In the Shī‘ī ḥadith corpus there are some reports about the legality of selling excrement. This was clearly not simply a theoretical issue. Dung is, of course, a fertilizer for crops and a fuel to heat houses and baths. Therefore, trade in excrement might be thought of as having a useful, public benefit. However, the excrement of some animals (according to most schools, those animals whose flesh is forbidden) is deemed impure, and creates legal questions. Can one use this impure excrement as a fertilizer (that is, will the excrement's impure status somehow affect the crop)? Is there something legally problematic about using it as fuel to heat houses? Can one buy (and, conversely, can one sell) these impure forms of excrement, given that there is a general prohibition on buying and selling impure substances? In later Islamic periods, these legal questions gave rise to debates, perhaps the best known of which was the exchange of treatises between the famous Yemeni hadith scholar Muhāmmad al-Shawkānī (d. 1250/1839) and other scholars, given the common practice of Jews collecting human excrement as part of their duties as a non-Muslim subjects of a Muslim government.¹

In the Shī‘ī corpus, all the reports relating to the sale of excrement are traced to Ja‘far al-Ṣādiq (d. 148/765), the sixth Shī‘ī Imam and supposed progenitor of the Shī‘ī legal system. The reports do not, at first glance, appear consistent. The earliest recorded report is found in al-Kāfī of al-Kulaynī (d. 329/941), the text of which runs as follows:

[1] He said, “There is no problem with selling excrement.” (lā bā‘s bi-bay‘ al-‘adhira)²

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¹ See Joseph Sadan, “The ‘Latrines Decree’ in the Yemen versus the Dhimma Principles,” in Pluralism and the Other: Studies in Religious Behaviour, eds. J. Platvoet and K. van der Toorn (Leiden: Brill, 1995), 167–185.

²  Muḥammad b. Ya‘qūb al-Kulaynī, al-Kāfī (Tehran: Dār al-Kutub al-Islāmiyya, 1367Sh), 5:226; see also Muḥammad b. al-Ḥasan al-Ṭūsī, Tahdhib al-Ahkām (Tehran: Dār al-Kutub al-Islāmiyya, 1365Sh), 6:372.
This would appear a reasonably clear dictum—namely that selling (and perhaps by implication, purchasing) excrement is legally unproblematic. The phrase lā ba’s (“There is no problem ...”) is extremely common in legal dicta, and is normally taken to be code for mubāḥ (permitted) in the categorisation of actions in later fiqh manuals. That there needs to be explicit regulations permitting selling excrement reveals that this report (whatever its provenance) is likely to be a reaction to a view that this act of selling is problematic (prohibited or at least discouraged). At the least, it reveals that there was juristic discussion over the legal categorisation of the action of selling excrement. Why might selling excrement be subject to any sort of discussion? Both Sunni and Shīʿī fiqh writers in the later juristic tradition explored why the rules were as they are, finding reasons for the action’s legal categorisation, and I return to their discussions below.

Report [1] above seems to be specifically addressing the act of selling excrement. It does not address the act of buying excrement; it also does not discuss the status (valid, invalid, faulty, binding etc.) of a sales contract involving excrement; finally, it does not discuss the legality of the money gained from the sale. Rulings on these would need to be extrapolated from the report. There is, though, another statement by Jaʿfar al-Ṣādiq:

[2] “The money received from the sale of excrement is ill-gotten wealth.” (thaman al-’adhira min al-suḥt)\(^3\)

Here the implication is that the sale of excrement leads to illegal (or at least morally dubious) enrichment for the seller. This might indicate that the sales contract is invalid, implying that excrement (like alcohol or swine products) is a thing which has no monetary value, and hence cannot be exchanged. The rules concerning the sale of prohibited items can be found in numerous other reports; here excrement appears to fall into that category. The formulaic phrasing of the report “The money received from the sale of X is ill-gotten wealth” (thaman X min al-suḥt) is common in the Sunni hadith corpus. Other examples include:

From Abū Hurayra, from the Prophet who said, “The money received from the sale of dogs is ill-gotten wealth.” (thaman al-kalb min al-suḥt)\(^4\)

\(^3\) Ṭūsī, Tahdīḥ al-Aḥkām, 2:112.
\(^4\) Abū Jaʿfar al-Taḥāwī, Sharḥ Maʿānī al-Āthār (Beirut: ‘Ālam al-Kutub, 1414/1994), 4:58.
From Abū Hurayra from the Messenger of God said, “The bride-price of the rebel, the price of dogs and cats and the income of the cupper are ill-gotten wealth.”

