The Formation of the *Mudawwana*

by

Wesley Arnold Thiessen
B.A., Bethel University, 1986
M.A., Institute of Holy Land Studies, 1989

A Dissertation Submitted in Partial Fulfillment of the
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Supervisory Committee

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(Department of History)

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The Mudawwana is a work which is traditionally credited to Saḥnūn, a legal jurist from Kairouan, North Africa in the 2nd-3rd/8th-9th century. It is one of the major legal texts at the foundation of the Mālikī madhhab named after Mālik b. Anas. The text is a large compendium of hypothetical scenarios requiring resolution. The style of the text is masāʾil, i.e. question-and-answer, between a disciple and his teacher. This research examines ancient manuscripts, commentaries and modern editions of the Mudawwana for a comparative analysis in attempting to understand the way in which the text was formed. The text will be examined in the areas of structure, content and presentation. The roles and influences of those responsible for the development of the text will be examined using definitions set out by Sebastian Günther. Discrepancies and variances amongst the manuscripts and modern editions, along with insights gleaned from the commentaries will yield a formative process in the development of the text over a period of centuries. It will be shown that although much of the content of the text was likely set by the creator of the text, various influences through the centuries by personalities and individuals fulfilling certain roles have impacted the structure and presentation of the text. The various roles in the creation of the text will be examined including author, writer, scribe, student, transmitter and editor. The influences of these various roles have developed the text further, therefore distancing it from the intentions of the creator of the original text. Structural changes were most prominent in the medieval period with kitābs within the text being bound in kurrāsas, one or more to a group. In the modern period, these nearly one hundred kitābs were
then bound in multi-volume hardcover sets providing a very new presentation form for the text. Additionally, a new name was given with the publication of the first modern edition in 1323/1905, *al-Mudawwana al-kubrā*. The textual changes will be examined in light of these roles in order to better understand how the text has been modified and formed over the centuries. Results will demonstrate that the text of the *Mudawwana* has undergone three primary periods of development: formative, classical and renaissance. The roles and personalities have impacted its development in content, structure and presentation, with the latter two having been more significantly affected during its classical and renaissance stages.
# Table of Contents

**Supervisory Committee**

**Abstract**

**Table of Contents**

**List of Figures**

**Frontispiece**

**Preface**

**Acknowledgements**

**Introduction**

1. The Problem of the *Mudawwana*
   1.1. General Description of the *Mudawwana* 5
   1.2. The “Problem” of the *Mudawwana* 7
   1.3. The Modern Editions of the *Mudawwana* 14
      1.3.1. 1323/1905 Cairo Edition 14
      1.3.2. 1324/1906-07 Cairo Edition 15
      1.3.3. Modern Editions in Recent Decades 17
         1.3.3.1. 1994 Dār al-Kutub al-ʿIlmiyya 18
         1.3.3.2. 1999 al-Maktaba al-ʿAṣriyya 19
         1.3.3.3. 2005 Muʿassasat al-Nadā’ 19
      1.3.4. Summary of the Printed Texts 20
   1.4. Review of Scholarly Literature 21

2. The Historical Context of the *Mudawwana*
   2.1. Time Period 40
   2.2. Personalities of the *Mudawwana* 46
      2.2.1. Mālik b. Anas 46
      2.2.2. Ibn al-Qāsim 49
      2.2.3. Saḥnūn 51
         2.2.3.1. Saḥnūn’s reputation 51
         2.2.3.2. Primary sources on the life of Saḥnūn 53
         2.2.3.3. Saḥnūn’s *riḥla* and the *Asadiyya* 55

3. Sources: Manuscripts and Commentaries 61
   3.1. The Known Ancient Manuscripts of the *Mudawwana* 61
      3.1.1. Garrett 900H 63
      3.1.2. Alexandria al-Baladiyya 1210b 63
      3.1.3. Leuven ms Lefort B1, B2, B3, B4 and B5 64
      3.1.4. Fes Qarawiyyīn 577 65
      3.1.5. British Library ms Or 6586 67
      3.1.6. British Library ms Or 9810 68
      3.1.7. Kariouan 400/1010 69
      3.1.8. Kairouan 258/871-72 69
      3.1.9. Fes Qarawiyyīn 319 70
3.1.10. Fes Qarawiyyīn 796
3.1.11. Fes Qarawiyyīn 1335
3.1.12. Rabāṭ Kattānī 343
3.1.13. Chester Beatty Library mss Ar 3006 and 4835
   3.1.13.1. Ar 3006 71
   3.1.13.2. Ar 4835 73
3.1.15. Leiden ms Or 14.038 75
3.1.16. Known Inaccessible Manuscripts 75
3.2. Commentaries 75
   3.2.1. al-Barāḍī: al-Tahdhīḥ fi ikhtisār al-Mudawwana 77
   3.2.2. Ibn Rushd: al-Muqaddimāt al-mumahhidāt 77
   3.2.3. al-Qāḍī ‘Iyāḍ: al-Tanbihāt al-muṣtanbaṭa 78
   3.2.4. al-Rajrājī: Manāhij al-taḥṣīl 79
   3.2.5. al-Jubbī: Kitāb sharḥ gharīb alfāẓ al-Mudawwana 79

4. Roles in the Formation of the Mudawwana 82
4.1. Transmitter 82
4.2. Author 83
4.3. Writer 83
4.4. Editor 84
4.5. Authority 89
4.6. Source 90
4.7. Commentator 90

5. Observations from the Sources 92
5.1. Structural Observations 92
   5.1.1. Kurraṣas and Kitābs—Their Order in the Text 92
   5.1.2. Combined and Divided Kitābs 106
   5.1.3. Subject Headings 109
   5.1.4. Modern Editions 109
5.2. Content Observations 111
   5.2.1. Missing Kitābs 111
   5.2.2. Kitāb Titles 116
   5.2.3. Subject Headings 121
   5.2.4. Discrepancies of Textual Content 131
      5.2.4.1. Between manuscripts and modern editions 131
      5.2.4.2. Heffening study 132
      5.2.4.3. CBL ms Ar 4835 folio 59b in comparative analysis
               with modern editions 137
      5.2.4.4. Manuscript marginal notations 138
      5.2.4.5. Comparison of the Beirut edition and the 1324/1906-07
               Cairo edition 143
      5.2.4.6. Comparison of the two modern editions: the 1323/1905
               Cairo edition and the 1324/1906-07 Cairo edition as
               represented by the Beirut edition 150
   5.2.5. Honorific Phrasal Endings 158
   5.2.6. Concluding Statements 160
   5.2.7. Modern Editions 161
      5.2.7.1. Footnotes 161
5.3. Presentation Observations 166
   5.3.1. Layout 167
   5.3.2. Volume and Section (juz’) Title Pages 169
5.3.3. Kitāb and Kurrāsa Title Pages
5.3.4. Subject Headings
5.3.5. Within the Text
  5.3.5.1. Quotations from the Qur’ān and ḥadīth
5.3.6. Conclusions of Kitābs and Concluding Statements
5.3.7. Presentation Conclusions
5.4. Summary to this Point

6. Textual Investigation in the Mudawwana
6.1. Kitāb al-Qisma al-awwal wa’l-thānī
6.2. Translated Text
6.3. Discussion of the Text
6.4. Commentaries on the Text
6.5. Application of Günther’s Terminology
  6.5.1. Transmitter
  6.5.2. Guarantor
  6.5.3. Informant and Teacher
  6.5.4. Authority
  6.5.5. Writer, Author and Editor

7. Conclusions

Bibliography

Appendices
A. Table of Transliteration and Translation of kitābs and section groupings
B. A comparison of the kitābs of four modern editions of the Mudawwana
C. A comparison of the kitābs found in five commentaries of the Mudawwana and the kitāb list of the 1323/1905 Cairo edition
D. A comparison of Heffening’s A, B and ms Leuven B5 added along with the Beirut, Mecca and Abu Dhabi modern editions
E. A comparison of CBL ms Ar 5835:59b with the four modern editions of the Mudawwana
F. Discrepancies between the 1323/1905 Cairo edition and the Beirut edition for selected passage in Kitāb al-Qisma al-thānī
G. Subject headings from Kitāb al-Qisma al-awwal and al-thānī
H. Text of the Mudawwana from Kitāb al-Qisma al-thānī
List of Figures

1. Title page of volume two of the 1324/1906-07 Cairo edition of the Mudawwana (Vol. 2:1).
2. Polychrome metallic lustre ceramic tile from the area surrounding the mihrab in the Grand Mosque of Kairouan.
4. CBL ms Ar 4835:1a. Title page of the kurrāsa of Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārith waʾl-ansāb.
5. CBL ms Ar 4835:55a. Marginal notation correcting a subject heading.
6. CBL ms Ar 4835:55b. Visual image of textual discrepancies with a manuscript folio.
7. CBL ms Ar 4835:32a. Marginal notation correcting a textual error.
8. CBL ms Ar 4835:2a. Marginal notation in manuscript not part of text of 1323/1905 Cairo edition yet found in the Beirut edition.
15. A Visual representation of the varying influences of personalities/roles on characteristic aspects in the formation of the Mudawwana.
Sunan Abū Dāwud
“Book of Judgments”
Chapter concerning “Requests for Judgments”
And with it [the book of Saḥnūn] the teachings of Mālik were spread throughout the Maghrib.

- Ibn Khallikān, Wafayāt al-aʿyān
Preface

My sojourn in Tunisia began in 1997, following a brief stint as an English instructor in Libya. At the time, I had no idea that my search for temporary employment would turn into a twelve-year career in the city of Kairouan. At times unbearably hot in summer, a family decision was made to construct a rectangular basin within our walled home to serve as a swimming pool for our survival of the temperatures that regularly spiked above 40°C. My wife takes pleasure in occasionally reminding me that she, along with our children, endured one of the hottest days in Kairouan in our recollection while I just happened to be out of the country—a mere 57°C. So we considered the pool a necessity, rather than a luxury. A climbing vine on a metal frame near the street end of the pool created a screen of sorts. That, along with the large iron gate fused with perforated metal panelling, provided our privacy from the street. The following year, our neighbours to the north began extensive renovations on their home, including a studio apartment above their garage which directly abutted the wall separating our two properties. As is common modern building practice, each property owner has his own wall surrounding his property, built right against that of the neighbour, so there were twin walls dividing our living spaces. The neighbour’s studio apartment required a place to hang wet laundry, and so a terrace was built for that purpose. This terrace provided observer status from above to those enjoying the more moderate temperatures of an unheated swimming pool in summer. This awkward situation was my introduction to Islamic building practice, both modern and ancient custom, as well as law.

My local building project manager, Muḥammad, who oversaw the completion of several small building modifications at my home over those years, provided excellent commentary on the appropriateness of both my neighbour’s, as well as my own, modifications, according to current custom. He, being unaware of the historical development of Islamic building law in the Mālikī school, was certainly aware of what was appropriate concerning current building practice in the city. He informed me at the time that the action of
my neighbour in building a terrace above the level of our pool, and having a wall beside the
terrace providing a direct sight line with the bathers in the pool was in contravention of local
custom. He further declared that as my pool was built before the neighbour’s terrace, it was
my neighbour’s responsibility to increase the height of his portion of our twin wall,
maintaining the privacy which I previously had for my pool. My neighbour and I only spoke
once or twice concerning the privacy issue and his terrace, specifically to convey my
disapproval of the viewing by his sons of our free time in the pool. Following that
conversation, I don’t recall another incident ever contravening our privacy from that vantage
point. Yet on his terrace, the wall remained at waist height.

This was not the end of personal experiences with my neighbours concerning
appropriate Islamic building practice. Some years later, I made the decision to close in a
small, virtually unused balcony on the back side of our home in order to increase storage
space. When planning the design of the structure, we chose to include a window space on the
larger wall, with a side vent window on one of the narrow ends of the balcony walls. It wasn’t
long after we had the initial structure completed that a knock came at our gate. The neighbour
to the rear of our property came to share his anger over our decision to include a window
which would now overlook his—a currently unoccupied, building-in-progress—property.
This “invasion” of his privacy, was completely unacceptable to him. His complaint was
tempered by his assertion that he was not concerned about us, as foreigners, as the current
occupiers of the home, insisting that we had pure inner motivations, but rather he was
concerned about who may, in future, occupy the home and choose to observe his home from
the window. I assured him that we had calculated this possible invasion of privacy, and
wanting to allow light into the room of our home off of which the balcony was located, we
had decided we would use opaque glass blocks to fill the window space, rather than a
traditional window. When the project was completed, his objections appeared to be assuaged,
as we heard nothing further from him.
Ironically, some years later during an absence from the country, and without my approval, a window was transferred in my home from an interior location to an exterior one—directly overlooking our own pool, and facing towards the property of the owner of the studio apartment and the terrace. Being on the second level of the house, it provided an excellent viewpoint of the surrounding area. Now, from within that bedroom, it was possible to see into the more recently installed pool in the neighbour’s yard (you must keep up with the Joneses, you know). Upon our return to the house, it was made quite clear to us that the neighbour was not at all pleased with this situation, as it allowed someone to discreetly observe that family now lounging in their pool. Note that neither pool is adequately large to justify the use of the verb “swim”. Another irony in the scenario was that the wall by their terrace was still the same height. Some months later, with no further intervention on my part, the neighbour’s wall between our properties was increased in height, blocking any view that anyone on their terrace might have had of our pool, and additionally blocked any view from our window to their pool. Obviously, the placement of a window in such a “strategic” location moved the owner to rectify the situation once and for all. Thus privacy was restored to our pool, and the right of privacy returned to the one who had occupied the sight line first. No harm done.

This introduction to the concepts of building law within an Islamic society piqued my interest in the origins of Islamic law, and specifically those dealing with building and privacy. I discovered that in the twenty-first century, laws in place concerning modern building practices were founded on those established many years earlier through the reasoning of jurists in North Africa, one hailing from Kairouan. This study is a deeper look into the formation of one of the legal texts at the foundation of the Mālikī madhhab. It was the creation of texts like the Mudawwana which applied Islamic law to the aspects of life of the people of North Africa and beyond, helping them understand the way in which life should be conducted while following the teachings of Mālik and the Mālikī tradition.
Acknowledgements

Any undertaking of this nature is never accomplished alone. Nor is it celebrated alone. Like a marathon, the completion of just over four years of often intensive study has brought me to a place of achievement with a desire to recognize those who have been helping alongside, providing practical, emotional, material and intellectual assistance during this project.

I would not have embarked on this venture had it not been for the likes of historians such as Paul Spickard and Patrick Miller, first planting the seed in my head. Further inspiration came with the visit of Charles Nienkirchen who encouraged me to think carefully about the institution and historian with whom I would affiliate myself. Added to these were courses taken previously with Joseph Cumming and thus I began my search for an appropriate mentor and institution to begin my foray.

The cheering section is vital for a long-distance venture, to provide encouragement to continue on. At the front of the pack have been my family—my wife, Elaine, and my four children, Hannes, Amaliyah, Aedyn and Geneiagh. They have released me from innumerable obligations and responsibilities over the last four years, allowing me to pursue this goal. Their belief in me, ever present, has been a mainstay. Thank you! My parents along with numerous relatives and friends have encouraged me over the years, expressing statements of support and good wishes. I know many prayers have been made on my behalf.

Academically, I am most indebted to my supervisor, Dr. Andrew Rippin. From the first exchanges of email with my inquiries concerning this scholarly relationship, until the final revisions of this dissertation, I have found him to be most available, full of insight and excellent guidance. Opportunities for exchange with Dr. Martin Bunton and Dr. Marcus Milwright have only enhanced my experiences at the University of Victoria. I could not have
guessed that such a beautiful location would provide me with such excellent academic mentorship.

I have met new colleagues and begun new relationships with previous colleagues in Tunisia. Hospitality is valued in Tunisia, and amongst my academic cohorts, I found nothing but the most helpful. Here I must mention the assistance of Dr. Ahmed Bahi, Dr. Lotfi Abdeljaouad and Dr. Nejemeddine Hentati. Their valuable aid has been to my great benefit.

You simply cannot find all the resources yourself; it takes a team of helpers to gather what you need. In this respect, I would like to recognize the support of the staff of two excellent university libraries, at the University of Victoria and at the University of Calgary. I would be remiss though, if I did not specifically mention the names of two excellent ILL librarians, skilled in coaxing the most difficult resources out of the bowels of North American depositories: Kathleen James and Judy Zhao. Mention should also be made of Dr. Elaine Wright of the Chester Beatty Library, along with the kind permission to include images of the library’s manuscripts. I’m also grateful to Anna Esty of Harvard University Library for access to special resources there.

Some library work is done by those who are not librarians. I have had a rich crew of research assistants including Keith Yoder, the best scanner in the UAE, and my cousin (soon-to-be Dr.) John Dirks, my right-hand at the U of T library! You guys are great.

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The road would not have been travelled (it certainly is the road LESS travelled) had it not been for the generous financial support of the University of Victoria History department. Two Graduate Directors have assisted in this regard, Dr. Perry Biddiscombe and Dr. John Lutz. Thank you for believing in what I do to the extent that the department would assist with
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My time in Victoria would never have been affordable had it not been for the generous housing provided by my aunt, Betty Dirks. The door was always open. Conversations each visit always included her seeming deep interest in all my coursework. She provided stimulating questions that helped me think through my studies.

Rudolf and Marguerite Dyke, my aunt and uncle, also provided an open door and warm hospitality in Victoria. Uncle Rudolf provided mock comprehensive exams to prepare me for the real thing. He even seemed genuinely interested! I’m grateful.

Thank you to my extended family and friends who have had a word of encouragement and to my many Tunisian friends who have helped along the way. I would like to specifically acknowledge Sahbi, Muhammad, Lamia, Nadia, Samir, Aymen and Lassaad. You have each made my life richer.

I would also like to thank God for the health, strength and mind to carry this out.
Introduction

The formation of a book in modern times is a lengthy and sometimes complicated process, with many individuals being involved in the task. These responsibilities include, but are not limited to, copy-editing, typesetting, proof-reading, artwork design, printing and binding. Many books, from the date the writing is completed, take up to a year to be published.

The publication of modern editions of ancient Arabic texts is further complicated by additional factors. The subject matter may be unclear caused by the uncertainty which sometimes characterizes the sources as a result of variant readings existing between manuscripts. Some ancient manuscripts were not bound together, creating potential disorder in the sequence of the text itself. The source of the text itself may be unknown or unverified resulting in misunderstanding the value a text may have had both at the time that it was written as well as later.

With the passage of time, many ancient manuscripts are being published as modern editions, with a new face on them. Preparing this new look often requires decisions affecting the physical make-up of the text; divisions are created where there were none, bringing things together that were formerly apart. More than that, these changes can affect the textual content of a book. In some instances ambiguity needs to be eliminated, forcing editors to make difficult decisions attempting in most instances to discern the author’s original intent: a challenging process.

It would be naïve to believe that modern editors have no influencing developmental role in the formation of modern editions of ancient Arabic texts. The nature and depth of the influence a modern editor has in production can only be understood if one views the work comparatively, both the pre-published product, in this case the manuscripts, and the final editions. Yet modern editors can in some cases be taciturn in divulging the nature of their sources. Comparative analysis between modern editions and ancient manuscripts is one way
of being able to better discover the nature of the influence of modern editors on the texts. This research is exactly that—a comparative analysis of modern editions and ancient manuscripts in order to better determine not only the influence of the modern editor on the final published form, but also the influence of the author, writer, or creator of a text, the transmitters and even commentators. The specific text being investigated is the *Mudawwana*, known from the beginning of the twentieth century as *al-Mudawwana al-kubrā*, a legal text of the Mālikī *madhhab* from North Africa which dates to the 3rd/9th century.

The text will be examined comparatively, and at various stages in its formation. Ancient manuscripts of the *Mudawwana* will be compared with each other, and these manuscripts will also be compared with the modern editions of the *Mudawwana*. Five modern editions have been examined for this research, spanning 100 years from 1905-2005. The modern editions will themselves be compared to each other as well. Finally one short passage from the *Mudawwana* will be translated and analyzed in order to better understand from the text itself the way in which it was formed.

Comparisons between the manuscripts and the modern editions will yield discrepancies between them, these discrepancies and differences will be classified into three categories—structure, content and presentation. Some of the differences will demonstrate the effect of the process of copying manuscripts, and also decisions that must be made by modern editors in publishing a modern edition. Discrepancies will be uncovered from amongst the modern editions, providing evidence that there is more than one manuscript tradition which underlies the various modern editions of the text.

Following the presentation of one small portion of the text, an analysis will be made of the text in order to identify the roles played by various historical personalities who have been involved in its formation. These personalities will include the three most significant figures named in the text, Mālik, Ibn al-Qāsim and Saḥnūn. Definitions used for these roles
will be those already found within the discipline of Islamic studies, drawing on the
discipline of Islamic studies, drawing on the
experience of modern scholarship. Each role influences the text. Structure and presentation of
the text will give cues as to the influence those responsible have had on it. Each cue must be
examined within its own context in order to arrive as nearly as possible at an accurate
perspective of what the text was, how it was influenced and by whom.

What will be seen is that the *Mudawwana* had at least three significant periods
concerning its formation: formative, classical and renaissance. The text demonstrates
development in three phases that can be clearly evidenced through the interpretation of the
witnesses extant. An initial stage gave birth to the idea of the *Mudawwana*, primarily through
the agency of Saḥnūn, from years of study under Ibn al-Qāsim. The influence of the teachings
of Mālik will be evident, but he himself is essentially a textual source rather than an active
participant. A later stage brought more rigid structure and form to the text, taking on the
shape of a book in initial stages. Another historical figure, al-Qābisī, had an active role in
strengthening the contemporary place of the *Mudawwana* through his role as teacher as well
as an editor of the text. Then the modern period brought about a new text of the *Mudawwana*,
new in form more than content, although the content was influenced to some degree.

Saḥnūn, a *qāḍī* (jurist) from third/ninth century Ifrīqiya (North Africa), is seen by
many to be primarily responsible for the authorship of the *Mudawwana*. Yet with the
instruction and input of his teachers, Ibn al-Qāsim and indirectly Mālik, it can become
difficult to determine who should rightly take credit for a particular role. Clearly defined
roles will help to accurately assess the involvement of each individual. With this
methodology, it will be less taxing to determine the influence that each role had in the
formation of the text.

Roles examined in this research will include writer, author and editor. Other roles
which will also be examined, such as source, guarantor and authority, may be altered with
modifiers such as direct, indirect, main, original, earliest and older, to name a few. Terminology and their definitions for these roles will be based on that provided by Sebastian Günther, publishing almost ten years ago, in order to reduce confusion amongst scholars of Islamic history.

Fragments of ancient manuscripts of the Mudawwana have been consulted, primarily from two collections, the Chester Beatty Library (CBL) in Dublin, Ireland and the British Library (BL) in London, United Kingdom. Five modern editions of the Mudawwana have also been investigated, two of them extensively. Their forms will be given once in full, following which a shortened designation will be used to identify them. As modern journal material is infrequent, it is not necessary to provide a list of scholarly journal abbreviations. All dates will be referred to first in the Hijri form followed by the Gregorian equivalent through the entire study. Geographic locations will be referred to by commonly used English spelling if they exist. The content of the Mudawwana is made up of almost 100 individual chapters, or kitābs. These kitābs will be referred to by their Arabic titles transliterated into Latin characters. The word kitāb, preceding each one, will be capitalized along with the first word of the title of the kitāb following the form of Miklos Muranyi in his various studies of Mālikī works in North Africa. Although the use of the male gender is used exclusively to refer to authors or publishers, this is merely for ease of composition and should in no way be considered a reflection of attitude or persuasion in any form.

Although this research has been completed with the assistance of many, any errors found within it are completely my own.
Chapter 1
The Problem of the Mudawwana

1.1. General Description of the Mudawwana


This clarification avoids any confusion with texts containing the word Mudawwana in its title.

The Mudawwana is a lengthy treatise which deals extensively with numerous areas of life concerning the permissibility of actions from a religiously legal perspective. It lays a foundation of what is understood to be acceptable behaviour within the Mālikī madhhāb not only for everyday situations, but also almost any imaginable situation through the course of life, including

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1. This is the form of his name, exactly as it appears in al-Mālikī’s Riyyād al-Nafūs, see Abū Bakr ʿAbd Allāh b. Muḥammad al-Mālikī, Riyyād al-Nafūs fī tābaqāt ‘ulamāʾ al-Qayrawān wa Iḍīqiyā (Beirut: Dār al-Gharb al-Islāmī, 1981), 1:345. Although his proper first name is sometimes recognized as ʿAbd al-Salām, his more well known nickname of Saḥnūn is clearly preferred. Al-Mālikī notes that the name Saḥnūn is considered correct, i.e. not a nickname, amongst the ‘ulamāʾ of Iḍīqiyā. Two theories have been put forward concerning the meaning and giving of his nickname: one is that he was named for a bird, the other is for his shrewdness. Talbi suggests that the form of his name is a diminutive, in the form of faʿlūn, expressing affection, such as that in Khaldūn, see M. Talbi, “Saḥnūn, Abū Saʿīd ʿAbd al-Salām b. Saʿīd b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār b. Rabīʿa al-Tanūkhī,” Encyclopaedia of Islam, Second Edition (Brill Online, 2010). Abū ʿl-ʿArab, the oldest primary source of Tābaqāt literature of Iḍīqiyā, quoted by al-Mālikī, lists him as Saḥnūn b. Saʿīd b. Ḥabīb al-Tanūkhī, see Abū ʿl-ʿArab Muḥammad b. ʿAbd ʿAbd al-Tanūkhī b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār b. Rabīʿa al-Tanūkhī, Abū ʿl-ʿArab Muḥammad b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār b. Rabīʿa al-Tanūkhī, see Abū ʿl-ʿArab Muḥammad b. ʿAbd ʿAbd al-Tanūkhī

2. Mālik b. Anas is best known as the person after whom the Mālikī madhhāb was named and to whom are accorded the traditions and foundational teachings of Islamic jurisprudence of that madhhāb.

3. See page 93 and footnote 239 for other Mudawwana. Having a better context for what the Mudawwana is will provide a better understanding for the information conveyed there.

4. Its modern day title, Al-Mudawwana al-kubrā, will be further explained on page 94 in the section on “Observations from the Sources,” but specifically dealing with modern editors and their influence on the text. The text of al-Mudawwana al-kubrā will be referred to simply as the Mudawwana throughout the course of this work.
religious obligations, in order to guide those who are affiliated with the teachings of Māliḵ b. Anas.

The text is divided into chapters or kitābs (lit. book, pl. = kutub)⁵, varying in length from one to sixty-six pages.⁶ Depending on the particular modern edition read,⁷ there are 93 or 94 kitābs within the text for a total of 2,437 or 2,849 pages of text. Areas dealt with in the text include personal religious duty, personal affairs such as marriage, birth and death ritual, personal economics, for example property and inheritance divisions, lending, and sales with an option, as well as calamities, judgments and testimonies, among many, many others.⁸ The format of the text is that of questions and answers, a genre of Arabic literature technically known as masāʾil,⁹ where questions are posed from a knowledge-seeking disciple, to a more learned teacher who has an extensive knowledge base and the background knowledge of an

5. The divisions referred to here are understood to be original to the first developments of this text, intended by those who were responsible for the authoring and earliest transmissions of the text. The divisions found within the modern editions of the text will be dealt with more fully in section 5.1.1, entitled Kurrāsas and Kitābs—Their Order in the Text, starting on page 92.

6. These numbers of pages are based on the modern edition of the text, to give a rough idea of the immense size of the text.


8. A full list of all the kitābs of the Mudawwana can be found in Appendix A. Both the transliterated Arabic names as well as their names translated into English are found in the general order in which they occur in the modern editions.

9. More on masāʾil will be discussed at the beginning of chapter six entitled Textual Investigation in the Mudawwana which begins on page 183.
even larger group of teachers. Frequently the questions are asked inquiring whether a particular action or scenario is permissible or not or whether the teacher has an opinion on a particular issue. Within each kitāb the scenarios devised are such that one concludes these are hypothetical situations which are posed in order to inquire concerning what would be an acceptable solution. The value of these hypothetical situations should not be underestimated, as they fulfil several roles, whether pedagogical, intellectual or even an exploration of the possibilities of Allāh’s law. Often times questions asked and opinions given are based on the teachings, and specifically the words (qawl) of Mālik, however other names, such as Ashhab, ´Abd al-Wahhāb and Ibn al-Mājishūn, among others, are mentioned throughout the text as providing opinions which appear to be equally valid.

In his biographical section on Ibn al-Qāsim, the Arabic biographer Ibn Khallikān (d. 681/1282) gives a brief description of the Mudawwana, citing Ibn al-Qāsim as the author (ṣāhib) of the Mudawwana. He describes the text as one of the most highly regarded texts within the Mālikī madhhab, and that Sahnūn received it from Ibn al-Qāsim. The late date of Ibn Khallikān’s biographical information does not lend it credibility, but for the purposes of this research it demonstrates how the historical narrative of the Mudawwana grew over four hundred years.

1.2. The “Problem” of the Mudawwana

Opening a modern edition of the Mudawwana one is immediately overwhelmed by the massive size of the text. The text itself is too long for it to be practical to have it in a single volume. The large size of the text is made more manageable through the division of the material into smaller parts like chapters. Each of these parts is named a kitāb. In the 1323/1905 Cairo edition, these kitābs are grouped together in a larger section called a juzʾ (section/part; pl. ajzāʾ). Each modern edition gathers together many kitābs into a mujallad (bound volume; pl. mujalladāt). This last grouping designates a separate binding. However
when simple comparisons are made between the various modern editions currently available, discrepancies immediately start to appear in the order of the kitābs, sometimes in the names of the kitābs, and when reading deeper, it is apparent that there are discrepancies in the content of the text itself. How did these discrepancies between the various modern editions come about? Who was responsible for them? How can they be resolved? In fact, how was the Mudawwana, as a text, formed?

Studying the formation of the text of the Mudawwana presents numerous difficulties. Its extensive size and massive breadth make a study of its content as being virtually impossible, practically requiring potential researchers to choose a specific subject and inquire as to what the Mudawwana has to say on that particular subject. Subject content is not the primary objective of this research, rather this research will seek to better understand how the Mudawwana, as a text, was formed. Comparisons will be made between manuscript witnesses to the Mudawwana and the modern editions of the text. The roles of different personalities in forming the text will include author, writer, editor, transmitter and commentator. These roles have been filled at various times by various people. These different personalities throughout history, it will be shown, have each played a part of varying significance, in creating what is now referred to today as al-Mudawwana al-kubrā. In addition, one brief passage of the text will be examined in more detail, leading to a better understanding of the origin of the text and the role that authority plays within the composition of the text. Textual comparisons involving ancient manuscripts as well as modern editions will demonstrate that what is printed in modern editions cannot always be relied upon to be an accurate reflection concerning the ancient text. These comparisons will also show that the manuscripts of the ancient text itself display discrepancies, making it difficult to know who

10. Several of these subject explorations have been done over the last century, but they are surprisingly few given the vast ocean of knowledge dealt with by the Mudawwana. The literature review, section 1.5, beginning on page 21, will highlight those known in Western scholarship.
was responsible for the text as we now have it. The content study will further reflect on the concept of authorship, providing a better understanding of the process a text like this could have taken in coming to the form in which it is found in the modern day.

The *Mudawwana* is one of only a handful of texts that are considered to be foundational in the formation of the Mālikī madhhab. Named after Mālik b. Anas, the Mālikī madhhab normally refers to those who are affiliated with the teachings of Mālik and use them to guide their life and practice. However, there is controversy as to how these madhāhab were first formed. Joseph Schacht in his *Introduction to Islamic Law* put forward most clearly the idea that affiliation to the madhāhib of the formative period of Islam was mainly based on geography rather than personality. These ancient schools, in his terminology, were formed based on a particular geographic location, such as Kufa or Madina, and not based on one specific person. He iterated that they eventually developed into a school based on a particular individual, e.g. Mālik or Abū Hanifa, but that their original locus of reference was a place and not a person. Further support for this theory was presented by Christopher Melchert in his seminal work on the origins of the Sunni schools of law.

Melchert developed the idea of how these “regional schools” became schools of law centered on a specific individual. Contending against this, Wael Hallaq argues that “regional schools” never existed, as there is insufficient evidence to demonstrate a common understanding of a

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group within a certain region large enough to constitute a “school.””

Although these scholars may not agree on the development as it took place, it is clear that a development transpired.

It is not the purpose of this thesis to try to confirm or refute either of these developmental theories, but to recognize that differences did exist, whether that be categorized according to individuals or regions. Individual faqīhs (experts/scholars in Islamic jurisprudence in the early period; pl. fuqahāʾ) did gather disciples and did provide teaching concerning legal matters. The opinions of one teacher did not necessarily agree with those of another, and differences between teachers based in certain regions became clearly evident over time. It was these teachers, whether as a personality or as a group within a region, that attracted disciples to come and study under them, some even from a vast distance requiring lengthy journeys and resulting in stays of years and sometimes decades. These academic journeys became known in the literature simply as a disciple’s riḥla (journey). Saḥnūn’s own history indicates a desire to study under the teachers associated with Mālik, while at the same time desiring to study under Mālik himself.


15. These differences among the fuqahāʾ in the formative period are even the subject of literature in the classical period. For literature of this nature within the Mālikī madhhab see for example Yusuf b. `Abd Allāh Ibn `Abd al-Barr, *Ikhtilāf aqwāl Mālik wa-ashābīhi* (Beirut: Dār al-Gharb al-Islāmī, 2003).

16. Al-Qāḍī `Iyād (d. 544/1149), writing about three hundred years after the time of Saḥnūn, relates a brief conversation between Saḥnūn and Ibn al-Qāsim concerning the reason why Saḥnūn never studied directly under Mālik. Saḥnūn is recorded as saying that money (or the lack thereof) was the sole reason. See al-Qāḍī `Iyād b. Mūsā, *Tarīkh al-madārik wa taqrīb al-masālik li-ma ūrifat a ʿlām madhhab Mālik* (Rabat: Wazārat al-Awqāf waʾl-Shuʿūn al-Islāmiyya, 1403), 4:46. The veracity of this report, and others like it, can be called into question, given the length of time between the events themselves and the date recorded. However, it must be asked what can be drawn out of a recording of this conversation even if the details of the events themselves cannot be verified. In this particular instance, it would be worth noting that a reason is being sought in this conversation to explain why Saḥnūn never studied directly under Mālik. The story itself, although of doubtful accuracy, would support the fact that Saḥnūn did not ever study directly under Mālik. Here the question asked of our source should be changed. It should no longer be “What is the reason why Saḥnūn did not study under Mālik?” but rather it should become “Did Saḥnūn in fact study under Mālik or not?” For if this conversation between Saḥnūn and Ibn al-Qāsim is indeed a fabrication, then it begs the question, what was the need for the fabrication in the first place? This anecdote would provide a plausible reason why Saḥnūn was unable to see Mālik, and at the same time express Saḥnūn’s personal desire to study under him directly. It would keep his academic objectives intact while providing him with a legitimate reason for not making that happen. He is able to “save face” with this story. Who can verify whether or not it is true? It is most unlikely that it will ever be either confirmed or denied in an absolute way. These are some of the incongruities within the history of the early
The mystery of the formation of the madhāhib of Sunni Islam is a typical point of issue within the formative period of Islam. In the same way that madhāhib developed, texts within each madhhab are also believed to have developed. It is a common idea that texts formed over a period of time. In fact this time period is well known for oral history transforming into literary history. Concerning the formation of Mālikī texts, a chief proponent that these texts formed over generations is that of Norman Calder. He presented evidence to support a redaction to the texts of early Muslim jurisprudence of not only the Mālikī school, but others within Sunni Islam as well. In referring to the Muwaṭṭa’, he stated with confidence that “. . . this is not an authored text: its present form is explicable only on the assumption of a fairly extended process of development . . .” Similarly, in regards to the Mudawwana, Calder presented a sample text from Kitāb al-Wuḍū’. Through this text, Calder asserts that there is clear evidence of a history of development within the text. As evidence, he cites the theory that “a predominantly generalizing approach to the law is more characteristic of a mature tradition,” but allowing for the coexistence of both a casuistic and generalizing style in the early period. He therefore concludes that since both of these styles coexist, there must have been development of the text.

Islamic sources which need to be accepted. The biographical dictionaries are also contradictory concerning the dates of Saḥnūn’s riḥla, some intimating that Saḥnūn made more than one trip east. Because of this, controversy has arisen as to whether or not Mālik was alive during the time of Saḥnūn’s journey. Brockopp addresses this issue in his article Jonathan E. Brockopp, “Contradictory Evidence and the Exemplary Scholar: The Lives of Saḥnun b. Saʿid (d. 854),” International Journal of Middle East Studies 43 (2011), 115-32.

17. Dutton discusses this idea in his review of Calder, cautioning that scholarship not place upon the texts of early Islam the same expectations that they would have on much later texts in Islamic law, due to the shift from oral to literary history during that time period. See Yasin Dutton, review of Studies in Early Muslim Jurisprudence, by Norman Calder, Journal of Islamic Studies 5 (1) (1994), 102-108.

18. See Norman Calder, Studies in Early Muslim Jurisprudence (Oxford: Clarendon Press, 1993). In this text, Calder discussed small portions of not only the Muwaṭṭa’ of Mālik and the Mudawwana of Saḥnūn, but also the Kitāb al-Asl and Kitāb al-Hujja ‘alā ahl al-Madīna of Shaybānī (d. 189/805), the Kitāb al-Umm of Shāfīʿī (d. 204/820), the Mukhtaṣar of Muzanī (d. 264/878) and the Kitāb al-Kharāj of Abū Yūsuf (d. 182/798).

19. Calder, Studies, 34.

Although Calder’s argument that there has indeed been development in the text itself is convincing, and adding to that the research which is being presented here, defining that development exactly is impossible. It is possible to put forward theories. However the theories will of course be restricted by the evidence available. As more evidence becomes available over time, it may be possible to further clarify the developmental process. In critiquing Calder, Dutton also takes him to task for not recognizing the assumed knowledge of the Qur’ān in the text of the Mudawwana. Although it is clear that both the Mudawwana and the Muwatta’ contain, admittedly, Qur’ānic references, until a clearly datable fragment is found within the first generation of Saḥnūn’s life which contains text of the Mudawwana including a portion of a Qur’ānic quotation or reference, it cannot be said with surety that the references to the Qur’ān found within the text of the Mudawwana are original to whoever was responsible for the text.

The textual content of the Mudawwana itself involves similar difficulties. The main challenges surrounding this text involve its composition, authorship and compilation including a dating for the completion of the text. The term authorship itself is somewhat ambiguous in this text. Three main personalities are featured throughout the text of the Mudawwana, Mālik, Ibn al-Qāsim and Saḥnūn. It is a complex question as to the roles each of these plays in the authorship question, this being one of the issues to be better understood as a result of this research. An early source for addressing general issues of authorship in early Islamic texts is that of Georges Vajda. Providing an initial presentation of the terminology used within the primary sources themselves, Vajda defines these terms clarifying the roles that different individuals had in forming texts, e.g. samāʿ (heard, listened), qirāʿa

21. See Georges Vajda, “De la transmission orale du savoir dans l’Islam traditionnel,” in La transmission du savoir en Islam (VIIe-XVIIIe siècles), ed. Nicole Cottart (London: Variorum Reprints, 1983). Although not a problem unique to Islamic history, it is an issue which is faced within the various schools and traditions of Islamic law.
(read, as in to read or quote back to the teacher what was taught) and wasiyya (testament). A more extensive presentation of terms along with categories and methodologies for assessing the classical sources through the process of transmission was completed by Sebastian Günther. It is Günther’s terminology which will be used as a guide through the discussion of authorship issues concerning the Mudawwana. Günther’s terminology will be presented in Chapter Four on page 82 and the application of his ideas will follow in Section 6.5 on page 205, entitled “Assessing the Mudawwana According to Günther’s Terminology.”

In addition to authorship, it is also imperative to discuss the compilation of the text of the Mudawwana. Modern editions may give the impression that a completed volume of the text has been in existence for a long time. Libraries within North Africa, Europe and even North America contain manuscript fragments of kitābs which form part of the Mudawwana. Some of these kitābs are grouped together in a loose bundle, while others remain alone. In some cases, there does not appear to be any organization whatsoever concerning the association of some kitābs with others. However they are clearly all part of the same “text.” This makes it difficult to define of what exactly the “text” consists. A developmental process appears to have been involved. The issue of the gathering of kitābs to form the Mudawwana will also be dealt with in this research.

The title of the text itself is an issue. Today, the text is referenced as al-Mudawwana al-kubrā with a fuller title including what or who is believed to be the source of this Mudawwana. It is commonly titled as al-Mudawwana al-kubrā lil-Imām Mālik, allatī rawāhā al-Imām Saḥnūn b. Saʿīd al-Tanūkhī ‘an al-Imām ʿAbd al-Rahmān b. al-Qāsim al-ʿUtaqī ‘an Imām dār al-Hijra wa-ʾawḥad al-aʾimma al-aʾlām Abū ʿAbd Allāh al-Imām Mālik b. Anas al-

Aṣbaḥī. As convoluted as this title may appear to many westerners, its format is fairly common for a text of early Islamic jurisprudence including names of transmitters through history in its title. Teaching was often passed from one to another orally, and when it was eventually recorded in writing, the main lines of oral transmission needed to be recognized in order to ensure the readers understood which version, or transmission of the original they were referencing. One question which will be asked is when and how did the text come to be recognized as al-Mudawwana al-kubrā rather than simply al-Mudawwana?

On the matter of dating the text of the Mudawwana, as the nature of the text is better understood it will become clear why this can be a complicated matter. Suffice it to say at this point that it is not possible to give a singular date for the completion of the text of the Mudawwana.

1.3. The Modern Editions of the Mudawwana

1.3.1. 1323/1905 Cairo Edition

Interest in the Mudawwana of Saḥnūn in modern times is mainly as a result of the first publication of the text in the twentieth century. This edition was originally published by Maṭbaʿat al-Saʿāda in 1323/1905 in 16 volumes (sections) which were bound in eight hardcover volumes. The editor in Cairo, Muḥammad Sāsī al-Maghribī al-Tūnisī, from his nisba obviously had his origins in Tunisia. This edition has become the standard with which others are compared. Much mystery surrounds the manuscript from which this text was taken. According to Muranyi, it is unknown which manuscript provided the text for this edition, however he believes it to have been from a private collection, likely in Morocco. The edition

itself describes the manuscript—in utterly fantastical terms—as being a complete 5th/10th century manuscript of the text, from Morocco, written on gazelle parchment.\textsuperscript{24} The specific date of the manuscript is given as 476/1083-84.\textsuperscript{25} The copyist responsible for the manuscript is named, ‘Abd al-Malik b. Masarra b. Khalaf al-Yaḥṣūbī. Further information about this manuscript is unknown. No description of the features of the manuscript, its condition, current location, owner or number and description of its folios is found anywhere.\textsuperscript{26} It has been reprinted many times, not only in Cairo but also by a publisher in Beirut many decades later and even following that as an offset reprint by Dār al-Ṣādir. This offset reprint, one of the editions utilized in this study, although rendered in a six-bound volume set, maintains the divisions of the original 16 volumes from 1323/1905, acknowledging which \textit{kitābs} were part of which volume in the original 1323/1905 Cairo edition. Pagination of the offset reprint edition follows the new volume breakdown.

\textbf{1.3.2. 1324/1906-07 Cairo Edition}

Another publication of the text of the \textit{Mudawwana} was made just one year later in 1324/1906-07 by a second publisher, al-Maṭba‘a al-Khayriyya.\textsuperscript{27} (See figure 1 below for the

\begin{itemize}
\item \textbf{24.} Sahnūn, \textit{Mudawwana} 1323/1905 Cairo edition. The 1323/1905 Cairo edition states the following: “This great book has been printed from a very ancient copy whose history is eight hundred years old, written on gazelle skin ... and present in the footnotes of this copy are many lines from the Imams of the [Mālikī] \textit{madhhab} imams, like al-Qāḍī ʿIyāḍ and the likes of him and it has been attributed to him through it that the \textit{Mudawwana} has four thousand \textit{ḥadīth} of the messenger of Allāh (PBUH) and thirty thousand of his traditions and forty thousand of his questions.” The number of references is clearly exaggerated. See 1:241.
\item \textbf{25.} See Sahnūn, \textit{Mudawwana} 1323/1905 Cairo edition, 6:476.
\item \textbf{26.} The Library in Alexandria has in its archives a complete text of the \textit{Mudawwana} considered to be the most precious acquisition in its collection. It is possible that this manuscript is the one which was used for the publication of the first modern edition in Cairo in 1323/1905. See Walid Saleh, “Report from Alexandria,” (2013).
\item \textbf{27.} Abū Sa‘īd Ḥāmīd b. Iskandar al-Ṣāḥibī al-Munīfī, \textit{Mudawwana} 1324/1906-07. It is this edition which Heffening says was published in a four volume set. See Heffening, “Islamischen Handschriften,” 89. Some confusion seems to exist concerning the volume published in 1324 as the Hijri date corresponds to 1906-07, having led some to conclude that there were three separate editions published in 1905 and 1906 and 1907. However, no record can be found of a third publication of the \textit{Mudawwana} in the year 1907. In order to reduce confusion, and yet to clearly differentiate between these two separate publications of the \textit{Mudawwana}, the publication years for only
Along with the text of the 
*Mudawwana,* this 1324/1906-07 publication included the commentary on the *Mudawwana* of 


these two editions will be referred to in both Hijri and Gregorian dates throughout this dissertation.

28. The designation, the grandfather, is given to Ibn Rushd to distinguish him from his grandson, the well-
One writer, writing significantly closer to the time of the publication of these first editions, has noted that although these publications came from two different manuscripts, the differences between them relate to formal characteristics and not to the construction of legal elements. The difficulty in making such statements is that no evidence is provided which would demonstrate that the copies are taken from different manuscripts. Other than the physical description of the manuscript itself given above, no description of its current whereabouts, owner or caretaker are given. No identification information is given which would enable one to know whether or not a future edition comes from the manuscript or not. This practice of providing as little information about the sources as possible prohibits further academic research and understanding. Without the evidence that a different manuscript was used in preparing this second publication, many would assume that any discrepancies between the two publications should be attributed to editorial discretionary practice, and that no new additional sources were used in the preparation of this edition.

1.3.3. Modern Editions in Recent Decades

For many years no further publications of the text were made until a four-volume edition was published in 1978 in Beirut by Dār al-Fikr. This same publisher came out with another edition, the volumes released over a period of a few years, beginning to be published in 1991. It includes two other medieval texts both providing biographical information on known philosopher Ibn Rushd or Averroes. The grandfather was regarded in his day as the most prominent Mālikī jurist in the Muslim West. See J.D. Latham, “Ibn Rushd,” Encyclopaedia of Islam, Second Edition (Brill Online, 2014). More information concerning the commentaries of Ibn Rushd and others will be presented in section 3.3 beginning on page 75.


30. This situation is perpetuated and exacerbated by modern technology in websites. For example, websites which post Arabic historical texts often give no reference or publication information, they simply publish the “text” as it appears in some publication. For a posting of the Mudawwana, see for example http://library.islamweb.net/hadith/display_hbook.php?bk_no=20. Without any information regarding the sources which underlie these texts, critical scholarship is impossible.
Imām Mālik—the first, Kitāb Tazyīn al-mamālik bi-manāqib sayyidnā al-Imām Mālik, by Jalāl al-Dīn al-Suyūṭī (d. 911/1505), and the second being Kitāb Manāqib (Virtues) sayyidnā al-Imām Mālik, by Ḥūsain b. Ḥusayn b. Masʿūd al-Mawsī (d. 743/1342). This edition also incorporates the commentary of Ibn Rushd. In addition to more biographical information on Mālik himself, these texts provide biographical information on Saḥnūn and background to the development of the text of the Mudawwana. Although none of this was new information at the time, to have Ibn Rushd’s introduction included in the text allowed readers to better understand the known context for the development of the Mudawwana.31 The addition of further texts along with the text of the Mudawwana provides only the most meagre of evidence that this publication might in fact be an edition which is based on a different manuscript. But in no way can this evidence be considered sufficient grounds to confirm that speculation. As publishers tend to be very circumspect concerning the sources they use for the publications printed, confirmation of sources is near impossible. Internal evidence, within the text of the published documents, is the only means with which to support, confirm or deny the theory that different source manuscripts were used. This is the methodology which will be used in this research.

1.3.3.1. 1994 Dār al-Kutub al-ʿIlmiyya

A four-volume edition of the Mudawwana was published in Beirut in 1994 by Dār al-Kutub al-ʿIlmiyya. This edition consists of four volumes of text from the Mudawwana, with an additional volume containing the commentary of Ibn Rushd, al-Muqaddimāt al-mumahhidāt. This edition contains no footnotes, the text appears to be very plain and with a modernized font. Concerning the text, the only observations which attract the eye is a

31. It must be clearly understood that the introduction provided by Ibn Rushd was the known, accepted or claimed understanding to the background of the Mudawwana during the time of Ibn Rushd.
decorative ligature for the taṣliya\textsuperscript{32} as well as decorative parentheses which enclose sūra references of the Qurʾān. An index at the end of each volume, acting like a table of contents, helps the reader to locate subject headings within the kitāb of that volume on the pages on which they occur. No indication is given whatsoever for the source text of the modern volume. This edition begins with the two additional medieval biographical texts published in 1991 by Dār al-Fikr.

1.3.3.2. 1999 al-Maktaba al-ʿAṣriyya

A nine-volume text of the Mudawwana was published in 1999 both in Mecca and in Sidon by al-Maktaba al-ʿAṣriyya.\textsuperscript{33} The final two volumes of this edition include the commentary by Ibn Rushd, al-Muqaddimāt al-mumahhidāt, as well as, for the first time, an index of Qurʾānic quotations and ḥadīth. Occasional footnotes in this edition list sūras for Qurʾānic quotations, and ḥadīth references such as al-Tirmidhī and al-Dāraquṭnī.

1.3.3.3. 2005 Muʿassasat al-Nadāʾ

One other publication of the Mudawwana was made in 2005 by Muʿassasat al-Nadāʾ in Abu Dhabi and in Beirut in six volumes.\textsuperscript{34} This edition provides much more extensive indexing, including indexes for Qurʾānic references, almost 600 pages of indexes for aḥādīth, āthār and masāʾil, in addition to the usual indexes indicating subjects covered in the text of the Mudawwana. One innovative editorial addition to this edition is the ordinal numbering of the kitābs of the Mudawwana, each subject within the kitābs, as well as the division and numbering of each conversational piece within the subjects. Numbering of the subjects within

\begin{thebibliography}{99}

\footnotesize

\bibitem{taṣliya} taṣliya: the phrase commonly introducing Muhammad, often translated “peace be upon him”

\bibitem{1999} This edition was consulted for this research.

\bibitem{2005} It is likely that this is a re-publication of a twelve-volume edition that was published in 2002 in the UAE by al-Shaykh Zāyid b. Sultān Al Nahayūn as cited by Umar F. Abd-Allah Wymann-Landgraf. This edition was also consulted for this research. See Umar F. Abd-Allah Wymann-Landgraf, Mālik and Medina: Islamic Legal Reasoning in the Formative Period (Leiden, Boston: Brill, 2013), 64n126.

\end{thebibliography}
the kitābs is independent of other kitābs, so the numbering begins in each kitāb from zero. Yet the conversational pieces within the subjects of the Mudawwana are numbered consecutively from the beginning of the first volume to the end of the last. Every time the speaker changes from the first person (qultu) to the third person (qāla), a new ordinal number is given. Speech quoted from a third party not present in the “conversation” between Saḥnūn and Ibn al-Qāsim is left within the section of the quote of the speech of Ibn al-Qāsim. This means that there are over 23,000 components of speech fragments numbered, presumably allowing for greater ease in the location of specific portions of the text.

1.3.4. Summary of the Printed Texts

Comparisons between modern editions of the Mudawwana will seek to discover an explanation for the multitude of discrepancies which seem to exist amongst them. This in turn will raise questions concerning the underlying source texts of the modern editions. Given that the first two modern editions were published just one year apart from each other, it is tempting to presume that the publication of the 1324/1906-07 Cairo edition relied either solely on the modern publication of the 1323/1905 Cairo edition, or that edition along with the same sources upon which it relied. When comparisons between the modern editions of the Mudawwana are made, it appears that other sources were available to the 1324/1906-07 Cairo edition in addition to simply the 1323/1905 Cairo edition of the Mudawwana. The roles of modern editors in producing these modern editions will be better understood through this comparison.

Appendix A provides both the transcription and the translation of the kitābs into English. Four modern editions of the Mudawwana were consulted for this study, two of them extensively. The four include the first modern edition published, the 1323/1905 Cairo edition
but in the offset re-print edition from Dār al-Ṣādir noted above,\textsuperscript{35} the 1994 edition published by Dār al-Kutub al-ʿIlmiyya in Beirut,\textsuperscript{36} the 1999 edition published by al-Maktaba al-ʿAṣriyya,\textsuperscript{37} and the 2005 edition published by Muʿassasat al-Nadāʿ in Abu Dhabi.\textsuperscript{38} A more comprehensive chart in Appendix B displays various details concerning the contents of each of the four modern editions of the \textit{Mudawwana} used in this research, providing greater ease in comparing these editions.\textsuperscript{39} Details include the names of the \textit{kitāb}s appearing in each edition, the volume within which the \textit{kitāb}s are found in each edition, the page numbers where the \textit{kitāb}s begin and end, along with the total number of pages of each \textit{kitāb}. The order of the \textit{kitāb}s of each edition is preserved. In some instances, blank cells will appear in the spreadsheet of Appendix B in order to allow for a comparison of the order of the \textit{kitāb}s between modern editions.

\section*{1.4. Review of Scholarly Literature}

An initial article citing the significance of the 1323/1905 Cairo edition of the text was published by Émile Amar in 1910.\textsuperscript{40} Amar highlighted not only the significance of the original manuscript but also the Islamic scholarly resources used in publication. His description is too rich to miss: “une copie complète de la Moudawwana, entièrement écrite sur parchemin vierge (raqq ghazāl) et remontant au cinquième siècle de l’hiégire, ce qui est d’une belle antiquité pour un manuscrit arabe, car, pour les premiers siècles de l’hiégire, nous

\begin{itemize}
  \item \textsuperscript{35} See page 15.
  \item \textsuperscript{36} This is referred to as the Beirut edition. This edition is suspected of being a reprint of the 1324/1906-07 Cairo edition. This suspicion will be investigated further in 5.2.4.5 on page 143.
  \item \textsuperscript{37} This is referred to as the Mecca edition.
  \item \textsuperscript{38} This is referred to as the Abu Dhabi edition.
  \item \textsuperscript{39} It is Appendix B which should be referenced for corresponding line numbers from the spreadsheet following the titles of the \textit{kitāb}s in square brackets throughout this research. This is for ease in locating references on the chart of \textit{kitāb}s in the \textit{Mudawwana}.
  \item \textsuperscript{40} Émile Amar, “La grande \textit{Moudawwana},” \textit{Revue de Monde Musulman} 10 (1910), 524–32.
\end{itemize}
n’avons que des Qorans.” 41 Great care was taken, according to Amar, in the editorial process, which was conducted under the supervision of the scholarly professors of Al-Azhar University, notably “le chaikh al-Bichrî et le chaikh ʿAlîch.” 42 Amar considered these jurisprudents to be the most qualified of the Mālikī scholars in Egypt, providing their observations of the text. The manuscript also provided another very important piece of evidence concerning its dating. At the end of Kitāb al-Ḥajj al-awwal, a certificate of achievement (lit. hearing, samāʾ—having attended lessons provided by the teaching jurist qualifying the attendee to now teach the material) 43 was present, signed by a faqīḥ by the name of ʿAbd al-ʿAzīz b. ʿĀmir, dated the month of Dhū ʿl-Qaʿda 428/August-September 1037. This attests, according to Amar, to three separate important points concerning the manuscript—its age, provenance, and that at least one part of the text is authentic and conforms to Saḥnūn’s original. Amar’s caution is warranted. The evidence can only attest to that which the evidence attests. In this case, it testifies that this specific part of the Mudawwana was heard by this particular student by this individual teacher who himself heard it by the list of uninterrupted transmitters. Although the information is clear, one must also weigh the evidence appropriately.

