

The Relative Lenience or Strictness of the Sunni Schools of Law

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Abstract

‘Abd al-Wahhāb b. Aḥmad al-Sha‘rānī (d. Cairo, 973/1565), *al-Mizān*, is a survey of agreements and disagreements among the Sunni schools of law. For each question, it locates the rules of the different schools on a spectrum from lenient to strict, suggesting that a believer may choose whichever suits his situation, such as his capacity for self-control. The Ḥanafī school has a reputation for relative lenience, which al-Sha‘rānī’s survey tends to confirm.

Since the eleventh century CE, there have flourished four Sunni schools of law, named for jurists of the eighth and ninth centuries. The Ḥanafī has a modern reputation for being the most lenient of the four, the Ḥanbalī the strictest. One insider account stressing lenience and strictness is a survey of agreements and disagreements by the Ottoman-period Egyptian jurist ‘Abd al-Wahhāb b. Aḥmad al-Sha‘rānī (d. Cairo, 973/1565) called *Kitāb al-Mizān* (“the scale”).¹ Like other surveys of agreements and disagreements over problems of law (*ikhtilāf*), it goes through a series of juridical problems and relates which authorities took one position, which another (usually among the four imams for whom the schools were named); unlike other surveys of *ikhtilāf*, it then indicates which position is lenient (*khafif*), which strict (*shadīd*). If the Ḥanafī school was indeed the most lenient, the Ḥanbalī the strictest, it ought to show up here.

Kitāb al-Mizān

As an account of Islamic law, the *Mizān* was an early modern success. Printed editions appeared already in the mid-nineteenth century in India and Egypt. With his uncanny

1. Page references to come will be to al-Sha‘rānī, *Kitāb al-Mizān*, ed. ‘Abd al-Raḥmān ‘Umayra, 3 vols. (Beirut: ‘Ālam al-Kutub, 1409/1989).

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eye for problems that would still be interesting a century or more after his death, Ignaz Goldziher brought it to the attention of modern scholarship already in the 1880s.² Important recent studies include a monograph by Michael Winter and articles by Samuela Pagani and Ahmed Fekry Ibrahim, the first two developing the Sufi influence on al-Shaʿrānī's jurisprudence, the last its juridical context and significance.³ It seems to me an important element of its context was Ottoman preference for the Ḥanafī school, al-Shaʿrānī proposing to the contrary that the schools were equally close to revelation.

The first third of the book is an exposition of jurisprudence, with particular attention to the importance of hadith (against reliance on *ra'y*) and the legitimacy of disagreement. There was evidently a view already that the Ḥanafī school was particularly lenient, for al-Shaʿrānī devotes a short section to arguing against it. To maintain that this school is less given to precaution (*iḥtiyāt*) than other schools is overly partisan (*mutaʿaṣṣib*), he says, and overlooks Abū Ḥanīfa's personal reputation for piety. Besides, lenience is always relative, especially in rules pertaining to property and commodities. For example, strictness toward a seller implies lenience toward the buyer, while strictness as to divorce implies lenience toward whoever might marry her afterwards (1:239). The rest of the book is divided about equally between rules of ritual (*ʿibādāt*) and interpersonal relations (*muʿāmalāt*). One might take this as a reflection of al-Shaʿrānī's special interest as a Sufi in worship, since the earliest works of Islamic law generally give equal space to worship and interpersonal relations whereas later ones give much more space to the latter. For example, ritual takes up about half of Mālik (d. 179/795), *al-Muwaṭṭaʿ*, but scarcely a fifth of al-Qarāfi (d. 684/1285), *al-Dhakhīra*. There are exceptions; for example, ritual takes up about a third of al-Shāfiʿī (d. 204/820), *al-Umm*, less than a quarter of al-Māwardī (d. 450/1058), *al-Ḥāwī*, but half of al-Ghazālī (d. 505/1111), *al-Wasīṭ*. Still, one might also remark that al-Shaʿrānī quotes his Sufi shaykhs more frequently in the section on worship, as in a series of comments on the adept's experience of standing before God at the *wuqūf* of the ritual prayer (2:50–53).

