A Dispute between Ḥanafis and Twelvers about *Mutʿa* (First Half of 2nd c. AH)

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Abstract

Disputes between scholars of different backgrounds were usual in the first two centuries AH, which was the formative period of the Islamic system of law. At that time each geographical centre, mainly Mecca, Medina, Kūfa, Baṣra, and within each centre, each scholar, was proposing his own legal solution and was justifying it based on his own interpretation of the Quran and the Prophetic tradition. The *ih̥tilāf* literature is rooted in that period. One of the controversial subjects concerns the lawfulness of the temporary marriage (*nikāḥ al-mutʿa*), which was a matter of sharp divergences between a group of the Shia, the Twelvers, and the remaining law schools. The subject matter of this paper does not concern the legal polemics about *mutʿa*, rather it exclusively aims to highlight the interpersonal relationships between the scholars involved. At my knowledge, I quote all sources regarding these personal relations. Only the Imami jurist al-Kulaynī reports three hadiths including disputes between the most preeminent representatives of the Twelvers, namely Abū ʿAbd Allāh Ḡaʿfar al-Šādiq and Abū Ḡaʿfar, and their Ḥanafī opponents, namely Abū Ḥanīfa and his disciple Zufar. The first controversy was between Abū ʿAbd Allāh and Abū Ḥanīfa; the second involved Abū Ḡaʿfar and Abū Ḥanīfa; the third one concerned Abū Ḡaʿfar and Zufar. The presentation of al-Kulaynī obviously sheds a good light on his school and its representatives and takes for granted the Imami legal justification of the doctrines he describes.

Key words: Ḥanafis, Twelvers, *mutʿa*, interpersonal relationships

1. Introduction

Disputes between scholars of different backgrounds were usual in the first two centuries AH, which was the formative period of the Islamic system of law. At that time each geographical centre, mainly Mecca, Medina, Kūfa, Baṣra, and within each centre, each scholar was proposing his own legal solution and was justifying it based on his own interpretation of the Quran and the Prophetic tradition. The *ih̥tilāf* literature is rooted in that period.

One of the controversial subjects concerns the lawfulness of the temporary marriage (*nikāḥ al-mutʿa*), which was a matter of sharp divergences between a group of the Shia, the Twelvers, and the remaining law schools. The Imami jurist al-Kulaynī (d. 328/939) reports three hadiths, including disputes between the most preeminent representatives of the Twelvers, namely Abū ʿAbd Allāh Ḡaʿfar al-Šādiq and Abū Ḡaʿfar, and their Ḥanafī opponents, namely Abū Ḥanīfa and his disciple Zufar. The first controversy was between Abū ʿAbd Allāh and Abū Ḥanīfa; the second involved Abū Ḡaʿfar and Abū Ḥanīfa; the third one concerned Abū Ḡaʿfar and Zufar. The presentation of al-Kulaynī obviously sheds a good light on his school and its representatives and takes for granted the Imami legal justification of the doctrines he describes. Thus, the Imami view should be integrated with the Ḥanafī standpoint.

2. Abū ‘Abd Allāh vs. Abū Ḥanīfa

On the authority of ‘Alī b. Ibrāhīm, on the authority of his father, on the authority of Ibn Abī ‘Umayr, on the authority of ‘Alī b. al-Ḥasan b. Ribāt, on the authority of Ḥarīz, on the authority of ‘Abd al-Raḥmān b. Abī ‘Abd Allāh, who said that he heard Abū Ḥanīfa ask Imam Abū ‘Abd Allāh (Ġa‘far al-Šādiq) about *mut‘a*, and he replied, ‘About which of the two *mut‘as* are you asking?’ He said, ‘I have already asked you about the *mut‘a* of *ḥağğ* [the enjoyment of the freedom of normal life after the pilgrim’s state of ritual consecration], so inform me about the *mut‘a* of women. Is this a man’s right?’ He replied, ‘Glory be to God! Have you not read in the book of God, *Since you enjoy them, give them their recompense* (Q 4:24)?’ Abū Ḥanīfa said, ‘By God, it is as I have never read that verse!’¹