An article by W. Heffening appeared in 1937 describing five small groups of manuscript fragments of the Mudawwana belonging to the University Library of Leuven. 44 The collection has a total of 27 folios. Although the modern printed editions of the Mudawwana had been available for more than 30 years by this time, no one had yet written anything of a comparative nature concerning these editions and any known manuscript

42. Amar, “La grande Moudawwana,” 531.
43. For more background on hearing certificates, see above page 12 and footnote 21 where the article of Vajda is referenced. For Vajda’s article, see Vajda, “transmission orale.”
44. Heffening, “Islamischen Handschriften,” 86-100.
fragments. Heffening compared the text found in the modern editions with that of the manuscript fragments in Leuven, including both modern editions available at that time, the 1323/1905 and 1324/1906-07 Cairo editions. His article includes a brief description of all five groups of manuscript fragments, identified as B1 through B5, indicating which parts of the greater text are found on the folios. Some comparative work is recorded concerning groups B1 and B2, but the majority of his work focuses on group B5. The folios in group B5 are consecutive, two double-sided folios and relate to just one part of the great text of the Mudawwana rather than being dishevelled folios from various kitābs. Heffening’s detailed comparative work between the manuscript fragments and the two modern editions revealed significant differences between these three versions of the text. Heffening’s research suggests that the underlying sources for the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition are not consistent. Additionally, as the manuscript fragments in Leuven are in some places consistent with the 1323/1905 Cairo edition and in other places consistent with the 1324/1906-07 Cairo edition it must not come from the same source as the underlying sources for either of the modern editions. Heffening’s article has raised many questions about the nature and sources of the Mudawwana.

In 1953 an article appeared, the first of those focused on content within the Mudawwana, written by Antonio d’Emilia concerning Kitāb al-Ghaṣb (usurpation) found within the Mudawwana.45 In his study, d’Emilia explored not only the topic of ghaṣb, including the economic, political and social factors of the issue, but also briefly discussed the sources of production and knowledge of Islamic law as evidenced in the Mudawwana’s treatment of ghaṣb. The lack of clarity in separating sources of production and knowledge

was a significant factor as stated by d’Emilia.\textsuperscript{46} His exploration hoped to further define and separate these two sources, but concluded that in many instances the action of qiyās brought about new law, founded in a source of production based in knowledge.\textsuperscript{37} D’Emilia included an observation within his study of Saḥnūn’s questioning of Ibn al-Qāsim of the legal justification in a specific instance where a seizure took place involving a slave who subsequently died. It is in this example that he demonstrates that the doctrine becomes a source of the production of the law. Ibn al-Qāsim’s teaching, in his responses to Saḥnūn, constitute the production of Islamic law within the Mālikī school as presented here. He attributes to both the opinions of Mālik and those of Ibn al-Qāsim as being part of the sources of production of Islamic law.\textsuperscript{48} D’Emilia’s articles on the content of the \textit{Mudawwana} demonstrate a good understanding of the significance of the \textit{Mudawwana}, yet they are rarely cited in the literature.

More notice of the \textit{Mudawwana} as a work of Mālikī fiqh came to the attention of the scholarly world with Ibrahim Chabbouh’s modern publication of an ancient register of the mosque library of Kairouan dated from 693/1293-94.\textsuperscript{49} Three entries concerning the \textit{Mudawwana} were made on this old list of the library’s contents, published in 1956, collectively containing more than two hundred booklets (\textit{daftar}) of the \textit{Mudawwana}, some specifically listed as being on parchment. It is interesting to note the terminology as the ancient list refers to \textit{daftar} rather than the expected \textit{kitāb} or \textit{kurrāsa}.

\begin{itemize}
\item \textsuperscript{46} d’Emilia, “Il Kitāb al-Ġaṣb,” 18n2.
\item \textsuperscript{48} d’Emilia, “Il Kitāb al-Ḡaṣb,” 19.
\item \textsuperscript{49} The ancient list gives the briefest of descriptions of individual manuscripts as well as manuscripts that are grouped together, often indicating the text or author of the work, if known. References cited here refer to first the page number in the article, followed by the reference to the specific entry number. Ibrahim Chabbouh, “Sijill qādīm li-maktabat jāmi’ al-Qayrawān,” \textit{Revue de l’Institut des Manuscrits Arabes: Majallat ma’had li-makhtūṭāt al-‘arabiyya} 2 (1956), 359n58, 362n72, 369n121.
\end{itemize}
Just a few years later, a valuable resource by Bousquet was published in a number of journal issues concerning the content of the Mudawwana. Although entitled Analyse, Bousquet’s work was rather more of a condensed outline or summary than an analysis. Since little had been published concerning the Mudawwana up until that point, Bousquet’s articles were a great contribution to Mālikī studies. He provided first, in his introduction, a brief description of the larger work of the Mudawwana both in terms of content and format. His objective was not to provide a lengthy description or analysis of the text, but rather to draw awareness to the text itself, making it at least one step more accessible to the scholarly community. Following this introduction, Bousquet then provided a brief summary of the subjects dealt with in each of the books of the Mudawwana. It took several years to publish the series beginning in 1958 and concluding in 1962. One minor drawback concerns the ordering of the articles. They were published in two separate journals over the course of these five years and the summaries of contents were not published following the order of the text. Bearing that in mind, the resource was an excellent contribution to scholarly work. Several years later, and without the ability to consult the main text of the Mudawwana in Arabic, Bousquet published an index to the subject matter of the Mudawwana. Although the subject matter of the Mudawwana is overwhelmingly extensive, Bousquet made an attempt to catalogue the subject matter according to paragraph numbers, the paragraphs corresponding

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to subject headings within the text of the Mudawwana. To date, his index, which provides elementary indexing based on subject, is still the only known resource of its kind concerning Saḥnūn’s work. No other individual has attempted to create any type of index to the subject matter of the Mudawwana. Given that Bousquet published in French, the subject of the contents of the Mudawwana became accessible to a much wider audience than was previously the case.

In 1967, the same year that The Origins of Muhammadan Jurisprudence was published, Josef Schacht drew further attention towards the rich ancient manuscript library in Kairouan. In listing the manuscripts known at the time in the holdings, he referenced the Mukhtaliṭa, which he identified as another name for the Mudawwana. Early research on the Mudawwana often led to the misidentification of certain references to it such as this one from Schacht. As time went on clarity of the Mukhtaliṭa did not fully materialize, and further research is still necessary today. The studies of Muranyi demonstrate that the Mukhtaliṭa is not synonymous with the Mudawwana, nor is it synonymous with the Asadiyya. In retrospect, it seems very strange that at the time of Schacht, no further manuscripts of the Mudawwana were known to exist in Kairouan.

Labor partnerships as defined in Ḥanafi and Mālikī law was the topic of a study published by Abraham Udovitch in 1967. Udovitch compares the permissibility of different forms of partnerships as they existed in early Ḥanafi and Mālikī law, relying on early legal texts including the Mudawwana. His content study focuses on this one topic within the early sources, drawing on the information from Kitāb Sharika from the Mudawwana, as well as


53. Muranyi’s findings on the Mukhtaliṭa provide the best clarification on this obscurity. They are described further in note 149 on page 59.

sources from the Ḥanafī madhhab, including Sarakhsī’s Mabsūṭ and Shaybānī’s Kitāb al-Āṣl.

Udovitch describes the basis for labor partnerships in both madhāhib, drawing out the differences and similarities between them. He provides much translated text, allowing the texts to speak for themselves to his audience, giving exposure to the text. There is no attempt on his part to provide any analysis of the Mudawwana as a whole, but rather simply to focus on the content of this particular subject. It is interesting to note that the name of the kitāb within the Mudawwana from which this material comes, that is Kitāb al-Sharika, is not mentioned once. It appears that in the 20th century, the focus is clearly on the larger text, rather than on the individual kitābs.55

During the same year, Fuat Sezgin published his foundational work on the history of Arabic manuscripts, Geschichte des Arabischen Schrifttums.56 This now fundamental work advanced the understanding of almost every single discipline which relies on Arabic manuscript evidence. Sezgin’s section on Mālikī fiqh alone changed the knowledge with which scholars were able to move forward concerning any subject in this discipline. The Mudawwana as a work of Mālikī fiqh became available for further study with Sezgin’s list of known manuscripts as well as a brief description of each one. Sezgin lists Ibn al-Qāsim as the first “Verfasser” of the Mudawwana.57 In terms of content of the Mudawwana, this was not an advance from what Bousquet had presented, but it made research on the manuscripts of the text of the Mudawwana much more accessible.

55. This is in contrast to the focus during the Medieval period where the focus is clearly on the kurrāṣa. See below page 92.


57. Sezgin also recognized a role for Asad b. al-Furāṭ in the formation of the Mudawwana, seeing Ibn al-Furāṭ’s riwāya of the Mudawwana as leading to the Asadiyya. See Sezgin, GAS, I, 465.
Save for the work of Antonio d’Emilia, the fifteen years from 1967 to 1982 were relatively quiet with little forward motion in the academic world concerning the Mudawwana. In addition to his previous study on Kitāb al-Ghaṣb in the Mudawwana, three additional content studies were published, actually re-printed, all concerning Kitāb al-Bayʿ al-khiyār (sales with an option). As they came together in one volume concerning studies in Islamic law rather than dispersed in separate journals from different years, they garnered somewhat more attention than the original articles. The three studies dealt specifically with the nature of bayʿ al-khiyār, demonstrating the unique nature of this type of sale where although a form of agreement has taken place, the transaction itself has not been completed and as such it is not considered binding. It is the content of the legal concept which is of interest for d’Emilia, as he studies this interesting form of transaction and its distinctive nature within Mālikī law.

Given its interesting formula and unique characteristics, it is noteworthy that only one other writer has focused on this particular subject concerning the Mudawwana. Further study concerning the development and source origins of bayʿ al-khiyār would be useful for the greater discipline of the development of Islamic law.

Another topic dealt with in the Mudawwana which has received considerable attention in recent decades is the built environment. In 1982, Besim Hakim, an architect and

58. Compare the 1994 Beirut edition which entitles this Kitāb al-Bayʿ in biʿ l-khiyār.


60. D’Emilia notes the fundamental point of importance in bayʿ al-khiyār is that although the exchange is discussed and the value of the exchange agreed upon, if the consent for the exchange has not been given and the transaction itself has not been completed, then the sale itself has no binding quality to it. As a result, it is clearly fundamentally different from a normal sale in Mālikī law as it has no binding effect until consent is given for the transaction. There is no obligation upon the seller until that consent is given. See d’Emilia, “La Struttura,” 304.

61. See the description below of the work of Rüdiger Lohlker.
urban design consultant by trade, as well as a scholar in the area of Islamic building law, began to publish a number of articles dealing with building codes in medieval and modern Islam and their roots in Islamic law. With a greater body of work on building codes and building law being found within the Mālikī madhab, especially during the medieval period, most of Hakim’s work has been focused on the geographic region of North Africa and the legal works within this madhab. Since that time, Hakim has written several articles and a book concerning not only the built environment, but also the influence of ‘urf (custom) and other background elements to the discipline. Hakim’s articles are a good starting point for anyone interested in pursuing the subject of the built environment in Islamic law.

Although much has been written about this subject, early developments from the formative period which influenced the final forms of building law are still not fully understood. There is a direct link between the work of the Mudawwana and that of the medieval period which still must be clarified.

In 1983 a most interesting study of the Mudawwana appeared by José María Fórneas simply entitled “Datos para un estudio de la Mudawwana de Sahnūn en al-Andalus.”

62. Besim S. Hakim, “Arab-Islamic Urban Structure,” The Arabian Journal for Science and Engineering 7 (1982), 69-79. This first article of Hakim’s provided a study of traditional indigenous building within the Arab world, his impetus being a desire to better understand traditional building practices in reaction to the borrowing of architectural forms in the modern era. His discovery was that much had been written within the Mālikī madhab concerning legal building codes and practices. See especially Abū Muhammad ʿAbd Allāh Ibn Abī Zayd al-Qayrawānī, al-Nawādir waʾl-ziyādāt alā mā fiʾl-Mudawwana min ghayrīhā min al-ummahāt (Beirut: Dār al-Gharb al-Īslāmī, 1999), Ibn al-Imām al-Tufīlī, al-Qaḍāʾ biʾl-miḥrāq fiʾl-mahānī wa naftiʾl-darara (Tunis: Markaz al-Nashr al-Jāmīʿī, nd) and al-Shaykh al-Marjiʿ al-Thaqafī, Kitāb al-ḥīṭān (Beirut: Dār al-Fikr, 1994) for source literature concerning this subject within the Mālikī madhab.


Although focused on the regional use of the *Mudawwana* in Andalusia and its transmission, the observations and conclusions have relevance for the entire region upon which the *Mudawwana* had influence. Using four sources for the transmission of the *Mudawwana*, Fórneas traced the transmission lines in a schematic format similar to the *isnād* trees developed concerning the transmission of *hadīth*. Fórneas’s study also provided the sources which followed the *Mudawwana*, specifically in Andalusia, demonstrating the breadth of its influence in the later medieval period in that region.

Miklos Muranyi began to publish on the subject of the *Mudawwana* in 1989. To date, he is the most prolific Western researcher concerning the Mālikī school specifically in the matter of the documents which are housed or have come out of the city and mosque library of Kairouan. His text on Saḥnūn’s *Mudawwana* is extensive, and provides more information on the *Mudawwana* and its genesis than all other scholarly resources combined. That said, Muranyi’s work focuses on observation rather than analysis and conclusions. He describes many of his observations concerning the manuscript data he has had access to but often neglects to explain the impact of these observations. Additionally, his aim appears to be to disprove those of the “skeptical” school—those who are not so quick to affirm an early date for the majority of the documents of the early formative period either in Kairouan or


70. Muranyi’s work is sometimes more anecdotal than it is scientific due to the lack of sufficient referencing in order to follow-up on his work.
other locations throughout the Muslim world. As a result, his own data needs to be sifted and interpreted in order to understand its full value. Without a doubt, Muranyi is aware of more facts concerning the riches of the Mālikī school documents in Kairouan than any other scholar in the Western world. His extensive work is founded on his broad foundation of understanding of the documents in Kairouan in his Beiträge.\footnote{71} This text provides the name, a brief description and the background to each document he was able to access of the ancient mosque library of Kairouan during his most extensive research period.

Similar to the study provided by d’Emilia on bayʿ al-khiyār, Rüdiger Lohlker published a study on commercial law in early Mālikī writings, focusing on Kitāb al-Buyūʿ of the Muwāṭṭaʿ and other kitābs in the Mudawwana which deal with this subject.\footnote{72} He dealt with the concept of salaf (pre-payment; synonymous with the word salam as used in the Mālikī and other madhhabs) and more developed trade relations in Egypt and the Maghrib, specifically the use of money in relation to trade by barter. Lohlker comments somewhat on the composition of the Mudawwana, identifying Mālik and Ibn al-Qāsim alone as “Verfasser” whereas he sees the role of Saḥnūn as being most likely that of a final redactor (Endredakteur).\footnote{73} One of Lohlker’s reasons for his conclusions concerning the different roles played by Mālik, Ibn al-Qāsim and Saḥnūn in the creation of the Mudawwana is his observation that the Mudawwana, as compared to other Mālikī legal works of the formative period, such as the Muwāṭṭaʿ, shows a different primary textual structure.\footnote{74}


\footnote{72} The concept of sales is dealt with in many kitābs within the Mudawwana such as Kitāb al-Ājāl (deferred sales), Kitāb al-Buyūʿ al-fāsida (spoiled sales) and Kitāb Bayʿ al-gharar (hazardous sales) to name just a few. For Lohlker’s study, see Rüdiger Lohlker, Der Handel im mālikitischen Recht: am Beispiel des k. al-buyūʿ im Kitāb al-Muwaṭṭaʿ des Mālik b. Anas und des salam aus der Mudawwana al-kubrā von Saḥnūn (Berlin: Schwarz, 1991).

\footnote{73} Lohlker, Der Handel im mālikitischen Recht, 131.

\footnote{74} Lohlker’s terminology is derived from the exposition on Verfasser, Kompilatoren, Bearbeiter and Überlieferer in a book review by Gregor Schoeler. Schoeler’s specific comments concerning the issue of roles in...
In 1993 Norman Calder published an analysis of some early writings of Muslim jurisprudence. In addition to a section dealing with a short excerpt from the *Mudawwana*, Calder also examined the *Muwaṭṭaʾ* of Mālik, *Kitāb al-Umm* of Shāfiʿī, the *Mukhtaṣar* of Muzanī and *Kitāb al-Kharāj* of Abū Yūsuf. His relatively short publication, considering the number and influence of his texts of choice, created a type of watershed within the scholarly community concerning the development of early Muslim jurisprudence. Calder challenged the traditional dating which most scholars had up to that point accepted for the great works of the Mālikī madhhab. For Calder, following Schacht, hadīth was generally a literature created in order to support particular religious or political positions. He believed that it arose out of the need to establish authority for a particular opinion, and as such was a literary development that is not found in the earliest decades of the formative period. The *Muwaṭṭaʾ* is highly dependent on hadīth in establishing authority for the legal conclusions presented, whereas the *Mudawwana* uses, relatively speaking, much less hadīth. So Calder concluded that the *Muwaṭṭaʾ* must have succeeded rather than preceded, the *Mudawwana* in date. It was his opinion that due to the lack of focus on hadīth within the *Mudawwana*, it must have come earlier in legal development, that is closer than the *Muwaṭṭaʾ* to the time of Mālik. This was a break with traditional dating for these two texts. Calder came under much criticism by others

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authoring texts is found specifically on pages 124-126. Lohlker stated that by the strict definitions provided by Schoeler, that Saḥnūn should also be recognized as an author. His categories are similar, but not as detailed as Günther’s which will be presented in section 4 beginning on page 82. Both Günther and Schoeler are attempting to create some standard terminology for the discipline to reduce confusion and misunderstandings. For Schoeler’s original article, see Gregor Schoeler, review of *Quellenuntersuchungen zum Kitāb al-ʿīd al-farīd des Andalusiers Ibn ʿAbdrabbih* (246/860-328/940). *Ein Beitrag zur arabischen Literaturgeschichte*, by Walter Werkmeister, *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 136 (1986), 118-28.

75. Calder, *Studies*.


77. Libson sees the use of hadīth not only to establish authority, but also to attribute custom to sunna in order to give it greater authority or legitimacy. It is a parallel principle which he describes, “But certain traditions drew heavily on later customs, which legal authorities ascribed to the time of the Prophet—indeed, sometimes attributing the innovation in question to the Prophet himself—in order to accord them greater legitimacy and to incorporate the custom into the accepted legal framework.” See Gideon Libson, “On the Development of Custom,” *Islamic Law and Society* 4 (1997), 138.
for his position, however without the necessary proof to back up claims that the *Muwaṭṭa’* was an earlier text, it became difficult to refute Calder’s assertions. One author described well the general atmosphere—felt amongst those deeply interested in early Ḥanafī and Shāfīʿī works, feeling their domain somewhat threatened by Calder’s thesis—with the phrase “wishing him away.”

Following Calder’s shift in dating of the early works of Mālikī jurisprudence, more interest arose in the contents of the *Mudawwana*. However the focus of attention was on specific topics within the text itself rather than a general understanding of either the origin or the framework of the whole text. One example of this is Camarero Castellano’s article on the subject of agricultural calamities as addressed in the *Mudawwana*. As with much early research on a formative text, Camarero Castellano was unable to make any firm conclusions, with most of her work being preliminary. With little other background into the text of the *Mudawwana*, these were the beginnings of understanding the depth and the breadth of the content of the work, being simply a sliver of the riches contained within. Camarero Castellano recommended further research be done in the area of calamities from other medieval texts dealing with rural agricultural issues, in order to compare the content of the *Mudawwana* with contemporaneous, or near contemporaneous, texts.

Slavery, and more specifically the marriage of slaves, is the topic of a study by Cristina de la Puente from 1995. As with so many of the other topical studies of the *Mudawwana*, the edition used is that of 1323/1905 published in Cairo. De la Puente explores

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the topic of the marriage of slaves as described in the *Mudawwana*, highlighting unique characteristics of the status of slaves within the Mālikī school. One example given is that in the Mālikī school the slave is considered as being equal to a free minor, giving him the right to own property, make decisions about his own marriage and pay a dowry.\(^{81}\) De la Puente concludes the study asserting that the *Mudawwana* demonstrates the social reality which exists in the Muslim context of North Africa at the time of Saḥnūn. The greater context of the *Mudawwana* itself, and the nature of the judgments which are in its pages, will need to be better understood in order to make statements which reflect upon social reality. It would be easy to assume a reality which did not quite exist in Saḥnūn’s time especially if it is understood that many, if not all, of the situations described in the *Mudawwana* are hypothetical situations. As such, it is possible to use the *Mudawwana* as an understanding of legal positions but not necessarily social realities.

In 1996 Yasin Dutton began to publish concerning the origins of the school of Medina.\(^{82}\) One main purpose of Dutton’s work was to provide a better understanding of the role of ʿ*amal* in the Mālikī madhhab and in Islamic law in general. Giving definitions of not only ʿ*amal* but also *sunna* and ḥadīth, Dutton clarifies that *sunna* is seen as relating solely to Muḥammad in his interpretations of the Qurʿān and his *ijtihād* resulting in new practices, whereas ʿ*amal* is a more developed factor as it includes the *ijtihād* of not only Muḥammad, but also his successors and those after them. Dutton concludes that ʿ*amal* always includes *sunna* within it however not all *sunna* includes ʿ*amal*, as some practice might be based entirely on the actions and interpretations of Muḥammad. Other practices could be based on the actions and interpretations of the successors as well. It is like a mathematical set and

\(^{81}\) De la Puente, “Esclavitud y matrimonio,” 333.

subset, where 'amal is a subset of sunna. He also provides a distinction between 'amal and hadith in his description of what later came to be known as Mālik’s madhhab. This distinction is very important as it defines the actions of the people of Medina as being a further development from that of Muḥammad himself, being influenced by the opinions and interpretations of those that followed Muḥammad. So for Dutton, the 'amal of the people of Medina is an expression of the preservation of the law.  

The Mālikī madhhab relies not only on the traditions handed down concerning the opinions and interpretations of Muḥammad himself, but also, and even more significantly, the practice of the people of Medina as being understood to be a reflection of the actions, attitudes and interpretations of Muḥammad. What the people of Medina practiced, was understood to be a continuation of those things that Muḥammad practiced and encouraged. As a result, a reliance on the 'amal of the people of Medina heavily influences the thoughts and ideas throughout the Mālikī madhhab, believing that reliance to have been the direction of Mālik himself.

Building on the work of Hakim, Akel Ismail Kahera began focusing on the development of building practices within the Mālikī madhhab first through his dissertation on the subject in 1997 followed by a text on the Islamic City in 2011. Kahera’s main emphasis in his writing has been on the impact that judicial judgments have on the practical outworkings of building in the medieval period. Beginning with a focus on the interplay of 'urf and fatāwā (legal judgments), he has gone on to explore further the dimension of the power of the judicial element expressed through the issuing of legal decrees concerning building practices. Kahera’s publication of a joint article along with Omar Benmira in 1998

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83. Dutton’s larger work expands more on this idea. See Yasin Dutton, The Origins of Islamic Law: The Qurʾān, the Muwaṭṭa’ and Medinan ‘amal (New Delhi: Lawman, 1999).


demonstrates the growing interest in this subject area. One other upcoming scholar concerning this niche area is Eli Alshech, who zeros in on the nuances of privacy within the development of building law in the formative and early classical periods of Mālikī law. Having just published a few articles in the last decade, he has yet to establish himself as a significant voice in this subject field.

In the same year, 1997, Christopher Melchert published The Formation of the Sunni Schools of Law: 9th -10th centuries C.E. His work aims to identify major contributing factors in the formation of schools of law within Sunni Islam. Working from a practice of clear definitions, Melchert sketches out the rise of schools forming first around particular perspectives: a “sunna of the Prophet” arising in Basra, opposition rising in Kufa against these ancient schools of law and an opposition in Medina formed by the “Traditionists” who disliked human reasoning. Following on from this development, Melchert wrote an article on the traditionist-jurisprudents, those who had a more formal dependence on hadīth and isnād comparison rather than on ra’y (opinion). He discusses the titles ahl al-hadīth and ahl al-ra’y, as well as the descriptors aṣḥāb al-hadīth and aṣḥāb al-ra’y, concluding that sometimes ra’y was used in a positive sense and sometimes by an opposing group, pejoratively.

In 1997 Jonathan Brockopp also began work focusing on Mālikī fiqh and specifically on Saḥnūn. His interest was initially expressed through several journal articles, each having to do with different topics of jurisprudence within the Mālikī madhhab. He published a


88. Melchert, Formation.

89. Brockopp’s foray into this field began with two extensive book reviews. The first was Jonathan E. Brockopp, “Rereading the History of Early Mālikī Jurisprudence,” review of Das “K. al-Wāḍiḥa” des ‘Abd al-Malik b. Habib: Edition und Kommentar zu Ms. Qarawiyīn 809/40 (Abwāb al-Tahāra) by Beatrix Ossendorf-
significant text centered on Ibn ʿAbd al-Ḥakam and his text, the Mukhtaṣar, in 2000. His interest has more recently been on the biographical dictionaries and specifically on the life of Saḥnūn. Brockopp appears to be picking-up on the research of Muranyi, attempting to move research from North Arica forward. Some of his yet-to-be published works deal with the subject of this research.

Nejemeddine Hentati has been working on the formative period of the Māliki madhhab for many years. A native of Tunisia, his focus concerns the role of the ‘ulama’ in the formative period. Articles that he has published develop the role of the qāḍī, one entitled “Mais le Cadi Tranche-t-il?” exploring through the analysis of a court judgment, arbitration and transaction as to whether or not a qāḍī did in fact settle disputes. Another article, “L’I’dhār: Une Procédure Judiciaire dans le Droit Musulman” explains the meaning of i’dhār, a juridical procedure wherein an accused has an opportunity to object to an allegation or an unjust judgment. Most of Hentati’s work seeks to better understand the roles and procedures of the qāḍī specifically in the Mālikī madhhab.

One final scholar who needs to be mentioned in this review of literature concerning scholarly work related to the Mudawwana is Umar F. Abd-Allah Wymann-Landgraf.


Completing his PhD work in 1978 his dissertation was entitled “Malik’s Concept of ʿAmal in the Light of Mālikī Legal Theory.” After being revised, his dissertation was recently published as Mālik and Medina: Islamic Legal Reasoning in the Formative Period. Although clearly a significant contribution in this area, prior to his revisions his text was dated. His updates do not share the careful and accurate work he presented in the 1970s. He asserts that from 1905 until 2002 no new publications concerning the Mudawwana were undertaken which involved new manuscript evidence. Rather he stated that all editions between 1905 and 2002 were based either on the same original manuscript or simply on the modern edition published from that manuscript, hence refuting the earlier assertion of d’Emilia. However, comparisons with at least two of the modern editions of the text from that time period present evidence which would not support this assertion. The edition published in 2002 by Zāyid b. Sultān, according to Abd-Allah Wymann-Landgraf, was based on new manuscript evidence, however the publisher neglected to provide any details concerning these additional documents. Abd-Allah Wymann-Landgraf identifies clear differences which exist between the 2002 edition under the direction of al-Sayyid ʿAlī al-Hāshimī and the first modern Cairo edition of 1323/1905. Based on the testimony of the editor, he believes these differences to be due to new manuscript evidence introduced in 2005. Yet, as will be demonstrated in this research, major discrepancies have existed between the 1323/1905 Cairo edition and subsequent editions as early as the 1324/1906 Cairo edition, in support of the unverified neglected claim of d’Emilia. Despite Abd-alla Wymann-Landgraf’s unreliable detail concerning the formation of the Mudawwana, his text has been a valuable resource to the current research,

95. Abd-Allah Wymann-Landgraf, Mālik and Medina.
96. See above page 17 for the explanation of this and note 29 on the same page for the reference.
97. See section 5.2.4.5 on page 150 for this comparison.
98. Abd-Allah Wymann-Landgraf cites a personal conversation with the editor of the text as the only available source of verification concerning new manuscript evidence. His personal frustration can be read into the lines of his description of the situation. See Abd-Allah Wymann-Landgraf, Mālik and Medina, 64n127.
presenting facts concerning the relationships between the modern editions of the

*Mudawwana*.

It is the relationships between not only the modern editions, but also the medieval manuscripts of the text of the *Mudawwana* which have been tested and are presented here in the pages that follow. Additionally, the role and responsibility of modern editors and medieval copyists in the formation of the modern concept of the *Mudawwana* is explored. How has the concept of the *Mudawwana*, if one can be defined, changed from the time of its inception to modern times? And how has this concept been formed? The 2002 edition and the ones before it, even with new manuscripts, all fall far short of providing what is needed today in order to understand the *Mudawwana* from a more critical perspective. It is hoped that this research can answer these questions and address these issues.
Chapter 2
The Historical Context of the *Mudawwana*

2.1. Time Period

The events which surround the genesis of the *Mudawwana* are significant to its creation. In order to better understand its context, a brief overview of the events of the time period prior to and during Saḥnūn’s life will be presented. In addition, understanding the position and role of the senior judicial figure in the region is essential in perceiving the dynamics of the political and religious spheres during that time period. Following these general overviews, a more focused look will be made of the lives of Mālik, Ibn al-Qāsim and Saḥnūn.

By the time of Saḥnūn, the city of Kairouan was already at least 120 years old. As the administrative centre of the entire Muslim Maghrib region, it held an extremely significant position. Located there was the seat of the local governor (*wālī*) and also the state appointed judge (*qāḍī*). However, prior to the time of Saḥnūn, the city and the region experienced many turbulent times.

Founded in the year 50/670, Kairouan was established as a fortress city by the Arab armies expanding westward, jumping off first their base in Fusṭāṭ (just outside modern day Cairo), and then also Tripoli (modern day Tripoli, Libya). Although a regional battle took place several years before in the region of Sufetula, it was not until the establishment of the city of Kairouan that the presence of the Arabic Islamic empire was firmly established in the region. Being distant from the central point of power, a regional authority, the *wālī*, was established early on in order to administer the territory. This individual held an extreme

amount of power, controlling the army, administration for the region, the judiciary and also the religious authority, not unusually leading the prayers. He was virtually autonomous from state intervention. During the Umayyad period, the wālī was usually chosen from those who had been manumitted by the Arabs, presumably increasing the likelihood of loyalty to those providing their freedom. Generally the wālī himself would have been protected by a personal guard also made up from the freed slaves (mawālī). Later, under the 'Abbāsids, noblemen of Kairouan known as the Muhallabids\(^{100}\) came to assume the role of wālī for about a quarter of a century—the period leading up to the time when Saḥnūn was born.

A significant shift took place in the governing of the region when Ibrāhīm b. al-Aghlab was appointed as amīr (prince) of the region by Hārūn al-Rashīd, the caliph, in 184/800.\(^{101}\) Greater autonomy was afforded to the Aghlabids by the central authority in Baghdad in exchange for a fixed annual tribute to the central treasury. This allowed for greater control within the region by the amīr, but also led to deeper conflict with the local inhabitants, with those of Kairouan often supporting insurgents in time of rebellion. Oftentimes revolt was motivated by the anger of the people over the abuse of power of the authorities. Judgments concerning their religious standing frequently influenced these relations and the amīr needed an ally to support him from within the ranks of the people. Sometimes this ally was found in the office of the qāḍī. This role, which carried out judicial rulings and made pronouncements for the permissibility of almost all actions and practices, became a useful partner for the political ruler, provided he complied. The appointment by the amīr of the qāḍī ensured that religious policy fell in line with political aspirations, sometimes

\(^{100}\) in Arabic al-Mahāliba

\(^{101}\) For greater background to the rule of the Aghlabids, see G. Marçais and J. Schacht, “Aghlabids or Banu 'l-Aghlab,” Encyclopaedia of Islam, Second Edition (Brill Online, 2013).
providing just such an ally. However, a stiff-necked qāḍī potentially created a difficult scenario for governance.

Following a relatively difficult period in the relationship between the amīr and the people, an external enemy became the focus of conflict—Byzantine Sicily became the goal. Religious elements were positioned at the centre of this political thrust, not only in a platform for the war in the first place, but also through the appointment of the chief qāḍī of Kairouan, Asad b. al-Furāt,¹⁰² as the leader of the army. Ibn al-Furāt was not to return to his post in Kairouan, as he died two years later (213/828) either from his wounds of the war or from the plague. These events helped to shape local attitudes and responses to the relationship between political and religious leadership during that time.

The Aghlabids, as mentioned briefly just above, enjoyed a high degree of autonomy. At the same time, their dependence on the ʿAbbāsid Empire can be evidenced in some of the most important religious symbolism regularly displayed before the people. The Grand Mosque, first built by ʿUqba b. Nafiʿ in 50/670 was rebuilt twice, once by Ḥassān b. al-Nuʿmān in 84/703, and then again in 155/772 by Yazīd b. Ḥātim. The most prominent location within the mosque, the miḥrāb, was decorated with carved marble and surrounded by squares of monochrome and polychrome metallic lustre ceramic tile. The marble rectangles are inscribed as being the work of an Andalusian craftsman, while the metallic lustre ceramic tile are the work of a craftsman from Baghdad, and are reminiscent of similar tile work in Samarra.¹⁰³ See below, figure 2 for an image of the ceramic tile and figure 3 for an image of the sculpted marble of the miḥrāb.


Figure 2. Polychrome metallic lustre ceramic tile from the area surrounding the *mihrab* in the Grand Mosque of Kairouan.

Figure 3. The *mihrab* of the Grand Mosque in Kairouan. Inset: detail of carved marble tile from the *mihrab*.
In 218/833, under Caliph al-Maʾmūn, the mīḥna was initiated in the ʿAbbāsid empire requiring qāḍīs and all whose testimonies were to be acceptable in court, to ascribe to the belief in the created nature of the Qurʾān. Having for some in the East devastating effects, the Aghlabids in Ifrīqiya were relatively untouched by this crisis until the rise to power of Abū Jaʿfar Aḥmad b. al-Aghlab in Kairouan in 231/846. Abū Jaʿfar instituted his own mīḥna, pitting Saḥnūn against the Muʿtazilī qāḍī Ibn Abī ʾl-Jawād concerning the nature of the Qurʾān, created or uncreated. The amīr had Saḥnūn arrested and brought to trial and the qāḍī, Ibn Abī ʾl-Jawād, who was also the son-in-law of Asad b. al-Furat, demanded his execution. Merely placed under house arrest, the tide turned in favour of Saḥnūn within a year, when the previous amīr, Muḥammad I, regained power and had Saḥnūn released. Retribution, at the hand of Saḥnūn, who obtained the title of qāḍī within two years, meant that Ibn Abī ʾl-Jawād died, succumbing to daily lashing in the courtyard of the Grand Mosque for not recanting his belief in the created Qurʾān.

When Saḥnūn assumed the role of qāḍī in Kairouan, the Aghlabids were still in power. Known for being a corrupt elite, they were not likely interested in furthering the interests of the jurists. Given their corruption, and Saḥnūn’s penchant for elucidating piety, it is unlikely that a general interest in spreading his doctrines would have been tolerated under this regime. The standards put forth in the Mudawwana would merely have demonstrated the distant ethical position held by the governors.

The role of the qāḍī could be characterized at times as precarious, as poor relations or disagreement with the ruling amīr could easily lead to retribution. Hentati ascribes a

104. For more information on the mīḥna see the extensive article by M. Hinds in “Miḥna,” Encyclopaedia of Islam, Second Edition (Brill Online, 2014).

105. For a description of three different types of responses of jurists towards their ruling authority, see Nejemeddine Hentati, “Mālikī Jurists in the Medieval Muslim West Between Submission and Revolt” (Paper presented at the VII Islamic Legal Studies Conference, Ankara, Turkey, May 2012).
political role to the position of qāḍī given their judicial leadership as well as the influence they have in decisions made by the amīr. The relationship between the amīr and the qāḍī was mutually beneficial if both supported the other. The relationship could easily sour if either perceived antagonism by the other. Being politically inferior, the qāḍī would normally submit himself to the authority of the amīr. However, there are instances of qāḍīs refusing to submit to the authority of the amīr, and in some cases actually accusing the ruler of heresy. Saḥnūn himself experienced both the benefit and liability of his relationship with the ruler, as the change in rulers during the miḥna demonstrated one extreme and then the other.

With the help of Berber military might, the Aghlabids were overthrown and a new Fāṭimid dynasty began in Mahdia in 297/909. The Fāṭimid adherence to Shi‘ī thought put some of its beliefs into opposition with the Sunnīs of the Maghrib. The relationship between the jurists and the Fāṭimid caliphate fluctuated over the years, sometimes tolerant and other times demonstrating arrant aggression by the rulers. 'Alī b. Muḥammad b. al-Walīd recorded the execution of a mu'adhdhin of Kairouan in 307/919-20 for not having correctly pronounced the call to prayer, neglecting to include the usual Shi‘ī phrase, “Come to the best of works.” At another period, a rebellion in Kairouan begun by the Khārijī Abū Yazīd in alliance with the Sunnīs there, further disrupted Fāṭimid rule, until put down by Fāṭimid caliph al-Manṣūr in 336/947. This rebellious outbreak prompted the move of the Fāṭimid capital from Mahdia to al-Manṣūriyya, just two kilometers south of Kairouan, known for its sumptuous palaces. Fāṭimid extravagance, along with their geographical proximity to the


107. The person responsible for making the oral call to prayer

108. The Khārijītes were an early religious sect creating religious and political dissension and division, often leading to rebellion and insurrection. for more on Khārijītes, see “Khārijītes,” Encyclopedia of Islam, Second Edition (Brill Online, 2012).

109. For more not only on al-reativeb, but also al-'Abbāsiyya of the Aghlabids, see Sylvie Denoix, “Founded Cities of the Arab World,” in The City in the Islamic World, ed. Salma Khadra Jayyusi et al. (Leiden: Brill, 2014).
‘ulama’ of Kairouan at the time, likely did not endear them to the legal scholars. The relationship of the religious elite with the Fāṭimids was likely never a stable matter.

When the Fāṭimids made a choice to move their capital to Egypt in 361/972, the region of the Maghrib was left in the hands of Ṣanhājī Berbers, beginning the Zīrid dynasty. For many decades there were good relationships between the two. The Zīrids broke away from the Fāṭimids in 443/1051 declaring allegiance to the ʿAbbāsids in Baghdad. This led to the reprisal of the Fāṭimids through the invasion of the Banū Hilāl. In 449/1057 the city of Kairouan was devastated by the invaders, never fully recovering. Political and military upheaval prevailed in the region until control was returned by the Almohad\textsuperscript{110} dynasty based in Morocco.

With a better understanding of the political scene during the time of the genesis of the Mudawwana, a brief focus on the individuals themselves at the heart of the Mudawwana is warranted. Biographical information will be presented for Mālik b. Anas, Ibn al-Qāsim and Saḥnūn.

\section*{2.2. Personalities of the Mudawwana}

\subsection*{2.2.1. Mālik b. Anas}

Mālik b. Anas, whose full name was Abū ʿAbd Allāh Mālik b. Anas b. Mālik b. Abī ‘Āmir b. ‘Amr b. al-Ḥārith b. Ghaymān b. Khuthayn b. ‘Amr b. al-Ḥārith al-ʿAshbāḥī (d. 179/796), was born near the end of the 1st/7th century, his actual date of birth being unknown. Much legendary material surrounds the biographical information available, although almost all sources rely on a now lost biography written by Ibn Saʿd (d. 230/845) which was based on al-Wāqīḍī (d. 207/822). What is recorded in later sources of his life

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seems to fluctuate in terms of its reliability, further complicating an assessment of the sources. The fact that he studied *fiqh* with various teachers can hardly be in question, however the number of the *shuyūkh* under whom he sat is likely exaggerated\(^\text{111}\) and can no longer be verified.

In addition to having studied under various teachers, Mālik himself became known as a great source of knowledge and tradition even within his lifetime. He is known to have had many disciples, along with a circle of colleagues. Some of the more well-known and influential members of Mālik’s circle include Ibn Wahb (d. 197/813), Ashhab (d. 204/819), Ibn Mājishūn (d. 214/829), Ibn ’Abd al-Ḥakam (d. 214/829), al-Muṭarrif (d. 220/835), al-Shaybānī (d. 187/803 or 189/805), al-Shāfiʿī (d. 204/820) and the most significant, for the purposes of this research, Ibn al-Qāsim (d. 191/806). Each of these personalities is featured in one way or another in the *Mudawwana*, either as a voice giving an opinion, or confirming something that is already being presented. So although Mālik himself is certainly one of the most significant personages of the *Mudawwana*, he is not the only one.

Mālik’s death and burial in Medina occurred when he was approximately 85 years old, his funeral service being conducted by the local governor. In his lifetime he garnered the attention of a handful of *khulafāʾ* given his status as a teacher of jurisprudence and a transmitter of traditions.

The opinions of Mālik along with *ḥadīth* were the basis of his teachings, but foundational to these both were his observations and pronouncements concerning the *ʿamal* of the people of Medina. His most long-standing and well-known work is without doubt the *Muwaṭṭa*’, meaning literally smoothed path. Schacht’s description of the *Muwaṭṭa*’ can hardly

be improved upon: “... a survey of law and justice; ritual and practice of religion according to the *ijmāʿ* of Islam in Medina, according to the *sunna* usual in Medina; and to create a theoretical standard for matters which were not settled from the point of view of *ijmāʿ* and *sunna.*” For Mālik, the *ʿamal* of the people of the Medina was either a confirmation of or a source in itself for his rulings. This is clearly demonstrated throughout the *Muwatta*’. The practice of the people of Medina is foundational within the Mālikī school as it is believed to have been based on the transmission of the practice of Muḥammad during his lifetime—the people of Medina continuing to behave in the same way which they witnessed Muḥammad himself doing. Thus they carried a living and active tradition which was lived out by the generations before them and passed on through behaviour and lifestyle. As a city Medina is also important as the capital of the early Islamic state was located here under the successors of Muḥammad.

Mālik figures significantly in the text of the Mudawwana as he is often recognized as the final authority on many matters.112 However his voice is indirect—in the background. Sometimes he is quoted, both directly and indirectly, but the format of the text—question/answer—does not engage Mālik at all in the first person. Although he is noted as not having spoken about many of the issues discussed within the various *kitābs* of the Mudawwana,113 it is his opinions and his known sayings that are then used to project how he would have answered or responded to these issues. His name is invokes as an authoritative source. Of the three personages focused on here, Mālik, Ibn al-Qāsim and Saḥnūn, the relative frequency of their names would be an indicator of their perceived importance from the perspective of the

112. The subject of Mālik and his representation of authority is found in section 6.3 entitled the Discussion of the Text beginning on page 193. For the part of the discussion specifically on authority in the text, see page 198.

113. Throughout the text, Ibn al-Qāsim is noted as saying, “I did not hear anything from Mālik about this,” or something similar. At which point, he often gives his own opinion.
Mālik’s name occurs a total of 18,731 times in the text of the Mudawwana. Of the six volumes that this searchable text file is based on, Mālik’s name occurs significantly more in the first of the six volumes. A later comparison with the occurrences of the names of Ibn al-Qāsim and Saḥnūn will yield an interesting point. Although Mālik figures very prominently in the text, it appears that he was accredited with much more creative work than for which he was really responsible. Recent scholarship has recognized again that the madhhab named after him was really founded by those who came after Mālik, and not by Mālik himself.

2.2.2. Ibn al-Qāsim

Relatively little is written in the way of biographical information concerning Ibn al-Qāsim, although due to the rather prolific work with which he is credited through not only the Mudawwana, but also the Asadiyya, he is regarded as being the most reliable transmitter of Mālik’s opinions. According to Ibn Khallikān, Ibn al-Qāsim was born either in the year 128/745-46 or 133/750-51 and died in 191/806. He was buried in Cairo, close to the grave of another Mālikī faqīh, Ashhab. Of note in his biography, in relation to his influence on the transmission of Mālikī doctrine, he was a friend or disciple (ṣāhib) of Mālik for twenty years.

114. Word searches of the Mudawwana, like any text, can be made on any digital word processing or text file. The 1323/1905 Cairo edition of the Mudawwana in a searchable text file can be downloaded off the web at <http://www.ahlalhdeeth.com/vb/showthread.php?s=2d5de6fa723064b5da599fabcd9b7b00&postid=83344>. I am grateful to Dr. Andrew Rippin for drawing this website to my attention.

115. Occurrences of Mālik’s name in order of the six volumes of the 1323/1905 Cairo edition text are as follows: 3,744; 3,227; 2,398; 3,045; 3,088 and 3,229.


117. More will be presented on the Asadiyya in the section to follow beginning on page 55.


Ibn Khallikān’s biography interestingly describes Ibn al-Qāsim as using this lengthy relationship to his advantage with Mālik’s associates following Mālik’s death, leaving a subtle implication that Ibn al-Qāsim may have manipulated himself into this role. Given the length of his tutelage under Mālik, it may have been simply a natural progression for Ibn al-Qāsim to assume the role of teacher once his mentor passed on. It may also be based partially on his age, as he seems to have been the oldest of Mālik’s more well-known disciples. There is somewhat of a sense of great accomplishment in the life of Ibn al-Qāsim when one reflects on both his accomplishments and his family background. He is recognized as a crucial link for the transmission of Mālik’s teaching to Saḥnūn, and then in turn to the entire Maghrib region and into Andalusia. This recognition is given despite his family having originated from within a tribe that had been manumitted (ʿataqa) through the hand of Muḥammad, who in turn gave his tribe the name al-ʿUtaqī (of the manumitted).

Although Ibn al-Qāsim is referred to in the Mudawwana exclusively in the third person, and most often quoted, either directly or indirectly (qāla), it is he who is set as the real power broker in the text. He is the decision maker, analyzer and analogical reasoner (mujtahid). Yet, according to the testimony of the text of the Mudawwana, the fundamentals which he employs in his decision making come from the teaching that he has received from Mālik. Over and over again Ibn al-Qāsim refers to what Mālik has said publicly, what he taught and what Mālik said to him directly. Ibn al-Qāsim is the filter through which all of the teaching of Mālik is distilled, enabling him to recall, repeat and interpret what Mālik said. Ibn al-Qāsim becomes the authority of the authority as he knows more about what Mālik has taught, given the length of time he spent under Mālik’s teaching.

120. It is with care that this assertion is made, as the concept of a mujtahid may not have been present in Ibn al-Qāsim’s day, and it is important to avoid anachronistic pronouncements. However, with the ability to do word searches on the text of the Mudawwana, it is possible to demonstrate that the word ijtihād does indeed occur in the text, in fact, it is found even in the text of Kitāb al-Qisma al-awwal. See, e.g., the text based on the 1323/1905 Cairo edition, Saḥnūn, Mudawwana 1323/1905 Cairo edition, 4:480:3.
Given this background, Ibn al-Qāsim becomes the key link bridging the knowledge gap between Saḥnūn and Mālik, enabling Mālikī ideas to be transplanted in the Maghrib.

Ibn al-Qāsim’s name occurs 1,989 times in the text of the Mudawwana. The frequency of occurrences though, is not consistent throughout the six volumes analyzed. There is a significantly higher occurrence of his name in the first volume than there is in any of the other five volumes: 883 times as compared with 296, 190, 230, 223 and 167 times. As with the frequency of Mālik’s name, the question forms: What is the need for such a relatively high frequency of their names in the first portion of the text? A quick look at the kitābs found in the first of the six volumes reveals that the subject matter dealt with in this part of the text involves fundamental aspects of religious expression: purity, prayer, ḥajj, fasting, zakāt, burial practices, jihād, sacrifices and vows, to name many of them—ʿibādāt. Could the need for authoritative names, moreso than in other parts of the text, be greater here in order to establish these fundamentals with the mark of authority? As Mālik and Ibn al-Qāsim are the authoritative voices of the Mudawwana, representing what became known later as Mālikī teaching, it is no surprise that their names would occur with a significantly greater frequency in the section of the text that deals with the most fundamental guidelines in the practical outworking of religious practice.

2.2.3. Saḥnūn

2.2.3.1. Saḥnūn’s reputation

The life of Saḥnūn (d. 240/854), is surrounded by some mystery. In addition to the difficulty that this time period has with the source material, much of the literature that speaks of the life of Saḥnūn is replete with accolades. One vivid saying describes the following trail

121. For more on this subject see the discussion concerning the order of the kitābs in the commentaries below on page 104.

122. For his full name see page 5.
of statesmen-jurists: “I saw in a dream the Prophet (God’s blessings and peace be upon him) walking on a road and Abū Bakr was behind him, and ‘Umar was behind Abū Bakr, and Mālik was behind ‘Umar, and Saḥnūn was behind Mālik.”123 As Saḥnūn is known historically as emphasizing the practice of the people of Medina and their transmission through practice of the sunna of the Prophet Muḥammad, it is not too surprising to find this saying also in the same source: “I saw the Prophet (God’s blessings and peace be upon him) entombed, and the people were putting dirt on the grave, and Saḥnūn was exhuming him. And he [the transmitter of this story] said, ‘He said to Saḥnūn, “They are burying the sunna of the messenger of God (God’s blessings and peace be upon him) and you are keeping it alive.” ’ ”124 This tribute has extended to the modern day, with Saḥnūn being described as “the greatest jurist of Medieval Iftīqiyah.”125 Brockopp has written about the apparent contradiction that exists in the sources concerning the life of Saḥnūn which he attributes to the later popularity of the Mudawwana and the need to give him and his text the legitimacy they deserve.126 Brockopp has also recently published a brief biography of Saḥnūn along with multiple short translated sections from the Mudawwana.127 Although not attempting to provide a thorough analysis of any or all of the primary sources relating to the biographical data of Saḥnūn, it is important to have a


126. Brockopp, “Contradictory Evidence.” Citing conflicting reports within al-Qāḍī ‘Īyāḍ’s text, Brockopp classifies the textual data into two categories: narrative accounts—entries which are found in the biographical dictionaries—and transmission records—these would be the sources that are cited by Saḥnūn in the texts which he is responsible for transmitting. Classifying them in this way, he maintains that the content of each is of a different value. What is transmitted in the dictionaries is intentionally included in order to elaborate on the lives of those described, believed by him to be a stretching of, or possibly even complete fabrication of, the truth. Brockopp argues the transmission records would be more reliable, as the information is embedded within the text of another document and the motivation for its inclusion would not be related to the reputation of the one being mentioned.

general understanding of the context of some of the sources available, as well as their content, in order to better understand the context of Saḥnūn’s writing.

2.2.3.2. Primary sources on the life of Saḥnūn

Two primary sources have been consulted concerning the biography of Saḥnūn. The first is considered to be more reliable than the second due to its earlier date and is recorded in one of the earliest biographical dictionaries of the religious scholars of Ifrīqiya. Ṭabaqāt ‘ulamā’ Ifrīqiya was written by Muḥammad b. Tamīm b. Tahmām al-Tamīmī (d. 333/945), better known as Abū ʾl-ʿArab. Born within two decades of the death of Saḥnūn, and being a student and later teacher of fiqh, it is reasonable to believe he would have been quite familiar with the stories of the life of Saḥnūn. Having died in 333/945, his biographical work sits within one century of this subject. Although Abū ʾl-ʿArab’s ancestors were from a great Arab family which, prior to the rule of the Aghlabids, had some political power in the region of Tunis, Abū ʾl-ʿArab himself was more focused on literary and religious pursuits. He is known to have participated in the revolt of Abū Yazīd against the Fāṭimids, which entered Kairouan in 333/945, resulting in his imprisonment and soon after, his death.

The second biographical source, much more enriched, and possibly more unreliable as a result of its much later date, was written by al-Qāḍī ʿIyāḍ (d. 544/1149-50), a historian, biographer, and, clearly from his title, a religious scholar and judge. His work, entitled Tartīb al-madārik wa taqrīb al-masālik, is a biography of the religious scholars of the Mālikī

128. Abū ʾl-ʿArab and al-Khushanī, Ṭabaqāt.
madhhab. Al-Qāḍī ʿIyāḍ was born in 476/1083 in Ceuta, a tiny part of modern Spain on the continent of Africa located at the straits of Gibraltar. He was appointed as a qāḍī first in Ceuta, followed by Granada and then Marrakesh. Although apparent from this brief detail, it should be pointed out that al-Qāḍī ʿIyāḍ lived both geographically and temporally very distant from Saḥnūn. He was very familiar with Saḥnūn’s office, being a qāḍī himself, although the politics of al-Qāḍī ʿIyāḍ’s world were quite different from that of Saḥnūn’s.

Much had transpired in those three centuries which separated their lives, not the least of which is the shift in status likely achieved by the Mudawwana in that period of time.

Born to a family not yet well-known in Ifrīqiya, Saḥnūn’s date of birth has not been accurately recorded. Al-Qāḍī ʿIyāḍ, claiming no discrepancy amongst the sources, says that he died on the 8th of Rajab 240/the 2nd of December 854.132 Noted to have lived a life of 80 years, al-Qāḍī ʿIyāḍ goes on to conclude that Saḥnūn was born in the year 160/776-77. Details which might convince a reader of its veracity, al-Qāḍī ʿIyāḍ describes the funeral prayers given for Saḥnūn conducted by the amīr himself, Muḥammad b. al-Aghlab. Saḥnūn’s son, Muḥammad, rejected the shroud which the amīr personally sent, and gave that away as charity. The men of the amīr refused to participate in the prayers for his death, saying to him, “You have learned what was between him and us,” as they had accused each other of being apostates. Most of these men were members of the theological grouping known as the Muʿtazila, and they had no intention of having the population believe that they were now

132. ʿIyāḍ b. Mūsā, Tarīḥ al-madārik, 85. Abū ʿl-ʿArab, the earliest known biography of Saḥnūn, apparently disagrees that the sources have no discrepancy, placing the date of his death one day earlier on 7 Rajab 240/1 December 854. See Abū ʿl-ʿArab and al-Khushanī, Tabaqāt, 102.
reconciled and satisfied with Saḥnūn. Thus al-Qāḍī ʿIyāḍ concludes the description of Saḥnūn’s life with a sense of the on-going controversy with which he lived.

Given, as Brockopp notes, that al-Qāḍī ʿIyāḍ’s narrative of the life of Saḥnūn is compiled two centuries following the earliest biography of Saḥnūn, and corresponds to about one century following the compilation the Mudawwana in its final form, much of what al-Qāḍī ʿIyāḍ writes about Saḥnūn may reflect hagiography more than biography. Many historical works mentioned in the sources are now lost. Quotes from those works allow some piecing together of non-existent texts, Yet the amount of source material with which medieval biographers had to work was much different than it is now. Only speculation can produce what is no longer available. So al-Qāḍī ʿIyāḍ’s biography of Saḥnūn must be read with extra caution. With that approach, it is possible to tease out of his work ideas which underlie his thoughts, focusing not on the veracity of the claims he makes, but rather trying to understand the need to include those particular statements in the biography of a man dead for about three hundred years. In this way, the historical records will produce a clearer understanding of the times in which al-Qāḍī ʿIyāḍ, and others like him, wrote.