ʿAlī said, “The income of a cupper (kasb al-ḥajjām) is ill-gotten wealth.”

Abū Hurayra said, “The price of a dog, and the money gained from [playing?] a wind-instrument are ill-gotten wealth.”

Abū Hurayra said, “Payment to the cupper (kharāj al-ḥajjām), the price of dogs, and the bride-price for the female fornicator are ill-gotten wealth.”

Abū Hurayra, who is the speaker in the last two of these reports, is credited with a number of reports in this format, either on his own merit or as the final transmitter from the Prophet. There are also reports from the Prophet and others where the phrase order is reversed:

Al-Sāʾib b. Yazid from the Prophet: “In the category of ill-gotten wealth is the price of dogs, the bride-price of the rebel and the income of the cupper.” (min al-suḥt, thaman al-kalb ...)

Abū Hurayra said, “In the category of ill-gotten wealth (min al-suḥt), there is breeding stallions, the bride-price of a rebel and cupping” (Ibn Abī Shayba, al-Muṣannaf, 5:317; there is also the variant, from Abū Hurayra: “there are four things in the category of ill-gotten wealth ...”)

In the early Shīʿī hadith corpus, the format reappears. From al-Qāḍī al-Nuʿmān (d. 363/974), usually thought to be an Ismaʿīlī source (though drawing on common Imāmī Shīʿī sources):

5 Abū Ḥātim Ibnn Ḥibbān, Sahīḥ Ibn Ḥibbān (Beirut: Mu’assasat al-Risāla, 1414/1993), 11:315.
6 Aḥmad b. al-Ḥusayn al-Bayhaqī, Maʿrīfat al-Sunan wa-l-Āthār (Beirut: Dār al-Kutub al-ʿIlmiyya, 2010), 7:278; also available in reverse format from Abū Hurayra: min al-suḥt kasb al-ḥajjām (Tahāwī, Sharḥ Maʿānī al-Āthār, 129).
7 Ibn Qutayba, Taʾwil Mukhtalif al-hadīth (Beirut: Dār al-Jīl, 1972), 300.
8 Aḥmad b. Shuʿayb al-Nasāʾī, al-Sunan al-Kubrā (Beirut: Dār al-Kutub al-ʿIlmiyya, 1411/1991), 3:115.
9 Nasāʾī, Sunan, 3:112; ‘Ali b. Abī Bakr al-Haythamī, Majmaʿ al-Zawāʾid (Cairo: Mu’assas Maktabat al-Qudsī, 1408/1988), 487; Sulaymān b. Aḥmad al-Ṭabarānī, al-Muʿjam al-Kabīr (Dār al-Iḥyāʾ al-Turāth al-ʿArabī, 1405/1985), 7:161.
10 Nasāʾī, Sunan, 3:114.
From ‘Ali, “In the category of ill-gotten wealth is the price of the hide of the beasts of prey” and “In the category of ill-gotten wealth is the payment of the one who calls to prayer.”\textsuperscript{11}

And from the more widely recognised Imāmī corpus, we find:

From ‘Ali, “In the category of ill-gotten wealth are the price for carrion, the price for dogs, the price for wine, the bride-price of the female fornicator, the bribe in the administration of justice and the payment to the soothsayer.”\textsuperscript{12}

From Ja’far [al-Ṣādiq], who said that the Prophet said, “the price of wine, the bride-pride of the rebel and the price of the dog which does not do any hunting are ill-gotten wealth.”\textsuperscript{13}

Clearly, the format was a handy way of declaring the money gained from an item to be illegitimate wealth gain. It is interesting that many of the Sunni hadith come through Abū Hurayra, and in both Sunni and Shī‘ī collections, the format is commonly ascribed to ‘Ali.

From these reports, one can, perhaps, gain an idea of the other items in the category of “items, the profit from which is ill-gotten wealth.” They can be categorised in three ways. Namely, money gained from:

a. Sale of taboo/prohibited items (wine, hide of beasts of prey, dogs and cats)

b. Payment for the performance of dubious/illegal activities (soothsaying, cupping, playing a wind instrument)

c. Payment for activities which should be done without charge (breeding horses, making the call to prayer)

One could, perhaps, collapse the first two (a. and b.) by saying that the selling of taboo/prohibited items constitutes payment for a dubious/illegal activity (namely the provision of said items).

The second report, though, does indicate a different element of the problem of selling excrement: namely, whether the money gained from the sale of excrement is legitimate wealth for the seller. Ja’far here says it is not, and in doing

\textsuperscript{11} al-Qāḍī al-Nu‘mān, Da‘āʾī al-Islām (Cairo: Dār al-Ma‘ārif, 1383/1963), 1:126, 147.

