



THE INFLUENCE OF THE ENVIRONMENT ON AL-LAYTH BIN SA'D'S SCHOOL OF ISLAMIC LAW

Václava Tlili

University of West Bohemia

Email: tliliven@ff.zcu.cz

Abstract: The aim of this study is to bring back to the light one of the forgotten Islamic jurist al-Layth bin Sa'd, and find out how the environment may have influenced his legal reasoning. The first part focuses on the influence of a specific environment on human thinking in general and points to the factors influencing the formation of Islamic law in various areas in particular. The rest of the paper discusses Layth ibn Sa'd's personality and the elements that may have contributed to his conception of legal thought; the very multi-religious nature of early Islamic Egypt has been identified as one of the significant elements that helped shape the central nature of his legal school. The conclusion of the study provides examples of some legal rulings issued by him, in which the key role of his environment is clearly demonstrated, and the different legal approach of other lawyers is pointed out.

Keywords: Islamic jurisprudence, fiqh, al-Layth bin Sa'd, legal reasoning, religious diversity, Egypt.

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Introduction

'DIVERSITY OF OPINION among the companions of the Prophet Muḥammad (peace be upon him) is a mercy', or 'Diversity of opinion on legal issues is a blessing'. Such statements are most often uttered by Muslim jurists when it comes to the topic of hermeneutic understanding of Islamic thoughts extensive range. '*Ilm al-ikhtilāf* or *al-fiqh al-muqārin*, which refers to diversity in the scientific field of epistemology of disagreement among Islamic jurists, is therefore considered a natural phenomenon. There are many causes of this disagreement among jurists, and it is not surprising that authoritative interpreters of Islamic law

(*mujtahidūn*) from various Islamic schools of jurisprudence¹ or belonging to one school can arrive at different arguments or evidences (*dalā'il*, sg. *dalīl*) using different methods, and subsequently issue different decision or judgment (*ḥukm*) concerning one subject. This is particularly related to the concept of independent reasoning (*ijtihād*) by an expert in Islamic law practiced during the lifetime of Muhammad that enables the preservation of the religion of Islam itself and its permanence. Though, how extensively can legal judgment be influenced by factors such as society and the environment in which an Islamic jurist (*faqīh*) finds himself? The aim of the present study is to answer this question in the context of the specific, now defunct school of law of al-Layth bin Sa‘d, originated in Egypt, and to analyze how his derivation or extraction of legal provisions (*istimbāṭ*) was influenced by the landscape and local conditions in which he lived.

Despite his undisputed merits in Islamic jurisprudence, al-Layth bin Sa‘d receives only little attention, both among Islamic and Western scholars.² This is mainly because the complete form of his legal school could not be preserved for various reasons, and it is therefore possible to study his individual opinions mainly through individual narration collections (*ahādīth*, sg. *ḥadīth*),

¹ For an overview of the main views on the origins of Muslim jurisprudence,

² The legal schools of Abū Ḥanīfa, Mālik, al-Shāfi‘ī, and Ahmad ibn Hanbal have historically been more dominant and influential. This overshadowing has led to less attention being paid to al-Layth's contributions. Moreover, al-Layth was based in Egypt, which, during his time, was not as central to the Islamic scholarly world as other regions like Iraq or the Hijāz. This geographical factor contributed to his relative obscurity in later scholarship. However, his legacy continues to be studied to this day, as evidenced by the following studies: Fātima Muhammād Maṣnūr (2021) in her study *Rasā'il al-imāmayn al-Layth bin Sa‘d wa Mālik bin Anas* points out that the exchange of legal opinions between both jurists serves as a model of scholarly debate and a similar *ikhtilāf* (difference of opinion) can be found among the Companions and their Successors. Adham Muṣṭafā (2022) examines issue of consensus in his study *Al-Ijmā‘ ‘inda al-Layth bin Sa‘d* and the fundamental principles of jurisprudence are analyzed by ‘Abbās Ibrāhīm (2020) in his study *Al-qawā‘id al-uṣūlīya allatī i’tamadahā al-Layth bin Sa‘d fī risālatihī li al-imām Mālik*. The causes of the disappearance of al-Layth's legal school are analyzed by Aḥmad Maḥmūd (2021) in the study *Dirāsa hawla fiqdān al-juhūd al-‘ilmīya wa al-hadīthīya li imām al-diyār al-miṣrīya al-Layth bin Sa‘d*.

especially Sunan Ibn Māja, as the legal rulings (*fatāwā*, sg. *fatwā*) of al-Layth bin Sa'd should also be looked for in the Qur'an exegesis of al-Qurṭubī. A valuable document of his legal opinions is the surviving correspondence addressed to his friend and also the renowned founder of influential legal school, Mālik ibn Anas.³ On the example of this discussion, it is also possible to observe how the different background of these jurists is reflected in their opinions. By analyzing some of the legal issues dealt with in early Islamic Egypt, the study will further try to draw attention to the specific characteristics of his legal teaching that may have differed from other scholars. The research will also try to clarify the less mentioned reasons that led to the loss of a large part of his legal legacy.

The study begins by examining the general relationship between a jurist and their surrounding environment, highlighting the importance of environmental influences in shaping their views. This is followed by an analysis of historical sources concerning the first two centuries AH in Egypt, including specific details about this early period. The subsequent chapter delves into the life of al-Layth, exploring the characteristics of his legal thought and his interactions with other prominent jurists. The penultimate chapter focuses on the role of significant institution of 'Amr Mosque, which was important for the development of fiqh in Egypt at that time, while the final chapter presents several of al-Layth's legal opinions, illustrating the impact of environmental factors on his thinking, and comprises five subchapters.