2.2.3.3. Saḥnūn’s riḥla and the Asadiyya

Born in Ifrīqiya to a family with roots in Syria (al-Shām), Abū ʿl-ʿArab describes Saḥnūn as being a pure Arab (mīn ʿalībaṭ al-ʿarab), a phrase which Lane considers

133. See the discussion above on page 44 concerning the miḥna and the significance of the Muʿtazila in relationship with Saḥnūn in that crisis.


135. Muranyi’s work on Saḥnūn and the Mudawwana, Muranyi, Die Rechtsbücher, which is the most complete review to date, states that the organization of the sections and chapter titles remains relatively unchanged since the time of al-Qābisī (d. 403/1012). See Muranyi, Die Rechtsbücher, x.

136. See above note 16 on page 10 for an example of how al-Qāḍī ʿIyāḍ’s works can serve historical purposes.

Maghribian Arabic used to describe someone descended from the family of the Prophet.\textsuperscript{138}

His father had been in the military from the region of Ḥomṣ. He was known as a collector or compiler of \textit{fiqh}. Saḥnūn was schooled while young. His interest in legal matters led to a desire to make an educational trip (\textit{riḥla}) eastward, a common project for would-be scholars of his day. Abū ‘l-’Arab uses a curious phrase to describe the work which Saḥnūn had compiled which seems to indicate, already at that date, a preference of some for his work over that of someone else. He says, “The body [of \textit{fiqh} work] which he compiled is a sincere friend in comparison with what another has compiled.”\textsuperscript{139} After this follows a brief series of phrases which extol Saḥnūn’s work and his character, words such as skillful, pious, righteous, ascetic and simple in terms of worldly affairs—dress, food and travel.\textsuperscript{140} Abū ‘l-’Arab then goes on to relate some of his other qualities as expressed through his actions, giving some details concerning his \textit{riḥla}, his dates of working as \textit{qāḍī}, as well as his age. According to the text, he became \textit{qāḍī} in the year 234/848-9 at the age of 74, and kept that position until his death six years later. Abū ‘l-’Arab notes that Saḥnūn did not take any earnings for his work as \textit{qāḍī}. This could suggest that Saḥnūn did not believe in providing religious duties for pay, or that he was not in any financial need, or that the state did not have the resources to pay him. This last reason seems the most unlikely as the sources would not support an interpretation which suggests that the Aghlabid empire was in a state of financial insolvency. Concerning

\textsuperscript{138} E.W. Lane, \textit{An Arabic-English Lexicon} (London: Williams and Norgate, 1874), I:1713.

\textsuperscript{139} Abū ‘l-’Arab and al-Khushanī, \textit{Tabaqāt}, 101.

\textsuperscript{140} Talbi, in his entry on Saḥnūn in \textit{EI2} translates this as, “In him there were qualities,” wrote Abu ‘l-’Arab, “which were not to be found combined in any other: perfect knowledge of the law (\textit{fiqh}), sincere piety, rigour in the application of justice, contempt for temporal things, simple tastes in food and clothing, generosity and refusal to accept anything from princes.” This is also quoted in French in his article on Kairouan and Mālikī Spain. See M. Talbi, “Kairouan et le malikisme espagnol,” in \textit{Études d’Orientalisme: Dédiées a la Mémoire de Lévi-Provençal, Tome I} (Paris: G.-P. Maisonneuve et Larose, 1962), 328.
his own wealth, at that period of his life, al-Qādi ʿIyāḍ reports a saying of al-Anbarī that Saḥnūn was making 500 dinars a year on olives.\textsuperscript{141}

Whether or not Saḥnūn received any compensation for his work as qādi, it could be asked why the biographer would want to include such a detail. The most obvious answer that seems to appear is that Saḥnūn’s life is an example of piety demonstrated without the desire for worldly gain. But this is precisely how Abū ʿl-ʿArab describes Saḥnūn from the outset, making it plain that his jurisprudence was “skillful and pious” and that in regards to affairs of the world, he was an ascetic.\textsuperscript{142} Abū ʿl-ʿArab is clear from the beginning of his entry on Saḥnūn that his reputation was seen in very high regard, even at this relatively short span after his life.

The literature indicates a desire on Saḥnūn’s part to seek out the correction or revision to the work of Asad b. al-Furāt, known as the Asadiyya. The jurisprudential competition between Ibn al-Furāt and Saḥnūn may be interpreted considering what is written in the sources of their works, and their own lives. The lack of substantial data surrounding both Saḥnūn and Ibn al-Furāt as well as their works, leaves many questions about their lives and times as yet unanswered. The political and religious events surrounding their lives, the perceived competition between different religious schools of thought, and the outcome of their scholastic achievement make it necessary to understand the impact of the life of Ibn al-Furāt on Saḥnūn.

Asad b. al-Furāt was born in 142/759 or 145/762 in either Ḥarrān or Irīqiya, the sources are contradictory,\textsuperscript{143} with one even saying that his family originates from Khurasan.

\textsuperscript{141} ʿIyāḍ b. Mūsā, \textit{Tartīb al-madārik}, 80.
\textsuperscript{142} Abū ʿl-ʿArab and al-Khushanī, \textit{Tābaqāt}, 101.
and Nishapur.\(^{144}\) He traveled to the East in order to study *fiqh* and is said to have received the *Muwaṭṭa*‘ from Mālik (d. 179/795) in Medina. He also studied under al-Shaybānī (d. 189/805) and Abū Yūsuf (d. 182/798) in Iraq and Ibn al-Qāsim (d. 191/806) in Egypt.\(^{145}\)

Following his time spent in Egypt under Ibn al-Qāsim, Ibn al-Furāt came out with his presumed work, the *Asadiyya*, which was apparently a text resolving questions he had following his time in Irāq. It is understood that he wrote this text as a result of his consultations with Ibn al-Qāsim following his trip to Irāq.

The details concerning the beginning of Saḥnūn’s pursuit of Mālikī thought revolve around the controversy of Ibn al-Furāt’s text. It is said in the biographical dictionaries that Saḥnūn made his *riḥla* east in order to correct the *Asadiyya* with Ibn al-Qāsim, after having received a copy of it from Ibn al-Furāt.\(^{146}\) It is presumably a text based on Ḥanafi thought that was also influenced by the Mālikī thought of Ibn al-Qāsim, or simply as a Ḥanafi/Mālikī syncretism.\(^{147}\) The reason for Saḥnūn’s trip east is given only in one of the later biographies of Saḥnūn, rather than in that of Abū ‘l-ʾArab.\(^{148}\) This unique report with a late mention of Saḥnūn’s travel motivation has led Brockopp to suggest that the report may not be accurate. Although being reported by only a later biographer does not necessarily make the report untrue, it does raise questions as to why the reason was not mentioned earlier. As travelling east was a normal event for those interested in pursuing *fiqh* for the purpose of studying with whom they considered teachers, whether that be in Egypt, Medina or Iraq, Saḥnūn’s trip was

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\(^{144}\) Abū ‘l-ʾArab and al-Khushanī, *Ṭabaqāt*, 81.


\(^{146}\) Brockopp, “Asad b. al-Furāt,” *EI*\(^{3}\) states that the work was supposedly 60 volumes in length, but that it was only first mentioned by al-Shirāzī (d. 476/1083), as noted by Murānī. It is mentioned in Mālikī works by Ibn Abī Zayd al-Qayrawānī (d. 386/996), which seems rather significant, yet it is still approximately 200 years following the time when it was supposedly written.

\(^{147}\) Talbi, “Saḥnūn” *EI*\(^{2}\).


58
not out of the ordinary. It is possible that he had a desire to correct legal perspectives represented by the Ḥanafi school in Ifrīqiya along with a general desire to study in the East.

That it should be reported 250-300 years later in one biography that the purpose of his trip was to question the work of one of the main proponents for a rival school of thought in jurisprudence begins to appear as a religiously politicized agenda, revising historical perspectives. Muranyi interprets the evidence of handwritten additions to manuscripts in the Arab librarires of North Africa as confirming the rivalry between the Asadiyya and the Mudawwana and demonstrating a shift in content between the two works. The evidence supports that the Mudawwana and the Asadiyya were separate and different texts, although both dealing with similar questions of a legal nature.

Although it is clear from this distant temporal position that there was some form of struggle between the Ḥanafi and Mālikī schools in Kairouan, recent research confirms a desire on Saḥnūn’s part to not dominate Ḥanafi jurists when he took control as qāḍī, rather he requested their help in the area of jurisprudence.

149. Note here Muranyi’s clear presentation of a marginal gloss from ms Qarwiyyīn 799 found within kitāb al-nikāḥ of the Mudawwana demonstrating a shift in doctrinal thought between the (no longer accessible) Asadiyya and the Mudawwana. Muranyi has championed the revision of the idea supported by both Schacht and Sezgin that somehow included within the Mudawwana at the end of the text is the Asadiyya, under the title of the Mukhtaliṭa. It is much clearer now at this juncture in the origins of the texts to realize that Saḥnūn began his discussions with Ibn al-Qāsim on the basis of the information provided by the Asadiyya, but that he did not include Ibn al-Furāt’s text within his own. It has taken more than thirty years for research to correct this mistaken conclusion. However it is still unclear what the relationship is exactly between the Mudawwana and the Mukhtaliṭa. It appears that even in the second half of the third century, according to the findings of Muranyi in the Qarawiyyīn library in Fes, there was not a clear distinction of material that belonged in the Mudawwana and what belonged to the Mukhtaliṭa. A copy of kitāb al-hajj al-awwal is labeled as being min Mukhtaliṭat al-Mudawwana. This belongs to the collection cited by Muranyi as 800. Additionally, the modern Abu Dhabi edition includes Mukhtaliṭa in its title.

150. Muranyi, in his text, identifies three fragments from the mosque library in al-Qayrawān, two fragments mentioning the riwāya of Asad b. Furāt (sic) and two separate kitābs: Kitāb al-‘Itq wa l-tadbīr and Kitāb al-Sarīqa wa-qāt’ al-tariq. These provide the clear proof that there in fact was some known text (and teaching) of Ibn al-Furāt which differed from that of Saḥnūn and the Mudawwana. Exactly when and how they came to be known as the Asadiyya though, is another matter. Other references refer to the kutub of Asad b. al-Furāt. Ibn Khallikān, four hundred years after the time of Saḥnūn and Ibn al-Furāt, used both terms, the Asadiyya and “his” books, referring to Ibn al-Furāt’s books, in his recounting. See Ibn Khallikān, Wafayāt al-aʿyān, 181-82.

The further sources are removed from the time of the original events, the more complex the situation becomes, both in terms of the intrigue which takes place, and the interpretation of those recorded events. Ibn Khallikān, in his rendering of the rivalry between Ibn al-Furāt and Saḥnūn, narrates that Ibn al-Qāsim instructed Ibn al-Furāt to verify his work against the “correct” version held by Saḥnūn. Additionally he puts words in Ibn al-Qāsim’s mouth wishing that no one would benefit from the person and work of Ibn al-Furāt. These words would very easily be placed in his mouth centuries after Ibn al-Qāsim’s death based on the eventual triumph of the Mālikī madhhab over the Ḥanafī.

Chapter 3
Sources: Manuscripts and Commentaries

This chapter will describe the known ancient manuscripts of the *Mudawwana*, and give a fuller description of the sources which have been consulted throughout this research. Many of the known ancient manuscripts are in fragmentary form. Observations relevant to the research will be made of each of these sources. As well, commentaries which have been consulted, both modern publications as well as manuscripts, will be included in this overview. Those manuscripts which are a significant part of this research will be identified.

3.1. The Known Ancient Manuscripts of the *Mudawwana*

In the case of manuscripts, it is only a small portion of the *Mudawwana* which is usually still preserved. This comparison is made in reference to the size of the *Mudawwana* in terms of the content as we know it from the modern editions. There are lengthy manuscripts of the *Mudawwana* extant, but in relative terms, the majority of manuscript witnesses are fragmentary.

With Saḥnūn himself coming from the region of the Maghrib, and his students studying there and disseminating his work within the region, as one should expect, the script in the manuscripts being examined exhibits attributes common of Maghribī script.\(^{152}\) Later figures in the research will display various manuscript folios. In order to read the script properly, it would be important to note the following observations concerning the script employed. The letter \(fāʾ\) is written with one subscript dot, whereas the letter \(qāf\) is written with one superscript dot. The letter \(dhāl\) and \(dāl\) are identical with no superscript dot above

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152. For a fuller discussion of the characteristic features of Maghribī script, see Adam Gacek, *Arabic Manuscripts: A Vademecum for Readers* (Leiden: Brill, 2009), 147-50 and N. van den Boogert, “Some Notes on Maghribi Script,” *Manuscripts of the Middle East* 4 (1989), 30-43. Van den Boogert’s article, although a good reference for Maghribī script, uses forms particular to a specific geographic area. Forms will change somewhat depending on the region from which the text comes as well as the hand of the individual copyist. Any guide to a particular Arabic script should be seen as a guide only with variation likely.
the dhāl. Additionally, the foot or body of the dhāl or dāl, when it occurs in the final position, seems to resemble the rāʾ or zāʾ, becoming more of a descender rather than being the body of the letter. The ‘ayn and ghayn have a wide opening when occurring in the initial position. The descender of the mīm in the final position is not consistently formed, sometimes curving to the right and sometimes to the left. The stem of the tāʾ and zāʾ is not vertical, but rather slanted, the downward stroke coming down from the right to connect with the body of the letterform on the usual left side. The yāʾ in the final position is written with the descender sweeping back towards the right, running parallel with the baseline, normally under the baseline but sometimes on it, raising up the position of the previous letter or even two. An initial yāʾ is not consistently pointed, likewise the tāʾ, sometimes creating confusion between the two. A final alif, not including an alif maqṣūra, has a tail of sorts which falls below the baseline, slanted to the left, prior to raising the stem upward in a vertical fashion. The alif maqṣūra, on the other hand, resembles a final nūn, but of course, without the superscript dot and thus not like the yāʾ which may well be undotted most of the time. The letter hāʾ is not completely sealed together when it appears in the initial and medial positions. The letters jīm and khāʾ are not consistently pointed, thus context is very important in determining which letter is which especially when they are of the dotted variety. These observations are some of the unique characteristics of the Maghribī script employed in the manuscripts observed of the Mudawwana.

Each fragment, regardless of its size, exhibits some type of organization of the text, whether that be simply lined text, sections divided by subject headings, a kitāb of text or more than one kitāb grouped together. Each kitāb deals with one main subject matter, the title of the kitāb being indicative of the contents. In manuscript form, when one (or more) kitāb(s) is(are) bound in some manner, separated from other kitābs or groups of kitābs, it will be
referred to as a kurrāsa. This signifies a group of sheets of parchment which were compacted together in some form to create a separate whole.

### 3.1.1. Garrett 900H

This manuscript is housed at the Princeton University Library and is described in Hitti’s catalog of the Arabic collection of manuscripts.\(^{153}\) The author is listed as Ibn al-Qāsim. There are 126 folios which measure 25.6 cm by 19.6 cm while the written surface is 18.5 cm by 13 cm. There are 20 lines per page, written in Maghribī script on vellum. Hitti records that the contents of this manuscript contain Kitāb al-Ṣiyām wa l-i’tikāf, Kitāb al-Ḥudūd fī ’l-qadhf and Kitāb al-’İtq. Note that without examining the manuscript, it would be difficult to determine whether or not each of these kitābs is complete. A comparison by simply the number of pages in total for the three kitābs in the 1323/1905 Cairo edition (164) and the number of folios in the manuscript (126) indicates that it is likely that all three of these kitābs are complete, in the sense of containing similar to all of the material which would be in correspondence with this modern edition.\(^{154}\) Muranyi indicates that there is no notation of a scribe, a date or any marginal notes.\(^{155}\)

### 3.1.2. Alexandria al-Baladiyya 1210b

In Sezgin’s source, Fihris al-makhṭūtāt, the entry for this manuscript lists the title as being: “Questions and their answers according to Imām Mālik.”\(^{156}\) The entry in the Fihris just...

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154. The 1323/1905 Cairo edition has these three kitābs from Garrett 900H in five separate divisions, not three. They are, along with their number of pages in the 1323/1905 Cairo edition, Kitāb al-Ṣiyām [5] 35; Kitāb al-’İtikāf [6] 16; Kitāb al-Ḥudūd fī ’l-qadhf [95] 33; Kitāb al-’İtq al-awwal [36] 48; and Kitāb al-’İtq al-thāni [37] 32. Recall that the contents of the square brackets refer to the line numbers upon which these kitābs are found in Appendix B. This comparison is supported based on similar comparisons between the numbers of printed pages in the 1323/1905 Cairo edition relative to the number of folios for the same material found in BL ms Or 6586 which has been consulted for this research.


156. For Sezgin see GAS, I, 469. For Fihris al-makhṭūtāt see Fu’ād Sayyid, *Fihris al-makhṭūtāt al-muṣawwara*,
before this one was specifically for *al-Mudawwana* so the work was obviously known by the editor but it may not have been apparent from the state of the manuscript that this was from the same general work. However the description is appropriate for the material. This manuscript is said to have been written in the sixth century in the Naskhī style, rather than Maghribī. There are 66 folios measuring 27 cm by 18 cm in size. Otherwise, there is no further information about the content of the manuscript. Other than the mention of Mālik in the title, no indication is given of any other individual responsible for authorship, writing or transmission.

**3.1.3. Leuven ms Lefort B1, B2, B3, B4 and B5**

Purchased in the markets of Cairo, these pages of a manuscript were gifted by Prof. L. Th. Lefort, hence the name of the manuscripts, in March 1923, and are now located in the University library in Leuven (Löwen) in Belgium. Following Heffening, Sezgin lists these simply as “*Stücke einer Hds. von al-Mudawwana.*” A description of this manuscript, 27 folios on parchment, was written in 1937 by Heffening, along with a description of other texts. According to handwriting analysis as well as handwriting materials, Heffening has dated the manuscript to the 4th-5th/10th-11th century supported by the statement that parchment was rarely used after the 5th/11th century, this statement later being refuted by Muranyi given new findings concerning the use of parchment in Ifrīqiya and al-Andalus. Divided into five different parts, each one appears to be an assortment of pages from the *Mudawwana* with no sense of continuity whatsoever, like cards dealt out in a card game. The

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1 (1954), 281 as cited in Sezgin.

157. This collection was described above on page 22 in the literature review concerning Heffening’s article in 1937.

158. See Sezgin, *GAS*, I, 469.

159. Heffening, “Islamischen Handschriften.”

folios of groups B2, B3, B4 and B5 are all noted to have two holes in the margins which
Heffening speculates are used, along with some form of string, to be a binding agent for the
kurraṣa.\footnote{161} Heffening’s greatest contribution to the study of the Mudawwana in this
description is the comparative analysis he makes of the manuscript portions he had access to
along with the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition.\footnote{162} The length of
his article belies its significance as Heffening uses the few marginal notations to demonstrate
what he refers to as the “heillos verworren” situation of the Mudawwana, simply two
hundred years after its authorship.\footnote{163} His conclusion, he also claims, supports the description
of the Mudawwana according to al-Qāḍī ʿIyāḍ as related by Ibn Khallikān, which he
interprets as a collection of poorly ordered questions and answers, without subject headings,
which he edited, a job which he was unable to finish.\footnote{164} Heffening’s study will be referred to
further on page 132 in section 5.2.4 entitled Content Discrepancies within the Textual
Content. His study has been an important piece of evidence upon which this research has
built further.

\subsection{3.1.4. Fes Qarawiyīn 577}

A brief description of this manuscript was published by al-ʿĀbid al-Fāsī in 1959.\footnote{165} Al-Fāsī notes that it is written on parchment (al-raqq) and contains several parts (ajzāʾ). He
dates the earliest of the parts (juzʾ) to 494/1100-01. Muranyi does not mention this
manuscript in his foreword by this identifier at all. Given the size and description of the

\footnote{161. See Heffening, “Islamischen Handschriften,” 87-88.}

\footnote{162. Further discussion of Heffening’s contribution concerning the comparative analysis of the 1323/1905 Cairo
edition and 1324/1906-07 Cairo edition of the Mudawwana will follow in the modern edition section. See below
section 5.2.4.2 on page 132.}

\footnote{163. Heffening, “Islamischen Handschriften,” 96.}

\footnote{164. Ibn Khallikān, Wafayāt al-a ṣān, 3:180-182.}

l’Institut des Manuscrits Arabes; Majalla ma had li-makhtūṭat al-ʿarabiyya 5 (1959), 12.}
manuscript, this appears to be the same document that Muranyi labels as Fes Qarawiyyīn 574 and will be assumed as such for the sake of this research. Muranyi provides an excellent description of this manuscript in his publication on the *Mudawwana*. Each part (juz’) of the text has on average 25-30 folios in it. Muranyi describes the names and order of the different sections of the text, but not the books (kitābs) within the sections. These sections appear to act in the same role as modern volumes. This is the only known collection, partial or otherwise, where sections of the *Mudawwana* are given named titles of some sort. What is interesting in this manuscript, which Muranyi notes, is that there is a recording in the text of the order of the different sections of the text. These sections are, according to Muranyi, as follows:

*Rizmat al-Sharāʾiʿ* - from *Kitāb al-Wuḍūʿ* to *Kitāb al-Nudhūr*
*Rizmat al-Nikāḥ* - to *Kitāb al-Īlāʿ wa ’l-liʿān*
*Rizmat al-ʿAbīd* - from *Kitāb al-’Itq* to *Kitāb al-Walāʿ wa ’l-mawārīth*
*Rizmat al-Buyūʿ* - to *Kitāb al-Ṣulḥ*
*Rizmat al-Ijāra* - from *Kitāb al-Ijāra* to *Kitāb Ta’dmīn al-ṣunnāʾ*

The recording of this arrangement is most interesting for two reasons. First, the date of this arrangement is the earliest known recording of any form or order or organization for the text. The second reason is that the arrangement listed here, which can be as early as 494/1100-01, does not agree in full with the arrangement of the kitābs as they appeared in the 1323/1905 Cairo edition or any subsequent publication. Although not all the kitābs are listed in this recording, the names of the kitābs given provide some clue as to the ordering of the kitābs themselves. The order of the kitābs of the *Mudawwana* is a major issue which will be dealt with more fully in chapter four.

166. Muranyi, *Die Rechtsbücher*, xi.
3.1.5. British Library ms Or 6586

The BL ms Or 6586 presents fragments of the Mudawwana which are grouped together into five sections under separate title pages, one now missing. Ellis observed and recorded these numbers when he wrote his Descriptive List of the British Library holdings. Ellis describes “books 20, 37, 40 and 50.” What Ellis refers to as “books” are clearly kurrāsas consisting of various kitābs of the main text. For the purposes of this research and to avoid any confusion in terminology, what Ellis refers to as books will be identified as kurrāsas. Kurrāsas are present in other manuscript collections of the Mudawwana, and the ones found here share characteristics which allow them to be defined as one or more kitābs of the Mudawwana which are held together as a separate whole. They have their own individual title page, but are named only according to the kitāb(s) found within them, with many being described as being min al-Mudawwana. Each of these kurrāsas contains kitābs within it, namely and respectively: Kitāb al-Īlā’ (section 20, complete), Kitāb al-Jawā’ih, Kitāb al-Musāqāh, Kitāb al-Luqāṭa, and Kitāb al-Ābiq (section 37, all being incomplete), Kitāb al-Sharīka (section 40, incomplete), Kitāb al-Wadī’ā, wa ’l- Āriyya, wa ’l-Hibāt (section 50, all incomplete) and Kitāb al-Murābaḥa (incomplete), Kitāb al-Wakālāt (complete) and Kitāb Taḍmīn al-ṣunnā’ (complete).

Each folio measures approximately 28.4 cm by 19.5 cm and they are generally consecutive within their respective sections. They must have been stored together and were most likely bound with string as individual kurrāsas. Holes punched in the inside margins


168. In regards to being “complete” or “incomplete”, individual kitābs were compared with the text in the modern editions (1323/1905 Cairo edition and the 1324/1906-07 Cairo edition) and their completeness is in relation to those forms of the text.

169. A lengthy discussion concerning the inconsistency of specific kitābs grouped together within kurrāsas will follow in the section dealing with structural discrepancies of the text. For the section on kitābs and kurrāsas, see specifically section 5.1.1 on page 92.
support this supposition.\textsuperscript{170} This allowed for many of the folios to remain in the order they did, providing excellent continuity of the text.\textsuperscript{171} Containing only a few marginal notes, according to Muranyi, one folio includes a correction notice of the copyist “\textit{min al-umm}.”\textsuperscript{172}

Each section within the manuscript has a title page for the \textit{kitābs} within that section. For example, the \textit{kurrāsa} Ellis identifies as book 50, its reference number written directly on the title page of the \textit{kurrāsa}, says in the upper right corner, “\textit{al-m[---] khamsīn min al-Mudawwana}.” Then centered on the page it reads, “\textit{Kitāb al-Wadī’a wa ’l- Āriyya wa ’l-Hibāt min al-Mudawwana riwāyat Saḥnūn b. Sa’īd al-Tanūkhī ’an ’Abd al-Raḥmān b. al-Qāsim al-’Utaqī ’an Mālik b. Anas al-ʾAṣbaḥī}.” This manuscript is referenced several times throughout the course of this research.

\subsection*{3.1.6. British Library ms Or 9810}

This collection of folios is made up of five groups, labelled A through E. Groups A and B have 132 and 57 folios respectively, while groups C, D and E have only 19, 17 and 20 folios each. According to Muranyi, there are only a few marginal notes, and there is a generally formulated source, “\textit{wa-qad qāla ba’dū ’l-tūnisīyyīna wa-ba’dū ʾaṣḥabī-nā}.”\textsuperscript{173}

Undated as a group, as each part seems to be from a different date, parts C and E though, have dating evidence. A fragment of \textit{Kitāb al-Nikāh} coming from Kairouan was copied in the year 381/991 with two addenda coming at the end of the section (\textit{juz’}). It is these addenda which testify to its origin from Kairouan. Part E, which has 20 folios, provides a complete

\begin{flushright}
\textsuperscript{170} Heffening theorizes on the meaning of the dual holes in the inside margin of the manuscripts in Leuven, assuming them to be holes which support a binding keeping the \textit{kurrāsa} intact as one separate whole. See above page 65 note 161.

\textsuperscript{171} The ordering of the \textit{kurrāsas} in comparison with the modern editions will be discussed further in section 5.1.1 on page 79.

\textsuperscript{172} Muranyi cites this marginal notation as being on folio 75a of BL ms Or 6586. See Muranyi, \textit{Die Rechtsbücher}, xii.

\textsuperscript{173} See BL ms Or 9810A:45a.
\end{flushright}
copy of Kitāb al-Nudhūr which was produced in the year 394/1003 based on a model of his teacher, Abū ʾl-Hasan al-Dabbāj, that would have dated as early as 344/955.

3.1.7. Kariouan 400/1010

Nothing is known about this manuscript, save the reference which is provided by Sezgin. As it is privately owned, unless some sort of information is provided in the future by its owner, it is unlikely to provide the scholarly world with any value.

3.1.8. Kairouan 258/871-72

Sezgin lists this manuscript fragment as consisting of eight folios. It is difficult to try to determine exactly to which folios these might be referring. Since the time of Sezgin’s GAS, Muranyi has spent many years in the Mosque library of Kairouan. Throughout those years, according to his publications, he has seen literally hundreds of fragments from the Mudawwana. Although many of his observations are recorded in his text on Saḥūn’s Mudawwana, the fragments and folios that he has studied and photographed have not themselves been published. He has chosen, rather, to focus simply on publishing significant findings such as colophons and addenda, but not the text itself. As a result, folios, shelf markings and kurrāsa numbers are not provided for any of his sources in Kairouan. It is possible that the collection is so disorganized that no shelf or accession numbers exist. The manuscript simply appears as “Hs Qairawān.” The only times Muranyi uses full references is when he is referring to published manuscripts. This will make further research, with his work as a foundation, more difficult. One can only assume that these eight folios to which

174. Sezgin, GAS, I, 469.
175. Sezgin, GAS, I, 469.
176. Muranyi, Die Rechtbücher, 38.
Sezgin refers, are included in the folios, fragments and collections Muranyi has seen in his years in Kairouan.

3.1.9. Fes Qarawiyīn 319

The only information supplied by Sezgin is “I, 4th or 5th century H.” No other information on this manuscript is available.

3.1.10. Fes Qarawiyīn 796

According to the entry by al-ʿĀbid al-Fāsī, this manuscript is a huge book written on gazelle skin with the use of a small stick (siwāk). It is, presumably, one of the few lengthy or complete copies of the Mudawwana, in relation to the modern editions. Located in the Qarawiyīn mosque library in Fes, it attests to have been copied by ʿAbd Allāh b. Muḥammad b. ʿAbd al-Wārith. As the 1323/1905 Cairo edition of the Mudawwana is credited to a different copyist, see above page 15, this is apparently another extensive copy of the Mudawwana. The date for the copying of this manuscript is unknown. It was not available for the purposes of this research.

3.1.11. Fes Qarawiyīn 1335

According to Schacht, this manuscript contains two booklets of two quires each, on parchment. The first is dated from 517/1123-24 and contains the 24th juzʿ of the second half of the work. The contents range from Kitāb al-ʿĀriyya to Kitāb Ḥarīm al-Ābār, however the kurrāsa itself says that it ends at the conclusion of Kitāb Iḥyāʾ al-mawāt. The second

177. Sezgin, GAS, I, 469.


179. As this kitāb is unknown from other sources for the Mudawwana one could speculate that it is either a lost kitāb, or possibly part of the contents of the Mukhtaliṭa which seem to sometimes appear alongside kitābs of the Mudawwana in manuscript form.
The booklet contains Kitāb al-Qaṭʿ fi l-sariqa\textsuperscript{180} and Kitāb al-Muḥāribīn (or al-hirāba).\textsuperscript{181} The owner of the manuscript, at the time of its creation, is listed as Mūsā b. Muḥammad b. Saʿāda.\textsuperscript{182}

**3.1.12. Rabāṭ Kattanī 343**

This manuscript contains 55 folios of unknown content, from the 4th/10th century.\textsuperscript{183} It was not available for the purposes of this research.

**3.1.13. Chester Beatty Library mss Ar 3006 and 4835**

Although listed as two separate manuscript numbers, the majority of the folios from these two different accession numbers are from the same copyist hand. As they were acquired at different times they were given different numbers, keeping folios which originally belonged together in the same manuscript apart from each other. Both of these manuscripts are used extensively throughout this research.

**3.1.13.1. Ar 3006**

These disorganized vellum fragments number 143 folios measuring 25.5-28 cm by 19.5-20.3 cm.\textsuperscript{184} They are written in Maghribī script with the copyist named—Ŷūsf b. 'Abd al-Jabbār b. 'Amr al-ʿAbdarī, the colophon clearly indicating his name and the year of the

\textsuperscript{180} In the 1905 modern edition, Kitāb al-Muḥāribīn follows directly after Kitāb al-Sariqa, therefore it seems reasonable to assume that what Qarawīyīn 1335 refers to as Kitāb al-Qaṭʿ fi l-sariqa and Kitāb al-Sariqa are referring to the same general content, however neither of the modern editions refer to this kitāb by that name. This relates directly to the discussion of the titles of the various kitābs and when they were set for the various manuscript traditions that obviously arose.

\textsuperscript{181} Note the additional variant title of this kitāb, according to Schacht. Where he obtained this other title is not explained. Presumably it’s source is somewhere else in the text.

\textsuperscript{182} Schacht’s note is that naming the owner of the manuscript for whom it was copied in the title of the manuscript was a common practice in ancient Maghrīb manuscripts.

\textsuperscript{183} Sezgin, GAS, I, 469.

One of the kitābs is dated to Rabī’ II 509/August 1115. According to Muranyi, these only have one interesting marginal note of Andalusian origin. Yet for the purposes of this research, much can be gleaned from this source. Like the other manuscript of the Chester Beatty Library, the pages are not in correct order. This manuscript was purchased by Chester Beatty in Cairo from A. S. Yahuda in two parts, one in March 1928 and the other in March 1929, which would explain some of the disorganization in the manuscript. Six kurrāsa title pages are found in this manuscript from the following kitābs: Kitāb Ummahāt al-awlād, Kitāb Kirā’ al-dūr wa ’l-araḏīn, Kitāb al-Aymān bi l-ṭalāq, Kitāb al-Salam al-thānī, Kitāb al-Shuf’a, and Kitāb al-’Itq al-thānī. These title pages have very unique and uniform layouts. Presentations of the titles of the kitābs will be discussed below in section 5.3.3 on page 170.

185. For more on typical contents of colophons in Arabic manuscripts see Rosemarie Quiring-Zoche, “The Colophon in Arabic Manuscripts: A Phenomenon without a Name,” Journal of Islamic Manuscripts 4 (2013), 49-81.

186. The kitāb which mentions the date is Kitāb al-’Itq al-thānī. The copyist writes: “fī Rabī’ al-ākhīr ‘alā tis’a wa khamsa mi’a ’alā yad Yūsuf b. ’Abd al-Jabbār b. ’Amar b. al-’Abdārī.” This is noted on the digital copy of the folio provided by Chester Beatty Library. In the absence of folio numbers written on the individual folios of this particular manuscript, jpeg image files as forwarded by the CBL will be cited in their stead. See Chester Beatty Library ms Ar 3006, digital image reel_222-030.jpg.

187. Muranyi, Die Rechtsbücher, xii.


189. digital image reel_222-004.jpg

190. digital image reel_222-011.jpg

191. digital image reel_222-033.jpg

192. digital image reel_222-058.jpg

193. digital image reel_222-072.jpg

194. digital image reel_222-081.jpg
Further purchases were made by Chester Beatty on 14 July 1936 in Cairo from A. Sarkissian resulting in this addition to the library’s holdings of the *Mudawwana*. Although under a different accession number, many of these folios belong to the same original manuscript, as they have been copied by the same individual and one page provides a date from just a year following that of CBL ms Ar 3006. An average size folio measures 25.4 cm by 19.8 cm. There is one title page amongst its folios, the *kurrāsa* containing more than one *kitāb*, namely *Kitāb al-Mudabbar wa ’l-walā’ wa ’l-mawārīth wa ’l-ansāb*. Subject headings in this copy of the *Mudawwana*, like many others, are written in a larger size handwriting, taking up two lines of the page, justified in the center of the page and indented from the main text at both margins of the folio.

Due to the dishevelled nature of the manuscript under this accession number, it is clear that some folios from a different original manuscript became mixed up with what was originally from a manuscript of the *Mudawwana*. The majority of the folios in this manuscript, 53 out of a total of 72 folios, have 20 lines per page and are used extensively in this study. Their content provides evidence that they are indeed from *kitābs* known to be part of the *Mudawwana*. Not all the folios in this collection belong either to the same copy of the *Mudawwana*, nor were they from the same hand. Of the remaining 19 folios, 17 of them have 22 lines per page and two of them have 19 lines per page, each set seeming to be written

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195. Wright, “Visitor Query.”
196. folio 72a
197. folio 1a
198. folios 6, 7, 50 and 67-70
199. folios 44 and 45- Extensive word searching of samples from the two folios which have only 19 lines of text have not been successful in determining a location from the general text of the 1323/1905 Cairo edition of the *Mudawwana*, yet the language of the folios is consistent with the type of language found in the text of the modern edition. It is possible that they contain commentary from the *Mudawwana*, but their content cannot be verified as none of the commentaries accessed indicate any correspondence with this text.
by a different hand. Although these mismatched folios are written by another hand, a closer
inspection of the ones with 22 lines per page can establish that the text contains subject
matter found in the *Mudawwana*. For example, when inspecting folio 50a, which has 22 lines
per page as opposed to the usual 20 lines in this manuscript, it can be determined that the first
line of this folio actually comes from *Kitāb al-Diyāt*, the last *kitāb* in all of the modern
editions of the *Mudawwana*. It corresponds with both the 1323/1905 Cairo edition and the
Beirut edition. ²⁰⁰ Another folio has text found in *Kitāb al-Ḥajj al-thānī*. ²⁰¹ These folios
provide evidence that at some point, folios from different *kitābs* and even different scribes,
came to be found together, resulting in an unorganized collection. It is possible, therefore,
that there is more than one copy of the text of the *Mudawwana* that is incorporated together
in this collection, or that more than one copyist was used in writing different *kitābs* of the text
as the copyist style is very different. If one manuscript became mixed up with another
manuscript, it could have happened as late as the twentieth century. Manuscript evidence
must be checked carefully to ensure that all folios belong to the same *kitāb*, scribe and even
original ancient writing.

The CBL manuscripts have a total of seven title pages amongst its folios. ²⁰² Of these
seven, only one title page lists more than one *kitāb* as its contents. ²⁰³ This *kurrāsa* contains
*Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārith waʾl-ansāb*.

₂⁰⁰. It is interesting to observe that there is a discrepancy with the text in this folio of the CBL ms Ar 4835 and
the text of both the 1323/1905 Cairo edition and Beirut edition. The unusual folio states, from the very top line,
waʾl-sāriq idhā waqțaʾa wa-ghayr al-sāriq siwā yadmahu. The 1323/1905 Cairo edition reads, al-sāriq wa-
ghayr al-sāriq idhā waqtaʾa fihi siwāʾ yadmahu. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition,
6:454:20. The Beirut edition reveals yet one other reading, being, idhā waqtaʾa al-sāriq aw ghayr al-sāriq siwāʾ
yadmahu. Compare Saḥnūn, *Mudawwana* Beirut, 4:672:26. Unless further manuscripts can be found for this
specific *kitāb*, one can only speculate as to which version, if any of these, was the original intended text.

₂⁰¹. folio 68

₂⁰². Six of the seven title pages in these manuscripts appear in CBL ms Ar 3006 as mentioned above on page
72.

₂⁰³. CBL ms Ar 4835:1a. For an image of this title page, see page 98.

Noted by Sezgin, this manuscript exists in five volumes (*Bänden*) and is almost a complete manuscript of the *Mudawwana* in relation to the modern editions.\(^{204}\) It contains the equivalent of parts II - XVI of the 16 volume set published in Cairo in 1323/1905. Parts of it were written in the year 527/1132-33. This manuscript has not been accessible for the purposes of this research.

3.1.15. Leiden ms Or 14.038

Consisting of four folios on vellum, measuring 21.5-28.5 cm by 13.5-19.0 cm, they are dated to the 4th-5th/10th-11th centuries. According to the notes provided by Witkam, these folios contain text from *Kitāb al-Istibrāʾ*.\(^{205}\) Most folios contain some marginal notations which appear to have been written by the same copyist.

3.1.16. Known Inaccessible Manuscripts

In addition to the manuscripts noted above, it must again be mentioned that there are numerous fragments of the *Mudawwana* located in Kairouan, Rabat and Fes according to Muranyi.\(^{206}\) As none of these manuscripts have been published, and multiple attempts to access fragments in Kairouan have not been successful, sadly no further information on these fragments can be provided.

3.2. Commentaries

Five commentaries concerning the *Mudawwana* have been consulted for comparative purposes with the order of the *kitābs*. These have been written at various times after the

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\(^{204}\) Sezgin, *GAS*, I, 469. For the original reference, see *Fihris al-kutub al-mawjūda biʿl-maktaba al-Azhariyya* (Cairo: Maṭbaʿat al-Azhar, 1365), II:405.


\(^{206}\) See page 30 above in the review of scholarly literature concerning Muranyi’s work.
circulation of the Mudawwana, one as early as within 200 years of the death of Saḥnūn, with the furthest from his life being almost 400 years later. The commentaries give a perspective on how the text of the Mudawwana was perceived and explained by the scholars in the centuries after its genesis. These include, in chronological order beginning with the oldest, al-Tahdhib fi ikhtisār al-Mudawwana by al-Barādhiʿī (Abū Saʿīd Abū ʾl-Qāsim Muḥammad al-Azādī al-Qayrawānī, d. 438/1046-47), al-Muqaddimāt al-mumahhidāt\(^\text{207}\) by Ibn Rushd (Abū ʾl-Walīd Muḥammad b. Ṭāhir, d. 520/1126), al-Tanbihāt al-mustanbaṭa ʿalā ʾl-kutub al-
Mudawwana wa ʾl-Mukhtaliṭa by al-Qāḍī ʿIyāḍ (ʿIyāḍ b. Musā, d. 544/1149), Manāhij al-tahṣīl wa-natāʾiḥ laṭāʾif al-taʿwīl fi sharḥ al-Mudawwana wa-ḥall mushkilātihā by al-Rajrājī (Abū ʾl-Ḥasan ʿAlī b. Saʿīd, d. 633/1235) and Kitāb sharḥ gharīb alfāẓ al-Mudawwana by al-Jubbī (c. 4th-5th/10th-11th century). These are, by no means, the only commentaries that were written on the Mudawwana. These particular commentaries have all been published in the last thirty years, and are somewhat readily available to the general reader.

Of the five commentaries, only that of al-Jubbī appears from its table of contents not to be comprehensive, the number of kitābs being dealt with being many fewer than the other commentaries. Appendix C provides a comparison of the kitābs found in each of these five commentaries along with the order of kitābs from the 1323/1905 Cairo edition. As the order of kitābs in the commentaries varies quite significantly in comparison to the variances of the order of the kitābs in the modern editions of the Mudawwana, no attempt has been made in Appendix C to try to create correspondence in the orders of the kitābs between the commentaries as was done in Appendix B for the orders of the kitābs in the modern editions. As noted in Appendix C, the number of kitābs discussed in each commentary is as follows: al-Barādhiʿī 87, Ibn Rushd 80, al-Qāḍī ʿIyāḍ 76, al-Rajrājī 81 and al-Jubbī 56.

\(^{207}\) The full title for this commentary was given above on page 16.
3.2.1. al-Barādhiʿī: al-Tahdhīb fī ikhtiṣār al-Mudawwana

Writing within two hundred years of the death of Saḥnūn (d. 240/854), and likely at least one hundred years prior to that of al-Qāḍīʿīyād, al-Barādhiʿī’s commentary is of special interest. In his studies and biography of al-Barādhiʿī, introducing the commentary, Ibn al-Shaykh places his birth between that of Ibn Abī Zayd al-Qayrawānī (d. 386/996) and al-Labīdī (d. 440/1048-49) as al-Qāḍīʿīyād places him in the eighth generation of scholars of Ifrīqiya. Little is known specifically of al-Barādhiʿī’s life other than that he was from Kairouan and within the scholarly community, a colleague of al-Labīdī and a student of Ibn Abī Zayd. Biographers deduce a strong religious scholarly background from his writings and context. His nisba, al-Barādhiʿī, indicates family roots from Azerbaijan, according to al-Shaykh as taken from Lisān al-ʿArab.208

3.2.2. Ibn Rushd: al-Muqaddimāt al-mumahhidāt

Note that the author of this work is Ibn Rushd, “the grandfather” (al-jadd), of the more famous grandson by the same name. The grandson is better known by his Latinized name Averroes. In addition to al-Muqaddimāt al-mumahhidāt, the Andalusian Abūʿl-Walīd Ibn Rushd wrote additional commentaries on Mālikī works, one other being the commentary Kitāb al-Bayān waʾl-tahṣīl li-mā fiʾl-Mustakhrajah on the work of al-ʿUtbī (d. 255/869), often referred to as the ʿUtbiyya, after its accredited author.209

Ibn Rushd is rightly known as one of the greatest Mālikī jurists of all time.210 Living two hundred years after the time of Saḥnūn, Ibn Rushd took some of the primary source


material of the Mālikī madhhab, namely the Mudawwana and the ’Uṭbiyya, and applied the science of the principles of Islamic law (i.e. uṣūl al-fiqh) to these works, in order to clarify contradictions, correct discrepancies and errors, and essentially organize the foundations of Mālikī law. Al-Muqaddimāt al-mumahhidāt related to the Mudawwana and al-Bāyan related to the ’Uṭbiyya. They were likely used in tandem depending on the particular source to which one was referring. Ibn Rushd introduces his commentary with fundamentals of religion and law as well as discussing different forms of reasoning. The highly developed methodology applied in his work, not only in these commentaries, but also his fatāwā, led to the high regard in which he was held by the generations which followed him.

3.2.3. al-Qāḍī ʿIyāḍ: al-Tanbīḥāt al-mustanbaṭa

Interest in al-Qāḍī ʿIyāḍ’s commentary rests in his significant role in recording the history of Mālikī scholars through his biographical dictionary Tartīb al-madārik wa-taqrīb al-masālik bi-ma’rifat a’lām madhhab Mālik.²¹¹ Talbi states that this text is “the best defence for and illustration of the Mālikī school.”²¹² This work of al-Qāḍī ʿIyāḍ’s was the first major biographical dictionary of the Mālikī school. He was the qāḍī of Ceuta for two separate periods during the first half of the 6th/12th century. Details concerning the end of his life are unknown. Following his involvement in open rebellion against the Almohads he was exiled to Marrakesh where he died.

Very little work has been done in the West on any of his works other than his biographical dictionary mentioned above.²¹³ In his commentary, al-Qāḍī ʿIyāḍ provides

²¹¹ ʿIyāḍ b. Mūsā, Tartīb al-madārik.

²¹² See M. Talbi, “ʿIyāḍ b. Mūsā,” Encyclopaedia of Islam, Second Edition (Brill Online, 2013). This commentary was also available in digital manuscript form, making it even more attractive for this research. See al-Qāḍī ʿIyāḍ, Kitāb al-Tanbīḥāt al-mustanbaṭa ʿalaʾl-kutub al-Mudawwana waʾl-Mukhtaliṭa (Munich: manuscript Cod. arab. 339 digitally published by Bayerische Staats Bibliothek).

²¹³ A recent article gives good background to al-Qāḍī ʿIyāḍ. See Camilo Gómez-Rivas, “Qāḍī ʿIyāḍ (d. 544/1149),” in Islamic Legal Thought: A Compendium of Muslim Jurists, ed., by Oussama Arabi et al. (Leiden: Brill, 2013), 323-338.
background for the text explaining the scholars involved in its origins, discussion of *fiqh* from the text of the *Mudawwana* along with comparisons with other *madhāhib*. He also includes explanations for strange words, including pronunciation. Al-Qāḍī ‘Iyāḍ’s text is pertinent to this particular research as included at the beginning of the text is a table of contents for the work as a whole, listing the *kitābs* dealt with in the commentary in a particular order. Accessibility to a manuscript copy of the text has also made this an interesting part of the research.

3.2.4. al-Rajrājī: *Manāḥij al-taḥṣīl*

The modern editor of al-Rajrājī’s commentary, Abū ’l-Fāḍil al-Dimyāṭī, admits to the difficulty in finding adequate biographical information concerning al-Rajrājī. Quoting another source, Shaykh al-‘Ulamā’ Abū Uways Muḥammad al-Amīn, al-Dimyāṭī explains this is his only source for any biographical information. Part of the difficulty is that al-Rajrājī comes from a Berber background, a group for whom few sources of information are available. Al-Rajrājī is described as being qualified to acquire an understanding of the *Mudawwana* given the fact that he was trained in *fiqh*. Like many others of his day, having completed the *hajj* was also a qualification considered valuable in scholarship. He was specialized in commentary of the remembrances of what was real for the Imāms from the meanings and the use of the words of Ibn Rushd and al-Qāḍī ‘Iyāḍ and the expositions of Abū al-Ḥasan al-Lakhmī. He was also known for being accomplished in Arabic.*214*

3.2.5. al-Jubbī: *Kitāb sharḥ gharīb alfāẓ al-Mudawwana*

Concerning al-Jubbī, little is actually known. Maḥfūẓ states that it is generally assumed that al-Jubbī was from the 4th-5th/10th-11th century.*215* The language of al-Jubbī is

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215. The modern edition consulted for this research, according to Maḥfūẓ, is based on a manuscript dated 889/1484 located at the National Library in Tunis, manuscript number 1946.
an interesting point, as his language includes vocabulary specific to the geographical region of modern-day Tunisia, including words such as *al-sfanāriya*\(^{216}\) rather than *al-jazār* to refer to carrots and *al-kaskāsa* instead of *ʿaša lil-rāʾī maʿqūf* for a hooked shepherd’s stick. This indicates his origin as being local to the region.\(^{217}\)

As the title of al-Jubbī’s text states, he is simply commenting on what is considered strange (*gharīb*\(^{218}\)) in the text of the *Mudawwana*, not necessarily needing to comment on each subject which it discusses. It acts as a glossary for the reader of the *Mudawwana* who may be unfamiliar with some of its vocabulary. With this in mind, it is interesting to observe the subjects which receive more attention by al-Jubbī than others—subjects which might require more attention by the reader than others, or which readers may have more difficulty in understanding. Appendix C displays the page lengths of each chapter of this text (the final of the five commentaries listed), with the vast majority of them consisting of one or two pages. Note that the modern editor has also included footnotes in the text, so one page of text may actually mean simply a word or two that needed some sort of definition; the modern editor’s footnotes sometimes take up as much room as al-Jubbī’s original text. Those subjects which require more explanation (more than two pages) include only those *kitābs* which appear, in all the modern editions, at the beginning of the *Mudawwana*. These *kitābs* include *Kitāb al-Wuḍu‘*, *Kitab al-Ṣalāt*, *Kitāb al-Zakāt*, *Kitāb al-Ḥajj*, *Kitāb al-Jihād*, and *Kitāb al-Nudhūr*.

This concludes the description of the sources consulted for this research, namely the manuscripts and commentaries of the *Mudawwana*, as well as the modern editions of *al-Mudawwana al-kubrā*. Prior to looking specifically at the sources themselves, the specific

\(^{216}\) This is the word in modern common usage in Tunisia for carrots.


\(^{218}\) or rare: In his listing of the manuscript for this text, Derenbourg translates al-Jubbī’s title into French to read “*Livre contenant un commentaire sur les expressions rares de la Moudawwana.*” See Hartwig Derenbourg, *Les Manuscrits Arabes de l’Escurial* (Paris: L’École des Langues Orientales Vivantes, 1884), 10:395.
roles undertaken by various individuals in the formation and transmission of the *Mudawwana* will be illustrated. The purpose of this is to better understand the influence these individuals would have had in the formation of the *Mudawwana* so as to bear those in mind as the source material evidence is examined.
Chapter 4
Roles in the Formation of the *Mudawwana*

The world of ancient Islamic manuscripts is fraught with difficulties. Not least of these is the language with which scholars today discuss the individual roles played by various personalities in the creation of a manuscript. One reason for the chaos which exists is a non-uniformity amongst scholars of Islamic studies in the terminology used to refer to these roles and responsibilities. This issue was addressed by Sebastien Günther in his article “Assessing the Sources of Classical Arabic Compilations.” Through his article, Günther creates a lexicon of terms which he hopes can be used by scholars of Islamic studies in order to reduce inconsistencies between them occurring from mismatched terminology. A contributing factor to this disorder is the multiple languages used by scholars from various backgrounds. Simple agreement on terms and definitions to be used by a breadth of scholars could potentially reduce confusion significantly and assist in the advancement of a clear understanding within Islamic studies of how particular manuscripts have been created and transmitted. His efforts in this regard are pertinent to the current research. Below are categories and definitions presented by Günther with comments concerning how they apply to this particular research. Günther’s terms will be used later in section 6.5 to assess the roles amongst specific personalities in regards to the formation of the *Mudawwana.*

4.1. Transmitter

Transmission is both an internal as well as external process in terms of the *Mudawwana*. The sayings of Mālik and Ibn al-Qāsim are transmitted by Saḥnūn in his text. This is the internal process of transmission. Externally, the text of the *Mudawwana* has been


220. See below section 6.5 on page 205.
transmitted as early as the end of the third century, according to the information which Muranyi has provided concerning fragments found in the mosque library of Kairouan. Although likely very different processes, these two forms are transmission, information being conveyed from one time/form/document to another through the action of an individual.

4.2. Author

Concerning authorship, Günther states an author is “a ‘writer’ whose written work is provably (sic) the result of creative scholarly efforts” (emphasis Günther).221 With this understanding, those who are responsible for creative work within a given text are given credit for their contribution to that text. Note that Güther specifies that the author is also some form of writer, and has created written work. In the case of the formative period of Islam, these could be difficult qualifiers to confirm—much of the material is believed to have been oral history as there is very little material evidence for written work in the early part of the formative period. For as in the case of Mālik, trying to determine if in fact he qualifies as an author of the Mudawwana according to these parameters would mean needing to determine if he actually wrote some of the material found within the Mudawwana. According to the strict parameters of Günther’s definition, simply having said something, and being quoted, would not qualify as being an author. Either the definition needs to be adjusted to include quoted, creative work, or authorship cannot be applied to those of whom it cannot be proven that they were responsible, even in part, for the writing of the work.

4.3. Writer

Günther defines a writer as: “any scholar to whom a conclusively edited written work is attributed.”222 It appears from this definition, in comparing it with that provided for author,
that Günther is using creativity as the differentiation between an author and a writer. Both are responsible for writing a known written work. Both these definitions, and that of editor will be discussed extensively as they relate to Saḥnūn and Ibn al-Qāsim, and to some extent, Mālik in section 6.5.5.

4.4. Editor

Günther clarifies the word editor with the word ‘recensionist’. He defines this individual as a ‘writer’ who it has been proven has “relied, in all or in most cases, on one and the same scholar (or ‘direct guarantor’)—while the latter can be identified in the bibliographical literature as the ‘author’ of a book dedicated to the topic relevant in this context.” So the editor makes use of a work, written or oral, that is attributable to another individual, being a writer himself. Note that an editor with this strict definition is not dependent on a previously written work. For if an individual can be credited with having adjusted in some way the work of another, where this previous work had not been written down, the work of the editor is still valid and the work takes on a new form in writing. Günther’s qualification is that this new work must not simply be a matter of taking notes, there must be some writing, not necessarily creative to differentiate it from author, which the editor is involved in.

Although not fitting the strict definition of editor as presented here, al-Qābisī, in the early 5th/11th century engages in activity which falls within the scope of both a commentator as well as an editor. Al-Qābisī’s contribution in the continuation of and formation of the Mudawwana is evidenced by the research of Muranyi. Although it is difficult to make generalizations about the nature of al-Qābisī’s work relative to the manuscripts that are

located in the mosque library of Kairouan. Muranyi has published some evidence which is useful in this thesis concerning the formation of the *Mudawwana*. In six colophons he has documented, three from the mosque library of Kairouan and three from the Qarawiyyīn library in Fes, either al-Qābisī or one of his students is referred to by name. Al-Qābisī had a circle of students who, along with al-Qābisī himself, appear to have been very active concerning the transmission of the text of the *Mudawwana*.

The colophon remarks Muranyi quotes are extensive. In one such colophon, the colophons of the preceding texts which were used as sources, are added to create a string of texts that have been copied from those coming before it. The final entry, at the end of the list, describes what was heard from two specific teachers, ʿIsā b. Miskīn and Aḥmad b. Abī Sulaymān. The colophon concludes with a personal remark from al-Qābisī’s preceded with: “*qāla Aḥmad, qāla Saḥnūn,*” Aḥmad here presumably being one of Saḥnūn’s own disciples. Muranyi goes on to provide further colophon examples which demonstrate that the transmission of the text during the time of al-Qābisī and his students was not restricted to simply transmission of the text, but also included the creation of new copies/editions of the text with certificates of authenticity. These new editions give al-Qābisī the role of editor. He interprets the versions available to him, indicating, according to Muranyi, variants in the various *riwāyāt* of the text.