In general, counting a rule strict (*tashdīd*) has to do with permitting less, counting one lenient (*takhfīf*) with permitting more. For example, the lenient position, advocated by Abū Ḥanīfa, is that the rule of *iḥyāʾ al-mawāt*, that someone may take possession of land by bringing it into cultivation, applies to non-Muslim subjects as well as Muslims, whereas the strict position, advocated by the other three imams, is that only Muslims may so take possession (3:138). For some transactions, as al-Shaʿrānī observes in the introduction and elsewhere, a position will be strict or lenient depending on which party's interest is considered. For example, the position of Abū Ḥanīfa alone is that taking possession of a gift is sound with or without the permission of the giver, whereas the position of the other three imams requires the giver's permission. Abū Ḥanīfa's position is lenient toward the receiver of a gift, strict toward the giver, the other three imams' position the opposite

2. Ign. Goldziher, "Zur Literatur des Ichtilāf al-madhāhib," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 38 (1884): 669–82, at 675–82.

3. Michael Winter, *Society and Religion in Early Ottoman Egypt: Studies in the Writings of ʿAbd al-Wahhāb al-Shaʿrānī* (New Brunswick, NJ: Transaction Books, 1982); Samuela Pagani, "The Meaning of *ikhtilāf al-madhāhib* in ʿAbd al-Wahhāb al-Shaʿrānī's *al-Mizān al-kubrā*," *Islamic Law and Society* 11 (2004): 177–212; Ahmed Fekry Ibrahim, "Al-Shaʿrānī's Response to Legal Purism," *Islamic Law and Society* 20 (2013): 110–40.

(3:147). Similarly, contrary rules of inheritance shares are characteristically strict toward one set of heirs, lenient toward another (3:157-63). Strict application of the stoning penalty to non-Muslim subjects who commit adultery is *mushaddad* in relation to them but has an element also of *takhfif*, since one who suffers the *ḥadd* punishment in this world will suffer less in the afterlife (3:313).

Sometimes, al-Shaʿrānī makes out one or more intermediate categories. For example, if a person loses consciousness, he need not make up missed prayers according to al-Shāfiʿī (*mukhaffaf*), needs to make up missed prayers if unconscious for less than a day and a night according to Abū Ḥanīfa (*mufaṣṣal*), and must make up all missed prayers according to Aḥmad (2:17). All four imams agree that two prostrations suffice for *sahw* (making up for misperforming the ritual prayer), but al-Awzāʿī (d. 157/773–74?) called for two each for addition and abbreviation, Ibn Abī Laylā (d. 148/765) for two for every neglect, the first being lenient for the general (*ʿamma*), the second severe for the intermediates (*mutawassiṭīn*), the third most severe for the mature ones “who have exerted themselves to an extreme” (*akābir mubālighīn*) (2:99). Mālik and al-Shāfiʿī considered it encouraged to marry for one in need of it and with the means; Aḥmad required it for one who finds his lower soul desiring it and fears falling into sin; Abū Ḥanīfa encouraged it for everyone; and Dāwūd required it for everyone at least once in a lifetime: the first is conditional (*mufaṣṣal*), the second conditional as to obligation, not just encouragement, the third lenient, and the fourth strict (3:172–73).

Sometimes not all four imams are represented. For example, Mālik held that if one was taken prisoner, then given his freedom on condition of swearing not to leave the enemies’ territory, he was to abide by his oath, whereas al-Shāfiʿī allowed one to break such an oath (3:380). Sometimes, as above, al-Shaʿrānī considers more than the positions of the schools. For example, the four imams said that one must say *Allāh akbar* for every bowing (*rukūʿ*), whereas the Followers Saʿīd b. Jubayr (d. 95/714?) and ʿUmar b. ʿAbd al-ʿAzīz (d. 101/720) said it was only for the opening of the prayer, the first position strict, the second lenient (2:59).

Al-Shaʿrānī occasionally discusses intraschool disagreement. For example, some of the followers of al-Shāfiʿī maintain that age is a consideration in calculating marriage equality (*kafāʿa*), while others maintain that it is not considered, since an old man may marry a young woman.