Islamic Jurisprudence, Jurist and His Environment

Just as the conditions for life in each country or region of the world can differ, so the Islamic thoughts of its inhabitants and the legal view on selected topics can be shaped and changed in different ways. Some countries are religiously more homogeneous, while in others, a large religious minority lives alongside Muslims; some countries are mostly desert and have a dry climate, others

³ 'Abd al-Fattāh Abū Ghudda, *Namādhij min rasā'il al-a'immat al-salaf wa adabihim al-'ilmī: Abī Ḥanīfa wa Mālik ibn Anas wa al-Layth bin Sa'd*, al-Qāhira, 1999, 115.

are irrigated by rivers and the inhabitants enjoy bountiful harvests. Great differences are evident at the level of culture, customs and traditions appropriate to the urban industrial society on the one hand, and to the Bedouin agricultural society on the other. Residents of some Islamic countries live in relative prosperity, while others struggle with a poor economic situation. These are certainly some general parameters that every jurist must consider when forming his legal opinion. Furthermore, Ibn Khaldūn,⁴ based on empirical facts, clarified in his famous *al-Muqaddima* the significant influence of the climate and geographical area on human morality, and thus on thinking and behavior.⁵ Later, this aspect of the interactive relationship between man and his environment was extensively studied by sociologists, who gave rise to the science of environmental sociology. In the relationship between man and the environment, one element can hardly be separated from the other. Muḥammad (peace be upon him) himself was supposed to refer to the strong connection between environment and thought formation when he said:

Wa ʔ-fakhr wa ʔ-khīlā' fī ashābi ʔ-ibil

Wa ʔ-sakīna wa ʔ-wiqār fī ahli ʔ-ganam

Camel owners have their own pride and arrogance

Whereas owners of sheep have their own peace and dignity⁶

If we project the interaction of a man and his environment into the field of Muslim legislation, we find various examples of the extent to which the environment influenced the jurist. Throughout history, the legal provisions of the people of Medina were not always the same as those of Egypt, the norms of Egypt, on the other hand, were different from those of the historical region of Shām, as each country or region favored its own distinguished jurists to guide their people. The role of the environment and living conditions is also relevant to consider when analyzing the causes of extremism and strict religious jurisprudence in some

⁴ An Arab sociologist, philosopher, and historian.

⁵ Fuad Baali, *Society, State, and Urbanism: Ibn Khaldun's Sociological Thought*, New York, 1988, 34-35.

⁶ Muḥammad Ḥamza Ibrāhīm, *Shu'arā' Makka qabl al-islām*, Bayrūt, 2017, 39-40.

areas. It is natural to believe that the environment where cultures and civilizations as well as languages intermingled is not a fertile environment for one opinion and strict jurisprudence. On the contrary, the desert environment and inhospitable areas, far from multicultural metropolises, certainly contributed to exaggerated opinions, supporting the vision of a single existing face of Islamic law.⁷

Historical Sources about the First Two Centuries AH in Egypt

For the first two centuries after the conquest of the territory of Egypt, our understanding is limited to mainly Muslim chronicles, the most important of which is *Ta'rīkh al-rusul wa l-mulūk* by al-Tabarī. Another important source is *Futūh Misr wa akhbāruhā* by Ibn 'Abd al-Ḥakam, where we find information about the settlement of the first Muslims in Egypt. Two remarkable publications are from al-Kindī, *Kitāb al-wulāt* (Book of Governors) and *Kitāb al-qudāt* (Book of Judges), in which we obtain details about the political situation of the time and Egyptian rulers. Other historical works follow these and for a better understanding it is also necessary to rely on Christian sources. These include the History of the patriarchs of the Egyptian church attributed to Sawīrus ibn al-Muqaffa'. In 21 AH / 642 AD, the Egyptians were Christians, living alongside a significant community of Jews. Very few Coptic Christians accepted Islam at this early age and it is also apparent that there were several churches in the area Qaṣr al-Sham', near to al-Fuṣṭāt, a city with the status of the capital.⁸

Specifics of the Capital City of al-Fuṣṭāt

Al-Fuṣṭāt,⁹ an important city in early Islamic Egypt, was somewhat different from the other settlements (*amṣār*, sg. *misr*) that were established by Muslim warriors in conquered lands. From the beginning, groups of different religions - Muslims,

⁷ For more see: Wael B. Hallaq, *The Formation of Islamic Law*, London: Routledge, 2016, 79.

⁸ Hugh Kennedy, Egypt as a province in the Islamic caliphate, 641-868, in: PETRY, Carl F. (ed.), *The Cambridge History of Egypt*, Cambridge, 2008, 67.

⁹ For more information see Wladyslaw B. Kubiak, *Al-Fuṣṭāt. Its Foundation and Early Urban Development*, Cairo, 1987.

Christians, Jews - lived side by side in the same region. As the conquerors who became a minority in a majority Christian society, they had to co-exist together and live peacefully for their own benefit. Muslims needed the services of Christians and Jews so they had to deal with them in some way. Those times discussions about the way how to treat non-Muslims actually provides a sample of the evolution of juridical norms of that historical period in this area. For example, we can see that the legal status of the Christian cross resulted from constant discussions between Muslim jurists, various decisions of judges (*qudāt*) and governors (*wulāt*), and very often, social unrest entered the debate.¹⁰

Legal status of churches and synagogues

At the time of the foundation of al-Fustāt, several non-Muslim buildings were also built or restored, in various parts of the capital. Some of them existed before Islam, others were built with the permission of Muslim authorities during the first years of the conquest. Under the governorate of Maslama ibn Mukhallad (4-62 AH / 618-682 AD) several churches were built in al-Fustāt outside the center, in the above mentioned area of Qaṣr al-Sham'.¹¹ Because it was an area far enough away from the Muslims,¹² therefore, his gesture should not be taken directly as an indication of his sufficiently tolerant approach to non-Muslim religious buildings. Rather, churches could be constructed as long as they were located away from major Muslim areas and did not compete with mosques. Thus, it seems that non-Muslims living in an Islamic state with legal protection (*ahl al-dhimma*) could practice their rituals being out of sight of the Muslims.¹³

'The first church which was built in al-Fustāt (...) is the one located behind the bridge, founded in the days of Maslama ibn

¹⁰ Ibid, 77.