One clear example which Muranyi provides of the work of al-Qābisī concerns the comments from the mouth of Saḥnūn which are added at the end of a portion of text in *Kitāb

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224. Access to the is impossible and Muranyi’s published work does allow for that


226. Here in this section, rather than given further examples to support this, Muranyi simply refers to previously published material of his, both his *Beiträge* and his “Notas sobre la transmission” in *Qantara*.
The subject matter is of a man who purchases seeds in order to harvest them, then later purchases the land itself. Muranyi notes that these comments, included in the printed editions within the flow of the text, are found handwritten in the margin on a manuscript in the mosque library of Kairouan. Al-Qābisī’s own notes indicate that these particular comments, less than three lines long in the printed edition, are not agreed upon by the group (jamī‘a, presumably a group of individuals belonging to the ‘ulama‘), in contrast to most of the earlier quoted comments of Saḥnūn. In this particular instance, al-Qābisī is acting in the capacity of a commentator, indicating who is and is not in agreement with Saḥnūn’s commentary on this particular text. Al-Qābisī has gathered together the different opinions of scholars concerning their attitudes toward the reliability of statements ascribed to Saḥnūn. Al-Qābisī is acting in the role of both commentator and editor.

Although Günther’s intent was that these definitions be applied to classical Arabic compilations, they are useful in a discussion concerning the roles of the personalities involved in the formation of the Mudawwana. Application of the terms may prove to be somewhat challenging given the difference in the nature of the formation and transmission of texts between the formative and classical periods of Islamic history. Adjustments may need to be made for circumstances which do not exactly fit the definitions as laid out by Günther. Yet their application is useful outside of the boundaries of the classical period.

Additionally, these terms can also be applied to the modern period, specifically those of transmitter and editor. The formation of the text of the Mudawwana did not end with the Classical period. In fact, the modern editors in the 20th and 21st centuries have played a meaningful role in the form which the Mudawwana has achieved in the modern period.

227. See the 1323/1905 Cairo edition 5:35 and the Beirut edition 3:589. Note that the Beirut edition in this part of the text of the Mudawwana does not have subject headings.
The role of the modern editor of ancient or medieval Arabic texts requires a plethora of skills. This would include, but is not be limited to, linguistic expertise in Arabic, historical knowledge and religious education. Yet there is no minimum requirement in order to identify oneself as an editor. With no regulation of sorts amongst editors, the result is varying degrees of quality from one edition/editor to the next. It is not a revelation that editing a text is an interpretive practice.228

In editing a work for publication, modern editors make significant changes to the form of the text—its presentation—even if they do not change the content of the text itself. These changes can easily shift the perceived meaning of the text for the reader, both in terms of meaning and authority. This shift in meaning can be more significant if the reader is less informed concerning the formation of ancient texts and their modern publication.

The goal of the modern editing of ancient Arabic texts is in dispute. The dispute, according to the literature, rises over the discrepancy between the said goal and the practical outworking of the practice. The spoken goal can be phrased similarly to that given by editor Ramaḍān ‘Abd al-Tawwāb: to restore “the text to the form it had when the author issued it.”229 ‘Abd al-Tawwāb was influenced by his teacher, ‘Abd al-Salām Hārūn. Hārūn’s definition of editing, when it comes to medieval Arabic works in the modern period, “means that a book be rendered truthfully, as its author wrote/composed it.”230 Yet, the practice does

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not always reach the objectives of the theory, as described by al-Qāḍī. 231 As a result of this
discrepancy, and in order to preserve the fidelity of texts in from the Arabic classical period,
Al-Qāḍī has gone on to propose different categories of manuscripts, suggesting that editorial
practices should recognizably differ between Arabic texts, as different types of texts should
be handled in different ways. She proposes that texts which should have a minimum of
intervention include early Arabic papyri and poetry, illustrations in manuscripts with artistic
value and proverbs and sayings which have socio-historical value. A second category, which
requires, in her opinion, greater editorial input she classifies as having “authorial
authorization”—those scribed directly by the author or containing certificates of hearing or
reading of the author, or copies thereof. A third category, requiring even more editorial
contribution, would include the balance of Arabic texts. For each category, differing editing
criteria should apply, restricting and sometimes freeing editorial discretion and interference in
the text—all with the goal of attempting to establish what the author intended. Al-Qāḍī makes
it clear that she believes a crucial responsibility of the editor is make the text accessible to the
reader of today, labelling this a moral duty. 232

Inevitably decisions that editors make in preparing the text will result in something
new. Editors are not simply releasing a text through their work, but they themselves are
“participating in its ongoing life.” 233 It should be expected that modifications will take place
to some extent in the text, as this is part of the role of the editor. Yet to what extent the editor

231. Her analysis is that although these editors agree theoretically on the principles of editing and the desire to
maintain the fidelity of the text according to their understanding of the original author’s intent, the practical
outworking of that theory is what results in differences in their results. See al-Qāḍī, “How ‘Sacred’ is the Text?”
19-21.

232. See al-Qāḍī, “How ‘Sacred’ is the Text?” 34-52.

should be able to interfere with the text is not agreed upon by all, hence al-Qăḍī’s desire to set some parameters as described above.\textsuperscript{234}

\subsection*{4.5. Authority}

The definition of authority used by Günther is “any scholar to whom material incorporated in a given compilation is explicitly ascribed.” There is no doubt that both Mālik and Ibn al-Qāsim, by this definition, should be considered authorities in the \textit{Mudawwana}, as will be seen. Accordingly, Saḥnūn, and several other colleagues of Mālik, such as Ibn Wahb, should be included in this designation as they are also ascribed explicitly with material found within the text. The ascription of authority in this sense is not complicated with the text of the \textit{Mudawwana}, as material presented is clearly attributed either to one authority or another. The meaning of authority used here is one who is considered to be an expert in a particular area. The \textit{Mudawwana} seems to demonstrate an understanding of degrees of authority. So that, Ibn al-Qāsim, Mālik and Saḥnūn, along with Mālik’s other companions, can all be considered authorities according to Günther’s terminology. But they may not all be perceived of as having the same level of authority. This will be an important consideration when looking at a specific portion of text in section six. Differing levels of authority will be used in order to reach a conclusion concerning a difficult point of interpretation.

Many of Günther’s terms support multiple modifiers in order to differentiate between various forms of one particular role. For example, concerning authority, Günther relates that the text may indicate an “earliest” authority, or “main” authority. Other modifiers for

authority include original and direct. Given that the chain of transmission most common in the Mudawwana is that from Saḥnūn to Ibn al-Qāsim to Mālik, it is rare that these modifiers are necessary, the earliest or main authority being apparent to the reader.

4.6. Source

Any text used directly by a compiler is considered by Günther as a direct source. In terms of source material, the Mudawwana is a complicated text, as are other legal works from this particular time period. The dearth of extant ancient works makes source identification difficult for most texts of the formative period. Isnād analysis, along with comparisons of the matn material amongst sources helps to identify the origins of some texts. Muranyi has done much investigative work in attempting to identify the particular sources of the Mudawwana.235 His identification of the primary sources includes the Muwaṭṭa’ (NB: not of Mālik) and the Jami’ of ‘Abd Allāh b. Wahb (d. 197/812), the Mukhtaṣar al-kabīr of ‘Abd Allāh b. ‘Abd al-Ḥakam (d. 214/829) along with the writings of Ashhab b. ‘Abd al-‘Azīz (d. 204/819).236

4.7. Commentator

Although not a category defined by Günther in his terminology, the role of commentator is introduced here due to the number of commentators consulted in this research. Commentators are those who live following the period of the writing and dissemination of the text, and provide some form of explanation of the meaning or significance of the text. Commentators may integrate more than one work in their texts. Qur’anic material may also be included according to the subject matter.

235. See Muranyi, Die Rechtsbücher, 23-35.

Having completed a survey of the terminology Günther employs, the sources of the *Mudawwana* will now be presented through comparative analysis. Following that, a portion of the text of the *Mudawwana* will be focused on. Then Günther’s terminology will be applied to the personalities involved in the formation of the *Mudawwana*. 
Chapter 5
Observations from the Sources

5.1. Structural Observations

5.1.1. Kurrāsas and Kitābs—Their Order in the Text

Comparing the structure of the text of the Mudawwana over a lengthy period of history requires the understanding that the structural format differs over time. In the modern editions, aside from physical volumes with which the large text is divided, the main dividing principle is the kitāb. However, this is not the case with the manuscripts. For the manuscripts, the presence of kurrāsas is a higher, and more relevant division, holding one or more kitābs together. Another organizing factor for manuscripts, but rarely evidenced, is that of the rizma. This is a larger division within the text, different from the kurrāsa, consisting of several kitābs. There is no evidence to support the idea that a rizma though, was a physical division. On a smaller scale, within a kitāb itself, subject headings provide divisions between different subjects. Kitābs and subject headings are present in all mediums, allowing for easier comparisons on those levels. Awareness of the differing forms of organization is the first step in comparing the evidence from a structural perspective.

The presence of the title pages in the BL and CBL manuscripts testify to the significance of the division of a kurrāsa. The title page of each kurrāsa names the kitābs which are included within that kurrāsa. However, it is not possible to examine the order of the kitābs as a whole within a manuscript as the kurrāsas were themselves loose from each other. So it appears there was no fixed order of the kurrāsas. Each kurrāsa seems to have been held together, yet was not bound to another kurrāsa. The kurrāsas of the CBL manuscripts exhibit features indicating that they were treated as a stand alone text yet were part of a larger work. A set of two holes is found on the inside margin of the text. The most
plausible of explanations is that these are holes which held some form of string, binding the kurrāsa together.\textsuperscript{237} It is also evident that the folios of the different kurrāsas are not the same size, however they are the same size within each kurrāsa. Additionally, the binding holes do not line up from one kurrāsa to another so it appears that the kurrāsas were not held together. This would support the belief that the kurrāsas themselves were stand alone texts. The title pages of each of the kurrāsas indicate that the kitābs are part of (min) the Mudawwana.\textsuperscript{238} It is difficult to understand exactly what the relationship was of the kitābs to each other, both globally and within each kurrāsa. This evidence together demonstrates that the kurrāsa is a weightier organizing principle than the kitāb within the manuscripts. Kurrāsas provide one of the only means with which to evaluate the order of the material of the Mudawwana prior to the modern period. The commentaries will also provide some evidence concerning the issue of the order of the kitābs.

Contents of each kurrāsa are identified on the title page. (See figure 4 on page 98 for a sample title page.) This includes mention of the kitābs, the riwāya, or transmission line of the content, and an indication that the kitābs are “from the Mudawwana” (min al-Mudawwana). Each of the manuscripts identify the text as al-Mudawwana and specifically as the riwāya Saḥnūn ‘an Ibn al-Qāsim ‘an Mālik b. Anas. Although there may be other

\textsuperscript{237} See above on page 65 note 161 for Heffening’s theory from the manuscript fragments in Leuven.

\textsuperscript{238} See above section 3.1.13 on page 72 concerning the CBL mss Ar 3006 and 4835 concerning the title pages. Figure 4 below on page 98 provides an example of a title page expressing the kurrāsa is “min al-Mudawwana.” These are the first two words of the third line in Figure 4.
Mudawwanas,\(^{239}\) it is clear that this particular text came to be known as the transmission chain from Mālik to Ibn al-Qāsim to Saḥnūn.

The title of the modern text, *al-Mudawwana al-kubrā*, does not appear anywhere before the 14th/20th century. Modern editors appear to be responsible for this emendation of the name of the text from the medieval period. There is no doubt that the text is worthy of the title, due to its immense size. There is no evidence, though, to support that either *kubrā*, or *Mudawwana* for that matter, were names that the author or writer of the *Mudawwana* had in mind when producing the text.

The *kurrāsas* of the BL ms Or 6586 are labelled in the upper left-hand corner of the title page with a number in clear, well-defined, unhurried Arabic script. Written with a different type of script and style from that of the title page, it seems that these numbers were not written by the original copyist. Yet, given the nature of the hand, it is most unlikely that this numbering was done in modern times as part of the library holdings. Rather, it is most likely this was a numbering system developed earlier, possibly in the medieval period, to assist in locating and maintaining the organization of the *kitābs* of the *Mudawwana*. These numbers imply an order of the *kitābs* within the text of the *Mudawwana* which is not

\(^{239}\) Compare references to the Moroccan family code from the modern period, as well as the *Mudawwana* of Abū Ghānim Bishr b. Ghānim al-Khurāsānī (d. unkn but early decades of 3rd/9th century) in Berber. See Vermondo Brugnatelli, “Some Grammatical Features of Ancient Eastern Berber (the Language of the Mudawwana),” in *He Bitaney Lagge: Studies on Language and African Linguistics In Honour of Marcello Lamberti*, ed. Luca Busetto et al. (Milan: Qu.A.S.A.R., 2011). This is an Ibāḍī legal document which shares some similarities with the *Mudawwana* attributed to Saḥnūn. Modern editions of this text recognize the existence of an *al-Mudawwana al-ṣughrā* (the small *Mudawwana*) and an *al-Mudawwana al-kubrā* (the large/great *Mudawwana*). Francesca has noted that both of these texts are identical other than the fact that the “larger” version contains editorial comments from the twentieth century editor Muhammad b. Yusuf Aṭfāyyash. Clearly the influence of the modern editor in “adjusting” the title to include *al-kubrā* changes the way in which this text will be viewed, with an unsuspecting reader naturally assuming that this text is significantly different, even from an original point of view, from that of the *ṣughrā* version. Although this Ibāḍī text appears to be significantly shorter and less detailed than the *Mudawwana* attributed to Saḥnūn, the 14 chapters located in it all appear as subjects in one form or another of the Mālikī text. Examples of the subject matter of various chapters include *ṣalāt*, *zakāt*, *ṣawm* and *diyāt*. See Ersilia Francesca, “Early Ibadi Jurisprudence: Sources and Case Law,” *Jerusalem Studies in Arabic and Islam* 30 (2005), 246-47. Also see Ersilia Francesca, “Abū Ghānim Bishr b. Ghānim al-Khurāsānī,” *Encyclopaedia of Islam, Three* (Brill Online, 2014).
explained anywhere. As the manuscript is incomplete, it is difficult to make any but the most basic of observations about the kitābs as they appear in these kurrāṣa groupings.

Of the five kurrāṣa in the BL ms Or 6586, one has a missing title page, thus only four of the kurrāṣa numbers were recovered, namely 20, 37, 40 and 50.240 The kurrāṣa with a missing title page will be referred to as kurrāṣa “X” for identification purposes. To prove that kurrāṣa X was indeed a kurrāṣa in its own right rather than simply loose folios that happened to be found with these other kurrāṣas, it would be important to point out that one folio contains the end phrases of Kitāb al-Murābaha, followed directly on the same folio on the following line with the title and the beginning of Kitāb al-Wakālāt. So one kitāb ends on the same folio on which another kitāb begins indicating these kitābs were grouped together. On another folio Kitāb Taḍmīn al-ṣunnāʾ begins on the same folio in which Kitāb al-Wakālāt concludes. Therefore, an appropriate conclusion, given this evidence, is that at least these three kitābs were conceived in this particular manuscript as being a group of some kind together in a single kurrāṣa. The contents of each kurrāṣa are as listed below. The meanings of the kitābs which are grouped together in each kurrāṣa may give a clue concerning why they were grouped together. Numbers in square brackets following the kurrāṣa number from the manuscript refer to the line on which the kitābs can be found on the spreadsheet in Appendix B on page 236.

• 20 Kitāb al-ʾIlāʾ (vow of continence [33])241

• 37 Kitāb al-Jawāʾiḥ (agricultural calamities [64]), Kitāb al-Musāqāh (sharecropping contracts [63]), Kitāb al-Luqaṭa (found property [92])242

240. See BL ms Or 6586:1a, 29a, 33a and 74a.
241. BL ms Or 6586:1a-11a
242. BL ms Or 6586:291-51a
• 40 Kitāb al-Sharika (partnership [65]) (incomplete)\textsuperscript{243}

• 50 Kitāb al-Wadīʿa (entrusting [90]), Kitāb al-ʿĀriyya (commodity loan [91]) and Kitāb al-Hibāt (donations [85]) (all three kitābs incomplete)\textsuperscript{244}

• X Kitāb al-Murābaḥa (sale at stated cost price [50/52]) (incomplete), Kitāb al-Wakālat (administrative agencies [53]) and Kitāb Taḍmīn al-ṣunnā (responsibility/security/liability of the artisans [58])\textsuperscript{245}

Three of the five kurrāsas contain more than one kitāb. Both the groupings of the kitābs themselves within these kurrāsas is curious as well as the group order itself. In kurrāsa 37, each of the kitābs deals with a subject of an agricultural nature. It is possible that this is the glue which holds these subjects together in this kurrāsa. In kurrāsa 50, the subjects of all three kitābs is related to some type of giving. Again, it could be possible that the subject matter between the various kitābs found together in one kurrāsa is what brings them together. Yet in kurrāsa X it is difficult to affirm that subject matter alone is what brings these kitābs together in this kurrāsa. It is possible that at the time the medieval抄写员 put these kitābs together the overriding reason for him was simply the number of folios in the various kitābs compared with the number of folios available in his kurrāsa. Such pragmatic reasons should not be neglected in consideration.

The folios of this manuscript are in order for the most part, yet the folios concerning kurrāsa X are not properly collated. As has been described, it is possible to reconstruct the contents, to a (confident) degree, as when one kitāb ends, the following kitāb of the same kurrāsa begins on the same side of the folio where the previous kitāb ended. With a continuously

\textsuperscript{243} BL ms Or 6586:52a-73a

\textsuperscript{244} BL ms Or 6586:74a-90b

\textsuperscript{245} BL ms Or 6586:91a and b, 12a-28a
flowing text within the kurrāsa it is possible to identify the kitābs belonging to one kurrāsa with almost complete certainty. The folios for kurrāsa X though, 12a-28a and 91a and 91b, are not in consecutive order in this manuscript.

Of the title pages preserved in the CBL manuscripts there is little evidence to help understand the reason why kitābs were grouped together into kurrāsas as only one kurrāsa appears to contain more than one kitāb in it. This kurrāsa lists its contents as Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārīth waʾl-ansāb.246 See figure 4 below on page 98.247 The subjects of mudabbar (manumission of a slave through a will), walāʾ waʾl-mawārīth (clientage and inheritances/legacies) and ansāb (genealogies) all seem to deal with relationships and wills, this could be the reason why these kitābs were held together. But the evidence is too sparse in order to make a firm conclusion. With so few kurrāsas in both manuscript collections containing more than one kitāb, it is difficult to perceive and conclude a presiding principle putting particular kitābs together into one kurrāsa.

As demonstrated above through the title pages of the kurrāsas, the kitābs themselves were regarded as stand alone texts within the Mudawwana even though they at times appeared together within one kurrāsa. When the order of the kitābs within the greater text of the Mudawwana is considered, it can be observed that the modern editions demonstrate a different order of the kitābs from one edition to the next.248 For example, in the 1323/1905 Cairo edition, Kitāb al-ʾIdda wa ʿṭāq al-sunna [30] precedes Kitāb al-Aymān bi-ʾl-ṭalāq wa

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246. CBL ms Ar 4835:1a. As the matters surrounding this particular kurrāsa in the CBL manuscript and its contents are extremely relevant to the subject concerning the consistency of the names of the kitābs, a fuller discussion concerning the title will be below in section 5.2.2 on page 116. Concerning the presentation of kitāb title pages, see section 5.3.3 on page 170.

247. See above page 61 for a description of Maghribī script to assist in reading the title page.

248. Refer to Appendix B on page 236 for a clear presentation of the order of each of the kitābs in each modern edition. It will become immediately apparent that kitāb titles are not consistent amongst the manuscripts and modern editions. Be aware that the content within these kitābs being discussed concerning their order is generally the same.
talāq al-marīd [31]. This order concurs with the Abu Dhabi edition yet the titles of the kitābs between the editions is not consistent. In the Beirut and Mecca editions, these two kitābs appear successively, but much earlier—Kitāb Ṭalāq al-sunna [19] and Kitāb al-Aymān bi-ʾl-talāq [20]—nine kitābs earlier in the general order. Much further in the compendium, Kitāb al-Murābaha [50] appears before Kitāb al-Gharar [51] in the Beirut, Mecca and Abu Dhabi editions. While in the 1323/1905 Cairo edition, Kitāb Bayʿ al-murābaha [52] follows Kitāb Bayʿ al-gharar [51]. The 1323/1905 Cairo edition is again the only modern edition to place Kitāb al-Hiba [89] after Kitāb al-Ṣadaqa [88]; the other modern editions place Kitāb al-Hiba [86] after Kitāb al-Hibāt [85]. It is clear that the order is not consistent across the four modern editions examined.
When considering the ordering of the kitābs, limited comparisons can be made between the manuscripts and the modern editions. As the kitābs themselves were considered works in their own right, as has been demonstrated above, then it is understandable that their order within the work might not be fixed. There are a total of four kurrāsas between the BL and CBL manuscripts which contain more than one kitāb. These four kurrāsas provide a small piece of evidence to demonstrate that the order of the kitābs within the larger context of the Mudawwana, was not fixed. For example, kurrāsa 37 of the BL ms Or 6586 contains three kitābs, however in each of the modern editions of the Mudawwana, the first two of these books, kitābs al-Jawāʾīḥ (agricultural calamities [64]) and al-Musāqāh (sharecropping contracts [63]), are consecutive in the ordering of the kitābs, yet the third kitāb, al-Luqāṭa (found property [92]), has about 30 kitābs which separate it from the other two. Another example is that of kurrāsa 50, also having three kitābs in it; two of the kitābs, al-Wadīʿa (entrusting [90]) and al-ʾĀriyya (commodity loan [91]), are consecutive in the modern editions, yet the third kitāb, al-Hibāt (donations [85]), comes earlier in the order of the modern editions by five kitābs. Kurrāsa X of the BL ms Or 6586 contains three books of which two are consecutive in the modern editions, kitābs al-Murābaḥa (sale at stated cost price [50/52]) and al-Wakālāt (administrative agencies [53]), whereas the third kitāb, Taʾmīn al-ṣunnāʾ (responsibility, security and liability of the artisan [58]) follows later in the order of the modern editions. Given that all four modern editions share the same order concerning these few kitābs from BL ms Or 6586, it does appear odd that these kitābs, which are grouped together in these kurrāsas of the BL manuscript, should be separated within the order of the modern edition and some so far apart from each other. It is apparent, from this evidence, that there were different traditions for ordering the kitābs.

The kurrāsa numbers found on the title pages of BL ms Or 6586 (see above page 94 note 240) which were presumably used to provide some form of order for the kurrāsas within...
the greater text of the *Mudawwana* are very curious when compared with the order of the *kitābs* in the modern editions.249 These *kurrāsa* numbers seem to bear some type of comparative order, as the numbers generally do rise as you go down the list when compared with the order of the *kitābs* in the 1323/1905 Cairo edition. However, with number 40 immediately following number 37 between *Kitāb al-Jawāʾih* and *Kitāb al-Sharika*, and then later in the list number 37 following number 50 between *Kitāb al-ʿĀriyya* and *Kitāb al-Luqāṭa wa l-dawāl wa l-ābiq*, it seems that this demonstrates that no order of the *kitābs* or *kurrāsas* was fixed.

A similar organizing principle, such as the numbers in the BL ms Or 6586 provide, appears to have been found by Muranyi in his observations of a manuscript in the Qarawiyyīn library in Fes. When examining manuscripts of the *kitābs* of the *Mudawwana* in Morocco, Muranyi observed the storage of the manuscripts is rather disorganized, yet the *kitābs* themselves were in thematically arranged groupings.250 Unfortunately, Muranyi does not elaborate on these themed groups. What he does explain, though, is his discovery of a skeletal organization of the larger text of the *Mudawwana* by some form of groupings listed within Qarawiyyīn ms 574. Each section within this organizational framework is referred to as a *rizma*.251 From the arrangement listed in the manuscript, it is clear that the *kitābs* were arranged in some form of content groupings as the groupings themselves were named thematically. The list of the groupings which Muranyi found are as follows:

- 1. *Rizmat al-Sharāʾiʿ* (Islamic law) from *Kitāb al-Wuḍūʾ* (ritual purity) to *Kitāb al-Nudhūr* (vows)

249. See Appendix A on page 232, second column from the left, for the listing of the *kurrāsa* numbers as they flow in the order of the *kitābs* of the modern editions.

250. See Muranyi, *Die Rechtsbücher*, xi.

251. Lane, in his lexicon, defines *rizma* as meaning a bundle or a pack of something of which the contents are similar or related to each other. See Lane, *Lexicon*, 1:1078.
• 2. *Rizmat al-Nikāḥ* (marriage contracts) starting of course from *Kitāb al-Nikāḥ* and concluding with *Kitāb al-Īlā’ wa’l-li‘ān* (vow of continence and imprecation - those related to marriage issues, e.g. fidelity)

• 3. *Rizmat al-‘Abīd* (slaves) which contained from *Kitāb al-‘Ilq* (manumission) to *Kitāb Walā’ wa’l-mawārith* (clientage and inheritances)

• 4. *Rizmat al-Buyūʿ* (sales) and running from presumably⁵² Kitāb al-Ṣarf (exchange) and ending with *Kitāb al-Ṣulḥ* (settlement/negotiation)

• 5. *Rizmat al-Ijāra* (renting/leasing) which includes *Kitāb al-Ijāra* (renting/leasing) to *Kitāb Taḍmīn al-ṣunnā’* (responsibility/security/liability of the artisan)

• 6. *Rizmat al-Aqḍiya* (judgments) concluding with *Kitāb Harīm al-ābār* (separated space around wells). This final one, Muranyi says, contains only one juzʾ from the *Mudawwana* with the following *kitābs* being from the *Mukhtaliṭa*.⁵³

It is possible to compare this skeletal outline of the organization of the *Mudawwana* from the 5th/11th century with the general order of the *kitābs* in the modern editions.²⁴ Initially it seems to fit the outline, however it is difficult to find reconciliation between the lists as there is a discrepancy with *Kitāb al-Istibrāʾ* (healing/freeing/ridding of oneself)—it falls between the second and third rizmas leaving its place of belonging rather ambiguous according to this setup. Additionally, Muranyi’s account attests that the final rizma, that of *al-Aqḍiya*, contains

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²⁵². Muranyi only mentions the *kitāb* with which this rizma concludes.

²⁵³. When Muranyi describes these rizmas he neglects to clarify his use of terminology making his statements sometimes confusing. In all of his descriptions of the first five rizmas he uses only *kitāb* to list the contents of the rizmas. In the case of the sixth rizma, without having used juzʾ anywhere else in describing the contents, he describes this rizma as including only one juzʾ from the *Mudawwana*. This juzʾ he names *Kitāb Jināyāt al-‘abīd* (most certainly *Kitāb al-Jināyāt* of the modern editions). Then he says the rest of this rizma contains ajzāʾ from the *Mukhtaliṭa*. It is not clear if there is just one juzʾ or more in each of the other rizmas. Any other juzʾ in another rizma are also not named.

²⁵⁴. See Appendix A on page 232 for the chart which displays the rizma organization of the *kitābs* according to the outline of ms Fes 574, in the first column from the left.
only one juz’. However, when looking at the list of kitābs in the modern editions, this rizma seems to contain more kitābs than any other rizma. Muranyi’s lack of detail concerning the contents of this section leads to doubt that it would really be this large. There is no clarity in this regard and one wonders if this organization according to rizmas might possibly have been simply a local organizing principle in the region of Morocco or even just in Fes. Yet this example is an accurate representation of the difficulties faced in a study of the Mudawwana as conclusions seem to bring up more questions than those that are answered.

Given that the order of the kitābs is different from one modern edition to another, it should be asked on what did the editor base his decision concerning the order of the kitābs. The absence of a fixed order for the kitābs could be firmly established if two complete manuscripts of the work were somehow bound or ordered and demonstrated differing orders of the kitābs. Other than a bound copy, a list of the order of the kitābs, such as a table of contents, would also demonstrate a fixed order. Concerning this matter, the commentaries provide some evidence. Appendix C on page 238 provides a list of the order of the kitābs in each of the five commentaries consulted for this research.

Al-Qāḍī ‘Iyāḍ lists a table of contents of the kitābs of the Mudawwana discussed in his commentary al-Tanbīḥāt al-mustanbaṭa. Although it may appear useful to have this seeming resource, upon closer inspection it is revealed that the table of contents is unreliable

255. In addition to the commentaries consulted for this research, an additional source from one manuscript fragment belonging to the Leiden collection provides some evidence concerning the order of the kitābs. Leiden ms Or 14.039 has not been positively identified. The language, layout and the one kitāb title in it (Kitāb al-Shuhādāt) all support its close association with the Mudawwana. There is no direct correspondence with the content of Leiden ms Or 14.039 with the text of the Mudawwana, so it is suspected to be a commentary of the text. It is not a fragment of any of the commentaries investigated in this research. In this fragment, the section on Kitāb al-Shuhādāt immediately follows Kitāb al-Aqdiyya. Although at first this may appear to be a discrepancy with the modern editions as their order lists Kitāb al-Qadā’ [68] between kitābs al-Shuhādāt [69] and al-Aqdiyya [67], this is not the case. For it should be noted that in both the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition, Kitāb al-Qadā’ is found within Kitāb al-Aqdiyya as some form of a sub-kitāb, rather than its own kitāb. So when comparing the order of the kitābs between the modern editions with the order found within this fragment, this should not be seen as a discrepancy. For a photo of this particular folio, see J.J. Witkam, Catalogue of Arabic Manuscripts in the Library of the University of Leiden and Other Collections in the Netherlands (Leiden: Brill, 1982), 66.
concerning the order of the *kitābs* within the commentary itself. For example, in the table of contents *Kitāb al-Dahayā* appears before *Kitāb al-Dhabā‘ih* whereas in the text of the commentary, the order is reversed.\(^{256}\)

In al-Jubbī’s commentary, *Kitāb sharḥ gharib alfāz al-Mudawwana*, there is a group of *kitābs*, from *Kitāb al-Nikāḥ al-awwal* to *Kitāb Ẓalāq al-sunna* which remain relatively together in a group order, but this group itself features much later in the order of the contents than that generally seen in either the text of the *Mudawwana* itself in the modern editions or the other commentaries.\(^{257}\) This would suggest that some *kitābs* were seen as belonging together in some type of theme or grouping, similar to the idea of the *rizma* encountered in the manuscript in Fes.

The commentary of Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*, has more inconsistencies concerning the order within which individual *kitābs* appear in comparison with the modern editions. *Kitāb al-Ashriba* (cell I-21 in Appendix C) appears much earlier in the commentary order than that of the modern editions (compare cell B-95 of Appendix C).\(^{258}\) In the middle of the commentary, another *kitāb* appears earlier than it does in other orderings, namely *Kitāb al-Tijāra ilā ard al-ḥarb* (commerce with/towards the land of war; cell I-41 of Appendix C). This evidence appears to demonstrate that between the time of the writing of the *kitābs* and the writing of the commentary of Ibn Rushd, neither the names nor the order of the *kitābs* was fixed. Closer to the end of the commentary, *Kitāb al-Ṣulḥ* appears later in the order (I-63) than it does in the modern editions of the text of the *Mudawwana* (B-58). But more significantly than these individual *kitābs* in unexpected locations, there is a group of

\(^{256}\) See ‘Īyāḍ, *al-Tanbihāt al-mustanbaṭa*, 1a, 49a and 49b.

\(^{257}\) See lines 36-43 of column O in Appendix C on page 238 for this group. The related group of *kitābs* in the 1323/1905 Cairo edition is found in column B lines 24-33.

\(^{258}\) Specific cell coordinates within Appendix B will be used when one specific *kitāb* of one modern edition of the *Mudawwana* is being referred to for ease of reference.

103
kitābs in Ibn Rushd’s work which one would expect to see much earlier in the text given the order in which they fall in the other commentaries and the modern editions, similar to the situation above in al-Jubbī’s commentary. Those kitābs are Kitāb al-Walā’ wa l-mawārīḥ, Kitāb al-‘Itq, Kitāb al-Makātib, Kitāb al-Tadbīr and Kitāb al-Ummahāt al-Awlād (I-73 to I-77 of Appendix C). There must have been some reason why these books would appear together at this place in Ibn Rushd’s rendering. Although not overwhelming as far as evidence is concerned, this group appearing together, but out of an expected order, would support the grouping of kitābs in some form, again similar to the rizmas which Muranyi observed in the Moroccan manuscript. However, no consistent principle can be determined for any theme unique to the Mudawwana.

Although no consistent specific order of the kitābs can be evidenced through the modern editions nor the commentaries, there does appear to be a general consistency concerning the kitābs. Once one is familiar with the names of the kitābs and reviews the editions and commentaries, patterns begin to emerge, and one expects to find particular kitābs in a general area. One example of this is the group of kitābs consistently found at the beginning of every single modern edition as well as of each commentary. These kitābs include Kitāb al-Wuḍū’ (ritual purity; sometimes entitled Kitāb al- оформленный text (see above at the end of section 2.2.2 which begins on page 49) as compared with the frequency of Mālik’s names (see above at the end of section 2.2.1 on page 46). For a fuller discussion of ‘ibādāt see G. H. Bousquet, “‘Ibādāt,” Encyclopaedia of Islam, Second Edition (Brill Online, 2013).
single person in order to fulfill the requirements understood under this particular religious framework. In works of *fiqh* and *ḥadīth*, the subject matter of ḫīdāt is always dealt with before that of muʾāmalāt (social relations or association with others). So the observation that this group of kitābs appears first in the *Mudawwana*, itself, as well as in the commentaries, is in congruence with the wider practice of the day. Although a specific order of the kitābs of the *Mudawwana* cannot be supported, the order of the kitābs within the commentaries, and also the modern editions themselves, demonstrate that a general order was followed, with the beginning of the *Mudawwana* or any of these commentaries, always dealing first with the subject of ḫīdāt.

With the evidence presented, it is reasonable to conclude that some form of recognized organization, beyond that of just the kitāb, did exist at different points in time for those who were familiar with and made use of the *Mudawwana*. This consists of the use of kurrāsas containing more than one kitāb, the ordering of kurrāsas, rizmas, as well as the idea of ḫīdāt and muʾāmalāt creating forms of organization within the text. The order of these different units is not fixed across time periods or even across mediums, that is manuscripts or modern editions. There appears to be a general order of the kitābs within the text, however a fluidity existed within that general scheme. This implies that the order of the *Mudawwana* as a large text was not fixed.

It cannot be assumed, from the evidence examined to this point, that the *Mudawwana*, by those who knew it, was conceived of as a singular textual unit, giving the sense of what we would call today a large book, as the kurrāsas do not seem to have been bound together, nor was their order fixed. What exactly the ḥulamāʾ understood as the *Mudawwana* between the time of Saḥnūn and the end of the writing of the commentaries is rather elusive. What it meant in the minds of the copyists and readers is difficult to determine. The title pages themselves seem to provide further conclusive evidence for the independent nature of the
kitābs of the Mudawwana. However, kitābs were not completely independent, rather they seem to have functioned as semi-autonomous parts of something larger.

**5.1.2. Combined and Divided Kitābs**

The unit of the kitāb appears to have some degree of flexibility. Some kitābs, where the content deals with mainly one subject, are found in the form of a series of many kitābs in one edition but in other editions the same content might be in either fewer kitāb divisions or found all together in one single kitāb. This is apparent when examining the names of the kitabs in the modern editions. (Refer to Appendix B on page 236 for this comparison.) One example of this is Kitāb al-Ḥajj. In the 1323/1905 edition, the 1994 Beirut edition and the Mecca edition this content appears in three different kitābs: Kitāb al-Ḥajj al-awwal [9], Kitāb al-Ḥajj al-thānī [10], and Kitāb al-Ḥajj al-thālith [11]. In the Abu Dhabi edition this appears all in one part named simply Kitāb al-Ḥajj [9-11]. Deeper examinations demonstrate that the content between these different editions is the same. Another interesting example of this is Kitāb al-Nikāḥ, for in the 1323/1905 edition this is in six parts [21-26], in the Beirut and Mecca editions, it comes in three parts, Kitāb al-Nikāḥ al-awwal, Kitāb al-Nikāḥ al-thānī and Kitāb al-Nikāḥ al-thālith, but in the Abu Dhabi edition it consists of one part only, Kitāb al-Nikāḥ. Other examples of this include Kitāb al-Ṣalāt [2-3], Kitāb al-Zakāt [7-8], Kitāb al-‘Itq [36-37], Kitāb al-Shuf’a [79-80], Kitāb al-Qisma [81-82] and Kitāb al-Waṣāyā [83-84].

When considering the size of the kitābs it is speculated that the reason why these divisions were originally created would likely concern the number of manuscript folios within one kurrāsa. Certainly amongst the modern editions there appears to be a policy on the part of the editor of the Abu Dhabi edition to collate all of the different parts of one subject matter into one single kitāb. For no kitāb in that edition references a kitāb al-awwal (first book of...) or kitāb al-thānī (second book of...). Maybe this is some form of modernizing organization on his part. It would seem most unlikely that the manuscripts—if there were any—upon which
this edition was based, had no secondary kitāb divisions of this nature, given the size that a manuscript kurrāsa would need to be in order to complete the text. For example Kitāb al-Nikāḥ itself has over 230 pages in the Abu Dhabi modern edition. However these divisions are merely divisions of convenience and do not affect the content of the kitābs whatsoever.

Comparisons of these divisional discrepancies are not isolated to the modern editions. Although it may seem that divisions within a subject matter became fewer as time progressed, the opposite can be observed in CBL ms Ar 3006. In this manuscript, Kitāb al-Shufʿa appears as one single kitāb rather than being split into two as found in three of the four modern editions.260 Again, this further supports the supposition that the kitābs, as we see them now in the modern editions, were not fixed in their divisions, groupings or order.

Another form of combination or division of kitābs involves situations where the content includes more than one primary subject. In situations like this, the title of the combined kitāb seems to include references to all parts, yet combined into one name. For example in the Beirut, Mecca and Abu Dhabi editions, Kitāb al-Īlāʾ [33] and Kitāb al-Liʾān [34] are separate books. Yet in the 1323/1905 Cairo edition, they appear together in one kitāb under the name Kitāb al-Īlāʾ waʾl-liʾān [33]. A similar situation concerns Kitāb al-Walāʾ [41] and Kitāb al-Mawārith [42], which is how they appear in the Abu Dhabi edition, but the 1323/1905 Cairo edition has them combined as one under the name Kitāb al-Walāʾ waʾl-mawārith [41-42]. Upon further investigation with the Beirut and Mecca editions, a more interesting observation suggests itself. For in these editions, not only are the subjects of two kitābs named together in one kitāb title, but there is another kitāb title with just one of the subjects listed in it. So it appears that at one point the two kitābs were amalgamated as one kitāb, but then separated later with their combined name not being revised. Both editions

260. The title page for this kitāb attests to this. See CBL ms Ar 3006:69a. The Abu Dhabi edition is the only one of the four modern editions which has this appearing as a single kitāb.
have both a Kitāb al-Walāʾ waʾl-mawāʾīth [41], which contains only the content of the Kitāb al-Walāʾ of the Abu Dhabi edition, and they also have a separate kitāb entitled Kitāb al-Mawāʾīth [42], which has the same content as the kitāb by the same name in the Abu Dhabi edition. The joining of kitābs and then their later separation would account for why these kitābs occur in the Beirut and Mecca editions with a dual name and have the content of only one kitāb.

This curious scenario also occurs in a similar manner concerning Kitāb Kirāʾ dūr wa araḍīn. The two books are completely separated in the Abu Dhabi edition under two names, Kitāb Kirāʾ al-dūr [61] and Kitāb Kirāʾ al-araḍīn [62]. They are combined in the 1323/1905 Cairo edition under one joint name, Kitāb Kirāʾ dūr wa araḍīn [61]. The Beirut and Mecca editions both have one kitāb with the combined name, Kitāb Kirāʾ dūr wa araḍīn [61], which contains the same contents as the Abu Dhabi edition’s Kitāb Kirāʾ al-dūr, but these two editions also have another separate kitāb entitled simply Kitāb Kirāʾ al-araḍīn [62] which is the same content as the kitāb in the Mecca edition of the same name. Kitāb al-Ḥubus [87] and Kitāb al-Ṣadaqa [88] demonstrate a similar situation. In the 1323/1905 Cairo edition they are separate kitābs whereas amongst the editions of Beirut, Mecca and Abu Dhabi the content of Kitāb al-Ḥubus is found in a kitāb with the joint name of Kitāb al-Ḥubus waʾl-ṣadaqa [87], yet these three editions also have a separate kitāb entitled Kitāb al-Ṣadaqa [88] whose content reflects the kitāb of the same name in the 1323/1905 Cairo edition. It would be plausible that at some point, early on in the copyist tradition, these books had been copied together, and then later on, due to the size of the kurrāsa, the kitābs were separated, but somehow the titles of the kitābs were not changed to reflect the division. A similar circumstance concerns Kitāb al-Luqaṭa waʾl-ḍawāl waʾl-ābiq which occurs in the 1323/1905 Cairo edition as one kitāb [92-93], whereas in the other three modern editions it is found in two separate kitābs entitled Kitāb al-Luqāṭa waʾl-ḍawāl [92] and Kitāb al-Ābiq [93]. It is
unlikely that the circumstances leading to these discrepancies will ever be proven. It does demonstrate the variation which exists amongst manuscript traditions with resulting variance amongst modern editions.

5.1.3. Subject Headings

In addition to kitāb titles, the content of the kitābs in the text of the Mudawwana is further organized by the use of subject headings. These are divisions found within kitābs which appear to divide topics. When they appear in the text, the subject headings generally summarize the scenario described in the initial question of that particular section, as the subject headings are almost always immediately followed by a question introduced by qultu (I said/asked). In the manuscripts examined, subject headings are most often set apart from the regular text by being centered and placed on their own line of the manuscript. In less frequent occurrences, the subject headings can be found in the middle of the text rather than on their own separate line. Regardless of location, all subject headings are written in larger script from the general text and are often written in a different colour of ink standing out from the main text. As subject headings vary significantly between and amongst manuscripts and modern editions, they will be dealt with more fully in section 5.2.3 concerning content observations on page 121.

5.1.4. Modern Editions

Modern editors make many choices in the publication of large texts. A useful feature of many modern editions is some form of a table of contents. Prior to the modern editions, indexing is not evidenced apart from the (unreliable) table of contents provided in the manuscript of al-Qādī ’Iyāḍ’s commentary on the Mudawwana. This feature of the Mudawwana makes it much easier to locate a specific topic. Indexes in the modern editions are based on the subject headings. These indexes are found at the end of the text within

261. Although not included in this part of the study, it is significant to note the Mecca and Abu Dhabi editions
each volume, operating more on the level of a table of contents as the subject headings are
listed under their kitāb titles in the order in which they occur in the text.

A structural decision made by modern editors of the Mudawwana, in addition to those
divisions examined earlier, concerns the division of the larger text into bound volumes.
Sometimes, smaller divisions are made creating parts to the text which are larger than a kitāb
division, but smaller than a volume division. In the case of the 1323/1905 Cairo edition, the
editor divided the larger text of the Mudawwana into 16 parts (ajuzʾ) which were divided
amongst eight bound volumes (mujallad). Succeeding editions of the Mudawwana by other
publishers did not follow these volume or part divisions.

When comparing the volume divisions of each of the four modern editions examined,
it seems that none of the editors rely on each other in deciding where to make the division for
each of their volumes. The offset re-reprint of the 1323/1905 Cairo edition is in six volumes,
the Beirut edition in four volumes, the Mecca edition has nine volumes and the Abu Dhabi
dition has eight. It appears to be a purely arbitrary division, likely based on a preferred
number of pages within each volume, those being 400-500 for the 1323/1905 Cairo edition,
600 for the Beirut edition, 350 for the edition published in Mecca and 460-600 pages for that
published in Abu Dhabi. In terms of the editor of the Abu Dhabi edition, the contents of one
kitāb, namely Kitāb al-Nikāḥ, are split between the end of volume two and the beginning of
volume three with no kitāb division.

By simply presenting the Mudawwana in a multi-volume textual format, the editors
influence the reader’s understanding of the nature of the text. If the manuscript is made up of

both have much more advanced indexing of the Mudawwana. For example, the Mecca edition contains an index
of Qurʾānic verses quoted and the volume and page number on which they can be found in the Mudawwana.
There is also an index of hadith in the text. Both of these are found at the end of volume nine. See Mālik b.
Anas, Mudawwana Mecca, 3209-50. In addition to an index of Qurʾānic verses and hadith found in the
Mudawwana, the Abu Dhabi edition also includes a brief index of fiqh texts. All three of these indexes are
located at the end of volume eight. Note that the index of hadith, sayings and questions is almost six hundred
pages long. See Sahnūn, Mudawwana Abu Dhabi, 8.7-616.

110
multiple kitābs each with its own cover, and each kitāb exists as a stand alone, the simple act of publishing these many kitābs together in one edition gives a reader a new impression of the text. With a bound volume with multiple kitābs included in it, the reader is given the impression that when authored, these kitābs were meant to be bound together. If it may be said that Saḥnūn started something, his disciples added to it and copyists through the centuries have influenced its content and impact, then it can also be said that modern editors themselves have played a part in the reception of al-Mudawwana al-kubrā by creating the impression of a unified, single text, stemming all the way back to Saḥnūn, if not Mālik.

With a multi-volume text, the modern editors of the Mudawwana must decide on a name with which to refer to the Mudawwana. Since the first modern edition was published in 1323/1905, the text has been known as al-Mudawwana al-kubrā. The modifier, grand or great, is clearly a modern addition, as there is no evidence of this adjective anywhere in the history of the Mudawwana prior to 1905. As mentioned above in note 239 on page 93, there are other Mudawwanas and even others by the name al-Mudawwana al-kubrā, referring to the edited Ibāḍī al-Mudawwana al-kubrā. It is possible that the modern editors picked up the name from this text.

5.2. Content Observations

This next section will discuss content discrepancies which occur between manuscripts, commentaries and modern editions. In making observations of differences which occur between these witnesses of the Mudawwana, one must consider not only the occurrence of the variance, but the significance of that variance upon the composition or compilation of the Mudawwana.

5.2.1. Missing Kitābs

A common type of variation is where content is found in one source or edition, but not in another. Of this type of discrepancy, the most prominent in terms of the Mudawwana is
where an entire *kitāb* is found in one edition, but not in another. The implication of this, of course, is that the contents of that book are not found in the edition missing its title. This is indeed the case concerning *Kitāb al-ʿAqīqa*, which is found in the Beirut and Abu Dhabi editions [16], but not in the 1323/1905 Cairo and Mecca editions. This absence in the 1323/1905 Cairo and Mecca editions provides significant evidence to support the theory that collectively the editors of the modern editions must have had access to more than simply one edition based on one manuscript. For if the editors of the Beirut, Mecca and Abu Dhabi editions only had access to the published 1323/1905 Cairo edition, then it would have been ludicrous that they would have added a *kitāb* with no original source. Given also the fact that *Kitāb al-ʿAqīqa* is an extremely short *kitāb*, only one page in length in the modern editions, this brevity does not mirror the length of any other *kitāb* in the *Mudawwana*. If an editor, for whatever reason, were going to attempt to attract more attention to their edition, even through scrupulous means with the best of intentions, they would most likely do it in a way which would appear most realistic. However, the length of *Kitāb al-ʿAqīqa* is so short that it does not support this possibility, but rather lends further evidence to its credibility as a legitimate *kitāb* in this collection from some manuscript traditions. It would appear that the modern editors, between them, had access to more than one manuscript tradition for the *Mudawwana*.

Concerning the commentaries and missing *kitābs*, there are two issues which deserve mention. The first is that *kitāb* titles can be misleading, as it is not unusual for the same content to be referred to by different *kitāb* titles. There are three *kitābs* listed in the commentaries which are not found within the *Mudawwana*. Two of these are found in the commentary by Ibn Rushd, namely *Kitāb al-Qasāma* (to swear by Allāh) and *Kitāb al-Jāmiʿ* (comprehensive/all-encompassing/gathering). Although *Kitāb al-Qasāma* is not specifically a *kitāb* in the *Mudawwana*, the subject is dealt with extensively in *Kitāb al-Diyāt*. Word searching in the *kitāb* confirms this. So it seems most likely that Ibn Rushd added this subject
to his commentary, making it a separate section. *Kitāb al-Jāmiʿ*, the last *kitāb* of his text, appears to be a *kitāb* about various aspects of Muḥammad’s life, including his birth, his personal characteristics, his mother, his wives and even his names among other subjects. This is all material that does not seem to appear in any form in the *Mudawwana*. It seems to be a form of honor which Ibn Rushd is offering, in spite of the fact that it appears odd the material is not found in the *Mudawwana* when that is the specific aim of his commentary. A third *kitāb* which does not appear in the *Mudawwana* is one listed by al-Qāḍī ʿIyāḍ, specifically *Kitāb al-Radd biʾl-ʿayb* (the flawed response/reaction). This situation appears to resemble that of Ibn Rushd’s *Kitab al-Qasāma*, for although in the modern editions there is no *Kitāb al-Radd biʾl-ʿayb*, the Beirut, Mecca and Abu Dhabi editions each have a *kitāb* entitled *Kitāb al-Tadlíš biʾl-ʿayūb* (pl. of ʿayb). The title of this *kitāb* in the 1323/1905 Cairo edition reads *Kitāb al-Tadlíš*. These *kitāb* title changes demonstrate that *kitāb* titles were not fixed by the time the commentaries were written.

A second issue concerning the commentaries and missing *kitābs* is to note that several of the *kitābs* found in the *Mudawwana* are not mentioned in some of the commentaries. No one commentary, of the five examined, has a *kitāb* of commentary on every *kitāb* of the *Mudawwana*. With a work as extensive as the *Mudawwana*, it does not seem odd that a *kitāb* or two or even five, for that matter, might be missed in a commentary. However, there are two *kitābs* from the *Mudawwana* which do not appear in any commentary at all. Four of the *kitābs* are not found in al-Barādhiʾī’s commentary (*Kitāb al-Dahāyā, Kitāb al-Qaḍāʾ, Kitāb al-Daʿwā and Kitāb al-Rajm*), three *kitābs* are absent in Ibn Rushd’s text (*Kitāb al-Wakālāt, Kitāb al-Qaḍāʾ* and *Kitāb al-Daʿwā*), eight *kitābs* are not mentioned al-Rajrājī’s commentary (*Kitābs al-Hajj al-awwal, al-thānī and al-thālith, Kitāb al-Dhabāʾiḥ, Kitāb al-Qaḍāʾ, Kitāb al-Daʿwā, Kitāb al-Luqāṭa waʾl-ḍawāl waʾl-ābiq, Kitāb al-Ḥudūd fīʾl-zinā waʾl-qadhf waʾl-ashriba and Kitāb al-Ashriba*) and al-Qāḍī ʿIyāḍ’s commentary does not deal with five of the
Common to all four of them, Kitāb al-Qaḍāʾ and Kitāb al-Daʿwā are not part of any of their reports. This is particularly curious, as these two kitābs are found only as single kitābs in all of the modern editions, meaning they are not combined with another kitāb. Neither of these kitābs is presented anywhere as combined with any other kitāb, nor are their names found in other forms. Although Kitāb al-Qaḍāʾ is not a lengthy text in itself, appearing as five to nine pages in the modern editions, Kitāb al-Daʿwā is a substantial text of at least 21 pages of text. It is not, therefore, an insignificant document relative to the length of the other kitābs. Yet neither of these kitābs is listed by these four major commentators. In both the 1323/1905 Cairo and Beirut editions, Kitāb al-Qaḍāʾ is presented as a separate text, being given a subject heading which reads Kitāb al-Qaḍāʾ, but not with its own separate title page. In both cases it follows directly after the contents of Kitāb al-Aqḍiya. Therefore, it would seem reasonable to believe that the contents of Kitāb al-Qaḍāʾ could be included within the text of Kitāb al-Aqḍiya in the commentaries if some manuscript traditions brought the content of these two texts together with no indication through the title of the kitāb. This is what appears to be the case, as reading through the commentaries one discovers that the subject matter dealt with in Kitāb al-Qaḍāʾ in the Mudawwana is indeed found in the commentaries under Kitāb al-Aqḍiya. There must be a reason why these two subjects were understood by all of the commentators to have belonged together in one kitāb whereas in the modern editions, they appear under two separate kitāb titles. It seems more likely that two books which had been separate kitābs in the past would be combined together into one than to have one kitāb split into two in a later period. However, the situation with the kurrāsas of the manuscripts investigated earlier (see section 4.2.1 on kurrāsas and kitābs, page 92) demonstrated the fluid nature of some of the kitābs in how they were joined together into one kurrāsa sometimes with little reason evident.
The situation with *Kitāb al-Daʿwā*, though, is somewhat more difficult to resolve. For there is presently no evidence to support that it was part of another text. Its absence from the commentaries seems odd. One explanation could simply be that this *kitāb* did not garner much attention, or that it had little that needed any form of commentary. But this is not a convincing argument, given the vast nature of the *Mudawwana* and the volume of the commentary written about it. Every other subject, amongst these four commentaries, is dealt with in one way or another. It is possible that *Kitāb al-Daʿwā* was lost within some manuscript traditions, and at that point in time did not receive comment. But with four commentaries from authors of origins including Kairouan, the birthplace of the *Mudawwana*, as well as that of Andalusia, another major centre of Mālikī thought, it is difficult to believe that these subjects would not have been considered at one point or another. Perhaps it is simply coincidence that this *kitāb* is not mentioned by these writers. Possibly *Kitāb al-Daʿwā* was not formally considered a part of the *Mudawwana* until after the commentaries had been written. The reason for the absence of *Kitāb al-Daʿwā* in the commentaries may not be discovered.

A most interesting observation to conclude this look at the *kitābs* of the *Mudawwana* not mentioned in commentaries on the *Mudawwana* is that Ibn Rushd includes in his commentary *Kitāb al-ʿAqīqa*, which is the one *kitāb* that does not appear either in the 1323/1905 Cairo or Mecca editions, but is found in the Beirut and Abu Dhabi editions. Ibn Rushd, in this relatively brief commentary, explains the meaning of ʿaqīqa—the sacrificial slaughter of an animal on the seventh day after the birth of a child—describes its background, as well as the support, or lack thereof, for the practice of ʿaqīqa by Muhammad through the use of ḥadīth. From this, a rather modest conclusion is formed: concerning the relationship of this *kitāb* to the text of the *Mudawwana*, by 520/1126, the date of Ibn Rushd’s death, the
content of Kitāb al-'Aqīqa was firmly established in at least one manuscript tradition in the text of the Mudawwana.

5.2.2. Kitāb Titles

Variation in kitāb titles between modern editions, as well as involving manuscripts and commentaries, is quite common. Different forms of variation in kitāb titles is present, including words missing in the title between references, variations in words within a title, or different words altogether being used between two different documents.