Abū ‘Abd Allāh Ġa‘far al-Šādiq (‘the trustworthy’) b. Muḥammad al-Bāqir b. ‘Alī Zayn al-‘Ābidīn (d. 148/765), a contemporary of Abū Ḥanīfa, was born in Medina, where he continued to live. His historical role is relevant, because he was the last imam recognised by both Twelvers and Ismailis. Nevertheless, Ismailis do not follow his doctrine on *mut‘a*. Ġa‘far al-Šādiq was renowned as a great scholar by both Shi‘is and Sunnis. As a matter of fact, he is an essential point of reference of the Imami doctrine and he is also mentioned in the Sunni *isnāds*. A wide circle of scholars learnt hadiths from him and he had many disciples who specialised in different sciences. Abū Ḥanīfa, Mālik b. Anas, Muḥammad b. al-Ḥasan al-Šaybānī and Sufyān al-Ṭawrī are counted among those who attended his lessons in the field of *fiqh*.² Contemporary Imāmi scholars emphasise the role of Ġa‘far al-Šādiq and his relation with Sunni scholars, stressing that he ‘was the original source of the sciences he inherited from his forefathers and from his grandfather, the great Prophet, who had caused the sources of knowledge and wisdom to gush out on earth’.³ As a consequence, according to this view, Abū Ḥanīfa and Mālik b. Anas were proud on their joining the school of the Imam and attending his lessons. An episode⁴ is indicative of the alleged preeminence of Ġa‘far al-Šādiq over Abū Ḥanīfa:

Abū Ḥanīfa visited Imam Ġa‘far al-Šādiq, peace be on him, and said to him: ‘I have seen your son, Mūsā, pray while the people were passing before him. He did not prevent them from that.’ Abū ‘Abd Allāh (al-Šādiq), peace be on him, ordered his son to be brought before him. When he stood before him, he asked him: ‘O My little son, Abū Ḥanīfa says that you pray and the people pass before you.’ ‘Yes, father,’ replied Imam Mūsā, ‘the One to Whom I pray is nearer to me than them; Allah, the Great and Almighty, says: “We are nearer to him than the jugular vein”.’ Imam al-Šādiq, peace be on him, was very delighted and glad when he heard these wonderful

1 al-KULAYNĪ, *al-Uṣūl min al-kāfi*, V: 449-450, no. 6. This hadith is translated into English in CALDER, MOJADDEDI & RIPPIN (eds. and transl.) 2003: 55.

2 al-QARASHI 1970: 80; HODGSON. Many works are ascribed to Ġa‘far al-Šādiq; see SEZGIN 1967: 528-531, no. 7.

3 al-QARASHI 1970: 82-83.

4 Ibid.: 198. This episode is reported from al-MAĞLISĪ, *Bihār al-Anwār*.

words of his son, so he rose for him, embraced him, and said to him: 'May my father and mother be your ransom, O he in whom secrets have been deposited!'

3. Abū Ġa'far vs. Abū Ḥanīfa

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'Alī Raf'a said that Abū Ḥanīfa asked Abū Ġa'far Muḥammad ibn al-Nu'mān Ṣāhib al-Ṭāq, 'What do you say, Abū Ġa'far, concerning *mut'a*? Do you consider it lawful?' He replied, 'Yes.' Abū Ḥanīfa then asked, 'What stops you from instructing your women to have *mut'as* on your authority?' Abū Ġa'far answered him, 'Not all activities are desirable even if they should be lawful. People have different capacities and ranks, and they can increase their capacity. But what do you say, Abū Ḥanīfa, about (date) wine? Do you consider that lawful?' He answered, 'Yes.' Abū Ġa'far countered, 'So what stops you from seating your women behind the liquor-stalls to drink on your authority?' Abū Ḥanīfa responded, 'It is one strike each, but your arrow has hit the mark! Abū Ġa'far, the *āya* which is found in the *sūra* that opens with "The questioner asked" [i.e. Q 70] conveys the prohibition of *mut'a* [Q 70:29-30],⁵ and the tradition about the messenger of God abrogates the permission for *mut'a*.' Abū Ġa'far responded to him, 'Abū Ḥanīfa, the *sūra* that opens with "The questioner asked" is Meccan, while the verse about the *mut'a* is Medinan, and your prophetic tradition is an unsound transmission.' Abū Ḥanīfa countered, 'The *āya* about inheritance also pronounces the abrogation of *mut'a*.' Abū Ġa'far responded, 'It is proven that there can be marriage without inheritance.' Abū Ḥanīfa asked, 'On what basis do you say this?' Abū Ġa'far answered, 'If a Muslim man marries a Jewish or Christian woman and then dies, what do you say should happen?' Abū Ḥanīfa said, 'She does not inherit anything from him.' Abū Ġa'far concluded, 'Therefore the possibility of marriage without inheritance has indeed been proven!' Then they parted company.⁶