¹¹ Ayman F. Sayyid, *La capitale de l'Égypte jusqu'à l'époque Fatimide, al-Qāhira et Fustāt: Essai de Reconstitution Topographique*. Beirut, 1998, 27.

¹² For example, the church Hairā al-dunyā was located very close to the heart of the Muslim city and was destroyed during the government Sulaymān al-‘Abbāsī (169/786-171/788).

¹³ This was apparently also the reality of the Covenant of 'Umar.

Mukhallad, which made the members of army indignant and they said to him: "Do you allow them to build churches?" And they protested vigorously against him. Then Maslama said: "It is not situated in your settlement but outside of it, in their lands," whereupon they fell silent.¹⁴

In non-Muslim sources, historical accounts of the legal status of churches and synagogues vary widely. Above all, we learn about many Coptic rebellions that first broke out during the Umayyad period when tax collection became increasingly difficult.¹⁵

Al-Layth bin Sa'd, *Faqīh Miṣr* (94-175 AH / 713-791 AD)¹⁶

Al-Layth bin Sa'd appears to be one of the most important figures in the early history of Muslim Egypt. It is really surprising that his famous school of law, whose principles had a great impact on the development of later jurisprudence, has disappeared. This scholar was probably also the reason why al-Shāfi'ī, the founder of one of the four great legal schools of law and the author of the famous *al-Risāla*,¹⁷ traveled to Egypt during his study trips (*rihla fi ṭalab al-'ilm*) and followed al-Layth's views in many ways.

Al-Layth bin Sa'd was born near Cairo in the middle of the Islamic month of Sha'bān¹⁸ in Qalqashanda,¹⁹ and since conceived by an esteemed and wealthy family,²⁰ enjoyed the omnipresent abundance. Qalqashanda was characterized by fertile land with rich fruits, extensive gardens and fresh air. According to al-Sharqāwī, this was the major stimulus for the creation of such unique form of jurisprudence as created by al-Layth bin Sa'd.²¹ According to him and some other authors, the first *ḥadīth* he

¹⁴ Abū al-Qāsim Ibn 'Abd al-Ḥakam, *Futūḥ Miṣr wa akhbāruhā*, New Haven, 1922, 132.

¹⁵ Ibid, 67.

¹⁶ Called the Faqīh of Egypt during his lifetime.

¹⁷ This publication, *al-Risāla fi usūl al-fiqh*, is considered to be the first book written on the fundamentals of Islamic jurisprudence.

¹⁸ The eighth month of Islamic calendar, the last one before Ramadan.

¹⁹ The city lies in Qalyubīa Governorate about 28 km north of Cairo.

²⁰ Originally from Iran.

²¹ 'Abd al-Rahmān al-Sharqāwī, *A'immat al-fiqh al-tis'a*, al-Qāhira, 2020, 98.

memorized and narrated was 'God is beautiful and loves beauty'.²² First of all, he studied narrations that appealed to the noble character (*makārim al-akhlāq*) of people relating to one another and tried to show how religion can fulfill the positive role of man's servant.²³

In his childhood, he had the opportunity to experience the favorite period of Muslims, the reign of Caliph 'Umar ibn 'Abd al-'Azīz (61-101 AH / 680-720 AD), during which the population was supposed to be sufficiently provided for no one needed almsgiving (*zakāt*), and no major differences were to be made between Muslims and non-Muslims.²⁴ His short reign represented an important social and political context in which al-Layth grew up, and this very life period that I find being one of the significant elements that influenced his tolerance of the different, his acceptance of religious diversity and plurality, and his sense of progress. For this approach, by some authors, he is referred to as the leader of religious diversity (*ta'addudīya*) and religious freedom (*hurrīya dīniyya*), which is a controversial topic among most Muslim scholars.²⁵

The other important fact about his life is that he belonged to the non-Arab Muslims, who pioneered intellectual activity in Islamic lands (*mawālī*). This group gradually began to form the majority of the Muslim population, because during the first three centuries mostly economic impulses forced many people to convert to Islam.²⁶ From an early age he was led to knowledge, and his father, also very educated, tried to allow him to receive all the knowledge of the time, religious or secular.

An indicator of the respect some people bore towards him was the decision of the Abbasid caliph Mansūr (95-158 AH / 714-775 AD) who offered al-Layth to take dominion (*yuwālī*) over Egypt. Al-Layth, eagerly engaged in science, tried to skillfully hide his

²² 'Abd al-Salām 'Allūsh, *Taqrīb al-madārik bi sharh risālatay al-Layth bin Sa'd wa al-imām Mālik*, Bayrūt, 1995, 351; Abū 'Abdullāh al-Qurtubī, *al-Jāmi' li aḥkām al-Qur'ān*, 2002/1423, 3/325.

²³ *Ibid*, 210.

²⁴ *Ibid*, s. 350.

²⁵ *Ibid*, s. 39.

²⁶ Abū al-Qāsim Ibn 'Abd al-Hakam, *Futūh Miṣr*, 146.

refusal behind his background, while he should have said: 'Ruler of Believers, I do not have the courage to do so, after all I belong to *al-mawālī*'.²⁷ It was certainly a good decision that ensured the creation of his own school of law, different from those established by other great jurists of his time – Abū Ḥanīfa and Mālik ibn Anas.