In the 1323/1905 Cairo edition and Abu Dhabi edition, one kitāb is entitled Kitāb al-I’tikāf [6]. Both the Beirut and the Mecca editions present this as Kitāb al-I’tikāf bi-ghayr ṣawm, simply specifying that the pious activities discussed in this text are those other than fasting. Another example which demonstrates agreement between the 1323/1905 Cairo edition and the Abu Dhabi edition concerns Kitāb al-‘Idda wa ṭalāq al-sunna [30], which appears in the Beirut and Mecca editions as simply Kitāb Ṭalāq al-sunna [19]. An unusual agreement exists between the three editions of 1323/1905 Cairo, Beirut and Abu Dhabi concerning the title of Kitāb al-Ājāl [47], which appears as Kitāb Bayū’ al-ājāl [47] in the Mecca edition. Kitāb al-Aymān bi’l-ṭalāq wa ṭalāq al-marīd [31] appears as such only in the 1323/1905 Cairo edition, whereas the other three editions render it as Kitāb al-Aymān bi’l-ṭalāq [20]. The same three modern editions present Kitāb al-Gharar [51], while in the 1323/1905 Cairo edition it presents as Kitāb Bay’ al-gharar. A similar occurrence involves Kitāb Bay’ al-murābaḥa of the 1323/1905 Cairo edition [52], which is published by the other three editions simply as Kitāb al-Murābaḥa [50]. In the 1323/1905 Cairo edition one can find Kitāb al-Tadlīs [56], but in the Beirut, Mecca and Abu Dhabi editions one must look for Kitāb al-Tadlīs bi’l-ʿuyūb [56]. Among the kitābs of the 1323/1905 Cairo edition one will find Kitāb Bay’ al-khiyār [49], whereas in all three of the other editions, it is listed as Kitāb al-Bay’ān bi’l-khiyār. One final instance where additional words create discrepancies
between the editions involves Kitāb al-Hudūd fī l-zināʾ wa l-qadhf [95] which is how it appears in the Beirut, Mecca and Abu Dhabi editions. However the 1323/1905 Cairo edition, including the idea of wine or alcoholic beverages in the title as well, published it as Kitāb al-Hudūd fī l-zināʾ wa l-qadhf wa l-ashriba. Simple differences like these can sometimes present further evidence not only of different manuscript traditions, but also indicate relationships that might exist between certain manuscripts when enough consistent variation occurs amongst them.

Manuscripts provide limited useful information when comparing kitāb titles due to their fragmentary nature. As mentioned previously (in section 3.1.13 beginning on page 71), the CBL manuscripts have a total of seven kurrāsa title pages amongst its folios. Of these seven, only one title page lists more than one kitāb as its contents. This kurrāsa contains Kitāb al-Mudabbar wa l-walāʾ wa l-mawārith wa l-ansāb. Both Kitāb al-Mudabbar and Kitāb al-Ansāb are not found anywhere in the names of the kitābs of the modern editions of the Mudawwana. From the names known through the modern editions, it is possible that Kitāb al-Mudabbar (slaves manumitted following the death of the owner) is the same content as Kitāb al-Tadbīr (manumission by will/testament). In his commentary on the Mudawwana, al-Rajrājī lists Kitāb al-Mudabbar as one of the kitābs in the Mudawwana. (See Appendix C.) The verso of the title page folio listing Kitāb al-Mudabbar has as its first subject heading “fī ’l-tadbīr.” A comparison of the beginning of Kitāb al-Tadbīr of the modern editions of both Beirut and 1323/1905 Cairo confirm that it is the same subject matter as that found on folio 1b of CBL ms Ar 4835. This demonstrates that the name by which this kitāb was known was not necessarily fixed and a different form of the word was sometimes used in the title of the kitāb. Concerning Kitāb al-Ansāb, no kitāb from the modern editions seems to bear a title

262. See CBL ms Ar 4835:1b.
somehow related to this, either in form or meaning. It is possible that al-ansāb is simply an extension of the title al-Walāʾ waʾl-mawārīth (clientage and inheritances). Yet this word is not associated with this kitāb in any of the modern editions, or in any of the commentaries examined. It appears to be an aberration unique to this manuscript. Although the word ansāb (genealogy) itself does not appear in the title of the kitāb, this subject matter is dealt with fairly substantially within the kitāb from the modern editions known as Kitāb al-Walāʾ waʾl-mawārīth. So it seems likely that this is just an extension of the title. A search for this word within this kitāb reveals that in its plural form it occurs only twice, but in its singular form (nasab) it occurs 38 times. Another kitāb within which this subject is dealt with on a large scale is that of Kitāb al-Ummahāt alawlād, where the word occurs 31 times. The title Kitāb al-Walāʾ waʾl-mawārīth does exist in the modern editions. Unfortunately, due to the incomplete nature of CBL ms Ar 4835, along with its unorganized collation, it is impossible to verify whether al-ansāb was considered an extension of Kitāb al-Walāʾ waʾl-mawārīth or if it was a separate kitāb of its own in this manuscript in its original form. It seems reasonable to conclude that the title of this kurrāsa from the CBL ms Ar 4835 included the text which is known in the modern editions as Kitāb al-Tadbīr and Kitāb al-Walāʾ waʾl-mawārīth. The further addition of the name al-ansāb appears to indicate the content also deals with the subject of ansāb. References to the subject matter of kitābs by more than one name within the same manuscript such as al-Mudabbar and al-Tadbīr in this particular case, provides further evidence that the titles of the kitābs were not fixed. As a kitāb from the kurrāsa is given a name which does not appear in the modern editions, this adds further evidence that the names and titles of the kitābs were not fixed. It also seems apparent that the collecting of certain kitābs within a kurrāsa must also not have been fixed.

In addition to the manuscripts, the commentaries provide beneficial observations concerning kitāb titles of the Mudawwana. All five commentaries provide some form of
commentary concerning 
Kitāb al-Tijāra bi ’l-arḍ al-ʾadūw (commerce in the land of the enemy; cell B-56). This kitāb title is identical between the 1323/1905 Cairo edition and the Mecca edition. The Beirut and Abu Dhabi editions have a slightly different variation on the title—Kitāb al-Tijāra ilā arḍ al-ʾadūw (an insignificant change in meaning: with land of the enemy). Yet, all five of the commentators use the word ḥarb (war) rather than ʿadūw (enemy) in their title demonstrating consistency amongst the commentators and concurrence with the 1323/1905 Cairo edition and the Mecca edition. This evidence appears to demonstrate that between the time of the writing of the kitābs, and the writing of the first of the commentaries, the name of this particular kitāb may have been fixed.

Ibn Rushd’s commentary identifies some unusual names for some of the kitābs. Like the other two commentaries, in the place of the expected Kitāb al-Nudhūr al-awwal (First book of vows) and Kitāb al-Nudhūr al-thānī (Second book of vows), Ibn Rushd lists this as one entitled Kitāb al-Nudhūr waʾl-āymān (vows and belief/faith). No modern edition cites this with the reference to al-āymān. Other kitābs with a similar situation where the title is obviously related to a specific kitāb from the text of the Mudawwana, yet there is some change in the title of the kitāb, includes Kitāb al-Tadlīs biʾl-ʿuyūb (fraud by defects; modern edition) being rendered as Kitāb al-ʿUyūb (defects) and also the case of Kitāb al-Muḥāribīn (military soldiers; modern edition) appearing as Kitāb al-Muḥāribīn waʾl-murtaddīn (military soldiers and deserters). Al-Barādhiʾī’s commentary has a comparable occurrence with the title Kitāb Bayʾ al-gharar waʾl-mulābasa (risky and dubious sales), al-mulābasa (dubious) not being found in any of the kitāb titles of the modern editions.

Al-Jubbīʾs order of books remains consistent with the text of the modern editions of the Mudawwana in the first section of the text as seen in the previous section on structure. His commentary, though, is the only one which includes the word tafsīr (meaning explanation or commentary) anywhere in its content, and this in the first kitāb—Tafsīr Kitāb al-Wuḍāʾ.
This could explain why it needed an unusually large number of pages for al-Jubbī—13.\(^{263}\) Most of his other kitāb titles are known, with only a couple which are unfamiliar. In addition to dealing with Kitāb al-Jirāḥāt, al-Jubbī also includes a chapter entitled Awwal al-Jirāḥ. According to Lane’s Lexicon, both of these words, jirāḥāt and jirāḥ, are plural forms of the same singular word, namely jirāha, meaning a wound, possibly incurred from an iron instrument.\(^{264}\) It is possible that there were kitābs which were considered part of the Mudawwana at the time that al-Jubbī wrote his text which are not available to us today in the modern editions, for example Kitāb Awwal al-jirāḥ. Muranyi also makes mention of a Kitāb al-Jirāḥ as being listed in a survey of works in the mosque library of Kairouan assumed to be part of Saḥnūn’s Muktaliṭa.\(^ {265}\) Al-Jubbī’s commentary may also be a possible reference to this source, although unlikely. It would seem more likely that the kitāb names to which al-Jubbī refers are different than those used by the modern editions. The discussion earlier in this section concerning the discrepancy between the manuscripts of the names of the kitābs would support this. Further investigation into the vocabulary explained by al-Jubbī in Awwal al-Jirāḥ yields that the words found there, for the most part, are found in Kitāb al-Jirāḥāt of the 1323/1905 Cairo edition of the Mudawwana. It seems that al-Jubbī referenced Kitāb al-Jirāḥāt of the Mudawwana in two parts. No reason has yet surfaced as to why this is the case.

A second unknown kitāb mentioned by al-Jubbī is Kitāb al-Khawārij. The reference to this kitāb is found in a group of kitābs together in one chapter entitled Kitāb al-Muḥāribīn wa’l-murtaddīn wa’l-khawārij wa Kitāb al-Rajm. As the word kitāb is found twice in the title, but there are four subjects, it would appear that al-Jubbī is dealing with what he

\(^{263}\) Other kitābs are dealt with by al-Jubbī in as few as one or two pages with two kitābs needing six pages and the second largest being seven pages.

\(^{264}\) Lane, Lexicon, 1:405.

understands to be simply two kitābs. If such is the case, al-khawārij is considered a part of the subject matter dealt with in the one kitāb which also deals with the subjects of al-muḥāribīn and al-murtaddīn. Although a word search of the 1323/1905 Cairo edition in the text of Kitāb al-Muḥāribīn yields no occurrences of the word al-khawārij (rebels), another form of it, kharaja (to go out), is found there. Searches for references to cognates of the word murtaddīn (apostate), and the word itself, are unfruitful. However, a quick scan of al-Jubbi’s short text shows that the unusual words he lists are indeed discussed in its pages. The titles of the kitābs, as demonstrated here, show a high degree of inconsistency across different manuscript traditions.

These examples provide additional evidence that the titles for the kitābs were not fixed, with commentators, between two and three centuries after the rise of the material, using varying names to refer to the same kitābs.

5.2.3. Subject Headings

Relative to the number of discrepancies between kitāb titles, subject headings vary enormously in documents of the Mudawwana. As subject headings are the backbone of indexing in the modern editions of the Mudawwana—each modern edition provides them in their index—data abounds. Indexes make the task of comparing subject headings between different modern editions a fairly simple task. Yet these comparisons are also very time consuming due to the high rate of variation among them. In the manuscripts, subject headings are always set apart from the main text in one way or another, making it easier to see them and creating a separation from one subject to another. They are often centered on a line alone. Sometimes in the BL ms Or 6586, even though they are set apart from the main text and centered on the line, the beginning and the end of the line can have some additional script as well. Often, but not always, the subject headings in manuscripts are larger script than the common text, and the ink is often a different colour from that used in the main text. (See
This formatting also assists the comparison of subject headings between manuscripts and modern editions. There is no consistency within a single edition of the Mudawwana concerning the formulas used at the beginning of subject headings let alone consistency between the various modern editions. Given the inconsistent nature of the introductory phrases, as well as the variation within one edition, it seems most likely that these subject headings were added at various times in the passage of the text from one scribe to the next. It seems most certain that subject headings were not conceived of concurrent with the text itself otherwise much greater consistency would be expected amongst them.

Found at the beginning of the subject headings amongst the different manuscripts are the following words and phrases: fī (about), fīmā (with regard to/with respect to/while), bāb (chapter), al-rajul (the man), fīʾl-rajul (about the man). An example of the variance across modern editions, subject headings in the Beirut edition often begin with the phrase mā jāʾ a fī yet this is often absent altogether in the 1323/1905 Cairo edition, with the BL ms Or 6586 often reading simply fī. There are examples of this trend being the reverse, though.

A comparison of the subject headings found in the manuscripts and those in the modern editions reveals that there are discrepancies, sometimes significant, with the modern editions. In BL ms Or 6586, Kitāb al-Īlāʾ, found in kurrāsa 20, is one of the few kitābs which

266. For more on the presentation of subject headings, refer to section 5.3.4 below on page 176.


268. In the 1323/1905 Cairo edition, the first of these subject headings begins without this phrase, see Saḥnūn, Mudawwana 1323/1905 Cairo edition, 5:6:3. In the second example, the subject heading is absent altogether, see Saḥnūn, Mudawwana 1323/1905 Cairo edition, 5:7. Regarding the third example, the 1323/1905 Cairo edition text introduces the subject heading with simply the word fī, see Saḥnūn, Mudawwana 1323/1905 Cairo edition, 5:8:1. Concerning the fourth example, mā jāʾ a fī is again completely absent in the subject heading. See Saḥnūn, Mudawwana 1323/1905 Cairo edition, 5:8:9.

269. In the BL ms Or 6586, in all four of the instances mentioned, the subject headings are introduced with simply fī. See BL ms Or 6586:37a:6, 37b:11,15 and 24.

270. See for example Kitāb al-Ābiq in BL ms Or 6586:50b:5 and Saḥnūn, Mudawwana Beirut, 4:463:9.
does not have any subject headings. Subject headings are not present in either the Beirut or Mecca modern editions for *Kitāb al-Īlāʿ*, but they are found in the 1323/1905 Cairo and Abu Dhabi editions. The 1323/1905 Cairo edition also puts this *kitāb* and the next one, *al-Liʿān*, together into one *kitāb*. None of the other modern editions, nor the BL ms Or 6586, put these two *kitābs* together into one. As explored earlier concerning the grouping of *kitābs* into *kurrāsas*, in section 5.1.1 on page 92, it is possible that in one manuscript tradition these *kitābs* were combined by a scribe beginning a new collation tradition with that compilation.

Apart from this particular *kitāb*, where subject headings do not exist in the Beirut edition, many of the subject headings in the BL ms Or 6586 correspond with both the 1323/1905 Cairo and Beirut editions. However, there are some instances where it corresponds fully with the 1323/1905 Cairo edition but not the Beirut edition. For example, at the beginning of *Kitāb al-Musāqāh*, the first subject heading in the 1323/1905 Cairo edition reads *al-ʿamal fī ʿl-musāqāh*. This corresponds with the manuscript. However, the Beirut edition reads *fī ʿl-musāqāh wa mā yajūz fī istithnāʿ al-bayāḍ*. This reading of the Beirut edition agrees with the first subject heading in both the Mecca and Abu Dhabi editions. So in this instance, the BL ms Or 6586 agrees with the 1323/1905 Cairo edition but not the other three modern editions. Another example within the same *kitāb, al-Musāqāh*, there is a subject heading in the manuscript which reads *fī ʿl-musāqāh sanīn*, which is found in the Beirut,

271. See BL ms Or 6586:1-11.
274. See BL ms Or 6586:34b.
277. See BL ms Or 6586:41a:2.
Mecca and Abu Dhabi editions, but it is not found in the 1323/1905 Cairo edition. So in this particular case, the content of three of the modern editions corresponds with that of the BL ms Or 6586, but the subject heading is not found in the 1323/1905 Cairo edition. This could be due to either it not being present in the manuscript upon which the 1323/1905 Cairo edition is based, or the editor could have neglected to include this in the copy of the 1323/1905 Cairo edition. These are not the only examples of this type of inconsistency found in *Kitāb al-Musāqqāḥ* between BL ms Or 6586 and the 1323/1905 Cairo and Beirut modern editions. Another instance occurs where a subject heading is found in both the Beirut edition and the BL ms Or 6586, but is not found in the 1323/1905 Cairo edition. The subject heading reads: *musāqqāt al-ard sinīn ‘alā an yaghrisahā wa yaqūma ‘alayhā*. There are also examples where there is correspondence between the modern editions of 1323/1905 Cairo and Beirut but a discrepancy with the BL ms Or 6586. For example in this same area of the text, another subject heading is present which reads *tark al-musāqqāḥ* in both the Beirut and 1323/1905 Cairo editions, but in BL ms Or 6586 it reads *fī tark al-musāqqī al-musāqqāḥ*.

Another example demonstrates correspondence between the 1323/1905 Cairo edition and the BL ms Or 6586 but not with the Beirut edition. There is a subject heading which reads *jidād al-nakhl wa-ḥiṣād zar‘ al-musāqqāḥ*, but in this section of the text it is not found in the Beirut edition.


Errors in subject headings are not confined to only one kurrāsa in this manuscript. *Kurrāsa* 40 of BL ms Or 6586 contains the text of *Kitāb al-Sharika*. There appears to be a scribal error when it comes to the fifth subject heading of this *kitāb*. Each of the four modern editions agrees with the subject heading which reads (fi) *al-rijāl ya’tī aḥadahum bi’l-bayt wa’l-ākhir bi’l-raḥā wa’l-ākhir bi’l-baghl*. 283 However, this manuscript reads *fi’il-rijāl ya’tī aḥadahum bi’l-bayt wa’l-ākhir bi’l-bayt wa’l-ākhir*. 284 Note that the word *bi’l-bayt* is copied twice, whereas the word *bi’l-raḥā* is not present in the manuscript copy. This seems like a typical case of the scribe copying the word *bi’l-bayt* twice when it should only have been used once due to the word *wa’l-ākhir* being found twice in the text. 285 Of course, it is possible that a previous copyist made this error and the scribe responsible for this manuscript simply repeated the error. This error should not be considered textual, but rather simply noted as a scribal error. For an error of this sort to occur in a subject heading leads one to doubt the accuracy of the scribe and thus the reliability of the manuscript itself. Further investigation, though, reveals that there are few errors of this sort. Such a rash conclusion would be unreasonable.

If subject headings were added at a later time, as seems very possible given observations of the manuscript itself, then the inaccuracy of the subject headings may have no reflection at all on the accuracy of the other content of the *Mudawwana* within the manuscript. The observations of this manuscript support the conclusion that the text of the *Mudawwana* and the subject headings were handled independently and may very possibly


284. BL ms Or 6586:54b:7

285. Although not exactly the same as the scribal error termed *saut du même au même*, this is a very similar type of error. See Gacek, *Vademecum*, 234.
have developed independent of each other. It is likely that the subject headings were a (much) later addition to the text of the *Mudawwana*.

Marginal notations are also used in order to correct errors in subject headings within a manuscript. An example of this is seen on folio 55a of CBL ms Ar 4835. The subject heading near the middle of the folio reads, *al-qadāʾ fī tark taḍmīn al-ṣunnaʾ mā talaffā bi-aydayhim*, with the word *idhā* added by a different pen, but likely the same hand, just beside the final word. Then, just a little further into the margin, and slanted at an acute angle with the line of the subject heading, these words can be found: *aqāmūʿ alayhi al-bayyina*.\(^{286}\) See figure 5 below on page 127 for an image of this folio. The 1323/1905 Cairo edition reads *tarak taḍmīn al-ṣunnaʾ mā yatalafa fī aydīhim idhā aqāmūʿ alayhi al-bayyina*.\(^{287}\) So it appears that what was in the margin of the CBL manuscript is a part of the main text in the 1323/1905 Cairo edition but with the variance in a verb and the following preposition. Yet a slightly different reading comes from the Beirut text, rendered, *al-qadāʾ fī tark taḍmīn al-ṣunnaʾ mā yatalafa bi-aydayhim idhā aqāmūʿ alayhi al-bayyina*.\(^{288}\) Here the verb agrees with the 1323/1905 Cairo edition and the preposition agrees with the CBL manuscript. Although this may be a simple scribal error, it provides additional evidence that a multitude of discrepancies exist between manuscripts of the *Mudawwana* and the modern editions.

Subject heading comparison between two modern editions yields an overwhelming number of observations. Numerous comparisons between the 1323/1905 Cairo edition and the Beirut edition demonstrate discrepancies between these two editions. A good example is provided in *Kitāb Ṭalāq al-sunna* [19]. It should be underlined again though, that this particular *kitāb* goes by a different name between the 1323/1905 Cairo and Beirut editions,

\(^{286}\) See CBL ms Ar 4835:55a:9.


referred to as *Kitāb Ṭalāq al-sunna* in the Beirut edition whereas in the 1323/1905 Cairo edition it is known as *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30]. In this *kitāb* there are 14 subject headings found in the Beirut edition which are not found in the 1323/1905 Cairo edition at all. In two cases, words in the subject headings between

Figure 5. CBL ms Ar 4835:55a. Marginal notation correcting a subject heading. By permission of the Chester Beatty Library.

289. The 14 subject headings are absent from the following pages of the 1323/1905 Cairo edition, all from volume 2: 421, 422, 427, 428, 430, 432, 438 (x2), 455, 471, 472, 473, 478 and 480. The corresponding pages in the Beirut edition where the subject headings do occur, in volume 2, are 5, 6, 10, 11, 13, 14, 19 (x2), 34, 48, 49, 50, 54 and 56.

127
both editions are inverted. In one case the subject heading in the 1323/1905 Cairo edition is lengthier than that in the Beirut edition. However, in thirteen situations, it is the reverse, where the Beirut edition has a lengthier subject heading than that of the 1323/1905 Cairo edition. Although the subject headings could have been added to the text of the various kitābs at a relatively late date, the extensive discrepancies in the subject headings between the 1323/1905 Cairo and Beirut editions supports the idea of an additional underlying textual source for the editor of the Beirut edition. If a different source text was available to the editor of the Beirut edition, it would explain the profusion of discrepancies which occur between the Beirut edition and the 1323/1905 Cairo edition.

Another random difference in this same kitāb seems curious as it also involves the subject heading just prior to the difference. The Beirut edition begins one section with the subject heading, The 1323/1905 Cairo edition does not include a subject heading at this point in the text. A question immediately follows this subject heading which begins in the Beirut edition as a-raʾayta al-muṭallaqa idhā. In the 1323/1905 Cairo edition the beginning of the question reads a-raʾayta al-marāʾa idhā, using the word al-marāʾa. The Beirut edition uses the word al-muṭallaqa in the question demonstrating consistency with the subject heading and the text by the use of this word in both places. This evidence would suggest the possibility that a

292. Some of these subject headings are extensively longer, including more than just a word or two. Compare the 1323/1905 Cairo edition, volume two, pages 424, 430, 434, 445, 447, 448, 451, 454, 456, 461, 464, 474 and 479 with the Beirut edition volume two pages 8, 12, 16, 23, 31, 40 (x2), 43, 47, 51, 56 and 57.
293. See Saḥnūn, Mudawwana Beirut, 2:11:1.
change occurred in the reading of the text prior to the addition of the subject headings of the source for the Beirut edition, due to the consistent use of the word in the Beirut edition. However, it is also possible that the wording in the Beirut edition is that which was originally intended, and the 1323/1905 Cairo edition has been changed at some point in the recitation, copying or transmission process. An even further, difficult to substantiate, speculation would be that there was no fixed text and both readings are considered accurate. If the lessons through which the Mudawwana was conveyed were oral, it is possible that the teacher recited the text at one time using one of the words and then changed it in another session. This seems unlikely though, as, if this were a possible occurrence, it is likely there would be many more discrepancies similar to this in the text than are currently found. Another possible solution to resolve the discrepancy is that a scribe may have added an additional word in the margin as an explanation, only to have a later scribe substitute this word in the text itself replacing the original word. Regardless of when the subject headings were added to that source, the text would have been fixed by either edition before the addition of the subject headings, as the subject headings here demonstrate correspondence with the text.

Although it is more frequent to see additional subject headings in the Beirut edition which are absent in the 1323/1905 Cairo edition, such as in Kitāb (al-ʾIdda wa-) Ṭalāq al-sunna, the opposite is the case concerning Kitāb al-Īlāʾ waʾl-liʿān [33, 34]. In this instance there are fifteen subject headings found in the 1323/1905 Cairo edition which are absent in the Beirut edition.295 As previously observed the Beirut edition separates what appears as one kitāb in the 1323/1905 Cairo edition as Kitāb al-Īlāʾ waʾl-liʿān into two separate kitābs, Kitāb al-Īlāʾ and Kitāb al-Liʿān. However, in the 1323/1905 Cairo edition, at the beginning of the content which is a part of Kitāb al-Liʿān in the Beirut edition, there is a separation the

295. For these subject headings see Sahnūn, Mudawwana 1323/1905 Cairo edition, 3:85, 86, 87, 88, 89, 90, 91, 92, 93 (x2), 94, 95, 98, 101 and 103.
equivalent of a subject heading. This subject heading includes a basmala as well as a subject heading for the next section. However it does not say that this is now the beginning of Kitāb al-Liʿān. If it were supposed that the Beirut editor merely added subject headings in Kitāb Ṭalāqa al-sunna where he believed they should be included, then it would be curious as to why subject headings do not appear in the Beirut edition of Kitāb al-Liʿān. This discrepancy adds more evidence to the possibility of an underlying textual source for the Beirut edition other than that used by the 1323/1905 Cairo edition.

The matter of subject headings provides clear examples of variations between manuscripts and modern editions of the Mudawwana. The variations between the manuscripts and the different modern editions are not consistent. Within one Kitāb of the Mudawwana, consistent variations may occur to a point with one or more modern editions. Yet later in the same Kitāb, it is entirely possible that the consistency in variations changes and the textual variations between the manuscript and a different modern edition becomes consistent. The inconsistent variation that occurs with subject headings makes a very strong case for the introduction of subject headings later than the text of the Mudawwana itself. It could possibly have been a development that did not occur until the time of the writing of the first commentaries. The inconsistency between subject headings may also support the supposition that they were introduced at varying times for different Kitābs. The examination of older manuscripts in North Africa, currently unavailable for research, may in the future help to shed light on the development of these textual aids.

5.2.4. Discrepancies of Textual Content

5.2.4.1. Between manuscripts and modern editions

Access to manuscripts allows for the examination of possible content variations between the modern editions of the Mudawwana and earlier sources. Discrepancies which exist between BL ms Or 6586 and the modern editions of the Mudawwana are too many to present them all in this research. The following example will demonstrate one type of difference present between them. In Kitāb al-Musāqāh, at the beginning of the subject entitled musāqāt al-thamar alladhi lam yabdu ṣalāḥahu, the text in the Beirut edition reads, qultu: a-raʾayta in kāna fī ruʾūs al-nakhl thamar lam yabdu ṣalāḥahu, wa-lam yaḥill bayʿuhu.297 Notice here the word lam occurs twice in this sentence. In the 1323/1905 Cairo edition, the text here reads, qultu in kāna fī ruʾūs al-nakhl thamar lam yabdu ṣalāḥhu,298 seeming to cut off a phrase at the end, with lam occurring only once in the 1323/1905 Cairo edition. Yet the text of the BL ms Or 6586 at this point reads, qultu a-raʾayta in kāna fī ruʾūs al-nakhl thamar lam yaḥill bayʿuhu.299 Again, as in the 1323/1905 Cairo edition, lam occurs only once here, but the phrases which follow in both the 1323/1905 Cairo edition and that of the BL ms Or 6586 are different from each other. Those familiar with the copying of texts will immediately recognize that in the case of the manuscript, it is possible that this is simply a case of the scribe copying what follows the second occurrence of the word lam after the first occurrence and therefore the phrase in between these two occurrences, yabdu ṣalāḥahu, wa-lam, drops from the text.300 However, this would not explain why the texts of the Beirut edition and the 1323/1905 Cairo edition differ from each other. Rather it would appear that

299. See BL ms Or 6586:37b:6.
300. This type of error is another example of what Gacek describes as saut du même au même. See Gacek, Vademecum, 234.
either a phrase has been dropped out of the 1323/1905 Cairo text manuscript tradition at some point, or that a phrase was added to the Beirut manuscript tradition. The former possibility is more likely, as having a phrase drop out through copying is much more reasonable than having a copyist at some point create or add a phrase within the text. Whatever the reason was for this discrepancy between these two textual traditions, it appears that they each come from a different source. The idea of differing sources for the modern editions will be further explored later through a comparison of the modern editions of the 1323/1905 Cairo edition and the Beirut edition. Kurrāsa 37 from the BL ms Or 6586 reveals discrepancies between itself and the Beirut edition and the 1323/1905 Cairo edition prompting a further inquiry regarding the consistency of the texts between these two modern editions.

5.2.4.2. Heffening study

In 1937 Heffening published an article in Le Muséon which demonstrates discrepancies between a manuscript fragment of the Mudawwana and two modern editions.301 The manuscript fragment is held in the Leuven University Library under the identification of Fonds Lefort Série B, and the modern editions used were the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition of the Mudawwana. Although Heffening’s article describes several folios in five different groups within this collection, it is the description of discrepancies which he found between one group in this collection (B5, consisting of 26 folios) and the same passage within the text of the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition which were the focus of his research. Heffening’s study will be reviewed, and further research based on his findings will assist in understanding the nature, not only of discrepancies between the manuscript and modern editions, but also between modern editions themselves and their source text. The passage concerned is found in Kitāb

301. See Heffening, “Islamischen Handschriften.” The specific study which is referred to below is on pages 92-95.
al-Waṣāyā al-thānī and starts near the beginning of the section with the subject heading fi ʾl-rajul yūṣī an yuḥajja ʿanhu according to the Cairo 1323/1905 edition and fiṭman awṣā an yuḥajja ʿanhu according to the Beirut edition. This corresponds with the 1323/1905 Cairo edition in volume 6 on page 58 at line 14 and the Beirut edition in volume 4 on page 366 beginning at line 21. One of his conclusions, given the quantity and also the quality of the discrepancies, was that that the Mudawwana, 200 years after the time of Sahnūn, was a “heillos verworrene textliche Überlieferung.” In attempting to analyze Heffening’s conclusion concerning the hopeless nature of the textual tradition, Appendix D provides not only the discrepancies which Heffening described in his poorly formatted findings, but also expands on those by providing the textual equivalents in all instances for the modern editions from Beirut, Mecca and Abu Dhabi. Upon inspection of these results, it can be seen that in almost every instance where a discrepancy occurs, the text of the 1324/1906-07 edition of the Mudawwana, according to Heffening, is precisely the same as that of the 1994 Beirut edition.

There are 60 instances of discrepancies in the passage of approximately eight pages of text. The discrepancies which exist between the manuscript and the modern editions which Heffening discovered demonstrate the high degree of variance which exists between the two modern editions he consulted. Heffening’s research, in that respect, confirms what has been observed, and will be further demonstrated below, that inconsistencies abound between the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition. In this section, though, what is

302. 6:58:7
303. 4:366:14
305. In examining these discrepancies, it is important to note that the presence of diacritical markings (hamza, dotted yāʾ, tashdīd and tawwīn) are different from one period to another. The absence or presence of these markings is not considered as a discrepancy, as when they are absent in the text their presence is assumed but it was not the practice of the day to include them in a manuscript or print edition.
of interest is the correspondence which exists between Heffening’s “B”, which is the
research, founded on Heffening’s findings and then further supplemented by consulting the
other three modern editions—Beirut, Mecca and Abu Dhabi—has demonstrated significant
correspondence between the 1324/1906-07 Cairo edition and the Beirut edition. Heffening
listed 60 discrepancies between the manuscript and the two editions he consulted. Of the 60,
in only two cases do the Beirut text not match exactly with the 1324/1906-07 edition as cited
by Heffening. The consistency which occurs between the 1324/1906-07 Cairo edition and
the Beirut edition leads to the speculation that the Beirut edition is based on the
1324/1906-07 Cairo edition.

The two discrepancies which occur between the 1324/1906-07 Cairo edition and the
Beirut edition are as follows:

1. A fairly lengthy phrase in the “B” edition reads

"وأراى ان دفعوا ذلك الى عبد او صبى ان يضمنوا ذلك"  
307

whereas in the Beirut edition it reads:

"وأراى ان دفعوا ذلك الى عبد او صبى ان يضمنوا ذلك"  
308

Note that the difference between the two is in the 1324/1906-07 Cairo edition
أوصي in the Beirut edition. The quotation is taken from a dialogue between
(assuming) Saḥnūn and Ibn al-Qāsim, with this being the reply from Ibn al-Qāsim. In
order to appreciate the difference between the two texts, it would be important to see the

306. These cases correspond with Heffening’s 92:3 and 95:6. See Appendix D for more detail of the
discrepancies.


308. Saḥnūn, Mudawwana Beirut, 4:366:27.
conversation in context, as the reading of this word(s), either أوصي or صبي is dependent on the reading of the question in the previous sentence. The Beirut edition and the 1323/1905 Cairo edition will be used for comparison, as the 1323/1905 Cairo edition is consistent here with the 1324/1906-07 Cairo edition containing the same variation. In context, the passage, in the Beirut edition reads:

"قلت: و هل يجوز أن يدفعوا إلى عبد أوصي ايجح عن الميت في قول مالك؟ قال: لم أسمع من مالك فيه شيئاً ولا أرى أن يجوز، وأرى إن دفعوا ذلك إلى عبد أوصي أن يضمنوا ذلك إلا أن يكون عبداً ظنوا أنه حر ولم يعرفوه واجتهد الدافع."

Whereas in the 1323/1905 Cairo edition the same passage reads:

"قلت: و هل يجوز أن يدفعوا إلى عبد أو الي صبيّ أن يحج عن الميت في قول مالك ( قال) لم أسمع من مالك فيه شيئاً ولا أرى أن يجوز، وأرى إن دفعوا ذلك إلى عبد أو صبيّ ضمنوا ذلك إلا أن يكون عبداً ظنوا أنه حر ولم يعرفوه واجتهد الدافع."

Although this may appear as a rather complicated situation, it is really dependent on the reading of the text in the earlier part. The question and the answer must have consistency between them. It is interesting that Heffening does not point out an inconsistency between the texts in the question part of this exchange, but only in the response of Ibn al-Qāsim. The text of the 1324/1906-07 Cairo edition varies here. One wonders if this was an oversight on his part, which seems the most likely in this situation. The topic being discussed, according to the subject heading, is who can be commissioned/charged/entrusted/requested/obligated to perform the ḥajj on behalf of someone else. The question that arises for the inquirer is whether or not a child or a slave can (be obligated

311. See Appendix D, page 241.
to) perform the *hajj* on someone else’s behalf. Note that neither a child nor a slave is obligated by Islamic law to perform the *hajj*. It appears that in the explanation, the speaker indicates that the only way that this can be possible is if it could be known that the slave indeed will become a free man. However, since it cannot be known in advance whether or not he will be free in the future, it is not permissible until that point to obligate/allow him to perform the *hajj* on behalf of someone else. The discrepancy lies in whether or not the word(s) should be read as “child” (ṣabīyy) or the noun of “entrust/obligate” (awṣā). So the question now becomes, which of these two readings is the preferable reading? Both readings, from the context, seem to be possible, as the text earlier speaks of both young men (ṣabīyy) and the concept of entrusting (waṣaya) is part of the main thought of the passage. It appears, though, that in reading the passage in greater context, the reading of the 1323/1905 Cairo edition seems preferable. It is interesting to note how the misreading of a single letter can result in a new reading, which, although not original, can still be seen as somewhat reasonable given the context. If the 1324/1906-07 Cairo edition of the *Mudawwana* is the base text for the Beirut edition, the only reasons that could be acceptable for this discrepancy would be either an editorial correction or a typesetting error in the Beirut edition. Otherwise it could not be explained as to why these two texts differ in this instance.

2. The second discrepancy involves the absence of the letter *wāw* in the Beirut edition, while this letter is found in all of the other modern editions. The specific phrase, as quoted by Heffening, reads:

   "..."  

This discrepancy is most likely due to typographical error, although editorial error could be a possibility also.

Of the other 58 variances which Heffening listed between the Leuven ms B5 and the 1324/1906-07 Cairo edition, no variances were found in any other cases between the 1324/1906-07 Cairo edition and that of the Beirut edition. No information is included in the Beirut edition concerning the origin of the text presented, however this examination of the discrepancies of the text indicate the strong likelihood that the text of the Beirut edition of the *Mudawwana* is in fact a re-print of the 1324/1906-07 Cairo edition originally printed in four volumes. 313 Further investigations comparing the 1324/1906-07 Cairo edition with that of the Beirut edition will be noted below in Section 5.2.4.5, on page 143. Discrepancies in the texts of the 1323/1905 Cairo edition and that of the Beirut edition, will be the subject of section 5.2.4.6 below, beginning on page 150. An examination of the differences between these two editions will provide a better understanding, given Heffening’s evidence, of the textual differences brought to light just one year apart, likely due to different underlying source texts.

5.2.4.3. CBL ms Ar 4835 folio 59b in comparative analysis with modern editions

Further detailed comparative analysis with folio 59b of CBL ms Ar 4835 and the modern editions of the *Mudawwana* reveals several discrepancies with the modern editions. Appendix E lists the various discrepancies that exist between the manuscript folio and the four modern editions of the *Mudawwana*. Figure 6 on page 139 below displays this manuscript folio with the addition of digital rectangles superimposed on the folio demonstrating visually the frequency with which the folio is inconsistent with modern editions of the same text. The extent of the differences between this folio and the modern editions is

313. See Heffening, “Islamischen Handschriften,” 86.
editions is noteworthy. In the chart of discrepancies in Appendix E, the shaded and non-shaded areas of each row show consistency among the editions as well as with that of the manuscript. Cells across a row with the same level of shading (or none) indicate consistency. In almost every single instance, the 1323/1905 Cairo edition is inconsistent with the other three modern editions, while the other three editions, Beirut, Mecca and Abu Dhabi, are consistent with each other. This evidence, along with that of Heffening’s findings with the additional research, leads one to conclude that the modern editions of the Mudawwana published since 1324/1906-07, all rely on the same textual source, whereas the 1323/1905 Cairo edition seems to be from a different textual source. It then becomes tempting to speculate that the 1323/1905 Cairo edition is less reliable than that of the other three editions. This speculation cannot yet be warranted. However, a much closer look at the differences between these two editions, the Cairo and Beirut editions, will assist in trying to determine the validity of the belief in the greater reliability of the 1324/1906-07 edition along with the other three modern editions.

5.2.4.4. Manuscript marginal notations

The manuscripts occasionally contain marginal notations. The marginal notations in the CBL ms Ar 4835 are of two orientations: horizontal and vertical. Horizontal marginal notations appear to represent scribal additions related to simple textual error corrections in the copy of the manuscript. Vertical oriented marginal notations are created by turning the manuscript on its axis by 90° and writing perpendicular to the main text of the folio. Marginal notations of this orientation appear to represent comments in the margin which are commentary on the content of the text. The shift in axis is believed to help avoid confusion that the notation might be a textual insertion. One example folio of a textual error marginal
notation occurs in CBL ms Ar 4835 folio 32a. (See figure 7 on page 140 below.) On this folio, there are three words that are written in the margins, located at lines 2, 8 and 15. The words are written in a similar script to that of the main text. They abut the text when placed in the margin. There is a written mark, like a hook, in the middle of line 2 and about a third of the way through line 9 at the top of the text line, in the midst of the text. This mark acts as an indicator of where these marginal notations should be placed within the body of the main
text. These are words which, for some reason, were not placed in the main text at the time of the original writing and so were added in the margin at a later time. The later insertion could have happened immediately after the original writing, by the scribe himself, realizing the omission, or much later. Handwriting analysis assists in identifying the time at which the notation was made. In each case, these words are part of the text in both the 1323/1905 Cairo
edition\textsuperscript{314} and Beirut\textsuperscript{315} edition. These marginal notations for this common type of scribal error in the CBL ms Ar 4835 are always written with a horizontal orientation in the margin, that is, parallel to the orientation of the text itself.

Sometimes marginal notations are useful in assisting to identify different manuscript traditions. A copyist could miss an insertion, creating a new manuscript tradition different from the manuscript from which he is copying. In the CBL ms Ar 4835, some folios have content associated with \textit{Kitāb al-Salam al-awwal}. In one case in the left-hand margin of the folio, the phrase \textit{idhā kāna mithlan bi-mithlin} has been added\textsuperscript{316} (See figure 8 on page 142 below.) When comparing this manuscript with the 1323/1905 Cairo edition, the text from the margin is not part of the modern edition.\textsuperscript{317} Yet when comparing this section with the corresponding section in the Beirut edition, the material written in the margin of the CBL manuscript is part of the text itself in this modern edition.\textsuperscript{318} It could be argued that the phrase added in the margin of folio 2a of the CBL ms Ar 4835 was added in when the copyist read back the manuscript to the dictator, if this was the practice, or when checking his own work with the original manuscript from which he was copying. However it seems odd, rather than coincidence, that this phrase should be both in the margin of CBL ms Ar 4835 and also missing from the 1323/1905 Cairo edition. This would tend to indicate that a textual tradition may have begun with an addition of a phrase to the text in this section, meaning that this phrase would then not be present in manuscripts from another copying tradition. More


\textsuperscript{315} Saḥnūn, \textit{Mudawwana} Beirut, 3:45:17, 23 and 3:46:2.

\textsuperscript{316} See CBL ms Ar 4835:2a:17.


\textsuperscript{318} See Saḥnūn, \textit{Mudawwana} Beirut, 3:84:10.
evidence, of course, would be necessary in order to establish this conclusion. This orientation differs from marginal notations which are meant to act as some sort of commentary on the text, or an additional note that a redactor would like to add to the text at a later date from the original copy. An example of this form of marginal notation can be found on CBL ms Ar 4835 folio 58a. (See figure 9 on page 144 below.)

One further manuscript notation must be mentioned. Although this research has not focused primarily on the content of the manuscript marginal notations, recent scholarship has pointed to evidence from a manuscript fragment and the marginal notation specifically in order to support a dating for the Mudawwana or at least its compilation, to the time of

Figure 8. CBL ms Ar 4835:2a. Marginal notation in manuscript not part of text of 1323/1905 Cairo edition yet found in the Beirut edition. By permission of the Chester Beatty Library.
Saḥnūn. The specific notation has been translated, “I heard this from Saḥnūn, reciting it back to him, in the year 235.” This marginal notation certainly supports that Saḥnūn himself taught the material that is contained within the Mudawwana and that his students wrote material down. Yet the composition of the entire Mudawwana, nor even of its compilation, cannot be supported from the evidence of this single marginal notation. Although the notation supports that speculation, it is a conclusion which is too weighty to place on the weak evidence of one notation.

5.2.4.5. **Comparison of the Beirut edition and the 1324/1906-07 Cairo edition**

Initial comparisons between the 1323/1905 Cairo edition and the Beirut edition leads to speculation that the Beirut edition was based on a different source text. The study of Heffening, outlining the differences between the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition, supports the conclusion that there are different source texts for these two editions. Heffening’s study also provides data used to support the speculation that the 1324/1906-07 Cairo edition is the source text for the Beirut edition. These data, combined with further research presented below leads to the conclusion that these two editions are based on the same source text.

Comparisons made between the 1324/1906-07 Cairo edition and the Beirut edition seem to demonstrate that there is structural and content consistency between them. Presentation, a factor which affects the way in which the text is received, should not be considered in comparative analysis when attempting to better understand the underlying differences, for the internal structure of the two texts is the same. Internal structure can be defined as the structure of the individual components which make up the text as a whole. In

320. See the study of Heffening as noted on page 132 and further detailed in Appendix D.
this particular instance, although the volumes may demonstrate differing divisions between them, each of the kitābs within the larger text remains stable between the two editions. Therefore, comparative analysis supports an internal structural integrity between the two editions. This is significant in supporting the conclusion that both of these editions rely on the same underlying source text.
These two editions are also textually identical in all respects with two known minor exceptions.\(^{321}\) The following comparative textual analysis between the two editions includes various textual discrepancies which exist between the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition in order to see with which of the two Cairo editions the Beirut edition agrees. This comparative textual assessment exhibits the following observations:

- *Kitāb* divisions are consistent between the 1324/1906-07 Cairo edition and the Beirut edition. For example, in both of these editions, *Kitāb al-Nikāḥ* is divided into three *kitābs* and not six like in the 1323/1905 Cairo edition.\(^{322}\) *Kitāb al-Īlāʾ* and *Kitāb al-Līʿān* are separate *kitābs* as in the Beirut edition and not the 1323/1905 Cairo edition.\(^{323}\)

- Subject headings appear to be consistent between the 1324/1906-07 Cairo edition and the Beirut edition as the 1324/1906-07 Cairo edition does not have any subject headings in *Kitāb al-Līʿān* just as in the Beirut edition, but contrary to the 1323/1905 Cairo edition.\(^{324}\)

- A section of text present in the 1323/1905 Cairo edition which is absent in the Beirut edition is also absent in the 1324/1906-07 Cairo edition.\(^{325}\)

- There is consistency with named speakers from the Beirut edition which are absent in the 1323/1905 Cairo edition. In one location in *Kitāb al-Nikāḥ al-awwal* in the Beirut

\(^{321}\) These exceptions are those noted in the follow-up to the study of Heffening. See above page 134.


\(^{324}\) See Saḥnūn, Mudawwana 1324/1906-07 Cairo edition, 2:335-45.

speech is introduced with “qāla Saḥnūn.” This is present in the 1324/1906-07 Cairo edition, but absent in the 1323/1905 Cairo edition.

- Honorific phrasal endings are consistent. In Kitāb al-Ñikāḥ al-awwal of the Beirut edition, at the end of one subject, the phrase wa Allāhu a’lam concludes the section. This is also present in the 1324/1906-07 Cairo edition, but absent in the 1323/1905 edition. Additionally, the phrase by which ‘Ā’isha, one of the wives of the prophet, is referred, umm al-mu’minīn, is consistent between the Beirut edition and the 1324/1906-07 Cairo edition, which differs from the 1323/1905 Cairo edition, using the phrase “zawj al-nabī.”

- Unusual word discrepancies between the Beirut edition and 1323/1905 Cairo edition are consistent between the Beirut edition and the 1324/1906-07 Cairo edition. Examples of these are al-muṭallaqa, which appears in the Beirut edition and the 1324/1906-07 Cairo edition and al-mar’ā, which is what is presented in the 1323/1905 Cairo edition. In

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326. See Saḥnūn, Mudawwana Beirut, 2:103.
332. See Saḥnūn, Mudawwana Beirut, 2:108.
335. See Saḥnūn, Mudawwana Beirut, 2:11.
337. See Saḥnūn, Mudawwana 1323/1905 Cairo edition, 2:428. This discrepancy between the 1323/1905 Cairo edition and the Beirut edition was briefly discussed previously on page 128.
Kitāb al-Nikāh al-awwal the word maʿīṣat appears in the Beirut edition\textsuperscript{338} which agrees with the 1324/1906-07 Cairo edition\textsuperscript{339} whereas this word appears as maʿidat in the 1323/1905 edition.\textsuperscript{340} The same passage uses the word yushawiru in the Beirut edition, again agreeing with the 1324/1906-07 Cairo edition, but is discrepant with the 1323/1905 Cairo edition which reads tasta ḏhinu.

These observations provide overwhelming support for the conclusion that these two editions of the Mudawwana share the same underlying textual source.

One other note of interest concerning the 1324/1906-07 Cairo edition should be mentioned. This edition includes something rather surprising in the text. In addition to the text of the Mudawwana, running on almost every page of the text is the medieval commentary of Ibn Rushd, lower on the page and separated from the main text of the Mudawwana by a double line. A separate index for Ibn Rushd’s commentary is found at the back of the text. This would have been a very significant addition to the text of the Mudawwana when it was published in 1324/1906-07, just one year after the first modern publication of the Mudawwana. The addition of a commentary to a main text brings to mind the many commentaries of the Qurʾān which include, along with the commentary, the full text of the Qurʾān. In terms of presentation, the page of the text may contain a lithographed copy of a page from the full text of the Qurʾān, with the commentary typeset around it.\textsuperscript{341} In the case of the 1324/1906-07 edition of the Mudawwana, an attempt has been made to bring

\begin{itemize}
\item \textsuperscript{338} See Saḥnūn, Mudawwana Beirut, 2:103.
\item \textsuperscript{339} See Saḥnūn, Mudawwana 1324/1906-07 Cairo edition, 2:142.
\item \textsuperscript{340} See Saḥnūn, Mudawwana 1323/1905 Cairo edition, 2:159.
\item \textsuperscript{341} Riedel’s article concerning Baydāwī’s tafsīr is an excellent demonstration not only of engaging the text of a commentary with the original text together on the same page, but also of the ways in which manuscript layouts were often mimicked to some extent in early modern publications of their texts. See Dagmar Riedel, “In Praise of Academic Grazing: From Script to Print to Script - A Quran Commentary of No Importance,” Paper presented at the 25th Annual Conference of the American Council for the Study of Islamic Societies, Washington, DC, 12 April 2008.
\end{itemize}
the legal text of Saḥnūn together with one of the more well-known, and well-respected, commentaries of the text. See Figure 10 on page 149 below for a sample of one of the pages of the 1324/1906-07 Cairo edition of the Mudawwana displaying the commentary of Ibn Rushd at the bottom of the page. Note that the editor attempts to make the commentary of the text more accessible and useful for the reader by bringing the commentary and the text together.\textsuperscript{342}

Yet the editor, rather than make adjustments to the order of the text of the commentary, valued fidelity to the order of the commentary above accessibility to the reader. The order of kitābs within Ibn Rushd’s commentary is not consistent with the order of the kitābs in the 1324/1906-07 Cairo edition. Preserving the integrity of the order of the text would normally be considered very positive from a textual perspective, however, it completely nullifies any value that is attempted in trying to make this text conveniently available as a commentary for the reader of the Mudawwana. For when reading the page of the Mudawwana, as the orders of the kitābs are not consistent, the commentary for Ibn Rushd is most often not related to the text found on that page. The incongruence of the orders of the two texts makes finding commentary by Ibn Rushd concerning a particular passage more awkward than simply having two separate texts. The arrangement chosen in later editions, like that of the Beirut edition, was to simply publish Ibn Rushd’s commentary in separate volumes following the conclusion of the text of the Mudawwana. Although trying to bring the commentary and the text of the Mudawwana together seems positive, this attempt fares poorly given the inconsistent order of the kitābs between these two texts.

\textsuperscript{342} Here al-Qāḍī would commend the work of the editor of the 1324/1906-07 Cairo edition of the Mudawwana for seeming to make the text more accessible to the reader. See above page 88 note 232 and al-Qāḍī, “How ‘Sacred’ is the Text?”, 34-52.
its ease of accessibility. The Beirut edition rests on the same textual basis as the underlying text between the 1324/1906-07 Cairo edition and the Beirut edition, it can be safely concluded that these two texts rely on the same underlying textual source. Further comparisons with the the 1323/1905 Cairo edition will be based on the Beirut edition due to its ease of accessibility. The Beirut edition rests on the same textual basis as the underlying text.
textual source of the 1324/1906-07 Cairo edition, as it is assumed to be a new type-setting of the older printing.

5.2.4.6. Comparison of the two modern editions: the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition as represented by the Beirut edition

Upon turning the flyleaves and publishing information pages of the Beirut edition of the Mudawwana, one immediately sees a major content difference between the Beirut edition and the 1323/1905 Cairo edition: the Beirut edition has added two ancient texts along with the Mudawwana, as well as a modern biography on Saḥnūn and his writing of the Mudawwana. Included are Kitāb Tāzyīn al-mamālik bi-manāqib sayyidinā al-Imām Mālik by Jalāl al-Dīn al-Suyūṭī (d. 911/1505) and Kitāb Manāqib sayyidinā al-Imām Mālik by ʿĪsā b. Masʿūd al-Zawāwī (d. 743/1342). Both of these additional texts are meant to assist the reader by providing background information concerning Mālik. The biography of Saḥnūn is meant, of course, to provide more background on Saḥnūn, and the circumstances under which Saḥnūn was active in the production of the Mudawwana. Al-Suyūṭī and Zawāwī's sources are the biographical dictionaries of North Africa and the Mālikī madhhab. Given the length of time between the events and the recording of these biographies, from 500 to 700 years after the events, it is understandable that the reliability of the information would be in question.

Beyond these immediate differences, a deeper investigation is necessary in order to demonstrate exactly how these two editions differ from each other. The textual differences between these two editions can be classified into four different types. All types will be

343. The other two modern editions referred to in this research, those from Mecca and Abu Dhabi, have not been included for comparative purposes in this section. However they have been included in the data of the spreadsheet in Appendix B. It should be noted that these two editions contain some editorial errors. A minor error involves the absence of the title of Kitāb al-Sharīka as well as its page number, 1841, from the index of the Mecca edition. See Mālik b. Anas, Mudawwana Mecca, 6:1. Also in the Mecca edition one verse from the Qur'ān is listed in the index to Qur'ānic verses as appearing twice in volume six, where they really appear in volume seven (page numbers are correct though, as the page numbers are consecutive throughout the various volumes in the Mecca edition, with each volume not returning back to a page one). In the index of the Abu Dhabi edition, all kitābās are given an ordinal number. However in volume 5, Kitāb al-Sharīka is not given an ordinal number in the index, although its name does appear there. Considering the order in which it falls, it
defined first, with examples following as in some instances when examples are given, several
different types of differences occur within one example passage. The first type includes those
differences where the word order differs between the two editions. This can be as simple as
one word being inverted with another or where two phrases are transposed with each other.
When the wording differs between the two editions but the received meaning is the same, the
reason can be as simple as a spelling error in one edition. Some may not consider a spelling
error a case of difference, however there are spelling errors which result in different words,
changing the meaning of the sentence or term.344 This category generally refers to situations
where there is no significant change in meaning in the passage, but different wording has
been used in both, resulting from synonymous terms. A second type of difference is where
word forms differ. In this case, the root word itself is the same, but the form that the root
takes differs from one edition to the other. For example a verb might be changed to a noun, or
a noun could change from one gender form to another. A third case where differences exist
between editions includes those where the wording itself differs between the editions but the
meaning is the same. In these cases, the words are formed from completely different roots.
The general meaning of the passage is not altered, as the word or words affected are
synonymous. These are the first three categories of differences between the two editions.

344. In the Beirut edition 1:116:7 the sūra referred to is misspelled. A Qurʾānic quotation is made from Sūrat al-
Nahl (The Bee). The Beirut edition includes references to the Qurʾān citing the names of the sūras and giving
their āya number. It is most likely that the modern editor added the names of the sūras and the āya numbers, as
none of the manuscripts accessed ever listed the name of the sūra or the āya number in the case of a Qurʾānic
quotation. In this particular case, the sūra is written as al-Nakhl (meaning The Palm Tree, which is not a sūra of
the Qurʾān) instead of al-Nahl. It is possible that this is a scribal or copyist error, yet it is more likely this is
simply a modern editorial proofing error. It does seem particularly odd though that the typesetter and
proofreader would not have caught an error involving the name of a sūra of the Qurʾān.
The final category of differences deals with situations where a word, phrase, sentence or even more is found in one edition, but no corresponding piece is found in the other. The most glaring of these differences involves subject headings, as these stand out on their own by formatting of the text, but also because a comparison of subject headings via the indexes available in each edition is quite a simple matter. Yet there are examples of entire sections of text found in one edition but not the other. As subject headings have been dealt with previously in section 5.2.3 (see page 121), they will only be mentioned here in situations where their inclusion is dependent on the context of textual content.