The first is strict, to be applied to the condition of one overcome by the natural desires of the lower soul, set on the ornaments of the world. The second is lenient, applicable to one overcome by renunciation of the world, who has hung his heart on the conditions of the afterworld and has no ardent desires (3:180).

The lenient rule is presumably for a renunciant to marry a woman older than himself. He also occasionally mentions positions from Abū Yūsuf and al-Shaybānī in the absence of or contrary to their teacher Abū Ḥanīfa’s position, and different versions of the positions of Mālik, al-Shāfiʿī, and Aḥmad b. Ḥanbal. Aḥmad’s opinion seems to be the least secure: multiple versions (*riwāyāt*) are presented for almost a quarter of the questions in which his position comes up. Al-Shaʿrānī’s conscious emphasis is certainly on the imams, not their

schools, as when he accuses the Mālikiyya of misrepresenting Mālik's opinion as to whether removal of filth (*istinjāʿ*) is required (not merely recommended) for valid prayer (2:113).

One example of Sufi thinking is al-Shaʿrānī's discussion of how far to raise the hands at the *takbīr*: to opposite ears is for the general, to the shoulders only for the mature ones (*akābir*) who will maintain the presence of God throughout their prayer without such strong reminders (2:33). Another example: the position of Mālik, al-Shāfiʿī, and Aḥmad in the better-known version is to require recitation of the Fātiḥa (Q. 1) in every prayer, whereas Abū Ḥanīfa allows any passage. The first is for *akābir*, for whom the Fātiḥa includes the whole Qurʾān, the second for novices (*aṣāghir*). As a Sufi master, al-Shaʿrānī is accustomed to thinking of some persons as having by training become closer to God than others, hence for example able to perceive the whole of the Qurʾān in seven verses. He also periodically quotes his own master ʿAlī al-Khawwāṣ (e.g., 2:40–43) as well as others, such as this advice from his brother Afḍal al-Dīn:

It is meet for the one praying alone not to bow until God's greatness is revealed to him and he is unable to stand. Then he is commanded to bow. So long as he is capable of standing, he has a choice: if he wishes, he bows, if he wishes, he prolongs recitation. The place of bowing is that he not do it until such greatness is revealed as the servant cannot stand with it. So long as he is able, it is not meet for him to bow (2:63).

Apropos of whether to salute at the end of *sujūd al-tilāwa* (prostrating oneself on hearing a verse of the Qurʾān that refers to prostration), he says, "Here are secrets not to be set down in writing" (2:108).

Aṣāghir are regularly those who need relatively lenient rules; for example, those facing necessities who may be allowed to put off a required pilgrimage, unlike those *akābir* covered by al-Shāfiʿī's strict rule who will not allow themselves to delay performing a duty to God (2:306). Sometimes, however, the lenient rule is for the *akābir*; for example, Abū Ḥanīfa's permission for the qadi to trade for himself (risking that he will favor people who give him good deals) by contrast with the strict position of the other three discouraging it (3:404). Neither are lenient rules necessarily for Sufi novices, as in the example above of marrying a woman not of the same age.

Unusually for a jurist, al-Shaʿrānī also quotes his wife. Apropos of whether pregnancy (as opposed to eyewitness testimony) might occasion the *ḥadd* penalty for adultery, al-Shaʿrānī among other things quotes a story from al-Bayhaqī about a woman with no husband brought to ʿUmar b. al-Khaṭṭāb when found pregnant. She said to him, "O Commander of the Faithful, I am a shepherd woman. When I enter the ritual prayer, I am often overcome by submissiveness (*khushūʿ*) to the point of losing my senses. Perhaps some insolent man came and covered me without my knowledge." ʿUmar recognized her as a virtuous woman and ruled out the *ḥadd* punishment for her.⁴ Al-Shaʿrānī goes on,

4. I have found two stories of ʿUmar's releasing a woman who said she had become pregnant by force in al-Bayhaqī, *al-Sunan al-kubrā*, ed. Muḥammad ʿAbd al-Qādir ʿAṭā (Beirut: Dār al-Kutub al-ʿIlmiyya, 2003/1424), 8:410 *kitāb al-ḥudūd* 29, *bāb man zanā bi-imraʾa mustakraha*. However, both involve sleeping at the time of the attack, not performing the ritual prayer.