However, Mansūr appealed to Islamic scholars to go to al-Fustāṭ and meet al-Layth, while caliph did not recognize a more knowledgeable man than him. Moreover, the Egyptian judges were to consult al-Layth on all major legal matters by order of Mansūr and no important decision would come from *wālī* or *qādī* without al-Layth's permission. Al-Layth was given the position of Head of centers for issuing Islamic legal opinions.²⁸ This is another reason that could have caused al-Layth's school of law not to be preserved, because some Arab jurists might not like Mansūr giving this position to one of the *mawālī*. How could he be worth more than an Arab? There are also reports that some of Arab jurists and judges started writing him hateful letters. They complained to Mansūr, saying 'Ruler of Believers, free Egypt from danger!' However, the caliph supported al-Layth in all his decisions.

It is also possible that he was hated by some contemporaries for his wealth, which was further multiplied after sudden death of his father who left him large properties. On the other hand, numerous reports demonstrate that he treated it generously.²⁹

The very fact that he was actively involved in society could be one of the reasons why he did not have time to take care of writing his own jurisprudence. Each day he was supposed to attend four assemblies (*majālis*),³⁰ and it is mainly his students who are blamed for not preserving his teachings.³¹

²⁷ 'Abd al-Salām 'Allūsh, *Taqrīb al-madārik*, 98.

²⁸ al-Sharqāwī, *A'immat al-fiqh*, 108.

²⁹ Abū Na'im al-Asbahānī, *Hilya al-awliyā' wa ṭabaqāt al-asfiyā'*, 7/322.

³⁰ 1) consultation with rulers and judges who either asked him or listened to his opinions 2) consultation with scholars of *hadīth*, while al-Layth listened to them and narrated what he remembered, learning with them the chains of transmitters and correctness of *hadīth*; 3) he accepted questions from scholars who consulted him about their *fatāwā* 4) consultation at his home for people's needs; much of his budget was spent especially during this time.

³¹ Al-Shāfi'ī was supposed to say, that al-Layth was more knowledgeable than Mālik, but his students did not compile or save his knowledge.

The Generosity of al-Layth bin Sa'd

As one of al-Layth's dominant character traits we can count his included unprecedented generosity. Although he belonged among the wealthiest Muslims of his time, he did not have to pay any *zakāt*,³² because he gave away all his possessions every year. His annual income is estimated to be between 20,000-100,000 *dīnārs* per year;³³ and it increased especially in the period after meeting Hārūn al-Rashīd. Every day he used his income to feed three hundred poor (*masākin*) and needy (*fuqarā'*). If his income had been a bit higher, he would have fed the same number after each prayer,³⁴ especially from among students and scholars, so that they can devote themselves to science without worry.³⁵ If someone tried to suggest him that he was spending a lot, he should have replied that his property is only a means to satisfy the needs of God's creatures and everyone in need has a right to share it. At the same time, he was supposed to warn those who turn away from helping others of coming punishment: 'Man does not live alone in the world, but everyone in his company should be satisfied so that he himself can be truly satisfied.' He was supposed to send 1,000 *dīnārs* to Mālik annually; when Hārūn al-Rashīd learned about it, he was ashamed, because his gift to Mālik was smaller. Al-Rashīd sent to Mālik 500 *dīnārs*, while al-Layth sent 1,000. When al-Layth was asked why he was giving him so much, he allegedly replied: 'I was ashamed to give Mālik less than my daily income is.'³⁶

His financial support to Mālik is famous, but he tried to support any scholar or person in need. If he noticed any poor student especially those coming to the 'Amr Mosque whose role will be discussed later, he supported them in secret. He did not hesitate to give new clothes to those who had bad ones. If it was difficult for someone to come to the 'Amr Mosque, he gave him an

³² A Muslim is required to give alms *zakāt* if one *Hijra* year has passed since the beginning of owning a minimum amount of property. See more in Shamsuddīn Al-Dhahabī, *Siyar a'lām al-nubalā'*, 8/149.

³³ It was worth 1.25 grams of gold at the time.

³⁴ Abd al-Rahmān al-Sharqāwī, *A'immat al-fiqh*, 113.

³⁵ According to recorded accounts, he was supposed to provide the best he had to students and scholars.

³⁶ Shamsuddīn Al-Dhahabī, *Siyar a'lām al-nubalā'*, 8/149.

animal. So as not to embarrass them, he told them that when they were old and had the means, they would pay him back. He was also never supposed to eat alone. When a woman asked him for specific unit of measurement (*ratl*) of honey, to help her sick son, as honey was rare at the time, al-Layth ordered to give her one hundred twenty of it. At a time when his servant hesitated, al-Layth answered him: 'She asked us on her terms, and we gave her on our terms.'³⁷

His famous saying was: 'If someone bestows a gift on a high-ranking person, justice goes out the window.' Therefore, he urged high-ranking officials not to accept any gifts, if they want to keep their sense of justice. According to Abd al-Ḥalīm Mahmūd, he was exemplified by the Sufis for his sincerity (*ikhlās*), devotion (*tajarrud*) and engagement among people.³⁸

We also know from the preserved information that he was aware of the ways in which he could relieve his body and soul. He dressed and perfumed well, enjoyed what was permissible (*halāl*) and good (*tajjib*) and tried to make people around him happy. His own motto was: Be good as God has been good to you, and do not forget your share of this world. However, according to him, people do not have the right to their own property, only if others really have enough (*hadd al-kifāya*), not just secure food and drink for survival (*hadd al-kafāf*). Therefore, he was convinced that the government of rulers were responsible before God to ensure sufficiency (*kifāya*) for their people. So it is not surprising that he used his independent reasoning (*ijtihād*) most on topics dealing with social justice between the rich and the poor, between rulers and ordinary Egyptians.³⁹

Al-Layth bin Sa'd and Great Jourists

Al-Layth bin Sa'd and Mālik ibn Anas (93-179AH / 711-795AD)

Both lawyers al-Layth and Mālik ibn Anas are known not only for their exchange of letters on several legal topics, but also for

³⁷ Ibid.