The first example of these textual differences between the 1323/1905 Cairo edition and the Beirut edition of the Mudawwana comes from Kitāb al-Janāʾiz (burial rites [4]). Two phrases are reversed in their word order and there is a slight change in meaning in the main phrase through a different form of the same root word. In the first volume of the 1323/1905 Cairo edition on page 177 starting at line 15, the subject heading reads “al-ṣalāt ʿalā qātil nafsihi” ([ritual] prayers [for the dead] over [one] killing himself). There is no discrepancy between the two editions in the subject heading. The first line of text reads:

Whereas in the Beirut edition, 1:254:7-8, two of these phrases are reversed, rendering the sentence as:

345. As mentioned above in section 1.4 on page 37, one of the more recent studies on Mālik and the writings of the Mālikī school is that of Abd-Allah Wymann-Landgraf. His recent publication is a revision of his doctoral dissertation done some decades ago. He has revised his findings to include pertinent developments in the field from the time of his original writing. He devotes a small section to comparative studies on editions of the Mudawwana, with one part dealing with comparative sections of different editions, the type spoken of here. Yet his conclusions do not always correspond with the findings presented here. Concerning the relationship between the 1323/1905 Cairo edition with the 1994 Beirut edition he says: “The 1994 edition of the Mudawwana is a reprinting of the 1905 version with no new manuscript evidence.” See Abd-Allah Wymann-Landgraf, Mālik and Medina, 63nt125. The specific evidence presented here does not support the claim that the 1994 edition was simply a reprinting of the 1323/1905 edition. Rather it supports the supposition that indeed new manuscript evidence was available to the editor of the 1324/1906 edition and hence the 1994 edition of the Mudawwana.
A reversal of the phrases occurs between *wa-*ithmuhu ʿalā nafsihi (his sin is against himself) and *wa-*yaṣnaʿ u bihi mā yuṣnaʿ u bi-mawtī al-muslimīn (and he does with him what is done with the dead among the Muslims), yet this does not shift the meaning of the passage. It may be argued that the 1323/1905 Cairo edition is a more natural reading of the situation than the Beirut edition. The word order of the Beirut edition gives the sense of a phrase being tacked on at the end which belongs to the main idea, but it has been put in a less desirable position in the sentence. The reading sounds a little awkward as the phrase at the end, *wa-*ithmuhu ʿalā nafsihi, modifies the person who killed himself, rather than the action of the community in burial rites. Another change, what was recorded in the 1323/1905 Cairo edition as *man qatala* is rendered in the Beirut edition as *qātil*. The context of the passage supports the meaning that the individual has committed suicide. The later transposition in phrases does not change the meaning of the description of the person, it is merely a change in the order of presentation.

One of the roles of the modern editor, as mentioned above in section 4.6 on page 87, is to make the text more accessible to the reader. In doing so, editors must make textual decisions, sometimes introducing changes to the written text sometimes based on modern convention. For example, in ancient and medieval manuscripts many letter forms are undotted which in modern times have superscript or subscript dots to differentiate them from other letters sharing the same base form. In order to reduce ambiguity between letters, following modern convention, editors must decide which letter to put into a final copy. In many cases these decisions are based on possible letter combinations, the context making it clear which possible reading is correct. Here what the editors have done is simply make it easier to understand the actual content of the text, reducing possible confusion over whether a particular letter is a *rāʾ* or a *zayn* or clarifying if a letter is a *ḥāʾ* or a *jīm* or a *khāʾ*. This speaks specifically to al-Qāḍī’s prescriptive statement that editors must work to make the text
more accessible to the reader.\textsuperscript{346} However, sometimes more than one reading is possible and the editor must choose one reading over a second possible reading. In this case, possible meanings for the text will become more restricted.

In the 1323/1905 Cairo edition, 2:159:9-12, following the isnād one finds:

"قال تستَسَّمِر الْبِتِّيْمَةِ في نَفْسِها فَإِنْ مَعْصِتْ لم لَيْتَكِحْ وَإِنْ سَكِتْت فَهُوَ إِذْنَهَا. وَيَدلُّ عَلَى أنَّ الْبَيْتِمَةِ اِذْ شَوَّرَتْ فِي نَفْسِهَا أَنَّهَا لا تَكوَّنُ إِلَّا بَالْغَا لَانَّهَا لم تَبَلْغُ لَا إِذْنَهَا فَكِيفَ تَسْتَأَمِرَ مِنْ لِيَسِ لَهَا إِذْنًّا.

The corresponding passage in the Beirut edition, 2:103:20-23, reads:

"قال «تَسْتَسَّمِر الْبِتِّيْمَةِ فِي نَفْسِها فَإِنْ مَعْصِتْ لم لَيْتَكِحْ وَإِنْ سَكِتْت فَهُوَ إِذْنَهَا» قَالَ سَحْنُونَ وَيَدلُّ عَلَى أنَّ الْبَيْتِمَةِ إِذْ شَوَّرَتْ فِي نَفْسِهَا أَنَّهَا لا تَكوَّنُ إِلَّا بَالْغَا لَانَّهَا لم تَبَلْغُ لَا إِذْنَهَا فَكِيفَ يُشَاوِرُ مِنْ لِيَسِ لَهَا إِذْنًّا.

There are several things worthy of note in this passage. The first discrepancy encountered, as mentioned briefly above on page 147, is the use of the word \textit{maʿiḍat} in the 1323/1905 Cairo edition, whereas in the Beirut edition the word used is \textit{maʿiṣat}.\textsuperscript{347} In the manuscripts, the difference between these two letters, ẓā and ṣād would not be observable, as it is only distinguished by a dot, and manuscripts have demonstrated that the dot may well not be present in the case of ẓā. As such, it would be the modern editors who would have to make a judgment, in the case of more than one possibility for a particular letter if it was one or the other, and indicate that in the edition. In this instance, the 1323/1905 Cairo editor has chosen the word \textit{maʿiḍat} ([the orphan] was angry/annoyed) whereas the Beirut editor has chosen the word \textit{maʿiṣat} (meaning unclear). The 1323/1905 Cairo edition includes a footnote with the content of marginal comments from the manuscript. It appears that there are two separate marginal notations. The first marginal notation says that the words should be \textit{maʿiḍat} “biʾl-ẓād.” The footnote goes further to say that for those who say \textit{maʿiṣat} (unpointed, i.e. the

\textsuperscript{346} See above page 88.

\textsuperscript{347} The vowelling for this word is taken from al-Jubbī`ī’s commentary. See just below.
letter šād), it would only have one meaning, that she frowned [or knitted her brow]. The footnote then begins the second marginal notation which includes within it the phrase “from the margin of the original.” So this second marginal notation was copied from a previous manuscript. It says that maʿida according to the dictionary known as “al-Qāmūs”\(^\text{348}\) and a commentary (sharha) on that as well as support from a ḥadīth of Ibn Maymūn stating that this is the correct reading and there is no doubt in what the scribe has written. The modern editor of the 1323/1905 Cairo edition confirms that the marginal notation has been copied correctly with the added phrase “katabahu musahhihuhu.” It is also interesting to note the reference in al-Jubbī’s commentary to the word maʿisat in his section on Kitāb al-Nikāḥ.\(^\text{349}\) It appears that Jubbī was working from an understanding that the word in the text was not maʿidat. In addition to providing the correct spelling for the word (bi-faṭḥat al-mīm wa-kasrat al-ʿayn wa-faṭḥat al-ṣād ghayr manqūta), al-Jubbī also provides a definition: one that is red in the face from embarrassment and has done more than what is required. It has been demonstrated, for the purposes of this research, that the modern editors must take all of this evidence into account when making decisions concerning ambiguous vocabulary such as this one. The two editions each use a different word, and yet arguments are made giving reasons explaining the particular choice of word.

A second observation with this small passage is the addition in the Beirut edition of the phrase “qāla Saḥnūn.” There is no reference to Saḥnūn in the 1323/1905 Cairo edition whatsoever. The inclusion of a “Saḥnūn said” by the editor of the Beirut edition is sufficiently random to allow the suggestion that there is a source text under this rather than an editor’s attempt to “improve” the text.

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348. This “al-qāmūs” refers to Majid al-Dīn Muḥammad b. Yaʿqūb al-Fayrūzābādī, al-Qāmūs al-muḥīṭ (Beirut: al-Risāla, 2005), 654. Indeed the marginal notation is quoting this dictionary of al-Fayrūzābādī.

349. Note that al-Jubbī vowels his vocabulary. See al-Jubbī, Kitāb sharḥ gharīb alfāz al-Mudawwana, 84. No comment was found in any of the other commentaries concerning this ambiguous word.
Near the end of the passage there is a change in verb. In the 1323/1905 Cairo edition, the verb used is *tustaʿdhan* (to ask permission), mentioned above on page 147, whereas in the Beirut edition the word used is *yushāwiru* (to consult someone). Not only does the root verb change from *alif-dhāl-nūn* to *shīn-wāw-rāʾ* but also the gender of the subject of the verb changes from female to male, although both remain in the third person singular. This shift in gender changes the word which follows shortly afterwards from *lahā* to *lahu* in order to keep agreement between the verb and the referent subject, male or female. The change in verb between these two editions in this example passage provides further evidence that different sources were used by these editors in preparing their editions.

In *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30] of the 1323/1905 Cairo edition it reads,

"(قال) قال مالك لا تدهن الحام إلا بالحل. يريد الشيرج أو بالزيت ولا تدهن بشيء من الدهان المربعة (قال مالك) ولا

تمشط بشيء من الحناء ولا الكلام ولا بشيء مما يختمر في رأسها،"

The Beirut edition of the *Mudawwana* in the corresponding text found in *Kitāb ṭalāq al-sunna* reads similarly, with only two words appearing differently. Where the 1323/1905 Cairo edition reads *tumashshiṭu* (to comb) the Beirut edition reads *tamtashiṭu* (to comb; the same meaning). Also, in the place of *al-murabbaba* (to be infused with fragrant oils) in the 1323/1905 Cairo edition, the text in the Beirut edition reads *al-muzayyana* (adorning). The 1323/1905 Cairo edition has a footnote related to the word *al-murabbaba* giving an indication of the spelling of the word. The footnote includes the letter *alif* and *ḥāʾ* at the end of the notation, indicating that the footnote is copied from the source text. The footnote reads:

"(المربية) بباءين مفتوحتين مع تشديد أو لاها أى المصصلة بالطيب،"


So it is clarified in the footnote of the text what the reading of this word should be, at least in the mind of the individual writing in the margin of the ancient manuscript, defining it as beneficial out of goodness. Who this might have been is unknown, but the marginal notation would date from anytime after 476/1083-84, the date when the manuscript was copied according to the text itself. Similarly to a previous example above, with the original source manuscript not having dots on the letters, any reader would have been left to either deduce by context what the particular word should be or guess using one’s language knowledge. The ambiguity of this word is demonstrated through the use of another word in the Beirut edition, al-muzayyana.

A final example of the differences between these two modern editions involves the absence of an entire section of text in one of the editions which is found in the other. In Kitāb al-Nikāḥ al-thānī of the 1323/1905 Cairo edition, there is a section beginning with the following subject heading:

"فِي أَنْكَاح الْرَجُل وَلِيَتِه مَن رَجُل وَهُوَ مَرْيَم" 352

Neither the subject heading, nor the entire section, eight lines of text, appear in the Beirut edition at all. Several speculations could be proposed as to why this section of text is absent in one edition yet appears in the other. A scribe might have found the handwriting here difficult to read and neglected to copy this section. The manuscript page on which this section occurs may have gotten lost or damaged or destroyed somehow. As the section before ends with “Mālik” (written as مَلِك in the manuscripts, without the alif) and this section ends with dhalika (ذَلِك) also written without the alif (as is standard), it is possible the scribe took a

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352. Recall that in the 1323/1905 Cairo edition Kitāb al-Nikāḥ is divided up into six separate kitābs whereas in the Beirut edition, it is divided up into only three. So the corresponding part of the text in the Beirut edition is found in Kitāb al-Nikāḥ al-awwal. See Saḥnūn, Mudawwana 1323/1905 Cairo edition, 2:190:10-18. For the corresponding section of the Beirut text see Saḥnūn, Mudawwana Beirut, 2:126:20. The absent section would occur between lines 19 and 20.
break, and upon returning to the task did not pay due attention to which section he had finished, confusing what he had written skipping over a section. The lesson may have been oral with the scribe copying what was taught, and during this particular session, this section was not presented. It is possible this section was a later addition to one manuscript tradition by a redactor. It is possible that a disciple who listened to the teachings of the *Mudawwana* and received a certificate to teach its material, learned of this section in some other way and added it to his teaching. It is also possible that an omission occurred in the modern edition. It may have been in the source manuscript for the Beirut edition, and for some reason the editor chose not to include it in the printed edition. However, this last possibility seems highly unlikely. Some of these possibilities are more reasonable than others. Of these possible solutions, the most likely seems to be one of two. Either scribal or organizational error caused one subject heading to be dropped from this particular manuscript tradition at one point in its history, or this subject heading was added at some point following a previous presentation of the material, allowing for one tradition to carry a more expanded text. The individual responsible for this possible “revised edition” could be as early as the time of Saḥnūn or as late as a medieval editor, however this latter possibility seems less likely. Without access to other sources of the *Mudawwana* only speculation could conclude the reason for this discrepancy.

5.2.5. Honorific Phrasal Endings

Informal honorific phrasal endings to a section seem to indicate further redaction to the text either by a copyist, or possibly a reader adding phrases at the end of a section. These sometimes appear discrepant between the two editions. For example, in the Beirut edition in *Kitāb al-Nikāḥ al-awwal* [21], at the end of the brief section concerning the permissibility of
a man to marry his mukātaba\textsuperscript{353} the following phrase is found: wa-Allāhu a’lam.\textsuperscript{354} This is not found in the corresponding section of the 1323/1905 Cairo edition.\textsuperscript{355} Similarly at the end of a lengthy section in the 1323/1905 Cairo edition of Kitāb al-‘Idād wa ṭalāq al-sunna [30] the final phrase, in reference to Allāh is ‘azza wa-jalla.\textsuperscript{356} Whereas in the Beirut edition, the phrase reads tabāraka wa-ta’ālā.\textsuperscript{357} It is possible that a student, upon copying this lesson, may have added these titles from the time of the teaching, although there is no evidence to either confirm or deny such a supposition. One further possibility is modern custom influencing the changes. Again, without further evidence, it is speculation to suggest reasons for these discrepancies, but they provide further evidence for different traditions relied upon for the two modern editions.

A second example of discrepancies between honorific titles following names involves the way in which ‘Ā’isha, one of Muhammad’s wives, is referenced.\textsuperscript{358} In Kitāb al-Nikāh al-awwal [21] in the 1323/1905 Cairo edition, she is referred to as “zawj al-nabī”\textsuperscript{359} whereas in the same passage in the Beirut edition she is referred to as “umm al-mu’minin,”\textsuperscript{360} the title referencing Surāt al-Ahzāb 6. It seems curious why the title for ‘Ā’isha is different in the two editions. These simple differences between these two modern texts indicate the likelihood that at some point someone added these titles to the text, such as a scribe in the act of copying

\begin{footnotesize}
353. mukātaba: one who was a slave to the other, but upon writing a contract, it was agreed that the slave would pay a sum of money earning his/her freedom


357. See Saḥnūn, Mudawwana Beirut, 2:10:18.

358. This reference was also referred to above on page 146 demonstrating consistency between the 1324/1906-07 Cairo edition and the Beirut edition.


\end{footnotesize}
the text. In this case, the two titles could have been added independently of each other at
different times and at different places. Another possibility is that one of the two titles could
have been found in a manuscript, but then later changed by a copyist while copying the
manuscript out of habit or changing cultural practice. As such, if one title were changed for
another, it would be more likely that the change was from zawj al-nabī (wife of the prophet)
to umm al-muʾminīn (mother of the believers), rather than the reverse. Without further
manuscript evidence, it is impossible to conclude these speculations.

5.2.6. Concluding Statements

It is difficult to make an assertive statement concerning the inconsistency of the
concluding statements of each of the kitābs. Most manuscript kitābs, of which the end pages
are still extant, have a concluding statement at the end of the kitāb. These conclusions state
the name of the kitāb which is ending. Concluding statements in the manuscripts do not
include an indication of the kitāb which is to follow, even when the kurrāsa contains more
than one kitāb. The concluding statements can vary from one kitāb to another within a
manuscript, especially concerning the recognition of Allāh’s help or strength or in giving
praise to Allāh. The statements usually include that the kitāb is “min al-Mudawwana.”

In the modern editions, the conclusion of each kitāb is generally indicated with a clear
statement that the kitāb has concluded. In the Beirut edition formal concluding statements
include the name of the kitāb. There are only two kitābs which do not exhibit a concluding
statement, these being Kitāb al-Walāʾ waʾl-mawārīth and Kitāb Kirāʾ al-dār waʾl-araḍīn.
The reason for this is likely just editorial error, however it is possible that the original
manuscripts for some reason had no statement at the end of each of these kitābs. The

361. This includes CBL mss Ar 3006 and Ar 4835 as well as BL ms Or 6586.
362. The presentation of concluding statements and the conclusions of kitābs is the subject of section 5.3.6 on
page 179.
formatting of the concluding statement is not consistent between the kitābs. This is also very possibly a carry over from the manuscripts. From the beginning of volume one until about half way through the volume, the statements vary greatly. In some cases, added to this formal ending is a recognition that the end has come with praise to Allāh and a recognition of his help and agreement. By the end of volume one, there is a general statement at the end of each kitāb which is repeated almost verbatim through to the end of the text. The first six kitābs do not mention the larger work that the kitāb is a part of, but beginning with Kitāb al-Zakāt al-awwal all the way to the end of the fourth volume, the concluding statement includes the phrase al-Mudawwana al-kubrā as part of the reference for the greater work. This phrase, as a title, is only found in the modern editions of the Mudawwana. At the end of each of volumes one, two and three there are additional phrases indicating that the volume itself is ending and a subsequent volume, named, will begin. It is these references to the volume numbers that are the best indicator that these concluding phrases at the end of each kitāb have been prepared or at least edited by the modern editor. For this reason, to have the phrase al-Mudawwana al-kubrā included in the statement is not too alarming in terms of understanding that the title is a modern invention. With the addition of this title to the end of each of the kitābs in the modern editions of the Mudawwana, along with the absence of the title in this form in any of the manuscripts examined, it seems apparent that this title, given later to the work as a whole, is a creation of the modern editors of the text.

5.2.7. Modern Editions

5.2.7.1. Footnotes

Footnotes are treated differently in the two editions. The Beirut edition makes no use of footnotes anywhere in the text whatsoever. Content is only conveyed through the main text of the body of the book with no attempt made to provide any commentary on the text. The 1323/1905 Cairo edition, on the other hand, has occasional footnotes throughout the main
body of the text, something which distinguishes it from a manuscript. They are used for two purposes, either to communicate information which is located in the margins of the manuscript itself, or to include editorial comments regarding the vocabulary or other meaning of the text. In the case of the former, the editor has included in the footnote an indication that the quote is from the margin of the manuscript (min hāmish al-aṣl). It is these footnotes which are most interesting when comparing the content of the two editions.

In Kitāb Nikāḥ al-awwal [21] of the 1323/1905 Cairo edition the following is found in regards to a hadīth instructing men not to get married to a woman without the permission of her walī:

"ابن وهب عن سفيان الثوري عن أبي اسحاق الهمداني عن أبي برده بن أبي موسى الأشعري(1) أن رسول الله صلى الله عليه وسلم قال لا نكاح لامرأة بغير اذن ولي.” 363

The footnote related to this saying in the 1323/1905 Cairo text states the following:

"قوله عن أبي برده بن أبي موسى) كذا في نسخة وفي نسخة أخرى عن أبي موسى قيل ان هذا الحديث موقوف على أبي برده قاله على بن المدنى قال لا يصح عن النبي صلى الله عليه وسلم انه قال لا نكاح إلا بولى اه وممن أجلان النكاح يغير ولي ابن سيرين والحسن والشعبي وروى ذلك عن على بن أبي طالب وقال به أبو خفية اه وقوله لا نكاح مثل هذا اللظ إذا ورد في مثل النكاح والمعاملات فلا يحمل بوجه الا على نفی الصحة وإذا ورد في العبدات كالوضوء والصلاة فقد بقع على الأجزاء وعلى الكمال واختلف أهل الأصول على مايحمل منهما اذا لم تكن فريضة اه من هاشم الاصلي." 364

The footnote provided here in the 1323/1905 Cairo edition initially indicates a variant reading in another manuscript concerning the isnād. Following this, it provides discussion concerning whether or not Muḥammad actually said the words accredited to him in the hadīth which is quoted in the text, "lā nikāḥ ilā bi-walī." The particular isnād mentioned in the text is noted as being “mawqūf”, however another isnād is given through Alī b. Abī Ṭālib, which was

referenced by Abū Ḥanifa. At this point the discussion in the footnote becomes more content oriented, describing Alī b. Abī Ṭalīb’s saying and contrasting the perspective of nikāḥ (marriage contract) as either an aspect of ritual practice (‘ibādāt) or contractual arrangements between people (muʿāmalāt). The discussion indicates that from the perspective of muʿāmalāt, the nikāḥ should only be characterized this way in the event that there is something wrong with the soundness (health of the party?) and there is a refusal then given. Concerning ‘ibādāt, the nikāḥ needs to be considered in some sense a part of ‘ibādāt, an evidence of this being what is left of the arrangement after considering the differences amongst those who deal in the fundamentals (uṣūl) [of jurisprudence] concerning all of it and the parts of it if it is not an obligation.

Although this may seem like an overwhelming amount of information to take in, that is, to some extent, part of the point here. The footnotes in the 1323/1905 Cairo edition provide a degree of information which is simply not available through the Beirut edition. However, the information they provide needs to be understood in the context of when it was provided/written, which is often elusive. So, although the footnotes supply otherwise unknown information, without knowing the context, that information becomes enlightening but imprecise for historical purposes.

One final example of the multitude of discrepancies between these two modern editions is found in the 1323/1905 Cairo edition. In Kitāb al-Nikāḥ al-awwal [21] it reads:

\[\text{قال})\text{ قال مالك لا يثبت النكاح ولا يكون على الرسول شيء من الصداق الذي ضمن)

فيمن وكل رجلا على تزويجه.\]

365. Note that this line of text is a subject heading.
The footnote reads:

Note that the footnote here indicates explicitly that this information is taken from the margin of the original manuscript. Given the number of scribal errors that occur in manuscripts, it is unlikely that the modern editor of the 1323/1905 Cairo edition believed that this marginal notation was simply a scribal correction. For if he indicated that for every instance where the manuscript had a marginal correction for scribal errors then there would be a vast increase in the number of footnotes in the 1323/1905 Cairo edition. Therefore, it is safe to assume that the editor believed that this was an addition to the manuscript from a later writer. However, in the Beirut edition it reads:

In this passage, the discussion centers on whether or not a particular marriage contract is enforceable if the two parties have agreed verbally after the man has asked the woman to “send to him” and he will contract with her in marriage. After she complies, saying that she is satisfied, and he also indicates his satisfaction, he then later comes forward and says that he did not make the transaction. The question put before Ibn al-Qāsim was whether or not the messenger (rasūl, i.e. Muḥammad) considered this marriage contract in force. Ibn al-Qāsim’s reply was that Mālik said that the marriage contract is not established and that there is no evidence from Muḥammad that the marriage contract is assured. At this point the footnote

indicates that Muḥammad said that it is not guaranteed, and this *ḥadīth* comes from Alī b. Ziyād. The footnote further indicates that this information is taken from the margin of the original (*min ḥāmish al-āsλ*).

The most pertinent observation to make here is that what is found in the footnote of the 1323/1905 Cairo edition is found in the text of the Beirut edition. There is no indication that this information came from the margin of the manuscript. Rather its inclusion in the text in this form indicates one of three possibilities. The editor may have chosen to include it as part of the main text if it had been a marginal notation in the source manuscript he used. As the Beirut edition does not have any footnotes in it at all, this could easily be the case. It is also possible that he was working with a different source manuscript from that of the 1323/1905 Cairo edition in which this statement was a part of its text. This could also easily be the case. A third possibility exists if he was using the 1323/1905 edition as a source, in which case he may simply have chosen to include this footnote into the main text of the work. Without access to the original sources for the two modern editions, it is difficult to reach a conclusion concerning the actions, let alone the intentions, of the editors with regard to the sources. However, this example permits one of two conclusions. The first is that the editor of the Beirut text was more assertive in pursuing an interpretive stance than that of the editor of the 1323/1905 Cairo text, by including a marginal notation as part of a text. However, this conclusion is unlikely given the other examples of the work of the Beirut editor, which instill a greater sense of reliability in that text. A more likely conclusion is that the Beirut editor had access to a different manuscript tradition wherein this part of the text was not a marginal notation but rather part of the main text itself. A different underlying source text for the editor of the Beirut edition is also supported through other examples presented above.
The extensive examples given above provide weighty evidence in favor of the likelihood that the 1994 Beirut edition of the *Mudawwana* used primary source material other than either simply the text of the 1323/1905 Cairo edition or the manuscript used by the 1323/1905 Cairo edition. It has been shown that the differences between these two editions are both too random, as well as unique, to support the idea that the 1994 Beirut edition is simply a reprinted form of the 1323/1905 Cairo edition. Examples have been given involving subject headings, names of *kitāb*īs, textual content and footnotes including content manuscript marginal notations. The differences in meaning in these examples are not merely “corrections” to a bad copy due to copyist errors or poorly educated copyists. Rather the differences in meaning suggest parallel streams of thought concerning various areas within the manuscript tradition. Together, these inconsistencies are weighty enough to support the supposition that there are two separate textual sources for these two modern editions.

5.3. Presentation Observations

The issue of presentation plays a small but significant role in the impact that texts make upon their audience. Through presentation, texts are elevated in stature not only by content and form, but also by how the content is presented. A façade can be created upon which the contents may or may not be related. When an editor takes a manuscript with dots missing on it, marginal notations and *kitāb*īs that seem like they have a relationship with one another, and he makes a modern text with it, the choices that he makes impact the way in which the text will be received. Visual presentation can be a very important part of the influence that the text will have on the reader or the visual observer. Purchasers can easily decide to buy a set of books for the simple reason they would look good on a bookshelf, providing a good visual presentation.
The editor of the 1323/1905 Cairo edition, along with the publisher, had a role to play in the reception of the *Mudawwana* in the 20th century. How the text has been presented in that edition is significant to the “organic nature of the text.” For a text is more than simply the sum of its parts, it is also the belief of the reader of what the text itself is—and this is a factor in what took place between the time of Saḥnūn and that of al-Qābisī as well. The text itself grew far bigger than it really was as a result of the perception by the people of the text itself. This is the influence that the modern editor has on the reception of the text as a result of presentation. The following will present some of the evidence concerning the presentation of the 1323/1905 Cairo edition and the Beirut edition in this regard.

### 5.3.1. Layout

In terms of page layout, the 1323/1905 Cairo edition has layout features typical of the period in which it was printed. The margins on the top, bottom and sides are almost identical in size, similar to an ancient manuscript layout. There is a single block of writing text, with only a page number added as outside content, being centered and directly under the last line of text. There is no other identifying information on any page. Each new section begins with a centered subject heading bordered on each side with a palmette, the same size as the text line. The subject heading is separated from the main body of the text by a dividing line both above and below it in the same point size as the main text typeface with no additional spacing in between. There are no other distinguishing characteristics of the page

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369. Concerning the layout of modern books mimicking that of a manuscript, see note 341 on page 147 and the reference to Riedel. This appears to be the case also with the 1323/1905 Cairo edition. Visually, the text is reminiscent of the ancient manuscript layout.

Although printing began in Egypt, mainly through the work of the Būlāq Press in 1822, by the beginning of the 20th century, the Arab world was still far behind the Western world in terms of modern presses. Yet this printing, the centre of which was Cairo, was significant in the *Nahda*. The publisher of the 1323/1905 Cairo edition of the *Mudawwana*, Maṭbaʿaʾi al-Saʿāda, is one of the names by which the Būlāq Press is known. See G.W. Shaw, “Maṭbaʿaʾ.” *Encyclopaedia of Islam, Second Edition* (Brill Online, 2014). Although Būlāq eventually became known as a significant factor for the rise in the cultural reputation of Egypt in the modern period, their initial priorities in printing were more focused on grammatical works rather than on literary works. See Richard N. Verdery, “The Publications of the Būlāq Press under Muḥammad ʿAll of Egypt,” *Journal of the American Oriental Society* 91 (1) (Jan-Mar 1971), 132.
layout; it is rather plain. (See Figure 11 on page 169 below, presenting a page from the 1323/1905 Cairo edition.)

Similar to the 1323/1905 Cairo edition, the page layout and display of the text of the Beirut edition is a rather simple but modern affair. Each page of text, apart from the title pages of the kitābs, has a single header at the top which includes the name of the kitāb currently opened justified to one margin, with the page number of the text on the other margin. A single solid line separates the header from the main text. Contrasting with the typeface of the 1323/1905 Cairo edition, the font of the Beirut edition is modern and very easy to read. Paragraphs are indented. Punctuation aids reading with full colons following the frequent phrases of qāla, qultu, or even the verb along with the name of the speaker, such as following qāla Saḥnūn. Commas are frequently found in the text, providing appropriate breathing spots, but mostly indicating editorial decisions concerning the break up of ideas.370

The greater value for reading in the Beirut edition as compared to the 1323/1905 Cairo edition is the use of diacritical markings. No punctuation of any form is used in the 1323/1905 Cairo edition except for parentheses decorated with rosettes around the narrative indicators of the beginning of a new dialog, i.e. around either the name and verb, or where the verb occurs alone without a named subject (e.g. qāla Ibn al-Qāsim, or qultu) when a back-and-forth exchange of a new topic begins. Otherwise, in the case of the responder in the dialog, always occurring as qāla, the verb only appears in regular parentheses. Apart from this, there is no use of commas, periods, semi-colons, full-colons, question marks or any other form of modern punctuation assisting in the reading and interpretation of the text. Other Arabic diacritical markings which are rarely encountered include tashdīd and tanwīn.

370. Consistent with other medieval Arabic manuscripts, the only punctuation found in the manuscripts consulted were the occasional circles with dots in them, functioning as a full stop. The addition of punctuation is a major contribution made by editors to the modern publication of ancient Arabic texts. Examples of these markings can be seen in Figure 5 on lines 13 and 19 of CBL ms Ar 4835:55a. See page 127.
Although individual pages of the text of the 1323/1905 Cairo edition may seem plain, the opening page of each volume, and with the reprint, the first page of each *juzʾ*, displays a
decorative title page for that juz’. (See figure 12 on page 171 below of the title page of the second juz’ from the 1323/1905 Cairo edition.) In the size of the textblock, a rectangular border is created by multiple palmettes within which the textual information is found. Groups of text, either in block or line, are separated by the use of text lines decorated with simple asterisks or palmettes. Each block of text is in a different typeface, ranging from Thuluth and Diwani to the plain font used for the text of the copy. At the top of the title page, the title of the work, al-Mudawwana al-kubrā, is featured in a larger typeface of Thuluth set in a rectangular block created by the filling of white space through creative letter order and diacritics, both language and aesthetic. The title page of each juz’ contains information concerning the riwāya, the editor, a note of its first printing being in a simple form of this majestic book, as well as a lengthy description of the manuscript and its contents.

5.3.3. Kitāb and Kurrāsa Title Pages

The beginning of each separate kitāb of the text in the 1323/1905 Cairo edition is normally on a new page with a centered basmala in a decorative square of Thuluth typeface, the hamdala and the tašliya. An exception to this is the first juz’, where each kitāb simply follows along in the text with only the separation of the title of the new kitāb along with the basmala and a line separating text and title. It would appear that in the initial stages of production, a consistent format had not yet been established. Other title pages are sometimes missing the ḥamdala or the tašliya. In three curious cases, the basmala is written in a Diwani

371. Aesthetic diacritics are often used in ornamental Arabic text writing in order to fill empty space or balance the text to make it more pleasing to the eye. See Mohamed Hssini and Azzeddine Lazrek, “Design of Arabic Diacritical Marks,” International Journal of Computer Science Issues 8 (2011), 263.

372. See page 15 and note 24 for the translated description found on the title page of each juz’ (except the first) of the 1323/1905 Cairo edition.
typeface, completely inconsistent with the rest of the title pages. No reason for this seems apparent. Kitāb al-Qadā’, as an exception, does not begin with a centered basmala. As

![Figure 12. Title page of juz’ 2 of the 1323/1905 Cairo edition (Vol. 1:241).](image)

detailed earlier (see section 5.2.1, specifically page 113, concerning the discussion of Kitāb al-Qadā’), it may not have been considered its own separate kitāb in the manuscripts given

the way in which it is found in the modern editions and one manuscript. Inconsistency exists concerning the vowelization of the *basmala*; the majority of the *kitāb* of the *Mudawwana* in the Beirut edition do not have vowels in place (i.e. *fatha, damma* and *kasra*) in the *basmala*, yet, for some unknown reason in some of the *kitābs* in the third of four volumes, many of the *kitābs* have a vowelled *basmala* in place. Under the *basmala*, many, but certainly not all of the *kitābs* have some format of the *taṣliya*. In volume three, only five *kitābs* have some form of the *taṣliya*, while in volume four the *taṣliya* is not found at the beginning of any *kitāb* at all. When a *taṣliya* is in place, in some cases Muḥammad’s status as *nabī* is mentioned, sometimes his family is also mentioned, and in some cases his companions are mentioned. The formatting of the *taṣliya* is extremely inconsistent. The name of the *kitāb* is then centered on the next line of text separated from the above with a line of white space. One more line of white space separates the name of the *kitāb* with the first subject heading. Once the text begins, it is only broken up by subject headings.

Unlike the modern editions, the manuscripts do not have volume or *juz*’ title pages. Title pages of a *kurrāsa* in the manuscripts function visually in the same way as the *juz*’ title pages of the modern volumes. Each *kitāb* in the manuscripts begins with the *basmala* and often the *taṣliya* as well. Other than being centered on the top line of text with the *basmala* including a *kashīda* to justify the line. These phrases appear in the manuscripts as regular text. So the *kurrāsa* title pages function differently than the first pages of a *kitāb* in the modern editions.

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374. This seems a very unusual observation as the remainder of the text appears to be formatted quite consistently throughout. It is very possible that different individuals were responsible for different presentation details in the modern publishing company.

375. *Kitāb al-Salam al-thānī* does not have a *taṣliya* nor is the *basmala* centered. This is likely due to the fact that it begins the second (*al-thānī*) portion of the subject rather than the beginning (*al-awwal*), considered simply a continuation of the previous *kitāb* therefore not needing the *taṣliya*. 
More than simply recognizing the text, the form of the presentation of the *kurrāsa* title pages also conveys significant information. The title pages within BL ms Or 6586 have a simple format, the essential information being centered on the page, both from the top and bottom margins as well as from the left and right margins. There are two lines of larger script, at least double the size of the smaller script, indicating the name(s) of the *kitāb*(s) contained within the *kurrāsa* and the listing of the *riwāya*. Of the four title pages found within BL ms Or 6586, all of them have just two lines of text in larger script. The size of the script is not adjusted considering the number of words needed on the title page, rather the number of words which are presented in larger script is limited by the space of two lines of text. So if the name(s) of the *kitāb*(s) is (are) long, the names of the transmitters will drop down to the third, fourth and possibly fifth lines of text. After the second line of text, all words are presented in a smaller script. For example, one title page reads *Kitāb al-Sharika min al-Mudawwana riwāyat Saḥnūn b. Saʿīd al-Tanūkhīʾ an ʿAbd al-Raḥmān b. al-Qāsim al-ʿUtaqīʾ an Mālik b. Anas al-ʾAṣbahī.* (Different size script on the font in the BL ms Or 6586 is similar to that displayed in the CBL ms Ar 4835. See Figure 13 on page 175 below.) The use of a larger script gives a sense of more emphasis being placed on the content of the text itself, rather than on those that were responsible for its transmission.

Titles pages from the CBL mss Ar 3006 and 4835 are consistent amongst themselves in format and design. Consisting of four to five lines of text centered on the page, the first two lines contain the name(s) of the *kitāb*(s), followed by the information concerning the *riwāya*. The visual imagery of the title page begins on the top line of each title page, a centered horizontal marker created by an elongated *bāʾ*, formed from the last letter in the word *kitāb*. This centers the top line with the word *kitāb* on one side of the balance and the

376. See BL ms Or 6586:1a, 29a, 53a and 73a.
377. See BL ms Or 6586:53a.
first word of the kitāb itself providing the counterbalance. The subsequent information within these first two lines of text, if the titles of the kitābs are not too long, will begin the information concerning the riwāya. Two lines of text are not enough to complete, and in some cases do not even begin, the riwāya. When part of the riwāya is within these two lines, that part consists only of the name of Saḥnūn, so it is only Saḥnūn’s name, which sometimes figures in larger script within the first two lines. These first two lines of text are rather large and very distinct. The following line or two, which completes the information concerning Ibn al-Qāsim, is significantly smaller in size and is in simple script, whereas the previous portion is in highly pronounced Maghrībi script. The last line of the title pages always presents the name of Mālik, again in large, pronounced Maghrībi script, with a very distinctive form of Mālik’s nisba, al-Aṣbaḥi. (See figure 13 on page 175 below for an example.) The last four letters of Mālik’s nisba, šād, bāʾ, ḥāʾ and yāʾ, create this unique visual image. The šād creates an oval or rectangular shape with its upper and lower lines being elongated. The bāʾ, hardly noticed, sits just beside the end of the šād, creating almost a twin for the upper portion of the following hāʾ. In creating the right terminus of the ḥāʾ, which normally sits on, or sometimes slightly above, the base line of writing, the scribe extends this portion of the letter lower than the šād, and parallel with the horizontal lines of the letter šād, creating a third parallel in the visual form, justifying its length with the beginning of the šād. A fourth and final line of this set of parallel forms is completed with the yāʾ, which reverses from the usual direction of going to the left, and sweeps underneath the upper three parallel lines, again justifying with the right end of the group of letters. Together these four letters create a visual image of four parallel lines stacked on top of each other, each line connected with another either on the right or the left sides, looking almost like the tines on the end of a modern day fork. This completes the visual aspect of the title page.
The formatting of the title pages in these manuscripts communicates several things. Both Ibn al-Qāsim and Saḥnūn are credited with the transmission process, however given this rendering and the script size, Ibn al-Qāsim is seen in a lesser light than that of Saḥnūn, as Saḥnūn’s name often appears on the second line (although not in the figure above as the kitāb titles take up too much room) in larger script. Ibn al-Qāsim’s name never appears in larger script. Although Ibn al-Qāsim is a necessary part of the transmission, his name in a smaller script and with no sense of prominence whatsoever on the title page seems to give him a place of lesser honour. The prominence of Mālik’s name, which occurs in the same special and significant way on the last line of the title page of each kitāb, makes it clear that he is given a place of special honour. Additionally, the significance of his nisba being given a special form, drawing the eye towards it, sends the message that Mālik is given the place of honour in this rendering of the text, in spite of the fact that he would not have been aware of
its forthcoming existence. (See also section 6.5 on page 205 regarding the role of Mālik in the creation of the Mudawwana.) The honour with which Mālik is acknowledged here also communicates a sense of authority that goes along with his name. This authority is communicated both visually and textually, for his name comes at the end of this isnād. In this way, he is recognized on the title pages of the kitābs of this text as the final necessary authority.

5.3.4. Subject Headings

As described above in section 5.2.3 on page 121, subject headings are centered on the line and separated from the main text by a line of white space above and below. They are written in a larger size script than the main text and in a different colour of ink presumably to make them distinct from the regular text. In BL ms Or 6586 the subject headings are most often consistent in form with each other—planned on a line, centered, having either an entire line to itself, or most of a line if there are only a few words of the previous section at the beginning of the line of text. On occasion in kurrāsa 37, containing Kitāb al-Jawīh wa l-musāghāt wa l-luqāta, the subject headings share the line with a few words of text from the successive section, to which the subject heading refers. However, the subject heading is still centered on the line of text. In one place the letter bāʾ, which occurs at the end of the last word of the subject heading, has a rather elongated formation, creating a visual sense of the centeredness of the subject heading, whereas if the bāʾ had not been elongated, it would not have had a centered appearance.378 This practice does not appear to be exclusive to particular letters—it occurs with several: jīm,379 ghayn,380 and tāʾ.381 This practice is not exclusive to

379. See BL ms Or 6586:39b:21.
380. See BL ms Or 6586:35a:20.
381. See BL ms Or 6586:37a:14.
subject headings; it can even occur in plain text, for example with the letter $\textit{khā'}.^{382}$ Further examples are numerous. The practice appears to be arbitrary, as no pattern can be determined for when it was employed. Regardless of this irregularity, it demonstrates that care, of some degree, was taken by the copyist to give the text a particular visual form, whether that be simply for visual effect or to assist in the common scribal practice of justifying the text.$^{383}$

In the CBL ms Ar 3006 and the CBL ms Ar 4835 subject headings are also distinct from the main text being centered on the line with additional space above and below separating them out from the main text. (See Figure 7 of CBL ms Ar4835:32a on page 140 for an example of this.) This general format is also employed in the Beirut edition with the subject heading being written in a larger size font and with a boldface type. The 1323/1905 Cairo edition distinguishes the subject heading with a single line above and below the subject heading and distinctive arabesque designs on both the right and left of the subject heading to separate them from the main body of the text. The typeface of the subject heading though is identical to that used in the main body of the text. See figure 11 on page 169 above for an example.

### 5.3.5. Within the Text

As mentioned previously in section 5.2.4.6 on page 153, modern editors at times must make choices affecting the textual reading in order to reduce ambiguity between similar letter forms. Discrepancies between modern editions are evidence of these choices. Although more a matter of content rather than a pure form of presentation changes, these choices do affect the way the text presents. However, regular inclusion of quoted content, such as Qur’ānic text and hadith are treated in different ways in different modern editions.

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382. See BL ms Or 6586:37b:1.

383. It was a goal of manuscript scribes to create a square or rectangular block of text on the page which was justified. See Gacek, *Vademecum*, 146.
5.3.5.1. Quotations from the Qurʾān and ḥadīth

Within the body of the text itself, formatting plays a role in the presentation of both ḥadīth and verses quoted from the Qurʾān but in one edition only. The 1323/1905 Cairo edition introduces ḥadīth with the taṣliya but there are no other visual cues to indicate that the text to follow is different in any way. Qurʾānic quotations do not receive any special textual treatment whatsoever. The typeface is the same as any other part of the regular text, and no references are given of any sort other than the isnād, if it is included, as part of the regular text. However, in the Beirut edition, when the name Muḥammad or the title rasūl is mentioned in the text, immediately following is the taṣliya prior to the quotation of ḥadīth. The form of the taṣliya is a decorative three line miniature which sits on the line of the text, similar in form to the unicode ligature:

In the event that a ḥadīth is quoted, a full colon follows the taṣliya and the ḥadīth is enclosed with double parentheses, the quoted text presented in boldface type. When a verse is quoted from the Qurʾān, the text is set apart in a pair of single parentheses overlaid with a floral type of shamsa. Following the quote, the reference for the verse is given within square brackets providing both the full name of the sūra followed by the verse number. When comparing the presentation of Qurʾānic quotations between the modern editions and the ancient manuscripts, it is clear that the modern editors have greatly enhanced the format. The manuscripts do not contain any special formatting surrounding or in the script of the text of the quote. References to sūra names are also not found in the manuscripts. These are both modern additions to the ancient presentation. In the case of ḥadīth found in the manuscripts, the taṣliya precedes the ḥadīth, yet written as normal text with nothing distinctive about it.
5.3.6. Conclusions of Kitābs and Concluding Statements

In the modern editions, the conclusion of each kitāb is generally indicated with a clear statement that the kitāb has concluded, often, but not always, accompanied by a ḥamdala and a taṣliya. Inconsistency is found in the added creativity that goes into the final form of some of the kitābs. See figure 14 below on page 180 for an example from the concluding portion of Kitāb al-Ḥajj al-thānī from the 1323/1905 Cairo edition with each successive line of text at the end of the kitāb having a shorter line length creating an inverted triangle. Consistent with the ancient manuscripts consulted, there is a long tradition of a concluding statement accompanying the end of each kitāb.

Concerning the presentation of the indexes within the modern editions, text in the indexes in the 1323/1905 Cairo edition is smaller in typeface than the main body of the text, which is already difficult to read. Given the condensed nature of the index, it is not easy to find the passages for which one is looking. The indexes of the Beirut edition are rather easier to navigate as they have only one column of text, the typeface is larger, and there are breaks in the column between kitābs. In addition, kitāb titles in the Beirut edition are centered over the column so it is easier to locate the divisions between them.

5.3.7. Presentation Conclusions

As discussed above, concerning the role of the modern editor in the formation of the Mudawwana, how the text is presented affects the reader’s reception of the text beyond the meaning of the text. For example when each kitāb begins with a stylized form of the basmala or there is a pictorial ligature for the taṣliya, these artistic additions add meaning in terms of

384. This layout is not new to Arabic works in the modern period. Examples can be found of other ancient manuscripts which share this motif. See, for example, the pedigree of Zubayr b. Abī Salmā recorded in this style in Leiden ms Or 14.031:40a as published in Witkam, Catalogue, 58.

385. See above section 4.4 beginning on page 84.
Artistic additions create symbolic representations holding meaning not found in the text itself. When a reader associates particular symbols as having a personal religious value and then sees those symbols in the text, the value they associate with that symbol is

Figure 14. 1323/1905 Cairo edition. Conclusion of Kitāb al-Ilajj al-thānī demonstrating artistic typesetting in the shape of an inverted triangle (Vol. 1:482).

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386. This principle props up an entire arm of the modern advertising industry. Graphic design focuses on how images are portrayed in order to manipulate consumers to make a particular desired response. How language is received as a result of visual presentation is discussed by Swann. See Cal Swann, Language and Typography (New York: Van Nostrand Reinhold, 1991), 70.
then transferred to the text itself. In this sense, although the editor has not technically changed the text, the meaning has been altered through the use of form. As a result, the editor adds to the meaning of the text, providing the reader with a newly perceived emphasis or significance. Examples given above include stylized title pages to *kitābs*, rosettes around narrative signals, and a decorative *tašliya* which clearly stands out from the text. It must be remembered that these all lead to a contextual change in meaning, rather than a strictly textual change. The supratextual context of the text gives added meaning for the reader.

The modern editor himself has entered into the role of compositor. Yet as compositor, his role has not been merely to arrange the type for the printing of the document, rather more deeply than that he has participated in the creation of a new composition, adding to the layers of composition his own work—for the choice of volume division, *kitāb* arrangement, visual presentation, vowelling of the words all contribute towards something greater. More than compositor, the editor has also given a new status to the text for the average reader with symbolic decoration to give the reader the impression visually of an importance to the text. He has conveyed an importance to the text through visual means. In addition to responsibilities as editor to ensure that the text is accessible to the reader, the editors of the modern editions have influenced the reception of the text in their choices of format and presentation, adding to the final text artistic and religious symbols which influence the reader’s understanding of the value of the text. The editor has become one of the contributors to the work as a whole through his participation in its modern presentation.
5.4. Summary to this Point

A summary of the research to this point would be helpful. Differences in textual variants within the *Mudawwana* demonstrate a degree of instability with the text over time. Despite this instability, a vast majority of the text shows consistency. An immense copy of the text dates from 476/1083-84, showing a collection of most of the recognized *kitābs* of the work being found together from just under 250 years from the date of the death of the attributed author/writer. Fragments have been found dating prior to this manuscript, but no published research has demonstrated the degree to which these earlier fragments would attest to a more complete tradition prior to the 5th/11th century. Modern editions seem to reflect two varying traditions. Modern editors themselves have played a part in the creation of the modern *al-Mudawwana al-kubrā*, both in textual decisions as well as presentation. Given the textual inconsistencies, and the number of manuscripts available of the *Mudawwana* with further potential variant traditions, a critical edition of the text is highly warranted for further research to help understand the nature of its composition and collation to a greater degree.

Having a better understanding of the creation of the book of the *Mudawwana*, it is now time to turn to the content of the text itself, in order to try to better understand its composition from what we can understand of an original author and his intent. This is the goal of the next chapter.
Chapter 6
Textual Investigation in the *Mudawwana*

A textual investigation of the *Mudawwana* will help to better understand the nature of the text itself at the micro level. It is hoped that this will lead to a better understanding of the composition of not only this specific portion of the text, but the text as a whole. Given that it is a fundamental (read: primary/initial/foundational) legal text within the Mālikī madhhab, the concept of authority is expected to play a significant role in the statements that are made. How this authority is established through the text will be a key aspect of the investigation.

As mentioned previously, content throughout the *Mudawwana* is presented in the form of *masāʾil wa-ajwiba* (questions and answers). Texts in the form of *masāʾil* exist prior to the time of Saḥnūn, one at least dealing with legal matters attributed to a member of the Hanafiyya tribe. It is very possible that during his *riḥla* to Iraq, Asad b. al-Furāt was exposed to and influenced by this form, which may have influenced Saḥnūn. According to Daiber, *masāʾil* was the format of some of the earliest texts dealing with philological and textual problems of the Qurʾān. *Kitāb al-Masāʾ il*, an apologetic text believed to have influenced the conversion to Islam by a Jew from Medina, ’Abd Allāh b. Salām (d. 43/663-4), provides evidence that Mālik would have been familiar with this form, and thus it would not have been innovative when produced within the Mālikī school. Having been available to those who are believed to have influenced the formation of the Mālikī madhhab, it would not have been a development for the *Mudawwana* to take this form in its presentation of legal work.

Many previous legal works from the period of Mālik, and later that of Saḥnūn, relied upon the use of ḥadīth in order to communicate teaching. Another major legal work from within the Mālikī madhhab, accredited to Mālik, is the Muwaṭṭa’, based almost exclusively on ḥadīth. In contrast, the Mudawwana, although it contains ḥadīth, is based much more on ra’y. The Mecca edition of the Mudawwana records about 860 ḥadīth in its index as found within the text. Given that the text is in many editions about 2,500 pages long, the number of ḥadīth recorded is relatively small compared to prior legal works. Thus the format of masā’il is a practical vehicle to transmit teaching without the need to rely heavily on ḥadīth. A question and answer format, as opposed to narrative or didactic teaching, is sympathetic to the expression of opinion.

6.1. Kitāb al-Qisma al-awwal wa’l-thānī

In examining the Mudawwana, a very small portion has been chosen from Kitāb al-Qisma al-thānī (the second book of divisions). This kitāb occurs approximately half way through the fourth (last) volume of the Beirut edition, and at the end of the second last (fifth) volume of the 1323/1905 Cairo edition. Divisions is a topic of great importance for Muslims, as dividing property is often required following the death of a family member. Inheritance law, which is found in only two sūras of the Qur’ān,388 can be very complicated in its formulaic calculations depending on the surviving family members. However, to properly receive inheritance, and be able to independently control a property, often requires having the property divided according to legal principles. The two books of divisions provide scenarios wherein different types of property or ownership situations are explored in order to identify how they can be legally divided between joint owners. Thus, when a family member dies, and their property is not already clearly divided into quarters or eighths or sixteenths, depending

388. The passages which deal with how an estate should be specifically divided amongst its heirs include Sūrat al-Nisā’ (4):11, 12 and 176 and Sūrat al-Baqara (2):180-182 and 240. Other parts of these sūras discuss inheritance relationships amongst family members more generally as well.

184
on the calculations required in that instance, the principles outlined in these two books can assist in determining the best way for these situations to be resolved. Although the emphasis in the kitābs of division is on property, goods are also discussed as to whether or not they can be divided. Subjects discussed regarding the permissibility of division within the first and second kitābs include houses, land—in varying forms: with/without trees, wells, fields, springs—produce, seed, milk in the udders of animals, unsheared wool, finances, the supervision of the finances of a minor, inheritances, textiles, livestock, jewellery, and also more complicated matters of division, mostly found in the second kitāb. A translation of the subject headings for both the first and second book of divisions can be found in Appendix G. Although the content of the text within these two kitābs is interesting, this research focuses on the structure of the content and its composition, rather than the content itself.

The content of Kitāb al-Qisma al-awwal and al-thānī seems to lack a strong organizing principle. When surveying the topics dealt with in these two kitābs, the only observation regarding organization may be that the situations dealt with in Kitāb al-Qisma al-thānī appears a little more complicated than that of the first kitāb. Questions appear either more obscure or dealing with the results of a division where something has gone wrong, such as the goods spoiled, or money or another commodity is added in to the equation.

There is little use of Qur’ānic text or hadīth in these two kitābs.389 The entire text of the Mudawwana has a total of 124 quotations of Qur’ānic text. Of these, only one occurs within the two kitābs of al-Qisma, that of Surāt al-Nisā’ 7, referenced twice. One occurs within the portion of text translated below. The second citation of Surāt al-Nisā’ 7 occurs just

389. It is not a new observation that Islamic law is founded on Qur’ān and hadīth, nor is it a new observation that very little of these two sources are actually present the law in detail. Islamic law is understood to be merely presented in broad strokes, and more fully detailed and applied through the “carriers” of Islamic law—the jurists. Hallaq has rightly observed that what is understood to be the revelation of Allāh is simply the “basic building blocks of the law with no more than intimations of a blue-print as to how the House of Law should be constructed and formed out of these blocks.” See Wael Hallaq, “Juristic Authority vs. State Power: The Legal Crises of Modern Islam,” Journal of Law and Religion 19 (2003), 245.
a few pages later in the *Mudawwana* under the subject heading “Concerning the division of houses and rooms and (flat) rooftops (ṣuṭūḥ).” The full text of the āya quoted reads: “From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large—a determinate share.” However, only one portion of it is quoted in both places, that being: “whether the property be small or large—a determinate share.” In al-Qurṭūbī’s *tafsīr, al-Jāmiʿ li-āḥkām al-Qurʿān*, one section describes the sayings of several *fuqahāʾ* including the sayings of Mālik, Abū Ḥanīfa and the opinion of Ibn al-Qāsim. So the Qurʾānic commentaries include references to the sayings of the *fuqahāʾ*, some of which are recorded in the *Mudawwana*. The commentary of both al-Qurṭūbī and Ibn al-ʿArabī will be referenced later following the presentation of the translated portion of the text.

Only one ḥadīth is quoted within both of these *kitābs*—“lā ḍarara wa-lā dirāra,” meaning “There should be no harm nor the reciprocation of harm,” or “Do not harm or reciprocate harm.” Schacht has translated it as, “there shall be no damage and no mutual infliction of damage.” This particular ḥadīth is quoted seven times within the *Mudawwana*. In addition to the one quotation of this ḥadīth in *Kitāb al-Qisma al-thānī*, it can also be

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393. According to Wensinck this ḥadīth can be found in Ibn Māja’s *Akhām* (18), Mālik’s *Muwaṭṭa*’ (Kitāb AQdiya 31), Ibn Ḥanbal’s *Musnad* (1:313, 5:327). See A.J. Wensinck et al., *Concordance et indices de la Tradition Musulmane: Les six livres, le Musnad d’Al-Dārimi, Le Muwaṭṭa’ de Mālik, le Musnad de Ahmad Ibn Hanbal* (Leiden: Brill, 1955), 3:496-97. Ḥadīth are still used in contemporary times to preach to the masses. On 21 August 2013 a local Tunis newspaper published in their “Eyes and Announcements” column this ḥadīth in the section labelled “Yā Fatāḥ, yā rażāq.” In addition to the *nabi*, the *isnād* included Abū Saʿīd al-Khudrī. See “Yā fatāḥ yā rażāq,” *al-Ṣarīḥ*, 21 August 2013, 2.


found twice in Kitāb al-Nikāḥ al-awwal,396 twice in Kitāb Kirāʾ al-dūr wa l-araḍīn,397 once in Kitāb al-Shufa al-thānī,398 and once in Kitāb Ḥarīm al-ābār.399 One interpretation of this ḥadīth is that ḍarara refers to the act of someone harming someone else but with no profit to himself, with dirāra being the act of one who wrongs someone else for his own profit.400 Harm can be classified into two general categories, according to Muḥammad al-Tāhir b. Āshūr. The first is harm which should be avoided and/or prevented at all costs, and the second is harm which is unavoidable and is therefore allowable.401 The concept of whether or not something was considered harmful is what guided decisions concerning divisions of property within the Mudawwana.