\textsuperscript{12} Ibn Bābawayh al-Qummī, Man lā yahḍuruhu al-faqīh (Qum: Mu‘assasat al-nashr al-Islāmi, 1404), 4:363.

\textsuperscript{13} al-Hurr al-ʿĀmili, Wasāʾīl al-Shī‘a (Qum: Mu‘assasat Āl al-Bayt, 1414), 1795—abbreviated from Ṭūsī, al-Tahdhīb, 7:135–136.
so reveals that there must have been a contrary opinion that it is legitimate wealth. This would appear a contradiction to Report [1], but it is not an explicit one, even if one reaches that conclusion speedily. To determine that these two reports contradict each other one needs to know that legitimate profit can only come from valid contracts; and one needs to know that if the sale of an item is prohibited, a sales contract involving it is invalid; and one needs to know that the profit gained from it cannot be legitimate wealth. Only with all this background information can one can say the two reports contradict each other. That is certainly how subsequent Shīʿī jurists viewed these reports, and their solutions to this issue (outlined below) were an attempt to preserve the legal integrity of both Report [1] and Report [2]. Nonetheless, to view them as contradictory assumes the existence of at least a skeletal system of rules and regulations concerning how sales, contracts and the wealth gained from economic activity operate.

There is a third statement, also from Jaʿfar al-Ṣādiq:

[3] A man asked Abū ʿAbd Allāh [Jaʿfar al-Ṣādiq] when I was present, saying, “I am someone who sells excrement (innanī rajulun ubī ʿal-ʿadhira)—what do you say?” He said, “selling it and the money paid for it are forbidden” (ḥarāmbayʿuhā wa-thamanuhā) and then he said, “There is no problem with selling excrement.” (lā bāʾs bi-bayʿ al-ʿadhira)14

This report appears to contain both of the two contradictory rulings in Reports [1] and [2]. Jaʿfar al-Ṣādiq appears to say that selling excrement is prohibited and its price (the money paid for it) is also forbidden. This appears to reflect the sentiments of Report [2]. Jaʿfar al-Ṣādiq then later in the report seems to say the sale of excrement is permitted, with the precise wording of Report [1].

The phenomenon of reports giving quite contradictory rulings attributed to the same authority is, of course, quite common in early Muslim juristic literature. Indeed, one could argue that conflicting rulings, being a prevalent feature of the legal corpus, required solutions and this acted as a spur to the development of systematic legal thought in Islam. Resolving apparent contradictions in the Qurʾān and the reports of the Prophet, his companions and the subsequent generations of Muslim legal authorities became a particularly pressing issue. Any resolution could only be defended through demonstrating that there had

14 Ṭūsī, Tahdhīb, 2:312.
been a consistent application of an indisputable method. However, to find the two contradictory rulings in a single report is unusual, and required the particular exegetical skills of Shi‘ī exegetes.

Before proceeding, a number of stylistic observations can be made about these three reports. Report [3] appears as a combination of Reports [1] and [2], or at least a combination of the rulings found therein. The reoccurrence of the term *thaman* (the price paid and received for a good) between the first and the third cited hadiths indicates perhaps a shared context for the reports' formulation; or at least an echo of Report [1] in [3]. In both reports, the use of the term *thaman* appears to reveal that the legal dictum is not merely that the act of sale is prohibited; the money paid for the excrement is illegitimate wealth for the seller. The reproduction of the precise wording from Report [1] in Report [3] also indicates a shared context, though it should be admitted that the phrase *lā ba’s* is extremely common in legal discourse.

Second, in all these reports, the focus is on the seller, his actions and the money he gains from the sale; there is no mention of the purchaser. This may be because of the natural conclusion that if selling something is forbidden, then buying it must also be similarly categorised. Or it may be because the purchase of excrement is a separate legal issue to its sale, and needs treatment elsewhere. In Report [3], it would seem superfluous to say that both the selling of excrement, and the money paid for it are forbidden (*ḥarām bay’uhā wa-thamanuhā*)—surely if selling excrement is forbidden, then wealth gained thereby would also be forbidden. How might we explain this phrasing within the report? It may of course be formulaic or rhetorical (pleonasm). This “belt and braces” approach (making both the sale and the money gained therefrom explicitly forbidden) is possibly a reaction to the doctrine emerging in early juristic discussions that the sale of grapes to a person (Muslim or non-Muslim) who then produces wine creates a valid contract, and the money from such a contract is licit, even though wine is illicit.