³⁸ The *Sūfiyūn* are understood here as those who follow *tasawwuf*, the Islamic scientific discipline that teaches what qualities should be in the human heart.

³⁹ Layth bin Sa'd narrated that Muḥammad said: The one who is unjust in sadaqa is like the one who withholds it. Sunan ibn Māja 1808, 26.

their very strong friendship.⁴⁰ Al-Layth was supposed to visit Mālik in Medina for the first time during his pilgrimage to Mecca (*hajj*) and from then on he gifted him 100 *dinārs* every year.⁴¹ Whenever Mālik asked him for any kind of support, he got from al-Layth more than he needed. It is evident that al-Layth also inquired about Mālik's needs in letters.⁴² History has preserved their friendly debate and exchange of legal views in two letters, which represent a very valuable source of information as for how the scholars treated each other when they differed in opinion on some legal issues (*adab al-khilāf*).⁴³

Both scholars had their own methodology of extracting the laws, unless the surviving statement spoke clearly and did not contain a direct argument (*dalāla qat'īya*). In addition, Mālik did not accept the narration, which was narrated by only one of the companions (*hadīth āḥād*), but emphasized the living practice of the inhabitants of the city of Medina ("amal ahl Madīna"). Unlike him, al-Layth accepted the narration of one companion if it agreed with the spirit of the Qur'ān (*rūh al-Qur'ān*) and the Sunnah, it was not against reason, and in accordance with God's Law (*maqāṣid shari'ā*).

Al-Layth bin Sa'd and Al-Shāfi'ī (150-204AH / 767-820AD)

Although al-Layth and al-Shāfi'ī never met, al-Layth's legal opinions had a great impact on al-Shāfi'ī's legal school of law. Al-Shāfi'ī came to Egypt in 814 AC, when al-Layth was already dead, making him very sorry and urging him to get acquaint with al-Layth's teaching at least through his known legal views and extent works. Al-Shāfi'ī noticed that many jurists do not follow Mālik, but rather lean towards the views of al-Layth. Furthermore, he observed that when al-Layth found no information regarding new

⁴⁰ Based on these letters, we know that they differed in 70 legal issues; however, the letters did not encompass all of them. See Ibn Ḥajar al-Ḥaythamī, *al-Fatāwā al-kubrā al-fiqhīya 'alā madḥhab al-imām al-Shāfi'ī*, 4/313.

⁴¹ 'Abd al-Rahmān al-Sharqawī, *A'immat al-fiqh*, 103; Shamsuddīn Al-Dhahabī, *Siyar a'lām al-nubalā'*, 8/149.

⁴² The letters contain not only legal but also personal topics, both of the lawyers were close friends.

⁴³ Ibn Sa'īd Saḥnūn, *Al-mudawwana al-kubrā li al-imām Mālik bin Anas al-Asbahī*, 109-110.

matters (*mustaḥdathāt*) either in what the companions of Muhammad said (*aqwāl ṣahāba*) or in the above mentioned *ahādīth* *āḥād*, he resorted to the process of deductive analogy (*qiyās*).⁴⁴

During his five years in Egypt, therefore, al-Shāfi’ī tried to find what al-Layth had written; he searched for *Masā’il al-fiqh* (Issues of Jurisprudence), written by al-Layth’s own hand and containing the history of Egypt before Islam, exegesis of the Qur’ān and collection of narrations. Unfortunately, much of his work was destroyed by those who did not wish him the favor of *wālī*, and apparently they did not like the fact that he was preferred over others as a Persian instead of an Arab. Most of his writings were burned or buried underground.

Al-Layth took the so-called middle path between people of narration (*ahl al-ḥadīth*) and people of opinion (*ahl al-ra’y*),⁴⁵ inspiring al-Shāfi’ī to follow him. Al-Shāfi’ī was also at a loss for a long time whether to lean towards the Iraqi people of narration or people of opinion, until he settled in Egypt and got to know al-Layth’s school of law, which was more central. That is why he went from the contemplation where he followed Mālik to a final comprehensive compendium laying out where he differed from him. Al-Shāfi’ī revised his teaching that he had written in Iraq and changed some of his earlier legal rulings because they did not suit the Egyptian environment and society. Thousands of pages written by al-Shāfi’ī in Egypt were compiled into the famous work *Kitāb al-umm* (The Exemplar).⁴⁶ Studying what was left by al-Layth, he was supposed to declare ‘I have not missed anyone as al-Layth, and I will not be sad for missing anyone as for al-Layth.’

According to Sharqāwī, the change in Shāfi’ī’s legal teaching was influenced not only by familiarization with the works of al-Layth, but also with the specific Egyptian culture characterized by

⁴⁴ The process of deductive analogy in order to apply a known injunction to a new circumstance.

⁴⁵ Two groups of Islamic jurists who differed in their methods of deriving legal rulings from the sources of Islamic law. Whereas people of narration place a strong emphasis on the use of *ḥadīth* (mainly recorded sayings or actions of the Prophet), people of opinion rely on independent legal (*ijtihād*) and analogical reasoning (*qiyās*).

⁴⁶ One of the earliest and most influential works in Islamic jurisprudence.

an ideological synthesis between Islam and ancient civilizations, especially ancient Egyptian, Coptic and Greek.⁴⁷ He himself then exhorted his friends not to follow anything else from his jurisprudence than what he wrote in Egypt; therefore, there was no such thing as the old and new legal school of al-Shāfi‘ī, or the legal teaching of Egypt and the legal teaching of Iraq, just a teaching formed on the basis of new stimuli and insights.