The figure of Abū Ġa'far is very complex, and the events of his life are narrated in both Shi'i and Sunni sources. He was an Iraqi scholar, renowned as a theologian and jurist. His full name is Abū Ġa'far Muḥammad b. 'Alī b. al-Nu'mān b. Abī Ṭarīfa al-Aḥwal al-Baḡalī al-Kūfī (d. 180/796), nicknamed *Ṣāhib al-Ṭāq* or *Mu'min al-Ṭāq* by the Shia (*ḥāṣṣa*) and *Ṣaytān al-Ṭāq* by non-Shia (*'amma*), counted among the *aṣḥāb* (companions) of Abū 'Abd Allāh Ġa'far al-Ṣādiq, highly praised as trustworthy, theologian, skillful, quick to respond.⁷ The Sunni al-Ḍahabī (d. 748/1348)⁸ qualifies him as belonging to the extreme Shia.

5 'And those who guard their chastity except with their wives and the (captives) whom their right hands possess—for (then) they are not to be blamed'. An identical wording is reported in Q. 23:5-6: 'Who abstain from sex, except with those joined to them in the marriage bond, or (the captives) whom their right hands possess—for (in their case) they are free from blame'. For the English version of the Quran, I use here the Yusuf Ali translation.

6 al-KULAYNĪ, *al-Uṣūl min al-kāfi*, V: 450, no. 8. This hadith is translated into English in CALDER, MOJADDEDI & RIPPIN (eds. and transl.) 2003: 83-84, no. 8.

7 al-ṬŪSĪ, *al-Fihrist*, 131-132, no. 583.

8 al-ḌAHABĪ, *Siyar A'lām al-Nubalā'*, X: 553-554, no. 187.

Abū Ġa'far's literary activity was intense. He wrote many books, mentioned in the primary sources, such as Ibn al-Nadīm (d. 385/995),⁹ al-Nağāšī (d. 450/1058),¹⁰ al-Ṭūsī (d. 460/1067),¹¹ al-Ḍahabī,¹² but all of them are considered lost.¹³ He was a skilful controversialist, especially on the issue of Imamate, about which he composed *Kitāb al-iḥtiğāğ fī imāmat amīr al-mu'minīn* (Evidence for the Imamate of the Commander of the Faithful), also entitled *Kitāb al-Imāma* (The Book of the Imamate), and *Kitāb al-radd 'alā 'l-Mu'tazila fī imāmat al-maḥdūl* (The Book of Refuting the Beliefs of the Mu'tazilites on the Imamate of the Less Excellent). He discussed theological and legal issues with his contemporaries, namely the doctrines of the Ḥawāriğ, in his *Kitāb kalāmihi 'alā 'l-Ḥawāriğ* (theological debates with the Ḥariğites, containing his debates with them and their corrupt beliefs). But he notably debated with his compatriot Abū Ḥanīfa, as it is attested by his work *Kitāb Mağālisihi ma'a Abī Ḥanīfa wa'l-Murğī'a* (debates with Abū Ḥanīfa and the Murğī'a).¹⁴

Abū Ġa'far is mentioned several times by Western scholars, above all in the context of theology and philosophy.¹⁵ He is also mentioned in connection with the controversies around the Imamate, since he was a staunch defender of this Shi'i institution.¹⁶

The Shi'i sources enhance the figure of Abū Ġa'far and present him as one of the most beloved disciples of al-Šādiq. Al-Kaššī (d. 4th/10th c.)¹⁷ reports a statement of Ġa'far al-Šādiq, according to which four people were the most beloved to him, alive or dead: Barīd b. Mu'āwiya al-ʿIglī, Zurāra b. A'yan, Muḥammad b. Muslim and Abū Ġa'far al-Aḥwāl.