Third, the consistency of terminology for excrement (primarily *ʿadhira*, but additionally *zibl*) is striking when there is a rich scatological vocabulary in Arabic generally. As we shall see below, *fiqh* writings took some time to settle on a consistent terminology, and a variety of terms were used, often without very much precision as to different items and their classification. The sub-categories are used in later *fiqh*, and given more precise terminology include animal dung/human dung, pure excrement/excrement mixed with another substance such as straw, dung of animals we eat/dung of forbidden animals, impure dung/pure dung. Whilst these reports do not display this level of precision, they do employ the phrasing of the general heading of most later juristic discussions (the issue of *bayʿ al-ʿadhira*). This could be evidence that the statements reflect a form
of juristic discourse which emerged sometime after the mid-late second century AH (mid-eighth century CE).

There does not appear to be any hadith corpus (from the Prophet or companions) which non-Imāmī jurists could draw upon to develop their legal doctrine on the sale of excrement. The discussions which one does find reflect, then, discussions which did not emerge out of reflection on the hadith corpus (in oral or written form). Instead, they are the result of juristic contemplation unfettered by revelatory restrictions. This makes the case revealing in terms of the development of legal argumentation, as legal doctrine emerged relatively free of textual control. There is, of course, a debate around whether early legal doctrine emerged more generally free of textual control (i.e. outside of the direct influence of the Qur’ānic or hadith corpus). I do not wish to enter that debate here; I simply wish to note that the absence of directly relevant dicta from Qur’ān or hadith makes this a useful test case; and perhaps indicates that the emergence of the issue of the sale of excrement post-dates the emergence of the bulk of hadith literature (otherwise, one might expect a hadith directly addressing the issue, as one finds in other legal problems).

The early lexical variety related to the question of the sale of excrement can be demonstrated by a comparison with (supposedly contemporary) texts to Reports [1] to [3] above. In the Mudawwana—a record of early Mālikī opinions which are ascribed to Saḥnūn (d. 240/855), Ibn al-Qāsim (d. 191/806) and Mālik (d. 179/795) himself—there is a passage in which the selling of excrement is discussed. The passage is located within a larger section examining the sale of forbidden and impure items. Various words associated with excrement are used, making it difficult to identify what is and what is not covered by the opinions listed, at least on a first reading. There are three words for excrement in the title of the passage: “Buying dung (ṣibl), faecal matter (rajīʿ), the hides of car- rion (julūd al-mayta) and excrement (al-ʿadhira).” My use of various English terms (dung, faecal matter etc.) as translations is merely to indicate that these are different terms in Arabic; they might appear as separate categories, though

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15 See, for example, Schacht’s comments: “Mohammedan law did not derive directly from the Koran but developed [...] out of popular and administrative practice under the Umaiyyads, and this practice often diverged from the intentions and even the explicit wording of the Koran.” In Joseph Schacht, The Origins of Muhammadan Jurisprudence (Oxford: Clarendon Press, 1950), 224 and 227; and a contrasting view from David Powers: “It follows from the preceding remarks that anyone who wants to shed light on the origins of Islamic positive law ought to begin with the Qur’anic legislation in the field of family law, inheritance, or ritual.” In David Powers, Studies in Qur’an and Hadith: The Formation of the Islamic Law of Inheritance (Berkeley: University of California Press, 1986), 7.
the text, as we shall see, appears less clear on the differences and different rulings for the referent of each term. In the course of the passage, two more words for excrement are introduced in the passage: namely \textit{ba'\textsuperscript{r}} and \textit{khith\textsuperscript{a}}. In the following, I shall leave the terms in their Arabic transliteration, as the referent is rarely explicitly identified.

The passage begins as follows:

[a] I [Sahnūn] said, “What do you think about \textit{zibl}—did Mālik have an opinion about selling it?” He [Ibn al-Qāsim] said, “I didn’t hear anything from Mālik concerning this, and I don’t see a problem in selling it.”

[b] I said, “Did you hear Mālik say anything about selling the \textit{rajī\textsuperscript{a}} of human beings, such as that sold in Baṣra?” He said, “I heard Mālik disapprove of it.”

[c] Ashhab said, concerning the \textit{zibl}: The buyer is more excused than the seller—he was speaking about buying it.

