the Prophet, both the verses included in the mushaf, and verses ‘once-revealed’ but later suppressed, together form the text of umrn al-kitäb, or at least, part of it. The Heavenly prototype or original (umrn) dwells in God’s Presence. In respect of their contents, both umrn and mushaf, have been the result solely of the operation of the divine Will.

In addition to the reference to Q 13,39, there would appear to be in the ibn ‘Abbás definition of naskh an implied if unspoken allusion to Q 22,52: fa yansakh alläh mā yulqi al-shajā‘ān, where the term naskh can mean nothing but suppression. The reference to Q 13 was intended to convey that whereas naskh (allegedly spoken of as yamhū) certainly means suppression, the suppression occurs following tabdil, replacement, while yathbit refers to non-replacement. To that extent, there is a further implied but unspoken glance towards Q 16,101: wa idhā baddala‘ ayyah makhā‘a ayyah . . .

f. 4a. In a second hadith, ibn Juraj reports from Mujāhid the exegesis of Q 2,106: We endorse the [existing] wording of the verse [for inclusion in the mushaf] while altering the ruling of the verse by replacing it [nubaddal], i.e. substituting a second ruling. At f. 7a, Abū ‘Ubaid reads the Mujāhid taṣfīr as a ‘clarification’ of the ibn ‘Abbás taṣfīr: naskh = ibdāl. That would seem to guarantee the wording of this Mujāhid taṣfīr as it appears on f. 4a. For Nahjās, confusingly, reproduces from ibn abi Nājiḥ, Mujāhid’s exegesis of Q 2,106: We suppress [nazzūl] the (existing) ruling of the verse, while endorsing the (existing) wording [which still appears in the mashaf] (p.9).

This use of the stem azāla conforms more closely with the ibn ‘Abbás express appeal to Q 13,39 [yamhū: yathbit] and with the implied allusion to Q 22,52 [fa yansakkahu] and the second implied reference to Q 16,101 [idhā baddala‘]. Apparently, ibn ‘Abbás was saying: Some verses God alters, [yubaddal] — i.e. He alters their rulings; and some verses God does not alter — their rulings remain valid. In addition, God alters the Qur’ān by expunging parts of the Book. Here our problem is that it is difficult to know whether fa yansakkahu [f. 3b.] is intended to gloss the [yubaddal] in which case, naskh = tabdil = supression; or whether it intends to state that naskh [supression] is a consequence of naskh [supression] — i.e. the (original) ruling is first altered and then the (original) Qur’ān wording can be azāla, suppressed, [yamhū]. Supressing the (existing) ruling of a Qur’ān verse, while retaining the (original) wording of the verse amounts, in the mechanics of naskh, to exactly the same end-result as replacing the existing wording of the verse. But, suppressing a verse is not the same as suppressing the ruling of the verse: ibdāl is not the same as ibdāl. In addition to our immediate concern with the theories of naskh, we have to take into account the parallel because consequent question of the history of the mushaf, of the Qur’ān texts. In these discussions, appeal to Q 22,52 yields results very different in their implications from the results of appeal to Q 16,101. The Mujāhid exegesis of Q 2,106, adduced by the author, (which shows indirect appeal to Q 13,39) in fact, far from confirming the view credited to ibn ‘Abbās (f. 3b.) departs from it. For ibn ‘Abbās, Qur’ān verses allegedly fell into two classes, according as their rulings had been altered or not. The wording of those verses whose rulings had been replaced might subsequently be removed from the written (and memorised) records of the revelation. For Mujāhid, on the contrary, Q 2,106 refers to verses whose wording has been retained in the records [mushaf] notwithstanding the replacement of the rulings of those verses by other rulings. The ibn ‘Abbās juxtaposition: naskh: mahu nasiya: izhāb exposes the identification of naskh = taṣfīr without, however, quite disguising awareness that naskh really means not supression, but suppression. The emphasis upon the replacement aspect of this definition of naskh is unmistakable at f. 3b. and signals an implicit reference to Q 16,101, which was then taken by Abū ‘Ubaid (f. 7a) to have provided the basis of the ibn ‘Abbās taṣfīr of Q 2,106. The replacement definition of naskh underlines concentration upon the rulings of the Qur’ān, with correspondingly less concern for the effects for the wording of the Qur’ān of the alleged operation of naskh upon the texts. The interest, in other words, is centred upon the application or non-application in the Fiqh of the rulings of the Qur’ān verses. Abū ‘Ubaid read the Mujāhid taṣfīr, (as that was known to him) as clarifying the ibn ‘Abbās taṣfīr: Whatever verse we replace — i.e. we replace the ruling, but not the wording. That equates naskh with tabdil as ibn ‘Abbās is said to have done, reading Q 2,106 in the light of Q 16,101. But it restricts the tabdil to the ruling alone, and applies Q 2,106’s aw nansa hā to the wording alone, the latter term being explained as ‘non-suppression’ rather than ‘non-replacement’. For Mujāhid, the wording of the verse whose ruling had been altered, was endorsed, and hence included in the mushaf. That interpretation invites comparison of naskh (alleged to mean ‘to alter’) with naskh, meaning ‘to copy’. possibly with nasakhah, code — an interpretation which does not shrink from concealing the observable fact of tension between the present texts of the Qur’ān and the present rulings of the Fiqh.
f. 4a. *naskh* = ‘to copy out’ – sc. from *umm al-kitāb*, i.e. ‘to reveal to Muhammad’, is the basis of a third interpretation of Q 2:106, attributed, not only to ‘Aṭā’, among others, but also to Mujāhid!

Abū ‘Ubayd considers this interpretation unproductive. In that light, Q 2:106 would apparently state that God will either reveal verses to Muhammad, or retain them in the divine presence, in *umm al-kitāb*, but that in either event, He will bring something similar or even better. That might imply that God proposed to replace the entire Qur’ān.

If one read *naskh* meaning ‘to copy out’ – i.e., ‘reveal’, one could then read *aw nasaa’ hā* [as ifn ‘Abbās allegedly did read] to mean: “to leave it where it is” – not to *naskh*. ‘Aṭā’, however, allegedly read *aw nasaa’ hā* – “to leave the verse where it is”, i.e., ‘and not reveal it’.

f. 4b. We are informed that this ‘Aṭā’ reading had been shared by Mujāhid, ‘Ubayd b. ‘Umar, ‘many of the Readers’, among them, Abū ‘Amr and ‘others in Baṣra’ and that this hamzated reading can be justified on the grounds of the occurrence of *nās* in texts of both Qur’ān and Sunna. An instance of its Qur’ānic use is Q 9:37, and in the Sunna, the Prophet’s words: ‘He who desires an extension of his life-span . . . .’ Abū ‘Ubayd could make little of the *tafṣīr*: ‘Whatever verse We reveal, or do not reveal, We shall bring one better than it, or similar to it.’ It left him somewhat non-plussed, and he preferred to pass on rapidly to ‘the generally recognised phenomenon’ of the *naskh* and the *mansūkh* of the Qur’ān. In other words, *naskh* had already achieved an accepted definition and, in common with ‘everyone else’ of his generation, being content with that, Abū ‘Ubayd had little interest in alternative definitions.

Yet, we find that Shāfi‘i, a contemporary of the author, seemed for his part, to make sense of that ‘Aṭā’ definition. In Q 2:106, God informs us that the *naskh* of the Qur’ān and the dererent [ta’khir] of its revelation occur solely at the hands of the Qur’ān. [Ris., pp.107-8.] For Shāfi‘i, the verse refers specifically to rulings and *naskh*, for him the contrary of *taḥzhīb*, he equates with *izāḍah* [iḥtiṣām].

What precisely is meant by the *ta’khir* of the Qur’ān is, perhaps, made clearer by Suwāṭi’i [*Iṣāq, 2, p.21]. *Naskh* is of several types: 1. the suspension of a ruling before it is even put into practice. This, which is ‘true’ *naskh*, is exemplified by Q 58:12-13. 2. The *naskh* of the laws of those before us, for example, the law on retaliation, replaced in Islam by the institution of the wergeld *diyyah* . . . .

Rulings may be imposed for a specific reason, and then disappear with the disappearance of that reason [‘illah]. For example, the command to be patient in the days when the Muslims were few and militarily weak, was eventually to be superseded by the command to make war. This is not *naskh*.

This is really *insā‘*, as God said: *aw nasaa’ hā*. The command to fight is the *mansa‘*. That is, a ruling that God had deferred until the Muslims acquired military strength. Many scholars include the verse demanding patient forbearance among the verses which were abrogated by the ‘sword verse’ [Q 9:5]. That is not the case as these verses are not *mansīkḥah* but *mansa‘*a*‘*h. Every revealed ruling is to be put into practice in accordance with the ‘illah underlying its revelation, and for as long as the ‘illah persists. When, however, the ‘illah ceases to apply, the ruling ceases. But by *naskh* is meant the suppression of a ruling so that its implementation becomes forbidden forever.

From this, it would appear that the ‘Aṭā’ *tafṣīr* of Q 2:106 should be read: ‘Whatever verse of the Qur’ān We reveal, or do not reveal, but defer, We shall [in the meantime] bring one better than it, or similar to it.’ It thus does not refer to the entire Qur’ān. This *tafṣīr* not only makes sense, it is perhaps more comprehensive than that favoured by the author.


*Bu., K. al-baytā‘, bāb: man ḥabb al-baṣa‘ fi-l-rīsqa; Adā‘, bāb: man ṣuṣiṣu lahu fi-l-rīsqa;*

*The *insā‘s* differ from Abū ‘Ubayd’s.*

For ibn ‘Abbās, *naskh* appeared to mean replacement of Qur’ān verses.

For Mujāhid, it appeared to mean replacement of Qur’ān rulings, but not necessarily replacement of the wording.

For ibn ‘Abbās, *nisāʿ* meant non-replacement of rulings.

For ‘Aṭā’ and Mujāhid, *nasi‘* meant non-revelation.

Abū ‘Ubayd’s *ihkām*: f. 5b. The author rejects both ‘Aṭā’’s ‘reading’ and his *ta‘wil*. He prefers the ‘reading’ of the major Companions and Successors. Q 2:106 does not refer to the entire Qur’ān but only to those parts of the Qur’ān which are *mansūkh* in the ‘generally accepted’ sense of the word. He read *aw nasaa’ hā* without final hamzah, as the Medinan and Kufan scholars had done, linking it with the root *nasa‘*, meaning ‘to forget’. This was how the verse was understood by Ubaïy b. Kūb‘, ‘Abdullāh b. Mas‘ūd, Sa‘īd b. ʿAbī Waqqās, and by ibn ‘Abbās [!] – although the reports from him vary. That was also the reading of Sa‘īd b. al-Musayyab and of al-Dahhakh. The ‘readings’ reported from the two major Companions, Ubaïy and
Abdullāh b. Mas‘ūd reinforced the reading of aw nansa ḥā without hamzah;
Ubaiy read: mā nansakh mīn āyāh aw nunsika .
Abdullāh: mā nansakh mīn āyāh aw nansakh ḥā . while
Dabāhāk read: mā nansakh mīn āyāh aw nussi ḥā .
Their readings point to a ‘forgetting’ tafsīr.
A dispute has been recorded involving ibn abī Waqqāṣ and ibn al-Musayyab. The first recited: aw tansa ḥā. The other read: aw nussi ḥā [nansa ḥā?] possibly even aw tansa ḥā. Abū ‘Ubayd is uncertain, probably owing to the condition of the script. Sa‘d repudiated Sa‘d’s reading urging in favour of his own, parallel Qur‘ān contexts: Q 87.6.7: fa là tansā illā mā shā’ā allāh . . . Q 18.24: w-adhkar rabbaka idhā nasitā . . . Both contexts speak of ‘forgetting’ and predicate it of Muḥammad.
The Medinese Readers, Abū Ja‘far and Shaibah [both d. 130] and Nāfi‘ [d. 169] all read: aw nussi ḥā, which was also the reading of the Kūfans.
f. 6b. Abū ‘Ubayd expresses a common-sense approach and is not prepared to enter further into subtle minutiae. Whether the word is read with u‘ or with nān, the reference is to ‘forgetting’ and it makes no difference whether Muḥammad forgot, or God caused him to forget parts of the Qur‘ān – they are forgotten. He now suggests that the ibn ‘Abbās tafsīr had probably been analogically derived from Q 20.126, Q 9.67, and guided by the realisation that, of course, God neither errs nor forgets. The ibn ‘Abbās tafsīr and the ‘Aṭī reading had both equally represented a flight from:
a. reading Q 2.106: aw nansa ḥā [with nān] and
b. understanding God to say: ‘or We forget the verse . . . . ’

The term ‘naskh’
f. 7a. The term has three uses in Qur‘ān and Sunna.
1. The naskh which refers to verses still present in the mushaf, but not acted upon in the Fiqh. This is the ‘well-known phenomenon’ referred to by ibn ‘Abbās and Mu‘āwīah [sc. naskh al-ḥukm dāna al-talāwah]. The evidence in favour of this view, in Abū ‘Ubayd’s eyes, had been ibn ‘Abbās’ implied reference to Q 16.101: idhā baddalān āyāh makāna āyāh. Where this mode of naskh occurs, both nāsikh and mansūkh verses are still present in the mushaf, save only

that the ruling of the nāsikh verse alone is operative [cf. Fībār, 8]. The wording of both nāsikh and mansūkh verses may be recited in the ritual prayer.

2. raf‘. f. 7b. This naskh refers to the withdrawal of verses both from the written records and from the memories of the Muslims. Our knowledge of this type of naskh derives from hadiths reporting its occurrence [cf. Tab., 2.479]. The hadith which Abū ‘Ubayd cites is one form of the familiar report on ‘the lost sūrah’. The isnād is Hijājī, and the adventure is said to have involved three men. Use of the report equates naskh with raf‘.

Also quoted, but only in the margin, is the celebrated report on ibn Mas‘ūd’s mushaf. A third, and final hadith which features the Prophet is incomplete, owing to the loss at this point [f. 8b] of at least one whole folio. From the opening words, this would seem to have been a version of the equally celebrated hadith of the Prophet’s being reminded by a man’s recital in the mosque by night of Qur‘ān verses which Muḥammad had quite forgotten. Abū ‘Ubayd certainly knew the hadith in question, since he refers to it in his Gharīb al-hadīth, s.v. n s y. [cf. Bu., K. Fadā’il al-Qur‘ān, bāb: nisyn al-Qur‘ān.] In his own Fadā’il al-Qur‘ān, Abū ‘Ubayd could amass a number of hadiths under the rubric: What was withdrawn [raf‘] from the Qur‘ān following its revelation and is thus not recorded in the mushaf. The whole section has been taken over by Suyūṭī [Qaṣīd, 2, p.25 ff.] to illustrate: naskh al-ḥukm wa-talāwah. In his Fadā’il, Abū ‘Ubayd comments: The scholars have neither repudiated these fragments we have cited, nor denounced as unbelievers those who do not accept them. They regard them as ‘like’ what is in the mushaf, although they do not recite them in the ritual prayers.

Both from the wording of these hadiths, however, and also from the wording of the Bukhārī heading cited above, it is clear to the reader that the hadiths themselves were merely part of the ammunition used by those exegetes who took Q 87.6–7 to be a clear divine hint that Muḥammad could forget, and had, in fact, forgotten, parts of the Qur‘ān. In: sanuqr‘ika fa là tansa‘ illā mā shā’ā allāh, the illā exceptive clause attracted the bulk of the exegetical study. ‘You, Muḥammad will not forget – except what God wills.’ The scholars divided into those who regarded the exceptive as ‘ineffective’ – as merely part of the Qur‘ān’s rhetoric, and those who regarded it as effective – as necessarily to occur, but, as it had occurred under divine control, to be placed [under the aegis of Q 2.106 which consisted of two clauses: mā nansakh and aw nussi ḥā] with the other
categories of naskh. One mode of naskh: naskh al-ḥukm wa-l-ṭilāwah jami‘ an, consisted entirely of Qur’ān verses which Muḥammad had been caused to forget. The others, more precisely, preferred to keep the two ‘phenomena’ of naskh and of Muḥammad’s forgetting entirely separate, as has neatly been illustrated in a further ḥadīth: The Prophet performed the salāt, but omitted an āyah in the course of his recital. After the prayer he asked, ‘Is Uba‘ī in the mosque?’ Uba‘ī spoke up, ‘Here I am.’ The Prophet asked him why he had not prompted him. Uba‘ī replied that, as the Prophet had omitted the verse, he had presumed it had been abrogated. Muḥammad replied, ‘It was not abrogated – I forgot it.’ [cf. Muh. 1, p.107; Rāzi, ad Q 87.]

Finding naskh referred to in one verse, and forgetting in another, some had concluded that they were discrete, their opponents insisting that both are referred to in Q 2,106, and therefore associated. There are in this view, two modes:

naskh al-ḥukm dūna al-
 ṭilāwah [Q 2,106* mā nansakh;
Q 16,101].
naskh al-ṭilāwah wa-l-ḥukm
[Q 87,6-7 illā mā shā‘a allāh].
[Q 2,106 aw nansi hā.]

The ‘more precise’ scholars of whom we speak would prefer to appeal to Q 22,52: fa yansakh allāh mā valqī al-shajā‘an thumma yuhkīm allāh āyāthī. They criticised Abū ‘Uba‘īd’s reference to the raf‘ of Qur’ān matter which had been revealed to the Prophet, then later withdrawn, so that it is neither recited in the prayer, nor recorded in the mushaf. The ḥadīths on which he relied had sound isnāds, but he had misinterpreted them. Arguing on the basis of other verses: ‘If We wished, We would remove what We have revealed to you’, [Q 17,86] his critics insisted that this made it inconceivable that Muḥammad would be, or had been deprived of anything that had once been revealed to him. Alternatively, his error lay in reading naskh into these ḥadīths, when, in fact, they merely spoke of his forgetting. We have already seen, however, f. 6b. that it is quite immaterial whether Muḥammad forgot, or whether God caused Muḥammad to forget – for our author, Muḥammad had not behaved other than as God had directed. When God caused him to forget, he forgot. [cf. Nahhās, p.9; Tābarī 2, p.479.]