Al-Qarashi,¹⁸ a contemporary Imami scholar, with some emphasis and with a clear apologetic intent, presents a broad picture of the eminent figure of Abū Ġa'far. He states:

With this subject matter we will end our talk about this unique, great man who struggled and combated for a long time in the way of Allah and defending the entity of Islam at the time when the ruling authorities pursued the reformers and severely punished the men of knowledge and thought, who spread the merits of Ahl al-Bayt, peace be on them.¹⁹

9 IBN al-NADĪM, *The fihrist of al-Nadīm*, I: 438.

10 al-NAĞĀŠĪ, *Kitāb al-riğāl*, 228.

11 al-ṬŪSĪ, *al-Fihrist*, 131-132, no. 583.

12 al-ḌAHABĪ, *Siyar A'lām al-Nubalā'*, X: 553-554.

13 For a complete list of his works, see VAN ESS 1991-1997, V: 66.

14 The title is also *al-Munāzara ma'a Abī Ḥanīfa*, a book on the debate with Abū Ḥanīfa. On the life, activities and doctrines of Abū Ġa'far, see VAN ESS 1991-1997, I: 336-342; V: 66-68. See also al-MAMAQĀNĪ, *Kitāb Tanqīh al-Maqāl fī aḥwāl al-riğāl*, III: 160-163, who reports a summary of the information given by the previous scholars, such as Ibn al-Nadīm, al-Kaššī, al-Nağāšī, al-Ṭūsī.

15 See, for instance, HOWARD 1990: 20; AMIR-MOEZZI 1994: 11, 180 (no. 275); AMIR-MOEZZI 2011: 222; HALPERIN 1995: 285 (no. 19); POONAWALA 2001: 110, 114 (no. 55), 115 (no. 59), 116; LEAMAN 2006; DAFTARY 1994: 88, 95; GIMARET, 'Shayṭān al-Ṭāq'. *EP*.

16 See, for instance, SACHEDINA 1988: 84.

17 al-KAŠŠĪ, *Riğāl al-Kaššī*, 164-169, no. 74.

18 al-QARASHI 1970: 551-557, no. 250.

19 Ibid.: 556.

Abū Ḡaʿfar is considered ‘on top of Muslim religious scholars in his jurisprudence, his knowledge, and his defending the religion. However, the early historians mentioned nothing of his viewpoints and legacy except a little bit’.²⁰ Muʿmin al-Ṭāq was formed at the school of al-Ṣādiq and specialized in Islamic philosophy and theology. When Imam al-Ṣādiq passed away, Muʿmin al-Ṭāq devoted himself to the Imam Mūsā and took from him many sciences and much knowledge.²¹ ‘In addition to his specialization in this art, he was among the gifted poets, but he left poetry and practiced theology’.²²

The Imami sources mention many debates between Abū Ḡaʿfar and his opponents, which—according to al-Qarashi—‘are evidence for his skillfulness and his excellence over them. He was famous for his firm arguments, strong proofs and conclusions’.²³ Some of these controversies involved Abū Ḥanīfa, including their divergence on *mutʿa*. Obviously, these episodes put in an unfavourable light Abū Ḥanīfa, while Abū Ḡaʿfar is presented as having a ‘strong evidence, intense opposition, a quick answer, a keen idea, and a clever heart’. Moreover, ‘he had with Abū Ḥanīfa other debates indicating his excellence over him and his ability to recall answers’.²⁴ Some episodes are reported in primary sources.

Abū Ḥanīfa said to Muʿmin al-Ṭāq: ‘O Abū Ḡaʿfar, Ḡaʿfar b. Muḥammad has died! Your Imam has died!’