I related this to my saintly wife Umm ‘Abd al-Raḥmān. She said, “A child is not formed except from the water of a man and a woman together. If her mind was absent, then she had no sensation of the pleasure of coitus with that man such that her water would come out. The formation of a child from a single water is a character peculiar to ‘Īsā . . .”

She said, “What I think is that she did sense the man’s having sex with her so that her water did go out. However, she was embarrassed before the better people. That created some ambiguity in ‘Umar’s opinion, so he ruled out the *ḥadd* punishment for her, except that he pronounced sound her declaration.” I said to her, “Perhaps this woman became pregnant after the man had withdrawn from her, so that her emission (*manyuhā*) was mixed with what remained of his in her womb, so that a child was formed of that. Alternatively, she was an heir of ‘Īsā’s mother in this station. Thus, as the angel blew into the train of Maryam’s dress (*qamīṣ*) to take the place of a husband’s water, so the blowing of an angel or devil in this woman’s train took the place of a husband or master’s water.” She said, “That is far-fetched” (3:325–26).

(Premodern legal discussions of sex regularly refer to female ejaculation. The wife’s opinion may reflect the widely held theory that female orgasm was necessary to conception.)

The Relative Lenience of Each School

Al-Sha‘rānī cites every school sometimes for strict positions, sometimes for lenient. An example of Abū Ḥanīfa’s calling alone for the strict has to do with *sujūd al-tilāwa*: he pronounced it required, not just recommended (2:101). Al-Shāfi‘ī alone called for the strict rule as to someone being led in the ritual prayer who has failed to follow the imam’s *sajdat al-tilāwa*: that his prayer is nullified (2:108). Mālik alone called for the strict rule as to one who prays the Friday noon prayer in his house but can hear the *takbīr* of the imam: his prayer is invalid (2:146). Aḥmad alone called for the strict rule in denying any right of pre-emption (*shuf‘a*) to a non-Muslim subject (3:122).

An example of Abū Ḥanīfa’s calling alone for the lenient rule is that the other three call for the bald pilgrim to pass a razor over his head, whereas Abū Ḥanīfa does not (2:807). (Al-Sha‘rānī explains that shaving the head is an expression of renouncing *riyāsa* or “headship,” which may be represented by passing a razor over the scalp, although one should understand that if there is true *riyāsa*, it resides in the heart.) An example of Mālik’s calling alone for the lenient rule is his permission to eat the flesh of birds of prey and carrion eaters (3:7). Al-Shāfi‘ī alone called for the lenient in allowing, although with discouragement, *bay‘ al-ṭna*, defined as buying something with delayed payment, then buying it back from the buyer for less than that in exchange for cash—an indirect way to lend money at interest (3:55). Aḥmad alone called for the lenient rule in permitting one group after another to pray the same prayer in a single mosque (2:130).

To get to the question of whether any school is identifiably the most lenient or strict, I surveyed a random sample of two hundred pages. I noted the first problem on each page in connection with which exactly two possibilities were characterized (hence avoiding intermediate degrees of lenience or strictness). I paid no attention to multiple versions

unless they were expressly mentioned on each side, in which case I counted half a lenient position, half a strict. Here is a table of the results:

	Aḥmad	al-Shāfi‘ī	Mālik	Abū Ḥanīfa
lenient	70½	76	73	88½
strict	71½	67	70	76
proportion	50/50	53/47	51/49	61/39

Aḥmad comes out the most evenly balanced between lenience and strictness, hence slightly the strictest of the four imams. However, Mālik and al-Shāfi‘ī are close to that, probably not significantly different given a sample size of two hundred. Abū Ḥanīfa is on the lenient side of the scale about 61 percent of the time, so the common perception that the Ḥanafī school is more lenient than the others is confirmed, although perhaps by narrower margin than some have supposed.

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