Al-Layth bin Sa‘d and Abū Ḥanīfa (80-150 AH / 696-767 AD)

Al-Layth first met Abū Ḥanīfa at one of the gatherings for the study of Islam (*halaqāt*; sg. *halaqa*) in Madīna. He rejected his principle of following opinion (*akhd bi al-ra‘y*), but was nevertheless supposed to recognize his wise wisdom. Al-Layth disagreed with him in many important points, the most famous is their exchange of views on the inalienable charitable endowment under Islamic law (*waqf* or *hubūs*). Al-Layth admonished those judges who decided to withhold their property at the expense of charity, pointing out that such a decision was against the Sunnah.⁴⁸

Role of the ‘Amr Mosque

After al-Fustāṭ was established in 20 AH / 642 AD, the commander who led the conquest, ‘Amr ibn al-‘Āṣ, had a mosque built here, simply known as ‘Amr.⁴⁹ Its uniqueness lay in the fact that it had became a witness to all governments since the first presence of the Arabs to this day, thus witnessing the development that took place over more than thirteen centuries. Although it was built on a very modest scale, it gradually grew and flourished to its present form.

More than forty types of gatherings⁵⁰ in this mosque, it was not only religious sciences, i.e. the Qur‘ān, narrations and jurisprudence, but also oral tradition (*qīṣaṣ*), poetry (*shi‘r*), philosophy (*falsafa*), medicine (*tibb*), astronomy (*falak*) or mathematics (*riyāḍiyāt*). This fact testifies to the easy acceptance of

⁴⁷ ‘Abd al-Rahmān al-Sharqāwī, *A ‘immat al-fiqh*, 3.

⁴⁸ Prophetic tradition.

⁴⁹ Also referred to as *tāj al-jawāmi‘* or *al-jāmi‘ al-‘atīq*.

⁵⁰ Yāsīn Ḥūrī, *Al-masjid wa risālatihī fī al-islām*, Bayrūt, 115.

new ideas, while al-Layth praised that its doors are also open to poets.⁵¹

At the same time, scholars encountered other customs here; there were no one-sided lectures by the teacher, while the students listened, as was the custom, for example, in the gatherings of Mālik. Instead, the teacher just brought up any idea that was encountered in a debate with some of the students, and through these confrontations, discussions on various topics were sparked, opinions could develop and mature here. Such a way of science spreading could belong to the ancient Egyptian tradition, and had to be part of the Greek philosophers tradition as well. Even the Egyptian school of Islamic jurisprudence moved in this direction. Al-Shāfi‘ī, when he started teaching here later, followed this method in giving lessons in history of the Qur’ān, Qur’ān exegesis and many other subjects.⁵² Under the influence of the mosque ambience, he wrote his famous *Kitāb al-Umm*. Among the other Islamic scholars who realized their potential there were also historian al-Tabarī and Egyptian judge Ibn Lahī'a,⁵³ actually, each corner (*zāwīya*) of the mosque was known according to the scholar who taught and gathered his students there.⁵⁴

The unprecedented activity of the scholars was described in 439 AH / 1047 AD by Persian poet, philosopher and traveler Nāsir Khusraw: 'In the mosque there are constant *halaqāt* lessons, many reciters, it is a mosque belonging to an exceptional center of learning, there are not less than 5,000 people present it at any time of the day or night, the outer courtyards of the mosque do not lack students, not even from among foreigners.'

This description also points to the exceptional position of the mosque and its scientific and cultural role, and at the same time we can perceive the difference between the 'Amr Mosque in al-Fustāt and the famous al-Azhar Mosque. While in the 'Amr Mosque, the lessons were free, so to speak, for God's sake (*li wajh Allāh*), in al-Azhar Mosque the fees were claimed by the state and

⁵¹ 'Abd al-Rahmān al-Sharqāwī, *A'immat al-fiqh*, 152.

⁵² *Ibid*, 152.

⁵³ Shamsuddīn Al-Dhahabī, *Siyar a'lām al-nubalā'*, 8/151.

⁵⁴ Yāsīn Hūrī, *Al-masjid wa risālatihī*, 115.

subsequently redistributed among the scholars. Moreover, 'Amr Mosque started activities for Muslims full four centuries earlier and from early times an important, it meant direction (*qibla*) for scholars and students throughout the Islamic world.

A very significant characteristic of these gatherings that referred to the local progressive thinking was also that the teaching was intended not only for men, but also women studied and taught there. The most famous was the corner of Nafisa, a descendant of Hasan ibn 'Alī, known for her piety and devotion to Islam.

The 'Amr Mosque had a decisive meaning in the central conception of Islamic teaching, moving between the people of opinion and the people of narration and till now carries much of the old pre-Islamic knowledge and passes it on among the students. All these aspects were certainly reflected in the thinking of al-Layth.

Furthermore, the study of languages was another important stimulus for al-Layth's reasoning because Arabic was still only minimally spread and the Coptic language prevailed in Egypt. He therefore learned both languages; Coptic of his forefathers and Arabic, the language of Islam. In addition, he also grasped Latin and Greek, thereby he had the opportunity to look even deeper into the cultural heritage of his country. This is also related to his interest in pre-Islamic poetry, the verses of which he enjoyed singing to himself until one of his teachers told him: 'It is permitted, but do not do it, because one day you will have a great position in the field of Islamic jurisprudence.'⁵⁵ That was already the period when he was seventeen and was said to show a very independent view on legal topics with the statement attributed to him: 'Learn patience (*sabr*) and self-control (*hilm*) before knowledge.' Although he was offered to lead some gathering at a very young age, his modesty did not allow him to do so.