Abū Ḡaʿfar answered: ‘But your Imam is among “those who have been granted a respite (*min al-munẓarīn*) until the Day of Resurrection”’.²⁵

One time [Abū Ḡaʿfar] met with Abū Ḥanīfa, who asked him: ‘I have heard something about you, o People of Shia!’ He replied: ‘What is it?’ [Abū Ḥanīfa] said: ‘I have heard that when one of you dies, you break his left hand, so that he may be given his book in his right hand.’ [Muʿmin al-Ṭāq] replied: ‘O Nuʿmān, it is a lie fabricated against us. However, I have heard about you, o People of the Murǧiʿa, that when one of you dies, you restrain a funnel in his back and pour a jar of water in it, so that he may not be thirsty on the Day of Resurrection.’ Abū Ḥanīfa said: ‘It is a lie fabricated against us and you.’²⁶

One time [Abū Ḥanīfa] asked Muʿmin al-Ṭāq: ‘Do you believe in the return?’ He answered: ‘Yes.’ Abū Ḥanīfa replied: ‘Give me now one thousand dinars, so that I

20 Ibid.: 551.

21 Ibid.: 552.

22 Ibid.: 553.

23 Ibid.

24 Ibid.

25 al-KAŠŠĪ, *Riḡāl al-Kaššī*, 166. This episode is also reported with variants by al-ṬABARŚĪ, *Kitāb al-iḥtiḡāḡ ʿalā ahl al-liḡāḡ*, 381: ‘When Imam al-Ṣādiq passed away, Abū Ḥanīfa saw Muʿmin al-Ṭāq and asked him: “Has your Imam died?” He answered: “Yes, but your Imam is among those who have been granted a respite until the Day of Resurrection.”’ The term *munẓarūn/munẓarīn* reminds the Quran: ‘Then they will say: “Shall we be respited?”’ (Q. 26:203); ‘We send not the angels down except for just cause: if they came (to the ungodly), behold! no respite would they have!’ (Q. 15:8); ‘And neither heaven nor earth shed a tear over them: nor were they given a respite (again)’ (Q. 44:29).

26 al-KAŠŠĪ, *Riḡāl al-Kaššī*, 168.

will give it back to you when we shall return.’ Al-Ṭāqī said to Abū Ḥanīfa: ‘Give me a warrantor that you will return as a man and not as a pig’.²⁷

Another day Abū Ḥanīfa was walking with Mu’min al-Ṭāq in one of the paths in Kūfa when a man was yelling: ‘Who will lead me to a lost child?’ Mu’min al-Ṭāq said: ‘As for the lost child, we did not see him, but if you are looking for a lost *ṣayḥ* then take this!’ He meant Abū Ḥanīfa.²⁸

4. Two doctrines in opposition

The first report, involving Ḡa’far al-Ṣādiq and Abū Ḥanīfa, makes Abū Ḥanīfa seem as if he were not able to fully understand the meaning of Q 4:24 (‘Seeing that ye derive benefit from them give them their dowers (at least) as prescribed’). This seems quite unlikely, because the Ḥanafī school admitted at its beginning that this verse really refers to *mut’a*, as stated by Ibn ‘Abbās. However, Ḥanafīs also believed that Ibn ‘Abbās changed his mind before his death.²⁹

The second report, concerning Abū Ḡa’far and Abū Ḥanīfa, falls more in detail into two opposite doctrines. The discourse evolves in the form of a cross-disputation, as a polemical match. One seeks to make his opponent fall in contradiction. In this way, to the statement of Abū Ḡa’far declaring lawful the *mut’a* marriage, Abū Ḥanīfa provocatively replies to let his wives practise it. But Abū Ḡa’far immediately polemically counters to Abū Ḥanīfa to let his wives drink wine, because he believes drinking wine is lawful. So, the response of Abū Ḡa’far is a counter-argument, concerning a rule rejected by the Sunni schools, except the Ḥanafī school, and by the Shia as well. The Arabic term used in the report for wine is *nabīḍ*. The lawfulness of drinking *nabīḍ* was a disputed matter at that time. Some Prophetic traditions report that *nabīḍ* was among the drinks prepared by Muḥammad’s wives and drunk by him. Nevertheless, only the Ḥanafī school allowed its use.³⁰

Abū Ḡa’far and Abū Ḥanīfa then move on more merely legal arguments. The key question concerns the interpretation of Q 4:24. According Abū Ḥanīfa, Q 70:29-30 abrogates *mut’a*. On the contrary, Abū Ḡa’far replies reminding him of the well-known principle of *nāsiḥ wa-mansūḥ*; i.e., the method of solving a discrepancy between verses indicating different regulations having recourse to the criterion based on the chronology of the revelation.³¹ In this specific case, verses mentioned by Abū Ḥanīfa were revealed in Mecca, while Q 4:24 was revealed in Medina. According to the Twelvers, this implies that Q 4:24 has not been abrogated.