3. Following the break caused by the missing folio, Abū ‘Uba‘īd appears to have already passed to the third meaning of naskh. That this was the iktišāb definition, derived from nasakhu al-kīthāb, is guaranteed by his referring to Q 45,29 but also, again by Nahhās’ assurance [p.9] that Abū ‘Uba‘īd mentioned only these three meanings of the term naskh.

f. 9a. The author reminds us of ‘Atā‘s taṣfīr of mā nansakh, based on this same iktišāb meaning, i.e. ‘to copy’ [reveal]. The degree of scholarly confusion is shown by Nahhās’ adding: Muḥājīd and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘ī and Qatā‘...
ff. 9a–14a. *Instances of ‘nāsikh’ and ‘mansūkh’ in the Qur’ān and the Sunna documents dealing with the ritual prayer*

Having divided the Qur’ān revelations roughly into the Meccan and Medinan periods, the Islamic scholars agreed that no instance of *naskh al-ḥukm dīna al-ṣaḥābat* affected the Meccan revelations. Replacement of rulings is Medinan. Thus, the earliest instance of this type of *naskh* is dated to the period after the Hijrah. The first alteration of a Qur’ān ruling was that concerned with the direction of prayer, the *qiblah*. The ibn ‘Abbās *ḥadīth* implies that the choice of *qiblah* had at first been delegated to the Prophet who had chosen to pray facing the Temple at Jerusalem. Later, God imposed upon the Muslims the direction of the Meccan *Haram*, as a test of the obedience of Muhammad’s followers. It is not here stated whether this is to be regarded as an instance of the *naskh* of the Qur’ān by the Qur’ān, or of an allegedly Qur’ān-based sunna by the Qur’ān. The Abū ‘Ubaid *ḥadīth* is based on the ‘Āṭā’ Khurāsānī *rijā’āt*: the Nahḥās *ḥadīth* on the ‘Ali b. abi Ṭalḥah transmission. Abū ‘Ubaid has: to distinguish the people of certainty from the people of doubt and uncertainty: *al-shakk wa-l-raḥab*. Nahḥās has: to distinguish the people of certainty from the people of *shirk*. He comments: *shirk* here means: *shakk wa-l-raḥab* [p.14]. The Nahḥās *ḥadīth* is much longer and is almost a meld of the ibn ‘Abbās and Barra’ *ḥadiths* which in Abū ‘Ubaid are separate. Barra’: the Jerusalem *qiblah* lasted 16 or 17 months. ibn ‘Abbās: When he transferred to Medina, the majority of whose inhabitants were Jews, God ordered him to pray facing Jerusalem. To the delight of the Jews, he did so for something above ten months . . . The Prophet would have preferred the *qiblah* of Abraham, and kept praying to God and looking skyward. Following the change, the Jews said, ‘What has turned them from the *qiblah* they have been following?’ cf. with this Nahḥās version Abū ‘Ubaid’s laconic remark: the ‘thoughtless’ [ṣafahā’] Q 2,142, are the Jews. Hibbatullāh [p.12–3]; Qatādāh, Daḥḥāk and ‘others’ reported that he prayed towards Jerusalem for about seventeen months; Qatādāh said 18 months; Ibrāhīm al-Harrānī said 13 months. Nahḥās [p.14] Zuhri – ‘Abdul Raḥmān b. ‘Abdullāh b. Kāʾb b. Mālik: The *qiblah* was changed to the Kāʾbāh in Jumāda 2 A.H.; ibn Iṣhāq said, ‘in Ṭaḥra’; Wāqīḍī said, ‘in mid-Shaʿbān.’ The Prophet arrived at Medina in Raḥṣ 1, i.e. 16 months before Jumāda 2 – the period mentioned by ibn ‘Abbās. According to the ibn ‘Abbās report, it was God Who had imposed the Jerusalem *qiblah*, then abrogated it. Others held that God abrogated the act of the Prophet who imitated the sunna of the previous prophets until informed that that had been abrogated; yet others said that Q 2,115 was here abrogated by Q 2,144. This last view is mentioned also by Hibbatullāh [p.12]. He also, however, mentions that some people argued that Q 2,115 was God’s response to the question ‘What has turned them from the *qiblah* they have [hitherto] been following?’ – after the change of *qiblah*; cf. f. 10a, the *ḥadīth* from Barra’.

Resistance to any suggestion that any of Muhammad’s Sunna was mere borrowing from the Jews of Medina is represented in the Mujahid-ibn ‘Abbās *ḥadīth* [Nahḥās, p.14]: While still in Mecca, Muhammad faced Jerusalem, placing the Kāʾbāh between himself and the Temple. He continued praying towards Jerusalem for 16 months after transferring to Medina . . .

This ‘facing towards Jerusalem’ is nowhere mentioned in the Qur’ān which [Q 2,142] merely rationalises a change of direction. We have no information on what was that direction here said to have been abandoned. All mention of Jerusalem and the Temple is mere exegetical guesswork.

f. 11a. This is an instance of the *naskh* of the Qur’ān. Nahḥās prefers the ibn ‘Abbās conclusion: an order from God was abrogated by an order from God. He brushes aside the attacks on the ‘Ali b. abi Ṭalḥah transmission. ‘Ali is said never to have met ibn ‘Abbās, but to have acquired the ibn ‘Abbās *tafar* at second-hand from Mujahid and ‘Ikrīmah. Nahḥās: all three men are trustworthy.

ff. 11a–14a. *Instances of ‘naskh’ in the Sunna relating to ritual prayer*

In this section, the introduction of regulation *ibtiḍāʿ* is treated as change, and all change is *naskh*. The earlier situation had been one of non-regulation. This indicates a rather loose use of the term *naskh* which, in the hands of Shaʿfī, was already a precise technical term. [Ris., p.122.]

*Adhān*; *iqāmah*; *al-ʾitāʿām bi-l-ʾitāʿām*; *al-qadʿ* are the four aspects of ritual prayer treated in a single compendious report from a single Companion, Muʿādh b. Jabal. The *ḥadīth is marʿūf* and betrays part of its purpose in attributing to the Prophet the commendation of ‘the sunna of Muʿādh’. f. 12a.

1. the *adḥān*: ‘Abdullah b. Zaid al-Anṣārī. cf Suyūṭī, Durr, 1, p.175, for Muʿādh’s *ḥadīth*. In this version, the first change is the *qiblah*; the
second, that of the adhān. Here, ‘Umar had received the same vision as ‘Abdullah, but ‘Abdullah reported his first.

b.M. abwâb al-adhâh: Dâr., Šalât, ǧâdî al-adhân. Suṣûfî’s third change is the qaḍâh of the late-comer. Dâr.,[al-sunna fi man subaqa bi bâr al-salâtu] ‘I adhere to the view of the Kafâns in this matter of the qaḍâh. A man should treat that part of the prayer which he missed as something that has to be made up.’

DQ, 1, p.402: the same is reported as from ‘Ali.

f. 12b. This is already reported as from the Prophet.

Chatting during the ritual prayers
2. Three reports indicate that the ‘earlier’ practice had been suppressed. Two come from ‘Abdullah b. Mas‘ûd. The first implies change of a sunna by divine inspiration: naskh of the wâhi by the wâhi. This suggests, but does not state, that the Sunna is revealed: al-wâhi ghair al-ma‘âlî. The second hadîth merely states the common-sense rationalisation: at prayer, one is pre-occupied. The third, f.13b from Zaid b. Arqam, places this change into the category of the naskh of the Sunna by the Qur‘ân.

A.D., 1, p.211; b.M., 1, p.319; Mus., 2, p.70: The ritual prayer is not an appropriate place for mere profane talk. Prayer consists of divine praise, extolling the greatness of the Creator and reciting the Holy Book.

Nahâsîs [p.17] . . . ‘Abdullah b. al-Mubârâk – Ima’mîl b. abi Khâlid – al-Hârîth b. Shihâb – Abû ‘Amr al-Shaibânî – Zaid: (approximately what author reports.) Nahâsîs: some say qunû‘ means ‘to stand’; others report from the Prophet that he said it means ‘obedience’. This is borne out by the above hadîth whose isrâd is sahîh. The meaning of the verse is thus, ‘Stand in obedience to God’s command that you leave off chatting during the ritual prayers.’

cf. Bu., Taṣfîr, Q 2,238; Tîr., abwâb al-salât– both from Abû ‘Amr al-Shaibânî. cf. Fu’âbîr, p. 73 where ḥadîths, assembled as from ‘Uthmân b. Ma‘zûn, ‘Ammâr b. Yâsîr, report only ‘the earlier situation’: the Prophet returned greeting even when at prayer. Amassed against these reports are others which, unlike them, are neither mursal nor munafiqî, but sahîh. These include the Abû ‘Amr report from Zaid and a report from ibn Mas‘ûd whose second half declares that the Prophet said, ‘God has introduced a new ruling concerning ritual prayer: that you should not engage in profane talk,

but only in praising God and that you should stand before him qâinîn.’

Abû ‘Ubayd does not attempt to solve the question of whether this represents the naskh of the Sunna by the Qur‘ân. He is content merely to cite the conflicting reports, being interested more in the fact than in the precise mechanism of this instance of naskh.

f. 13b. The traveller’s Šalât
The scholars are agreed that the Muslim traveller has been granted the concession of abbreviating the ritual prayers. This opinion is allegedly based on Q 4,101: ‘and when you travel in the land, you will incur no guilt in shortening the ritual prayer if you fear that those who reject the Prophet will assault you . . . ’ whereas the verse uses the root q.s.r, abbreviate, the ‘A‘îshah hadîth states that the ritual prayer, having been originally imposed as consisting of only two rak‘ahs, was later increased to four rak‘ahs for the sedentary, remaining at two rak‘ahs for travellers. Using the Qur‘ân’s reference to ‘abbreviation’, ibn ‘Abbâs achieved the conclusion that the traveller’s prayer, in that event, consisted, in time of fear, of only one rak‘ah [Umm., 1.159]. Abû ‘Ubayd’s discussion of this question, in its excessive brevity – he does not even refer to the Qur‘ân text – contrasts strangely with the intensive and extensive discussion of this very topic in the tafsîr and Ḥadîth works. He appears to have allowed himself to get caught up in the resolution of the conflicting reports on the ‘practice’ of ‘A‘ishah and of ‘Uthmân.

ff. 13b–14a. ‘A‘ishah’s ta‘wil is mentioned also by Muslim: as from ibn ‘Uyainah – Zuhîr – ‘Urwah – ‘A‘ishah, as given here; and, as given at the end of f. 14a., by Nahâsîs [p.77] cf. Nahâsîs [p.115]: ‘in my view, there is here neither naskh nor mansâkh. Those who say that the Prophet’s sunna repealed the ‘fear element’ of Q 4,101 are mistaken . . . The verse does not prohibit the shortening of the prayer in the absence of fear, it permits the shortening of the prayer in the presence of fear. Nor does it refer to the number of rak‘ahs, but to the curtailing of the constituent features of the salâr: iqâmât; rak‘ah; sujud, etc . . . The majority of the fuqâ‘îs say that the Qur‘ân ruling concerns the traveller’s prayer – two rak‘ahs only, when there is fear. The traveller’s prayer when there is no fear – two rak‘ahs – is the ruling derived, not from the Qur‘ân, but from the Sunna.’ [cf. Umm., 1, p.159.] Both sources therefore, the Qur‘ân and the Sunna, are thought to have regulated the relevant matters independently one of
ff. 14b–20b. The Zakāt

The scholars have disputed the nasq of certain verses:

1. Q 4.8: The discussion reflects differing exegeses of the term rizq. Those taking that to refer to ‘lands’ or ‘property’, connect this verse with their thinking on the wasīfah. A more primitive tafsir, taking the term in its most basic sense, discusses the provision of food. The initial hadīths assume that the verse is not mansūkhah. This view attributed to: Sa‘īd b. Jubair; ‘Abd al-Faqīh; ‘Abdullāh b. ‘Abdul Raḥmān b. abi Bakr.

f. 16a. ‘Partial nasq’ of Q 4.8 is hinted at, possibly referring obliquely to the exclusion of heirs from benefit by wasīfah. Abū Mūsā said to have implemented the apparent ruling of the verse. Mujāhid, also connecting it with the inheritance regulations, considered the ruling valid and commendable.

f. 16b. Hasan, ‘Ikrīmah and ibn al-Musayyab all regarded Q 4.8 as superseded by Q 4’s inheritance regulations.

Abū ‘Ubayd is content to report the differences without seeking either to resolve them, or to express a preference. Najāḥs mentions three positions on Q 4.8: it is mansūkhah; it is muḥkam and wājib; it is muḥkam but only recommended. To the above names of those who thought it had not been abrogated, he adds those of: ‘Urwah; Mujāhid; ‘Aṣā; ‘Abd al-Faqīh; Zuhair; Yahyā b. Ya‘mur and ibn ‘Abbās. Najāḥs himself prefers the view that the verse commends charitable giving to those attending the division of an estate.

Bu. [4, p.8] produces an ibn ‘Abbās tafsīr to the effect that the verse has not been abrogated.

2. Q 6,141: f. 17a. According to Hasan, the verse refers to sadaqah on cereals and fruit. According to ibn ‘Abbās, it refers to zakāt and is still in force.

f. 17b. Mujāhid harmonises the two views. Abū ‘Ubayd distinguishes: ibn ‘Abbās and Hasan took the verse to refer to zakāt; Mujāhid thought it referred to something other than zakāt – it imposes a further obligation on the Muslims. All three thought the verse still valid.

ff. 17b–18a: Sa‘īd b. Jubair, Abū Ja‘far and ibn ‘Abbās all considered the verse to have been abrogated. Abū Ja‘far puts this into the form of legal tags: zakāt replaced sadaqah; Islamic slaughter replaced all ritual slaughter; Ramadān replaced all fasts.

f. 18b. Abū ‘Ubayd expresses his preference for the view that the verse is muḥkamah and is still in force. This is more in conformity with two marfu’ hadīths which, for him, are the deciding factor. Further, he knows a fatwā from ibn ‘Umar in close agreement with the view transmitted as having been that of the Prophet.

f. 20b. A statement from Sha‘bī as to the meaning of Q 2,177 reinforces Abū ‘Ubayd’s certainty, while the deliberate and conscious
dating of Q 2,177 reported from ibn ‘Abbās who placed its revelation later than that of the inheritance regulations, is finally decisive. The beggar, the destitute and the protégé therefore have a God-given right in the Muslim’s property (f. 20b).

Nahjūs [p.140] mentions five views on Q 6,141:
It was abrogated by the Qur’ān – by the zakāt; it was abrogated by the ‘asr (introduced in the Sunna); it is not abrogated, but refers to the zakāt itself; it is still valid and refers to something other than the zakāt; it is still valid, but only as a recommendation. Nahjūs thinks the verse, which is Meccan, cannot refer to zakāt itself, imposed only at Medina; further, if the reference were to zakāt, the zakāt would have to be paid at the moment of the harvest, which is not the case. Zakāt would also be payable on fruit and on all agricultural produce, which is also not the case. Zakāt is levied on only four crops: wheat, barley, dates and grapes – that is the Sunna. cf. Anmāwāl, p.470.


f. 18a. Mujāhid: zakāt abrogated every sadaqah mentioned in the Qur’ān. cf. Anmāwāl, loc. cit. That was not the view of ibn ‘Umar and Abū Hurairah. The Companions are better informed of the tafsīr of the Qur’ān and they are to be followed. The views of Tāwās and Shībī (f. 20a) were that there are rights in the Muslim’s property over and above the zakāt; for example, filial piety, charity towards blood-kin, hospitality to guests. There are also duties towards dumb animals.

f. 20b. For the dating of Q. 2,177, cf. Anmāwāl, p. 358.


ff. 20b–46b. The Fast

The exegetes focused their attention in the first place on two questions: the precise function of the particle kamā; and the identification of ‘those before you’.

Q 2,183: “Fasting is imposed upon you, as fasting was imposed upon those before you…”
The widest divisions reign among the commentators. For Jaśsās [v. 1, p.202] there is no indication in the kamā of the number of days, the manner or the time of the fast imposed upon ‘those before you’. The expression is, thus, general and uninformative. If we did know the answer to these two questions, the verse might possibly refer to the manner and the modality of the previous fast, but that knowledge could not have been used by us to imitate that fast. Qurṭūbî [1, p.472] points out the two possible functions of kamā: it may be merely a conjunction, addressing the fact of the imposition of fasting; or, it may be a relative mā suggesting similarity in the modalities of fasting. Sha’bī and Qatādah interpreted it as indicating the timing. Ramadān had been imposed upon both the Jews and the Christians, but both had altered its character. Mujāhid, Ḥasan and ibn ‘Umar stated that Ramadān had been imposed in every pre-Islamic revealed religion – i.e. the fast of one complete month. There is also a marjū transmitted by ibn ‘Umar. Suyūṭī, [Durr, 1, p.172] The Prophet said exactly this. Qastallānī [3, p.343] the isnād is, however, unsatisfactory.

The comparison is general, referring to the fact of imposition, the number of days, the modalities of the fast in all its aspects. For example, the People of the Book were prohibited from eating, drinking and sexual intercourse during the period of the fast, after they had had the first sleep of the night – some say after the ‘ishā’ prayer. [ibn Hayyān, Badr, 2, p.48]

A comment from Sudūl [Qasī, loc. cit.] that the ruling of this verse was in conformity with what had been imposed upon the People of the Book indicates the source of much of the exegesis and its attendant hadith evidence in this kamā. The Christians were forbidden to eat, drink and have sexual intercourse during the month’s fast. The same prohibition operated at first in the Muslim fast. Sa’d b. Jabair reported that, if one of them slept before breaking his fast, food and women were forbidden until he broke his fast on the following day. That prohibition remains in force in their fast, but has been relaxed in yours [Durr, p.176].

Finally, what establishes the methods by which these ‘facts’ were extracted from the sources is fully illustrated in the ibn ‘Abbās declaration: The fast was imposed upon the Christians, just as it has been imposed upon you. The verification of this statement may be found in the Book of God [Durr, loc. cit.].

Hibatullāh reads the verse as an encomium [p.16]: Some say the reference is to all pre-Islamic religions. God sent no prophet without imposing upon him and his community the fast of the month of Ramadān. All previous communities fell away from belief and only the followers of Muhammad remained firm. Others held that the reference is to the Christians who were forbidden to eat, drink and enjoy sexual intercourse upon breaking the fast if they first fell
asleep. This ruling originally applied to the Muslims, upon whom an additional condition was imposed: if they first fell asleep, or prayed the ‘‘isha’’ prayer.

f. 21a. The scholars’ knowledge of the details of the ‘‘previous’’ fast and the identity of those upon whom it was imposed had been the result of thoughtful reflection upon the wording of the Qur‘ān’s fasting pericope, and more especially of their extraction of the negatives from the imperatives of Q 2:187. “It is declared lawful that you approach your wives in the nights of the fast . . . .” God knows that you have hitherto been betraying yourselves, but He has relented and forgiven. Now approach them . . . and eat and drink . . . .”

The ibn ‘Abbās ḥadīth: the ‘‘original’’ fast had been imposed upon Muhammad and his group. The strict nature of the ‘‘first’’ fast is known by what may be termed asbāb al-nuzūl in reverse. Q 2:187 had been revealed ‘‘to correct’’ the behaviour of the first Muslims, and from the contents of that verse, the ‘‘earlier situation’’ can easily be reconstructed.

The very words, “It is declared lawful . . . .” show that, until their revelation, it had been unlawful. [Bajr, 2, p.48] The scholars are agreed that these words indicate naskh. For knowledge of the mansūkh regime, we are in need of some indication, and there is none, other than the comparison stated in: “as fasting was imposed upon those before you.” [Rāzi, 1, p.69]

The uncertainty as to when the fast re-commences: after the ‘‘isha’’ [‘atamah] prayer, or after the first sleep, results from uncertainty as to the definition of ‘‘night’’ in Q 2:187: “then maintain a complete fast until night.”

Uncertainty as to the meaning of ‘‘isha’’ is indicated by Zuhair’s report which uses, instead of ‘‘isha’’ the verb yat‘a‘ashshā, i.e. to have supper. [Nas, 4,147; Nahjās, p.24.] Early exegeses are actualised in the reports about ‘‘Umar: ‘night’ is determined by when one goes to bed; and about Sirmah: night is determined by ‘‘isha’’, meaning supper time. Sleep is the limit when both ‘‘Umar transgresses the ban on sexual intercourse and Sirmah does not transgress the ban on eating and drinking. Their stories represent the different guesses available to the primitive taṣḥīr of Q 2,187.

f. 21b. The ‘‘sleep limit’’ is lacking in the second ḥadīth from ibn ‘Abbās, while the reference to eating lacks specific identification of the persons involved.

The need to define also the moment of the re-commencement of each day’s fast [al-fajr] leads to the lengthy digression concerned with this clause of Q 2,187. The two reports, that from ‘‘Adī and that from Sahl, are lacking in the studies of Hibatullāh and Nahjās. These ḥadīths present superb examples of early exegetes’ gossip, but especially of the extreme atomisation of the Qur‘ān texts for the purposes of their discussion. A literalist interpretation: “until the white thread is distinguishable from the black”, is explained on the basis of quite spurious asbāb showing the predication of the Muslims before the revelation of the two final words of Q 2,187: min al-fajr, which had had to be sent down as an explanatory gloss. (Sahl.)

f. 21b. cf. Bu., 5, 34; 9,249 which has the same isnād.

f. 22a. cf. Tab., 3,512 – also via Mujād – The Prophet said, ‘‘But didn’t I say to you: “min al-fajr”?’’


f. 23a. The reference to the ban on sexual intercourse is intrusive in this Sirmah story which concentrates upon the ban on eating and drinking. The detail prefigures the ‘‘Umar story [f. 23b].

‘Self-betrayal’ appears to have two aspects: action, in ‘‘Umar’s case; inaction in Sirmah’s case.