[d] And as for selling \textit{rajī\textsuperscript{a}}, there is no good in it.\footnote{Sahnūn-Mālik, \textit{al-Mudawwana al-Kubrā} (Beirut: Dār Iḥyāʾ al-Turāths al-ʿArabi, 1323), 4:360.}

The usage of terms here may be inconsistent, or at least vague. Both \textit{zibl} and \textit{rajī\textsuperscript{a}} may refer to animal or human excrement; \textit{rajī\textsuperscript{a}} \textit{bani Ādam} would appear unambiguously to refer to human excrement. If we argue that \textit{rajī\textsuperscript{a}} refers exclusively to human excrement (allowing its usage in [d] to be precise), the phrase \textit{rajī\textsuperscript{a}} \textit{bani Ādam} is pleonastic—a phenomenon which does exist, but which a refined juristic writer might have edited out.

If Ashhab, a companion of Mālik, is seen as speaking on his own authority and not relating an opinion of Mālik, then his views are clearly at variance with those attributed to Mālik. To explicate:

[a] establishes that Mālik said nothing about \textit{zibl} and Ibn al-Qāsim views its sale as unproblematic.

[b] establishes that Mālik disapproved of the selling of human excrement.

[c] establishes that Ashhab views both the buying and selling of \textit{zibl} as problematic (otherwise there would be no need for either action to be “excused”), but that selling it is worse. This contradicts the opinion of Ibn al-Qāsim, and the implicit opinion of Mālik in [a], that it is unproblematic.
[d] establishes that selling rajī' is at least discouraged, and perhaps forbidden, but precisely what rajī' refers to, and who holds this opinion is not clear.

The only absolutely precise term we have is rajī' banī Ādam—the excrement of human beings, in [b]. All other references to zibl and rajī' are ambiguous.

To argue that all the opinions [a] to [d] are consistent would require us to view the terminology as being used inconsistently. What Ibn al-Qāsim means by zibl must be different from what Ashhab means, for Ibn al-Qāsim sees it as unproblematic, whilst Ashhab views it as problematic (though selling it is worse than buying it). Zibl could mean different things in different places. In [c] it could refer to human excrement (to conform with [b]), and it might mean animal excrement in [a]. The rajī' referred to in [d] could refer to human excrement only, as a form of shorthand for rajī' banī Ādam (human excrement). This would mean it does not contradict Mālik's opinion in [b], but here the phrase “there is no good in it” would need to indicate disapproval rather than prohibition.

The other possibility is that we have an opinion from Mālik: that the sale of animal excrement is unproblematic, but the sale of human excrement is discouraged. But Ashhab, a companion of Mālik, disagrees with Mālik, viewing the sale of animal excrement as problematic (because both buyer and seller need to be “excused”). If we see [d] as an opinion of Ashhab, then his view on human excrement appears stronger than that of Mālik: “there is no good in it” might be seen as stronger than “discouraged.”

What is clear from the above is that some work is necessary to enforce consistency upon the above passage, and even then there are loose ends to tie up; alternatively, there is disagreement between Mālik and his companion Ashhab, which is less helpful, since it leaves the law undecided. The whole passage is rather disorganised and appears as a collection of opinions and reported opinions, rather than a clear juristic exposition with consistent terminology and a harmonised set of rulings.

Immediately following this passage ([a]-[d] above), there is a discussion of the hide of carrion, which is not directly relevant to the issue of excrement. It reveals, perhaps implicitly, that these various items (human excrement, animal excrement, manure and the hide of carrion) are viewed as being of the same legal category, and are to be dealt with in proximity within a work such as the Mudawwana. The passage recounts how an animal dies in a man’s house, and he pays someone else to remove it. As wages for the work, he gives him the hide of the dead animal. The text continues:
Mālik disapproved of this. He did not, however, disapprove of paying the person removing it with cash (dinars and dirhams); he only disapproved of [paying the man with the hide] because he didn’t hold the opinion that one could sell the hide of carrion, even if it had been tanned.17

“He didn’t hold the opinion that one could ...” would seem identical to “he held the opinion that one could not ...”; but of course, the former could be a locution used to indicate “he didn’t ever express an opinion that you could, and therefore one should assume he held the opinion that you could not.”

Unlike the other sections of the passage, this appears in semi-narrative form, in which a scenario is presented, Mālik’s opinion is given, and an explanation offered as to why Mālik held the opinion. It appears more natural (and perhaps less juristically processed) than the straightforward “question and answer format” or the bald opinion (“X held the opinion Y”). In the question and answer format, the question might concern a general category (e.g. human excrement, animal excrement etc.), and a judgement is given; it is perhaps the most obvious example of legal framing to avoid potential ambiguity. In the semi-narrative format, Mālik’s opinion is given, but it is on a specific circumstance (animal dies in man’s house; man hires someone to have it removed; man pays remover in hide). The general rule about selling carrion hide is presented, but it appears exegetical. Mālik’s reasoning for giving the ruling is deduced by the narrator, but it is not explicit in the story.