The later Ḥanafī doctrine, as attested by al-Saraḥsī (d. 483/1090),³² changed the view of Abū Ḥanīfa, giving a different interpretation of Q 4:24. While Abū Ḥanīfa believes that

²⁷ al-ṬABARSĪ, *Kitāb al-iḥtiḡāḡ ‘alā ahl al-liḡāḡ*, 381.

²⁸ Ibid.

²⁹ al-SARAḤSĪ, *Kitāb al-Mabsūṭ*, V: 152. See also IBN QUDĀMA, *al-Muḡnī*, VII: 572.

³⁰ See HEINE, ‘Nabīḍh’, *EP*; WENSINCK & SADAN, ‘Khamr’, *EP*; SADAN, ‘Mashrūbāt’, *EP*.

³¹ See BURTON, ‘Naskh’, *EP*.

³² al-SARAḤSĪ, *Kitāb al-Mabsūṭ*, V: 153.

Q 4:24 actually refers to *mut'a*, even if it was later abrogated, the reformed doctrine maintains that the sentence of this verse 'Seeing that ye derive benefit from them' refers to wives married to a permanent contract. According to this view, such interpretation is confirmed by the previous words of the same Quranic verse: 'provided ye seek (them in marriage) with gifts from your property,—desiring chastity' (*muḥṣinīn*). Now the one who is chaste (*muḥṣin*) is a man who wants to get married in a permanent way (*nākiḥ*).

Another Quranic argument presented by Abū Ḥanīfa to Abū Ḡa'far against the lawfulness of the *mut'a* concerns the right of spouses to inherit from each other. Such right derives from a permanent marriage, but it is excluded in a *mut'a* marriage. Abū Ḥanīfa was not so naïve as to not know that a Jewish/Christian woman does not inherit from her Muslim husband. He could reply to Abū Ḡa'far that a *mut'a* contract and a permanent marriage between partners of different denomination represent two completely different cases. In fact, with reference to a permanent marriage, the impediment to inherit exists in the presence of a valid contract while, according to Abū Ḥanīfa, a *mut'a* union absolutely excludes the right to inherit between partners, precisely because of the lack of a contract. In conclusion, this report extols the figure and the doctrine of Abū Ḡa'far and makes Abū Ḥanīfa look like a naïve.

Al-Saraḥsī³³ adds further proofs, based on the Quran and attested in the Hadith literature, against the lawfulness of the *mut'a*. As a matter of fact, it is reported that 'Ā'īsa mentioned the Quranic verses 23:5-6 against *mut'a*. Indeed, according to this view, the wording of this revelation implies that a woman married in *mut'a* is neither a wife nor a slave. In fact, she cannot be considered a wife; firstly, because partners have no right to inherit from each other; secondly, a *mut'a* contract does not require repudiation (*ṭalāq*); thirdly, a man cannot have recourse to the specific procedures of *ẓihār* (repudiation pronounced using the words: 'You are for me like the back of my mother') and *ilā'* (oath of abstinence). Q 23:5-6 clearly admits only marriage and concubinage. Moreover, according to Ibn Mas'ūd (d. 32/652-3), a Companion of the Prophet and a reader of the Quran, *mut'a* was abrogated by the verses on *ṭalāq*, *idda* (period of waiting) and inheritance. In sum, al-Saraḥsī concludes that the Companions agree on the abrogation of the *mut'a*.