⁵⁵ 'Abd al-Rahmān al-Sharqāwī, *A'immat al-fiqh*, 100.

Some Legal Opinions Reflecting the Influence of the Environment on al-Layth's Thinking

Juridical schools were still in their infancy in Layth's time and the opinions had not yet been fixed. Neither jurists nor rulers were united. However, new and controversial topics and situations gave lawyers food for their thought and more and more often they were forced to take a particular position.

Demolition of Coptic Sacred Buildings

This sensitive issue shows that the establishment of new churches became a widely discussed topic in the early days and al-Layth's opinion on this matter clearly demonstrates influence of the Egyptian multi-religious society, in which he grew up and which surrounded him all his life. The original population before the spread of Islam in Egypt consisted mostly of Copts, only few of them converted to Islam. When one of the rulers, Sulaymān bin 'Alī (123-173 AH / 740-789 AD), ordered the demolition of several churches⁵⁶ while the Copts offered 50,000 *dīnārs* for him to let them stand, al-Layth stood up for the Copts. Subsequently, he wrote to the Caliph to encourage him to remove the ruler from power because in his view bin 'Alī was committing an innovation (*bid'a*). The following ruler, Mūsā ibn 'Isā (128-189 AH / 746-805 AD), consulted the matter with al-Layth and 'Abdullāh ibn Lahī'a, who supported him in the decision to rebuild the churches, as we learn:

'Mūsā ibn 'Isā allowed the Christians to rebuild the churches destroyed by Sulaymān ibn 'Alī. They were all rebuilt on the advice of al-Layth and 'Abdullāh ibn Lahī'a, who claimed: "They belong to the country's architecture." They gave as an argument that most of the churches in Egypt were rebuilt under Islam, at the time of the Companions and their Successors.'⁵⁷

According to al-Layth, Prophet Muhammad was supposed to appeal for good behavior towards the Copts, and many of the churches were believed to be built in Egypt since the time of the

⁵⁶ During his reign there was also a massive campaign against alcohol and gambling.

⁵⁷ Muhammad Ibn Yūsuf al-Kindī, *The Governors and Judges of Egypt; or, Kitāb el umarā (el wulāh) wa Kitāb el-qudāh of el Kindī*, New York, 2016, s. 132.

Companions. Al-Layth is also said to repeat Muhammad's warning: 'He who harms a peaceful/contracted non-Muslim, then I will be His opponent.'

Another line of this issue can be seen in the Covenant of 'Umar ibn al-Khattāb that was supposed to guarantee the protection of lives, property, creed (*aqīda*) and churches of non-Muslims. He supposedly warn against harming the inhabitants of the conquered territory from the People of the Book (*ahl al-kitāb*) that did not accept Islam and remained in their religion (*ahl al-dhīmma*).

Al-Layth further confirmed that churches, like mosques and synagogues, are an ornament (*zīna*) of Egypt and issued a decision that they belong to the monumental landscape of the country (*imāra al-ard*). Al-Layth's legal reasoning therefore shows an effort to maintain good relations with the Copts and he himself is believed to make friends with them.⁵⁸

Al-Layth accepted the temples of all three monotheistic religions as part of the cultural heritage of the country and mainly referred to the fact that non-Muslim buildings were built on the territory of the Muslim world even during the time of Muhammad and his Companions, Muhammad was not supposed to forbid it.

In this legal area, al-Layth differed with Mālik ibn Anas and the whole Medinan school which considered the building of new churches and synagogues in Islamic lands illegal.

Purchase of a Slave from Nubia during the Baqṭ Treaty concluded

Another area of legal discussion concerns the peace between Egypt and Nubia, which was maintained from the 1st/7th century on the basis of a famous treaty called The Baqṭ lasting almost seven hundred years. Muslim authorities believed that Egypt would not arrange attacks against Nubia as long as it supplied precious goods including several hundred slaves. At the same time, Nubia will not attack Egypt in exchange for Egyptian products, textiles and wheat. Contrary to this interpretation of the

⁵⁸ 'Abd al-Rahmān al-Sharqāwī, *A 'immat al-fiqh*, 113.

treaty, the Nubian authorities regarded the exchange of goods and slaves as a voluntary gift expressing good diplomatic relations.⁵⁹

Mālik explicitly opposed the buying and selling of Nubians and understood that the Baqt forbade organizing Nubian raids on Egyptian territory and slave hunting. However, the majority of 2nd/8th and 3rd/9th century scholars did not agree with Mālik's legal reasoning.

Al-Layth is referred to say that as an Egyptian he knows the land of Nubia and the needs of Egyptian people better than Mālik in Medina. According to him, the truce between the Egyptians and the Nubians was based on an agreement that they would not attack each other or defend themselves from their enemies. The matter had nothing to do with slaves and their purchase, in al-Layth's view, was legal and required.⁶⁰

Equality in Marriage (kafā'a)

According to Mālik, the origin of the partner (*naṣab*) was important; it is not possible for a Quraysh man to marry a non-Quraysh woman, or for an Arab man to marry a non-Arab woman. Al-Layth, who also took into account non-Muslims, was more inclined to the importance of the Islamic faith; a Muslim man can marry a Muslim woman and whoever decides otherwise acts contrary to the Qur'ān, in which is said: 'Surely the most noble of you in the sight of God is the most righteous among you.'⁶¹

It is also contrary to the narration of Muḥammad: 'No superiority for an Arab over a non-Arab, no for a non-Arab over an Arab. Neither is the white superior over the black, nor is the black superior over the white – except by piety.'⁶²

Beating an individual accused of Theft (sirqa)

Mālik permitted the beating of an individual accused of theft, in order to force to confess; i.e. the common good (*maṣlaha 'āmma*)

⁵⁹ Jelle Bruning, *Slave Trade Dynamics in Abbasid Egypt: The Papyrological Evidence*, in: *Journal of the Economic and Social History of the Orient*, č. 63-5-6/2020, Leiden, 685-686.