According to Hibatullāh, the ‘‘Umar story occurred before the Sirmah story and God referred to ‘‘Umar’s case first (in Q 2,187) since the transgression of the sexual ban was more grievous than the transgression of the ban on eating and drinking. cf. Tab., 3,498–9; Durr, 197: ‘‘Umar fell asleep and did not wake until after the Prophet had performed the ‘‘isha’’. Sirmah then ate and drank, but God forgave them . . . .” cf. Tab., p. 503, the report from ‘‘Ikrīmah.

Nahjās [p.24]: Q 2,187 abrogated Q 2,183: kamā kutub. (Abū al-‘Āliyāh; ‘Atā’.) Others said that Q 2,187 abrogated their actions. [cf. Tab., 494: what they had done was Sunna. (ibn abi Lailā.)]

Nahjās, the Zuhair riwāyah: If a man fell asleep before he had had supper [yat‘a‘ashshā] he might not then eat . . .

Abū ‘Ubaid accepts the ḥadīths as evidence of naskh, but does not commit himself as to what was abrogated – the Qur‘ān verse, or the Sunna. The instances that he has illustrated had derived, not from the Qur‘ān texts, but from the naïve exegeses constructed directly from the wording of the verses.

f. 24a-b. The second instance of naskh in the Qur‘ān’s fasting pericope concerned the question of the ḥidāyah. This is the most complex, as it undoubtedly was the most debated aspect of the fasting regulations.
Q. 2:184: wa `ālā alladhīn yuṭiqūnahu fidyat tā’īm mīskīn.

f. 24b. ibn abi Lailā bluntly asserts the naskh of the verse.

ibn ‘Abbās: the fast of Ramaḍān had ‘originally’ been optional. It was first declared obligatory by Q. 2:185. Salamah b. al-Akwa', ‘Alqamah, Zuhri are proponents of the same view, (cf. f. 25a–b).

f. 25a. Salamah: cf. Bu., 9,247, ‘the following verse’ is not precisely identified. Tab., 3,423, ‘the following verse’ identified (as here) as Q. 2:185. Durr. 178, Bu., 5,90, Tab., 3,424, ‘the following verse’ was, in fact: wa an raṣāmū khairūn lakum, (ibn abi Lailā).

f. 25b. Zuhri: the fidyah had ‘originally’ been a universal concession available to all who could fast.

f. 26a. Zuhri: fasting had originally been optional. Anyone who could manage the fast, whether entirely well or ill, travelling (or sedentary) could opt out of the fast by providing the fidyah of feeding one of the poor. He had no further obligation vis-à-vis the Ramaḍān fast.

cf. Tab., 3,422: the Zuhri ḥadīt continues: when God made fasting binding, the physically fit were required to fast – [cf. f. 25b: the concession of the fidyah was suppressed for all those physically capable of fasting.] – [Tab., contd.] the sick and the traveller were [now] required to fast a number of other days, while the fidyah remained available to the elderly who cannot manage the fast [cf. f. 26b]. The naskh was Q. 2:185.

ibn ‘Abbās deduces the suppression of the fidyah e silentio: “in the ‘later’ fast, God made no mention of the fidyah. It must have been abrogated.” [Tab., 3,422.]

But, cf. Tab., 3,425: ibn ‘Abbās: Q. 2,185 permits only the aged who are physically incapable of fasting to continue to proffer the fidyah. ibid., 429,430: ibn ‘Abbās: Q. 2,184 was never abrogated. Since the day it was revealed, it has applied restrictively to the elderly who cannot fast. ibid., p. 432: ibn ‘Abbās: the fidyah remains available solely to those who cannot manage the fast, save with the greatest distress. They shoulder their painful burden; they force themselves. They try to shoulder the burden of fasting, but simply cannot manage it.

f. 26b. ‘Ikrimah read: yuṭawwaqūnahū . . .

f. 27a. Sa‘īd b. Jubair read yuṭawwaqūnahū . . .

Mujāhid, f. 27b., ibn ‘Abbās read it thus.

Tab., 3,430: ‘Ikrimah said: those who can manage the fast shall fast; those about whose necks it hangs like a millstone cannot manage the fast. This contrasts yuṭiqūnahū with yuṭawwaqūnahū.

The reading of: ibn ‘Abbās; ‘Ā’ishah; ‘Ikrimah; Sa‘īd b. Jubair; ‘Ajā‘; Mujāhid; Tawūs; ‘Amr b. Dinār was: yuṭawwaqūnahū – [Bahā', 35; Tab., 430; Bu., 9,246].

‘Ikrimah read yuṭawwaqūnahū, explaining: ‘Were it yuṭiqūnahū, they would fast.’ [Durr, citing Tabāri, but this is lacking in Tabāri.]


Bahā' [p.35]: It has also been suggested that the words: wa ‘alā alladhīn yuṭiqūna referred to those who, although sick, were yet still capable of fasting. They were presented with the choice between abandoning the fast and providing the fidyah, and completing the fast. That choice was then abrogated by Q. 2,185.

Note: Q. 2,184: wa ‘alā alladhīn yuṭiqūnahū uses the particle ‘alā, the particle of imposition, as opposed to the particle implying concession, li.

Further, since God says: wa ‘alā alladhīn yuṭiqūnahū, it is clear that both the variant readings proposed and the alternative proposal to re-introduce the ‘missing’ negative: wa ‘alā alladhīn [li] yuṭiqūnahū are parallel flights from the existing wording which was simply incomprehensible to the exegetes. An alternative interpolation is suggested by Suddī: “and incumbent upon those who[in the past were] capable of fasting, [but who have now become by reason of their great age and fast-falling physical powers incapable of fasting] the fidyah . . .” [Tab., 3,427].

Some dismissed the variant reading as no reading. It was merely a tafṣīr. [Bahā', loc. cit.]

f. 27b. What is recorded in the musḥaf of the people of the Hijāz, ‘Irāq, Syria and other lands is: wa ‘alā alladhīn yuṭiqūnahū. In that event, the verse can be nothing other than musākhāḥ, as we have already reported from: ibn ‘Abbās, Salamah, ibn abi Lailā, ‘Al-qamah b. Qais and ibn Shihāh. The reading of the entire body of Muslims is: yuṭiqūnahū. That is what is found in their musḥaf, and that is the reading which none may question, given its transmission generation after generation. [Tab., 3,418.]

As for yuṭawwaqūnahū, that is a reading at variance with what we find in the musḥaf of the Muslims. It is simply not permitted to anyone among the Muslims to pit his ra‘y against what all of the
Muslims have transmitted as their inheritance from their Prophet, openly and publicly and in a manner which admits of no doubt or uncertainty. What is thus universally transmitted is the truth that none can doubt, nor question that it comes from God, nor is it to be opposed on the basis of ra’y, supposition or stray opinions. [Tab., 3,438; Nahjus, 22]

The contextual position of the two expressions in Q 2,184: fa man yaqawat khaifan fa ha wa khaifun lahu, and wa an tasimuna khaifun takum, induces some to find here a contrast with the fidayah. If, in ‘the first fast’, the Muslims were free to choose between fasting and paying the fidayah, which of the two courses had been the preferable? The question already exhibits the exegetical assumption that one of the three uses of khaif represents an Elative, rather than a Substantive.

f. 26a. Zuhri: to fast and pay the fidayah is khaif; that is to volunteer to do something that is not obligatory.

Tawus: volunteering khaif is to feed two poor men. This taṣfiq depends upon reading here miskin rather than masakín. Although the scribe writes masakín throughout, it seems more likely, given his reception of these and other similar hadiths that Abū Ubaid would have read: miskin. [cf. Tab., 3,439–40]

f. 26b. Zuhri: wa an tasimuna khaifun – fasting is more meritorious than opting out of the fast and paying the fidayah.

This is also attributed to Ubay, whose reading was: wa al-siyām wa al-sawm khaifun. [Qurt., p. 290; Bahyr., loc. cit.]. The verse is said to be addressed to all sedentary Muslims in good health; or to the sick and the traveller; or to all who are permitted to break the fast for some good cause. That was before the occurrence of naskh [in Q 2,185]. This exegesis highlights yet another instance of taqdir. It becomes clear that there is an ‘omission’ in the verse: wa ‘alā alladhīn yaqūnahu [fa afaqar] . . . or, alternatively, fa man kana minkum marādan aw ‘alā safarin [fa afaqar] . . . then: fa ‘iddah min ayyāmin ukhar – but, that you fast is khaif . . .

There was also confusion as to the antecedent of the hu of yaqūnahu. Farra’i suggested that it might refer either to the fast, or to the fidayah. [Qurt., p.285.] cf. Jassas, p.210; Tab., 3,434; Bahyr., 36. Durr., p.178, quoting ‘Abd b. Ḥumaid, as from Sha’bi: He reported that the rich used to break the fast, leaving fasting to the less well-off.

The quarrel over the function of khaif will re-appear in the discussion of the obligation of the sick and the traveller.

Thus, whereas the Qur’an mentioned the obligation of those who yaqūnahu, the bulk of the scholarly discussions have centred upon defining the obligation of those who cannot fast. This class was extended beyond the aged to accommodate other groups of persons who might be unable to manage the fast of Ramadān. The verse is abrogated – but only partially, for the mention of the fidayah represents a ruling which continued to be acknowledged in the Fiqh. Bu., Taṣfiq, Q 2,184: As for the elderly who cannot fast, Anas b. Mālik reportedly fed one poor man bread and meat every day he broke the fast in his old age.

Ibn Kathir, 1, p.215: When Anas became too weak to fast, he prepared a dish of tharid, invited thirty of the poor and fed them. Tab., 3, p.422: ‘Āṭā’: ‘Q 2,185 made fasting obligatory for all except the sick and the traveller and aged gentlemen like myself who may provide the fidayah.’

In these ‘historical’ hadiths, exegesis is concretised.

f. 28b. In terms of Q 2,184, as repeated in Q 2,185, the sick and the traveller have the choice between fasting during Ramadān, or postponing the fast until they are better able to observe it: fa ‘iddah min ayyāmin ukhar . . . Those who say that the sick and the traveller who are unable to fast, without acute distress, are obliged to break the fast and ‘make it up’ when they are able, apply the expression: wa ‘alā alladhīn yaqūnahu to sick and travellers who are, nevertheless, well able to observe the fast, but who choose not to do so. If these people decide to break the fast, they are required to provide the fidayah. [Rāzi, p.79.]

Tabari reports the view that the sick are obliged to break the fast, and that any traveller who observes the fast must repeat the fast on his arrival. The obligation is: ‘iddah min ayyāmin ukhar. The first of these two extreme views he attributes to: ibn ‘Umar; ibn ‘Abbās and Daḥḥāḳ; the second to: ibn ‘Umar; Abū Hurairah and ‘Urwah. Sallīm reports that ibn ‘Umar never fasted on a journey; ‘Urwah reports that ‘Āṣimah invariably fasted on a journey.

[Tab., pp.465–6.] Q 2,185 closes with the expressions: “God desires for you the easy path, He does not desire for you the difficult path,” and ibn ‘Abbās held that the easy path means: breaking the fast on a journey; the difficult path means observing the fast on a journey. Thus, what God desires, He commands. [Tab., p.475.]

The Companions, Successors and Fuqahā’ agreed that the traveller may fast, if he chooses, and does not have to repeat the fast on his
arrival. That is because there is in wa man kāna minkum maridān aw ‘alā safar an omission: [fa aftar] – fa ‘iddah min ayyāmin ukhar. Thus, if the traveller breaks his fast, he must ‘make it up’ later. That is a concession [rukhsah] to the traveller.

In addition to the personalities spoken of above by Ṭabarī, ibn Hayyān adds as from ‘Abdul Rahman b. ‘Awf: He who fasts on a journey is as bad as he who neglects to fast when settled at home.

The extreme view that the traveller cannot observe a valid fast, his obligation being to break the fast, was favoured by the Zāhirīs – i.e. by scholars who disdained appeal to the assumption of interpolation [taqādir], But, it had been ‘soundly’ established on the basis of widespread ḥadith reports from: Abū al-Dardā’; Salamah b. al-Muḥannaq; Abū Sa‘īd al-Khudri; Ḥabīb b. ‘Abdullāh; Anas b. Mālik and ibn ‘Abbās that the Prophet fasted while travelling. It is also reported from him that he said that the traveller is free to choose whether to fast or not. [Baḥr, p.34.]

f. 29a. The ḥadith of Ḥamzah b. ‘Amr al-Aslāmī [see above line]. Among the opponents of fasting while travelling, ibn Ḥajar names Zuhri and Ibrāhīm [F.B. 5. p.86]. The Ḥamzah ḥadith comes via two tariqahs: as reported by ‘Ā’ishah, Bu. Ṣawm; Mus., Ṣawm; b.M. Ṣawm; Tīr., Ṣawm; Dār., Ṣawm.

Mālik, Ṣawm; Tāy., Ṣawm; Muw. Shāibah, Ṣawm; Mus., loc. cit.; all report without mentioning ‘Ā’ishah.

Abū ‘Ubayd knows both tariqahs [f. 29a.] ibn Daqiq al-‘Id noted that Ḥamzah did not specifically refer to Ramadān. ibn Ḥajar counters this with two comments: Mus., mentions that to break the fast was, in the Prophet’s words a rukhsah. That word implies that the discussion concerned an obligatory fast. [cf. Mus., 3.145.] Secondly, in A.D.’s version, Ḥamzah specifically mentions Ramadān, [A.D. 1.377; F.B. 5. p.82.] Certain ibn ‘Umar ḥadiths have been set up to counter the Ḥamzah-Prophet ḥadith: ‘I prefer to break the fast when travelling in Ramadān to observing it. Breaking the fast is a ṣadaqah that God has granted His creatures.’

‘It is a rukhsah granted from Heaven – reject it at your peril.’ [cf. above, p.74 the travel-prayer is a rukhsah]

‘If you gave alms to some man and he rejected your ṣadaqah would you not be angry?’

A man consulted ibn ‘Umar, saying, ‘I am able to fast when travelling,’ ibn ‘Umar now reports that he had heard the Prophet say, ‘He who does not accept this divine rukhsah incurs guilt equivalent in mass to the volume of Mt. ‘Arafah.’ [Durr, p.193.] The word here translated ‘guilt’ is ṣibb.

In the Mus., version of the Ḥamzah-Prophet exchange: Ḥamzah said, ‘I find I have the strength to fast when travelling, would I thereby incur any guilt?’ [junūb] The Prophet replied, ‘It is a concession [rukhsah] from God. Whoever accepts it, well and good; whoever prefers to fast, incurs no guilt.’ This, in turn, suggests the claim that the Prophet would have regarded the khāir in: wa an taṣūnūkh khair, as Substantive, rather than Elative. The dispute really concerns the egression of this one phrase.

A man consulted al-Qāsim b. Muhammad. ‘We travel in winter-time during Ramadān, and would find it easier to fast then than break the fast and have to ‘make it up’ in warmer weather.’ al-Qāsim [as ‘Umar b. ‘Abdul ‘Azīz is also said to have done] recited: ‘God desires for you the easy path; He does not desire for you the difficult path.’ [Ṭab., 468–9]

f. 29b–30a. The ibn ‘Abbās ḥadith dating the Prophet’s conduct to the Year of the Conquest. The ḥadith was used too by Mālik [loc. cit.] and Suyūṭī [Ṭanwīr] quotes al-Qābīsī: This is a Companion-mursal, since ibn ‘Abbās was not present on this expedition, but was at home with his parents in Mecca. In the Bu., version, we do not find the expression: The Companions would adhere to the latest-known act of the Prophet. It is present in the Mus., versions, where questions as to precisely whose these words are were raised. It was thought reasonable to suppose that they went no further back than Zuhri. The Companions would have taken the Prophet’s latest ascertained act as their guide: it would have been regarded as the mukāmak, the nāsīkh of his earlier acts. But, since Abū Sa‘īd is reported [Mus., 3.144] as averring that they had fasted on a later expedition with the Prophet, the scholars have not accepted Zuhri’s view that fasting while travelling had definitely been abandoned. [F.B. 5. p.84]

Similarly, Suyūṭī can report via al-Khaṭib from Mu‘ādh: The Prophet fasted following the revelation of the concession to break the fast when travelling.’ [Durr, p.190.] On this question, abrogation was not ascertained. The matter, it was thought, must therefore be left to the discretion of the individual Muslim. It is optional.

f. 30b. The Prophet both fasted and broke the fast when travelling. The continuing pressure from: “and that you fast is khāir” [more meritorious] is visible in the report of Abū ‘Iyād: the Prophet fasted – as was to be expected.

f. 31a. The Abū Sa‘īd report: ‘Those who were not fasting did not
criticise those who were; nor did those who were fasting criticise those who were not,’ is occasionally reversed. ‘Those men who were fasting did not criticise those who were not, nor did those who were not criticise those who were.’ [F. 31b.]

The linkage between the questions of prayer and fasting when travelling is shown in ‘A‘ishah’s statement: ‘The Prophet, when travelling, did both: he fasted, and broke the fast; he completed and he shortened the ritual prayers.’ [Durr, 195]

f. 32b. The matter is thus wholly discretionary, and the negative statements reported from the Prophet can be satisfactorily resolved by ‘ta‘wil [re-interpretation]. *wa an ta‘ṣāmāḥ khāīr lakām:* the scholars nevertheless, following agreement that the matter was optional, further divided on the question of which course was the more meritorious [khāīr]. The exegesis of this one word underlay the appearance of a number of *ḥadīths*, the most celebrated being the Prophet’s saying: *la‘aṣa‘a min al-būr al-ṣiyām [an ‘aṣā‘ām] fi al-sa‘far.*

Tab., p.468: Sa‘īd b. Jabair, Mujāhid and Ibrāhīm held that to fast when travelling was more meritorious.

f. 32b. To continue to fast when travelling might so weaken a man that he is rendered incapable of correctly performing his other religious obligations. Abū Sa‘īd reports that the Prophet told his army that to continue to fast would weaken their military capability.

[Muṣ., 3,144.]

Jābir reports Muhammad’s impatience with those who persisted in fasting after he himself had broken his fast: ‘Those are disobeying their Prophet.’ In a second version, Muhammad was informed that the fast was proving a serious hardship to his troops who were waiting to see what he would do. He therefore decided to break his fast.

[Muw. Shaib., p.126.] Mālik and Abū Hanīfah thought that to fast was preferable. The Mālikis, distinguishing military expeditions from other journeys, preferred that, on the former, the fast be broken, on the basis of the Prophet’s words, ‘In the morning, you will be confronted by the enemy.’

Shāfi‘i thought that to break the fast when travelling was the more meritorious, on account of the Prophet’s words: *la‘aṣa‘a min al-būr al-saym fi al-sa‘far.* Further, the latest recorded act of the Prophet was to break the fast. The correct view is that to observe the fast is the more meritorious act, given the verse: *wa an ta‘ṣāmāḥ khāīr.*

The Prophet broke his fast on one journey, but that was because he had been informed that the people were enduring hardship. The scholars are not divided in the view that he who experiences grave difficulty in observing the fast may break his fast. [Ibn al-‘Arabī, *Abkām*, 1,80-1.]

Anas b. Mālik declared: The more meritorious course is to observe the fast. The concession to break the fast was revealed in the days when we were still poor, and half-starved most of the time. [Bukhr, 34.]

That the more meritorious course was to break the fast was the view of Awwārī, Aḥmad, and Iṣāqāq, as it had been the view also of Ibn ‘Umar, Ibn ‘Abbās, ibn al-Muṣayyab, Sha‘bī, ‘Umar b. ‘Abdul ‘Azīz, Mujāhid and Qatādāh, although ‘Umar and Mujāhid are reported as having said that the better course was whichever a man found the easier.