The rejection of the *mut'a* marriage by Abū Ḥanīfa was also based on Prophetic Sunna. In the report of al-Kulaynī, Abū Ḥanīfa simply stated that the Prophetic tradition abrogates *mut'a*, while Abū Ḡa'far merely countered that the hadith Abū Ḥanīfa spoke of is atypical and refuted. But what are these Prophetic traditions? They are mentioned by al-Saraḥsī.³⁴ The first tradition concerns what Muḥammad b. al-Ḥanafiyya transmitted from 'Alī b. Abī Ṭālib, that Allah and his Messenger forbade the *mut'a* on the Day of Ḥaybar. The second tradition is the hadith of al-Rabī' b. Sabra, who said that the Messenger of Allah permitted *mut'a* the Year of the Victory (*ām al-fath*) for three days. Then people refrained from it. Thus, Ḥanafis admit that the Prophet made the *mut'a* lawful for three days during a military expedition he carried out, when abstaining from sexual intercourse (*uzūba*) became hard; then he prohibited it. We agree, al-Saraḥsī goes on, that it was licit (*mubāḥ*), and such rule remained established (*tābit*) until it was abrogated. In conclusion, al-Saraḥsī comments that

³³ Ibid.: 152.

³⁴ Ibid.: 152-153.

absolute lawfulness is not confirmed, but only lawfulness for a short period of three days. After that, if a man utters: 'I get married to you for a month', and the woman answers: 'I give myself in marriage to you', this takes the form of a *mut'a*, not a *nikāh*, even if the word *nikāh* is pronounced, because the Ḥanafis believe that a marriage contract does not admit a term. However, for the Ḥanafī school, a decisive proof against the lawfulness of the *mut'a* is the statement of 'Umar, who declared that if a man who had married a woman, setting a time limit to the contract, had been introduced to him, he would apply the punishment of stoning; if he knew he was dead, he would stone his grave.

The arguments of the Twelvers against the soundness of the proofs based on Prophetic hadiths are precise and detailed. Al-Ṭūsī³⁵ criticises the evidence of his opponents, stating, first of all, that all the traditions they mention are *aḥbār āḥād* (traditions or reports going back to one single authority).³⁶ Moreover, those traditions are contradictory because, according to the report of Ibn al-Ḥanafīyya from his father, *mut'a* was prohibited on the Day of Ḥaybar, in contrast to what is reported by al-Rabī' b. Sabra, that such prohibition occurred in Mecca, the Year of the Victory. Al-Ṭūsī correctly stresses that there was a time lapse of about three years between the two episodes.

Al-Ṭūsī³⁷ also rejects the statement of his opponents that Ibn 'Abbās changed his mind. In fact, the contrary is generally admitted and there is no evidence that he changed his doctrine. Lastly, against the decision of 'Umar, al-Ṭūsī³⁸ argues that *mut'a* was practiced at the time of the Prophet. Thus, it is a compulsory rule as a Prophetic Sunna; as such, it must be considered a canonical law (*ṣar'*) and a part of the religion (*dīn*).

5. Abū Ḡa'far vs. Zufar

Al-Kulaynī³⁹ reports a hadith referring the opposite doctrines of Abū Ḡa'far and Zufar:

Muḥammad b. Yaḥyā, on the authority of Aḥmad b. Muḥammad, on the authority of 'Alī b. al-Ḥakam, on the authority of Baṣīr b. Ḥamza, on the authority of a man belonging to the Qurayš. He said: 'A very rich paternal cousin sent me this message: You are acquainted that many men have asked me in marriage, but I have never get married. I do not send you this proposal because I desire men, rather I knew that God made it lawful in His Book, and the Messenger of God made it explicit in His Sunna, but Zufar prohibited it. I want to obey God and His Messenger, and to disobey Zufar. Thus, marry me in a temporary marriage'. I answered her: 'Not before I went to Abū Ḡa'far and ask him advice.' Then, he added: I went to him and informed him. He answered: 'Do it! God bless your couple!'

³⁵ al-ṬŪSĪ, *al-Fihrist*, II: 394-395.

³⁶ JUYNBOLL, 'Khabar al-Wāḥid', *EP*.

³⁷ al-ṬŪSĪ, *al-Fihrist*, II: 395.

³⁸ *Ibid.*: 394.

³⁹ al-KULAYNĪ, *Al-Uṣūl min al-kāfī*, V: 465, no. 1 (included in *Bāb al-nawādir*).