After this story, the topic of excrement is taken up once more in the next subsection (more on which below). The passage on carrion hide would appear tangential (the discussion was focused on the sale of excrement), and quite possibly an interpolation. It would seem more sensibly located after the discussion of excrement (human or animal) has been completed. After the discussion of excrement, the discussion moves on to the sale of carrion bones; this would seem a more logical place to locate the narrative of the man in whose house an animal dies.

A legitimate query might be posed at this point: why, for the purpose of legal categorisation, might carrion hide be classed alongside excrement? The legal boundaries of the term mayta (“deceased animal”; normally linked to an animal or part thereof which has not been subject to ritual slaughter, but may have simply died of natural causes) appear somewhat expanded. Such items are, of course, prohibited for consumption in Muslim legal doctrine; by extension,

17 Sahnūn-Mālik, al-Mudawwana, 4:360.
for most jurists, they hold no monetary value and hence cannot be legitimately sold or bought. Locating this discussion, bracketed by discussions of the legality of selling excrement, conveys the message that these items are best considered together. In the same section, not considered here, after ending the discussion of excrement, the text continues with a section on carrion bones and whether they can be legitimately sold. All these items (excrement, carrion hide, carrion bones) are either classed as mayta (expanding the category beyond simply carrion meat), or are not mayta but are to be considered with mayta in legal terms. The reasoning appears to be that they are matter from an animal source which has been rendered legitimate for consumption (in the sense of economic usage, though eating these items is also forbidden) by ritual slaughter.

The discussion returns to excrement with the following passage:

[f] Ibn al-Qāsim said he asked Mālik about selling the ʿadhira which they use as manure in agriculture. He said, “It doesn't perturb me, but I disapprove of it.” And he said, “The only ʿadhira of which I disapprove is the ḥajī of people.”

This statement introduces a term (ʿadhira) mentioned in the passage's heading, familiar to us from the Imāmi hadiths mentioned above. Passage [f] indicates that ḥajī is a type or subcategory of ʿadhira; with ʿadhira being a more general term (perhaps for excrement of all living beings). Once again we have a qualifier for ḥajī—this time “of people” (al-nās). Is this once again pleonastic, and strictly speaking superfluous? If ḥajī can only mean human excrement, why not say “the only ʿadhira I disapprove of is ḥajī”? Are ḥajī and ʿadhira synonyms? How this passage matches up in terms of both terminology and rulings with passages [a] to [d] is not yet clear.

The passage continues:

[g] I said, “What is Mālik's opinion concerning the zibl of beasts?” he said, I didn't hear anything from Mālik about this, except that it was impure for Mālik. He only disapproved of ʿadhira because it is impure, and zibl is the same also, but I didn't see any problem with it.

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18 Sahnūn-Mālik, al-Mudawwana, 4:160.
19 Sahnūn-Mālik, 4:160.
Here *zibl* is contrasted with *ʿadhira*; they appear as distinct categories. However, *ʿadhira* (as we saw in [d]) would appear to be a general category of which human excrement (*rajīʿ*) is but one subcategory. The question is not explicit, though it would seem to be about whether the sale of the *zibl* of beasts is permitted. The phrase *zibl* of beasts (*duwābb*) might indicate that there are other types of *zibl* (*zibl* of birds or insects, *zibl* of humans?). In [a] above, *zibl* could exclude human excrement, so there may be other types. Unless, as in [b] and [c], we have a redundant qualifier (all *zibl* is from beasts, so the phrase *zibl* of beasts is another instance of pleonasm).

There is a hint at a category distinction between *ʿadhira* and *zibl*: *ʿadhira* is impure and “*zibl* is the same” (*fakadhālika al-zibl ayḍan*). Of course, the word for “the same” here (*kadhālika*) could mean “likewise,” and hence because excrement is impure, excrement when it is used as manure is also impure.

What, exactly is Mālik supposed to disapprove of doing with *ʿadhira* in [g]? The context of the passage would indicate buying or selling it, but it is not explicit. If so, there is an implication that he disapproved of transactions involving both *ʿadhira* and *zibl* because they were ritually impure (*najis*). If this is so, then it contradicts the ruling given in [a] where there was “no problem” (*lā baʾs*) with trade in *zibl*. Perhaps it is not trade (buying and selling) which Mālik is disapproving of with respect to *ʿadhira* and *zibl*, but something else; but the section heading (perhaps added later), the flow of the passage and the underlying assumption surely indicates that when Mālik is reported as “disapproving of *zibl*,” the reader is most likely supposed to understand that Mālik approved of the selling of *zibl* and not doing anything else with it.