We have heard the extreme view expressed by some of the Companions: he who fasts on a journey shall repeat the fast on his arrival. His fast was regarded as quite invalid. ‘Abdul Raḥmān b. ‘Awf is alleged to have said: ‘He who fasts on a journey is as bad as he who fails to observe the fast at home.’ [Ibid.] We find this dictum attributed to the Prophet himself. [Tab., 3,463]

f. 33b. The appeal to Q 2,185: “God desires for you the easy path. He does not desire for you the difficult path,” underlies Abū ‘Ubayd’s rationalisation of the Prophet’s reported attitude, as it was said to have prompted the view of ‘Umar II. Those who insisted that the traveller could not validly observe a fast were those who rejected the suggestion that there is an ‘omission’ in Q 2,184 [*fa ‘afār.*]. His obligation was clear: *‘iddah min ayyāmīn ukhas.* [Qurtb., 286]

f. 33b. The deciding factor for Abū ‘Ubayd lay in the words: *al-ṣāhilin yutīquṣa‘ahu* [Q 2,184] and that that expression determined the view of the *fuqaha*’ is clear from Timiđhī’s reports. [p.231] This entire wide-ranging debate had sprung from the exegeses of the different sections of the Qur’ān’s far from clearly worded fasting pericope. The scholars differed because they had seized on different fragmentary expressions in Q 2,184-5. The choice determined also their selection of evidentiary *ḥadīths*, the ‘debris’ of earlier similar exegetical differences. *Tafsīr* thus begets *ḥadīths*. *Ḥadīths*, being Sunna, are next exploited to ‘confirm’ tafsīr.

*fa ‘iddah min ayyāmīn ukhas; wa ‘dā‘a alladhin yutīquṣahu fidyayat t‘ām mãiqīn.*

The Muslim who breaks the fast of Ramadān for good reason must fast an equivalent number of days when he can. But those who break the fast since it is simply beyond their physical powers cannot be expected ever to ‘make up’ the fast.
K. al-nāsīkh wa-l-munsākh

f. 34b. Zuhri had said that the fidyah – abrogated for all able-bodied Muslims – had remained available to the aged whose incapacity has become permanent.

ja man tatawwa' khairan; cf. supra, ff. 26a–b.
Zuhri: to fast and provide the fidyah is khair.
Tawüs: to feed two poor men is khair.
Zuhri: to fast is better than to provide the fidyah.
Qurṭ: both khairs are Elatives. [p.290.]
Durra: ibn ‘Abbās: fīdyaš ta‘am miskīn [waḥīd].
ja man tatawwa' khairan – feeding two poor men.

‘Ikrimah: to feed two poor men. Anas fed four poor men every day.
Mujāhid: to feed the poor man a whole šāh instead of just half a šāh. [p.179.]

Mujāhid: to add to the number of the poor [Bahyr, p.36]. This is then reported from ibn ‘Abbās, Tawüs, ‘Aṭā’ and Suddī [cf. Nahhās, p.23].

f. 35b. Quis b. al-Sā‘ib: a man may break the fast of Ramadān on undertaking to feed one poor man daily. But, feed, on my behalf, two poor men daily [DQ, no. 18] with the same upper ṣuṣūd as here.

Quis: Two mudds daily suffice – but give in my name three mudds. [Jaṣṣāṣ, p.210.]

f. 36b. Abū Hurairah, cf. DQ no. 19.
Hijāz: 1 mudd = ½ šāh = 1, ½ pints. 1 šāh = 5, ½ pts. ‘Irāq: 2 mudds = ½ šāh = 4 pts. 1 šāh = 8 pts. [Lane, s.v.]

Apart from confusion over the measures, disputes appear to have resulted from differing approaches to: tatawwa‘.

The Q 2,184 fidyah provision had been abrogated, but only for the able-bodied, sedentary Muslim. Zuhri alleged that it had remained in force for the aged. [Naw., p.134]: the fidyah verse had been only partially abrogated.

Nahhās: Just as Q 4,15, although abrogated, laid down the ruling that is to be applied still in the Fiqh in the matter of the number of witnesses required in cases of adultery, so also the fidyah provision remains operative in the case of the elderly. The wording of both verses remains in the musḥaf. [p.23.]

f. 38a. Rabī‘ah and Mālik thought the aged who could not fast incurred no penalty, although Mālik hoped that they would provide the fidyah. Anas, ibn ‘Abbās, Quis b. al-Sā‘ib and Abū Hurairah thought the aged should provide the fidyah. That is also the view of Shāfi‘i for the aged are neither sick nor journeying. [cf. Nahhās, loc. cit.]

cf. Muw., Māl., p.224: I do not think the fidyah is incumbent upon the aged, although I prefer that they offer it, if they can. [Mālik’s comment upon the Anas hadith.]

If Ramadān comes around and a man, who had not fasted the previous Ramadān for good cause, has not yet ‘made up’ his previous year’s fast, although well able in the meantime to do so, he should observe the new Ramadān and provide the fidyah in respect of the unfulfilled previous fast. [Bahyr, 36.]

cf. Q 2,184: wa‘alā aladīhūn yuṭ iqūnahu, which does read like a dual imposition.

f. 38b. Their differences reflect their different ta‘wīls. Those who say the aged have no obligation, consider that God imposed the fast on those capable of fasting. They had, before naskh, the choice: to fast, or pay the fidyah. After naskh, the fidyah was withdrawn and they were required to fast. O 2,185 is silent on those who are incapable of fasting – they therefore have no obligation.

These scholars drew the analogy between fasting, zakāt and Ḥajj, none of which is obligatory for those lacking the means. The others argued that fasting does not resemble either zakāt or Ḥajj. The analogy therefore collapses. God has revealed a substitute for fasting which He imposed upon those not able to fast – the fidyah. This is analogous to tayammum, the substitute for ṭuḥfah where water is unavailable; or the gestures which are the substitute for ṭuḥfah and sujud in the event of physical disability. No substitute was ever appointed for either zakāt or Ḥajj which ought, therefore, to form the basis of no analogy. This explains why Sufyān and the ‘Irāqis consider that the elderly who do not observe the fast must provide the fidyah.

f. 39b. Jaṣṣāṣ [p.208] Abū Ḥanīfah, Abū Yūsuf, Muhammad and Zufar all said that the elderly who are unable to fast should break their fast and provide ½ šāh. If a man breaks his fast owing to illness, and does not recover before death, he has no fast obligation. His obligation was a number of alternative days. Since he was never capable of fasting the number of other days, he has no further obligation. The elderly are not expected ever to be able to fast the other days. That cannot, therefore, be their obligation. Wherefore, their obligation must be the fidyah.

The referent of the ‘hu’ of ‘yuṭ iqūna’hu’ was disputed. Naw., [p.134] Ḥasan and others thought the ‘hu’ referred to the fidyah, not to the fast.
Durr, [p.178] Sha'bi: ‘The rich used to feed the poor, leaving the fasting to the less well-off.’ i.e. the rich could afford the fidyah.

Umm, 3.88: applies the ‘hu’ to both fast and fidyah: ‘The elderly who cannot fast, but can afford the fidyah, should provide it. This is based both on reports from Companions, and on the analogy with inability to perform the Hijâj. In the latter case, proxy performance is valid.

[Proxy fasting is impermissible, there having been instituted a substitute for fasting – the fidyah.]

f. 39b. Pregnant women and nursing mothers.

Scholars, both ancient and modern have disagreed. Three differing analogies have been proposed: their obligation is the same as that of the elderly; it is the same as that of the sick; it is the same as that of the traveller.

1. They should break the fast, pay the fidyah and observe the fast when they recover.

f. 40a. Attributed to ibn ‘Umar and Mujâhid [Durr, p.179.] Nahhâs [p.23] adds the name of Shâfi‘i.

2. They should break the fast, pay the fidyah, but there is no obligation on them to ‘make up’ the fast.

f. 41a. Attributed to ibn ‘Abbâs and to ‘those who accept his reading [yâywâq/qânuhû] and his fatwâ.’

Tab., [p.428]: ibn ‘Abbâs said to an umm walad of his, who was either pregnant or nursing an infant, ‘You are in the category of those who simply cannot manage the fast. Feed the poor and break your fast. There is no need for you to ‘make up’ the fast later.’ [qâdâ’] Durr, [p.179 from DQ (p.207)]: this is reported from a second ‘Abdullâh – [ibn ‘Umar] ibid. and from Saïd b. Jubair.


3. They should break their fast and ‘make it up’ later.

f. 41b. Attributed to Ibrâhim; Hasan; ‘Atâ; Daḥhâk.

Nahhâs adds: and the Medinese.  

f. 42a-b. The differences arose from their differing ta’wîl.

Qiyâs 1 was based on precautionary application of two verses: fidyât mân miskîn ân fa ‘iddâh min ayyâmanîn allikhr.

Qiyâs 2 was based on the consideration that these women are neither sick nor travelling, to which categories the obligation ‘to make up’ the fast pertains. ibn ‘Abbâs ta’wil [and those of ‘Ikrîmah, Saïd b. Jubair and Mujâhid] reflected his reading. [f. 42b.]

Qiyâs 3 was based on the proposition that both pregnancy and Breast-feeding are quasi-indispositions. This was the basis of the view of Sufyan and the ‘Iraqîs, and of Mâlik and the Hijazis, Awzâïs and the Syrians.

Baḥr [p.36]: Shâfi‘i took the view that they were both covered by the provision of Q 2.184 and, in addition, by the analogy with the elderly. They thus both pay the fidyah and ‘make up’ the fast. Abû Ḥanîfah pointed out that the aged do not have ‘to make up’ the fast, whereas these women must. If, in addition, we insisted that they also provide the fidyah, we should have imposed upon them two substitutes for one infringement. ibn ‘Umar and Hasan said the same.

Umm, 3.88. Shâfi‘i concentrates on ability to fast: If capable of fasting, the two women must fast, if they have no fears for the safety of the infant. If they do fear for him, they should break the fast, pay the fidyah and ‘make up’ the fast when that fear recedes. If they cannot manage the fast, they are analogous to the sick – they break their fast and later, on recovering, ‘make up’ the fast. We insist on the fidyah on the basis of hadîths. Besides, they break their fast not on their own account, but on that of another. Tab., [p.432] ibn ‘Abbâs: Q 2.184 refers to the aged who cannot fast, to pregnant women, nursing mothers and to the chronically sick. [cf. Durr, p.177.]

Durr, p.179: Hasan said that the nursing mother should break her fast, if she has any fear, and pay the fidyah. The pregnant woman who fears that fasting will affect her own health should break the fast and ‘make it up’. She is analogous to the sick.

Mud. [p.210]: The nursing mother, fearing for the infant, should break the fast, pay the fidyah and fast later. The pregnant does not pay the fidyah, they merely fast later. The pregnant are sick, the nursing mother is not sick. Mâlik knew and admired the ibn ‘Umar fatwâ to the effect that the pregnant should provide the fidyah, but Mâlik did not make that fatwâ the basis of his view, for he took pregnancy to be a form of illness, and for the sick, the Qur’ân has made a clear ruling. Thus, whereas ibn ‘Umar had relied upon one clause in Q 2.184: wa ‘ala alladîn yuqûnahû fidyât, Mâlik had relied on the other clause: wa ‘iddâh min ayyâmanîn allikhr.

Qurt., p. 289: among those who were of the view that the pregnant woman and the nursing mother might break the fast without incurring
the fidyah, since they are in the same class as the sick who break the fast and fast later, were: Ḥasan; ‘Aṭā‘; Daḥḥāk; Ibrāhīm; Zuhri; Rabī‘ah; Awzā‘; Ǧāḥiṣ ab na‘īra‘; Abu ʿUbayd and Abu Thawr. Mālik applied this ruling to the pregnant, but required of the nursing mother both the fidyah and the ‘making up’ of the fast. Shāfi‘ī and Aḥmad applied both fidyah and qadā‘ to both women.

f. 43a. That pregnancy and nursing are analogous to illness and that the women involved are, in terms of the ruling, analogous to the sick and the Traveller was the view held by: Sufyān and the ‘Irāqī, Mālik and the Ḥijāzī, Awzā‘ and the Syrians, in addition to the Successors listed.

f. 44a. The matter is clinched for Abu ʿUbayd by one solitary marfu‘ hadith conveying the Prophet’s instruction: This Anas b. Mālik al-Ka‘bī is not the celebrated Ǧāḥiṣ ab na‘īra‘, but an obscure person from whom only this one hadith from the Prophet is known. Abu ʿUbayd nevertheless defers to it. Tāhir. [p.236] In the view of the scholars, this hadith provides the ruling for these women. Tāb., relays the hadith via Sufyān from Ayyūb. [p.435]

Nas., (as here) via Ismā‘īl b. Ῥa‘ūsain, with, however, in this version, no mention of these women. He also knows the Tābir version, and both he records. The hadith from this man, and a hadith from Abu Umayyah al-Dāmāri are given. Both come down through Sufyān b. ʿUmayrah, via Ayyūb. They branch off into one line through ibn Ῥa‘ūsain and another through an ʿAbdollāh. A further line, through Sufyān Thawrī [as here, via Ayyūb] provides a hadith similar to Abu ʿUbayd’s.

Nas. knows the Abu Umayyah version through numerous isnāds. In none of them are women mentioned. [Nas., 4, 181] That is also the case with Tābir. [1, p.342.]

Mālik alone appears to have identified one class of Muslims upon whom lay a dual imposition arising from Q 2,184: wa ʿalā alladhiṣ min yuṭḥāq hū. [Baiy, p.36; Mūw., p.225.]

ff. 44b-46b. The fast of ‘Ashūrā‘
Not only has Ramadam itself undergone modification. By its revelation a ‘previous’ fast had been superseded. This Ashṭāth b. Qais-ibn Mas‘ūd exchange reads like a calque upon the preceding Anas-Prophet exchange [f. 43b.] or vice-versa; [cf. Mūs., 3, p.149].

f. 45a. The Prophet used to observe the fast of ‘Ashūrā‘ before the revelation of Ramadam.

ff. 46b–74b. Marriage
Abū ʿUbayd’s materials have been provided in hadīths on the Sunna and on the ta‘wil of the Qur’ān.
Temporary marriage: nīḥāḥ al-muṭ‘ah.
al-Rabī‘ b. Sabrah al-Juḥani. The date. It is not clear which ‘umrah is here intended: that of the year 6–7, i.e. Hūdā‘iba is probably ruled out, since the Muslims did not reach Mecca. The fulfilled ‘umrah of the following year is indicated [cf. Ḥasan’s statement, f. 47b.]

The Sunna materials are very confused as to the date of the authorisation of temporary marriage and of its prohibition. They are equally confused as to who authorised it and who had forbidden it.
Rabi' reports from his father the Prophet's claim that he had authorised mut'ah, and that it was God Who had prohibited it 'until Judgment Day'. That is an instance of the naskh of the Sunna. There occur in this hadith certain quasi-Qur'anic reverberations: cf. Q 2,229; Q 4,20. Both verses refer to the dower passed to the wife in formal Islamic marriage.

The Prophet is said to have countenanced mut'ah 'in the early days of Islam', it having been a pre-Islamic custom; he is said to have permitted it on one of his expeditions, when his Companions were still young; he is reported to have permitted it at the time of the Khaibar raid, or at the time of his 'umrah, or at the time of the Conquest of Mecca, or on the Awtas raid, or the journey to Tabuk, or at the time of the battle of Hunain. This last is a graphic confusion with Khaibar [cf. Nas., 6,126].

f. 47b. Hasan shares with Rabi' the 'umrah dating.
Sabrah's hadith mentions the 'fee': two cloaks. Hasan's mentions the 'stipulated period': three nights.

Bu., nikâh al-mut'ah: Jabir and Salamah b. al-Akwa mention an expedition; the three nights' period.

f. 48a-b. The 'Ali hadith in Mush., [2,12] lacks the mention of ibn 'Abbâs. Note the wording used here by 'Ali: 'the Prophet prohibited the mut'ah with women at Khaibar, and the consumption of the flesh of domestic donkeys.' Mâlik's wording would render Abû 'Ubaid's rehabilitation of 'Ali's hadith [f. 48a.] impossible. cf. Bu., [7, p.12]: 'Ali said: 'The Prophet prohibited both mut'ah and the flesh of domestic donkeys at the time of the Khaibar raid.'

f. 49a. As to the date of the prohibition of mut'ah, total confusion reigns. As to the fact of the prohibition, total unanimity reigns. Mut'ah is forbidden to the Muslims. ibn 'Abbâs would appear to commend the 'practice', while ibn al-Zubair was stern in its denunciation. cf. Mus., 4,133: Zuhri reports from 'Urwah b. al-Zubair that 'Abdullâh b. al-Zubair delivered a public address at Mecca: 'There are men whose wits God has confounded, and whose vision He has confused who commend mut'ah.' He was hinting at one man in particular, whom he now summoned. This fellow defied him, claiming that it had been 'practised' in the days of the 'leader of the Saints', 'Abdullâh told this man that he had sinned against his own soul. He should try practising what he preached, in which case, 'Abdullâh would have him stoned.

f. 49b. As to what was, in fact, forbidden, and by whom, total confusion re-emerges. The Jâbir hadith illustrates the entanglement of one Fiqh topic with another, quite unrelated to it. They had practised tamattu' in the company of the Prophet. The report illustrates the attribution to the Sûrah of an action, merely on account of the fact that the Qur'an legislates for that 'action'. Q 2,196, ja man tamattu' . . . 'Umar reminds the Muslims that the revelation of the Qur'an is now complete. God says [Q 2,196]: Complete the Hajj and the 'umrah - ja man tamattu' bi-l-'umrah idâ al-Hajj . . . 'Umar appears to be discussing the mut'ah of the Hajj. The rest of this hadith, however, affects to discuss the mut'ah with women. 'Umar regards that as an abomination and he threatens to apply the penalty for illicit sexual conduct [zina] to anyone who practises mut'ah, cf. Mus., 4,131: A man informed 'Abdor the altercation between 'Abdullâh b. 'Abbâs and 'Abdullâh b. al-Zubair concerning the two mut'ahs. 'We certainly practised both in the company of the Prophet,' asserts 'Abdor, 'until 'Umar forbade both.'

b M [1, p.605]: ibn 'Umar reports that when 'Umar acceded to the caliphate, he delivered a public address: 'The Prophet permitted us to engage in mut'ah for three nights. Later, he forbade mut'ah. I shall not hear of any muhâsan person who tamattu', but I will stone him.'

Mus., [4, p.38] relates the Jâbir hadith from Shu'bah - Qatâdah - Abû Na'drah, as at f. 49a - but his chapter-heading is: the 'umrah of the Hajj and the 'umrah!

f. 49b. Shu'bah himself avers that he has transmitted his hadith from three men, only one of whom, Qatâdah, adverted to the stoning penalty. We should, therefore, perhaps, excise from the Jâbir-'Umar hadith all references to women. The expression 'the marriage of these women' and 'who marries a woman for a stipulated period' might well have crept into the narrative as a gloss, dislodging an original simple reference to mut'ah - i.e. mut'ah of the Hajj.

Nahîhâs [p.34]: but, as for the report in which 'Umar is supposed to have said, 'If I hear of some man doing it, I will punish him,' it refers to the other mut'ah. One of the two mut'ahs has been prohibited, i.e. the mut'ah with women. That is tantamount to adultery [zina]. The second mut'ah, sc. the mut'ah of the Hajj, or faskh, cannot be read into 'Umar's dictum, since God has expressly permitted it, Q 2,196.

f. 50a. ibn 'Umar is in no doubt as to what 'Umar's view of the mut'ah with women would have been.

f. 47a-b. Sabra b. Ma'bad provides one more instance of quasi-Qur'anic reverberation: in the time of the Prophet, istamattu' with a
woman . . . cf. Q 4.24–5 the verse which regulates Islamic marriage. 

fa mà stamna’ tan bihi min hanna fatihunna ujūrahunna. The dowry is paid in consideration of the sexual enjoyment of the wife by the husband.

Nahhās [p.105]: Here, the scholars are divided, although those ‘whose word is law’ have unanimously insisted that mut‘ah is prohibited by both the Book of God and the Sunna. It is likewise prohibited on the basis of the teachings of the caliphs, and by ‘Ali’s setting ibn ‘Abbās to rights on this very question. ‘Ali said to him, ‘You are a man astray. The Prophet of God forbade mut‘ah.’

Some scholars said that Q 4.24 refers exclusively to Islamic marriage. God had never sanctioned mut‘ah in the Qur‘ān. [These were Hasan and Mujāhid.]