Abū 'l-Huḍayl Zufar b. al-Huḍayl b. Qays al-ʿAnbarī,⁴⁰ as pious as he was learned, died in Baṣra in 158/775. He remained with Abū Ḥanīfa more than twenty years. Thus he is one of the most eminent pupils of Abū Ḥanīfa's, at the same level as Abū Yūsuf and al-Ṣaybānī. He was the most notable among Abū Ḥanīfa's companions in the use of *qiyās*, but he was also learned about Hadith. In general, Zufar may be considered a strict juridically-minded man, rigidly adherent to a legal logic, averse to compromises and ethical considerations, an advocate of the purity of the Islamic principles, and a free-thinker, following sometimes an unlimited *iğtihād* but not strictly bound to the discipline of his school.

Zufar maintained diverging doctrines from his school, notwithstanding the contrary advice of his master, Abū Ḥanīfa, to the extent that he was sometimes accused of having introduced *bid'a* (innovation). He frequently distinguished himself from the mainstream of his school. Zufar's freedom and independence of thought also emerge in the solution he gives to the case of *mut'a*. While the Ḥanafī school agrees on the unlawfulness of the *mut'a* marriage in any case, Zufar believed that the *nikāḥ* is valid, while the condition, that is, the limitation in time, is null and void, because a marriage contract does not admit a term.⁴¹ Zufar reasons that the general rule is that an unsound condition does not invalidate a contract. For instance, a contract under condition of drinking wine (*ḥamr*) is valid, but the condition is invalid; or a marriage contract under condition that the husband will repudiate his wife after a month is valid, while the condition is null and void. The same reasoning applies to a marriage contract stipulated fixing a term, that is, a *mut'a* marriage.

As a reply to the arguments of Zufar, al-Saraḥṣī—but it can be assumed that it was the reply to Zufar at his time—argues that fixing a time to a contract cannot be equated to a condition, because fixing a term in the *nikāḥ* undermines the very nature of the marriage. This is different, al-Saraḥṣī goes on, from the condition to repudiate a wife after a month, because repudiation breaks off a marriage tie, which had previously been stipulated between partners, while a marriage bond just does not exist in the case of *mut'a*.⁴²

6. Conclusion

The pride of the Twelvers pretending a more correct interpretation of the sources is evident in all the Shi'i works. One wonders whether this claim does have a sound foundation.

Certainly it seems that the interpretation of Q 4:24 given by the Twelvers is more consistent than the one by the Sunnis. It is no coincidence that Abū Ḥanīfa himself believed that it refers to *mut'a*. Only later was it read by Ḥanafis as concerning a permanent marriage. In general, Sunni arguments based on the Quran about the rejection of the *mut'a* seem without a strong basis, first of all because a permanent marriage without a reciprocal right of the spouses to inherit from each other as a consequence of the difference of religion is lawful in Islam, as mentioned by Abū Ḡa'far. Secondly, two kinds of marriage (permanent and temporary marriages) can coexist, as they did in pagan times; thus, the evidence

⁴⁰ See CILARDO 2008.

⁴¹ See also IBN QUDĀMA, *al-Muḡnī*, VII: 571.

⁴² al-SARAḤṢĪ, *Kitāb al-Mabsūṭ*, V: 153.

against the *mut'a* exclusively based on absence of repudiation, waiting period, and right of inheritance does not have much sense. Finally, a decisive proof against the Sunni arguments is the principle of *al-nāsiḥ wa'l-mansūḥ*, recalled by Abū Ġa'far, with reference to Q 4:24 and 70:29-30.

As regards the traditions too, the Imami arguments against their soundness seem more linear. Al-Ṭūsī correctly stresses a chronological discrepancy between the reports of 'Alī b. Abī Ṭālib, and al-Rabī' b. Sabra, pointing out then the inconsistency of the position of the Sunnis. As a matter of fact, on the one hand, Sunnis cannot deny that the practice of *mut'a* continued for some time after Muḥammad's death. But, on the other hand, what is more interesting is the proof they use in order to forbid *mut'a*, that is, a report on the authority of 'Alī, which seems nothing than an accusation to the Twelvers to not follow the doctrine of their fundamental reference. But the truth is that this practice was banned by the Caliph 'Umar. And this is the diriment reason for the Twelvers to invalidate a decision of a usurper who opposed them.

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