Opinions given in the Mudawwana appear to be based on very little source material. This little portion of source material seems to be applied very extensively. In situations where appropriate source material cannot be found to provide answers which arise, new opinions are necessary. Yet it is indicated in the text that any new opinions presented are based on previously known and accepted principles and ideas from the teacher who came before, Mālik b. Anas.

After reading a few entries, one begins to feel a rhythm for the scenarios presented in the Mudawwana, at least in this section of it. The framework of the format is of a conversation with a question being asked, obviously from an inquirer to a more learned teacher. The words qāla and qultu appear very frequently in the text. In these two books, qāla

399. See Saḥnūn, Mudawwana Beirut, 4:470.
401. Āshūr is cited by Hakim, Arabic-Islamic Cities, 22.
appears 682 times and *qultu* 331 times. With a word count in these two books of over 22,000 words, almost five per-cent of the words in the text are taken up with these dialog markers. Bear in mind that the word *qāla* is often used in reference to Mālik, as in *qāla* Mālik (121 times). With only 68 total subjects discussed in these two *kitābs*, simply the phrase, “Mālik said” occurring more than 120 times means that in each scenario there is an average of almost two times where Mālik’s words are quoted or referenced. Given these figures, it is evident that for every time “I” said something, i.e. Saḥnūn, or the first-person speaker in a *qultu* form (331), there is an average of two replies, e.g. *qāla* (682) or possibly *qāla* Mālik (121 of the 682). Highly dependent on this conversational form, the text does not give the sense of an apologetic or of a treatise, rather it presents scenarios that, although possible, are hardly common.

Each situation brought up for discussion begins with the disciple, understood to be Saḥnūn and sometimes mentioned that way, asking his presumed teacher, Ibn al-Qāsim, his opinion of the presumably hypothetical situation. Most often Ibn al-Qāsim provides a reply which is qualified by something that Mālik has said in regards to this particular type of situation or a broader one which could apply to this situation. Sometimes, not having heard Mālik say anything about a particular topic, Ibn al-Qāsim will state that outright, e.g. *lam asma` min Mālik fīhā shay‘*. In which case, Ibn al-Qāsim would continue by giving his own opinion. He would assert that he gives this particular opinion based on something else that Mālik has said, meaning it would have some sort of analogus relationship. In no case does Ibn al-Qāsim simply give his own opinion based on his own authority without reference to some other source, whether that be Mālik’s direct discussion of the subject, another subject, but somehow related, or a reference to *ḥadīth* or Qur’ānic text. Once, in these two *kitābs*, the *ḥadīth* concerning harm is invoked in this type of situation.
In a clear example of this, in Kitāb al-Qisma al-thānī, a subject is discussed concerning the division of a road and a wall. Ibn al-Qāsim answers the first question in the exchange which concerns the division of a pathway (tārīq) within a property (dār) if each of the parties refuses to have it divided. The answer given is very brief with Ibn al-Qāsim stating that this does not divide according to Mālik. An immediate follow-on question is whether or not a wall shared between two parties divides when one of them refuses to have it divided. In this situation Ibn al-Qāsim states that he has heard nothing from Mālik on this subject, but goes on to give his opinion, ʿillā annī arā. The beginning of his opinion indicates that if the division does not cause harm (in kāna lā yudkhīlu dhaliqa dārā), then it is divisible. As one reads further into the subject of divisions, it is quite clear that this simple idea of the causing of harm is the essential, and seemingly only, stipulation which determines whether or not the division of certain things is forbidden. When two or more parties share in the ownership of something, and one or more of the owners chooses to have the property in question divided, it must be divided, even if opposed by the other parties, unless the division would somehow cause harm. The idea of what exactly harm is, and who can determine whether or not something is harmful, is not a subject which is discussed. It seems that the harm caused is apparent to those deciding, and it is clear for them with no explanation of the harm caused being necessary.

This style of exchange implies a sense of layering in the conversation, which, admittedly, is part of all conversation, a back and forth between two or more parties. Although the differentiating characteristic in the exchanges between “I” (qultu) and “he” (qāla) here in the Mudawwana is the continual interjection of the third “missing” voice of Mālik, invoked in times of necessity to either approve a particular situation along with the

saying that supports/demonstrates its approval, or an acknowledgment of a lacuna in his cache/repository of sayings. In instances where nothing is known to have been pronounced, a new dictum must be given, but one based on what has previously been proclaimed. For this, Ibn al-Qāsim uses his experience, knowledge and analogic capabilities to come up with what will become a new guideline of permissibility. In the layering of the text, one can see the theme of authority rise to the surface.

6.2. Translated Text

The passage chosen for investigation is found almost two-thirds of the way through Kitāb al-Qisma al-thānī. The Arabic text, formatted schematically to demonstrate clausal dependence, can be found in Appendix H. The section is introduced with the subject heading “Concerning two men who divide a wall in two, and one of them adds in payment for the other money or liquid assets or for a deferment.” On the following page begins the English translation of the sample which I have chosen for my text. Lines have been numbered in order to simplify referencing specific parts of the text.

404. This passage can be found in the two modern editions consulted as follows: Saḥnūn, Mudawwana Beirut, 4:309-10. Saḥnūn, Mudawwana 1323/1905 Cairo edition, 5:517-18. Appendix F lists discrepancies which occur in this text between the 1323/1905 Cairo edition and the Beirut edition. A brief analysis of the discrepancies is included in the chart of discrepancies.
I said, “What is your opinion [about the following]: Two men own a
property (dār) that is divided between them. One of them takes a part and gives a
part to the other on the condition that the one gives the other a slave or cash
(darāhim) or a commodity of full measure or a promise of payment. What
would the situation be if the one who gives it, paying with a deferment of
payment, does not specify a time frame?” He said, “This is permissible when the
time frame is specified, and when there is a prescribed financial obligation; it is
only not right when that person is to pay it at an unspecified later date. What is
permissible in this situation is what is permissible in sales, and what is invalidated
in this situation is what is invalidated in sales.” He said, “This is my opinion
because Mālik said there is nothing wrong (lābās) if one of them takes a part of
the property and the other a part from the property on the condition that one of
them provides additional money (danānīr) for the other.”

I said, “It is similar if the property is divided among the two of them and
one takes a part and the other a part on the condition that one of them donates an
acceptable charitable gift on behalf of his co-owner or gives him an acceptable
gift.” He said, “Mālik said, ‘This is permissible.’ ”

I said, “What if a man buys a passageway in his house from someone
without buying any other part of the house which has the potential to be the object
of a bequest; is this permissible?” He said, “This is permissible according to
Mālik.”

I said, “What are the sayings of Mālik in the case of a small house (bayt)
which is owned together by fellow tribesmen and the portion that belongs to one

405. Implied in this is that the commodity is not silver or gold.
of them is too small to be of benefit if it is divided further. Can it be divided or
not?”

He said, “Mālik said, ‘It is divisible even if there is a portion belonging to
one of them which is of no benefit to him if it is divided amongst them. [This is]
because Allāh, the exalted (taʿālā),406 said in his book, “Whether the portion be
small or large—[it is] a legal share.” 407 Whether the portion of it is little or the
portion of it is large, it is the same. It divides between them if they request the
division and this requirement cannot be disregarded even if the [resulting] portion
is small or large.’”

I said, “What if one partner [in a property] requests the division [of the
property] when the partnership was the result of an inheritance or a purchase, and
the remainder [of the shareholders] rejected the division?” He said, “Mālik said,
‘Whoever among them requests the division, and what is to be divided belongs to
him, it should be divided. [This is so] whether it is a slave, livestock or something
else.’ Mālik said to me, ‘That is also so whether it is a purchase or an inheritance;
it must be divided. However, regarding something which is not divisible and one
of them says, “I will not sell [my portion],” while the rest of them say, “We will
sell,” ’ he said, ‘It should be sold for him and for all the others, regardless of
whether they want [to sell] or not. Those who do not want the sale still get to take
what they have been given for [their portion]. That will be what belongs to
them.’”

406. The 1323/1905 Cairo edition reads here tabārak wa-taʿālā.
407. Sūrat al-Nisa’ 7
6.3. Discussion of the Text

Although the content of the text is quite interesting, and raises many questions concerning social life and personal status law, it is the form itself that is being investigated here, in order to make some conclusions concerning the composition of the text and the implications arising from that composition. First, some observations are appropriate. The text is essentially written as dialogue with quoted speech.\textsuperscript{408} Three individuals are relevant to the text: Saḥnūn—the implied and sometimes mentioned first-person narrator as disciple; Ibn al-Qāsim—the other person in the dialog referred to in the third-person and in the role of teacher; and Mālik—referring to Mālik b. Anas (lines 11, 17, 21, 22, 26, 36, 39). Also relevant to this portion of the Mudawwana is the text of the Qurʾān, here referred to as “Allāh’s book” (line 28).

The text seems to naturally break up into three sections (lines 1-17, 18-32, 34-45), considering the back-and-forth, question-answer nature of the exchange. These natural divisions within the text are identified above with a line break between them. At the outset, Saḥnūn poses a scenario to his teacher concerning the division of a property which, when divided, is clearly not equal in value (1-6). As an aside, it would be useful to know that when a property is divided between individuals by law, it is often divided in unequal portions due to the fraction of the property which is accorded to each individual. So it is not necessary that a property be divided into equal portions, but rather that the property be divided in such a way that each individual receives the share to which he is entitled. This could be a half, or a quarter or an eighth or smaller, depending on the number of people amongst which it is divided and the relationship that each individual had to the deceased, in the case of inheritance.

\textsuperscript{408} Translation license is taken to indicate by punctuation direct speech and reported speech although punctuation of that nature does not occur in the original text.
Note that when Ṣaḥnūn poses his initial question, he is asking Ibn al-Qāsim for his opinion concerning this conditional sale. Often the questions that are initially posed in the first person within the text of the Mudawwana are asking for the opinion of the teacher. The need for a question itself implies that there is a gap of knowledge concerning this situation. The very existence of the Mudawwana, noting especially its vast size, demonstrates the need for clear instruction or procedure in a multitude of situations in life. Following this initial question, the response provides a ruling regarding the permissibility of the scenario as outlined by the question. Included in the response is a reference to what seems to be some form of a recognized body of law that is already established: “...that which is permissible in sales (lines 8-9)...” and “...that which is invalidated in sales (9-10).” The implication is that by the time this was recorded or transmitted, a general concept existed of what was permissible or not in the category of sales.

Note that Ibn al-Qāsim then clearly states that what he has pronounced is his opinion (raʾyī) (10), yet he appears eager to point out that his opinion is not based solely on what he thinks is good, but rather on the basis of what Mālik has previously said (11-13). Additionally, it should be pointed out that Mālik’s speech in this particular part does not appear to be direct speech as it is later in the passage, but rather reported speech.

In the next part, Ṣaḥnūn asks two further questions related to the original topic but with a variation—now a charitable or non-charitable gift is given by the one who receives a greater than proportionate size of the property being divided in order, presumably, to equalize the shares appropriately (14-17). Ṣaḥnūn also asks about the legality of purchasing simply a passageway through the house, without purchasing any part of the house proper, assuming an individual’s need to pass through one property to get from his own property to a public access way (18-20). Both of these follow-on questions results in a very brief response from Ibn al-Qāsim indicating that these suggested scenarios are permissible, but again, and it should be emphasized, this is “according to Mālik (17, 20-21).” The majority of the dialogue in this part
of the text is dependent on the speech of Saḥnūn—the lengthy, detailed explanation of his question requiring a greater proportion of the exchange.

In the final part of the sample text, the student now asks a more investigative question concerning the sayings of the main master, Mālik, on the particular subject about whether or not something should be divided if, upon its division, it becomes unusable (23-26). The length of Ibn al-Qāsim’s reply is similar to that in the first part, but the contents of his reply contain not just the saying of Mālik (26-27, 28-32), but also the basis for this quoted saying, which is given as a quote of Qurʾānic text (28-29). One more follow-on question is asked concerning this (34-36), and a longer explanation is given which is simply another quotation of direct speech from Mālik (37-45).

Before delving further into the questions concerning the use of authority in the text, the following is the same sample text, yet with the source of the information being designated by variations in font style in order to visually identify of whom the speech is representative. Italic text indicates Saḥnūn is the speaker; underlined text represents the speech of Ibn al-Qāsim; underlined italic is for narrative speech within Ibn al-Qāsim’s speech; bold text is for Mālik’s either direct or indirect speech; and bold italic represents text found within the Qurʾān.

I said, “What is your opinion [about the following]: Two men own a property (dār) that is divided between them. One of them takes a part and gives a part to the other on the condition that the one gives the other a slave or cash (darāhim) or a commodity of full measure or a promise of payment. What would the situation be if the one who gives it, paying with a deferment of payment, does not specify a time frame?"

409. Implied in this is that the commodity is not silver or gold.
He said, “This is permissible when the time frame is specified, and when there is a prescribed financial obligation; it is only not right when that person is to pay it at an unspecified later date. What is permissible in this situation is what is permissible in sales, and what is invalidated in this situation is what is invalidated in sales.” He said, “This is my opinion because Mālik said there is nothing wrong (lā bā’s) if one of them takes a part of the property and the other a part from the property on the condition that one of them provides additional money (danānīr) for the other.”

I said, “It is similar if the property is divided among the two of them and one takes a part and the other a part on the condition that one of them donates an acceptable charitable gift on behalf of his co-owner or gives him an acceptable gift.”

He said, “Mālik said, ‘This is permissible.’”

I said, “What if a man buys a passageway in his house from someone without buying any other part of the house which has the potential to be the object of a bequest; is this permissible?”

He said, “This is permissible according to Mālik.”

I said, “What are the sayings of Mālik in the case of a small house (bayt) which is owned together by fellow tribesmen and the portion that belongs to one of them is too small to be of benefit if it is divided further. Can it be divided or not?”

He said, “Mālik said, ‘It is divisible even if there is a portion belonging to one of them which is of no benefit to him if it is divided amongst them. [This is] because Allāh, the exalted (taʾālā), said in his book, “Whether the portion be

410. The 1323/1905 Cairo edition reads here tabārak wa-taʾālā.
small or large—[it is] a legal share." 411 Whether the portion of it is little or the portion of it is large, it is the same. It divides between them if they request the division and this requirement cannot be disregarded even if the [resulting] portion is small or large.’ ”

I said, “What if one partner [in a property] requests the division [of the property] when the partnership was the result of an inheritance or a purchase, and the remainder [of the shareholders] rejected the division?”

He said, “Mālik said, ‘Whoever among them requests the division, and what is to be divided belongs to him, it should be divided. [This is so] whether it is a slave, livestock or something else.’ Mālik said to me, ‘That is also so whether it is a purchase or an inheritance; it must be divided. However, regarding something which is not divisible and one of them says, “I will not sell [my portion],” while the rest of them say, “We will sell,” ‘he said, ‘It should be sold for him and for all the others, regardless of whether they want [to sell] or not. Those who do not want the sale still get to take what they have been given for [their portion]. That will be what belongs to them.’ ”

It is interesting to observe the balance, or rather the imbalance, of the different speakers within the text, noting not only the amount of speech which is accorded to each source, but also the placement of the different speakers and how this might change the strength or authority of each response. First note that Saḥnūn’s speech, which is merely the asking of the questions, consists of a considerable portion of the passage. The questions themselves are lengthy, they include many details, and sometimes allow for different variables within the same situation. Through the continual asking of questions, not merely in

411. Sūrat al-Nisa’ 7
the brief passage, but throughout his entire compendium, Saḥnūn demonstrates the unending ability to dream up potential scenarios for which a legal opinion is required. This is a significant point. The content of Ibn al-Qāsim’s speech which is based on his own thought (underlined text), seems proportionately small in comparison with the whole text. It essentially occurs only once in the passage, following the initial question on this new topic, and is not broken up at all. His stated opinion is smaller in quantitative text than the original question.

When concluding his opinion in this first response, Ibn al-Qāsim immediately gives authority to his own opinion by supporting it with the transmitted saying of Mālik. So Ibn al-Qāsim’s opinion is not merely based on his own thoughts and ideas, but rather it is founded on the sayings of a more authoritative source which came before him. This particular source, which Ibn al-Qāsim relies on, is not a direct quote of Mālik’s but appears to be a paraphrase or transmission of Mālik’s thought. So Ibn al-Qāsim’s personal opinion is linked together with the more authoritative saying of Mālik.

Ibn al-Qāsim refers to the ideas and speech of Mālik in different ways. Sometimes he relates what Mālik has said through a paraphrase of his speech. At other times he quotes him directly. He also simply acknowledges that Mālik would have approved of the idea put forth. At one point, Ibn al-Qāsim quotes Mālik directly and indicates that he himself heard Mālik say what he is quoting. These different forms of reference to Mālik convey differing levels of authority. When Ibn al-Qāsim says, “Mālik said” or “Mālik said to me” there is a different strength of authority to which he is appealing, for the second one clearly implies that it was said directly from Mālik to Ibn al-Qāsim, whereas the other construction implies that the words were spoken by Mālik, but may have been transmitted by someone else to Ibn al-Qāsim. Unlike the Muwaṭṭa’, there are few isnāds to rely on in the Mudawwana relative to ḥadīth literature, the conversational style lending itself to an indirect isnād. An isnād could
now be reported by testimony of the *Mudawwana* sounding something like: “Saḥnūn said, according to Ibn al-Qāsim, who heard it from Mālik that . . .”

The speech of Mālik has some interesting qualities to it. It appears in several parts of the passage, and not in one isolated location. In this section it begins relatively small. In the middle of the passage it is short and stands alone—on its own authority. In one section, a verse which is part of the Qurʾānic text, is added in the midst of Mālik’s saying, with a notation that the text quoted is the speech of Allāh. This appears as an attempt to further strengthen the force of the response by appealing to a recognized ultimate authority. By the end of the passage, however, Mālik himself, even though not present in the recorded conversation, has become the dominant voice.

The passage being examined demonstrates a clear process involved in trying to arrive at answers to questions asked. The first source appears to be Mālik—on any given subject. This is supported by *ḥadīth* or even Qurʾānic text when there is one related. But in the absence of these resources, the teacher uses his own judgment/opinion. Yet this must have a basis in something previously said or taught—again by Mālik. The outcome, though, is a new situation, a new statement. In all of this opinion which is being given on the subject of divisions, the simple dicta *lā ẓarara wa lā dirāra* is the main foundation of the teaching.

### 6.4. Commentaries on the Text

The commentaries themselves yield interesting observations concerning how the text is treated and how the commentaries themselves are written. Al-Barādhiʿī (d. 438/1046-47) seems to be silent on the specific matter of how to deal with a division which will create a piece of property that is too small for someone to benefit from it. However, in reading through al-Barādhiʿī’s commentary, his layout of text and methodology in dealing with specific subjects has much in common with the text of the *Mudawwana*. Ignoring the subject headings, as these could easily have been added by later redactors, al-Barādhiʿī often begins a matter using a hypothetical situation, similar to that in the *Mudawwana*. He does not use
questions and answers, but simply presents the scenario, then providing the instruction for how this situation should be resolved. For example, one section begins with a description of a property (dār) owned by three men, and Barādhiʿī continues to describe the situation. Barādhiʿī also begins many ideas with the name of the person who spoke something, e.g. qāla Ibn al-Qāsim or qāla Mālik. Within the section of his commentary concerning Kitāb al-Qisma there are no apparent references to writings or kitābs or even the word used in other commentaries to refer to legal doctrine of someone, madhhab. Being one of the earlier commentators on the Mudawwana, these observations support the conclusion that the Mudawwana was still in its formative stages in terms of being viewed as a book (kitāb) in itself, at the time of al-Barādhiʿī’s writing. However, caution should be taken in making an argument out of silence in order to support the idea that the Mudawwana did not exist as a book at the time of al-Barādhiʿī. Given al-Barādhiʿī’s hometown being Kairouan, and his death some 35 years after that of al-Qābisī, he was most assuredly aware of the latter’s work concerning the transmission of the Mudawwana. One wonders if al-Barādhiʿī’s temporal proximity to al-Qābisī, knowing the influence that al-Qābisī may have had on the text, does not allow for him to recognize the Mudawwana in the same way as later commentators.

The commentary of Ibn Rushd (d. 520/1126) is presented very differently from al-Barādhiʿī’s work demonstrating significant development not only in dealing with textual matters, but also in terms of the synthesis of jurisprudence as a discipline. Upon reading his work it is understandable why Ibn Rushd gained the reputation as the most prominent Mālikī jurist in the Muslim West during his lifetime. His section on Kitāb al-Qisma begins by expressly stating the source material for his commentary, namely the Qurʾānic verses and any

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412. See al-Barādhiʿī, al-Tahdhib, 4:176.
413. See al-Barādhiʿī, al-Tahdhib, 4:181.
414. See al-Barādhiʿī, al-Tahdhib, 4:194.
415. See Latham, “Ibn Rushd.”
hadīth related to the subject matter. Then it is neatly divided up into sections, each division identifying a new subject area with the word section or division (faṣl). When quoting something from the Mudawwana, specifically the phrase “a sale of sales” (bayʿ min buyūʿ), he refers to the “text of Mālik” (naṣṣ Mālik), implying that this is something that is clearly written down, and recognized, without title, that it is from Mālik. In another section of his commentary of this kitāb, he brings up an issue, the resolution of which is not agreed upon by previous scholars. A reference is made to the “qawl Ibn Mājishūn” and his son, ʿAbd al-ʿAzīz, and the “different readings of this in the hearing (samāʿ) of Yahya from the kitāb of divisions.” These observations may indicate, from the time of al-Barādhiʿī to the time of Ibn Rushd, a period of just less than a century, a possible development in the text of the Mudawwana which allows jurists to now refer to something that is written, rather than simply the “sayings” of the teacher. Is it possible that in this short period of time the concept of a “text” has come to be placed in the minds of the jurists?

One final commentator of those investigated in this research is al-Rajrājī (d. 633/1235). Coming almost a full 200 years after al-Barādhiʿī, it is interesting to see even further developments in his references to “al-Mudawwana,” by name. His use of the word madhhab seems to indicate from context those who follow a teacher in general. In at least five different places, he makes mention of “the madhhab,” he speaks specifically about “the madhhab of Ibn al-Qāsim” and “the madhhab of Ashhab.” This appears to be a general usage of this word. Concerning the concept of a book, he speaks of “al-kitāb” three times, with one of these references being to the “sayings (qawl) of Mālik in the kitāb.”

419. al-Rajrājī, Manāhīj al-taḥṣīl, 9:171.
“The Mudawwana” itself is mentioned three times.⁴²² Providing evidence that the kitābs of the Mudawwana are in fact seen as separate entities, yet within an organized whole, he mentions two individual kitābs within the Mudawwana: Kitāb al-Ruhūn (sic),⁴²³ and Kitāb al-Qisma itself.⁴²⁴ By this time, the commentators, within their own texts, provide clear evidence for the referencing of juristic concepts from a text compendium, with separate kitābs within it, as a source text for jurisprudence. A table of contents, or a listing of the kitābs of the Mudawwana as dealt with in their commentaries may provide support as well. However, the mentioning of these titles, from within the text of the commentary itself is much stronger evidence for the view that the commentators took of the kitāb of the Mudawwana itself, as well as the relationship between the kitābs found within it. Here the concept now is expressed of a complete whole with a relationship existing between the parts. This brings to mind the adage that the whole is greater than the sum of the parts.⁴²⁵

The Qur’ānic reference to Surat al-Nisā’ ⁷ is explained by Ibn al-ʿArabī (Abū Bakr Muhammad b. ʿAbd Allāh, d. 543/1148), in three parts: first the sabāb al-nuzūl, second a section dealing with the outcomes expected as a result of the āya, and third a discussion of the differences which exist within the Mālikī madhhab concerning the division of property. It is this third point which is most relevant to this discussion. In his commentary Ibn al-ʿArabī indicates that both Mālik and Ibn Kanāna were of the same opinion, that in the case of the division of property where the division would nullify the benefit of the part, the parts should not be divided, but rather lots should be cast for them in order not to harm the property. Ibn al-ʿArabī goes on to say that Ibn al-Qāsim, on the other hand, believed that Allāh removed

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⁴²². al-Rajrājī, Manāḥīj al-taḥṣīl, 9:177 and 181.
⁴²⁵. This phrase is often attributed to Aristotle, although it is the kernel of the idea which may be found in his whole-part causation theory, in Metaphysics. See Aristotle, Metaphysics (Santa Fe: Green Lion Press, 1999). Euclid is credited with saying, “Καὶ τὸ ὅλον τοῦ μέρους μεῖζον” meaning the whole is greater than the part. See Euclid, Elements (n.p.: Richard Fitzpatrick, 2007), 7.
the harm with his glorious words, which was also confirmed by the words of the ḥadīth, lā darara wa lā dirāra. What is implied is that in a sense the words of the Qur‘ān and the ḥadīth here appear to become like a magic spell that removes the harm, according to how Ibn al-ʿArabī interprets Ibn al-Qāsim. Ibn al-ʿArabī goes on to criticize the use of this āya concerning divisions, for, in his opinion, the context of the āya is about inheritances, and not about divisions. He concludes by saying that the division lapses concerning that which voids the benefit and decreases the value of the property.

Regarding the sayings of Mālik, al-Qurṭubī (Muḥammad b. Aḥmad, d. 671/1272), states that Mālik instructs that if something is divisible, it should be divided, even if the division results in a part that is not of benefit (mā yantafiʿu bihi), seeming to directly quote the passage of the Mudawwana (below). Concerning Abū Ḥanīfa, al-Qurṭubī relates that Ibn Abī Laylā advises differently saying that if the division creates something that is of no benefit, then it should not be divided. Further he said that all divisions create some form of harm for one of those involved. It is interesting to note that al-Qurṭubī’s commentary credits Ibn al-Qāsim, quoting his opinion but not word for word as related in Kitāb al-Qisma al-thānī. Al-Qurṭubī actually provides a different reading than that found in the Mudawwana, giving clarity to the text. The content of Ibn al-ʿArabī is essentially found in al-Qurṭubī, with al-Qurṭubī giving fuller details on the situation.426

Throughout this passage, it has been observed that several levels of authority are demonstrated. Authority is sought based on:

- the opinion of Ibn al-Qāsim linked to the teachings of Mālik

426. That al-Qurṭubī provides a different reading for Ibn al-Qāsim’s opinion to what is found in the Mudawwana causes one to wonder about the influence that the commentators and commentaries had on the text and reception of the Mudawwana. Wansbrough, in his Quranic Studies discusses briefly the issue of “the process by means of which revelation became scripture.” It is possible that the commentaries could have been the bridge or a stepping stone for the Mudawwana becoming a received legal text within the community of the ʿulamā’. See John Wansbrough and Andrew Rippin, Quranic Studies: Sources and Methods of Scriptural Interpretation (Amherst: Prometheus Books, 2004).
- the reported speech of Mālik
- the direct speech of Mālik possibly via an unknown transmitter
- the direct speech of Mālik to Ibn al-Qāsim
- the direct speech of Mālik which is then linked to a verse from the Qurʾān noted as being the direct speech of Allāh

Following these observations, along with the notations above concerning the different speakers, the following are reasonable conclusions which can be drawn from this analysis. First, concerning the permissibility of different aspects of divisions, and assumedly many other subjects within the legal sphere, judgments were seen as needing to be made by those who had the authority to do so. Sufficient knowledge of previous judgments, along with the ability to be able to apply those judgments in new situations as they come up, are at least two qualifications necessary to enable one to act in this role. Also, a properly qualified individual, although in some circumstances may have had sufficient authority in order to pronounce judgments on his own authority, could appeal to a higher authority in order to establish a stronger, and in some cases, an incontestable case. These types of cases included Mālik, whose authority was sometimes linked to the authority of Allāh, and Ibn al-Qāsim, whose own opinions were closely linked to the teachings of Mālik. Finally, the law was capable of rendering judgments which were applicable to situations in which people found themselves in the course of their daily lives—it had practical application, but it also had the ability to deal with highly unusual and even hypothetical situations, rendering the law as able to deal with any and all scenarios. However, along with that, the law needed to be handled by those qualified to do so.

In Saḥnūn’s time, sufficient gaps existed in the people’s understanding of the “correct” way, according to their perceived religious understanding, to carry out specific actions and practices in many aspects of human life regarding both interpersonal relationships
as well as the relationship of the individual with Allāh. The Mudawwana, fills this knowledge gap, giving the people pragmatic answers to questions they may ask concerning the appropriate way for them to carry out their life. Additionally, though, the Mudawwana, through the use of authority, demonstrates the ability of the sufficiently trained legal jurisprudent to handle any and all questions he may encounter. It silently asserts the ability of the religious field to more than adequately deal with all aspects of human life. The Mudawwana is an exemplification of legal discourse, within a historical context, to address needs, whether perceived or proclaimed, with full capability.

6.5. Application of Günther’s Terminology

In the introduction to this project, Günther’s terminology to classify historical sources in Arabic compilations was presented.\(^{427}\) At this point, using the text presented above in translation, an assessment of the Mudawwana will be made according to Günther’s terminology in order to attempt to classify the different roles played by the individuals mentioned in the text.

Günther’s terminology is comprehensive and allows classifications to be made of a myriad of individuals that may have a role in the creation of a complex text over the course of possibly centuries. Although the Mudawwana is a lengthy text and likely has a lengthy compilation history, its creation is not as complex in terms of individuals as the full range of terms presented by Günther. As there are only three main personalities as presented in the text above, classification of personalities from the text itself will be limited to these three.\(^{428}\) These three personalities are seen to take on multiple roles as defined by Günther’s

\(^{427}\) See above page 13 and chapter 4 for the explanation of Günther’s terms beginning on page 82.

\(^{428}\) Although there are many other personalities mentioned in the larger text of the Mudawwana, these three remain the principal personalities throughout the entire text.
terminology. His observation that his terms proposed are not mutually exclusive is very apropos in this circumstance.\textsuperscript{429}

The three personalities, as understood in the above text but named in other places, are Saḥnūn, Ibn al-Qāsim and Mālik. Each fulfills multiple roles when classifying them with the terms of transmitter, guarantor, teacher, informant, authority, writer, author, editor and collector.

\subsection*{6.5.1. Transmitter}

In terms of transmitter, both Saḥnūn and Ibn al-Qāsim qualify for this title. They each pass teaching on from someone before them to someone after them. For example in the passage above on lines 6 to 10 Saḥnūn, through the text of this kitāb, is transmitting the teaching of Ibn Al-Qāsim. So, Saḥnūn is a direct transmitter of Ibn al-Qāsim as he is seen receiving teaching directly from Ibn al-Qāsim. The very next section, from lines 10 to 13, Ibn al-Qāsim is relating teaching from Mālik to Saḥnūn. As Saḥnūn did not receive this directly from Mālik himself, he passes it on indirectly from Mālik. He is recorded historically as never having met Mālik face-to-face,\textsuperscript{430} Saḥnūn is an indirect transmitter of Mālik. However Ibn al-Qāsim is seen as a direct transmitter of Mālik, in this instance. At some points the direct transmission reads as indirect speech, and at other points as direct speech. This detail does not affect whether or not it is considered direct or indirect transmission. Although Saḥnūn, and Ibn al-Qāsim for that matter, was a transmitter of other individuals as evidenced by the text of the Mudawwana, as they are not directly mentioned in the brief passage translated above, they will not be classified.

\begin{itemize}
\item \textbf{6.5.2. Guarantor}
\end{itemize}

\textsuperscript{429} See Günther, “Assessing the Sources,” 92.

\textsuperscript{430} For more on this, see above on page 10 note 16.
Ibn al-Qāsim and Mālik are both guarantors of Saḥnūn. Ibn al-Qāsim can be classified as a direct guarantor and Mālik can be classified as an older, earliest, main, original guarantor of Saḥnūn. Although it may appear that Mālik should also be listed as a “direct” guarantor of Saḥnūn, for according to Günther’s definitions, a direct guarantor is a “senior person, whose material the compiler used directly (indicated *inter alia,* by direction quotations) without having been in personal contact with this senior person.”

However, throughout the text of the *Mudawwana,* whenever Mālik is quoted, the quotation is spoken as if through the personality of Ibn al-Qāsim. A clear example of this is in lines 26 to 32 where Ibn al-Qāsim quotes directly from the speech of Mālik. Here Saḥnūn, through the text of the *Mudawwana,* is quoting Mālik directly, and in that way Saḥnūn can be classified as a direct guarantor of Mālik. Yet Ibn al-Qāsim is seen as always being the intermediary between Saḥnūn and Mālik. As such, there is reluctance to follow this strict definition of Günther in this instance by classifying Mālik as a direct guarantor of Saḥnūn. Through this conversational style, contact between Saḥnūn and Mālik is avoided in a sense, and a transmitter is required for Saḥnūn to “hear” Mālik. This protocol implies that there is no direct written source to which Saḥnūn would have been able to appeal, being required to get his teaching on Mālik through Ibn al-Qāsim and Ibn al-Qāsim’s interpretation on that teaching being necessary. It may of course have been the case that Ibn al-Qāsim had notebooks of Mālik’s sayings to which Saḥnūn had access. These notebooks could have been Ibn al-Qāsim’s quotations of the speech of Mālik as found within the *Mudawwana.* Understanding what we do about teaching styles prevalent during this formative period of Arabic texts, the conclusion which could be drawn here is that the narrative implies a necessary lengthy, intensive teaching time for Saḥnūn from Ibn al-


432. See earlier in Günther’s article for conclusions he draws from the literature available. Specifically relevant here is the conclusion that sessions were held by scholars for the purposes of teaching that took place in communal locations such as mosques, or even in homes of the teacher. See Günther, “Assessing the Sources,” 77.
Qāsim. This would speak to the training which is implied is necessary in order for one to be fully qualified to be able to sufficiently judge on matters not specifically outlined previously.

Throughout the larger text of the *Mudawwana* where Ibn al-Qāsim presents his own opinions, he takes on the role of first or main guarantor in the place of Mālik. This allows for a shift in the teaching. In some instances through the balance of the larger text, Saḥnūn himself also takes on the role of first guarantor, main guarantor and informant. It occurs specifically in those instances where Saḥnūn’s name is invoked such as in ḥala Ṣaḥnūn.\(^{433}\)

The personalities as demonstrated here move rather fluidly through these different roles. This is due to the need for the student to learn from the teacher, and then to take on the role of teacher/compiler, in a new location, becoming the area expert. Becoming a teacher was an important shift not just for Saḥnūn, but it allowed for the teaching of the Mālikī tradition to be passed from Egypt further west into the Maghrib region. This shift allowed for Saḥnūn to take on a much greater role in the dissemination of the traditions of Mālikī thought. Although this brought Mālikī teaching to the region of Kairouan, and assisted in establishing Kairouan as a main teaching area, it is not the evidence needed to demonstrate the establishment of the Mālikī tradition as the dominant tradition in the region. It is believed that this took place during the time between Saḥnūn and Ibn Abī Zayd as well as al-Qābisī.

### 6.5.3. Informant and Teacher

As Ibn al-Qāsim was a direct guarantor of Saḥnūn, having had personal contact with him. He is also classified as an informant. The passage, through its narrative, provides ample evidence of Ibn al-Qāsim teaching Saḥnūn. The style of the text, *masāʿil*, may lead one to question whether or not these narratives took place as recorded. For the purposes of defining the relationship between Saḥnūn and Ibn al-Qāsim, other historical sources provide enough evidence.

\(^{433}\) See above page 155 for a specific reference in the text to this phrase. This phrase is encountered too many times to list them all here. In the first volume of the 1323/1905 Cairo edition alone it occurs 51 times, dispersed rather evenly between pages 100 and 400. The first and last hundred pages of this volume have few occurrences of the phrase.
evidence to indicate Saḥnūn’s ṭribla east for the purposes of studying under Ibn al-Qāsim.434 Saḥnūn learned directly under Ibn al-Qāsim during his ṭribla to Egypt, attending his lectures. Ibn al-Qāsim is also technically classified as Saḥnūn’s teacher.

6.5.4. Authority

The word authority, as it is used here, refers to “any scholar to whom material incorporated in a given compilation is explicitly ascribed.”435 Günther’s definition restricts the application of this definition to individuals, however, in the translated section of the text, an appeal is made to a higher authority which does not fit this category as defined. The kitāb of Allāh, to which Ibn al-Qāsim quotes Mālik as making reference, does not fit the category of scholar, however it plays the same role as a scholar to whose work reference is made. The three main personalities, Saḥnūn, Ibn al-Qāsim and Mālik, all technically fit this definition, as all three are ascribed with material in this text. The role of Saḥnūn in this portion of the text is clearly of one asking questions, for information and clarification, yet this material is still ascribed to him. It may be that Günther’s original intent was not for those asking questions, but rather those making statements to which the role of authority should be ascribed. Here Günther’s qualification is important for he also states that the category of authority reflects two dimensions, the second of which is the significance of the materials ascribed to this scholar. He describes an “internal” dimension to the relationship between the scholar and the text in order to establish authority, and this is clearly the case concerning both Mālik and Ibn al-Qāsim in the text in question. For example, in the translated text as found on page 191, in lines 6-10 of the text, Ibn al-Qāsim is giving his opinion. He states that outright in line 10. This establishes a clear “internal” dimension that Ibn al-Qāsim has with the text. He is not simply transmitting information from an authority, being an authority in that process, but he also is providing content, textual content itself, putting himself in a higher role of authority

434. See above on page 55 for the discussion on Saḥnūn’s ṭribla from the primary sources.
other than simply passing on information as an informant. Similarly, when Ibn al-Qāsim quotes from Mālik in lines 11-13, 17, 25-30 and 34-42, he is demonstrating a close internal relationship between Mālik and the text given. The shift in speech from indirect to direct speech, as recognized previously and mentioned above on page 198, strengthens the sense of authority given in the passage. And further, in that vein, the referencing of the kitāb of Allāh is clearly another intensification of authority through the text. Günther’s classification of authority here includes every individual referenced in this section, Saḥnūn, Ibn al-Qāsim and Mālik, as well as the kitāb of Allāh, even though not a “scholar.”

6.5.5. Writer, Author and Editor

The nuances which exist between these three terms as defined by Günther are quite clear in theory. However, in the classification of these categories concerning the Mudawwana, the differences are too subtle in order to segregate them into separate categories. So they have been gathered together in order to discuss them collectively.

The following are reminders of the definitions as provided by Günther above in section 4. Günther defines a writer as: “any scholar to whom a conclusively edited written work is attributed can be termed a ‘writer.’” Günther states an author is “a ‘writer’ whose written work is provably the result of creative scholarly efforts” (emphasis Günther). Editor, the last of these trio of terms is further clarified by Günther as a “recensionist.” He defines this individual as a “writer” who it has been proven has “relied, in all or in most cases, on one and the same scholar (or ‘direct guarantor’)—while the latter can be identified in the bio-bibliographical literature as the ‘author’ of a book dedicated to the topic relevant in this context.”

436. See above section 4 beginning on page 82.

210
To simplify the understanding of editor by application to the current research, Saḥnūn, if seen as a writer, could be classified as an editor—of the Mudawwana—if he is proven to have relied, in all or in most cases, on Ibn al-Qāsim as his direct guarantor, if Ibn al-Qāsim, is recognized in the bio-biographical literature⁴⁴⁰ as the author of a book dedicated to the topic relevant here. As the classification of Saḥnūn as an “editor” of the Mudawwana is dependent on whether or not Ibn al-Qāsim is seen as an/the author of the Mudawwana, it is necessary to clarify his role in that regard. Referring to our definition of author above, it must be asked whether or not Ibn al-Qāsim can be said to have made “creative scholarly efforts” concerning the Mudawwana. As seen above, in section 6.5.2 on page 206 Ibn al-Qāsim is clearly the teacher, informant and direct guarantor of Saḥnūn. The recensions of the Mudawwana, as they have been examined in this research, are recognized by medieval transmitters to have been recensions ‘an Saḥnūn, ‘an Ibn al-Qāsim, ‘an Mālik. Saḥnūn, according to these transmitters, is the final link in the chain who receives the “material” which is incorporated into the Mudawwana. All three of these personalities are credited through this recension list as having a role in the creation of the Mudawwana. Yet the lion’s share of the creative work of the Mudawwana appears to rest with Saḥnūn. Although Ibn al-Qāsim makes creative statements in the Mudawwana, it is through the inquiries of “Saḥnūn” that these creative statements are made in the text. Ibn al-Qāsim is indeed the author of something, but to say that Ibn al-Qāsim himself is the author of the Mudawwana would be crediting him with more than is reasonable. Were his comments to Saḥnūn seen to have come from notebooks of his own, which Saḥnūn copied or recorded in some way, it would be correct to say that Ibn al-Qāsim is the author of those notebooks, but not of the Mudawwana. As the Mudawwana is created with much more than just the statements “authored” by Ibn al-Qāsim, in this respect. Thus the creativity found in the Mudawwana is attributable to Saḥnūn to a greater degree

⁴⁴⁰ Here it is assumed that Günther is referring to the ṭabaqāt literature or what many refer to as the biographical dictionaries of the classical period, e.g. al-Qāḍī ‘Īyāḍ’s Tarīkh al-mudārik or al-Mālikī’s Riyāḍ al-mufīs.
rather than Ibn al-Qāsim. In considering his role in the *Mudawwana*, Ibn al-Qāsim should be limited to the roles of teacher, direct, main guarantor of Saḥnūn and even one of the sources of the *Mudawwana*. As Ibn al-Qāsim should not be classified as the “author” of the *Mudawwana*, it then becomes unreasonable, by the definitions provided by Günther, for Saḥnūn to be considered as the editor of the *Mudawwana*, for the latter classification is dependent on the former.

Concerning the role of writer, it is not disputed that the work of the *Mudawwana*, by all who are familiar with it, is attributed in one form or another to Saḥnūn. So the attribution aspect of Günther’s definition is not a hurdle. The difficulty in the classification of Saḥnūn as a writer with this definition is in the “conclusively edited written work.” The word “conclusively” here, in Günther’s definition, seems to be somewhat ambiguous. Does Günther mean that the work is clearly edited—that clear editing effort has been done on the work? That is what is understood here. The *Mudawwana* is clearly both written and edited. The significant point, for classification purposes here, rests with the question of whether or not the weight of this definition rests more on the fundamental of “edited” or on “written.” The mass of evidence to support the work of Saḥnūn in editing the text is too heavy to shift the chief burden of it to some other writer: the biographical dictionaries which include details of Saḥnūn’s trip east, his studying with Ibn al-Qāsim, his inquiries concerning the *Asadiyya*, fragments of the *Mudawwana* which date as early as the late 3rd/9th century, commentaries on the *Mudawwana* which attribute the work to Saḥnūn, copies of manuscripts not only in North Africa but also into Andalusia, and even into West Africa which attribute

441. It could be argued that Günther’s intended meaning here of conclusively edited written work is that the work must have been written down in some form, edited to some extent, and completed to some degree into a form that is recognizable as a complete work. If that is the case, it is not clear given Günther’s definition. This, though, is not the sense in which Günther’s definition is used.

442. See below note 448 on page 216 concerning the title of Ibn al-Furāt’s works.

443. *The Kano Chronicle*, a work that records the history of parts of northern Nigeria from the 4th/11th century until the time of the Fulani in the 13th/19th century, documents the arrival of Islam in the 9th/15th century by Mohamma Rimfa, the son of Yakubu. He built a mosque and minaret on the site of their sacred tree, establishing Islam as the local religion. In the period just before this, during the reign of Yakubu b. Abdullahi, Shehu Abu
the work to Saḥnūn. Each piece of evidence, in and of itself, is not sufficient to provide proof of Saḥnūn’s involvement in the creation of the Mudawwana but taken together as a whole it is a large collection of evidence in favour of Saḥnūn’s significant involvement in the creation of the Mudawwana. Admittedly, much of this later “evidence” could easily be attributed to a traditional understanding of the role of Saḥnūn. But even early fragments attest to Saḥnūn having been responsible for something in the creation of the Mudawwana. However, there is little definitive proof that it was Saḥnūn himself who wrote text onto parchment. It may seem most logical and reasonable that he did. Yet the burden of proof would not pass a “beyond a shadow of a doubt”—not that this is a trial of any sort. Yet, that Saḥnūn is the “writer” of the Mudawwana might not, for some, move from the realm of speculation into the realm of fact. 444 Here, of course, also, must be a clear understanding of what is meant by the name Mudawwana.

The Mudawwana, as a text, was formed over a period of centuries. From the evidence presented, this much is clear. The form that it took in the time of Saḥnūn is different than the form it was found in during the time of al-Qābisī. By the time of al-Qābisī the Mudawwana was understood to be a compendium of kitābs, the material of which had come down through the jurists as the writings of Saḥnūn based on source material gathered from Ibn al-Qāsim, Mālik and others.

When using the definition given by Günther, and it can be agreed that one can be the “writer” without having to actually put reed to parchment in recording the text, then it would be hard to dispute that Saḥnūn is not the “writer” of the Mudawwana. For although it cannot

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444. Tanselle has made an interesting statement in saying that the distinction between these two, fact and speculation, is not self-evident. He goes on to say that “historical inquiry has no choice but to treat speculation as fact, because facts are speculations that informed observers agree to accept until they are persuaded by a contrary argument.” See Tanselle, “Textual Instability and Editorial Idealism,” 10n15.
be proven that Saḥnūn himself actually wrote the words down, it could hardly be argued that he did not create these words and teach them to his students. The evidence does seem to support that Saḥnūn himself created something, either orally or possibly in writing, which later became written text, and still later came to be known as the Mudawwana. The evidence also seems to support that Saḥnūn was responsible for the composition of the Mudawwana in its form before it became a written text. If being a “writer” does not require one to physically “write” the text, and if the greater task in writing considered here is in editing, which is accepted, then it should be agreed, and here Tanselle’s definition of “fact” is quite useful, that until it can be proven otherwise, Saḥnūn “wrote” the Mudawwana.

Concerning authorship, Günther states an author is “a ‘writer’ whose written work is provably the result of creative scholarly efforts” (emphasis Günther). With this additional definition, the distinction in definition between the terms author and writer is that a writer must been seen to actually edit, by writing, something, whereas an author must be seen to “create” something. Note that the difference between the editor and the writer, according to Günther, appears to be in the number of sources (direct guarantors) upon which the individual relies.

Classifying the role of Saḥnūn with these neat, tight boxed, definitions is not cut and dried. From the evidence presented, Saḥnūn seems to have been responsible for the greater part of the creation of the separate kitābs, which have been examined in this research. For example Kitāb al-Wuḍū’, Kitāb al-Nikāh and Kitāb al-Qisma, to name just three of the many, are all kitābs, the content of which was created by Saḥnūn, generally in the form that they have reached us today through the modern editions of al-Mudawwana al-kubrā. However, that Saḥnūn himself was responsible for a compendium of these kitābs, which in the classical period came to be known as the Mudawwana and then in the modern period came to be

known as *al-Mudawwana al-kubrā*, is highly doubtful. In “creating” these building blocks (*kitābs*) which later were brought together to make what became the *Mudawwana*, Saḥnūn used material from a few sources. There can be no doubt that with the evidence presented by Muranyi concerning the *Asadiyya*, that this was indeed some form of impetus for Saḥnūn in his effort to present juristic substance. That, together with the teachings of Mālik, the interpretations of Ibn al-Qāsim, Ibn al-Qāsim’s additional opinions on a multitude of matters, as well as Saḥnūn’s own opinions given a lacuna of judgments, were the basic building blocks which Saḥnūn used in order to create his *kitābs*.446 Did Saḥnūn himself write these *kitābs* on some form of record, as in parchment, in order to preserve them physically in the form in which he created them? This is unclear. That his students wrote them down is definite, supported by the unpublished evidence noted by Muranyi and Brockopp of a fragment from the end of the third/ninth century. Yet the form of these writings from what they were to what they became is a process that is as yet not fully understood. As more evidence becomes available, it may be possible, hopefully, to better determine the form that Saḥnūn’s writings took in the period between his own life and that of the time of al-Qābisī, both milestones in the formation of the *Mudawwana*.

The nature of the *Mudawwana* has been understood in different ways at different times. It is not at all provable that the title of the work, *al-Mudawwana*, came from Saḥnūn himself.447 The nature of the *Mudawwana* during the time of Saḥnūn can only be understood by the most reasonable conclusions that can be drawn from the evidence available. The evidence presented throughout this work leads to the conclusion that no sense of a *Mudawwana* was in the mind of Saḥnūn at the time of his “writing” of the *kitābs* which later

446. As listed above on page 90, Muranyi would add to this list of “building blocks” for the *Mudawwana* the *Muwatṭa*’ and *Jāmi*’ of Ḥabd Allāh b. Wahb, the *Mukhtāṣar al-kabīr* of Ḥabd Allāh b. Ḥabd al-Ḥakam along with the writings of Ashshāb b. Ḥabd al-ʿAzīz. See Muranyi, *Materialien*, 1.

came collectively to be known as the Mudawwana.\textsuperscript{448} It is possible that Saḥnūn, in his role as qāḍī al-quḍāt, felt it necessary to establish as much as he could as a theoretical basis for legal judgments that he felt were in line with the teachings of Mālik. This may have been his motivation for creating these kitābs which came to be known as the Mudawwana. But it is likely this will never be known.

Due to a shifting understanding throughout time of the idea of al-Mudawwana, different time periods will ascribe different personalities as being responsible for these various roles in relation to the Mudawwana. If the definition of the Mudawwana is to be the collection in classical times of kurrāsas of kitābs known as “min al-Mudawwana” then it would appear that the role of editor of the Mudawwana should really be attributed to al-Qābisī. Likewise the modern editions of al-Mudawwana al-kubrā each have their own editors, all responsible for having relied on Saḥnūn as their “direct guarantor”, through the manuscripts that have come down to them through the hands of various transmitters. So the modern editions of the Mudawwana which are present today have experienced the editing work of a minimum of two different editors.

Concerning the other two roles, those of author and writer, the evidence presented seems to naturally lead to the following conclusions:

• Both Mālik and Ibn al-Qāsim “authored” material to which they are ascribed in the Mudawwana.

• Saḥnūn collected this authored material of Mālik and Ibn al-Qāsim while on his riḥla east, studying with Ibn al-Qāsim.

\textsuperscript{448} There is likewise no evidence, to my knowledge, to support the idea that a “book” of the Asadiyya existed at the time of Saḥnūn. The only known evidence to date concerning the Asadiyya from any time close to that of Saḥnūn does not refers to Ibn al-Furat’s writings as the Asadiyya. There is, though, a reference to the kutub of Asad b. al-Furat. Muranyi cites an early 4th/10th century reference by Andalusian Ibn al-Faraḍī. See Muranyi, Die Rechtsbücher, 9.
• Saḥnūn creatively put this authored material of Mālik and Ibn al-Qāsim into the form of kitāb, or sections of material related to the same subject.

• Saḥnūn taught this material to his students in the form of questions and answers in a conversational style between himself, the inquirer, and Ibn al-Qāsim, the teacher.

Mālik and Ibn al-Qāsim can both be considered as sources of the Mudawwana, but neither of them, based on the criteria of creativity, should be credited with being the author of the Mudawwana. If the Mudawwana is understood to be the collection of kitāb during the classical/medieval period, Saḥnūn cannot be rightly seen as the editor of the Mudawwana, due to the fact that Ibn al-Qāsim is not seen as the author of the work. Saḥnūn should rightly be classified as the author (Günther’s Verfasser) of the Mudawwana given his creative role. However, given the strict definitions of Günther’s terminology, it cannot be supported that Saḥnūn be classified as the writer of the Mudawwana. This will all seem very confusing to those with a shallow reading/understanding of the Mudawwana. In order to try to rectify this potential confusion, and not to exacerbate it, I would propose an additional term be added, allowing for Saḥnūn to be distanced from the somewhat ambiguous terms, in this context, of author and writer. This new term I would propose is “creator”. Although the idea of a Mudawwana was likely not in the mind of Saḥnūn at the time of his creation work, he was, and it is believable that he realized it, in the business of compiling (yadawwina). In this sense, even though the title of Mudawwana may not have been in his mind, it is reasonable to conclude that Saḥnūn realized that he was creating a mudawwana (compilation) of works of Mālikī fiqh, simply not the Mudawwana.
Chapter 7
Conclusions

When Saḥnūn set out on his journey eastward, he could not have realized the product that would result from his riḥla. The effects of his voyage and schooling under Ibn al-Qāsim still impact the world of knowledge in Mālikī studies; the “book” that was begun through the journey, learning and teaching of Saḥnūn is still evolving today. In an age of computers, internet and wiki pages, the concept that users of a product would add content to that product is an easy one to understand. In the case of Saḥnūn’s Mudawwana, updating has been happening to “his” text since he first began teaching his lessons as a qāḍī in Kairouan in the region of the Maghrib.

The book that we have today, entitled al-Mudawwana al-kubrā, is related to, but is not in fact, the same product for which Saḥnūn is directly responsible. The modern book has been influenced by numerous personalities over the centuries beginning with the initial creation at the hands of Saḥnūn. Although Mālik’s words and dicta are a vital part of the content of the book, along with the teaching of Ibn al-Qāsim, neither of them should be given credit for the creation of the Mudawwana, nor should the text be referred to as Mālik’s Mudawwana nor Ibn al-Qāsim’s Mudawwana. The evidence supports the belief that it was Saḥnūn who was responsible for the genesis of this work. However, alone, without the content of Mālik and the opinions of Ibn al-Qāsim, Saḥnūn could not have created such a work.

The question of who should receive credit for the text has different answers depending on the perspective and time period one has of the text. The time period in which one lives will shape the questions asked. In modern times, the question revolves around who wrote the words down: Who put the sentences, with ink, on paper or parchment? In classical times, it was not the final recensionist, nor even some of the additional sources along the way which were the important names in creating the text. Rather it was the names that gave the
text its authority which were celebrated. In order to be viable, a text needed not only someone who wrote the words down, but a name behind those words stamping their seal of approval on them. For this reason, during the medieval period, it is understandable why the text was referred to by some as “Mālik’s book.” Coming to the modern era, noting that as times change, and along them ideas and perspectives, the concept of the more significant role shifts to those who were responsible for the “creative” work of assembling the text—combining the authoritative dicta—still giving credit to the one responsible for speaking them, but adding a supportive text around it. In modern times, it is Saḥnūn’s name which should be recognized on the front cover of the text. Mālik, and Ibn al-Qāsim, for that matter, still receive their fair share of credit. Yet Saḥnūn has been the personality which has shaped the material into something new.

Like perspectives of those responsible, the Mudawwana itself has not been a static object. As has been presented, there is no evidence to support the belief that Saḥnūn himself had a “book” in mind when he wrote his various writings on the legal understandings of the teachings of Mālik. That he himself wrote some things down cannot be in doubt, but that he actually wrote the text of the kitābs, largely the way we read them today, cannot be assured. His teachings came to be written down in the form we would most recognize them, likely by his own pupils, based on writings that Saḥnūn himself must have made as a result of his education in Egypt. It is possible that Saḥnūn himself had written and dictated these lessons to his disciples before they then copied them into manuscript form, although no evidence so far uncovered can support (or refute) this speculation. There are no extant notebooks belonging to Saḥnūn. Given events that have taken place between then and now, this is not surprising. Nor are there any holographs of the Mudawwana, likely because they never existed in that form. It seems more likely that his students were the first ones to write the work down in the question and answer format which we read today of the content of the Mudawwana. Those that followed, while copying texts, had the freedom to insert in various
places phrases that indicated some teaching had come direct from Saḥnūn himself—“Saḥnūn said.” Soon after the teaching had taken place, revisions were made. It seems most reasonable to believe, though, that Saḥnūn himself was responsible for the determination of various blocks of teaching which would eventually become the kitābs of the Mudawwana.