Others held that mut‘ah had once been lawful but was later suppressed by the Word of God in the Qur‘ān. [Reported of: Sa‘īd b. al-Musaiyab; ‘A‘ishah; al-Qāsim b. Muḥammad; Sālim b. ‘Abdullāh. This is also attributed to ibn ‘Abbās.]

f. 50b. al-Qāsim reports that whenever mut‘ah was mentioned, ‘A‘ishah would explicitly refer to Q 23.6; Q 70.30. Only Islamic marriage and the right to enjoy one’s slave-women occur in the Qur‘ān.


His conversation with al-Qāsim – f. 51a.

[p.105] ibn ‘Abbās: Q 4.24 was abrogated by Q 65.1.


Mut‘ah consists of the man’s saying to the woman: ‘I wish to marry you for a day or so on condition that you will have to observe no ʿiddah [Q 65.1] there will be no mutual rights of inheritance [Q 4.12] no divorce procedure [Q 65.1] and no witnesses.’ Nahhās says: i.e. outright adultery [p.106.] ibid. Abī ʿUbayd’s view was that mut‘ah had been prohibited by both the Qur‘ān and the Sunna. [f. 51b.]

No Companion is known to have taken a permissive view of mut‘ah, apart from ibn ‘Abbās, and he recanted.

f. 52a. The hadīth Abī ʿUbayd reports as from ibn ‘Abbās may be a construction other than that he appears to place upon it. He reads it as ibn ‘Abbās’ resigned acceptance of ‘Umar’s prohibition of mut‘ah. It can also read, however, as ibn ‘Abbās’ reproof of ‘Umar’s unthinking impetuosity in banning something which God had

granted out of His solicitude for the Muslims. But for ‘Umar’s prohibition of mut‘ah, none would have to resort to adultery, except those whom, in any case, God had pre-desined to Hellfire. For, ironically, the same hadīth is to be found used against the Sunni rejection of mut‘ah by those who claimed that mut‘ah remained a valid Islamic practice. [Rāzi, 10, pp.51-2]

One can see how it is possible to render Q 4.24 into a seeming permission to practice mut‘ah, given readiness to subject the verse to the interpolations suggested here by Abī ‘Atīa’. The crudity of the Qur‘ān’s vocabulary aids and abets this kind of ta‘wil: istanā‘tum; uṣūr. But uṣūr is a Qur‘ānic cliché for waslqaq or donatio propter nuptias – cf. Q 4.24; 25; Q 5.5 and Q 33.50 which is addressed to the Prophet himself.

In the Salamah b. al-Akwa’ report above, it was alleged that the Prophet explained that on the expiry of the three nights’ mut‘ah, it was open to the partners to negotiate an extension, if they so desired, prolonging the ‘stipulated period’.

Nahhās [p.107]: some impudent but unlearned fellows have attempted to foist this kind of ta‘wil upon God’s words: ‘after both sides have agreed the dowry, there is no harm in re-negotiating an increase, on the basis of mutual consent.’ [Q 4.24 – cf. Q 4.4 which mentions the possibility of the wife’s offering to commute part of the waslqāq the husband had undertaken to provide.]

f. 53a. Tir., [5.48]: ibn ‘Abbās said, ‘Mut‘ah occurred in the early days of Islam’. A man would arrive in a strange town where he knew nobody. He would marry a wife for a stipulated period to look after him and his merchandise during his stay. This lasted until the revelation of Q 23.6; Q 70.30.

ibn abi ‘Amrah remonstrates with ibn ‘Abbās. Mut‘ah, in the early days of Islam was permitted only in extremis, like the permission to eat carrion and other prohibited food-stuffs, for the saving of human life.

f. 53b. the satirical song:

1. (Tībā‘, p.180):

I said to the elder who had been long imprisoned:

“My friend, would you like to take advantage of ibn ‘Abbās’ legal opinion?

Would you like a tender-limbed companionable young woman

To entertain you until the men return?”

2. Qurūbī, 5, p.153:
2a. I say to my travelling companions when we have been long on the road:
   “My friend, would you like to take advantage of ibn ‘Abbâs’ legal opinion?
Would you like a soft, plump, tender and supple-limbed young companion
To entertain you until the men come back?”

2b. The traditionist said after a long study session:
   “My friend, would you like to take advantage of ibn ‘Abbâs’ legal opinion?”

ibn ‘Abbâs has now appropriated the ibn abi ‘Amrah rationalisation.
Fûbur [p.178]: “All reputedly said: ‘Mut’ah was once permitted – but only
to those who could not raise the dowry. [What is still permitted
to those who cannot raise the dowry for marriage with a free woman,
is marriage with a slavegirl.]”

f. 54a. The entire body of Sunni scholars is unanimously of the view that
mut’ah is in no circumstances permitted. It has been prohibited
once and for all.

The scholars needed never to have conceded that mut’ah had ever
been permitted to a Muslim, but for their respect for the hadiths,
which in turn, owed their existence solely to exegetical pedantry in
the handling of the term ujur of Q 4,24.

f. 54b. A kind of marriage, once prohibited, that became lawful is
marriage with the women of the People of the Book. The entire
discussion is exegetical, and centred upon the meaning of the term
mushrik in Q 2.221: “Do not marry [?] mushrik females until they
become believers.”

Those who take the word to mean simply non-Muslim, could argue
that Q 5,5 ‘now’ excepted kâbuliyât. For some of the scholars,
‘exception’ is tantamount to naskh, being ‘change’.

f. 55a. The author exhibits his ever lively interest in girdat, although,
here, he is not sure whether this is a variant reading, or just a
transmitter’s error.

Among those he can list as regarding this as an instance of the
naskh of the Qur’ân by the Qur’ân, were: ibn ‘Abbâs; Awzây; Sufyân; Mâlik, and several Companions and Successors, ibn ‘Umar,
on the contrary, taking the extreme view, did not think that the ‘ban’
on marriage between Muslims and non-Muslim females had ever
been relaxed. This represents a very selective tafsir, since food,
[w]hich he accepts] and marriage [which he rejects] are mentioned in a

single verse, Q 5,5. This insistence upon the Q 2.221 ruling marks a
narrowing attitude on the part of some Muslims towards the Script-
tuaries.

f. 56a. ‘One verse permits it; a second verse prohibits it.’ To
determine an instance of naskh, the scholar must be able to deter-
mine which of the two verses is the later. ibn ‘Umar did not have this
information, and exercised ihtiyât.

56b. What was the conduct of the Companions and caliphs? ‘Uth-
mân, who was already married to Muslim ladies, took the Christian
Nâ’ilah as his wife. Some residual anti-kâbul animus is evident in the
acid comment of Sha’bî’s on al-Zubair’s marriages. If he is not the
man intended by Sha’bî in his comment that ‘one of the six’ [members
of the shura] had married a Jewess, Abû ‘Ubayd states that it might
have been Tâlah, of whom that is known. Hudâhâf had also
married a Jewess. Neither Hasan nor Ibrahim, nor Sha’bî saw
anything amiss in marrying kâbul women.

f. 58a. A Muslim might even marry his full quota of four wives from the
kâbul, in Hasan’s view.

That we are dealing simply with exegesis, is made clear by Sa’id b.
Jubair’s reading of Q 2.221: it refers only to non-kâbul women –
idolatresses and majâsi women.

f. 58b. Abû ‘Ubayd reports that the Muslims in his day accept that the
‘concession’ abrogated the prohibition. This shows that naskh is the
harmonising device best calculated to resolve conflicts between
hadiths which, although clashing, are, on both sides of the argument,

f. 59a. We glimpse here something of Abû ‘Ubayd’s expert know-
ledge of isnâds. The hadith, related as marfu’â, is, in fact, mursal. In
addition to his keen interest in hadiths as a whole, one notes his
preference for the hadiths from the Prophet, where these are
available.

Ibtâs: this problem, crucial for the imposition of the stoning penalty
in cases of zinâ, was never resolved, since the Muslims did not
achieve an agreed definition of the qualification. cf. J. Burton, ‘The

Ummi, 6, p.143: When a man marries a free woman, Muslim or Jewish
or Christian, or cannot raise the dowry for a free woman and marries
a believing slavegirl, and has intercourse with her, being of adult
years, he becomes thereby muhâsan. When a free Muslim or dhimmi
woman marries a Muslim, free or slave and consummates their union, she being of adult years, she becomes thereby muḥṣanah. Should either thereafter commit adultery, the penalty is death by stoning.


Mabsūt [p. 39] Our learned – except for Abū Yūsuf – insist upon Islam as a condition of ḯūṣān. (Like Shafi’i, Abū Yūsuf relied on the above ibn ‘Umar report.) Our evidence is: the Prophet’s words: ‘He who is mushrik cannot confer ḥayyān.’ Baihaqi reports the ḥadith concerning Ka‘b b. Malik, while, in the Kharajah, Abū Yūsuf relates that ibn ‘Umar thought that the mushrik female could not confer ḥayyān. Mughirah reported from Ibrāhīm and Sha’bī that a free Muslim married to a kitābi woman would merely be flogged and not stoned for zina. The kitābi wife does not confer ḥayyān. Abū Ḥanīfah is reported to have relayed the Ibrāhīm opinion that a Muslim male cannot confer ḥayyān on a kitābi female or on a slavegirl.

f. 60a. Abū ‘Ubayd is scandalised at the suggestion that the ḥayyān employed in the Prophet–Ka‘b exchange is the jurists’ technical term – as if the Prophet could contemplate zina on the part of any of his associates! The author’s own ta’wil of the Prophet’s intent is scarcely convincing. Besides, how could ibn ‘Umar deliver himself of the fatwa that the mushrik cannot confer ḥayyān – it was ibn ‘Umar who reported the Prophet’s stoning of the two Jews.

f. 60b. ibn ‘Umar had already included kitābi among the mushrikīs. [f.56a.]

Interestingly, no reference is made throughout this entire section to the Prophet’s own marital record.

That the Qur’ān [Q 5.5] characterises the kitābi women whom the Muslims may marry as muḥṣanāt, that ‘Umar, ibn ‘Umar and the Prophet were reluctant to approve of marriage with kitābi women, on the ostensible grounds that they do not confer ḥayyān; that ibn ‘Umar, nevertheless did report the Prophet’s stoning of a Jewish couple – which must mean that they were muḥṣan in the technical sense – which sense is not, however, that intended by the Prophet when he counselled Ka‘b, nor by ibn ‘Umar in his fatwa - can only mean that the term muḥṣan has more than one meaning. f. 54b; f. 59a; f. 59b; and f. 60a. convey reference to the second meaning: chaste.

f. 61a. Further, the only kitābi women the Muslims may marry are dhimmi women. Marriage with kitābi women of dār-al-šarb is forbidden. Women of the majās and idolatresses are most certainly forbidden, the ban, in their case, never having been relaxed in either Qur’ān or Sunna.

f. 62a. The negative conditions allegedly placed upon the acceptance of ḥayyān from the majās of Hajar, tend to underline the positive approach adopted in Q 5.5 to the People of the Book, whose food and women are declared lawful to the Muslims. The reader should note, incidentally, the verse’s use of the word ajur, in connection with dowries.

This entire discussion was exegetical, but was rendered necessary by the existence of the ḥadiths here reviewed. They, in turn, had been the product of an earlier stage in the exegeesis.

One might, in addition to the oblique reference conveyed by the ibn ‘Umar ḥadith at f. 56a, have expected an explicit mention of Q.9.31, where the kitābis are actually referred to as mushrikīs. Nahjīs [p.59] repairs this omission. Further, in his comments on ibn ‘Umar’s views, he settles the question of which of the two verses in the later, and hence the nāṣīkh.

f. 61b. Abū ‘Ubayd reports that he knows of no scholar who questioned the general disapproval of the Muslim’s marrying a harrīyah. Nahjīs conceded that that is what had been reported from ibn ‘Abbas and Ibrāhīm, but, claimed that Shafi’ī and Malik are among scholars who argued that Q.5.5 contains nothing to support this restriction. If they had disapproved of it, that was only from fear that the children might be brought up in the other faith.

We have seen that muḥṣan was said to have more than one meaning. Similarly, in addition to ‘marriage’, nikāh has another, more basic meaning.

Q 2.221: la tunkhiṣa al-mushrikah ḥattā wa la’āmmah ma’mīnah khair min mushrikah

f. 62b. ibn Mas‘ūd deplored sexual intercourse with a slavegirl who was either mushrikah or less than chaste. This presents the alternative taṣfīr of the verse. The statement from Ibrāhīm is mere paraphrase of the verse. The same is true of the other statements cited, ff. 62b–63b. Abū ‘Ubayd is alive to the origin of the two doctrines, one on marriage, the other on concubinage, in the taṣfīr of the verse, and of a third doctrine, that which distinguishes marriage from concubinage, forbidding the first, but allowing the second. f.64a.

The influence of the growing doctrine of the ‘pure Prophet’ will not, however, permit him to extend the distinction back into the Sirah.
Hadiths on the Awtās campaign must be subjected to a fairly transparent ta’wil [re-interpretation].

f. 65b. A further point of contention concerned Muslim prostitutes, centred upon the wording of Q 24,3. Some said the ruling was abrogated, others that it was still in force. Those who argued the naskh of this verse, held Q 24,32 to be the nāsīkh. Again, the crux appears to be nikāh.

Mujahid: Some men wished to consort with women who still plying a trade they had pursued in the Jāhiliyya. When told that that was forbidden, they sought to marry them – but even marriage was not permitted. Both Ibn al-Muṣayyab and Mujahid thought that such marriages had been forbidden at first, then permitted on the revelation of Q 24,32.

f. 66b. The ‘evidentiary’ hadiths adduced in support of this ta’wil of the verses, open up the discussion by confusing prostitution with fornication. Although imposing upon the fornicators the appropriate penalty, Abū Bakr did nothing to impede their eventual marriage. This tafsīr-hadith is based on the wording of Q 24,3 and keeps fornication apart from prostitution [cf. f. 90a].

f. 67b. Whereas the Abū Bakr hadith read Q 24,3 as a ‘permissive’ verse, ‘Umar almost reads it as mandatory. The Ibn Mas‘ūd hadith turns this tafsīr into a legal dictum. Jābir b. ‘Abdullāh and Ibn Abbās were proponents of this view. ‘Imrān b. Ḥuṣayn, Jābir b. Zaid, Ḥasan and other Ṭirāqīs were opposed to this line of thinking. [Ba., v.7, p.11]

Abū Hurairah, Ibn al-Muṣayyab, ‘Urwah and Zuhri took the first view, reported also as from ‘Ali.

f. 68a. The Ibn Abbās metaphor, attributed to Daḥḥāk in Hikabullāh [p.67].

Conviction for fornication does not bar the partners from eventual marriage, even to third parties.

Shaḥīfī. [Imm, 5, p.10]: A man marries a woman, unaware of her previous fornication, but learns of it before consummating his union with her: she is not barred from being his wife, whether her sin preceded or followed the marriage. He may not seek the return of the dowry, nor dissolve the marriage on the grounds that the contract was irregular. He may either persist with the marriage, or dissolve it by divorce.

f. 68a-b. This is so, in ‘Aṣūr’s view, even if the man witnesses the wife’s misconduct.
3. exposing the interpretations to his linguistic skills and to the lexicon of the Arab poets.

The lascivious slavegirl: [Bu., Muhārābin, Muw., Hūdād; Mus., Ḥūdád (‘an Malīk): all state that the Prophet was asked what to do in the event that a slavegirl misbehaved – if she is non-muḥṣanah – all reporting from Abū Hurairah.] They also all cite from Abū Hurairah the same report without the restriction: if she is non-muḥṣanah, b.m. has: ‘if she misbehaves before becoming muḥṣanah’ [Ḥūdād].

Malīk insists that, if the slavegirl has a husband, only the imām – not the owner – may apply the penalty, for the Prophet spoke of slavegirls who were non-muḥṣanah.

Shāfi‘ī knew both versions of the slavegirl ḥadīth. He used both in his definition of ḫṣān. The term has a wide variety of connotations, among them: Islam; liberty; marriage; consummation of marriage; being kept closely confined. His concern, at this point, is to argue that no mamluke is ever stoned for zīnā, whatever the foundation of her ḥṣān. His discussion was provoked by Q 4.25’s reference to the penalty for the erring slavegirl who is muḥṣanah. Since the Qur’ān states merely that her penalty shall be half that appointed for the muḥṣan, the scholars found themselves in considerable difficulty as to how to interpret these two uses of the term, deciding finally that its meaning clearly alters according to the status of the individual [Ris., pp. 135–6].

The difficulty with the main ḥadīth which, in this section, causes Abū ‘Ubayd such problems, is that the wife who ‘could never refuse any man’s overtures’ was undoubtedly muḥṣanah in the technical sense. Yet the Prophet told the husband to retain her as his wife. There is no mention in the ḥadīth of ḫṣān; would the Prophet, who took such a stern line with slavegirls, be sanguine on the misconduct of a free woman?

f. 72a. The ḥadīth cannot be ‘soundly’ reported. Both rāwīs, Hārūn b. Riyād and ‘Abdul Karīm, transmit it as a mursal. Nas., [Nikāh]: this ḥadīth is known in both marjī‘ and mursal forms. ‘Abdul Karīm carries it back to ibn ‘Abbas. Hārūn does not. Thus, the ḥadīth is not established. Besides, ‘Abdul Karīm is not ‘strong’. Hārūn reports it only from ‘Abdullāh b. ‘Ubayd b. ‘Umar. [cf. Umm, 5, p.10.]

f. 72a. If there be a ‘sound’ basis to the ṣaḥīḥ, then resort must be had to ta’wil. The man had said, ‘My wife cannot resist the overtures of any grasping hand’ – i.e. grasping the husband’s property. Abū ‘Ubayd conceded, however, that the other interpretation can be justified on the basis of everyday vernacular usage.

f. 72b. But ‘Ali warned us to be careful always to interpret the Prophet’s utterances in the most wholesome possible sense. Abū ‘Ubayd’s opponents could refer to Q 5.6 or Q 4.43. He can reply with reference to Q 6.7. Further, he can appeal to a line from Jarīr’s qaṣīdah beginning:

“Then greet the remains of the dwellings whose outline traces are fading.

The place where foals were tethered and the welcoming earth ablaze for him who sought a fire”

declaring that this poet is acceptable evidence for Arabic usage, and that he has used the expression to refer to those who had designs on the tribe’s property and wealth.

f. 73b. ibn ‘Abbas interpreted the term nikāḥ [Q 24.3] in the now familiar basic sense. The Muslim ceases to be a Muslim at the moment that he is engaged in what is unlawful. cf. Bu., Ḥūdād: ibn ‘Abbās reported that the Prophet said: ‘A man cannot simultaneously be a fornicator and a Muslim; no man can simultaneously be a thief and a Muslim.’

cf. Muhārābin, ihtīn al-zunāt: nor drink and be a Muslim, nor kill and remain a Muslim.

ff. 74a–b. The second meaning of nikāḥ. The word is capable of bearing both meanings in Arabic.

ff. 74b–89a. Ṭalāq

The author knows of only two instances of naskh:

1. fulayt al-Khuṭbī. 2. ‘iddat al-wafāt. In view of the inclusion here, of the second topic, it seems more appropriate to translate the ṭalāq of the title as the dissolution of marriage.

ff. 74b–87a. Q 2.229. The occurrence of references to both spouses and to the Muslims appears to have led to division as to the locus of competence in khutb. Some would consider khutb a strictly private inter-spouse arrangement; some considered competence to reside solely in the husband’s hand, while others thought competence lay with the authorities, acting on behalf of the community.

f. 75a. ibn ‘Abbās again equates exception with naskh. He sees a
breach in the solemn prohibition of a man’s seeking restitution of all, or part of the dowry. The first series of hadiths makes the point that the fidyah is a quasi-penalty imposed for the matrimonial offence of the wife.