⁶⁰ Ibid, 686-687.

⁶¹ Al-Qur'ān, 49:13.

⁶² 'Abd al-Salām 'Allūsh, *Taqrīb al-madārik*, 351.

was more important to him than the benefit of the suspect. Al-Layth wondered at Mālik's opinion and asked what if he was innocent? For him, protecting the innocent was more important than punishing the guilty, i.e. letting a culprit going unpunished was preferred to doing injustice to an innocent. Also when the perpetrator was ignorant of the illegality of his act, it was sufficient to create juridical doubts.⁶³ In addition, according to al-Layth, the beating (*darb*) should come only after the guilt is proven, or the one who beats (*dārib*) and the one who orders the beating (*āmir bi darb*) and who issued a legal ruling that it is allowed, those all should be held responsible.⁶⁴

Dealing with the Murderer's Accomplices (shurakā al-qātil)

According to Mālik, it is necessary to kill all accomplices of a murderer together with the very murderer (*qātil aslī*) and here he refers to retaliation in kind, „eye for an eye“ (*qisāṣ*). Al-Layth pointed out that this contradicts the spirit of the Qur'ān verses about such a punishment, which should be imposed only on the original perpetrator, while the punishment for killing (*qatl*) remains killing. For companions of a murderer he favored life imprisonment.

The socio-political context of Egypt, with its administrative complexity and interactions with non-Muslim communities, seem to have shaped Layth's emphasis on justice and the protection of the innocent. The need to govern a diverse population with fairness and justice would have underscored the importance of ensuring that legal judgments did not lead to unjust harm. Layth's insistence on proving guilt before punishment and his concern for the potential innocence of the accused reflect an environment where legal procedures needed to be both just and equitable.

Conclusion

The study pointed out some features of al-Layth's Islamic jurisprudence that can also be analyzed from the perspective of the

⁶³ Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law*, Cambridge, 2014, 53.

⁶⁴ 'Abd al-Rahmān al-Sharqāwī, *A'immat al-fiqh*, 117.

specific environment in which al-Layth grew up and lived, and which surely influenced his legal thinking to a great extent. He lived during a period of significant political and social transition in the Islamic world, as the Umayyad dynasty was succeeded by the Abbasid dynasty in 750. This shift marked a crucial transformation in legal thought, with the Abbasid dynasty emphasizing centralized governance and the codification of laws, undoubtedly influencing Layth's focus on legal systematization and the independence of his legal doctrine. Furthermore, increasing urbanization and commercial development likely shaped his legal perspectives, particularly in matters of commercial transactions and economic justice. The influx of merchants and various goods would necessitate a flexible and equitable legal framework.

Furthermore, during his formative years, al-Layth bin Sa'd lived through the reign of Caliph 'Umar ibn 'Abd al-'Azīz, a period renowned for its notable social equality and minimal differentiation between Muslims and non-Muslims. This historical context could profoundly influenced al-Layth's perspectives on tolerance and religious diversity.

He possessed an in-depth knowledge of Egypt and an understanding of its heterogeneous society. From early in his life, he was accustomed to the presence of *ahl al-dhimma*. The interactions with non-Muslim communities led to the incorporation of non-Islamic elements in his legal decisions and fostered a more tolerant and accommodating legal system. This diversity may have also required more adaptable and considerate legal rulings to maintain social harmony. It is evident that al-Layth emphasized the importance of openness to local customs and traditions in legal decisions, making his interpretations more attuned to the specific social and cultural conditions of his time. His views are often focused on practical problem-solving, justice, and equality, even frequently standing in opposition to the conventional opinions of his time. It even seems that al-Layth could have been one of those jurists who issued the most legal rulings in the matter of *ahl al-dhimma* or *ahl al-kitāb*. They mainly touched on the areas of dealings / relationships (*mu'āmalāt*), marriage (*zawāj*) and rebuilding churches (*iqāma mā hudima min al-kanā'is*).

Another area of discussion was his life in abundance, as indicated by numerous surviving accounts. In his legal teachings, he particularly highlighted those narrations that appealed to the love of a good and beautiful life, aspiring to this ideal for both himself and others. From this perspective, his jurisprudence is primarily influenced by his environment and social life, particularly in the context of individual benefit. This approach entails the prohibition or permission of certain actions based on necessity and specific circumstances, and whether these actions serve the interests of Muslims or not. It can be seen that al-Layth was well aware of the kind nature of Islam and the wide possibilities of peaceful practice of this faith. In contrast, Mālik originated from a desert and inhospitable environment where, with few exceptions, only Muslims coexisted. Consequently, his legal doctrine can be perceived as more rigid and dogmatic.

The impact of intellectual exchanges with scholars from various regions and legal schools was also considered. The vibrant academic environment, with its access to diverse scholarly works, likely enriched al-Layth's legal knowledge and fostered innovative legal interpretations. Renowned scholars and their works, which were significant in the intellectual circles of the time, played a crucial role in shaping his jurisprudential perspectives.

At the same time, al-Layth bin Sa'ad was regarded as a *mawlā* and often encountered hateful reactions due to his exceptional position as the chief jurist in Egypt. This experience likely shaped his character, which appears to be forgiving, humble, and purposeful. Moreover, this status is identified as one of the possible reasons why much of the legacy of such an outstanding Egyptian jurist has been irretrievably lost.

When analyzing Layth bin Sa'd's school of law, several limitations must be considered. The limited primary sources on his jurisprudence may not fully represent his legal thought, and accurately reconstructing the historical context of 9th-century Egypt presents challenges that can influence interpretations, further complicated by scholarly bias and evolving perspectives.

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