Yet more categories are introduced in the following section:

[h] I said, “What about the *baʿr* of the sheep and camels, and the *khithāʾ* of cattle?” He said, “There is no problem with this for Mālik and I saw camel *baʿr* being bought for Mālik.”

There is no problem to buy and sell these items, since Mālik was involved in the sale and purchase of camel *baʿr*. These types of excrement can be bought and sold according to Mālik. There is the assumption that Mālik’s own practice creates evidence for his opinion on a legal issue (that is, that there is perfect confluence between his legal opinion and his everyday practice). Mālik’s own behaviour can act as an indication of obedience to the code of conduct which the followers of Mālik are attempting to lay down. These regulations

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20 Sahnūn-Mālik, 4:160.
appear to be exceptions to a general rule, though which general rule? On one reading, the trade in animal excrement is perfectly legal; on another it is disapproved. If the former, this does not constitute an exception at all, but merely an explicit example of the application of the rule. If the latter, then these are exceptions to the general rule that the sale of excrement is disapproved.

This passage from the Mudawwana reveals that these issues were discussed at length, but it does not reveal consistency of legal categorisation or indeed a clear terminological framework to which all participants (Mālik, Saḥnūn, Ibn al-Qāsim, Ashhab) adhere. A preliminary opinion could be that the Imāmī reports, whilst contradictory, do demonstrate a greater juristic processing: they use terminology consistently (and this is the terminology which became commonplace in the later fiqh tradition). They consider both the legitimacy of the act of sale, and the legitimacy of the money gained from that sale—this might be seen as a second order issue, and perhaps a more developed context of juristic discussion. Also, the phraseology of the reports conforms to a series of other legal statements by the Prophet, and the Shīʿī Imams. The emergence of set phraseology in legal sources, with specific meanings within the wider legal system is also likely to be a later development. The phrases min al-suḥt and lā ba’s, the use of thaman to indicate the money paid (or received) for a sale, as well as other features, indicate that these discussions represent more considered and reflective discussions than the lack of coherence found in the Mudawwana. One might tentatively position the Imāmī reports as emerging sometime after those found in the Mudawwana.

In the Kitāb al-Umm attributed to Muhammad b. Idrīs al-Shāfiʿī (d. 204/820), there is a passage on this issue, and though it is short it reveals a great level of systematic legal discussion:

I said, “What is your opinion on the sale of ʿadhira by which the crops are fertilised (yazbīlu)?”

He said, “It is not permitted to sell ʿadhira, nor is it permitted for rawth, nor urine, be it from people or from beasts, and nothing which is ritually impure. No animal is ritually impure as long as the animal is alive, except for the dog and the swine. Regarding these two, since they are necessarily impure whilst alive, their sale value is not permitted.”

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21 Muḥammad b. Idrīs al-Shāfiʿī, Kitāb al-Umm (Beirut: Dār al-Fikr, 1403/1983), 6:268.
The identity of the questioner (“I said”) is not clear from the text or indeed the context (one editor considers there to be a lacuna in the manuscript causing the ambiguity).²² Often in Kitāb al-Umm, the first person is reserved for Rabī’ b. Sulaymān (d. 270/884), widely recognised as the transmitter of the version of Kitāb al-Umm we have today. The respondent (“He said …”) would then be al-Shāfi’ī himself. In this passage, the speaker (presumed to be al-Shāfi’ī) is asked a specific question concerning the dung they use to fertilize the fields (a question and answer format referred to above). The information about the utility of the dung is added in here; the refusal to allow this sale makes a clear statement: it does not matter if a product is useful to society (in that it fertilizes the crops). This is no reason to permit the practice of selling it in the law. This assertion hints that there was already a counter position existing (that is was permitted) with a reason to justify it (because dung was used to fertilize the crops, and this is a public good, it should be permitted). The general, and categorical, prohibition of the answer in Kitāb al-Umm establishes the inflexibility of the law in the face of such an argument, a feature of argumentation in the later Shāfi’ī tradition.

Furthermore, the answer is not specific to fertilising dung, even though the question is. The respondent (al-Shāfi’ī) uses the question as an opportunity to make a general ruling for all excrement; and to excrement (‘adhira) is added urine and the category of rawth as also forbidden for sale. Rawth is also some form of faecal matter—but how it is distinguished from 'adhira is not spelled out here. Elsewhere in Kitāb al-Umm (namely the section on purity), rawth appears to be dried excrement, whilst 'adhira appears to be excrement which is still moist. The implication here is that all excrement (dried or moist, animal or human) is covered by the same rulings.