Attempts have been made to define and delimit the precise nature of the offence, and to suggest general formulae. Statements specifying character and behaviour faults on the wife’s part are attributed to ibn ‘Abbas; Ibrāhim; ‘Aṭā’, who adds the qualification that the wife’s consent is needed for the institution of proceedings leading to ḥuḍrat, i.e. to her surrender of property in exchange for the dissolution of the marriage.

f. 76a. ‘Aṭā’, ‘Amr b. Shu‘aib and Zuhri attempt more precise definitions of the nature of the wife’s misconduct. Jābir b. Zaid held that only the wife may initiate ḥuḍrat.

f. 76b. Hasan, who regarded ḥuḍrat as a form of divorce, and thus assigned the initiative to the husband, does not depart from the wording of Q 4,34.

f. 77a. Both ‘Urwah and Tawus repudiated the attempts to devise formulae such as those illustrated at f. 75a-b. The Qur’ān provides no warrant for these, or for any other forms of words. Abu Qilābah interprets Q 4,19 in the sense that a husband may pressure an erring wife into the surrender of the donatio propria nuptias – although that is otherwise strictly prohibited elsewhere in the Qur’ān.

f. 77b. Abu ‘Ubaid defines ḥuḍrat: it is the purchase by the wife of her liberty from the marriage. By offering the husband a fee, or by agreeing to waive the donatio, she induces him to divorce her.

Both sides in this dispute as to whose prerogative it is to initiate ḥuḍrat – the husband’s or the community’s – can find support in the hadiths that have reached them.

f. 78a. The author accepts both views and can distinguish differing circumstances in which each can be justified. Primary prerogative lies with the parties to the marriage. They may complete all the formalities on the basis of free mutual consent and have their separation formally witnessed, without reference to the authorities. Only if they fail to reach mutual agreement, the wife refusing to surrender her rights, or the husband reluctant to release the wife, and they then apply to the authorities, does the prerogative pass out of their hands to become the sole prerogative of the courts.

f. 75a. This formula repeated by Hibatullāh [p. 25] but already dismissed by Bu. [7,46] as the mouthings of fools. Bu., [nikah, khul] repeats the Tawus tafsir [f. 77a].

f. 79a. Habibat ibn Sahl’s story is celebrated.

cf. Mālik, 2,22; b.M. 1,633; Nas., 6,169; Dār., 2, 85. A.D. 1,348.


f. 80a. ‘the wife is unnamed. Her identity is uncertain.


f. 80a. [Baṣran isnād]: the Prophet separated them.

f. 80b. The Prophet ordered Thābit to divorce her.

f. 81a. [Baṣran isnād]: the Prophet ordered etc. . . . The wife is named for the first time [Jamilah].

ff. 79a-81a: Medinan or Başran, all the hadiths show the wife applying to the Prophet for a decision.

f. 81a. A brief domestic comedy provides a moment of humour. The story is tafsir of Q 4,35 which, however, it breaks into two separate clauses. The story establishes the principle that the spouses may withdraw their invitation to the authorities to act. The verse says: “If they desire to ‘make up’, God will assist them.” This was preceded by: “If you fear they will split up, send a representative from his people and another from her people to arbitrate between them. . . .”

The connection between Q 4,35 and Q 2,229 was facilitated by the juxtaposition in Q 2 of “unless the two fear. . . .” with “and if you fear. . . .”

Men are forbidden to seek the return of the donatio, or any part of it, “unless the two fear that they cannot abide by the limits set by God. But, if you fear that they cannot, there is no guilt in their agreeing that she provide the fidyah. . . .” Hence the validation in the tafsir and hadiths as to the locus of the prerogative to initiate separation.

f. 81b; f. 76a.b. The references to nushāz derive from Q 4.
The confusion as to where the prerogative lay: with the wife, the husband or the authorities arose from Q 2’s discussions on divorce and its financial implications.

f. 82a. The ḥadīth meld the Q 2 and Q 4 contexts.

Ṣāliḥ is said to regard the two arbiters as plenipotentiary. The allegation that that was his reading of the relevant Qurʾān statements is clearly stated.

f. 82b. The same view attributed to Shuraṭ.

f. 83a. It is attributed to Saʿīd b. Jubair; Shaʿbī and Ibrāhīm who is said to grant the arbiters the power to declare the separation either revocable or absolute.

f. 83b. But the two arbiters must agree – Ṣāliḥ; Shaʿbī. If they do not agree, others must be appointed, Shaʿbī.

f. 84a. The two arbiters may reconcile the spouses; they may not separate them – Zuhār. The question of separation is for the inām, not the arbiters.

f. 84b. Ḥudūd is the exclusive prerogative of the sultan: Hasan; ibn Sirin; Ḍaḥḥāk.

Abū ’Ubayd points out that the Prophet did not leave the discretion to Thabāt. Muḥammed separated the couple. That had also been Ṣāliḥ’s view, ibn Ṭabāṣir and Muʿāwiyah’s.

f. 85b. The caliph may endorse ḥudūd after agreement has been reached by the spouses. Ṣāliḥ: ‘Uthmān; Shurāḥ had all recognised this, thus acknowledging the right of the spouses to act independently.

f. 86b. Shuraṭ teaches his associates that ḥudūd is a form of divorce.

f. 87a. Abū ’Ubayd is of the opinion that the spouses may separate by mutual consent, but that their act requires the ratification of the authorities for its validity.

Umm, 5,178: The ḥadīth: ibn Sirin – Ṣāliḥ: Ṣāliḥ – Ṣāliḥ [f. 81b.] Shāfiʿi denies the arbiters the power to separate the couple. They are agents of the husband and may not offer him any part of the donātio, except as agents of the wife. God stated that He would help if they desired to be reconciled – He said nothing in Q 4,35 about their separating. The inām ought to invite the spouses to agree to appoint arbiters between them, deputised to act on their behalf.

Although Abū ’Ubayd does not mention the ḥudūd of ḥudūd, he does mention the story of al-ʿRabi’ ibn Muʿāwiyah.

f. 86a. [cf. Muw., Ṭalāq al-mukhtalāf;] al-Rubāʾi’ informs ibn ʿUmar that she had sought from her husband and obtained his consent to her ḥudūd. ‘Uthmān had come to hear of this and did not repudiate it. [cf. f. 86b.]

Rubāʾi’s story features in the discussions on the ḥudūd of ḥudūd. ibn ʿUmar declared that this ḥudūd is the same as that of any divorced woman – Mālik had heard that Saʿīd b. al-Musayyab, Sulaimān b. Yāsir and ibn Shihāb had been of the view that it was the same as for divorce – three cycles. Tir.: Ṭalāq, ḥudūd. Sulaimān b. Yāsir-Rubāʾi’ reports that she obtained ḥudūd in the time of the Prophet, and that he ordered her to observe the ḥudūd of one menstrual cycle. From ibn ʿAbdās, he also reports this of Thābit’s wife; [cf. f. 79b.+] The Prophet ordered her to observe an ḥudūd of one menstrual cycle. Cfr. A.D., ḥudūd. Nas., [Ṭalāq, ḥudūd. In Nas., [ ḥudūd of al-mukhtalāf;] the transmitter is Rubāʾi’ relaying the story of Jamāḥi. The Prophet ordered her, (she was Thābit’s wife) to observe an ḥudūd of one cycle. [Nas., ḥudūd of al-mukhtalāf.] The above is followed by the story of Rubāʾi’ informing ʿUthmān of her ḥudūd and enquiring what her ḥudūd is. ʿUthmān tells her she has no ḥudūd to observe, unless she had married very recently, in which case she should observe one cycle as isṭibra’. [Nas., 6,187.] cf. ibn al-ʿArabī, [Sharḥ Tir., loc. cit.] Rubāʾi’s story in Muw. is incomplete. It ought to continue: Her uncle asked ʿUthmān if she might leave the matrimonial home. ʿUthmān said she might. There would be no mutual rights of inheritance, and she had no ḥudūd obligation, but was not free to re-marry immediately. She should wait for one cycle as isṭibra’. ibn al-ʿArabī explains that these scholarly differences had sprung from the different views the ināms had formed of the ḥudūd institution: Mālik, for example, saw ḥudūd as a form of divorce, while one report from Shāfiʿi suggests that he regarded it as the dissolution of the contract [faskh]. The differences ante-dated both ināms. If ḥudūd is divorce, the ḥudūd is of three menstrual cycles; if ḥudūd is faskh, the ḥudūd is of one cycle only.

ff. 87a–89a. The ḥudūd of the widow.

Fībār [p.8]: the abrogation of Q 2,240 by Q. 2,234 is a ‘classic instance’ of the nasākh of the Qurʾān by the Qurʾān. Both nasākh and mansūkh verses remain in the maṣūf, save only that the ruling of the mansūkh verse no longer applies.

f. 87a. The ibn Ṭabāṣir ḥadīth reads Q 2,234 in implied association with Q 65,4 and, compared with Q 2,240 suggests that:
the widow’s ‘iddah had ‘originally’ been for twelve months [Q 2,240]; that it was later reduced to four months and ten nights [Q 2,234] for all widows who were not pregnant. Pregnant widows were dealt with at Q 65,4. The second ibn ‘Abbās hadīth: financial provision for the widow and her accommodation for twelve months [Q 2,240] were superseded by the inheritance revelations of Q 4,12.

The present is one of only two instances in which the nāsīkh verse precedes the mansūkh verse in the literary arrangement of the musḥaf. [Hibbatullāh, p. 26.]

Bu., [Taṣīr, Q 2,234] ibn al-Zubair asked ‘Uthmān why he had recorded Q 2,240 and left it in the musḥaf, when he knew it had been replaced by Q 2,234. ‘Uthmān replied that it was not his place to alter the arrangement of the revelations. For the theories of abrogation, the literary lay-out of the Qur’an is irrelevant, only the chronological order of the revelation of the verses is brought into account. Hence the significance of yet another branch of the Ḥadīth literature, the asbāb al-nuzāl.

The exegetes of Q 2,240 [and Q 2,180] had clashed with the results of the exegetes of Q 4 on inheritances. Shāfi‘i, arguing that the Qur’an revelations are ‘ambiguous’ sought the help of the Sunna. ‘Uthmān: that the wasīyah to parent, nearest kin, and widows was still required. They would benefit twice: by wasīyah and by inheritance; or, it could be that the inheritance verses abrogated the wasīyah provisions of both Q 2 verses. Of two hadīths known to him, one, transmitted by Syrians, contains in the ismā‘il persons unknown to the specialists. He accepts the second, the Ḥijāzī tradition, circulated by the maghażal scholars in a report on which the scholars are all agreed. This version he prefers — although it is musqāf: “in the Year of the Conquest of Mecca, the Prophet said, ‘there is to be no wasīyah in favour of any heir.’” [Ris., pp. 138-43.]

This hadīth, and its unanimous acceptance among the scholars indicates that Q 4 abrogated the two Q 2 verses.

b M [wasīyā]: Abū Umāmah said, ‘I heard the Prophet say, at the Farewell Pilgrimage, “God has granted to all who are entitled their due rights — there is to be no wasīyah in favour of any heir.”’ Anas b. Mālik reports the same. Nas., [wasīyā]: ‘Amr b. Khārijah reports: ‘The Prophet said, “God has assigned to every man his due share of the inheritance. A wasīyah in favour of any heir is not valid.”’ cf. Dār., wasīyā: Sīrah, 2, p.605. [f. 87b. for this wording.]

This wording is more pointed in its prohibition of the wasīyah, and in stating that God [i.e. the Qur’an, Q 4] had been the nāsīkh, not the

Sunna, i.e. the words of the Prophet: là wasīyah li wārith — as others have supposed.

Muw., 2,133: ‘The established sunna, in our view, on which there is no disagreement, is that a wasīyah in favour of any heir is not permissible — unless authorised by the man’s other heirs.’ Here, there is no trace of the above hadīth, which, as we saw, was in Shāfi‘i’s day, still defective.

To sustain the claim that Q 2,240 had been abrogated, the first point to establish is that the ‘iddah had, in fact, ‘originally’ been for twelve months. The most satisfactory technique is to cast that ‘ruling’ back into the Jāḥiliyyah.

f. 88a. Zainab reports from two widows of the Prophet.

cf. Bu., Tālq, [7,59]: Humaid — Zainab — Umm Habībah: When the report of her father’s [Abū Sufyān] death reached her, she called for some unguents and smeared herself, saying, ‘I don’t really need perfume, but I heard the Prophet say, “It is not lawful for a woman who believes in God and the Last Day [Q 2,232; 65,2] to mourn the dead for more than three nights — save only her husband whom she should mourn for four months and ten nights.”’ [Using Mālik’s ismā‘il, cf. Muw., Tālq, [2,39] Humaid — Zainab . . . Mālik gives three hadīths, the first, like the foregoing, the second, also like the foregoing, but featuring Zainab ibnat Ja‘sh, on the occasion of the death of her brother; the third, Zainab from Umm Salamah, as given here by Abū ‘Ubayd. Mālik also reports from ‘A‘ishah and Ḥafṣah, as before.

The function of the hadīths was to instil the notion that mourning is actually an obligation, incidentally inculcating the parallel notion that the longer ‘iddah of the Jāḥiliyyah and [by extension] of ‘early Islam’ had been ‘reduced’ by the revelation of Q 2,234. Mūjahīd is supposed to have reversed this order: [Bu., Taṣīr, Q 2,240]: Q 2,240 imposed the ‘iddah which the widow must observe in the matrimonial home, four months and ten nights; God then imposed in Q 2,220 on the heirs the additional seven months and twenty nights, granting her accommodation if she chose to avail herself of it — i.e. for a whole year. She might remove from the matrimonial home on the expiry of the ‘iddah of four months and ten nights.

Naḥḥās [p.75]: Qatā‘dah said, ‘the provision of the widow’s accommodation for twelve months during which she might not be evicted from the matrimonial home, was abrogated by the revelation of Q 4: the period mentioned, twelve months, was abrogated by Q 2,234.’ He gives also the ibn ‘Abbās hadīth, as at f.87a—b, but with extended
K. al-nādikh wa-l-mansūkh

wording: ‘God revealed her inheritance in Q 4, so her wāsīyah and the expenditure [upon her accommodation and subsistence] ceased.’

Those who excluded the pregnant widows from the Q 2,234 ‘iddah, on the grounds that their obligation was revealed in Q 65, argued on the basis of the hadīth in which ‘Abdullāh b. Mas‘ūd exclaimed: ‘I am prepared to engage in mutual oath-taking with any man to the effect that the “shorter sūrah on women” [Q 65] was revealed later than the “longer” – i.e. the Q 2 passages.’ This was the view of the majority of Companions, Successors and fuqahā’; ‘Umar; ibn ‘Umar; ibn Mas‘ūd; Abū Mas‘ūd; Abū Hurairah; ibn al-Musayyab; Zuhri; Mālik; Awzā‘ī; Thawrī; asŠāh al-ra‘y; asŠāh al-ḥadīth; Shāfī‘i and Abū Thawr.

Those who wished to harmonise the two verses, Q 2,234 and Q 65,4, argued that the widow should observe the longer of the two periods: the four months and ten nights, or the period of the pregnancy. If the woman gave birth before the expiry of the Q 2,234 period, she should continue until the end of that period. This view was represented by ‘Ali and ibn ‘Abbās. The opposing view was held by ‘Umar who argued that if the widow gave birth before even the husband had been interred, she had no further ‘iddah obligation. The quarrel was settled by the appearance of a further ḥadīth. Umm Salamah reports the Prophet as saying to Subay‘ah that she was free to re-marry immediately. She had informed him that she had given birth only nights after the death of her husband. [Muw., 2,36.]

All are agreed that a pregnancy greater than four months and ten nights determines the longer ‘iddah to be observed. Nāfi‘ah [p.77] mentioned Mālik’s ḥadīths from Humaid. Among their many provisio ns was the widow’s obligation to mourn. One may therefore ignore Hasan’s denial that mourning is obligatory. The Prophet did, however, exempt from this obligation the pregnant widow, since he restricted his remarks to widows whose ‘iddah is for four months and ten nights! [p.79]; if the widow is pregnant, the Hījāzis do not permit her accommodation nor her subsistence to be deducted from the deceased husband’s estate; the Trāqis (including Abū ‘Ubaid) allow her her maintenance from the [undivided] capital.

These discussions, with their tafsir-ḥadīths expose the extent to which the exeges had confused a number of unrelated questions: Q 2,240’s regulation of the wāsīyah to provide the widow’s keep, its insistence upon her right to the accommodation for the full twelve months, if she wished to avail herself of it, whatever the man’s other heirs said. The period is long enough to provide for all normal pregnancies. The distinction between pregnant and non-pregnant

widows is thus a complete red herring. In this regard, cf. Mishnah, Ket., 12: “If a widow said, ‘I do not wish to leave my husband’s house,’ the heirs cannot say to her, ‘Go to thy father’s house, and we will maintain you,’ but they must maintain her in her husband’s house and give her a dwelling befitting her position.” This is precisely what Q 2,240 regulates. It has nothing to say about the ‘iddah. That is the topic of Q 2,234. The widow may not contemplate re-marriage for at least four months and ten nights from the date of the husband’s decease. The exeges have further denied the widow her wāsīyah, on the grounds of Q 4,12’s having allotted her a specific share in the inheritance. Yet, Q 4,12 twice mentions that estates are to be divided only after the deduction of any wāsīyah the decedent may have made. Shāfī‘i himself had conceded this much.

Q 65 has nothing to do with widows. It regulates the ‘iddah to be observed by the divorced wife. ibn al-‘Arabi tries to argue that the fact that the verse concerns divorced women does nothing to limit its general application to all ‘iddahs. It applies to all pregnant women observing an ‘iddah. [Ahkām, 1, p.208.] Q 2,234 and Q 2,240 share no topic in common; they cannot be in conflict, therefore there can be no naskh.

ff. 89a–97b. Corporal and capital penalties

ibn ‘Abbās’ linking of Q 4,15 with Q 65,1 on the basis of the presence in each of the term fāḥishah, illustrates the common technique of verse comparison. This present link had interesting consequences for the vowelizing, first, of Q 65,1, and thence, of Q 2,240. Consideration of the exegesis of the verses, and that of Q 24,2 – (together with a reference to ‘current practice’) – seemed to point to the relative dating of the three contexts.

Q 4,14: aw ya‘al allāh lahunna sabīl – the sabīl which God subsequently brought for these women was flogging [Q 24,2] and stoning [Sunna] – the ‘Aţā’ Khurāsānī transmission.

f. 89b. The ‘Ali b. abī Taḥlyah transmission: Q 24,2 abrogated the rulings of both Q 4,15 & 16. The Sunna, however, established the death penalty for the muḥšan who committed an act of illicit sex. That was the penalty God brought for these men and women – lahunna.

f. 90a. The ‘Ubādah ḥadīth: God has now brought His sabīl lahunna:
for virgins, flogging and banishment; for the non-virgins: flogging and stoning. Thus, this first version deals exclusively with women [cf. Q 4:15].

"Take it from me": cf. Q 59:7; "Whatsoever the Prophet gives you, accept it; whatsoever he denies you, be denied." This is one of the most over-worked Qur'anic proofs of the divine requirement that men accept and act upon the Sunna of the Prophet. In fact, the verse discusses, as is clear from the context, the division of the spoils of battle. The above penalties were established by the Sunna.

f. 90b. ʿUbādah, version 2.: the penalties were revealed.

Abū ʿUbayd offers no comment or explanation of the mechanics of this alleged instance of naskh.

Hibatullāh [p.33]: house-arrest [Q 4:15] was abrogated by the Sunna, not by the Qurʿān. The verse referred solely to the mūḥāṣar, males and females, i.e. adulterers. Q 4:16 referred only to the non-mūḥāṣar, male and female, i.e. to fornicators, whose ruling was abrogated by Q 24:2, the flogging verse. The penalty for the mūḥāṣar is stoning. Naḥḥas [p.98] Q 4:15 [house-arrest] applied at first to all, i.e. fornicators and adulterers. That was first abrogated by Q 4:16. The offenders were now subjected to physical and verbal abuse. This was next abrogated by the distinction between fornication and adultery. For the former, the penalty was flogging and banishment; for the latter, it was flogging and stoning. This was the view of ʿIkrimah, and has been related by ʿAbdān from ʿUbādah [f. 90b].

A second view, Qatādah’s, was that Q 4:15 referred to the mūḥāṣar alone; Q 4:16 referred to the non-mūḥāṣar. ʿĀthir inclined to this opinion.

Thirdly, Q 4:15 referred to all female offenders, Q 4:16 to all male offenders. This, the view of Mujāhid, has been reported also as from ibn ʿAbbās. Naḥḥas regards this as the soundest of all the exegeses.