It is hard to determine when the collection of kitābs which make up the content of the Mudawwana first came to be gathered together, figuratively if not physically, with the name of Mudawwana being associated with it. The evidence presented though, seems to support the belief of Muranyi that it was the significant work of al-Qābisī which brought the Mudawwana together. It is most certain, though, that even with this sense of a “book” forming by the gathering of the kitābs, that these kitābs themselves continued to circulate independent of the others which “belonged together” in this new form.

Events from history may help to situate this collection during that time period. In reviewing the history of the region of Kairouan from chapter two, recall that the Aghlabids, a generally corrupt but powerful and industrious dynasty, reigned during the time of Saḥnūn. Following the Aghlabids came the arrival of the Fātimids. Although possibly of a more pious character, religious conflict with the Sunnīs would not have created an atmosphere to foster deep religious development, such as demonstrated in the Mudawwana. However, with the departure of the Fātimids to Egypt and the arrival of the Zīrids, an historical window of opportunity appears to have opened prior to the time of the invasion of the Banū Hilāl. It is during this time period when it seems most reasonable that the Mudawwana would have been formed in the sense of a book—the sense that the various kitābs understood to have been taught and passed on by Saḥnūn were now part of a larger whole, a compendium of laws. This time period allowed other individuals like Ibn Abī Zayd al-Qayrawānī to influence the establishment of the Mālikī madhhab. Ibn Abī Zayd’s own book, al-Nawādir wa al-ziyādāt, containing judgments not found in the Mudawwana, may have awakened a strong desire amongst other members of the ‘ulamāʾ during his time to study anew the material within the
**Mudawwana** leading to the firm establishment of the Mālikī madhhab in the region. For such an establishment, a necessary text, such as Saḥnūn’s would have secured the Mālikī position. Within one century of the death of al-Qābisī, at 476/1083-84, the manuscript for the 1323/1905 Cairo edition had been written, providing a *terminus ad quem* for the formation of the *Mudawwana* as a book.

The rise of the *Mudawwana* to its status as a text of such great import was also a journey in formation. A “*kitāb* of Asad” did exist, and the rivalry between the Ḥanafī and Mālikī madhhab is attested to in the historical records. Evidence of the erasure of listening certificates connected with the *Asadiyya* (if I can be permitted to use that term) supports the idea of one text losing ground and importance. It is not clear that the *kitābs* of Saḥnūn took a seat of preference and priority from their beginnings. It is not known how exactly it came about that Saḥnūn’s text took priority, only that the historical record shows the *Mudawwana* came out on top in the end. It is entirely possible that Saḥnūn and “his book” received the honour they did as a result of the eventual triumph of the Mālikī madhhab over that of the Ḥanafī. For those in Kairouan, Saḥnūn was a home-grown scholar. He came to fame after the *miḥna* in his few short years as chief *qāḍī* near the end of his own life. In the face of opposition he remained firm in his belief in the Qurʾān despite the opposition he faced from the political authorities as a result of his resolute faith. He was a man of a certain degree of character, he did not bend under that pressure—but the tide turned and he was given his own hand at power. Saḥnūn was a man of retribution with little mercy—an attribute that was likely not decried by the people who existed in such turbulent and often violent events between tribes, dynasties and nations. The absence of clear evidence cannot verify how Saḥnūn and the *Mudawwana* eventually prevailed as the leading thought.

Up until the time of the *Mudawwana’s* rise to prominence, various roles had already been filled in the formation of the *Mudawwana*. Mālik and Ibn al-Qāsim, as well as *ḥadīth* and Qurʾānic quotations, fill the role as source material, Saḥnūn as creator, disciples of
Saḥnūn acting as editors and transmitters of the *kitābs* and then finally, likely al-Qābisī filling the role of compiler or instigator of the book. It is not until this period of time that evidence exists for the concept of a specific group of *kitābs* being thought of as belonging together in some form. That it was labelled and advertised as a “book” should not imply that it was treated as such by all other jurists and commentators. Yet just over one century later, the time of the commentators like Ibn Rushd, and more clearly that of al-Rajrājī, evidence demonstrates that commentators from both near and far in relation to the locus of Kairouan, refer to the text as a book in its own right.

Even in that period of time, though, what the “book” consisted of is not clear. The modern editions, all based to a large extent, on manuscripts from the medieval period, demonstrate through their texts unfixed names and an unfixed order of the *kitābs* within the text. The best evidence for a fixed order is the table of contents provided by al-Qāḍī Ḥyāḍ. Yet even this order is not strictly followed in his own text of the commentary.

The formation of the *Mudawwana* did not end at the time of the commentaries. The *Mudawwana* of the medieval period eventually came to be known as *al-Mudawwana al-kubrā*, but not until 1323/1905. It was to be another more than eight centuries before that manuscript would be published in a new form, several *kitābs* bound together in volumes, with a sense of continuity added to it through more consistent phrasal formulas and visual cues. The addition of the word *al-kubrā* to its title, likely borrowed from, or possibly even confused by, the Ibāḍī *Mudawwana*, gives the text a sense of grandeur. This splendour is not unwarranted given its immense size, but it was certainly not intended by the creator, nor even any of its medieval commentators, as being a part of its title. A new edition, in a new era, was given a new name.

The formation of the *Mudawwana* can rightly be divided into three distinct time periods: formative, classical and renaissance (*nahḍa*). Within each period individual
personalities, or those occupying a particular role such as transmitter or editor, have had varying influences on the different aspects of the formation of the Mudawwana.

The first period should be that classified as the formative period, involving the time period of the life of Saḥnūn. From the start, Saḥnūn’s greatest influence on the Mudawwana, between the aspects of content, structure and presentation, has been on the content of the text. It appears that Saḥnūn’s primary intent during this period was to gather information, both prior to and during his riḥla east, from authority figures such as Ibn al-Qāsim, and possibly to correct information passed on by others. Whether or not he brought along with him copies of the “kitāb of Asad” is irrelevant for this particular discussion. That Asad’s work influenced Saḥnūn’s should not be doubted, yet the specific influence that work had is unknown. Coupled with that prior work should be added Saḥnūn’s own research and his gathering of source material while in Egypt. His return to Kairouan and subsequent teaching allowed that material to take form, either figuratively or physically, through his lessons with his disciples. He structured the content through the form of questions and answers, creating a structure of the content which has remained fixed through the centuries. It is highly doubtful that his disciples would have influenced the formation of the content in this matter, for no manuscripts vary from this format of Saḥnūn’s teaching. Therefore using masāʾil must have been an early decision in the formation of the text and should be attributed, without doubt, to the times of Saḥnūn. So, Saḥnūn is afforded some significant influence in the area of structure along with content. In the matter of presentation, Saḥnūn’s influence is not perceptible in either the manuscript witnesses or the modern editions. So concerning his influence on the formation of the Mudawwana, Saḥnūn can be said to have had a high influence on the content, a moderate influence on the structure and an imperceptible influence on the presentation. The death of Saḥnūn, and the beginning of his lessons being taught by the first generation of his disciples should be considered the transition between the
formative and classical periods in the formation of the *Mudawwana*. Further significant content was not added to the text after this time.

The second period in the formation of the *Mudawwana*, which I am calling the classical period, is a time in which the *Mudawwana* took on a written form, became structured to a high degree and began to be recognized rather consistently amongst jurists and scholars alike as having a high degree of relevance to contemporaneous events. During this time, there appears to have been a significant increase in the copying of the *Mudawwana*, with manuscripts found in a dispersed area throughout the Maghrib. Transmitters copying manuscripts would have influenced the content of the text slightly through marginal notations that may eventually have ended up in the text, as well as with the addition of subject headings. Besides subject headings, transmitters also influenced the structure of the work through the development of *kurrāsas* containing one or more *kitābs*. Presentation of the text was also significantly influenced during this time period with the addition of *kurrāsa* title pages, as well as the designation that the *kitāb(s)* came “*min al-Mudawwana*,” admittedly affecting both structural and presentation aspects of its formation. With the current body of evidence, it is not possible to distinguish between the influence of those who came before al-Qābisī, such as Ibn Abī Zayd or his students, yet there was certainly influence for a period of time before, during and after the lifetime of al-Qābisī, as evidenced by Ibn Abī Zayd’s own additional work on the topics discussed within the *Mudawwana*. The period did not stop with al-Qābisī either, as the commentators who came later, who should most certainly be included in this classical period, also influenced the conception of the *Mudawwana*. The influence of the commentators is the least significant of all the personalities and roles. The greatest role of the commentators seems to be the significance of their work as a litmus in demonstrating the perception that scholars have had of the *Mudawwana* over a two century period. This time began two centuries after the death of Saḥnūn, shortly following the time of al-Qābisī. During that 200 year spread, the commentators demonstrate a clear development in their perspective.
of the text, seeing it move from the “book of Mālik,” as referenced by al-Barādhiʿī, all the way to al-Qāḍī ʿIyāḍ’s fixed nature of the Mudawwana complete with a listing of the kitābs. Included in the commentaries, although a full century later, should rightly be al-Rajrājī, as he demonstrates the on-going solified perspective that the Mudawwana is indeed a book in its own right.

The renaissance (al-nahḍa) period in the formation of the Mudawwana begins in the 14th/20th century with the publication of the first modern edition of al-Mudawwana al-kubrā. The label renaissance signifies that this is a re-birth of something that existed previously. It comes out of the Nahḍa of culture and history within Arab civilization itself. The nahḍa of the Mudawwana brings a new form, being created out of what came before mixed with the influence of the modern editors. A new name accompanies this new form, al-Mudawwana al-kubrā. The editors have been divided into both an early and late renaissance period in the formation of the Mudawwana as those coming in the late period have significantly less influence over the modern editions than those in the early period. The primary influence of the modern editors in the early renaissance period is on the presentation of the text. This is accomplished through the publication of the text with the use of modern printing presses, the addition of religious symbolic form. The use of footnotes in the text, a title page for the work as a whole and the description of the manuscript used as the source for the edition all provide cues concerning the authority behind the text in the modern edition. Adding the names of the publishing companies onto the text is another layer of authority joined with the previous layers. The modern editors also have a moderate influence on the structure of the text through the division of the text into volumes, published in hard-cover, leather-bound books.

The late renaissance period furnishes the text with some improvements, but the major significance in the renaissance period takes place at the beginning of the 14th/20th century.
Succeeding editions add supporting apparatus and one even introduces a structural development but these are of little consequence in the larger scheme of things.

Figure 15 on page 227 below provides a visual representation of the influence of the various personalities and roles on these characteristic aspects in the formation of the *Mudawwana*. The horizontal axis of the graph runs chronologically from left to right, denoting the personalities and roles described: Sahnun, the time of Ibn Abī Zayd, al-Qābisī, the commentators, and the modern editors, both early and late. The vertical axis provides a numerical scale upon which values are placed for the varying influence that each of the personalities/roles have had on the text. Granted the numerical values applied are somewhat subjective, and not based on analytical figures, there is a high degree of confidence, as the influence of the various roles/personalities can be distinguished between minimal, moderate, highly moderate, significant and the like. So although this is not a mathematical analysis, nor should it be interpreted that way, it is illustrative of the comparative influence these roles/personalities have had on the formation of the *Mudawwana*. Three different aspects are analyzed on the three-dimensional graph, which are, from front to rear: content, structure and presentation. The visual dimension of the evidence will likely conjure new images in the mind of the reader as the influence of these various personalities is considered from a new perspective.

When reading a modern published edition of a formative/classical/medieval text, one must realize that what is seen on the page may not necessarily be what was intended by the original creator. One may assume that the text of the modern edition is based on manuscript witnesses, but modern editors are not forthcoming in declaring the sources for their editions. Simply noting that an edition is based on “significant new manuscript evidence” or “a complete manuscript from the 5th/11th century” does not allow for the transparency needed in which to conduct verifiable, scholarly historical research. This, though, is clearly not the
The aim of the modern editor. Rather, his purpose is more suited to bringing the text closer/making the text accessible to the reader. This objective requires textual decisions on his part, examples of which have been clearly presented above.

The Mudawwana, as a text, has been through a lengthy period of formation. Its primary genesis began with Saḥnūn in the early 3rd/9th century. Notes were taken, lessons were taught, and a text was generated. Some collaboration between teacher and student appears requisite with the roles of creator and editor and writer often flowing between different personalities. Some two hundred years later, manuscripts were copied which testify to the existence, in the minds of the copyists but not quite yet in the minds of the commentators, of a Mudawwana, a collection of these kitābs begun with Saḥnūn’s teaching. Transmitters copied old manuscripts onto new parchment, sometimes adding words or

Figure 15. A Visual representation of the varying influences of personalities/roles on characteristic aspects in the formation of the Mudawwana.
phrases, birthing new variances within the text. Individual *kitābs* were bound together providing definition and a sense of completeness. Over time, the virtual bond of these *kitābs* with each other strengthens to where student and commentator alike recognize the transmission of knowledge and judgment from Mālik to Ibn al-Qāsim to Saḥnūn as a collection—a book has been formed, maybe not bound together fully, but nonetheless a book. Some centuries later, following an Arabic revival in works of the past, the book was re-shaped, re-formed. Modern editors presented the old *kitābs* bound together in many volumes, portraying a unified sea of knowledge. Much of the content was the same, but with a new form, it took on a grand new name—*al-Mudawwana al-kubrā*. The formation of the *Mudawwana* may have begun in the 3rd/9th century, but it has shown no signs of ceasing.
Bibliography


236


Appendices
<table>
<thead>
<tr>
<th>rizma according to Fes ms Qarawiyin 577</th>
<th>kurrāsa grouping according to BL Or 6586</th>
<th>kitāb of the Mudawwana</th>
<th>Transliteration</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>rizmat al-Shara‘ī</td>
<td></td>
<td>al-Wuḍū‘</td>
<td>Book of ablutions/ritual purity</td>
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<td>Book of prayer</td>
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<td>al-Janā‘iz</td>
<td>Book of fasting</td>
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<td>Book of seclusion</td>
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<td>Book of fasting</td>
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<td>rizmat al-Nikāḥ</td>
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<td>Second book of zakat</td>
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<td>Third book of hajj</td>
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<td>Book of jihad</td>
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Appendix A - page 243
### Table of Transliteration and Translation of *kitābs* and section groupings

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A Comparison of the \( \text{kitāb} \)s of four modern editions of the Mudawwana

Appendix B - page 248
A comparison of the kitāb found in five commentaries of the *Mudawwana* and the kitāb list of the 1323/1905 Cairo edition

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</table>

Appendix C - page 250
A comparison of the kitābs found in five commentaries of the *Mudawwana* and the kitāb list of the 1323/1905 Cairo edition

<table>
<thead>
<tr>
<th>B</th>
<th>D</th>
<th>G</th>
<th>I</th>
<th>M</th>
<th>O</th>
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</thead>
</table>
| 74 | كتاب الفكاية والجميلة | كتاب الفقه | كتاب الحربية | كتاب القوط | كتاب الغوث | كتاب الجواهر
| 75 | كتاب الفكاكة | كتاب الجواب | كتاب المرجع | كتاب القوط والجميلة | كتاب الجواهر | كتاب الغوث
| 76 | كتاب رمادنا | كتاب المضارع | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 77 | كتاب الفكاكة الآثرة | كتاب المغاربة | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 78 | كتاب الفكاكة الآثرة | كتاب الحسبة | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 79 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 80 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 81 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 82 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 83 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 84 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 85 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 86 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 87 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 88 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 89 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 90 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 91 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 92 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 93 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 94 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 95 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 96 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 97 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 98 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع
| 99 | كتاب الفكاكة الآثرة | كتاب القراء | كتاب الامام عبد الربين | كتاب القوط والجميلة | كتاب الجواهر | كتاب المضارع

| 93 kitābs | 87 kitābs | 80 kitābs | 76 kitābs | 10 | 10 | 10 | 10 | 10 |

Appendix C - page 251
### Appendix D

**Comparison of Heffening’s A, B and ms Leuven B5 added along with the Beirut, Mecca and Abu Dhabi modern editions.**

<table>
<thead>
<tr>
<th>Heffening 92:1</th>
<th>Result*</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>الصبيان 1</td>
</tr>
<tr>
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<td>الصبيان</td>
</tr>
<tr>
<td>MS Löwen B5</td>
<td>الصبيان</td>
</tr>
<tr>
<td>Beirut</td>
<td>366:21</td>
</tr>
<tr>
<td>Mecca</td>
<td>2296:05</td>
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<tr>
<td>Abu Dhabi</td>
<td>85:10</td>
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</table>

<table>
<thead>
<tr>
<th>Heffening 92:2</th>
<th>Result*</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>لا يحجز عن ميت أوصى 3</td>
</tr>
<tr>
<td>B</td>
<td>لا يحجز عن ميت أوصى بحجج</td>
</tr>
<tr>
<td>MS Löwen B5</td>
<td>لا يحجز عن الميت وأن أوصى بحجج</td>
</tr>
<tr>
<td>Beirut</td>
<td>366:24</td>
</tr>
<tr>
<td>Mecca</td>
<td>2296:07</td>
</tr>
<tr>
<td>Abu Dhabi</td>
<td>85:15</td>
</tr>
</tbody>
</table>

The following example is not found in Heffening’s study:

- **1323/1905 Cairo edition**: "وهل يجوز أن يدفعوا إلى عبد أو إلى صبي أن يحجز عن الميت في قول مالك"
- **1324/1906-07 Cairo edition**: "وهل يجوز أن يدفعوا إلى عبد أو صبي أن يحجز عن الميت في قول مالك"
- **Beirut**: "وهل يجوز أن يدفعوا إلى عبد أو صبي أن يحجز عن الميت في قول مالك"
- **Mecca**: "وهل يجوز أن يدفعوا إلى عبد أو صبي أن يحجز عن الميت في قول مالك"
- **Abu Dhabi**: "وهل يجوز أن يدفعوا إلى عبد أو صبي أن يحجز عن الميَبَ في قول مالك"

*This Chart details the discrepancies listed by Heffening in his comparison between Leuven ms B5 and the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition. Added to Heffening's findings, are the readings for each of the other three modern editions presented in this research, the Beirut, Mecca and Abu Dhabi editions. In the right-hand column is the comparative result for each citation of Heffening’s research. The key in the footer of each page explains the result numbers. An equals sign (=) indicates correspondence between the editions/ms cited. The empty set sign (∅) indicates the manuscript or edition cited is unique and does not match any other witness. The key to the editions is as follows: A = 1323/1905 Cairo edition, B = 1324/1906-07 Cairo edition, MS = Leuven ms B5, Beirut = Beirut edition. So, for example, if the result is 1, it means that the 1323/1905 Cairo edition reads the same as the Leuven ms B5 and the 1324/1906-07 Cairo edition reads the same as the Beirut edition.

Key: 1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅
<table>
<thead>
<tr>
<th>Heffening 92:3</th>
</tr>
</thead>
</table>
| **A** | وأرى أن دفعوا ذلك إلى عبد أو صبي ضممو ذلك  
| **B** | وأرى أن دفعوا ذلك إلى عبد أو صبي أن يضمنوا ذلك  
| **MS Löwen B5** | وأن دفعوا ذلك إلى عبد أو صبي ضممو ذلك في رأيي  
| **Beirut** | 366:27 
| **Mecca** | 2296:10 
| **Abu Dhabi** | 85:19-20  

<table>
<thead>
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<th>Heffening 92:4</th>
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</thead>
</table>
| **A** | جاز ذلك  
| **B** | جاز  
| **MS Löwen B5** | جاز أمره ذلك  
| **Beirut** | 367:08  
| **Mecca** | 2296:19  
| **Abu Dhabi** | 86:12  

<table>
<thead>
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<th>Heffening 92:5</th>
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</thead>
</table>
| **A** | فإذا كان هذا له جائزًا  
| **B** | فإذا كان هذا كذلك  
| **MS Löwen B5** | فإذا كان هذا له جائزًا  
| **Beirut** | 367:09  
| **Mecca** | 2296:20  
| **Abu Dhabi** | 86:13  

<table>
<thead>
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</table>
| **A** | ولم يرد الفرضية  
| **B** | ولم يرد الفرضية  
| **MS Löwen B5** | ولم يرد فرضية  
| **Beirut** | 367:15  
| **Mecca** | 2296:25  
| **Abu Dhabi** | 86:22  

Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅
| Heffening 92:7 |  
| --- | --- | 
| **A** | فابا فلان این یحج عنه | 
| **B** | فابایي ان یحج عنه فلان | 
| MS Löwen B5 | فابا فلان ان یحج عنه | 
| Beirut | 367:16 | فابایی ان یحج عنه فلان | 
| Mecca | 2296:26 | فابایی ان یحج عنه فلان | 
| Abu Dhabi | 87:01 | فابایی ان یحج عنه فلان | 

| Heffening 92:8 |  
| --- | --- | 
| **A** | قال وهذا این ایوصی یحججة تطوع ان یحج عنه رجل یعیینه فابایی ذلك الرجل ان یحج عنه ردة الی الورثة | 
| **B** | قال وهذا این ایوصی یحججة تطوع ان یحج عنه رجل یعیینه فابایی ذلك الرجل ان یحج عنه ردة الی الورثة | 
| MS Löwen B5 | قال وهذا این ایوصی یحججة تطوع ان یحج عنه رجل یعیینه فابایی ذلك الرجل ان یحج عنه ردة الی الورثة | 
| Beirut | 367:17,18 | وهذه این ایوصی یحججة تطوع ان یحج عنه رجل یعیینه فابایی ذلك الرجل ان یحج عنه ردة الی الورثة | 
| Mecca | 2296:27,22 97:01 | وهذه این ایوصی یحججة تطوع ان یحج عنه رجل یعیینه فابایی ذلك الرجل ان یحج عنه ردة الی الورثة | 
| Abu Dhabi | 87:4-5 | وهذه این ایوصی یحججة تطوع ان یحج عنه رجل یعیینه فابایی ذلك الرجل ان یحج عنه ردة الی الورثة | 

| Heffening 93:1 |  
| --- | --- | 
| **A** |  
| **B** | سحنون | 
| MS Löwen B5 | سحنون | 
| Beirut | 367:18 | سحنون | 
| Mecca | 2297:02 [in parentheses, similar to the qāl and qultu references] سحنون | 
| Abu Dhabi | 87:06 | سحنون | 

| Heffening 93:2 |  
| --- | --- | 
| **A** | لا قواوم بایعاتهم | 
| **B** | لا قواوم بیعینهم | 
| MS Löwen B5 | لا قواوم بایعاتهم | 
| Beirut | 367:20 | لا قواوم بیعینهم | 
| Mecca | 2297:04 | لا قواوم بیعینهم | 
| Abu Dhabi | 87:08 | لا قواوم بیعینهم. | 

Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅  

Appendix D - page 254
<table>
<thead>
<tr>
<th>Heffening 93:3</th>
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<tbody>
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<td></td>
<td></td>
</tr>
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<tr>
<td>Abu Dhabi</td>
<td>87:14</td>
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### Appendix D - page 256

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Key: 1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅
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*NB: I have extended this quote as a further discrepancy exists just prior to the phrase quoted here by Heffening.*

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<td>يسكن الرجل داره</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>B</td>
<td>يسكن الرجل داره</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>MS Löwen B5</td>
<td>يسكن الدار رجلا</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Mecca</td>
<td>2301:05</td>
<td>2301:05</td>
<td>2301:05</td>
</tr>
<tr>
<td>Abu Dhabi</td>
<td>94:06</td>
<td>94:06</td>
<td>94:06</td>
</tr>
</tbody>
</table>

Key: 1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅
Heffening 94:11
A

لا يَباَسَ بِهَا

B

لا يَباَسَ بِهَا

MS Löwen B5

لا يَباَسَ بِهَا

Beirut 371:21

لا يَباَسَ بِهَا

Mecca 2301:10

لا يَباَسَ بِهَا

Abu Dhabi 94:11

لا يَباَسَ بِهَا

Heffening 94:12
A

قال ابن وهب وابن نافع

B

قال ابن وهب

MS Löwen B5

missing

Beirut 371:22

قال ابن وهب

Mecca 2301:10

(قال) ابن وهب

Abu Dhabi 94:12

قال ابن وهب

Heffening 94:13
A

قال سحنون

B

قال سحنون

MS Löwen B5

missing

Beirut 371:22,23

قال سحنون

Mecca 2301:11

(قال) سحنون

Abu Dhabi 94:13

قال سحنون

Heffening 94:14

subject heading

A

فِي الرَّجُلِ بَوْصِيَ بِجَانَانِهِ لَرَجُلٍ فِي شَمْرِ الحَائِطِ

B

فِي الرَّجُلِ بَوْصِيَ بِجَانَانِهِ لَرَجُلٍ فِي شَمْرِ الحَائِطِ

MS Löwen B5

فِي الرَّجُلِ بَوْصِيَ بِجَانَانِهِ لَرَجُلٍ فِي شَمْرِ الحَائِطِ

Beirut 371:24

فِي الرَّجُلِ بَوْصِيَ بِجَانَانِهِ لَرَجُلٍ فِي شَمْرِ الحَائِطِ

Mecca 2301:13

فِي الرَّجُلِ بَوْصِيَ بِجَانَانِهِ لَرَجُلٍ فِي شَمْرِ الحَائِطِ

Abu Dhabi 94:15

فِي الرَّجُلِ بَوْصِيَ بِجَانَانِهِ لَرَجُلٍ فِي شَمْرِ الحَائِطِ
<table>
<thead>
<tr>
<th>City</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beirut</td>
<td>372:07</td>
</tr>
<tr>
<td>Mecca</td>
<td>2301:22</td>
</tr>
<tr>
<td>Abu Dhabi</td>
<td>95:08</td>
</tr>
</tbody>
</table>

Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅
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<thead>
<tr>
<th>Heffening 94:19</th>
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<tr>
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<tr>
<td>MS Löwen B5</td>
<td>missing</td>
</tr>
<tr>
<td>Beirut</td>
<td>372:24</td>
</tr>
<tr>
<td>Mecca</td>
<td>2302:12</td>
</tr>
<tr>
<td>Abu Dhabi</td>
<td>96:08</td>
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<table>
<thead>
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<tbody>
<tr>
<td>A</td>
<td>من تجارة فيه</td>
</tr>
<tr>
<td>B</td>
<td>من تجارة بتجارة</td>
</tr>
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<td>MS Löwen B5</td>
<td></td>
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<tr>
<td>Beirut</td>
<td>372:25</td>
</tr>
<tr>
<td>Mecca</td>
<td>2302:13</td>
</tr>
<tr>
<td>Abu Dhabi</td>
<td>96:09</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Heffening 95:2*</th>
<th>* There is a word order change in this instance which Heffening does not acknowledge</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>به من اللَّه</td>
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<tr>
<td>B</td>
<td>من اللَّه بالمال</td>
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<td>MS Löwen B5</td>
<td></td>
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<tr>
<td>Beirut</td>
<td>372:28</td>
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<td>2302:16</td>
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<table>
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<tr>
<td>A</td>
<td>فللمسى له نصف ذلك</td>
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<tr>
<td>B</td>
<td>فللمسى له نصف ذلك</td>
</tr>
<tr>
<td>MS Löwen B5</td>
<td>missing</td>
</tr>
<tr>
<td>Beirut</td>
<td>373:04</td>
</tr>
<tr>
<td>Mecca</td>
<td>2302:21</td>
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<td>96:19</td>
</tr>
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</table>

Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅
| Heffening 95:4 | A | الخرج الذي | 1 |
| | B | للشركة التي | |
| MS Löwen B5 | Beirut | للشركة الذي | |
| | Mecca | للشركة التي | |
| | Abu Dhabi | للشركة البي | |

| Heffening 95:5 | A | الباب | 2 |
| | B | الباب | |
| MS Löwen B5 | Beirut | الباب | missing |
| | Mecca | الباب | |
| | Abu Dhabi | الباب | |

| Heffening 95:6 | A | وهو أعدل أقوال أصحابنا | 5 |
| | B | وهو أعدل أقوال أصحابنا | |
| MS Löwen B5 | Beirut | وهو أعدل أقوال أصحابنا | *missing |
| | Mecca | وهو أعدل أقوال أصحابنا | |
| | Abu Dhabi | وهو أعدل أقوال أصحابنا | |

*NB: This is one of two occurrences of discrepancy between Heffening’s "B" and the Beirut edition. Note that the discrepancy is merely a conjunction, *wa.*

| Heffening 95:7 | A | للمساكين | 2 |
| | B | للمساكين | |
| MS Löwen B5 | Beirut | للمساكين | |
| | Mecca | للمساكين | |
| | Abu Dhabi | للمساكين | |

Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅
<table>
<thead>
<tr>
<th>Heffening 95:8*</th>
<th>* Heffening likely missed the <em>نَفَى</em> in his transcription of the manuscript and <em>أَمْوَت</em>, which is present in both Cairo and Beirut editions.</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>يَدِيُّ حَتَّىِ أَمْوَت</td>
</tr>
<tr>
<td>B</td>
<td>فِيِ يَدِيُّ حَتَّىِ يَمُوت</td>
</tr>
<tr>
<td>MS Löwen B5</td>
<td>يَدِيُّ حَتَّىِ أَمْوَت</td>
</tr>
<tr>
<td>Beirut</td>
<td>373:10,11</td>
</tr>
<tr>
<td>Mecca</td>
<td>2302:27-23 03:01</td>
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<td>97:05</td>
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</tr>
<tr>
<td>B</td>
<td>من وَرَشَتِي</td>
</tr>
<tr>
<td>MS Löwen B5</td>
<td>من وَرَشَتِي</td>
</tr>
<tr>
<td>Beirut</td>
<td>373:11,12</td>
</tr>
<tr>
<td>Mecca</td>
<td>2303:01,02</td>
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<tr>
<td>Abu Dhabi</td>
<td>97:06</td>
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</tr>
<tr>
<td>Beirut</td>
<td>373:13,14</td>
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<tr>
<td>A</td>
<td>مِيْراَثَا لِلْوَرْثَة</td>
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<tr>
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<td>مِيْراَثَا لِلْوَرْثَة</td>
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<td>مِيْراَثَا لِلْوَرْثَة</td>
</tr>
<tr>
<td>Beirut</td>
<td>373:14</td>
</tr>
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<td>2303:04</td>
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<tr>
<td>Abu Dhabi</td>
<td>97:09</td>
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<td>Heffening 95:12</td>
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<td>---</td>
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A discrepancy in the modern editions but not given by Heffening.

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<td>374:03</td>
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<td>Mecca</td>
<td>2303:22</td>
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<tr>
<td>Abu Dhabi</td>
<td>98:12</td>
</tr>
</tbody>
</table>

| Cairo            | "6:68:12" |
| Beirut           | 374:07 |
| Mecca            | 2303:26 |
| Abu Dhabi        | 98:18 |

A discrepancy in the modern editions but not given by Heffening.

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<td>Beirut</td>
<td>374:08</td>
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<tr>
<td>Mecca</td>
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<td>Abu Dhabi</td>
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<td>الأولي</td>
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<td>Beirut</td>
<td>374:09</td>
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<td>98:20</td>
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Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅
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<tr>
<td>Mecca</td>
<td>374:10</td>
</tr>
<tr>
<td>Abu Dhabi</td>
<td>2304:02</td>
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Key: 1: A=MS; B=Beirut  2: A=B=Beirut; MS=∅  3: B=Beirut; A=∅; MS=∅  4: all different  5: A=B; MS =∅; Beirut = ∅
# A comparison of CBL ms Ar 5835:59b with the four modern editions of the Mudawwana

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<td>الابائع</td>
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<td>4</td>
<td>سفيان</td>
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<td>7</td>
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<td>11</td>
<td>يفتقا</td>
<td>224:01</td>
<td>567:01</td>
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</table>

- **Observations**:
  - An editorial addition by the copyist upon noticing the word was originally missed in the copy.
  - Was this a later addition to strengthen the text/concept by adding Allāh? Or could the removing of Allāh have taken place?
  - The Beirut edition attributes this section to Ibn Wahb. This would have likely been added by a transmitter at some point.
  - Was the CBL ms copied in a geographic region where Sufyān (note the spelling with out the alif) which appears to be consistent within the manuscript with many names, e.g. Malik rather than Mālik) was not known well enough and had to be specified?
  - The subject heading - most intriguing that the CBL ms would have a different written tradition. This supports a late addition of the subject headings and that the subject headings were likely developed independent of the development of the text.
  - Why would the ms of the Cairo edition have added the name of Ibn al-Qāsim here? Also note the dropping of the word specifically referencing his opinion
  - Simply another formula to say something of virtually the same content.
  - Although the two forms appear different, there is little difference between the two parties becoming separated or separating themselves in reality. The significance of the discrepancy seems to be more with the particular edition, namely the Cairo edition.

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**Appendix E - page 269**
<table>
<thead>
<tr>
<th></th>
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<tr>
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<td>13</td>
<td>اذا</td>
<td>4</td>
<td>ان</td>
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<td>اهدمها بالخير قبل</td>
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<td>18</td>
<td>بين واحد منهما وبين صاحبه</td>
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<tr>
<td>20</td>
<td>سحنون</td>
<td>18</td>
<td>قال سحنون</td>
<td>10</td>
<td>قال سحنون</td>
</tr>
</tbody>
</table>

Although of the same essential meaning, what would induce this word change and when? at the time of samâ' by the individual listener? Although the absence of the word منهما does not significantly change the meaning, does this provide further evidence that the 1323/1905 Cairo edition typesetter/proofreader or a previous copyist of the manuscript in previous generation manuscripts, was poor at his job?
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>في الرجلين</td>
<td>12</td>
<td>ما جاء في الرجلين</td>
<td>6</td>
<td>Subject heading: incidental discrepancy. No significant shift in meaning.</td>
</tr>
<tr>
<td>وأتعلى طائفة صاحبة</td>
<td>14</td>
<td>8 - 9</td>
<td></td>
<td>word order inversion of two words: incidental discrepancy; 1323/1905 Cairo edition preferred reading. No shift in meaning.</td>
</tr>
<tr>
<td>وكيف لم</td>
<td>16</td>
<td>10</td>
<td></td>
<td>The presumed word present in the 1323/1905 edition and absent in the Beirut edition here is إن (that) and not إن (if). In which case the discrepancy is incidental. The inclusion of the word إن here would not make sense. 1323/1905 Cairo edition preferred reading. 1323/1905 Cairo edition reading is preferred here as the word order in that edition implies that &quot;later&quot; (اَيُّ) modifies when it is given, whereas in the Beirut edition reading the meaning is that &quot;later&quot; (اَيُّ) modifies specified. However it would need to be specified sooner, rather than later, and needs to be given later.</td>
</tr>
<tr>
<td>ويعلمه إذا لم يكن يعلمه</td>
<td>16</td>
<td>10</td>
<td></td>
<td>The difference is in the tense of the verb, perfect (completed) in the Beirut edition or imperfect (still in the present or incomplete stage) in the 1323/1905 Cairo edition: incidental discrepancy in this context. No preferred reading. No significant shift in meaning.</td>
</tr>
<tr>
<td>وكذلك ان اقتصا فيما</td>
<td>20</td>
<td>14</td>
<td></td>
<td>Here the third person feminine accusative pronoun is added to the verb, making reference to the property (دَار); incidental discrepancy. No shift in meaning.</td>
</tr>
<tr>
<td>بين قوم كيفون</td>
<td>1</td>
<td>18</td>
<td></td>
<td>The 1323/1905 Cairo edition has the definite article added to the tribe: incidental discrepancy. No shift in meaning.</td>
</tr>
<tr>
<td>ما لا يبقي به قسم بينهم</td>
<td>2</td>
<td>3</td>
<td></td>
<td>The difference is the in the tense of the verb, perfect (completed) in the Beirut edition or imperfect (still in the present or incomplete stage) in the 1323/1905 Cairo edition: incidental discrepancy in this context. No preferred reading. No significant shift in meaning.</td>
</tr>
<tr>
<td>لا إن الله تعالى قال</td>
<td>3</td>
<td>19</td>
<td></td>
<td>An additional word is present in the honorific phrase of the 1323/1905 Cairo edition: incidental discrepancy. Although meaning is added with the 1323/1905 Cairo reading, throughout the centuries transmitters could easily have added to these honorific phrases, being affected by cultural and temporal influences and practices which result in no significant shift in the meaning of the text. Although the textual meaning changes with the addition of the word, the function of the honorific title is not any different with the addition of this word.</td>
</tr>
<tr>
<td>وما قل منه أو أكثر نصيbags مبوضًا</td>
<td>3</td>
<td>20</td>
<td></td>
<td>This must be a typographical, unintentional error in the Beirut edition as it is a Qur’ānic quotation. It would be very interesting to see the source manuscript that was used for this text. Could this possibly be an indication of sloppy editorial work on the part of the modern editor, or was it an error original to the 1324/1906-07 edition of which it is believed this edition is a re-print?</td>
</tr>
<tr>
<td>وشركتهم من ميراث أو شراء وأيبي قييمتهم قضمة؟</td>
<td>6</td>
<td>23</td>
<td></td>
<td>Two differences are noted here, the inversion of the inheritance (مِراث) and purchase (شِرَب); incidental discrepancy with no shift in meaning. Additionally, the conjunction in the two editions differs, the 1323/1905 edition reading و and the Beirut edition reading fa. No significant shift in meaning.</td>
</tr>
<tr>
<td>يباغ عليهم وعليهم جميع</td>
<td>9</td>
<td>26</td>
<td></td>
<td>Here it seems the Beirut edition is the preferred meaning, as the plural pronoun on the preposition would here seem to refer to the parties involved in the division. Following that, the conjunction shifts the subject towards all of them (jamīt); female, singular calling for a feminine singular pronoun.</td>
</tr>
<tr>
<td>بما يعملون به</td>
<td>10</td>
<td>1</td>
<td></td>
<td>Difference in preposition here, between fi and bi. No shift in meaning and no preferred reading.</td>
</tr>
</tbody>
</table>

Remarks:
- Incidental discrepancy: A difference in meaning due to the inclusion or exclusion of words, phrases, or structures that do not significantly alter the core meaning of the text.
- No significant shift in meaning: The differences noted do not alter the overall meaning of the text.
- Preferred reading: The edition that is preferred based on the shift in meaning or the textual context.

Appendix F - page 271
Subject headings from

*Kitāb al-Qisma al-awwal* and *al-thānī*

of *al-Mudawwana al-kubra*¹

Arabic original and translated English

<table>
<thead>
<tr>
<th>Beirut edition, Vol. 4, page number</th>
<th>English translation</th>
<th>Arabic Original</th>
</tr>
</thead>
<tbody>
<tr>
<td>265</td>
<td>Concerning the sale of inheritances</td>
<td>ما جاء في بيع الميراث</td>
</tr>
<tr>
<td>265</td>
<td>Concerning the apportionment of benefits of divisions</td>
<td>ما جاء في التهاو في القسم</td>
</tr>
<tr>
<td>266</td>
<td>Concerning the purchase of a passageway and the division of house, to whom does the way belong</td>
<td>ما جاء في شراء الممر وقسوة الدار على أن الطريق على أحدهم</td>
</tr>
<tr>
<td>266</td>
<td>Concerning the division of a house and one of them is ignorant of his fortune</td>
<td>ما جاء في قسمة الدار وأحدهما يجهل حظه</td>
</tr>
<tr>
<td>266</td>
<td>The division of villages/populated areas</td>
<td>قسمة القرى</td>
</tr>
<tr>
<td>267</td>
<td>The division of the houses between various people</td>
<td>قسم الدور بين ناس شتى</td>
</tr>
<tr>
<td>267</td>
<td>On the division of a village which has houses and trees [much longer section than most]</td>
<td>في قسمة قرية فيها دور وشجر</td>
</tr>
</tbody>
</table>

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¹ Subject headings are taken from the 1994 Beirut edition of the *Mudawwana.*

Appendix G - page 272
<table>
<thead>
<tr>
<th>Page</th>
<th>English</th>
<th>Arabic</th>
</tr>
</thead>
<tbody>
<tr>
<td>268</td>
<td>Concerning the division of fruit (dates, grapes, wheat) mandouj that will give you something.</td>
<td>ما جاء في قسمة الثمار</td>
</tr>
<tr>
<td>269</td>
<td>Concerning the division of herbs</td>
<td>ما جاء في قسمة البقل</td>
</tr>
<tr>
<td>270</td>
<td>Concerning the division of land and its water and its trees</td>
<td>ما جاء في قسمة الأرض ومانها وشجرها</td>
</tr>
<tr>
<td>270</td>
<td>Concerning the division of green seeds before they are useful</td>
<td>ما جاء في قسمة الزرع الأخضر قبل أن يبدو سلاحه</td>
</tr>
<tr>
<td>271</td>
<td>Concerning the division of dates (different forms) from date trees</td>
<td>ما جاء في قسمة البلح الكبير والبسر والرطب في رؤوس النخل</td>
</tr>
<tr>
<td>273</td>
<td>Concerning the division of slaves</td>
<td>ما جاء في قسمة العبيد</td>
</tr>
<tr>
<td>273</td>
<td>Concerning the division of yoghurt in the udders and wool on the backs of sheep</td>
<td>ما جاء في قسم اللبن في الضروع والصوف على ظهور الغنم</td>
</tr>
<tr>
<td>273</td>
<td>On the division of [a trunk of a date tree which has the head cut off and is dry/an animal which has reached maturity], and [the leaves of a door/door panels], slippers, sandals and clothing</td>
<td>في قسمة الجذع والمصراعين والجفرين واللتين والثياب</td>
</tr>
<tr>
<td>274</td>
<td>On the division of cheese and food</td>
<td>في قسمة الجبنة والطعام</td>
</tr>
<tr>
<td>274</td>
<td>On the division of land and springs</td>
<td>في قسمة الأرض والعيون</td>
</tr>
<tr>
<td>275</td>
<td>On the sale of date trees by date trees and it has fruit on it which is either flowering or not</td>
<td>في بيع النحل بالنحل وفيها ثمر قد آزه أو لم يزه</td>
</tr>
<tr>
<td>276</td>
<td>Concerning the division of the produce with the tree</td>
<td>ما جاء في قسمة الثمر مع الشجر</td>
</tr>
<tr>
<td>276</td>
<td>Concerning the division of fruit</td>
<td>ما جاء في قسمة الفواكه</td>
</tr>
<tr>
<td>277</td>
<td>Concerning the division of the family of the inheritance and then one of them claims the error</td>
<td>ما جاء في قسمة أهل الميراث ثم يدعي أحدهما الغلط</td>
</tr>
</tbody>
</table>

Appendix G - page 273
<table>
<thead>
<tr>
<th>Page</th>
<th>Arabic Title</th>
<th>English Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>278</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>Concerning two men who divide the house and one of them claims the house after the division</td>
</tr>
<tr>
<td>278</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>Concerning differences in the limits of the boundary (boundary lines)</td>
</tr>
<tr>
<td>279</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>On the division of guardianship over finances of minors</td>
</tr>
<tr>
<td>279</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>On the bequeathing of a Muslim to a dhimmi and it/he divides a course of water</td>
</tr>
<tr>
<td>280</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>A man who has a date tree on the property of another man, he uprooted it and wanted to plant it somewhere else</td>
</tr>
<tr>
<td>282</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>When an heir dies shortly after inheriting but the inheritance has already been divided</td>
</tr>
<tr>
<td>283</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>When an heir adopts religion after division has taken place</td>
</tr>
<tr>
<td>284</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>When the will (testament) inflicts the deceased after the division</td>
</tr>
<tr>
<td>285</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>On the property judge dividing for an absentee</td>
</tr>
<tr>
<td>286</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>Concerning the division of land and trees of an intersection</td>
</tr>
<tr>
<td>286</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>Concerning the division that is not divided</td>
</tr>
<tr>
<td>286</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>What is collected in the division of cloth and livestock</td>
</tr>
<tr>
<td>287</td>
<td>مِثْلَ لِلرجلين يقَسَمُ الدار فِيْذَا‐ْعِنْيَ أحدهما بِيْتًا بِعُدُدَ الْقُسم</td>
<td>Concerning the division of bracelets and jewels</td>
</tr>
</tbody>
</table>

Appendix G - page 274
<table>
<thead>
<tr>
<th>Page</th>
<th>English</th>
<th>Arabic</th>
</tr>
</thead>
<tbody>
<tr>
<td>287</td>
<td>Concerning the division of land and green seeds</td>
<td>ما جاء في قسمة الأرض والزرع الأخضر</td>
</tr>
<tr>
<td>289</td>
<td>Concerning the division of an inheritance which is unknown</td>
<td>ما جاء في قسمة المواريث على غير رؤية</td>
</tr>
<tr>
<td>289</td>
<td>Concerning the division involving options (to be contemplated and decided upon over a period of time)</td>
<td>ما جاء في القسمة على الخيار</td>
</tr>
<tr>
<td>289</td>
<td>Concerning the division of a father or guardian to his son (minor) and the giving to him of his money/share</td>
<td>في قسمة الأب أو وصيه على ابنه الصغير وهبته ماله</td>
</tr>
<tr>
<td>290</td>
<td>Concerning the guardian of the mother and his share</td>
<td>ما جاء في وصي الأم ومقاسمه</td>
</tr>
<tr>
<td>291</td>
<td>Concerning the division of an unbeliever regarding his daughters who have reached the age of majority</td>
<td>ما جاء في قسمة الكافر على ابنته البالغ</td>
</tr>
<tr>
<td>292</td>
<td>On the division of the mother or the father for/towards/regarding absent adult children and the sharing of the mother toward her son</td>
<td>في قسمة الأم أو الأب على الكبار الغيب ومقاسمة الأم على ولدها</td>
</tr>
<tr>
<td>292</td>
<td>On the division of the guardian of a foundling to the foundling</td>
<td>في قسمة وصي اللفظ للفقيط</td>
</tr>
<tr>
<td>292</td>
<td>Concerning the judgement of a man concerning the capital of his wife</td>
<td>ما جاء في قضية الرجل في مال امرأته</td>
</tr>
</tbody>
</table>

*Kitāb al-Qisma al-thānī*

<table>
<thead>
<tr>
<th>Page</th>
<th>English</th>
<th>Arabic</th>
</tr>
</thead>
<tbody>
<tr>
<td>294</td>
<td>Concerning the partners who make a division and one of them discovers a fault with his share or between them</td>
<td>ما جاء في الشريكين يقسمان فجده أحدهما بحصته عيباً أو بعضهما</td>
</tr>
<tr>
<td>295</td>
<td>Concerning the grain which is divided and one of them finds a fault with the grain</td>
<td>ما جاء في الحنطة يقسمانها فيجد أحدهما بحثنة عيباً</td>
</tr>
<tr>
<td>296</td>
<td>On the man who buys a slave to which he is entitled</td>
<td>في الرجل يشتري عبأً فيستحق</td>
</tr>
</tbody>
</table>

Appendix G - page 275
| 299 | Concerning the replevin of part of the transaction | ما جاء في استحقاق بعض الصفقة
| 300 | Concerning the division of sheep according to their value between two men | ما جاء في قسمة الغنم بين الرجال بالقيمة
| 300 | Concerning the division of wheat and coin (dirhams, lit. silver) between two men | ما جاء في قسمة الحنطة والدرهم بين الرجال
| 301 | Concerning the people have divided amongst themselves a house and one of them is entitled to a portion, and the house has been built | ما جاء في القدر يقسمون الدور فستحق حصة أحدهم وقد بني
| 302 | On the division of many houses and one person is entitled to some of them | في قسمة الدور الكثيرة يستحق بعضها من يد أحدهما
| 304 | For a man who entrusts one-third of his estate to another man who takes in his entrusting a third of the houses which he deserves "from his hand" after they have been built | في الرجل يوصي للرجل بثالث ماله فياخذ في وصيته ثلث دار فيستحق من يده بعد البناء
| 305 | Concerning the renunciation between the two men and the courtyards of the houses/courts of the houses/vacant lots are not divided | ما جاء في النفقات يكون بين الرجال والعرصة ليست لهما فيقسمانه
| 306 | Concerning the division of the roads and the walls | ما جاء في قسمة الطريق والجدار
| 307 | Concerning the division of bath houses, and wells and cisterns and springs | ما جاء في قسمة الحمام والأبار والمواحل والعيون
| 307 | Concerning the division of date and olive trees | ما جاء في قسمة النخلة والزيتونة

2. replevin: noun, Law - a procedure whereby seized goods may be provisionally restored to their owner pending the outcome of an action to determine the rights of the parties concerned
<table>
<thead>
<tr>
<th>Page</th>
<th>Arabic Text</th>
<th>English Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>308</td>
<td>ما جاء في قسمة الأرض القليلة والدكان بين الشركاء</td>
<td>Concerning the division of a small piece of property or a shop between joint owners</td>
</tr>
<tr>
<td>309</td>
<td>ما جاء في الرجلين يقسمان الجدار على أن يزيد أحدهما صاحبه دنانير أو سلعة نقدا أو إلى أجل</td>
<td>Concerning two men who divide the wall into two parts to which one of them adds for the other money or liquid assets or for a deferment</td>
</tr>
<tr>
<td>310</td>
<td>ما جاء في أرزاق القضاء والعمال وأجر القسم على من هو؟</td>
<td>Who is responsible for the provision of the judgment, the workers and the division?</td>
</tr>
<tr>
<td>310</td>
<td>فيمن دبر في الصحة والمرض والعتق في المرض</td>
<td>Who takes care of the healthy and the sick and the sick manumitted slave?</td>
</tr>
<tr>
<td>311</td>
<td>ما جاء في قسمة الدور بالذراع على السهام</td>
<td>Concerning the division of the house by measurements by casting lots</td>
</tr>
<tr>
<td>312</td>
<td>ما جاء في قسمة الدور والساحة والمرفق بالساحة</td>
<td>Concerning the division of houses and courtyards and courtyard enclosures</td>
</tr>
<tr>
<td>312</td>
<td>في قسمة البيوت والغرف والسطح</td>
<td>On the division of houses and rooms and roof terraces</td>
</tr>
<tr>
<td>314</td>
<td>فيمن أراد يحدث في أرضه حماما أو فرنا أو رحى</td>
<td>For one who wants a vacant lot to become a bathhouse or a bakery or a mill</td>
</tr>
<tr>
<td>314</td>
<td>في قسمة الدور والرفق إذا كانت القيدة واحدة</td>
<td>On the division of a house and a slave if they are of one value together</td>
</tr>
<tr>
<td>315</td>
<td>في الرجل يريد أن يفتح باباً في زقاق نافذ أو غير نافذ</td>
<td>If a man wants to install a door which open into an alleyway or into a deadend alley</td>
</tr>
<tr>
<td>317</td>
<td>في قسم الدار الغانية وقسم الوصي على الكبير الغانب والصغير</td>
<td>On dividing a hidden/concealed house and dividing the entrustment of large and small concealments</td>
</tr>
<tr>
<td>319</td>
<td>ما جاء في اختلاف الورثة في قسمة الدور إذا أرادوا أن يجعلوا سهمهم في كل دار</td>
<td>Concerning the differences of the heirs in the division of the properties if the result is worse than casting lots for each house.</td>
</tr>
</tbody>
</table>


Text of the Mudawwana from Kitāb al-Qisma al-thānī

ما جاء في الرجلين يقتسمان الجدار على أن يزيد أحدهما صاحبه دنانير أو سلعة نقدًا أو إلى أجل

قلت: أرأيت لو أن دارًا بين رجلي اقتسماها فيما بينهم،

فأخذ هذا طائفة

وأعطى طائفة صاحبه،

على أن أعطي أحدهما صابه عبدًا

أو أعطاه دراهم

أو عروضاً نقدًا

أو إلى أجل,

وكيف لم يضرب للذي يعطيه؟ إذا لم يكن بعينيه أجلًا؟

قال: ذلك جائز

إذا كان بعينه,

وإن كان ديننا موصوفًا فلا يصح إلا أن يضرب لذلك أجلًا,

يجوز من هذا

ما يجوز في البيع

ويفسل من هذا

ما يفسل في البيع.


1. The text is taken from the Beirut edition of the Mudawwana with footnotes indicating discrepancies with the 1323/1905 Cairo edition.
2. In the place of ﻓﻲ ﺟﺎﺀ ﻓﻲ the 1323/1905 Cairo edition reads simply ﻓﻲ.
3. In the 1323/1905 Cairo edition, these two words are inverted, reading صاحبه طائفة.
4. The 1323/1905 Cairo edition adds here ﻓﻲ.
5. In the 1323/1905 Cairo edition, inserted here is the word أجل.
قال: وهذا رأي
لأن مالك قال:
لا بأس
أن يأخذ أحدهما طائفة من الدار
والأخر طائفة من الدار
على أن يزيد أحدهما صاحبه دنانير.

قلت: وكذلك إن اقتسماها فيما بينهما
فأخذ هذا طائفة
وهذا طائفة.

على أن يتصدق أحدهما على صاحبه بصدقة معروفة
أو يحب له هبة معروفة؟

قال:
قال مالك: ذلك جائز.
قلت: فلو اشترى رجل من رجل ممره في داره من غير أن يشترى من رقية الدار شيئاً، أيجوز ذلك؟
قال: ذلك جائز عند مالك.
قلت: ما قول مالك في البيت الصغير يكون بين قوم؟ فيكون في نصيب أحدهما ما لا ينتفع به إذا قسم أقسم أم لا؟
قال:
قال مالك: يقسم
وإن كان في نصيب أحدهما ما لا ينتفع به قسم؟ بينهم،
لأن الله تعالى! قال في كتابه:

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7. This word in the 1323/1905 Cairo edition reads simply اقتسما.
8. This word in the 1323/1905 Cairo edition reads القوم.
9. In the 1323/1905 Cairo edition this reads يقسم.
10. In the 1323/1905 Cairo edition this honorific phrase reads تبارك وتعالى.

Appendix H - page 279
(ما قبل منه أو أكثر نصيباً مفرضاً) (سورة النساء: 2)

قلت: فإذا دعا واحد من الشركاء إلى القسمة - وشركتهم من شراء أو ميراث 3 - فأبي 4 يقيتهم القسمة؟

قال:

قال المالك:
من دعا منهم إلى القسمة
وكان ما في أينديهم
ما يقسم قسم
من رقيق
أو دواب
أو غير ذلك.

قال لي المالك:
كان ذلك من شراء أو ميراث فإنه يقسم; 
وإن كان مما لا يقسم.
وقال أحدهم:

أنا لا أبيع وقال بقيتهم نحن نبيع.

قال:
يباع عليهم;

11. The 1323/1905 Cairo edition reads here كثر which agrees with the Qur’ān.
12. The reference for this aya in the Qur’ān is not given in the 1323/1905 Cairo edition.
13. This phrase is inverted in the 1323/1905 Cairo edition to read ميراث أو شراء .
15. The 1323/1905 Cairo edition has (unusually) here a full stop.
وعليه16 جميع ذلك
على ما أحبوا أو كرهوا
بما يعطون فيه17
فكون ذلك لهم.

16. The 1323/1905 Cairo edition inverts these prepositional phrases here, reading بيع عليه و عليهم.
17. The 1323/1905 Cairo edition reads here به.