The itemised list is followed by a general category classification. Here there is a shift from specific items (‘adhira, rawth, bawl) to classes of items (lā shay‘un min al-anjās—“nothing which is ritually impure”). The shift is from a set of categories which are determined by factors external to the law (in this case, the physical constituents of excrement and urine) to a category of items determined by a legal framework (impurity). The shift from physical to legal categories is a significant element in the later stages of the process of systematization. No longer are there simply discrete rules concerning individual items; there are now general rules which apply to classes of items. This enables the expansion of the law to new instances within that class. This process is even more signi-

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²² The editors here are Nāṣir al-‘Ādilī and Muḥammad al-Husaynī: see al-Shāfi’ī, Kitāb al-Umm, 6:286, n. 1.
significant, as one sees here an assertion, implicit or otherwise, of the reason for the prohibition of these items. That is, ritual impurity (as it did for Mālik in passage [g] above) lies behind their sale being prohibited. More syllogistically, one might say: the sale of ritually impure items (anjās) is not permitted; these items are ritually impure; therefore their sale is prohibited.

In this case, the law itself decides on the membership of the category—the law decides what is, and what is not ritually impure (i.e. that ʿadhira is “one of the anjās”), and hence what can and cannot be sold. In this way, the law can be said to be attempting to control reality, imposing on it a classification system for items, and then assessing what can and what cannot be done with them. In this smooth shift from ʿadhira, rawth and bawl to lā shayʿun min al-anjās, we find the hegemonic aspirations of the law expressed. The physical characteristics of the items (viscosity, colour, odour) are legally irrelevant. The same can be said of characteristics one might think of as more legally relevant: namely, whether they are dangers to health (through infection or germ transmission), or useful to society (as a nutrient or fuel), or whether buying and selling the item is part of an existing economic system (as a custom). Only the law’s classification process and system matters in the categorisation of these items.

A number of features are reflected in this passage: a high level of legal sophistication; a developed legal framework into which a particular ruling might fit; a consistent terminology, well-defined and explicitly expressed. The discussion context would appear quite a leap from that found in the Mudawwana, and would naturally indicate a later date for this passage’s emergence. It also indicates a greater level of both legal complexity and dexterity, and therefore a likely later emergence date, than the Imāmī reports recounted at the outset.

The above analysis of a series of reports and legal statements on the selling of excrement is, in a sense, an experiment: to see if the wider early legal discussions (Mālik and Shāfiʿī being just two such indications of context) might usefully inform an assessment of the process whereby Imāmī legal doctrines emerged. The preliminary indication is that Imāmī legal doctrine was formed as an element of the other legal discussions occurring at the time. The Imāmī legal material can be seen as reflecting the debates in the Sunni material; indeed, gaps in the development of a particular Sunni legal doctrine might be filled by reference to the corpus of Imāmī legal sources. I have deliberately eschewed two possible additional lines of enquiry. First, the dating of the texts of the early juristic tradition: this has been a quite controversial area of discussion, particularly since Calder’s intervention in his Studies in Early Muslim
Jurisprudence. My approach here has been to attempt to establish a potential chronology for the three bodies of material set alongside each other here (namely, Mudawwana, Imāmi hadith, Kitāb al-Umm). Of course, the Imāmi hadith material may not have emerged at one time, and the canonisation of these early juristic works in their final form may have taken some time. The relative dating of the elements of the chronology would require a more elaborate analysis than that offered here. Second, isnād analysis: this was, of course, a passion for Juynboll and it seems unjust to write a paper analysing hadith in a volume dedicated to his memory without some form of isnād analysis. However, the analysis of Shi‘ī isnāds requires a methodological framework which as yet we do not have; isnād analysis represents the next stage in the process of delineating the early development of Imāmi law within the context of wider Sunnidevelopments. A methodology as nuanced and complex as that developed by Juynboll has not yet emerged in the study of the early Shi‘ī legal corpus.

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23 Norman Calder, Studies in Early Muslim Jurisprudence (Oxford: Clarendon, 1993).
24 I arrive at some rather inconclusive results concerning the possibility of isnāds dating particular traditions in the Shi‘ī context in Robert Gleave, “Early Shi‘ite Hermeneutics and the Dating of Kitāb Sulaym ibn Qays,” Bulletin of the School of Oriental and African Studies 78, no. 1 (2015): 83–103.
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