[p.99] cf. ʿUbādah 1, f. 90a. The Prophet’s saying: ‘God has now brought His sabīl lakunna,’ shows that Q 4:15 had not been abrogated before this was uttered.

[p.100] Naḥḥas derived the view which he prefers from the ʿAli b. ʿAbd Talḥah transmission [f. 89b] although his wording is slightly varied.

Whereas some scholars, including ʿAli; ʿHasan b. ʿAlī; al-Ḥasan b. al-Ḥasan and Ishāq maintained both elements of the penalty for the mūḥāṣar, as established in the ʿUbādah hadith, arguing that the flogging had been imposed in the Qurʿān, and the stoning by the Sunna, others, including ʿUmar; Zuhraj; ʿAlī; ʿAbdul Wāhīd; Abū Bakr b. ʿAbd Shaibān; ʿAbdul Wāhīd; and ʿAbdul Hādī, declared that the stoning was not authorized. The ʿAlī version, which has been preserved in the ʿAbbāsī chain, of the ʿAbū Dāvūd transmission, was generally adopted. ʿAbd al-Wāhid declared that both are authorized. ʿAbdul Wāhīd declared that both are authorized.

f. 90b. The penalties applicable to the dhimmis. ʿIbrāhim and ʿAbdul Bādi the Muslim judge is free to hear cases brought by the People of the Book, but he must judge on the basis of the Book of God. Q 5:42 is muḥkamah.

f. 91a. Q 5:49 abrogated Q 5:42: ibn ʿAbbās; ʿAbdul Wāhīd; ʿAbdul ʿAlī.

Ibrahim and ʿAbdul Bādi had not explained which Book of God they thought in mind. The expression is a re-working of the Q 5:49 verse: “on the basis of what God has revealed.”

f. 91b. The Ibrahim Taimi remark throws some interesting light both on this, and on a possible origin of the stoning penalty. Note: f. 92b. ʿAbd ʿUbayd: This is what has come down concerning the abrogation of the penalties for zina! Is that what the discussions on Q 5 were about? If so, Taimi’s remarks takes on considerable importance.


cf. Mus., [ibn rajm al-yahbi]: ʿAbdul ʿAbdul Wāhīd – ʿAbdul Bādi – ʿAbdul Wāhīd – ʿAbdul Bu. ʿAbdul Bādi – ʿAbdul Wāhīd: ‘Before or after the revelation of Q 24?’ He said that he did not know.’ Bu. adds the footnote: In some versions this reads: ‘Before or after the revelation of Q 5’ – but the more correct version is the one mentioning Q 24.

The mention of Q 5, nevertheless, recalls Taimi’s remark. Bu. follows up the question as to whether the Prophet had ever stoned with the ibn ʿUmar report to the effect that the Prophet had stoned two Jews. Stoning is the penalty in the Torah. Which Book of God did Ibrahim and ʿAbdul Bādi mean?

ff. 92b–94b. Retaliation
Sha'bî's hadîth is the sabab of the revelation of Q 2.178. The verse 'introduced' order into the question of weregeld. cf. Hibatullâh [p.15].

f. 93a. Ibn 'Abbâs sees nasîkh here. Q 5.45 abrogated Q 2.178. This is a second asbâb hadîth. For ibn 'Abbâs, what has been introduced is the ruling that free persons, male and female, exercise mutual retaliation in cases of deliberate assault, whether the result is death or merely wounding. Previously, men had not been killed for the murder of women, nor vice-versa. They had formed separate retaliation categories.

f. 93b. Abû 'Ubâid's intervention: ibn 'Abbâs did not regard Q 5.45 as the nasîkh of Q 2.178. He took both verses to be still valid. Q 5.45 presented the tafsîr of Q 2.178. In cases of homicide, men and women form a single category, free persons. Similarly, the slave class are a category.

f.94a. There is no retaliation across the categories, whether in cases of homicide, or lesser assaults. This was the view of Mâlik and the Hijâzîs. Some of the 'Iraqîs, on the other hand, thought Q 2.178 had been abrogated by Q 5.45. On account of the latter's expression: "a life for a life" they permitted cross-category retaliation – but only in cases of homicide. Abû 'Ubâid prefers the Medinese view: 1. on account of the ibn 'Abbâs tafsîr; 2. because the Medinese view is the more consistent. The 'Iraqi position is selective, since Q 5.45 is not, in fact, restricted to homicide. The verse mentions wounding also. Hibatullâh [p.15]: if it be objected that Q 5.45 was imposed upon the Jews, not upon the Muslims, one replies that the verse ends with the insistence that men should judge on the basis of what God has revealed.

The Hijâzîs and others point to Q 17.33: "Let there be no excess in killing." To kill a Muslim in retaliation for an unbeliever, or a free man for a slave would, indeed, be excessive.

Nabîh [p.17] Daâhîk reports from ibn 'Abbâs that Q 5.45 abrogated Q 2.178.

[p.18] Sab:î, as at f. 92b., although abbreviated.

[pp.18–19] Nabîh explains the Kûfîan view that permits retaliation upon the free for the homicide of the slave: it had been based on a Prophetic proclamation which 'Allî had preserved in his sword-case. This stated, among other things, "the blood of all the believers is equal".

Shâfi'i, K. Ikhtilâf Abî Hanîfî wa ibn abi Laila [p. 137] AH: there is no retaliation between men and women for non-fatal assault, nor between free and slave for non-fatal assault. Ibn abi Lailâ replied: retaliation is wholly unrestricted, whatever the gravity of the assault.

Shâfi'i himself permits retaliation between men and women for all, including fatal assaults. The same applies to the slave class, but within their own category. Shâfi'i shows that here, he is arguing from the major to the minor.


Noting the discrepancy between this hadîth and Q 5.33, the scholars have concluded that the ruling shown in the hadîth has been superseded. Although it occurred at Medina, it occurred before the revelation of the Islamic penalties.

f.95b. It occurred in 'early Islam'.

Mus., Sulaimân Taimî – Anas: The Prophet put their eyes out because they had put out the eyes of the herdsmen, i.e. this was retaliation, not a penalty.

Bu., [Muhammad] via Abû Qilabah, these people stole; they killed; they made war on God and His Prophet... [cf. Q 5.33] they stole; they killed; they apostatised; they made war on God and His Prophet.

s m r s m [Bu., k h] cf. Gharib al-Hadîth, 1, p.173. The penalty of the muradd [apostate] is death. Putting out the eyes is mutilation, which is forbidden.

f. 96b. The ibn 'Abbâs hadîth: the penalties mentioned in Q 5.33 are listed as alternatives. The tafsîr-hadîth mirrors the verse perfectly; so too, at f. 97a.

Naîbîhs [p.125]: scholars have said that Q 5.33 abrogated the Prophet's practice when he mutilated the group from 'Uqrah, putting out their eyes, and leaving them to die of exposure. Ibn Sirin said that when the Prophet acted in that way, he was admonished and that 'practice' was abrogated [p.126]. Suddî said, 'The Prophet was on the point of doing this, when he was forbidden to do it, and the penalties were revealed.'

Some accept that the penalties of Q 5.33 are alternatives. The imam is free to apply whichever he chooses.

Others say that the penalties are a tariff reflecting the gravity of the crime.
K. al-nāsikh wa-l-mansūkh

[p.127] The first view is reported from Mālik and ibn ‘Abbās; Sa‘īd b. al-Musaiyab; ‘Umar b. ‘Abdul ‘Azīz; Mujāhid and Daḥḥāk.

The second view is attributed to  Ḥasan; ‘Atā’; Sa‘īd b. Jubair; Abū Mujiţ; and ibn ‘Abbās!

f. 97a. But this second view is attributed to ibn ‘Abbās in the hadīth of Ḥaţajj b. Arţat via ‘Aţiyah from ibn ‘Abbās. Ḥaţajj and ‘Aţiyah are not highly regarded by the hadīth specialists. The second view was that adopted by Awzā‘i and  Shāfi‘i; asšab al-ra‘y; Sufyān and Abū  Hanīfah; Abū Yūsuf, although they did not agree on the order of the penalties.

f. 97a. The ibn ‘Abbās tarīff.
A man who rebels, acts the highwayman and steals, his hand and opposite foot are cut off; if, in addition, he kills he is crucified; if he kills but does not steal, he is killed; if he neither stole nor killed, he is banished.

cf. Nahḥās [p.129]
A man who rebels and kills, is killed; if he steals but does not kill, his hand and foot are cut off; if he steals and kills, he is killed then crucified.

ff. 97b–105b. The section on witnesses

ff. 97b-99b. 1. Witnessing sales.
Q 2.282 is absolute in its requirement that all transactions be witnessed, however trifling the amount. Debts should, in addition, be recorded in writing. ‘Atā’, Ibrāhim and ibn ‘Umar insisted on witnesses to all sales, although ibn ‘Umar did not insist on their being recorded.

Nahḥās [p.84] adds the names of: Abū Miṣar; ibn Sīrīn; Abū Qilāb; Daḥḥāk; Jābir b. Zaid; Mujāhid. These men took the Qur’ān wording literally.

f. 98a. He reproduces the ‘Atā’ and Ibrāhim statements, and now adds the name of Tabarī [Nahḥās, loc. cit.].
Q 2.283 regulates the same matters for travellers. As they cannot always expect to find a clerk capable of recording their transactions, they may exchange pledges instead. The recipient of such a pledge will be expected to turn it over to its owner on the completion of the transaction. Ḥakam; Shārīb and Ḥasan thought of Q 2.283 as

abrogating Q 2.282. Nahḥās adds: and ‘Abdul Raḥmān b. Zaid. These scholars would seem to have understood the Q 2.283 term amīna to mean ‘to trust’; the context suggests, however, that it refers to the handing over of the pledge [amānāh]. The demand for witnesses is here repeated.

Tabarī insists that this verse is mandatory and he challenges the view of those who take it as a simple recommendation – said to be the view of Ṣhairī‘i; Mālik; Shāfi‘i and  asbāb al-na‘ir. The Qur’ān’s orders are not to be construed as other than commands, without good evidence. There being no second Qur’ān verse which says, ‘Do not record, and do not call witnesses’; Tabari will not accept this claim of naskh. Nahḥās admires this analysis, but, since those  fuqaha whose words ‘are regarded‘ have pronounced, the majority are satisfied that this is not obligatory. Tabarī had defined naskh as the negating of an earlier ruling. But ibn ‘Abbās had interpreted Q 2.106’s aw nunsah hā to mean ‘abandon’. Naskh can thus refer to the abandonment of an earlier ruling without the revelation of any replacement ruling. [This is al-nasīkh lā ilā baddi: nasakhat al-rīḥ al-āthār – i.e. simple suppression, as opposed to supersession.]

Shāfi‘i, [Umma, 3, p.76] regards Q 2.282 as ‘ambiguous’. It may be a recommendation; it may be a command. He prefers that sales be witnessed, not because the Qur’ān says so, but since this is obviously commercially prudent. He knows a hadīth in which the Prophet, on one occasion, was embarrassed because he had failed to have a transaction recorded.

[cf. Nahḥās, p.85] Muhammad’s action on that occasion, shows that the verse does not impose a command.

Q 24.4: bearing witness against the chastity of females.

f.99b. Four witnesses are required. Those who libel others and are unable to produce four witnesses, are to be flogged. Thereafter, they will be quite unacceptable as witnesses to any transaction – unless they repent of what they have done. The disputes among the scholars centre upon the range of this exception. Ibn ‘Abbās restricted the effects of the exception to the description of those involved as ‘wrongdoers‘. The exception in no way re-habillates their suitability to give evidence. His view shared by Shura‘i; Ḥasan; Ibrāhim, and Sa‘īd b. Jubair. [The ‘Atā’ Khurāṣānī transmission.]

f. 100b. The ‘Aţī b. b. Taḥhā transmission, on the contrary, ibn ‘Abbās had held that repentance purges both the moral guilt and the disqualification to give evidence.
That view was shared by: 'Umar; Zuhri; al-Qāsim and Sālim.

The clash of the two most common tariqahs from ibn 'Abbās appears to represent a clash between Hijāzī and 'Iraqī views.

f. 101a. cf. Bu., [Shahādat, bāb shahādat al-qādīh]: [3,170] 'Umar flogged Abū Bakrah, Shīl b. Ma‘bad and Na‘īf for their libelling Mughirah. He then asked them to repent, stating that, if they did, he would re-instate their evidence. This is said to have been the view also of: ‘Abdullāh b. ‘Utbah; ‘Umar b. ‘Abdul‘Azīz; Sa‘īd b. Jubair; Tawās; Mu‘ājam; Shahr; ‘Ikrīmah; Zuhri; Mu‘ājam; B. Dīthār; Shurārī; Mu‘ājam b. Qurrah; Abī al-Zinād and Qutādah.

cf. Shāhī [Umm, 6, p.214] The criterion for the rejection of the gādīh’s testimony is not whether or not he was flogged, but the fact of the libel, in the absence of any sign that he has repented.

Mālik, using the ‘shorthand’ of the other scholars, sees this exception: “except those who repent” as re-habilitating the ‘adilah of the gādīh. [Muw., 2, p.108]

A marfu‘ hadīth declares that the Islamic penalties ‘wipe the slate clean’: Mus., [al-ḥudūd kaffārāh].

cf. b,M, bāb: dhikr al-tawbah. But, cf. Tir., bāb: man lā tajār shahādatuha: ‘A’ishah – Prophet: ‘The shahādat of neither the treacherous, nor those who have been flogged for an offence, is acceptable.’ Tir., does ‘not know the meaning of this report’. On the basis of the iṣnād, the hadīth is ‘unsound’.

f. 103b. The ‘Irāqis would on no account ever re-instate the gādīh as witness. This regional difference reflects the exegetical dispute as to the function of the exegetic. The tension between the Qur’ān’s ‘aga‘dāt’ and ‘illa’ was too great to be ignored.

Not for the first time. Abū ‘Ubaid prefers the Hijāzī view. It was that of the majority, including some of the most senior Muslims; it was systematically more satisfying, since he who merely utters evil is scarcely to be thought more reprehensible than he who actually commits evil. If they repented, the convicted were re-instated as acceptable witnesses. He who merely bore witness against them [even if falsely] or if unable to produce three or more witnesses, is surely less criminal, especially after he belies his earlier statement. The repentant are as if they had never sinned, and if God is prepared to accept their repentance, mere fellow-creatures ought to be even readier to accept it. Besides, there are further Qur’ān contexts whose use of the exegetic is analogous to that of Q 24,4: e.g. Q 5,33; Q 4,43. If repentance can divert the penalty from the apostate, it can surely do the same for the gādīh.

ff. 105b–116a. The testimony of dhimmis against Muslims

The acceptability of the testimony of dhimmis to the waṣiyah of the dying Muslim when, on a journey, Muslim witnesses are not available, seems to be referred to in Q 5,106.

The majority of the ancients took this verse in this sense. Others, conceding that this is the sense, insisted that the verse had been abrogated. A third group denied that there is in the verse any reference to non-Muslims.

f. 106a-b; 107b–108a. Two very lengthy hadīths, the first, ‘Ikrīmah affects to set the scene for the revelation of the verse. The hadīth uses the asbāb al-nuzūl method to present the exegesis of the verse. The atomism of the tafsīr separates the circumstances in which each of the two verses had been revealed, ʻakhārinn min ghairikum has been interpreted as a reference to non-Muslims. The ibn Mas‘ūd tale purports to represent an event which occurred after the revelation of the verses. This is straightforward exegesis. ʻakhārinn min ghairikum is here shown to refer to Jews and Christians.

Both ‘ṣīrah-type’ narrative exegeses are mere re-working of the vocabulary and materials presented by the Qur’ān.

Hībatullāh [p.42–3] has the detail that the two Christians killed the mawla of the ʻAs family. He names the two: Tamīm al-Dārī and ʻAdī b. Zāid. His confused tale has the phrase aw ʻakhārinn min ghairikum revealed in consequence of events which occurred in early Islam’.

The testimony of non-Muslims was later rejected by Q 65,2. In a second version, ʻAdī is now the mawla of the ʻAs family who, together with Tamīm, murdered a second mawla of the ʻAs family.

f. 107a. The verse speaks of ‘concealing testimony’.

The hadīth speaks of concealing merchandise.

Q 5,107, the two secondary witnesses are drawn from the aggrieved kin-group of the deceased [as at f. 107a]. Their role is to rebut the testimony of the witnesses to the waṣiyah, in the event of suspected fraud.

f. 107b. The Qur’ān’s aw ʻakhārinn min ghairikum has here become wa ʻakhārinn min ghairikum [?] there being now two ranks of witnesses; the Muslims to whom the dying man had entrusted his waṣiyah, and the witnesses to the Muslims’ receipt of the man’s property. The hadīth does not specify that the Muslim witnesses were
in any degree related to the dying man, other than by their common religion.

Q. 5,107 calls them: awlayānī. In the second ḥadīth, the rebuttal witnesses are the second rank of those who attended the dying man – the Jews [and Christians]. The dead man’s kin are called upon merely to confirm the testimony here given by non-Muslim witnesses.

The Ḥikmah ḥadīth refers to events in the Prophet’s lifetime and is therefore mursal. The ʿAbdullāh ḥadīth refers to the reign of ʿUthmān, some dozen years after the death of the Prophet.

f. 109b. Naḥḥās [p.133] that the testimony of the People of the Book against Muslims, in the case of the wasīyah of the traveller, is acceptable was the view of: two of the Companions, ibn ʿAbbās and Abū Mūsā. Naḥḥās can produce an ibn ʿAbbās tafsīr-ḥadīth, while Abū ʿUbayd has none. If the testimony of the non-Muslim witnesses be suspect, two of the Muslim’s kin can rebut it [awlayānī].

f. 109b. Naḥḥās [p.134]: Shurāh; Saʿīd b. al-Musaiyab; Saʿīd b. Jubair; ʿAbdah; ibn Sirin; Saʿbī; Yahyā b. Yaʿmur and Saddū; and of the fuqahā’, Thawrī and Abū ʿUbayd were among those who took this view.

Abū ʿUbayd adds the names of Mujaḥid and Ibrāhīm. These scholars interpreted min ghairikum as: non-Muslims.

f. 111b. These views are reinforced by the numerous ḥadīths which stress how few occurrences of naskh affected Q. 5.


f. 112b. Those who insist that Q 5,106 is abrogated stress Q 65,2 and Q 2,282, arguing that the Qur’ān suggests that only the testimony of Muslims is acceptable. Hibatullāh [p.44] calls Q 65,2 ‘the verse stressing Islam’. Naḥḥās [p.134]: the verse is abrogated (comparison of Q 5,106 and Q 24,4). Zaid b. Aslam; Mālik; Shāfiʿi; Abū Ḥanīfah of this opinion.

f. 112b. Abū ʿUbayd does not know to whom among the ancients they could have traced this view, although it has been adopted by Mālik and the Ḥijāzīs and many of the ʿIrāqīs, but not by Sufyān.

f. 113a. Second report from Abū Mūsā, contrary to the above [f.109a]. Here, he comments that the witnesses must all be Muslims. Hasan: min kum = of your tribe; min ghairikum = of another tribe, but all must be Muslims.

Editor’s commentary on the text

f. 113b. Abū ʿUbayd accepts the view of the majority, among whom are some of the most senior Companions. Besides, there are inconsistencies in the opposing view. As for this second report from Abū Mūsā, Shāfiʿi had related the contrary.

Hasan’s report is unacceptable, since the Qur’ān opens this passage as a direct address to the believers. God then says: min ghairikum, which can refer only to non-believers. The last report from Ẓahīr is also to be rejected, for it confuses disagreement among the man’s heirs, some of whom may raise claims against others. But God is speaking of shahādah, i.e. testimony, not iddā [claim and counter-claim]. (Has the author here, perhaps overlooked the verse’s phrases: wa la kān dār qurbā; istahāqa ʾalāhilhim al-awlayānī? Further, since when has the testimony of the Muslim witness been acceptable at only one hour of the day? (after the ḥajj prayer). Note Abū ʿUbayd’s tacit acceptance of this detail of Ibrāhīm’s tafsīr [f. 110b.] and since when has it been Islamic practice to have witnesses swear or take the oath?

In addition to the view expressed by the Companions, and the Successors, Abū ʿUbayd is swayed by Sufyān’s view [f. 115a]. Then, too, he has noted the number of occasions on which the Qur’ān is prepared to make concessions to the traveller: shortening of the ritual prayer [Q 4,101]; tayammum [Q 4,43]; combining two ritual prayers [Sunna, not Qur’ān]; breaking the fast in Ramadān [Q 2,184].

The eating of carrion is permitted in extremis. Is the plight of the Muslim, overtaken by death when far from home and kin, not the kind of parallel situation of extreme need in which God would permit him to call upon the testimony of men of other faiths? The Muslims have acknowledged the testimony of females unaccompanied by that of males in matters pertaining exclusively to females (although ordinarily that is not acceptable). That is nowhere referred to in either the Qur’ān or the Sunna. It is a practice that has grown up in response to need. Now, Q 5,106 admits of the exegesis that the dhimmī may bear witness to the wasīyah of the Muslim, in the absence of Muslim witnesses. The ruling to that effect may, thus, be said to be somewhat more firmly established than the rule about accepting exclusively female testimony.

Perhaps their taʿwil that the prayer mentioned in this verse as the time when the testimony of non-Muslims is to be examined, refers to the ḥajj prayer, is sound, for, from personal observation, the author reports that the hours of sunrise and sunset are times when they particularly pray.

Shāfiʿi [Umm, 6, p.127] knows the taʿwil: min ghairī qabīlatikum;
they are to be examined after the prayer – but the mushriks have no formal prayer, and they would have no qualms about concealing testimony. He has also heard that Q 65,2 abrogated Q 5,106-7. Shāfi‘ī is familiar with the views of the maṣāfi‘īs of Medina who restrict testimony to Muslims of impeccable ‘adālah.

ff. 116a–136a. The pilgrimage rites

The author knows of no nasikh affecting the Qur‘ān. But there were apparently two practices current in the time of the Prophet – faskh al-iḥrām and mu‘āt al-nisā‘ [*] on which some of the imāms have formed a different view. He can explain this only by presuming that the imāms knew of a second, nasikh regulation, or realised that the two practices had been restricted solely to the time of the Prophet.

ff. 116a–123b. Interruption of the iḥrām:

f. 116b. cf. b.M. bāb: faskh al-Ḥajj: Barrā‘: They had assumed the iḥrām for the Ḥajj. On reaching Mecca, the Prophet ordered them to alter their ṭihlāl [niyāh].


f. 119b. The author’s expression: illa man sāq al-hadya. Mus., wujāh al-iḥrām, has: The Prophet said, ‘Whoever has a ḥady should form the intent to perform the Ḥajj with his ‘umrah. He should not then abandon iḥrām, until he does so for both rites.’ ‘A‘ishah also reports the Prophet’s saying, ‘He who assumed iḥrām for the ‘umrah and has no ḥady may abandon iḥrām. He who assumed iḥrām for the ‘umrah and has a ḥady, may not abandon iḥrām until he has sacrificed his ḥady. He who proclaimed the intent to perform the Ḥajj must complete his Ḥajj.’

cf. f. 119a: ‘Umār’s appeal to Q 2,196: Complete the Ḥajj . . . The criterion which permits faskh, abandonment of iḥrām, appears to be absence of ḥady.

f. 119a. Abū Mūsā had no ḥady, and the Prophet ordered him to abandon his iḥrām. ‘A‘ishah and Jabir: He ordered those who had no ḥady to abandon their iḥrām. Mus., wujāh al-iḥrām: ‘A‘ishah, the Prophet said, ‘But that I have driven a ḥady, I would have proclaimed my intent to perform the ‘umrah.’ Jabir, the Prophet said, ‘But for my ḥady, I would abandon iḥrām, as you are now doing. If I had my time over again, I would not bring a ḥady.’ [The same, from ‘A‘ishah.]

The criterion for proclaiming one’s intent to perform the Ḥajj, would appear to be the presence of the ḥady.

cf. Bu., bāb al-mu‘tamir: ‘A‘ishah: The Prophet, and some of the Companions (who had some wealth) had the ḥady. They were thus barred from performance of the ‘umrah. Jabir: The Prophet had a ḥady, and so could not faskh.

f. 120a. ibn al-‘Arabī [Sharī‘ Tir., 4,39]: ibn ‘Umar reports: The Prophet appointed ‘Attāb b. Usaid amīr of the Ḥajj and he proclaimed his intent to perform the Ḥajj alone [afradā]. In the year 9 A.H., he appointed Abū Bakr who afradā. The Prophet himself, in the year 10 A.H., afradā; when the Prophet died, Abū Bakr, succeeding, sent ‘Umar who afradā; ‘Umar, throughout his own caliphate, afradā; when ‘Umar died and ‘Uthmān succeeded, he afradā. When ‘Uthmān was shut up in Medina, he sent ‘Abdullāh b. ‘Abbās who afradā.

f. 120a. ‘Ali did not abandon his iḥrām.

cf. Mus., bāb al-ṣaqqīr wa-l-qarin; Muw., bāb ifrād al-Ḥajj.

ff. 120b–121a. Bilāl b. al-Hārith al-Muzanī. Abū Dharr: faskh was restricted to the time of the Prophet.

f. 121a. faskh means: altering one’s proclaimed intent to perform the
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Hajj [ihlāl] into one to perform an ‘umrah. But mut‘ah also = faskh = altering one’s ihlāl.
cf. Nas., bāb al-tamattu‘; Muw., bāb al-tamattu‘.
Dār., al-tamattu‘.
Abū Dharr: cf. DQ mawāqit, 26; ‘the mut‘ah of the Hajj was not permitted – i.e. that one should proclaim the intent to perform the Hajj, then faskh that, and turn it into an ‘umrah’ [and cf. DQ,25].
cf. Mus., jawāz al-tamattu‘; that was a concession to us [alone] – sc. mut‘ah during the Hajj. The two mut‘ahs were permitted to us alone – sc. mut‘ah with women and mut‘ah of the Hajj. cf. Nas., loc. cit. Mut‘ah was a concession to us alone.


Mus. has: tashqaghhafta / tashqaghhahta / tashqashqahta.

f. 123a. The view adopted by some scholars who countenance faskh, in our day, would be unexceptionable, but for Bilāl’s and Abū Dharr’s hadīths; and but for the view of the caliphs who are the best informed on the Sunna of the Prophet and its ta‘wil.

f. 121b. The Ḥijāzis, Ṭiraqis, Syrians: Sufyân, Mālik, aḥl al-ra‘y and others do not think the pilgrim who proclaims the intent to perform Hajj alone, and the man who proclaims the intent to perform Hajj and ‘umrah jointly in a single journey may abandon ʿihram before Yawm al-Nahr.

ff. 120a-b. Abū ‘Ubayd distinguishes faskh from mut‘ah.

f. 123b. cf. Muw., bāb al-tamattu‘.


f. 123b. ‘Umar forbade it; Tīr., bāb al-tamattu‘; Ibn ‘Umar said, ‘Suppose my father did forbid it, but the Prophet did it. Whose word should we follow, ‘Umar’s or Muhammad’s?’

Mus., loc. cit., b.M., faskh al-Hajj; note the usual alternative: mut‘ah/tamattu‘.

Bilāl and Abū Dharr represent the opposition to faskh.

f. 124b ff. Suraqāḥ b. Mālik represents the pro-mut‘ah faction.

Editor’s commentary on the text

f. 125a. The Prophet’s dictum: ‘The ‘umrah has been incorporated into the Hajj until the Last Day.’
Mus., jawāz al-ʿumrah: ibn ʿAbbās: ‘The Prophet said, “This is an ‘umrah istamta‘nā bihā – he who has no hady may abandon ʿihram and all its tabus.”’ He added, ‘The ‘umrah has been incorporated into the Hajj until the Last Day.’ ”
The confusion of the vocabulary of Q 2,196 and Q 4,24 is the key to this entire section.

f. 126a. ‘Ubayd: The Prophet’s dictum is susceptible of two possible interpretations:
1. ‘by the incorporation of the ‘umrah into the Hajj’ is meant faskh. That is, that a man proclaims his intent to perform the Hajj but, on completing the jawāz of the Ka‘bah, [which counts as an ‘umrah] he abandons the ʿihram which he had assumed for the Hajj.
2. It may be a reference to mut‘ah. That is defined as: performing the ‘umrah in the pilgrimage months, and, having completed it, and shaved the head, deciding to participate in the same year’s Hajj, by renewing a proclamation for the Hajj. In the pre-Islamic era, the Arabs were unfamiliar with the performance of the ‘umrah in the Hajj season. They did not acknowledge it – indeed even deplored it. This is related as from Tāwīs, while others relate it as from ibn ʿAbbās. [cf. Mus., jawāz al-ʿumrah fī askhur al-Hajj; Bu., bāb; al-tamattu‘ wa-l-qirān wa-l-ifrād, etc. Nas., loc. cit.] The Suraqāḥ hadīth refers to this. When the Prophet ordered them to abandon ʿihram, that is why they protested. He then insisted, stating that the ‘umrah had been incorporated into the Hajj for all time. Then the Qur’ān revealed the rukhsah, permitting this practice, Q 2,196. The Prophet demonstrated also the sunna of qirān – i.e. the proclamation of one’s intent to perform Hajj and ‘umrah jointly in the course of a single visit to Mecca.

f. 126a. Mus., bāb; al-ifrād wa-l-qirān, Anas b. Mālik: I heard the Prophet proclaim his intent to combine Hajj and ‘umrah. cf. Dār., qirān; b.M., al-ṣirāj; man qaran al-Hajj wa-l-ʿumrah; Nas., al-qrān; for hadīths from: ibn ʿAbbās; ‘Ali; ‘Imrān. Nas., from the Prophet, ‘If I had my time over again, I would do as you are now doing; but I have brought a hady and have qaran.’
Thus the Prophet [who made only one pilgrimage] is credited with: faskh; afrada; tamattu‘; qirān.

f. 126a. ‘Imrān: The Prophet jama‘ ʿHajj and ‘umrah. He never
subsequently forbade their combination, nor did the Qur'ān ever come down to declare that unlawful.


‘Imrān’s is the most celebrated and widely reported ḥadīth. Mus., jawāz al-tamataw’, reproduces the following versions:
1. [Shūb ibn b.]: the Prophet ḥada’ baina hijjah wa ‘umrah;
2. No qur’an came down [to forbid it] nor did the Prophet forbid us to combine them, whatever some man’s ra’i.
3. We tamatta with the Prophet . . .
4. The Prophet tamatta and we tamatta’ with him . . .
5. The mu’tah verse was revealed in the Qur’ān – i.e. the mu’tah of the Hāji. The Prophet ordered us to do it, and no verse has ever been revealed to abrogate the mu’tah verse, nor did the Prophet ever forbid it – whatever some man’s ra’i.

6. In the course of his Farewell Pilgrimage, the Prophet tamatta the ‘umrah into the Hāji. He had a hādy and he proclaimed the intent to perform the ‘umrah, then the intent to perform Hāji. The people did as he did . . . He told those who had a hādy not to abandon ṣāhdām: he told those who had no hādy to abandon the ṣāhd following the ṣawāf, to renew the intent to perform the Hāji and to offer a hādy; he told those who could not afford a hādy to fast for three days during the Hāji and seven days on their return. [cf. Q 2,196.] cf.Bu., Q 2,196; Dār., qirān, ‘Imrān says: ‘Mu’tah is lawful in the Book of God . . .’ cf. Nas., qirān, ‘Imrān says: ‘The Prophet ḥada’ . . .’

There cannot remain any doubt, following version 6 above, and Bu.’s placing of the ‘Imrān ḥadīth, that we here deal solely with the exegesis of Q 2,196.

ff. 127a-b. cf. b.M. bāb: man qaran al-Hāji wa-l’umrah; Nas., bāb al-qirān; Shaqiq b. Salamah calls Subayy ‘a man of Taghilb’. Shaqiq and Masruq kept going back to ask Subayy to repeat his ḥadīth. Subayy had consulted a man of his own tribe who had advised him that he might combine Hāji and ‘umrah. He should then offer what sacrifice he could afford. There is here no mention of Abū Mūsā.


cf. Bu., bāb al-tamatuu wa-l-qirān, etc. for the ḥadīth of Marwān; Nas., qirān – both Bu. and Nas. have: ‘Uthmān forbade mu’tah and combining Hāji and ‘umrah. Mus., loc. cit. has also: ‘Ali said to ‘Uthmān: ‘You know very well that we tamatta’ in the company of the Prophet.’ ‘Uthmān conceded but insists: ‘That was because we were in fear of enemy attack.’

The addition would seem to carry us back to the ‘umrah in the year of Ḥudaybiyyah. Refused entry to Mecca, the Prophet and his company were obliged to abandon ṣāhd following without ever reaching the Ka‘bah and to sacrifice their hādy which could not reach the Ka‘bah: [cf. Mus.: mā jā’a fi man uhṣir bi ‘adwān (1,260)]. Shafi‘i insists that Q 2,196 was revealed at Ḥudaybiyyah. Umm, 2, p.135: ḥana’iyya al-nabī . . .

cf. DQ mawāqif: Abû Dharr said, ‘Mu’tah was lawful only to us and to the muḥṣar – [the obstructed] cf. Q 2,196. ‘It was permitted exclusively to the Companions of the Prophet. It is not permitted to others – except the muḥṣar.’

Ironically, ‘Imrān and ‘Aṭṭār have joined ibn ‘Abbās as chief witnesses appealed to by the proponents of mu’tah, in the sense of ‘temporary marriage!’ [cf. Rāzī, 10, p.52.]

Despite the reports of ibn ‘Umar and ‘Aṭṭār, the author settles the question of the Prophet’s ibdāl mathematically.

f. 129a. The majority report that he qaran, and they include: ‘Umar, who assured Ṣubayy that he had been guided to the Sunna of the Prophet. Suyuti [Tawāwir, 1,245] and Nawawi [5,251] show how the conflicting reports are to be harmonised.

f. 129b. A fuller ḥadīth wording is not grounds for suspension: some transmitters retain more than others. In any event, mu’tah of the Hāji is mentioned in the Qur’ān; qirān is found only in the Sunna. Both represent alleviation, ruḥshāh, concessions to the Muslims.

f. 130b. ibn ‘Umar’s ra’wil of Q 2,196 shows that mu’tah and qirān are, however, permitted only to non-Meccans.

But, cf. Mus., tamatatuu: non-Meccans are penalised for mu’tah.

f. 131b. ‘Umar is reported to have forbidden this mu’tah. That cannot be the case, since it is mentioned in both Qur’ān and Sunna. The reports must, therefore, be re-interpreted.

‘Umar either had in mind Q 2,197: ‘The Hāji is in well-known months’, - i.e. the Hāji alone; or he was solicitous for the economic welfare of the city, and preferred to see the stream of visitors distributed throughout all the months of the year.

f. 132a. cf. Mus., jāmi‘ mā jā’a fi-l’umrah: ‘Umar said: ‘Keep your hajj separate from your ‘umrah – that is ʿaumm for both the Hāji and the ‘umrah. It is ʿaumm for your ‘umrah that you perform it outwith the Hāji months.’ [cf. Q 2,196: ʿaumm . . .] cf. Mus., fi-l-mu’tah bi-Ḥajj wa-lʿumrah [as here, f. 132b]. He makes it clear that this is taḥṣīl of the two verses.
f. 131a. Abū 'Ubayd espouses ibn 'Umar's *tafsîr* of Q 2.196: Some scholars had declared that Meccans might with impunity perform either *mu'tah* or *qârin*. But ibn 'Umar took the opposite view: God granted this concession only to non-Meccans, "that is for those whose families do not dwell in the precincts of the Sacred Mosque." cf. Mw., *tamaritch*: the *hady*, or its alternative, the fast, are imposed ['alâlî] non-Meccans. The Qur'ân and the ibn 'Umar *tafsîr* both say *li* - the particle of concession!

f. 133b. cf. Mw., *tamaritch*: ibn 'Umar said, 'By God! I prefer the performance of the *'umrah* before the *Hâj* and to offer a *hady* to performing the *'umrah* after the *Hâj* in *dhu-l-Hijjah*.' cf. Bu., bâb Q 2.196: ibn 'Abbâs said, 'God declared that permitted to all men - except the Meccans.'

The *Hâj* months: Shawâwâl; *dhu-l-Qa'dah*; *dhu-l-Hijjah*. Anyone who *tamaritch* during these months incurs the duty either to offer a *hady*, or to observe the fast.

cf. Bu., bâb: the *Hâj* is well-known months: ibn 'Umar said: the months of the *Hâj* are: Shawâwâl; *dhu-l-Qa'dah* and ten nights [only] of *dhu-l-Hijjah*. ibn 'Abbâs said: The Sunna is that one may not assume *ihram* for the *Hâj* except in the *Hâj* months.

f. 134a. The *hadiths* represent the interpolation into Q 2.197 of the word [only]: [only] the *Hâj* may be performed during the *well-known months*. cf. f. 131b. 'Umar's view.

f. 134b. The *Ali* statement is opposed to the *Umar* view. cf. Nahâsh [p.34]: Commenting upon Q 2.196, 'Umar said: The "completion" of the *Hâj* and *'umrah* is that you do not *faksh*". 'Ali said: 'It is that you assume *ihram* from your home' [*min duwain al-ahdâf*]. Abû 'Ubaid thinks *Ali* too great a scholar to suppose that the *ihram* is to be assumed from one's homeland. That would be contrary to the Sunna of the Prophet on the *mawâiqi*. Perhaps *Ali* was referring to the intent with which one left home. One should intend solely the performance of the *'umrah* and devote one's journey to that sole aim. Nahâsh reports from Sufyân: One should have no ulterior intent, such as, for example, to combine the journey with commercial activities. Abû 'Ubaid would add that one ought not to intend either to take advantage of the same journey for the performance of the *Hâj*.

Shâfi'i, *Umm*, 2.113: takes the view that the *hady* required of the *qârin* and the *mutamattî* is on account of their having performed one of the two rites from Mecca, without returning to the *mawâiqi*.

f. 135b. Q 5.2. Nahâsh [p.117–8] produces approximately the same ibn 'Abbâs *hadîth*. By the same *insâd*, he quotes also: The mushriks used to venerate the *Hâj*, and to lead their *hady*, and regard the Sacred House with the greatest degree of respect. The Muslims hoped to alter *yughayirîl* that state of affairs, but God revealed Q 5.2.

cf. Hibatullah [p.40–1] On the occasion of the fulfilled *'umrah*, the Muslims heard the *talâbiyyah* of the unbelievers, including that of Bakr b. Wâlî, among whose number was a man who had apostatised and stolen some of the Prophet's livestock [*fâl*]! The prophet was on the point of attacking *yughir* but was prevented by God's revealing: "*wa lâ amîn al-bait* . . . . do not be led into error on hearing glouting of people who prevented you from reaching the Sacred Mosque. Do not let yourself be goaded into transgression . . . ." This verse was, in turn, abrogated by 'the sword verse' - [Q 9.5].

f. 136a. Q 9.28: Nahâsh [p.167]: the verse was revealed to abrogate the agreement the Prophet had made with the mushriks to the effect that he would not bar anyone from entering the Sacred Mosque. The verse means that they should now be barred from entry to the entire *Harâm*. Malik and 'Umar b. 'Abdul 'Azîz extended this ban to all non-Muslims and to every mosque. Shâfi'i forbids the entry of mushriks to the Sacred Mosque, but does not include other mosques in the ban. Abû Hanîfah, Abû Yusuf and Zufar do not forbid Jews and Christians entry to mosques, even to the Sacred Mosque. They argue that the term *mushrik* means 'polytheist', 'idolator'. But God Himself calls the People of the Book *mushriks* in Q 9.31.

ff. 136a–157a. *The Holy War*

f. 136b. The *Zuhri hadîth*, cf. Nahâsh [p.190]: ibn 'Abbâs declared: Q 22.39 was the first verse revealed to permit fighting the enemies of Islam.


ff. 137b–138a. The two *tariquhs* do not agree:
