



Harald Motzki

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The Origins
of Islamic
Jurisprudence
Meccan Fiqh
before the Classical
Schools

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Meccan Fiqh before the Classical Schools

BY

HARALD MOTZKI

translated from the German

by

MARION H. KATZ



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PREFACE TO THE ENGLISH EDITION

Since the publication in 1991 of my *Die Anfänge der islamischen Jurisprudenz. Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts* several English-speaking colleagues have suggested that it be made available in English. The realization of the project, which had already begun in 1993, was not making good progress until it received a fresh stimulus in 1999 by a new demand for the translation from the Middle East.

The text has been thoroughly revised. The errors which I detected in the course of time or which were brought to my attention by colleagues and reviewers have been corrected. Recent literature has been added but only where appropriate. The references in the notes serve to support the argument; completeness of references was not aspired to. In some places I reacted to critical comments by reviewers and tried to remove misunderstandings.

I am grateful to Dr. Marion H. Katz (Mt. Holyoke College) for her accurate translation of the German text, to Fransje Zweckhorst, M. A., who compiled the index, and to Dr. Lawrence I. Conrad (Wellcome Institute for the History of Medicine) who was the first to suggest translation of the book. I owe a great debt to Shaykh Nizām Ya'qūbī (Manāma) who made the publication of the book possible by supporting its translation and editing with a grant. I also wish to thank Professor Wadād al-Qāḍī (University of Chicago) who agreed to accept the book for publication in her series *Islamic History and Civilization* and offered valuable corrections and suggestions.

INTRODUCTION

The question of when, where, and how Islamic jurisprudence came into being has occupied research in Islamic studies for over a century. Initially, a continuous development starting in the lifetime of the Prophet and ultimately leading into the legal schools of the second and third centuries A.H. (approximately the eighth and ninth centuries A.D.) was assumed. This has also been the Muslim view of things since medieval times. This view was put into question toward the end of the nineteenth century of our era by Ignaz Goldziher, and was refuted definitively by Joseph Schacht in his book *The Origins of Muhammadan Jurisprudence*, which appeared in 1950. The different opinions are essentially dependent on the state of the sources available. If one considers the Qur'ān as a work which—at least in its earthly form—originated in the lifetime of Muḥammad and was put down in writing in the course of about two decades after his death, a hole of almost 150 years yawns between it and the first collections of legally relevant texts which are recognized as authentic, i.e. which really go back to the author or compiler claimed for them. The debate has thus revolved around the question of what historical worth the texts of these works have as sources for the preceding phase.

Schacht's theory was largely accepted in western Islamic studies and strongly influenced subsequent research. The present study attempts to demonstrate that Schacht's conceptions, in substantive points, are no longer tenable or are greatly in need of modification—above all, that he estimated the beginnings of Islamic jurisprudence a good half to three-quarters of a century too late. The reservations about Schacht's conclusions result in part from the nature of his work itself: it contains a number of questionable premises, historical inferences, and methods. This is described in the first chapter of the present study, which contains an outline of the history of research on the subject. For, one can better demonstrate the problems of research, understand Schacht's approach, and clarify the point at which the present study begins when the earlier, pre-Schachtian, and the more recent studies as well as the critical voices addressing the theses of Schacht and his followers are reviewed.

Decisive arguments, however, are here provided by the utilization of a new source which was not yet at Schacht's disposal, the *Muṣannaḥ* of the Yemeni 'Abd al-Razzāq al-Ṣan'ānī (d. 211/826). This work and its author are introduced in the second chapter. It is an important source for the history of law, if only because its author, although a contemporary of al-Shāfi'ī (d. 204/820), whose work Schacht took as a point of departure, was clearly not influenced by al-Shāfi'ī. Thus, in contrast to the classic *Hadīth* collections of the third/ninth century, it represents an earlier stage of the development of the reception of tradition, and is several times more voluminous than comparable older works like the *Muwatta'* of Mālik ibn Anas (d. 179/795). However, the special significance of 'Abd al-Razzāq's *Muṣannaḥ* lies in the fact that it contains sources from the first half of the second/eighth century which are lost as independent works or at least have not surfaced until today. It is the principal concern of the second chapter to demonstrate this.

The method of reconstructing sources which is used in this study, and which consists of extracting older texts or tradition complexes out of later works on the basis of the statements of transmission (*isnāds*), is not new. In Biblical, and especially Pentateuch, research it has a long history reaching into the eighteenth century. And it was students of the Old Testament, such as Julius Wellhausen, who introduced it to western Islamic Studies.¹ These methodological attempts were followed up, supplemented and refined by Heribert Horst, Fuat Sezgin, Georg Stauth, Albrecht Noth, Gernot Rotter, Walter Werkmeister and Khalil Athamina, to name only a few.² The principle is acknowledged; differences of opinion persist only on details, like the form of such sources (authored books or not) and the mode of their transmission (written, oral, or a combination). The

¹ J. Wellhausen, "Prolegomena zur ältesten Geschichte des Islams," *Skizzen und Vorarbeiten*, vol. 6 (Berlin, 1899).

² H. Horst, "Zur Überlieferung im Korankommentar at-Ṭabarī," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 103 (1953), pp. 290-307. F. Sezgin, *Bukhārī'nin kaynakları hakkında araştırmalar* (Istanbul, 1956). G. Stauth, *Die Überlieferung des Korankommentars Muḡāhid ibn Gabr* (Ph.D. thesis, Giessen, 1969). A. Noth, "Der Charakter der ersten grossen Sammlungen von Nachrichten zur frühen Kalifenzeit," *Der Islam* 47 (1971), pp. 168-199. Id., *Quellenkritische Studien zu Themen, Formen und Tendenzen frühislamischer Geschichtsüberlieferung* (Bonn, 1973). G. Rotter, "Zur Überlieferung einiger historischer Werke Madā'inīs in Ṭabarī's Annalen," *Oriens* 23-24 (1974), pp. 103-133. W. Werkmeister, *Quellenuntersuchungen zum Kitāb al-'Iqd al-farīd des Andalusiers Ibn 'Abdrabbih* (Berlin, 1983). Kh. Athamina, "The sources of al-Balādhurī's *Ansāb al-ashraf*," *Jerusalem Studies on Arabic and Islam* 5 (1984), pp. 237-262.

argument over the textuality or orality of transmission in early Islam, however, miss the historical realities. Gregor Schoeler has pointed this out repeatedly,³ and the present study confirms it.

The question now presents itself: what meaning do the newly tapped older sources have for the early history of Islamic jurisprudence? It is true that Schacht, in his utilization of the legally relevant tradition collections of the second half of the second/eighth century, like Mālik's *Muwattaʿa*' and the *Āthār* of Abū Yūsuf (d. 182/798) and al-Shaybānī (d. 189/805), noticed that they also contain older sources. For example, he assumed that the *Āthār* of these two Kufans originated predominantly with their teacher Abū Ḥanīfa (d. 150/767), and that Mālik used a source of Nāfi's which Schacht dated to the middle of the second/eighth century.⁴ But his mistrust of the chains of transmission (*isnāds*) which precede the individual texts blocked him from undertaking a consistent source analysis aimed at reconstructing the history of transmission. Instead, he relied primarily on the criterion of content and attempted to place the texts chronologically by ordering them "in the overall context of a problem."⁵ He resorted to the *isnād* when its statements could be reconciled with the chronology developed through content; otherwise he rejected the *isnād* as forged.

This study advances the thesis that Schacht's premise, that portions of the *isnāds* which extend into the first half of the second/eighth and the first/seventh century are without exception arbitrary and artificially fabricated is untenable, at least in this degree of generalization. A relative chronology of the texts based primarily on aspects of content, and a representation of the development of Islamic jurisprudence constructed upon it, do not lead to definite conclusions. The third chapter attempts to demonstrate this. The central question

³ G. Schoeler, "Die Frage der schriftlichen oder mündlichen Überlieferung der Wissenschaften im frühen Islam," *Der Islam* 62 (1985), pp. 201–230. Id., "W. Werkmeister: Quellenuntersuchungen zum *Kitāb al-Iqd al-farid* des Andalusiers Ibn 'Abdrabbih, Berlin 1983," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 136 (1986), pp. 118–128. Id., "Mündliche Thora und *Ḥadīṭ*: Überlieferung, Schreibverbot, Redaktion," *Der Islam* 66 (1989), pp. 213–251. Id., "Schreiben und Veröffentlichen. Zur Verwendung und Funktion der Schrift in den ersten islamischen Jahrhunderten," *Der Islam* 69 (1992), pp. 1–43.

⁴ Cf. J. Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, 1950), pp. 149, 177.

⁵ Cf. J. Schacht, "A Revaluation of Islamic Tradition," *Journal of the Royal Asiatic Society* 49 (1949), pp. 143–154, esp. 147. Id., *Origins*, p. 1 and *passim*.

under consideration is this: Is it possible to find criteria which enable us to determine whether the information about the provenance of the earlier sources contained in 'Abd al-Razzāq's *Muṣannaf* is trustworthy or forged?

Using the examples of two strands of sources, it is possible to show that a number of arguments, which I call criteria of authenticity, speak for the credibility of the statements of transmission which are made by the authors or compilers of these sources of the first half of the second/eighth century. The criteria of authenticity on which I fall back relate predominantly to form and not to content, such as the distribution of the texts among sources; the shares of *ra'y* and *Ḥadīth*; the ratios of traditions going back to the Prophet, the *ṣaḥāba* and the *tābi'ūn*; the use and the quality of chains of transmitters; the terminology of transmission; the existence of personal *ra'y*; divergent or contradictory comments about texts; indirect transmission found next to direct transmission; uncertainty about exact wording; the reporting of changes of opinion, of contradictions, of cases of ignorance in legal matters, and so forth.

The conclusion that the texts which 'Abd al-Razzāq's informants claim to have received from specific people do indeed go back to them makes it possible, in turn, to extract from within these strands of sources older sources which can be dated to the first quarter of the second/eighth century. They supply a firm and extensive textual basis for delineating the state of the development of law towards the end of the first and the beginning second/eighth century. They thus bring us back into a period in which, according to Schacht, only a few reliable traditions existed which can, however, seldom be firmly assigned to historical persons.

By the same method—the determination of criteria of authenticity and forgery—it is possible, starting out from this new textual basis, to venture further back into the first/seventh century. In Islamic terminology this is the generation of the *ṣaḥāba*, which represents the link to the Prophet himself. There are good arguments that a number of the traditions attributed to this generation are reliable. Occasionally it is even possible to verify among them reports about the Prophet which quite probably are authentic, that is, they were really reported by one of the Prophet's contemporaries, and their genuineness, that is, that they have a historical kernel, cannot be simply dismissed.

For argumentation and for the development of the criteria of authenticity not all of the major strands of older sources contained

in 'Abd al-Razzāq's *Muṣannaf* will be used, but only the Meccan ones. The purpose is to combine the critical analysis of the sources with a study of early Meccan legal scholarship, about which next to nothing is known. Thus the third chapter is divided according to the most important legal scholars of Mecca in the first and second Islamic centuries. The findings about those scholars which are derived from the textual material transmitted by them, are then contrasted with the biographical traditions about them. The investigation of the Meccan strands of sources leads to the conclusion that the roots of legal scholarship in Mecca can be traced back to the middle of the first/seventh century, and that their further development up to the middle of the second/eighth century can be ascertained with a stunning wealth of detail that exceeds our dreams.

One issue which has played a large role in the scholarly discussion of the genesis of Islamic jurisprudence since the nineteenth century will be consciously bracketed in the present investigation: the possible influences on Islamic jurisprudence by pre-Islamic non-Arabic systems of law. One reason lies in the conclusions of this study itself. Starting from the assumption that Islamic jurisprudence developed only toward the end of the Umayyad period, scholars have sought its pedigree in Islamic Iraq (Schacht) or Syria (Crone). Our conclusions, conversely, limit the scope for such an influence, temporally, to the end of the first/seventh century (including pre-Islamic times) and, spatially, to the Arabian Peninsula.⁶ It is true that, even within these temporal and spatial limits, fertilization by Near Eastern provincial law, which was strongly infused with Roman law, and especially by Jewish legal forms, is conceivable; but since we so far know nothing precise about the dissemination and substance of these laws in the Arabian Peninsula in the sixth and seventh centuries of our era, or about pre-Islamic law in Mecca, concrete proofs of the development of Islamic legal institutions out of other systems of law or of their being influenced by them are difficult to adduce. Patricia Crone has recently attempted this.⁷ Her study is extremely ingenious, and shows how one can approach the problem. The dating and localization, however, remain speculative.⁸

⁶ This statement concerns only issues which can be ascertained to be early. There might have been later influences as well.

⁷ P. Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate* (Cambridge, 1987).

⁸ Cf. H. Motzki, "P. Crone, *Roman, Provincial and Islamic Law—The Origins of Islamic Patronate*, Cambridge 1987," *Der Islam* 65 (1988), pp. 342–345. W. B.

In the decade since the publication of the original German edition of the present study, two books with a similar title have been published: Norman Calder's *Studies in Early Muslim Jurisprudence* (1993) and Yasin Dutton's *The Origins of Islamic Law* (1999). They deal with the emergence of the juridical schools associated with the names of early legal scholars such as Abū Ḥanīfa, Mālik and al-Shāfi'ī, i.e. the stage of development that *followed* the period on which the present study focuses. Both books, which are valuable in themselves, ignore the results of the present study. Dutton considers Mālik's *Muwatta'* as "our earliest formulation of Islamic law" and as "our earliest record of that law as a lived reality."⁹ He is concerned only with the interpretation of the *Muwatta'* and the description of the state of juridical development which it reflects. The period before the *Muwatta'* remains outside his scope and is only perfunctorily touched on in the conclusions.¹⁰ For Calder "Islamic jurisprudence is an organic product of Arabic-speaking Muslim society in the third century."¹¹ He claims that "the instability or creativity of oral or notebook traditions," "organic texts, pseudoepigraphy, and long-term redactional activity" prevent us from recovering earlier stages of history and, for that reason, he doubts whether 'Abd al-Razzāq's *Muṣannaf* really goes back to him and whether it can be used as a basis for the history of Islamic *fiqh* in the second/eighth century.¹² This is an "ideological" statement which is based neither on a literary analysis of the *Muṣannaf* nor on a critical dialogue with the literary analysis which I have presented of this work. Calder's theories and literary analyses of juridical texts certainly raise crucial issues but they are in many respects not convincing, as some reactions to his book have already shown.¹³

Hallaq, "The Use and Abuse of Evidence: The Question of Provincial and Roman Influence on Early Islamic Law," *Journal of American Oriental Society* 110 (1989), pp. 79–91. U. Mitter, *Das frühislamische Patronat. Eine Untersuchung zur Rolle von fremden Elementen bei der Entwicklung des islamischen Rechts* (Ph.D. thesis Nijmegen 1999).

⁹ Y. Dutton, *The Origins of Islamic Law. The Qur'ān, the Muwatta' and Madinan 'Amal* (Richmond, Surrey, 1999), p. 4.

¹⁰ Op. cit., p. 180.

¹¹ N. Calder, *Studies in Early Muslim Jurisprudence* (Oxford, 1993), p. 244.

¹² Op. cit., pp. 194–195.

¹³ Cf. Y. Dutton, "N. Calder: *Studies in Early Muslim Jurisprudence*, Oxford 1993," *Journal of Islamic Studies* 5 (1994), pp. 102–108. Id.: "'Amal v. Ḥadīth in Islamic Law: The Case of *sadl al-yadayn* (Holding One's Hands By One's Sides) When Doing Prayer," *Islamic Law and Society* 3 (1996), pp. 28–33. Id.: *Origins*, pp. 26–27. M. Muranyi, "Die frühe Rechtsliteratur zwischen Quellenanalyse und Fiktion,"

The present book tries to leave aside generalizing preconceptions about the reliability of textual elements, such as *isnāds* and *mutūn*, or of genres of sources, such as Prophetic *ḥadīths* or biographical reports; and it does not take for granted special characteristics of the transmission process such as stability, creativity, organic growth, and the like. It analyzes the sources with the same goal that my teacher, the late Albrecht Noth, formulated in his source-critical study of the early Arabic historical tradition: “[to] establish reliable *criteria* according to which individual traditions or groups of traditions can be assessed—not only for their ‘historicity,’ but in other ways as well.”¹⁴ If this study can contribute to bringing back the debate on the origins of Islamic jurisprudence and early traditions in general to a more “philological” level of interpreting the texts—“philological” does not necessarily mean “uncritical” or “essentialist”—then it will have fulfilled its purpose.

Nijmegen, December 2000

HARALD MOTZKI

Islamic Law and Society 4 (1997), pp. 224–241. H. Motzki, “The Prophet and the Cat. On Dating Mālik’s *Muwatṭaʾ* and Legal Traditions,” *Jerusalem Studies in Arabic and Islam* 22 (1998), 18–83.

¹⁴ A. Noth/L. I. Conrad, *The Early Arabic Historical Tradition. A Source-critical Study* (Princeton, New Jersey, 1994), pp. 24–25.

CHAPTER ONE

THE BEGINNINGS OF ISLAMIC JURISPRUDENCE IN THE RESEARCH OF THE NINETEENTH AND TWENTIETH CENTURIES

The good old custom of preceding or following the investigation of a problem with a sketch of its research history pertains in Islamic studies as well. Think, for instance, of Friedrich Schwally's research report in his adaptation of Theodor Nöldeke's *Geschichte des Qorāns*,¹ on which many a scholar has fed since then, and which is still worth reading today. Following his example and that of many others, let us precede this study as well with a chapter not only about the state, but also about the history of research on the origins of Islamic law and its jurisprudence. It will clarify the point at which my investigation commences and the problem which it attempts to solve.

The conclusions of historical research are fundamentally determined by two factors: firstly, by the questions that are asked, i.e., by the knowledge in which the researcher is interested. This is subject to constant change, and can sometimes also be dependent on external conditions and developments—political, social, economic, and ideological, among others. Secondly, by the the sources that are available. The tapping of new sources or revised findings about already known material can lead to the rejection of existing theories and to the formulation of new hypotheses. The question what intellectual interest motivated specific orientalists who concerned themselves with the origins of Islamic law and Islamic jurisprudence, and whether specific subjective attitudes to Islam and to political and legal developments in the Islamic countries influenced their framing of questions and their results, is a delicate² but legitimate subject of scholarly reflection. However, it is not to this that we will now turn

¹ F. Schwally, "Die muhammedanischen Quellen und die neuere christliche Forschung über den Ursprung der Offenbarungen und die Entstehung des Qorānbuches," in: Th. Nöldeke/F. Schwally/G. Bergsträsser: *Geschichte des Qorāns*, vol. 2 (2nd ed., Leipzig, 1919), pp. 122–224, esp. 193–224.

² Cf. J. Waardenburg, *L'Islam dans le miroir de l'occident* (Den Haag, 1963). E. W. Said, *Orientalism* (London, 1979).

our attention, but to the connection between the state of the sources and the conclusions of research. That is, I will undertake an attempt to sketch the history of research on the emergence of Islamic law and Islamic jurisprudence from the point of view of the sources on which the contributions are based, and to ask what effect the selection and evaluation of the sources have on their theories and representations.

A. EARLY RESEARCH

The question of the origins of Islamic law and the development of jurisprudence up to the beginnings of the classical schools of law has occupied Islamic studies intensively since the second half of the last century. The prerequisites for any in-depth work on this subject were provided by the sifting of the oriental manuscripts scattered in Europe and their listing and description in catalogues, which intensified at the beginning of the nineteenth century, as well as the editing and publication of numerous works.³ The first significant attempt to illuminate the problem on the basis of the sources accessible to him was made by Eduard Sachau in an essay which appeared in 1870 under the title "Zur ältesten Geschichte des muhammedanischen Rechts."⁴ Sachau assumes that Islamic law "can be traced back to two fundaments,"⁵ the Qur'ān and the *sunna* of the Prophet. He does not understand this only to mean that these are the theoretical sources, but also historically: the Qur'ān and the *sunna* in the form of traditions about statements and active or passive behaviors of the Prophet stand at the beginning of the development of Islamic law as the legacy of Muḥammad. The "earliest adherents of the new teaching," the "Companions,"⁶ availed themselves of these two sources in order to reach a verdict in cases of conflict. This legal situation

³ Florence, Venice, Cambridge, Oxford and Madrid had already published the first catalogues of manuscripts in the eighteenth century; Leipzig, Dresden, Vienna, Copenhagen, Lund, Upsala and St. Petersburg followed their example in the first half of the nineteenth century. Cf. C. Brockelmann, *Geschichte der arabischen Litteratur*, Supplement vol. 1, pp. 5-11 and id., *Arabische Grammatik* (13th ed., Leipzig, 1953), pp. 212-221.

⁴ Appeared in: *Sitzungsberichte der Kaiserlichen Akademie der Wissenschaften in Wien, Phil.-historische Klasse*, vol. 65, pp. 699-723.

⁵ Sachau, op. cit., p. 699.

⁶ Op. cit., p. 700.

characterized the entire first/seventh century, until the generation of the Companions had died out. The following generation of "Successors" resorted in cases which were not covered by Qur'ān and *sunna* to "opinions and decrees of the Companions, which had been unanimously shared by them and decreed on similar occasions (*ijmā' al-ṣahāba*)."⁷ According to Sachau, this is the third source of Islamic law.⁸ At the same time, that is, starting in the second/eighth century, jurisprudence begins to establish itself "as an independent science" "through systematic treatment of the confrontation of the facts with the regulations of the Qur'ān and the *sunna*."⁹ This is reflected first in the emergence of the concept of *ra'y*, which according to Sachau originally means the same thing which is later characterized by the term *qiyās* (deduction) and regarded as the fourth source of law,¹⁰ and in the differentiation between *aṣḥāb al-ḥadīth* (scholars of Tradition) and *aṣḥāb al-ra'y* (jurists).¹¹ This development culminates around the middle of the second/eighth century in the elaboration of complete systems of law which become the points of departure for the later schools of law.¹²

This depiction of the beginnings of Islamic law rests essentially on the Sunnī teaching of the *uṣūl al-fiqh*, the theoretical sources of law, which has been a branch of Islamic jurisprudence since al-Shāfi'ī (d. 204/819–20).¹³ Sachau drew his information on this subject mainly from the heresiographical work *Kitāb al-Milal wa-l-nihāl* of al-Shahrastānī (d. 528/1134),¹⁴ the *Prolegomena* (*Muqaddima*) of Ibn Khaldūn (d. 808/

⁷ Op. cit., p. 701.

⁸ This limitation of *ijmā'* to the generation of the *ṣahāba* does not correspond to the classical theory of *uṣūl*. Cf. C. Snouck Hurgronje, "Le droit musulman," *Revue de l'Histoire des Religions* 37 (1898), pp. 296 f.; id., "The 'foundations' of Islamic Law," in id. *Selected Works. Oeuvres choisies*, ed. G. H. Bousquet/J. Schacht (Leiden 1957), p. 273 ff. Article "Idjmā'" in *Encyclopaedia of Islam*, First and Second editions. Presumably Sachau is influenced by the representation of the discipline of *uṣūl* in Ibn Khaldūn's *Muqaddima* and al-Shahrastānī's *Kitāb al-Milal* (see below notes 14, 15).

⁹ Sachau, op. cit., p. 708.

¹⁰ Op. cit., pp. 708, 715.

¹¹ Op. cit., p. 711.

¹² Op. cit., pp. 716, 718.

¹³ Cf. M. Hamidullah, "Histoire d'Uṣūl al-Fiqh," *Annales de la Faculté de Droit d'Istanbul* 1959, pp. 72–90, passim; G. Makdisi, "The Juridical Theology of Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh," *Studia Islamica* 59 (1984), pp. 5–47, passim.

¹⁴ *Book of Religious and Philosophical Sects*, ed. W. Cureton (London, 1846). In the following I will give the bibliographical data of the sources; in the earlier works they are usually lacking.

1405–6)¹⁵ on the philosophy of history, and the lexicon of technical scientific terms of al-Tahānawī (d. 1158/1745),¹⁶ which contains quite lengthy excerpts from standard works. A true book of *uṣūl* was not yet available to him. Characteristic of Sachau's approach is that—following the example of his sources—he historicizes the categories of *uṣūl*, which are actually systematic, and uses them to describe the genesis of law. He fills out the framework thus formed with his own hypotheses about the causes and driving forces of the development of law and with information from biographical and historical sources. Among his *a priori* assumptions is, for example, that the conquests and the associated economic, political and social upheavals were important causes for “the foundation of a jurisprudence,” and that this arose from “a practical need,”¹⁷ which he illustrates by references to an early elaboration of the law of inheritance—the Companions Zayd ibn Thābit and Ibn ‘Abbās were considered the first specialists in this area—, of war, of slavery, and of the *dhimma*. In the first/seventh century, however, law “was not yet independently developed and elaborated into a system,” and jurisprudence consisted “merely of applied knowledge of Qur’ān and *sunna*.”¹⁸ He attempts to demonstrate this through a portrayal of “the practical administration of the law” in this period. He cites the reports about Companions and Successors who made names for themselves as judges (*quḍāt*) or legists (*fuqahā*). The list begins with ‘Alī and Mu‘adh ibn Jabal, who are supposed already to have performed the duties of *qāḍīs* in the time of the Prophet, and ends with the “seven Medinan jurists.”¹⁹ The material comes mainly from biographical sources, above all from the *Kitāb al-Ma‘ārif* of Ibn Qutayba (d. 276/889–90)²⁰ and the *Tahdhīb al-asmā’* of al-Nawawī (d. 676/1277–8).²¹ It is lacking in

¹⁵ *Prolegomènes d'Ebn Khaldoun*, ed. É. M. Quatremère (Paris, 1858).

¹⁶ [*Kashshāf iṣṭilāḥāt al-funūn*] *Dictionary of Technical terms*, ed. A. Sprenger (Calcutta, 1862).

¹⁷ Sachau, op. cit., p. 702.

¹⁸ Op. cit., p. 707.

¹⁹ Op. cit., pp. 704–707. ‘Utba ibn Mas‘ūd erroneously appears among the “seven,” which clearly results from a misreading of ‘Ubayd Allāh ibn ‘Abd Allāh ibn ‘Utba ibn Mas‘ūd as ‘Ubayd Allāh ibn ‘Abd Allāh *wa* ‘Utba ibn Mas‘ūd. Von Kremer, *Kulturgeschichte des Orients unter den Chalifen* (Vienna 1875), p. 485 displays the same mistake.

²⁰ *Handbuch der Geschichte*, ed. F. Wüstenfeld (Göttingen, 1850).

²¹ *The Biographical Dictionary of Illustrious Men . . .*, ed. F. Wüstenfeld (Göttingen, 1842–47).

substantive statements about the legal decisions and opinions of the persons named.

"How a complete system of law was built up from these four sources of law—Qur'ān, *sunna*, consensus of the Companions and *qiyās*—by the Successors (*al-tābi'ūn*) and the "Successors of the Successors" (*tābi'ū l-tābi'īn*) by the time of Abū Ḥanīfa is still partially discernible from the available reports."²² Sachau leaves the researching of this process to future legal historians—indicating, however, that the biographical works should be consulted for this purpose. He then turns his attention to the men "who first assimilated and unified the material accumulated from the foundation of Islam until the middle of the first half of the second/eighth century into complete systems of law as they still in our time, with relatively minor modifications, form the legal basis in the life of all Muhammedan nations":²³ Abū Ḥanīfa (d. 150/767), al-Awzā'ī (d. 157/774), Sufyān al-Thawrī (d. 161/778) and Mālik ibn Anas (d. 179/795–6). Of these, al-Thawrī and al-Awzā'ī produced no lasting effect, and thus almost nothing is known of them. Of the works of the four, according to Sachau, nothing is preserved, but the oral and written transmission of their views forms the basis of the entire Islamic legal literature of subsequent times,²⁴ whose actual founder does not come until al-Shaybānī.²⁵ Sources for these statements are the above-mentioned biographical literature and the bibliographical opus *Kitāb al-Fihrist* of Ibn al-Nadīm (wrote 377/987–8).²⁶ The fact that no writings are preserved from the great jurists of the first half of the second/eighth century does not mean that there was no written transmission at this time. Sachau assumes that "the recording of relatively large quantities of traditions had already begun in the third decade of the second century" and became generally prevalent "between the years 120 and 150."²⁷ Al-Zuhri (d. 124/742), Ibn Jurayj (d. 150/767) and Sa'īd ibn abī 'Arūba (d. 156/773 or 157/774) are regarded as the protagonists of written transmission; a dozen other scholars of the second/eighth century followed their example.²⁸ The older compilations—before ca. 140/

²² Sachau, op. cit., p. 716.

²³ Op. cit., p. 718.

²⁴ Op. cit., p. 719.

²⁵ Op. cit., p. 723.

²⁶ It was available to him in manuscript.

²⁷ Op. cit., p. 721.

²⁸ Op. cit., pp. 721 f.

757–8—should hardly be imagined as completely ordered books. These appeared only between 140 and 150/767.²⁹ These statements of Sachau's, too, rest indirectly on biographical sources, even when they are drawn from other works.

This first attempt to portray the beginnings of Islamic law and jurisprudence makes use of certain types of sources and methodological approaches which were subsequently used over and over again: 1. The sequence of the sources of law (*uṣūl*) serves as a historical framework for the development of law until the middle of the second/eighth century. This is assumed as a historical necessity. 2. Details about individual persons who played a role in the development are drawn from the biographical and bibliographical sources.

Alfred von Kremer, who does not mention Sachau's essay, proceeds similarly in his *Culturgeschichte des Orients unter den Chalifen*.³⁰ At the death of Muḥammad the two fundamental sources of Islamic law, Qur'ān and *sunna*, were present. The first four caliphs, who were among the closest confidants of the Prophet, made do with them and otherwise shaped their juridical practice in conformity with the ideas of the Prophet. The *ṣaḥāba* added new traditions to those available according to need, and likewise the following generation of the *tābi'ūn*, so that the *sunna* swiftly assumed enormous dimensions.³¹ The transmission of the traditions of the Prophet was initially predominantly oral, but also partially in writing. The process of ordering, sifting, and systematic compilation began, according to von Kremer, "not only at the middle, but already at the beginning of the second/eighth century after Muḥammad and perhaps even earlier."³² He emphasizes more strongly than Sachau the role of Medina in the discipline of Tradition: Medina was the site "where Tradition flowed from the purest springs, where the most genuine memories" lived on and "where the complete mass of traditions recognized as trustworthy and well-authenticated was first collected in a great *corpus juris divini et humani*."³³ Here knowledge of a new source, the *Muwatta'* of Mālik ibn Anas (d. 179/795–6), which Sachau did not mention and with which he was probably not yet familiar, makes itself notice-

²⁹ Op. cit., p. 723.

³⁰ *Culturgeschichte*, vol. 1, pp. 470–504.

³¹ Op. cit., pp. 470–474.

³² Op. cit., p. 476. This is probably directed against Sachau.

³³ Op. cit., p. 477.

able.³⁴ Nevertheless, von Kremer's portrayal of the "legal school of Medina" is based mainly on biographical sources—in addition to al-Nawawī's *Tahdhīb*, Ibn al-Athīr's (d. 630/1233) *Usd al-ghāba*³⁵—, although it is also conceivable that he used the *Muwatta'* as a guideline without citing it. Accordingly, "a school of Tradition and law was already formed under the first caliphs."³⁶ Its founders were 'Abd Allāh ibn Mas'ūd and 'Abd Allāh ibn 'Abbās. They were followed by the seven legal scholars of Medina. They "sifted and put in order the excessively rich material, they gave a large portion of the Tradition the scholastic stylistic form, they collected in addition to it the decisions of the first caliphs, used them as a source of law and brought Qur'ānic exegesis into being."³⁷ Thus Medina can be seen as "the oldest workshop of Islam, where the still fluid ideas, opinions and dogmas were forged, cemented and given definite form."³⁸ Mālik was able to build upon the preliminary work of the "Seven." "Thus, his *corpus juris* is the embodiment of the legal views which achieved general acceptance in Medina itself in the *first* century,"³⁹ which Mālik arranged systematically.

In addition to the Medinan, "historical school of law"—historical, because it rested essentially upon Tradition—there developed in Iraq at the same time, according to Kremer, "the school of the speculative jurists (*aṣḥāb al-ra'y*)," who made "extensive use of the deductive method (*qiyās*)," "by means of which they reached decisions in cases for which there was no precedent in Qur'ān, *sunna* and *āthār*."⁴⁰ Von Kremer draws details about their earliest representatives, Ibn abī Laylā (d. 148/765–6) and Abū Ḥanīfā (d. 150/767), from the biographical literature—Ibn Qutayba, al-Nawawī—but, as in the case of Medina, he is in a better situation than Sachau, because a manuscript of Abū Yūsuf's (d. 182/798) *Kitāb al-Kharāj* was available to him. He believes that this work literally reproduces the legal views of the author's teacher Abū Ḥanīfā⁴¹ but does not use it to illuminate

³⁴ Printed with the commentary of al-Zurqānī, Būlāq, 1280/1863.

³⁵ Printed Cairo, 1286/1869.

³⁶ Von Kremer, *Kulturgeschichte*, vol. 1, p. 483.

³⁷ Op. cit., pp. 484–485.

³⁸ Op. cit., p. 486.

³⁹ Op. cit., p. 488. Emphasis mine.

⁴⁰ Op. cit., p. 490.

⁴¹ Op. cit., p. 492.

the latter's legal methodology in greater detail, simply drawing from it the conclusion that Abū Ḥanīfa's foundation of public and administrative law is ultimately connected with the 'Abbāsids' ascension of the throne and the transfer of the seat of government to Iraq.⁴² He reports on Abū Yūsuf, al-Shaybānī, al-Shāfi'ī and Ibn Ḥanbal, among other important legal scholars of the second/eighth and third/ninth century, only from the well-known biographical and bibliographical sources.⁴³

Von Kremer evaluates the traditions of the Prophet distinctly more critically than Sachau. According to him, they were largely created by the generations of the Companions and the Successors.⁴⁴ A few of the Prophet's wives—like 'Ā'isha⁴⁵—and Companions—like Ibn 'Abbās⁴⁶—particularly distinguished themselves in the creation of legends and the fabrication of traditions of the Prophet. The seven legal scholars of Medina are not to be counted among the inventors of *ḥadīths*, but were provided with a constant flow of forgeries for almost all legal problems.⁴⁷ In their day the demands for authentication of traditions by means of the *isnād* were not solidly formed. A stricter criticism of Tradition began only with Mālik ibn Anas,⁴⁸ but even then the large scale forgery which was being performed did not cease—a fact which can be seen from the collections of traditions, which become ever more extensive as time goes on. The Kufans in particular were known as notorious forgers.⁴⁹ The method of Muslim source criticism, which attempted to distinguish false from genuine traditions through evaluation of the quality of the chains of transmission, should be regarded as “a very clumsy, a blunt weapon,” with which it was impossible to succeed in filtering the authentic matter from the mass of forged traditions. One must doubt whether the biographical reports about the vast number of transmitters are really trustworthy, and take into account the fact that religious orthodoxy tended toward the acceptance of those traditions “which cor-

⁴² Op. cit., pp. 492–493.

⁴³ In contrast to Sachau (see p. 5, note 26), von Kremer could already use G. Flügel's edition of the *Fihrist* (Leipzig, 1871/2).

⁴⁴ Von Kremer, op. cit., pp. 472–474.

⁴⁵ Op. cit., pp. 472, 486–487.

⁴⁶ Op. cit., p. 484.

⁴⁷ Op. cit., p. 487.

⁴⁸ Op. cit., pp. 478, 479 ff.

⁴⁹ Op. cit., p. 481.

responded with the prevailing religious views.”⁵⁰ This critical evaluation of the *sunna* of the Prophet, with which von Kremer prepares the terrain for Goldziher, takes its orientation from early intra-Islamic criticism, especially that coming from the ranks of the Mu‘tazila. The details come from unnamed sources on *Ḥadīth* criticism and from historical works like Ibn al-Athīr’s (d. 630/1232–3) *Kāmil*,⁵¹ Ibn ‘Asākir’s (d. 571/1175–6) *Ta’rīkh madīnat Dimashq*⁵² and al-Maqrīzī’s (d. 845/1441–2) *Khīṭaṭ*.⁵³ Finally, von Kremer devotes himself intensively to the question of outside influences—above all, that of Roman law—on Islamic law, and discusses the possible modes of transfer. Similarities and parallels between a few Ḥanafī and Roman legal institutions and terms form the point of departure.⁵⁴

The pattern of interpretation sketched by the pioneering works of Sachau and von Kremer remained unchallenged in its basic features for decades. In two essays from the years 1882 and 1898,⁵⁵ Christian Snouck Hurgronje further elaborated the portrayal of early legal history starting out from the development of *uṣūl* on the basis of several *uṣūl* works in manuscript—especially the *Waraqāt* of Imām al-Ḥaramayn (d. 478/1085–6). His first contribution is still quite speculative, the second draws supplementarily on historical sources about the early period—Ibn al-Athīr’s *Kāmil*, al-Ṭabarī’s (d. 309/921–2) *Ta’rīkh*,⁵⁶ the *Chronicles of the city of Mecca*⁵⁷—and on al-Bukhārī’s (d. 257/871) *Ṣaḥīḥ*.⁵⁸

Alois Sprenger’s “Skizze der Entwicklungsgeschichte des muslimischen Gesetzes,” which appeared in 1892,⁵⁹ presents substantially

⁵⁰ Op. cit., p. 482.

⁵¹ *Cronicon quod perfectissimum (el-Kāmil) inscribitur*, ed. C. J. Tornberg (Lugduni Batavorum, 1851–1876).

⁵² Which he has used as manuscript.

⁵³ Printed Būlāq, 1270/1853.

⁵⁴ Von Kremer, *Culturgeschichte*, vol. 1, pp. 532–547. On the history of research on this problem, cf. P. Crone, *Roman, Provincial and Islamic Law. The Origins of the Islamic Patronate* (Cambridge 1987), pp. 1–17. I will not treat this issue in the following; almost all of the authors named expressed opinions on it.

⁵⁵ “Nieuwe bijdragen tot de kennis van de Islam,” *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch Indië*, 4th Series, vol. 6, 1882 (Reprinted in: id., *Verspreide Geschriften*, vol. 2, pp. 3–58. Partial translation: “The ‘Foundations’ of Islamic Law,” in: id., *Selected Works. Oeuvres choisies*, pp. 268–289). “Le droit musulman,” pp. 1–22, 174–203.

⁵⁶ *Annales*, ed. J. Barth et al. (Lugduni Batavorum, 1879–1901).

⁵⁷ *Die Chroniken der Stadt Mekka*, ed. F. Wüstenfeld (Leipzig, 1857–1861).

⁵⁸ Printed Būlāq, 1290/1873.

⁵⁹ In: *Zeitschrift für vergleichende Rechtswissenschaft* 10 (1892), pp. 1–31.

nothing new other than a few additional biographical details; many statements are imprecise or false, sources are seldom cited, and the entire argumentation lags behind the above-mentioned works as a result of its vagueness. Similarly without exact citation of sources, but much more precise, is the outstanding overview of the state of the discussion reached at the end of the nineteenth century which B. Duncan MacDonald offers in his book *The Development of Muslim Theology, Jurisprudence and Constitutional Theory*.⁶⁰

D. S. Margoliouth too proceeds according to the usual nineteenth-century pattern of generating the origins of Islamic jurisprudence from the *uṣūl*, the sources of law, in his "lectures" held in 1913, entitled "The early development of Mohammedanism."⁶¹ Nevertheless, he offers a number of new details and conclusions which are based chiefly on his reading of al-Shāfiʿī's newly accessible work *Kitāb al-Umm*⁶² and on greater consideration of historical sources, chiefly al-Ṭabarī's *Taʾrīkh al-rusul wa-l-mulūk*, while biographical sources are hardly used. Margoliouth places "the construction of a system of jurisprudence" approximately at the beginning of the second/eighth century. It was made possible by the classificatory groundwork of the Medinan jurists of the first/seventh century, and climaxes with the "great Pandects, which were compiled by the doctors of the second century."⁶³ The fabrication of traditions of the Prophet relevant to law took place predominantly, if not exclusively, in the first/seventh century.⁶⁴

Common to all of the above-mentioned works is that they pad out the *uṣūl* schema used as a historical framework, sometimes speculatively, sometimes with biographical or historical reports about the early period derived from relatively late sources—between them and the events about which they report lie two or more centuries. At the same time, an increasingly critical stance toward the biographical and historical statements is discernible, but no clear method for their evaluation.

It was Ignaz Goldziher who turned against the idea that Islamic jurisprudence developed out of the application of the fundamental

⁶⁰ New York, 1903, pp. 65–117.

⁶¹ London, 1914. Lecture III: The Legal Supplement.

⁶² Printed Būlāq, 1321–1325/1904–1908.

⁶³ Margoliouth, *op. cit.*, pp. 91 f.

⁶⁴ *Op. cit.*, p. 98.

sources of law, Qur'ān and *sunna*, an idea which presupposed that the *sunna* of the Prophet and the Companions was available from the earliest times and offered sufficient material for the purpose. His position should be scrutinized in more detail, since it deeply influenced the research of the twentieth century. In his study about the "legal school" of the Zāhiriyya,⁶⁵ which developed in the mid-third/ninth century, he already emphasizes the importance of *ra'y*—decision according to personal insight⁶⁶—in the first/seventh century, and assumes that this method developed "in Muhammedan jurisprudence as an inevitable postulate of the exigencies of practical legal life in the performance of the legal office"⁶⁷ in addition to "the study of the traditional sources."⁶⁸ Out of the indefinite and unsystematically handled *ra'y* of the *ṣaḥāba* generation there later—i.e., in the first half of the second/eighth century—developed the domesticated "logical form of analogy (*qiyās*)."⁶⁹ The hypothesis that a source of the forging of traditions was to be seen in the effort to escape from *ra'y*, and that fabricated traditions simply represented *ra'y* clothed in the form of *ḥadīths*, is already present here.⁷⁰ In other words, a portion of the *sunna* is only a consequence of jurisprudence based on *ra'y*, and thus secondary. Goldziher states these assumptions more precisely in later works. In his *Muhammedanische Studien*, he speaks of the "few stones laid" and "scanty material" of the first/seventh century for the development of jurisprudence,⁷¹ and expresses the opinion that "a freer development of the study of the traditions of the Prophet" came only with the religious policies of the 'Abbāsids, and that only from that point was there a large-scale quest for Prophetic documentation for *ḥalāl wa-ḥarām* (the permissible and the forbidden), that is, for a legal basis for religious and social life.⁷²

Goldziher most clearly formulated his theory that Islamic jurisprudence developed primarily from *ra'y*, and not from Qur'ān and *sunna*,

⁶⁵ *Die Zāhiriten. Ihr Lehrsystem und ihre Geschichte* (Leipzig, 1884).

⁶⁶ Op. cit., p. 11.

⁶⁷ Op. cit., p. 5.

⁶⁸ Op. cit., p. 3.

⁶⁹ Op. cit., p. 11.

⁷⁰ Op. cit., p. 7.

⁷¹ Goldziher, *Muslim Studies*, ed. S. M. Stern, trans. C. R. Barber and S. M. Stern, vol. 2 (Chicago: Aldine, Atherton, 1971), pp. 73; cf. also op. cit., pp. 28–29. (All references are to the pagination of the original German edition, which appears in brackets in the margins of the English translation.)

⁷² Op. cit., p. 72.

in his article "*Fikḥ*" in the *Encyclopaedia of Islam*:⁷³ "In the oldest period of the development of Islam the authorities entrusted with the administration of justice and the conduct of religious life had in most cases to fall back on the exercise of their own *ra'y* owing to the scarcity of legislative material in the *Qur'ān* and the dearth of ancient precedents."⁷⁴ *Ra'y* was, along with *ilm*—the "knowledge of the legal decisions handed down from the Prophet and the companions"—an equally valid factor, and the *ra'y* of early authorities later became an element of *ilm*.⁷⁵ In addition to the thesis of the meagreness of both of the sources (*uṣūl*) of Islamic law later regarded as fundamental, it emerges from the statements quoted that Goldziher considered the level of jurisprudence in this time extremely poor. For him, its development actually begins only at the beginning of the second/eighth century, and really gets under way only from its second quarter. He expresses this most clearly in the article mentioned above: "In the beginning of the second century," "in Medina, Syria and the 'Irāq" "the first endeavor" was made "to evolve a finished system of Muhammedan law." "The *sporadic attempts* that were made during the 'Omayyad period in the field of Law⁷⁶ did not lead to a systematic codification of the material in existence. It was only with the rise of the 'Abbāsīd caliphate that this attempt was made, favoured and indeed even furthered by the pronounced religious character of the government."⁷⁷

On what are Goldziher's opinions, which diverge from those of his contemporaries, based? Methodologically he does not proceed very differently from Sachau, von Kremer or Snouck Hurgronje. However, he takes as his starting point not the doctrines of *uṣūl* which gained acceptance from the third/ninth century, but the conflict between the *ahl al-ḥadīth* (scholars of Tradition) and the *ahl al-ra'y* (speculative legal scholars), which reached a climax in the second

⁷³ Vol. 2 (Leiden/London 1927), pp. 101–105.

⁷⁴ Op. cit., p. 101, column 2.

⁷⁵ Op. cit., p. 101, columns 1–2.

⁷⁶ On this subject cf. also Goldziher, "Muhammedanisches Recht in Theorie und Wirklichkeit," *Zeitschrift für vergleichende Rechtswissenschaft* 8 (1889), pp. 406–423, quoted from id., *Gesammelte Schriften* (Hildesheim, 1967–1973), vol. 2, pp. 353–370, esp. pp. 356 ff., 360.

⁷⁷ Id. "*Fikḥ*," p. 102, column 2 (emphasis mine). Cf. also Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori (Princeton, New Jersey: Princeton University Press, 1981), pp. 44–47.

half of the second/eighth century, and draws from it hypothetical conclusions about the first and early second/eighth century.⁷⁸ While Sachau and von Kremer illustrate their historicized *uṣūl* theories with biographical reports, Goldziher is highly critical of them insofar as they concern the time of the Prophet and the Companions. He, like Snouck Hurgronje,⁷⁹ considers the evidence for the express recognition of *ra'y* as a source of law in this early phase apocryphal, a projection back from later times.⁸⁰ He laments the "lack of nonpartisan sources for the history of the earliest development of Muhammedan law," the "tendentious coloring of the data—which are largely invented ad hoc—upon which such [a history] could be constructed."⁸¹ Nevertheless, he does not completely eschew this material. Goldziher accepts reports about legal scholars of the generation of the *tābiʿūn* and their opinions, such as Mujāhid, Saʿīd ibn al-Musayyab, ʿAṭāʾ ibn abī Rabāḥ, Ḥammād ibn abī Sulaymān or Ibn Shihāb al-Zuhrī, who were active in the last quarter of the first/seventh century and in the first quarter of the second/eighth,⁸² or about the earlier systematizers of the second/eighth century such as Abū Ḥanīfa, al-Awzāʿī, al-Thawrī, or Mālik,⁸³ as long as they do not strike him as excessively anecdotal, polemical or anachronistic. For this purpose, he uses a multitude of works of various literary genres—not only biographical and historical—but preferred Ibn Saʿd's *Ṭabaqāt* after this work became available in print.⁸⁴

Goldziher's critical treatment of biographical-historical traditions makes his statements about the beginnings of the development of law seem more speculative and less precise than the earlier portrayals. Because of his evaluation of the sources, he can produce almost nothing about the first/seventh century and little that is definite

⁷⁸ Cf. Goldziher, *Die Zāhiriten*, Chaps. I and II.

⁷⁹ Cf. Snouck Hurgronje, "Foundations," pp. 285 f. and note 4.

⁸⁰ Cf. Goldziher, op. cit., pp. 8–10; id., "Fikh," p. 101, col. 2; 103, col. 1.

⁸¹ Goldziher, *Die Zāhiriten*, p. 12.

⁸² Cf. op. cit., p. 13; id., *Muslim Studies*, vol. 2, pp. 19–20, 38–40, 206, 210–211, 215. Id., "Fikh," p. 101, col. 2; 103, col. 1.

⁸³ Cf. Goldziher, *Die Zāhiriten*, pp. 13–16. Id., *Muslim Studies*, vol. 2, pp. 32, 67, 80, 82.

⁸⁴ *Kitāb al-Ṭabaqāt al-kabīr*, ed. E. Sachau et al. (Leiden, 1905–1917). The preference is discernible in his article "Fikh." In his earlier studies Goldziher used primarily al-Nawawī's *Tahdhīb* and al-Dhahabī's *Ṭabaqāt al-huffāz* (ed. F. Wüstenfeld, Göttingen, 1833–1834; the newer editions have the title *Tadhkirat al-huffāz*) as biographical works.

about the first half of the second. Thus it is understandable that he has the development of jurisprudence truly begin only in the second/eighth century and attributes the decisive impetus to the 'Abbāsīd dynasty, because it is only in this period that for him the first "systematic codification" of *fiqh* is demonstrable in the form of preserved works or bibliographically and biographically certain information.⁸⁵ Let us leave aside the question of whether this conclusion of causality from a chronological coincidence, on the basis of the sources he considered usable, is tenable. What is more problematic is that inferences of this kind become the standard of source criticism. That is, whether Goldziher accepts a historico-biographical tradition as trustworthy depends less on aspects of the history of transmission, form, or genre than on the compatibility of their content with his theories of development. These, however, are primarily derived from inferences from the development as displayed in fortuitously preserved later legal and *Ḥadīth* works, i.e., on the basis of data which, although secure, are incomplete. Because this procedure started a trend,⁸⁶ let us demonstrate its implications by an example from Goldziher: his ideas about the beginnings of the legal and *Ḥadīth* literature.

In his *Muhammedanische Studien* he opposes the view that the collection of *ḥadīths* was the point of departure of juridical literature, and that the law books only developed from the theoretical and practical assimilation of these sources. "The facts of literary history show us precisely the opposite line of development for this literature. The true literature of jurisprudence, which represents the result of synthetic thought, precedes *Ḥadīth* literature in terms of chronology."⁸⁷ This is demonstrated not only by the existence of the works of Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī and al-Shāfi'ī, but by the many early works on individual areas of law which are listed in the *Fihrist* of Ibn al-Nadīm (written 377/987–8) but are lost today. This statement is surprising, because it basically contradicts his own ideas about the early textuality of a portion of *Ḥadīth* transmission.⁸⁸ He harmo-

⁸⁵ Cf. Goldziher, "Fikh," p. 102, col. 2. He did not venture to make a decisive judgment on the Zaydite *Majmū' al-fikh* of Zayd ibn 'Alī (d. 122/740), ed. E. Griffini (Milano, 1919). Additionally, cf. Goldziher's comments on Mālik's *Muwatta'* in *Muslim Studies*, vol. 2, pp. 213–226.

⁸⁶ See below, pp. 18–27.

⁸⁷ Goldziher, *Muslim Studies*, vol. 2, p. 208.

⁸⁸ Cf. op. cit., pp. 9 f., 38, 194–196. Goldziher does not consider all statements about early books credible, but he definitely assumes the existence of written records as early as the first century.

nizes the existence of older *ṣuḥuf* and *kutub* of *Ḥadīth* with his theory by supposing that these should not be imagined as books in the literary sense, but as "*scripta*," collections of individual sayings intended for private use.⁸⁹ In addition to reports about early notebooks and books, Goldziher is faced with reports about initial efforts to collect *Ḥadīth* material. Since, firstly, the pious Umayyad caliph 'Umar ibn 'Abd al-'Azīz appears as their instigator, secondly, some contradictions are noticeable in the traditions about them, and, finally, the oldest appear only in al-Shaybānī's version of the *Muwatta'* and not in the other recensions, Goldziher considers these reports apocryphal.⁹⁰ However, his arguments are anything but compelling—the last one is very weak in view of the many different recensions of the *Muwatta'* to which Goldziher himself refers in other places.⁹¹

After Goldziher has ruled out the existence of collections of *Ḥadīth* in the Umayyad period, he investigates corresponding indications about the early 'Abbāsīd epoch. According to a statement of Aḥmad ibn Ḥanbal (d. 241/855–6) found in later biographical works, for instance al-Nawawī's *Tahdhīb*, Ibn Jurayj (d. 150/767) in the Ḥijāz and Sa'īd ibn abī 'Arūba in Iraq were the first to compose books organized into chapters (*awwal man ṣannaḥa l-kutub*).⁹² Contrary to the view of the Muslim "historians of literature"⁹³ Goldziher is of the opinion that these were not collections of *Ḥadīth* but books of *fiqh*, "first attempts at codices organized according to the chapters of the law, not without utilization of the appropriate transmitted material from the *sunna*."⁹⁴ He considers the information itself trustworthy; he disputes only the "literary-historical fact derived from it." He argues this mainly on the basis of the statements of Ibn al-Nadīm's *Fihrist*, which characterizes Ibn Jurayj's book as a *sunan* work, exhibiting the division into chapters which was later customary in books of *fiqh*—

⁸⁹ Op. cit., p. 196. Cf. his similar remarks on early *fiqh* books in "Fīḥ," p. 102, col. 2.

⁹⁰ Goldziher, *Muslim Studies*, pp. 210–211.

⁹¹ Op. cit., pp. 220–226.

⁹² Op. cit., p. 211.

⁹³ Ibid. It is still held by some people today; cf. Sezgin, *Geschichte des arabischen Schrifttums*, vol. 1, p. 58.

⁹⁴ Goldziher, op. cit., p. 212. Sachau was not at all certain how he should class these books, but believed that they consisted largely of traditions (cf. "Zur ältesten Geschichte," pp. 722 f.); Sprenger, on the other hand, characterizes Ibn Jurayj's book as "pandects" (cf. "Eine Skizze," p. 12.—The death date of Ibn Jurayj given here as being 707 should be corrected to 767).

a conclusion which is not convincing, since the great *Ḥadīth* collections of the *muṣannaf* type from the third/ninth century also have such chapter divisions and are sometimes also characterized as *sunan* works. The argument that legal compendia better corresponded to the practical needs of the 'Abbāsīd regime than "comprehensive works of *Ḥadīth*" does not hold either, because connections between the Meccan Ibn Jurayj and the 'Abbāsīds in Iraq are unknown and rather unlikely, and his work probably originated at a time when the 'Abbāsīds had only just come to power.⁹⁵ Until today, the *sunan*-book of Ibn Jurayj has been considered lost. In this study I will show that this is not the case, at least that Goldziher's statement "not a line," "no citations preserved"⁹⁶ is no longer accurate, and that his idea that it is a compendium of *fiqh* and not a collection of *Ḥadīth* is not confirmed by the portion which survives. It is neither the one nor the other, if one understands *Ḥadīth* exclusively as traditions from the Prophet. It is, however, to be categorized more as a work of Tradition in the broader sense than as a legal codex. It is better to drop this distinction altogether as inadequate. It is artificial, and only serves Goldziher to prove that there were collections of *Ḥadīth* which could be regarded as *Ḥadīth* literature only from the third/ninth century on. Goldziher also pursues this goal in his portrayal of Mālik's *Muwatta'* as "a *corpus juris*, and not a *corpus traditionum*"⁹⁷—an unproductive distinction, because it is both—which only serves to bring the work into harmony with the starting thesis, that in the development of legal literature "plain *fiqh*" stands at the beginning, and the *Ḥadīth* collections organized according to legal aspects stand at the end.⁹⁸

Goldziher's treatment of biographical and historical reports is certainly more critical than that of Sachau, von Kremer and Sprenger, but by too quickly dismissing those reports which do not fit into his preconstructed theories as inauthentic or fabricated he leaves himself open to criticism.

In the twenties of this century, Gotthelf Bergsträsser made two contributions to the question of the beginnings of Islamic legal history. In his reflections on the "beginnings and character of juridical

⁹⁵ On this see below, pp. 274 f.

⁹⁶ Goldziher, *Muslim Studies*, p. 213.

⁹⁷ Op. cit., pp. 213–220, esp. 213.

⁹⁸ Op. cit., pp. 219, 232.

thought in Islam," which are characterized as "provisional," he takes a methodological path which before him had been used only in rudimentary form:⁹⁹ to draw from the oldest preserved legal works, especially Mālik's *Muwatta'*, conclusions about the development which proceeded them. Bergsträsser sees in Mālik's *Muwatta'* "the most important source for the history of old Medinan, and thus also of primitive Islamic law," in addition to "reports about old Medinan decisions and teachings" in other sources, for example in the *ikhtilāf* works.¹⁰⁰ The goal of juridical thinking which is revealed in the *Muwatta'* is the pervasion of legal life with ethico-religious ideas.¹⁰¹ This presupposes on the one hand material to be pervaded, which Bergsträsser identifies as the customary law (*sunna* and *ijmā'*) of Medina, and on the other ethico-religious points of view.¹⁰² Thus the achievement of the earlier jurists did not consist in "elaborating the sparse framework of Islamic law which was created by Muḥammad to satisfy the more multiform needs of the time after his death, in part by borrowing from alien forms of law," but in "fleshing out according to a series of Islamic ethico-religious principles" "the customary law of Medina, which was not at all primitive, but was sufficient to rather high demands of social interaction and itself already contained many elements of non-Arabian origin, especially from Roman provincial law."¹⁰³ In addition, this existing law will have been further developed mainly in the practice of the administration of justice, but also through theoretical casuistry.¹⁰⁴

Bergsträsser follows this hypothetical attempt to specify the basic outlines of the early development of Islamic law in his *Grundzüge des*

⁹⁹ E.g. by Goldziher in his analysis of the *Muwatta'*. Cf. *Muslim Studies*, vol. 2, pp. 213-220.

¹⁰⁰ Cf. G. Bergsträsser, "Anfänge und Charakter des juristischen Denkens im Islam," *Der Islam* 14 (1925), p. 77. The *Majmū' al-fiqh* of Zayd ibn 'Alī published in 1919 by E. Griffini, which the editor characterized as the earliest work of Islamic law yet discovered, was rated by Bergsträsser as a later forgery which had merely been attributed to Zayd ibn 'Alī. Cf. his discussion in: *Orientalistische Literaturzeitung* 25 (1922), pp. 114-123. Similar conclusions were reached by R. Strothmann in "Das Problem der literarischen Persönlichkeit Zaid b. 'Alī," *Der Islam* 13 (1923), pp. 1-52, and W. Madelung in *Der Imām al-Qāsim b. Ibrāhīm und die Glaubenslehre der Zaiditen* (Berlin, 1965), pp. 54 f. F. Sezgin, on the other hand, votes for authenticity in *Geschichte des arabischen Schrifttums*, vol. 1, pp. 552-556.

¹⁰¹ Bergsträsser, "Anfänge," p. 79.

¹⁰² Ibid.

¹⁰³ Op. cit., p. 80.

¹⁰⁴ Ibid.

*Islamischen Rechts*¹⁰⁵ with a rather conservative overview of its development, which reproduces without citation of sources much of what was already current in the nineteenth century.

B. MORE RECENT RESEARCH

It was a quarter of a century¹⁰⁶ before another attempt to solve "the secret of the development and the origins of *fiqh*"¹⁰⁷ was published: Joseph Schacht's *The Origins of Muhammadan Jurisprudence*.¹⁰⁸ Schacht, a student of Bergsträsser and Snouck Hurgronje, followed up the methodological approach which his teacher Bergsträsser had introduced in his essay entitled "Anfänge und Charakter des juristischen Denkens im Islam." However, he takes as his point of departure not the *Muwatta'* of Mālik ibn Anas (d. 179/795–6), which originated around the middle of the second/eighth century and is considered the oldest preserved legal work, but the tractates of al-Shāfiʿī, which originated towards the end of the second/eighth century to the beginning of the third/ninth, and in which he critically analyzes the theory and practice of the jurisprudence of his time (i.e., in the second half of the second/eighth century) and attempts to place Islamic *fiqh* on methodologically firm foundations.¹⁰⁹ Mainly from the indications that this source material provides about the "ancient schools of law"—i.e., the trends of legal scholarship which were prevalent in the Hījāz,

¹⁰⁵ G. Bergsträsser's *Grundzüge des Islamischen Rechts*, revised and edited by J. Schacht (Berlin/Leipzig, 1935), pp. 8–19. The first chapter, "Überblick über die islamische Rechtsgeschichte," dates from about the year 1925 (cf. the preface, p. VII).

¹⁰⁶ The subject was touched upon in the intervening period. Cf. for instance, C. A. Nallino, "Diritto musulmano," *Nuovo Digesto Italiano* 4 (1938), pp. 1109–1116, reproduced in id., *Raccolta di scritti editi e inediti*, vol. 4 (Rome 1942), pp. 1–16, esp. pp. 6–9 or R. Hartmann, *Die Religion des Islam* (Berlin, 1944), pp. 51 f.; but new aspects did not come to light. Muslim research on legal history in the first half of the 20th century and the influence exercised on it by western scholarship is a separate topic which requires separate treatment. Stimuli from it scarcely reached non-Muslim scholarship.

¹⁰⁷ "Le mystère de la formation et des origines du *fiqh*," the title of an essay by G.-H. Bousquet, appearing in 1947, which comes to the conclusion that the origins of Islamic jurisprudence remain a mystery (in: *Revue Algérienne, Tunisienne et Marocaine de Législation et de Jurisprudence* 1947, pp. 66–81, esp. pp. 80–81).

¹⁰⁸ Oxford, 1950.

¹⁰⁹ At the same time—independently of Schacht—the research of Robert Brunschvig was moving in a similar direction in his essay "Polémiques médiévales autour du rite de Mālik," *al-Andalus* 15 (1950), pp. 377–435.

Iraq and Syria in the second half of the second/eighth century—and from the older sources which have been preserved from this period, such as the two recensions of Mālik's *Muwatta'* and the *Āthār* of Abū Yūsuf (d. 182/798–9) and al-Shaybānī (d. 189/805), Schacht reconstructs “the development of legal theory.” That is, he pursues the question of which sources of law the “ancient schools of law” take as a basis and to what extent, and compares al-Shāfi‘ī's conception of the subject. Schacht extrapolates the lines of development thus produced back approximately to the beginning of the second/eighth century, partially on the basis of indications which he draws from sources of the first half of the second/eighth century like the *Risāla fī l-ṣaḥāba* of Ibn al-Muqaffa' (d. ca. 140/757–8)¹¹⁰ or from still older texts like the dogmatic tractate of al-Ḥasan al-Baṣrī (d. 110/728–9) written at the request of the Umayyad caliph ‘Abd al-Mālik,¹¹¹ less frequently from later historical and biographical works, and sometimes speculatively. The most important results of this part of Schacht's investigation have to do with the juridical relevance of the different kinds of Tradition and the conception of the *sunna* in the “ancient schools of law” of the second half of the second/eighth century. Their adherents did not yet recognize the absolute priority of Prophetic *ḥadīths* which al-Shāfi‘ī demands, but argued mainly with traditions of Companions and Successors.¹¹² Thus it sometimes happened that they neglected or interpreted away traditions of the Prophet in favor of systematic conclusions or traditions of the Companions.¹¹³ Even a more or less clearly manifested resistance against *ḥadīths* of the Prophet can be demonstrated.¹¹⁴

From these facts Schacht draws historical conclusions which are methodologically problematic. For instance, he establishes that among the Iraqi traditions of the Companions predominate in terms of quantity, and that these are regarded as equal in value to *ḥadīths* of the Prophet. From this he concludes that reference to the generation of the Companions is the older procedure.¹¹⁵ He further observes that for the Iraqi's the traditions of the Successors are at the same

¹¹⁰ Cf. Schacht, *Origins*, pp. 58 f., 95, 102 f.

¹¹¹ Cf. op. cit., pp. 74, 141.

¹¹² Op. cit., p. 20.

¹¹³ Op. cit., p. 21.

¹¹⁴ Op. cit., pp. 40 ff.

¹¹⁵ Cf. op. cit., pp. 29–30.

level as the traditions of the Companions, and are even cited more frequently. From this he concludes that reference to the Successors preceded reference to the Companions.¹¹⁶ Thus he succeeds in constructing a schema of development in which reference back to the Successors is the earliest, and that to the Prophet the latest, stage. The conclusion that the lesser quantity of the textual attestations is an indicator of the lesser age of their use or of the texts themselves appears, in view of the fact that—as Schacht expressly emphasizes—they were considered of equal value, not to be plausible. The opposite could just as well be true. Quantity and age do not necessarily coincide.

Schacht notices a defensive posture of the ancient schools toward traditions of the Prophet, and sees in it “the natural reaction of the early specialists on law against the introduction of a new element.” From this he concludes that “the traditions from the Prophet do not form, together with the Koran, the original basis of Muhammadan law, but an innovation begun at a time when some of its foundations already existed.”¹¹⁷ This conclusion contradicts his own statements that the opposition of the ancient schools was not directed at the traditions of the Prophet as such, but at those which were newly appearing, at the recent growth of *Hadith*, which threatened to destroy the “living tradition” of the schools.¹¹⁸ Their reaction is understandable only if at the same time the demand was raised that the traditions of the Prophet must have superior authority. It is not reference to traditions of the Prophet which is the innovation, but their demand for recognition. The enmity toward newly appearing *hadiths* which were not compatible with the existing doctrines says nothing about the role which *hadiths* per se played in the schools of law. Schacht is surely right when he writes, “It is not the case, as has often been supposed *a priori*, that it was the most natural thing, from the first generation after the Prophet onwards, to refer to his real or alleged rulings in all doubtful cases.”¹¹⁹ Probably no one—even in the ranks of the Muslim scholars—has ever seriously supported such a universal statement. But neither the observation that *hadiths* of the Prophet as such only achieved primacy as a source of law rather late, nor

¹¹⁶ Cf. op. cit., pp. 32–33.

¹¹⁷ Op. cit., p. 40.

¹¹⁸ Op. cit., p. 60.

¹¹⁹ Op. cit., p. 57.

the fact that in the second/eighth and third/ninth centuries the number of the Prophetic traditions greatly swelled, justify the conclusion that no *ḥadīths* of the Prophet were significant in the beginnings of Islamic jurisprudence. Through such exaggerated conclusions, correct observations become errors.

Schacht's theory produced in this way can be summarized as follows: The "living tradition" of the ancient schools, which was originally anonymous and has been secondarily and arbitrarily assigned to certain personalities of the generation of the Successors,¹²⁰ was largely based on individual thought (*ra'y*); this "living tradition" was put under the aegis of Companions only in a second stage; and this entire system was finally disturbed and influenced by traditions of the Prophet which were brought into circulation by "traditionists" in the middle of the second/eighth century.¹²¹ Schacht attempts to refine his theory by an investigation of the growth of traditions. One goal of this enterprise was supposed to be the development and testing of a method making it possible to reconstruct the development of legal doctrine in the pre-literary phase, for which the traditions are the sole source.¹²² Methodologically, Schacht proceeds by attempting to determine when, and attributed to which authorities, specific texts or opinions first appear in the legal works and the Tradition collections of the second half of the second/eighth century and the third/ninth century. Starting from the assumption that legal traditions were adduced as arguments as soon as they came into circulation, he concludes that traditions, as long as they produced no precipitate which was literary or datable through the *isnād*, were unknown, i.e., did not exist.¹²³ This is a *conclusio e silentio*. Schacht is aware of the general problems surrounding such a conclusion, but in this case considers it safe.

As the result of this investigation it emerges that all three kinds of traditions, those of the Prophet, the Companions, and the Successors, exhibit a process of growth between 150/767 and 250/864, which in the case of the Prophetic *ḥadīths* was particularly strong in the

¹²⁰ Cf. op. cit., pp. 84 ff., 113 f. This, too, is not a necessary deduction from the sources used. The concept of the "living tradition" is a construct of Schacht's which pretends a greater doctrinal homogeneity of the "ancient schools" than is demonstrable, at least for the first half of the second/eighth century.

¹²¹ Cf. op. cit., p. 138.

¹²² Ibid.

¹²³ Op. cit., pp. 140 f.

fifty years between al-Shāfi'ī and the classical collections, which Schacht attributes to the joint influence of al-Shāfi'ī and the traditionists.¹²⁴ Since he postulates the same growth process for the pre-literary period as well,¹²⁵ he comes to the conclusion that the legally relevant traditions of the Prophet and the generation of the *ṣaḥāba* are to be regarded as generally fictive, and the traditions of the *tābi'ūn* as largely inauthentic.¹²⁶ Although the growth of Tradition in this period is indisputable, in view of the many uncertainties which adhere to the *e silentio* procedure this conclusion too, in its generality, must be provided with several question marks. Among the interfering factors which Schacht does not take sufficiently into account are the following: 1. Not all the texts that Schacht compares are elements of a legal discussion which would necessarily demand the naming of all usable traditions. 2. A number of compilations are only textual selections. 3. The volume of the surviving sources is only a fraction of the originally existing stock. 4. Given the relatively prolonged regionally separated development of jurisprudence and Tradition, which—as Schacht himself assumes and this work will show—still prevailed in the first half of the second/eighth century, the lack of a text in a regional source says little as long as we have no contemporary sources from the other centers.¹²⁷

Another central element of Schacht's argumentation has to do with the meaningfulness of the chains of transmitters with which legal traditions are generally provided. Schacht claims that there are no grounds to assume that the *regular* practice of using *isnāds* is earlier than the beginning of the second/eighth century.¹²⁸ However, this is not meant as cautiously as it is formulated, because he adds that the idea that the origin of the *isnād* is in the last quarter of the first/seventh century is untenable. It is not clear upon what this absolute certainty is based. The regular practice of the use of *isnāds* at the beginning of the second/eighth century does not preclude an origin at the end of the first/seventh century. On the contrary! Both

¹²⁴ Op. cit., pp. 140, 150, 151.

¹²⁵ Op. cit., p. 149.

¹²⁶ Op. cit., pp. 149, 150, 151, 176.

¹²⁷ It is true that Schacht assumes a "common ancient doctrine" and an influence by Iraq on the Hijāz, but he nevertheless presumes separate developments in the individual centers. Cf. op. cit., pp. 214–223 and *passim*. Cf., however, also the criticisms of Fück and Azami; see below, pp. 28 f., 39 f.

¹²⁸ Cf. op. cit., p. 37. Emphasis mine.

pieces of evidence Schacht adduces tend to speak in favor of an origin in the first/seventh century. Only his prejudice that there were not yet any *isnāds* in the first/seventh century induces him to interpret them otherwise.

According to a statement of Ibn Sīrīn which he cites, the use of *isnāds* began as a result of "the *fitna*."¹²⁹ Because an *isnād* in the first/seventh century is unthinkable for Schacht, he interprets "the *fitna*" as the murder of al-Walīd ibn Yazīd in the year 126/744, along with the subsequent events which led to the fall of the Umayyads. Since this conflicts with the fact that Ibn Sīrīn died already in 110/728–9, he declares the attribution to Ibn Sīrīn to be fabricated.¹³⁰ He thus assumes that the tradition originally had another author and that someone was later interested in transferring the origin of the *isnād* into an earlier time, not the end of the Umayyad period, and for this reason fathered it on Ibn Sīrīn. He does not even consider as a conceivable possibility that this observation could really come from Ibn Sīrīn and that "*fitna*" perhaps means an episode other than the murder of al-Walīd, for example one of the great *fitnas* of the first/seventh century, which would actually be the more natural interpretation.¹³¹ Even if the tradition were forged, the forger would have expressed by the reference to Ibn Sīrīn that he meant a *fitna* of the first/seventh century. The claim that only the name Ibn Sīrīn is fabricated is arbitrary; it would only be defensible if other clear indications spoke for the development of the *isnād* toward the end of the Umayyad period. Schacht's other piece of evidence, however, does not do this either: the tradition that Sa'īd ibn Jubayr (d. 95/713–4) rebuked a listener who asked him for an *isnād* for a tradition.¹³² It implies only that at the end of the first/seventh century there were people who demanded *isnāds*—consequently, there must also have been people who customarily named *isnāds*—, but that Sa'īd ibn Jubayr, for unspecified reasons, (once?) refused this.

¹²⁹ This note is found in *Hadīth* collections of the third/ninth century. Cf. Schacht, op. cit., p. 36.

¹³⁰ Op. cit., pp. 36 f.

¹³¹ Cf. J. Robson, "The *Isnād* in Muslim Tradition," *Transactions of the Glasgow University Oriental Society* 15 (1953–54), pp. 21 f. M. M. Az[al]mi, *Studies in Early Hadīth Literature* (2nd ed., Beirut, 1978), p. 216 f. G. H. A. Juynboll, "The Date of the Great *Fitna*," *Arabica* 20 (1973), pp. 142–59. J. van Ess, "Das *Kitāb al-irgā*" des Ḥasan b. Muḥammad b. al-Hanafīyya," *Arabica* 21 (1974), pp. 23, 27 f.

¹³² Cf. Schacht, *Origins*, p. 37, note 1.

It cannot be interpreted to mean that no *isnāds* existed in the first/seventh century or that the custom was not generally prevalent. The examples show that Schacht's conclusions must be approached with caution, because they have a tendency toward exclusivity which results from preformed opinions.

Schacht considers the *isnāds* of traditions highly arbitrary constructs which are often very carelessly cobbled together. The transmitters, according to him, were sometimes chosen at random. He derives this assumption from the observation that alternative names appear in otherwise identical *isnāds* of identical or similar texts, "where other considerations exclude the possibility of the transmission of a genuine old doctrine through several persons."¹³³ What the "other considerations" are specifically, one does not learn, although it would actually be important to know why, for instance, two students of the same teacher or two different members of the same family should not be in a position to pass on traditions about them almost identically.

The *isnāds* were—according to Schacht—initially rudimentary, were gradually improved, and achieved their complete and unbroken form only in the classical collections of the third/ninth century. This backward growth of the *isnāds* is a process related to the projection of teachings back to earlier and thus higher authorities. Thus the general rule applies: The most complete *isnāds* are the latest.¹³⁴ This leads to the conclusion: As a result of the artificial growth of the *isnāds* and of the ballooning of the number of traditions in the pre-literary and literary periods, neither the legally relevant traditions from the Prophet nor those of the *ṣahāba* are to be considered authentic. The latter are thus also not responsible for the extensive forging of *ḥadīths*.¹³⁵ Here, too, the problem presents itself whether correct observations cannot become false through generalization. Can one—or should one, for methodological reasons—rule out the possibility that there were complete *isnāds* from the beginning? In Schacht's earliest sources incomplete and unbroken *isnāds* are found side by side. The fact that holes were later filled and invented texts were supplied with complete chains of transmission does not permit the conclusion that all *isnāds* were originally discontinuous, and in consequence all complete chains of transmission are forged.

¹³³ Cf. op. cit., p. 163.

¹³⁴ Op. cit., pp. 163–165.

¹³⁵ Op. cit., pp. 169, 170.

Although Schacht considers the chains of transmission to be wholly or partially fabricated, he uses the *isnāds* to establish from what time a tradition came into circulation. In this context he refers to the curious phenomenon that numerous traditions which are preserved with several different *isnāds* have one or several common transmitters—Schacht calls them “common links.” The earliest common link in the *isnāds* of a tradition marks—according to Schacht—the point in time at which, at the earliest, a text was brought into circulation, whether by the common link transmitter himself or by anonymous persons who used his name.¹³⁶ Since the early common links belong predominantly to the first half of the second/eighth century, Schacht concludes that the origin of the greater part of the legal traditions present at the beginning of the literary period (ca. 150/767) is to be placed in this period.¹³⁷ That this supplies a sure criterion for dating, as Schacht believes, is to be doubted.¹³⁸ Firstly, it is inoperative—according to his own theory about the development of the traditions of the Prophet—in the case of all texts which are attested only in the classical collections and not earlier, since these texts and their chains of transmitters were fabricated only in the third/ninth century. This consequence was later taken into consideration too little. Secondly: The fact that there can be several common links at different stages of the process of transmission and that numerous common links are known as collectors or compilers of works which, among other things, contained traditional material—for example al-Zuhri, Ibn Jurayj, Ibn ‘Uyayna¹³⁹—at least permits the additional possibility of explaining the common link phenomenon as a result of the activities of these people as collectors and the spread of their compilations by systematic teaching. That is, their material would generally be earlier and might come from the sources named. This does not preclude the possibility that they also occasionally produced forgeries or were taken in by them.

As the most important result of his investigation of the development of legal theory and legal traditions Schacht emphasizes that

¹³⁶ Op. cit., pp. 171–175. The Prophet or a *ṣaḥābī* are—according to Schacht—fabricated as a common link and are excluded from consideration for dating.

¹³⁷ Op. cit., pp. 163, 176.

¹³⁸ Cf. M. Cook, *Early Muslim Dogma. A Source Critical Study* (Cambridge, 1981), pp. 107 ff.

¹³⁹ Cf. op. cit., pp. 174 f.

the beginnings of Islamic jurisprudence lie essentially in the waning Umayyad period, i.e. in the first three decades of the second/eighth century. The point of departure is represented not by the Qur'ān and the *sunna* of the Prophet, but by the legal practice of this time, which cannot be regarded as specifically Islamic and which was Islamicised by the "religious specialists."¹⁴⁰ As a consequence, Schacht cannot identify himself with the conventional picture of the development of the Islamic schools of law in the pre-literary phase which is drawn by the Arabic sources—especially in legal theory and biography—since the third/ninth century and was to a great extent adopted by western scholarship. Eschewing these sources, he develops a counter-outline based purely on the basis of the early legal works and collections of traditions which were at his disposal. The guiding methodological principle is the idea that all statements about the pre-literary period which are not verifiable are subject to the suspicion of having been forged or falsely attributed to someone. Verification can be attempted by the methods developed by him, such as consideration of the stages of growth of traditions, the common link, and so forth.

Schacht's picture of the development of Islamic jurisprudence in the pre-literary period looks like this:

1. The Iraqis: The teachings attributed to their early authorities who lived in the first/seventh century, such as 'Abd Allāh ibn Mas'ūd and his companions, Shurayh, al-Ḥasan al-Baṣrī, al-Sha'bī and Ibrāhīm al-Nakha'ī, are generally not authentic.¹⁴¹ The first who can be considered to be fully historical is Ḥammād ibn abī Sulaymān (d. 120/738), the teacher of Abū Ḥanīfa (d. 150/767). With the latter, the Kufan school of law enters the literary phase.¹⁴² His contemporary al-Thawrī (d. 161/777–8) is an independent representative of the ancient school of Kufa whose views are only fragmentarily preserved.¹⁴³

2. Medinans: The so-called seven legal scholars of Medina, who died around 100/718–9 (± 10) are not a group which was established early. The names vary. The information about their teachings is

¹⁴⁰ Op. cit., pp. 190–193. These views were already held by Bergsträsser and Goldziher (see above, pp. 12, 17), many of whose ideas in *Ḥadīth* criticism Schacht adopted.

¹⁴¹ Op. cit., pp. 229–236.

¹⁴² Op. cit., pp. 237–239.

¹⁴³ Op. cit., p. 242.

largely inauthentic. The "living tradition" of Medina is originally anonymous.¹⁴⁴ Only starting with al-Zuhrī (d. 124/742) can authentic Medinese doctrines be established with some certainty. Of Mālik's traditions from al-Zuhrī, however, at best only his answers to questions and the "heard" traditions can be considered authentic. Thus, in many traditions he was introduced into the *isnād ex post facto*.¹⁴⁵ The same is true of Rabī'a ibn abī 'Abd al-Raḥmān (d. 136/753-4) and Yaḥyā ibn Sa'īd al-Anṣārī (d. 143/760-1). Schacht regards the latter as a forger. All three were teachers of Mālik (d. 179/795-6), with whom the Medinan school entered its literary period.¹⁴⁶

In both centers there was an oppositional minority with a strong inclination for the material of the traditionists, who were trying to change the prevailing teachings with traditions of the Prophet and the Companions.¹⁴⁷ The intellectual center which Islamic jurisprudence took as its point of departure, and which played the role of a kind of intellectual pioneer, was not Medina—as is usually assumed—, but Iraq.¹⁴⁸ The Qur'ān was not generally the first and pre-eminent basis of early legal theory, but was in many cases adduced as evidence only secondarily.¹⁴⁹ Schacht's ideas about the origins and the development of Islamic jurisprudence are diametrically opposed to the Muslim view, which in its fundamentals—with the exception of Goldziher—had also been adopted by the older research in Islamic studies.

Schacht finishes his study with the words, "I trust that the sketch by which I have tried to replace it [the conventional picture of the development of Muhammadan jurisprudence] comes nearer to reality. Beyond the detailed evidence on which this book is based, the coherence of the picture which emerges ought to confirm its essential outlines."¹⁵⁰ In view of the problematic premises and methods on which his portrayal is based, this will have to be provided with a question mark.

The immediate echo of Schacht's book was predominantly positive to enthusiastic. H. Ritter: "[...] This thorough methodical and

¹⁴⁴ Op. cit., pp. 243-246.

¹⁴⁵ Op. cit., p. 246.

¹⁴⁶ Op. cit., pp. 247-248.

¹⁴⁷ Op. cit., pp. 240 ff., 248 f.

¹⁴⁸ Op. cit., pp. 222 f.

¹⁴⁹ Op. cit., pp. 324-327.

¹⁵⁰ Op. cit., p. 329.

highly original book, has advanced considerably our knowledge of the early development of one of the most important branches of the history of Islamic thought and has established a methodical base for investigations of this kind."¹⁵¹ H. A. R. Gibb: "[. . .] What emerges is no theoretical reconstruction; on the contrary, the pattern of events is so consonant with the general development of the early Islamic society and so adequately documented that it will become the foundation of all future study of Islamic civilization and law, at least in the West." "[. . .] His main structure is not likely to be impugned on any but *a priori* grounds."¹⁵²

Similar unreserved endorsement was expressed by, for instance, the *Ḥadīth* specialist J. Robson,¹⁵³ the Qur'ān experts A. Jeffery¹⁵⁴ and R. Paret,¹⁵⁵ the *kalām* and *sīra* authority W. Montgomery Watt,¹⁵⁶ the expert on pre-Islamic Arabia G. Ryckmans,¹⁵⁷ and J. N. D. Anderson,¹⁵⁸ an authority on Islamic law and the legal systems of the modern Islamic countries.

The hymns of praise of this select chorus of fellow specialists were jarred by only a few voices like those of A. Guillaume¹⁵⁹ and J. W. Fück.¹⁶⁰ That these should be precisely two experts on Ibn Ishāq is no coincidence, because their principle objections rest upon the demonstration that several of Schacht's conclusions cannot be reconciled with evidence in Ibn Ishāq's *Sīra*, which is earlier than the legal sources used by Schacht. Fück dealt most thoroughly with Schacht's *Origins* and presented his criticism unvarnished. Several of his remarks and assessments are worth quoting. Fück observes that Schacht constructs from his analysis of the development of *uṣūl* under al-Shāfi'ī and his predecessors and of their method of construction of juridical concepts and argumentation a *developmental progression*¹⁶¹

¹⁵¹ *Oriens* 4 (1951), p. 312.

¹⁵² *Journal of Comparative Legislation and International Law*, 1951, p. 114.

¹⁵³ *Muslim World* 42 (1952), pp. 61-63.

¹⁵⁴ *Middle East Journal* 5 (1951), pp. 392-394.

¹⁵⁵ Cf. "Die Lücke in der Überlieferung über den Urislam," in: *Westöstliche Abhandlungen: Rudolf Tschudi zum 70. Geburtstag*, ed. by F. Meier (Wiesbaden, 1954), pp. 147-153.

¹⁵⁶ *Journal of the Royal Asiatic Society*, 1952, p. 91.

¹⁵⁷ *Le Muséon* 65 (1952), pp. 314 f.

¹⁵⁸ *Die Welt des Islams*, 2 (1953), p. 136.

¹⁵⁹ *Bulletin of the School for Oriental and African Studies* 16 (1954), pp. 176 f.

¹⁶⁰ *Bibliotheca Orientalis* 10 (1953), pp. 196-199. A French translation by J. Cantineau appeared in: *Hespéris* 45 (1958), pp. 333-338.

¹⁶¹ Emphasis mine.

“which leads from primitive forms of law, rough analogical conclusions and simple maxims through abstract principles of law to ever more complicated concepts, until it finds its crowning conclusion at the end of the second/eighth century in al-Shāfi‘ī’s system. Schacht equates the stages of this developmental progression with the historical course of Islamic jurisprudence in the second/eighth century and thus produces a standard for the chronological placement of the legal principles, decisions, and doctrines transmitted in the sources, while he declares inauthentic the reports which will not fit into this schema.”¹⁶² Schacht’s dating of traditions with the help of the *e silentio* procedure is not compelling and in a number of cases is refutable through material in Ibn Ishāq’s *Sīra*.¹⁶³ The same is true of his thesis of the late development of the *isnād*.¹⁶⁴ In the evaluation of chains of transmission his hypotheses about the development of juridical thought lead him to false interpretations or the unjustified rejection of statements about sources. Fück demonstrates this on the example of Schacht’s statements about “the golden chain” Mālik—Nāfi‘—Ibn ‘Umar, and he comes to the conclusion: “If the traditions of Nāfi‘ thus show an advanced stage of juridical thinking, they prove only that Islamic jurisprudence is older than Schacht wishes to admit.”¹⁶⁵ Fück puts Schacht’s theory on a level with Lammens’ theses about the *sīra*: “It, too, rests on the inadmissible generalization of individual observations and fails [. . .] because of its incompatibility with the sources.”¹⁶⁶

Schacht subsequently composed several outlines of legal history, all of which were based—for the early period—on his book *The Origins of Muhammadan Jurisprudence*.¹⁶⁷ A further development or substantial revision of the theses put forward there is not observable in

¹⁶² Op. cit., p. 197, col. 1.

¹⁶³ Op. cit., p. 197, col. 2; 198, col. 1.

¹⁶⁴ Op. cit., p. 198, col. 2.

¹⁶⁵ Op. cit., p. 198, col. 1.

¹⁶⁶ Op. cit., p. 199, col. 1.

¹⁶⁷ “Le droit musulman: solution de quelques problèmes relatifs à ses origines,” *Révue Algérienne, Tunisienne et Marocaine de Législation et de Jurisprudence*, 1952, pp. 1–13. *Esquisse d’une histoire du droit musulman* (Paris, 1953). “Pre-Islamic Background and Early Development of Jurisprudence” and “The Schools of Law and Later Developments of Jurisprudence” in: M. Khadduri/H. J. Liebesny (eds.), *Law in the Middle East*, vol. 1: *Origin and Development of Islamic Law* (Washington, 1955), pp. 28–84. *An Introduction to Islamic Law* (Oxford, 1964) (Historical Section). “Fikḥ” in: *Encyclopaedia of Islam*, Second Edition, vol. 2, pp. 886–891, esp. pp. 887 ff. “Law and Justice,” in: *The Cambridge History of Islam*, vol. 2B, pp. 539–568.

them. His portrayal of the beginnings of Islamic jurisprudence became a standard work in non-Muslim legal and Islamic studies. The *Origins*—although a book which demands the highest degree of motivation and endurance from the reader—has been reprinted regularly since its appearance,¹⁶⁸ even in a paperback edition. Beyond this, as the author of articles on legal subjects in the second edition of *The Encyclopaedia of Islam*,¹⁶⁹ Schacht managed to ensure the greatest possible diffusion for his theories. Despite the extensive acceptance with which Schacht's study was received in western scholarship, in the case of some scholars a certain ambivalence in their evaluation is noticeable. H. A. R. Gibb, who in his review characterizes Schacht's central conclusions as unassailable, does revise the chapters on *Ḥadīth* and *sharī'a* in the second edition of his book *Muhammedanism*¹⁷⁰ "in the light of recent studies,"¹⁷¹ but the changes do not indicate that he completely identifies with them,¹⁷² at least as far as the development of *Ḥadīth* and the evaluation of its historical relevance are concerned.¹⁷³ The same is true of J. Robson, who in an essay appearing shortly after Schacht's book does still unreservedly endorse his conclusions—"impossible to discover an authentic saying of the Prophet in the Tradition"¹⁷⁴—, but only two years later distances himself from them and registers significant doubts about Schacht's statements about the genesis of *isnād* and *Ḥadīth*: "There seems to be some genuine early material."¹⁷⁵

S. G. Vesey-Fitzgerald also indicates an ambivalence toward Schacht's theses on the worth of *ḥadīths* in an essay which appeared together with an outline of the early development of law written by Schacht.¹⁷⁶

¹⁶⁸ Four editions: 1950, 1953, 1959 and 1967. Reprints: 1975, 1979.

¹⁶⁹ In the first edition, among others, the articles "*Shari'a*" and "*Uṣūl*" come from him. In the second edition he revised Goldziher's contribution "*Fikḥ*." A list of all of Schacht's publications is found in *Studia Islamica* 31–32 (1970), pp. xv f.

¹⁷⁰ The first edition appeared in 1949, the second in 1953.

¹⁷¹ Note to the Second Edition, p. vii.

¹⁷² This has been pointed out by D. Forte, who gives some examples which could be multiplied, in: "Islamic Law: The Impact of Joseph Schacht," *Loyola of Los Angeles International and Comparative Law Annual* 1 (1978), pp. 1–36, esp. 16–18.

¹⁷³ Cf. *Mohammedanism* (3rd ed., 1969), pp. 49 ff., 55 f., 58 f.

¹⁷⁴ Cf. "Muslim Tradition: The Question of Authenticity," *Manchester Memoirs* 93 (1951–1952), p. 102.

¹⁷⁵ Cf. "The *Isnād* in Muslim Tradition," *Transactions of the Glasgow University Oriental Society* 15 (1953–1954), p. 25.

¹⁷⁶ "Nature and Sources of the *Shari'a*," in: M. Khadduri/H. J. Liebesny (eds.), *Law in the Middle East*, vol. 1: *Origin and Development of Islamic Law* (Washington, D.C., 1955), pp. 85–112.

Vesey-Fitzgerald assumes that there was already fabrication of *ḥadīths* from the earliest period, the generation of the Companions, and that later as well much was projected back into the early period, "but the unreal clarity with which this process invests these traditions does not always preclude a foundation in fact."¹⁷⁷ What he means by this he demonstrates on the example of the tradition of Mu'ādh, which had already been categorized as inauthentic by Snouck Hurgronje and Goldziher.¹⁷⁸ According to him it has a genuine historical nucleus, which was later enlarged by additions; the fact that the Prophet delegated a man as *qāḍī* and agreed with him on appropriate rules of conduct can be inferred from it, only its wording is unmistakably a projection into the past. "It is the formalism rather than the substance of the tradition which lays it open to suspicion, and also its attempt to create a legal theory out of what can hardly have been more than administrative advice."¹⁷⁹ This was an interpretation which—despite Goldziher—was current in the first half of the twentieth century,¹⁸⁰ and which Schacht considered himself to have just refuted.¹⁸¹ On the other hand, he states that Schacht has given "very strong reasons" for the thesis that at the time of the founders of the Sunnī schools of law the forgery of traditions was pursued on such a scale that no purely legal tradition of the Prophet can be considered immune to suspicion. "The new evidence revealed by Schacht's researches raises the strong suspicions of previous scholars to the level of proof."¹⁸²

The objections of Erwin Gräf tend in a similar direction. In his *Untersuchung zur Entwicklung der islamischen Jurisprudenz*,¹⁸³ which appeared in 1959, he writes: "After the pathbreaking works of Goldziher, Snouck-Hurgronje and J. Schacht have definitively destroyed naive credulity toward the statements of Islamic tradition and thus opened the way for true historical consideration, there is now a danger,

¹⁷⁷ Op. cit., p. 93.

¹⁷⁸ See above p. 13, notes 79, 80.

¹⁷⁹ Op. cit., p. 93.

¹⁸⁰ Cf. D. Santillana, *Istituzioni di Diritto Musulmano Malichita*, vol. 1 (Rome, 1926), p. 39. J. Fück, "Die Rolle des Traditionalismus im Islam," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 93 (1939), p. 19.

¹⁸¹ Cf. Schacht, *Origins*, p. 4.

¹⁸² Vesey-Fitzgerald, op. cit., p. 94.

¹⁸³ Thus the subtitle. The main title: *Jagdbeute und Schlachtvieh im islamischen Recht* (Bonn, 1959).

which already becomes discernible with the masters of this area of research, that source criticism may grow into a misleading scepticism toward the sources and an overly great confidence in one's own exegetical judgment. If this method were to be carried through one-sidedly, our sources would disintegrate more and more into an ultimately uncontrollable force-field of multiple tendencies."¹⁸⁴ Contrary to Schacht, Gräf is of the opinion that the formation of *Ḥadīth* in jurisprudence was closed, at the latest, at the time of the founders of the schools—i.e., Mālik, al-Shaybānī, al-Shāfi'ī. The process of the genesis of legally relevant *ḥadīths* is more complicated than Schacht assumes and has a longer pre-history, which reaches back into the first/seventh century. It is necessary—according to Gräf—to differentiate between the literary form and the content: "Seen from the point of view of literary form, all *ḥadīths* are late, revised according to the needs of *fiqh*." "This literary-historical judgment, however, does not yet say anything about the age of the content."¹⁸⁵ However, Gräf does not believe that the authenticity or inauthenticity of all components of a *ḥadīth*—exceptions aside—can be established with certainty. Thus, for the moment one must limit oneself to the observation: "The development of the Islamic jurisprudence of the 150 years between the Qur'ān and the first works of *fiqh* is reflected in the *Ḥadīth*."¹⁸⁶ To which individual early jurists the decisive advances in this progress are owed, cannot be said exactly. Gräf does agree with Schacht that rationales for judgments were regarded as necessary only relatively late, but he thinks that the quest for authorities which began in this way leads through pure practice into jurisprudence already in the second half of Umayyad rule (ca. 80/700–130/747–8).¹⁸⁷ Both—Gräf and Schacht—start largely from the same sources in making their judgments, but Gräf's is an impression from his work, not a concrete proof which Schacht claims for his conclusions.

Starting out from an approach like those of Vesey-Fitzgerald and Gräf¹⁸⁸—the distinction between literary form and content—, Noel Coulson attempted to evade and take the sting out of Schacht's posi-

¹⁸⁴ Op. cit., pp. 1 f.

¹⁸⁵ Op. cit., p. 338.

¹⁸⁶ Ibid., p. 338.

¹⁸⁷ Cf. E. Gräf, "Vom Wesen und Werden des islamischen Rechts," *Bustan* 60 (1960), pp. 10–21, esp. p. 11.

¹⁸⁸ He mentions, however, neither of them.

tion. It is true that in *A History of Islamic Law*¹⁸⁹ he declares Schacht's thesis about the origins of Islamic law to be "irrefutable in its broad essentials"¹⁹⁰ and adopts his schema of historical development in its broad outlines and in many of its details: the role of legal practise and the significance of the activities of the *qāḍīs* as a preliminary stage; the genesis of a jurisprudence at the beginning of the second/eighth century as a reaction and counter-movement on the part of "pious scholars" against prevalent practices; the development of "the early schools of law" with their concepts and methods which fuelled the process of the Islamic revision of law; and al-Shāfi'ī's decisive role in the victory of the idea that the *sunna* of the Prophet embodied in the traditions from him—must have superior authority in legal determinations. However, he attempts to do away with the discontinuity arising in Schacht's theory of legal development between the activities of Muḥammad and the "early legal schools" which only came into being a hundred years later. He assumes that the substance of many traditions from the Prophet and the first caliphs—especially those traditions dealing with every-day legal problems that inevitably emerged from Qur'ānic regulations—, despite their fictive *isnāds* and possible later recasting, have authentic nuclei and were preserved through originally oral transmission until they were gathered into the stock of traditions of the early schools of law.¹⁹¹ From this he derives the methodological principle: "An alleged ruling of the Prophet should be tentatively accepted as such unless some reason can be adduced as to why it should be regarded as fictitious"¹⁹²—a method which is diametrically opposed to Schacht's of regarding all traditions as fabricated until the contrary is proven. It allows Coulson to extend the legal development of the second/eighth century backward, and to describe the legal situation in Muḥammad's lifetime not only through the Qur'ān but through—what he conjectures to be—authentic traditions of the Prophet¹⁹³ and the epoch of the "*Rāshidūn*" and the Umayyad caliphs on the basis of legal verdicts ascribed to them or to their governors and *qāḍīs*.¹⁹⁴ Thus,

¹⁸⁹ Edinburgh, 1964.

¹⁹⁰ Coulson, *op. cit.*, p. 4.

¹⁹¹ *Op. cit.*, pp. 64 f.

¹⁹² *Op. cit.*, p. 65.

¹⁹³ *Cf. op. cit.*, p. 22.

¹⁹⁴ *Cf. op. cit.*, pp. 23–35.

he allies himself with the ideas of earlier research. Coulson relies essentially on the source material set forth by Schacht in his *Origins*.¹⁹⁵

Schacht reacted to Coulson's book extremely sharply. In a twelve-page review with the indicative title "Modernism and Traditionalism in a History of Islamic Law,"¹⁹⁶ he accuses him of "minimizing" the "accepted conclusions" of "modern scholarship," which were based primarily on his—Schacht's—own researches and those of R. Brunschvig, and of undermining them with assumptions that were sometimes "fanciful" and sometimes "old-fashioned."¹⁹⁷ Schacht largely contents himself with noting Coulson's divergences from his teachings in schoolmasterly fashion and dismissing them as "incorrect," "fanciful," "quite out of date," "misunderstood," or "positively wrong," or simply contradicting him. However, on the key point, that of the methodological treatment of Islamic traditions, he condescends to a more thoroughly grounded refutation of Coulson's theses, using an example that the latter had used for demonstration.¹⁹⁸

Coulson responded to this discussion with an open—and no less outspoken—letter which appeared in the same journal,¹⁹⁹ and attempted to show that Schacht's arguments against him are not compelling.²⁰⁰ Both lines of argumentation are very speculative. Theoretically, Schacht's more critical position is certainly superior to Coulson's, but the latter is correct in his thesis that the historical inferences that Schacht draws, among other things, from the "formal criteria" of traditions like the *isnād*, are "artificial" and scarcely as certain as he claims, and that other conclusions are at least as conceivable or probable as Schacht's. The unprofitable discussion between the two does, however, make one thing clear: The placement of a tradition

¹⁹⁵ Occasional supplements are drawn from al-Kindī, *Kitāb al-Umarā' wa-l-quḍāh* (The governors and judges of Egypt), ed. Rh. Guest (Leiden/London, 1912) (cf. op. cit., p. 228, note 29, 5).

¹⁹⁶ In: *Middle Eastern Studies*. 1 (1965), pp. 388–400.

¹⁹⁷ Cf. op. cit., p. 389.

¹⁹⁸ Cf. op. cit., pp. 392–395.

¹⁹⁹ *Middle Eastern Studies* 3 (1967), pp. 195–203, esp. pp. 195–200. Warmed over as "European Criticism of *Hadīth* Literature," in: A. F. L. Beeston et al. (ed.), *Arabic Literature to the End of the Umayyad Period* (Cambridge, 1983), pp. 317–321.

²⁰⁰ The *ḥadīth* that plays an important role in this argument has to do with the testament of Sa'd ibn abī Waqqās. On it cf. R. M. Speight, "The Will of Sa'd b. Abī Waqqās: The Growth of a Tradition," *Der Islam* 50 (1973), pp. 248–267. D. S. Powers, "The Will of Sa'd b. Abī Waqqās: A Reassessment," *Studia Islamica* 58 (1983), pp. 33–53.

within the development of law, i.e., whether it is rudimentary or advanced—a question which plays a central role for Schacht as well as for Coulson—is difficult to determine objectively, and with both depends decisively on the premises upon which their picture of the development of Islamic law is based. A resolution of the dilemma on the basis of the the sources utilized by Schacht and Coulson does not seem to be possible.

The reaction of Muslim scholars to Schacht's depiction of the origins of Islamic jurisprudence was just as mixed as that of western scholarship. Some simply ignored his works, others rejected them without engaging in a discussion, others accepted them on substantive points but nevertheless set aside his theses about the discipline of Tradition or at least limited them.²⁰¹ Only a few accepted the challenge to seek for points of departure from which to refute Schacht's theory. Their efforts tended in two directions: The indirect method aimed to test and shake some of Schacht's fundamental assumptions: his ideas, based on the work of Goldziher, about the authenticity of *Ḥadīth* and its development from its beginnings to the emergence of the classical collections. Here, it was above all necessary to deal with the works of Goldziher. Another possibility was to attack Schacht's *Origins* directly and to attempt to prove him guilty of methodological or factual errors.

Fuat Sezgin opened the debate in 1956 with the first variation. In his *Bukhārī'nin kaynakları hakkında araştırmalar*,²⁰² and later in the introduction to the chapter "*Ḥadīth*" of his *Geschichte des arabischen Schrifttums*,²⁰³ he attempts to demonstrate that the classical *Ḥadīth* collections of the third/ninth century do not represent the beginning of the *Ḥadīth* literature—as Goldziher assumed—but the continuation of a process of recording such traditions in writing which began in the lifetime of Muḥammad and led to collections as soon as the beginning of the second/eighth century and soon thereafter to ordered compilations, that is, to the *Ḥadīth* literature. In doing this he depends on biographical source material in the broadest sense, which he draws chiefly from works of Muslim *Ḥadīth* scholarship such as the *Taqyīd al-ʿilm* of al-Khaṭīb al-Baghdaḍī (d. 403/1012–3)—a work which had

²⁰¹ D. Forte gives an overview of these reactions, "Islamic Law," op. cit., pp. 26–31.

²⁰² Istanbul, 1956, esp. pp. 3–68.

²⁰³ Leiden, 1967, pp. 53–84.

long been known to western scholars²⁰⁴—the *ġāmīʿ bayān al-ʿilm* of Ibn ʿAbd al-Barr (d. 463/1070–1), the *al-Muḥaddith al-fāṣil* of al-Rāmhurmuzī (d. 360/971) and others, as well as from *rijāl* and bibliographical works from the third/ninth to ninth/fifteenth centuries. Sources of this nature had been completely neglected by Schacht in his *Origins*—not, however, by Goldziher. Sezgin concludes, firstly, “that the *isnāds* by no means indicate oral transmission, but that they name authors and authorized transmitters of books,”²⁰⁵ secondly, that the *isnāds* did not emerge only in the second/eighth century, and thirdly, that the names of the transmitters were not invented,²⁰⁶ as Schacht assumed. It is in this generalization of numerous and quite valuable observations and their extension to other branches of Islamic tradition that the weak point of Sezgin’s argumentation, which sparked off criticism, lies.²⁰⁷

Sezgin’s theses received support from other works. In 1961 there appeared M. Z. Ṣiddīqī’s book *Hadīth Literature*,²⁰⁸ Muḥammad Hamīd-ullāh’s edition of the *Ṣaḥīfat Hammām ibn Munabbih* provided with an English-language introduction,²⁰⁹ and Muṣṭafā al-Sibāʿī’s book *Al-sunna wa-makānatuhā fī l-tashrīʿ al-islāmī*²¹⁰ in 1963, Muḥammad ʿAjjāj al-Khaṭīb’s study *Al-sunna qabla l-tadwīn*,²¹¹ in 1967 and 1968 the studies of Nabia Abbott,²¹² who is certainly not Muslim, and of Muhammad M. Az[a]mi.²¹³ Methodologically, they are all similar to

²⁰⁴ A. Sprenger already gave selections under the title “On the Origin and Progress of Writing down Historical Facts among the Musalmans,” *Journal of the Asiatic Society of Bengal* 25 (1856), pp. 303–329, 375–381.

²⁰⁵ F. Sezgin, *Geschichte*, op. cit., p. 79. Emphasis mine.

²⁰⁶ Op. cit., p. 83.

²⁰⁷ Cf. W. Werkmeister, *Quellenuntersuchungen zum Kitāb al-ʿIqd al-farīd des Andalusiers Ibn ʿAbd al-Rabbih (246/860–328/940)* (Berlin, 1983), pp. 12 f. G. Schoeler, “Die Frage der schriftlichen oder mündlichen Überlieferung der Wissenschaften im frühen Islam,” *Der Islam* 62 (1985), pp. 201 ff.

²⁰⁸ Calcutta, 1961. Large parts of the book were, however, already written between 1930 and 1936! A new edition, revised by A. H. Murad, has been published by the Islamic Texts Society (Cambridge 1993).

²⁰⁹ 5th ed., Luton 1961. Whether the first edition, which appeared in Damascus in 1953, already contained the introduction I have not been able to determine.

²¹⁰ Cairo, 1961 (it was written at the beginning of the forties).

²¹¹ Cairo, 1963. On the books of al-Sibāʿī and ʿAjjāj and the intellectual context in which they are to be seen, cf. G. H. A. Juynboll, *The Authenticity of the Tradition Literature. Discussions in Modern Egypt* (Leiden, 1969).

²¹² N. Abbott, *Studies in Arabic Literary Papyri*, vol. 2: *Qurʾānic Commentary and Tradition* (Chicago, 1967).

²¹³ M. M. Az[a]mi (the form of the name varies between the first and the second edition), *Studies in Early Hadīth Literature* (Beirut 1968/2nd ed., Indianapolis 1978).

Sezgin's studies; they use primarily the same type of sources and supplement the material set forth by Sezgin with much additional evidence. Was Schacht's theory of the late emergence of the Prophetic *ḥadīths*, or—from a methodological point of view—the impossibility of demonstrating the existence of authentic Prophetic traditions, or of ones originating as early as the first/seventh century, thus refuted? Surely not for the adherents of Schacht's thesis, for in view of the supposedly massive dimensions of the forgery which was pursued in the second/eighth and third/ninth centuries and which—although not on this order of magnitude—was certainly admitted by the Muslim scholars, no more credence can be lent to the reports *about* the early transmitters than to the reports *from* them, especially when the bulk of this information derives from sources which came into being 200 years and more after the time about which they report.

Some of the above-named authors attempted to counter this objection by concretely pointing out texts or fragments of texts of early *Ḥadīth* collections whose existence is asserted in these sources, but which had thus far not been discovered. A beginning had been made by Hamidullah, who published the *Ṣaḥīfat* of Hammām ibn Munabbih (d. 101/719–20), supposedly the oldest preserved *Ḥadīth* work, in 1953.²¹⁴ Sezgin unearthed the *Ḥamī* of Ma'mar ibn Rāshid (d. 153/770) and assigned it to its place in the development of *Ḥadīth* literature;²¹⁵ Az[a]mi edited three small manuscripts of Tradition collections, as the authors of which he named Nāfi' (d. 117/735), the *maṭwā* of Ibn 'Umar, al-Zuhrī (d. 124/742), and Suhayl ibn abī Ṣāliḥ (d. 138/755–6); and Abbott edited and annotated a series of papyrus fragments, among which was a small collection of *ḥadīths*, as the author of which she identified al-Zuhrī.

Were Schacht's theses about *Ḥadīth* thus rendered absurd? In the eyes of their sympathisers, scarcely. None of these texts is an autograph. Who can guarantee that the supposed *Ṣaḥīfa* of Hammām ibn Munabbih is not a forgery or a collection of fabricated traditions by Ma'mar ibn Rāshid (d. 153/770) or by 'Abd al-Razzāq (d. 211/827),

To this group also belongs the more recent work of S. H. Abdulghaffar, *Criticism among Muslims with Reference to Sunan Ibn Maja* (2nd ed., London, 1986; 1st ed., 1983), which more strongly emphasizes the significance of Muslim *Ḥadīth* criticism since the first century for the question of the authenticity of the *isnād*.

²¹⁴ See p. 36, note 209.

²¹⁵ "Hadis musannefatının mebdci ve Ma'mer ibn Rāşid'in 'Cāmi'i'," *Türkiyat* 12 (1955), pp. 115–134.

who both appear before Hammām in the *isnād*? ‘Abd al-Razzāq is the common link of all preserved versions of the text!²¹⁶ What assurance does one have that the supposed texts of al-Zuhrī really originate with him and were not ascribed to him by anonymous persons or by the Shu‘ayb ibn abī Ḥamza (d. 162/778–9) or Abū l-Yamān (d. 222/837)²¹⁷ named in some *riwāyāt*, or ‘Uqayl ibn Khālīd (d. 142/759–60 or 144/761–2) or al-Layth ibn Sa‘d (d. 175/791–2) named in another *riwāya*?²¹⁸ In his review of Abbott’s book, John Wansbrough summed up the reservations of the adherents of Schacht toward the evidential value of the works mentioned above: “In illuminating the dark centuries of Islam she [Abbott] is not content to shed just a little light, but proclaims from nearly every page the existence of written records from the very beginning.” “But this is surely *zām*, not *burhān*! Unless these records can be produced, the present situation will not have much altered. We have never lacked for assertions that such (oral or written) existed.” “It has been suggested that this kind of tradition was put into circulation from the first half of the second/eighth century (Schacht, *Islamic Law*, 34), and that the elaboration of *isnāds* can be dated from the generation preceding Mālik (idem, *Origins*, 163 ff.). [. . .] These papyri do not take us further back than that, if indeed so far, and do not really make more compelling the arguments for a genuine *sunnat al-nabī* [. . .].”²¹⁹ Thus opinion stands against opinion, without either of the two sides being able to deliver to the other proofs which will convince them.

The other path on which some Muslim scholars embarked was that of directly engaging oneself with Schacht’s results and the sources and methods he used. For instance, Fazlur Rahman attempted to defuse Goldziher’s and Schacht’s results interpretatively. He distinguishes—like some of Schacht’s western critics²²⁰—between unhistorical form (*ḥadīth*) and authentic content (*sunna*), and regards the *Ḥadīth* as having “developed” from the Prophetic *sunna*, the latter as its basis, the former as its “gigantic and monumental commentary [. . .] by the early community.”²²¹ Ahmad Hasan, a student of Fazlur

²¹⁶ Cf. Hamidullah, op. cit., p. 69.

²¹⁷ Cf. Azami, op. cit., pp. 277 f.

²¹⁸ Cf. Abbott, op. cit., pp. 166 ff.

²¹⁹ *Bulletin of the School of Oriental and African Studies* 31 (1968), p. 615.

²²⁰ See pp. 31–34.

²²¹ Cf. Fazlur Rahman, *Islamic Methodology in History* (Karachi, 1965), pp. 1–87,

Rahman, developed a depiction of the early development of Islamic jurisprudence²²² on the basis of essentially the same basic sources which Schacht took as his point of departure, which is intended to show that on the basis of these sources one must not necessarily come to Schacht's conclusions, but may also reach some which are completely compatible with the traditional picture conforming to the theory of *uṣūl*. True, many of his conclusions from the sources of the second half of the second/eighth century and later are speculative and more postulative than demonstrative, but this is just as true of Schacht, for instance, of his thesis of Umayyad praxis as the point of departure of Islamic jurisprudence²²³ or his conception of the "living tradition" of the ancient schools,²²⁴ of a common early doctrine,²²⁵ et cetera. The decisive difference between the two approaches is that Schacht regards the Prophetic traditions as a late creation, while Ahmad Hasan does not accept this in this degree of generalization, but assumes the existence of the conception of the *sunna* of the Prophet and of a quantity, if a limited one, of Prophetic *ḥadīths* as early as the first/seventh century.²²⁶ It is true that in his study Ahmad Hasan at various places explicitly distances himself from Schacht,²²⁷ but he scarcely attempts to show him guilty of concrete errors. In general, he contents himself with presenting his own interpretation.

In contrast, Az[a]mi sought direct and occasionally polemical engagement with Goldziher and Schacht. He confronted their statements with the evidence from the sources upon which they relied, and attempted to demonstrate that their interpretations were wrong or one-sided or impermissibly generalized specific pieces of information and neglected others. Already in his *Studies in Early Ḥadīth Literature* (1968) he attacked Schacht's ideas about the inauthenticity of the *Ḥadīth* material and the *isnāds*, as well as the methods which he used in his work, more thoroughly than any other critic.²²⁸ Seventeen years later he published a renewed refutation in book

esp. p. 76. The first two chapters, which are the most interesting in this context, already appeared in the years 1962–1963 in *Islamic Studies*.

²²² *The Early Development of Islamic Jurisprudence* (Islamabad, 1970).

²²³ Cf. Schacht, *Origins*, pp. 190 ff.

²²⁴ Cf. op. cit., pp. 58 ff.

²²⁵ Cf. op. cit., p. 214.

²²⁶ Ahmad Hasan, *The Early Development*, pp. 88–95, 109.

²²⁷ Cf. op. cit., pp. xvi, 28–30, 45 ff., 89 f., 135 f., 145 f., 159 f.

²²⁸ Azami, *Studies in Early Ḥadīth Literature*, pp. 18 f., 215–267.

form, under the title *On Schacht's Origins of Muhammadan Jurisprudence*,²²⁹ this time going into even greater detail and taking into account Schacht's conclusions about legal history. Since it is the only truly substantive critique since Fück of a work which has deeply influenced western Islamic studies and Islamic legal history in the last four decades—Azami ironically calls it “the bible of Orientalists”²³⁰—, let us examine its argumentation more closely. Azami's accusations are grave: “Schacht has apparently failed to consult some of the most relevant literature; he often misunderstands the texts he quotes; the examples he uses frequently contradict the point he is trying to make; on occasion he quotes out of context; and most important, he applies unscientific methodology for his research, thus drawing conclusions that are untenable when the evidence of the text as a whole is weighed.”²³¹ However, if one goes into Azami's arguments in detail one will have to class these accusations as highly exaggerated and excessively generalized. Azami often simply offers another interpretation which he postulates as the correct one, and his polemical attitude toward Schacht's statements sometimes clouds his vision of what Schacht meant by them. Thus, his criticism is often inaccurate, rests on misunderstandings, and at most convinces those who consider his premises correct *a priori*. A few examples:

Schacht considers Islamic law more as a corpus of religious duties than as a true system of law. “Law [in the strict sense] lay to a great extent outside the sphere of religion, was only incompletely assimilated to the body of religious duties, and retained *part of* its own distinctive quality. No clear distinction, however, can be made.”²³² Azami declares that this is untrue; the dichotomy of secular law and religious teaching does not exist in Islam, “*in theory at least*.”²³³ “Law can be seen to be an integral part of Islam. There was no aspect of behavior that was not *intended* to be covered by the revealed law.”²³⁴ The concept of Islamic law is already given by the Qur'ān.

The emphases clarify the differences in point of view. Schacht's statements are quantitative and aim at a description of *historical reality*. Strictly speaking, he does not differentiate between religion and law,

²²⁹ Riyadh, 1985, 237 pages.

²³⁰ Azami, *On Schacht's Origins*, p. 1, note 3.

²³¹ Azami, *op. cit.*, p. 3.

²³² Schacht, *Origins*, p. v. Emphases mine.

²³³ Azami, *op. cit.*, p. 3.

²³⁴ *Op. cit.*, p. 13.

religious and secular—as Azami accuses—, but between law in a more or less technical sense or with a more or less religious content.²³⁵ Azami's statements, on the other hand, are qualitative. They are descriptions of the *norm* or *theory*. As such, Schacht would not dispute them.²³⁶

Schacht is of the opinion that it was not *Muhammad's aim* to create a new, comprehensive system of law. His authority as prophet and lawgiver was not legal in the narrower sense, but religious or political. The Prophet's legislation was an innovation *within* the legal system of Arabia.²³⁷ Schacht's description of the role of the Prophet depends only on the Qur'ān as a source. Here he is not interested in the question of whether Muhammad had the intention or the idea of creating a completely new, comprehensive system of law or not—the expression “aim” here is open to misinterpretation—, but whether he in fact did and, if so, with what sources this can be proven. From the Qur'ān at most the idea can be verified,²³⁸ but not such a system itself, at most beginnings of one. Azami responds to this that the Qur'ān accords the Prophet legislative, interpretative, judicial and executive functions. Consequently, it was *God's intention*²³⁹ to create a new system of law, *ergo* the Prophet did so. His systematic legal activities are present in his *sunna*.²⁴⁰ While Schacht describes that which is historically palpable and in doing so leaves the *sunna* aside, since its authenticity is not assured, Azami depends on theory and reasons from the possibility of facts to their probability or reality, in doing which he merely asserts the authenticity of the *sunna* but does not prove it.

It is Schacht's thesis that for the greater part of the first/seventh century, Islamic law in the technical sense of the word did not exist. The first caliphs did not lay the foundations of later Islamic legal administration. Corresponding biographical reports are products of the third/ninth century. Where there were no religious or moral objections, pre-Islamic legal practices were preserved.²⁴¹ Schacht

²³⁵ Cf. also Schacht, *Introduction*, pp. 11–13.

²³⁶ Cf. op. cit., p. 11.

²³⁷ Ibid.

²³⁸ Cf. also S. Goitein, “The birth-hour of Muslim Law? An essay in exegesis,” *Muslim World* 50 (1960), pp. 23–29.

²³⁹ Azami, *On Schacht's Origins*, p. 15.

²⁴⁰ Cf. op. cit., pp. 3, 17.

²⁴¹ Cf. Schacht, *Introduction*, Chap. 4. Id., *Origins*, pp. 5, 230, note 1.

depends for this on sources of the second half of the second/eighth century. Azami disputes this and adduces as evidence for the existence of Islamic law at the time of the Prophet and in the first/seventh century: legal rulings of the Prophet (source: Ibn Ṭallāʿ, d. 497/1103–4, *Aqḍiyat Rasūl Allāh*, who supposedly has his material from sources of the second/eighth and third/ninth century), a list of judges appointed by him (according to sources of the second/eighth century and later), a list of the *qāḍīs* of Basra (primarily compiled according to Khalīfa ibn Khayyāṭ's, d. 240/854–5, *Ṭabaqāt*), letters of 'Umar to his *qāḍīs* (source: 'Abd al-Razzāq, d. 211/827, *Muṣannaf*), rulings of other figures of the first/seventh century which are based on the *sunna* of the Prophet (source: Mālik, d. 179/795–6, *Muwatṭa'*), and texts of legal content from the first/seventh century (according to sources of the third/ninth century and later). From this evidence he concludes that Schacht's theory of the emergence of Islamic law in the early second/eighth century is untenable.²⁴² This conclusion is surely not compelling: firstly, strictly speaking Schacht does not mean the beginning of Islamic law, but of Islamic jurisprudence, and secondly he considers reports from later sources about the first/seventh century to be generally unreliable and sometimes neglects them intentionally. Azami does nothing more than to assert their authenticity without supplying proofs. Thus, at most one can evaluate his depiction of the legal development as an antithesis, but not as a refutation of Schacht.

Azami engages himself very intensively with Schacht's theory of the development of the conception of the *sunna*. Here, too, he fields facts against him which Schacht did not dispute in the first place, overlooks Schacht's fine distinctions in his apologetic zeal, and postulates the opposite on the basis of sources whose authenticity remains unclarified. Meanwhile, he occasionally attempts to prove that Schacht misunderstood his sources. However, only in the rarest cases is this accusation justified. An illustrative example is Schacht's and Azami's interpretation of the *Risāla* of Ibn al-Muqaffa'²⁴³ (d. ca. 140/757–8). Schacht's main argument is: Ibn al-Muqaffa' observes that in his time *sunna* is not based on authentic precedents of the Prophet and

²⁴² Cf. Azami, op. cit., pp. 20–25.

²⁴³ "Risālat Ibn al-Muqaffa' fi l-ṣaḥāba," in: M. Kurd 'Alī (ed.), *Rasā'il al-bulaghā'* (Cairo, 1331/1913), pp. 120–131.

the first caliphs, but largely on administrative regulations of the Umayyad dynasty. Azami contradicts him, but in doing this does not refer to Ibn al-Muqaffa's observation of fact, but on the conception that the latter himself has of *sunna*: *Sunna should rest on precedents of the Prophet or of the "rightly guided" caliphs* (is the 'Abbāsid dynasty also meant?). Schacht: According to Ibn al-Muqaffa', the caliph *is free to establish* and to codify the supposed *sunna*. Azami: According to Ibn al-Muqaffa', the caliph *must follow* the Qur'ān and the *sunna*, that is, the *sunna* of the Prophet and of the rightly-guided caliphs of the pre-Umayyad period. Schacht refers to Ibn al-Muqaffa's statement that the caliph alone has the right to make decisions *on the basis of ra'y* in cases in which no tradition [of precedents of the Prophet and the *imāms*] is available (*al-ḥukm bi-ra'y fī-mā lam yakun fihī athar*). Azami, on the other hand, emphasizes the following sentence: The caliph alone has the right to impose [Qur'ānic] penalties and sentences *on the basis of the scripture and of the sunna* (*imḍā' al-ḥudūd wa-l-aḥkām 'alā l-kitāb wa-l-sunna*). Schacht stresses the caliph's right of revision on the basis of his divinely inspired *ra'y* according to Ibn al-Muqaffa', Azami his suggestion that it was the scholar's task to explain on what *sunna* or what *qiyās* their judgments and norms were based.²⁴⁴

Azami argues that one cannot deduce from the Ibn al-Muqaffa' text that law in the first/seventh century was not based on Qur'ān and *sunna*. Schacht does not draw such a conclusion from this source at all; rather, he only wishes to demonstrate with it that at the end of the Umayyad period the legal practice postulated as *sunna* was not generally based on the precedents of the Prophet and the early caliphs. Ibn al-Muqaffa' does assert precisely that, and later al-Shāfi'ī reproached the scholars of his time with it. The two—Schacht and Azami—accentuate different aspects of the text which are not mutually exclusive. Azami distorts Schacht's argumentation and also does not take into account all of his references to the text of Ibn al-Muqaffa'.²⁴⁵ The accusation that Schacht understands this source incorrectly is unjustified. Azami does not understand Schacht correctly.

Similarly twisted and unconvincing reinterpretations of Azami's, in making which he sometimes does not correctly reproduce the

²⁴⁴ Cf. Schacht, *Origins*, pp. 58–59, 95, 102 f.; Azami, *On Schacht's Origins*, pp. 41–43. The emphases are mine.

²⁴⁵ He neglects pp. 95 and 102 f.

literal sense of the source,²⁴⁶ are found in his discussion of the conceptions of the early schools as well.²⁴⁷ It is frequently to be observed that Azami draws conclusions from the material cited by Schacht which Schacht did not draw, or did not draw in this way, and fathers them on Schacht, and that he then refutes these ostensibly Schachtian theses. Naturally, he only discusses those examples which he believes himself able to refute, and ignores others. Azami also proves Schacht guilty of some manifest misinterpretations, it is true, and, for example, his reservations with respect to the evidential value of al-Shāfiʿī's often polemical statements about his contemporaries are not to be dismissed. But Azami's apologia for the classical conception of the development of Islamic law—based on the source material used by Schacht to reconstruct the "ancient schools of law" and reinterpreted by Azami—can only convince those who believe in the authenticity of the traditions of the Prophet from the outset.

Stronger, and in places convincing, is Azami's treatment of Schacht on the subject of *Ḥadīth* and *isnād*. He shows that the *e silentio* method stands on a very insecure basis, and that Schacht's datings can easily be shaken by sources which escaped him or which have newly emerged.²⁴⁸ His objections with respect to Schacht's dating of the beginnings of the *isnād*, his evaluation of certain types of *isnād* and his common-link theory²⁴⁹ are partially well-founded, even if in the process he occasionally adduces evidence the authenticity of which remains unproven, and now and then polemically distorts Schacht's argumentation. The reservation as to whether the *Ḥadīth* material contained in the *fiqh* literature, which Schacht used as the basis for his theses on the *isnād*, allows generalizations of this kind at all is also justified.²⁵⁰ However, Azami's counter-depiction of the emergence and development of *Ḥadīth* is based completely on sources of the third/ninth to eighth/fourteenth centuries,²⁵¹ without his even

²⁴⁶ Cf., for example, Azami, op. cit., p. 44: Schacht translates "*Qāla Mālik: 'Alā dhālika l-sunnatu llatī lā ikhlāfa fihā 'indanā'*" more correctly as "... to the same effect is the sunna . . ." (*Origins*, p. 61). Azami: "... this is the sunna . . .," a small, but decisive difference of which Azami takes advantage for his thesis.

²⁴⁷ Op. cit., pp. 43–108.

²⁴⁸ Op. cit., pp. 118–153. Cf. also Z. I. Ansari, "The Authenticity of Traditions: A Critique of Joseph Schacht's Argument *e silentio*," *Hamdard Islamicus* 7 (1984), pp. 51–61.

²⁴⁹ Op. cit., pp. 166–205.

²⁵⁰ Cf. op. cit., pp. 206–212 and id., *Studies in Early Ḥadīth Literature*, pp. 218–222.

²⁵¹ Azami, *On Schacht's Origins*, pp. 109–115.

posing the question to what extent the information about the first/seventh and second/eighth centuries contained in them is reliable, or whether conclusions about the technique and criticism of transmission of earlier centuries may be drawn from later practice. Even if they were datable as early as the second/eighth century, are they then to be assumed for the first/seventh century? His representation of the development of the *isnād*²⁵² rests primarily on conjectures. The existence of multiply twigged branches of transmission for individual *ḥadīths* is not yet any proof for the authenticity of their *isnāds*. Schacht's adherents will not be moved to abandon his entire theory as absurd by Azami's proof that a few of Schacht's datings and textual interpretations are incorrect. His argumentation is too imprecise and polemically tinged to convince. What he offers as a substitute for Schacht's theory is based on sources whose reliability is doubted by many non-Muslim scholars. Azami has not eliminated this doubt.

The most recent works of western Islamic studies dealing with the beginnings of Islamic law, appearing since the seventies, all stand under the influence of Schacht's researches. Some adopt his results without qualification;²⁵³ others see in it a by and large assured and acceptable representation of the development of Islamic jurisprudence but have reservations on some points or suggest concrete modifications. Thus, for instance, Klaus Lech in his *Geschichte des islamischen Kultus*, vol. 1: "These [Schacht's] theses have proven themselves extremely fruitful in many respects . . ." "Aside from the contribution of having made an initial examination of the voluminous and remarkably difficult material and established at least debatable ordering schemata for the evaluation of Muslim legal development, a number of important individual observations remain completely secure." "At the same time, it also becomes clear that in the future we should proceed differently methodologically."²⁵⁴

G. H. A. Juynboll is an admirer of Schacht's *Origins* and has taken his inspiration from Schacht's methodology.²⁵⁵ It is true that he estimates the origins of the *Ḥadīth* to be earlier than does Schacht,

²⁵² Op. cit., pp. 154–156.

²⁵³ For example Ph. Rancillac, "Des origines du droit musulman à la *Risāla* d'al-Šāfi'ī," *MIDEO* 13 (1977), pp. 147–169.

²⁵⁴ *Das ramadān-Fasten* (Wiesbaden, 1979), pp. 4, 5.

²⁵⁵ Cf. *Muslim Tradition* (Cambridge, 1983), p. 3. Schacht's methodological example is particularly clear in chapters three and five.

specifically, in the second half of the first/seventh century and the beginning of its standardization, the *isnād*, towards its end,²⁵⁶ but this does not conflict with his theory about legal development in general and of the role of tradition in it. Nevertheless, Schacht would probably have had serious misgivings about Juynboll's representation of the preliminary stages and beginnings of *Hadīth*, because it is essentially based on biographical and historical tradition material from sources of the third/ninth century and later, toward which he had strong reservations. He certainly would not have been able to acquire a taste for "*awā'il* evidence."²⁵⁷

David S. Powers begins his *Studies in Qur'ān and Hadīth—The Formation of the Islamic Law of Inheritance*²⁵⁸ with a discussion of Schacht's theses: "The writings of the late Joseph Schacht, in which he sketches the broad outlines of the history and development of Islamic law, constitute the benchmark of all modern studies on this subject."²⁵⁹ He reports on a few critiques and sums up, "Schacht's thesis, despite these negative considerations, has stood the test of time."²⁶⁰ He himself, however, has objections similar to Coulson's: Schacht underestimates the importance of the Qur'ān for the development of law in the first/seventh century, when it is difficult to imagine a vacuum—an *a priori* assumption, as Powers himself admits. By means of a sharper differentiation between "law" and "jurisprudence," he attempts to leave Schacht's theses to a large extent unscathed and at the same time to clear the way for an investigation of "positive law" in the first/seventh century.²⁶¹ This, however, then turns out to be very speculative and lacks Schacht's critical standard in the treatment of tradition material, especially where Powers uses the content of texts which he identifies as late anecdotes directed against the traditional Qur'ānic interpretations of the *fuqahā'* to describe historical facts of the first half of the first/seventh century.²⁶²

Patricia Crone's study *Roman, Provincial and Islamic Law. The Origins of the Islamic Patronate*²⁶³ stands completely in the Schachtian tradi-

²⁵⁶ Op. cit., Chap. 1: A tentative chronology of the origins of Muslim tradition.

²⁵⁷ Op. cit., pp. 10 ff.

²⁵⁸ Berkeley and Los Angeles, 1986.

²⁵⁹ Op. cit., p. 1.

²⁶⁰ Op. cit., p. 6.

²⁶¹ Op. cit., pp. 6-7.

²⁶² Cf. my review in *Der Islam* 65 (1988), pp. 117-120.

²⁶³ Cambridge, 1987. Cf. also P. Crone/M. Hinds, *God's Caliph* (Cambridge, 1986), esp. Chap. 4 (Caliphal law).

tion. It is true that she considers his contributions to the question of the influence of extra-Islamic legal systems—a problem which plays only a passing role in the *Origins*, but was later taken up by Schacht several times²⁶⁴—to be meager, and attempts to replace them with better founded hypotheses; but to a large extent she identifies with the basic outlines of the Schachtian schema of development and, although she admits some methodological inconsistencies in his dating of *ḥadīths*, she defends his *Ḥadīth*-critical position against dilutions such as those which had been suggested by Coulson and others.²⁶⁵ Crone, like Schacht, emphasizes the importance of “pre-classical law” as a decisive source for the investigation of origins,²⁶⁶ and largely neglects biographical material of later Muslim sources. “Pre-classical law,” according to Crone, can be reconstructed partially from the “early *Ḥadīth*,” partially through “a systematic comparison of Sunnī and heretical law.”²⁶⁷ As sources of early *Ḥadīth*, according to Crone, the classical compilations do not come into consideration, but rather the two earlier collections of ‘Abd al-Razzāq (d. 211/827) and Ibn abī Shayba (d. 235/849–50), the much later one of al-Bayhaqī (d. 458/1066), and a few later legal works, such as those of Ibn Ḥazm (d. 456/1064), Ibn Qudāma (d. 620/1223), and others.²⁶⁸ She assumes that into these later sources earlier ones are assimilated, although the indices of what can be considered old are not precisely defined by her. The criterion that a tradition is not contained in the “classical” collections is surely not sufficient. It also remains unclarified why the material of the pre-classical collections can lay claim to more authenticity than that of the classical ones—aside from the fact that they were compiled a few decades earlier—and why the *isnāds* can serve as indicators of the origin and age of the traditions contained in these works, in view of Schacht’s conclusion that as late as the second half of the second/eighth century and the third/ninth century traditions of every kind—even ones from *tābi‘ūn*²⁶⁹—were fabricated.²⁷⁰

²⁶⁴ Cf., for instance, Schacht, “Foreign Elements in Ancient Islamic Law,” *Journal of Comparative Legislation and International Law* 32 (1950), pp. 9–17. Id., “Droit byzantin et droit musulman,” in: *XII Convegno di scienze morali storiche e filologiche 1956*, pp. 197–230. Id., *Introduction*, pp. 19–22.

²⁶⁵ Cf. P. Crone, *Roman, Provincial and Islamic Law*, Chap. 2.

²⁶⁶ Cf. op. cit., p. 16.

²⁶⁷ Ibid.

²⁶⁸ Cf. op. cit., pp. 26–27.

²⁶⁹ Cf. Schacht, *Origins*, p. 245.

²⁷⁰ For an appreciation of her actual subject—the influence of extra-Islamic law—

The history of research on the question of the origins and beginnings of Islamic law and its jurisprudence, regarded from the point of view of the source basis used, displays some characteristic lines of development. It began with depictions drawing on the material of the Muslim discipline of *uṣūl*, that is, the science of the “fundamentals” of Islamic jurisprudence, from sources of the fifth/eleventh century and later, as well as from biographical and historical sources of the third/ninth century and later. To a large extent, they mirror the Muslims’ traditional ideas about the development of their jurisprudence. At most, doubts were registered about the authenticity of a portion of the traditions from the Prophet. Through his studies of *Ḥadīth*, Goldziher came to the conviction that in the first century the *sunna* of the Prophet was not yet a “generally valid norm”²⁷¹—except perhaps in Medina—and that consequently the theory of the *uṣūl* scholars did not correspond to the historical facts. Accordingly, in questions of legal development he chose another type of source as a point of departure: the earliest preserved legal works of the second half of the second/eighth century. They had become accessible in print only towards the end of the nineteenth century, and could provide definite information about the development during the second half of the second/eighth century. From them one could also draw reasonably reliable conclusions about pre-history back to approximately the beginning of that century, which could in some cases be supported with biographical source material in the widest sense. Further back, into the first/seventh century, it was possible to proceed only speculatively. Bergsträsser offered an example of how the development might have looked. Both, the traditional and the source-critical points of view—as I would like to call them—had their proponents in the first half of the twentieth century, nor were syncretisms lacking.

Schacht attempted to gain the source-critical trend exclusive recognition. His schema of development, based on criteria of form and content and illustrated by rich textual material, seemed consistent

cf. my discussion of the book in *Der Islam* 65 (1988), pp. 342–45; W. B. Hallaq, “The Use and Abuse of Evidence: The Question of Provincial and Roman Influence on Early Islamic Law,” *Journal of American Oriental Society* 110 (1989), 1–36; and U. Mitter, *Das frühislamische Patronat. Eine Untersuchung zur Rolle von fremden Elementen bei der Entwicklung des islamischen Rechts* (Ph.D. thesis, Nijmegen 1999).

²⁷¹ Goldziher, *Muslim Studies*, vol. 2, p. 20.

and at first glance hardly refutable, as the immediate response to his *Origins* shows. He depended almost exclusively on the early legal works and the Tradition material contained in them and in the classical *Hadīth* collections, which, however, he accepted only as a source for the second/eighth and third/ninth century. He used biographical reports from other works rarely and with the greatest distrust. The result was that he abbreviated the timespan about which he could make definite statements by two more decades. Only from 120/738 on did he believe that he had historically reliable information about the early *fuqahā'*. If one accepts Schacht's source-critical premises, one can indeed scarcely go further back on the basis of the legal works of the second half of the second/eighth century.

The reaction against Schacht's depiction of the beginnings of Islamic jurisprudence consisted primarily of contesting his source-critical premises. Insofar as this did not take place on the theoretical plane only—for example, through proof of impermissible or faulty methods and conclusions—, but through recourse to the sources, people turned again to the biographical material, which meanwhile had become quite voluminous through the editing of a number of works on the science of *Hadīth* and of biographical lexica. At the same time, the quest for the testimony of older Islamic and extra-Islamic sources was activated. However, until now all efforts to dispel the suspicion of forgery to which biographical reports and supposedly earlier sources are exposed by source-critical research have failed. The fact that the majority of Schacht's critics have been Muslims probably contributed to the fact that their objections and attempts at refutation have met with little approval from the Schacht's adherents. That is the present state of affairs. The opinions are contrary and irreconcilable. A solution to the dilemma has not yet emerged. As long as no one succeeds in finding juridical sources from, or biographical materials about, *fuqahā'* or *'ulamā'* before 120/738 whose genuineness is demonstrable, one will have either to content oneself with the realization that on the basis of the available sources no definite statements about the development of law and jurisprudence before 120 A.H. are possible, or to expose oneself to the accusation of uncritical use of the sources.

CHAPTER TWO

NEW SOURCES FOR THE HISTORY OF THE BEGINNINGS OF ISLAMIC JURISPRUDENCE

The term *muṣannaf* designates a specific kind of *Ḥadīth* work, namely, the collection of *ḥadīths* ordered in chapters by subject. Al-Bukhārī's and Muslim's *Ḍaḥīḥ*'s are considered typical examples of this genre.¹ Thus, it is a widespread idea that *muṣannaf* works are as a rule collections of *ḥadīths* of the Prophet. However, the earliest preserved works known under the title of *Muṣannaf*, for example the *Muṣannaf* of 'Abd al-Razzāq (d. 211/827) or that of Ibn abī Shayba (d. 235/849–50), show that *muṣannaf* works were not originally compilations limited to *ḥadīths* in the narrower sense—that is, traditions of the Prophet. Rather, they contain reports of the statements and modes of behavior of all past generations, including the immediate teachers of the compilers. Traditions of the Prophet represent only part of the collected material. The earlier *muṣannaf* works can thus better be compared to the compilations of the second/eighth century such as the *Muwatta'* of Mālik and the *Āthār* of Abū Yūsuf than with the classical *Ḥadīth* collections of the third/ninth century. The latter represent special forms of the *muṣannaf* type.

Like the *Muwatta'* and the *Āthār*, which have played a central role in the works about the emergence of Islamic jurisprudence, the earlier *muṣannaf* works thus come under consideration as potential sources for the early history of Islamic law and Islamic jurisprudence. While the versions of the *Muwatta'* are limited primarily to the transmission from Mālik and the *Āthār* almost exclusively to that from Abū Hanīfa, and thus contain Medinan and Kufan material respectively, the *Muṣannaf* works of 'Abd al-Razzāq and Ibn abī Shayba are more broadly structured and are not confined to a single scholarly tradition. Both works have been available in edited form only since the

¹ Goldziher, *Muslim Studies*, vol. 2, pp. 231–234, 261. MacDonald, *Development*, p. 79. Th. W. Juynboll, "Ḥadīth," in: *Encyclopaedia of Islam*, First Edition, vol. 2, p. 192. Robson, "Ḥadīth," in: *Encyclopaedia of Islam*, Second Edition, vol. 3, p. 24. Cf. Sezgin, *Geschichte*, vol. 1, p. 57; Ṣiddīqī, *Ḥadīth Literature*, p. 16.

seventies and were not available, for instance, to Schacht. It is thus to be expected that through them the picture of the development of Islamic law in the second century, which until now has been strongly centered on Medina and Kufa, can be broadened, and that perhaps knowledge can be gained which will necessitate modifications of the depiction of the emergence of Islamic jurisprudence which is largely accepted in western Islamic studies.²

The usefulness of the *muṣannaf* works as historical sources is, however, dependent on the solution of a central problem, namely, whether the materials they contain can be dated and geographically located with reasonable certainty, or more precisely, whether and to what extent one can lend credence to the statements about their provenance in the chains of transmitters. The problem is as old as *Ḥadīth* itself. The Muslim science of *Ḥadīth* has engaged itself with it intensively since the close of the second/eighth century and set forth its results in the classical collections of *Ḥadīth* and the works on criticism of transmitters and transmission.³ For centuries, they were largely the object of consensus and, exceptions aside, were accepted at least in Sunnī circles. However, they have been placed generally in question by European scholars, especially by the work of Goldziher and Schacht, since the beginning of this century. Since then, the *Ḥadīth* material as a whole—traditions of the Prophet, *ṣaḥāba*, and *tābiʿūn*—has been subject to an all-encompassing suspicion of forgery, and they are consequently usable as historical sources only when the authenticity of their alleged origin is demonstrable or the forgery can be dated, unless one contents oneself with a wholesale date of origin in the second/eighth or third/ninth century, depending on the date of origin of the collection that one is using. In his investi-

² Both works have been used repeatedly since their appearance, for instance by: J. van Ess, *Zwischen Ḥadīth und Theologie* (Berlin, 1975). Cook, *Early Muslim Dogma* (Cambridge, 1981). M. Muranyi, *Ein altes Fragment medinensischer Jurisprudenz aus Qairawān* (Stuttgart, 1985). P. Crone, *Roman, Provincial and Islamic Law* (Cambridge, 1987). The latter very explicitly indicates their importance for "pre-classical law" (see p. 47), as does Muranyi in *Materialien zur mālikitischen Rechtsliteratur* (Wiesbaden, 1984), p. 26, note 59. M. J. Kister, in addition to Sezgin, was among the first who recognized the value of 'Abd al-Razzāq's *Muṣannaf* and Ma'mar's *Jāmi'*. He used them even before they were edited. Cf. his "Ḥaddithū 'an banī Isrā'īla wa-lā ḥaraja," *Israel Oriental Studies* 2 (1972), pp. 215–239.

³ Cf. Goldziher, *Vorlesungen*, p. 38 and the surveys of the literature in question in Siddiqi, *Ḥadīth Literature*, Chaps. 4, 5, 7, 8; Azami, *Ḥadīth Methodology*, Part 2.

gation of the origins of Islamic jurisprudence, Schacht expended a great deal of effort and ingenuity on the solution of these problems and employed a combination of internal criteria (of content) and external criteria (having to do with the *isnād*) in order to place individual traditions historically. Nevertheless, in examining his decisions about authenticity or forgery and his datings one is often unable to avoid the impression that a great deal of arbitrariness and uncertainty is in play, and that he does not apply his methods uniformly and consistently. Because of this, and because Schacht's ideas have met with broad acceptance in western Islamic studies, one cannot overlook his judgments on the worth of the *muṣannaf* works and the material contained in them.

The following early works of the *muṣannaf* type were available to Schacht: The two *Āthārs* of Abū Yūsuf and al-Shaybānī and the two *Muwattaʿa*' versions of al-Shaybānī and Yaḥyā ibn Yaḥyā. In the case of the *Āthār* he assumes that the ascription of the material to Abū Ḥanīfa is credible,⁴ but that even the latter's own informants are not always the true authors or transmitters of the traditions presented under their names, and that their citation of figures of the end of the first/seventh century is almost completely fictive.⁵ The certainty with which Schacht accepts Abū Ḥanīfa as the true source of the *Āthār*, for which he gives no detailed rationale, is surprising in view of his opinion, expressed in another context, that Abū Yūsuf and al-Shaybānī were in the habit of ascribing their own opinions to their teacher Abū Ḥanīfa, which according to him was a customary procedure.⁶ Similarly, Schacht assumes that the materials indicated as originating with Mālik by al-Shaybānī and Yaḥyā ibn Yaḥyā in their recensions of the *Muwattaʿa*' were in fact received from him,⁷ although the two versions are inconsistent in a number of ways. On the other hand, in many cases he expresses doubts about the authenticity of the statements of origin with which Mālik supplied his traditions,⁸ and rejects the ascription of texts to the so-called

⁴ This emerges from Schacht's use of the *Āthār*, cf. *Origins*, Part II, Ch. 2 and *passim* and id., "Abū Ḥanīfa," in: *Encyclopaedia of Islam*, Second Edition, vol. 1, p. 123.

⁵ Cf. Schacht, *Origins*, p. 238.

⁶ *Ibid.*

⁷ Cf. Schacht, "Mālik," in: *Encyclopaedia of Islam*, First Edition, vol. 3, pp. 205-209.

⁸ Cf. Schacht, *Origins*, pp. 163 ff., 176 ff.

"seven lawyers of Medina" as largely unhistorical. Even if he does not explicitly place Abū Ḥanīfa and Mālik under suspicion of forgery, he does insinuate that they at least presented as directly received traditions which they did not have directly from the indicated authorities, and that they either did not know that the texts they indirectly adopted were forgeries or knowingly passed on fictive traditions. Both premises are so weighty that they require independent proofs, that is, ones which do not depend on his theories. Schacht does not supply these. He does not even provide plausible reasons for the assumption that, for example, Abū Yūsuf's reference to Abū Ḥanīfa is reliable, that of Abū Ḥanīfa to Ḥammād not necessarily so, and that of Ḥammād to Ibrāhīm al-Nakha'ī only rarely credible.⁹

It does not seem advisable to adopt such a procedure, which rests on unfounded and unproven presuppositions, for the analysis of the newly accessible sources. It presents itself as an alternative to investigate the *muṣannaf* works from the point of view of their history of transmission and to seek concrete evidence of falsification of the information about sources, thus not asserting it *a priori* but—when possible—proving it. In order to test the practicability of this procedure, I have preferred the *Muṣannaf* of 'Abd al-Razzāq as experimental material for two reasons, among others: It is the earlier of the newly accessible *muṣannaf* works, and its structure of transmission is at first glance more homogeneous than that of Ibn abī Shayba.

A. 'ABD AL-RAZZĀQ'S *MUṢANNAF*—THE WORK AND ITS SOURCES

1. *The Edition*

The *Muṣannaf* of 'Abd al-Razzāq ibn Hammām al-Šan'ānī (d. 211/827) has been available since 1972 in an eleven-volume edition prepared by Ḥabīb al-Raḥmān al-A'zamī and published by al-Majlis al-'Ilmī, Beirut. It is unfortunate that an introduction to the manuscripts used and the principles of editing is lacking. One was planned as an inde-

⁹ He only gives reasons why particular texts from them are inauthentic, for instance: "express secondary stages in the development of the Iraqi doctrines," among other things (cf. p. 235); but the criterion he is applying is based on a fictitious legal development constructed with the exclusion of early material.

pendent publication, but never saw the light of day.¹⁰ From remarks of the editor and some illustrations of manuscripts used, it is possible roughly to reconstruct the manuscript basis:

1. The manuscript Murād Mullā (Istanbul) is the basic text.¹¹ It consists of five sections and is—by al-A‘zāmī’s estimation—complete, aside from small losses at the beginning of the first and fifth sections.¹² This judgement can only apply to the part of the text covered by this manuscript, because the end of the work is missing. This manuscript dates from the year 747/1346–7.¹³ It represents the basis for volumes one through ten, page 145 of the edition.

2. For the rest, the manuscript Fayḍ Allāh Efendī (Istanbul), from the year 606/1209–10, was used.¹⁴

Al-A‘zāmī consulted three other fractional texts for comparative purposes:

3. A manuscript of the Zāhiriyya (Damascus) from the seventh century. It begins on page 15 of vol. 1 and ends on page 57.¹⁵

4. A manuscript from al-Maktab al-Islāmī (Damascus). It begins on page 353 of vol. 3 and ends in vol. 4, approximately on page 406.¹⁶

5. A manuscript from Ḥaydarābād which comprises the text from vol. 9, page 271 to vol. 11, approximately page 23.¹⁷

The work as a whole consists of 33 “books” (*kutub*), which are subdivided into chapters (*abwāb*) and provided with headings. They do not all originate from the same transmission; rather, five different *riwāyas* are to be observed: these are found at the beginning of the *kitāb* in 22 books, in four books they are repeated once or several

¹⁰ ‘Abd al-Razzāq, *al-Muṣannaf*—abbreviated below to AM—, vol. 1, p. 4. I used the first edition. A second edition has been published in 1983.

¹¹ Cf. Sezgin, *Geschichte*, vol. 1, p. 99.

¹² AM 1, p. 1. There are photographs of a few pages of the manuscript on pp. [15], [17], [21], [22].

¹³ See AM 10, p. 145.

¹⁴ See AM 10, p. 126 (note); vol. 11, p. 471. On this cf. Sezgin, *Geschichte*, pp. 99, 291.

¹⁵ Cf. Sezgin, *Geschichte*, p. 99 (here identified as a separate *Kitāb al-ṣalāt*; this should probably be corrected).

¹⁶ See the photographs of the first folio in AM 1, pp. [19], [20]. The beginning and approximate end of the manuscript can be inferred from the references in the notes.

¹⁷ Sezgin lists further, later manuscripts, *Geschichte*, p. 99; he is lacking the two last named, however, about which no more precise information can be derived from the edition.

times at the beginnings of chapters, and eleven books have no explicit *riwāya* before ‘Abd al-Razzāq. In general, this probably means that that of the preceding text is still applicable. In three cases, however, the heading of the book is also missing, which could be the result of the loss of a folio. In one case the *riwāya* changes without indication as a result of this.¹⁸

1. *Riwaya* A:¹⁹ Abū Sa‘īd Aḥmad ibn Muḥammad ibn Ziyād ibn Bishr al-A‘rābī al-Baṣrī—Abū Ya‘qūb Ishāq ibn Ibrāhīm ibn ‘Abbād al-Dabarī—‘Abd al-Razzāq. From this tradition come the first fourteen books, that is, vols. 1–5 of the edition, book 16 (*al-nikāḥ*) and 17 (*al-ṭalāq*), that is, two thirds of vol. 6 and all of vol. 7, and books 27 (*al-ashriba*) to 29 (*al-luqṭa*) in vols. 9 and 10.²⁰ It ends with the manuscript Murād Mullā.

2. *Riwaya* B: Abū l-Ḥasan ‘Alī ibn Aḥmad al-Iṣbahānī in Mecca—Muḥammad ibn al-Ḥasan ibn Ibrāhīm ibn Hishām al-Ṭūsī—Muḥammad ibn ‘Alī al-Najjār—‘Abd al-Razzāq. It is found in only three books of the manuscript Murād Mullā: in book 15 (*ahl al-kitāb*), that is, at the beginning of vol. 6, in book 18 (*al-buyū‘*) and probably also the immediately following *kitāb al-shahādāt* with which vol. 8 starts. This tradition is externally distinguished from the first in that it much more regularly introduces ‘Abd al-Razzāq with “*akhbaranā*.”

3. *Riwaya* C: Abū l-Qāsim ‘Abd al-A‘lā ibn Muḥammad ibn al-Ḥasan ibn ‘Abd al-A‘lā al-Būsī, *qāḍī* in Ṣan‘ā’—Abū Ya‘qūb Ishāq ibn Ibrāhīm ibn ‘Abbād al-Dabarī—‘Abd al-Razzāq. It begins in vol. 8 with the twentieth book (*al-mukātab*) and probably extends to the end of the *kitāb al-mudabbar* in vol. 9. This is not completely certain, because in these books the *riwāya* is either missing or reduced to the last link (al-Dabarī). This could also indicate *riwāya* A, which is externally hardly different from C.

These three *riwayas* are limited to the manuscript Murād Mullā, and the next two to the manuscript Fayḍ Allāh Efendī.

4. *Riwaya* D: [Abū ‘Umar] Aḥmad ibn Khālīd [ibn Yazīd al-Qurṭubī]—Abū Ya‘qūb Ishāq ibn Ibrāhīm al-Dabarī—‘Abd al-Razzāq.

¹⁸ AM 10, p. 146.

¹⁹ The *sigla* for the *riwayas* are mine.

²⁰ In vol. 9, p. 271 one should probably read Abū Sa‘īd Aḥmad ibn Muḥammad instead of “‘Abd al-Razzāq Aḥmad ibn Muḥammad.”

This manuscript probably begins with it (vol. 10, p. 146). Since the beginning of the thirtieth book is missing along with its heading, one can conclude this only from the outer form, which corresponds to that of the following book (*al-farā'id*). There, and in the last (33rd) book, the *kitāb al-jāmi'*, the *riwāya* is specified. It generally introduces the individual traditions with "*akhbaranā* 'Abd al-Razzāq," and is differentiated by this from the following *riwāya*.

5. *Riwāya* E: Abū 'Umar Aḥmad ibn Khālīd [ibn Yazīd al-Qurṭubī]—Abū Muḥammad 'Ubayd ibn Muḥammad al-Kashwārī—Muḥammad ibn Yūsuf al-Hudhāqī—'Abd al-Razzāq. It is limited to the *kitāb ahl al-kitābahayn* and the *waṣāyā* cited in its appendix, and is externally to be distinguished from all of the other *riwāyas* in that 'Abd al-Razzāq is not named before each individual tradition.

The *riwāyas* A, C and D run through Ishāq ibn Ibrāhīm al-Dabarī. Thus, 29 of the 33 books of the *Muṣannaf* derive from his tradition, that is, the greater part (90%) of the text available in the edition.

The existence of different strands of transmission in one and the same manuscript indicates that the textual stock it presents is a collection of parts of the work. This implies that we cannot be sure whether the work is really complete and the order of all the books really original. The collectors who put together the existing recensions between the second half of the fourth/tenth century and the beginning of the seventh/thirteenth or the eighth/fourteenth century do not seem to have had at their disposal a complete version in a single *riwāya*. This also makes it difficult, if not impossible, to determine with certainty whether all the "books" contained in the edition were originally part of the *Muṣannaf*. This question presents itself not only in the case of the last book, the *kitāb al-jāmi'*, which the editor characterizes as a work of Ma'mar ibn Rāshid transmitted by 'Abd al-Razzāq,²¹ but also in the case of the *kitāb al-maghāzī*, which also contains primarily texts of Ma'mar.²² However, both books contain not exclusively traditions of Ma'mar, but also—if in smaller

²¹ See the title page of vol. 1. On *al-jāmi'* of Ma'mar cf. Sezgin, "Hadis musannefatının mebdet" and id., *Geschichte*, vol. 1, p. 291.

²² On the *Kitāb al-Maghāzī* of Ma'mar cf. op. cit. Possibly 'Abd al-Razzāq's *kitāb al-maghāzī* is only an excerpt from this work. Cf. M. Jarrar, *Die Prophetenbiographie im islamischen Spanien. Ein Beitrag zur Überlieferungs- und Redaktionsgeschichte* (Frankfurt/Bern 1989), p. 29.

numbers—ones which ‘Abd al-Razzāq purports to have from others. Thus, it is possible that ‘Abd al-Razzāq or his students already regarded them as part of his tradition work. This, in any case, is the view of the earliest manuscript (Fayḍ Allāh Efendī), which closes the *kitāb al-jāmi‘* with the comment: *Tamma kitābu l-jāmi‘* [. . .] *wa bi-tamāmihi tamma jamī‘u kitābi l-muṣannafi li-abī Bakr ‘Abd al-Razzāq ibn Hammām ibn Nāfi‘ al-Ṣan‘ānī al-Yamānī* [. . .] ([With this] closes the *kitāb al-jāmi‘*, and with its completion the entire *Kitāb al-Muṣannaḥ* of ‘Abd al-Razzāq, and so forth, is complete).²³ This does not exclude the possibility that the *Kitāb al-jāmi‘* of Ma‘mar is contained virtually in toto in the section of ‘Abd al-Razzāq’s *Muṣannaḥ* of the same name.

2. The Sources of the Work

Even in a fleeting overview of the work, it is conspicuous that most of its books (*kutub*) contain materials which are supposed to derive largely from three people: Ma‘mar, Ibn Jurayj and al-Thawrī. Exceptions to this rule are the books *al-maghāzī* and *al-jāmi‘*, which contain primarily texts of Ma‘mar, and the *kitāb al-buyū‘*, which has only very few traditions of Ibn Jurayj. On the basis of a representative spot check of 3810 individual traditions—or 21% of the relevant parts of the entire work²⁴—the supposed origin of ‘Abd al-Razzāq’s texts appears, more precisely, as follows: about 32% are from Ma‘mar, 29% from Ibn Jurayj and 22% from al-Thawrī. Traditions from Ibn ‘Uyayna follow at a wide remove (4%). The remaining 13% are distributed over 90 names, to which only 1% or less are attributed; among them are found other famous legal scholars of the second/eighth century, such as Abu Ḥanīfa (0.7%) and Mālik (0.6%).

Let us assume for the moment that ‘Abd al-Razzāq’s statements of origins are correct. Then the work is compiled from three major sources. Each of the three major sources contributed several thousand individual traditions. This enormous volume makes it natural to suppose that they are either originally independent works, or parts

²³ AM 11, p. 471.

²⁴ The three “atypical” books have been excluded.

thereof, or the content of the instruction of these three figures, who in terms of age could have been his teachers, recorded in writing by 'Abd al-Razzāq. On the other hand, the possibility that 'Abd al-Razzāq fabricated his statements of origin in general is not to be precluded. The question which of the two hypotheses is more probable can, without recourse to external—for instance, biographical or bibliographical—sources, most readily be answered on the basis of the four more voluminous complexes of tradition. Assuming that 'Abd al-Razzāq arbitrarily attributed them to the four people named—Ma'mar, Ibn Jurayj, al-Thawrī and Ibn 'Uyayna—, they ought to be similar in their structure of transmission. To make a comparison possible, it suffices to quantify the statements of origin of the four sources and assemble them into profiles.

1. The Ma'mar source consists 28% of materials from al-Zuhri and 25% of materials from Qatāda. 11% goes under the name Ayyūb, just over 6% is anonymous, and 5% comes from Ibn Tāwūs. Ma'mar's own statements make up only 1%. The remainder (24%) is distributed among 77 names.²⁵

2. The Ibn Jurayj source consists 39% of material from 'Aṭā', 8% is anonymous, 7% is allotted to 'Amr ibn Dīnār, 6% to Ibn Shihāb [al-Zuhri], and 5% to Ibn Tāwūs. Ibn Jurayj's own material comes to 1%. The remainder (34%) is divided among 103 persons.

3. In the case of the al-Thawrī source, his own statements dominate with over 19%; there follow, at some distance, the material of Maṣṣūr (7%) and of Jābir (6%); 3% of the texts are anonymous, and the remaining 65% is distributed among 161 sources.

4. The Ibn 'Uyayna source contains 23% traditions of 'Amr ibn Dīnār; 9% are allotted to Ibn abī Najīh, 8% to Yaḥyā ibn Sa'īd, 6% to Ismā'īl ibn abī Khālid, 3–4% are anonymous, and the remaining 50% represent 37 persons. His own opinion is not present.

Arranged in a table, the results appear as follows:

²⁵ The calculations are based on the sampling given on pp. 58, 74 and 78, note 13.

<i>Sources:</i>	Ma'mar	Ibn Jurayj	al-Thawrī	Ibn 'Uyayna	'Abd al-Razzāq
<i>Number of main informants:</i>	2	1	0	1	3
<i>Shares of the main informants:</i>	28/25%	39%	—	23%	32/29/22%
<i>Number of less frequent informants:</i>	3	3	2	3	1
<i>Shares of less frequent informants:</i>	11/6/5%	7/6/5%	7/6%	9/8/6%	4%
<i>Number of rarer informants:²⁶</i>	77	103	161	37	90
<i>Residual shares of rarer informants:</i>	24%	34%	65%	50%	13%
<i>Personal material:</i>	1%	1%	19%	0%	0.03%
<i>Anonymous material:</i>	6%	8%	3%	3-4%	0.5%
<i>Number of traditions per informant:²⁷</i>	17	10.4	5.6	4.7	40.5

These profiles show that each source has a completely individual face. It is unlikely that a forger ordering materials and equipping them with false labels would create units so strongly differentiated from each other. At the same time, it is to be noted that the profiles only represent very rough outlines and that the differences are rein-

²⁶ These numbers are limited to the sampling; the others are representative of the work as a whole.

²⁷ This is the quotient from the total number of traditions and the number of transmitters.

forced as one goes into greater detail, for instance, inquiring into the geographical affiliations of the sources or the formal characteristics of the texts. Thus, analysis of the structure of transmission of the *Muṣannaf* of 'Abd al-Razzāq and his main sources leads to the conclusion that we are more probably dealing with real sources than with fictions of 'Abd al-Razzāq's.

Some further formal characteristics which are conspicuous in 'Abd al-Razzāq's presentation of the traditions point in the same direction,²⁸ for instance, the fact that 'Abd al-Razzāq occasionally expresses his uncertainty about the exact origin of a tradition. An example:

'Abd al-Razzāq from al-Thawrī from Mughīra or someone else—Abū Bakr [i.e., 'Abd al-Razzāq] was unsure about it—from Ibrāhīm, who said: . . .²⁹

In the case of a notorious forger such doubts are scarcely to be expected, because they would compromise his actual aim, the feigning of certain and unbroken transmission.

'Abd al-Razzāq claims to have received thousands of texts directly from Ibn Jurayj, al-Thawrī and Ma'mar. This could be a fabrication. However, the fact that, for instance, *isnāds* such as 'Abd al-Razzāq—al-Thawrī—Ibn Jurayj . . .,³⁰ or—more rarely—'Abd al-Razzāq—Ibn Jurayj—al-Thawrī³¹ or 'Abd al-Razzāq—al-Thawrī—Ma'mar . . .³² appear, and thus that indirect transmission from his main informants also occurs, is an indicator that 'Abd al-Razzāq's statements about origins are not arbitrarily chosen but really designate the sources from which the relevant traditions derive. This fact is just as unrecconcilable with the forgery theory as 'Abd al-Razzāq's transmitting anonymous reports from people for whom he otherwise names one of his main sources, for instance, 'Abd al-Razzāq from a Medinan scholar (*shaykh*), who said: I heard Ibn Shihāb report from . . ., or 'Abd al-Razzāq from someone (*rajul*) from Ḥammād from. . .³³ In

²⁸ I use the term "tradition," in addition to its common meaning, as a synonym for *ḥadīth*, *athar* or *khābar*.

²⁹ AM 6: 11825 (The number before the colon indicates the volume; the number after it is always the number of the text).

³⁰ Cf. AM 6: 11682; 7: 12631, 13020, 13607.

³¹ Cf. AM 6: 10984.

³² Cf. AM 6: 10798.

³³ Cf. AM 7: 12795, 13622.

general, he has traditions of Ibn Shihāb from Ibn Jurayj or Ma'mar and texts of Ḥammād from al-Thawrī or Ma'mar.

The results obtained from within the work find confirmation through reports of biographical character contained in various later works. Separate evaluation of these sources is advisable for methodological reasons, because the authenticity of the biographical traditions is no less controversial than that of the *Ḥadīth* and the early legal traditions.

B. THE AUTHOR AND HIS WORK IN THE LIGHT OF THE BIOGRAPHICAL SOURCES

According to the biographical literature, his full name is Abū Bakr 'Abd al-Razzāq ibn Hammām ibn Nāfi'.³⁴ As *nishas* we find: al-Ṣan'ānī,³⁵ al-Yamānī³⁶ and al-Ḥimyarī.³⁷ The last should indicate that he was a *mawlā* of the Ḥimyar.³⁸ Born in the year 126/744,³⁹ he grew up in Yemen and studied there, but also undertook business trips to Syria which surely led him through Mecca and Medina, where he used the opportunity to meet with the scholars there.⁴⁰ Later he lived and taught in Yemen and died there at the age of 85 years⁴¹ in the middle of the month of Shawwāl of the year 211/827.⁴²

³⁴ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 399. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 289. al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 130. Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 38. Ibn 'Asākir, *Ta'rikh*, vol. 36, p. 160. Ibn Khallikān, *Wafayāt*, vol. 2, p. 371. Ibn al-Nadīm, *Fihrist*, p. 318. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 126. al-Ṣafadī, *Nakt*, p. 191. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 310. (For the complete bibliographical information, see bibliography.)

³⁵ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 38 and the literature following Ibn abī Ḥatīm in the preceding note.

³⁶ al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 130. Ibn 'Asākir, *Ta'rikh*, vol. 36, pp. 164, 165.

³⁷ Ibn 'Asākir, *Ta'rikh*, vol. 36, p. 160. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 126. al-Ṣafadī, *Nakt*, p. 191. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 310.

³⁸ See note 34 and Ibn 'Asākir, *Ta'rikh*, vol. 36, pp. 164, 166.

³⁹ Ibn 'Asākir, *Ta'rikh*, vol. 36, p. 163. Ibn Khallikān, *Wafayāt*, vol. 2, p. 371. al-Dhahabī, *Mizān*, vol. 2, p. 126. al-Ṣafadī, *Nakt*, p. 191. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 314.

⁴⁰ Ibn 'Asākir, *Ta'rikh*, vol. 36, pp. 160, 162, 178. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. al-Ṣafadī, *Nakt*, p. 191.

⁴¹ al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Less precisely: Ibn al-Imād, *Shadharāt*, vol. 2, p. 27.

⁴² Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 399. al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 130. Ibn 'Asākir, *Ta'rikh*, vol. 36, p. 192. Ibn Khallikān, *Wafayāt*, vol. 2, p. 371. Ibn al-Nadīm, *Fihrist*, p. 318. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2,

‘Abd al-Razzāq’s most important teacher was Ma‘mar ibn Rāshid, who originated from Basra but had settled in Yemen.⁴³ According to his own statements, he studied with him for seven, eight or nine years.⁴⁴ On the basis of his age, this must have been in the last years of the life of Ma‘mar, who died in 153/770.⁴⁵ He was present at his death;⁴⁶ presumably at that time he was still his student. The beginning of his studies with Ma‘mar is thus to be dated approximately in his twentieth year.⁴⁷ Earlier, however, he seems to have taken advantage of a visit of the Meccan Ibn Jurayj in Yemen to attend his lectures.⁴⁸ According to the statement of an older classmate of ‘Abd al-Razzāq’s, the later *muftī* and *qādī* of Ṣan‘ā’ Hishām ibn Yūsuf (d. 197/812–3),⁴⁹ he was then 18 years old,⁵⁰ that is, Ibn Jurayj’s trip to Yemen would have to have taken place in the year 144/761–2. That is quite possible, since Ibn Jurayj’s journeys in the last years of his life—he died in 150/767—are documented elsewhere as well, and his presence is indicated in Basra in the following year.⁵¹ Sufyān al-Thawrī (d. 161/777–8) also numbers among ‘Abd al-Razzāq’s more significant teachers.⁵² He made a stay in Yemen in the year 149/766,⁵³ and ‘Abd al-Razzāq probably obtained

p. 129. Ibn Kathīr, *Bidāya*, vol. 9, p. 265. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 314. Ibn al-‘Imād, *Shadharāt*, vol. 2, p. 27.

⁴³ Cf. Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 397. al-Bukhārī, *Ta’rīkh*, vol. 4, p. 378. Ibn Ḥibbān, *Mashāhīr*, no. 1543. Ibn Ḥajar, *Tahdhīb*, vol. 10, p. 243; vol. 6, p. 311.

⁴⁴ Ibn abī Ḥātim, *Jarḥ*, vol. 3, p. 38 (source: Muḥammad ibn Abān al-Balkhī). Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 167 (source: Aḥmad ibn Ḥanbal). al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 126 (Ma‘mar should be read instead of ‘Umar).

⁴⁵ Variants: 152, 154.

⁴⁶ Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 397 (source: Ibn ‘Uyayna from ‘Abd al-Razzāq himself).

⁴⁷ This is probably what is referred to by al-Dhahabī’s statement, *Mizān*, vol. 2, p. 126, that he devoted himself to the study of Tradition (*talaba l-‘ilm*) at the age of 20. On the relationship between ‘Abd al-Razzāq and Ma‘mar cf. also Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 311, 312, 313.

⁴⁸ Cf. also Ibn abī Ḥātim, *Taqdīm*, pp. 52 f. Also Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 311, 312.

⁴⁹ On him cf. al-Dhahabī, *Tadhkira*, vol. 1, p. 346.

⁵⁰ Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 167. al-Dhahabī, *Mizān*, vol. 2, p. 127.

⁵¹ See below, p. 282.

⁵² al-Bukhārī, *Ta’rīkh*, vol. 3/2, p. 130. Ibn abī Ḥātim, *Jarḥ*, vol. 3, p. 39. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 128. al-Ṣafadī, *Nakī*, p. 191.

⁵³ Cf. Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 365 (biography of Ibn ‘Uyayna; source: Ibn ‘Uyayna). Ibn ‘Asākir, *Ta’rīkh*, vol. 36, pp. 167, 168 (sources: ‘Abd al-Razzāq, Zayd ibn al-Mubārak). al-Dhahabī, *Tadhkira*, vol. 1, p. 346 (biography of Hishām ibn Yūsuf; source: Ibrāhīm ibn Mūsā). Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 311, 313.

the bulk of the material transmitted from him on this occasion. The same is true of Sufyān ibn 'Uyayna (d. 198/813-4), who visited Yemen in the years 150/767 and 152/769⁵⁴ and is named in the biographical literature as a teacher of 'Abd al-Razzāq.⁵⁵ That at this time he was already studying with Ibn 'Uyayna can be inferred from a remark of 'Abd al-Razzāq's that he presented a *ḥadīth* of Ibn 'Uyayna to Ma'mar.⁵⁶ Furthermore, it is not impossible that 'Abd al-Razzāq repeatedly contacted the Meccans Ibn Jurayj and Ibn 'Uyayna, as well as the Kufan al-Thawrī, who spent most of the years 155/772-160/777 in Mecca,⁵⁷ on the occasion of the *ḥajj*. Aside from the people named, further names of informants are listed in the biographical works, among them 'Ubayd Allāh ibn 'Umar, al-Awzā'ī and Mālik, to name only the better known.⁵⁸ Most can also be documented as such in the *Muṣannaf*. Thus, the statements of the biographical literature about 'Abd al-Razzāq's teachers to a large extent correspond to the information which can be gained from his work itself about his more significant sources. Since, as far as I can tell, a direct dependence of the biographical reports on the work of 'Abd al-Razzāq—in the form of their being extracted from it—is not to be observed, they may be regarded as an independent confirmation of the conclusions drawn from the work itself.

'Abd al-Razzāq achieved such fame as a scholar in the last quarter of the second/eighth century that he attracted students from all corners of the Islamic *oikoumene*. Among them were the Iraqis Aḥmad ibn Ḥanbal and Yaḥyā ibn Ma'īn, two of the outstanding '*ulamā'*' of the first half of the third/ninth century, who studied with him for a year before the turn of the century.⁵⁹ Also found among the numerous students of 'Abd al-Razzāq is the name Ishāq ibn Ibrāhīm al-

⁵⁴ Ibn Sa'd, as in note 53.

⁵⁵ Ibn Khallikān, *Wafayāt*, vol. 2, pp. 129, 371. al-Ṣafadī, *Nakt*, p. 191. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 311.

⁵⁶ Ibn abī Ḥatīm, *Taqdīm*, p. 52 (Source: Aḥmad ibn Maṣṣūr al-Ramādī, d. 265/878-9, a student of 'Abd al-Razzāq. On him cf. al-Dhahabī, *Tadhkirā*, vol. 2, pp. 364, 564 f. al-Ṣafadī, *Nakt*, p. 191).

⁵⁷ Cf. al-Baghdādī, *Ta'rikh*, vol. 9, pp. 71, 153, 159 f.

⁵⁸ Ibn abī Ḥatīm, *Jerh*, vol. 3, p. 38. Ibn 'Asākir, *Ta'rikh*, vol. 36, p. 160, 165. Ibn Khallikān, *Wafayāt*, vol. 2, p. 371. al-Dhahabī, *Tadhkirā*, vol. 1, p. 364. Id., *Mizān*, vol. 2, pp. 126, 128. al-Ṣafadī, *Nakt*, p. 191. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 311.

⁵⁹ Ibn 'Asākir, *Ta'rikh*, vol. 36, pp. 174, 176. Ibn Khallikān, *Wafayāt*, vol. 2, p. 371. al-Dhahabī, *Mizān*, vol. 2, pp. 126, 127, 128. al-Ṣafadī, *Nakt*, p. 192. Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 311, 312, 313. Ibn al-ʿImād, *Shadharāt*, vol. 2, p. 27.

Dabarī,⁶⁰ from whom a large part of the version of the *Muṣannaf* which has come down to us derives.

‘Abd al-Razzāq’s reputation rested above all on his book or books. The earliest references to them derive from his students Ibn Ma‘īn (d. 233/847) and Ibn Ḥanbal (d. 241/855–6) and their student al-Bukhārī (d. 256/870).⁶¹ From them it can be inferred only that the books came into being before the turn of the century and that, among other things, they contained *ḥadīths*, but the references provide neither a title nor any details about their structure. Ibn al-Nadīm (d. 385/995) mentions a *Kitāb al-Sunan fī l-fiqh* and a *Kitāb al-Maghāzī* by him.⁶² The designation “*sunan* book” leads one to assume that it was a work of the *muṣannaf* type. This is also implied by a number of characterisations of his work from the fourth/tenth century and later: Ibn ‘Adī (d. 365/975–6) remarks of ‘Abd al-Razzāq that he possessed *asnāf* and a voluminous *Ḥadīth*. Ibn Hibbān (d. 354/965) numbers him among those who gathered (*jama‘a*) and ordered thematically (*sannafa*).⁶³ Al-Khushanī (d. 371/981–2) speaks of a “*Kitāb ‘Abd al-Razzāq fī khilāf al-nās fī l-fiqh*.”⁶⁴ Ibn Khayr (d. 575/1179–80) knows the *Muṣannaf* by ‘Abd al-Razzāq in different *riwāyas* and mentions a *kitāb al-maghāzī* and a *kitāb al-jāmi‘* as parts of it.⁶⁵

Al-Dhahabī (d. 748/1347–8) writes: “*Ṣannafa al-Jāmi‘ al-kabīr*” (he composed the *Jāmi‘ al-kabīr* arranged according to subject areas),⁶⁶ and in another place, “He was the author of *al-Taṣānīf*.”⁶⁷ al-Ṣafadī (d. 764/1363) has: “*Ṣannafa l-Taṣīr wa-l-Sunan*.”⁶⁸ This last indicates the existence of a *Taṣīr* transmitted from him.⁶⁹ Ibn Kathīr (d. 774/1372–3) mentions him as the author of the *Muṣannaf* and of the

⁶⁰ Ibn ‘Asākir, *Ta’rikh*, vol. 36, p. 161. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 128. al-Ṣafadī, *Nakt*, p. 191 (al-Dayrī should be corrected to al-Dabarī). Ibn Hajar, *Tahdhīb*, vol. 6, p. 311. On him see below, pp. 68 f.

⁶¹ Cf. al-Dhahabī, *Mizān*, vol. 2, p. 127. al-Bukhārī, *Ta’rikh*, vol. 3/2, p. 130. Ibn ‘Asākir, *Ta’rikh*, vol. 36, pp. 164, 181, 183.

⁶² Ibn al-Nadīm, *Fihrist*, p. 318.

⁶³ Ibn Hajar, *Tahdhīb*, vol. 6, pp. 313, 314.

⁶⁴ Cf. M. Muranyi, “Das *Kitāb Musnad ḥadīṡ Malik ibn Anas* von Ismā‘īl b. Ishāq al-Qadī (199/815–282/895),” *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 138 (1988), p. 134.

⁶⁵ Ibn Khayr, *Fahrasa*, pp. 127–130, 236. I owe this reference to Maribel Fierro.

⁶⁶ al-Dhahabī, *Mizān*, vol. 2, p. 126.

⁶⁷ Id., *Tadhkira*, vol. 1, p. 367.

⁶⁸ al-Ṣafadī, *Nakt*, p. 192.

⁶⁹ The *Taṣīr* has been edited recently several times: al-Riyāḍ, 1989; Beirut, 1991 and 1999. It is partially preserved in al-Tabarī’s *Jāmi‘*. Cf. Horst, “Zur Überlieferung,” pp. 295, 297. Sezgin, *Geschichte*, vol. 1, p. 99.

Musnad,⁷⁰ al-Ṣafadī and Ibn al-ʿImād (d. 1089/1687) as the composer of the *Muṣannafāt*.⁷¹ It is to be assumed that the *Kitāb al-sunan fī l-fiqh*, the *Jāmiʿ al-kabīr*, the *Taṣānīf*, the *Muṣannaf* and the *Muṣannafāt* are one and the same work, of which the present edition of the manuscripts entitled al-*Muṣannaf* represents a recension.⁷² Possibly all of these titles do not derive from the author himself, but designate the genre.⁷³

However, ʿAbd al-Razzāq was already controversial in his lifetime. Several reasons for this can be discerned: 1. Inaccuracies in his oral transmission. It is true that it is emphasized by his students that he knew the *Ḥadīth* of Maʿmar by heart and was better versed in this area than other students of Maʿmar,⁷⁴ that his transmission from Ibn Jurayj was more reliable than that of others,⁷⁵ and that the material of his book consisted exclusively of direct, “heard” traditions,⁷⁶ but Yaḥyā ibn Maʿīn and Aḥmad ibn Ḥanbal were able to observe

⁷⁰ Ibn Kathīr, *Bidāya*, vol. 9, p. 265. al-Dabbāgh (d. 696/1297) also has “*Muṣannaf*” in *Maʿālim al-ʿimān*, according to Muranyi, “Das *Kitāb Musnad ḥadīṭ Mālik*,” p. 134.

⁷¹ al-Ṣafadī, *Wāfi*, vol. 6, p. 394. Ibn al-ʿImād, *Shadharāt*, vol. 2, p. 27.

⁷² Ḥajjī Khalīfa asserts the identity of ʿAbd al-Razzāq’s *Muṣannaf* and his *Jāmiʿ fī l-ḥadīṭ*, cf. *Kashf*, vol. 2, col. 1712 (cf. vol. 1, col. 576).

⁷³ It would be wrong, however, to conclude, as G. R. Hawting did in his review in *Bulletin of the School of Oriental and African Studies* 59 (1996), p. 142, that early scholars did not associate a work called al-*Muṣannaf* with ʿAbd al-Razzāq simply because the title “al-*Muṣannaf*” appears only late in Islamic biographical literature. ʿAbd al-Razzāq’s *Muṣannaf* was known by this title to Ibn Mufarrij (d. 380/990–1), i.e. in the fourth/tenth century al-Andalus (cf. Ibn Khayr, *Faḥrasa* (Saragossa, 1894), pp. 128–130), and—obviously independently from that transmission—to Ibn abī Zayd al-Qayrawānī (d. 386/996) (cf. M. Muranyi, *Beiträge zur Geschichte der Ḥadīṭ- und Rechtsgelehrsamkeit der Mālikīyya in Nordafrika bis zum 5. Jh. d. H.* (Wiesbaden, 1997), p. 256). Muranyi also mentions (p. 206) that al-Dabārī’s transmission had already been brought to Qayrawān a generation earlier by Ibn abī l-Manzūr (d. 337/948) under the title *Kitāb ʿAbd al-Razzāq fī khilāf al-nās fī l-fiqh*. The fact that the work was transmitted with different titles almost from the beginning does not necessarily mean that the work achieved its literary stabilization only much later, as Hawting suggests (op. cit., p. 143). If the work is not an authored book but—as I think—the transcription of ʿAbd al-Razzāq’s lectures in which he transmitted his thematically arranged collections of legally relevant traditions, it is easily understandable that the whole had no title given to it by ʿAbd al-Razzāq himself. The lack of title does not mean, however, that there was no work by him at all or that it was very different from that presented in the manuscripts written in the seventh/thirteenth and eighth/fourteenth centuries.

⁷⁴ al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 127 (source: Aḥmad ibn Ḥanbal). Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 38 (source: Yaḥyā ibn Maʿīn), 39 (source: Abū Zurʿa). Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 312.

⁷⁵ al-Dhahabī, *Mizān*, vol. 2, p. 127 (source: Aḥmad ibn Ḥanbal). al-Ṣafadī, *Nakt*, p. 191. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 312.

⁷⁶ Op. cit. (source: Yaḥyā ibn Maʿīn).

that he made mistakes when he was not reading from his written texts.⁷⁷ It was also reported of him that he once let himself be prevailed upon to read aloud *ḥadīths* written by others that were unknown to him, which was regarded as passing on materials one had not heard oneself and was strongly condemned by the critical scholars.⁷⁸ Because of this, Yaḥyā refused to write down traditions from ‘Abd al-Razzāq which were not recorded in his “book.”⁷⁹ Al-Bukhārī followed him in this, and considered as “*ṣaḥīḥ*” only the traditions contained “in his book.”⁸⁰ 2. In the last years of his life ‘Abd al-Razzāq lost his eyesight⁸¹ and could not himself check against the original the copies of his book presented to him, but depended in cases of doubt on the versions of the students whom he knew to be particularly accurate,⁸² a procedure which he had perhaps also practiced before becoming blind. Furthermore, he is supposed to have dictated texts from memory. Because of this, Aḥmad ibn Ḥanbal deemed the traditions of people who studied with him in this period to be *da‘īf* (unreliable).⁸³ Later scholars such as Ibn al-Ṣalāḥ (d. 643/1245–6) joined him in this opinion⁸⁴ and—following al-Nasā’ī (d. 303/915–6)—insisted that texts deriving from ‘Abd al-Razzāq be tested, whether to distinguish the later from the earlier, good transmission, or because they generally distrusted him and only wanted to accept the traditions attested elsewhere as well.⁸⁵

3. Such fundamental reservations were based less on ‘Abd al-Razzāq’s transmission practices than on his sympathy for the Shī‘a. It is attested by his profession to Yaḥyā ibn Ma‘īn and by numerous pro-‘Alid statements.⁸⁶ ‘Abd al-Razzāq was won for the Shī‘a—

⁷⁷ al-Ṣafadī, *Nakt*, p. 192 (source: Abū Ḥaythama Zuhayr ibn Ḥarb).

⁷⁸ Ibn abī Ḥātim, *Jarḥ*, vol. 3, p. 39 (source: Yaḥyā ibn Ma‘īn from Abū Ja‘far al-Suwaydī). On a similar case see Goldziher, *Muslim Studies*, vol. 2, p. 176.

⁷⁹ al-Dhahabī, *Mizān*, vol. 2, p. 127. al-Ṣafadī, *Nakt*, p. 192.

⁸⁰ al-Bukhārī, *Ta‘rikh*, vol. 3/2, p. 130.

⁸¹ al-Dhahabī, *Mizān*, vol. 2, p. 127 (source: Aḥmad ibn Ḥanbal). al-Ṣafadī, *Nakt*, p. 191; Ibn Hajar, *Tahdhīb*, vol. 6, p. 312.

⁸² al-Baghdādī, *Kifāya*, p. 259 (source: Ishāq ibn abī Isrā‘īl, i.e., Abū Ya‘qūb ibn Ibrāhīm al-Marwazī, d. 245/859–60, a student of ‘Abd al-Razzāq’s. On him cf. al-Dhahabī, *Tudhkira*, vol. 2, pp. 484 f.).

⁸³ al-Dhahabī, *Mizān*, vol. 2, p. 127. al-Ṣafadī, *Nakt*, p. 191. Ibn Hajar, *Tahdhīb*, vol. 6, p. 312.

⁸⁴ al-Dhahabī, *Mizān*, vol. 2, p. 128.

⁸⁵ al-Ṣafadī, *Nakt*, p. 192. al-Dhahabī, op. cit. Ibn Hajar, *Tahdhīb*, vol. 6, p. 314.

⁸⁶ Cf. Ibn ‘Asākir, *Ta‘rikh*, vol. 36, pp. 186, 187. al-Dhahabī, *Mizān*, vol. 2, pp. 127–128. al-Ṣafadī, *Nakt*, pp. 191–192. Ibn Hajar, *Tahdhīb*, vol. 6, p. 313.

clearly only at a rather advanced age—by Ja‘far ibn Sulaymān al-Ḍaba‘ī (d. 178/794–5) during the latter’s sojourn in the Yemen.⁸⁷ Some of his students deserted him for this reason,⁸⁸ but *Ḥadīth* specialists such as Yaḥyā ibn Ma‘īn and Aḥmad ibn Ḥanbal did not regard his transmission as devalued by it. The statement is reported from Yaḥyā: “Even if ‘Abd al-Razzāq were to lapse from Islam, we would not give up his *Ḥadīth*.”⁸⁹ His Shī‘ism is generally described as moderate.⁹⁰ He is supposed to have distanced himself from more radical movements like that of the Rawāfiḍ.⁹¹ Nevertheless, some later scholars apparently took his conversion to the Shī‘a as an occasion to put his reliability in question. According to Abū Ḥātim (d. 277/890–1), for instance, one may indeed write down ‘Abd al-Razzāq’s *Ḥadīth*, but not depend on it.⁹² Others, such as al-Bukhārī (d. 256/870), al-Dhuhālī (d. 258/872), al-‘Ijlī (d. 261/874–5), Abū Dāwūd (d. 275/888–9), al-Bazzār (d. 292/905), and al-Dāraquṭnī (d. 385/995), considered him, aside from exceptional cases, to be reliable.⁹³

The edition of the *Muṣannaf* is based mainly on the version of the work transmitted by Abū Ya‘qūb Ishāq ibn Ibrāhīm ibn ‘Abbād al-Dabarī.⁹⁴ Not very much can be learned about him from the biographical literature.⁹⁵ He came from the village of Dabar near to Ṣan‘ā’ and already attended ‘Abd al-Razzāq’s lectures as a small

⁸⁷ Op. cit. in note 86. On Ja‘far ibn Sulaymān cf. al-Dhahabī, *Tadhkira*, vol. 1, p. 241.

⁸⁸ Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 187, 188. al-Dhahabī, *Mizān*, vol. 2, p. 127.

⁸⁹ Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 192. al-Dhahabī, *Mizān*, vol. 2, p. 128. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 314. On Aḥmad’s opinion cf. also Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 186. al-Dhahabī, op. cit., pp. 127, 129; Ibn Ḥajar, op. cit., pp. 311, 313.

⁹⁰ Op. cit. (source: Aḥmad). al-Dhahabī, *Tadhkira*, vol. 1, p. 364.

⁹¹ Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 191. al-Dhahabī, *Mizān*, vol. 2, p. 128 (source: Abū Bakr ibn Zanjawayh). On the Rawāfiḍ cf. W. M. Watt/M. Marmura, *Der Islam. II Politische Entwicklungen und theologische Konzepte* (Stuttgart 1985), pp. 159–164 and passim.

⁹² Ibn abī Ḥātim, *Jarh*, vol. 3, p. 39. Cf. also Ibn ‘Asākir, *Ta’rīkh*, vol. 36, p. 172. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 314 (here the “lā” before “*yuhṭajju bihi*” has clearly been dropped.)

⁹³ al-Bukhārī, *Ta’rīkh*, vol. 3/2, p. 130. al-Dhahabī, *Tadhkira*, vol. 1, p. 364. Id., *Mizān*, vol. 2, p. 127. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 314. Ibn al-‘Imād, *Shadharāt*, vol. 2, p. 27.

⁹⁴ See p. 57.

⁹⁵ Cf. al-Dhahabī, *Mizān*, vol. 1, p. 58. Id., *Ibar*, vol. 2, p. 74. Ibn Ḥajar, *Lisān*, vol. 1, pp. 349–350. al-Sam‘ānī, *Ansāb*, vol. 5, p. 304. al-Ṣafādī, *Wāfi*, vol. 6, p. 394 f. Ibn al-‘Imād, *Shadharāt*, vol. 2, p. 190.

boy with his father. He “heard” the *Muṣannaḥ*⁹⁶ in 210/825–6—thus, a year before ‘Abd al-Razzāq’s death—under the supervision of his father (*bi-‘tinā’ wālidihi*), at the age of approximately six years.⁹⁷ His father was thus a student of ‘Abd al-Razzāq’s, and it is to be assumed that he produced the manuscript which later passed into the possession of his son. Since, however, Ishāq “heard” the text as a child or at least claimed to have done so, he was able to omit his father from the *isnād*. Ishāq al-Dabarī is characterized as “*ṣaḥīḥ al-samā’*” (impeccable in oral transmission) and “*ṣadūq*” (upright),⁹⁸ but al-Dhahabī (d. 748/1347–8) notes that he also transmitted unacceptable (*munkar*) *ḥadīths* from ‘Abd al-Razzāq, of which it was doubtful whether they really derived from ‘Abd al-Razzāq because they were unique, and texts about the authenticity of which his teacher was himself unsure. Muslim (d. 261/874–5), Abū ‘Awāna (d. 316/928–9), al-Ṭabarānī (d. 360/971), al-Dāraquṭnī (d. 385/995) and others, however, considered him reliable and drew ‘Abd al-Razzāq material from him. The suspicion that he belonged to the Shī‘a seems to feed exclusively on the fact that he was a student of ‘Abd al-Razzāq and transmitted some of his pro-‘Alid statements.⁹⁹ He died in 286/899.¹⁰⁰

According to the criteria of critical *Ḥadīth* scholars of the third/ninth century of the stature of an Aḥmad ibn Ḥanbal, the transmission of ‘Abd al-Razzāq’s *Muṣannaḥ* through Ishāq ibn Ibrāhīm should be categorized as worthless. It was took place in the last years of his life, when he had become blind and was no longer able to check what was read to him with the necessary exactitude. The “heard” acquisition of the text by a six-year-old—even with the help of an adult—certainly does not contribute to a more positive evaluation.

The historian must not necessarily adopt the strict standards of *Ḥadīth* criticism. For his purpose, a purely written, not “heard” textual

⁹⁶ al-Dhahabī: *al-Taṣānīf*; al-Ṣafadī: *al-Muṣannaḥāt*.

⁹⁷ Ibn Khayr, *Fahrassa*, p. 130. al-Baghdādī, *Kifāya*, p. 64. al-Dhahabī, *Mizān*, vol. 1, p. 58 (in the Beirut edition no. 731). One source for this information is al-Dabarī’s Iraqi contemporary Ibrāhīm al-Ḥarbī (d. 285/898). On him cf. al-Dhahabī, *Tadhkira*, vol. 2, pp. 584 f.

⁹⁸ The precise meaning of this and other termini of evaluation in *Ḥadīth* criticism is difficult to define and probably varies from author to author. Cf. Juynboll, *Muslim Tradition*, pp. 184 ff.

⁹⁹ Muḥsin al-Amin, *A‘yān al-Shī‘a*, vol. 11, p. 35.

¹⁰⁰ Cf. Ibn Khayr, *Fahrassa*, p. 130. al-Dhahabī’s date of 182 is an error.

transmission is completely usable, even at the risk that it is faultier. It is to be inferred from a comment of 'Abd al-Razzāq's student Ishāq ibn abī Isrā'īl that at lectures several students simultaneously checked over their copies and when differences occurred the master clarified the valid version of the text. Despite his blindness, through this procedure a high degree of agreement between original and copy could be achieved. Since it is to be assumed that Ishāq ibn Ibrāhīm al-Dabārī's manuscript was prepared by his father or someone else from a text of 'Abd al-Razzāq's intended for instruction, Ishāq's age has no significance for the written process of transmission. Since, so far as I can see, neither Ishāq nor later transmitters substantially expanded or changed the text—aside from minimal clarifications¹⁰¹—, it is to be assumed that Ishāq's tradition is an authentic version of the works of 'Abd al-Razzāq.¹⁰² The fact that

¹⁰¹ Cf., for instance, AM 7: 12120, 13423, 13855.

¹⁰² Specifically, the last version taught in his circle during his lifetime. The possibility cannot be precluded that 'Abd al-Razzāq supplemented or abbreviated his collection several times in the course of his life.

Hawting doubts the conclusion that the part of the text which is ascribed to al-Dabārī reproduces 'Abd al-Razzāq's teaching (cf. his review, p. 142). He claims that the text "should be seen as the work of a later generation." His arguments are: 1) "Reports in the sources indicate" that expressions such as "*qara'nā 'alā*" are "often perfunctory", i.e. are not an indication of direct transmission; 2) most of the traditions in the work begin with "*qāla 'Abd al-Razzāq*." Neither argument is convincing. 1) Reports (Which reports? In which sources?) that the expression *qara'nā 'alā* was used although the text had not been read to the transmitter or author, cannot be generalized. It is dangerous to conclude on the basis of single reports that this happened "often" or almost always and that the term, therefore, has no specific meaning at all. 2) The claim that "most of the traditions in the work begin with *qāla 'Abd al-Razzāq*" is not correct. Al-Dabārī's *riwāya* is usually introduced at the top of a *kitāb*, rarely at the beginning of a chapter, with *qara'nā 'alā* and then mostly confines itself to giving only the name 'Abd al-Razzāq at the head of the *isnāds*. Only three books of al-Dabārī's transmission have "*akhbaranā 'Abd al-Razzāq*" (vol. 2, p. 335, vol. 9, p. 199 and vol. 10, p. 379) and only two books (vol. 2, p. 271 and vol. 9, p. 137) have "*an 'Abd al-Razzāq*" in their introductory formulae. This system is frequently interrupted by the expression "*akhbaranā 'Abd al-Razzāq*" which obviously means the same as "*qara'nā 'alā 'Abd al-Razzāq*." In al-Qurṭubī's *riwāya* the words "*akhbaranā 'Abd al-Razzāq*" are even regularly used to introduce the *isnāds*. Two other transmissions from al-Dabārī, those of al-A'rābī and al-Būsī, correspond, however, in *not* giving *akhbaranā* every time. Therefore, their method of quotation seems to be al-Dabārī's original text which has been systematically corrected by al-Qurṭubī. The method of quotation displayed in the (original) transmission of al-Dabārī's text does not necessarily indicate later editing but this method may, of course, have been used by pupils when making copies of the material collected from their teacher.

Ishāq was still a child at the time of 'Abd al-Razzāq's death could also speak for the assumption that the text remained largely in its original form and was not supplemented with oral traditions to any great extent.¹⁰³

In comparison, very few texts begin with "qāla 'Abd al-Razzāq" and they are clearly in most cases additions by 'Abd al-Razzāq himself to traditions quoted before or they are his comments on them. Strikingly, many of the additional traditions introduced with "qāla 'Abd al-Razzāq" continue with "samītu X" or another expression of *samā'* which is normally not the case with the other types of introduction. It is erroneous to assume that the expression "qāla X" necessarily indicates that the text is of a later generation. It may also be a comment made by the author or transmitter of a work during the transmission process written down by the students in the margin of their copies and later integrated in the body of the text, as seems to be the case in al-Dabari's transmission of 'Abd al-Razzāq's *Muṣannaf*.

For a more detailed discussion of the question whether the *Muṣannaf* really goes back to 'Abd al-Razzāq cf. my "The Author and his Work in Islamic Literature of the First Centuries. The Case of 'Abd al-Razzāq's *Muṣannaf*," *Jerusalem Studies in Arabic and Islam* (forthcoming).

¹⁰³ Hawting objected to such a reconstruction that it was based on an "undynamic view of the tradition" and that "the effects of the continuous reworking of the tradition, the introduction of glosses and improvements, the abbreviation and expansion of material" and so forth, "let alone simple errors of scribes and narrators" do not allow one to speak of authentic material. This objection has three shortcomings: 1) It is not true that I neglect those "effects," as can be seen, for example, in the discussion of the corpora of traditions ascribed to Ibn Jurayj and Ibn 'Uyayna, both allegedly going back to 'Amr ibn Dīnār (see below pp. 180-185) and in my articles "Der *Fiqh* des -Zuhri," "Quo vadis *Hadīth*-Forschung," "The Prophet and the Cat," and "The Murder of Ibn Abī l-Ḥuqayq." 2) The possibility that traditions changed during the transmission process must not lead us to conclude that we must give up the idea of reconstructing their original form and documenting the changes. 3) The concept of "continuous reworking of the tradition" which includes all possible changes is too general to be of any practical use. We must differentiate between types of changes that occur during the transmission process. It is one of the results of this study that 'Abd al-Razzāq and Ibn Jurayj can be characterized as collectors who tried to reproduce as accurately as possible the material which they had collected. This result does not exclude the possibility that they sometimes made mistakes and that later transmitters, copyists and even the modern editor of the work also made mistakes. I indicated obvious errors where I came across them. But these types of changes do not justify the conclusion that, for example, 'Abd al-Razzāq's transmission from Ibn Jurayj is not authentic as a whole, i.e. that we cannot be sure that the texts really go back to him and that they are generally so heavily distorted that they cannot be ascribed to Ibn Jurayj anymore. There are no indications of such dramatic changes. Hawting's comparison with historical traditions is misleading. The free use of traditions in this genre may not be generalized and transferred to the field of legal *Ḥadīth* even if instances of manipulation can be observed here as well.

C. THE *MUṢANNAF*—A SOURCE FOR THE LEGAL HISTORY OF THE FIRST HALF OF THE SECOND/EIGHTH CENTURY

Thus we have clarified two prerequisites on which the utility of the work as a historical source ultimately depends:

1. The recension available in an edited form very probably reproduces faithfully 'Abd al-Razzāq's teaching material—aside from the sequence of all the books, textual losses and errors which crept in during copying and editing. In other words, the *Muṣannaf* represents a text which is in principle trustworthy and whose origins can be dated in the first decade of the third/ninth century—perhaps even earlier.

2. The work itself seems to be a compilation of the texts of older sources of varying size. They can be reconstructed from the statements of provenance (*isnāds*).¹⁰⁴ 'Abd al-Razzāq came into possession of the materials of his four main sources largely between the years 144/761–2 and 153/770. They are presumably texts which go back to scholars of the first half of the second/eighth century—only Ibn 'Uyayna lived much longer—, which the author acquired directly from them. Consequently, the materials of 'Abd al-Razzāq's main sources originated in the course of the first half of the second/eighth century and are thus among the earliest legally relevant textual collections of large dimensions which have appeared to date and whose authenticity can be considered ensured.¹⁰⁵

¹⁰⁴ With "reconstruction of sources" I do not mean here that we can reconstruct earlier works in their original form, but only that we can compile all the texts which are ascribed by 'Abd al-Razzāq to main teachers.

¹⁰⁵ The word "authenticity" used here must not be misunderstood. I do not mean that the *content* of the traditions ascribed by 'Abd al-Razzāq to Ibn Jurayj, for example, is reliable, but only that his ascription to Ibn Jurayj can be trusted. Whether the material transmitted by Ibn Jurayj is reliable or not is another issue. Besides, my judgement that the corpus of Ibn Jurayj traditions is authentic is limited to the material contained in 'Abd al-Razzāq's *Muṣannaf*. Texts ascribed to Ibn Jurayj in other sources are not included. The question as to whether his name was used by someone else to confer legitimacy cannot be answered without a detailed study of the sources in question. In the case of 'Abd al-Razzāq's *Muṣannaf*, however, it can be ruled out that Ibn Jurayj's name was used by someone else.

G. H. A. Juynboll expressed some reservation about my conclusion that the texts which in the *Muṣannaf* are ascribed to 'Abd al-Razzāq's main informants Ibn Jurayj, Ma'mar and al-Thawrī really derive from them (cf. his "New Perspectives in the Study of Early Islamic Jurisprudence?", *Bibliotheca Orientalis* 49 (1992), pp. 358–361). He considers it possible that 'Abd al-Razzāq had fictitiously ascribed several or even many texts to his alleged informants. He argues that it was common among *Ḥadīth*

Since all four of the scholars from whom 'Abd al-Razzāq has the greater part of his material are also known as the authors of written works which have until now been considered lost—for instance, the *Kitāb al-Sunan* of Ibn Jurayj or the *Jāmi' al-kabīr* and *al-ṣaḡhīr* of Sufyān al-Thawrī¹⁰⁶—, the question presents itself whether such works—received in lectures—are not completely or partially 'Abd al-Razzāq's sources. It is imaginable that he cannibalized them and reworked them into a new synthesis. This impression is unavoidable; whether it is tenable can only be decided after reconstruction and a detailed investigation of the individual strands of sources.

Another important problem is what informational value these sources have for the question of the origins and development of Islamic jurisprudence, how old the material that they contain is, where it comes from, what characteristics it displays in terms of form and content, and what conclusions can be drawn from it with respect to our question. To get to the bottom of these questions and to test

scholars of the third/ninth century to invent additional *isnāds* and *mutūn*. As evidence Juynboll refers to the fact that collections of the third/ninth century and later contain many traditions ascribed to 'Abd al-Razzāq, Mālik, Sufyān ibn 'Uyayna and al-Ṭayālīsī that cannot be found in the collections preserved under their names. These traditions must, therefore, have been forged. This argument is not convincing, however, because it is improbable that these collections are complete records of their teachings. Juynboll thinks, furthermore, that the textual elements which I interpreted as "criteria of authenticity" were introduced by 'Abd al-Razzāq on purpose "in the expectation that even a critical *Ḥadīth* student such as Motzki, living many, say twelve centuries later, might fall for this, being taken in by these frills and tassels as 'hallmarks of authenticity.'" This and Juynboll's other highly speculative arguments as to why forgery of informants on a large scale may be "conceivable" need to be substantiated in order to be acceptable. In the meantime we can safely start from the working hypothesis that 'Abd al-Razzāq's main sources are not fictitious. I agree with Juynboll that it is desirable to check "diligently every single tradition supposedly transmitted by Ibn Jurayj to his alleged pupil," by comparing it with similar traditions in all other sources available, in order to be certain whether it really goes back to Ibn Jurayj. Yet testing all traditions of the *Muṣannaf* ascribed to Ibn Jurayj, Ma'mar, al-Thawrī and others in this manner needs generations of scholars devoting their energies to that enterprise. By comparing single traditions of the *Muṣannaf* with parallels in other sources, I have until now not detected a tradition which 'Abd al-Razzāq or his transmitters purposely falsely ascribed to one of his main informants.

¹⁰⁶ Cf. Ibn al-Nadīm, *Fihrist*, pp. 315, 316. According to him Ibn 'Uyayna did not have a book; one could only hear his lectures. This probably means that he did not supply a written text to be copied. However, works are ascribed to him, which consequently are probably notes by his students: a *Tafsīr* (thus op. cit., p. 316) and a *Kitāb al-Jawāmi' fī l-sunan wa-l-abwāb* (thus Abū Ṭālib al-Makkī, *Qūt al-qulūb*, vol. 1, p. 324. Cf. also Sezgin, *Bukhārī'nin kaynakları*, p. 42). On Ma'mar's *Jāmi'*, see above, p. 57, and Sezgin, "Hadis musannefatının mebdel."

whether they can be answered at all with the help of these sources, I have chosen two of 'Abd al-Razzāq's textual traditions—those of Ibn Jurayj and Ibn 'Uyayna—for a pilot study. One reason for this choice is that both are Meccan scholars. Since we know as good as nothing about the development of jurisprudence in Mecca in the first/seventh and second/eighth centuries—conditions in Medina and Kufa have been much more thoroughly researched and depicted¹⁰⁷—there is an opportunity to fill this gap with the help of the materials of the two figures named. Another, decisive factor was the observation of certain formal characteristics of the Ibn Jurayj source which seemed particularly favorable for the determination of the provenance and authenticity of the texts contained in it.

In view of the predominantly homogeneous structure of the *Muṣannaf*, it would not have been very efficient to extend the study over the entire work. Despite the expenditure of several extra years, the conclusions would not have looked very different. For this reason, I have chosen a sufficiently large textual basis—the books *al-nikāḥ* and *al-ṭalāq*,¹⁰⁸ that is, three quarters of the sixth and the entire seventh volume of the work—, but took pains to depict the results in a representative way. In principle, they are valid for the entire work with the exception of the appended *kitāb al-jāmi'* and the *kitāb al-maghāzī*,¹⁰⁹ which contain material from neither Ibn Jurayj nor Ibn 'Uyayna, and of the *kitāb al-buyū'*, where texts of Ma'mar and al-Thawrī dominate. This limitation, furthermore, will—I hope—contribute to the transparency and testability of the argumentation, which often leave something to be desired in Schacht's work on the origins of Islamic law, which may in part explain his lasting success. Not least, a certain familiarity with the Islamic law of marriage and divorce resulting from some of my earlier work also played a role in the choice of the extract. It was, in fact, a great help in the clarification of many difficult passages.

¹⁰⁷ Cf. Schacht, *Origins*, pp. 8–9.

¹⁰⁸ This book also contains material on *al-riḍā'*, *al-naḥaqa*, *al-ḥadd*, *al-zinā* and so forth, which in later works are often to be found in their own or in other chapters.

¹⁰⁹ For a first investigation of this *kitāb* cf. N. van der Voort, *Zoektocht naar de waarheid met behulp van het Kitāb al-Maghāzī in de Muṣannaf van 'Abd al-Razzāq b. Hammām aṣ-Ṣan'ānī* (gest. 211/827), M.A. thesis (Nijmegen 1996) and id., "Het *Kitāb al-maghāzī* van 'Abd al-Razzāq b. Hammām al-Ṣan'ānī," *Sharḥiyāt* 11/1 (1999), 15–31.

CHAPTER THREE

THE DEVELOPMENT OF ISLAMIC JURISPRUDENCE IN MECCA TO THE MIDDLE OF THE SECOND/EIGHTH CENTURY

A. THE STATE OF RESEARCH

Schacht admits in his chapter on the Meccan school of law in the "pre-literary period,"¹ by which he designates the time before the middle of the second/eighth century,² that we know only little about it.³ Its main authority among the Companions of the Prophet was Ibn 'Abbās and its "representative scholar" at the beginning of the second/eighth century 'Atā' ibn abī Rabāḥ. He is—according to Schacht—the only one among the Meccan legal scholars of this time who is historically palpable as an individual. The information preserved about him and his teachings contain an "authentic core" which was overlaid with fictive attributions in the course of the second/eighth century.⁴ The sources on which Schacht relies are predominantly al-Shāfi'ī's (d. 204/820) *Kitāb al-Umm*, from which he draws nine references to him, and later commentaries on the *Muwatta'* of Mālik ibn Anas such as those of al-Zurqānī (d. 1122/1710), whom he cites three times and who once names as his source the commentary of Ibn 'Abd al-Barr (d. 463/1070), and al-Laknawī (d. 1304/1887) (one attestation). In addition, he mentions Abū Yūsuf (d. 182/798), al-Shaybānī (d. 189/805), al-Dārimī (d. 255/868), and al-Maqrīzī (d. 845/1442)⁵ once each. In an article on 'Aṭā' Schacht adds a few biographical sources;⁶ however, he seems to have obtained from them no new information about his teachings.

The basis on which Schacht rests his conclusions is—as one can see—very narrow. A third of it consists of works whose authors lived

¹ Schacht, *Origins*, p. 228.

² Cf. op. cit., p. 140. Id., *Introduction*, p. 40.

³ Schacht, *Origins*, p. 249.

⁴ Op. cit., p. 250.

⁵ Cf. op. cit., pp. 7, 131, 160, 167, 173, note 3; 186, note 6; 250 ff.

⁶ *Encyclopaedia of Islam*, Second Edition, vol. 1, p. 730.

several centuries after 'Aṭā' and whose sources are largely unknown. Even between his main source, al-Shāfi'ī, and 'Aṭā' there gapes more than a half-century. The credibility of the reports about the Meccan scholars of the close of the first/seventh century and the beginning of the second/eighth is thus anything but assured. Schacht assumes a critical attitude toward them and takes it for granted that opinions and doctrines were falsely attributed to 'Aṭā' after his death. As a criterion to distinguish the authentic from the false serves his theory about the historical development of Islamic jurisprudence, in which Iraq acted as a pioneer with respect to the Ḥijāz. This theory was developed essentially on the basis of the writings of al-Shāfi'ī, and is thus only conditionally appropriate as a criterion to measure the credibility of information which also derives from him. Schacht's categorization of specific traditions on the basis of their content as authentic, of others as "spurious," "fictitious," "forged," "ascribed," and so forth is consequently subjective to a high degree, which is sometimes expressed by careful formulations such as "possibly authentic," "probably genuine," "presumably genuine," "certainly fictitious," or "probably fictitious," and so forth.⁷

G. H. A. Juynboll infers from the biographical work of Ibn Ḥajar that 'Aṭā' is supposed to have been the most important legal scholar of Mecca in his time, whose legal information was greatly in demand. He considers him to be one of the *fuqahā'* whose legal decisions in the course of time were transformed into Prophetic *ḥadīths*, either by themselves or by anonymous persons. This assumption is based on the observation that 'Aṭā's *samā'* from numerous companions was doubted and that many *ḥadīths* were attributed to him which report about the Prophet without naming a source at the level of the Companions (*mursalāt*).⁸ Juynboll thus believes that the traditions of the Prophet transmitted under 'Aṭā's name are predominantly forgeries in which texts which were originally 'Aṭā's were put into the mouth of the Prophet (and probably also of the Companions).

The more recent studies by Muslim scholars on Islamic legal history, too, treat Meccan *fiqh* grudgingly in comparison to that of Medina and Kufa. One learns only that Ibn 'Abbās was its founder.

⁷ Schacht, *Origins*, pp. 250 ff. and *passim*.

⁸ Cf. Juynboll, *Muslim Tradition*, p. 40.

and that some of his students, above all 'Aṭā' ibn abī Rabāḥ⁹—in addition to him, further names are sometimes given: Mujāhid, 'Ikrima, Ṭawūs and 'Amr ibn Dīnār¹⁰—elaborated it. Scholars such as Abū l-Zubayr, 'Abd Allāh ibn Khālīd ibn Asīd, 'Abd Allāh ibn Ṭawūs and after them Ibn Jurayj and Ibn 'Uyayna continued the school. They were followed by Muslim ibn Khālīd and Sa'd ibn Sālim. Its endpoint is represented by al-Shāfi'ī.¹¹ Ultimately this all derives from biographical source material and is limited to the listing of names and occasionally some additional biographical information.

B. 'AṬĀ' IBN ABĪ RABĀḤ

1. *The main source: authenticity and mode of transmission*

Unlike J. Schacht in his time, today we have at our disposal a source which—if it is historically reliable—allows a comprehensive and detailed insight into 'Aṭā's legal scholarship: the tradition of Ibn Jurayj from 'Aṭā' ibn abī Rabāḥ in the *Muṣannaḥ* of 'Abd al-Razzāq. The decisive question is whether or to what extent this tradition can be regarded as authentic. Can this problem be solved with more objective criteria than those used by Schacht?

a. *External formal criteria of authenticity*

Magnitude

It is possible to identify a number of formal criteria which speak for the genuineness of the corpus of 'Aṭā' traditions in the work of Ibn Jurayj. Its magnitude should be mentioned first. The traditions of Ibn Jurayj from 'Aṭā' ibn abī Rabāḥ comprise almost 40% of all the texts of Ibn Jurayj contained in the *Muṣannaḥ* of 'Abd al-Razzāq. The next 25% are distributed among the following five scholars:

⁹ Cf. 'A. H. 'Abd al-Qādir, *Nazra 'amma fi ta'riḥ al-fiqh al-islāmī* (Cairo, 1361/1942), p. 138 f.

¹⁰ Cf. M. al-Khuḍarī, *Ta'riḥ al-tashrī' al-islāmī* (5th ed., Cairo, 1939), p. 156. M. al-Ḥajawī, *Al-fikr al-sāmī fi ta'riḥ al-fiqh al-islāmī* (Rabat and elsewhere, 1345–49/1926–31), vol. 1, pp. 297–298, 301. M. Yūsuf Mūsā, *Muḥāḍarāt fi ta'riḥ al-fiqh al-islāmī* (Cairo, 1954–55), vol. 1, pp. 38–39 (sources: al-Dhahabī, *Tadhkira* and other biographical lexica).

¹¹ Yūsuf Mūsā, op. cit., vol. 2, p. 24 (source: Ibn Ḥazm, *al-Iḥkām fi uṣūl al-aḥkām*).

‘Amr ibn Dīnār (7%)
 Ibn Shihāb (5.8%)
 Ibn Ṭāwūs (4.9%)
 Abū l-Zubayr (4.1%)
 ‘Abd al-Karīm (3.3%)¹²

Five further sources to be classed as Meccan or Medinan together have a share of only 8.1%. These are:

Hishām ibn ‘Urwa (2.1%)
 Yaḥyā ibn Sa‘īd (2%)
 Ibn abī Mulayka (1.43%)
 Mūsā ibn ‘Uqba (1.3%)
 ‘Amr ibn Shu‘ayb (1.25%)

There follows in the list of frequency a group of ten people with a total share of 6.9%. The quota for individuals lies between barely 1 and 0.5%:

Sulaymān ibn Mūsā
 ‘Aṭā’ al-Khurāsānī
 Nāfi‘, *mawlā* of Ibn ‘Umar
 Ḥasan ibn Muṣlīm
 Mujāhid
 Ja‘far ibn Muḥammad
 Dāwūd ibn abī Hind
 Ayyūb ibn abī Tamīm
 Ibrāhīm ibn Maysara
 ‘Abd Allāh ibn ‘Ubayd ibn ‘Umayr

The remaining 21.5% are distributed among 86 people—among them famous Iraqi *fuqahā’* such as al-Ḥasan [al-Baṣrī] and al-Ḥakam ibn ‘Uṭayba, but also a few unknowns, anonymous traditions and Ibn Jurayj’s own views.¹³

¹² The digits after the decimal point have been rounded off.

¹³ The frequency calculations are based on a sampling of 1,117 traditions of Ibn Jurayj from the *kitāb al-nikāḥ* and the *kitāb al-ṭalāq* (= Vols. 6–7, Nos. 10243–14053). The total number of less frequent informants in the *Muṣannaf* as a whole is surely far above 100. The 1% lacking in the total are Ibn Jurayj’s own opinions. On this, see p. 83.

The curious proportions of Ibn Jurayj's alleged sources strongly speak against the possible assumption that he was a forger who projected his own legal ideas and those current in his time in Mecca and elsewhere back into the previous generation of scholars and fathered them upon them. Why should he have made the task so difficult for himself? Would one not expect that he would have referred to one or at the most a few of the most valued earlier *fuqahā'* and transmitters, and to these practically evenly? Why does he expose himself to the danger of having his hoax uncovered with a legion of sources?

It seems to me more plausible to interpret the distribution of frequency of Ibn Jurayj's sources as follows: 'Aṭā' ibn abī Rabāḥ was Ibn Jurayj's teacher over a relatively long period of time. Since, measuring by date of death, he was the eldest of Ibn Jurayj's significant authorities—he died in 115/733—one can conclude that he was probably his first teacher. After his death—or perhaps even during his lifetime—Ibn Jurayj also heard the lectures of other Meccan scholars such as 'Amr ibn Dīnār and Abū l-Zubayr and of some who were not resident in Mecca, for instance Ibn Shihāb al-Zuhri, whether he traveled to them or contacted them when they stayed in Mecca for the *hajj*, or whether he obtained written texts from them or their students. The high number of sporadic informants can be explained by Ibn Jurayj's place of residence, Mecca, which as a place of pilgrimage offered him the opportunity to meet with scholars from all corners of the Islamic *oikoumene*. The relatively frequent appearance of Medinans with Ibn Jurayj is probably also geographically conditioned.

Genres

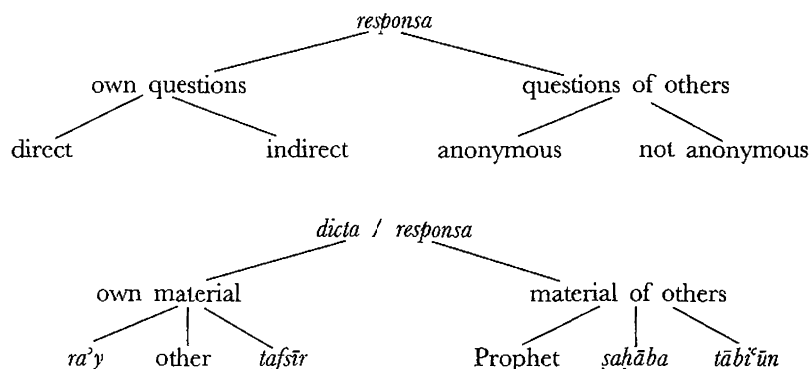
A second argument for the authenticity of Ibn Jurayj's 'Aṭā' material can be drawn from an analysis of its genres. From this point of view, one can first divide it into two categories: the genres of *responsa* and of *dicta*. By a *responsum* I mean an answer (*jawāb*) to a question (*mas'ala*); in the sources it is occasionally also characterized as a legal opinion (*fatwā*). An example: Ibn Jurayj said: "I asked 'Aṭā' about . . . He said: . . ."

A *dictum*, in contrast, is defined as a statement (*qawl*, *ḥadīth*) which is not preceded by a question in the text. In the material transmitted by Ibn Jurayj from 'Aṭā' the shares of the two genres are practically equal in size. Mixed forms occur relatively rarely. The *responsa* can be subdivided into the transmitter's, i.e. Ibn Jurayj's, own questions

and those from others; the former can be asked directly or indirectly, i.e., through an intermediary, and the latter anonymously or not anonymously, i.e., the questioner can be identified by name.

An example of the anonymous type of question: Ibn Jurayj said: "‘Aṭā’ was asked (*su’ila*) about . . . He said: . . ."

On the other hand, the answers—the same is true for the *dicta*—can be classified as personal material and that from others. By the material of others is meant citations of statements or descriptions of actions of persons other than ‘Aṭā’, thus, for example, *ḥadīths* and *āthār*. Mixed forms occur. ‘Aṭā’'s own material can be subdivided according to considerations of content, and material from others according to the circle of people from which it comes or to which it refers—thus, for instance, the Prophet, *ṣaḥāba*, or contemporaries of ‘Aṭā’'s. I regard Ibn Jurayj's occasional statements that ‘Aṭā’ rejected or approved something, and so forth, as disguised *dicta*. For a better overview of the classification of the Ibn Jurayj—‘Aṭā’ tradition, let us represent it in a diagram.



‘Aṭā’'s answers to questions from Ibn Jurayj comprise by far the largest portion of the *responsa*; the anonymous cases do not even come to 10%, while those from identified other persons are very rare. In the genre of the *responsa* personal material predominates strongly; material from others comes to only 10%. Among the *dicta* the difference is not so sharp. Here, the proportion of material from others is 30%.

If one compares the relationship between the two main genres, which is 50 : 50 in the case of ‘Aṭā’, with that in other important sources of Ibn Jurayj's a large difference is conspicuous: In the case

of 'Amr ibn Dīnār the share of *responsa* is only 9% (exclusively to questions of Ibn Jurayj's), in the case of Ibn Shihāb approximately 14% (of these, however, only 1.5% to questions of Ibn Jurayj's!), in the case of Ibn Ṭāwūs 5.5% (exclusively to questions of Ibn Jurayj's), in the material from Abū l-Zubayr no *responsa* are to be found at all and in that of 'Abd al-Karīm 8% (only to questions of Ibn Jurayj).¹⁴

What can the analysis of the genres contribute to the question of the authenticity of the texts? The fact that the two main genres appear in such different proportions in the cases of Ibn Jurayj's various sources in itself seems to me to speak against the assumption of systematic projection back into the preceding generation of scholars. In such a case one would expect more uniformity in the method of forgery. The same applies to the different frequency of the types of question within the *responsa* that Ibn Jurayj transmits from 'Aṭā'. Can one dismiss the indirect, the anonymous and the non-anonymous questions from others as mere stylistic means that Ibn Jurayj employed according to the principle *variatio delectat*?

The question-answer schema implies a strong claim to truthfulness, insofar as the question is directed by the transmitter or student himself to the source or teacher whose statement is reported. Through the question, the questioner participates in the answer to a certain extent as its actual originator. The immediacy of the transmission can scarcely be expressed more strongly. Formulations such as "*samī'tuhu yaqūl*," "*akhbarānī*," or "*qāla lī*," also introductions that signal direct, oral transmission—which does not exclude the possibility of written records—have a distinctly lesser authenticity content, not to speak of the simple "*an X qāla*."¹⁵ If one assumes from Ibn Jurayj's many direct questions to 'Aṭā' that he wanted to feign the highest degree of genuineness, how does one explain the following two introductions: Ibn Jurayj said: "I asked someone to ask 'Aṭā' about . . . , when I could not hear him (*haythu lā asma'u*)" or "I sent someone to 'Aṭā' with the question about . . . ?"¹⁶ Why does he invent anonymous questions, which have a lesser authenticity content, since they presuppose the transmitter only as a hearer and not

¹⁴ On the basis of the calculations, see p. 78, note 13.

¹⁵ Here I am not basing myself on the rules of the later science of *Ḥadīth* relating to these terms, since they cannot be assumed to have been followed systematically in the early period; rather, I proceed from the plain meaning of the terms.

¹⁶ AM 6: 10825; 7: 13893.

as a co-actor? Why does he transmit, instead of exclusively *responsa*, a quantity of *dicta* from 'Aṭā' as well, two thirds of them with the simple formula "'an 'Aṭā' qāla"?

Whoever defends the hypothesis of projection or forgery must be able to answer these questions plausibly. To me, the analysis of the genres seems to speak against such an assumption. On the other hand, it seems natural to interpret the genres and their differences historically. This may seem somewhat speculative at first glance; however, this impression will be dispelled below.

The large number of 'Aṭā's *responsa* to questions from Ibn Jurayj indicates an actual, long-term student-teacher relationship between the two. The questions from others, in which the asker of the question is occasionally identified by name, imply a circle of students around 'Aṭā' or that his instruction was public.¹⁷ The quantity of the transmitted material and the precise differentiation between *responsa* and *dicta*, as well as between his own questions and those of others, rather certainly presuppose written records of Ibn Jurayj's.¹⁸ It is imaginable that he first wrote down questions which he later asked during instruction. The answers, which are usually very short and pithy, he could have immediately noted down. That he also had the opportunity to ask questions spontaneously is shown by the not infrequent cases in which 'Aṭā's answer stimulates Ibn Jurayj to further questions, and by the *dicta* which are immediately followed by questions, whether he demanded a more detailed explanation in this way or attempted to make the case more specific.¹⁹ The combination of *dicta* from 'Aṭā' with a following question from the student makes clear that Ibn Jurayj did not receive the genre of *dicta*, for instance, in the form of a collection of sayings left in written form, but in the lectures or presentations of his master. One may probably imagine that 'Aṭā' presented legal problems or theoretical cases with his solutions in his classes. Interrupting questions were clearly allowed in such lectures. In addition, there may have been pure question-and-

¹⁷ Cf. especially AM 6: 10440 (anonymous question with following question by Ibn Jurayj); 7: 12862 (*sami'tu* 'Abd Allāh ibn 'Ubayd [ibn 'Umayr] *yas'alu* 'Aṭā'an), 12614, 13883 (*sami'tu* 'Aṭā'an *yas'alu*—in the latter case with a further question by Ibn Jurayj). On the circle of students, cf. also pp. 105 f.

¹⁸ On the question of written records, see below, pp. 95–99.

¹⁹ Cf., for instance, for questions on answers: AM 6: 10651, 10706; 7: 11954, 12917. For questions on *dicta*: AM 6: 10673, 10816, 10912; 7: 12435, 13586.

answer sessions, perhaps following the treatment of a specific subject. Ibn Jurayj's many questions can probably best be explained in this way. The relatively small amount of other people's material in the *responsa* and its larger share of the *dicta* leads one to suspect that although 'Aṭā' was superior in legal questions and lectured without notes, his knowledge of traditions related to law was limited and it was necessarily for him to rely on written texts for this.

b. *Internal formal criteria of authenticity*

In addition to the two external formal criteria of authenticity, magnitude and genre, it is possible to ascertain further indices that speak for the genuineness of the Ibn Jurayj—'Aṭā' tradition. I call them internal formal criteria of authenticity, since they are based on an investigation of the way in which Ibn Jurayj presents 'Aṭā's material. Here, the central question was to what extent a personal profile of Ibn Jurayj is recognizable and whether there are critical remarks of his about the views of his teacher or other formal indications which are not reconcilable with a thesis of projection into the past or forgery.

Ibn Jurayj's legal opinions

It has already been mentioned in passing that 'Abd al-Razzāq transmits from Ibn Jurayj some of his own legal opinions as well.²⁰ He generally introduces them with "*an Ibn Jurayj qāla*," rarely with "*sami'tu Ibn Jurayj yaqūlu*."²¹ It is true that the number of Ibn Jurayj's legal *dicta* is small in the context of the tradition as a whole (1%), but when one compares the frequency of his *dicta* with that of the material transmitted from his sources, he nevertheless takes twelfth place.²² However, the quantity is less important than the fact that his own legal views exist. If one imputes that Ibn Jurayj projected his own legal opinions onto earlier legal scholars in order in this way to lend them greater authority, one must have a convincing explanation why legal pronouncements which do not refer to his teachers or any informants are transmitted from him at all.

²⁰ See above, p. 78, note 13.

²¹ On the latter formula cf., for instance, AM 6: 10729.

²² According to the frequency list on p. 78, he would be placed at the head of the group of ten before Sulaymān ibn Mūsā.

Ibn Jurayj's commentaries

The untenability of the thesis of projection becomes still clearer through the commentaries of his own with which Ibn Jurayj from time to time provides the 'Aṭā' material he transmits. One can classify them into *additions*, which are of either clarifying or amplifying character, and *contradictions*. Both types of comment have obviously been added to the text later by Ibn Jurayj. It is clear that the young student—if our assumption that 'Aṭā' was his first teacher is correct—did not have the competence and self confidence to supplement or criticize his master's remarks at the stage when he received them.

Two examples of additions:

Ibn Jurayj said: I said to 'Aṭā': "The *umm walad* of Maysara, the *mawlā* of Ibn Ziyād, claims that her child is not Maysara's." ['Aṭā'] said: "No [her claim is not accepted], the child belongs to the bed and to him who engages in illegitimate sexual relations belongs nothing (*al-walad li-l-firāsh wa-li-l-'āhir al-ḥajar*)." Ibn 'Ubayd ibn 'Umayr [thereupon] said to him: "Aren't the physiognomists (*qāfa*) called in for this?" ['Aṭā'] said: "The child belongs to the bed and to him who engages in illegitimate sexual relations belongs nothing." Ibn Jurayj said: "*I say*: 'If the woman says this, she is charged with lying and beaten.'" ²³

Ibn Jurayj said: I said to 'Aṭā': "A youth (*ghulām*) married a woman without having reached [the capability of] emission of semen (*lam yabluḡ an yunzila*). After this he committed fornication. Is he stoned?" ['Aṭā'] said: "No! I am not of the opinion that he is stoned until he has an emission when he sleeps with her." I said [to 'Aṭā']: "[Assuming] two men bear witness, 'We saw him on her belly,' without adding anything."²⁴ ['Aṭā'] said: "An example is made of both of them." Ibn Jurayj said: "*I say*: 'Neither of the two receives the *ḥadd* penalty, since neither of the two [witnesses] bore witness to fornication, but they receive an exemplary punishment.'" ²⁵

²³ AM 7: 12381 (the emphasis is mine). A parallel is 12529. It has a few more words. The other divergences seem to derive from scribal errors.—The meaning of *al-ḥajar* chosen here is preferred in the *Hadīth* commentaries and the Arabic lexica to "stoning" (*rajm*), which would also be conceivable, for good reason. Cf. Ibn Manẓūr, *Lisān al-'arab*, vol. 4, p. 166. al-Zabīdī, *Tāj al-'arūs*, vol. 3, p. 127. al-Qaṣṣālānī, *Irshād al-sārī ilā sharḥ al-Bukhārī*, vol. 4, p. 10. E. W. Lane, *Arabic-English Lexicon* (Cambridge 1984; reprint of the edition London 1863-77), vol. 2, s.v. "*āhir*."

²⁴ Instead of: "[*wa-lā*] *yurīdānī*" I read *yazīdānī*, as in AM 7: 13578.

²⁵ AM 7: 13393.

In the first example there is an amplifying addition, in that Ibn Jurayj supplements 'Aṭā's statement, which is limited to the case of the *umm walad*, i.e., the slave, with the case of the free woman. The second example consists of an *ex post facto* justification of 'Aṭā's solution.

Even more unequivocally than the additions, the contradictory commentaries speak for the thesis of later additions:

Ibn Jurayj said: I said to 'Aṭā': "The man divorces the woman, and she spends a part of her waiting period. Then he returns to her during the waiting period and divorces her without having slept with her. Starting from what day must she observe her waiting period?" ['Aṭā'] said: "She must complete the rest of her waiting period." Thereupon he recited: "*Thumma ṭalaqumūhunna min qabli an tamassūhunna*"²⁶ ([If] you then divorce them [the women] before you have sexual relations with them). Ibn Jurayj said: "*I say*: That is in [the case of] marriage; this [however] is a return."²⁷

Ibn Jurayj puts 'Aṭā's Qur'anic justification for his legal ruling into doubt by pointing out that the verse cited refers to the case of marriage and not to that of returning during the waiting period. The verse means that in the case of marriage with subsequent divorce before consummation no waiting period is necessary. 'Aṭā' also uses the verse for the case of returning during the waiting period, which in his opinion is analogous, and concludes from it that no new waiting period is to be observed, but only the remainder of the one that was broken off. Ibn Jurayj, on the other hand, rejects this *qiyās*.

Ibn Jurayj said: I said to 'Aṭā': "A man is absent from his wife. She had not asked him beforehand for permission to go out. May she leave the house to circumambulate [the Ka'ba] or to care for an ill blood relative?" ['Aṭā'] said: "No." [Ibn Jurayj]: He refused this very decidedly.—I said: "[Assuming] her father dies?" He ['Aṭā'] refused to allow it to her in the case of her father's death. I [however] say: "She can go to him and to [another] close blood relative. Ibn 'Umar [even] left the Friday prayer service to see a relative to whom he had been called."²⁸

A last example:

²⁶ Qur'an 33:49.

²⁷ AM 6: 10948.

²⁸ AM 7: 12538.

Ibn Jurayj from 'Aṭā'.

[Ibn Jurayj] said: I said to him: "A slave married a free woman whom he mislead about himself with the claim that he was a free man. He sent her money that belonged to his master." ['Aṭā'] said: "Whatever of that same money of his he [the master] can [still] find, he can [again] take possession of; [on the other hand], for whatever she has already used she is not responsible. If, however, the money belonged to the slave, it remains her property." *Ibn Jurayj*: "I and 'Ubayd Allāh ibn [abī] Yazīd²⁹ [however] say: My property (*māl*) and that of my slave are the same. He [the master, may] take it away [from her], [but] she is entitled to the bridal gift of her kind."³⁰

If Ibn Jurayj had already had a divergent opinion at the reception of these teachings of 'Aṭā's, then he would have discussed them with his teacher. Such cases are attested, if only rarely.³¹

The assumption that Ibn Jurayj added the comments to the tradition of 'Aṭā', and not only those which I have called contradictions but supplements as well, only at a later stage may be considered sufficiently certain.³² The example in which Ibn Jurayj bases his argument on the behavior of 'Abd Allāh ibn 'Umar is particularly conclusive in this respect, since Ibn Jurayj has it from the Medinan tradition of transmission, which he received only secondarily.³³ In the tradition of Ibn Jurayj, projection of his own legal opinions or those of others onto 'Aṭā' is out of the question. His own profile as a legal scholar is clearly recognizable in his legal *dicta* and his supplementary and critical comments on some of 'Aṭā's opinions. The development of Meccan jurisprudence after 'Aṭā' is also reflected in them.³⁴

With Ibn Jurayj's legal *dicta* and his comments on the tradition of 'Aṭā', the arguments which can be marshalled in favor of the latter's authenticity are not yet exhausted. Four more points seem to me noteworthy in this connection:

²⁹ The text has 'Ubayd Allāh ibn Yazīd; intended, however, is probably the 'Ubayd Allāh ibn abī Yazīd mentioned also in 7: 12791, 12793. On him cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 354.

³⁰ AM 7: 13072.

³¹ Cf. AM 6: 10440, 10816, 11496; 7: 12369, 13751.

³² On another type of comment which also supports this hypothesis, see pp. 92 ff.

³³ On this see p. 207. A similar case is AM 6: 11113, where Ibn Jurayj prefers, instead of 'Aṭā's opinion, that in a tradition of 'Umar and Ibn Mas'ūd.

³⁴ On this see pp. 186, 205.

Indirect traditions of 'Aṭā'

'Aṭā' is—as has been shown—Ibn Jurayj's main source. If 'Aṭā's' authorship of texts were wholly or partially forged, it would not be to be expected that he would also report opinions from 'Aṭā' of which he claims that he did not get them directly from him, but learned them by way of a third party. There are, however, such traditions. For example:

Ibn Jurayj said: "Abd al-Ḥamīd ibn Rāfi' transmitted to me from 'Aṭā' *after his death* that a man said to Ibn 'Abbās: 'A man divorced his wife 100 times.' Ibn 'Abbās replied, 'Take three of them and leave out the 97.'"³⁵

In view of the fact that Ibn Jurayj generally transmits 'Aṭā's' traditions of Ibn 'Abbās directly from 'Aṭā', such a text is to be evaluated as an indicator of the precision and credibility of Ibn Jurayj's statements of origin. Had he been a forger, he would surely have credited this tradition of Ibn 'Abbās to his own account. In another case, Ibn Jurayj transmits a *responsum* of Ibn 'Abbās both directly from 'Aṭā' and through someone who heard 'Aṭā'.³⁶ The two versions are not completely identical, which similarly speaks for Ibn Jurayj's precision and credibility, since he could have eliminated the shorter version of his source in favour of his own. Ibn Jurayj also transmits a few legal opinions and *ḥadīths* from 'Aṭā' through his teachers 'Amr ibn Dīnār and 'Abd al-Karīm al-Jazari³⁷ or anonymously.³⁸

Ibn Jurayj's uncertainties

Occasionally Ibn Jurayj expresses uncertainty about precisely what 'Aṭā' meant or said. For example:

Ibn Jurayj said: I said to 'Aṭā': "May a slave marry four wives with the permission of his master?" Ibn Jurayj: He acted as if he did not reject it."³⁹

³⁵ AM 6: 11348 (emphasis mine). Variants of it are also in Mālik, *Muwatta'* (Y), vol. 2, 29:1 (anonymous) and Ibn abī Shayba, *Muṣannaf*, vol. 5, pp. 12–13 (through 'Alqama, 'Antara and Sa'īd ibn Jubayr). 'Abd al-Ḥamīd ibn Rāfi' is among Ibn Jurayj's infrequent informants.

³⁶ Cf. AM 7: 12553 and 12571.

³⁷ Cf. AM 6: 11080; 7: 14001 ('Amr ibn Dīnār); 6: 11460 ('Abd al-Karīm).

³⁸ AM 7: 13121.

³⁹ AM 7: 13138. Perhaps Ibn Jurayj was mistaken in this case, since Ibn 'Uyayna reports from Ibn abī Najīh that 'Aṭā' was of the opinion that the slave could marry

He is similarly unsure in the case of the concubinate of a slave whether 'Aṭā' allowed it generally, if the slave financed it from his own money, or only with the permission of the master.⁴⁰ This cautious mode of expression in cases of doubt bears witness to Ibn Jurayj's uprightness and to his intention of reporting the teachings of his master as faithfully as possible.

'Aṭā's variants

A concern for exact, verbatim transmission is also to be observed in places where Ibn Jurayj notes 'Aṭā's divergences from traditions which he has obtained from other sources as well as 'Aṭā', or which he heard from him several times. The following examples are instructive in this respect:

Ibn Jurayj said: 'Aṭā' transmitted to me (*akhbarāni*): "A woman was brought to 'Alī ibn abī Ṭālib who had married in her waiting period and with whom the marriage had been consummated. He divorced her and ordered her to complete the remainder of the waiting period, and then to observe the following waiting period. When her waiting period was over, she had the choice: if she wished, she could marry [the man whom she had married in the waiting period again], or not." [Ibn Jurayj:] Someone other than 'Aṭā' said to me in this *ḥadīth*: "And she has the right to her bridal gift." 'Aṭā' said [as a supplement to the *ḥadīth* or in another context]: "She has a right to her bridal gift for that which he received from her [in terms of sexual satisfaction]."⁴¹

Here Ibn Jurayj differentiates precisely between 'Aṭā's transmission of the text and his own opinion about the case represented, while in another source this view is annexed to the *ḥadīth*, and thus ascribed to 'Alī.

In another place Ibn Jurayj notes 'Aṭā's divergences from a story about a verdict of the caliph 'Umar, which he transmits in full from Hishām ibn 'Urwa from his father, in a similarly meticulous way.⁴² 'Aṭā's variants are quite insignificant; they are two textual expan-

only two women, but that Mujāhid allowed four (13139). However, it is also conceivable that 'Aṭā' later changed his mind and that Ibn Jurayj is reporting a later position.

⁴⁰ AM 7: 12835. The text is confused in places, but the meaning is clear.

⁴¹ AM 6: 10532. A similar verdict is also transmitted from 'Umar, with the difference, however, that they may not remarry. Cf. Motzki, "Der *Fiqh* des -Zuhri: die Quellenproblematik," *Der Islam* 68 (1991), pp. 29–34.

⁴² Cf. AM 7: 13650, 13651. The story is relatively long; for this reason, I have eschewed a translation. 13651 begins with the words: "Ibn Jurayj said: I heard 'Aṭā' report the same (*yuhaddithu*), but he said: . . ."

sions of a few words. One may ask oneself why Ibn Jurayj did not cite 'Aṭā's version, which he presumably learned earlier, *in toto* and note 'Urwa ibn al-Zubayr's divergences instead. This could be for the simple reason that it is simpler to add supplements than omissions. It could also, however, have to do with 'Aṭā's defective *isnād*—Ibn Jurayj does not name any source from whom 'Aṭā' got this case—a state of affairs which I will have occasion to discuss later.⁴³

Another example of Ibn Jurayj's striving for exactitude:

Ibn Jurayj transmitted to us from 'Aṭā': "The Prophet did that: he made her manumission her bridal gift." [Ibn Jurayj:] "He ['Aṭā'] did not mention that it was Ṣafiyya."⁴⁴

Ibn Jurayj presumably added the note about Ṣafiyya when he became familiar with the corresponding traditions about her. 'Abd al-Razzāq's *Muṣannaf*, it is true, contains—as far as I can see—no corresponding tradition of Ibn Jurayj's, only one each from Ma'mar ibn Rāshid and Sufyān al-Thawrī,⁴⁵ but that is clearly no proof that he did not know it. Ibn Jurayj's note shows how false such a conclusion *e silentio* would be. The following examples as well illustrate the untenability of the theory of projection and the weakness of inferences *e silentio*.

Ibn Jurayj from 'Aṭā': "Ibn al-Zubayr made her [the *umm walad*] a portion [of the inheritance] of her son."⁴⁶

With traditions from the early period of Islam it is sometimes to be observed that later sources, whether compilations or commentaries, provide the names of people involved who are not named in the texts of older collections. It has been concluded from this that these names were not known to the original transmitters and that they are the inventions of later generations. This may occasionally be true, but one may not regard it as the rule, as the following variant of the above tradition proves:

Ibn Jurayj transmitted to us with the words: 'Aṭā' transmitted to me (*akhbarani*): "Ibn al-Zubayr included Umm Ḥabī—the *umm walad* of Muḥammad ibn Ṣuhayb, known as Khālīd—in the property (*māl*) of her son."⁴⁷

⁴³ See pp. 151 f., 158.

⁴⁴ AM 7: 13108.

⁴⁵ Cf. AM 7: 13107, 13110.

⁴⁶ AM 7: 13217.

⁴⁷ AM 7: 13220.

Thanks to the precision and completeness of Ibn Jurayj's transmission from 'Aṭā', which is visible in such examples, one can conclude that the precise knowledge of details must not *eo ipso* necessitate their mention. Since only a fraction of the sources from which the Muslim scholars of the third/ninth to fifth/eleventh century could draw are at our disposal today, the greater detail of later sources is in itself no proof for the unreliability of their additional information. Rather, such proof must be adduced case by case. The assumption that in the above text the names originated with Ibn Jurayj or 'Abd al-Razzāq can be ruled out, since in this case the forger would surely have eliminated the superfluous original version.

The inadmissibility of the conclusion *e silentio* does not apply only to individual elements of traditions, but also to whole traditions. Schacht often reasons according to the schema: If the tradition T is not yet present with the early compiler E but is present with the later compiler L, then it must have come into existence between E and L.⁴⁸ That this conclusion is not generally valid is demonstrated by the following two traditions of Ibn Jurayj from 'Aṭā':

Ibn Jurayj said: I said to 'Aṭā': "He divorced her while she was menstruating (*ḥā'idan*)."' ['Aṭā'] said: "He should take her [the woman] back (*yarudduhā*) and then, when she is pure [again], pronounce the divorce or keep [her]."⁴⁹

In this *responsum* 'Aṭā' refers to no tradition to support his opinion. If only this text had been preserved, Schacht would have had to conclude that during 'Aṭā's lifetime no corresponding tradition yet existed, or at least it could not have been known in Mecca, in adherence to his motto: "The best way of proving that a tradition did not exist at a certain time is to show that it was not used as a legal argument in a discussion which would have made reference to it imperative, if it had existed. [. . .] We may safely assume that the legal traditions with which we are concerned were quoted as legal arguments by those whose doctrine they were intended to support, as soon as they were put into circulation."⁵⁰ This does sound obvious, but is not always correct, as the following *responsum* of 'Aṭā's shows:

⁴⁸ Cf. Schacht, *Origins*, pp. 140 ff.

⁴⁹ AM 6: 10962. On 'Aṭā's opinion about the correct time for divorce, cf. also 10919, 10951.

⁵⁰ Schacht, *Origins*, pp. 140–141.

Ibn Jurayj said: I said to 'Aṭā': "He divorces her while she is menstruating (*ḥā'idan*)."' ['Aṭā'] said: "She may not calculate her waiting period according to it [her menstrual period] (*lā ta'taddu bihā*), [rather,] she should fulfill three [cycles of] menstruation (*ḥayd*)."' I said: "[Assuming] he divorced her in the hour in which she menstruated [i.e., in which her menstrual period began]."' ['Aṭā'] said: "It was reported to us (*balaghanā*) that the Prophet said to Ibn 'Umar: 'Take her back until the time when she is pure, then divorce [her] or keep [her].'"⁵¹

'Aṭā's Prophetic *dictum* is a very abbreviated version of a tradition of the Prophet which is preserved in numerous variants. I will return to it in another place.⁵² His version strongly resembles the *responsum* of 'Aṭā's on this subject mentioned first. Thus we can assume that 'Aṭā' already knew the Prophetic *ḥadīth* in some form when he answered Ibn Jurayj's question, but did not consider himself obliged to cite it. There are several imaginable reasons, which will be discussed later, for his not doing so.⁵³

There are several cases in which Ibn Jurayj quotes a legal solution once as an opinion of 'Aṭā's and another time as his transmission of a *ḥadīth*. Another example is the controversial⁵⁴ early legal maxim "*al-walad li-l-furāsh wa-li-l-āhir al-ḥajar*" (the child belongs to the bed, and to the one who engages in illegitimate sexual relations belongs nothing), which Ibn Jurayj cites twice as 'Aṭā's *ra'y* and once as a Prophetic *dictum* known to him.⁵⁵

The existence of such variants from one and the same authority can hardly be brought into harmony with the assumption that material was merely fathered upon him. One would have to estimate Ibn Jurayj as very limited in intelligence to suppose that he would not have noticed the contradictions.

On the theme *ra'y* versus *ḥadīth* let us also give the following example, which similarly contradicts the thesis of projection. Ibn Jurayj notes about a number of 'Aṭā's legal ideas that this position was also held by one of the Companions of the Prophet or the caliphs. In general he clearly identifies this as his own comment, without citing a source for it. It is hardly likely that a forger would have resisted

⁵¹ AM 6: 10969.

⁵² See pp. 132-136.

⁵³ See pp. 120-123.

⁵⁴ Cf. Schacht, *Origins*, pp. 181 f.

⁵⁵ AM 7: 12369, 12381, 12862. Also see pp. 126 ff.

the temptation to enlist 'Aṭā' for the purpose. Two attestations of this:

Ibn Jurayj from 'Aṭā' about a man who divorced his wife three times but then slept with her and denied that he had divorced her, against whom [however] the divorce was witnessed. ['Aṭā'] said [about this]: "The two are separated; he is not stoned or punished." *Ibn Jurayj said*: "It was reported to me (*balaghani*) that 'Umar ibn al-Khaṭṭāb ruled accordingly."⁵⁶

Ibn Jurayj transmitted to us from 'Aṭā' the pronouncement: "He [the slave] is allowed no renunciation (*ilā'*) [of his wife, who is also of slave status] without [the permission of] his master, and it is [for a period of] two months." *Ibn Jurayj said*: "It was reported to me (*balaghani*) that 'Umar ibn al-Khaṭṭāb said: 'The slave's renunciation is two months.'"⁵⁷

'Aṭā''s "weaknesses"

I summarize a further cluster of internal formal criteria of authenticity under the designation of "weaknesses" of 'Aṭā'. It is not particularly felicitous, since it might suggest value judgments which I would not like to have associated with it. I mean by it simply those data which do not show 'Aṭā' as an infallible legal scholar who has the correct answer to all questions and adheres to them unwaveringly. With a student who was passing off his own teachings as those of his teacher in order to share in his glory, one would presumably seek such references to the latter's deficiencies in vain. With Ibn Jurayj, one finds them in abundance. Four "weaknesses" of 'Aṭā's—which Ibn Jurayj in some cases surely did not see as such—can be observed in his tradition: ignorance, uncertainty, changes of opinion, and contradictions.

'Aṭā' answered a few of Ibn Jurayj's questions with "*mā 'alimtu*," "*lā adri*" (I don't know) or "*lam asma' fihā bi-shay*" (I have heard nothing about that).⁵⁸ In other cases he nevertheless follows such confessions of ignorance with a conjecture. For instance, Ibn Jurayj asks 'Aṭā' after the latter has cited a *dictum* of 'Ā'isha's: "From whom are you transmitting that" (*ta'thiru*)? ['Aṭā']: "I don't know. I think (*hasabtu*) that I heard 'Ubayd [ibn 'Umayr] say it."⁵⁹ Or: Ibn Jurayj

⁵⁶ AM 7: 13408 (emphasis mine).

⁵⁷ AM 7: 13188 (emphasis mine).

⁵⁸ AM 6: 11522; 7: 12658, 13655, 14030.

⁵⁹ AM 7: 14001. The manuscript text is somewhat corrupt: Instead of "*qultu*" one should, as the editor suggests, read *qāla*, and instead of "*abdan*," 'Ubaydan.

said: I said to 'Aṭā': "Is whoever intentionally (*ʿāmidan*) makes a woman permissible to her former husband [through an intervening marriage] to be punished?" ['Aṭā'] said: "I don't know. I think he should be punished."⁶⁰

Ibn Jurayj reports on 'Aṭā's changes of opinion several times with the words: "Earlier I heard him say . . ."⁶¹ or "later he said . . .",⁶² in one case noting that he likes 'Aṭā's first opinion better than his later one.⁶³ An example for illustration:

Ibn Jurayj transmitted to us from 'Aṭā' the statement: "Stoning is not performed when someone who has never yet been married (*bikr*) or someone who has already been married (*ṭhayyib*) commits fornication with a female slave. Both [the *bikr* and the *ṭhayyib*] are whipped one hundred [strokes] and exiled for a year." [Ibn Jurayj] said: "The same is true when a free woman commits fornication with a slave. 'Aṭā' used to say something else before that, until he heard that said by Ḥabīb ibn [abī] Thābit. After that he said it [too]."⁶⁴

That 'Aṭā' changes his mind and adopts the legal opinion of a relatively unknown Kufan scholar cannot be a projection.

Finally, it speaks against the thesis that Ibn Jurayj fathered his own views on 'Aṭā' that sporadically he cites contradictory statements from him on the same subject. A glaring example is afforded by two *responsa* on the question of the *ilā'*:

Ibn Jurayj said: 'Aṭā' was asked about a man who had sworn not to approach his wife [sexually] for a month, and stayed away from her for five months. 'Aṭā' said: "That is no renunciation (*laysa dhālika bi-ilā'in*)!"⁶⁵

To precisely the same question he responds on another occasion: "That is a renunciation (*dhālika ilā'un*), regardless of whether he specified a date or not. When four months have passed—as God, the Exalted, says—it is a [divorce]."⁶⁶

Since 'Aṭā' also shows a further uncertainty in the question of the *ilā'* which indicates a process of development and perhaps originates

⁶⁰ AM 6: 10780. A further example of this type is present in AM 7: 11954.

⁶¹ E.g. AM 7: 11954, 11966.

⁶² AM 7: 11680, 12974.

⁶³ AM 7: 11680.

⁶⁴ AM 7: 13391. In the text is Ḥabīb ibn Thābit. Presumably, however, the Ḥabīb ibn abī Thābit mentioned in 6: 10323, 10644 is intended. On him cf. Ibn Sa'd, *Ṭabaqāt*, vol. 6, p. 223.

⁶⁵ AM 6: 11620. Cf. also 11603, 11618.

⁶⁶ AM 6: 11627. Cf. also 11610.

in the influence of others,⁶⁷ this contradiction could be based on a chronological remove between the two questions. Then we would similarly be dealing with a change of opinion, which Ibn Jurayj does document, but does not—as in some other cases—identify as such. A forger of the stature of Ibn Jurayj—if he in fact were one—could presumably be trusted not to commit the error of discrediting his master through contradictory statements.

c. The results of the test of genuineness

It would be possible to adduce some further internal formal criteria which speak for the genuineness of Ibn Jurayj's 'Aṭā' tradition. However, I think that the foregoing two external and six internal formal criteria of authenticity are sufficient to support the following conclusions:

Ibn Jurayj's 'Aṭā' material in the *Muṣannaf* of 'Abd al-Razzāq actually derives from 'Aṭā' ibn abī Rabāḥ, who must have been one of Ibn Jurayj's most important teachers. Ibn Jurayj generally differentiates precisely between statements of 'Aṭā's, those of other informants and his own opinion and does not hesitate to diverge from his legal teachings. It is not to be expected that there are intentionally false ascriptions of opinions to 'Aṭā' in this tradition. It can be considered a historically reliable source for the state of legal development in Mecca in the first decade of the second/eighth century. This chronological placement results from the traditional death dates of 'Aṭā' and Ibn Jurayj. 'Aṭā' died in 115/733 and Ibn Jurayj in 150/767.⁶⁸ The difference of 35 years and the assumption that Ibn Jurayj began his studies at the age of 18 make it likely that he studied with 'Aṭā' only in the last two decades of the latter's life. 'Aṭā's legal opinions, however, surely did not spring from the void only at this time—that is hard to imagine on the basis of their enormous bulk alone—; rather, their development reaches back at least into the last two to three decades of the first/seventh century. Whether he had predecessors on whom he could rely, i.e., whether the origins of Islamic jurisprudence are to be placed in his time or perhaps even earlier, is to be clarified by an investigation of 'Aṭā's legal sources.⁶⁹ I have

⁶⁷ AM 6: 11610, 11627 with 11648.

⁶⁸ On this see below, pp. 253 ff., 269 f.

⁶⁹ See Chap. III.B.2.b.

deliberately expended all of this effort in order to substantiate the genuineness of Ibn Jurayj's 'Aṭā' tradition with features which can be elicited from the form and manner of his representation of 'Aṭā's statements, without having recourse to their content. It would have been an easy task to point to ostensibly archaic traits of 'Aṭā's teachings like, for instance, the very subsidiary role of *ḥadīths* and the practically complete lack of *isnāds* in them or the relatively modest role of the Qur'ān in the argumentation. Such a procedure, however, would run the risk of circular conclusions in which one proves the age of a text by such criteria and then uses it to show that they are archaic. Usually it is possible to carry out a crosscheck by attempting to prove with the same criteria that the text in question could also be late, which is quite possible with the above-mentioned "archaic" characteristics. One escapes the inadmissible circular conclusion only when it is possible to determine the genuineness and age of a source largely independently of features of content.

d. *Written or oral reception*

In discussing the formal aspects of Ibn Jurayj's 'Aṭā' tradition, I have until now largely left aside a question to which the research of the last decades has provided very contradictory answers: the problem of the written or oral character of the transmission of knowledge in early Islam.⁷⁰ It poses itself with especial acuteness in the case of our source, and because of its age the answer has wide general implications for the history of the technique of transmission in the first two Islamic centuries. With respect to the question of the authenticity or inauthenticity of the source, however, this differentiation is of little help, since forgeries are possible in written just as in oral form.⁷¹ I will try to clarify whether the reception of the 'Aṭā' material by Ibn Jurayj took place in writing or orally from four points of view: in respect to 1. the formal criteria of authenticity which have been worked out, 2. Ibn Jurayj's technique of reference, 3. the autonomy of the individual texts, and 4. the terminology of transmission.

⁷⁰ Cf. G. Schoeler, "Die Frage der schriftlichen oder mündlichen Überlieferung der Wissenschaften im frühen Islam," *Der Islam* 62 (1985), pp. 201–230.

⁷¹ Cf. van Ess, *Zwischen Hadīth und Theologie*, p. vii and Schoeler, *op. cit.*, p. 226.

Conclusions from the criteria of authenticity

According to my calculations, the *Muṣannaḥ* of ‘Abd al-Razzāq contains approximately 5,250 individual texts from Ibn Jurayj, of which about 2,000 refer to ‘Aṭā’.⁷² One half of them are *responsa* to questions of Ibn Jurayj’s, such texts often consisting of more than one question and answer, the other half *dicta* and traditions of ‘Aṭā’⁷³, some of which display considerable length. The remaining approximately 3,250 texts are distributed among 100–200 sources, who in turn name up to three or more sources in the *isnād*. It is quite unlikely that this mass of heterogeneous material was kept by Ibn Jurayj *exclusively* in his memory and transmitted by heart.

If poems, anecdotes, stories and short legal maxims can be retained relatively well, juridical dialogues and descriptions of intricate legal situations are as inappropriate for memorization as can be imagined. For illustration, let us enjoy the following—admittedly extreme—example:

Ibn Jurayj said: I said to ‘Aṭā’: “[What do you think about] the man’s saying ‘*anti khaliyya*’ and ‘*khalawti minni*?’” [‘Aṭā’] said: “[They are] the same [in value].” I said: “[And the words] ‘*anti bariyya*’ and ‘*binti*’⁷³ *minni*?’” [‘Aṭā’] said: “[They are] the same.” I said: “[And the words] ‘*anti bā’ina*’ or ‘*qad binti minni*?’” [‘Aṭā’] said: “[They are] the same. As to his words ‘*anti khaliyya*,’ ‘*anti sarāḥ*,’ ‘*ʿitaddi*’ or ‘*anti ṭāliq*,’ they are a *sunna* with respect to which no freedom of choice is left to him (*lā yudayyanu*); it is a divorce. As to his words ‘*anti bariyya*’ or ‘*anti bā’ina*,’ they are something that has been newly introduced (*aḥdathū*); [for this reason] freedom of choice is left to him with respect to them; if he desires divorce, it is one, and if not, then not.” I said: “What is your opinion if he said: ‘*anti ṭāliq*,’ ‘*anti khaliyya*,’ ‘*anti bariyya*,’ ‘*anti bā’ina*’ or ‘*anti sarāḥ*,’ and afterwards said: ‘I intended three [divorces],’ [then] regrets [it] and loves his wife (*aḥlahu*) [again]?” [‘Aṭā’] said: “He is left no freedom of choice.” I said: “[Assuming] he said nothing indicating divorce?” [‘Aṭā’] said: “[What he said about his intention] is sufficient; he has pronounced a definitive divorce, [and in consequence] she is separated from him; it is a [threefold] divorce.” Amr ibn Dīnār said: “No, rather there is [only] one [divorce], as long as ‘*anti bariyya*,’ *khaliyya*, *bā’ina*’ or ‘*binti minni*’ came from his mouth.” He said [further]: “And he is given freedom of choice [whether it should be a divorce at all].”

⁷² This is extrapolated on the basis of my sample of about 21% of the total text. Cf. pp. 58, 74, 78, note 13.

⁷³ Clearly a mistake in transmission. Presumably it should originally have been “*bani*’*ū*!”

I said: "If he intended three [divorces] by his words '*qad binii minni*' or '*bari'ti minni*'?" [ʿAmr] said: "It is [nevertheless] only one."⁷⁴

It is hardly imaginable that anyone is in a position to keep such instructional dialogues in his head without notes. It also speaks in favor of Ibn Jurayj's transmission from 'Aṭā' having depended essentially on written records which he prepared in and immediately following classes with 'Aṭā' that he cites slightly divergent stances of 'Aṭā's on the same subject,⁷⁵ notes additions or omissions of only a few words in traditions of 'Aṭā's that Ibn Jurayj knows from other sources as well,⁷⁶ is able to differentiate later from earlier views of 'Aṭā's,⁷⁷ and can specify whether he has a text directly from him or through an informant.⁷⁸ Ibn Jurayj's commentaries and remarks on the 'Aṭā' traditions⁷⁹ also suggest written documentation. Otherwise how, over the course of time, could he keep separate his teacher's statement and his own explanations and amplifications of it, as he usually neatly does? The criteria adduced for the authenticity of Ibn Jurayj's 'Aṭā' tradition without exception speak for a written mode of transmission. One can hardly escape this conclusion if one has accepted the premises.

Ibn Jurayj's references

A further argument in favor of this thesis can be derived from Ibn Jurayj's comments. Until now we have spoken only of two types of comments, additions and contradictions.⁸⁰ A third type could be called references. They are notes about the opinions or statements of other scholars about the case in question or about a *ḥadīth*. Just 10% of the traditions from 'Aṭā' contain such references. They refer to approximately a dozen persons, at their head 'Amr ibn Dīnār, from whom Ibn Jurayj also transmits the most after 'Aṭā'.⁸¹ 60% of the references are to 'Amr. In second place follows 'Abd al-Karīm (20%), more rarely Ibn Shihāb, Mujāhid, ['Abd Allāh] Ibn Kathīr, Ibn Ṭāwūs and others. They are distributed in approximately equal

⁷⁴ AM 6: 11190.

⁷⁵ See pp. 88–92.

⁷⁶ See pp. 88 f.

⁷⁷ See pp. 93 f.

⁷⁸ See p. 87.

⁷⁹ See pp. 84 ff.

⁸⁰ See pp. 84–86.

⁸¹ See pp. 77 f.

portions between the two main genres of *responsa* and *dicta*. Since only a few of the references (15%) identify Ibn Jurayj *expressis verbis* as the originator of this form of note with “*qāla* Ibn Jurayj,” the names and their distribution of frequency are an important indication that they in fact derive from him and not, for instance, from ‘Abd al-Razzāq. Further indicators of this are their content and form. In these respects they are clearly different from the latter’s references. In terms of content, half of Ibn Jurayj’s references say only that “X said the same” (e.g., “*wa-qālahu* ‘Amr” or “*qāla* ‘Amr *mithlahu*”);⁸² the other half give concrete indications of additions to or divergences from ‘Aṭā’s statement, but generally only in a few words. The content and size of these references clearly indicate that they are subsequent additions of Ibn Jurayj’s to ‘Aṭā’s traditions. One might imagine that he originally wrote them in the empty lines between the individual texts, between the lines or in the margin and that he himself or a copyist later integrated them into the running text. For this thesis and against the imaginable hypothesis that they are ‘Abd al-Razzāq’s notes on oral commentaries of Ibn Jurayj’s speaks—in addition to the fact, already mentioned, that ‘Abd al-Razzāq’s comments on other texts are different from these—the occurrence of abbreviated references. They consist simply of the conjunction “*wa*” and a name, e.g., “*wa-‘Amr*” or “*wa-Ibn al-Musayyab wa-‘Amr*”⁸³ and mean the same thing as “*wa-qālahu* X.” These abbreviated forms appear not only at the end, but also in the middle of the text, which clearly identifies them as marginal notes or the equivalent. An example:

Ibn Jurayj said: I said to ‘Aṭā’: “The man gives the divorce, but does not make it irrevocable. Where does she spend her waiting period?” [‘Aṭā] said: “In her husband’s house, where she is.” I said: “What do you think if he allows her to spend the waiting period with her family (*ahl*)?” He said, “No, then he participates with her in the sin [which she may commit].” [Ibn Jurayj:] “Thereupon he recited: ‘*wa-lā yakhrujna illā an ya’ṭina bi-fāḥishatin mubayyinatin*’⁸⁴ (and they should [or: need] not leave [their houses], unless they have committed a provable [sexual] transgression).”⁸⁵ I said: “This verse applies to this?” He said: “Yes.”—and ‘Amr. I said: “It was not abrogated?” He said: “No.”⁸⁶

⁸² AM 6: 10976, 11392, 11807.

⁸³ AM 7: 12246; 6: 10422.

⁸⁴ Quotation from Qur’ān 65:1.

⁸⁵ On the term *fāḥisha*, cf. Motzki, “*Wal-muḥṣanātu mina n-nisā’i illā mā malakat aimānukum* (Koran 4:24) und die koranische Sozialethik,” *Der Islam* 63 (1986), p. 195.

⁸⁶ AM 6: 11009. Emphasis mine.

From the mode of transmission of Ibn Jurayj's comments one can conclude that 'Abd al-Razzāq copied them and the corresponding text from a written document. This does not exclude the possibility that the material was the subject of lectures of Ibn Jurayj's in which 'Abd al-Razzāq participated and in which he, a classmate or Ibn Jurayj himself read the texts aloud.⁸⁷ I will go even further and advance the hypothesis that the references were entered by Ibn Jurayj in his lecture notes from 'Aṭā' in the course of the second phase of his studies, in which he heard 'Amr ibn Dīnār and other predominantly Meccan and Medinan scholars, while initially⁸⁸ collecting the others' texts separately. Here I base myself on the observation that in his traditions from other, uniformly younger, teachers and sources abbreviated references do not turn up at all,⁸⁹ and those of the type "*wa-qālahū X*" only very rarely. He thus did note in his 'Aṭā' documents when others agreed with him or diverged from him, but not in the records of the younger sources what 'Aṭā's position was and only sporadically the positions of others.

The autonomy of the individual texts

For the solution of the problem whether the transmission of a text or a work took place in writing or orally, one can also, in my opinion, make use of the criterion of autonomy. By this I mean the question of whether the transmitted textual fragments or individual texts are autonomous in themselves and understandable as such, or are not autonomous and are meaningful only within a larger context. Here it seems to me permissible to assume that in general a purely oral tradition reproduces no non-autonomous textual fragments and does not tend as easily as a written one to tear apart autonomous texts in order to incorporate them into other contexts.

In Ibn Jurayj's tradition from 'Aṭā' often⁹⁰ non-autonomous texts are to be found which are only meaningful within a context. It is true that a context is created by 'Abd al-Razzāq, whether it be formed through chapter headings or through thematically related

⁸⁷ On methods of instruction cf. Ṣiddīqī, *Hadīth Literature*, 158 ff. Sezgin, *Geschichte*, pp. 53–84 passim. Azami, *Studies in Early Hadīth Literature*, pp. 183–211. Schoeler, "Die Frage," passim.

⁸⁸ See below, pp. 204 ff.

⁸⁹ This statement applies to my selection of texts; on this, see p. 78, note 13.

⁹⁰ In about 16–17% of the cases.

traditions from other sources, but the original context which was constituted by other traditions of 'Aṭā' is no longer, or only partially, present. An example:

Ibn Jurayj said: I said to 'Aṭā': "I sent them my sandals and they were satisfied with this." ['Aṭā'] said: "What good are your sandals to them?" He said [further]: "It is said [*yūqāḥu*]: 'The least which suffices is his ring or a dress which he sends.'" ⁹¹

Without additional information, only specialists in Islamic law will divine that the subject here is the minimum of the bridal gift. This necessary aid to understanding is offered by the immediately preceding chapter heading and the following texts. Three further texts of 'Aṭā' on the subject of the bridal gift follow in the *Muṣannaf* only seven pages later. In between come 26 traditions from other authorities. The original, reconstructable context of the 'Aṭā' traditions has been destroyed in the *Muṣannaf* in favor of a new thematic composition. The question is whether 'Abd al-Razzāq is responsible or already Ibn Jurayj. From the fact that in the *Muṣannaf* the traditions of Ibn Jurayj often appear in blocks one can conclude that 'Abd al-Razzāq found these units ready-made, and thus that he essentially limited himself to cutting up Ibn Jurayj's work and combining it with other sources, in doing which, however, he left related things together. This can also be seen in the above example, which is directly followed by three traditions of Ibn Jurayj: 1. the opinions of 'Amr ibn Dīnār and 'Abd al-Karīm, his most important teachers after 'Aṭā', 2. a tradition received from 'Amr ibn Dīnār about 'Alī and 3. a Prophetic tradition of Ibn abī l-Ḥusayn. Only after these come texts which 'Abd al-Razzāq has from other sources—Ma'mar, al-Thawrī and others.⁹² Before the next traditions of 'Aṭā', which also form a block, comes a tradition with the *isnād* Ibn Jurayj—anonymous—Ibn 'Umar—Ibn Mas'ūd, which probably originally ended Ibn Jurayj's chapter, while the 'Aṭā' texts began a new chapter for him as well.⁹³ It is thus to be assumed that the headings of the

⁹¹ AM 6: 10394. Descriptions of situations by Ibn Jurayj in the first person are very rare. This certainly does not necessarily mean that they describe things which really occurred. Here, too, one should probably mentally add the word "assuming" and understand the sentence as a hypothetical.

⁹² AM 6, pp. 174 ff.

⁹³ AM 6, pp. 180–81.

two chapters also already derive from Ibn Jurayj. One encounters such compositional features relatively frequently, but not invariably. Individual texts of Ibn Jurayj also occur in the midst of other material. Nevertheless, I think that the conclusion that Ibn Jurayj already organized his material thematically into chapters, and that with him the traditions of 'Aṭā' generally came at the beginning, can be drawn with some certainty from the text of the *Muṣannaf*.⁹⁴ The hypothesis that Ibn Jurayj undertook this ordering of the traditions he had collected exclusively in his head and presented it to his students from memory with the chapter headings is quite unlikely. One will thus not go wrong in assuming that Ibn Jurayj recorded a thematically ordered compilation of legally relevant traditions, including his comments and his own opinions about them, in writing, i.e., that he composed books. One should most likely imagine these as notebooks, each of which contained a "*kitāb*" about a specific subject or part of one and served him as lecture notes, thus, for instance, a *kitāb al-nikāḥ*, a *kitāb al-ṭalāq*, a *kitāb al-walā'*. It is not necessarily the case, but highly probable that he did not begin his writing only at a relatively ripe age. Even his collecting activities will have consisted of writing from dictation and copying those texts which he later re-edited. The other features of the Ibn Jurayj tradition already mentioned also speak for this assumption.⁹⁵

The terminology of transmission

In the discussion of the orality or textuality of early Islamic tradition, and above all of *Ḥadīth*, until now the defenders of early textuality have particularly invoked the terminology of transmission.⁹⁶ Because of this it is necessary in closing to examine this question too and to investigate whether it offers such clues in the case of the Ibn Jurayj—'Aṭā' tradition as well.

In order to have opportunities for comparison, it seemed to me useful to classify the *isnāds* separately according to the two genres of

⁹⁴ Another organizing principle is used in Mālik's *Muwatta'*, where generally—insofar as they are cited—the traditions from the Prophet come at the beginning and the rest follow according to the seniority of the authorities cited, Mālik's teachers and himself thus comprising the end of a chapter (recension of Yahyā ibn Yahyā).

⁹⁵ See pp. 96–97.

⁹⁶ Cf. Abbott, *Studies*, vol. 2, pp. 57, 63, 126, 181, 193, 196–198, 236. Sezgin, *Geschichte*, vol. 1, pp. 53–84.

responsa and *dicta*. In both cases the same three main types can be differentiated; however, their frequency in the two genres is completely different.

Type 1 has the basic pattern:

‘Abd al-Razzāq ‘an Ibn Jurayj. *Qāla*.

In the case of the *responsa* it usually has the continuation: “*qultu li-‘Aṭā*,” but also “*sa’altu ‘Aṭā*,” “*qultu lahu*,” “*sami’tu X yas’alu ‘Aṭā*” and “*qāla X li-‘Aṭā*.” In the case of the *dicta* the continuation usually runs “*qāla ‘Aṭā*” or “*akhbaranī ‘Aṭā*,” more rarely “*qāla lī ‘Aṭā*” oder “*sami’tu ‘Aṭā yaqūl*.” This type represents 70% of the *isnāds* of the *responsa* but only 12% among the *dicta*.

Type 2 has the basic pattern:

Akhbaranā ‘Abd al-Razzāq. Qāla: akhbaranī Ibn Jurayj.

In the case of the *responsa* this is generally followed by: “*qāla: qultu li-‘Aṭā*,” rarely “*qāla: sa’altu ‘Aṭā*,” “*qāla: su’ila ‘Aṭā*” or “*qāla: sami’tu ‘Aṭā yus’al*.” The *dicta* usually proceed: “*‘an ‘Aṭā. Qāla:*” or “*qāla: akhbaranī ‘Aṭā*,” “*qāla: qāla ‘Aṭā*,” “*qāla: kāna ‘Aṭā yaqūl*,” “*qāla: sami’tu ‘Aṭā yaqūl*” or, extremely rarely, “*qāla: ḥaddathanī ‘Aṭā*.” Among the *responsa* this type represents 22%, among the *dicta* 31%.

Type 3 has the basic pattern:

‘Abd al-Razzāq ‘an Ibn Jurayj ‘an ‘Aṭā’.

In the case of the genre of *responsa* the continuation is usually: “*qāla [Ibn Jurayj]: qultu lahu*,” more rarely “*qāla [Ibn Jurayj]: qultu*,” “*qāla [Ibn Jurayj]: sa’altuhu*” or “*qāla [Ibn Jurayj]: qultu li- ‘Aṭā*”; in a few cases “*qāla*” is also missing. The *dicta* continue the *isnād* in the majority of cases with “*qāla*,” which sometimes, however, is missing, or—more rarely—with “*‘an X*.” Extremely rarely one finds “*qāla [Ibn Jurayj]: sami’tuhu yaqūl*.” This basic pattern has a frequency quotient in the case of the *responsa* of only 8%, but among the *dicta* of 57%.

Among the *responsa* the ranking of the basic patterns is thus: type 1: 70%, type 2: 22%, and type 3: 8%, among the *dicta*, on the other hand: type 3: 57%, type 2: 31%, and type 1: 12%. If one calculates the distribution of frequency of the *isnād* types in the genre of *dicta* divided according to personal opinion and material from others,⁹⁷ in

⁹⁷ On these sub-categories see above, p. 80.

the case of personal opinion there results the ranking: type 3: 68%, type 2: 23%, and type 1: 9%, in the case of material from others, on the other hand: type 2: 48%, type 3: 34%, and type 1: 18%.

These statistics are to be interpreted as indicating that there are correlations between types of *isnād* and textual genres: For *responsa* the pattern “‘Abd al-Razzāq ‘an Ibn Jurayj. *Qāla*:” is preferred, for *dicta*, on the other hand, the pattern “‘Abd al-Razzāq ‘an Ibn Jurayj ‘an ‘Aṭā’. *Qāla*:”; while the material from others (i.e., ‘Aṭā’s reports from others) is most often introduced with: “*akhbaranā* ‘Abd al-Razzāq. *Qāla*: *akhbaranā* Ibn Jurayj” with the continuation “‘an ‘Aṭā’” or “*qāla*: *akhbaranī/qāla/haddathanī* ‘Aṭā’.”

These are, however, only tendencies which reflect particular preferences. Type 2, for instance, which introduces almost half of all traditions from others, is nevertheless represented among the *responsa* and ‘Aṭā’s own *dicta* with 22% and 23% respectively. There is no hard and fast rule that a specific *isnād* pattern belongs to a specific genre. On the other hand, it is to be observed that almost three quarters of all ‘Abd al-Razzāq—Ibn Jurayj—‘Aṭā’ traditions have the “‘an” or “‘an . . . ‘an” structure, and only a quarter the “*akhbaranā*” pattern. This difference, however, is not to be attributed to a different mode of transmission, for instance, with “*akhbaranā*” indicating the procedure of *qirā’a*, *yāza* or *munāwala* and “‘an,” in contrast, textual transmission without an *yāza*. Against such an assumption speaks the fact that occasionally the same text, or two texts related in content which Ibn Jurayj must have obtained at the same time, appear with different *isnād* structures, once with “*akhbaranā*” and another time with “‘an.”⁹⁸

The structure of transmission between Ibn Jurayj and ‘Aṭā’ is simpler and contains only two basic patterns:

Type 1:

Ibn Jurayj *qāla*.

In the case of the *responsa* there usually follows “*qultu li-‘Aṭā*” or the equivalent, in the case of the *dicta* predominantly “*qāla* ‘Aṭā’,” “*akhbaranī* ‘Aṭā’” or the equivalent. Explicit emphases of *samā’* occur, but relatively rarely (4%).

⁹⁸ Cf. AM 7: 13217 and 13220; 13854 and 13856.

Type 2:

Ibn Jurayj 'an 'Aṭā'.

The continuation in the case of the *responsa* usually runs: "*qāla* [Ibn Jurayj];" infrequently the question follows immediately; in the case of the *dicta*: "*qāla*"—in a few cases, however, it is missing—or, sporadically, "'an."⁹⁹

Type 1 is more often represented (58%) than type 2 (42%), however, the difference is not large enough to be considered significant. On the other hand, the correlation with the genres is unmistakable. Type 1 occurs primarily with the *responsa* (78%), type 2 with the *dicta* (90%); in contrast, in the case of 'Aṭā's material from others the distribution is not eccentric: type 1 reaches a frequency of 45%, type 2 of 55%.

In the case of Ibn Jurayj's transmission from 'Aṭā' as well, the two *isnād* types thus correspond to different preferences associated with specific genres, something which is even more apparent here than in the case of 'Abd al-Razzāq—Ibn Jurayj. The two types, however, are not the expression of a truly different method of transmission. This is shown by the examples in which the two genres overlap, in which, for example, a *dictum* of 'Aṭā's is followed by a follow-up question of Ibn Jurayj's and 'Aṭā's answer.¹⁰⁰ These texts are uniformly introduced with "'an 'Aṭā'." That proves that this pattern results from the same situation of transmission as that of the *responsa*. It would be incorrect to assume that "'an 'Aṭā'" indicates textuality, "*qāla: qultu li-* 'Aṭā'," in contrast, orality. From these formulations alone for the early period it is not possible to conclude either the one or the other. That is only possible with the help of other criteria, such as those which I have already mentioned.¹⁰¹

In the case of Ibn Jurayj's 'Aṭā' material one will have to assume that oral and textual reception are inextricably intertwined, that Ibn Jurayj heard 'Aṭā' and wrote down what he heard, as is still the practice in the lecture business today. That he transmitted texts from 'Aṭā' which he did not hear from him but obtained only in writing is unlikely despite the many "'an" traditions.

⁹⁹ See p. 102.

¹⁰⁰ Cf. AM 6: 10673, 10816, 10912, 11275, 11926; 7: 12435, 13586, 13786, 14001.

¹⁰¹ See pp. 97–101.

2. Characteristics of 'Aṭā's legal scholarship and its significance for the history of Islamic jurisprudence

a. General characteristics

Ibn Jurayj's tradition from 'Aṭā' contains a number of indications that Ibn Jurayj was not his only student, but that 'Aṭā' had a circle of students who regularly heard his lectures. An indicator which has already been mentioned are the texts in which Ibn Jurayj reports not only his own questions but those of other persons. Two examples:

Ibn Jurayj said: 'Aṭā' was asked about [two]¹⁰² men, each of whom married the other to his sister under the condition that each of the two would have to produce [only] a small bridewealth [*jūhāz*]; if he desired, however, he could receive more than that. ['Aṭā'] said: "No, the *shighar* [i.e., the exchange of wives without bridewealth] is forbidden." I said: "But the two specified a bridewealth!" ['Aṭā'] said: "No! Each of the two gave the other permission [to marry] for his own sake (*min aqli nafsihi*)."¹⁰³

Ibn Jurayj said: I said to 'Aṭā': "A man said to his wife, who had been a slave and then was freed, 'You have committed fornication since you were freed!', without offering proof of this. ['Aṭā'] said: If he says that without having proof of it, he is whipped." Someone said to him (*qīla lahu*): "[Assuming] she committed the fornication as a slave." ['Aṭā'] said: "[In that case] there is no *ḥadd* [punishment for the accuser]."¹⁰⁴

These texts show that not only a dialogue between Ibn Jurayj and 'Aṭā' took place, but that others who also asked questions attended 'Aṭā's instruction as well. Ibn Jurayj sometimes gives explicit expression to this situation, for instance with formulations such as "*qīla li-'Aṭā wa-ana asma'u*"¹⁰⁵ or "*sami'tu 'Aṭā yus'alu*"¹⁰⁶ (someone said to 'Aṭā' while I was listening; I heard 'Aṭā' asked). One may assume that there was a steady circle of students who studied with 'Aṭā' and felt themselves to be classmates. They designated themselves as "*julūs*

¹⁰² The manuscript has only "*rajul*," following the suggestion of the editor, one should read *rajulayn*.

¹⁰³ AM 6: 10440. Emphases mine.

¹⁰⁴ AM 7: 13750. Emphases mine.

¹⁰⁵ AM 6: 11522.

¹⁰⁶ AM 7: 13883.

ma'a 'Aṭā'”¹⁰⁷ (participants in 'Aṭā's sessions), and the master occasionally addresses them directly, for instance, when he responds to a question: “*mā turwawna 'an . . . ?*” (what was transmitted to *you* from . . .?).¹⁰⁸ In addition, 'Aṭā's meetings were visited by guest auditors who used their stay in Mecca to contact the famous scholar. Thus Ibn Jurayj reports that once a scholar from Kufa took the floor and communicated the opinion of the *fuqahā* of Kufa about a legal question.¹⁰⁹ Perhaps it was also in the circle of 'Aṭā' that the *muḥaddith* Abū Quz'a presented a tradition of the Prophet to 'Aṭā' and Ibn Jurayj.¹¹⁰ Besides Ibn Jurayj, a few more students or auditors of 'Aṭā's can be ascertained from his tradition; one can add other names from other early sources. In various contexts Ibn Jurayj names 'Ubayd Allāh ibn abī Yazīd,¹¹¹ Hishām ibn Yaḥyā, Sulaymān ibn Mūsā, ['Abd Allāh] ibn 'Ubayd ibn 'Umayr, Ya'qūb [ibn 'Aṭā'],¹¹² and also transmits 'Aṭā' material from 'Abd al-Ḥamīd ibn Rāfi',¹¹³ 'Abd al-Karīm al-Jazarī¹¹⁴ and 'Amr ibn Dīnār,¹¹⁵ whom he consequently accepts as students of 'Aṭā's. Ma'mar ibn Rāshid sporadically transmits from 'Aṭā' through Ibn Ṭāwūs and Ayyūb [ibn abī Tamīma],¹¹⁶ Sufyān al-Thawrī through Abū Ishāq [al-Sabī'i],¹¹⁷ Ibn 'Uyayna through 'Amr ibn Dīnār and Ibn abī Najīh,¹¹⁸ 'Abd al-Razzāq through 'Abd al-Malik ibn abī Sulaymān and through 'Amr ibn Ḥawshab,¹¹⁹ who all probably studied with 'Aṭā' as well. Later sources know of even more sometime students of 'Aṭā's, among them such famous names as al-Zuhrī, al-Awzā'i and Abū Ḥanīfa.¹²⁰

Instruction took place partially in the form of question-and-answer sessions and partially as lectures or free presentations. This can be

¹⁰⁷ AM 6: 10957; 7: 12553.

¹⁰⁸ AM 6: 10641. Instead of “*tarawna*” I read with the editor *turwawna*. Emphasis mine.

¹⁰⁹ AM 7: 13742.

¹¹⁰ AM 7: 12584.

¹¹¹ A fellow student of 'Aṭā's with Ibn 'Abbās. See p. 86, note 29.

¹¹² AM 7: 12553; 6: 11666, 11772; 7: 12381, 12529, 12862; 6: 11610.

¹¹³ AM 6: 11348.

¹¹⁴ AM 6: 11460.

¹¹⁵ AM 6: 10895, 11080, 14001.

¹¹⁶ AM 6: 11565; 7: 12634, 13335.

¹¹⁷ AM 7: 13325.

¹¹⁸ AM 6: 10562, 10764, 10772; 7: 13139.

¹¹⁹ AM 7: 12886, 13436.

¹²⁰ See p. 251 and cf. Azami, *Studies in Early Ḥadīth Literature*, p. 80. Sezgin, *Geschichte*, vol. 1, p. 31.

inferred from the two main genres of Ibn Jurayj's tradition, the *responsa* and the *dicta*. Among the *responsa*, however, the predominance of Ibn Jurayj's questions (88%) in comparison with those of other persons is curious and requires explanation. I do not think that this is a result of 'Aṭā's style of instruction, for instance, that only a particular student and well-known personalities were allowed to ask questions, but that it has to do with the records of Ibn Jurayj, who noted above all his own questions and those of others more rarely. Since he studied with 'Aṭā over a quite long period of time, as is indicated by his statements about earlier and later opinions of 'Aṭā's,¹²¹ this amount of material could gradually accumulate.

b. 'Aṭā's sources

In most cases 'Aṭā does not give reasons for his legal opinions, but merely observes that such-and-such is the legal situation. The texts in which he refers to some source, whether it be the Qur'ān, the Prophet, the latter's Companions, or learned colleagues, constitute only one third of Ibn Jurayj's entire 'Aṭā tradition. Nevertheless, it is precisely these which are of decisive significance for the question of the origins of Meccan jurisprudence. In order to obtain a nuanced picture of 'Aṭā's sources, I will investigate them divided according to genre.

The sources of the *responsa*

If one differentiates between texts in which 'Aṭā refers to sources argumentatively and those in which he merely mentions them—usually prompted by questions from students—, it emerges that only about 14% of the *responsa* contain a recourse to sources which serves to support the legal pronouncement. Among them the shares of the Qur'ān and of the Companions of the Prophet are approximately equally high (about 6% each), and those of the Prophet and of 'Aṭā's contemporaries equally low (about 1% each). That is, when 'Aṭā invoked an authority in order to strengthen his position—which he did rarely—as a rule it was either the Qur'ān or one of the *ṣaḥāba*, rarely the Prophet or *fuqahā* of the *tābi'ūn* level. If one adds the other kind of references, i.e. sources merely mentioned, the share of

¹²¹ See pp. 92–94.

the Qur'ān doubles and those of the Prophet and of 'Aṭā's contemporaries rise to approximately half of the value for the Companions of the Prophet, which rises only negligibly.

This shift in 'Aṭā's references to sources reflects the interest of his students. Through their questions, they prompt him to deal with the Qur'ān, the Prophet and contemporary opinions more intensively than he did on his own initiative.

The next question to be clarified is how 'Aṭā' refers to his sources. From this, it is possible to draw conclusions about their existence in his time and his familiarity with them. I treat them in the order of their significance in 'Aṭā's instruction.

α. The Qur'ān

'Aṭā's references to the Qur'ān can be subdivided into *allusions* and *citations*. Allusions are, among other things, those cases in which he simply invokes "God" or the Qur'ān and in doing this assumes that the questioner knows precisely which verse is intended. Two examples:

Ibn Jurayj said: Hishām ibn Yahyā said to 'Aṭā': "[What happens] if a man does not know the period of renunciation (*ajal al-ila'*) until four months have passed?" ['Aṭā'] said: "Even if he is ignorant, the period [of renunciation] is as God has established (*kamā farada llāhu*)."¹²²

'Aṭā' refers—as does the question—to Qur'ān 2:226: "Those who renounce their wives [i.e., swear to abstain from them sexually] have a waiting period of four months . . ."

Ibn Jurayj said: I said to 'Aṭā': "The man marries the woman, but does not see her until he divorces her. Is she permitted to his son [in marriage]?" ['Aṭā'] said: "No! It is revealed [in the Qur'ān] (*mursala*)."
I said: "[What does] '*illā mā qad salaḥa*' (with the exception of that which has already taken place) [mean]?" ['Aṭā'] said: "In the Jāhiliyya sons married the wives of their fathers."¹²³

Ibn Jurayj's follow-up question shows that he has understood 'Aṭā's allusion precisely and relates it to Qur'ān 4, verse 2, from which he then quotes.¹²⁴

Allusions of this kind are, however, relatively rare. In general, 'Aṭā' cites the appropriate verse fragments. This offers the opportunity to compare them with the *textus receptus*. 'Aṭā's Qur'ānic cita-

¹²² AM 6: 11666. Emphases mine.

¹²³ AM 6: 10805.

¹²⁴ Even the term *jāhiliyya* is Qur'ānic. Cf. Qur'ān 3:154; 5:50; 33:33; 48:26.

tions generally have introductions identifying the text as such. Usually 'Aṭā' precedes them with "*qāla llāhu*" (God said:),¹²⁵ more rarely "*dhakara llāhu*" (God mentioned) or "*kitābu llāhi*" (God's book),¹²⁶ or Ibn Jurayj notes, "*talā* ['Aṭā']" ('Aṭā' recited).¹²⁷ However, completely unannounced citations, identifiable only to those well-versed in the Qur'ān, also occur.¹²⁸ In the questions directed to 'Aṭā', on the other hand, the Qur'ānic citations of Ibn Jurayj and others are predominantly without mention of the source; it is only sporadically characterized as "*qawl allāh*" (God's word). 'Aṭā's Qur'ānic citations, which are without exception only fragments of verses, can be classified into three kinds: 1. Those which are in complete agreement with the *textus receptus* represent by far the largest portion. 2. Citations which to a large extent correspond to the 'Uthmānic recension, but which contain omissions, and 3. Paraphrases. Two examples of the second and third kind:

['Aṭā'] said: [. . .] God, the exalted, said: "*Lā taḥillu lahu ḥattā tankiḥa zawjan ḡayrahu* [. . .]."¹²⁹

The *textus receptus* of Qur'ān 2:230 runs: "[. . .] *fa-lā taḥillu lahu min ba'du ḥattā tankiḥa zawjan ḡayrahu* [. . .]."¹³⁰

Ibn Jurayj said: I said to 'Aṭā': "The woman is divorced, and it is suspected that she is no longer menstruating, without its being completely clear to them. How is that [to be handled]? ['Aṭā'] said: "As God, the exalted, said: 'If she has given up the hope of it, she must observe a waiting period of three months (*idhā ya'isat min dhālika i'tad-dat thalāthata ashhurin*).'"¹³¹

The fraction of a verse which 'Aṭā' is paraphrasing runs: "*Wa-l-llā'i ya'isna mina l-maḥīdi min nisā'ikum ini rtabtum fa-iddatuhunna thalāthatu ashhurin* [. . .]" (Qur'ān 65:4).

Such abbreviations of Qur'ānic texts also occur in the questions of Ibn Jurayj, whose citations, however, generally agree precisely with the *textus receptus*. One probably should not infer deficient knowledge of the Qur'ān or divergent readings on the basis of these, even when they seem defective, like the following citation of Ibn Jurayj's:

¹²⁵ E.g. AM 6: 11094, 11142.

¹²⁶ AM 6: 11476; 7: 13621 (without eulogy!).

¹²⁷ E.g. AM 6: 10948, 11357.

¹²⁸ E.g. AM 6: 10620: "*imsākun bi-ma'rūfin aw tasrīhun bi-iḥsānin*" (Qur'ān 2:229). The editor does not note that it is a Qur'ānic passage.

¹²⁹ AM 6: 11142.

¹³⁰ Emphasis mine.

¹³¹ AM 6: 11094.

Ibn Jurayj said: I said to 'Aṭā': "What is your opinion [about the following case]: If a woman were to come from the polytheists (*ahl al-shirk*) to the Muslims today and convert to Islam, would her husband be entitled to compensation for her—in accordance with the word of God in [the *sūra*] al-Mumtaḥana: '*wa-ātūhum mithla mā anfaqū*' (and give them the same [amount] as what they spent)?" ['Aṭā'] said: "No! That was just a [an arrangement] between the Prophet and the people of the pact [of al-Ḥudaybiya], [only] between him and them."¹³²

The *textus receptus* of Qur'ān 60:11 runs: "*fa-ātū lladhīna dhahabat azwājuhū mithla mā anfaqū*."¹³³

'Aṭā's and Ibn Jurayj's references to the Qur'ān allow a number of historical conclusions: If they say "*fi l-qur'ān*"¹³⁴ or quote from the "*kitāb allāh*" (Book of God),¹³⁵ the Qur'ān must have been a known quantity in their time, i.e., at the beginning of the second/eighth century. The textual content of the verses, too, must have been largely established. That is the presupposition of the mode of citation, which expects of the listener that he be able to place the fractional verses, often consisting of only a few words, in a known context. Had the text of the Qur'ān not been definitely fixed, it would not have been possible to refer to it in this way.¹³⁶ The defective quotes and paraphrases which sporadically occur are no counter-argument. They are explained by the tendency to brevity which comes to expression in the allusive mode of citation in general. It results not only in the fragmentary rendition of Qur'ānic verses, but also in their rather free summarization. The thesis that the text of the Qur'ān was established does not preclude the possibility that there were isolated divergent readings of a few verses. An example of a *qirā'a* not contained in the *textus receptus* which was in circulation at the beginning of the second/eighth century is offered by this *responsum*:

Ibn Jurayj from 'Aṭā'. He said: "She [the wife's mother] is not permitted to him [in marriage]; it is revealed [in the Qur'ān] (*mursala*)."
I said: "Didn't Ibn 'Abbās read '*wa-ummahātu nisā'ikumū llāfi dakhalthum*'

¹³² AM 7: 12707.

¹³³ Emphasis mine.

¹³⁴ AM 6: 10805.

¹³⁵ AM 7: 13621.

¹³⁶ This and the following findings concerning 'Aṭā's knowledge and use of the Qur'ān contradict J. Wansbrough's thesis of its late collection, editing and canonization as presented in his *Quranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford, 1977).

(and the mothers of your wives with whom you have consummated the marriage)?" ['Aṭā'] said: "We do not read [in this way]"¹³⁷

The text contains, in the first place, only an allusion to the Qur'ān of 'Aṭā's, which Ibn Jurayj, as his follow-up question shows, correctly relates to Qur'ān 4:23. He cites a *qirā'a* of Ibn 'Abbās's for it, which gives the passage a narrower interpretation than the *textus receptus*, to which 'Aṭā' refers. This runs only, "*wa-ummahātu nisā'ikum*;" the "*allātī dakhaltum*" follows only a line later and refers to the mothers of stepdaughters. The *qirā'a* of Ibn 'Abbās does not intend a general proscription of marriage to the mothers of wives, but only of those with whom the marriage was actually consummated. That is indeed a meaningful interpretation of the passage, but precisely that exposes this *qirā'a* to the suspicion of being an exegetical addition. 'Aṭā' does not dispute that this is a reading of Ibn 'Abbās. This could be for two reasons: Either he considers the statement that Ibn 'Abbās read in this way to be correct, or he himself had not heard his opinion about this passage and for this reason did not want to dispute it. Nevertheless, he rejects it as not being accepted in Mecca in his time and adheres to the version of the *textus receptus*.

The invocation of *qirā'āt* can be considered an argument for the thesis that the text of the Qur'ān was established.¹³⁸ The fact that they are considered the deviations of specific persons presupposes a standard text from which they differ. This also becomes clear from the example of other *qirā'āt* which 'Aṭā' himself reports from Ibn 'Abbās.¹³⁹

At the time when Ibn Jurayj was studying with 'Aṭā', i.e., in the first 15 years of the second/eighth century not only the content of the Qur'ānic verses, however, but probably also their ordering in *sūras* was largely established. The latter—or at least some of them—already had names by which one could refer to them. This emerges from the *responsum* cited,¹⁴⁰ in which Ibn Jurayj locates his Qur'ānic citation with the remark that it is from "al-Mumtaḥana" (The Tested Woman). It is, in fact, from *sūra* 60, which has this name in the Egyptian standard edition of the Qur'ān. It is among the few names

¹³⁷ AM 6: 10816. I read *lā naqra'u* instead of the meaningless "*lā natra'u*" of the manuscript and the edition.

¹³⁸ A. Brockett also reaches this conclusion on the basis of a comparison of readings in "The Value of the Ḥafṣ and Warsh Transmission for the Textual History of the Qur'ān," in: A. Rippin (ed.), *Approaches to the History of the Interpretation of the Qur'ān* (Oxford, 1988), pp. 31–45, esp. p. 43.

¹³⁹ See p. 152.

¹⁴⁰ See p. 110.

of *sūras* which do not consist of a word in the *sūra* in question.¹⁴¹ It is only derived from a word contained in it, namely in the tenth of the thirteen verses, which says: “*fa-mtaḥinūhunna*” (and test them! [the women who come to Medina as emigrants]). The designation of the *sūra* as “al-Mumtaḥana” is in no way obvious, as in the case of many *sūras* which draw their names from a word of the first verse. That such an unusual name for a *sūra* existed so early speaks against the idea, current until now, that the names of the *sūras* accrued to the *sūras* relatively late from oral tradition.¹⁴² The fact that in the earliest Qur’ān fragments often no *sūra* names appear does not speak against their early use in the domain of instruction. The addition of names to *sūras* is to be attributed at the latest to the first generation of scholars after the definitive redaction of the text of the Qur’ān by the Companions of the Prophet, if not to the latter themselves. In any case, *sūras* which have a name must already have existed as finished units.¹⁴³

In addition to Ibn Jurayj’s and ‘Aṭā’s use of a standard version of the Qur’ān—which, as far as can be seen from the citations examined, corresponds to the familiar *textus receptus*—and of *sūra* names, their familiarity with two exegetical methods which subsequently played an important role in the *tafsīr* literature is noteworthy: *naskh al-qur’ān* (abrogation of the Qur’ān, [i.e., of individual elements]) and *sabab al-nuzūl* (occasion of revelation [of individual verses]).

A textual attestation of *naskh* has already been cited in another context.¹⁴⁴ There Ibn Jurayj asks ‘Aṭā’ whether the sentence “*wa-lā yakhrujna illā an ya’tina bi-fāḥishatin mubayyinatin*” (they [f.] should/need not leave [their houses] unless they commit a provable [sexual] transgression) in Qur’ān 65:1 is not abrogated. Clearly Ibn Jurayj is aware of a discussion about the abrogation of this verse fragment,¹⁴⁵ and ‘Aṭā’, who denies it, is aware of the meaning of the question asked.¹⁴⁶

¹⁴¹ On the classification of the names of the *sūras* cf. A. T. Welch, “al-Ḳur’ān,” in: *Encyclopaedia of Islam*, Second Edition., vol. 5, p. 410.

¹⁴² Cf. W. M. Watt, *Bell’s Introduction to the Qur’ān* (Edinburgh, 1970), p. 59. R. Blachère, *Introduction au Coran* (2nd ed., Paris, 1977), p. 140 f.

¹⁴³ On another *sūra* name see p. 152.

¹⁴⁴ See p. 98.

¹⁴⁵ That “*illā an ya’tina bi-fāḥishatin mubayyinatin*” was abrogated was, for instance, the opinion of ‘Aṭā’ al-Khurāsānī (d. 135/757), an informant of Ibn Jurayj’s for a number of Ibn ‘Abbās traditions. Cf. AM 6: 11020 (this tradition, however, comes from Ma’mar). On ‘Aṭā’ al-Khurāsānī see below, p. 233.

¹⁴⁶ On the phenomenon of *naskh* cf. D. S. Powers, “The Exegetical Genre *nāsikh al-Ur’ān wa mansūkhuhu*,” in: A. Rippin (ed.), *Approaches*, pp. 117–138.

The following *responsum*, for instance, contains a *sabab an-nuzūl*:

Ibn Jurayj said: I said to ‘Aṭā’: “What does ‘*Wa-l-wālīdātu yurđīna awlā-dahunna ḥawlayni kāmīlayni*’¹⁴⁷ [mean]?” [‘Aṭā’] said: “If a woman wants to shorten [the period of suckling] of two years, it is a duty of his [i.e., the child’s] mother to inform him [the father, about it]. He may not prolong [the period of suckling] beyond two years unless she desires. Divorced [women] and widows are [also intended]. It is reported (*yurwā*) that [the verse] [was revealed] among the people when they were in disagreement about the period of suckling.”¹⁴⁸

The last sentence refers to the occasion of the revelation of the verse. This tradition without precise information about its origins is so meaningless in its generality that one may ask oneself whether it is not the abbreviation of a more concrete and historically detailed version.

That such concrete *asbāb al-nuzūl* traditions already existed is shown by another example:

Ibn Jurayj said: I said to ‘Aṭā’: “‘*Wa-ḥalā’ilu abnā’ikumu*’¹⁴⁹ (and the wives of your sons). [Assuming that] the man marries the woman but does not see her until he divorces her. Is she permitted to his son?” [‘Aṭā’] said: “It is revealed [in the Qur’ān] (*mursala*). [There it says:] ‘*Wa-ḥalā’ilu abnā’ikumu lladhina min aṣṭābikum*’ (and the wives of your sons who [come] from your loins). [‘Aṭā’] said [further]: “We are of the opinion (*narā*) and transmit (*nataḥaddathu*)¹⁵⁰—God, however, knows best—that it was revealed to Muḥammad when he married Zayd’s wife. The polytheists in Mecca talked about it [disparagingly] and so it was revealed: ‘*Wa-ḥalā’ilu abnā’ikumu lladhina min aṣṭābikum*.’ In addition, it was revealed: ‘*Wa-mā ja’ala ad’iyā’akum abnā’akum*’¹⁵¹ (and he did not make those you call sons [i.e., adoptive sons] you [real] sons) and it was revealed [at that time]: ‘*Mā kāna Muḥammadun abā aḥadin min rijālukum*’¹⁵² (Muḥammad is the father of none of your men).”¹⁵³

While the Zayd-Zaynab affair is obvious as the occasion of revelation of the two latter verses, since Zayd is identified by name in Qur’ān 33:37, this is not as evident in the case of Qur’ān 4:23, even if an indirect thematic reference to the verses from *sūra* 33 is

¹⁴⁷ Qur’ān 2:233.

¹⁴⁸ AM 7: 12173.

¹⁴⁹ Qur’ān 4:23.

¹⁵⁰ Sic!

¹⁵¹ Qur’ān 33:4.

¹⁵² Qur’ān 33:40.

¹⁵³ AM 6: 10837. Emphasis mine.

present.¹⁵⁴ Whatever may be true of the historicity of the association—‘Aṭā’ himself shows a glimmer of uncertainty in the formula “*wa-llāhu a‘lamu*” (God, however, knows best)—, in his *responsum* there is present a *sabab al-nuzūl* tradition whose origin is to be dated at the latest in the first decade of the second/eighth century, but probably as early as the second half of the first/seventh century.¹⁵⁵

The thesis that the Qur’ān played a role as a source of law in ‘Aṭā’s instruction, which has initially been formulated quantitatively,¹⁵⁶ is also supported by more detailed examination of the Qur’ānic material contained in ‘Aṭā’s *responsa* transmitted by Ibn Jurayj. It reveals, as the examples cited show, not only that ‘Aṭā’ knew the Qur’ān extremely well but that he was well-versed in Qur’ānic exegesis, and that his students used to obtain from him information about the meaning of parts of Qur’ānic verses. In cases in which he was unsure about the meaning he admitted this and named possible alternatives, as in the following text:

Ibn Jurayj said: I said to ‘Aṭā’: “What is your opinion about the word [of God]: ‘*Mā khalāqa llāhu fī arḥāmihinna*’¹⁵⁷ (what God created in their wombs)?” [‘Aṭā’] said: “The child [is meant], she may not keep it secret so that he desires her [again]. However, I do not know [for certain], perhaps the menstrual period is [also meant] along with it [i.e., the child] [. . .].¹⁵⁸

In general, as in this example, ‘Aṭā’ gave interpretations of the Qur’ān as his own opinion. Occasionally he also supported himself—as in the case of the *asbāb al-nuzūl*¹⁵⁹—with traditions, without precisely specifying their origins. Already in ‘Aṭā’s lifetime, however, the consciousness of a qualitative difference between the two types of statements seems to be in the offing or already present. This becomes clear in a few of ‘Aṭā’s answers, in which he emphasizes that his interpretation is not only his personal opinion (*ra’y*) but also rests on “knowledge” (*‘ilm*),¹⁶⁰ or in which he supplements the introductory

¹⁵⁴ Al-Suyūṭī, *Lubāb*, p. 156 cites this *sabab al-nuzūl* tradition of ‘Aṭā’s in the context of Qur’ān 4:19 with the *isnād*: Ibn Jarīr [al-Ṭabarī]—Ibn Jurayj.

¹⁵⁵ On *asbāb al-nuzūl* cf. A. Rippin, “The Function of *Asbāb al-Nuzūl* in Qur’ānic Exegesis,” *Bulletin of the School of Oriental and African Studies* 51 (1981), pp. 1–20.

¹⁵⁶ See pp. 107 f.

¹⁵⁷ Qur’ān 2:228.

¹⁵⁸ AM 6: 11058.

¹⁵⁹ See p. 113 (*yurwā*).

¹⁶⁰ AM 6: 11017. Cf. also 10780.

formula "we are of the opinion" with "and we transmit."¹⁶¹ This differentiation is probably also the background of a question of Ibn Jurayj's, whether 'Aṭā' has heard "*bi-shay'in ma'lūmin*" (something based on knowledge) about part of a Qur'ānic verse, which 'Aṭā' answers in the negative, although he could surely have said something about its juridical relevance.¹⁶²

'Aṭā's way of treating Qur'ānic material reflects his predominantly juridical interest in it. Purely philological explanations are scarcely found in the *responsa*.¹⁶³ It is permissible to conclude from this that the Qur'ān already had an influence on juridical thinking in this early stage of legal development. This was obviously possible only in the subject areas about which unambiguous statements were to be found in the Qur'ān. Schacht's thesis "that apart from the most elementary rules, norms derived from the Qur'ān were introduced into Muhammadan law almost invariably at a secondary stage. This applies not only to those branches of law which are not covered in detail by the Qur'ānic legislation [. . .] but to family law, the law of inheritance, and even cult and ritual,"¹⁶⁴ thus seems to me questionable.¹⁶⁵ Schacht underestimates the significance of the Qur'ān for the origins of Islamic jurisprudence. One could, it is true, object that the frequency of only 13% explicit mentions of the Qur'ān in 'Aṭā's *responsa* transmitted by Ibn Jurayj (including the questions) speak for rather than against Schacht, but the portion of texts that show Qur'ānic influences without its being cited *expressis verbis* must be included in the calculation. Specifically, it is in no way the case that in every legal solution which he bases on the Qur'ān 'Aṭā' makes note of this. He does this rather rarely, often only when he is challenged to do so or provoked by counter-opinions, as in the following two examples:

¹⁶¹ See p. 113.

¹⁶² AM 7: 12187.

¹⁶³ I thus doubt Sezgin's assumption that there was a *Tafsīr* of 'Aṭā' as an independent work (cf. *Geschichte*, vol. 1, p. 31). The exegetical material preserved from 'Aṭā' seems merely to derive from Ibn Jurayj's notes on 'Aṭā's instruction. On the Ibn Jurayj—'Aṭā' *Tafsīr* cf. also Horst, "Zur Überlieferung im Korankommentar al-Ṭabarī," p. 295 and Stauth, *Die Überlieferung des Korankommentars Muḥāhid b. Ḡabrs*, pp. 111 f.

¹⁶⁴ Schacht, *Origins*, pp. 224–225.

¹⁶⁵ Cf. also Gräf, *Jagdbeute*, pp. 317 f.

Ibn Jurayj said: I asked ‘Aṭā’ about the man who wanted to divorce his wife and asked her to give him part of her bridal gift. She did so willingly, then he divorced her. [‘Aṭā’] said: “[That is not permissible].”¹⁶⁶ I said: “Why? God, the exalted, said: ‘*Fa-in ṭibna lakum ‘an shay’in minhu*’¹⁶⁷ (and if they grant you part of it).” Then [‘Aṭā’] recited: ‘*Wa-in aradtumū stibdāla zawjīn makāna zawjīn*’¹⁶⁸ (and if you want to exchange one wife for another).¹⁶⁹

Only Ibn Jurayj’s objection causes ‘Aṭā’ to cite the Qur’ānic evidence on which his legal view rests. It is similar in this text:

Ibn Jurayj from ‘Aṭā’. He said: “If a slave falsely accuses a free [man, of having committed fornication], he is whipped forty [lashes], regardless of whether he has become *muḥṣin* [i.e., one who must avoid illegitimate sexual relations]¹⁷⁰ (*uḥṣina*)¹⁷¹ or not.” I said: “There are people who say: ‘He is whipped eighty lashes.’” [‘Aṭā’] disapproved of this and recited: “‘*Wa-lladhīna yarmūna l-muḥṣanāti . . . fa-jlīdūhum thamānīna jaldatan wa-lā taqbalū lahum shahādatan abadan*’¹⁷² (and those who accuse chaste women [of fornication] . . . , whip them eighty lashes and never again accept testimony from them). There are, however, no testimonies for a slave.”¹⁷³

The legal questions treated in the two texts are certainly not what Schacht understands by the “most elementary rules.” Especially in the latter case, ‘Aṭā’s opinion rests on several deductions: 1. The Qur’ānic text, which speaks only of the false accusation of women, is also applicable to men. 2. For the solution of the problem it is immaterial whether the slave has already been married or not, i.e., has *iḥṣān* status. Thus, consideration of Qur’ān 4:25 to this point is to be rejected. An explicit reference to the passage is not present. 3. In general, no testimony is accepted from slaves; consequently, Qur’ān 24:4 is in the first place only to be applied to free persons. 4. Following Qur’ān 4:25, the penalty for slaves can accordingly be determined. This Qur’ānic point of reference, too, is not specifically mentioned.

¹⁶⁶ This answer, which the context requires, is missing in the manuscript, probably as the result of an oversight.

¹⁶⁷ Qur’ān 4:4.

¹⁶⁸ Qur’ān 4:20.

¹⁶⁹ AM 6: 11827.

¹⁷⁰ On the term *muḥṣin* cf. Motzki, “*Wal-muḥṣanātu*,” passim and id.: “Chastity,” in: J. D. McAuliffe/C. Gilliot et alii: *Encyclopaedia of the Qur’ān*, vol. 1 (Leiden, 2001), forthcoming.

¹⁷¹ The editor vocalizes “*aḥṣana*.”

¹⁷² Qur’ān 24:4.

¹⁷³ AM 7: 13786.

The example shows that 'Aṭā' already possessed considerable skill in utilizing the Qur'ān as a legal source and working out solutions to new legal questions through combination of and deduction from parts of Qur'ānic verses. Such lines of reasoning are implicitly contained in many of his legal answers, without a word being expended on the Qur'ānic foundations. One can claim with some certainty that 'Aṭā' not only was a good scholar and exegete of the Qur'ān, but used this knowledge for the solution of juridical problems.

β. The Companions of the Prophet

Measured by the frequency of their mention, after the Qur'ān the *ṣaḥāba* constitute the second most important source to which 'Aṭā' resorts in his *responsa*. Among those more often named are Ibn 'Abbās, 'Umar and 'Ā'isha, among those more rarely mentioned Ibn 'Umar, 'Alī, Ibn al-Zubayr and others. Formally, it is conspicuous that references to Companions of the Prophet in the *responsa* generally have no *isnād*¹⁷⁴ and are extremely short. In terms of genre, the *dicta* (sayings) predominate; *acta* (actions) and *sententiae* (verdicts) are more rare. Some have the character of mere references which presuppose either personal contact with the person in question or knowledge of a more detailed report from him.

From the texts investigated by me, a direct relationship can be determined only for Ibn 'Abbās. He is not only the authority among the *ṣaḥāba* to whom 'Aṭā' refers most often, but also the only one about whom he claims that he "heard" him. E.g.:

Ibn Jurayj transmitted to us. He said: I said to 'Aṭā': "*Aw yaḥfuwa lladhī bi-yadihi 'uqdatu l-nikāhi*"¹⁷⁵ (or he who has the contraction of marriage in his hand remits it) [who is meant by this?]" ['Aṭā'] said: "The [marriage] guardian! *I heard Ibn 'Abbās say*: 'The one who remits is the one of the two [i.e., the woman herself and the guardian] who is more God-fearing.'"¹⁷⁶

'Aṭā' does not emphasize *samā'* from Ibn 'Abbās in every case. Often he limits himself to saying after his own opinion: "*kāna Ibn 'Abbās yaqūluhu*" (Ibn 'Abbās [too] used to say this).¹⁷⁷

¹⁷⁴ There was not a single one in my selection of texts.

¹⁷⁵ Qur'ān 2:237.

¹⁷⁶ AM 6: 10851. Emphasis mine.

¹⁷⁷ E.g. AM 7: 12990, 13145.

A number of indicators speak for the the authenticity of 'Aṭā's Ibn 'Abbās traditions:

1. Ibn 'Abbās traditions are found among the *responsa* only in very small numbers (in just over 2%), and there they are usually additive, simply a confirmation of 'Aṭā's statement without great value of its own. Clearly 'Aṭā' does not generally consider it necessary to give more weight to his own legal teachings through the authority of an Ibn 'Abbās or of another Companion of the Prophet. Thus one can assume that the cases in which he mentions him casually are credible. Otherwise, there is no discernible reason why he mentions him at all.

2. The situation is different in the following text:

Ibn Jurayj said: I asked 'Aṭā' about a man who, after a "ransom" divorce (*fidā*), divorced [normally] (*tallaqa*). ['Aṭā'] said: "This is to be regarded as void, because he divorced a woman whom he did not possess [any more]."¹⁷⁸ Sulaymān ibn Mūsā contradicted him. Thereupon 'Aṭā' said: "Ibn 'Abbās and Ibn al-Zubayr were in agreement about this in the case of a man who divorced his wife by "buying free" and then after the "buying free" (*khul'*) divorced [her normally]. They both agreed that the [normal] divorce after the "buying free" [from marriage] was to be regarded as void,¹⁷⁹ with the words: 'He did not divorce his wife, but something which he did not possess [any more].'¹⁸⁰

In this case one might suspect that in view of the criticism of his opinion, 'Aṭā' considered himself compelled to ascribe it to weightier authorities in order to defend it. This assumption, however, is not convincing. A reference to the fact that Ibn 'Abbās had been of the same opinion would have been sufficient for support. The failed caliph 'Abd Allāh ibn al-Zubayr, outlawed by the Banū Umayya, is at the beginning of the second/eighth century surely no especially opportune or impressive authority for juridical subtleties. It is rather to be supposed that 'Aṭā' is referring to a real case which took place during the caliphate of Ibn al-Zubayr (64/684–73/692), was brought before the caliph and decided by him. Perhaps Ibn 'Abbās commented positively on the verdict. As a student of Ibn 'Abbās, 'Aṭā' could have been present at the time. The fact that he names his

¹⁷⁸ Literally: Of whom he possessed nothing [more].

¹⁷⁹ Literally: That after the ransoming he did not [effectively] divorce, and [thus his act] was to be considered void.

¹⁸⁰ AM 6: 11772.

source only upon being questioned or contradicted was already to be observed in the case of his Qur'ānic evidence.¹⁸¹ The example is thus not unusual. It confirms my thesis that this scholar usually did not deem it necessary to enhance his statements through reference to older authorities, not even when he had adopted his solution from them. There are, however, indications that even in 'Aṭā's lifetime a desire for stronger support of statements through authorities was spreading among scholars. Even 'Aṭā's students seem to have been infected with it, as for instance appears from their occasional demands that he name his source or informant.¹⁸² The inclination to invoke older, famous personalities harbored the danger of arbitrary attributions, i.e., forgeries. This is clear from a *responsum* of 'Aṭā's:

Ibn Jurayj said: I said to 'Aṭā: "Ya'qūb¹⁸³ transmitted to me (*akhbarānī*) from you that you heard Ibn 'Abbās say: 'If [the man] specifies a period, the period is [binding] for him. That is not a renunciation (*īlā'*). If he does not name it, it is a renunciation [i.e., oath of sexual abstinence].' ['Aṭā] said: "I did not hear anything [at all] from Ibn 'Abbās about renunciation!" I said: "What do you say [then]?" He said: "Whether he names a period or not [, it is the same], when—as God says¹⁸⁴—four months have passed, it is a [divorce]."¹⁸⁵

The text displays an internal sign of genuineness: 'Aṭā' does not claim that Ibn 'Abbās did not say what was attributed to him or did say something else, as would be expected if 'Aṭā' were invoking Ibn 'Abbās arbitrarily, but that he did not *hear* him say anything on this question.¹⁸⁶ This speaks for the credibility of the cases in which 'Aṭā' claims to have something from Ibn 'Abbās. In addition, this is an example of an early effort at forgery, in which a legal opinion was either falsely put in the mouth of a Companion of the Prophet (*matn* forgery) or intended to be "supported" by a well-known contact person of this Companion (*isnād* forgery).¹⁸⁷

I think that the texts cited suffice as evidence that on the basis of 'Aṭā's *responso* it is possible to defend the thesis that—until the

¹⁸¹ See p. 116.

¹⁸² See p. 88.

¹⁸³ Ya'qūb ibn 'Utba? (cf. AM 6: 11733) or 'Aṭā's son. On him cf. Ibn Qutayba, *Ma'ārif*, p. 154.

¹⁸⁴ Qur'ān 2:226.

¹⁸⁵ AM 6: 11610.

¹⁸⁶ Also see pp. 110 f.

¹⁸⁷ On a similar case of forgery cf. AM 7: 14021, 14027 (see p. 144).

opposite is proved—the traditions transmitted in the *Muṣannaf* by Ibn Jurayj from ‘Aṭā’ from Ibn ‘Abbās may be regarded as reliable transmissions of the latter.

‘Aṭā’'s references to Companions of the Prophet other than Ibn ‘Abbās do not show that he had direct contact to them. He quotes them without naming his source—e.g., with the note “‘Umar said this [too]” or “So-and-so used to do such-and-such”¹⁸⁸—, but also sometimes indicates indirect transmission. For example, thus:

Ibn Jurayj said: I said to ‘Aṭā’: “The waiting period of a [female] slave?” [‘Aṭā’] said: “Two [cycles of] menstruation (*ḥayḍatāni*).” He said [further]: “*People have reported [dhakarū] that ‘Umar ibn al-Khaṭṭāb said: ‘If I could, I would make it one and a half periods.’*”¹⁸⁹

Ibn Jurayj said: I said to ‘Aṭā’: “[Assuming that] the man marries the woman. How many [days] should he stay with the virgin which are not accorded to the others?” [‘Aṭā’] said: “*What has been transmitted to you from Anas ibn Mālik*¹⁹⁰ is that he said: ‘For the virgin three days, for the one who has already been married (*ṭhayyib*) two.’”¹⁹¹

It should not be concluded from the lack of precise statements concerning the provenance of his references to Companions of the Prophet that ‘Aṭā’ was not familiar with the use of the *isnād*. It could also be for other reasons: firstly, the function of these references within the literary genre—which ultimately represents a reflection of the mode of instruction—could be responsible for it, and secondly the significance of such traditions for ‘Aṭā’'s legal scholarship in general; and the two are not mutually exclusive. It speaks for the first thesis that ‘Aṭā’'s citations in his *responsa* are in general not complete traditions, but only fragments. The original context is left out in favor of that constituted by the question and ‘Aṭā’'s answer. Usually only the quintessence of the tradition remains. It is for this reason that I call them references. Their function consists simply of serving

¹⁸⁸ AM 6: 10726; 7: 12401, 13198, 13883.

¹⁸⁹ AM 7: 12877. Emphasis mine.

¹⁹⁰ Instead of “*ṭarawna*” I read with the editor *ṭurwawna*.

¹⁹¹ AM 6: 10641. Emphasis mine. It is conspicuous that the majority of the Anas traditions name other numbers—seven or three. Cf. AM 6: 10642, 10643. Mālik, *Muwattaʿ* (Y) 28:5 (15). al-Bukhārī, *Jāmiʿ*, 67:100, 101. Muslim, *Jāmiʿ*, 17:12; 18:49–55. Cf. also Motzki, “Geschlechtsreife und Legitimation zur Zeugung im frühen Islam,” in: E. W. Müller (ed.), *Geschlechtsreife und Legitimation zur Zeugung* (Freiburg/München 1985) p. 532. The version of the Anas tradition to which ‘Aṭā’ alludes may be an early (end of the first century) Meccan counter-tradition against the Iraqi doctrine.

as a reminder that there is a tradition from a Companion of the Prophet which corresponds in tenor to 'Aṭā's teaching. This technique of reference has its natural "*Sitz im Leben*" in legal instruction, where it is primarily the content which matters and less the form of the legal sources. In principle, it does not exclude the possibility that 'Aṭā also knew the traditions in more detail and could cite them with sources, but it may also have led to his only remembering or noting down their essential meanings.

In favor of the second thesis one can marshal the fact that the small number of references to Companions of the Prophet in 'Aṭā's *responsa* speak for the marginality of their role in his legal instruction. One might explain this by a small number of traditions in circulation in his time. That this is, however, not the reason is proven by: 1. texts from which it emerges that he once referred to a Companion as his source and another time, with the same case, did not, 2. other *responsa* in which he cites a tradition of a Companion only in response to a follow-up question, or 3. the questions of students which allude to *ṣaḥāba* traditions which are not received from 'Aṭā but which—as his answers show—he must have known.¹⁹² He thus knew far more than he used, as shown by the following example:

Ibn Jurayj transmitted to us the words: I heard 'Aṭā being questioned; a man said to him: "A woman gave me some of her milk to drink after I was a grown man. May I marry her?" ['Aṭā] said: "No!" I said: "That is your opinion?" He said: "Yes!" 'Aṭā said: "'Ā'isha ordered her brother's daughters [to do] that."¹⁹³

Ibn Jurayj's question whether 'Aṭā's answer is also his opinion (*ra'y*) seems somewhat odd. It should probably be seen in the context of the distinction between *ra'y* and *ilm* which has already been mentioned.¹⁹⁴ Ibn Jurayj wants to know whether the answer is *ra'y* or *ilm*. Only understood in this way is it meaningful. 'Aṭā's answer is that it is *ra'y*. This does not fit with the following reference to the *usus* of 'Ā'isha. It is presumably a later addition of Ibn Jurayj's, who heard the thematically appropriate *ḥadīth* about 'Ā'isha from 'Aṭā in another (later?) context.¹⁹⁵ There is a similar case in a *dichum* about

¹⁹² Cf., in addition to the texts cited below, AM 7: 11948.

¹⁹³ AM 7: 13883.

¹⁹⁴ See pp. 114 f.

¹⁹⁵ The fact that 'Aṭā is named again before the *ḥadīth* also suggests that it is an addition.

the Prophet which Ibn Jurayj heard from 'Aṭā' as a tradition of 'Ā'isha, 'Amr ibn Dīnār, on the other hand, with an identical text as 'Aṭā's *ra'y*.¹⁹⁶ Here, too, it is probable that the reference to 'Ā'isha is to be placed later chronologically, since Ibn Jurayj is the younger of the two and 'Amr emphasizes that the matter is a long time in the past.

These facts strengthen me in the assumption that in the course of his decades-long activity as a teacher 'Aṭā' experienced a development from virtually pure *ra'y* to stronger consideration of traditions. Probably he was compelled to this by the "*Zeitgeist*," i.e., the blossoming of an interest in traditions of the first/seventh century, to which especially his students succumbed. If one assumes that the incorporation of *ḥadīths* represents a secondary stage in 'Aṭā's legal scholarship, his weaknesses as a transmitter also become understandable. After he had probably considered the citation of traditions superfluous for a relatively long time, it was difficult to make up his deficit in the swiftly rising standard for techniques of transmission. In support of this hypothesis let us first of all cite only one text. Investigation of 'Aṭā's *dicta* will bring further clarification.

Ibn Jurayj transmitted to us from 'Aṭā': 'Ā'isha said: "Until the death of the Messenger of God it was permitted to him to marry whomever (*mā*) he wished." I said: "From whom are you transmitting (*ta'thiru*) that?" 'Aṭā' said:¹⁹⁷ "I don't know [i.e., have forgotten]; I think (*ḥasabtu*) that I heard 'Ubayd¹⁹⁸ say it."¹⁹⁹

The student demands from 'Aṭā' that he specify of his source for the *ṣaḥāba* tradition. 'Aṭā' has forgotten who it was. This and the general lack of *isnāds* in 'Aṭā's references to traditions of the Companions in his *responsa* are to be evaluated as indications that for 'Aṭā' the registration and naming of transmitters was—at least for a time—unimportant, and that refraining from this was not injurious to his reputation as a scholar, since he otherwise presumably would have made an effort to eliminate the deficiency. 'Aṭā's *responsa* represent a rudimentary stage in the incorporation of traditions from the Companions of the Prophet into the developing discipline of

¹⁹⁶ AM 7: 14001.

¹⁹⁷ Instead of "*qultu*" one should read with the editor *qāla*.

¹⁹⁸ Instead of "*abdan*" one should read with the editor 'Ubaydan. Intended is 'Ubayd ibn 'Umayr, cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, pp. 341–342.

¹⁹⁹ AM 7: 14001.

jurisprudence, rudimentary with respect to the number of the traditions and their reporting. This hypothesis intentionally refers only to 'Aṭā's *identification of* traditions of the *ṣaḥāba*, not also—*e silentio*—to his teachings being influenced by them, because it is quite possible that he was molded earlier and more strongly by traditional material than is apparent, and that he simply did not consider it necessary to refer to it. Such behavior is observable on his part with respect to the Qur'ān as well.²⁰⁰

In contrast to 'Aṭā's traditions from Ibn 'Abbās, the authenticity of his references to other *ṣaḥāba* is uncertain, since he did not hear them himself and does not know or does not specify the provenance of the traditions. However, one can at least conclude from them that the corresponding traditions of Companions of the Prophet existed in his time. They cannot be fictions of later times, as Schacht assumes of most of them,²⁰¹ but most have been in circulation at the latest in the first decade of the second/eighth century. 'Aṭā's wavering about whether he heard the cited pronouncement of 'Ā'isha's from 'Ubayd ibn 'Umayr (d. 68/687) or from someone else²⁰²—this uncertainty speaks for his honesty!—even makes it possible to push back the origins of *ṣaḥāba* traditions far into the second half of the first/seventh century. This does not preclude the possibility that in the second/eighth century traditions of the Companions were invented and forged—which we have already seen in one example.²⁰³ Since 'Aṭā' usually cites only fragments of the traditions, or only alludes to them, they can be used to date the original versions, since only a one-sided dependence—namely, that of the 'Aṭā' texts from the more detailed versions—is likely. One can establish the rule: If there is a reference to the *matn* of a *ṣaḥāba* tradition in the 'Aṭā' material of Ibn Jurayj as contained in the *Muṣannaḥ*, 'Aṭā's death date (115/733) is the terminus *ante quem* of the existence of the tradition in question.

Let us demonstrate the utility of the method with an example:

In the two most important recensions of Mālik's *Muwatta'* there is an unusually long tradition composed of several individual traditions about the suckling of adults.²⁰⁴ It comprises a tradition of the

²⁰⁰ See pp. 115, 116.

²⁰¹ Cf. Schacht, *Origins*, pp. 150 f.

²⁰² See p. 122.

²⁰³ See p. 119.

²⁰⁴ Mālik, *Muwatta'* (Y) 30:12 (p. 605), *Muwatta'* (Sh), no. 627.

Prophet provided with several pieces of marginal information, a tradition about 'Ā'isha and one about the other wives of the Prophet. On the basis of the artful composition alone it is atypical of Mālik's traditions, and for this reason one is tempted to regard it as a relatively late product. Mālik's *isnād*, however, designates 'Urwa ibn al-Zubayr (d. between 92/711 and 101/720) as the originator of the story and Ibn Shihāb (124/742) as its transmitter. For "systematic" reasons Schacht does not assign the origins of the individual components even to Ibn Shihāb and his time, and considers the reference to 'Urwa to be "spurious" in any case. He sees in them counter-traditions from the circles of the "traditionists" against the established opinion of the "ancient school" of Medina and the latter's counter-traditions against the "traditionists" attempt to change the doctrine.²⁰⁵ Comparison with a *responsum* of 'Aṭā's already cited,²⁰⁶ however, yields a completely different picture: According to it, 'Aṭā', who is surely not to be numbered among the "traditionists," already accorded the suckling of adults legal efficacy and referred in this context to a *usus* of 'Ā'isha's: "*kānat 'Ā'isha ta'muru bi-dhālīka banātī akhīhā.*" That is clearly a relic of the more detailed 'Urwa tradition of the *Muwatta'*. There it says: "'Ā'isha [. . .] employed this [method] in the case of the men whom she wanted to admit into her presence. She used to order her sister Umm Kulthūm bint abī Bakr [. . .] and her brother's daughters (*fa-kānat ta'muru ukhtahā* Umm Kulthūm [. . .] *wa-banātī akhīhā*) to suckle the men whom she wished to admit to her presence."

This tradition of 'Ā'isha was thus already known to 'Aṭā'. 'Aṭā' and Ibn Shihāb are drawing from the same source, since the possibility can be excluded that 'Aṭā' was a student of the younger Ibn Shihāb. According to Mālik's *isnād*, 'Urwa ibn al-Zubayr is the original transmitter of the story. Since he is an older contemporary of

²⁰⁵ Cf. Schacht's *Origins*, pp. 48, 246. J. Burton has already depicted the many-faceted spectrum of opinion and tradition in early *fiqh* on the subject of *radā'a* in "The Interpretation of Q 4,23 and the Muslim Theories of *Naskh*," in: *Occasional Papers of the School of Abbasid Studies* (University of St. Andrews), no. 1 (1986), pp. 40-54. Although he advances a hypothesis which is directed against Schacht's conception of the secondary role of the Qur'ān for *fiqh*, his ideas about the *process of development* of the juridical discussion on the subject remain completely within the framework of the Schachtian way of thinking (see esp. p. 41 f.). However, he avoids—apparently intentionally—the latter's efforts at dating by means of the *isnāds*.

²⁰⁶ See p. 121.

‘Aṭā’s and his authority for other traditions, he is probably also ‘Aṭā’s source. The *Muwattaʿ*’s ‘Ā’isha tradition is thus to be regarded as a genuine tradition of ‘Urwa and will derive from the second half of the first/seventh century.²⁰⁷

γ. The Prophet

‘Aṭā’ refers to the Prophet very rarely in his answers. Of the over 200 *responsa* investigated, all of three contain a reference to him by ‘Aṭā’. That is, he is not named more frequently than, for example, ‘Umar or ‘Ā’isha and less than Ibn ‘Abbās. In addition there is some information about the Prophet in response to concrete questions from Ibn Jurayj. None of the texts contains an *isnād*; occasionally there is the formula “*balaghanā anna l-nabī/rasūla llāh. . .*”²⁰⁸ (it reached us that the Prophet/Messenger of God . . .).

The references and allusions to the Prophet contained in the *responsa* of ‘Aṭā’ transmitted by Ibn Jurayj confirm the conclusion that I have drawn from the references to Companions of the Prophet. ‘Aṭā’ knew many more traditions of the Prophet than he used for juridical argumentation. This emerges from the texts in which Ibn Jurayj specifically brings up the subject of the Prophet with him, for example, after an answer containing only ‘Aṭā’s opinion, and from the fact that ‘Aṭā’ cites legal maxims which he knows as traditions of the Prophet without indicating the Prophet as a source.

An example:

Ibn Jurayj said: I said to ‘Aṭā’: “The man seeks the woman in marriage when he [already] has a wife. At the engagement before the [consummation of] marriage, he contracts the marriage under the condition that she is entitled to [only] one day and X [the first wife] to two days [of marital care].” [‘Aṭā’] said: “That is allowed before marriage and, after they have amicably agreed upon it [in marriage].” I said: “Was it revealed with regard to this: ‘*Wa-ini mra’atun khāfat min ba’liha nushūzan aw ʾirādan*’²⁰⁹ (and if a woman fears quarrelsomeness and aversion from her husband)?” [‘Aṭā’] said: “Yes!” I said: “Did the Prophet do that with his wives?” He said: “Yes!” I said: “What [does it mean in this context]: ‘*Wa-uhḍirati l-anfusu l-shuhḥa*’ (the souls [of human beings] incline to stinginess)”. He said: “[That is meant] in

²⁰⁷ For a more detailed analysis of this tradition cf. Motzki, “Der Fiqh des -Zuhri,” pp. 34–42.

²⁰⁸ AM 6: 10969; 7: 12632.

²⁰⁹ Qurʾān 4:128.

reference to financial support (*naḥaqa*). It is alleged (*za'amū*), the woman [with whom the Prophet did this] was Sawdā'.²¹⁰

Although it would have been natural, 'Aṭā' does not at first refer to the Prophet as a precedent for his legal opinion. Ibn Jurayj must painstakingly coax it out of him. The name Sawdā', and with it a hint that a concrete tradition is known to him, comes only at the very end.

The case that 'Aṭā' knows a legal maxim as a *dictum* of the Prophet but does not identify it as such can be attested by the example of the saying, "*Al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*" (the child belongs to the bed, and to the one who engaged in illegitimate sexual relations belongs nothing). I have already referred²¹¹ to the fact that 'Aṭā' uses this legal maxim in two different texts²¹² without noting that it was also regarded as a pronouncement of the Prophet. That this was known to him is shown by the following example:

Ibn Jurayj said: I said to 'Aṭā': "What do you think if he [the man] rejects it [the child, i.e., denies paternity] after she has given birth to it?" ['Aṭā'] said: "[In that case] he must curse her (*yulā'imuhā*), and the child belongs to her." I said: "Didn't the Prophet say: '*Al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*'?" ['Aṭā'] said: "Yes! But that was because the people in [the beginnings of] Islam laid claim to children who were born in the beds of [other] men with the words: 'They belong to us!' [For this reason] the Prophet said: '*Al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*.'"²¹³

Only thanks to Ibn Jurayj's question do we learn that this legal maxim is in reality not a creation of 'Aṭā's but a saying which was also ascribed to the Prophet and was already known as such around the turn of the first/seventh century. That this is no isolated case is shown by the texts, already cited in another context, about divorce during menstruation.²¹⁴

The reason that 'Aṭā' so rarely appeals to the Prophet as an authority or cites his actions as exemplary and worthy of emulation thus cannot be that there simply was no more material about the Prophet at his disposal. The reason should, rather, be sought in the

²¹⁰ AM 6: 10651.

²¹¹ See p. 91.

²¹² One I have already cited on p. 84; the other is AM 7: 12862.

²¹³ AM 7: 12369.

²¹⁴ See p. 90. More on this subject, pp. 132 ff.

fact that the idea of the exemplary character of the *sunna* of the Prophet and its possible function as a legal source supplementary to the Qur'ān had not yet made its way into his thinking. This assumption is also reinforced by 'Aṭā's use of the word *sunna*, which for him designates custom in the sense of the recognized social practice in Mecca.²¹⁵ For the lack of information about the path of transmission (*isnād*) for 'Aṭā's references to the Prophet, the same reasons can be adduced as in the case of the Companions: It may be conditioned by genre and development.²¹⁶

The rule developed on the basis of the *ṣaḥāba* material, that with the help of 'Aṭā's references to traditions their *isnāds* can be tested and their time of origin delimited, is also valid for the Prophet. This can be understood, by way of example, through one of the texts already cited:

The earliest detailed traditions about the Prophetic *dictum* "*Al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*" are in the *Muwatta'* of Mālik and the *Muṣannaf* of 'Abd al-Razzāq. To be distinguished are: 1. Different variations of a *qiṣṣa*, i.e. narrative, version which tells of the dispute between Sa'd ibn abī Waqqāṣ and 'Abd ibn Zama'a over the *nasab* of a boy. They are supposed to have appealed to the Prophet as an arbitrator, and he to have decided the case with the above saying.²¹⁷ 2. A short tradition containing only the *dictum* itself.²¹⁸

The *Muwatta'*'s version runs:

Yaḥyā said from Mālik from Ibn Shihāb from 'Urwa ibn al-Zubayr from 'Ā'isha, the wife of the Prophet: She said: "Utba ibn abī Waqqāṣ had [at his death] entrusted (*ahida*) to his brother Sa'd ibn abī Waqqāṣ that the son of Zama'a's slave woman was his and that he should take

²¹⁵ Cf. AM 6: 10864; 7: 12977. On the development of the term *sunna*, cf. also G. H. A. Juynboll, "Some New Ideas on the Development of *sunna* as a Technical Term in Early Islam," *Jerusalem Studies in Arabic and Islam* 10 (1987), pp. 97-118.

²¹⁶ See pp. 122 f.

²¹⁷ Cf. AM 7: 13818 (Ma'mar—al-Zuhri), 13819 and 13821 (Ibn Jurayj—Ibn Shihāb). "*Aḥādīth Abū l-Yamān*," no. 1 (Shu'ayb—al-Zuhri), in: Azami, *Studies in Early Ḥadīth Literature*, Arabic texts, pp. 141 f. Mālik, *Muwatta'* (Y) 36:20 (Mālik—Ibn Shihāb). In most of the *qiṣṣa* versions the second half of the maxim is lacking. On this cf. also Azami, op. cit., p. 161. The text is also found in the "*Ṣaḥīḥān*:" al-Bukhārī, *Jāmi'* 34:3, 100; Muslim, *Jāmi'* 18:31, 41, 43, and in al-Dārimī, *Sunan* 21:45. On the legal and social implications cf. Motzki, "Geschlechtsreife," pp. 542, 546. A more detailed study of the tradition complex has been published by U. Rubin: "*Al-Walad li-l-Firāsh*." On the Islamic Campaign against *Ẓina*", *Studia Islamica* 78 (1993), pp. 5-26.

²¹⁸ AM 7: 13821.

him. In the year of the conquest [of Mecca] Sa'd seized him with the words: '[He is] my brother's son; he entrusted him to me.' Thereupon 'Abd ibn Zama'a went to him and said: '[He is] my brother, the son of my father's slave woman; he was born in (on) his bed.' They went with their struggle to the Messenger of God. Sa'd said: 'Messenger of God, he is my brother's son; he had entrusted him to me.' 'Abd ibn Zama'a said: '[He is] my brother, the son of my father's slave woman; he was born in his bed.' The Messenger of God said: 'He belongs to you, 'Abd ibn Zama'a!' Then the Messenger of God said: 'The child belongs to the bed, and to the one who engaged in illegitimate sexual relations belongs nothing.' Thereupon he said to Sawdā' bint Zama'a: 'Veil yourself in front of him!', because he saw the resemblance [of the boy] to 'Utba ibn abī Waqqāṣ. [Ā'isha] said: He did not see her [Sawdā', again] until he died (*laqiya llāha*).

The end of the *isnād* in all early variations of the *qissa* version is: Ibn Shihāb al-Zuhrī—'Urwa ibn al-Zubayr—Ā'isha, of the shorter version: the same or al-Zuhrī—Ibn al-Musayyab and Abū Salama—Abū Hurayra. Ibn Shihāb is the "common link" of all of these texts, leaving aside 'Āṭā's references. According to Schacht's procedure of dating with the help of the *isnāds*, the time of Ibn Shihāb's activity would be the *terminus a quo* starting from which, at the earliest, the tradition complex came into circulation.²¹⁹ Since Schacht reckons with the forging of chains of transmission on a large scale, however, he considers al-Zuhrī "hardly responsible for the greater part of these traditions" from the Prophet, Companions and Successors in whose *isnāds* he appears as the common link,²²⁰ i.e., he shifts the origin of such traditions into the second quarter of the second/eighth century or later. In the case of the legal maxim in question only the second quarter of the second/eighth century remains to him as a probable time of origin, since he infers from al-Shāfi's *Kitāb al-Umm* that Abū Ḥanīfa (d. 150/767) knew it as a *dictum* of the Prophet.²²¹ In addition, Schacht cites a text from the *Kitāb al-Aghānī* already used by Wellhausen and Goldziher, which reports an argument over paternity that is supposed to have taken place "in the middle Umayyad period." Since the legal maxim is not appealed to in it, Schacht concludes: "it had not yet asserted itself in the time of the dispute recorded in Aghani."²²²

²¹⁹ Cf. Schacht, *Origins*, pp. 171 ff.

²²⁰ Op. cit., p. 246.

²²¹ Op. cit., p. 182.

²²² Op. cit., p. 181. Cf. Goldziher, *Muslim Studies*, vol. 1, p. 188, note 2 and, on this, Azami, *Studies in Early Hadith Literature*, p. 266.

With this, he is convinced that the first/seventh century is completely out of the question as a time of origin for the legal saying and that the reference to the Prophet is historically untenable.

From Ibn Jurayj's and 'Aṭā's references to the Prophetic *dictum*, however, it emerges that Schacht's chronology is not correct. Since 'Aṭā' mentions it several times, it must already have been widespread in the first decade of the second/eighth century (i.e., the middle Umayyad period). Since 'Aṭā' clearly knew the *qīṣṣa* version²²³ and does not transmit from the younger Ibn Shihāb, but occasionally from 'Urwa ibn al-Zubayr,²²⁴ the latter is his probable source for the Prophetic saying. This means that it must have been brought into circulation at the latest in the second half of the first/seventh century ('Urwa died towards the end of the first century), but possibly as early as its first half (Abū Hurayra died in 59/678, 'Ā'isha in 57/676). Then, the possibility cannot be ruled out that the story has a historical core and Muḥammad actually made such an arbitration. Schacht considers this unthinkable for reasons of content—wrongly, in my opinion.²²⁵ In his short discussion of the legal maxim he also adduces systematic and historical legal arguments in support of his thesis, adopted from Goldziher, that the ostensible *dictum* of the Prophet is possibly influenced by the rule of Roman law, *pater est quem iustae nuptiae demonstrant*. He sees no indication that the maxim is based already upon pre-Islamic practice; the ancient Arabian method of resolving paternity disputes was the employment of "professional physiognomists." He further claims that this legal clause is "strictly speaking incompatible with the Koran" and that the cases that it is supposed to deal with "could hardly arise under the Koranic rule regarding 'idda."²²⁶ From this he seems to conclude—without expressing it explicitly—that the saying thus could not derive from Muḥammad.

The premise of incompatibility with the Qur'ān is, however, not convincing. The paternity disputes deal not only with cases of waiting periods which have not been correctly observed, as he implies,

²²³ Cf. AM 7: 12369. See p. 126.

²²⁴ E.g. AM 7: 13939.

²²⁵ Juynboll's argument (in: *Muslim Tradition*, pp. 15 f.) that the fact that this saying is attributed to Ibn Musayyab is in itself proof that it could not be older than the latter is not convincing either.

²²⁶ Schacht, *Origins*, pp. 181 f. Id., *Introduction*, p. 21.

but also—and above all—with illegitimate sexual relations. These the Qur'ān energetically combats through its regulations in the area of matrimonial law, but the early texts which depict the application of the maxim, i.e., the *qīṣṣa* versions of the Prophetic tradition and 'Aṭā's *responsa*,²²⁷ show that in social reality there were special problematic areas in which the Qur'ānic norms had no impact yet. One of them was the relationship between master and slave woman, which—as the Qur'ān shows—caused problems even in Muḥammad's time.²²⁸ That is the background of the dispute in which the rule came to be applied. It served to prevent one who committed fornication from then enjoying custody of the child resulting from the illegitimate relationship, and cases of adultery from becoming public. This because the man who raised a claim to a child born of the wife or slave woman of another, or the woman who claimed that the child was not her husband's or her master's, implicitly confessed illegitimate sexual relations and risked the corresponding punishment. 'Aṭā' limits the application of the maxim to those cases in which the paternity of the husband or owner of the woman was not disputed by the man himself but by others, which presupposes illegitimate sexual relations, and gives as a reason that it was the original intention of the rule to put an end to such paternity disputes. 'Aṭā' rejects the pre-Islamic method of letting the *qāṣa* (physiognomists) decide; he seems to consider it superseded by the maxim. The legal maxim is thus completely compatible with Qur'ānic regulations in the area of marriage and family law and with the social situation of early Islam. Influence by Roman law is, on the other hand, pure speculation.²²⁹

²²⁷ AM 7: 12369, 12381, 12529, 12862. Also see pp. 84, 91 and 126.

²²⁸ On this cf. Motzki, "*Wal-muḥṣanātu*," p. 199 ff.

²²⁹ Cf. also Azami, *Studies in Early Hadīth Literature*, pp. 265 f. In addition, Crone, *Roman, Provincial and Islamic Law*, pp. 10 f., has shown that the path through late antique rhetoric assumed by Schacht is improbable. Juynboll, *Muslim Tradition*, p. 15 f. considers Ibn al-Musayyab to be the author of the maxim. His textual basis is definitely too narrow, and his conclusions purely hypothetical. They may occasionally be correct, but must not be generalized. For more texts cf. Rubin "*Al-Walad li-l-Firāsh*," passim.—Hypothetically, the thesis that the maxim originated in another legal tradition could, however, be salvaged if one places the transfer in pre-Islamic times. Then both Roman provincial law and Jewish-rabbinic law would be imaginable as possible godparents (Crone pointed out a parallel in the Babylonian Talmud, op. cit., p. 11). Perhaps the *awā'il* tradition which ascribes this maxim already to Aktham ibn Ṣayfī has an authentic core. Muḥammad would then simply have resorted to a legal practice that was already current with some Arab tribes. On Aktham cf. M. J. Kister, "Aktham b. Ṣayfī," in: *Encyclopaedia of Islam*, Second Edition, vol. 1, p. 345.

I have chosen the example of "*al-walad li-l-frāsh . . .*" and discussed it in some detail for the reason that Schacht cites it in his work on the origins of Islamic jurisprudence. My thesis that with the help of 'Aṭā's references to traditions of the Prophet one can trace these at least into the second half of the first/seventh century undermines central pillars of the Schachtian theory, among others his famous three-stage progression: "Successors, Companions, Prophet." He assumes that the traditions of the Prophet having to do with legal questions are the most recent link in the chain: "[. . .] Generally and broadly speaking, traditions from Companions and Successors are earlier than those from the Prophet."²³⁰ "One of the main conclusions to be drawn [. . .] is that, generally speaking, the 'living tradition' of the ancient schools of law, based to a great extent on individual reasoning, came first, that in the second stage it was put under the aegis of Companions, that traditions from the Prophet himself, *put into circulation by traditionists toward the middle of the second century A.H.*, disturbed and influenced this 'living tradition', and that only Shafī'i secured to the traditions from the Prophet supreme authority."²³¹ "[. . .] Every legal tradition from the Prophet, until the contrary is proved, must be taken *not as an authentic* or essentially authentic, even if slightly obscured, *statement* valid for his time or the time of the Companions, *but as the fictitious* expression of a legal doctrine formulated at a later date."²³² "We shall find that the bulk of legal traditions from the Prophet known to Malik originated in the generation preceding him, that is *in the second quarter of the second century A.H.*, and we shall not meet any legal tradition from the Prophet which can be considered authentic."²³³

In the tradition of the Prophet about the saying "*al-walad li-l-frāsh . . .*" we have a text which contradicts these theses of Schacht's about the time of origin of the juridical traditions of the Prophet. To anticipate the objection that a single counter-example is not sufficient to refute the entire theory, let me cite another text in support of my argumentation. It is also contained in Mālik's *Muwatta'*,

²³⁰ Schacht, *Origins*, p. 3.

²³¹ Op. cit., p. 132. Emphases mine.

²³² Op. cit., p. 149. Emphases mine.

²³³ Op. cit., p. 149. Emphases mine. Cf. also Schacht, *Introduction*, p. 34. Similar ideas have recently also been advanced by Juynboll (cf. *Muslim Tradition*, pp. 71-73), who, however, does not reject the possibility that beginnings of the *hadiths* of the Prophet reach back into the generation of the *tābi'ūn*, and thus the end of the first/seventh century, and Crone (*Roman, Provincial and Islamic Law*, pp. 29-34).

and the *Muṣannaḥ* of ‘Abd al-Razzāq records several early variants.²³⁴ The text of the *Muwattaʿa* runs:

Yahyā transmitted to me from Mālik from Nāfiʿ: ‘Abd Allāh ibn ‘Umar divorced his wife in the lifetime of the Messenger of God while she was menstruating. Thereupon ‘Umar ibn al-Khaṭṭāb questioned the Messenger of God about it. The Messenger of God said: “Order him to return to her [and] then keep her until she is pure, then menstruates, then is pure [again]. Then if he desires he can still keep her; or he can divorce her before he has sexual intercourse with her. That is the waiting period which God enjoined in order to divorce women.”

Schacht does not deal with this tradition explicitly in his *Origins*, but he treats the Mālik—Nāfiʿ—Ibn ‘Umar traditions in detail and thus provides the opportunity to fit the above text into his theoretical edifice. Schacht doubts that Mālik can actually have obtained from Nāfiʿ all the traditions which he claimed to have from him, since the difference in age between the two was too great—Nāfiʿ died in 117/735–6, Mālik in 179/795—and wonders whether Mālik “did not take over in written form traditions *alleged to come from Nāfiʿ*.”²³⁵ He is also disturbed by the fact that the *isnād* Nāfiʿ—Ibn ‘Umar is a “family *isnād*,” since Nāfiʿ was a freedman of Ibn ‘Umar’s. He considers such *isnāds* generally to be suspicious or forged. Neither argument is valid, as has already been emphasized by others,²³⁶ since Mālik was between 20 and 27 years old at Nāfiʿ’s death and the transmission of families and clan members cannot be considered unreliable *a priori*.

About the Nāfiʿ traditions Schacht has the impression that they generally reflect a secondary stage of legal development: “Many Nāfiʿ traditions represent unsuccessful attempts at influencing the doctrine of the Medinese school.” “[. . .] These traditions are later than the established Medinese doctrine.” “It is certain”—thus he sums up—“that even the group of Nāfiʿ traditions in Malik’s *Muwattaʿa* represents the result of gradual growth. The historical Nāfiʿ was certainly not a representative of the ancient Medinese school of law, but beyond this his personality remains vague, and the bulk of the tra-

²³⁴ Mālik, *Muwattaʿa* (Y) 29:53; (Sh) no. 554; AM 6: 10952–10961.

²³⁵ Schacht, *Origins*, p. 177. Emphasis mine.

²³⁶ Cf. Robson, “The *Isnād*,” pp. 22 f. Azami, *Studies in Early Ḥadīth Literature*, pp. 245 f. Id., *On Schacht*, p. 171.

ditions which go under his name must be credited to anonymous traditionists in the first half of the second century A.H.²³⁷

On the example of the text about divorce during menstruation one can understand well how Schacht comes to this conclusion. I imitate his method! He would argue as follows: The Medinan *fiqh* of the second/eighth century is most thoroughly comprehended in Mālik's *Muwatta'*. From it, it emerges that the "living tradition" of the Medinan school occupied itself with the question of when the waiting period of a divorced woman *is over* and the divorce thus becomes definitive. It was solved thus: When the third menstrual period begins, the divorce can no longer be retracted. This is reported from several of the so-called "seven lawyers of Medina"²³⁸ and is illustrated by two traditions from the Companions of the Prophet,²³⁹ neither of which is authentic. A Nāfi'—Ibn 'Umar *dictum* to this effect also exists.²⁴⁰ Since, however, Nāfi' is not to be numbered among the Medinan school,²⁴¹ this will be a later back-projection of the opinion of the school onto the Companion Ibn 'Umar; Nāfi' is fabricated as an authority for this tradition. The clarification of the question was necessary, since Qur'ān 2:228 speaks only of three "*qurū'*" (cycles) and Qur'ān 2:231 of reaching "their appointed time" (*ajalahunna*), from which it is not clear whether the said time is to be placed at the end of a menstrual period, which thus belongs to the cycle of the preceding period of purity, or at the end of the inter-menstrual phase, the cycle thus beginning with the preceding menstrual period and not with the phase of purity, or whether only the phase of purity is to be regarded as the cycle. The latter opinion was put into the mouth of 'Ā'isha²⁴² and seems to have been

²³⁷ Op. cit., pp. 177 ff. Juynboll advocated the same thesis. Cf. his *Muslim Tradition*, p. 143: "Very many forged traditions supported by this *isnād* probably originated during Mālik's own lifetime (90–179/708–95)" and more recently in "Nāfi', the *Mawlā* of Ibn 'Umar, and his Position in Muslim *Hadīth* Literature," *Der Islam* 70 (1993), pp. 207–244. For a critical evaluation of his arguments cf. Motzki, "*Quo vadis Hadīth-Forschung?* Eine kritische Untersuchung von G. H. A. Juynboll: 'Nāfi', the *Mawlā* of Ibn 'Umar, and his Position in Muslim *Hadīth* Literature," *Der Islam* 73 (1996), pp. 40–80, 193–231 (the English version has the title "Whither *Hadīth* Studies", in: P. Hardy (ed.), *Traditions of Islam: Understanding the Hadīth* (London 2002).

²³⁸ Mālik, *Muwatta'* (Z), nos. 1257, 1259.

²³⁹ Op. cit., nos. 1254, 1256.

²⁴⁰ Op. cit., no. 1258.

²⁴¹ See p. 132.

²⁴² Op. cit., no. 1254.

the Medinan consensus. On the other hand, there is no indication that people worried about the *beginning* of the waiting period, i.e., when the divorce should take place if the waiting period is to comprise three cycles. Clearly the practice was that the man could pronounce a divorce at any time and after three menstrual periods, or more precisely with the commencement of the third menstrual period, the waiting period was considered complete. In this way, however, three full cycles were not always fulfilled, as the letter of the Qurʾān provides.

To fill this hole in the doctrine and to take the field against this practice, the said Nāfiʿ—Ibn ʿUmar tradition, whose text is the starting point of our discussion, was invented. This *fatwā* of the Prophet intends that divorce should take place, not during menstruation and not during an inter-menstrual phase, but at the beginning of the latter. This opinion is also represented in an anonymous Anṣār tradition of Yaḥyā ibn Saʿīd (d. 144/761) and in a historicising narrative of Rabīʿa ibn abī ʿAbd al-Raḥmān (d. 136/753) about the *ṣaḥābī* ʿAbd al-Raḥmān ibn ʿAwf.²⁴³ This shows that it appeared in the second quarter of the second/eighth century. It is conspicuous that people do not content themselves with Ibn ʿUmar, but simply use him as a peg for a *responsum* of the Prophet. As if that were not enough, the Prophet is made to emphasize that this is the form of the waiting period desired by God. Another Ibn ʿUmar tradition goes even one step farther along this path. It is not from Nāfiʿ but from ʿAbd Allāh ibn Dīnār, another client of Ibn ʿUmar who appears as an alternative transmitter from the latter “at random” beside Nāfiʿ:²⁴⁴ “I heard ʿAbd Allāh ibn ʿUmar recite: ‘Prophet, when you divorce women, divorce them at the beginning of their waiting period (*li-qubulī ʿiddatihinna*).’”²⁴⁵ That is a “word of God” which is not found in the standard edition of the Qurʾān,²⁴⁶ a non-canonical Qurʾānic variant. It is surely not original, but, like the Prophet’s *fatwā* for Ibn ʿUmar, arose from the attempt to give this legal opinion the greatest possible authority. Since reference back to the Prophet is, as a rule, more recent than that to the *ṣaḥāba*, the Nāfiʿ tradition will be

²⁴³ Mālik, *Muwattaʿa*ʾ (Z), nos. 1262, 1240.

²⁴⁴ Cf. Schacht, *Origins*, p. 177.

²⁴⁵ Mālik, *Muwattaʿa*ʾ (Z), no. 1281.

²⁴⁶ It fits in the context of Qurʾān 2:231, but cannot be seamlessly integrated without additions.

yet a little more recent than that of Yahyā and Rabīʿa, who would surely have cited it had it been known to them. It must thus have come into existence around the middle of the second/eighth century. As a reason why, despite the available *ṣahāba* traditions, such heavy artillery was brought to bear with the Prophet and a Qurʾānic variant, it is natural to suppose that this legal opinion met with bitter opposition, since it was probably directed against the prevailing practice and dramatically limited the man's freedom of choice about the timing of divorce.

All of this sounds very plausible, and Schacht would surely have been able to identify himself with this placement of the problem in "the development of legal doctrine"²⁴⁷—as he used to call it—which has been undertaken in his spirit. But the entire lovely edifice collapses like a house of cards if one looks at 'Aṭā's *responsa* on this question. The texts in question have already been cited in another context;²⁴⁸ for this reason, I content myself with simply referring to them. From them it emerges that 'Aṭā' already held the opinion that divorce during the woman's menstrual period was not permissible, that the man must take her back and could, when the woman was pure again, divorce her or change his mind.²⁴⁹ In one of the two *responsa* which deal with the question 'Aṭā' wastes no words on the basis of his opinion. In the other, however, he adds to his answer the comment: "It reached us that the Prophet said to Ibn 'Umar: 'Take her back! Then, when she is pure again, divorce [her] or keep [her].'"²⁵⁰ These are clear echoes of the Nāfi'—Ibn 'Umar tradition as it is contained in Mālik's *Muwattaʿ*. It is true that there 'Umar is also named as a link between Ibn 'Umar and the Prophet, but that is only one version of the story, of which there are also variants without 'Umar, one even from Mālik!²⁵¹

It is thus established that 'Aṭā' not only held the legal position but also knew the corresponding tradition of the Prophet. Its origin is not to be shifted to the middle of the second/eighth century, as

²⁴⁷ E.g. Schacht, *Origins*, p. 1.

²⁴⁸ See pp. 90, 91.

²⁴⁹ See p. 90, note 49. Cf. also AM 6: 10951.

²⁵⁰ See p. 91, note 51.

²⁵¹ For the variants cf. AM 6: 10952–10961. The Mālik tradition is no. 10952 with the *isnad*: 'Abd al-Razzāq—Malik—Nāfi'—Ibn 'Umar. Cf. also "*Aḥādith* 'Ubayd Allāh ibn 'Umar," no. 70 ('Ubayd Allāh—Nāfi'), in: Azami, *Studies in Early Ḥadīth Literature*, Arabic section, p. 123.

Schacht would do; rather, it must have been in circulation at the latest at the beginning of the second century. From where could 'Aṭā' have it? Nāfi' and Ibn 'Umar himself are possibilities. Nāfi' was a contemporary of 'Aṭā's. Each of the two stayed for a time in the other's place of residence, and they could have had contact with each other. This is also true for Ibn 'Umar, who died in 74/692, and thus later than Ibn 'Abbās (68/687). A remark of Ibn Jurayj's is interesting in this context: "We sent to Nāfi', who had alighted in the council house (*dār al-nadwa*) and was preparing himself to travel [back] to Medina—we were participants in the circle of 'Aṭā' (*nahnu julūs ma'a 'Aṭā*)—[and asked him:] 'Did 'Abd Allāh's divorcing his wife while she was menstruating, in the Prophet's lifetime, count [as a divorce]?' He said: 'Yes!'"²⁵² This question clearly refers to the Ibn 'Umar tradition. The fact that 'Aṭā's students took advantage of Nāfi's stay in Mecca to ask him about it and 'Aṭā's anonymous reference to the Ibn 'Umar story suggest that not Ibn 'Umar directly but Nāfi' was 'Aṭā's source. From wherever 'Aṭā' may have it, in any case Nāfi' is confirmed as a transmitter of the story.²⁵³ Schacht's doubt of the authenticity of the Nāfi'—Ibn 'Umar traditions cannot be upheld. An argument for which Schacht gained recognition in the analysis of *isnāds*²⁵⁴ speaks for Ibn 'Umar as the original source of the Prophetic tradition: the "common link." The transmission of all early variants of the text branches off after him.²⁵⁵ We are apparently dealing with a very old tradition of the Prophet, perhaps even with a genuine *fatwā* of the Prophet, since Ibn 'Umar was about 20 years old when Muḥammad died,²⁵⁶ old enough to be already divorced.

²⁵² AM 6: 10957.

²⁵³ Furthermore, it was transmitted from Nāfi' not only through Mālik but also through 'Abd Allāh ibn 'Umar [al-'Umarī] (d. 172/788–9) and Ayyūb [ibn abī Tamīm] (d. 131/748–9). Cf. AM 6: 10953, 10954.

²⁵⁴ On this cf. Juynboll, *Muslim Tradition*, pp. 206 ff. More critical positions are taken by, for example, Cook, *Early Muslim Dogma*, pp. 107 ff.; id., "Eschatology and the Dating of Traditions," *Princeton Papers in Near Eastern Studies* 1 (1992), pp. 23–47; and Crone, *Roman, Provincial and Islamic Law*, pp. 29 f.

²⁵⁵ As transmitters from Ibn 'Umar there appear, in addition to Nāfi': Ibn Sirīn and Sa'īd ibn Jubayr (AM 6: 10955), Yūnus ibn Jubayr (10959), Abū Wā'il (10956) and ['Ubayd Allāh?] ibn 'Umar (10960, 10961).

²⁵⁶ He is supposed to have been born one year before "the revelation," i.e. the beginning of Muḥammad's career as a prophet and to have participated for the first time in the "Battle of the Ditch" at the age of 15. Cf. Ibn Hībān, *Mashāhīr*, No. 55. This can only be accepted as an approximate statement of age, since the reports about Ibn 'Umar's age at Uhud and al-Khandaq are contradictory. At Uhud

δ. 'Aṭā's contemporaries

In the *responsa* of 'Aṭā' studied here no reference by name to the opinions of any of his contemporaries among the *fuqahā'* was to be found, although he probably was in contact with some of them, for instance to the Medinans Nāfi', 'Urwa ibn al-Zubayr and Sa'īd ibn al-Musayyab, supposedly also to al-Ḥasan al-Baṣrī.²⁵⁷ Some few texts, however, contain anonymous references to the opinions of others who are presumably 'Aṭā's contemporaries. For instance:

Ibn Jurayj said: I said to 'Aṭā': "Abd al-Malik ruled (*qaḍā*) that the daughter of Abū Zuhayr [be given] half of the bridal gift." ['Aṭā'] said: "People criticized him for ruling this." (*la-qaḍ 'āba l-nāsu qaḍā'ahu bi-dhālika*).²⁵⁸

Ibn Jurayj alludes to a dispute which clearly took place in the time of the caliph 'Abd al-Malik ibn Marwān and was presented to him for adjudication. The situation in question can be inferred in its outlines from a tradition of Ibn Jurayj's from 'Amr ibn Dīnār.²⁵⁹ Bint abī Zuhayr had married and had been delivered to the husband; he had divorced her and claimed not to have had sexual intercourse with her, which she confirmed. 'Abd al-Malik probably solved the case with reference to Qur'ān 2:237, but the unanimous opinion of the scholars like 'Aṭā', al-Ḥasan al-Baṣrī and Sa'īd ibn al-Musayyab²⁶⁰ was that the wedding with the delivery of the woman to the man was to be considered consummation—regardless of the partners' statement about what took place on the wedding night—and that in consequence the entire bridal gift was due.

Since there were scarcely any Companions of the Prophet alive at the time of the caliph 'Abd al-Malik, the criticism will have come from the ranks of the scholars of the following generation. 'Amr ibn Dīnār has his information about the case from Sulaymān ibn Yasār (d. 107/726), one of the Medinan *fuqahā'* who was probably himself among the critics of 'Abd al-Malik's verdict. Sulaymān reports that the caliph regretted this afterwards. Since 'Aṭā' also knew the story,

he is supposed to have been 14. Between this battle and the "Battle of the Ditch," however, two complete years passed according to the chronology of Ibn Ishāq.

²⁵⁷ Cf. Ibn Sa'd, *Ṭabaqāt*, vol. 7, p. 115 (9), 124 (11). Also see pp. 124 f., 129, 136.

²⁵⁸ AM 6: 10876.

²⁵⁹ AM 6: 10867.

²⁶⁰ Cf. AM 6: 10863, 10864, 10869, 10870.

it must have caused something of a stir among the scholars in his time. In view of the available textual testimony, its historicity seems to me likely.

The fact that 'Aṭā' was informed about the doctrines of other *fuqahā'* living in his time is also attested by the following *responsum*:

Ibn Jurayj said: I said to 'Aṭā': "How many times may a slave divorce a free woman?" ['Aṭā'] said: "[There are] people [who] say (*yaqūlu nās*): 'The waiting period and the divorce [generally depend] upon [the status of] the women.' Others have said (*wa-qāla nās*): 'Divorce [depends] on the men, whatever [status] they may have; the waiting period [on the other hand, depends] on the women, whatever they may be.'" I said: "Which of these [opinions] do you prefer?" ['Aṭā'] said: "Divorce [depends] on the men, the waiting period on the women" (*al-ṭalāqu li-l-rjālī wa-l-iddatu li-l-nisā'i*).²⁶¹

The other traditions in the *Muṣammaf* of 'Abd al-Razzāq allow us to identify the "*nās*" whom 'Aṭā' apparently has in mind. The first-mentioned opinion was held in Iraq (al-Sha'bī, Ibrāhīm al-Nakha'ī, al-Ḥasan al-Baṣrī),²⁶² the other, with which 'Aṭā' identifies himself, by the Medinans (Ibn al-Musayyab, Sālim ibn 'Abd Allāh ibn 'Umar).²⁶³ It is true that all of them base themselves on various Companions of the Prophet, but 'Aṭā' will scarcely have his knowledge directly from the Companions and consequently will surely be referring to the generation of their students, and thus his contemporaries. That he also knows the Iraqi point of view is noteworthy and can be considered an indication that the individual centers of scholarship were not completely cut off from each other, at least not Mecca. Since 'Aṭā' only very rarely refers to other opinions—Ibn Jurayj, however, already more frequently—the question whether and to what extent the centers mutually influenced each other at this stage is difficult to decide and must be reserved for a separate study. Schacht's thesis that the *fiqh* of the Ḥijāz was more backward and was influenced throughout by Iraq, but not vice versa,²⁶⁴ is probably not tenable in this degree of generalization, at least not for the period until the middle of the second/eighth century.

²⁶¹ AM 7: 12945.

²⁶² AM 7: 12953–12956.

²⁶³ AM 7: 12944, 12946, 12947, 12949, 12951, 12957–12959. Cf. also Mālik, *Muwatta'* (Z), no. 1271.

²⁶⁴ Schacht, *Origins*, p. 220.

The sources of the *dicta*

The authorities on whom 'Aṭā' bases himself and the traditions with which he is familiar have first been investigated only for the genre of *responsa*, since it has an especially high authenticity content. The question is whether the conclusions reached on the basis of the *responsa* can also be confirmed through his *dicta*, whether perhaps modifications must be made or additional aspects come to light.

I have defined as *dicta* all of 'Aṭā's statements which are not preceded by questions.²⁶⁵ They can be expressions of 'Aṭā's opinions on legal situations, on Qur'ānic verses, or on traditions, i.e., *dicta* in the true sense, or traditions—i.e., *ḥadīths*, *āthār* or *akhbār*—about statements or actions of others, of the Prophet, his contemporaries, caliphs, governors, *qaḍīs*, and so forth.

The number of true *dicta*²⁶⁶ exceeds that of the traditions several times over (70% as compared to 30%). Mixed forms, for instance those in which 'Aṭā' provides his opinion with a tradition, are rare (1%); as a rule, opinions and traditions are cleanly separated. Mere allusions to traditions and references to sources and authorities, too, are even more rarely (1%) to be found than among the *responsa*, where they accounted for almost 14%.²⁶⁷ The separation of 'Aṭā's own material from that of others does not, however, mean that we are dealing with disparate material in terms of content. 'Aṭā's traditions, too, generally have to do with legal situations. Despite their independence, and although their share is twice as large as among the *responsa*, they too probably functioned in 'Aṭā's instruction as evidence and references to sources, authorities or precedents. Possibly Ibn Jurayj is responsible for the clear division between 'Aṭā's traditions and his actual *dicta*, since he is more to be classed as a transmitter than as a *faqīh* expressing his own opinions.²⁶⁸ The relatively small proportion of material from others outside of the *responsa* confirms the impression gained there that in 'Aṭā's legal instruction, the reinforcement of opinions through reference to authorities played a rather subsidiary role.²⁶⁹ What he communicated to his students was largely his opinions on specific legal situations. Is this generally

²⁶⁵ See p. 79.

²⁶⁶ Some *āwā'* (opinions) are counted as *dicta* in disguise.

²⁶⁷ See p. 107.

²⁶⁸ On this see p. 205.

²⁶⁹ See p. 107.

a characteristic of the legal instruction of the *fuqahā'* of the first/seventh century?

Nevertheless, it cannot be overlooked that 'Aṭā' knows sources and cites them to a limited extent, something which later became an indispensable procedure of Islamic jurisprudence. Since these sources—at least sometimes—can yield information about the prehistory of 'Aṭā's legal teachings, special attention should be directed to them. The distribution of frequency appears to be somewhat different in the genre of *dicta* than in the case of the *responsa*.²⁷⁰ The Companions of the Prophet come in first place (23%); there follow, with almost equal numbers of attestations, the Qur'ān (including the exegetical traditions of *ṣaḥāba* and others) and the Prophet (6–7%); specifically named contemporaries of 'Aṭā's are very rare (1–2%).

The ranking of authorities which can be derived from Ibn Jurayj's *entire* tradition from 'Aṭā' (*responsa* and *dicta* together) thus appears as follows: references to Companions of the Prophet (15%), references to the Qur'ān (10%), *ḥadīths* of the Prophet (5%), references to anonymous traditions (3%), to contemporaries of 'Aṭā's (1.5%).²⁷¹

α. The Companions of the Prophet

'Aṭā's Ibn 'Abbās traditions are the largest group of *ṣaḥāba* traditions. This is even more conspicuous within the genre of *dicta* than in the case of the *responsa*. 'Aṭā' refers to Ibn 'Abbās almost three times as often as to 'Umar ibn al-Khaṭṭāb, the next most frequently cited, to the latter three times as often as to 'Alī or 'Ā'isha; Jābir ibn 'Abd Allāh, Abū Hurayra, Ibn 'Umar, Abū Sa'īd al-Khudrī, Mu'āwiya and less famous Companions turn up rarely. Among the *dicta*, the Ibn 'Abbās traditions represent half of all traditions from the *ṣaḥāba*.

²⁷⁰ Ibid. It is a ranking, that is, the determination of the frequency of the authorities named within a given number of texts—here only of the *dicta*.

²⁷¹ The interpretation of such statistical data is, methodologically, not unproblematic. In this case, however, it is legitimate, because Ibn Jurayj's 'Aṭā' tradition is so extensive. Thus the statistical data can be considered significant. It is, however, not certain whether 'Abd al-Razzāq's tradition from Ibn Jurayj is complete or only—as is to be presumed—represents a selection. It is quite possible that further 'Aṭā' material from Ibn Jurayj which can be demonstrated to be authentic will turn up in other works. The conclusions drawn from 'Abd al-Razzāq's work, however, could be at most modified, but not definitively refuted by this, since it would itself only represent a selection. (Such texts are, for instance, to be found in the *Muṣannaf* of Ibn abī Shayba; however, their reliability has yet to be clarified.) Since it is a chimerical hope that a complete tradition from early *fuqahā'* will ever appear, conclusions based on an extensive and clearly balanced, and thus representative, selection—like that of 'Abd al-Razzāq—are the most certain possible.

1,660 traditions of the Prophet are supposed to have been transmitted from Ibn 'Abbās.²⁷² As a rule, 'Aṭā's Ibn 'Abbās traditions contain no *ḥadīths* of the Prophet.²⁷³ In them, Ibn 'Abbās is only a learned authority, not a transmitter. The sole source to which Ibn 'Abbās occasionally refers is the Qur'ān. This discrepancy requires explanation. To conclude from it that Ibn 'Abbās did not know and pass on any traditions from the Prophet and that those going under his name are all forgeries would surely be overly hasty. A satisfactory explanation can probably be given only after an investigation of all of 'Aṭā's traditions from Ibn 'Abbās and the Prophet.²⁷⁴

From the references to and citations of Ibn 'Abbās in 'Aṭā's *responsa* it was possible to advance the hypothesis that these traditions are genuine, i.e., really were opinions and statements of Ibn 'Abbās.²⁷⁵ Further arguments in support of this thesis can be derived from 'Aṭā's remaining Ibn 'Abbās traditions.

Weighty indices of authenticity are yielded by texts in which 'Aṭā indicates that he has something from Ibn 'Abbās only indirectly or that his own opinion does not agree with that of this Companion of the Prophet. No forger who otherwise claimed to have heard a master, and who fathered his opinions on an authority, would do this. One attestation of indirect transmission:

Ibn Jurayj from 'Aṭā'. He said: "When a woman is divorced three times without the marriage with her having been consummated, it is only one [divorce]. That reached me (*balaghani*) from Ibn 'Abbās."²⁷⁶

For difference of opinion:

Ibn Jurayj from 'Aṭā'. He said: "If a validly-married husband and wife separate, even without the husband's pronouncing a divorce—for instance by mutual waiver of rights (*mubāra'ā*) or ransom [*fidā*]"—it is [tantamount to] one divorce [pronounced by the husband]. Ibn 'Abbās, however, *did not use to say this*."²⁷⁷

²⁷² Cf. Ibn Ḥazm, "*Asmā' al-ṣaḥāba al-ruwāt*," p. 276 and Ṣiddīqī, *Ḥadīth Literature*, p. 26.

²⁷³ There was not one in my excerpt of the text!

²⁷⁴ Critical *Ḥadīth* scholars of the second half of the second/eighth century like Yahyā ibn Sa'īd al-Qaṭṭān and others estimated the number of Ibn 'Abbās' *ḥadīths* of the Prophet at about ten. Cf. Juynboll, *Muslim Tradition*, p. 29. Possibly a few authentic ones can be found in the 'Aṭā' tradition of the *Muṣannaḥ*.

²⁷⁵ See pp. 117–120.

²⁷⁶ AM 6: 11076.

²⁷⁷ AM 6: 11747. On Ibn 'Abbās' opinion cf. 11767–11769

In addition, there is—as among the *responsa*—a number of texts with notation of *samāʿ* (“I heard Ibn ‘Abbās say”).²⁷⁸ Such notes are otherwise found only in the case of ‘Aṭā’s rare traditions from the Companions of the Prophet Abū Hurayra and Jābir ibn ‘Abd Allāh,²⁷⁹ who—like Ibn ‘Abbās—died only in the second half of the first/seventh century and whom ‘Aṭā’ could have heard, and from the early *tābiʿ* ‘Ubayd ibn ‘Umayr,²⁸⁰ not, however, in the case of traditions from ‘Umar, ‘Alī, ‘Ā’isha and Ibn ‘Umar.

In terms of genre, most of ‘Aṭā’s traditions from Ibn ‘Abbās are to be classed as legal *dicta* whose content does not, as a rule, provide any hint of the “*Sitz im Leben*” or of the historical situation in which they arose. The rare cases in which ‘Aṭā’ reports that Ibn ‘Abbās was asked for a legal *fatwā* or reached a verdict (*qadāʾ*) in a legal dispute²⁸¹ do have a stronger reality content, but they do not permit more than the assumption that concrete cases underlie them. Historical “meat” is offered only by ‘Aṭā’s very rare *qisṣa* traditions from Ibn ‘Abbās. The fact that they are stylistically atypical definitely speaks more for than against their authenticity, once ‘Aṭā’s tradition from Ibn ‘Abbās can be considered generally reliable on the basis of the various other criteria named. The following two sample texts offer not only an insight into the student-teacher relationship between the two men, but also show ‘Aṭā’s precision in the reporting of what he heard, when he admits having forgotten specific facts or emphasizes that Ibn ‘Abbās expressed himself literally in this way. Not least, ‘Aṭā’s statement that he was originally of a different opinion than Ibn ‘Abbās speaks for his honesty and thus for the genuineness of the tradition.

Ibn Jurayj from ‘Aṭā’. He said: “The first person from whom I heard [about] *muʿa* [marriage was] Ṣafwān ibn Yaʿlā. He reported to me (*akhbaranī*) from Yaʿlā that Muʿāwiya entered into a *muʿa* union (*istamtāʿa*) with a woman in al-Ṭāʾif.²⁸² I [‘Aṭā’] disputed that [i.e., the permission of *muʿa*] with him [Ṣafwān]. [Thereupon] we²⁸³ went into Ibn

²⁷⁸ E.g. AM 6: 10895, 10897, 11740; 7: 14021.

²⁷⁹ E.g. AM 7: 13680, 12566.

²⁸⁰ AM 7: 13541, cf. also 14001 (see p. 122).

²⁸¹ AM 7: 13000; 6: 10508.

²⁸² Cf. also AM 7: 14026. Presumably he cited Muʿāwiya’s action as evidence of the permissibility of *muʿa*. On Ṣafwān cf. Ibn Ḥibbān, *Mashāhūr*, no. 635.

²⁸³ Intended are probably ‘Aṭā’ and his fellow students, not he and Ṣafwān. Cf. AM 7: 14022. On ‘Aṭā’s companions, see p. 172.

'Abbās' presence and one of us told him [the story, or our difference of opinion]. [Ibn 'Abbās] said to him: 'Yes [, that is permitted].' I could not stop worrying about it, and when Jābir ibn 'Abd Allāh came we went to him in his residence. The people asked him this and that and then [also] mentioned *muḥa* [marriage] to him. He said: 'Yes [, it is permitted]. We practiced it (*istamtā'nā*) in the lifetime of the Messenger of God (eulogy), of Abū Bakr and of 'Umar, until—at the end of 'Umar's caliphate—'Amr ibn Ḥurayth entered into a *muḥa* union with a woman—['Aṭā':] Jābir named her, but I have forgotten [her name]²⁸⁴—, whereupon the woman became pregnant. News of this reached 'Umar. He had her brought [to him] and asked her [about what had been reported to him about her]. She answered: 'Yes [, it is so].' ['Umar] said: 'Who stood witness [at the contraction of the marriage]?' 'Aṭā' said: 'I do not know [i.e., remember], if she said: 'My mother' or 'my (her) marriage guardian (*walī*)'. [Thereupon, 'Umar] said: 'Why no one else [besides one of the two]?' [Jābir] said: 'He ['Umar] was afraid that this could ultimately (*al-ākhir*, sic!) lead to a degeneration of morals (*daḡhal*) [, and for this reason he prohibited *muḥa*].'²⁸⁵

'Aṭā' said: "I heard Ibn 'Abbās say [, when the subject of 'Umar's prohibition of *muḥa* came up]: 'May God have mercy upon 'Umar! *Muḥa* [marriage] was [by] permission of God (eulogy). With it he had mercy upon the community (*umma*) of Muḥammad (eulogy). If it were not for his ['Umar's] prohibition of it [*muḥa*], only a scoundrel (*illā shagīyy*) would have need of fornication!' 'Aṭā' said: "By God! It is as if I [still] saw him saying '*illā shagīyy*.'"

'Aṭā' said: "It [*muḥa*] is what is [meant] in the *sūra* 'The Women' [by]: '*Fa-mā stamtātum bihi minhunna*'²⁸⁶ (and what you have enjoyed of them (f.)) until such and such an appointed time, under such and such a condition, without consultation (?),²⁸⁷ and if,²⁸⁸ after the appointed time, the two find it best to reach an agreement [about a continuation of the union, that is possible] and [if it seems better to them] to separate, it is [also] good, and no marriage [then] exists [any longer].'²⁸⁹

Ibn Jurayj said: "'Aṭā' reported to me (*akhbarani*) that he heard Ibn 'Abbās express the opinion that it [*muḥa* marriage] was at present (*al-āna*) permitted. ['Aṭā' also] reported to me that [Ibn 'Abbās] used to

²⁸⁴ According to Abū l-Zubayr, a student of Jābir's (see pp. 209 ff.), she was called Mu'āna and was a client of Ibn al-Ḥaḍramī, cf. AM 7: 14026.

²⁸⁵ Cf. AM 7: 14025, 14028, 14029.

²⁸⁶ Qur'an 4:24.

²⁸⁷ The editor notes, "unclear in the manuscript." Perhaps the consultation of the woman with her marriage guardian is meant.

²⁸⁸ The manuscript seems to be corrupt in this place. I read instead of "*qāla*" "*fa-in*". This is also a suggestion of the editor's.

²⁸⁹ AM 7: 14021.

recite: *'Fa-mā stamta'tum [bihi]*²⁹⁰ *minhunna ilā ajalīn fa-ātūhunna 'ujūrahunna*²⁹¹ (and what you have enjoyed of them until an appointed time, [for it] give them their recompense). Ibn 'Abbās said in these very words (*bi-haṣṣin*): *'ilā ajalīn.*"

'Aṭā' said: Someone reported to me from Abū Sa'īd al-Khudrī the words: "One of us contracted a *mu'fa* [marriage] (*yastamī'u*) for a cup of crushed wheat." [Ibn Ṣafwān²⁹² said [about this]: "In his legal opinions, Ibn 'Abbās declares that to be fornication."²⁹³ Ibn 'Abbās said [when this reached him]: "I do not declare that to be fornication in my legal opinions! Has [Ibn Ṣafwān] forgotten Umm Urāka?²⁹⁴ Her son is from that [man]! Is he perhaps [a child of] fornication?" ['Aṭā'] said: "A man from the Banū Jumāḥ contracted a *mu'fa* [marriage] with her."²⁹⁵

In these Ibn 'Abbās traditions of 'Aṭā's about the question of *mu'fa* marriage I can discover no indication that 'Aṭā' invented them and fathered them on Ibn 'Abbās. Why should he, who seldom refers to Companions and then usually contents himself with an "Ibn 'Abbās also said that" or with the citation of a *dictum*, have thought up such complicated stories? His original opposition to *mu'fa*, which even Ibn 'Abbās was at first unable completely to dispel, his visit to Jābir ibn 'Abd Allāh, who reinforced him in his aversion to 'Umar's prohibition, Ibn 'Abbās' harsh criticism of 'Umar's verdict and his reference to the Qur'ān with a *qirā'a* which 'Aṭā' himself never adopted, the story that Ibn Ṣafwān ascribed to Ibn 'Abbās during his lifetime a view which he did not hold at all, the specific references to three concrete cases of *mu'fa* marriages (Mu'āwiya, 'Amr ibn Ḥurayth, Umm Urāka) whose children were probably still alive in 'Aṭā's time, all of this speaks against forgery of the stories. As a result of external and internal criteria—the former emerge from investigation of 'Aṭā's Ibn 'Abbās traditions in general, the latter from the two cited texts them-

²⁹⁰ Presumably an oversight of the copyist. "*Bihi*" is in the *textus receptus* and in 14021.

²⁹¹ Qur'ān 4:24. Emphases mine.

²⁹² I.e. 'Abd Allāh ibn Ṣafwān ibn Umayya ibn Khalaf (d. 73/692–3). Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, pp. 235, 280. Here there is probably a confusion with the previously named Ṣafwān ibn Ya'lā. That it cannot be the latter emerges from the content—he does not seem to have been an opponent of *mu'fa*—and from AM 7: 14027, a parallel in content to this text, where *Ibn Ṣafwān* is named.

²⁹³ Cf. AM 7: 14027.

²⁹⁴ Cf. AM 7: 14024. See pp. 190 ff.

²⁹⁵ AM 7: 14022. Ibn Ṣafwān belonged to the Banū Jumāḥ. The man in question was one of his uncles. Cf. AM 7: 14024, 14027.

selves—they are to be regarded as authentic, i.e., as actual opinions and paraphrases or even literal reports of Ibn ‘Abbās’ statements.

I have cited these two Ibn ‘Abbās traditions in such detail with another, ulterior motive in mind. The subject of *muḥa* was also dealt with by Schacht in his *Origins*, and this offers the opportunity to check his conclusions. Schacht suspects that *muḥa* was already an ancient Arabian institution which was “sanctioned and regulated” by Qur’ān 4:24. It was “certainly” a widespread practice in early Islam, which expressed itself in a more detailed and unambiguous reading in the Qur’ānic texts diverging from the *textus receptus* which “were attributed” to Ibn Mas‘ūd, Ubayy and Ibn ‘Abbās, and “in a tradition attributed to Ibn Mas‘ūd for Kufa, and in a doctrine attributed to Ibn ‘Abbās and his Companions for Mecca.”²⁹⁶ From a tradition of ‘Alī in the *Muwaṭṭa* which polemicizes against this teaching of Ibn ‘Abbās, Schacht concludes that it must have been attributed to Ibn ‘Abbās around the middle of the second/eighth century. Since the Medinan traditions from Companions who are against *muḥa*—in addition to ‘Alī, primarily ‘Umar (in the *Muwaṭṭa* in a version other than that of Jābir ibn ‘Abd Allāh)²⁹⁷—have a common link in al-Zuhri, this shows—according to Schacht—“that the explicit rejection of *muḥa* in Medina is not older than the time of Zuhri at the earliest.” There is no reason to except the tradition about ‘Umar’s prohibition of *muḥa* and to consider it more authentic than the other “counter-traditions.”²⁹⁸ The version of Jābir, which Schacht knows from Muslim’s *Ḥaṣi*, is according to him only a later reinforcement of this tradition.²⁹⁹ By “later” Schacht probably means—in conformity with his method of dating—later than Mālik!

‘Aṭā’s Ibn ‘Abbās traditions about *muḥa* as they exist in the *Muṣannaḥ* of ‘Abd al-Razzāq show that Schacht’s conclusions about the historical development of the legal problem are to a large extent incorrect. Ibn ‘Abbās’ teaching about *muḥa* was not attributed to him around the middle of the second/eighth century, but was already known to ‘Aṭā at the beginning of the second century and derived from Ibn ‘Abbās himself, and thus from the middle of the first/seventh century. The “counter-traditions” against *muḥa*, too, are much

²⁹⁶ Schacht, *Origins*, p. 266.

²⁹⁷ See p. 143.

²⁹⁸ Schacht, *Origins*, pp. 266–267.

²⁹⁹ Op. cit., p. 267, note 3.

older than Schacht assumes. They did not arise "at the earliest in the time of al-Zuhrī," i.e., in the first quarter of the second/eighth century, but already in the time of Ibn 'Abbās and probably are in fact to be traced back to 'Umar, since Ibn 'Abbās does not dispute that 'Umar was against *muḥa*, which would have been natural had Jābir made it up. The Jābir tradition is not to be assigned only to the last quarter of the second/eighth century; rather, it is a good century older—Jābir died in 78/697–8.³⁰⁰ From 'Aṭā's Ibn 'Abbās traditions it becomes clear—as was already suggested by the references to him in the *responsa*—that Ibn 'Abbās was 'Aṭā's teacher. Other Companions of the Prophet whom he had an opportunity to meet, in contrast, played only a marginal role for him. Viewed overall, he refers to Ibn 'Abbās more frequently than to any other source or authority, including the Qur'ān,³⁰¹ but not, on the other hand, to such an extent³⁰² that one could conclude from it that he necessarily needed him as an authority for his own teachings. This seems to me a weighty argument for the genuineness of his Ibn 'Abbās traditions. If this is the case, we can draw from it not only information about 'Aṭā's legal instruction but also about the legal teachings of Ibn 'Abbās himself, i.e., about the *development of law in the first half century after Muḥammad's death*. Only the investigation of all of 'Aṭā's Ibn 'Abbās traditions in the *Muṣannaf* can produce an exact picture. That must be reserved for a separate work. It is already possible, however, to make a few noteworthy observations on the basis of the selection of texts used here:

1. Qualitatively, there is no obvious difference between Ibn 'Abbās' legal statements and those of 'Aṭā'. Both prefer to express their opinions and only rarely support themselves with sources for justification.
2. With respect to the sources used, it is conspicuous that—as has already been mentioned³⁰³—Ibn 'Abbās supports himself only with

³⁰⁰ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 102. Ibn Hibbān, *Mashāḥir*, no. 25. That 'Umar's prohibition of *muḥa* is historical is also suggested by a comparison of the 'Aṭā' traditions with others, especially those of Abū l-Zubayr. Cf. AM 7: 14024, 14025, 14028, 14035, 14047. On the institution of *muḥa* cf. Motzki, "Geschlechtsreife," pp. 537–540 (with further literature). My hypotheses there are in need of revision in the light of this study; at least, the conception can be grasped chronologically earlier than I assumed. A detailed study on *muḥa* has been published by A. Gribetz: *Strange Bedfellows: Muḥat al-Nisā' and Muḥat al-Hajj* (Berlin 1994).

³⁰¹ Not infrequently he names him as the source of his Qur'ānic exegesis.

³⁰² Frequency: over 7%.

³⁰³ See p. 141.

the Qur'ān, and neither—at least in the traditions of 'Aṭā' which have been investigated—with older companions of the Prophet or with the Prophet himself. 3. The main difference between Ibn 'Abbās and 'Aṭā' is quantitative in nature. 'Aṭā' expresses opinions on many more legal questions and subjects than his teacher. This may in part have to do with the fact that he does not cite him regularly even in places where he has adopted an opinion from him, and in part with the fact that he was his student only for a period of time and could not hear everything. On the other hand, it probably also reflects a quantitative development of the legal material, a proliferation of problems and questions in the course of the second half of the first/seventh century.

The authenticity of 'Aṭā's traditions from Abū Hurayra and Jābir, and probably also from 'Abd Allāh ibn 'Umar, is to be judged in much the same way as in the case of his Ibn 'Abbās traditions. The infrequency with which they are mentioned speaks for, and the content of the texts in question—as far as I can see—does not speak against their authorship. 'Aṭā' explicitly claims to have *heard* Abū Hurayra and Jābir ibn 'Abd Allāh.³⁰⁴ In the case of Ibn 'Umar, only after investigating further 'Aṭā' traditions from him will it be possible to decide whether he has them directly from him or through, for instance, Nāfi'.³⁰⁵ 'Aṭā's statements that he heard something from the Companions in question cannot be dismissed as implausible from the outset. Firstly, he reports from them only very little and, in terms of content, rather insignificant things—at least from the point of view of *fiqh*. Secondly, he does not claim this about all of the Companions who were still alive when he was a student. He is supposed to have been born around 25/645, and thus could have met 'Ā'isha, who died in 57/676, which he did in fact claim.³⁰⁶ From her, however, he does not as a rule transmit directly,³⁰⁷ but he does from Abū Hurayra, who died only two years after 'Ā'isha. His traditions from Mu'āwiya (d. 60/680),³⁰⁸ Abū Sa'īd al-Khudrī (d. 74/693)³⁰⁹ and Anas

³⁰⁴ AM 7: 12566, 13680. Also see p. 142.

³⁰⁵ See p. 136.

³⁰⁶ Cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, pp. 341–342. On 'Aṭā's date of birth, see below, p. 247.

³⁰⁷ See pp. 150 f.

³⁰⁸ See p. 142.

³⁰⁹ See p. 144.

ibn Mālik (d. 93/711)³¹⁰ are likewise indirect; on the other hand, those from Ibn ‘Abbās (d. 68/687) and Jābir ibn ‘Abd Allāh (d. 78/697) are direct. This does not speak in favor of the assumption that ‘Aṭā’s “heard” *ṣaḥāba* traditions are forgeries, since in that case one would expect him to pass off everything as “heard” which, on the basis of the lifetimes of the corresponding Companions, he could have obtained directly from them. Thus, like his Ibn ‘Abbās traditions, his traditions from Abū Hurayra and Jābir ibn ‘Abd Allāh are also to be considered authentic.

The ‘Umar traditions represent the second largest group of ‘Aṭā’s *ṣaḥāba* traditions. Altogether—*responsa* and *dicta* combined—they do not, however, even comprise 3% of Ibn Jurayj’s ‘Aṭā’ tradition. If one classifies them according to genres, it emerges that the majority belongs to those genres which are especially appropriate to ‘Umar’s office of caliph: legal verdicts (*aqḍiyya*)³¹¹ and decrees (prohibitions, commands).³¹² There are also *dicta*,³¹³ (which in part may be relics of verdicts or *fatwās*, i.e. legal opinions)³¹⁴ for which caliphal authority was probably also required (criminal law), rarely *acta* of a more private character.³¹⁵ This differentiates the ‘Umar traditions clearly from those of Ibn ‘Abbās, for example, and lends them an air of historicity. The possibility ‘Aṭā’ forged, i.e. invented, these traditions can be rejected in view of their marginal role in his legal teachings and of the fact that he by no means always accepts ‘Umar’s verdicts. They were clearly already in circulation in his time. From where does ‘Aṭā’ have them? He does not name any source for most of the ‘Umar traditions; sporadically, he introduces them with “*dhakarū*” (it was reported [to me]).³¹⁶ In a few cases, however, he names his informant. In the text about *muṭa* marriage already cited it is Jābir ibn ‘Abd Allāh from whom he heard it;³¹⁷ he claims to have heard from ‘Ubayd ibn ‘Umayr a decree of ‘Umar’s about the penalty for consuming wine;³¹⁸ and ‘Aṭā’ transmits a *fatwā* of the caliph’s about

³¹⁰ See p. 120.

³¹¹ E.g. AM 7: 12401, 12858, 12884, 13651, 14021.

³¹² AM 7: 13508, 13541.

³¹³ AM 6: 10726; 7: 12877, 12885.

³¹⁴ AM 7: 13612.

³¹⁵ AM 6: 11140.

³¹⁶ E.g. AM 7: 12877.

³¹⁷ See p. 143.

³¹⁸ AM 7: 13541.

the *ḥadd* penalty in the case of fornication by a slave woman from (‘an) al-Ḥārith ibn ‘Abd Allāh, who has it from his father ‘Abd Allāh ibn abī Rabī‘a, a contemporary of the Prophet and of the first caliphs who is supposed to have directed the corresponding question to ‘Umar.³¹⁹

There are indications that ‘Aṭā’ actually obtained those traditions for which he names an informant from the people named. The arguments for the historicity of the Jābir tradition have already been given.³²⁰ It speaks for the credibility of the claim to have a tradition of ‘Umar from ‘Ubayd ibn ‘Umayr that in another place he admits not being completely sure about his authority, but that it possibly could be ‘Ubayd.³²¹ This does not fit the assumption that ‘Aṭā’ arbitrarily named authorities for anonymously circulating traditions. For this reason there are also no grounds for dismissing the family *isnād* “al-Ḥārith ibn ‘Abd Allāh—‘Abd Allāh ibn abī Rabī‘a,” i.e. son from father, as a forgery from the outset. Schacht’s claim that “a ‘family isnād’ [. . .] is *generally* an indication of the spurious character of the tradition in question”³²² is incorrect in this degree of generalization, as I have already shown on an example with the *isnād* “Nāfi‘—Ibn ‘Umar.”³²³ In any case, the text of the ‘Umar *responsum*, including the question, offers no grounds for the assumption of a forgery. The Qur’ān leaves open the question of how an unmarried slave woman who commits fornication is to be penalized, but virtually provokes it through its regulation for married slave women.³²⁴ ‘Umar’s enigmatic answer makes an archaic impression: “*Alqat farwatahā warā’ a l-dār*” (literally: She threw her pelt behind the house). It was understood as a rejection of the *ḥadd* penalty for the unmarried slave woman.³²⁵ Perhaps ‘Umar means by it that the owner should remove her from the house, i.e. sell her.³²⁶ Ibn Jurayj and Ibn ‘Uyayna

³¹⁹ AM 7: 13612.

³²⁰ See pp. 144–146.

³²¹ See p. 122.

³²² Schacht, *Origins*, p. 177. Emphasis mine.

³²³ See pp. 132–136.

³²⁴ Cf. Motzki, “*Wal-muḥṣanāt*,” pp. 200–201.

³²⁵ Thus by ‘Abd al-Razzāq (cf. the other traditions in the chapter) and probably also by Ibn Jurayj, who clearly already had a chapter on this subject himself.

³²⁶ Ibn al-Athīr interprets “*farwatahā*” as “veil” (*ḡinā*), others as her “hair,” which should be cut off and with which she should be flogged. (Cf. the editor’s note on AM 7: 13613). Both seem to me rather unlikely: slave women, especially unmarried ones, probably did not wear veils; for the proponents of the “hair” interpretation,

also have the tradition with the said *isnād* from 'Amr ibn Dīnār,³²⁷ and it is also transmitted from 'Ikrima ibn Khālīd.³²⁸ The common link is al-Ḥārith, which in any case makes 'Aṭā's reference to him seem credible, whatever one may think of the ascription to 'Umar.³²⁹

A picture similar to that formed by 'Aṭā's 'Umar traditions is offered by his few traditions from 'Ā'isha. From the point of view of genre they are *acta* describing her behavior in concrete familial situations, traditions about herself and the Prophet and *dicta* on questions related to women. The majority of them make the impression of reports of actual incidents. In her case as well he occasionally names his informant, while he does not do this in the case of the other Companions of the Prophet, for instance 'Alī, whom he cites just as often as 'Ā'isha.³³⁰ The case of 'Aṭā's guessing that he obtained an 'Ā'isha tradition from 'Ubayd ibn 'Umayr has already been mentioned,³³¹ as has the fact that he probably obtained another from 'Urwa ibn al-Zubayr.³³² He designates the latter *expressis verbis* as his informant ("*akhbarani 'Urwa ibn al-Zubayr*")³³³ for a tradition of the Prophet transmitted from 'Ā'isha in which she is herself involved.

That 'Aṭā' probably had from 'Urwa more 'Ā'isha traditions for which he names no source can be assumed in light of the parallels preserved.³³⁴ He seems to have been his main informant for 'Ā'isha traditions, even if he only rarely cites him by name.³³⁵ It is an argu-

the idea that no flogging would take place seems to have been insupportable and to have caused them to interpret it as a symbolic *ḥadd* penalty.

³²⁷ AM 7: 13612, 13613.

³²⁸ AM 7: 13614.

³²⁹ This is not 'Aṭā's only tradition from 'Umar and 'Abd Allāh ibn abī Rabī'a. Another is AM 6: 11140, without mention of an informant, who presumably may likewise have been al-Ḥārith. He is one of the elder *tābi'un* of Mecca. Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 279.

³³⁰ This observation applies only to my textual basis.

³³¹ See the text on p. 122.

³³² See pp. 124-125.

³³³ AM 7: 13939.

³³⁴ E.g. AM 7: 12053 (cf. 12054). In the case of AM 6: 11895 and 7: 11948 I also suspect that he may be 'Aṭā's source, since al-Mundhir, a brother of 'Urwa's, is a protagonist of the story. However, a variant seems to be preserved in later sources only from al-Qāsim ibn Muḥammad, transmitted by his son 'Abd al-Raḥmān. Cf. Mālik, *Muwatta'* (Y) 29:15. 'Aṭā' also seems to have traditions of 'Umar from 'Urwa, however; cf. AM 7: 13651 and 13650.

³³⁵ Occasionally his brother 'Abd Allāh also appears as a transmitter from 'Ā'isha known to 'Aṭā'. Cf. AM 7: 13911.

ment for 'Aṭā's credibility that he admits having 'Ā'isha traditions from anyone else at all, since he himself claimed to have met 'Ā'isha.³³⁶

'Aṭā's traditions from 'Alī ibn abī Ṭālib consist of legal verdicts (*aqḍiyya*), an excerpt from his testament, and *dicta*.³³⁷ They deal primarily with concrete cases. Even the *dicta*, which have to do with questions of criminal law, are in harmony with those of a caliph or a claimant to the caliphate. As in the case of the other *ṣaḥāba* traditions it can be observed that neither the genre of the transmitted texts nor their content in principle speaks against possible authenticity. For reasons of age—'Alī died when 'Aṭā was fifteen years old—direct transmission from him is unlikely, nor does 'Aṭā claim it. In the case of 'Alī's testament he says explicitly that the information about it "reached him" or "was reported to him" (*balaghahu*); otherwise he cites him without indication of the mode of transmission or the transmitter. It is difficult to say where 'Aṭā obtained his 'Alī traditions. In a few cases there are variants from Ibrāhīm [al-Nakha'ī]³³⁸ who, however, himself did not meet 'Alī. Possibly the two are drawing independently of each other from Medinan or Kufan sources. Contacts to Kufans should not be considered unusual for 'Aṭā, who lived primarily in Mecca. We have already heard of a Kufan legal scholar among 'Aṭā's auditors.³³⁹ Of 'Alī's testament 'Aṭā claims that he asked the latter's great-grandson Muḥammad ibn 'Alī ibn Ḥusayn, who was a contemporary of 'Aṭā's and lived in Medina, about it again, and that he confirmed his information.³⁴⁰ Certainly it is possible for us to say that 'Aṭā's 'Alī traditions are not his own forgeries. They probably derive from 'Alid circles of the second half of the first century.

In 'Aṭā's *responsa*, the citations of the *ṣaḥāba* lack *isnāds* of any kind.³⁴¹ The *dicta* show that it is not permissible to conclude from this circumstance that he did not yet know this mode of citation for traditions or that it did not yet exist. On the contrary! It was both extant and known to 'Aṭā. It must be for another reason that 'Aṭā

³³⁶ See p. 147, note 306.

³³⁷ AM 6: 10532; 7: 13212, 13414, 13445, 13672.

³³⁸ AM 6: 10532; 7: 13672; compare 6: 10534; 7: 13671.

³³⁹ See p. 106.

³⁴⁰ AM 7: 13212.

³⁴¹ See p. 120.

so seldom names his authorities. It was observable in the *responsa* that 'Aṭā' knew traditions but did not necessarily state them. The same is true, as the *dicta* show, for the *isnād* as well. On the above-mentioned subject of the penalty for consumption of wine, for example, in another text 'Aṭā' similarly refers to 'Umar's decree, but without citing his informant 'Ubayd ibn 'Umayr.³⁴² Since the traditions of the Companions as such played only a subsidiary role in 'Aṭā's legal instruction, his defective mode of transmission is not surprising. Presumably it was only his students who induced him occasionally to name his authority³⁴³ if he could remember or had made a note of his source.

β. The Qur'ān

'Aṭā's citations from the Qur'ān and his traditions with explicit Qur'ānic references, which are included in the genre of his *dicta*, confirm the conclusions reached on the basis of the *responsa*. For this reason, I can limit myself to a short characterization of the textual material and a few supplements to what has already been said.

The sections of Qur'ānic verses which he cites and interprets without exception agree with the *textus receptus*, i.e. the so-called 'Uthmānic recension.³⁴⁴ He knows the names of *sūras*; for example, he states that the verse fragment "*fa-mā stamta'tum bihi minhunna*"³⁴⁵ (and [for that] which you enjoyed of them) is in the *sūrat* "al-Nisā'" (the Women).³⁴⁶ He cites *qirā'āt* of Ibn 'Abbās which diverge from the *textus receptus* and adopts the exegesis intended, but himself follows the reading of the *textus receptus*: In the verse named (Qur'ān 4:24), for example, according to 'Aṭā's statement Ibn 'Abbās read "*fa-mā stamta'tum [bihi] minhunna ilā ajalīn*" (... until an appointed time),³⁴⁷ in Qur'ān 2:226 instead of "*yu'lūna min nisā'ihim*" "*yuqsimūna min nisā'ihim*" and in 2:227 instead of "*wa-in 'azamū l-talāq*" "*wa-in 'azamū l-sarāḥ*".³⁴⁸

³⁴² AM 7: 13508. See p. 148.

³⁴³ See p. 122.

³⁴⁴ Cf. AM 7: 12251, 13503, 13561, 14021.

³⁴⁵ Qur'ān 4:24.

³⁴⁶ AM 7: 14021.

³⁴⁷ Compare AM 7: 14022 with 14021. Cf. also Abū Dāwūd, *Kitāb al-Maṣāḥif*, p. 77 and A. Jeffery, *Materials for the History of the Text of the Qur'ān* (Leiden 1937), p. 197. This reading is also transmitted from Ibn Mas'ūd and Ubayy. Cf. Abū Dāwūd, op. cit., p. 53; Jeffery, op. cit., pp. 36, 126 and J. Burton, *The Collection of the Qur'ān* (Cambridge 1977), pp. 35 f., 178, 180.

³⁴⁸ AM 6: 11643.

the last two *qirā'āt* are actually only interpretive synonyms of the words they replace. I have already set forth the conclusions to be drawn from this about the existence and acceptance of the *textus receptus* around the turn to the second/eighth century,³⁴⁹ likewise the significance of the Qur'ān for 'Aṭā's legal scholarship.³⁵⁰ With the citations, paraphrases and interpretations of the Qur'ān which 'Aṭā' transmits from Companions of the Prophet it is possible to push back further into the first century. Most of them he transmits from his teacher Ibn 'Abbās, which—as has been shown in the previous chapter—can be considered credible. In addition to his *qirā'āt* which diverge from the *textus receptus*, 'Aṭā' cites some legal situations in which Ibn 'Abbās explicitly bases his opinion on the Qur'ān. These are mainly paraphrases, not literal quotations, introduced with an indication that the Word of God is intended.³⁵¹ From this allusive mode of reference, which is also occasionally used by 'Aṭā',³⁵² it is not permissible to conclude that the text of the Qur'ān was not yet established. Rather, it presupposes that the students of Ibn 'Abbās were in a position to understand his allusions and relate them to the text of the Qur'ān. Argumentation with an unknown quantity known as the "Word of God" would not be particularly meaningful or convincing. Texts in which his students ask him for the interpretation of part of a particular verse of the *textus receptus* or use it as an argument against a view of the master's show that it is necessary to reckon with the existence of a Qur'ānic text with an essentially established stock of verses at the latest in the last decade of Ibn 'Abbās' life. In this context it is understandable that his students took note of divergent readings of their master's. A good example of the fact that the citation of parts of verses, which 'Aṭā' also transmits from Ibn 'Umar,³⁵³ presupposes knowledge of the context, i.e. of the whole verse, is this text:

Ibn Jurayj from 'Aṭā'. He said: Ibn 'Abbās said: "If [the man] divorces [his wife] while she is pregnant, [but] then dies, the later of the two terms [applies], or if he dies while she is pregnant, then [similarly] the later of the two terms [applies]".³⁵⁴ It was said to him: "*wa-ūlātu l-aḥmālī*

³⁴⁹ See pp. 110 f.

³⁵⁰ See pp. 114–117.

³⁵¹ Cf. AM 6: 11919; 7: 12051, 12553, 12571.

³⁵² See p. 108.

³⁵³ AM 7: 13911.

³⁵⁴ I.e., either birth or the waiting period of the widow, whichever comes later.

ajaluhunna an qaḍa'na ḥamlahunna"³⁵⁵ (and the pregnant ones, their term is that they bear the fruit of their wombs). He said: "That is [only so] in the [case of] divorce [, not in the case of death]."³⁵⁶

Ibn 'Abbās' answer shows that he has correctly assigned the citation to the verse of the *textus receptus* from the beginning of which it is, in fact, possible to conclude that it deals with the waiting period in the case of divorce.

I have already pointed out the questionable nature of Schacht's thesis "that anything which goes beyond the most perfunctory attention given to the Koranic norms and the most elementary conclusions drawn from them belongs almost invariably to a secondary stage in the doctrine" in the context of the Qur'ānic material in 'Aṭā's *responsa*.³⁵⁷ The example just cited offers an opportunity to add depth to the critique of Schacht's "historical" reconstructions, since he also deals with the legal question of the waiting period of the pregnant widow. He claims: "The *common ancient attitude* was to consider her *ʿidda* ended and to make her available for another marriage at her delivery, even though this might happen immediately after the death of her husband and long before the completion of four months and ten days."³⁵⁸ In this he bases himself on Medinan and Iraqi traditions preserved in Mālik's *Muwattaʿa*' and the *Āthār* of Abū Yūsuf and al-Shaybānī. He probably considers this "common" and "ancient" because that is the simplest solution, namely, the application of Qur'ān 65:4, which indeed is held against Ibn 'Abbās in the above text. After Schacht has declared the simplest to be the oldest, he continues in his reconstruction of the historical development of the legal problem: "But there arose the demand, caused by the tendency to greater strictness, that she should keep the *ʿidda* 'until the latter of the two terms'; a demand which was *expressed* in traditions from 'Alī and from Ibn 'Abbās. *This refinement* succeeded neither in Iraq nor in Medina [. . .]."³⁵⁹

'Aṭā's Ibn 'Abbās tradition on this legal question shows that Schacht's distinction of primary and secondary solution is artificial and does not correspond to the historical facts. Both interpretations

³⁵⁵ Qur'ān 65:4.

³⁵⁶ AM 6: 11712.

³⁵⁷ See pp. 115-117.

³⁵⁸ Schacht, *Origins*, p. 225. Emphasis mine.

³⁵⁹ Op. cit. Emphases mine.

are equally old; the teaching of the "latter of the two terms" is no "refinement" which only developed over the course of time as a counter-opinion against the "common ancient attitude" and then was falsely ascribed to Ibn 'Abbās and others, but is really the opinion of Ibn 'Abbās, vouched for by his student 'Aṭā'. It is methodologically impermissible to postulate that a teaching which is not quite as simple as another—as in the case discussed, in which Ibn 'Abbās combines two Qur'ānic passages (2:234 and 65:4), while the others limit themselves to 65:4—must necessarily be secondary, and so to construct a historical development.

Purely in terms of quantity, 'Aṭā's references and allusions to Companions of the Prophet outnumber those to the Qur'ān or to the Prophet himself.³⁶⁰ This quantitative situation may not without further ado be interpreted qualitatively and used to conclude that for 'Aṭā' the Companions of the Prophet were more binding authorities than the Qur'ān or the Prophet. Quantity and worth are not necessarily correlated. Quantity can be conditioned by various factors which have nothing to do with value. Thus, for instance, the number of references to the Qur'ān and to the *ṣaḥāba* is equal if one examines only 'Aṭā's *responsa*.³⁶¹ Why the share of the *ṣaḥāba* in the genre of *dicta* is higher cannot be said for sure, but the reasons may have to do purely with the practical requirements of instruction or with the history of transmission, for instance, that Ibn Jurayj collected 'Aṭā's Qur'ān interpretations separately and for this reason included fewer of them in his collection of traditions; on the other hand, it should be kept in mind that there were natural limits to references to the Qur'ān because of the small number of legal regulations contained in it. On the basis of the quantity of references to sources alone it is not possible to answer the question whether 'Aṭā', or perhaps even older scholars, had developed an evaluation of the various *uṣūl* on which they based themselves—even if infrequently, and not in every case *expressis verbis*—, whether, for example, the Qur'ān has greater authority if a Companion of the Prophet advances a view diverging from the Qur'ān. Here only concrete cases, texts from which this can be read clearly, can help. I have found one:

³⁶⁰ See p. 140.

³⁶¹ See p. 107.

Ibn Jurayj said: 'Aṭā' said: "[Regardless of whether] much or little, [suckling] makes her tabu for marriage (*yuharrimu minhā*)." He said [further]: "[Ibn] 'Umar³⁶² said, when it reached him from ['Abd Allāh]³⁶³ ibn al-Zubayr that the latter was transmitting (*ya'thir*) from 'Ā'isha about suckling: '[Anything] under seven sucklings does not make [her] tabu for marriage.' "God is better than 'Ā'isha! God (eulogy) said: '*wa-akhawātukum minā l-raḍā'ati*'³⁶⁴ (and your sisters by suckling); he did not say: '[by] one or two sucklings.'"³⁶⁵

'Aṭā' held a position other than the one expressed in the 'Ā'isha tradition. He agrees with Ibn 'Umar, who refers to the Qur'ān in his criticism of 'Ā'isha's opinion. For 'Aṭā' as well, the Qur'ān thus represents a legal source standing above the opinions of the Companions of the Prophet. The problem of the evaluation of different sources of law, which a century later was extensively discussed by al-Shāfi'ī³⁶⁶ and in the course of the following century was solved to the satisfaction of consensus through the teaching of the *uṣūl al-fiqh*, did not—as Schacht believes—appear only as a result of the conflict between the representatives of the "ancient schools" and the "traditionists" around the middle of the second/eighth century,³⁶⁷ but is clearly significantly older. 'Aṭā' was aware of it as such, at the latest at the beginning of the second/eighth century—not only in this text but, for example, also in the conscious differentiation between "*ra'y*" and "*ilm*";³⁶⁸ however, it has its roots in the second half of the first/seventh century, more precisely in the time of the caliph 'Abd Allāh ibn al-Zubayr, since 'Aṭā's tradition from 'Abd Allāh ibn 'Umar as transmitted by Ibn Jurayj in 'Abd al-Razzāq's *Muṣannaf* is probably—as the investigation of his traditions from the Companions of the Prophet has shown in general—genuine.

Investigation of the Qur'ānic material in Ibn Jurayj's 'Aṭā' tradition leads to the conclusion that 'Aṭā' was familiar with essential questions of the later Qur'ānic sciences: the *textus receptus* with *sūra* names, divergent *qirā'āt*, juridical exegesis, the theory of *nāsikh* and

³⁶² A lapse of the copyist. According to the suggestion of the editor, and in agreement with AM 7: 13919, "*ibn*" is to be added.

³⁶³ Cf. AM 7: 13919. See p. 181.

³⁶⁴ Qur'ān 4:23.

³⁶⁵ AM 7: 13911.

³⁶⁶ Cf. Schacht, *Origins*, Part 1, Chaps. 6 and 10.

³⁶⁷ Op. cit., p. 137 and *passim*.

³⁶⁸ See p. 114.

mansūkh, the *sabab al-nuzūl* as an exegetical form and the problem of the evaluation of the Qur'ān as one of several sources of law. This means that all of these data—at least *in statu nascendi*—already existed at the turn from the first/seventh to the second/eighth century at the latest. In isolated cases they can even be followed back into the second half of the first century, i.e. the time between 'Aṭā' and Muḥammad. Here it is to be emphasized that they are primarily significant for 'Aṭā's legal teachings and are important to him only in this capacity. All of this indicates that the Qur'ān had greater significance for the early Islamic legal teachers whom Schacht characterizes as representatives of the "ancient schools" than he wished to concede to it.³⁶⁹

γ. The Prophet

Like the proportion of traditions overall, that of traditions of the Prophet in the genre of 'Aṭā's *dicta* is higher (6%) than among the *responsa*. While there predominantly *acta* of the Prophet are reported and the few *dicta* proved to be relics of legal verdicts (*aqḍiyya*) and opinions (*fatāwā*),³⁷⁰ the traditions of the Prophet in 'Aṭā's *dicta* are quite evenly distributed among the genres of legal verdicts, legal opinions, *dicta* and *acta* of the Prophet. In the *responsa* only references to and fragments of *ḥadīths* were to be found; among the *dicta*, there are primarily complete texts. Only one fourth of them have a—sometimes incomplete—*isnād*.

The Prophetic traditions of the *dicta* confirm the conclusions which have already emerged from the investigation of the *responsa*. The fact that 'Aṭā' so seldom refers to the Prophet, and that he expresses opinions for which he knows traditions of the Prophet without referring to them, speaks against the assumption that 'Aṭā' himself invented traditions of the Prophet. Those which he cites or to which he alludes must thus already have been in circulation in his time, i.e. their origin is predominantly to be dated in the first/seventh century. The possibility of false ascription of these traditions to 'Aṭā' by Ibn Jurayj is to be rejected for the reasons already set forth³⁷¹ and because of

³⁶⁹ Cf. W. B. Hallaq, *A History of Islamic Legal Theories* (Cambridge, 1997), pp. 3–10 and Motzki, "Die Entstehung des Rechts", in: A. Noth/J. Paul, *Der islamische Orient. Grundzüge seiner Geschichte* (Würzburg, 1998), pp. 151–172, esp. pp. 154–169.

³⁷⁰ See pp. 127 f. and 132.

³⁷¹ See Chap. III.B.1.

the usually absent *isnāds*.³⁷² ‘Aṭā’s *ḥadīths* of the Prophet are—contrary to Schacht’s sweeping judgment—not later than his *ṣaḥāba* traditions, they are not more carefully transmitted and clearly are no more binding for him than the latter. In terms of numbers, *ḥadīths* of the Prophet are far outstripped by references to his teacher Ibn ‘Abbās, but the Prophet ranks before all other Companions such as ‘Umar, ‘Ā’isha or ‘Alī. All of this reflects a very subordinate role for the *ḥadīths* of the Prophet—as for traditions in general—in ‘Aṭā’s legal scholarship, which is perhaps typical of the Islamic jurisprudence of the first/seventh century. It is to be emphasized, however, that they already existed and that they were occasionally employed as sources for the decision of legal questions or justifications of legal opinions. The waning first century seems to mark the beginning of a development in Islamic jurisprudence which had a stormy career in the second century and reached a high point in al-Shāfi‘ī’s (d. 204/820) teachings: the penetration and assimilation of Prophetic *ḥadīths* into jurisprudence.

Even though they may have been of only marginal significance for ‘Aṭā’s legal scholarship, for the history of Prophetic *ḥadīths* his traditions are—precisely for this reason—prime witnesses for their existence in the first century. Since only one generation lies between ‘Aṭā’ and Muḥammad, these texts are very close to the time and the people about whom they report, and the possibility of their authenticity cannot be rejected from the outset. ‘Aṭā’s Prophetic traditions which have an *isnād* are especially valuable from this point of view. Let us demonstrate this with the following example:

Ibn Jurayj said: ‘Aṭā’ transmitted to me (*akhbaranī*). He said: “‘Abd al-Raḥmān ibn ‘Āṣim ibn Thābit transmitted to me that Fāṭima bint Qays, the sister of al-Ḍaḥḥāk ibn Qays, transmitted to him—she was married to a man of the Banū Makhzūm—, she transmitted to him that he [her husband] divorced her three times and [then] went out on a military expedition (*ba’d al-maghāzī*). He ordered one of his agents to give her some financial support. She, however, regarded it as too little and went to one of the wives of the Prophet. The Prophet (eulogy) happened to come in when she was with her. Thereupon [the Prophet’s wife] said: ‘Messenger of God! So-and-so divorced this Fāṭima bint Qays [here]. He sent her some financial support, but she rejected it. [The man] claimed that it was something which he did as a good

³⁷² On Ibn Jurayj’s mode of transmission and his *isnāds* see pp. 240–44.

work [, not as a duty, and whose amount he could thus determine himself].’ The Prophet (eulogy) said: ‘He is right!’ Then he said to her [Fāṭima]: ‘Move in with Umm Maktūm and spend the waiting period with her.’ Thereupon he said: ‘No,³⁷³ [don’t do it after all;] Umm Maktūm is a woman who has many visitors; rather, move in with ‘Abd Allāh ibn Umm Maktūm. He is blind.’ She moved in with him until she had completed her waiting period. Then Abū Jahm and Mu‘āwiya ibn abī Sufyān sought her in marriage. She went to the Messenger of God (eulogy) and asked him for advice about the two of them. He said: ‘As for Abū Jahm, I fear for you the way he uses the stick’ (*qasqasatahu bi-l-‘asā*),³⁷⁴ Mu‘āwiya on the other hand is a poor fellow (*amlaq min al-māl*)! Thereupon she married Usāma ibn Zayd.”³⁷⁵

There are several parallels and variants to this narrative Prophetic tradition of ‘Aṭā’s which should be considered with it. Three versions are very close to ‘Aṭā’s in style and content:

a) Two texts with the *isnād* “Ma‘mar—al-Zuhri—‘Ubayd Allāh ibn ‘Abd Allāh ibn ‘Utha,”³⁷⁶ in which ‘Ubayd Allāh does not, however, claim to have the story directly from Fāṭima, but reports that Marwān—the later caliph—heard of it and thereupon sent to Fāṭima Qabīsa ibn Dhu‘ayb, to whom she told the story and who transmitted it to Marwān. The latter, however, refused to follow it, with the argument: “We have heard this *ḥadīth* only from a woman. We hold to the [continuation of] marital power (*‘isma*) which—we have found—the people [this probably means the ‘experts’] believe in.” This answer is supposed to have occasioned Fāṭima to make a reply in which she refers to Qur’ān 65:1 in support of her opinion and argues that this verse, which contains the prohibition of expulsion from or leaving of the house during the waiting period, applies to *revocable* divorce—which is, in fact, the case—and asks for what reason one would shut in *definitively* divorced women and [simultaneously] deny them financial support.³⁷⁷ In one of the two versions ‘Ubayd Allāh also recounts how it came to pass that Fāṭima’s story

³⁷³ With the editor I read “*lā imma*” instead of “*illā an*”.

³⁷⁴ I.e. blows.

³⁷⁵ AM 7: 12021.

³⁷⁶ AM 7: 12024, 12025.

³⁷⁷ The proponents of the opposite opinion support themselves, in addition to 65:1, with an unconvincing interpretation of Qur’ān 65:6 which can be glimpsed in the argument of the man’s agent. In the Prophet’s answer in text No. 12025, on the other hand, the allusion to this verse is illogical and probably an error (in thinking?) by one of the transmitters, since it stands in contradiction to Fāṭima’s subsequent argumentation. The version No. 12024 does not include this addition.

came to Marwān's attention in the first place: When he was governor [of Medina],³⁷⁸ 'Abd Allāh ibn 'Amr ibn 'Uthmān—a grandson of the third caliph—irrevocably divorced the daughter of Sa'īd ibn Zayd.³⁷⁹ Her maternal aunt, the said Fāṭima bint Qays, advised her to move out of the house of her divorced husband. Marwān heard of the affair and asked her how she came to move out during the waiting period. She referred to the "legal opinion" of her aunt, whom Marwān then had thoroughly questioned.

The story of Fāṭima herself diverges in several details from 'Aṭā's version. Missing—as in all other variants—is the indication that she was the sister of al-Ḍaḥḥāk ibn Qays. Instead 'Ubayd Allāh gives the name of the husband, Abū 'Amr ibn Ḥafṣ ibn al-Mughīra, and the name of his two agents, while 'Aṭā's informant 'Abd al-Raḥmān ibn 'Āṣim only speaks of one. In addition, 'Ubayd Allāh specifies more precisely what kind of *ghazwa* it was: Abū 'Amr had gone with 'Alī to Yemen.³⁸⁰ In 'Abd al-Raḥmān ibn 'Āṣim's version she first goes to one of the wives of the Prophet; in 'Ubayd Allāh's she turns directly to the Prophet, which could be the result of abbreviation. In 'Ubayd Allāh's versions the dialogues between the woman and the Prophet are also shorter. Mention that the Prophet first suggested the apartment of a woman, the first name of Ibn Umm Maktūm and the story of the two suitors are also missing. He reports only that the Prophet married her to Usāma ibn Zayd.

b) Mālik's *Muwatta'* also offers an early parallel with the *isnād* "'Abd Allāh ibn Yazīd, *marwā* of al-Aswad ibn Sufyān—Abū Salama ibn 'Abd al-Raḥmān ibn 'Awf—Fāṭima bint Qays."³⁸¹ Abū Salama also gives the name of her first husband, but says that he was on a journey in Syria (*bi-l-Shām*). He too—like 'Abd al-Raḥmān ibn 'Āṣim—speaks of an unnamed agent and specifies that the support consisted of barley. Like 'Ubayd Allāh he reports that for this reason she went to the Prophet, who confirmed that she was entitled to no support. As in 'Aṭā's version he further recounts that the Prophet first advised her to spend her waiting period with a woman whom, however, he does not call Umm Maktūm but Umm Sharīk, but then thought

³⁷⁸ AM 7: 12025: Instead of the "*fi mra'at Marwān*" of the manuscript, one should read "*fi imārat Marwān*".

³⁷⁹ Cf. also Mālik, *Muwatta'* (Y) 29:64; (Sh) No. 592. Here 'Abd Allāh ibn 'Umar criticizes Bint Sa'īd for her behavior.

³⁸⁰ Cf. the note in Ibn Hishām, *Sira*, p. 999.

³⁸¹ Mālik, *Muwatta'* (Y) 29:67.

better of it and suggested the blind 'Abd Allāh ibn Umm Maktūm, and he also has the Prophet's derisory remarks about Fāṭima's suitors.

The textual divergences manifested by these three versions—those of 'Aṭā', Ibn Shihāb al-Zuhrī and 'Abd Allāh ibn Yazīd—may go back to different narratives of Fāṭima's herself, which is a natural supposition given three different transmitters from her; the factual discrepancies may be caused by the transmitters (abbreviations, misunderstandings).³⁸² All three versions are independent of each other.

In addition to the complete versions named there are also several short versions:

c) One with the *isnād* "Ibn Jurayj—Ibn Shihāb—Abū Salama ibn 'Abd al-Raḥmān—Fāṭima bint Qays."³⁸³ It is a very much abbreviated paraphrase. It, too, contains mention of Marwān's rejection and, as a distinctly distancing element throwing doubt on Fāṭima's credibility, twice the introduction "*zā'ama*" (she claimed). If it is assumed that Ibn Shihāb's identification of Abū Salama as his informant is correct, the summary probably derives from Ibn Shihāb, since it displays considerable similarity to the versions of the story which he transmitted from 'Ubayd Allāh.

d) Another short version with the *isnād* "Muḥammad ibn Bishr—Abū Salama—Fāṭima bint Qays" is to be found in the *Muṣannaf* of Ibn abī Shayba. It has echoes of 'Aṭā's version and that of Abū Salama in the *Muwatta'*.

e) Two short versions are also transmitted from al-Sha'bī with the *isnāds* "Ibn 'Uyayna—al-Mujālid—al-Sha'bī—Fāṭima bint Qays" and "[al-Thawrī]³⁸⁴—Salama ibn Kuḥayl—al-Sha'bī—Fāṭima bint Qays."³⁸⁵ Ibn 'Uyayna's version has echoes of the one preserved in the *Muwatta'* (for example, the mention of Umm Sharīk), but is too abbreviated to permit recognition of true dependence on it.³⁸⁶

In addition, in the sources of the second and third centuries there is a number of references to the Fāṭima bint Qays tradition:

f) Ibn Jurayj transmits with the *isnād* "Ibn Shihāb—'Urwa" that 'Ā'isha reproached Fāṭima for this reason.³⁸⁷

³⁸² E.g. al-Shām instead of al-Yaman, Umm Maktūm instead of Umm Sharīk.

³⁸³ AM 7: 12022.

³⁸⁴ Cf. note 4 on AM 7: 12027.

³⁸⁵ AM 7: 12026, 12027. Versions with other *isnāds* in Ibn abī Shayba, *Muṣannaf*, vol. 5, p. 149.

³⁸⁶ Further short versions in Ibn abī Shayba, *Muṣannaf*, vol. 5, p. 149.

³⁸⁷ AM 7: 12023.

g) Yaḥyā ibn Saʿīd transmits from al-Qāsim ibn Muḥammad and Sulaymān ibn Yasār a disagreement between ʿĀʾisha and Marwān ibn al-Ḥakam, at the time governor of Medina, over the case of a brother of Marwān's who had his divorced daughter leave the house of her former husband. ʿĀʾisha, alluding to the Qurʾān, asked Marwān to bring her back, which he refused to do, according to Sulaymān ibn Yasār indicating his inability to assert himself against his brother, and according to al-Qāsim referring to the case of Fāṭima bint Qays. In the latter version, ʿĀʾisha is supposed to have retorted to Marwān that it would be better for him not to mention the *ḥadīth* of Fāṭima. Marwān answered: If in her eyes it was a bad thing that the woman had left the house, then the bad things which had occurred between the two of them surely sufficed for her to understand his brother's measure.³⁸⁸ The two versions are not necessarily mutually exclusive.³⁸⁹

In view of Marwān's rejection of the story of Fāṭima, reported by Ibn Shihāb,³⁹⁰ his attitude in this tradition is inconsistent. Does this prove that the Marwān traditions are forgeries? This conclusion is definitely not necessary. The two texts have their origins in different occasions, and it is quite imaginable that in the first case Marwān followed the opinion which was held in Medina by personalities like ʿĀʾisha and Ibn ʿUmar but later, when a similar case occurred in his own clan, pragmatically chose the path of least resistance without much caring about ʿĀʾisha's reproaches.

h) Sufyān [ibn ʿUyayna] transmits with the *isnād* "ʿAbd al-Raḥmān ibn al-Qāsim—al-Qāsim—ʿUrwa ibn al-Zubayr" that ʿĀʾisha criticized the behavior of Bint al-Ḥakam and Fāṭima's *ḥadīth*, and Ibn abī l-Zinād with the *isnād* "Hishām ibn ʿUrwa—ʿUrwa" that she became terribly upset about it and characterized Fāṭima's case as an exceptional regulation of the Prophet's which was motivated by the isolation of Fāṭima's dwelling.³⁹¹

i) It is reported with several different *isnāds* that Ibrāhīm [al-Nakhaʿī], when he was confronted with Fāṭima's *ḥadīth*, which contradicted his legal opinion, referred to the caliph ʿUmar ibn al-Khaṭṭāb,

³⁸⁸ Mālik, *Muwattaʾ* (Y) 29:63; (Sh) no. 591.

³⁸⁹ Cf. Ibn abī Shayba, *Muṣannaf*, vol. 5, p. 178: A parallel with the *isnād* ʿAlī ibn Mishar—Yaḥyā ibn Saʿīd—al-Qāsim in which Marwān answers the same as Sulaymān ibn Yasār does in Mālik's version.

³⁹⁰ See pp. 159 and 161.

³⁹¹ al-Bukhārī, *Jāmiʿ* 68:41. Cf. also Ibn abī Shayba, *Muṣannaf*, vol. 5, pp. 179 f. with the *isnād* Hishām—ʿUrwa: Fāṭima's fear of intruders.

who is supposed to have said about Fāṭima's *ḥadīth*: "We do not give up God's book and the *sunna* of His Messenger for the statement of a woman of whom we do not know whether she has a good memory or is forgetful (variant: whether she is speaking the truth or lying)."³⁹²

j) A critical remark about Fāṭima's *ḥadīth* is transmitted by Ibn Jurayj through Maymūn ibn Mihrān from, among others, Sa'īd ibn al-Musayyab: "That woman sowed discord among the [learned] people (*fatanat al-nās*)."³⁹³

This, in its rough outlines, is the state of transmission of the Fāṭima bint Qays tradition in the oldest sources.³⁹⁴ Some of the versions of the story are neutral, i.e. they contain no discernible evaluation. That is the case in 'Aṭā's version from 'Abd al-Raḥmān ibn 'Āṣim ibn Thābit, in those of Abū Salama ibn 'Abd al-Raḥmān ibn 'Awf in Mālik's *Muwatṭa'* and the *Muṣannaḥ* of Ibn abī Shayba, and those of al-Sha'bī. The rest take a position against this tradition. This is not very pronounced in the variations of 'Ubayd Allāh ibn 'Abd Allāh ibn 'Utba transmitted by Ibn Shihāb, but very strongly pronounced in his version of the tradition of Abū Salama and is without exception the tenor of the references to this *ḥadīth* of the Prophet.

Two legal questions are touched upon by the Fāṭima bint Qays tradition: 1. The question whether an irrevocably divorced woman is entitled to financial support (*naḥaqa*) in the waiting period or not, 2. whether she must spend the waiting period in the house of her divorced husband. One may or may not see an internal connection between the two questions. Both subjects are already addressed in Qur'ān 65:1-7, however not so unambiguously that no room remains for interpretation.

Theoretically, the following combinations are possible: a) She is entitled to no support; consequently she also need not remain in the house. b) She is entitled to support; consequently, she must also remain in the house. c) She is entitled to no support, but she must remain in the house. d) She is entitled to support, but she need not remain in the house.

³⁹² Several variants. Cf. AM 7: 12027 (incomplete). Ibn abī Shayba, *Muṣannaḥ*, vol. 5, pp. 146-148. Abū Yūsuf, *Āthār*, no. 608.

³⁹³ Cf. AM 7: 12038, 12037.

³⁹⁴ G. R. Hawting has treated the subject in detail, including later sources, but with other conclusions, in: "The Dispute in Muslim Law about the Rights of a Divorced Woman During Her 'Waiting Period'," *Bulletin of the School of Oriental and African Studies* 52 (1989), pp. 430-445.

As marginal problems, a possible pregnancy, the difference between the right of habitation and the duty of habitation, and the question of who must carry the costs for the habitation play a role.

As stated by the sources, almost all of the possible combinations were advanced by the early *fuqahā'*:³⁹⁵ solution a) by 'Aṭā', al-Ḥasan al-Baṣrī and al-Sha'bī (Kufa),³⁹⁶ b) by Ibrāhīm al-Nakha'ī (Kufa), c) by the Medinans Sa'īd ibn al-Musayyab, 'Urwa ibn al-Zubayr, Nāfi', Ibn Shihāb and others. Type d) scarcely found advocates, perhaps, Ibn abī Laylā (Kufa).³⁹⁷

Fāṭima's Prophetic *ḥadīth* supports only opinion a). It is thus not surprising that 'Aṭā' and al-Sha'bī are to be found among the neutral transmitters of the story, and that strong opposition to it is documented from Ibrāhīm, Sa'īd, 'Urwa and Ibn Shihāb. After sketching the *ḥadīth's* state of transmission and the complex of legal problems in which it arises, the question of the development of the corresponding legal solutions and of the dating of the *ḥadīth* poses itself.

Schacht supports the following thesis on the subject: "In late Umayyad times it must have been the practice for the divorced wife or widow to vacate the house of her husband immediately, without waiting for the end of her 'idda. This practice is clearly stated in two Medinese traditions."³⁹⁸ He is referring to the story of 'Ā'isha's disagreement with Marwān³⁹⁹ and to Ibn 'Umar's criticism of the behavior of Bint Sa'īd ibn Zayd,⁴⁰⁰ both of which are contained in Mālik's *Muwatta'*. "Late Umayyad times" means the first third of the second century. That is, in order to criticise the practice of the second/eighth century people did not choose the current representative of the Umayyad clan but their ancestor as a target. Since this and other traditions take the field against the Umayyad practice of the second century, they originated at the earliest in this period, which Schacht emphasizes with the statement that they were "ascribed" to

³⁹⁵ A good overview is offered by Ibn abī Shayba, *Muṣannaf*, vol. 5, pp. 146–153, 176–182.

³⁹⁶ There are different traditions from him, in one case like 'Aṭā, in another like Ibrāhīm.

³⁹⁷ Cf. AM 7: 12020. The statement applies to the pregnant woman; that she may leave the house is not stated explicitly—it is only said "*lā suknā*"—but can be inferred from it.

³⁹⁸ Schacht, *Origins*, p. 197.

³⁹⁹ See p. 160.

⁴⁰⁰ See p. 160 and note 379 there.

Ibn al-Musayyab and Ibrāhīm al-Nakha'ī.⁴⁰¹ This then also applies—as Schacht consistently would have to conclude—to the Fāṭima story mentioned in them, which would have to have been brought into circulation to support the Umayyad practice and presupposes the opposing tradition, thus is later and could have been incorporated in the tradition of 'Ā'isha and Marwān only secondarily.⁴⁰²

In view of the situation of transmission as I have described it, the divorced woman's moving out of the house of her husband during the waiting period *cannot* be characterized as a late Umayyad practice. As the other traditions about Marwān's behavior in this question show,⁴⁰³ leaving the house is *not* to be regarded as typical and generally approved and practiced by the Umayyads. Clearly there were not yet any binding patterns of behavior at all, and if some were already beginning to manifest themselves, it seems rather to have been *remaining* in the house which was the rule. Ibn Shihāb's traditions about Marwān are in principle no less credible than those of Yaḥyā ibn Sa'īd in the *Muwatta'*. Schacht probably neglected the former because they were accessible to him only in later sources.⁴⁰⁴ Ma'mar's Zuhri traditions, however, are at least as old as those of Mālik.

Furthermore, it emerges from the fact that 'Aṭā' already knew the Fāṭima bint Qays tradition in a form which suggests no dependence on the other versions that Schacht's chronology is not correct. Fāṭima bint Qays is the common link of all preserved versions of this *ḥadīth* of the Prophet. This in itself speaks in favor of the assumption that she was really the source of the different versions. 'Aṭā's statements about his authorities for traditions are—as has emerged from the preceding study—to be trusted, that is, the story could at most have been invented by his authority 'Abd al-Raḥmān ibn 'Āṣim. It speaks against this assumption that he does not appear in the *isnāds* of the variants. It is thus to be assumed that Fāṭima herself is the originator. With this, we find ourselves chronologically deep in the first/seventh century and must transfer the emergence of the complex of legal problems to the beginning rather than the end of the Umayyad

⁴⁰¹ Schacht, *Origins*, p. 198.

⁴⁰² The two different versions might suggest this.—Schacht treats the point of support during the waiting period in another context (p. 225). Further criteria for dating do not emerge from it.

⁴⁰³ See pp. 159 f., 161.

⁴⁰⁴ They are to be found, for instance, in Muslim and al-Nasā'ī.

caliphate, more precisely to the time of Mu'āwīya's caliphate (41/661–60/680), when Marwān was governor in Medina and 'Ā'isha and Ibn 'Umar were still alive. With proof of the genuineness of the 'Aṭā' tradition its variations, whose historicity could until now hardly be evaluated, gain credibility as well. This is also true of the reports about the rejection of the tradition, for instance, by his contemporaries Sa'īd ibn al-Musayyab and Ibrāhīm al-Nakha'ī, since if the story was known to 'Aṭā' it was probably known to them as well. This does not mean that all of the traditions cited about it are authentic. Let us leave aside the question of whether all reports about 'Ā'isha's criticism of Fāṭima's *ḥadīth* are genuine. It is nevertheless certain that the legal problem articulated in the Fāṭima *ḥadīth* was already the object of controversies around the middle of the first/seventh century and was already discussed by the generation of the *ṣaḥāba*.

Can one go yet a step farther and speak of a genuine tradition of the Prophet? Or must one assume that Fāṭima made it up of whole cloth? Against the thesis of invention speaks the precise information about the circumstances and the people involved, some of whom were still alive at the time when she was spreading this *ḥadīth*, such as for instance Mu'āwīya—then caliph—who is supposed to have been a potential suitor and about whom she has the Prophet say something which is hardly flattering. Even the traditions about 'Ā'isha's vehement criticism of Fāṭima's story do not claim that 'Ā'isha dismissed the thing as a complete falsehood. It is, of course, imaginable that the woman's moving out during the waiting period was not customary and that in Fāṭima's case there were special circumstances which induced Muḥammad to make an exception, as one 'Ā'isha tradition claims.⁴⁰⁵ The early intra-Islamic criticism of the *ḥadīth*, which in the cases of Ibn Shihāb and Ibrāhīm al-Nakha'ī shifts polemically from the issue itself to the woman as a transmitter, does not necessarily mean that people at that time already recognized it as a forgery, but only that very early other solutions, clearly based on the Qur'ān, existed which were placed in question by this *ḥadīth*. There are definitely no sufficient grounds to dismiss the Fāṭima bint Qays story as the pure invention of this woman. We are probably dealing with a genuine *ḥadīth* of the Prophet.

⁴⁰⁵ See p. 161.

Genuine in this case means credibly reported from memory 30 to 40 years after the event.

The excursus about 'Aṭā's tradition of Fāṭima bint Qays was intended to illustrate that 'Aṭā's traditions of the Prophet are important building blocks for the reconstruction of the development of law in the first/seventh century. The situation is especially favorable when 'Aṭā' also names his authority, which unfortunately he only seldom does. But even the traditions without *isnāds* are usable when variations of them are known from other sources. On the other hand, it has become clear that the sweeping rejection of the *Ḥadīth* material as a possible historical source for the first/seventh century which has been advocated by Lammens, Goldziher and in their wake Schacht and many others robs historical research of a significant and usable genre of sources. It is self-evident that they cannot be considered generally reliable. Not even the Muslims themselves have assumed that. Sifting them with the help of criticism of the transmitters was already a quite functional procedure, still useful to the historian today, but laden with many misjudgments. I think that we can and should approach the question of the historicity of the *Ḥadīth* texts anew through the *Ḥadīth* material in early Tradition complexes like those of 'Aṭā', in which the *Ḥadīth* is not the actual object but only peripheral.

δ. 'Aṭā's contemporaries

In the genre of *dicta* as well, 'Aṭā' cites the legal verdicts, opinions or exemplary modes of behavior of contemporaries very rarely. The few examples have to do with the verdicts of caliphs—for instance, of Ibn al-Zubayr in the case of the *umm walad* of Muḥammad ibn Ṣuhayb⁴⁰⁶ (a verdict of the same caliph was also contained in the *responsa*),⁴⁰⁷ similarly, references to two verdicts of 'Abd al-Malik ibn Marwān⁴⁰⁸—, of *qāḍīs* like Shurayḥ (Iraq) and Ibn Baḥdal (Syria), or opinions of *fuqahā'* like Ibn Ghanm (Syria) or *acta* of some learned contemporary, for instance of 'Ubayd Allāh ibn 'Adī, a little-known Medinan who died towards the end of the first/seventh century.⁴⁰⁹ In no case does 'Aṭā' name a source from which he derives the reports. That he invented them himself is unlikely, since he—as

⁴⁰⁶ See p. 89.

⁴⁰⁷ See p. 118.

⁴⁰⁸ See p. 137 and AM 7: 13385.

⁴⁰⁹ AM 7: 12251. On this figure cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 35.

evidenced by the majority of his legal teachings—generally had need of no authority, let alone that of the rulers and their henchmen. Rather, it is to be assumed that these are pieces of information about actual incidents which were reported to ‘Aṭā’ and which he mentioned because they accorded with his opinions or were noteworthy for other reasons.

Schacht—as did already Lammens and Tyan—considers Shurayḥ (d. between 78/697 and 99/717) a legendary figure: “The opinions and traditions ascribed to him are spurious throughout and are the outcome of the general tendency to project the opinions current in the schools of law back to early authorities.”⁴¹⁰ The question is why the Meccan ‘Aṭā’ would have fathered his own opinion on an Iraqi authority. If he had to invent a support, his teacher Ibn ‘Abbās or another of the generation of the Companions would have been closer to hand. ‘Aṭā’s Shurayḥ tradition is, it is true, not first-hand, but it is nevertheless probably authentic:

Ibn Jurayj: ‘Aṭā’ reported to me (*akhbaranī*): “One of their [the Banū Umayya’s?] governors (*umārā*) had Shurayḥ brought [to him] and asked him about a man who said to his wife: ‘You are definitively (*al-battata*) divorced.’ Thereupon he asked him [the governor] to be dismissed [from the post of judge], but he declined to dismiss him [in lieu of an answer]. Thereupon he [Shurayḥ] said: Divorce (*ṭalāq*) is a *sunna*; definitive [divorce] (*al-battata*) is a *bid’a* (innovation). The *sunna* in [the form of] divorce you should carry out; leave to him [the man] the decision about the *bid’a* ‘definitive’ [in accordance with] his intention [i.e., whether it should be one or three divorces].”⁴¹¹

Schacht cites a variation of this from the *Āthār* of al-Shaybānī with the *isnād* “Abū Ḥanīfa—Ḥammād—Ibrāhīm al-Nakha‘ī—‘Urwa ibn Mughīra” which contains some additional information: It was the said ‘Urwa who, as governor of Kufa, asked Shurayḥ for advice; in response, the latter first cited the mutually contradictory opinions of ‘Umar and ‘Alī and only with difficulty was prevailed upon to submit the above opinion of his own. Compared with it, ‘Aṭā’s version is an abridgment. Schacht dates the origin of this Shurayḥ tradition in the generation before Mālik, i.e. in the second quarter of the second/eighth century, and considers it to be a projection back “into earlier

⁴¹⁰ Schacht, *Origins*, p. 229.

⁴¹¹ AM 6: 11182.

Umayyad times.”⁴¹² That this is out of the question is proven by the existence of ‘Aṭā’s version. From it, it can be concluded that ‘Aṭā’ was already familiar with the legal problem—he himself advanced the same view as Shurayḥ in a *responsum*⁴¹³—, that it already appeared in the first/seventh century and in all likelihood was already solved by Shurayḥ through the compromise reported. Through ‘Aṭā’s parallel, Ibrāhīm al-Nakha‘ī’s version—*isnād* included—also gains credibility. Schacht’s claim that the Shurayḥ traditions are “spurious throughout” cannot be upheld in this degree of generalization.

The following tradition also speaks for the historicity of ‘Aṭā’s reports about contemporaries:

Ibn Jurayj from ‘Aṭā’ and Dāwūd ibn abī ‘Āṣim: A woman died in Syria (*bi-l-Shām*). She left behind a slave woman [who was divided] among her husband and [other] partners [entitled to inherit]. The husband slept with her, while only a fourth [of her belonged] to him. The [case] came before Ibn Baḥḍal, a *qāḍī* of the Syrians (*ahl al-Shām*). He said: “Stone him!” [Word of] that [case] reached Ibn Ghanm. He said: “Whip him with three fourths of the *ḥadd* penalty.” He did not order that he be stoned because of the [share] of her which belonged to him.⁴¹⁴

Ibn Jurayj transmits no opinion of ‘Aṭā’s on this legal question, so that it is not completely clear why he reports this case at all. Since, however, he does not advocate stoning in the case of fornication with a slave women,⁴¹⁵ he probably supported the solution of Ibn Ghanm. It is, however, unlikely that to support his own view he invented a tradition from which this view does not clearly emerge, and that he invoked Syrian legal authorities for the purpose. Here, too, it is more likely that we are looking at a historical case which was known and discussed in scholarly circles. It must have taken place before the year 78/697–8, the death date of ‘Abd al-Raḥmān ibn Ghanm.⁴¹⁶ Thus, a historical point of reference for the contro-

⁴¹² Schacht, *Origins*, p. 195.

⁴¹³ Cf. AM 6: 11171.

⁴¹⁴ AM 7: 13459.

⁴¹⁵ Cf. AM 7: 13391.

⁴¹⁶ Ibn Ghanm can only be ‘Abd al-Raḥmān ibn Ghanm, who is supposed to have been active as a legal expert in Syria and Palestine from the caliphate of ‘Umar. Cf. al-Dhahabī, *Tadhkira*, vol. 1, p. 51. I could not find a *qāḍī* Ibn Baḥḍal in the sources on the Syrian *qāḍīs* of the first century. Probably Ḥassān ibn Mālik ibn Baḥḍal is meant, who was governor of Palestine and Jordan under Mu‘āwīya

versial question⁴¹⁷ of the vintage of stoning as a penalty for fornication is also provided. Since the verdict of the *qāḍī* Ibn Baḥdal is mentioned without any commentary, stoning must already have been a current practice in his time, and 'Aṭā's comment on Ibn Ghanm's view also assumes that stoning was a possible penalty for illegitimate sexual relations. That the legal scholar deviated from the verdict of the *qāḍī* and advocated the Qur'ānic penalty of whipping should not be interpreted as the rejection of a non-Qur'ānic penalty, but has to do with the special case. Here there is an early case of a conflict between a *qāḍī* and a *faqīh*. Both penalties—stoning, which is not contained in the Qur'ān but is justified only with precedents from the Prophet, and flogging—seem already to have existed side by side at this time. For the beginning of the second/eighth century this is certain in any case, since both penalties are attested in several *responsa* of 'Aṭā's.⁴¹⁸

It is clear from the two textual examples cited that 'Aṭā's traditions from his contemporaries can also be valuable sources for the state of development of Islamic jurisprudence and Islamic law in the first century.

ε. Anonymous traditions

In discussing the Tradition material in 'Aṭā's *responsa* I have left aside the anonymous traditions, with the exception of those which, although not by name, are clear references to his contemporaries. They are very similar to each other in both genres and often appear in mixed forms of these genres, i.e. in *dicta* which are followed by questions, so that it is natural to discuss them together. They are contained in approximately 3% of the 'Aṭā' texts. Usually 'Aṭā' introduces them with "*balaghanā*", more rarely with "*balaghanī*" (it reached us or me), "*sami'tu*," "*sami'nā*" (I or we heard), "*yurwā*" (it is reported)

and Yazīd and played a role in saving the caliphate for the Umayyad dynasty against the claims of 'Abd Allāh ibn al-Zubayr. Cf. H. Lammens/[L. Veccia-Vaglieri], "Ḥassān b. Mālik," in: *Encyclopaedia of Islam*, Second Edition, vol. 3, pp. 270–271.

⁴¹⁷ Cf. J. Burton, "The Origin of the Islamic Penalty for Adultery," *Transactions of the Glasgow University Oriental Society* 26 (1975–76), publ. 1979, pp. 16–27. Burton believes that stoning established itself as a penalty in Muslim jurisprudence only in the course of the second/eighth century on the basis of exegetical traditions, and was not a practice of the Prophet.

⁴¹⁸ See pp. 92–93 and AM 7: 13393, 13445, 13624, 13751.

or "*qīla*" (it has been said). Usually they are solutions to specific legal questions, but sometimes also reports about earlier incidents and *ḥadīths*.⁴¹⁹

For instance: Ibn Jurayj said: 'Aṭā' said: "It reached us that it is forbidden to have simultaneously [as wives] the woman and her aunt on the maternal or (and) paternal side."⁴²⁰

Or: Ibn Jurayj from 'Aṭā'. He said: "We heard that the right of disposal over an orphaned girl is vested in her [herself] and marriage by her brother is only allowed with her consent."⁴²¹

It is not clear to which generation of legal scholars these anonymous references refer. They could be teachings of the generation of the Companions, that of the Prophet himself or that of 'Aṭā's contemporaries. Qualitatively, 'Aṭā' seems scarcely to have differentiated among these. This also becomes clear in the following answer of 'Aṭā's to some questions from Ibn Jurayj:

Ibn Jurayj said: I asked 'Aṭā' "May a man contract a *mut'a* marriage (*yastamit'u*) with more than four women simultaneously? Is a *mut'a* relationship (*istimtā'*) [associated with acquisition of] a [quality of] *iḥṣān*? Is *mut'a* (*istimtā'*) allowed for a woman if her husband irrevocably divorced her?" ['Aṭā'] said: "I have heard nothing about it and I have [also] not consulted (*rāja'tu*) my colleagues in this connection."⁴²²

It has already been mentioned in another context that 'Aṭā' occasionally differentiates between his own opinion (*ra'y*) and knowledge (*ilm*) or things that have been "heard."⁴²³ This is also reflected in the formulae with which he admits his ignorance on certain questions: "I do not know" (*lā adrī*), "I have heard nothing about it" (*lam asma' fihā bi-shay*). However, with 'Aṭā' one must not overvalue these different linguistic usages. In general, he supports himself with traditions too rarely for one to be able to see in such *formulae* more than the glimmering of an appreciation of the traditions as a legal source. Precisely the anonymous traditions show that 'Aṭā' actually did not consider it necessary to support himself with authorities, otherwise he would have named or invented them. Traditions introduced by the vague statement "it reached us" will hardly have been

⁴¹⁹ Cf. AM 6: 10969; 7: 12632.

⁴²⁰ AM 6: 10752.

⁴²¹ AM 6: 10314, similarly 10360.

⁴²² AM 7: 14030.

⁴²³ See pp. 114 f.

considered by his students to be better founded than those introduced by "we are of the opinion" and the like. From 'Aṭā's anonymous traditions—as in general from his treatment of traditions, his disinterest in their paths of transmission and the often incidental and casual character of his use of traditions—it becomes clear that in his legal instruction traditions as a legal source already had a place—if still only a subordinate one—but that the later demands on them, such as literal reporting and identification of authorities, were for him no standard by which he considered himself bound. To what extent this is characteristic of the situation of Islamic legal scholarship at the end of the first/seventh century and the beginning of the second/eighth remains to be clarified. In Mecca, in any case, this was the state of development.

It is conspicuous that 'Aṭā' usually introduces anonymous traditions with "*balaghānā*" (it reached us), more rarely with the first person singular. The plural is also to be observed in many of his *responsa*: "*lā naqra*" (we do not read [in this way]),⁴²⁴ "*narā*" (we are of the opinion),⁴²⁵ "*fi-mā narā wa-na'lam*" (according to what we think and know),⁴²⁶ and so forth. At first glance one might be tempted to see in this linguistic usage simply a "plural of modesty." However, 'Aṭā's remark that he could give no information about a question because he had neither heard anything about it nor consulted his "colleagues"⁴²⁷ is an indication that more than a polite cliché is hidden behind the use of the first person plural. Who are 'Aṭā's *aṣḥāb*? Whom does he mean when he says "we"? Without doubt they are like-minded people, probably his scholarly colleagues in Mecca, with whom he had attained a large degree of unanimity—a kind of local *ijmā'*—on many questions through the mutual exchange of ideas and under the formative influence of common teachers such as Ibn 'Abbās. That such beginnings of school formation and a feeling of commonality, a group consciousness already existed in the great centers of scholarship at the beginning of the second/eighth century is also shown by comments such as "*ba'd min ahl Kufa*," "*ba'd min 'ulamā' Medīna*" (one/some of the scholars of Kufa or Medīna), "*'ulamā'unā*"

⁴²⁴ AM 6: 10816.

⁴²⁵ AM 6: 10837.

⁴²⁶ AM 6: 11017.

⁴²⁷ See p. 171.

(our scholars) or "*fuqahā'uhum*" (their legal scholars),⁴²⁸ which are attested with Ibn Jurayj and the scholars somewhat younger than 'Aṭā'. Thus, the beginnings of local schools of law—schools in the sense of a far-reaching consensus among people teaching and learning in the same place—seem to be reflected in this linguistic usage of 'Aṭā's.

C. 'AMR IBN DĪNĀR

After 'Aṭā' ibn abī Rabāḥ, 'Amr ibn Dīnār is the authority of Ibn Jurayj's from whom he transmits the most.⁴²⁹ From the differing extent and form of Ibn Jurayj's references to the two and their traditional dates of death—'Amr died in 126/743–4), thus eleven years after 'Aṭā—it is possible to conclude that Ibn Jurayj first studied for a quite long time with 'Aṭā' and then with 'Amr.⁴³⁰ The latter lived and taught, like 'Aṭā', in Mecca, and is seen as a somewhat younger representative of the local scholarship.⁴³¹ Schacht does not mention him as a representative of the Meccan "school of law," but numbers him among the "traditionist group."⁴³² That he was, however, also a Meccan *faqīh* can be gathered from Ibn Jurayj's traditions from him. Thus, special attention should be directed to the question of the role of traditions in his legal instruction. First, however, the authenticity of the texts attributed to 'Amr ibn Dīnār must be subjected to a critical test.

1. *The main sources: authenticity and mode of transmission*

a. *Ibn Jurayj's tradition from 'Amr ibn Dīnār in the Muṣannaf of 'Abd al-Razzāq*

The observation that the texts which Ibn Jurayj transmits from his teacher 'Aṭā' are not forgeries or projections of a later time, but

⁴²⁸ Cf. AM 7: 12881, 13073, 13381, 13581, 13626.

⁴²⁹ See pp. 77–78.

⁴³⁰ See pp. 79, 94, 107.

⁴³¹ In the *ṭabaqāt* works, the two are placed in different "classes": 'Aṭā' in the second, 'Amr in the third *ṭabaqa* of Meccan scholars. Cf. Khalīfā ibn Khayyāt, *Ṭabaqāt*, pp. 280, 281.

⁴³² Cf. Schacht, *Origins*, pp. 65, 66, 249–252. Schacht devotes to him a total of one line (p. 66) and one note (p. 155, note 2).

authentic teachings and traditions of 'Aṭā's does earn his 'Amr ibn Dīnār traditions a certain amount of trust in advance, but nevertheless it is necessary and possible to ensure their genuineness through a number of indices. Here I follow the procedure, which I applied in the case of 'Aṭā', of feeling my way forward from external to internal formal criteria.⁴³³ Since the method has already been presented in detail there, the argumentation here can be somewhat shorter. As in the case of 'Aṭā', a complex of characteristics speaks for the authenticity of Ibn Jurayj's tradition from 'Amr. Each of them in itself, it is true, scarcely represents a convincing proof, but taken together they are overwhelming.

Against invention by Ibn Jurayj speaks the differing volume of the material which he claims to have from his informants. From 'Aṭā' he drew almost 40% of his entire tradition, from 'Amr ibn Dīnār only 7%.⁴³⁴ From other famous Meccan scholars of 'Amr's generation to whom it would have been obvious to refer, if only as fictive supports, he has widely differing quantities of traditions: from Ibn al-Zubayr about 4%, from Ibn abī Mulayka about 1%, from Mujāhid, Ibrāhīm ibn Maysara, 'Abd Allāh ibn 'Ubayd ibn 'Umayr or 'Ikrima, the *mawlā* of Ibn 'Abbās, on the other hand, only very little. This does not speak for systematic forgery.

The same is true when one compares the volumes of the textual tradition classified according to genre. With 'Aṭā' *responsa* and *dicta* were represented about equally.⁴³⁵ In the case of 'Amr, however, the *responsa* comprise only 8% of the stock, the *dicta*, on the other hand, 71%. While with 'Aṭā' pure *responsa* were the rule and questions following *dicta* the exception, in the 'Amr material the later predominate. In the genre of *dicta* Ibn Jurayj transmitted from 'Aṭā' about 70% pure *dicta* ('Aṭā's own opinion), but only 30% traditions (material from others); with 'Amr, on the other hand, only 16% are pure *dicta*, and the overwhelming majority of texts are traditions from others. In addition there is the genre of references and notes, in which 'Amr appears very frequently—they comprise a good quarter of Ibn Jurayj's 'Amr material—, but 'Aṭā' not at all. That is, even purely externally (in terms of genre and extent) Ibn Jurayj's 'Aṭā' and 'Amr traditions each have a very individual profile and differ strongly from

⁴³³ See Chap. III.B.1.

⁴³⁴ If one takes into account references and notes as well, 9.4%.

⁴³⁵ See p. 80.

each other. This speaks against fabrication by one and the same person. It is rather to be assumed that the different forms of tradition result from actual differences in the traditions themselves, their originators and their conditions of reception. Thus, for instance, the relatively small number of *responsa* and pure *dicta* and the high proportion of references and notes in the case of 'Amr can plausibly be explained by the fact that Ibn Jurayj, when he studied with 'Amr, already possessed in the teachings of 'Aṭā' an extensive legal opus, into which it did not make sense to integrate 'Amr's doctrines in extenso either for reasons of time or of cost—material to write on was rare: hence the many marginal notes and additions to the 'Aṭā' tradition. They are to be understood as residues of original *responsa* and *dicta* of 'Amr's, and compensate for the latter's conspicuously small number in comparison to the 'Aṭā' material. Someone who forged traditions and wanted to ascribe the same opinion to two authorities would hardly work with such notes, but would mention both of his authorities in the *isnād*, which indeed occurs in many traditions. Ibn Jurayj, too, occasionally makes use of such statements of provenance; for instance, he likes to summarize the concurring opinions of 'Amr ibn Dīnār and 'Abd al-Karīm al-Jazarī as one tradition and introduces it with "from 'Amr and 'Abd al-Karīm. They said: . . ." or the equivalent.⁴³⁶ Had it been Ibn Jurayj's concern to provide his own opinions and traditions or those which arose in his time with fabricated authorities and sources, he would surely have chosen this simpler method for all his forgeries.

Some internal formal criteria for the authenticity of Ibn Jurayj's 'Amr tradition, which speak for his credibility and precision in the reporting and transmission of the texts, are also available: 'Amr's additions to and divergences from 'Aṭā' in Ibn Jurayj's notes, 'Amr's commentaries on traditions transmitted by him, Ibn Jurayj's additions to traditions of 'Amr, uncertainties about exact wording and the naming of further authorities for the same tradition.

In most references to 'Amr Ibn Jurayj notes only that he "said the same" as 'Aṭā'.⁴³⁷ In a few cases, however, he makes note of additional statements of 'Amr's on the subject or contradictory opinions.⁴³⁸ This is hardly to be reconciled with the thesis of projection, since—

⁴³⁶ AM 6: 10395, 11494.

⁴³⁷ See p. 98.

⁴³⁸ Cf. AM 6: 10828, 11190, 11863, 11927; 7: 12881, 13069, 13701.

as already shown⁴³⁹—Ibn Jurayj always expresses his own opinion when he is not in agreement with a view of ‘Aṭā’s. ‘Amr’s divergences from ‘Aṭā’ will derive from actual differences of opinion or different ways of expressing their opinions.

The references to ‘Amr relate practically exclusively to pure questions of law, not traditions from others. But even with these there are special qualities which do not quite fit the theory of forgery. For a number of traditions which ‘Amr cites from older authorities, Ibn Jurayj makes note of comments of ‘Amr’s. This differentiation between tradition and commentary is an indicator against the assumption of forgery or back-projection of the ‘Amr texts by Ibn Jurayj. Some examples:

Ibn Jurayj said: ‘Amr ibn Dīnār transmitted to me (*akhbarani*) that he heard ‘Ikrima say: “‘Alī considered [his marriage to] Fāṭima permitted only because of [the bridal gift of] an iron breastplate (*badan*).” ‘Amr said: “To this he [‘Alī] added nothing [more as a bridal gift].”⁴⁴⁰

A forger would have put this specification directly into the mouth of ‘Ikrima.

Ibn Jurayj said: ‘Amr ibn Dīnār transmitted to me that he heard Abū Salama ibn ‘Abd al-Raḥmān say: “The Prophet (eulogy) forbid having a woman and her paternal or maternal aunt simultaneously as sexual partners.” ‘Amr said: “About the cousin on the father’s side (*bint ‘amm*) I have not heard anything.”⁴⁴¹

Ibn Jurayj said: ‘Amr ibn Dīnār transmitted to me that he heard ‘Ikrima, the *mawlā* of Ibn ‘Abbās, say: “Whatever (the) money allows to him [the husband] is no divorce.” He [‘Amr] said: “In my opinion he transmitted that to me only from Ibn ‘Abbās [i.e., it is not a statement of ‘Ikrima’s own].”⁴⁴²

Ibn Jurayj said: [...] [‘Amr] transmitted to us (*haddathanā*) that ‘Abd Allāh ibn al-Musayyab—Ibn Jurayj: or he said Ibn al-Sā’ib, I am not certain about it—al-‘Ā’idhī⁴⁴³ said to him⁴⁴⁴ [‘Abd Allāh ibn al-Zubayr?]:

⁴³⁹ See pp. 84 f.

⁴⁴⁰ AM 6: 10396.

⁴⁴¹ AM 6: 10754.

⁴⁴² AM 6: 11768.

⁴⁴³ ‘Abd Allāh ibn al-Sā’ib, who was a Meccan *qārī*, is probably correct; an ‘Abd Allāh ibn al-Musayyab is not attested. Cf. Ibn Ḥibbān, *Mashāḥir*, no. 631 (there, however, al-‘Ābidī) and Ibn Ḥajar, *Tahdhīb*, vol. 5, p. 229 (no. 393) (here: ‘Abd Allāh ibn al-Sā’ib ibn Abī l-Sā’ib Ṣayfī ibn ‘Ā’idhī [or: ‘Ābidī]).

⁴⁴⁴ I read “*qāla lahu*” instead of the meaningless “*laqāhu*.”

"She has no right to support." He [however] said: "Give her no support if you [do not] like."⁴⁴⁵

Such admissions of ignorance and uncertainty on the part of 'Amr and Ibn Jurayj as are made in the two last texts speak distinctly against the thesis that Ibn Jurayj fathered these traditions on 'Amr in order to have a well-known authority for them. They are, rather, indices of the precision with which Ibn Jurayj reports what he has heard from 'Amr. A further argument for this is provided by the differences between 'Amr and other authorities for the same tradition of which Ibn Jurayj occasionally makes note. Thus, for instance, he reports that the wife of a certain 'Abd al-Raḥmān ibn Mukmil, whom 'Amr ibn Dīnār designates as "ibnat Qāriḡ," according to 'Uthmān ibn abī Sulaymān had the name Juwayriya.⁴⁴⁶ This 'Uthmān is probably somewhat younger than 'Amr⁴⁴⁷ and relatively rarely attested as an informant of Ibn Jurayj's. Would a forger projecting traditions back onto famous authorities invent such insignificant details from almost unknown persons?

Just as little would one find, with a forger, uncertainties about the authorities themselves, like this one: Ibn Jurayj said: 'Amr or Abū l-Zubayr⁴⁴⁸ transmitted to me from Ibn 'Umar . . .⁴⁴⁹ The occasional naming of two authorities for the same tradition, like: "'Abd al-Karīm and 'Amr transmitted to me," "'Amr ibn Dīnār and Ibn Ṭāwūs," or "'Aṭā' and 'Amr"⁴⁵⁰ are also more plausible as indicators of accuracy than of forgery, since if Ibn Jurayj had had a need to reinforce traditions with further authorities one must ask oneself why he did this so seldom.

b. *Ibn 'Uyayna's tradition from 'Amr ibn Dīnār*

In the case of 'Aṭā' the testing of the genuineness of the texts had to be carried out on the basis of a single tradition, that of Ibn Jurayj, since only from him does a relatively large corpus of 'Aṭā' traditions exist in an early compilation. The situation is more favorable with

⁴⁴⁵ AM 7: 12084. The text is corrupt toward the end.

⁴⁴⁶ AM 7: 12196 (cf. also 14000). It is not impossible that both are correct.

⁴⁴⁷ Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 283 names him in the same *ṭabaqa*, Ibn Ḥibbān, *Mashāḥir*, No. 1119 in the same class with Ibn Jurayj.

⁴⁴⁸ The edition has Ibn al-Zubayr; this is probably an error.

⁴⁴⁹ AM 7: 13199.

⁴⁵⁰ AM 6: 10541, 11166; 7: 13612, 13998.

respect to 'Amr ibn Dīnār, from whom the *Muṣannaf* of 'Abd al-Razzāq contains two different strands of transmission: besides that of Ibn Jurayj also that of Ibn 'Uyayna. But it, too, is usable only if its autonomy and reliability can be assured.

After those of Ibn Jurayj, Ma'mar ibn Rāshid and Sufyān al-Thawrī, Ibn 'Uyayna's material is the fourth most extensive tradition in the *Muṣannaf* of 'Abd al-Razzāq. In comparison to the three first named it is more modest in extent—4.5%, compared to Ibn Jurayj's 29.3%⁴⁵¹—but it suffices to make its characteristics recognizable. Ibn 'Uyayna's main authority, from whom he transmits the most, is clearly 'Amr ibn Dīnār, who has a share of almost 23%, while the two next in rank—Ibn abī Najīḥ (Mecca) and Yaḥyā ibn Sa'īd (Medina)—come to only 8–9%. One can conclude from this that 'Amr, the eldest of the three, was probably the most important early teacher of Ibn 'Uyayna. He died in 126/743–4, Ibn 'Uyayna in 198/813–4.⁴⁵² The age difference of 72 years is considerable, but it is not impossible that Ibn 'Uyayna began his studies with 'Amr at the age of perhaps sixteen and lived to be 90 years old. If, on the basis of the difference in age, one advances the thesis that Ibn 'Uyayna's tradition from 'Amr is fictive, one must also have a plausible explanation by whom and why it was fathered specifically upon 'Amr and how the different characteristics brought to light by a comparison of the material transmitted by Ibn Jurayj and Ibn 'Uyayna came to be. The mere allegation of forgery does not do the job. The first person to come into question as a forger would be 'Abd al-Razzāq. But why should he have fabricated two strands of transmission in the case of 'Amr—one with an authority who, in terms of age, was close to the limits of the possible—, but for 'Aṭā' only one? Such questions and a number of others which—as I will yet demonstrate—emerge from Ibn 'Uyayna's 'Amr tradition for the advocates of the theory of forgery and projection and are hardly to be answered convincingly, leave the impression that this hypothesis creates more problems than it solves. Thus I prefer as a working hypothesis to consider 'Abd al-Razzāq as a student both of Ibn Jurayj and of Ibn 'Uyayna and these two as students of 'Amr ibn Dīnār.⁴⁵³

⁴⁵¹ On the basis of the calculations see pp. 58, 74, and 78, note 13.

⁴⁵² Cf. Khalīfa ibn Khayyāt, *ʿĀbaqāt*, pp. 281, 284.

⁴⁵³ Juynboll dismissed this conclusion (cf. his "New Perspectives," pp. 362–363). He argues that the age difference between Ibn 'Uyayna and 'Amr ibn Dīnār is so

If one compares Ibn 'Uyayna's tradition from 'Amr with that of Ibn Jurayj from the same person, a few differences are obvious. 'Abd al-Razzāq has twice as many texts from Ibn Jurayj as from Ibn 'Uyayna, not including Ibn Jurayj's notes in which he refers to 'Amr; there are no texts with such notes in the *Muṣannaf* from Ibn 'Uyayna. If one classifies the strands of transmission according to genres, it emerges that that of Ibn 'Uyayna is exclusively the material of others, i.e. *ḥadīths* and *āthār*, but does not contain one *dictum* or *responsum* by 'Amr himself. With Ibn Jurayj, on the other hand, there are both *responsa* (8%) and pure *dicta* (his own *ra'y*) (16%).⁴⁵⁴ The most plausible explanation for this seems to me to lie in the different interests of the two scholars. Because of his long study with 'Aṭā', Ibn Jurayj also received and transmitted 'Amr's legal opinions, while for Ibn 'Uyayna only his *ḥadīths* were worth passing on. This assumption is also supported by the observation that with Ibn Jurayj there are added to a number of 'Amr's traditions from others legally relevant commentaries of 'Amr's or *responsa* to questions from Ibn Jurayj, which are completely lacking with Ibn 'Uyayna. That a trend of development is reflected here can already be cautiously suggested.⁴⁵⁵ Finally, it is conspicuous that Ibn Jurayj's tradition from 'Amr is predominantly introduced by "*akhbaranī*" (almost 65%), "*qāla lī*" or "*sami'tu*," more rarely by a simple "*an*" (about 22%) or "*qāla*," while that of Ibn 'Uyayna contains exclusively "*an*" and no indication of *samā'*.

Purely *formally*, the two strands of transmission thus have different, individual faces, which does not speak for forgery by 'Abd al-Razzāq.

great that it is improbable that he really studied with him. According to Juynboll, Ibn 'Uyayna falsely claimed that 'Amr ibn Dīnār and Zuhri were his teachers. His arguments are: 1) Fictitious relationships between very old scholars and very young pupils are a commonly used device by traditionists to produce short and prestigious *isnāds*. 2) Except for one or two exceptions, it is not credible that so many relationships of this kind can really have existed because the environment was not healthy enough, hygienic circumstances not favorable enough and medical care not effective enough to allow such longevity of men. I discussed these arguments in "*Quo vadis Hadīth-Forschung*", pp. 61-64 in detail and showed that they are not convincing. Juynboll's explanation as to why Ibn 'Uyayna invented 'Amr as his teacher amounts to nothing more than speculation and Juynboll's answer to the question as to where Ibn 'Uyayna really got his 'Amr traditions from are not convincing either, as the following comparison between Ibn Jurayj's and Ibn 'Uyayna's 'Amr texts shows.

⁴⁵⁴ See p. 174.

⁴⁵⁵ On this see below, pp. 186, 205 f.

But—one might object—if both Ibn Jurayj and Ibn ‘Uyayna were transmitting from the same teacher, there must be a correspondence—at least partial—between the two traditions. *In terms of content*, this is in fact the case. In the *Muṣannaf* of ‘Abd al-Razzāq, for 43.5% of the ‘Amr traditions from Ibn ‘Uyayna parallels from Ibn Jurayj are attested.⁴⁵⁶ In addition, for 28% of the ‘Amr traditions from Ibn Jurayj which in the *Muṣannaf* have no variant from Ibn ‘Uyayna, these are present in other works through students of Ibn ‘Uyayna’s other than ‘Abd al-Razzāq—most from Sa‘īd ibn Manṣūr, some from al-Shāfi‘ī and others.⁴⁵⁷ That is, for over half of Ibn Jurayj’s traditions from ‘Amr in the *Muṣannaf* of ‘Abd al-Razzāq there exist parallel versions from Ibn ‘Uyayna—26.5% in this work itself, 28% in other collections. These parallels, however, are only sometimes completely identical. A number of textual differences are to be observed. In most cases, these constitute proof that the two strands of transmission are independent of each other. The possibility that the Ibn ‘Uyayna material derives from that of Ibn Jurayj and that Ibn ‘Uyayna passed him over in the *isnāds*, which would have been a simple solution to the problem of Ibn ‘Uyayna’s age, can be precluded.⁴⁵⁸

The divergences between Ibn Jurayj’s and Ibn ‘Uyayna’s parallel versions from ‘Amr can be classified into four types: 1. differing lengths of the *matn*, 2. divergences in the diction of the *matn* with the same meaning, 3. shifts in meaning and 4. differences in the *isnād*. For illustration, a few examples with commentary:

⁴⁵⁶ That is 26.5% of ‘Amr’s material from others transmitted by Ibn Jurayj in ‘Abd al-Razzāq.

⁴⁵⁷ Sa‘īd ibn Manṣūr’s tradition from Ibn ‘Uyayna is found in the former’s *Muṣannaf*, those of the others primarily in al-Bayhaqī’s *Sunan*. The calculation was made on the basis of the notes of the editor of ‘Abd al-Razzāq’s *Muṣannaf*, Ḥabīb al-Raḥmān al-A‘ẓamī. A large corpus of traditions from Sufyān is now available in al-Humaydī’s *Musnad*. Here further parallels are to be found.

⁴⁵⁸ Juynboll insists on it and considers it one of the two ways how Ibn ‘Uyayna made up his ‘Amr traditions (the other being invention); cf. his “New Perspectives,” p. 363. However, the comparison of Ibn Jurayj’s and Ibn ‘Uyayna’s tradition from ‘Amr does not speak in favour of his claim. This is not to say that Ibn ‘Uyayna obtained *all* of the traditions directly from ‘Amr. There are indications that he occasionally suppressed his informants. Cf. Ibn Hanbal, *‘Ital*, vol. 1, p. 320 (No. 2087). On this cf. also M. Cook, *Early Muslim Dogma*, p. 111. Yet even if Ibn ‘Uyayna received the few traditions from ‘Amr, which are completely identical with those transmitted by Ibn Jurayj, from the latter and falsely ascribed them directly to ‘Amr—a fact that should have been noticed and denounced by other students of Ibn Jurayj—these traditions by Ibn ‘Uyayna were not unreliable since Ibn Jurayj’s tradition from ‘Amr can be considered reliable for several other reasons. We would only lose an additional proof for these traditions.

In cases where the *matn* is largely identical, 'Abd al-Razzāq generally cites Ibn 'Uyayna's version immediately after that of Ibn Jurayj with an independent *isnād* but the remark "*mithlahu*" (the same), thus not repeating the text twice. E.g.:

'Abd al-Razzāq transmitted to us (*akhbaranā*) with the words (*qāla*): Ibn Jurayj transmitted to us with the words: 'Amr ibn Dīnār transmitted to me that he heard Ibn 'Umar being asked by a man: "Do one or two sucklings make [a woman] tabu for marriage?" [Ibn 'Umar] said: "We know only *that* the milk sister is tabu for marriage [, nothing about the number of sucklings]." A[nother] man said: "The Commander of the Believers—he meant Ibn al-Zubayr—claims that one or two sucklings do not [yet] make [a woman] tabu for marriage." Thereupon Ibn 'Umar said: "The decision of God is better than yours and that of the Commander of the Believers."⁴⁵⁹

Ibn 'Uyayna's parallel follows in the following form:

'Abd al-Razzāq from Ibn 'Uyayna from 'Amr ibn Dīnār from Ibn 'Umar and Ibn al-Zubayr the same.⁴⁶⁰

An example of minor differences in the *matn* with the same meaning, and simultaneously for differing lengths caused by an addition in one of the texts:

'Abd al-Razzāq transmitted to us (*akhbaranā*). He said (*qāla*): Ibn Jurayj transmitted to us. He said: 'Amr ibn Dīnār transmitted to us that Abū l-Sha'thā' said: "If the man transfers to his wife the power of disposal over herself (*mallaka amrahā*) and if the two leave that meeting before she says anything, she gains nothing by it (*fa-lā shay'a lahā*); if he takes back his offer (*amrahu*) before she says anything [in response to it], she [similarly] gains nothing by it."⁴⁶¹

The immediately following variant of Ibn 'Uyayna runs:

'Abd al-Razzāq from Ibn 'Uyayna from 'Amr ibn Dīnār from Abū l-Sha'thā'. He said: If the man transfers [*the power of disposal over herself*] to his wife (*mallaka*), that which she says in her meeting is valid. If the two part and she has said nothing, she gains nothing by it (*fa-lā amra lahā*). 'Amr said: [*In addition*] Abū l-Sha'thā' said: "How can [a man] go among people while the power of disposal over his wife (*amr imra'atihi*) is in the hand of another?"⁴⁶²

⁴⁵⁹ AM 7: 13919. Emphasis mine.

⁴⁶⁰ AM 7: 13920.

⁴⁶¹ AM 6: 11933.

⁴⁶² AM 6: 11934. The divergences are italicized.

The two texts display a number of verbal correspondances, but also such significant divergences—especially in the final sentences—that dependence on each other is unlikely. Both surely derive from the same source—‘Amr ibn Dīnār. The differences may either be caused by ‘Amr himself, if one assumes that he sometimes made quite free with his traditions, or by his students, who did not exactly reproduce his words and combined originally separate *dicta* of Abū l-Sha‘thā’. On the other hand, the possibility that ‘Abd al-Razzāq is responsible for the differences can be precluded in view of the many identical texts which he communicates.

The *isnāds* of ‘Abd al-Razzāq’s ‘Amr variants, it is true, rarely correspond in their formulae of transmission, but they usually correspond in their informants. Occasionally there are to be found especially noteworthy parallels like these:

‘Abd al-Razzāq from Ibn Jurayj. He said: ‘Amr ibn Dīnār transmitted to me that he heard ‘Ikrima, the *mawlā* of Ibn ‘Abbās, say: “Whatever (the) money allows to him [the husband] is no divorce.” He [‘Amr] said: “In my opinion he transmitted that to me only from Ibn ‘Abbās [i.e., it is not a statement of ‘Ikrima’s own].”⁴⁶³

Ibn ‘Uyayna’s text:

‘Abd al-Razzāq from Ibn ‘Uyayna from ‘Amr ibn Dīnār from ‘Ikrima—I think (*aḥsabuhu*)—from Ibn ‘Abbās: “Everything which (the) money allows is no divorce”—he meant buying free [from marriage] (*khulʿ*).⁴⁶⁴

Ibn ‘Abbās’ reservedly communicated authorship, which is formulated by Ibn Jurayj as an additional comment of ‘Amr’s, with Ibn ‘Uyayna stands in the *isnād* itself. Since—as shown on the basis of the texts—the two corpora of traditions are independent of one another, such a correspondence in a detail of the *isnād* speaks for credible and relatively accurate transmission by the two students from their teacher, and against sweeping hypotheses of forgery.

It is just as difficult to judge the authorship of divergences in the *isnād* as it is in the case of those in the *matn*. There are two types of *isnād* divergences: 1. another informant at one place in the *isnād*, 2. an informant in place of a lacuna in the *isnād*.

⁴⁶³ AM 6: 11768.

⁴⁶⁴ AM 6: 11770.

The *isnāds* of one and the same tradition of ‘Ā’isha display a divergence which is at first difficult to explain:

‘Abd al-Razzāq—Ibn Jurayj—‘Amr ibn Dīnār—al-Zubayr ibn Mūsā ibn Mīnā’—*Umm Sālih bint ‘Alqama ibn al Murtafi*—‘Ā’isha,⁴⁶⁵ but ‘Abd al-Razzāq—Ibn ‘Uyayna—‘Amr ibn Dīnār—al-Zubayr ibn Mūsā—*Umm Ḥakīm bint Ṭāriq*—‘Ā’isha.⁴⁶⁶

Since such cases of *isnād* divergence are extremely rare in the ‘Amr material, conscious forgery by ‘Abd al-Razzāq—for instance, with the purpose of enhancing the value of the tradition with different *isnāds*—is not very likely. One should in that case be able to observe it with him more often. One might, of course, think of a confusion by ‘Amr himself, but to me it seems most probable that it is a copying error. Umm Ḥakīm was incorrectly identified as Umm Šālih or vice versa, as can easily happen with bad handwriting. Her father was probably Ṭāriq ibn ‘Alqama al-Muraqqi’ (the cobbler), an early Meccan *tābi*.⁴⁶⁷ His name was clearly received by the transmitters only fragmentarily and defectively—whether already by Ibn Jurayj and Ibn ‘Uyayna or at a later stage of the textual history cannot be determined with certainty.

Another interesting *isnād* divergence for a largely identical *matn* is the following:

‘Abd al-Razzāq—Ibn Jurayj—‘Aṭā’ and ‘Amr—al-Ḥārith ibn ‘Abd Allāh—*his father ‘Abd Allāh ibn abī Rabi’a*—‘Umar ibn al-Khaṭṭāb,⁴⁶⁸

beside

‘Abd al-Razzāq—Ibn ‘Uyayna—‘Amr ibn Dīnār—al-Ḥārith ibn ‘Abd Allāh ibn abī Rabi’a—*‘Abd Allāh ibn ‘Umar ibn al-Khaṭṭāb*.⁴⁶⁹

Schacht’s adherents would probably declare the latter to be older since it reaches back less far, without bothering themselves with the fact that Ibn Jurayj was considerably older than Ibn ‘Uyayna. But there are indicators which speak for the assumption that Ibn Jurayj’s version is the original and that of Ibn ‘Uyayna is based on an error

⁴⁶⁵ AM 7: 13869.

⁴⁶⁶ AM 7: 13870.

⁴⁶⁷ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 280.

⁴⁶⁸ AM 7: 13612.

⁴⁶⁹ AM 7: 13613.

in copying or in recollection. It is decisive that for the version of Ibn Jurayj there is not only 'Aṭā' in addition to 'Amr as an authority, but also a further independent tradition of 'Abd al-Razzāq with the Meccan *isnād* "al-Muthannā ibn al-Ṣabāḥ—Ikrima ibn Khālid—al-Ḥārith ibn 'Abd Allāh—his father—'Umar."⁴⁷⁰ On the other hand, an inadvertant change from "al-Ḥārith ibn Abd Allāh *'an abīhi* 'Abd Allāh ibn abī Rabī'a *annahū sa'ala* 'Umar ibn al-Khaṭṭāb" to "al-Ḥārith ibn Abd Allāh ibn abī Rabī'a *annahū sa'ala* 'Abd Allāh ibn 'Umar ibn al-Khaṭṭāb" is imaginable: "*'an abīhi*" was overlooked, and as a result "'Abd Allāh" had to switch places. It also speaks for this that in our source the name element "ibn al-Khaṭṭāb" is customary only with 'Umar; with Ibn 'Umar, on the other hand, it would be out of the ordinary. From whom the error derives cannot at the moment be determined; it could even have been made after 'Abd al-Razzāq.

This type of *isnād* divergence thus supplies no argument for the hypothesis of forgery. This might more likely be the case with the second type, the filling of lacunae. It is conspicuous that precisely in the case of two *ḥadīths* of the Prophet Ibn 'Uyayna's version is more complete than Ibn Jurayj's by one link each:

1. 'Abd al-Razzāq—Ibn Jurayj—'Amr ibn Dīnār—the Prophet, but: 'Abd al-Razzāq—Ibn 'Uyayna—'Amr ibn Dīnār—*Abū Ja'far*—the Prophet.⁴⁷¹ According to the Muslim classification of *isnāds* the first is *muḍdal*, i.e. it is lacking two links between the Prophet and 'Amr; the second is nevertheless still *mursal*, i.e. it lacks the transmitter link of the *ṣaḥāba* level.⁴⁷²

2. 'Abd al-Razzāq—Ibn Jurayj—'Amr ibn Dīnār—Abū Salama ibn 'Abd al-Raḥmān—the Prophet, but 'Abd al-Razzāq—Ibn 'Uyayna—'Amr ibn Dīnār—Abū Salama ibn 'Abd al-Raḥmān—*Abū Hurayra*—the Prophet.⁴⁷³ Here a *mursal isnād* becomes continuous or flawless (*muttaṣil marfū'*).

⁴⁷⁰ AM 7: 13614.

⁴⁷¹ AM 7: 13266 and 13267. Emphasis mine.

⁴⁷² Abū Ja'far very probably means: Muḥammad ibn 'Alī ibn Ḥusayn ibn 'Alī ibn abī Ṭālib (d. 118/736), who had the *kunya* Abū Ja'far. Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 255. Ibn 'Uyayna names him several times as an informant of 'Amr's for traditions of 'Alī and the Prophet, but not Ibn Jurayj, at least not in the texts studied.

⁴⁷³ AM 6: 10754, 10755. Emphasis mine.

In both cases, the suspicion is not to be dismissed that the younger and more *Ḥadīth*-oriented Ibn 'Uyayna improved 'Amr's *isnād* with the authority who in his opinion was best suited.⁴⁷⁴ This pious fraud, branded by the later Muslim *Ḥadīth* criticism as a form of *tadlīs* (suppression of faults), was frequently used in the second/eighth century, especially with *ḥadīths* of the Prophet. This type of *isnād* forgery must, however, not tempt us generally and sweepingly to reject the traditions of these transmitters. On the one hand these are only individual cases which probably affect above all the *ḥadīths* of the Prophet, on the other hand they are not invented texts or projections onto the Prophet. The fact that 'Abd al-Razzāq cites both versions is a further argument for the exactitude and credibility of his transmission.

The comparison between the two strands of transmission from 'Amr ibn Dīnār shows that Ibn 'Uyayna is generally to be regarded as a trustworthy and credible transmitter from 'Amr and that he should not *a priori* be supposed to have committed *matn* and *isnād* forgery. He is a source independent of Ibn Jurayj for the traditions of 'Amr ibn Dīnār, but not for his legal teachings that were not supported by traditions. Texts of 'Amr's which are preserved both from Ibn Jurayj and from Ibn 'Uyayna agreeing either word for word or in meaning can be considered genuine; those which are transmitted from only one of the two can be considered credible until proof of the contrary. Caution is necessary only with respect to Ibn 'Uyayna's *isnāds*—especially with *ḥadīths* of the Prophet—when they are nearly flawless and no parallel from Ibn Jurayj is attested.

2. *Characteristics of 'Amr ibn Dīnār's legal scholarship and its significance for the history of Islamic jurisprudence*

a. *General characteristics*

It can be gathered from Ibn Jurayj's questions to 'Amr that instruction with him proceeded very much as with 'Aṭā'. 'Amr presented his own views and reports of opinions, modes of behavior, verdicts and advice of the previous generations of Muslims, and his students

⁴⁷⁴ The Prophetic *ḥadīth* is found in Muslim's *Ṣaḥīḥ*, also continuous, with the *isnād* ending: Yahyā ibn abī Kathīr—Abū Salama ibn 'Abd al-Raḥmān—Abū Hurayra—Prophet (cf. AM 6: 10755, note). Possibly Ibn 'Uyayna used this version as a model.

could ask questions about them or on other subjects.⁴⁷⁵ In contrast to Ibn Jurayj's texts from 'Aṭā', in those from 'Amr there are no *responsa* to questions from other students. This does not necessarily mean that Ibn Jurayj had private instruction with 'Amr, but probably has to do with the fact that he did not record 'Amr's legal teachings as thoroughly as those of 'Aṭā' and his tradition from him is overall not as extensive.⁴⁷⁶

If one classifies the entirety of Ibn Jurayj's 'Amr material into 'Amr's own legal opinions and material from others, there emerges a preponderance of 58% reports from others over 'Amr's legal statements (*dicta*, *responsa*, notes) (42%). Even if one takes into account a minor deficit in Ibn Jurayj's transmission of 'Amr's legal teachings, the proportion is conspicuous in comparison to 'Aṭā', with whom material from others comprises at most 20%. One may probably interpret the difference to mean that the younger 'Amr ibn Dīnār in his instruction more often supported himself with traditions than 'Aṭā' had done, although—as has been mentioned—in the case of the latter, too, greater consideration of Tradition became apparent at the end of his life.⁴⁷⁷ Here there becomes visible a development which—as will yet be shown—is steadily continued by Ibn Jurayj: the supplementing, supporting, or replacing of one's own legal opinion (*ra'y*) with legal Tradition (*ḥadīth*, *athar*, *khabar*).

A comparison of 'Amr's legal statements with those of 'Aṭā' reveals that there is a large degree of correspondence between the two. The cases in which 'Amr expressed an opinion different from 'Aṭā's scarcely amount to 10%. This shows that in Mecca at the latest in the first quarter of the second/eighth century there was already a kind of local *ijmā'* in many questions of law, a thesis which I have already suggested in the discussion of 'Aṭā's anonymous traditions and which is confirmed by the 'Amr tradition. This extensive consensus certainly results in part from the fact that as a teacher of law 'Aṭā' was a recognized authority from whom younger scholars took their orientation. Since 'Amr—if only seldom—transmits from 'Aṭā', he must for a time have numbered among his circle of students. Another component is perhaps to be sought in the fact that both of

⁴⁷⁵ Cf. AM 6: 10541, 10963, 10972, 11190, 11768; 7: 12736, 13625.

⁴⁷⁶ It should also be taken into account that I have not evaluated Ibn Jurayj's entire tradition from 'Amr, but only a representative selection.

⁴⁷⁷ See pp. 107, 122.

them come from a common local legal tradition, which then must already have developed in the first century. Whether this hypothesis will hold can be tested by an investigation of the sources to which 'Amr ibn Dīnār refers and a comparison with 'Aṭā's sources. Such an analysis of sources may—as already demonstrated on the example of 'Aṭā—also shed some light on the early development of the body of Tradition in general.

b. *'Amr ibn Dīnār's sources*

The analysis of 'Amr's sources is based on both strands of tradition of the *Muṣannaf* of 'Abd al-Razzāq, but treats texts with the same content and *isnād* as a tradition complex. By "sources" I mean in this context—as previously in the chapter on 'Aṭā—sources of law, i.e. authorities whom 'Amr cites as positive or negative precedents in order to illustrate or justify a legal position. In the majority of cases—in the tradition of Ibn 'Uyayna in general—the legal situation is not further commented upon, rather, the source is simply cited, from which the legal background generally emerges. More rarely, traditions occur which are so condensed that their problem can only be inferred from the context where they are found in the collection used.

If one investigates which authorities are named how often, there emerges a somewhat different picture than in the case of 'Aṭā'.⁴⁷⁸ As with him, the Companions of the Prophet do stand in first place (37%, with 'Aṭā' 15%), but they are followed neither by the Qur'ān nor by the Prophet, but by the *tābi'ūn* (28%), whom in the case of 'Aṭā' I characterized as his contemporaries—which is still true in the case of 'Amr—and who with the former played only a very subordinate role (1.5–2%). The *ḥadīths* of the Prophet, as with 'Aṭā' (5%), take third place (10%),⁴⁷⁹ while references to the Qur'ān, which with 'Aṭā' were relatively frequent (10%), appear only sporadically (1–2%) in the tradition from 'Amr. In comparison with 'Aṭā's legal sources, the great significance of scholars of the *tābi'ūn* level is unmistakable. An interpretation of this statistical finding is appropriate only after a more detailed investigation of the individual groups of sources.

⁴⁷⁸ On 'Aṭā's sources, see p. 140.

⁴⁷⁹ The percentage includes all of 'Amr's traditions of the Prophet in the textual selection. Some of them are mainly biographical in character. If one takes into account only the legally relevant *ḥadīths*, it is 7%.

The Companions of the Prophet

The scale of frequency of 'Amr's traditions from and references to the Companions of the Prophet is informative: Ibn 'Abbās (36%), 'Umar (26%), 'Alī (17%), Ibn 'Umar (11%), 'Uthmān, 'Ā'isha, Ḥafṣa, Fāṭima and anonymous *ṣaḥāba* 2% each. With 'Aṭā', at the top of the scale there was a very similar picture: Ibn 'Abbās dominated, followed by 'Umar and 'Alī; with 'Amr, Ibn 'Umar then takes the place of 'Ā'isha. This statistic is also significant, and explanations can be offered why, for instance, Ibn 'Abbās plays such a paramount role with 'Amr as well, or for what reason Ibn 'Umar is mentioned more often than 'Ā'isha.

Since it has been possible to demonstrate the authenticity of the 'Amr ibn Dīnār tradition in the *Muṣannaf* of 'Abd al-Razzāq, it is to be assumed that the traditions from the *ṣaḥāba*, the *tābi'ūn* and the Prophet that are traced back to him were actually transmitted by him to his students. His date of death, 126/743-4, is the *terminus ante quem* for their time of origin. It remains to be checked whether he himself invented them and brought them into circulation, and if not where he got them.

In the case of the traditions from Ibn 'Abbās, in about two thirds of all instances 'Amr names a source from whom he got them. They are usually known as students and clients of Ibn 'Abbās: 'Ikrima (d. 105/723-4),⁴⁸⁰ Ṭāwūs (d. 106/724-5),⁴⁸¹ 'Aṭā' ibn abī Rabāḥ (d. 115/733),⁴⁸² Abū Ma'bad (d. 104/722-3),⁴⁸³ Mujaḥid (d. 103/721-2 or 104/722-3),⁴⁸⁴ Abū l-Sha'thā' [Jābir ibn Zayd] (d. 93/711-2).⁴⁸⁵ Can one trust these statements of origin? Several indices speak for this: 1. 'Amr ibn Dīnār is supposed to have been born around the year 46/666-7,⁴⁸⁶ and Ibn 'Abbās to have died in the year 68/687-8.⁴⁸⁷

⁴⁸⁰ AM 6: 10852, 11768; 7: 12736. The dates of death in the biographical literature sometimes vary by a couple of years. Here and below I limit myself, for the sake of simplicity, to the data in Khalīfa ibn Khayyāt's *Ṭabaqāt*.

⁴⁸¹ AM 6: 11166, 11771 (?); 7: 12852.

⁴⁸² AM 6: 10895; 7: 13218.

⁴⁸³ AM 7: 12812, 12843.

⁴⁸⁴ AM 7: 13615.

⁴⁸⁵ AM 6: 10895. For the Abū Yaḥyā, *mawlā* of Mu'adh [ibn 'Afrā'] named in AM 6: 11609 (cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 163), neither an exact date of death (ca. first quarter of the second century) nor information about his relationship to Ibn 'Abbās are to be found.

⁴⁸⁶ Cf. al-Dhahabī, *Tadhkira*, vol. 1, p. 113.

⁴⁸⁷ Op. cit., p. 41.

Thus, in his youth he may still have met and heard him in Mecca, as is in fact occasionally asserted in the biographical literature.⁴⁸⁸ Why, then, should he have fabricated sources for Ibn 'Abbās, when he could refer to him directly? 2. In almost a third of his Ibn 'Abbās traditions 'Amr names no source, but neither does he claim to have them directly from him,⁴⁸⁹ although he otherwise likes to emphasize his *samā'* with formulae like "*sami'tu X yaqūl*" (I heard X say) or "*akhbaranī X*" (X transmitted to me). Consequently, there was no necessity for him to invent sources. 3. Examples in which 'Amr admits that he is not quite sure whether a statement comes from 'Ikrima himself or through his mediation from Ibn 'Abbās, or whether he really got a *dictum* of Ibn 'Abbās from 'Aṭā',⁴⁹⁰ speak against an assumption of forgery. 4. 'Amr also cites personal legal opinions from most of the sources named for Ibn 'Abbās, and in some texts differentiates between Ibn 'Abbās' statement and additions by the informant,⁴⁹¹ i.e. his Ibn 'Abbās traditions are not projections of legal opinions of ostensible students of Ibn 'Abbās onto the master himself, since if one assumes that it is hardly explicable why he transmits personal material from his sources for Ibn 'Abbās at all and does not attribute everything to Ibn 'Abbās.

I thus see no plausible reason why 'Amr's statements about the origin of specific traditions from Ibn 'Abbās should not be credible. This does not mean that *all of them* are genuine statements of Ibn 'Abbās. It is not possible to prove this on the basis of the textual selection I have used, since it contains too few of 'Amr's Ibn 'Abbās traditions. That would require a separate investigation of the entire *Muṣannaf*. However, several points can be asserted which speak for the credibility of the traditions of Ibn 'Abbās' above-mentioned students from and about him: firstly, it could be shown that the 'Aṭā'—Ibn 'Abbās tradition of the younger Ibn Jurayj is in all probability genuine.⁴⁹² Since—as has been observed—there are no grounds to doubt 'Amr's references to students of Ibn 'Abbās like 'Aṭā', the 'Aṭā'—Ibn 'Abbās tradition of the elder 'Amr can also—until proof

⁴⁸⁸ Cf., for instance, al-Dhahabī, as cited in note 486.

⁴⁸⁹ AM 6: 10928; 7: 12084, 12737, 13102, 13903.

⁴⁹⁰ AM 6: 11768 (also see p. 176); 7: 13218.

⁴⁹¹ E.g. AM 7: 12736.

⁴⁹² See pp. 140–146.

of the contrary—be approached with confidence. Secondly, for ‘Amr’s more important sources for Ibn ‘Abbās texts the authenticity of their citations from him can be proven *in individual cases*. Compare the following two texts:

Ibn Jurayj from ‘Amr ibn Dīnār, that ‘Ikrima, the *mawla* of Ibn ‘Abbās, reported to him (*akhbarahu*): “Ibn ‘Abbās saw no harm in a man’s having two sisters or a (the) woman and her daughter simultaneously [as concubines].” [. . .].⁴⁹³

Ibn Jurayj from ‘Amr ibn Dīnār, that he heard Abū l-Sha‘thā’ [say] that he did *not* like Ibn ‘Abbās’ view (*ra’y*) on simultaneous [concubinage with two sisters or mother and daughter].⁴⁹⁴

Here a legal opinion of Ibn ‘Abbās’ is independently documented by two of his students, ‘Ikrima and Abū l-Sha‘thā’, and Abū l-Shā‘thā’s distancing himself from it shows that it was actually his opinion, otherwise he would probably have disputed its authenticity.

In connection with Ibn Jurayj’s ‘Atā’—Ibn ‘Abbās tradition, Ibn ‘Abbās’ opinion on *mu‘a* marriage has already been mentioned and arguments for the authenticity of the corresponding reports have been adduced.⁴⁹⁵ One part of it runs:

Ibn Jurayj said: [. . .] ‘Atā’ said: [. . .] [Ibn] Ṣafwān said [about *mu‘a* alliances]: “Ibn ‘Abbās declares that to be fornication in his legal opinions.” Ibn ‘Abbās said [when that reached him]: “I do not declare that to be fornication in my legal opinions! Has [Ibn] Ṣafwān forgotten Umm Urāka? By God! Her son [comes] from that [man]! Is he perhaps a [child of] fornication?” [‘Atā’] said: “A man of the Banū Jumaḥ contracted a *mu‘a* marriage with her.”⁴⁹⁶

There is a counterpart to this tradition from ‘Amr ibn Dīnār:

Ibn Jurayj said: ‘Amr ibn Dīnār reported to me from Ṭāwūs from Ibn ‘Abbās the words (*qāla*): Only Umm Urāka frightened the Commander of the Faithful ‘Umar when she went out pregnant. ‘Umar asked her about [the origin of] her pregnancy. She answered: “Salama ibn Umayya ibn Khalaf contracted a *mu‘a* marriage with me (*istamta‘a bī*).” When [Ibn] Ṣafwān disputed with Ibn ‘Abbās part of what he said,

⁴⁹³ AM 7: 12736.

⁴⁹⁴ AM 7: 12738. Emphasis mine.

⁴⁹⁵ See pp. 142–146.

⁴⁹⁶ AM 7: 14022.

he said: "Ask your paternal uncle whether he contracted a *mu'ā* marriage."⁴⁹⁷

On the basis of their differences, the two traditions are to be regarded as independent of one another. A glance into the biographical literature shows that the contradictions between the two versions are based on imprecisions in transmission: "a man of the Banū Jumāḥ" is Salama ibn Umayya ibn Khalaf ibn Wahb ibn Ḥudhāfa ibn Jumāḥ, a Companion of the Prophet like his brother Ṣafwān, who is supposed to have died in the year 42/662-3 in Mecca.⁴⁹⁸ His son, Salama's nephew, must be the one who criticized Ibn 'Abbās' opinion about the *mu'ā* relationship. This is also confirmed by another Ṭāwūs tradition which Ibn Jurayj has from Abū l-Zubayr, which names Ibn Ṣafwān as an antagonist of Ibn 'Abbās.⁴⁹⁹ Who committed the error of substituting Ṣafwān for Ibn Ṣafwān cannot be said exactly. Possibly 'Abd al-Razzāq or later copyists are responsible.

The correspondences between the traditions of 'Aṭā' and Ṭāwūs from Ibn 'Abbās are, on the other hand, so conspicuous that the same incident must underlie both of them. Both are thus to be regarded as credible Ibn 'Abbās traditions. The fact that genuine Ibn 'Abbās traditions from 'Ikrima, Abū l-Sha'thā', Ṭāwūs and 'Aṭā' can be shown to exist in the tradition of 'Amr ibn Dīnār throws a favorable light on the credibility of these teachers of his and on his sources for Ibn 'Abbās in general. Until proof of the contrary, I thus assume that 'Amr's Ibn 'Abbās tradition is authentic. i.e. really goes back to the latter.

Neither are there any reservations against this assumption from the point of view of genre and content. Three-fourths of all texts are legal *dicta*. In addition to these, there are some legal opinions (*fatāwā*), in which either the questioner or the case is specifically mentioned.⁵⁰⁰ Examples which show Ibn 'Abbās in his family circle are reported primarily from his *mawla* Abū Ma'bad. In a number of texts Ibn 'Abbās argues through Qur'ānic verses,⁵⁰¹ and a *qirā'a*

⁴⁹⁷ AM 7: 14024.

⁴⁹⁸ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, pp. 24, 278.

⁴⁹⁹ AM 7: 14027.

⁵⁰⁰ AM 7: 12084, 12736; 6: 11771 (here instead of "I asked Ibrāhīm ibn Sa'd ibn 'Abbās," one should probably read "Ibrāhīm ibn Sa'd asked Ibn 'Abbās.").

⁵⁰¹ Cf. AM 6: 10852, 11771; 7: 12736, 12737.

diverging from the *textus receptus* is also transmitted from 'Amr.⁵⁰² With the exception of the above-mentioned reaction of 'Umar's to the *mu'a* alliance of Umm Urāka,⁵⁰³ there are, however, no traditions from others in 'Amr's Ibn 'Abbās material. From the point of view of form, 'Amr's Ibn 'Abbās tradition thus resembles that of 'Aṭā',⁵⁰⁴ independently of the overlaps in content. This, too, is an argument in favor of its genuineness.

For his traditions from the caliph 'Umar ibn al-Khaṭṭāb, who is the most often-cited Companion of the Prophet after Ibn 'Abbās, 'Amr usually but not always states their provenance. Very few of his *isnāds* are beyond reproach by the standards of the Muslim *Ḥadīth* criticism of the third/ninth century. Usually the last link before 'Umar is weak, whether it be that the sources named could not for reasons of age have the material reported directly from 'Umar, like for example his Medinan suppliers of 'Umar traditions Ibn al-Musayyab, Sulaymān ibn Yasār and Ibn Shihāb, or that the eye or earwitness is anonymous or not definitely identifiable.

Two examples of the latter:

a) 'Abd al-Razzāq—Ibn Jurayj—'Amr ibn Dīnār—'Amr ibn Aws—a *man of Thaḡf*—'Umar.⁵⁰⁵

b) 'Abd al-Razzāq—Ibn Jurayj—'Amr ibn Dīnār—Muḥammad ibn 'Abbād ibn Ja'far: al-Muṭṭalib ibn Ḥantab came to 'Umar and said . . .⁵⁰⁶

The first *isnād* contains before 'Umar an anonymous person; the second leaves it open whether Muḥammad ibn 'Abbād ibn Ja'far has the story directly from his fellow-tribesman—both belong to the Banū Makhzūm—the *ṣaḥābī* al-Muṭṭalib ibn Ḥantab. Only a few of the *isnāds* of 'Amr's 'Umar tradition are as unobjectionable as the already mentioned: Ibn Jurayj—'Amr ibn Dīnār—Ṭāwūs—Ibn 'Abbās—'Umar,⁵⁰⁷ in which, however, Ibn 'Abbās by no means claims

⁵⁰² AM 6: 10928. This *qirā'a* is also attested from Ibn 'Umar by 'Abd Allāh ibn Dīnār (see p. 134).

⁵⁰³ See pp. 190 f.

⁵⁰⁴ See p. 141.

⁵⁰⁵ AM 7: 12874. Emphasis mine. On 'Amr ibn Aws cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 286.

⁵⁰⁶ AM 6: 11175. On Muḥammad ibn 'Abbād ibn Ja'far and al-Muṭṭalib ibn Ḥantab cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, pp. 245, 281. Ibn Ḥibbān, *Mashāḥir*, no. 199.

⁵⁰⁷ See p. 190 f.

to have been a witness, or the *isnād* Ibn Jurayj—‘Aṭā’ and ‘Amr—al-Ḥārith ibn ‘Abd Allāh—his father ‘Abd Allāh ibn abī Rabī‘a—‘Umar.⁵⁰⁸

These facts show that ‘Amr was, in fact, familiar with the procedure of providing a tradition with a chain of sources reaching the authority named in it, but that either he was not always in a position to provide a continuous *isnād*, or the standard for a satisfactory chain of transmitters in his time did not yet correspond to that which was later demanded by *Hadīth* criticism. The two are not mutually exclusive. Although ‘Amr names sources for most of the ‘Umar and Ibn ‘Abbās traditions, there are some without any *isnād* at all. This speaks for the assumption that he endeavored to name his sources, but was not always able or willing to do so, be it that he could no longer remember from whom he had the tradition in question or that for other reasons it seemed to him inopportune to state its provenance, e.g. when he had obtained it from a little-known contemporary without an *isnād*. The occasional lack of *isnāds* is, on the other hand, an indication that he was under no compulsion to name his sources even at the expense of truth.

His Medinan *isnāds* Ibn al-Musayyab—‘Umar, Sulaymān ibn Yasār—‘Umar or even Ibn Shihāb—‘Umar, on the other hand, lead one to suspect that he considered the traditions of these famous scholars to be acceptable even when they were not direct witnesses of what they reported. One may suppose that ‘Amr had received these texts directly from the Medinans mentioned, since there are also examples of indirect transmission from them, like this one: ‘Amr ibn Dīnār ‘Abd Allāh ibn abī Salama⁵⁰⁹—Sulaymān ibn Yasār—‘Umar.

From these considerations results the conclusion that one may lend credence to ‘Amr’s statements about the provenance of his ‘Umar traditions. This also means that these were already in circulation in the lifetimes of his sources—i.e., in some cases as early as the first/seventh century.

Whether ‘Amr’s ‘Umar traditions are historical in the sense that they report actual events and statements of ‘Umar’s can only be

⁵⁰⁸ See p. 183.

⁵⁰⁹ The father of ‘Abd al-‘Azīz al-Mājjishūn, the well-known Medinan *faqīh*, who died in the middle of the second/eighth century. Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 268. Ibn Ḥibbān, *Mashāḥir*, no. 1087.

judged in rare cases in which complete statements about transmitters reaching into the time of 'Umar's caliphate are present, as for example with the Umm Urāka story to which Ibn 'Abbās alludes.⁵¹⁰

Seen from the point of view of the genres to which the 'Umar traditions are to be attributed, the majority could be historical. Most are legal verdicts or opinions—it cannot always be determined precisely—or relics of such which suggest by the naming of people involved or other information that concrete incidents underlie them. But all of this can also be invented, and for this reason genre analysis alone does not provide decisive criteria for the determination of the historicity of the reports.

The situation is very similar with respect to 'Amr's 'Alī traditions. For the majority he does name a Meccan ('Ikrima), Kufan (Sa'īd ibn Jubayr)⁵¹¹ or Medinan (Abū Ja'far)⁵¹² source, but in general, for reasons of age, they were probably not in direct contact with 'Alī; neither is this claimed by any of the people named. It is true that 'Ikrima, the *mawla* of Ibn 'Abbās, according to the biographical works was seventeen years old at 'Alī's death, but Abū Ja'far and Sa'īd ibn Jubayr were born only after it. The latter in fact emphasizes that he has the report about 'Alī from unnamed sources: "*balaghani*" (it reached me). That 'Amr actually has these traditions from the people named is to be assumed for the same reasons as in the case of his 'Umar traditions; this also means that in general they derive from the second half of the first century. It is, of course, possible that they report things which really happened, but their historicity is not ensured. Clearly it was enough for 'Amr that such reports were vouched for by members of 'Alī's family—Abū Ja'far was a grand-nephew of 'Alī's⁵¹³—or respected scholars of the generation after him.

A curious text deserves special mention: 'Alī's testament about his concubines.⁵¹⁴ 'Amr transmits it without a statement of provenance. It makes the impression of a verbatim excerpt from his will. The text is preceded by the sentence: "If something befalls me in this military venture," which might have stood on the recto of the folded

⁵¹⁰ See pp. 190 f.

⁵¹¹ AM 6: 10396, 11631.

⁵¹² AM 6: 10352; 7: 13271, 13544.

⁵¹³ See p. 184, note 472.

⁵¹⁴ AM 7: 13213.

document and may have served as a heading for the text. The actual text begins with "*amma ba'du*" and ends with the naming of two witnesses and the date.

'Abd al-Razzāq from Ibn 'Uyayna from 'Amr ibn Dīnār. He said: 'Alī wrote in his testament (*waṣīya*):—If something befalls me in this military venture (*ghazwa*)—I have nineteen slave women with whom I have (sexual) intercourse, among them mothers of children who have their children with them, pregnant women and those who have no children. I decree: if something befalls me in this military venture, those who are not pregnant and have no children shall be unconditionally (*li-wajhi llāhi*) free. No one shall have a right to them. Those who are pregnant or have a child shall be held with their child (*tuhbasu*). They belong to his share [of the inheritance]. If their child dies while they are still alive, they are unconditionally free. I decree this over my nineteen slave women by God, from whom I ask protection (*wa-llāhi l-mustā'ān*). Witnessed by Hayāj ibn abī Sufyān and 'Ubayd Allāh ibn abī Rāfi'. It was written in Jumādā of the year 37.

The content of this testamentary passage is reported without a statement of origin by 'Aṭā' as well, who, however, states that he inquired from 'Alī's great-nephew Muḥammad ibn 'Alī ibn Ḥusayn whether this was really in 'Alī's testament, which he affirmed.⁵¹⁵ Such a document must thus have existed around the turn of the first/seventh century. If it is a forgery, it would have to have originated in 'Alī's family. On the other hand, it is conspicuous that the provisions of the testament—e.g., that his concubines who were pregnant by him or had living children after his death should not be free but a component of their children's portion of the inheritance, as long as the latter lived—correspond to the teachings and verdicts of Meccan legal authorities of the first/seventh century like Ibn 'Abbās and 'Abd Allāh ibn al-Zubayr, as vouched for by 'Aṭā',⁵¹⁶ and that the testament was transmitted precisely by Meccan *fuqahā'* like 'Aṭā' and 'Amr, who presumably do not come into question as its forgers. Now, one cannot assume that the 'Alid family produced a forged testament in order to identify itself with the legal opinions of an Ibn 'Abbās or Ibn al-Zubayr. Rather, one can conclude that the fate of the *umm walad* was a legal problem which arose very early and was already solved in some fashion by individual Companions of the

⁵¹⁵ Cf. AM 7: 13212.

⁵¹⁶ Cf. AM 7: 13216–13218, 13220.

Prophet. If—as is certain—by Ibn ‘Abbās, then why not by ‘Alī? If only the simple expression of an opinion were transmitted from him, one would be able to reach no verdict about its historicity in the present state of the sources. The documentary form of this ‘Alī tradition, however, seems to me—in the context of confirmed similar opinions of Ibn ‘Abbās—to speak for its authenticity.⁵¹⁷

The assumption that ‘Amr’s tradition about ‘Alī’s testament is authentic does not necessarily imply that ‘Amr’s text reproduces the document exactly. The date “Jumādā 37” is problematic. It is strange that the month is not given more precisely: Jumādā l-ūlā or Jumādā l-ākhira?⁵¹⁸ The number may have been omitted by a transmitter or copyist, or Jumādā is a misreading of another month. Which *ghazwa* is meant? If Jumādā 37 was correct it would have been written only *after* the battle of Şiffin which took place in Şafar 37.⁵¹⁹ Was there a *ghazwa* immediately afterwards? The *ghazwa* against the Kharijites

⁵¹⁷ M. Muranyi argues against the authenticity of the testament. According to his view, the similarity between the legal opinions of the two Meccan scholars and ‘Alī’s alleged testament suggests that ‘Aṭā’ and ‘Amr ibn Dīnār may have fabricated the document and brought it into circulation to back up their doctrines. The documentary form of the testament in ‘Amr’s tradition could easily have been forged by this scholar (cf. his review in *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 143 (1993), p. 409). Muranyi would be right if we had only the two traditions of ‘Aṭā’ and ‘Amr at our disposal. In that case we would not be able to decide whether they are forgeries or not, the documentary form would be of no avail, and we would have to consider more seriously the possibility that the two scholars fabricated their traditions about ‘Alī’s testament. Yet the method followed in the present study of forming a judgment on an individual text based on an analysis of a large number of texts transmitted from the same scholar enables us to be more definite. In view of the whole corpora of ‘Aṭā’s and ‘Amr’s teaching transmitted by Ibn Jurayj and Ibn ‘Uyayna, the assumption that they forged a testament by ‘Alī in order to back up their own doctrines makes no sense. Besides, a testament by ‘Alī forged by Meccan scholars who were not members of ‘Alī’s family is improbable, because their swindle would not have remained undetected. Therefore, I argued that if it is a forgery, then it must have been produced by ‘Alī’s family. But for the reasons mentioned above such an assumption does not seem convincing. Only at this stage of argument does the unusual documentary structure of the text become significant.

The fact that the two texts dealing with ‘Alī’s testament are not identical is not necessarily a point against the hypothesis that ‘Alī’s family really had such a document at the turn of the first century. ‘Amr ibn Dīnār’s version with its documentary form may be based on knowledge of the document itself. ‘Aṭā’s short paraphrase, on the contrary, seems to reflect only oral information about it. This is indeed suggested by ‘Aṭā’s comment on the text that he asked a member of ‘Alī’s family whether this was really the content of the document.

⁵¹⁸ Cf. Muranyi, *op. cit.*, p. 409.

⁵¹⁹ Cf. W. Madelung’s review in *Der Islam* 74 (1997), p. 173.

at Nahrawān which perhaps took place early in Dhū l-Hijja 37⁵²⁰ could be meant. But if the arbitration at Dūmat al-Jandal lasted until early Dhū l-Qa'da 37⁵²¹ there was no battle imminent in Jumādā 37. Dhūl Qa'da would fit better. Is Jumādā a misreading of this? A definite answer is difficult, not least because the dates for the events mentioned are disputed. If Jumādā is correct, the battle meant may be that against the coalition of al-Zubayr, Ṭalḥa and 'Ā'isha which took place on 15 Jumādā 36. Then the year to which the testament is dated would be a misreading.

After 'Alī, finally, Ibn 'Umar is among the Companions of the Prophet to whom 'Amr refers relatively frequently. 'Amr himself heard him, as is attested by a text already cited:

Ibn Jurayj said: 'Amr ibn Dīnār reported to me that he heard Ibn 'Umar when a man asked him . . .⁵²²

One can trust this statement, since there are also Ibn 'Umar traditions from 'Amr which he does not claim to have directly from him and ones which contain neither a source nor an indication of *ṣamā'*. That his sources for Ibn 'Umar are not forged is apparent from the same facts. The Ibn 'Umar traditions about which he notes that he heard them himself can be classed as authentic and those of his sources as probably credible, when no problems of content exist.

'Amr ibn Dīnār's traditions from Companions of the Prophet—as has been shown by this investigation—are not invented by the former himself, but either derive—as in the case of Ibn 'Umar—from direct contact to the person in question or have been communicated to him by named or unnamed informants, usually older contemporaries. When these latter are reporting on the younger *ṣaḥāba*—like Ibn 'Abbās and Ibn 'Umar—with whom they had contact, their statements will generally be trustworthy because 'Amr could check them by asking other pupils of them. With the older Companions, 'Amr's *isnāds* reach a contemporary witness only in rare cases. They are usually reports about them deriving from the following generation.

⁵²⁰ Cf. W. Madelung, *The Succession to Muḥammad. A study of the early Caliphate* (Cambridge 1997), p. 261.

⁵²¹ Cf. op. cit., p. 254.

⁵²² See p. 181.

In contrast to the case of 'Aṭā', who only sporadically names sources for his traditions of the Companions, 80% of 'Amr's have a statement of provenance (*isnād*). This difference between the two, like 'Amr's more frequent reference to traditions in general, probably reflects a development of the discipline of legally relevant tradition and its technique. 'Amr was twenty years younger than 'Aṭā', in whose instruction traditions did not play any great role as a source of law and informants were very rarely named. Is such a transformation within one generation conceivable? One might imagine that the disappearance of the last *ṣaḥāba* gave rise to a feeling of uncertainty and perhaps scepticism towards the scholars who had not themselves been alive to meet the Prophet and a need for more security in the decision of legal questions through resort to the teachings and decisions of the Companions of the Prophet. The younger 'Amr, who was not moulded as deeply or as long by the learned authorities of the generation of the Companions as 'Aṭā', could have paid tribute to this trend. Whether that was really the cause which led to greater attention to traditions from older authorities cannot be determined with certainty. Others are conceivable. The fact that 'Amr's *isnāds*, which vouch for the provenance of such traditions, in the case of the reports from older *ṣaḥāba* are usually incomplete at the end in any case allows the conclusion that the procedure of the *isnād* was still young and was not widespread in the generations of the *ṣaḥāba* and the older *tābi'ūn*.

It also becomes clear from 'Amr ibn Dīnār's *ṣaḥāba* traditions that he—like 'Aṭā—has preferences for particular Companions of the Prophet. Ibn 'Abbās dominates with both, which in the case of 'Aṭā', as his student, is not surprising but requires explanation in the case of 'Amr. Although it is possible that he encountered Ibn 'Abbās—at his death he was probably about 22 years old—it cannot be inferred from his Ibn 'Abbās traditions that he heard them from him. Most of them are indirect. But precisely the sources whom he names for them are the key to answering the question why he refers to Ibn 'Abbās so often. The significance of these sources for 'Amr's legal scholarship will, however, become completely clear only through the investigation of his *tābi'ūn* traditions. For this reason, let us postpone the answer for the time being. However, one can certainly say that in the preference of the two—'Aṭā' and 'Amr—for the opinions of Ibn 'Abbās there lies a further cause for their extensive concurrence in legal questions and the development of a broad local

consensus among the Meccan legal scholars as early as the end of the first/seventh century.

On the other hand, it cannot be overlooked that there is a receptivity to the legal opinions of a few other Companions as well, above all 'Umar's but also 'Alī's, Ibn 'Umar's and 'Ā'isha's. This is to be observed in the case of 'Amr just as in that of 'Aṭā'; the latter's higher proportion of 'Ā'isha traditions is probably to be explained by the fact that he met her personally, while 'Amr refers more to Ibn 'Umar since he met him himself, but not 'Ā'isha.⁵²³

'Amr's contemporaries

After the Companions of the Prophet, 'Amr refers most to legal opinions, verdicts and legally relevant modes of behavior of older contemporaries. Here it is conspicuous that over half of 'Amr's references to this group of people fall to a single name: Abū l-Sha'thā'. In contrast, the next most frequently mentioned 'Ikrima does not even reach 9%. From this I conclude that Abū l-Sha'thā' was the most significant legal scholar for 'Amr, the one who influenced him most deeply. As in the case of the pair 'Aṭā'—Ibn 'Abbās, one will be able to assume a student-teacher relationship between the two. That 'Amr attended the instruction of Abū l-Sha'thā' is explicitly emphasized in some traditions from him by "*sami'ahu*", "*akhbarahu*",⁵²⁴ and once by the remark "Abū l-Sha'thā' told me to ask 'Ikrima about . . ."⁵²⁵

Who is Abū l-Sha'thā'? From 'Amr's traditions from him one can gather no more than this *kunya* and the facts that he is occasionally mentioned in the same breath with Ibn 'Abbās' students 'Ikrima, 'Aṭā' and Ṭāwūs⁵²⁶ and that once an opinion of Abū l-Sha'thā's diverging from that of Ibn 'Abbās is mentioned. On this basis, one might guess that he was also a student of Ibn 'Abbās, which is confirmed by a glance into the early biographical literature. He is Jābir ibn Zayd al-Azdī, a scholar resident in Basra who died in 93/711–2 (according to others 103/721–2).⁵²⁷ Since Ibn 'Abbās stayed

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⁵²³ The fact of having met with a Companion does not mean that all traditions from him must have been obtained directly.

⁵²⁴ AM 6: 11039; 7: 12738, 13934.

⁵²⁵ AM 7: 12775.

⁵²⁶ AM 6: 11080.

⁵²⁷ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 210; Ibn Sa'd, *Ṭabaqāt*, vol. 7/1, pp. 130–133. Ibn Ḥibbān, *Masāhīr*, no. 646. al-Dhahabī, *Tadhkira*, vol. 1, p. 72. He

in Basra for several years in the time of 'Alī's caliphate,⁵²⁸ Abū l-Sha'thā' could have encountered him during this period, which does not exclude the possibility that he maintained contact with him later as well, when Ibn 'Abbās had settled in the Hijāz.

If one did not know something about Abū l-Sha'thā's relationship with Ibn 'Abbās from other sources, one would hardly be able to infer it from 'Amr ibn Dīnār's tradition in the recensions of Ibn Jurayj and Ibn 'Uyayna. It contains no actual Ibn 'Abbās traditions; to be more exact, there are hardly any traditions in it at all.⁵²⁹ From Abū l-Sha'thā' 'Amr transmits primarily his legal *dicta*. Texts like the anecdote which Abū l-Sha'thā' is supposed once to have told about his dispute with a Qur'ān recitor and Shurayh's arbitration are very rare.⁵³⁰ In contrast, from the other legal scholars of the level of the *tābi'ūn* whose legal opinions 'Amr reports fairly frequently, like 'Ikrima and Ṭāwūs, he additionally cites traditions of Ibn 'Abbās and others.⁵³¹

It is certainly a very conspicuous phenomenon and one greatly in need of explanation that 'Amr, who possessed so many *ṣaḥāba* traditions and was so interested in them, transmits none from Abū l-Sha'thā', his most significant teacher. A similar situation was already to be observed in the case of 'Aṭā's Ibn 'Abbās tradition.⁵³² From both Ibn 'Abbās and Abū l-Sha'thā', however, *ḥadīths* are attested in other sources.⁵³³ If one does not wish to declare these forged from the outset and without examination, one will have to limit oneself for the time being to simply observing the facts, and can at most cautiously conclude that at the time when 'Amr ibn Dīnār attended the lectures of Abū l-Sha'thā' either the latter did not communicate any traditions of the *ṣaḥāba* and the Prophet or 'Amr for some reason did not cite them.

was claimed by the Ibādīyya as their most important early legal teacher. Cf. 'A. K. Ennami, *Studies in Ibādism* (Beirut, 1992), pp. 35–54 (Dr. W. Schwartz kindly put a copy of this book at my disposal). W. Schwartz, *Die Anfänge der Ibaditen in Nordafrika* (Bonn, 1983), pp. 37 f., 41 and *passim*.

⁵²⁸ Cf. L. Veccia-Vaglieri, "'Abd Allāh ibn al-'Abbās," in: *Encyclopaedia of Islam*, Second Edition, vol. 1, pp. 40–41, and the sources named there.

⁵²⁹ The statement is limited to the section of the *Muṣannaḥ* studied here. See pp. 74 and 78, note 13.

⁵³⁰ AM 6: 11039.

⁵³¹ Cf. AM 6: 10320, 10396, 10852, 11166, 12548, 12736, 12852, 14024.

⁵³² See p. 141.

⁵³³ For Ibn 'Abbās, cf. the *Musnad* of Ibn Ḥanbal and al-Ṭabarī's *Taḥdhīb al-āthār*, vol. 15 (= *Musnad* of 'Abd Allāh ibn 'Abbās); for Abū l-Sha'thā' cf. *al-Jāmi' al-ṣaḥīḥ* of Rabī' ibn Ḥabīb.

In addition to the above-mentioned students of Ibn 'Abbās 'Ikrima and Tāwūs, 'Amr referred—more rarely—to legal opinions of 'Atā' ibn abī Rabāḥ⁵³⁴ and of Ibn al-Musayyab,⁵³⁵ to verdicts of the caliphs 'Abd al-Malik ibn Marwān and 'Umar ibn 'Abd al-'Azīz,⁵³⁶ and to practices of Ḥasan ibn Ḥasan ibn 'Alī⁵³⁷ and of 'Abd Allāh ibn Ṣafwān ibn Umayya ibn Khalaf.⁵³⁸

If one examines the *tābi'ūn* on whom 'Amr relies both as a legal scholar and as a transmitter according to their affiliation with or dependence on one of the early centers of scholarship or on a teacher, it emerges that 68% are either students of Ibn 'Abbās or Meccans or both, and 24% are Medinans. He has only very little material from scholars of Kufa, Basra or Yemen who are not influenced by Ibn 'Abbās.

From all of the above observations on 'Amr's tradition from and about his contemporaries one does not get the impression that they must be forged, fabricated or projected, but rather that they are authentic, i.e. actual statements or modes of behavior of the people named as sources.

Decisive arguments against the thesis of projection are:

1. There exist numerous legal *dicta* and *responsa* from 'Amr himself; thus, he was under no compulsion to pass off his own opinions as those of others.

2. If one assumes that he did so anyway, it is incomprehensible that in addition to Ibn 'Abbās he also referred to the latter's students. A forger would presumably have projected their opinions too onto this Companion of the Prophet.

3. The difference between the profiles of the traditions from his teachers, for instance between 'Amr's Abū l-Sha'thā' and 'Ikrima traditions, can scarcely be explained by the thesis of forgery.

The large number of students of or transmitters from Ibn 'Abbās in the tradition of 'Amr ibn Dīnār now also answers the question why Ibn 'Abbās traditions are so dominant with him. 'Amr received his education in legal questions primarily from former students of Ibn 'Abbās—besides those already named, also from Mujāhid and

⁵³⁴ Cf. AM 6: 11080.

⁵³⁵ Cf. AM 6: 11671.

⁵³⁶ Cf. AM 6: 10484, 10672, 10867.

⁵³⁷ AM 6: 10770. The edition has erroneously Ḥasan ibn Ḥusayn ibn 'Alī.

⁵³⁸ AM 6: 10770; 7: 12739.

Sa'īd ibn Jubayr⁵³⁹—and necessarily adopted from them many teachings of Ibn 'Abbās. Thus, in addition to Ibn 'Abbās himself his circle of students is to be considered as a further component which played a role in the development of the local juridical consensus which is to be observed at the beginning of the second/eighth century in Mecca.

The Prophet

In terms of numbers, 'Amr's references to the Prophet come far behind those to Companions and their Successors. This is also true when one takes individual persons as a standard of comparison: Abū l-Sha'thā' or Ibn 'Abbās is named far more frequently as a legal authority than the Prophet, who ranks about equally with 'Alī. This is a first argument against the assumption that the traditions of the Prophet were fabricated by 'Amr himself to provide his own legal opinions with more authority. If he had done that, it would be incomprehensible that he generally refers to names such as Abū l-Sha'thā' or 'Ikrima and not to the Prophet.

75% of the statements of provenance which accompany 'Amr's *ḥadīths* of the Prophet are defective; only a few have a continuous *isnād*. A large portion has no source at all before 'Amr.⁵⁴⁰ The provenance of these texts and the time when they arose thus cannot be determined. All that is certain is that they existed in 'Amr's lifetime, thus at the latest in the first quarter of the second/eighth century. Others end with an older contemporary of 'Amr's, i.e. with *tābi'ūn* such as 'Ikrima, 'Aṭā' or Abū Salama ibn 'Abd al-Raḥmān.⁵⁴¹ Since many traditions of the Prophet are also cited by 'Amr without any source at all, one may probably lend credence to his statements of sources, especially since the *isnāds* are incomplete. These traditions of the Prophet will have come into circulation at the latest in the last quarter of the first/seventh century. In both groups, occasional versions with better *isnāds* are attested.

For example:

'Abd al-Razzāq from Ibn Jurayj from 'Amr ibn Dīnār. He said: "The Prophet accepted the [division of] inheritance which took place in the

⁵³⁹ Cf. AM 6: 11631; 7: 12455, 13203, 13615.

⁵⁴⁰ Cf. AM 7: 12637, 13113, 13266, 13998, 14000.

⁵⁴¹ Cf. AM 6: 10320, 10754; 7: 12455, 12548, 14001.

Jāhiliyya. [However,] whatever was not yet divided at the advent of Islam, he divided according to the division of Islam."⁵⁴²

This tradition is also transmitted in this form from 'Amr ibn Dīnār by Ibn 'Uyayna. On the other hand, Muḥammad ibn Muslim,⁵⁴³ a contemporary of Ibn 'Uyayna, names as 'Amr's source Abū l-Sha'thā'.⁵⁴⁴ A half century later, it turns up in Abū Dāwūd's *Sunan* work with a continuous *isnād* ending Muḥammad ibn Muslim—'Amr ibn Dīnār—Abū l-Sha'thā'—Ibn 'Abbās—the Prophet.⁵⁴⁵ Since both Ibn Jurayj and Ibn 'Uyayna transmit the *ḥadīth* as *muḍal* and the trustworthiness of their transmission from 'Amr is probable, the other versions are to be classed as *ex post facto* attempts to improve the *isnād*: Abū l-Sha'thā' should be chalked up to Muḥammad ibn Muslim, Ibn 'Abbās to a transmitter after him. Such examples can be multiplied.⁵⁴⁶ For this reason, the more complete *isnāds* of *ḥadīths* which are also transmitted as *muḍal* or *mursal* are to be approached with distrust, especially when they are to be found only in later works.

Since the majority of 'Amr's *ḥadīths* of the Prophet contain incomplete statements of provenance, it is not to be assumed that he has himself fabricated the few complete chains of transmitters which are to be found. Rather, it is to be assumed that he obtained them from the sources whom he names. Whether, however, their statements about the provenance of the traditions are correct is in most cases hardly to be determined. Examples of such *isnāds* are: 'Amr ibn Dīnār—Sa'īd ibn Jubayr—Ibn 'Umar—the Prophet⁵⁴⁷ or 'Amr ibn Dīnār *sami'ū* al-Ḥasan al-Baṣrī—Qabīṣa ibn Dhu'ayb—Salama ibn Muḥbiq⁵⁴⁸—the Prophet⁵⁴⁹ or 'Amr ibn Dīnār—Ḥasan ibn Muḥammad ibn 'Alī—Jābir ibn 'Abd Allāh and Salama ibn al-Akwa'—the Prophet (through a messenger).⁵⁵⁰

On the other hand, the *isnād* 'Amr ibn Dīnār—al-Ḥasan ibn Muḥammad ibn 'Alī—Abū l-Āṣ ibn al-Rabī' ibn 'Abd al-'Uzza ibn

⁵⁴² AM 7: 12637.

⁵⁴³ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 275; Ibn Ḥibbān, *Mashāḥir*, no. 1176.

⁵⁴⁴ Cf. the editor's notes on AM 7: 12637.

⁵⁴⁵ Ibid.

⁵⁴⁶ Cf. AM 6: 10754, 10755; 7: 12548, 13266 (13267), 14001.

⁵⁴⁷ AM 7: 12455.

⁵⁴⁸ Or Muḥabbiq. Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 36; Ibn Ḥibbān, *Mashāḥir*, no. 248.

⁵⁴⁹ AM 7: 13418.

⁵⁵⁰ AM 7: 14023.

‘Abd Shams ibn ‘Abd Manāf—the Prophet⁵⁵¹ is only externally continuous. The claim that Ḥasan obtained the information from Abū l-‘Āṣ (*akhbarahu*—sic!) cannot be correct, since the latter died already in the year 12/633–4, but al-Ḥasan only around the turn of the century.⁵⁵² This defect in the *isnād* naturally does not prove that the report itself is false or forged, and since it is not certain who is responsible for it, neither must al-Ḥasan’s trustworthiness necessarily be put into question.

Whether the *isnād* is incomplete or defective ultimately makes no difference. Authenticity can be considered ensured only up to ‘Amr’s informants, most of whom died around the turn from the first/seventh to the second/eighth century. This means that ‘Amr’s traditions of the Prophet for which he names a source existed at the latest in the last quarter of the first/seventh century. They are thus at least as old as—if not older than—‘Amr’s traditions from Companions of the Prophet and their Successors, ‘Amr’s older contemporaries. There can be no question here of a chronological progression according to the schema *tābi‘ūn—ṣaḥāba*—Prophet, in which the *ḥadīths* of the Prophet would be the latest products, like the one Schacht has in mind. It is conspicuous that the number of legally relevant traditions of the Prophet lags far behind those from the *ṣaḥāba* and *tābi‘ūn*; even in the case of ‘Aṭā’ there is not such a steep gradient in this respect as with ‘Amr. Since, however, the latter is receptive to traditions (*ḥadīths*, *āthār*) in general, this can only be explained by the fact that the number of “juridical” traditions of the Prophet which were in circulation in Mecca in his time and were accepted by him was far smaller than that of the traditions of the Companions. In his legal instruction—and, since the same is true of ‘Aṭā’, we may say in Meccan *fiqh* until the end of the first quarter of the second/eighth century—the *ḥadīths* of the Prophet played only a very modest role.

D. IBN JURAYJ

If one compares the profiles of Ibn Jurayj’s traditions from ‘Aṭā’ ibn abī Rabāḥ and ‘Amr ibn Dīnār with that of the material which

⁵⁵¹ AM 7: 12643.

⁵⁵² Cf. Ibn Ḥibbān, *Mashāḥir*, no. 156; Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 239.

‘Abd al-Razzāq transmits from Ibn Jurayj, one encounters a conspicuous fact: 80% of ‘Aṭā’s tradition consists of his own legal opinions, 42% of ‘Amr’s, but only 1% of Ibn Jurayj’s.⁵⁵³ Here the question presents itself why he should be regarded as a legal scholar at all. The investigation of ‘Amr revealed that a greater concern with traditions is to be observed with him, but that they have an almost exclusively legal background and are used by him as “sources of law,” i.e., to support or illustrate his own opinions. Only rarely does he cite opinions that contradict each other. For this reason he is to be classed not as a *muḥaddith* in the true sense but as a *faqīh* with an interest in legally relevant traditions. In principle, the same is true of Ibn Jurayj. Nevertheless, almost 40% of his material consists of the transmission of the legal teachings and traditions of ‘Aṭā’. In his tradition from ‘Amr, too, a constant interest in his legal opinions and commentaries is to be observed, which is not the case in Ibn ‘Uyayna’s ‘Amr traditions.⁵⁵⁴ Presumably, the small number of Ibn Jurayj’s own legal opinions which have been preserved is also in part due to a disinterest toward them on ‘Abd al-Razzāq’s part in view of the quantity of older *fiqh* material transmitted by Ibn Jurayj, comparable to Ibn ‘Uyayna’s disinterest in ‘Amr’s legal *dicta*. The small number of Ibn Jurayj’s preserved legal *dicta* thus says nothing about his quality as a legal scholar and must not lure us to the conclusion that he had as good as no legal opinions of his own. Against this speak his preserved legal *dicta*, his sometimes ingenious questions to ‘Aṭā’ and the examples in which he distances himself from ‘Aṭā’s opinion and expounds his own.⁵⁵⁵ On the other hand, it is indisputable that he far outstrips his teacher ‘Amr in knowledge of traditions. With Ibn Jurayj one can really speak of an encyclopedic interest in traditions, since he collected traditions of highly diverse provenance and passed on to his students even those which collided with his own opinions and those of Meccan *fiqh*. Nevertheless, his passion for collecting is directed toward legally relevant Tradition material. This juridical “function” of Ibn Jurayj’s traditions is also discernible in the organizing principle according to which he arranged them. It has been indicated in connection with the question of the

⁵⁵³ See p. 78, note 13; 83.

⁵⁵⁴ See p. 179.

⁵⁵⁵ See pp. 84 f., 86.

authenticity of the 'Aṭā' tradition that 'Abd al-Razzāq's chapter divisions in part derive from those of Ibn Jurayj, who is to be regarded as the author of a written collection of traditions. They were organized according to juridical criteria: into books comprising specific subject areas like marriage, divorce, fasting, *hajj* ceremonies, and so forth, and within these books into individual paragraphs which were probably already provided with headings.⁵⁵⁶ Ibn Jurayj was thus undoubtedly above all a legal scholar. In the fact that from 'Aṭā' through 'Amr to Ibn Jurayj the proportions of *ra'y* and *Ḥadīth* in the texts transmitted by them is reversed, one may probably also see a reflection of the actual development of Meccan legal instruction between 70/690 and 150/767, which is characterized by a progressive decline in expressions of personal opinion in favor of legal traditions.

In view of such a development, the question presents itself whether or to what extent Meccan *fiqh* thus developed in terms of content as well and reached new solutions through the influx of legal traditions from other centers. It would really be quite strange if no influencing at all had taken place. In individual cases, this can in fact be documented. For example, Ibn Jurayj turns away from some views of 'Aṭā's in favor of Medinan and Iraqi teachings which were known to him in the form of traditions from Ibn 'Umar, 'Umar and Ibn Mas'ūd.⁵⁵⁷ On the other hand, there are also instances in which he defends the Meccan point of view against Iraqi doctrines.⁵⁵⁸ In general, one gets the impression from Ibn Jurayj's expressions of his own opinion that he largely remains faithful to the Meccan solutions and cites the teachings diverging from them largely from a kind of collector's interest. Since Ibn Jurayj's own *ra'y* is not very extensive, the question of degree cannot be answered with finality. On the other hand, it is possible to observe where his traditions come from, and thus how strong the possible alien impulses were.

1. *The provenance of Ibn Jurayj's tradition material*

80% of 'Amr ibn Dīnār's traditions come from sources who are to be counted among the class of the *tābi'ūn* or the generation follow-

⁵⁵⁶ See pp. 100 f.

⁵⁵⁷ Cf., for instance, AM 6: 11113 (also 11095, 11098); 7: 12538.

⁵⁵⁸ Cf. AM 6: 11690, 11694, 11697.

ing them, i.e., older and younger contemporaries of 'Amr's. The remainder consists primarily of traditions of the *ṣaḥāba* and the Prophet without statements of provenance; in very few cases, they go back to a direct contact with a Companion. Two-thirds of his sources are students of Ibn 'Abbās or people living primarily in Mecca, one quarter are Medinans.⁵⁵⁹ The Medinan share allows us to infer a certain openness at least toward the traditions that originated in Medina, the neighboring scholarly center. Traditions of other provenance (Basra, Kufa, Yemen), on the other hand, are practically negligible.

A similar picture is offered by the tradition of Ibn Jurayj.⁵⁶⁰ Traditions from Meccan authorities and informants form the backbone with 54%, of which 'Aṭā' and 'Amr take the lion's share with 45%. If one adds to these the traditions from the school of Ibn 'Abbās, like those of the Yemenite Ibn Ṭawūs and of the Syrian 'Aṭā' al-Khurāsānī, one reaches a total of 60%. Medinan informants are represented with 13%; genuine Syrian and Basran traditions make up only 1% each. A special place is to be accorded to 'Abd al-Karīm al-Jazarī, who is associated with the region of the Jazīra (northern Mesopotamia) but clearly spent a relatively long time in Mecca and is one of Ibn Jurayj's significant sources (3.3%). This sketch of the geographic or educational affiliations⁵⁶¹ of Ibn Jurayj's most important teachers and informants shows a clear local preponderance of material of Meccan provenance or bearing the stamp of Ibn 'Abbās, but in addition an openness for legal teachings and traditions from other centers, especially for Medinan Tradition material and to a smaller extent for Iraqi and Syrian material.⁵⁶²

From the designation of the origins of the texts transmitted by 'Amr and Ibn Jurayj, it can be seen that the growth of the Tradition

⁵⁵⁹ See p. 201.

⁵⁶⁰ I limit myself to Ibn Jurayj's 21 most frequently-cited informants. See p. 78.

⁵⁶¹ It is based on the information of the *ṭabaqāt* works, which classify individuals according to the place where they lived and taught for the greatest amount of time.

⁵⁶² This result does not change in tendency if one adds Ibn Jurayj's 14 next most frequently-cited informants: nine of them are associated with Ibn 'Abbās' Meccan circle (Ibrāhīm ibn abī Bakr, Dāwūd ibn abī 'Āsim, 'Abd Allāh ibn 'Uthmān ibn Khuthaym, the Yemenī 'Amr ibn Muslim, ['Abd Allāh] ibn Kathīr, 'Ikrima ibn Khālid, 'Ikrima—*mawlā* of Ibn 'Abbās, 'Ubayd Allāh ibn abī Yazīd and 'Uthmān ibn abī Sulaymān), two are Medinans ('Abd Allāh ibn abī Bakr, 'Abd Allāh ibn 'Umar [ibn Ḥafṣ]), two are Damascenes ('Abd al-'Azīz ibn 'Umar [ibn 'Abd al-'Azīz], 'Imrān ibn Mūsā), one is an Iraqi (Abū Quz'a).

material in Meccan *fiqh* was not merely caused by an inundation with traditions from other legal centers, but to a large extent represents an independent local development as well.

For several reasons, it is worth while to examine in more detail the Tradition material of those sources of Ibn Jurayj's from whom he obtained a relatively large quantity. Firstly, further aspects of the early legal development can be demonstrated in this way; secondly, the observations made thus far about the beginnings of the discipline of Tradition can be supplemented; and thirdly, the arguments for the authenticity of the Ibn Jurayj tradition which were marshalled at the beginning of this study can be completed. For the sake of clarity, I organize Ibn Jurayj's sources according to geographical or intellectual provenance.

a. *Ibn Jurayj's Meccan sources*⁵⁶³

What Ibn Jurayj transmits from his most significant Meccan teachers—'Aṭā' ibn abī Rabāḥ and 'Amr ibn Dīnār—has already been set forth in detail. Further Meccans whom he cites relatively frequently as authorities or as informants for traditions are: Abū l-Zubayr, Ibn abī Mulaika, 'Amr ibn Shu'ayb, Ḥasan ibn Muslim, Mujāhid, Ibrāhīm ibn Maysara and 'Abd Allāh ibn 'Ubayd ibn 'Umayr.

Abū l-Zubayr

Full name: Muḥammad ibn Muslim ibn Tadrus. He died in the caliphate of Marwān ibn Muḥammad (127–132/744–750), according to others before 'Amr ibn Dīnār, i.e. 126/743–4 or earlier.⁵⁶⁴ His tradition⁵⁶⁵ displays several peculiarities. It contains no opinions from Abū l-Zubayr himself, but only traditions from others. These he introduces in 95% of all cases with "*sami'tu*" (I heard). Such a high number of *samā'* notations is found with no other source of Ibn Jurayj's, i.e. the use of this formula probably derives from Abū

⁵⁶³ Diverging from my use of the term "source" in connection with the traditions of 'Aṭā' and 'Amr, where "legal source, legal authority" was intended when I spoke, for instance, of 'Aṭā's "sources," a "source of Ibn Jurayj's" means the provenance of his various traditions. This is the usual meaning of the term, as in the phrase "statement of source" (*Quellenangabe*). Thus, for instance, 'Aṭā' and 'Amr are sources of Ibn Jurayj's for *ḥadīths* of the Prophet.

⁵⁶⁴ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 281. Ibn Ḥibbān, *Mashāhīr*, no. 452 (here reckoned as a Medinan, since he also lived in Medina for a time).

⁵⁶⁵ Proportion of the entire work of Ibn Jurayj: ca. 4%.

l-Zubayr himself. This is one of several points which speak against the assumption of forgery of the entire tradition by Ibn Jurayj. 60% of the authorities from whom he transmits are Companions of the Prophet, 27% are *ḥadīths* of the Prophet, 10% are traditions of the *ṭābiʿūn*, and 3% are anonymous. Among the *ṣaḥāba*, Jābir ibn ʿAbd Allāh takes first place. Two thirds of all of his references to Companions are to Jābir. They predominantly have the form of simple legal *dicta*; more rarely, *responsa* to anonymous questions occur. Stylistically, they are comparable to the *dicta* and *responsa* of Ibn ʿAbbās transmitted by ʿAṭāʾ. In addition to Jābir's legal *dicta* and *responsa*, he transmits from him—far less frequently—traditions in which he is only a source. Abū l-Zubayr's Jābir texts are always direct, generally transmitted with "*samiʿtu*." This is sometimes the case with his few Ibn ʿUmar traditions as well; those from other *ṣaḥāba*, like Ibn ʿAbbās, ʿUmar and Muʾāwiya, on the other hand, all come through an informant. This speaks in favor of the assumption that Abū l-Zubayr was actually a student of Jābir ibn ʿAbd Allāh, who according to the Muslim biographers died in 78/697–8 at the advanced age of 94 years.⁵⁶⁶ If one supposes that his references to him are forged, one must be prepared to be asked why he does not directly cite Ibn ʿAbbās (d. 68/687–8 or 70/689–90) as well, and why he cites Ibn ʿUmar sometimes with and sometimes without an informant. Abū l-Zubayr's traditions of the Prophet usually have an *isnād*, not infrequently an incomplete one. It is conspicuous that while he has relatively many traditions of the Prophet, he has only few from his teacher and main informant, the Companion of the Prophet Jābir. These few make a very archaic impression and are probably genuine statements of Jābir's about the Prophet. Some examples:

Ibn Jurayj said: Abū l-Zubayr reported to me that he heard Jābir ibn ʿAbd Allāh say: "The Messenger of God (eulogy) forbid the *shighār* [i.e., exchange of wives through marriage with evasion of the bridal gift]."⁵⁶⁷

Ibn Jurayj said: Abū l-Zubayr reported to me that he heard Jābir ibn ʿAbd Allāh say: "*In the lifetime of the Prophet (eulogy), we used to sell [our] concubines who had born children [to us] (ummahāt al-awlād) and see no harm in it.*"⁵⁶⁸

⁵⁶⁶ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 102. Ibn Ḥibbān, *Mashāḥir*, no. 25.

⁵⁶⁷ AM 6: 10432.

⁵⁶⁸ AM 7: 13211.

Ibn Jurayj said: Abū l-Zubayr reported to me that he heard Jābir ibn ‘Abd Allāh say: “The Prophet (eulogy) had a man of Aslam, a Jew and a woman stoned.”⁵⁶⁹

Ibn Jurayj said: Abū l-Zubayr reported to us that he heard Jābir ibn ‘Abd Allāh say: “My maternal aunt was divorced and wanted to tend her date palms. A man prevented her from going out [to the palm grove]. Thereupon she came to the Prophet (eulogy) [and told him about it]. He said: “No, tend your date palms! Perhaps you will give alms [from them] or do good (*ma‘rūfan*).”⁵⁷⁰

If, on the other hand, one compares the narrative traditions of the Prophet that Abū l-Zubayr transmits from ‘Urwa ibn al-Zubayr⁵⁷¹ through ‘Abd al-Raḥmān ibn al-Ṣāmit from Abū Hurayra⁵⁷² or through an unnamed Medinan from the *tābi‘* Abū Salama ibn ‘Abd al-Raḥmān,⁵⁷³ it becomes clear that he is unlikely himself to be the forger of such stylistically diverse texts. One can probably lend credence to his statements about the people from whom he has his traditions, especially since Ibn Jurayj also has from him traditions of the Prophet of indefinite origin.⁵⁷⁴

Among scholars of the older *tābi‘* generation, he cites as “heard” authorities primarily Abū l-Sha‘thā’, more rarely Ṭāwūs.⁵⁷⁵ From the latter derives the single *responsum* to a question of Abū l-Zubayr’s in the textual selection investigated. It is from him and the other students of Ibn ‘Abbās ‘Ikrima, Mujāhid and Sa‘īd ibn Jubayr that he has his Ibn ‘Abbās traditions.⁵⁷⁶ There is no discernible reason why this should not be accurate. Abū l-Zubayr’s ‘Umar traditions, on the other hand, generally derive from Jābir ibn ‘Abd Allāh.⁵⁷⁷ The same applies to them as to all other Jābir texts from Abū l-Zubayr: they are to be regarded as authentic. The possibility that they report actual facts about ‘Umar cannot be precluded. There are no problems of content, and as long as there is no recognizable motive for which he should have falsely ascribed things to ‘Umar one will have to regard them as good ‘Umar traditions.

⁵⁶⁹ AM 7: 13333.

⁵⁷⁰ AM 7: 12032.

⁵⁷¹ AM 7: 13008.

⁵⁷² AM 7: 13340.

⁵⁷³ AM 6: 10304.

⁵⁷⁴ AM 6: 11843.

⁵⁷⁵ Cf. AM 6: 10617, 10947, 11923.

⁵⁷⁶ Cf. AM 6: 10431, 11608, 11918.

⁵⁷⁷ Cf. AM 7: 12817, 12875, 13889, 14029.

Seen overall, for Ibn Jurayj Abū l-Zubayr is primarily a source for legal opinions and traditions of Jābir ibn ‘Abd Allāh and for those of Ibn ‘Abbās and his students. Most Abū l-Zubayr texts are introduced with the formula “*akhbaranī (nā)*,” rarely with “*an*” or “*qāla* Abū l-Zubayr.”

Ibn abī Mulayka

His full name is: ‘Abd Allāh ibn ‘Ubayd Allāh ibn abī Mulayka. He died in 118/736.⁵⁷⁸ Ibn Jurayj usually calls him Ibn abī Mulayka, rarely ‘Abd Allāh ibn ‘Ubayd Allāh or by his full name. In his tradition Ibn Jurayj states more frequently than usual that he has “heard” him. Otherwise he uses the formula “*akhbaranī (nā)*,” more rarely “*haddathanī*,” only very rarely “*qāla*.” Probably he attended his circle in Mecca for a time.

Ibn abī Mulayka’s tradition contains primarily traditions of the *ṣaḥāba*; only a quarter are *ḥadīths* of the Prophet, and references to contemporaries are rare. Conspicuous in his case is the dominance of caliphs as authorities to whom he resorts. In the generation of the Companions, in addition to ‘Umar,⁵⁷⁹ Mu‘āwiya⁵⁸⁰ especially but also ‘Uthmān,⁵⁸¹ who scarcely figure with ‘Aṭā’ and ‘Amr ibn Dīnār, are relatively frequently mentioned. Traditions about other Companions such as ‘Ā’isha, Ibn ‘Umar and Ibn ‘Abbās are less frequent.⁵⁸² The references to contemporaries usually have to do with verdicts of Umayyad caliphs such as ‘Abd al-Malik ibn Marwān, but there is also a *responsum* of the caliph Ibn al-Zubayr.⁵⁸³ It appears that he saw in the verdicts and legal opinions of caliphs—in addition to those of the Prophet—important sources of law.

Only a little more than a third of his traditions contain statements of provenance, and these are sometimes incomplete. There are traditions about ‘Umar, ‘Uthmān, ‘Ā’isha and the Prophet sometimes with and sometimes without an *isnād*. For the verdicts of Mu‘āwiya and ‘Abd al-Malik, the informant is always lacking. The possibility that Ibn abī Mulayka was eyewitness to them can probably be

⁵⁷⁸ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 281.

⁵⁷⁹ Cf. AM 6: 11139; 7: 12605, 13521, 13705.

⁵⁸⁰ Cf. AM 6: 10633, 10636, 11887.

⁵⁸¹ Cf. AM 6: 11887; 7: 12192.

⁵⁸² Cf. AM 6: 11887; 7: 12731, 13537.

⁵⁸³ Cf. AM 6: 10703; 7: 12192, 13514.

rejected; in one case it is clearly indicated that he learned it from an unnamed person.⁵⁸⁴ These predominantly defective statements of provenance show that the necessity for complete statements of transmission was unknown to him. That his *isnāds* are forged is quite unlikely; they are much too rare and too fragmentary for that. For this reason they are probably credible and usable as a source for the historian. From them it can be seen who brought what traditions into circulation in the first century.

‘Amr ibn Shu‘ayb

His full name is ‘Amr ibn Shu‘ayb ibn Muḥammad ibn ‘Abd Allāh ibn ‘Amr ibn al-‘Āṣ. He was from Mecca but later settled in al-Ṭā’if, where Ibn ‘Abbās also spent the twilight of his life. He died in 118/736.⁵⁸⁵

From him Ibn Jurayj has primarily traditions of the Prophet, some traditions of the *ṣaḥāba*, very few from contemporaries and from himself. In the textual excerpt under investigation the material is not extensive enough⁵⁸⁶ to draw definitive conclusions from it, but it suffices to formulate hypotheses.

It speaks for the assumption that Ibn Jurayj did not fabricate him as his source that he occasionally states that he heard him, but on the other hand also transmits from him through an intermediary.⁵⁸⁷ ‘Amr is a *faqīh* who clearly has the inclination to refer to the Prophet whenever possible, if the Qur’ān is not sufficient for the solution of a question. This is shown not only by the numerous *ḥadīths* of the Prophet but also by his own legal *dicta*. They are stylistically unusual and seem almost like little tractates in the argumentation of which he often refers to a corresponding decision of the Prophet without citing a concrete tradition.⁵⁸⁸ His *ḥadīths* of the Prophet are of varying provenance. Some have the *isnād* “his father—‘Abd Allāh ibn ‘Amr ibn al-‘Āṣ”⁵⁸⁹ and thus end with his great-grandfather, the

⁵⁸⁴ AM 6: 10703.

⁵⁸⁵ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 286. According to Khalīfa, Shu‘ayb was the son of ‘Abd Allāh ibn ‘Amr. This is probably an error. Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 180 and Ibn Qutayba, *Ma‘ārif*, p. 146 identify him as his grandson. On Ibn ‘Abbās cf. Khalīfa ibn Khayyāt, op. cit., p. 284 and Ibn Hībān, *Mashāhīr*, no. 17.

⁵⁸⁶ The proportion of Ibn Jurayj’s total work is somewhat above 1%.

⁵⁸⁷ Cf. AM 6: 11462; 7: 13941.

⁵⁸⁸ Cf. AM 6: 10270; 7: 12631. The younger al-Awzā‘ī used the concept of the “*sunna* of the Prophet” in a similar way. Cf. Schacht, *Origins*, pp. 70 ff.

⁵⁸⁹ Cf. AM 6: 10739; 7: 12597.

Companion of the Prophet. This *isnād* must not necessarily be forged simply because it contains members of a family.⁵⁹⁰ It speaks against the thesis of forgery that 'Amr transmits Prophetic traditions not only from his great grandfather but also through other *isnāds*,⁵⁹¹ and above all that the majority have no statement of provenance at all.⁵⁹² One can conclude from this that in the cases in which he names an informant he actually has the corresponding traditions from that person. This means that such texts were already in circulation in the first/seventh century.

Among the *ṣaḥāba*, 'Amr ibn Shu'ayb quotes his great-grandfather and Ibn 'Abbās as authorities directly,⁵⁹³ i.e. without an informant—which does not necessarily mean that he was actually an earwitness; for 'Umar and 'Uthmān, on the other hand, he names the Medinan Sa'īd ibn al-Musayyab as a source, which can be accepted as credible, since for 'Umar the latter is not a source whom a forger would choose.⁵⁹⁴

The few contemporary scholars from whom he reports *responsa* to a legal question which he himself asked them are also Medinans. In this context the credibility and precision of Ibn Jurayj reveals itself again, since in one case he admits that 'Amr named the Medinan *shaykhs* to him but that he did not remember one of them; he thinks that Ibn al-Musayyab and Abū Salama were probably among them.⁵⁹⁵

Through his preference for the Prophet as a legal authority, 'Amr ibn Shu'ayb diverges from what has so far been established as typical for Meccan *fiqh*. Whether that is an individual peculiarity of this man or derives from the influence of some circle of scholars cannot be determined for the moment. At any rate, a special affinity to Medina is discernible, so that intellectually he may have inclined more to this legal tradition than to that of Mecca. It is also imaginable that there is a connection with the *Ṣaḥīfa* of 'Abd Allāh ibn 'Amr, in which the latter is supposed to have compiled *ḥadīths* of the Prophet. That 'Amr ibn Shu'ayb possessed it and transmitted

⁵⁹⁰ These *ḥadīths* are, it is true, not found in the "*Ṣaḥīḥān*," but are in the collections of al-Bayhaqī, Ibn Māja, Ibn Ḥanbal and Abū Dāwūd, respectively. Cf. the notes on the passages cited in note 589.

⁵⁹¹ E.g. AM 6: 11455.

⁵⁹² Cf. AM 6: 10650; 7: 12631, 13318, 13571, 13851.

⁵⁹³ Cf. AM 7: 12508; 6: 10568.

⁵⁹⁴ Also see p. 223.

⁵⁹⁵ AM 6: 11462.

from it is attested early.⁵⁹⁶ Ibn Jurayj usually introduces his traditions with “*an* ‘Amr ibn Shu‘ayb,” more rarely with “*akhbaranī*” or simple “*qāla*.”

From the following four Meccan scholars Ibn Jurayj transmits only about half as much as from Ibn abī Mulayka or ‘Amr ibn Shu‘ayb. Although the textual basis is relatively small, some characteristics can be stated. They are to be regarded only as provisional “impressions” and are in need of greater depth.⁵⁹⁷

Ḥasan ibn Muslim

In full: Ḥasan ibn Muslim ibn Yannāq. His exact date of death is unknown; however, he is supposed to have died before Ṭāwūs, i.e. in the year 106/724–5 or earlier.⁵⁹⁸ With him *ṣaḥāba* traditions referring to Ibn ‘Abbās, ‘Umar and Ibn ‘Umar predominate. As sources for them he names Ibn ‘Abbās’ students Sa‘īd ibn Jubayr and Ṭāwūs, but also the Medinan Ibn Shihāb. There is also one tradition from ‘Umar and one from the Prophet without an *isnād*. He refers to legal opinions of Ṭāwūs more frequently than to the Prophet or an individual *ṣaḥābī*. Ibn Jurayj usually introduces Ḥasan’s traditions with “*akhbaranī*,” rarely with “*an*.”

Mujāhid ibn Jabr

This famous Meccan scholar and student of Ibn ‘Abbās died in 102/720–1, 103 or 104.⁵⁹⁹ From him Ibn Jurayj transmits primarily his own opinions—sometimes in the form of notes to his material from ‘Aṭā’ and others⁶⁰⁰—, some *responsa* of Ibn ‘Abbās,⁶⁰¹ a verdict of ‘Umar’s,⁶⁰² and a historical note about the Prophet’s son al-Qāsim,⁶⁰³ who died soon after birth. Mujāhid generally has no infor-

⁵⁹⁶ Cf. Goldziher, *Muslim Studies*, vol. 2, p. 10. Hamidullah, *Ṣaḥīfah*, pp. 34–37. Azami, *Studies in Early Hadīth Literature*, pp. 43 f. The earliest attestation I have found is AM 7: 12286 (al-Thawrī—Ḥabīb ibn abī Thābit—‘Amr ibn Shu‘ayb). It also shows that this “book” (here: *kitāb*, not *ṣaḥīfah*)—at least in ‘Amr’s recension—did not contain only *ḥadīths* of the Prophet, as is usually assumed.

⁵⁹⁷ This is also true of the representatives of other centers from whom only a small number of texts is preserved in the section of the *Muṣannaf* studied here.

⁵⁹⁸ Cf. Ibn Ḥibbān, *Mashāhīr*, no. 1126. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 281 names only Muslim ibn Yannāq, but in the *ṭabaqa* where Ḥasan belongs.

⁵⁹⁹ Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 280. Ibn Ḥibbān, *Mashāhīr*, no. 590.

⁶⁰⁰ Cf. AM 6: 11017, 11059, 11879; 7: 12157, 13503.

⁶⁰¹ AM 6: 11351, 11352.

⁶⁰² AM 6: 10788.

⁶⁰³ AM 7: 14012.

mant; in one case, however, Ibn Jurayj remarks that he transmitted a *responsum* of Ibn ‘Abbās not directly, but from his father.⁶⁰⁴ This is evidence of Ibn Jurayj’s precision and speaks against the thesis of forgery. It is conspicuous in comparison with his other Meccan sources that he introduces his Mujāhid traditions almost exclusively with “*qāla* Mujāhid.” This might mean that he drew these texts from a written source with material from Mujāhid, without having heard them from him himself (*wijāda*).⁶⁰⁵

Ibrāhīm ibn Maysara

From al-Ṭā’if by birth, he later lived in Mecca and died in the caliphate of Marwān ibn Muḥammad (127/745–132/750), according to others—more precisely—in the year 132.⁶⁰⁶ Ibn Jurayj transmits from him some traditions of the Prophet, ‘Umar and Ibn ‘Abbās, but also legal opinions of Ibn ‘Abbās’ students Mujāhid and Ṭāwūs. The latter is, in addition, his source for Ibn ‘Abbās and once even for a *dictum* of the Prophet. Ibrāhīm’s *isnāds* either are discontinuous or contain anonymous or unknown links. For example, he transmits a *fatwā* of the Prophet which his maternal aunt recounted from a “trustworthy woman” or a *fatwā* of ‘Umar’s from a “man from Sawā’a by the name of ‘Ubayd Allāh ibn Makkiyya, about whom he said nothing but good,” from the latter’s father or grandfather. There can be no doubt that neither Ibn Jurayj nor Ibrāhīm ibn Maysara can be supposed to have himself invented traditions with such weak *isnāds*. He probably actually has them from the people named. In other words, the *fatwā* of the Prophet in question derives at least from the first century. Whether it is really historical is another question. Ibn Jurayj usually cites Ibrāhīm with the formula “*akhbaranī*,” rarely with “*an*.” He does not transmit legal *dicta* of his own from him.

‘Abd Allāh ibn ‘Ubayd ibn ‘Umayr

He has the *nisba* al-Laythī and died in 113/731–2.⁶⁰⁷ Ibn Jurayj generally introduces him with “*sami’tu*,” only exceptionally with “*akhbaranī*.” He transmits without *isnād* from the Prophet, ‘Umar, ‘Alī, and—through the Medinan al-Qāsim ibn Muḥammad—a story from the

⁶⁰⁴ AM 6: 11352.

⁶⁰⁵ Cf. Sezgin, *Geschichte*, vol. 1, p. 59 f. Azami, *Studies in Hadīth Methodology*, p. 21.

⁶⁰⁶ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, pp. 282, 286. Ibn Hibbān, *Mashāhīr*, no. 639.

⁶⁰⁷ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 281. Ibn Hibbān, *Mashāhīr*, no. 605.

Prophet's wives Umm Salama and 'Ā'isha. As authorities among the older *tābi'ūn* he names his father 'Ubayd ibn 'Umayr and 'Aṭā'.⁶⁰⁸ Legal *dicta* of 'Abd Allāh's own are absent. He belonged to the circle around 'Aṭā'.⁶⁰⁹

Ibn Ṭāwūs

His full name was 'Abd Allāh ibn Ṭāwūs ibn Kaysān al-Hamdānī al-Khawlanī and he died in 132/749–50.⁶¹⁰ He lived and was active primarily in Yemen and, in the geographical sense, is not a Meccan. I include him in this category, however, since his tradition is kindred in spirit to that of Mecca.⁶¹¹ With almost 5%, it is among the more extensive in Ibn Jurayj's work and differs from all the others in a characteristic way. It consists exclusively of teachings of his father Ṭāwūs ibn Kaysān (d. 106/724–5) and a few legal opinions of his own. 85% of what he transmitted to Ibn Jurayj from his father is the latter's *ra'y* in the form of *dicta* (80%) and *responsa* (20%)—usually to questions of Ibn Ṭāwūs. Of the few traditions of Ṭāwūs, half fall to his teacher Ibn 'Abbās; the remainder consists of *ḥadīths* of the Prophet and traditions of the *ṣaḥāba*. Ṭāwūs generally does not name informants. The story of the Prophet's *fatwā* in the case of the divorce of 'Abd Allāh ibn 'Umar, which he states that he "heard" from Ibn 'Umar—probably 'Āṣim, not 'Abdallāh himself—is an exception.⁶¹²

All of these characteristics are reminiscent of Ibn Jurayj's tradition from 'Aṭā' and that of 'Amr ibn Dīnār from Abū l-Sha'thā': predominantly *ra'y*, few or no traditions, rarely *isnāds*. This correspondence is noteworthy since all three are approximately the same age and students of Ibn 'Abbās, and were considered the most outstanding legal scholars of their time in the region in which they lived and taught: Ṭāwūs in Yemen, 'Aṭā' in Mecca and Abū l-Sha'thā' in Basra. That there are also many correspondences in the content of their teachings is noticeable even through cursory reading, but would have to be investigated in greater detail. That cannot take

⁶⁰⁸ Cf. AM 6: 10324, 11037, 11896; 7: 12448, 12604, 12862.

⁶⁰⁹ See pp. 84, 106.

⁶¹⁰ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 288. Ibn Ḥibbān, *Mashāḥir*, no. 1538.

⁶¹¹ Presumably he studied in Mecca. Ibn Ḥazm also includes him with Meccan *fiqh* ("Aṣḥāb al-fityā," p. 324).

⁶¹² AM 6: 10961.

place in this context. It should only be kept in mind that the characteristic features of the *fiqh* of 'Aṭā' are clearly not unique, but can also be demonstrated in other centers of scholarship. Whether they can be considered paradigmatic for the Islamic *fiqh* of the first/seventh century in general can be definitively answered only when the early history of jurisprudence in Medina and Kufa, Basra and Damascus as well is investigated in greater detail.

Ibn Jurayj usually cites Ibn Ṭāwūs with the formula "*akhbarānī (nā)*" (58%), but also frequently with "*an*" (35%). Questions from Ibn Jurayj to Ibn Ṭāwūs occur in isolated cases, as do the simple "*qāla lī*" and "*za'ama*." He also occasionally appears in Ibn Jurayj's comments on his 'Aṭā' tradition.⁶¹³

b. *Ibn Jurayj's Medinan sources*

After the scholars of Mecca, it is above all Medinans from whom Ibn Jurayj reported the most. The most important are Ibn Shihāb, Hishām ibn 'Urwa, Yaḥyā ibn Sa'īd, Mūsā ibn 'Uqba, Nāfi' and Ja'far ibn Muḥammad. But a number of the informants who occur more rarely also come from Medina. This fact is surely explained above all by its geographical proximity to Mecca.

Ibn Shihāb

His full name was Muḥammad ibn Muslim ibn 'Ubayd Allāh ibn Shihāb ibn 'Abd Allāh ibn Zuhra ibn Kilāb. Ibn Jurayj never cites him as anything but Ibn Shihāb, others—for example Ma'mar ibn Rāshid—only with the *nisba* al-Zuhrī.⁶¹⁴ He died in 124/742.⁶¹⁵ In terms of volume, traditions from him come in third place after those of 'Aṭā' and 'Amr ibn Dīnār in the work of Ibn Jurayj (almost 6%). They too have a characteristic profile: 54% are Ibn Shihāb's legal *dicta* (42%) and *responsa* (12%)—of the latter, only a few to questions from Ibn Jurayj himself. Less than half are traditions from others. Among them, traditions of the *ṣaḥāba* dominate; most frequently mentioned are 'Umar, then 'Uthmān, Ibn 'Umar and 'Ā'isha, more

⁶¹³ E.g. AM 6: 11298; 7: 13276.

⁶¹⁴ The different forms of his name are probably a function of regional preferences. Compare the two recensions of Mālik's *Muwatta'*: in Yaḥyā ibn Yahyā (al-Andalus) Mālik generally refers to Ibn Shihāb, in al-Shaybānī (Iraq) to al-Zuhrī.

⁶¹⁵ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 261. Ibn Ḥibbān, *Mashāḥir*, no. 444.

rarely Zayd ibn Thābit, Abū Hurayra, Ibn ‘Abbās and lesser-known Companions. References to such authorities have a share of approximately 45%, those to *tābi‘ūn*—above all the caliphs ‘Abd al-Malik and ‘Umar ibn ‘Abd al-‘Azīz, more rarely Medinan scholars such as Ibn al-Musayyab and Abū Bakr ibn ‘Abd al-Raḥmān—25%, and *ḥadīths* of the Prophet 23%. As an individual, on the other hand, the Prophet is most frequently represented; he is followed only at some remove by ‘Umar (14%). It is conspicuous that the caliphs are very strongly represented (41%) among Ibn Shihāb’s authorities, a phenomenon which was to be observed with Ibn abī Mulayka as well.⁶¹⁶ Ibn Shihāb names sources for his traditions of the Prophet and ‘Ā’isha generally, for ‘Umar and Ibn ‘Umar more often than not, for ‘Uthmān rarely. He usually refers to *tābi‘ūn* directly. With one exception, Ibn Shihāb’s sources belong to the class of the *tābi‘ūn*. He transmits most frequently from ‘Urwa ibn al-Zubayr, then from other early Medinan scholars such as Abū Salama ibn ‘Abd al-Raḥmān ibn ‘Awf, ‘Ubayd Allāh ibn ‘Abd Allāh ibn ‘Utba ibn Mas‘ūd, Sālim ibn ‘Abd Allāh ibn ‘Umar, Sulaymān ibn Yasār, Qabīṣa ibn Dhu‘ayb and Muḥammad ibn ‘Abd al-Raḥmān ibn Thawbān. The only Companion of the Prophet among his informants for the Prophet is Sahl ibn Sa‘d.⁶¹⁷ He died in 91/710 or 88/707 in Medina as one of the last in the ranks of those who were alive to meet the Prophet.⁶¹⁸ That Ibn Shihāb has the *ḥadīth* in question directly from him is thus not out of the question. On the other hand, it should be remembered that he sometimes reports without an *isnād* about ‘Umar and ‘Uthmān, whom he cannot have met, but about ‘Abd Allāh ibn ‘Umar, to whom contact was possible, more often with than without a source.

It is surely not sensible to assume that Ibn Jurayj invented the entire tradition of Ibn Shihāb or even simply its statements of provenance. Firstly, it differs too much from the material which he presents from ‘Aṭā’ ibn abī Rabāḥ, ‘Amr ibn Dīnār, Ibn Ṭāwūs and others for this. Each of these traditions has a very individual stamp—I call it a profile—which can hardly derive from one and the same forger. Secondly, the advocate of the thesis of forgery would have

⁶¹⁶ See p. 211.

⁶¹⁷ AM 7: 12446, 12447.

⁶¹⁸ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 98. Ibn Ḥibbān, *Mashāḥir*, no. 114.

to be able to answer the question why the Meccan Ibn Jurayj, who relies predominantly on Meccan teachers, should have fabricated traditions with Medinan sources. That Ibn Jurayj actually has his Ibn Shihāb traditions from the latter is not in doubt. It is, however, also difficult to understand why Ibn Shihāb should have himself fabricated his traditions from others and their sources. Firstly, his own *ra'y* predominates over his traditions from others; for him there was thus clearly no necessity to invent traditions from the Prophet or his Companions in order to give expression to a legal opinion. Secondly, it would be odd that he should have falsely referred to older contemporaries and Companions and simultaneously fabricated so many *ḥadīths* of the Prophet. Had he had the need to lend his legal opinions greater authority through projections, would he not then generally have cited the Prophet or at least 'Umar? Thirdly, it is incomprehensible why he should have invented informants for some traditions and not for others, for some continuous *isnāds* and for others discontinuous ones. Thus, for example, the *isnād* Abū Salama ibn 'Abd al-Raḥmān (d. 94/712-3 or 104/722-3)—'Umar (d. 23/644)⁶¹⁹ is defective, since Abū Salama cannot have been eyewitness of a verdict of this caliph if he—as noted in the biographical literature⁶²⁰—died at the age of 72. On the other hand, Ibn Shihāb does not hesitate to report on the first caliphs, and other *ṣaḥāba* whom he himself did not meet, without any *isnād*.⁶²¹ All of this speaks against the assumption that he himself invented his traditions from others and fabricated the sources named for them. Rather, he probably obtained them from the latter and, where an *isnād* is lacking, from unnamed persons. The traditions of the Prophet and the *ṣaḥāba* for which he names an informant thus in all probability derive from the first/seventh century, the anonymous ones at the latest from the first quarter of the second/eighth century.

This conclusion also puts other Ibn Shihāb traditions like, for instance, those of Mālik in the *Muwatṭa'*—to name only the best-known—in a more favorable light. Schacht wanted at most to accept Ibn Shihāb's direct *responsa* to questions of Mālik's and the latter's "heard" *dicta* as without doubt authentic, but considered him "hardly

⁶¹⁹ AM 6: 10540. The second informant should probably be 'Ubayd Allāh ibn 'Abd Allāh ibn 'Utba instead of 'Abd Allāh ibn 'Utba.

⁶²⁰ Cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 117.

⁶²¹ Cf. AM 6: 11245; 7: 12092, 12093, 12097, 12198, 13322, 13540, 13970.

responsible" for the greatest part of the traditions transmitted through him from the Prophet, from Companions and their Successors.⁶²² Since, however, Ibn Jurayj has an Ibn Shihāb tradition independent of Mālik—another is offered by Ma'mar ibn Rāshid—on this broad source basis it is possible to reach a better-founded evaluation of the traditions attributed to Ibn Shihāb. This is an aspect which would have to be taken up in the context of an investigation of the early legal development of Medina.⁶²³

In the case of Ibn Shihāb, Ibn Jurayj's introductory formula is not uniform: "*Samī'atū*" and direct questions of Ibn Jurayj to Ibn Shihāb appear sporadically (together 6%). The anonymous questions usually begin directly with "*su'ila* Ibn Shihāb." References to him are also found in Ibn Jurayj's comments on other traditions.⁶²⁴

Hishām ibn 'Urwa

Hishām ibn 'Urwa ibn al-Zubayr ibn al-'Awwām died in 145/762–3 or 146.⁶²⁵ His tradition, which makes up about 2% of Ibn Jurayj's work as a whole, also has a very characteristic profile. It contains almost exclusively the traditions, *responsa* and *dicta* of his father 'Urwa (d. 94/712–3 or 99/717–8). In this respect it resembles that of Ibn Ṭāwūs.⁶²⁶ But in contrast to Ṭāwūs, with 'Urwa the traditions of others (ca. 60%) predominate over his own legal opinions. If one takes only individual persons as a basis for calculation, 'Urwa's own material is followed first by the *ḥadīths* of the Prophet and only at a large remove by reports about 'Uthmān, 'Umar, 'Alī, Abū Hurayra and others. That is, after 'Urwa himself a clear preference is accorded to the Prophet as an authority in the Ibn 'Urwa tradition.

In general, 'Urwa has various informants for his traditions of the Prophet and the *ṣaḥāba*. It is noteworthy that he does not rely exclusively on his aunt, 'Ā'isha, and his brother, the later caliph 'Abd Allāh,⁶²⁷ who is still considered a Companion of the Prophet,⁶²⁸ but

⁶²² Cf. Schacht, *Origins*, p. 246.

⁶²³ For a first evaluation of Ibn Shihāb's *fiqh* based on the sources mentioned cf. Motzki, "Der Fiqh des -Zuhri."

⁶²⁴ Cf. AM 6: 10561, 11863, 11924; 7: 12053.

⁶²⁵ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, pp. 267, 327. Ibn Ḥibbān, *Mashāḥir*, no. 583.

⁶²⁶ See p. 216.

⁶²⁷ Cf. AM 7: 13925, 13940.

⁶²⁸ He was born in the year 1, and was thus ten years old at the death of the Prophet. Cf. Ibn Ḥibbān, *Mashāḥir*, no. 154.

on many others as well. From 'Umar and 'Uthmān he transmits sometimes directly, sometimes through informants,⁶²⁹ but not firsthand from 'Alī and Abū Hurayra, with whom he probably had extensive contact. His sources are on the one hand well-known Companions of the Prophet like 'Ā'isha, 'Abd Allāh ibn al-Zubayr and Miswar ibn Makhrama,⁶³⁰ on the other hand—sometimes little- or unknown—*tābi'ūn* like Jamhān, al-Ḥajjāj ibn al-Ḥajjāj al-Aslamī, Zaynab bint abī Salama, 'Abd Allāh ibn Ja'far (a nephew of 'Alī) or Yaḥyā ibn 'Abd al-Raḥmān ibn Khaṭīb (a younger (!) contemporary of 'Urwa's).⁶³¹ Hishām also transmits from his grandmother Asmā', the sister of 'Ā'isha, and from his wife Fāṭima bint al-Mundhir, a granddaughter of Asmā's, instead of from his father 'Urwa.⁶³² This variety and the weak points in 'Urwa's *isnāds* do not speak for the thesis of forgery.

After all the information that has been compiled about his tradition up to this point, the possibility that Ibn Jurayj forged these texts or *isnāds* can be dismissed. I will spare myself enumerating all the arguments again. It is just as implausible that Hishām ibn 'Urwa made up this heterogeneous material from his father, or even simply the sources named for it, from whole cloth. For the Prophet he had—had he wished to project legal opinions onto him—a flawless *isnād* in the names "'Urwa—'Ā'isha—Prophet"; he had an excellent source for the older *ṣaḥāba*—why does he support himself with them at all, if he wished to engage in forgery?—in his uncle 'Abd Allāh ibn al-Zubayr, the later caliph, and for the younger Companions in his father 'Urwa. Why should he, for instance, produce *ḥadīths* of the Prophet with the *isnāds* "'Urwa—al-Ḥajjāj [ibn al-Ḥajjāj] al-Aslamī—*abūhu*—the Prophet" or "'Urwa—'Abd Allāh ibn al-Zubayr—the Prophet"?⁶³³ It is much more probable that Hishām really has his tradition from his father 'Urwa. The arguments mentioned against the thesis of forgery apply to him as well, so that it is to be assumed that 'Urwa has his reports about the Prophet or the Companions from the person whom he names and, in places where he reports

⁶²⁹ Cf. AM 6: 11760; 7: 12194 [here "'an *abūhi*" is probably missing from the *isnād* as a result of inattention on the part of later transmitters], 13644, 13650.

⁶³⁰ Cf. AM 6: 11734; 7: 13925, 13940.

⁶³¹ Cf. AM 6: 11760; 7: 13644, 13910, 13947, 13956, 14006.

⁶³² AM 7: 13993. On Fāṭima bint al-Mundhir cf. Ibn Sa'd, *Ṭabaqāt*, vol. 8, p. 350.

⁶³³ AM 7: 13956, 13925. I corrected al-Ḥajjāj al-Aslamī to al-Ḥajjāj ibn al-Ḥajjāj al-Aslamī following 13910.

about them directly, has them from an unnamed source or witnessed them himself.⁶³⁴

Ibn Jurayj's Hishām ibn 'Urwa tradition thus contains not only authentic texts about 'Urwa's *fiqh* but also traditions of the *ṣaḥāba* and the Prophet whose authenticity is to be assumed not only for 'Urwa and his time but sometimes also for the generation between him and the Prophet. In contrast to Schacht—"I have not found any opinion ascribed to one of these ancient lawyers which is likely to be authentic"⁶³⁵—I thus also consider Mālik's Hishām ibn 'Urwa material in the *Muwatta'* to be no less credible than that of Ibn Jurayj. Whether this assumption is correct could be tested by a detailed investigation of both strands of transmission—to which those of Ma'mar and al-Thawrī would also have to be added. This belongs in a work on Medinan *fiqh*.⁶³⁶

The formulae of transmission of the Ibn Jurayj—Hishām ibn 'Urwa texts are primarily "*akhbaranī (nā)*" (43%) and "*ḥaddathanī (nā)*" (26%); a simple "*an*" appears in smaller numbers.

Yaḥyā ibn Sa'īd

Yaḥyā ibn Sa'īd ibn Qays al-Anṣārī died in 143/760–1.⁶³⁷ He is thus a—probably only a few years older—contemporary of Ibn Jurayj, which precludes fabricated reference to him. In Ibn Jurayj's work his tradition has approximately the same magnitude as that of Hishām. It too has a characteristic profile. It consists largely—almost three fourths—of the legal *dicta* and the traditions of the Medinan Sa'īd ibn al-Musayyab, who died in 93/712 or 94.⁶³⁸ Legal *dicta* of Yaḥyā's own occur rarely. In approximately one third of all of Yaḥyā's texts the *ra'y* of Ibn al-Musayyab is reported. Since Yaḥyā frequently quotes him with "*samī'tu*," one may probably assume that he was Yaḥyā's teacher. The traditions which Yaḥyā cites from him are

⁶³⁴ On 'Urwa cf. J. von Stülpmagel, *'Urwa Ibn al-Zubair. Sein Leben und seine Bedeutung als Quelle frühislamischer Überlieferung*, Ph.D. thesis Tübingen 1957 and G. Schoeler, "'Urwa b. al-Zubayr," in: *Encyclopaedia of Islam*, Second Edition, vol. 10, pp. 910–913.

⁶³⁵ Schacht, *Origins*, p. 245.

⁶³⁶ For 'Urwa's role as transmitter of *sīra* and *maghāzī* material cf. also G. Schoeler, *Charakter und Authentie der muslimischen Überlieferung über das Leben Mohammeds*, Berlin/New York 1996 passim and A. Görke, "The Historical Tradition about al-Hudaybiya. A Study of 'Urwa b. al-Zubayr's Account," in: H. Motzki (ed.), *The Biography of Muḥammad: The Issue of the Sources*, Leiden 2000, pp. 240–275.

⁶³⁷ Cf. Khalifa ibn Khayyāt, *Tabaqāt*, p. 270. Ibn Hibbān, *Mashāḥir*, no. 581.

⁶³⁸ Cf. Khalifa ibn Khayyāt, *Tabaqāt*, p. 244. Ibn Hibbān, *Mashāḥir*, no. 426.

without exception traditions of 'Umar. Besides the material of Ibn al-Musayyab, Ibn Jurayj also has from Yaḥyā a few *ḥadīths* of the Prophet and traditions of 'Umar from other Medinan scholars—such as al-Qāsim ibn Muḥammad, 'Amrat bint 'Abd al-Raḥmān and 'Abd Allāh ibn Dīnār—and anonymous material.

Yaḥyā's—and probably already Ibn al-Musayyab's—legal authority of choice is clearly 'Umar, not the Prophet. It is not to be assumed that Yaḥyā fathered the 'Umar traditions on Ibn al-Musayyab since, firstly, he also transmits from 'Umar without a source and, secondly, Ibn al-Musayyab is too poor a choice for a scholar from the first half of the second/eighth century who wanted to forge an *isnād* for 'Umar. Ibn al-Musayyab is supposed to have been born in the year 15/636–7, which means that he was just eight years old when 'Umar died, too young to have been present for all of his legal verdicts and advice. If the 'Umar traditions thus actually derive from Sa'īd ibn al-Musayyab, is he then to be considered as a forger or as one who projected his own legal views onto 'Umar? Against this speaks the large number of his own legal opinions. From this I conclude that he was not compelled to shore up his views with authorities, and thus had no motive to invent traditions of 'Umar. Since he himself can hardly have experienced 'Umar's caliphate from the standpoint of a *faqīh*, he probably has them second-hand. Presumably he collected such precedents without noting down or remembering the source. Such "negligence" was also to be observed with 'Aṭā'. It led to the result that later, when the demand for identification of informants arose, people could no longer fulfil it. This could explain the discontinuity between 'Umar and Ibn al-Musayyab. It is true that the Ibn al-Musayyab traditions are not demonstrably authentic reports about 'Umar, but they are ones which were circulating in the first/seventh century—presumably quite early in the first century, at a time when *isnāds* were not an issue yet.

An investigation of Meccan *fiqh* is not the place to make definitive statements about Medinan legal scholars. The basis of material used is too narrow for this. In addition to Ibn Jurayj's tradition from Yaḥyā, that of Mālik in the *Muwatta'* and those of Ibn 'Uyayna, Ma'mar and al-Thawrī in the *Muṣannaf* of 'Abd al-Razzāq and that of Ibn abī Shayba, among other works, would have to be taken into account. However, even on the basis of the analysed section of Ibn Jurayj's tradition from Yaḥyā in the context of Ibn Jurayj's work as a whole it can be seen that Schacht's evaluation of Yaḥyā's traditions

is not tenable. He advanced the opinion: "Yahyā is responsible for the transmission of a considerable amount of *fictitious* information on the ancient Medinese authorities, information which had come into existence in his time; he also transmits *recently created* traditions and *isnads*."⁶³⁹

Yahyā's traditions are introduced by Ibn Jurayj primarily with "an" (59%), but also with "*akhbaranī*" (32%), rarely with "*ḥaddathanī*" or "*samītu*."

Mūsā ibn 'Uqba

He died in 135/752-3 or 141/758-9.⁶⁴⁰ His father was a *mawlā* (freedman) of al-Zubayr. Nevertheless, his tradition is completely different from that of the Zubayrids Hishām ibn 'Urwa—'Urwa. It is pure Nāfi' material which contains neither legal *dicta* of Mūsā's own nor those of Nāfi', but only traditions in which Nāfi'—i.e. the *mawlā* of 'Abd Allāh ibn 'Umar—who died in 118/736 or 119,⁶⁴¹ is his informant.⁶⁴² They are exclusively traditions from and about the family of 'Umar and 'Abd Allāh ibn 'Umar. *Ḥadīths* about the Prophet and other *ṣaḥāba*—such as Abū Bakr—are very rare. They, too, have an *isnād* of the family of Ibn 'Umar.

Ibn Jurayj probably actually has these traditions of Nāfi' from Mūsā. Since he himself also transmits directly from Nāfi', it is not comprehensible why he should fabricate an extra intermediary link. The fact that he himself met Nāfi'⁶⁴³ and perhaps in this way came into contact with Mūsā speaks for the assumption that Mūsā's material actually derives from Nāfi'. Ibn Jurayj would surely have recognized forgeries. The hypothesis that the two could have colluded to fabricate Nāfi' traditions is not acceptable as long as no sensible motive for the Meccan Ibn Jurayj to forge Medinan traditions of 'Umar and Ibn 'Umar—not *ḥadīths* of the Prophet!—is discernible.

⁶³⁹ Schacht, *Origins*, p. 248. Emphases mine.

⁶⁴⁰ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 267. Ibn Hibbān, *Mashāḥir*, No. 584. "Mūsā b. 'Uqba," in: *Encyclopaedia of Islam*, Second edition, vol. 7, p. 644.

⁶⁴¹ Cf. Khalifa ibn Khayyāt, *Ṭabaqāt*, p. 256. Ibn Hibbān, *Mashāḥir*, No. 578. G. H. A. Juynboll, "Nāfi'," in: *Encyclopaedia of Islam*, Second edition, vol. 7, pp. 876-877.

⁶⁴² The one exception—AM 7: 13312: Mūsā ibn 'Uqba—Ṣafiyya bint abī 'Ubayd—Abū Bakr—is probably based on an oversight by later (?) transmitters who forgot Nāfi' between Mūsā and Ṣafiyya.

⁶⁴³ Also see pp. 136, 279.

Let us set aside the question of whether Nāfi' invented it all. This will surely be brought out by an analysis of the preserved Nāfi' material, in which, among others, the strands of transmission of Ibn Jurayj—Nāfi' in the *Muṣannaf* and Mālik—Nāfi' in the *Muwaṭṭā'* will have to be consulted.⁶⁴⁴

Ibn Jurayj cites Mūsā ibn 'Uqba either with “*an*” (60%) or with “*akhbarani*” (40%).

Nāfi'

The tradition which Ibn Jurayj has not from Mūsā ibn 'Uqba but directly from Nāfi' is very similar to that of Mūsā. It too is largely limited to traditions about or from the family of 'Umar, but sporadically contains Nāfi's own legal *dicta*.⁶⁴⁵ Texts of 'Abd Allāh ibn 'Umar transmitted directly by Nāfi' dominate.⁶⁴⁶ For isolated reports about the wives of the Prophet 'Ā'isha or Ḥafṣa, 'Umar's daughter, he names as sources 'Umarids such as Sālim ibn 'Abd Allāh ibn 'Umar or Ṣafiyya bint abī 'Ubayd, the wife of 'Abd Allāh ibn 'Umar;⁶⁴⁷ however, he also sometimes cites 'Umar directly, which must be at second hand and in one case presumably derives from Ṣafiyya.⁶⁴⁸ Some indicators speak for the assumption that Ibn Jurayj's reference to Nāfi' is authentic. He emphasizes having heard many Nāfi' traditions;⁶⁴⁹ however, he cites the majority with a simple “*an*.” It has already been mentioned elsewhere that Ibn Jurayj, when he was still a student of 'Aṭā's, took advantage of a stay in Mecca by Nāfi' to question him through an intermediary about a tradition of Ibn 'Umar,⁶⁵⁰ which—because of the intermediary—is presumably not invented. What was said in connection with Mūsā ibn 'Uqba applies to the question of the genuineness of the Nāfi' material.⁶⁵¹

⁶⁴⁴ Also see my remarks on Schacht's evaluation of the Mālik—Nāfi' tradition on pp. 132–136.

⁶⁴⁵ E.g. AM 7: 12516.

⁶⁴⁶ Cf. AM 7: 13018, 13205, 13255.

⁶⁴⁷ AM 7: 13928, 13929.

⁶⁴⁸ AM 7: 13470, 13471.

⁶⁴⁹ AM 7: 12516, 13928, 13929.

⁶⁵⁰ See p. 136.

⁶⁵¹ G. H. A. Juynboll has argued that probably there was “not a man called Nāfi', the *mawla* of Ibn 'Umar” and that all transmissions claimed from him are fictitious. Cf. his “Nāfi', the *Mawla* of Ibn 'Umar, and his Position in Muslim *Hadīth* Literature,” *Der Islam* 70 (1993), pp. 207–244 and my answer in “*Quo vadis Hadīth*-Forschung.”

Ja'far ibn Muḥammad

His full name is Ja'far ibn Muḥammad ibn 'Alī ibn Ḥusayn ibn 'Alī ibn abī Ṭālib. He died in 148/765–6.⁶⁵² The tradition of this great-grandchild of 'Alī's contains exclusively⁶⁵³ texts which he acquired from his father, similarly to those of Ibn Ṭāwūs and Hishām ibn 'Urwa. However, legal opinions of Muḥammad ibn 'Alī are not among them; rather, they are primarily traditions about his great-grandfather 'Alī and a few *ḥadīths* of the Prophet, thus a pure family tradition. It is noteworthy that Muḥammad ibn 'Alī—also known by his *kunya* Abū Ja'far—, who died in 114/732–3 or 118/736 at the age of 63 years,⁶⁵⁴ names no informants for his traditions, neither for 'Alī (d. 40/660) nor for the Prophet. Presumably he drew on his family tradition. That he does not simply fill the gap with his father and grandfather and thus produce an *isnād* which would be above all criticism speaks against forgery by Ja'far and probably also by his father. This means that we are dealing with traditions about 'Alī and the Prophet which were circulating in the 'Alid family in the second half of the first/seventh century.

c. Ibn Jurayj's Iraqi sources

The proportion of traditions from Iraqi informants in the work of Ibn Jurayj is significantly smaller than that of the Medinans. Of the more frequently mentioned sources only 'Abd al-Karīm, Dāwūd ibn abī Hind and Ayyūb ibn abī Tamīma are from Iraq.

'Abd al-Karīm

'Abd al-Karīm is among Ibn Jurayj's five most frequently mentioned sources after 'Aṭā'. Usually he gives only this name, but in a few cases there is more complete information, allowing a more precise identification: 'Abd al-Karīm al-Jazarī⁶⁵⁵ and 'Abd al-Karīm ibn abī l-Mukhāriq.⁶⁵⁶ One might assume that this supplied his full name;

⁶⁵² Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 269. Ibn Ḥibbān, *Mashāḥir*, no. 997. M. G. S. Hodgson, "Dja'far al-Ṣādiq," in: *Encyclopaedia of Islam*, Second Edition, vol. 2, pp. 374–375.

⁶⁵³ In AM 6: 10984 "*an abīhi*" has probably been lost through the negligence of a transmitter.

⁶⁵⁴ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 255. Ibn Ḥibbān, *Mashāḥir*, no. 420.

⁶⁵⁵ AM 6: 10571, 11460.

⁶⁵⁶ AM 6: 11717.

however, a look into the biographical literature shows that they are two people of the same name. In Ibn Sa'd's (d. 230/844-5) *Tabaqāt* only an Abū Umayya 'Abd al-Karīm ibn abī l-Mukhāriq is registered, who died in 126,⁶⁵⁷ but citations from Ibn Sa'd about 'Abd al-Karīm al-Jazarī in Ibn Ḥajar's *Tahdhīb* show that the *Tabaqāt* originally contained his biography as well.⁶⁵⁸ In Khalifa ibn Khayyāt's (d. 240/854-5) work of the same name there is only an Abū Sa'īd 'Abd al-Karīm ibn Mālik from Harrān in the Jazīra.⁶⁵⁹ This should be Ibn Jurayj's al-Jazarī. Al-Bukhārī (d. 256/870) mentions both in his "*al-Ta'rikh al-kabīr*":⁶⁶⁰ about al-Jazarī he additionally notes that he was a *mawlā* (freedman) of 'Uthmān or Mu'āwiya, came originally from Iṣṭakhr, was a close cousin (*ibn 'amm laḥḥan*) of Khaṣīf [ibn 'Abd al-Raḥmān, d. 137/754-5, also a *mawlā* of Banū Umayya and a resident of Harrān]⁶⁶¹ and died in 127/744-5. About Ibn abī l-Mukhāriq he states that he had the *nisba* al-Baṣrī, died in 127 and was also called 'Abd al-Karīm ibn Qays by some.

Although all of these data suggest the conclusion that the two 'Abd al-Karīms are different scholars of the same name (*ism*) who lived at the same time, G. H. A. Juynboll is of the opinion that they are one and the same person.⁶⁶² In this he supports himself primarily with the many similarities which are to be observed in Ibn Ḥajar's biographical articles about the two.⁶⁶³ However, this conclusion is not compelling. In al-Bukhārī the correspondences are limited to one common teacher (Mujāhid) among others, two common students (al-Thawrī, Mālik) among others and the same date of death, which, however, differs by one year according to Ibn Sa'd. Such parallels in two biographies are not improbable. One cannot discard different

⁶⁵⁷ Cf. Ibn Sa'd, *Tabaqāt*, vol. 7/2, p. 18 (in the *tabaqāt* of the Baṣrians) and vol. 5, p. 365 (1st line); 'Abd al-Karīm al-Jazarī is mentioned in Ibn Sa'd in at least two places (vol. 7/2, p. 71, line 10; p. 182, line 18), but has no biographical entry of his own in the preserved recensions of the text.

⁶⁵⁸ G. H. A. Juynboll has pointed this out in "Dyeing the Hair and Beard in Early Islam. A *Hadīth*-analytical Study," *Arabica* 33 (1986), p. 64. In addition to the passage mentioned by him, Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 374 (line 9), he is also cited on p. 375 (line 8) with the death date 127. Citations on 'Abd al-Karīm al-Jazarī from Ibn Sa'd are also attested 200 years earlier in al-Nawawī, *Tahdhīb*, vol. 1, p. 308.

⁶⁵⁹ Cf. Khalifa ibn Khayyāt, *Tabaqāt*, p. 319.

⁶⁶⁰ al-Bukhārī, *Ta'rikh*, vol. 3/2, pp. 88-89.

⁶⁶¹ See note 659.

⁶⁶² Juynboll, "Dyeing the Hair," pp. 65-67.

⁶⁶³ Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 373-375 and 376-379.

kunyas, fathers' names, *nishas* and the judgment of the early Muslim biographers as irrelevant on this basis.

Juynboll does not clearly state how, in his opinion, all this is to be explained. He seems to assume that one of the names—he inclines to al-Jazarī—was invented in order to separate distasteful 'Abd al-Karīm traditions from acceptable ones. One may ask whether such a forgery is likely as early as the beginning of the third/ninth century—Ibn Sa'd had both names. It speaks clearly against the thesis of forgery that in the *Muṣannaf* of 'Abd al-Razzāq not only 'Abd al-Karīm (al-Jazarī) but also 'Abd al-Karīm Abū Umayya al-Baṣrī appear in *isnāds* of different sources—in addition to Ibn Jurayj also Ibrāhīm ibn 'Umar,⁶⁶⁴ Ma'mar,⁶⁶⁵ al-Thawrī,⁶⁶⁶ and others⁶⁶⁷—, and that the different names are consequently attested as early as the second century, thus at a time when the sifting of *ḥadīths* and the criticism of transmitters had not yet really gotten under way. It thus seems more sensible to follow the assignment of these name components to two different persons, as was undertaken by the Muslim biographers of the first half of the third century. They themselves or their teachers still had contact with the two 'Abd al-Karīms, and thus are not to be scorned as sources of information. The increase in biographical correspondences between the two in later works can be explained as the result of—conscious or unconscious—conflations caused by the fact that often in the *isnāds* only the name 'Abd al-Karīm is given and it remains open which of the two is intended. Since the two are contemporaries, sometimes refer to the same authorities, and sometimes are quoted by the same students, this is in fact difficult to decide. This uncertainty also appears clearly in Ibn Ḥajar's material, and because of the possibility of conflation al-Dhahabī explicitly mentions also Ibn abī l-Mukhāriq in his article on al-Jazarī.⁶⁶⁸ One also confronts this problem in the case of Ibn Jurayj. From the fact that he occasionally refers to 'Abd al-Karīm in the form of notes and that in one note the addition al-Jazarī appears, I conclude that the 'Abd al-Karīm in Ibn Jurayj's tradition had the

⁶⁶⁴ AM 6: 10248.

⁶⁶⁵ AM 6: 10073, (12704).

⁶⁶⁶ AM 6: 10080; 7: 12654. According to his student 'Abd al-Rahmān ibn al-Mahdī, with some traditions al-Thawrī explicitly stated which 'Abd al-Karīm he meant. Cf. Ibn Ḥanbal, *ʿIlal*, vol. 1, pp. 306, 307.

⁶⁶⁷ Outside the section of the *Muṣannaf* studied here.

⁶⁶⁸ Cf. Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 377 f. al-Dhahabī, *Tadhkira*, vol. 1, p. 140.

nisba al-Jazarī. This also fits the observation that ‘Abd al-Karīm al-Jazarī refers to Medinan and Meccan scholars, which is also most often the case with ‘Abd al-Karīm. Since in addition to ‘Abd al-Karīm [al-Jazarī] Ibn Jurayj cites ‘Abd al-Karīm ibn abī l-Mukhāriq, he probably obtained traditions from the latter as well. It is, however, unlikely that he himself did not differentiate between the two ‘Abd al-Karīms. In the case of ‘Aṭā’ ibn abī Rabāḥ, for instance, he generally speaks simply of ‘Aṭā’, and differentiates the other ‘Aṭā’ from him by the addition al-Khurāsānī. It is thus to be assumed that he designated the second ‘Abd al-Karīm by the patronymic Ibn abī l-Mukhāriq. If this is the case, he refers to the latter only rarely. ‘Abd al-Karīm [al-Jazarī] on the contrary is the scholar, after ‘Amr ibn Dīnār, to whom Ibn Jurayj refers most often in his notes on the ‘Aṭā’ material. This, and the relatively extensive tradition from him in the work of Ibn Jurayj, allows the assumption that after ‘Aṭā’ he was one of his teachers in addition to ‘Amr ibn Dīnār. This might mean that ‘Abd al-Karīm spent some time in Mecca, which is also confirmed by some of his traditions that assume direct contact to Medinans and Meccans.

The share of ‘Abd al-Karīm’s *ra’y* in his tradition as a whole—including Ibn Jurayj’s references to him in notes—is about 31%.⁶⁶⁹ The traditions of others which Ibn Jurayj reports from him are composed of 59% traditions about *ṣaḥāba*, 33% about *ṭabī‘ūn* and only 4% about the Prophet.⁶⁷⁰ In ‘Abd al-Karīm’s traditions of the *ṣaḥāba* there dominates a person whom we have not yet encountered in the investigation of Ibn Jurayj’s sources: Ibn Mas‘ūd.⁶⁷¹ He is followed at some remove, and almost even with each other, by ‘Umar and ‘Alī;⁶⁷² other scholars such as ‘Amr ibn al-‘Āṣ, Ibn ‘Umar, Zayd ibn Thābit and Ibn ‘Abbās are mentioned more rarely.⁶⁷³ The preponderance (almost 60%) of reports from Ibn Mas‘ūd and ‘Alī among the traditions of the Companions of the Prophet shows that ‘Abd

⁶⁶⁹ In comparison: With ‘Aṭā’ it was 80%, with ‘Amr ibn Dīnār 42%. This means either that the proportion of *ra’y* in the instruction actually decreased, or that Ibn Jurayj’s interest in *ra’y* diminished.

⁶⁷⁰ An additional 4% are anonymous.

⁶⁷¹ Cf. AM 6: 10244, 10722, 10827, 10878, 10990, 11098, 11163, 11716; 7: 13657, 13668.

⁶⁷² Cf. AM 6: 10541, 10626, 10722, 10877, 10990, 11361; 7: 12337, 12523, 13434, 13657, 13668, 13888.

⁶⁷³ Cf. AM 6: 10612, 10992, 11361.

al-Karīm's tradition draws for the most part from Kufan sources. This is to be observed—if not so markedly—in the case of his traditions of the *tābi'un* as well: He refers most often to "the companions (*aṣḥāb*) of Ibn Mas'ūd"⁶⁷⁴ and Shurayḥ,⁶⁷⁵ but also to Ṭāwūs, Ibn al-Musayyab, Abū Salama ibn 'Abd al-Raḥmān, Nāfi', Sa'id ibn Jubayr and 'Aṭā' ibn abī Rabāḥ.⁶⁷⁶ In addition to his Kufan strand of transmission a Ḥijazī one is thus also discernible.

Of 'Abd al-Karīm's traditions of the Companions, two thirds have no *isnād*. He usually cites Ibn Mas'ūd, who died in the year 32/652–3⁶⁷⁷ and whom he cannot himself have met, without identifying informants; sometimes, however, he names as a source the "companions of Ibn Mas'ūd,"⁶⁷⁸ from whom he probably has—directly or indirectly—the entire tradition of Ibn Mas'ūd. He practically never cites sources for 'Umar; an exception is formed by an 'Umar/'Alī *dictum* from al-Ḥasan [al-Baṣrī?].⁶⁷⁹ A few of 'Abd al-Karīm's 'Alī traditions and one 'Amr ibn al-'Āṣ tradition have more precise statements of provenance: He has them primarily from Kufan *tābi'un* such as Abū 'Ubayda ibn 'Abd Allāh ibn Mas'ūd (d. 83/702),⁶⁸⁰ Abū Mūsā, i.e. probably Mālik ibn al-Ḥārith al-Sulamī (d. shortly before 95/713–4),⁶⁸¹ Sālim ibn abī l-Ja'd (d. between 99/717–8 and 101/719–20),⁶⁸² but also the Meccan Mujaḥid. In addition there are also "the companions of 'Alī"⁶⁸³ as a rough statement of provenance for traditions of 'Alī without any *isnād* at all. 'Abd al-Karīm's few *ḥadīths* of the Prophet sometimes have a continuous *isnād*—like the Ḥijazī: 'Amr ibn Shu'ayb—*abūhu*—'Abd Allāh ibn 'Amr [ibn al-'Āṣ]—the Prophet⁶⁸⁴—, sometimes no *isnād*.⁶⁸⁵ From *tābi'un* 'Abd al-Karīm generally reports directly; from the Ḥijazī scholars they are usually *responsa* to questions which he asked them himself. All in all, one must class

⁶⁷⁴ Cf. AM 6: 10827, 11301, 11393; 7: 13772.

⁶⁷⁵ Cf. AM 6: 10878, 11163, 11183.

⁶⁷⁶ Cf. AM 6: 10571, 11460; 7: 13765, 13770, 13880, 13916.

⁶⁷⁷ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 16.

⁶⁷⁸ Cf. AM 6: 10827, 11098; 7: 13657.

⁶⁷⁹ AM 6: 10877.

⁶⁸⁰ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 153.

⁶⁸¹ Cf. the editor's note on AM 6: 10626 and Ibn Ḥibbān, *Mashāḥir*, no. 786.

⁶⁸² Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 156.

⁶⁸³ E.g. AM 7: 13657.

⁶⁸⁴ AM 6: 10750.

⁶⁸⁵ E.g. AM 7: 13864 (Ibn Jurayj is missing between 'Abd al-Razzāq and 'Abd al-Karīm through an oversight of the editor or of a transmitter).

his use of the *isnād* as rather under-developed in comparison to other contemporaries. This does not speak for the assumption that Ibn Jurayj or 'Abd al-Karīm himself invented this traditions. In the cases where he states an informant, he probably actually has the tradition in question from him. He clearly draws the rest from usually Kufan sources of the second half of the first/seventh century which he either could not remember in detail or did not think it necessary to name.

Ibn Jurayj's tradition from 'Abd al-Karīm is introduced with approximately the same frequency by the formulae "*akhbarani*" and "*an*," rarely by "*qāla (lā)*." There are also direct questions to him by Ibn Jurayj.⁶⁸⁶

Dāwūd ibn abī Hind

He is considered one of the scholars of Basra and died in 137/754–5, 139/756–7 or 140.⁶⁸⁷ Ibn Jurayj's tradition from him is not very extensive.⁶⁸⁸ Nevertheless, some characteristics can be noted. He transmits only material of others, no *dicta* of Dāwūd's own. It contains in equal parts traditions about Companions of the Prophet and their Successors, and only rarely *ḥadīths* of the Prophet. His traditions of the *ṣaḥāba* and the Prophet generally have *isnāds*, which, however, sometimes display anonymous links. Dāwūd's sources for these traditions are not always Basrans or Iraqis—as one might suspect—, rather, in addition to Kufan *isnāds*⁶⁸⁹ there are also those with Syrian and Meccan informants.⁶⁹⁰ Of the scholars of the *tābiʿūn* generation he cites exclusively *dicta* and *responsa* of the Medinan Saʿīd ibn al-Musayyab which he heard from him himself.⁶⁹¹ The tradition of Dāwūd ibn abī Hind is thus not typically Basran or Iraqi but has—so far as one can see from the narrow textual basis—a Ḥijāzī infusion. Ibn Jurayj usually introduces it with "*akhbarani*," seldom with "*ḥaddathanā*" or "*an*."

⁶⁸⁶ E.g. AM 6: 10827, 10878, 10973.

⁶⁸⁷ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 218. Ibn Ḥibbān, *Mashāḥir*, no. 1187.

⁶⁸⁸ About 0.6% of the total work.

⁶⁸⁹ E.g. AM 7: 12322 (NN—'Abd al-Raḥmān ibn abī Laylā—'Umar), 13074 ('Āmir al-Shaʿbī—[instead of "*aw*" one should read "*an*"] 'Abd Allāh ibn Qays [i.e., Abū Mūsā al-Ashʿarī]—'Uthmān).

⁶⁹⁰ E.g. AM 6: 11079 (Yazīd ibn abī Maryam—Abū 'Iyād—Ibn 'Abbās), 7: 12476 ('Abd Allāh [ibn 'Ubayd ibn 'Umayr]—NN min Banī Raziq [Medina]—['ulamā' of Medina]—the Prophet).

⁶⁹¹ Cf. AM 6: 11048, 11359; 7: 12431.

Ayyūb ibn abī Tamīma

He has the *nisba* al-Sakhtiyānī and is likewise is one of the scholars of Basra. He died in 131/748–9 or 132.⁶⁹² His tradition with Ibn Jurayj has a clearly Basran background. His main source for traditions of the Prophet and the *ṣaḥāba* is Ibn Sīrīn (d. 110/728 9),⁶⁹³ more rarely Yaḥyā ibn abī Kathīr (d. 129/746–7),⁶⁹⁴ but he also transmits from Meccan and Syrian informants.⁶⁹⁵ *Isnāds* are generally present. Legal opinions of *tābiʿūn* and of his own are absent. Ibn Jurayj's introductory formulae are primarily “*an*,” more rarely “*akhbarani*.”

d. *Ibn Jurayj's Syrian sources*

Only two Damascene scholars are relatively frequently cited by Ibn Jurayj: Sulaymān ibn Mūsā and ʿAṭāʾ al-Khurāsānī. Together they comprise less than 2% in the work of Ibn Jurayj as a whole.

Sulaymān ibn Mūsā

He died in 115/733–4 or 119/737.⁶⁹⁶ Ibn Jurayj's tradition from him contains, in addition to some legal *dicta* of Sulaymān's own,⁶⁹⁷ primarily *dicta* and *responsa* of Syrian *tābiʿūn* such as Qabīṣa ibn Dhuʿayb (d. 86/705), Makḥūl (d. 112/730–1, 113 or 114), Rajāʾ ibn Ḥaywa (d. 112)⁶⁹⁸ and verdicts or statements of Umayyad caliphs such as ʿAbd al-Malik and ʿUmar ibn ʿAbd al-ʿAzīz,⁶⁹⁹ but also a few traditions of the Prophet⁷⁰⁰ and ʿUmar.⁷⁰¹ The *ḥadīths* of the Prophet derive from Medinan circles (Ibn Shihāb—ʿUrwa ibn al-Zubayr, Nāfiʿ); their *isnāds* are sometimes continuous, sometimes defective, and the ʿUmar traditions have no *isnād*. For ʿUmar ibn ʿAbd al-ʿAzīz the source is Rajāʾ ibn Ḥaywa; the ʿAbd al-Malik reports have anonymous sources or none at all. The tradition of

⁶⁹² Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, pp. 218. Ibn Ḥibbān, *Mashāḥir*, no. 1183.

⁶⁹³ Cf. AM 6: 10257, 10317, 10346; 7: 13010.

⁶⁹⁴ E.g. AM 6: 10306.

⁶⁹⁵ E.g. AM 6: 10306; 7: 13010 (ʿIkrima—Ibn ʿAbbās). 12948 (Rajāʾ ibn Ḥaywa—Qabīṣa ibn Dhuʿayb—ʿĀʾisha).

⁶⁹⁶ Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 312, Ibn Ḥibbān, *Mashāḥir*, no. 1415.

⁶⁹⁷ Cf. AM 7: 12514, 12692, 13155, 13299.

⁶⁹⁸ Cf. AM 7: 12496, 12515, 13787.

⁶⁹⁹ Cf. AM 7: 12515, 13409, 13739, 13787.

⁷⁰⁰ AM 6: 10472; 7: 12638.

⁷⁰¹ AM 6: 10877; 7: 13155.

Sulaymān ibn Mūsā is largely to be regarded as genuinely Syrian. Ibn Jurayj usually cites it with “*akhbaranī*,” more rarely with “*an*,” “*qāla (lī)*,” “*samī‘tu*” or “*sa’altu*.”

‘Aṭā’ al-Khurāsānī

‘Aṭā’ ibn abī Muslim al-Khurāsānī died in 133/750–1.⁷⁰² Ibn Jurayj’s tradition from this younger Damascene scholar has a completely different profile from that of Sulaymān. It is largely (70%) a tradition of Ibn ‘Abbās supplemented with a few traditions of the Prophet, ‘Umar and ‘Uthmān. Some times it refers to Ibn ‘Abbās himself as a legal authority, sometimes he functions only as the transmitter of legal verdicts of the Prophet and the first two caliphs. ‘Aṭā’ al-Khurāsānī names informants neither for his Ibn ‘Abbās material nor for his *ḥadīths* of the Prophet which do not run through Ibn ‘Abbās. Only in one case does he specify Ibn Shihāb as his source for decisions of ‘Umar’s and ‘Uthmān’s with the formula “*akhbaranī*.” This is not a proper *isnād*. For this reason one may wonder whether ‘Aṭā’ has his Ibn ‘Abbās traditions, which furthermore have no indication of direct reception from Ibn ‘Abbās, from the latter himself or at second hand. Between the death dates of the two lies a timespan of 65 years. If he was over 80 years old at his death, he could still have heard from Ibn ‘Abbās in his youth. It is true that the *rijāl* experts give 50/670 as his year of birth—accordingly he would have been 18 years old at the death of Ibn ‘Abbās, but they are nevertheless unanimously of the opinion that he did not himself study with Ibn ‘Abbās.⁷⁰³ Since ‘Aṭā’ does not reveal his sources, the age, provenance and authenticity of these Ibn ‘Abbās traditions cannot be determined more exactly. To Ibn Jurayj, however, either ‘Aṭā’’s personality or his tradition or both seem have merited consideration, otherwise he would not have passed on these texts. He usually introduces them with “*akhbaranī*,” more rarely with “*an*.”

⁷⁰² Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 313. al-Dhahabī, *Mizān*, vol. 2, p. 198. Ibn Hajar, *Tahdhīb*, vol. 7, p. 213.

⁷⁰³ Cf. Ibn abī Hātim, *Jarh*, vol. 3, p. 334. al-Nawawī, *Tahdhīb*, vol. 1, pp. 334–335. al-Dhahabī, *Mizān*, vol. 2, pp. 198, 199. Ibn Hajar, *Tahdhīb*, vol. 7, pp. 212, 213, 214, 215. The year of birth 50 derives from Yahyā ibn Ma‘īn ‘an Mālik (al-Dhahabī, *Mizān*, vol. 2, p. 198).

2. *The value of Ibn Jurayj's sources for the history of early Islamic jurisprudence*

a. *The authenticity of Ibn Jurayj's tradition*

The profiles of Ibn Jurayj's 21 most-quoted sources allow a number of conclusions. One has to do with the authenticity of the Ibn Jurayj material. In the context of my argumentation for the authenticity of his tradition from 'Aṭā' ibn abī Rabāḥ I had adduced the strongly differing magnitude of the sources to which Ibn Jurayj refers, and within these sources the differing distribution of the literary genres, as important criteria of authenticity. The preceding profiles, from 'Aṭā' ibn abī Rabāḥ up to 'Aṭā' al-Khurāsānī, show that the differences between Ibn Jurayj's individual sources go far beyond aspects of magnitude and genre and that actually the tradition of each individual source has very distinctive features, even if certain regional commonalities or ones conditioned by provenance are discernible. The differences which make up the profile of each source are to be observed on several levels:

1. The proportion of *ra'y* to traditions from others in the source itself or from its main authority is subject to great fluctuations. For instance, the share of *ra'y* with 'Aṭā' ibn abī Rabāḥ is 80%, Ibn Ṭāwūs—Ṭāwūs 85%, Ibn Shihāb 54%, 'Amr ibn Dīnār 42%, Ibn 'Urwa—'Urwa ibn al-Zubayr 40%, Yaḥyā ibn Sa'īd—Ibn al-Musayyab 30%, and 'Abd al-Karīm 31%, while with others such as, for instance, 'Amr ibn Shu'ayb, Sulaymān ibn Mūsā, Ibn abī Mulayka, and Mūsā ibn 'Uqba little or no personal material is to be recorded.

2. Equally significant differences are disclosed when one takes into consideration the relationship between Ibn Jurayj's source and the latter's main authority and the amount transmitted from him. In some cases there are student-teacher relationships, as with 'Aṭā'—Ibn 'Abbās, 'Amr—Abū l-Sha'thā', Abū l-Zubayr—Jābir ibn 'Abd Allāh, Yaḥyā ibn Sa'īd—Ibn al-Musayyab, and Mūsā ibn 'Uqba—Nāfi'; with others also son-father relationships, as in the case of Ibn Ṭāwūs—Ṭāwūs, Hishām ibn 'Urwa—'Urwa ibn al-Zubayr, and Ja'far ibn Muḥammad—Muḥammad ibn 'Alī, or ties of clientage, as with Nāfi'—Ibn 'Umar. Some of these pairings are almost exclusive in character, i.e. they have material only from their father or master and from no one else, such as Ibn Ṭāwūs—Ṭāwūs, Ibn 'Urwa—'Urwa, Mūsā ibn 'Uqba—Nāfi', and Ja'far ibn Muḥammad—

Muḥammad; some simply depend more or less strongly on their most important teachers, such as 'Aṭā', 'Amr, Abū l-Zubayr, Yaḥyā ibn Sa'īd and Ayyūb ibn abī Tamīma.

In addition there are sources in which such student-teacher or son-father relationships do not set the tone; rather, either a multiplicity of sources—as with Ibn Shihāb, Sulaymān ibn Mūsā and others—or a specific regional selection or one centered on a specific group of authorities sets the scene, as is conspicuous, for instance, with 'Abd al-Karīm, 'Aṭā' al-Khurāsānī, 'Amr ibn Shu'ayb and Ibn abī Mulayka.

3. Ibn Jurayj's individual sources vary strongly in their proportions of traditions from the Prophet, the *ṣaḥāba*, and the *tābi'ūn*. Only one tradition—that of 'Amr ibn Shu'ayb—contains primarily *ḥadīths* of the Prophet; in some their proportion fluctuates between 20 and 30%, thus for instance with 'Aṭā' ibn abī Rabāḥ, Abū l-Zubayr, Ibn abī Mulayka, Ibn Shihāb, Hishām ibn 'Urwa and 'Aṭā' al-Khurāsānī, while others—such as 'Amr ibn Dīnār, Ibn Ṭāwūs, Yaḥyā ibn Sa'īd, Mūsā ibn 'Uqba, 'Abd al-Karīm, Nāfi'—have only few traditions of the Prophet or none at all. High proportions of traditions of the *ṣaḥāba* are found, for instance, with 'Aṭā' ibn abī Rabāḥ, Abū l-Zubayr, Ibn abī Mulayka, Mūsā ibn 'Uqba, Nāfi', Yaḥyā ibn Sa'īd, 'Abd al-Karīm and 'Aṭā' al-Khurāsānī; they make up between 35 and 45% with, for instance, 'Amr ibn Dīnār, Ibn Shihāb, and Hishām ibn 'Urwa; 'Amr ibn Shu'ayb and Ibn Ṭāwūs have conspicuously few.

Only the tradition of Ibn Ṭāwūs contains a preponderance of material from the *tābi'ūn*; with some a volume of 30–40% is to be observed, as for instance with 'Amr ibn Dīnār, Hishām ibn 'Urwa, Yaḥyā ibn Sa'īd and 'Abd al-Karīm; Ibn Shihāb, Abū l-Zubayr, 'Aṭā' ibn abī Rabāḥ, Ibn abī Mulayka, and 'Amr ibn Shu'ayb have distinctly fewer; none at all are found with Mūsā ibn 'Uqba, Nāfi' and 'Aṭā' al-Khurāsānī.

4. The use of the *isnād* or the identification of informants for traditions varies in the individual sources of Ibn Jurayj. *Isnāds* are very rare with 'Aṭā' ibn abī Rabāḥ and Ibn Ṭāwūs; they reach less than 50% with, for instance, Ibn abī Mulayka, 'Amr ibn Shu'ayb, 'Abd al-Karīm and 'Aṭā' al-Khurāsānī. Chains of transmission and informants are frequent above all with the Medinans like Ibn Shihāb, Hishām ibn 'Urwa, Yaḥyā ibn Sa'īd, and Mūsā ibn 'Uqba, but also with the Meccans 'Amr ibn Dīnār and Abū l-Zubayr, who show a

quite pronounced Medinan influence in other ways as well or who are known to be of Medinan origin.

5. Large variations are to be observed in the terminology of transmission with which Ibn Jurayj cites his sources. For instance, the usage of the word “*an*” varies between 0 with Ibn abī Mulayka and 60 to 80% with Yaḥyā ibn Saʿīd, Mūsā ibn ʿUqba and ʿAmr ibn Shuʿayb. Between the two lie those with relatively few “*an*” traditions, such as those of Abū l-Zubayr and ʿAmr ibn Dīnār, and others in which “*an*” occurs with a frequency between 30 and 45%, as in the cases of Hishām ibn ʿUrwa, Ibn Shihāb, Ibn Ṭawūs, ʿAṭāʾ ibn abī Rabāḥ and ʿAbd al-Karīm. The usage of the formula “*samīʿtu*” displays fluctuations as well. With some informants Ibn Jurayj uses it not at all, with others rarely, but in individual cases conspicuously often, as, for instance, in the traditions of Ibn abī Mulayka. Similarly unusual preferences for specific *termini* of transmission are sometimes also observable on the part of Ibn Jurayj’s informants, for instance, the almost exclusive use of “*samīʿtu*” with Abū l-Zubayr. The heterogeneity of the structure of transmission furthermore speaks against the assumption that one can use it to determine written or oral transmission of individual traditions. With the tradition of Ibn Jurayj at least—with a few exceptions, like that of Mujāhid—this is not possible.⁷⁰⁴

These are the five most important dimensions by which the differing characters of the individual source-profiles can be formally represented. The individuality of each individual source and the many characteristic differences between them reduce to absurdity the thesis that Ibn Jurayj forged it all, produced the texts himself, projected them onto older authorities and fabricated the chains of transmission or informants for them. Such diversity cannot be the result of systematic forgery, but can only have developed historically. This means that the traditions for which Ibn Jurayj names specific persons as sources actually derive from them and are in this sense authentic. A popular trick to circumvent the problem that the texts are too heterogeneous to have been forged by a single person is to claim that the transmitter in question—in this case Ibn Jurayj—was not, or only in part, the forger, but rather a multiplicity of unnamed

⁷⁰⁴ Only the assumption that the formulae “*samīʿtu*,” “*qāla ʿlī*,” and so forth designate heard texts is probable. This, however, does not preclude the possibility that they were also recorded in writing.

contemporaries from whom he obtained his material and adorned it with his name; or that it was later generations who illegitimately made use of his name. This is a Schachtian mode of argumentation ("the bulk of the traditions which go under his name must be credited to anonymous traditionists in the first half of the second/eighth century").⁷⁰⁵ Such invention of anonymous parties as supposed originators of the inconsistencies cannot, however, be accepted as a scientifically satisfactory explanation, since it transfers the problem from the known and testable to the realm of speculation. I do not dispute that there were forgers of *ḥadīths* and *isnāds* in the first/seventh and second/eighth century and that it is among the duties of the historian to discover who fabricated traditions and chains of transmission, when, where, how, and why. However, I consider the prevailing theory which assumes—to overstate the case somewhat—that the stock of traditions up to the emergence of the great collections of the third/ninth century and beyond is primarily the work of hundreds of unknown forgers, while the names of transmitters stated in the traditions themselves have little to do with it, to be a great error and devoid of all historical probability.

To the wholesale denial of the credibility of the information about transmitters which has led to paralysis of research in this area one may object that it is possible to detect forgeries through comparison of the traditions in early and late collections. Schacht himself mentioned the fact, already known to Muslim *Ḥadīth* criticism, that the *isnāds* of later collections are considerably better and more complete. This is a possible point of departure to unmask forgeries and amendments of *isnāds* and their originators. From the observation that chains of transmission and *ḥadīths* were forged one may not conclude that everything was forged, or that the authentic and the fake can no longer be distinguished from each other. Investigation of a strand of transmission in an early collection of traditions—the material of Ibn Jurayj in the *Muṣannaf* of 'Abd al-Razzāq—shows that criteria can certainly be developed to separate credible traditions from questionable ones or those which cannot be evaluated. A comparison of this early stock of traditions (first half of the second/eighth century) with that of the collections of the second half of the third/ninth century and later may yield rather precise information about the volume

⁷⁰⁵ Cf. Schacht, *Origins*, p. 179 and *passim*.

of forgeries, the forgers and their motives. This is a research task which has yet to be taken in hand.⁷⁰⁶

b. *Characteristics of the early legal centers*

In addition to significant criteria of authenticity, Ibn Jurayj's more important sources yield further insights into the structures of development of Islamic jurisprudence between 50/670 and 150/767. They supplement the picture emerging from the traditions of 'Aṭā' and 'Amr, and permit a view beyond Mecca into other centers of legal scholarship.

'Aṭā' ibn abī Rabāḥ owes a portion of his legal knowledge, and probably also the impetus to pursue such questions, to his teacher Ibn 'Abbās.⁷⁰⁷ The formative influence of this personality on the development of Meccan legal scholarship is also to be detected in the case of the younger 'Amr ibn Dīnār, who received his education primarily from students of Ibn 'Abbās through whom he also received and passed on his teachings.⁷⁰⁸ A similar situation is to be observed with a few other Meccan contemporaries of the two men. Mujāhid was, like 'Aṭā', a student of Ibn 'Abbās, and cites him with corresponding frequency. Abū l-Zubayr,⁷⁰⁹ Ḥasan ibn Muslim,⁷¹⁰ and Ibrāhīm ibn Maysara⁷¹¹ transmit many legal opinions and traditions from students of Ibn 'Abbās such as Abū l-Sha'thā' and Ṭāwūs, among others. This "school" clearly dominated among the scholars of Mecca. A characteristic of the students of Ibn 'Abbās which decisively shaped Meccan *fiqh* is that primarily their own legal opinions and only relatively few traditions from others are preserved in the work of the Meccan Ibn Jurayj. This is true of 'Aṭā', Ṭāwūs, Mujāhid and Abū l-Sha'thā'. When they name authorities, they naturally cite

⁷⁰⁶ The works of G. H. A. Juynboll's are the most recent ventures in this area. His concentration on the biographical material, and practically exclusively on the traditions of the Prophet, has resulted in a number of remarkable conclusions, especially with respect to the scope and technique of *isnād* forgery, which were in part familiar to the Muslim scholars themselves. Through the inclusion of older sources which do not contain only *ḥadīths* of the Prophet, like the *Muṣannaf* of 'Abd al-Razzāq or of Ibn Abī Shayba, it will, however, certainly be possible to get further.

⁷⁰⁷ See p. 146.

⁷⁰⁸ See pp. 201 ff.

⁷⁰⁹ See pp. 208 ff.

⁷¹⁰ See p. 214.

⁷¹¹ See p. 215.

their teacher Ibn 'Abbās most frequently, but aside from him they like to refer to decisions of the second caliph, 'Umar. 'Umar is a standard authority in Mecca; he is valued by scholars who do not belong to the circle of Ibn 'Abbās—such as 'Amr ibn Shu'ayb⁷¹²—as well. With those students of Ibn 'Abbās who taught primarily their own legal opinions, the Prophet played no prominent role; he is generally cited more rarely than Ibn 'Abbās, by some about as frequently as 'Umar, by others scarcely at all.

One may not, however, generalize these preferences. In Mecca there were also legal scholars who were unconnected with the school of Ibn 'Abbās or were only partially committed to it, like Ibn abī Mulayka and Abū l-Zubayr. No personal legal opinions are reported from either of them. Ibn abī Mulayka seems particularly to have collected caliphal rulings, while Abū l-Zubayr was formed by the legal views of the Companion of the Prophet Jābir ibn 'Abd Allāh. These were—this is also confirmed by traditions of 'Aṭā'⁷¹³—, like those of Ibn 'Abbās and Ibn 'Umar, in demand in his lifetime, but they did not become as influential as the teachings of the latter. While the Meccan scholars of the first/seventh and opening second/eighth century preferred to cite legally knowledgeable Companions of the Prophet, in neighboring al-Ṭā'if there was a *faqīh* who based his *ra'y* not only on the Qur'ān, which was fundamental in the school of Ibn 'Abbās as well, but primarily on *ḥadīths* of the Prophet: 'Amr ibn Shu'ayb.⁷¹⁴

The school of Ibn 'Abbās was not limited to Mecca. Through Abū l-Sha'thā' (Basra), Sa'īd ibn Jubayr (Kufa) and Ṭāwūs (Ṣan'ā') it spread in Iraq and in Yemen, and its influence is discernible in Syria as well with a scholar such as 'Aṭā' al-Khurāsānī. These branches did not develop in isolation from each other, but continued to exercise a fertilizing effect on Mecca—which can be considered as the center of the school, since most of the students of Ibn 'Abbās had settled there—as is shown by Abū l-Sha'thā's influence on 'Amr ibn Dīnār⁷¹⁵ and the wide reception of the *fiqh* of Ṭāwūs and of 'Aṭā' al-Khurāsānī's Ibn 'Abbās material by Ibn Jurayj.⁷¹⁶

⁷¹² See pp. 212 f.

⁷¹³ See p. 143.

⁷¹⁴ See pp. 212 f.

⁷¹⁵ See p. 199.

⁷¹⁶ See pp. 216, 233.

This is not the place to depict the development of Medinan *fiqh*, but since it exercised influences on the Meccan *fuqahā'* on the basis of which it is possible to reach conclusions about the early legal scholarship of Medina, let us permit ourselves some remarks on the subject.⁷¹⁷

The teachings of the more important early Medinan *fuqahā'* contain a larger proportion of traditions than is the case with the students of Ibn 'Abbās such as 'Aṭā' and Ṭāwūs, who taught primarily their own *ra'y*. With Sa'īd ibn al-Musayyab and Ibn Shihāb, it is true, their own legal opinions are also well represented, but 'Urwa ibn al-Zubayr and—in an extreme form—Nāfi' give preference to *ḥadīth*. For the scholars of Medina as well, the second caliph 'Umar was an important legal authority, cited with greater or lesser frequency by all. In addition to him there dominates no individual personality like Ibn 'Abbās in Mecca; rather, Medinan *fiqh* refers to several sources: above all to the Prophet ('Urwa ibn al-Zubayr, Ibn Shihāb) and 'Abd Allāh ibn 'Umar (Nāfi', Ibn Shihāb), but also to the third caliph 'Uthmān, among others.

About the situation of *fiqh* in Syria and Iraq in the course of the first century, on the basis of Ibn Jurayj's tradition from Sulaymān ibn Mūsā and 'Abd al-Karīm⁷¹⁸ one can say only that there too there was a local tradition which articulated itself in *ra'y* and *ḥadīth*, and that in Iraq Ibn Mas'ūd and 'Alī in addition to 'Umar were preferred reference figures for juridical precedents.

c. *The use of the isnād*

A third point which may be kept in mind as a result of the examination of Ibn Jurayj's sources relates to the use of the *isnād* or the naming of informants for traditions of which one was not the eye- or earwitness. It has already been mentioned that the use of the *isnād* varies greatly with the early *fuqahā'*, that the Meccans—especially the students of Ibn 'Abbās—and the Iraqi 'Abd al-Karīm transmit more often without than with an *isnād*, while in the case of the Medinans and those Meccans who display stronger Medinan influences the opposite is true.⁷¹⁹ This could be an indication that the naming

⁷¹⁷ They are to be considered provisional, not only because of the relatively small textual basis, but also because the latter represents only a selection from Ibn Jurayj.

⁷¹⁸ See pp. 226–232.

⁷¹⁹ See pp. 235 f.

of informants and transmission with *isnāds* were practiced particularly in Medina, and that the custom perhaps also originated there. This hypothesis gains even more weight if one examines more closely the *isnāds* of a few non-Medinans: one finds in them abundant Medinan informants. On the other hand, it is to be observed that above all Ibn Jurayj's older informants, who flourished in the first/seventh century, more seldom supply *isnāds* than those who died after 118/736. One can probably interpret this to mean that in the first/seventh century the supplying of an *isnād* was rather the exception than the rule, but that from the beginning of the second/eighth century the use of the *isnād* asserted itself more and more. This should only be understood as a tendency. Among the older transmitters there were already some who provided the majority of their indirect traditions with statements of provenance—for instance, Nāfi' or Sulaymān ibn Mūsā—, and among the younger ones there were some—like 'Abd al-Karīm or 'Aṭā' al-Khurāsānī—who did this more seldom.

On the other hand, with respect to quality there is at first glance no trend from worse to better *isnāds* up to the middle of the second/eighth century to record. It is true that 'Aṭā' ibn abī Rabāḥ has few *isnāds*, but these are usually continuous; 'Amr ibn Dīnār uses the *isnād* much more frequently, but only about 60% of his *isnāds* are complete. A similar situation pertains with, for instance, Ibn abī Mulayka (d. 118/736), who has few but continuous indications of transmitters, while many defective *isnāds* are found with Yaḥyā ibn Sa'īd (d. 143/760-1). This fact does not speak for the assumption that in the first half of the second/eighth century *isnāds* were already being systematically forged. If one investigates more precisely where the weaknesses of the *isnāds* lie, it becomes clear that except in the rarest of cases the responsibility lies not with Ibn Jurayj's sources, but with their informants; that is, the discontinuities usually date from the first century. This conclusion fits the observation made above, that at this time the use of the *isnād* was not yet customary. This explains the weaknesses of *isnāds* with the scholars of the second half of the first/seventh century. That they were not eliminated also speaks against the hypothesis of forgery. It is interesting to note that with *ḥadīths* of the Prophet the use of the *isnād* is, it is true, more frequent and their *isnāds* are often more complete than in the case of other authorities, but that the discrepancy is much less significant than one might suspect: 68% of the traditions of the Prophet have an *isnād*, which in 69% of the cases is continuous; with the

others 59% have *isnāds*, of which 62% are complete. It is true that a tendency to make fuller statements of origin for traditions of the Prophet is beginning to become apparent up to the middle of the second century, but it is not yet highly pronounced.

d. *Ibn Jurayj's anonymous traditions*

In addition to material from others for which Ibn Jurayj specifies his sources, he also transmits material without naming his informant. It comprises about 7.9% of his work as a whole. He introduces these texts of anonymous origin with various formulae. Most often occur "*ukhbirtu*" or "*huddithu 'an/anna*" (it was reported to me from/that),⁷²⁰ more seldom "*balaghani 'an/anna*" (it reached me from/that), "*akhbarani rajul 'an/anna*" (someone reported to me), "*man uṣaddiq*" (someone I consider reliable), "*man sami'a X*" (someone who heard X), "*ghayr X*" (someone other than x), "*ba'd min*" (some people from), or simply "*qāla*" of a person who cannot be documented as a direct source of Ibn Jurayj's.

At the head of the authorities to whom these anonymous traditions refer stands the Prophet (23%). He is followed by 'Umar (13%), 'Alī and Ibn Mas'ūd (8% each), a number of completely anonymous traditions (6%) and Ibn 'Abbās (4%). Next place is taken by a group of caliphs and scholars of the generation of the *tābi'ūn* (4–3%): 'Umar ibn 'Abd al-'Azīz, 'Abd al-Malik, Sa'īd ibn Jubayr, Sa'īd ibn al-Musayyab, Shurayḥ and al-Ḥasan al-Baṣrī. The next place in the scale of frequency is shared by a number of Companions of the Prophet (2–1%): 'Uthmān, Salmān al-Fārisī, 'Ā'isha, Zayd ibn Thābit, al-Zubayr, Ibn 'Umar, Abū Hurayra and 'Amr ibn al-'Āṣ. The final place is again taken by scholars of the generation of the *tābi'ūn* (1%): Nāfi', 'Aṭā' ibn abī Rabāḥ, Ibn Shihāb, Ṭāwūs, al-Sha'bī, 'Urwa ibn al-Zubayr and Sulaymān ibn Yasār.

By an anonymous tradition I mean simply one for which Ibn Jurayj names no direct source. "Anonymous" does not mean that no informant at all is named as a link. That may be the case, but need not be. Between the elder *tābi'ūn* and Ibn Jurayj lies a gap of

⁷²⁰ That with Ibn Jurayj the formulae "*ukhbirtu*" and "*huddithu*" indicate reception in the form of *wjāda* (cf. Sezgin, *Geschichte*, vol. 1, pp. 78 f.) is in most cases unlikely, but possible in some, e.g. in the indirect references to traditions of 'Ikrima [*mawlā* of Ibn 'Abbās], Sa'īd ibn Jubayr, al-Ḥasan [al-Baṣrī] and Makḥūl.

only one generation. Thus, further informants for his anonymous traditions from them are scarcely to be expected, since it is precisely the link to them which is not named. In the anonymous texts informants for *tābiʿūn* do, in fact, appear only in exceptional cases.⁷²¹ On the other hand, in those from the *ṣaḥāba* and the Prophet partial *isnāds* are not unusual. Sometimes they lack only the link immediately before Ibn Jurayj. It is conspicuous that with the anonymous *ḥadīths* of the Prophet usually (78%) such a—sometimes multiply—interrupted *isnād* is present, and thus that only a very small portion are cited by Ibn Jurayj without any statement of provenance at all. The case is different with the traditions of the *ṣaḥāba*. Here it is only the texts from Ibn ʿAbbās for which one of his students is usually named as an indirect source, while those from ʿUmar, ʿAlī and Ibn Masʿūd only very rarely have further informants.

The textual group of anonymous traditions in the work of Ibn Jurayj contains a number of features which confirm the foregoing conclusions about the authenticity of the Ibn Jurayj material in the *Muṣannaf* of ʿAbd al-Razzāq and the knowledge it yields about the early discipline of juridical tradition.

1. The fact that Ibn Jurayj claims to have 90% of his material from specific informants but leaves 8% without statements of provenance speaks against the assumption that his informants are fabricated; since, if he had a motive to father his traditions on others, it would have affected all the texts. It is, however, largely the same authorities whom he cites both with and without statements of source. If he is a forger, why does he report anonymously from ʿUrwa ibn al-Zubayr, whose texts he generally records having from the latter's son Hishām? Why does he cite Nāfiʿ, Ibn Shihāb and even his teacher ʿAṭāʾ indirectly and anonymously, although he was in contact with them and otherwise always passes on their teachings and traditions directly? For what reason does he transmit *ḥadīths* of the Prophet which for a continuous *isnād* lack only the link before himself, which would be so easy to fabricate, and traditions of the Prophet completely without informants, although he was familiar with a number of good *isnāds*? On the contrary, all of these indices suggest that Ibn Jurayj's statements of sources, when he makes them, are credible and that he actually received from his informants the traditions

⁷²¹ E.g. AM 6: 11146 (*balaghani ʿan* Jābir [ibn Yazīd ibn al-Ḥārith?] *ʿan* al-Shaʿbī).

ascribed to them. The question of the form in which he obtained them from them—whether he heard them, read them out loud himself or simply copied from a written text—is, it is true, not unimportant, but it is not significant for the problem of the general authenticity of the tradition of Ibn Jurayj. The anonymous traditions are probably explained on one hand by Ibn Jurayj's honesty and precision: he left texts whose precise provenance he could no longer trace without a statement of origin, even in cases where particular informants absolutely forced themselves upon him, as, for instance, with 'Urwa ibn al-Zubayr and Ṭāwūs. In other cases—for instance, when he says "*akhbarunī mun ṣaḍdiq*" he dispenses with the naming of the informant for some reason, although he presumably knew who it was.

With respect to the early discipline of tradition, Ibn Jurayj's anonymous traditions demonstrate that among the *ḥadīths* in circulation in the first half of the second/eighth century those from the Prophet were more frequently and better equipped with *isnāds* than those from 'Umar, 'Alī and Ibn Mas'ūd. Such a tendency is also to be observed in Ibn Jurayj's sources which are known by name.⁷²² This allows us to conclude either that people began early to pay closer attention to the provenance of *ḥadīths* of the Prophet than they did with the traditions of the caliphs and the Companions, or that they early began to ascribe *ḥadīths* of the Prophet to well-known scholars. The two are not mutually exclusive, but neither will have been a generally disseminated procedure, but rather limited to specific groups of people or circles of scholars. Ibn Jurayj's anonymous *ḥadīths* of the Prophet with *isnāds* show that he did not even always consider it necessary to retain and transmit his immediate source. In Mecca in the first half of the second/eighth century the naming of continuous chains of transmission—even for *ḥadīths* of the Prophet—thus cannot have been part of the general standard of the juridical technique of transmission.⁷²³

⁷²² With 'Umar, for instance, in 62% of the cases informants are named, but only 40% of the *isnāds* are continuous.

⁷²³ That it was not very different in Medina is shown by Malik's *Muwatta'*. On this cf. Goldziher, *Muslim Studies*, vol. 2, p. 218.

E. THE EARLY MECCAN LEGAL SCHOLARS IN THE LIGHT OF THE BIOGRAPHICAL SOURCES

The depiction of the development of Meccan *fiqh* has taken place exclusively on the basis of the teachings of its most important representatives—‘Aṭā’ ibn abī Rabāh, ‘Amr ibn Dīnār and Ibn Jurayj—, which were collected and transmitted by their students. Up to this point I have largely neglected the biographical reports about them. Only the chronological and geographical placement of the figures, i.e. approximately when they died and where they lived and worked, has been derived from the *ṭabaqāt* works. This “one-sidedness” was intentional and has a methodological rationale. The credibility of the traditions about figures of the first/seventh and second/eighth century contained in the biographical works is just as controversial as the teachings and traditions which are ascribed to them. Schacht and the majority of the non-Muslim scholars of this century consider the biographical information about the *ṣaḥāba* and *tābi‘ūn*, i.e., the figures of the first century, to be largely unhistorical and legendary, and see scarcely any possibility of unraveling the tangle of truth and fiction. There is also a deep distrust toward the biographical information about figures of the second/eighth century, especially when it relates to their contacts to the preceding generation of scholars. Generally only the names, information about the place or places where they were active, and the death dates are accepted; everything else is generally subject to the suspicion of forgery, and it is left to the taste of the individual researcher what part of it he considers credible or otherwise. The claim that the traditions *from* the early legal scholars are predominantly later fictions necessarily goes hand in hand with the thesis that the information *about* them must also be forged to a greater or lesser extent. It was thus not advisable to make the analysis of the Tradition material from the Meccan *fuqahā’* dependent on unconfirmed biographical traditions about them.

Since it has emerged that ‘Abd al-Razzāq’s tradition from Ibn Jurayj and the latter’s tradition from ‘Aṭā’, ‘Amr and others are reliable, that based on them historically secure statements about the teachings of legal scholars of the first and second centuries are possible, and that, conversely, the hypothesis of forgery fails as a universal explanatory model for the development of the legal traditions ascribed to them, the question of the source-value of the biographical literature about the early *fuqahā’* must be posed anew. Methodologically,

I proceed by gathering all the information about 'Aṭā', 'Amr and Ibn Jurayj from the biographical lexica accessible to me, which naturally represent only a sample of the extant biographical reports overall, in order to be able to determine on the basis of reported implausibilities, contradictions or tendentious statements whether forged traditions about them exist. In addition, I will attempt to identify the sources from which the biographical reports about the figure in question derive.

1. 'Aṭā' ibn abī Rabāḥ⁷²⁴

He had the *kunya* Abū Muḥammad; his father's name was Aslam.⁷²⁵ The latter is supposed to have been a Nubian who earned his living by weaving baskets.⁷²⁶ His mother was a Negro by the name of Baraka.⁷²⁷ 'Aṭā' came from Yemen, more precisely from the town Muwalladī l-Janaḍ⁷²⁸—the variants Walad al-Janaḍ⁷²⁹ and al-Janaḍ⁷³⁰ are probably only inaccurate renditions—but grew up in Mecca. He was a *mawlā* (client) of the family (*āl*) of Abū Khuthaym al-Fihri⁷³¹—variants: of Abū Maysara ibn abī Khuthaym al-Fihri,⁷³² of the Banū

⁷²⁴ I have consulted primarily the following works: Ibn Sa'd (d. 230/844–5), *Ṭabaqāt*, vol. 5, pp. 344–346, 354, 355, 404, vol. 2/2, pp. 133–134, vol. 7/2, p. 130, vol. 8, p. 100. Khalīfa ibn Khayyāt (d. 240/854–5), *Ṭabaqāt*, p. 280. al-Bukhārī (d. 256/870), *Ta'rikh*, vol. 3/2, pp. 463–464. Ibn Qutayba (d. 276/889–10), *Ma'ārif*, p. 154. Ibn abī Hātim (d. 327/938–9), *Taqdīm*, pp. 39, 130, 238, 243–245. Id., *Jarh*, vol. 3, pp. 330–331. Ibn Hībān (d. 354/965), *Mashāḥir*, no. 589. Id., *Thiqāt*, vol. 5, pp. 198–199. Abū Nu'aym (d. 430/1038–9), *Hiṣya*, vol. 3, pp. 310–325. al-Shīrāzī (d. 476/1083–4), *Ṭabaqāt*, p. 69. al-Nawawī (d. 676/1277–8), *Tahdhīb*, vol. 1, pp. 333–334. Ibn Khallikān (d. 681/1282–3), *Wafayāt*, vol. 2, pp. 423–425. al-Dhahabī (d. 748/1347–8), *Mīzān*, vol. 2, p. 197. Id., *Tadhkira*, vol. 1, p. 98. al-Ṣafādī (d. 764/1362–3), *Nakt*, pp. 199–200. Ibn Ḥajar (d. 852/1448–9), *Tahdhīb*, vol. 7, pp. 199–203.

⁷²⁵ Variant: Sālīm—probably a misreading of Aslam. It and the name of the grandfather, Ṣafwān, are only in Ibn Khallikān, *Wafayāt*, vol. 2, p. 423 (without statement of source).

⁷²⁶ Only in Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200 [following Abū Dāwūd [al-Sijistānī], d. 275/888–9).

⁷²⁷ Only in Ibn Qutayba, *Ma'ārif*, p. 154. al-Fasawī, *Ma'rifa*, vol. 2, p. 18. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200.

⁷²⁸ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 344. Ibn Khallikān, *Wafayāt*, vol. 2, p. 423. al-Dhahabī, *Tadhkira*, vol. 1, p. 98. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200.

⁷²⁹ Ibn Qutayba, *Ma'ārif*, p. 154.

⁷³⁰ Ibn Hībān, *Thiqāt*, vol. 5, p. 198.

⁷³¹ al-Bukhārī, *Ta'rikh*, vol. 3/2, pp. 463 f. Ibn Hībān, *Mashāḥir*, no. 589; id., *Thiqāt*, vol. 5, p. 198.

⁷³² Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 344. Ibn Khallikān, *Wafayāt*, vol. 2, p. 423.

Fihri,⁷³³ of Ibn Khuthaym al-Qurashī al-Fihri,⁷³⁴ of Ḥabība bint Maysara ibn abī Khuthaym⁷³⁵—or of Banū Jumāḥ,⁷³⁶ both belong to Quraysh. ‘Aṭā’ is described as black-skinned, flat-nosed and kinky-haired,⁷³⁷ which fits with the statements that both parents were Negroes. He had only one healthy eye, and later became completely blind; he was crippled, and limped. His hand is supposed to have been cut off at the downfall of the caliph Ibn al-Zubayr.⁷³⁸ Under the suspicion of sympathizing with the Murjī‘a, in the year 93/711 he—like Mujāhid, ‘Amr ibn Dīnār and Sa‘īd ibn Jubayr, who was executed for this reason—was for a time imprisoned at the instigation of al-Ḥajjāj, the governor of Iraq.⁷³⁹

From his own statement that he consciously experienced the murder of ‘Uthmān (35/656) and recognized its implications,⁷⁴⁰ it can be inferred that he was born at the beginning of ‘Uthmān’s caliphate and was about six to ten years old at his death. In addition to this approximate information about his age, the statement is also transmitted from him that he was born two years after ‘Uthmān assumed the caliphate—which was in the year 23/644.⁷⁴¹ Then he would have been ten years old at his death. The year 27/648 is also named as a birth-date;⁷⁴² this seems to be based on a calculation assuming the year 115/733–4 as the date of death and a lifespan of 88 (lunar) years.⁷⁴³ A longer lifespan is assumed by those who place his birth in the caliphate of ‘Umar.⁷⁴⁴ Only seldom is his birth dated to the end of ‘Uthmān’s caliphate.⁷⁴⁵ Ibn Sa‘d already names 114/732 as well as 115 as an alternative year of death. Khalīfa ibn Khayyāt has

⁷³³ Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 280. Ibn Qutayba, *Ma‘ārif*, p. 154. al-Shīrāzī, *Ṭabaqāt*, p. 69. Ibn Khallikān, *Wafayāt*, vol. 2, p. 423.

⁷³⁴ Ibn abī Ḥātim, *Juḥh*, vol. 3, p. 330. al-Nawawī, *Tahdhīb*, p. 333. *Ibn* instead of *abū* is probably an error.

⁷³⁵ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200 (following Ibn al-Madīnī, d. 234/848–9).

⁷³⁶ See notes 733 and 735.

⁷³⁷ “Kinky-haired” appears only starting with al-Shīrāzī.

⁷³⁸ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200 (source: Abū Dāwūd [al-Sijistānī]).

⁷³⁹ Cf. Madelung, *Der Imām al-Qāsim b. Ibrāhīm*, pp. 232 f. (following al-Ṭabarī, *Tārīkh*, vol. 2, p. 1262).

⁷⁴⁰ Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 344. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202. al-Bukhārī, *Tārīkh*, vol. 3/2, p. 464.

⁷⁴¹ Ibn Ḥajar, *op. cit.*

⁷⁴² Ibn Ḥibbān, *Mashāhīr*, No. 589. Id., *Thiqāt*, vol. 5, p. 199.

⁷⁴³ Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 346. Ibn Qutayba, *Ma‘ārif*, p. 154. al-Shīrāzī, *Ṭabaqāt*, p. 69. Ibn Khallikān, *Wafayāt*, vol. 2, p. 425.

⁷⁴⁴ Only al-Dhahabī, *Tadhkira*, vol. 1, p. 98. Also see note 749.

⁷⁴⁵ al-Nawawī, *Tahdhīb*, vol. 1, p. 333 (without a source).

117/735.⁷⁴⁶ This uncertainty runs through the later biographical works, but 114 is considered most likely.⁷⁴⁷ He is supposed to have died in the month of Ramaḍān.⁷⁴⁸ His lifespan is usually given as 88 years; only later appear the numbers 90 and 100,⁷⁴⁹ which, however, similarly seem to be drawn from early sources. ‘Aṭā’ had a son named Ya‘qūb.⁷⁵⁰

At the beginning of his career (?) he taught the Qur’ān;⁷⁵¹ however, he was above all considered a legal scholar and transmitter. Numerous biographical traditions show that learned and simple people came to ‘Aṭā’ in order to question him about legal and ritual information. In Mecca his activities as a *muftī* sometimes had an official character; probably on the basis of a decree of the governor of the Umayyad caliph, only ‘Aṭā and, in his absence, Ibn abī Najīh, were permitted to act as *muftī*.⁷⁵² He was—next to Mujāhid⁷⁵³—considered as Ibn ‘Abbās’s successor in the position of *muftī* of Mecca⁷⁵⁴ and as the most important and best *muftī* Mecca possessed around the turn of the century.⁷⁵⁵ His sessions, in which he answered questions and taught, took place in the mosque, i.e. in the Ḥaram, where he also spent the night for the last two decades of his life.⁷⁵⁶ His

⁷⁴⁶ Khalīfa ibn Khayyāt, *Ṭabaqāt* p. 280. al-Nawawī, op. cit., p. 334. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202.

⁷⁴⁷ al-Dhahabī, *Tadhkira*, vol. 1, p. 98. al-Ṣafadī, *Nakt*, p. 199.

⁷⁴⁸ al-Dhahabī, op. cit. Ibn Ḥajar, *Tahdhīb*, vol. 7, pp. 201, 202 (sources: Ibn abī Laylā, d. 148/765–6, Ḥammād ibn Salama, d. 167/783–4).

⁷⁴⁹ Cf. Ibn Khallikān, *Wafayāt*, vol. 2, p. 425. al-Dhahabī, *Mizān*, vol. 2, p. 197. al-Ṣafadī, *Nakt*, p. 200. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 201 (following Ibn abī Laylā).

⁷⁵⁰ Ibn Qutayba, *Ma‘ārif*, p. 154.

⁷⁵¹ Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 344. al-Ṣafadī, *Nakt*, p. 199. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200.

⁷⁵² al-Bukhārī, *Ta’rīkh*, vol. 3/2, p. 464 (source: Ibrāhīm ibn ‘Umar (or ‘Amr) ibn Kaysān). Cf. also al-Nawawī, *Tahdhīb*, vol. 1, p. 334. Ibn Khallikān, *Wafayāt*, vol. 2, p. 424. al-Shirāzī, *Ṭabaqāt*, p. 69.

⁷⁵³ Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 346. Ibn Khallikān, *Wafayāt*, vol. 2, p. 423. al-Ṣafadī, *Nakt*, p. 199.

⁷⁵⁴ Abū Nu‘aym, *Hilya*, vol. 3, p. 311 (source: Muḥammad al-Shāfi‘ī, d. 204/819–20. The *ismād* should probably read, more correctly: Aḥmad ‘an, instead of Aḥmad ibn Muḥammad al-Shāfi‘ī).

⁷⁵⁵ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 330 (source: Rabī‘a). Cf. also al-Nawawī, *Tahdhīb*, vol. 1, p. 334. Ibn Khallikān, *Wafayāt*, vol. 2, p. 424. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 201. Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 345 (source: Muḥammad ibn ‘Abd Allāh ibn ‘Amr ibn ‘Uthmān ibn ‘Affān [al-Dībāj], d. 145/762–3). al-Dhahabī, *Tadhkira*, vol. 1, p. 98. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 201.

⁷⁵⁶ Abū Nu‘aym, *Hilya*, vol. 3, pp. 310, 311 (source: Ibn Jurayj). Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202. al-Dhahabī, *Tadhkira*, vol. 1, p. 98.

younger contemporaries considered him one of the, if not the, greatest of the scholars of his time.⁷⁵⁷ He was considered an eminent authority in the area of the *ḥajj* ceremonies,⁷⁵⁸ which is not surprising for a Meccan.

While in the second and third centuries 'Aṭā' was uncontested as a *faqīh*, as a *Ḥadīth* scholar he received mixed reviews. On one hand, it is said that he knew many *ḥadīths*⁷⁵⁹ and concerned himself with the study of Tradition (*talab al-ʿilm*),⁷⁶⁰ that among 'Aṭā's contemporaries his *ḥadīths* were coveted⁷⁶¹ and that scholars like Abū Ḥanīfa and al-Awzāʿī, who for a time numbered among his students, thought highly of him;⁷⁶² on the other hand, *Ḥadīth* scholars of the second half of the second/eighth century such as Yaḥyā ibn Saʿd al-Qaṭṭān (d. 198/813-4) already take a critical stance towards those *ḥadīths* of the Prophet which he transmitted indirectly (*mursal*), i.e., without an informant of the generation of the *ṣaḥāba*. At the same time, they did not imply that his *ḥadīths* were inauthentic or forged, but found fault in the fact that he supposedly received them from anyone, i.e., probably without testing the credibility of his informant, and suspected that he also received a good deal from unnamed written sources.⁷⁶³ Later critical scholars such as Aḥmad ibn Ḥanbal (d. 241/855-6) and 'Alī ibn al-Madīnī (d. 234/848-9)—both students of Yaḥyā's—followed this judgment.⁷⁶⁴ 'Alī ibn al-Madīnī also noted another flaw: two of his most important students, Qays ibn Saʿd and

⁷⁵⁷ Abū Nuʿaym, *Ḥiṣya*, vol. 3, p. 311 (source: al-Awzāʿī, d. 157/773-4). al-Shīrāzī, *Ṭabaqāt*, p. 69. al-Nawawī, *Taḥdhīb*, vol. 1, p. 333. Ibn Ḥajar, *Taḥdhīb*, vol. 7, p. 201. Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 346 (source: Maymūn [ibn Mihrān], d. 118/736). Ibn Ḥajar, *Taḥdhīb*, vol. 7, p. 202. Ibn Saʿd, *Ṭabaqāt*, vol. 2/2, p. 133 (source: Ismāʿīl ibn Umayya, d. after 130/747-8). Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 331. al-Dhahabī, *Taḥdhīb*, vol. 1, p. 98.

⁷⁵⁸ Ibn Saʿd, *Ṭabaqāt*, vol. 5, pp. 344, 345; vol. 2/2, p. 133 (sources: Abū Jaʿfar, d. 114/732-3, Qatāda, d. 117/735). Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 330. Abū Nuʿaym, *Ḥiṣya*, vol. 3, p. 311. al-Shīrāzī, *Ṭabaqāt*, p. 69. Ibn Khallikān, *Wafayāt*, vol. 2, pp. 423, 424 f. (source: Abū Ḥanīfa, d. 150/767-8). al-Dhahabī, *Taḥdhīb*, vol. 1, p. 98. Ibn Ḥajar, *Taḥdhīb*, vol. 7, p. 201 (source: Ibn abī Laylā, d. 148/765-6).

⁷⁵⁹ Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 344.

⁷⁶⁰ Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 345, vol. 2/2, p. 134 (source: Salama ibn Kuḥayl, d. 122/740). Abū Nuʿaym, *Ḥiṣya*, vol. 3, p. 311. al-Nawawī, *Taḥdhīb*, vol. 1, p. 333 (source: al-Shāfiʿī). Ibn Ḥajar, *Taḥdhīb*, vol. 7, p. 201.

⁷⁶¹ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 330. Ibn Ḥajar, *Taḥdhīb*, vol. 7, p. 201 (sources: Abū Jaʿfar, Qatāda).

⁷⁶² Cf. note 757 and al-Dhahabī, *Mizān*, vol. 2, p. 197.

⁷⁶³ Ibn abī Ḥatīm, *Taqdīm*, pp. 130, 243, 244. al-Dhahabī, *Mizān*, vol. 2, p. 197.

⁷⁶⁴ al-Dhahabī, op. cit. al-Ṣafadī, *Nakī*, p. 200. Ibn Ḥajar, *Taḥdhīb*, vol. 7, p. 202.

Ibn Jurayj, left 'Aṭā' towards the end of his life, clearly—even if al-Dhahabī does not want to admit it—because his intellectual powers were flagging.⁷⁶⁵ Nevertheless, in the third/ninth century—in the heyday of the winnowing of *Ḥadīth*—he seems to have been rated as generally dependable and credible, as the judgments of Yahyā ibn Maʿīn (d. 233/847–8)—also a student of al-Qaṭṭān—and of Abū Zurʿa [al-Rāzī] (d. 264/877–8) demonstrate.⁷⁶⁶ Aḥmad ibn Ḥanbal, too, clears him of the suspicion of having suppressed informants (*tadlīs*).⁷⁶⁷ This valuation dominates in the later *rijāl* literature.

In Ibn Saʿd's *Ṭabaqāt*, the earliest preserved biographical work, in several articles not devoted to 'Aṭā' himself there are indications that 'Aṭā' was a student of the Companions of the Prophet Jābir ibn 'Abd Allāh and Ibn 'Abbās and met with 'Ā'isha.⁷⁶⁸ An early list of the Companions of the Prophet from whom he transmitted appears in al-Bukhārī (d. 256/870). It includes only those from whom he "heard": Abū Hurayra, Ibn 'Abbās, Abū Saʿīd [al-Khudrī], Jābir [ibn 'Abd Allāh] and Ibn 'Umar.⁷⁶⁹ Some of them appear again and again in the later works as well, which, however, add new names: Rāfi' ibn Khadij, Jābir ibn 'Umayr (?),⁷⁷⁰ Mu'āwiya ibn abī Sufyān and 'Ā'isha, about whom it is explicitly observed that he heard her;⁷⁷¹ this is also supposed to have been the case with ['Abd Allāh] Ibn al-Zubayr, 'Abd Allāh ibn 'Amr and Zayd ibn Khālid al-Juhanī.⁷⁷² In the eighth/fourteenth century Umm Salama and Usāma ibn Zayd are added.⁷⁷³ This development culminates with Ibn Ḥajar (d. 852/1448–9) in a list of twenty names of Companions from whom he is supposed to have transmitted directly and four *ṣahāba* from whom he is supposed to have transmitted *mursal*.⁷⁷⁴ This supple-

⁷⁶⁵ al-Dhahabī, *Mizān*, vol. 2, p. 197. Ibn Ḥajar, *Tahdhīb*, vol. 7, pp. 202, 203 (source: Sulaymān ibn Harb, d. 224/839).

⁷⁶⁶ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 331.

⁷⁶⁷ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 203.

⁷⁶⁸ Cf. Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 354 (biographies of Abū l-Zubayr and 'Ubayd Allāh ibn abī Yazīd), vol. 8, p. 100 (biography of Maymūna), vol. 5, pp. 341–342 (biography of 'Ubayd ibn 'Umayr).

⁷⁶⁹ al-Bukhārī, *Taʾrīkh*, vol. 3/2, p. 464. Also cf., however, Ibn al-Madīnī (d. 234/848–9), *ʿIlal*, pp. 81 f.

⁷⁷⁰ Not attested. Perhaps Jābir [ibn 'Abd Allāh ibn 'Amr] and/or ['Ubayd] ibn 'Umayr is intended.

⁷⁷¹ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 330.

⁷⁷² Abū Nuʿaym, *Ḥilya*, vol. 3, p. 316. al-Nawawī, *Tahdhīb*, vol. 1, p. 333. Ibn Khallikān, *Wafayāt*, vol. 2, p. 423.

⁷⁷³ al-Dhahabī, *Tadhkira*, vol. 1, p. 98. al-Ṣafadī, *Nakt*, p. 199.

⁷⁷⁴ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 199.

menting of 'Aṭā's authorities by Ibn Ḥajar is probably based on his own research on the 'Aṭā' *ḥadīths* known to him or his source al-Mizzī. This is also suggested by his selection of *tābiʿūn* from whom 'Aṭā' transmitted, who are generally not named in early biographies. However, he also reports the judgments of *Ḥadīth* scholars of the third/ninth century, such as Aḥmad ibn Ḥanbal, 'Alī ibn al-Madīnī, Abū Zur'a and Abū Ḥātim, that 'Aṭā' did not hear from Ibn 'Umar, Abū Sa'īd al-Khudrī, Zayd ibn Khālid, Umm Salama, Rāfi' ibn Khadij, or Usāma, among others, even if he saw some of them, and that one may only cite 'Aṭā's 'Ā'isha traditions from the Prophet if he explicitly says that he heard them.⁷⁷⁵ Ibn Ḥajar himself declares that, in view of his date of birth, 'Aṭā' cannot have heard from two of the *ṣaḥāba* in his list.⁷⁷⁶

A similar picture is offered by the reports about 'Aṭā's students and auditors. The early biographical works name only a few, al-Bukhārī only 'Amr ibn Dīnār, Qays ibn Sa'd and Ḥabīb ibn abī Thābit;⁷⁷⁷ Ibn abī Ḥātim (d. 327/938) cites his father with the names Sulaymān ibn Mūsā, Qays ibn Sa'd, Abū l-Zubayr and 'Abd al-Malik ibn abī Sulaymān.⁷⁷⁸ These lists of names—like those on 'Aṭā's authorities—make no claim to exhaustiveness, which is already clear from the fact that one of 'Aṭā's most important students—Ibn Jurayj—is not mentioned, even though Ibn Sa'd already knows traditions of Ibn Jurayj's about 'Aṭā' which clearly identify him as his teacher.⁷⁷⁹ Later works add further auditors of 'Aṭā's⁷⁸⁰—Ibn Jurayj does not appear before al-Dhahabī. Finally, Ibn Ḥajar names 42 transmitters from 'Aṭā', which—as he says—is only a selection.⁷⁸¹

The biographical literature contains only little information illuminating 'Aṭā's relationship with, and way of dealing with, traditions. We learn from an eyewitness that in his circle *ḥadīths* were presented, both those which he had himself transmitted and others,⁷⁸² and that

⁷⁷⁵ Op. cit., p. 203.

⁷⁷⁶ Op. cit., p. 203.

⁷⁷⁷ al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 464.

⁷⁷⁸ Ibn abī Ḥātim, *Jarh*, vol. 3, p. 330.

⁷⁷⁹ Cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, pp. 344, 345; vol. 7, p. 100.

⁷⁸⁰ Cf. Abū Nu'aym, *Ḥilya*, vol. 3, p. 316. Ibn Khallikān, *Wafayāt*, vol. 2, p. 423. al-Dhahabī, *Tadhkira*, vol. 1, p. 98.

⁷⁸¹ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200. The selective character of such statements of Ibn Ḥajar's is also emphasized by Juynboll, *Muslim Tradition*, p. 109, note 58.

⁷⁸² Cf. op. cit., vol. 5, p. 345. Abū Nu'aym, *Ḥilya*, vol. 3, pp. 310 f.

upon questioning from his students he specified whether a statement he had made was his personal opinion (*ra'y*) or a tradition (*athar*, *ilm*).⁷⁸³ The fact that this was not always externally apparent in his teachings implies the absence of *isnāds*. This also fits the answer which 'Aṭā' is supposed to have given a listener from Kufa upon his asking from whom his legal solution derived: "That upon which the community (*umma*) agrees is stronger for us than the *isnād*."⁷⁸⁴

There is no concrete indication that 'Aṭā' possessed written notes. It is true that in the first half of the second/eighth century there existed a booklet with traditions which 'Aṭā' heard from Companions of the Prophet, but it is not clear whether they were compiled by 'Aṭā' himself or by his son Ya'qūb, who belonged to his circle of students. According to the statement of Sufyān ibn 'Uyayna (d. 198/813-4), who examined it, it contained only a fraction of the 'Aṭā' traditions known to him.⁷⁸⁵ Since 'Aṭā' had also been an elementary school teacher (*mu'allim*), it was customary in his classes to write down questions and answers,⁷⁸⁶ he encouraged his students to do so and even aided them with paper and ink,⁷⁸⁷ the possibility cannot, however, be precluded that he himself sometimes took notes as well.

The biographers have collected a number of traditions which illustrate 'Aṭā's virtues and his piety. He is supposed to have given alms for his parents—probably on the occasion of the 'Īd al-Fiṭr (the holy-day of breaking the fast)—, although they were dead,⁷⁸⁸ and only worn very simple clothing.⁷⁸⁹ The mark of prostration was visible on his forehead;⁷⁹⁰ his zeal and his way of performing the *ṣalāh* were extolled by his students.⁷⁹¹ Even when he had become old and weak, he used to stand up for the *ṣalāh* and in this posture, without mov-

⁷⁸³ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 345; vol. 2/2, p. 134 (source: Ibn Jurayj).

⁷⁸⁴ Abū Nu'aym, *Hilya*, vol. 3, p. 314 (source: Abū Ismā'il al-Kūfī). A very early attestation of the concept of *ijmā'*.

⁷⁸⁵ Ibn abī Hātim, *Taqdīm*, p. 39.

⁷⁸⁶ Cf. al-Dārimī, *Sunan*, vol. 1, p. 106.

⁷⁸⁷ Azami, *Studies in Early Hadīth Literature*, p. 80 (following Rāmḥurmuzī, *al-Muḥaddith al-fāsil bayna l-rāwī wa-l-wā'ī* (MS), 35 b. This work, which has since been edited, was not accessible to me.

⁷⁸⁸ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 346 (source: Ibn Jurayj).

⁷⁸⁹ Abū Nu'aym, *Hilya*, vol. 3, p. 311 (source: 'Umar ibn Dharr).

⁷⁹⁰ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 346 (source: Abū Mu'āwiya al-Maghribī).

⁷⁹¹ Cf. Abū Nu'aym, *Hilya*, vol. 3, p. 310 (source: Ibn Jurayj). al-Dhahabī, *Tadhkira*, vol. 1, p. 98. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202.

ing, recite 200 verses of the *sūrat* "al-Baqara."⁷⁹² The holy mosque of Mecca was his home, which for decades he did not leave even at night to sleep.⁷⁹³ He is supposed to have participated in the *hajj* 70 times.⁷⁹⁴ 'Aṭā' colored his hair and beard with *ḥinnā'* and *sufra*.⁷⁹⁵

None of these tesseræ, which I have taken from works of different dates and assembled into a biography, if a meager one—the same method was followed by the Muslim biographers themselves—makes the impression of an intentional forgery. This does not preclude the possibility that the statements about him and traditions from him contain exaggerations, rounding of numbers, false conclusions and errors. This is already clear from the fact that there are discrepancies on some points of his life history. These, however, can in part be explained with reference to their history of transmission.

The question whose *maulā* he was is probably to be decided in favor of the family of Abū Khuthaym al-Fihri. The variations which occur in the name are based partially on refinements and partially on errors in transmission. Ibn Sa'd names this family without hesitation, while Khalifa ibn Khayyāt, who brings the Banū Jumah into play in addition to the Banū Fihri, is uncertain and clearly had no precise information about it.

Among the various statements about 'Aṭā's year of death, al-Dhahabī considers the year 114/732 the best verified.⁷⁹⁶ This is probably by reason of the following tradition: Hammād ibn Salama (d. 167/783-4), a Basran scholar, reports that in this year he came to Mecca and 'Aṭā' was still alive. He wanted to go to him after the period of fasting, probably to hear him lecture. 'Aṭā', however, died in the course of Ramaḍān.⁷⁹⁷ The date 115/733 could be explained by the fact that reports from Mecca usually were spread by returning pilgrims, which could lead to confusions between years. On the other hand, the date 115 derives from students of Ibn Jurayj—Sufyān

⁷⁹² Abū Nu'aym, *Hiya*, vol. 3, p. 310 (source: Ibn Jurayj).

⁷⁹³ Op. cit. (source: Ibn Jurayj). al-Dhahabī, *Tadhkira*, vol. 1, p. 98. Ibn Hajar, *Tahdhīb*, vol. 7, p. 202.

⁷⁹⁴ al-Nawawī, *Tahdhīb*, vol. 1, p. 333 (source: Ibn abī Laylā). Ibn Khallikān, *Wafayāt*, vol. 2, p. 425.

⁷⁹⁵ Ibn Sa'd, *Ṭabaqāt*, vol. 5, pp. 345, 346 (sources: Abū l-Malīh [al-Raqqī] and Fiṭr ibn Khalīfa, d. 153/770). On the coloring agents cf. Juynboll, "Dyeing the Hair," pp. 50-59.

⁷⁹⁶ See p. 248.

⁷⁹⁷ al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 464. Ibn Hajar, *Tahdhīb*, vol. 7, p. 202.

ibn 'Uyayna, Muḥammad ibn 'Umar al-Wāqidi, Ibn 'Ulayya⁷⁹⁸— and clearly goes back to ibn Jurayj himself.⁷⁹⁹ As a Meccan and a former student of 'Aṭā's he must have been particularly affected by his death, which would tend to speak in favor of his statement. The year 114 is probably based on an error of Ḥammād's. The date 117 is documented only in Khalīfa ibn Khayyāt and is supported by no further source. Since the provenance of his information is unknown, it should be classed as probably erroneous. Perhaps it is based on a confusion between *sab'a* and *arba'a*. No motive is discernible for an intentional falsification.

Age and year of birth are usually problematic for figures of the first/seventh century, since they often did not know this themselves. Variations of a few years are thus preordained. The statement that 'Aṭā' was 88 years old at his death derives from Ibn Jurayj's student al-Wāqidi,⁸⁰⁰ who presumably has it from Ibn Jurayj. On the other hand, the statement that he was born when two years of the caliphate of 'Uthmān had passed is from 'Aṭā' himself.⁸⁰¹ Accordingly, at his death in the year 115/733 he would already have been 90 years old. This number is in fact named by al-Dhahabī,⁸⁰² but with him it seems to be only an approximate, rounded estimate which is not based on the 'Aṭā' tradition. The year 25/646 is most likely as the year of birth. 27 is based on the stated age of 88 years and is not quite as credible, but approaches the probably correct date very closely.⁸⁰³ The statements that he lived to be 100 and was born in the caliphate of 'Umar deviate from this significantly. Here one might be tempted to see an intentional falsification, which would have had the motive of making it possible for 'Aṭā' to have more contacts with Companions of the Prophet than was actually the case. However, it seems to me questionable that this is the original background. The statement that 'Aṭā' lived 100 years goes back to Ibn abī Laylā (d. 148/765–6),⁸⁰⁴ who attended 'Aṭā's lectures for a while but did not number among his permanent students. That Ibn abī Laylā, who is

⁷⁹⁸ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 346. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202.

⁷⁹⁹ Ibn Ḥajar, *op. cit.*

⁸⁰⁰ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 346.

⁸⁰¹ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202 (source: 'Umar ibn Qays [al-Makkī]).

⁸⁰² See p. 248, note 749.

⁸⁰³ Were one to consider this advanced age implausible, one would have to place 'Aṭā' himself under the suspicion of having consciously misstated his date of birth.

⁸⁰⁴ Ibn Khallikān, *Wafayāt*, vol. 2, p. 425. Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 201.

not considered one of the critical *Ḥadīth* scholars, already had the aforementioned motive for forgery is improbable. 100 is probably meant more as a symbolic number of very great age than as an exact figure.⁸⁰⁵ Since al-Dhahabī's placement of 'Aṭā's birth in the caliphate of 'Umar⁸⁰⁶ is not verified by early sources, it probably derives from calculations using Ibn abī Laylā's statement of age or it results from a misreading of the name of the caliph. Al-Dhahabī may have preferred this because he was clearly concerned to dispel possible doubts as to 'Aṭā's reliability.⁸⁰⁷ Both, the high age and the early birth, are thus unhistorical, but—at least originally—probably not intended as deliberate falsifications.

The discrepancies in the valuation of 'Aṭā's traditions are explained by the development of the discipline of Tradition and of *Ḥadīth* criticism. In the first half of the second/eighth century people collected in a much more carefree way, and the demands made on *ḥadīths* were not yet as strict as they would later become. The reputation of the person from whom one transmitted still played a large role⁸⁰⁸ and masked possible defects in the evidence of the provenance of the tradition. Traditions from famous *tābi'ūn* were thus coveted as such. At a growing remove from them, and with the enormous growth of the *Ḥadīth* material, from the second half of the second/eighth century the demand for continuous statements of transmission—which at the beginning was probably directed primarily at the links of the second/eighth century—became louder. In this way, however, the traditions of the *tābi'ūn*, which had no or defective *isnāds*, also came into the crossfire of criticism. This explains the objections which the critical *Ḥadīth* scholars of the end of the second and the third/ninth century had against some of 'Aṭā's *ḥadīths*.

The growing number of 'Aṭā's informants and students is primarily conditioned by the fact that in the early works only a few names are more or less arbitrarily selected. It is only Ibn Ḥajar who—based of course on his source al-Mizzī—attempts greater completeness and systematization. On the other hand, it should be taken

⁸⁰⁵ Ibn abī Laylā's statement that he made the *ḥajj* seventy times is probably also a rough estimate. Cf. Ibn Khallikān, *op. cit.*

⁸⁰⁶ al-Dhahabī, *Tadhkira*, vol. 1, p. 98.

⁸⁰⁷ This becomes very clear in al-Dhahabī, *Mizān*, vol. 2, p. 197.

⁸⁰⁸ Also see Juynboll, *Muslim Tradition*, p. 177 (a statement of Shu'ba ibn al-Ḥajjāj, d. 160/776-7).

into account that the scholars of the third/ninth century sometimes made stricter demands on traditions from Companions of the Prophet than later generations. They did not accept some of 'Aṭā's informants named in Ibn Ḥajar, since they doubted his *samā'* from them. They were less interested in whether the traditions in question actually derived from 'Aṭā or were merely fathered on him. Other traditions of 'Aṭā they rejected because of their state of transmission after 'Aṭā'. Abū Nu'aym collected 34 *ḥadīths* of the Prophet which supposedly derive from 'Aṭā' and are outerly continuous.⁸⁰⁹ Only eight of them are categorized as *ṣaḥīḥ*. This shows that there were more traditions from 'Aṭā' in circulation—authentic and forged—than were accepted by *Ḥadīth* criticism. They appear again and again in later collections, and from them the later biographers draw their knowledge about 'Aṭā's authorities and students who are not mentioned in the older biographical works. The information about 'Aṭā's informants and students thus cannot be considered definitely reliable; it is based only partially on biographical traditions, and partially on *isnāds*. As far as I can see, it does not contain intentional falsifications. The groundlessness of such an assumption is also shown by the fact that precisely Ibn Ḥajar, who has the most names, questions direct contact with some of the persons whom he himself enumerates on grounds of age, and thus considers the corresponding *isnāds* to be defective.

In the biographical material about 'Aṭā there are only a few texts which nourish the suspicion that they are forged or intentionally altered:

The following text is contained in Ibn Ḥajar: Khālid ibn abī Nawf—'Aṭā': "I have met 200 of the Companions of the Prophet."⁸¹⁰ In view of the significance that this "meeting" of informants later had in the Muslim discipline of Tradition, and taking into consideration the fact that it cannot be inferred from the tradition of Ibn Jurayj that 'Aṭā' referred to numerous contacts to Companions of the Prophet, it is natural to suspect that this statement was forged and fathered on 'Aṭā'. Older variants of this text show, however, that such a conclusion would be overly hasty. In Ibn Ḥajar only a fragment is preserved. 'Aṭā's statement runs in its entirety: "I met

⁸⁰⁹ Abū Nu'aym, *Hilya*, vol. 3, pp. 316–325.

⁸¹⁰ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 200.

200 Companions of the Prophet in this mosque—i.e., in the mosque of the Ḥaram; when the *imām* said: '*wa-lā l-ḡāllīna*,' they answered aloud: 'Amen.'"⁸¹¹

Thus it is not personal, individual contact to 200 persons which is meant, as Ibn Ḥajar's version suggests, but a mass meeting; the number represents only an estimate, 'Aṭā's age is unspecified, and transmission from them is not in question. Since the context is lacking, it remains unclear what 'Aṭā' intended by this comment. Such a statement on his part is not unthinkable. Textual reports that distort the meaning as does that in Ibn Ḥajar, however, occur rarely.⁸¹² Is there a motive behind it? It could also be carelessness.

The fact that the traditions in the biographical literature are usually isolated from the concrete situations in which they originated, that we do not know and cannot reconstruct the reason, context, addressees, and so forth of a *dictum*, must be taken into account in deciding whether a forgery is present or not. An example is the tradition of 'Abd al-'Azīz ibn Rufay', a Meccan who died in 130/747–8 or 131.⁸¹³

'Aṭā' was asked about a problem and said: "I do not know (*lā adrī*)."
Thereupon someone said to him: "[Why] do you not give your opinion about it?" ['Aṭā'] answered: "I would be ashamed before God for people on earth to profess (*yudāna*) my opinion (*ra'yī*)."⁸¹⁴

Since on the basis of Ibn Jurayj's tradition from 'Aṭā' it is established that the latter taught primarily his own *ra'y*, the *dictum* does not seem to fit 'Aṭā'. About it Schacht—although he had only two traditions of 'Aṭā' as a basis for comparison, whose authenticity he was just as unable to prove—reached the verdict: forged.⁸¹⁵ With what justification? What did a forger hope to achieve by fathering such a statement on 'Aṭā', of all people, of whom—at least in the second/eighth and third/ninth centuries—it was surely known that his *fiqh* consisted mainly of expressions of his opinion? Are there not

⁸¹¹ Ibn Ḥibbān, *Mashāhīr*, no. 1593. Similarly al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 464, but here Khālid ibn abī Thawr is named as a transmitter, which is probably an error—of later transmitters. I could not verify a person of this name.

⁸¹² Another example in al-Dhahabī, *Mīzān*, vol. 2, p. 197 (Ibn Jurayj—'Aṭā'), cf. Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 345 ('Amr ibn 'Āṣim al-Kilābī—Mahdī ibn Maymūn—Mu'adh ibn Sa'd al-A'war).

⁸¹³ Cf. Ibn Ḥibbān, *Mashāhīr*, no. 616.

⁸¹⁴ Ibn Ḥajar, *Tahdhīb*, vol. 7, p. 202. al-Dārimī, *Sunan*, vol. 1, p. 45.

⁸¹⁵ Schacht, *Origins*, pp. 131, 251.

conceivable situations in which ‘Aṭā’ could have made such a statement, although it contradicted his practice? For example, towards the end of his life the trend towards shoring up legal solutions with traditions could have been so pronounced that he paid tribute to it. It would also be conceivable that the presence of certain persons or simply a disinclination to answer the question prompted him to make the statement. Since many biographical reports are torn from their original context, one must be very careful with accusations of forgery. Since among the many reports from and about ‘Aṭā’ in the biographical literature real forgeries can scarcely be demonstrated, in this case as well I consider the accusation of forgery purely on the basis of the content of the *dictum* to be insufficiently grounded. Schacht adduces as a further argument that the *isnād* “in its lower, historical part” contains exclusively transmitters of the city of Rayy.⁸¹⁶ Aside from the fact that the distinction between a historical and a non-historical part of the *isnād* is completely arbitrary, this cannot count as a criterion of forgery, since transmission by students who come from the same place as their teacher or settled there need not for this reason be worse than that of auditors who sojourned there only temporarily. That such a statement was later eagerly seized upon by opponents of *ra’y*-based *fiqh* is not surprising. If it was a forgery by scholars of the city of Rayy, one must ask oneself why they resorted to the Meccan ‘Aṭā’ at all, when from the middle of the second/eighth century—the earliest possible date of forgery according to Schacht’s view—Companions of the Prophet or the Prophet himself had supposedly already taken the place of the *tābi‘ūn* as authorities.

One may have doubts about the authenticity of texts which contain praise of ‘Aṭā’s legal scholarship by Companions of the Prophet. Ibn Ḥajar cites from Khālīd ibn abī Nawf: Ibn ‘Abbās said: “You throng around me, Meccans, while ‘Aṭā’ is among you!”⁸¹⁷ This tradition is suspicious for three reasons: It is questionable whether ‘Aṭā’ was already active as a *muftī* or legal teacher in the lifetime of Ibn

⁸¹⁶ Schacht, *Origins*, p. 131. ‘Abd al-‘Azīz ibn Rufay‘ was a Meccan (cf. Ibn Ḥibbān, *Mashāhīr*, no. 616); the following informant, Abū Khaythama [Zuhayr ibn Mu‘āwiya], came from Kufa, lived for a time in Damascus and in the Jazīra, and died in 173/789–10 or 174 (cf. Khalīfa ibn Khayyāt, *Tabaqāt*, p. 168; Ibn Ḥibbān, *Mashāhīr*, no. 1482; al-Dhahabī, *Tadhkira*, vol. 1, p. 233). Schacht means only the next two transmitters.

⁸¹⁷ Ibn Ḥajar, *Tahdhīb*, vol. 7, pp. 200–201. Also in al-Dhahabī, *Tadhkira*, vol. 1, p. 98, but without indication of the source.

‘Abbās, although it is not impossible. More serious is the fact that Khālīd ibn abī Nawf does not name an informant from whom he got the statement of Ibn ‘Abbās. Direct contact to him is precluded by reasons of age.⁸¹⁸ In addition there is the fact that almost literally the same thing is transmitted from Ibn ‘Umar. This version appears for the first time in Ibn abī Hātim (d. 327/939)⁸¹⁹ and goes through Sufyān—either Ibn ‘Uyayna or al-Thawrī—back to ‘Umar ibn Sa‘īd, a Meccan who was a contemporary of Ibn Jurayj.⁸²⁰ He claims to have the information from his mother. In later works⁸²¹ ‘Umar ibn Sa‘īd becomes ‘Amr ibn Sa‘īd, which is surely erroneous, since no person of this name fits chronologically and geographically; and instead of his mother his father functions as an informant, which looks like an *ex post facto* improvement of the *isnād* but could also be based on the negligence of a transmitter.

The tradition about Ibn ‘Umar is not only more probable for historical reasons—after the death of Ibn ‘Abbās, ‘Aṭā’ became the leading legal scholar of Mecca—but also better authenticated—the naming of the mother speaks rather against than for a forgery. It is thus to be presumed that the Ibn ‘Abbās *dictum* is merely a plagiarism of the Ibn ‘Umar tradition. Whether it is an intentional forgery by Khālīd ibn abī Nawf or merely an inadvertent confusion, I do not venture to decide.

A similar statement about ‘Aṭā’ with a supplement is also transmitted from Abū Ja‘far.⁸²² However, it seems to be independent of the Ibn ‘Umar tradition, fits with Abū Ja‘far’s other laudatory comments about ‘Aṭā’, and is also impeccable with respect to the transmitter. Both *dicta*, that of Ibn ‘Umar and that of Abū Ja‘far, can thus—until the opposite is proven—be considered trustworthy.

Also suspect, finally, is the report that ‘Aṭā’ put his slave women at the sexual disposal of his guests. Ibn Khallikān found it in the “*Sharḥ mushkilāt al-wasīf wa-l-wajīz*” of Abū l-Futūḥ al-‘Ijlī. It could have been invented in order to discredit ‘Aṭā’. It seemed very odd

⁸¹⁸ Cf. Ibn Hibbān, *Mashāḥir*, no. 1593.

⁸¹⁹ Ibn abī Hātim, *Jarḥ*, vol. 3, p. 330.

⁸²⁰ Cf. Khalīfa ibn Khayyāṭ, *Ṭabaqāt*, p. 284. Ibn Hibbān, *Mashāḥir*, no. 1160.

⁸²¹ Abū Nu‘aym, *Hilya*, vol. 3, p. 311. al-Dhahabī, *Tadhkira*, vol. 1, p. 98 (‘Amr ibn Sa‘īd—his father). al-Nawawī, *Tahdhīb*, vol. 1, p. 333 (‘Amr ibn Sa‘īd—his mother).

⁸²² Ibn Hajar, *Tahdhīb*, vol. 7, p. 201 (source: Abū ‘Āṣim al-Thaqafī, d. ca. 170/786–7).

even to Ibn Khallikān, and he seems to have asked around among his colleagues who were better versed in the history of early *fiqh*, who informed him that ‘Aṭā’ was of the opinion that sexual relations with [other people’s] slave women was permissible with the permission of their owners. Nevertheless he considers the report about ‘Aṭā’'s behavior improbable, specifically for two reasons: masculine pride and jealousy would have prevented him, and such an opinion on the part of such an outstanding “*imām*” was utterly inconceivable.⁸²³

His arguments cannot convince the historian. He has at his disposal a source, in the form of the tradition of Ibn Jurayj from ‘Aṭā’ in the *Muṣannaḥ* of ‘Abd al-Razzāq, with which it is at least possible to decide the question of whether ‘Aṭā’ advanced the view attributed to him:

Ibn Jurayj said: ‘Aṭā’ reported to me (*akhbarani*) [on the question of whether a man could allow another his slave for sexual intercourse]: “[That] was practiced [before]; the man even allowed his slave woman to his [male] slave, son, brother, and the woman [her slave woman] to her husband. [However], I do not like people to do this, and I have not heard [permission for it] from any dependable [informant], but it was reported to me that the man [may] send his slave woman to his guest.”⁸²⁴

There are also traditions to this effect from ‘Amr ibn Dīnār, Ibn Ṭāwūs and others from Ṭāwūs and Ibn ‘Abbās.⁸²⁵ Thus, this opinion seems to have been advanced by the “school of Ibn ‘Abbās.” To this extent, the information that Ibn Khallikān received from his colleagues is correct. His argumentation that, even if it were true, theory and practice are different kettles of fish may be ingenious, but it is not convincing. To a Muslim of the seventh/thirteenth century like Ibn Khallikān, who was familiar only with forms of concubinate which had been established for several centuries and defined in the classical *madhhabs* it must have been a strange idea that in the early period of Islam not only were views other than those of the classical *madhhabs* expressed, but people acted accordingly, and that masculine pride (*murūʿa*) and jealousy (*ghayra*) are also products of societal norms. It is true that it cannot be proven that ‘Aṭā’ acted as he thought as long as the source from which al-ʿIjlī’s report derives

⁸²³ Ibn Khallikān, *Wafayāt*, vol. 2, p. 424. al-Ṣafadī, *Nakt*, p. 200.

⁸²⁴ AM 7: 12850.

⁸²⁵ AM 7: 12851–12854.

remains unknown, but such behavior in Mecca in the first/seventh century is not as impossible as Ibn Khallikān assumes, as the practice of *mutʿa* "marriages" there also shows.⁸²⁶

From what sources is the biographical literature's knowledge about 'Aṭā' drawn? Altogether about 60 persons are named from whom the majority of the reports about him ultimately derive. About *two thirds* of them met 'Aṭā' themselves; among them are a *ṣaḥābī* (Ibn 'Umar), six contemporaries and colleagues of 'Aṭā's (for example, Abū Ja'far, Qatāda, Abū l-Zubayr, 'Ubayd Allāh ibn abī Yazīd, Maymūn ibn Mihrān), some of whom can also be categorized as auditors of 'Aṭā's, 25 students or auditors of 'Aṭā's (like Ibn Jurayj, from whom by far the most direct information about 'Aṭā' derives, Qays ibn Sa'd, Ibn abī Laylā, al-Awzā'ī, Abū Ḥanīfa, to name only the best known). Of six people it is said only that they saw 'Aṭā'; among them may also be auditors of 'Aṭā's. Classified according to their geographical affiliations, the Meccans form the largest group of direct informants (10), followed by Kufans (8), Medinans (4), people from the Jazīra and Iran (3), from Basra and Damascus (two each). 11 names cannot be placed, or cannot be placed with assurance.⁸²⁷

A third of the statements about 'Aṭā' come from 18 persons who themselves had no contact with 'Aṭā'. Five of them are students or auditors of students of 'Aṭā's—usually of Ibn Jurayj (for instance Ibn 'Uyayna, who is also the most important transmitter of eyewitness material, al-Wāqidī, Yahyā ibn Sa'd al-Qaṭṭān, Ibn 'Ulayya)—, 11 or 12 students or auditors of former students of Ibn Jurayj or other students of 'Aṭā' (among them al-Shāfi'ī, Aḥmad ibn Ḥanbal, 'Alī ibn al-Madīnī, Khalīfa ibn Khayyāt, Muḥammad ibn Sa'd and al-Bukhārī). Only two or three (Abū Ḥatīm, Abū Dāwūd) belong exclusively to the fourth generation after 'Aṭā'. Among their teachers were the aforementioned figures of the first half of the third/ninth century.⁸²⁸ Since these scholars, who flourished from the second half of the second century, are largely also the transmitters of eye- and earwitness reports of 'Aṭā', it is to be assumed that their statements and judgments are largely based on traditions about 'Aṭā' from the first half

⁸²⁶ See pp. 283 f.

⁸²⁷ The geographical classification is largely based on the information in Khalīfa ibn Khayyāt, *Ṭabaqāt* and Ibn Hibbān, *Mashāḥir*.

⁸²⁸ The statements about teacher-student relationships are based on al-Dhahabī, *Tadhkira* and Ibn Ḥajar, *Tahdhīb*.

of the second/eighth century, which they are only reporting, summarizing or utilizing, without naming the source. The fact that many reports are documented for the first time only in the later works does not mean that they were forged. Rather, it can be explained by the fact that on the one hand the works before Ibn Ḥajar made only a small sampling of the reports accessible to them and, on the other hand, the sources used by Ibn Ḥajar and others before him are sometimes not preserved or not yet accessible.

2. 'Amr ibn Dīnār

His epithet was al-Athram (the gap-toothed). Like 'Aṭā', he had the *kunya* Abū Muḥammad; and like him, he was a *mawlā*, specifically of Mūsā ibn Bādhān⁸²⁹ from Madhhij (sic)⁸³⁰—variants: *mawlā* of Bādhān⁸³¹ (of the *abnā'* [al-Furs]),⁸³² of the family of Bādhān,⁸³³ and of Banū Jumaḥ⁸³⁴—variant: Banū Makhzūm. This Bādhān is supposed to have been a governor of the Sassanids in Yemen. As 'Amr's birth-date the year 46/666–7 is sometimes named.⁸³⁵ It is clearly based on a calculation assuming 126/744 as the year of his death and a lifespan of 80 years. While 126 as a year of death is probably correct, since it is transmitted by his student Ibn 'Uyayna⁸³⁶—variants: 125

⁸²⁹ al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 329 (source: Ibn abī Bazza, Meccan, d. 124/741–2 or 125). The form of the name Ibn Bādhām on p. 328 is probably an error of transmission. Ibn abī Ḥātim, *Jarḥ*, vol. 3, p. 231. Cf. also AM 7: 12084 (a tradition about a question which came up on the death of Mūsā b. Bādhān).

⁸³⁰ Ibn Ḥibbān, *Thiqāt*, vol. 5, p. 167. Probably Banū Madhhij is meant. Mūsā ibn Bādhān is said to have been a *mawlā* of them or of the Banū Jumaḥ. Cf. al-Mizzī, *Tahdhīb*, vol. 5, p. 408 (no. 4949).

⁸³¹ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 353. Ibn Ḥibbān, *Thiqāt*, vol. 5, p. 167. al-Shīrāzī, *Ṭabaqāt*, p. 70.

⁸³² al-Shīrāzī, *Ṭabaqāt*, p. 70.

⁸³³ Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 281. Ibn Ḥibbān, *Mashāḥir*, no. 613.

⁸³⁴ al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 329 (source: Ibn abī Bazza). al-Nawawī, *Tahdhīb*, vol. 2, p. 27. al-Dhahabī, *Mīzān*, vol. 2, p. 287. Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 28. According to al-Mizzī, *Tahdhīb*, vol. 5, 408 was Bādhān a *mawlā* of Banū Makhzūm.

⁸³⁵ Ibn Ḥibbān, *Thiqāt*, vol. 5, p. 167. Id., *Mashāḥir*, no. 613. al-Dhahabī, *Tadhkira*, vol. 1, p. 113.

⁸³⁶ al-Bukhārī, *Ta'rikh*, vol. 3/2, p. 328. Cf. also Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 355. Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 281. Ibn Ḥibbān, *Thiqāt*, vol. 5, p. 167. Id., *Mashāḥir*, no. 613. al-Shīrāzī, *Ṭabaqāt*, p. 70. al-Nawawī, *Tahdhīb*, vol. 2, p. 27. al-Dhahabī, *Tadhkira*, vol. 1, p. 113. Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 30.

or 129⁸³⁷—, the number 80 should be regarded only as a rough estimate which apparently derives from al-Wāqidī (d. 207/822–3).⁸³⁶ ‘Amr’s precise age was not known to his direct students, as Ibn ‘Uyayna reports.⁸³⁹ For this reason, those Muslim biographers probably come closest to the truth who assume that he lived to be “more than 70 years” old⁸⁴⁰ or was born “around” the year 46/666–7,⁸⁴¹ even if they name no sources for this.

About the place or places in which ‘Amr grew up and received his education nothing is transmitted. Since according to Ibn ‘Uyayna the “companions,” i.e. students, of Ibn ‘Abbās—and probably also the latter himself—were among his most important teachers,⁸⁴² he probably spent his time primarily in this circle, i.e. in Mecca and al-Ṭā’if.⁸⁴³ At the latest around the turn of the century, he was so famous as a scholar of Mecca that Ṭāwūs, living in Yemen, advised his son to study with him.⁸⁴⁴ He lived at some distance from the mosque where he held his sessions, and came to it regularly on a donkey. Although it is not reported that he had a physical disability, his students had to carry him into and out of the mosque.⁸⁴⁵ Sometimes he also spent the night there in teaching and prayer, but Ibn ‘Uyayna, who studied with him in the last years of his life, does not seem to have witnessed this himself.⁸⁴⁶ After ‘Aṭā’s death the Umayyads offered him the post of *muftī* of the city of Mecca, which was endowed with a stipend from the state treasury, but ‘Amr declined.⁸⁴⁷ ‘Aṭā’s

⁸³⁷ Ibn Qutayba, *Ma’ārif*, p. 161. al-Nawawī, *Tahdhīb*, vol. 2, p. 27. Ibn Hajar, *Tahdhīb*, vol. 8, p. 30. (No early source is named for these dates).

⁸³⁸ Cf. al-Dhahabī, *Tadhkira*, vol. 1, p. 113.

⁸³⁹ Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 353.

⁸⁴⁰ Ibn Hībān, *Thiqāt*, vol. 5, p. 167 (inconsistently, he also gives the year of birth 46).

⁸⁴¹ al-Dhahabī, *Tadhkira*, vol. 1, p. 113.

⁸⁴² al-Bukhārī, *Ta’rīkh*, vol. 3/2, p. 328.

⁸⁴³ Since Abū l-Sha’thā’ was his most important teacher, a relatively long sojourn in Basra is a possibility.

⁸⁴⁴ Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 353.

⁸⁴⁵ Cf. Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 353 (source: Ibn ‘Uyayna, d. 198/813–4). al-Dhahabī, *Tadhkira*, vol. 1, p. 113.

⁸⁴⁶ Abū Nu’aym, *Ḥiṣya*, vol. 3, p. 348. al-Dhahabī, *Tadhkira*, vol. 1, p. 113. (Ibn ‘Uyayna has the information from Ṣadaqa [ibn Yasār], a Meccan contemporary of ‘Amr’s; cf. Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 282.)

⁸⁴⁷ Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 353 (source: Sufyān [b. ‘Uyayna]). Abū Nu’aym, *Ḥiṣya*, vol. 3, p. 348. In Ibn Sa’d it is Ibn Hishām, in Abū Nu’aym the caliph Hishām himself, who attempts to win ‘Amr for the post of *muftī*. The former is to be preferred as a *lectio difficilior*. Ibn Hishām is presumably Muḥammad ibn Hishām, the caliph Hishām’s governor over the Ḥijāz. Cf. Ibn Hajar, *Tahdhīb*, vol. 9, pp. 495 f.

successor was his student Qays ibn Sa'd, who, however, died after only a few years.⁸⁴⁸ After this 'Amr seems to have assumed the post of *mufī* after all and to have held it until his death. He was succeeded in it by Ibn abī Najīḥ (d. 130/747–8 or 131).⁸⁴⁹

'Amr ibn Dīnār had an aversion against his students' recording his teachings in writing. This applied both to his legal views—with the justification that he might perhaps abandon them the next day⁸⁵⁰—and to his traditions. However, his attacks on recording in writing show that this was customary among some of his auditors. Sufyān ibn 'Uyayna claims that he wrote down nothing from 'Amr, but that he and other students learned his traditions—surely it was primarily these which were in question—by heart.⁸⁵¹ On the other hand, an eyewitness reports that Ibn 'Uyayna had tablets (*alwāḥ*) with him at 'Amr's classes,⁸⁵² from which it can be concluded that he did write down 'Amr's traditions initially, but used his notes only as mnemonic devices until he had committed them to memory. This can also be inferred from the fact that, according to his own statement, 'Amr forbade Ibn 'Uyayna to write down the *ḥadīths* of his teacher—with the exception of their beginnings (*aṭrāf*)—for Ayyūb [ibn abī Tamīma]⁸⁵³ from Basra, when the latter was staying in Mecca.⁸⁵⁴ By forbidding note-taking and the spreading of his teachings in written form, 'Amr probably wanted to urge people to study with him and hear traditions from him personally.⁸⁵⁵

From some reports about 'Amr one gets the impression that he was somewhat eccentric: not only did his students have to carry him, which may have had other reasons, but it is also reported that to express his displeasure he threw himself weeping to the ground or

⁸⁴⁸ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 355. Qays b. Sa'd died in 119/737. Cf. Khalifa b. Khayyāt, *Ṭabaqāt*, p. 281. Ibn Hibbān, *Mashāḥir*, no. 1151.

⁸⁴⁹ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 354. Ibn Hajar, *Tahdhīb*, vol. 8, p. 30.

⁸⁵⁰ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 353 (source: Ma'mar [ibn Rāshid], d. 153/770).

⁸⁵¹ Op. cit.

⁸⁵² Ibn abī Ḥatīm, *Farḥ*, vol. 2/1, p. 226 (source: Hammād ibn Zayd, d. 179/795–6).

⁸⁵³ Ayyūb ibn Mūsā is out of the question as a Meccan who could hear 'Amr himself. That it was Ayyūb ibn abī Tamīma can be inferred indirectly from Ibn Sa'd, *Ṭabaqāt*, vol. 7/2, p. 42 (line 18): Ayyūb together with the Basran Abū 'Amr ibn al-A'la'.

⁸⁵⁴ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 353; cf. also vol. 7/1, p. 161 (line 14).

⁸⁵⁵ On the issue of the opposition to writing down traditions cf. Schoeler, "Mündliche Thora" and M. Cook, "The Opponents of the Writing down of Tradition in Early Islam," *Arabica* 44 (1997). pp. 437–580.

pretended to have a stomach ache or to be blind, and that he withheld answers from questioners without any discernible reason, which earned him the reproach of having bad manners.⁸⁵⁶ In contrast to 'Aṭā' and Jurayj, he did not dye his hair.⁸⁵⁷

'Amr ibn Dīnār was highly regarded as a scholar. Very positive judgments are transmitted from two of his teachers: Ṭāwūs advised his son to study with 'Amr,⁸⁵⁸ and 'Aṭā' is supposed to have recommended to his students that they study with 'Amr after his death,⁸⁵⁹ which Ibn Jurayj, for instance, actually did.⁸⁶⁰ Colleagues of approximately the same age as 'Amr like the Meccan Ibn abī Najīḥ⁸⁶¹ and the Medinan al-Zuhri⁸⁶² gave him the highest praise. By some students and auditors—for instance Ibn 'Uyayna, Shu'ba ibn al-Ḥajjāj (Basra, Wāsiṭ), Mis'ar ibn Kidām (Kufa)—he is ranked as an outstanding *faqīh* and an absolutely trustworthy transmitter and preferred over all of his contemporaries.⁸⁶³ The critical *Ḥadīth* scholars of the end of the second/eighth and the third/ninth century, like Yaḥyā ibn Sa'īd al-Qaṭṭān, 'Alī ibn al-Madīnī, Abū Zur'a, Aḥmad ibn Ḥanbal, Abū Ḥatīm and al-Nasā'ī also considered him dependable and trustworthy, even more so than his Basran colleague and contemporary Qatāda ibn Di'āma.⁸⁶⁴ The positive estimation of 'Amr as a *Ḥadīth* transmitter, which is surprising in light of Ibn 'Uyayna's remark that he transmitted "according to the meaning" (*bi-l-ma'ānī*), that is, not

⁸⁵⁶ Op. cit., p. 353. Abū Nu'aym, *Hilya*, vol. 3, p. 348 (sources: Ibn 'Uyayna, Iyyās ibn Mu'āwiya, Hammād ibn Zayd, Ma'mar).

⁸⁵⁷ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 353 (source: Sufyān [ibn 'Uyayna]). Also see pp. 253, 283.

⁸⁵⁸ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 353 (source: Ibn Ṭāwūs, d. 132/749–5). Abū Nu'aym, *Hilya*, vol. 3, p. 348 (here erroneously Ṭāwūs instead of Ibn Ṭāwūs in the *isnād*). al-Shīrāzī, *Ṭabaqāt*, p. 70.

⁸⁵⁹ Abū Nu'aym, op. cit.; al-Shīrāzī, op. cit.; Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 30 (source: Sufyān ibn 'Uyayna without an informant).

⁸⁶⁰ See p. 271.

⁸⁶¹ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 231 (source: Ibn 'Uyayna). al-Nawawī, *Tahdhīb*, vol. 2, p. 27. al-Dhahabī, *Tadhkira*, vol. 1, p. 113. Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 29.

⁸⁶² Ibn Ḥajar, op. cit., p. 30 (source: Ibn 'Uyayna).

⁸⁶³ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 231. Abū Nu'aym, *Hilya*, vol. 3, p. 348. al-Nawawī, *Tahdhīb*, vol. 2, p. 27. al-Dhahabī, *Tadhkira*, vol. 1, p. 113. Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 30.

⁸⁶⁴ Ibn abī Ḥatīm, *Jarḥ*, vol. 3, p. 231. al-Dhahabī, *Tadhkira*, vol. 1, p. 113. Ibn Ḥajar, *Tahdhīb*, vol. 8, pp. 29, 30. Such comparative evaluations probably have the character of a *topos* and should be understood as a stylistic device, since opposite evaluations occur in the articles of the figures rated lower. Cf. Juynboll, *Muslim Tradition*, p. 163, note 4.

necessarily literally,⁸⁶⁵ also runs through the later *rijāl* works.⁸⁶⁶ Only Ibn Ḥajar draws the conclusion from some remarks of scholars of the third/ninth century that he is to be considered a *mudallis*,⁸⁶⁷ that is, that he transmitted *ḥadīths* from Companions of the Prophet from whom he did not hear them himself. The provenance of the statement that he was a Shīʿite, which appears late and which al-Dhahabī dismisses as unfounded (*bāṭil*),⁸⁶⁸ could not be determined.

For the *Ḥadīth* scholars it was a vital question which of the Companions of the Prophet ʿAmr ibn Dīnār heard himself. Al-Bukhārī (d. 256/870) names only Ibn ʿAbbās, Ibn ʿUmar and Ibn al-Zubayr. ʿAbd Allāh ibn Jaʿfar [ibn abī Ṭālib] he is only supposed to have seen.⁸⁶⁹ Ibn abī Ḥāṭim (d. 327/939), citing his father (d. 277/890-1), adds the *ṣaḥāba* Jābir ibn ʿAbd Allāh and Abū Shurayḥ.⁸⁷⁰ It is explicitly disputed by scholars of the third/ninth century that he heard Abū Hurayra and al-Barāʾ ibn ʿĀzib.⁸⁷¹ In addition, Ibn ʿAmr and al-Miswar are named by al-Nawawī (d. 676/1277-8),⁸⁷² Anas ibn Mālīk by al-Dhahabī (d. 748/1347-8),⁸⁷³ and Abū Hurayra, Abū Ṭufayl and al-Sāʿib ibn Yazīd by Ibn Ḥajar (d. 852/1448-9).⁸⁷⁴ Since a very early tradition exists only about his *samāʿ* from Ibn ʿAbbās,³⁷⁵ information about *ṣaḥāba* informants is to be treated with caution, since they could be extrapolated from available traditions whose authenticity is not established.

The list of *tābiʿūn* from whom ʿAmr is supposed to have transmitted also swells in the biographical works in the course of time, and in Ibn Ḥajar reaches the number of 27 names, without making a claim of exhaustiveness.⁸⁷⁶ Most of them probably come from the *isnāds* of the traditions of ʿAmr available to Ibn Ḥajar, and thus are not necessarily reliable. Of this generation, only Ibn ʿAbbās' stu-

⁸⁶⁵ Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 353.

⁸⁶⁶ Cf. al-Nawawī, *Tahdhīb*, vol. 2, p. 27. al-Dhahabī, *Mizān*, vol. 2, p. 287.

⁸⁶⁷ Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 30.

⁸⁶⁸ al-Dhahabī, *Mizān*, vol. 2, p. 287. Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 30.

⁸⁶⁹ al-Bukhārī, *Taʾrīkh*, vol. 3/2, p. 328.

⁸⁷⁰ Ibn abī Ḥāṭim, *Farḥ*, vol. 3, p. 231.

⁸⁷¹ Op. cit. (source: Abū Zurʿa, d. 264/877-8). Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 30 (source: Ibn Maʿīn, d. 233/847-8).

⁸⁷² al-Nawawī, *Tahdhīb*, vol. 2, p. 27.

⁸⁷³ al-Dhahabī, *Tadhkira*, vol. 1, p. 113.

⁸⁷⁴ Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 29.

⁸⁷⁵ al-Bukhārī, *Taʾrīkh*, vol. 3/2, p. 328 (source: Ibn ʿUyayna).

⁸⁷⁶ Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 29.

dents Ṭāwūs, Saʿīd ibn Jubayr, ʿIkrima, ʿAṭāʾ and ʿAmr ibn Kaysān are documented by early biographical sources as his teachers.⁸⁷⁷ The enumerations of his students and hearers are based partially on the biographical traditions about him and also partially on *isnāds*. With them, as well, the later sources sometimes know other names than the earlier ones. Ibn abī Ḥātim's list of students consists of five people—some well-known students, like Ibn Jurayj for instance, are missing—, and Ibn Ḥajar's of 24 names.⁸⁷⁸ There can be no sweeping answer to the question of whether all of them really attended ʿAmr's lectures.

The critical *Ḥadīth* scholars of the third/ninth century accept without reservation only a small portion of the *ḥadīths* of the Prophet deriving from ʿAmr ibn Dīnār. This is shown by the selection of 21 such texts in Abū Nuʿaym (d. 430/1038–9), of which only five receive the evaluation *ṣaḥīḥ*, *muttafaq ʿalayh* (flawless, generally accepted) on the basis of their *isnāds*.⁸⁷⁹ The deprecation of the others generally implies no doubt in ʿAmr's credibility or dependability, but is based on a critical examination of the text's state of transmission, especially after ʿAmr. Stated clearly: the reference to ʿAmr is considered questionable.

If one investigates the sources on which ʿAmr's biography primarily draws, it emerges that approximately *two thirds* of the reports derive from persons—twenty-three are named—who were in direct contact with him. Of this group, three-fourths of all information comes directly (75%) or indirectly (25%) from his student Ibn ʿUyayna, the rest from other students or contemporaries of ʿAmr's. Of the statements of those who did not know ʿAmr ibn Dīnār themselves, about half come from students of his students—like al-Faḍl ibn Dukayn, Yaḥyā ibn Maʿīn, Yaḥyā ibn Saʿīd al-Qaṭṭān, Aḥmad ibn Ḥanbal or al-Wāqidi—, and half from the generation of their students—like Abū Zurʿa, al-Bukhārī, Abū Ḥātim, al-Tirmidhī, al-Nasāʾī. They are primarily judgments about ʿAmr's quality as a *muḥaddīth* and about his informants. They contribute little to his actual biography.

Neither in terms of content nor in terms of their history of transmission do the biographical traditions about ʿAmr ibn Dīnār provide clues that they are completely or partially forged. It is true that

⁸⁷⁷ Cf. al-Bukhārī, *Taʾrīkh*, vol. 3/2, p. 328 (source: Ibn ʿUyayna).

⁸⁷⁸ Cf. Ibn abī Ḥātim, *Jarḥ*, vol. 3, p. 231. Ibn Ḥajar, *Tahdhīb*, vol. 8, p. 29.

⁸⁷⁹ Abū Nuʿaym, *Hilya*, vol. 3, pp. 349–354.

the material collected in the biographical works contains some gaps—for instance, indications of the importance of Abū l-Sha'thā' as his teacher, which can be inferred from his texts, are lacking—and it is one-sided, specifically, strongly marked by the perspective of Ibn 'Uyayna, but by and large it can be regarded as trustworthy.

3. *Ibn Jurayj*⁸⁸⁰

Behind this commonly-used name is hidden 'Abd al-Malik ibn 'Abd al-'Azīz ibn Jurayj, thus actually Ibn ibn Jurayj. His grandfather Jurayj (George) was a slave of Byzantine origin⁸⁸¹ (*rūmī* = "Roman") in the possession of a certain Umm Ḥabīb bint Jubayr, the wife of 'Abd al-'Azīz ibn 'Abd Allāh ibn Khālīd ibn Asīd ibn abī l-'Īṣ ibn Umayya.⁸⁸² Jurayj's descendants belonged to the clientel of this Umayyad clan, *āl Khālīd ibn Asīd*⁸⁸³—variants: Ibn Umayya Khālīd,⁸⁸⁴ Khālīd ibn 'Attāb ibn Asīd,⁸⁸⁵ Umayya ibn Khālīd ibn Asīd,⁸⁸⁶ Abū Khālīd ibn Asīd⁸⁸⁷—and took their *nisba*, al-Qurashī⁸⁸⁸—variant: al-

⁸⁸⁰ The biographical reports about him are drawn primarily from the following works: Ibn Sa'd, *Ṭabaqāt*, vol. 5, pp. 361–362; vol. 7/2, p. 163. Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 283. al-Bukhārī, *Ta'rikh*, vol. 3/1, pp. 422–423. Ibn Qutayba, *Ma'ārif*, p. 167. Ibn abī Ḥātim, *Taqdima*, passim. Idem, *Jarh*, vol. 2/2, pp. 356–359. Ibn Hibbān, *Mashāhīr*, no. 1146 et al. Idem, *Thiqāt*, vol. 7, pp. 93–94. Ibn al-Nadīm, *Fihrist*, p. 316. al-Baghdādī, *Ta'rikh*, vol. 10, pp. 400–407. Idem, *Kifāya*, pp. 258, 320. al-Shīrāzī, *Ṭabaqāt*, p. 71. al-Nawawī, *Tahdhīb*, vol. 2, pp. 297–298. Ibn Khallikān, *Wafayāt*, vol. 2, p. 348. al-Dhahabī, *Duwal*, p. 79. Idem, *Mizān*, vol. 2, p. 151. Idem, *Tadhkira*, pp. 169–171. Ibn Hajar, *Tahdhīb*, vol. 6, pp. 402–406.

⁸⁸¹ al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423 (source: Yahyā ibn Ma'īn, d. 233/847–8). al-Baghdādī, *Ta'rikh*, vol. 10, p. 401. al-Dhahabī, *Tadhkira*, vol. 1, pp. 169, 170. Ibn Hajar, *Tahdhīb*, vol. 6, p. 402.

⁸⁸² Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 361. Ibn Qutayba, *Ma'ārif*, p. 167. al-Baghdādī, *Ta'rikh*, vol. 10, p. 400 (here incorrectly: . . . ibn Khālīd ibn Asad . . .). al-Shīrāzī, *Ṭabaqāt*, p. 71. Ibn Khallikān, *Wafayāt*, vol. 2, p. 348.

⁸⁸³ Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 283. al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423 (source: Ibn Ma'īn). Ibn al-Nadīm, *Fihrist*, p. 316. al-Dhahabī, *Tadhkira*, vol. 1, p. 170.

⁸⁸⁴ al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423. Clearly an error for Khālīd [. . .] ibn Umayya.

⁸⁸⁵ Ibn abī Ḥātim, *Jarh*, vol. 2/2, p. 356. A mistake for 'Abd Allāh ibn Khālīd?

⁸⁸⁶ Ibn Hibbān, *Mashāhīr*, no. 1146. Idem, *Thiqāt*, vol. 7, p. 93. Ibn Khallikān, *Wafayāt*, vol. 2, p. 348. Presumably an erroneous correction of al-Bukhārī (see note 884).

⁸⁸⁷ al-Baghdādī, *Ta'rikh*, vol. 10, p. 401. A mistake: *abū* instead of *ibn*, perhaps under the influence of Ibn Jurayj's *kunya* (see below).

⁸⁸⁸ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 361. Ibn Hibbān, *Mashāhīr*, no. 1146. Ibn Khallikān, *Wafayāt*, vol. 2, p. 348.

Umawī.⁸⁸⁹ Ibn Jurayj's father is already supposed to have been a *faqīh* in Mecca. However, not much is known about him.⁸⁹⁰ Ibn Jurayj had the *kunya* Abū l-Walīd,⁸⁹¹ and probably also a second: Abū Khālīd.⁸⁹² He was born in the year 80/699. This date is not based on counting back, but on the tradition that he came into the world in the year in which Mecca was hit by a natural disaster, a flood probably caused by torrential rains, which caused great damage in the city (*'ām al-juhāf*).⁸⁹³ This tradition probably derives from Ibn Jurayj himself. On the other hand, the statement that he was born in the seventies⁸⁹⁴ is to be classed either as a concession to the reports about his age or as a confusion with his age.⁸⁹⁵ According to the statement of his student Muḥammad ibn 'Umar [al-Wāqidi], Ibn Jurayj died on the eleventh of Dhū l-Ḥijja of the year 150/768.⁸⁹⁶ Because of its exactitude, this date is to be preferred over all other statements—105/723-4,⁸⁹⁷ 147/764-5,⁸⁹⁸ 149/766-7,⁸⁹⁹ 151/768,⁹⁰⁰

⁸⁸⁹ al-Nawawī, *Tahdhīb*, vol. 2, p. 297. al-Dhahabī, *Tadhkira*, vol. 1, p. 169. Ibn Hajar, *Tahdhīb*, vol. 6, p. 402. I.e., this *nisba* is attested only relatively late.

⁸⁹⁰ Cf. Ibn Hibbān, *Mashāhīr*, no. 1145. Ibn Hajar, *Tahdhīb*, vol. 6, p. 333. In the section of the *Musannaf* studied here there were no traditions from his father. Was he born as a transmitter only in the process of *isnād* improvement after Ibn Jurayj?

⁸⁹¹ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 361. Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 283. Ibn Qutayba, *Ma'ārif*, p. 167. Ibn al-Nadīm, *Fihrist*, p. 316.

⁸⁹² al-Bukhārī, *Ta'rikh*, vol. 3/1, pp. 422-423. Ibn abī Ḥātim, *Jarh*, vol. 2/2, p. 356. Ibn Hibbān, *Mashāhīr*, no. 1146. Idem, *Thiqāt*, vol. 7, p. 93. al-Baghdādī, *Ta'rikh*, vol. 10, p. 401 (source: Abū 'Āsim [al-Dahhāk ibn Makhlad], a student of Ibn Jurayj's, d. 212/827-8). al-Nawawī, *Tahdhīb*, vol. 2, p. 297. Ibn Khallikān, *Wafayāt*, vol. 2, p. 348. al-Dhahabī, *Tadhkira*, vol. 1, p. 169. Ibn Hajar, *Tahdhīb*, vol. 6, p. 402.

⁸⁹³ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 361. Ibn Khallikān, *Wafayāt*, vol. 2, p. 348. al-Dhahabī, *Tadhkira*, vol. 1, p. 171 (source: Ibn Qutayba. But not contained in the edition of his *Ma'ārif*). On this event cf. also Ibn al-Athīr, *Kāmil*, vol. 4, p. 453.

⁸⁹⁴ al-Dhahabī, *Tadhkira*, vol. 1, p. 169 (no source).

⁸⁹⁵ See below.

⁸⁹⁶ Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 362. al-Dhahabī, *Tadhkira*, vol. 1, pp. 1, 70. Only 150: al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423 (source: Yahyā ibn Sa'd [al-Qaṭān]). Ibn Qutayba, *Ma'ārif*, p. 167. Ibn Hibbān, *Mashāhīr*, no. 1146. Idem, *Thiqāt*, vol. 7, p. 93. Ibn al-Nadīm, *Fihrist*, p. 316. al-Dhahabī, *Duwal*, p. 79.

⁸⁹⁷ Khalīfa b. Khayyāt, *Ṭabaqāt*, p. 283.

⁸⁹⁸ al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423 (source: 'Alī [ibn al-Madīnī], d. 234/848-9).

⁸⁹⁹ Ibn Hibbān, *Thiqāt*, vol. 7, p. 93. al-Baghdādī, *Ta'rikh*, vol. 10, p. 407 (source: Abū Ḥafṣ 'Amr ibn 'Alī, d. 249/863-4). Ibn Hajar, *Tahdhīb*, vol. 6, p. 405. al-Dhahabī, *Tadhkira*, vol. 1, p. 170 (source: Ibn al-Madīnī).

⁹⁰⁰ al-Baghdādī, *Ta'rikh*, vol. 10, p. 407 (source: 'Alī ibn al-Madīnī). Ibn Hajar, *Tahdhīb*, vol. 6, p. 405.

160/776–7⁹⁰¹—which all come from later sources, and of which probably only the discrepancies of plus or minus one year actually go back to scholars of the first half of the third/ninth century, while the other dates are based on errors in transmission. The date 150 is also supported by the tradition of Khālid ibn Nazzār al-Aylī, who wanted to study with Ibn Jurayj but was too late to meet him alive.⁹⁰² 105 and 147 are probably the products of misreadings of the numbers 150 (*kham*s instead of *kham*sīn) and 149 (*sab*ʿ instead of *tis*ʿ),⁹⁰³ 160 is attested only late and without an informant. Consequently, Ibn Jurayj lived to be 70. This obvious number is, strangely, nowhere attested. On the contrary, it is claimed that he was older than 70 at his death. Ibn Saʿd reports 76 years from al-Wāqidi,⁹⁰⁴ although he names 80 as the year of birth and 150 as the year of death. In addition to this odd discrepancy in Ibn Saʿd, it is conspicuous that the number 76 never again appears in later sources, although Ibn Saʿd was frequently used as a source. For this reason, I suspect that the number 76 originally was not in Ibn Saʿd at all, but that it derives from a misreading of *nayyif wa-sabʿīn* (a good seventy), which could have been intended either as a rough or—more likely—as an exact statement of age. Assuming that Ibn Jurayj was born at the beginning of the year 80, at his death in the month of Dhū l-Ḥijja 150 he would already have been almost 71. This would fit with the fact that ʿAlī [ibn al-Madīnī] (d. 234/848–9) gives Ibn Jurayj’s age as “over 70” (*jāza/jāwaza l-sabʿīn*),⁹⁰⁵ which simply represents another formulation of *nayyif wa-sabʿīn*.⁹⁰⁶ On the other hand, the isolated and late claim that he was over 100⁹⁰⁷ is a pure figment of the imagination.

⁹⁰¹ al-Nawawī, *Tahdhīb*, vol. 2, p. 297 (no source).

⁹⁰² al-Dhahabī, *Tadhkira*, vol. 1, p. 170.

⁹⁰³ That *kham*s was mistakenly read for *kham*sīn by later transmitters or by the editor can also be inferred from the fact that Khalīfa correctly places Ibn Jurayj in the *ṭabaqa* of those born around 150, and al-Baghādādī, *Taʾrīkh*, vol. 10, p. 407, transmits this date from Khalīfa. 149 is reported from ʿAmr ibn ʿAlī and ʿAlī ibn al-Madīnī; since both were students of Ibn ʿUyayna, this date may derive from him. The misreading of 147 instead of 149 in al-Bukhārī is thus likely, since 147 is isolated and Ibn Ḥibbān and al-Dhahabī, who used al-Bukhārī, have 149. *Sab*ʿ and *tis*ʿ are easily confounded in undotted texts.

⁹⁰⁴ Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 362.

⁹⁰⁵ Cf. al-Bukhārī, *Taʾrīkh*, vol. 3/1, p. 423. Ibn Ḥibbān, *Thiqāt*, vol. 7, p. 93.

⁹⁰⁶ Perhaps al-Dhahabī’s isolated birth date, “*wulida sanata nayyifin wa-sabʿīn*,” is also based on a confusion of al-Bukhārī’s statement of age, “*wa-huwa ibn nayyifin* (instead of: *siti*) *wa-sabʿīna sanatan*.”

⁹⁰⁷ al-Nawawī, *Tahdhīb*, vol. 2, p. 297 (no source).

From the mode of dating Ibn Jurayj's birth, one may infer that he was born in Mecca. Here he also received his education. Already at an early age—thus he himself related to his students—he had a lively interest in unusual poems and genealogies. Through a suggestion, he became aware of 'Aṭā' and wanted to join him as a student.⁹⁰⁸ When he came to 'Aṭā's circle, however, the latter's companion, the old 'Abd Allāh ibn 'Ubayd ibn 'Umayr (d. 113/731–2) made it clear to him that he did not have the necessary prerequisites to follow 'Aṭā's instruction; for Ibn Jurayj could not recite the Qur'ān, neither had he mastered the rules of inheritance (*farīda*). After he had learned all of that, he was accepted in the circle of 'Aṭā'.⁹⁰⁹ That must have been around the middle of the nineties of the first/seventh century, when he was about 15 years old, since Ibn Jurayj stated that he studied 18 or 19 years⁹¹⁰—variants: 17⁹¹¹ or 20⁹¹² years—with 'Aṭā, but left the latter before his death to study with 'Amr ibn Dīnār. The different numbers given can be explained in terms of the history of transmission or the context. The exact statement "18 or 19 years minus about a month" is most often attested and, as a *lectio difficilior*, is probably reliable. It derives from his student 'Abd al-Wahhāb ibn Hammām. From him and his brother 'Abd al-Razzāq is also transmitted the simple span of 18 years, which is probably a choice of the first of the two numbers made for reasons of brevity. The variant 17 years, which is also attributed to 'Abd al-Wahhāb, is presumably a misreading of 19 (*sab'* instead of *tis'*), 'Abd al-Wahhāb's alternative. The number 20, which appears relatively late and for which no source is named, could nevertheless go back to Ibn Jurayj himself. In its context it is clearly intended as an estimated statement of time and is probably a rhetorically motivated exaggeration. If one takes 18 years as the period of study with

⁹⁰⁸ Ibn abī Hātim, *Jarh*, vol. 2/2, p. 356 (source: 'Abd al-Wahhāb ibn Hammām, the brother of 'Abd al-Razzāq. On him cf. Ibn Hajar, *Lisān*, vol. 4, pp. 93 f.)

⁹⁰⁹ al-Baghdādī, *Ta'rikh*, vol. 10, pp. 401–402 (source: 'Abd al-Wahhāb ibn Hammām). *Farīda* in the sense of "science of the rules of inheritance" seems to me more meaningful in context than "religious duty." For similar demands on a *qāḍī* cf. Juynboll, *Muslim Tradition*, p. 83.

⁹¹⁰ Precisely: "18 or 19 years minus a month or so." Ibn abī Hātim, *Jarh*, vol. 2/2, p. 356 (source: 'Abd al-Wahhāb ibn Hammām). The abbreviated version in al-Dhahabī, *Tadhkira*, vol. 1, p. 170 (source: 'Abd al-Wahhāb), and al-Baghdādī, *Ta'rikh*, vol. 10, p. 402 (source: 'Abd al-Razzāq) has only 18.

⁹¹¹ al-Baghdādī, *Ta'rikh*, vol. 10, p. 402 (source: 'Abd al-Wahhāb). Ibn Hajar, *Tahdhīb*, vol. 6, p. 404.

⁹¹² al-Shīrāzī, *Tabaqāt*, p. 71.

‘Aṭā’ and its end as 1–2 years before his demise, one reaches the years 95–96 as a starting point. The background of the break with ‘Aṭā’ is obscure, but a fellow student of Ibn Jurayj’s, Qays ibn Sa’d, who left ‘Aṭā’ with him, made hints from which it can be inferred that—as a result of age—his memory, and thus his qualities as a transmitter of traditions, declined.⁹¹³ Traditions were, however, the trend of the time, and probably more in demand than ever. After ‘Aṭā’, Ibn Jurayj attended the circle of ‘Amr ibn Dīnār,⁹¹⁴ who was more strongly oriented towards traditions than ‘Aṭā’, for seven more years, that is, approximately until 120/738. In this time he also attended the lectures of other scholars, for instance Ibn abī Mulayka, who died in 117/735 or 118, and Nāfi‘, the *mawlā* of Ibn ‘Umar, who died in 118/736 or 119.⁹¹⁵

The biographical articles about Ibn Jurayj contain, in addition to such statements about his teachers deriving from Ibn Jurayj himself, lists of persons whose lectures he is supposed to have attended or from whom he allegedly transmitted. Among them are both teachers whose circles he attended for a relatively long time and informants whom he encountered only sporadically—if at all. Early there appear lists in which, in addition to ‘Aṭā’, two other students of Ibn ‘Abbās, Ṭāwūs (d. 106/724–5) and Mujāhid (d. 103/721–2) are named as informants from whom he heard material.⁹¹⁶ Can one trust this information in view of Ibn Jurayj’s educational career as it has been depicted? Mujāhid lived in Mecca, and contact with him was easily possible for Ibn Jurayj. Ṭāwūs, on the other hand, taught in Yemen; at most, he could have met him during his stays in Mecca on the occasion of the *hajj*. The assertion that Ibn Jurayj heard material from the two of them derives from his student Yaḥyā ibn Sa‘īd al-Qaṭṭān.⁹¹⁷ Not only this speaks for its credibility; so does the comment of the same Yaḥyā, reported elsewhere, about *what* he heard

⁹¹³ Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 202 (source: Sulaymān ibn Ḥarb). But cf. also al-Shīrāzī, *Ṭabaqāt*, p. 71, where other problems are also apparent.

⁹¹⁴ al-Baghdādī, *Ta’rikh*, vol. 10, pp. 402–403 (source: Sufyān [ibn ‘Uyayna]). al-Shīrāzī, *Ṭabaqāt*, p. 71. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404 (source: ‘Abd al-Razzāq ibn Hammām’s two brothers).

⁹¹⁵ al-Bukhārī, *Ta’rikh*, vol. 3/1, p. 423. Ibn abī Ḥātim, *Jarḥ*, vol. 2/2, p. 356.

⁹¹⁶ al-Bukhārī, op. cit.

⁹¹⁷ Ibn abī Ḥātim, *Taqdima*, p. 245.

from them: a single *ḥadīth* or a legal opinion from each.⁹¹⁸ Ibn Jurayj's meeting with them cannot have been more than an isolated occurrence. This fits, for example, with Ibn Hibbān's statement, which surely goes back to earlier sources, that Ibn Jurayj had the *tafsīr* of Mujāhid, which he occasionally cites, only from the written records of al-Qāsim ibn abī Bazza and had not heard it himself.⁹¹⁹ In the later works, the list of informants from whom Ibn Jurayj transmitted swells more and more—among others, Ibn Shihāb al-Zuhrī, Ibn abī Mulayka, Abū I-Zubayr, Nāfi', Ibn Ṭāwūs, Hishām ibn 'Urwa, Yaḥyā ibn Sa'īd al-Anṣārī and 'Amr ibn Shu'ayb are added.⁹²⁰ Ibn Ḥajar expands the very incomplete information of earlier works about his teachers and his sources into a circle of 64 persons, whose enumeration he ends with the words "and many more."⁹²¹ Among them are most of the people whom I have worked out to be his more important sources on the basis of the texts contained in the *Muṣannaf* of 'Abd al-Razzāq. Missing in Ibn Ḥajar are only Sulaymān ibn Mūsā, Dāwūd ibn abī Hind and Ibrāhīm ibn Maysara. Doubtless Ibn Ḥajar's list is based not primarily on traditions about Ibn Jurayj's informants, but on his own research on the basis of the *isnāds* known to him. For this reason it is not possible to reach a wholesale verdict on them, even if most of the names are credible.

The situation is similar with respect to the lists of Ibn Jurayj's students and auditors. In early works they are short; in later ones they become more extensive: al-Bukhārī names only two,⁹²² Ibn abī Ḥātim seven,⁹²³ al-Baghdādī 22,⁹²⁴ al-Nawawī eight,⁹²⁵ al-Dhahabī nine,⁹²⁶ and finally Ibn Ḥajar 49 names.⁹²⁷ Some of them go back to reports by these students themselves in which they speak of themselves or their teachers. One could name as examples, among others:

⁹¹⁸ Ibn abī Ḥātim, *Taqdima*, p. 245. al-Baghdādī, *Ta'rikh*, vol. 10, p. 400. al-Dhahabī, *Tadhkira*, vol. 1, p. 170.

⁹¹⁹ Ibn Hibbān, *Mashāhīr*, no. 1153 (biography of al-Qāsim).

⁹²⁰ Ibn Hibbān, *Thiqāt*, vol. 7, p. 93. al-Baghdādī, *Ta'rikh*, vol. 10, p. 400. al-Nawawī, *Tahdhīb*, vol. 2, p. 297. al-Dhahabī, *Tadhkira*, vol. 1, p. 169.

⁹²¹ Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 402–403.

⁹²² al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423.

⁹²³ Ibn abī Ḥātim, *Jarh*, vol. 2/2, p. 356 (source: Abū Ḥātim, d. 277/890–1).

⁹²⁴ al-Baghdādī, *Ta'rikh*, vol. 10, p. 400.

⁹²⁵ al-Nawawī, *Tahdhīb*, vol. 2, p. 297.

⁹²⁶ al-Dhahabī, *Tadhkira*, vol. 1, p. 169.

⁹²⁷ Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 403.

Muḥammad ibn ‘Umar [al-Wāqidī], ‘Abd al-Razzāq ibn Hammām, Sufyān ibn ‘Uyayna and Yaḥyā ibn Sa‘īd al-Qaṭṭān. Most, however, are presumably extracted from the *isnāds* of traditions.

In contrast to ‘Aṭā’ ibn abī Rabāḥ and ‘Amr ibn Dīnār, Ibn Jurayj was the author of a real book, and one of a completely new type. He himself asserted: “No one [before me] arranged (*dawwana*) traditions (*ilm*) the way I did.”⁹²⁸ His student ‘Abd al-Razzāq supports this opinion: “The first who arranged books according to subject (*ṣannaḡa l-kutub*) was Ibn Jurayj.”⁹²⁹ His book or books were thus a “*mudawwana*” or a “*muṣannaḡ*,” probably with the title “Kitāb al-Sunan”; at least, this is the only title which—although only in the fourth century—is reported.⁹³⁰ Ibn al-Nadīm (d. 385/995), who was familiar with the book, writes that it “contained what *sunan* books generally contain, for example [a *kitāb*] “*al-ṣahāra*,” [a *kitāb*] “*al-ṣiyām*,” [a *kitāb*] “*al-ṣalāḥ*,” [a *kitāb*] “*al-ṣakāḥ*” and others.”⁹³¹

Already the students of Ibn Jurayj speak sometimes of “his book”⁹³² and sometimes of “his books.”⁹³³ In the latter case as well, however, they seem simply to have been speaking of the *sunan* work, which was divided into chapters called “books” which perhaps consisted of separate booklets. That only his *sunan* work was a real book emerges from a remark of Ibn Ḥanbal’s that Ibn Jurayj’s “Kitāb al-Tafsīr” was not a book, but was simply his lectures (“dictations”) transmitted by his students.⁹³⁴ Otherwise, his method of instruction was that his students read aloud from their copies of his book and he checked their correctness.⁹³⁵ Ibn Jurayj’s book was already known beyond the

⁹²⁸ al-Baghdādī, *Ta’rīkh*, vol. 10, p. 402 (source: Sufyān [ibn ‘Uyayna?]). al-Shīrāzī, *Tabaqāt*, p. 71. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404 (source: ‘Abd al-Razzāq ibn Hammām’s two brothers).

⁹²⁹ Ibn abī Hātim, *Jarḥ*, vol. 2/2, p. 357.

⁹³⁰ Ibn al-Nadīm, *Fihrist*, p. 316.

⁹³¹ Op. cit.

⁹³² Ibn abī Hātim, *Taqdīm*, p. 238 (source: Yaḥyā ibn Sa‘īd al-Qaṭṭān, d. 198/813–4). al-Baghdādī, *Ta’rīkh*, vol. 10, p. 404 (same source, but a different tradition). Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404 (source: Ibn Ma‘īn, d. 233/847–8).

⁹³³ Ibn Ḥanbal, *‘Ilal*, vol. 1, p. 349 (no. 2295) (source: Ḥajjāj [ibn Muḥammad al-A‘war], d. 206/821–2). Cf. also Sezgin, *Geschichte*, vol. 1, p. 66 (here Sulaymān ibn Mujāhid should be corrected to Sulaymān ibn Mujālid). al-Baghdādī, op. cit. and vol. 8, p. 237 (source: Aḥmad ibn Ḥanbal through Ibn Jurayj’s student Ḥajjāj ibn Muḥammad). al-Dhahabī, *Tadhkira*, vol. 1, p. 170 (source: Khālid ibn Nazzār al-Aylī). On the *tafsīr* of Ibn Jurayj cf. also H. Horst, “Zur Überlieferung,” p. 295 and G. Stauth, *Die Überlieferung*, pp. 110 ff.).

⁹³⁴ Cf. note 933.

⁹³⁵ al-Baghdādī, *Ta’rīkh*, vol. 10, p. 237.

boundaries of Mecca in his lifetime, and because of it students came to him from all over.⁹³⁶ He himself promoted it vigorously by showing it to other scholars to hear their advice and acquire additional material.⁹³⁷ Even the 'Abbāsīd caliph Abū Ja'far al-Manṣūr (136/753-158/775)—according to the statement of 'Abd al-Razzāq—, when he once came to Mecca, had "the *Ḥadīth*" of Ibn Jurayj brought to him and examined it.⁹³⁸ From this comment one may not conclude that Ibn Jurayj's *sunan* work was purely a collection of *ḥadīths* of the Prophet, like those known from the third/ninth century. That would be an anachronism.⁹³⁹ Rather, it is to be assumed that it largely contained what 'Abd al-Razzāq transmits from Ibn Jurayj in his *Muṣannaf*.

Ibn Jurayj's and 'Abd al-Razzāq's opinion that no one before him had composed a book of this kind is naturally subjective. With the reservation that at least no earlier works of this kind were known to them, one can accept it. According to Aḥmad ibn Ḥanbal (d. 241/855-6), Ibn Jurayj must share the rank of the first *muṣannif* with the Basran scholar [Sa'īd] ibn abī 'Arūba (d. 156/773).⁹⁴⁰ It is also known of other contemporaries of his, like, for example, Ḥammād ibn Salama (Basra, d. 165/781-2),⁹⁴¹ Zā'ida ibn Qudāma (Kufa, d. 161/777-8),⁹⁴² Ma'mar ibn Rāshid (Yemen, d. 153/770) and Sufyān al-Thawrī (Kufa, d. 161) that they composed *sunan* works or passed on their traditions in this form.⁹⁴³ Nevertheless, it is quite possible that Ibn Jurayj's *muṣannaf* was really the first extensive work of this kind in the first half of the second/eighth century and that the others followed his example.

Ibn Jurayj's piety and scholarship were recognized and praised by many of his contemporaries and by later generations of scholars. His

⁹³⁶ Cf. al-Dhahabī, op. cit.

⁹³⁷ Azami, *Studies in Early Ḥadīth Literature*, p. 113 (following Ibn abī Khaythama, *Ta'rikh*, (MS) III, 39b).

⁹³⁸ al-Baghdādī, *Ta'rikh*, vol. 10, p. 404.

⁹³⁹ This was already noted by Goldziher, *Muslim Studies*, vol. 2, p. 212.

⁹⁴⁰ al-Baghdādī, *Ta'rikh*, vol. 10, p. 401. al-Nawawī, *Tahdhīb*, vol. 2, p. 197. al-Dhahabī, *Tadhkira*, vol. 1, pp. 169-170. Cf. also Ibn al-Nadīm, *Fihrist*, p. 317.

⁹⁴¹ Ibn al-Nadīm, *Fihrist*, p. 317.

⁹⁴² Ibn al-Nadīm, *Fihrist*, p. 316.

⁹⁴³ Cf. also 'Alī ibn al-Madīnī's review of the early *muṣannifūn* in his work *ʿIlal al-Ḥadīth*, pp. 17 ff. (Cf. also the abridged version in Ibn abī Ḥātim, *Taqdīm*, p. 234). Ibn al-Nadīm, *Fihrist*, p. 318 names as the earliest *sunan* work that of the Syrian Makhūl (d. 116/734-5). Cf. Goldziher, *Muslim Studies*, vol. 2, p. 212. Perhaps it originated only with his students, or it remained unknown for quite a long time.

teacher 'Aṭā' already saw in him his future successor⁹⁴⁴ and one of the stars of the rising generation of scholars.⁹⁴⁵ Ibn Jurayj's students lauded his exemplary manner of performing the *ṣalāh*, and traced it back through his teacher 'Aṭā' to the Prophet.⁹⁴⁶ He inspired people with his rhetoric,⁹⁴⁷ impressed them with his almost constant fasting,⁹⁴⁸ which he ceased for only three days each month, and gave ample alms to beggars.⁹⁴⁹ He shone not only as a *faqīh* and an 'ālim, i.e. as a legal or religious and traditional scholar, but also as a Qur'ān recitor (*qārī'*) and exegete (*mufasssīr*).⁹⁵⁰ However, as a *Ḥadīth* scholar he is not uncontroversial. Even from his students, in addition to laudatory judgements critical remarks are also reported. Al-Wāqidī considers him reliable (*thiqa*),⁹⁵¹ Ibn 'Uyayna one "who brought *Ḥadīth* onto the right path,"⁹⁵² and Yahyā ibn Sa'īd al-Qaṭṭān reports that he and his classmates called Ibn Jurayj's books "books of reliability."⁹⁵³ He is considered matchless for some traditions, for instance for those of 'Aṭā', 'Amr ibn Dīnār—more reliable than Ibn 'Uyayna—, Nāfi'—better than Mālik—, and Ibn abī Mulayka,⁹⁵⁴ although Ibn 'Uyayna claimed to have the better version, in cases of doubt, from their common teacher 'Amr ibn Dīnār.⁹⁵⁵

The Medinan Mālik ibn Anas (d. 179/795–6) and the Basran Yazīd ibn Zuray' (d. 182/798–9 or 183), in contrast, made very disparaging remarks about their somewhat older colleague Ibn Jurayj:

⁹⁴⁴ Ibn abī Hātim, *Jarḥ*, vol. 2/2, p. 356 (source: Ṭalḥa ibn 'Amr, d. 152/769). al-Baghdādī, *Ta'rikh*, vol. 10, p. 402. al-Dhahabī, *Tadhkira*, vol. 1, p. 170.

⁹⁴⁵ al-Baghdādī, *Ta'rikh*, vol. 10, p. 403 (source: al-Muthannā [ibn al-Ṣabāḥ], d. 148/765–6 or 149). al-Nawawī, *Tahdhīb*, vol. 2, p. 297. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404.

⁹⁴⁶ al-Bukhārī, *Ta'rikh*, vol. 3/1, p. 423. al-Baghdādī, *Ta'rikh*, vol. 10, pp. 403, 404 (source: 'Abd al-Razzāq). al-Nawawī, *Tahdhīb*, vol. 1, p. 297. al-Dhahabī, *Tadhkira*, vol. 1, p. 170. Ibn Ḥajar, vol. 6, p. 405.

⁹⁴⁷ Ibn abī Hātim, *Taqdima*, pp. 52–53 (source: 'Abd al-Razzāq).

⁹⁴⁸ al-Dhahabī, *Tadhkira*, vol. 1, p. 170 (source: Abū 'Āṣim [al-Ḍaḥḥāk], d. 212/827–8, heard Ibn Jurayj). Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 406.

⁹⁴⁹ al-Dhahabī, *Tadhkira*, vol. 1, p. 171 (source: 'Abd al-Razzāq).

⁹⁵⁰ Ibn abī Hātim, *Jarḥ*, vol. 2/2, p. 357 (source: Sufyān [al-Thawrī or Ibn 'Uyayna?]). al-Dhahabī, *Tadhkira*, vol. 1, p. 171 (source: 'Abd al-Razzāq).

⁹⁵¹ Ibn Sa'īd, *Ṭabaqāt*, vol. 5, p. 362. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 405.

⁹⁵² Ibn abī Hātim, *Taqdima*, p. 43. Cf. also al-Baghdādī, *Ta'rikh*, vol. 10, p. 404.

⁹⁵³ al-Baghdādī, *Ta'rikh*, vol. 10, p. 404.

⁹⁵⁴ Ibn abī Hātim, *Taqdima*, p. 241. Idem, *Jarḥ*, vol. 2/2, p. 357. al-Baghdādī, *Ta'rikh*, vol. 10, pp. 403, 405, 406. al-Dhahabī, *Tadhkira*, vol. 1, p. 170. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404 (source: in all cases Yahyā ibn Sa'īd al-Qaṭṭān, d. 198/813–4).

⁹⁵⁵ Ibn abī Hātim, *Taqdima*, pp. 49, 52.

He was a "*hāṭib layl*" (Mālik), literally: "one who collects wood by night," i.e. one who takes everything he gets his hands on, or a "*ṣāḥib ghūthā*" (Yazīd), literally: "owner of refuse."⁹⁵⁶ Such sweeping judgments about a colleague are to be treated with caution, as long as their background is unknown. They could be based on personal antipathies and rivalries among the centers of scholarship.⁹⁵⁷ However, the causes of the negative attitude of scholars like Mālik and Yazīd can be determined with some probability. The reservations of Ibn Jurayj's student Yaḥyā ibn Sa'īd al-Qaṭṭān (Basra, d. 198/813-4) are instructive: He does consider some of Ibn Jurayj's traditions excellent and also praises his book; but he also expresses concrete criticisms of him. They relate to four points: 1. Ibn Jurayj did not have a good memory. When he lectured not from his book or other books, but by memory, he made mistakes.⁹⁵⁸ 2. He transmitted texts that he did have permission to transmit, but which he had neither heard nor read aloud. As an example he names Ibn Jurayj's traditions from 'Aṭā' al-Khurāsānī.⁹⁵⁹ 3. He transmitted from written documents material which he did not know by heart.⁹⁶⁰ 4. Ibn Jurayj occasionally concealed discontinuities in the *isnād* or suppressed informants.⁹⁶¹

This predominantly positive evaluation of Ibn Jurayj, which nevertheless does not conceal weaknesses, continues with the scholars of the third/ninth century as well. Aḥmad ibn Ḥanbal, for instance, on the one hand speaks of him enthusiastically,⁹⁶² but on the other hand warns against his *ḥadīths* introduced with "*qāla X*" and "*ukhbirtu*," i.e. those only acquired in writing or transmitted while concealing the informant, and against those transmitted by memory,⁹⁶³ and names sources from which he transmitted texts without having heard them himself.⁹⁶⁴ He is similarly evaluated by Yaḥyā ibn Ma'īn (d. 233/

⁹⁵⁶ al-Baghdādī, *Ta'rikh*, vol. 10, p. 404. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404.

⁹⁵⁷ On envy among colleagues cf. also Juynboll, *Muslim Tradition*, p. 165.

⁹⁵⁸ Ibn abī Hātim, *Taqdima*, p. 238. al-Baghdādī, *Ta'rikh*, vol. 10, pp. 404-405. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404.

⁹⁵⁹ Cf. al-Baghdādī, *Kifāya*, p. 258. Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 404, 406.

⁹⁶⁰ al-Baghdādī, *Kifāya*, p. 258.

⁹⁶¹ al-Baghdādī, *Ta'rikh*, vol. 10, p. 406.

⁹⁶² Ibn abī Hātim, *Jarḥ*, vol. 2/2, p. 357. al-Baghdādī, *Ta'rikh*, vol. 10, p. 402. al-Dhahabī, *Tadhkira*, vol. 1, p. 169. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404.

⁹⁶³ al-Baghdādī, *Ta'rikh*, vol. 10, p. 405. al-Dhahabī, *Mizān*, vol. 2, p. 151. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404.

⁹⁶⁴ al-Dhahabī, *Tadhkira*, vol. 1, p. 170. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 405.

847–8),⁹⁶⁵ ‘Alī ibn al-Madīnī (d. 234/848–9),⁹⁶⁶ and al-Dhuhlī (d. 258/872).⁹⁶⁷ Exclusively positive statements are recorded from al-‘Ijlī (d. 261/874–5),⁹⁶⁸ Aḥmad ibn Ṣāliḥ al-Miṣrī (d. 248/862–3),⁹⁶⁹ Abū Zur‘a (d. 264/877–8), Abū Ḥātim (d. 227/841–2)⁹⁷⁰ and others. This ambiguous evaluation—*thiqa*, but *mudallis* also runs through the later *rijāl* works, while his *tadlis* occasionally—for instance, by al-Dāraqutnī (d. 385/995–6)⁹⁷¹—is rated as very questionable, in contrast to that of others, e.g. that of Ibn ‘Uyayna.⁹⁷²

The critical evaluation of Ibn Jurayj as a *muḥaddith* is based on facts, specifically, on traditions about the manner in which he collected and then presented his material. Ibn Jurayj is recorded, on the basis of biographical traditions, to have received texts in five forms: 1. He attended the lectures of his informants or questioned them and recorded what he heard in writing⁹⁷³ and/or learned it by heart. 2. He copied a manuscript which he had obtained from the transmitter or one of his students and read it aloud to the former. 3. He obtained written notes which the transmitter had prepared himself as a gift, without having heard them from him or read them to him. 4. He copied a text from the informant and got permission to transmit it, without hearing it or reading it aloud. 5. He came into possession of a manuscript or copied it without getting formal permission to transmit it further, be it that the owner in question was no longer alive or did not meet him, or be it that he refused him the *ijāza*.

Type 1 occurs in his tradition from his teachers ‘Aṭā’ ibn abī Rabāḥ and ‘Amr ibn Dīnār, and sometimes from Nāfi‘ and others. These texts, even later, were considered *ṣaḥīḥ* and above all criticism. Already in Ibn Jurayj’s time, type 2 was considered equal in value

⁹⁶⁵ Ibn abī Ḥātim, *Jarḥ*, vol. 2/2, p. 357. al-Baghdādī, *Ta’rīkh*, vol. 10, pp. 402, 405, 406. Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 404, 405.

⁹⁶⁶ Ibn abī Ḥātim, *Jarḥ*, vol. 2/2, p. 357. al-Dhahabī, *Tadhkira*, vol. 1, p. 70.

⁹⁶⁷ Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 405.

⁹⁶⁸ al-Baghdādī, *Ta’rīkh*, vol. 10, p. 407.

⁹⁶⁹ Op. cit., p. 405.

⁹⁷⁰ Ibn abī Ḥātim, *Jarḥ*, vol. 2/2, p. 358. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 405.

⁹⁷¹ Ibn Ḥajar, op. cit.

⁹⁷² Ibn Ḥibbān, *Mashāḥir*, no. 1146. Idem, *Thiqāt*, vol. 7, p. 93. al-Dhahabī, *Mīzān*, vol. 2, p. 151. Idem, *Tadhkira*, vol. 1, p. 170.

⁹⁷³ He is supposed first to have done this on the large leaves of the ‘*ushar*’ tree and later to have made a fair copy on other material (papyrus, parchment?—in the text: *fi l-bayād*). al-Fasawī, *Ma’rifat*, vol. 2, p. 26. Cf. also Azami, *Studies in Early Hadīth Literature*, p. 113.

to the first. He himself expressed this view to his student al-Wāqidi:

Muḥammad ibn ‘Umar [al-Wāqidi]: I asked Ibn Jurayj about reading *Ḥadīth* aloud to the *muḥaddith*. He answered: Someone like you is asking something like that?! The scholars (*al-nās*) are in disagreement about notebooks (*ṣaḥīfū*) which someone takes and says: “I am transmitting (*uḥaddithu*) what is in it” without having read it aloud, but if he has read it aloud, it is equal (*sawā*) [to hearing it].”⁹⁷⁴

In this form Ibn Jurayj received, for instance, some of his material from Nāfi‘ and probably from Ibn abī Mulayka. In the case of Nāfi‘ this emerges from his statement, “Nāfi‘ gave me a saddlebag. It contained what I had read [aloud] and asked.”⁹⁷⁵

Type 3 occurs, for instance, in Ibn Jurayj’s tradition from Abū Bakr ibn ‘Abd Allāh [ibn Muḥammad] ibn abī Sabra (d. 162/778–9 or 172/788–9, *muftī* in Medina, later *qāḍī* in Baghdad). Al-Wāqidi reports that this Abū Bakr related to him the following:

“Ibn Jurayj said [to me]: ‘Write me *sunan-ḥadīths*’⁹⁷⁶—variant: some of your good *ḥadīths*!’⁹⁷⁷ [Abū Bakr]: I wrote him 1,000 *ḥadīths* and then sent them to him. He neither read them to me, nor I to him.” Muḥammad ibn ‘Umar [al-Wāqidi]: Later I heard Ibn Jurayj transmit many *ḥadīths* with the words: “Abū Bakr ibn abī Sabra transmitted to us (*ḥaddathanā*)”—variant: “Later I saw that Ibn Jurayj had included many of his *ḥadīths* in his book with the words: ‘Abū Bakr ibn ‘Abd Allāh—i.e. Ibn [abī] Sabra—transmitted to me!’”⁹⁷⁸

Of type 4 are the traditions from Ibn Shihāb al-Zuhrī, Hishām ibn ‘Urwa, Abān ibn abī ‘Ayyāsh and ‘Aṭā’ al-Khurāsānī. Ibn Jurayj’s

⁹⁷⁴ Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 361. Cf. also Ibn Qutayba, *Ma’ārif*, p. 167; Sachau, “Zur ältesten Geschichte,” pp. 721–722 and F. Sezgin, *Geschichte*, p. 74 (his translation of “*sawā*” with “fine” (“*in Ordnung*”) is not correct. What is meant is shown by Ibn Qutayba’s variant: “*fa-huwa wa-l-samā’ wāḥid*.” Clearly, Ibn Jurayj considered even the transmission of a notebook that had not been read aloud to be “fine” (see below).

⁹⁷⁵ al-Baghdādī, *Ta’rīkh*, vol. 10, p. 406 (source: Yahyā ibn Sa’īd [al-Qaṭṭān]). Cf. also Abū Khaythama, *Ṭīm*, p. 117 (no. 34) (source: Ibn ‘Uyayna). On Ibn abī Mulayka’s transmission cf. Ibn abī Ḥatīm, *Taqdīm*, p. 241 (source: Yahyā ibn Sa’īd al-Qaṭṭān).

⁹⁷⁶ Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 361.

⁹⁷⁷ Ibn Qutayba, *Ma’ārif*, p. 167 (biography of Abū Bakr). The version in Ibn Sa’d, as a *lectio difficilior* with the meaning of *sunan* which was customary before al-Shāfi‘ī (cf. Schacht, *Origins*, pp. 2, 3), is probably more authentic.

⁹⁷⁸ Ibn Sa’d, *Ṭabaqāt*, vol. 5, p. 361. Ibn Qutayba, op. cit. The statement “many *ḥadīths*” is probably exaggerated. In the section of the text of the *Muṣannaf* studied here I found none.

student Yahyā ibn Saʿīd reports that he could get from him no confirmation that he had “heard” *ḥadīths* from al-Zuhrī.⁹⁷⁹ Ibn Jurayj himself is supposed to have admitted this: “I did not hear from al-Zuhrī, rather, he gave me a book [or: notebook] (*juzʿ*), I copied it, and he permitted it to me [to transmit].”⁹⁸⁰ Various eyewitnesses report similar things about the acquisition of his texts from Hishām ibn ʿUrwa: The latter had lent a notebook (*ṣaḥīfa*) with his *ḥadīths* to someone. Ibn Jurayj first got assurance from Hishām that it was actually his notebook. When the latter confirmed this,⁹⁸¹ he clearly copied it, but then returned to him with the copy and said: “These are your *ḥadīths*—variant: This is your *ḥadīth*. I would like to transmit them from you!” [Hishām]: “Yes! [You may].” He went and asked me nothing more.”⁹⁸² Nevertheless, Ibn Jurayj later cited Hishām ibn ʿUrwa with the formula “*ḥaddathanā*” as well.⁹⁸³ Such a procedure is also known in the case of Ibn Jurayj’s transmission from Abān ibn abī ʿAyyāsh.⁹⁸⁴ In this way he is also supposed to have gotten hold of the material from ʿAṭāʾ al-Khurāsānī,⁹⁸⁵ and also to have passed on his own work.⁹⁸⁶

His tradition from Mujāhid seems to be based on type 5. At least, this is asserted of his material from the latter’s *tafsīr* and is probably true of other material from him, since it is conspicuous that in the *Muṣannaf* of ʿAbd al-Razzāq he introduces him almost exclusively with the formula “*qāla* Mujāhid.” He is supposed to have gotten the *tafsīr* from a manuscript of al-Qāsim ibn abī Bazza, a student of Mujāhid’s who “heard” it from him,⁹⁸⁷ whom, however, he does not

⁹⁷⁹ Ibn abī Hātim, *Taqdīm*, p. 245.

⁹⁸⁰ al-Dhahabī, *Tadhkira*, vol. 1, p. 170. Ibn Hajar, *Tahdhīb*, vol. 6, pp. 405–406 (source: Quraysh b. Anas, d. 202/817–8, Basra). Cf. also Sezgin, *Geschichte*, p. 65. This statement of Ibn Jurayj’s probably applies only to *ḥadīths*, since in the *Muṣannaf* Ibn Jurayj transmits a few of Ibn Shūhāb’s *responsa* to his own questions.

⁹⁸¹ Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 362 (source: ʿAbd al-Rahmān ibn abī l-Zinād, d. 174/790–1, Medina). Ibn Qutayba, *Maʿārif*, p. 167 (incorrectly: ʿAbd al-Rahmān ibn abī l-Ziyād). Ibn Hajar, *Tahdhīb*, vol. 6, p. 405.

⁹⁸² al-Baghdādī, *Kifāya*, p. 320 (source: Hishām ibn ʿUrwa, d. 146/763–4, following Yahyā ibn Saʿīd [al-Qaṭṭān] or Shuʿayb ibn Ishāq, d. 189/805).

⁹⁸³ See note 981.

⁹⁸⁴ al-Baghdādī, *Kifāya*, p. 320 (source: Yazīd ibn Zurayʿ, d. 182/798–9 or 183, Basra). Abān is categorized by *Ḥadīth* criticism as unreliable. Cf. Ibn Hajar, *Tahdhīb*, vol. 1, pp. 97–101. Ibn Jurayj does not seem to have transmitted much from him. In the section of the text studied here he does not appear.

⁹⁸⁵ Ibn Hajar, *Tahdhīb*, vol. 6, p. 406 (source: Yahyā ibn Saʿīd).

⁹⁸⁶ Ibn Ḥanbal, *ʿIlal*, vol. 1, p. 349 (source: Ḥajjāj [ibn Muḥammad al-Aʿwar], d. 206/821–2). See also p. 274, note 933.

⁹⁸⁷ Ibn Hībān, *Mashāhīr*, no. 1153. Cf. also G. Stauth, *Die Überlieferung*, pp. 71 f.

name as an informant, evidently because he did not have permission for transmission from him. Perhaps he also got the other Mujāhid texts from him.

The last three of the enumerated types of transmission used by Ibn Jurayj were met by scholars of the second half of the second/eighth century and later with shaking of heads and derisive comments.⁹⁸⁸ However, from the fact that people like Ibn Shihāb, 'Aṭā' al-Khurāsānī, Hishām ibn 'Urwa, Ibn Jurayj and other transmitters of the first half of the second/eighth century used such forms of transmission it can be inferred that they did not evaluate them negatively. This means that it was only from about the middle of the second/eighth century that the view began to assert itself that only transmission of *ḥadīths* by hearing or reading aloud was acceptable. That this requirement was already familiar to Ibn Jurayj is shown by his remark that the transmission of a notebook that had not been read aloud was a subject of controversy among the scholars.⁹⁸⁹

The situation is similar—and this is probably related to the still-undecided question of the types of transmission—with respect to the terminology of transmission. In the first half of the second/eighth century it was not yet attached to specific forms of reception, even if certain customs were beginning to establish themselves. Students of Ibn Jurayj like al-Wāqidī and Yahyā ibn Sa'īd registered with surprise or displeasure that he cited materials which he had neither heard nor read aloud with the formula *ḥaddathanī*, which they already understood as a technical term for *samā'* or *qirā'a*.⁹⁹⁰ They report that Ibn Jurayj himself indicated that what he reported from 'Aṭā', he had in every case heard, even if he said "*qāla* 'Aṭā'" and not "*sami'tu* 'Aṭā',"⁹⁹¹ and that, for instance, Ibn Jurayj's texts from Ibn abī Mulayka were "*ṣaḥiḥ*" even if he had only "*an*" as an introduction instead of "*ḥaddathanī*."⁹⁹² What is astonishing is that a critical student of Ibn Jurayj's like Yahyā ibn Sa'īd, even though he was familiar with his undifferentiated terminology of transmission, sometimes acts as if it conformed to the later standard. He notes,

⁹⁸⁸ Cf. Baghdādī, *Kifāya*, p. 320 (source: Yahyā ibn Sa'īd). Ibn Hajar, *Tahdhīb*, vol. 6, p. 406 (source: the same); and see the documentation in note 956, p. 277.

⁹⁸⁹ See p. 279.

⁹⁹⁰ Cf. Ibn Sa'īd, *Ṭabaqāt*, vol. 5, pp. 361, 362. Ibn Qutayba, *Ma'ārif*, p. 167 (source: al-Wāqidī). al-Baghdādī, *Ta'rikh*, vol. 10, p. 406. Ibn Hajar, *Tahdhīb*, vol. 6, p. 404 (source: Yahyā ibn Sa'īd).

⁹⁹¹ Ibn Hajar, *Tahdhīb*, vol. 6, p. 406 (source: Yahyā ibn Sa'īd).

⁹⁹² Ibn abī Ḥātim, *Taqdīm*, p. 241 (source: the same).

for instance, that one can accept as trustworthy (*ṣadūq*) what Ibn Jurayj introduces with “*ḥaddathani*” and “*akhbaranī*” as a sign of *samāʿ* or *qirāʾa*, but that when he says “*qāla*” it is—since it is a purely written reception—worthless.⁹⁹³ Obviously he wanted in this way to salvage the credibility of at least a portion of his tradition. Other contemporaries of Yahyā’s, such as Mālik ibn Anas and Yazīd ibn Zurayʿ, judged him more rigorously and seem to have categorized his traditions en masse as untrustworthy,⁹⁹⁴ whether because of some of his methods of reception, because of his inconsistent terminology, or because of the reception of many texts from persons whose credibility was later put in question. However, the position of Yahyā ibn Saʿīd largely asserted itself: that only the texts of Ibn Jurayj’s which clearly are based on *wijāda*, i.e. written reception without permission for transmission, or those which are perhaps heard but in which the informant remains anonymous, are to be avoided, but his traditions identified with the formulae of *samāʿ* and *qirāʾa* can generally be accepted. It was advanced by Aḥmad ibn Ḥanbal.⁹⁹⁵ Occasionally individual traditions, like those from al-Zuhri, are excluded from this positive evaluation.⁹⁹⁶

Ibn Jurayj lived in Biʿr Maymūn, about three miles outside of Mecca.⁹⁹⁷ He seems to have spent most of his life exclusively in the Ḥijāz. Only as an old man did he undertake trips to the Yemen and Iraq; he is attested to have sojourned in Ṣanʿāʾ, Basra and Baghdad in the caliphate of al-Manṣūr (136–158/754–775).⁹⁹⁸ He is supposed to have had a brother Muḥammad, a son by the name of ʿAbd al-ʿAzīz and a grandson called al-Walīd.⁹⁹⁹ A few intimate

⁹⁹³ Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 404.

⁹⁹⁴ See pp. 276 f. Further study is in order to determine how the many informants from whom Ibn Jurayj has only a few reports are evaluated in *Ḥadīth* criticism, and whether some of them can be put into the context of larger textual complexes in other sources. As long as these are not available, it is scarcely possible to reach a conclusion about these reports’ authenticity beyond the level of Ibn Jurayj’s informant on the basis of the texts themselves.

⁹⁹⁵ See p. 277.

⁹⁹⁶ See p. 278, note 965.

⁹⁹⁷ Ibn Hibbān, *Thiqāt*, vol. 7, p. 94.

⁹⁹⁸ Ibn Saʿd, *Tabaqāt*, vol. 5, p. 361 (in Basra in the year 145/762; source: Muḥammad ibn ʿAbd Allāh al-Anṣārī, d. 215/830–1, Basra). al-Baghdādī, *Taʾrīkh*, vol. 10, p. 400 (source: Aḥmad ibn Ḥanbal, d. 241/855–6, Baghdad). al-Dhahabī, *Tadhkira*, vol. 1, p. 170 (in Yemen in the year 144/761–2) See p. 63.

⁹⁹⁹ Ibn Hibbān, *Thiqāt*, vol. 7, pp. 93–94. al-Baghdādī, *Taʾrīkh*, vol. 10, p. 400 (no sources).

details are also known about Ibn Jurayj. He had a reddish-brown skin color,¹⁰⁰⁰ colored his hair with black dye and scented himself with *ghāliya*,¹⁰⁰¹ a perfume made of musk and amber. He is supposed to have been married to a pious woman¹⁰⁰² but also to have contracted *mut'a* alliances, i.e. temporally limited relationships similar to marriage. Jarīr [ibn 'Abd Allāh al-Ḍabbī] (d. 188/804, Kufa) gives the number of his *mut'a* "marriages" as 60,¹⁰⁰³ and al-Shāfi'ī (d. 204/819–20) as 70—variant: 90. In old age he injected himself—according to al-Shāfi'ī—with an ounce of sesame oil as a stimulus to his libido.¹⁰⁰⁴ The discrepancy in the numbers transmitted by al-Shāfi'ī is probably based on a misreading of *sab'in* as *tis'in*, a confusion which is often to be observed. The divergence between al-Ḍabbī's statement and al-Shāfi'ī's is to be explained by the fact that the numbers, which probably derive from Ibn Jurayj himself, are not bookkeeping data but estimates, in which—despite his obviously great sexual vitality—exaggerations are not out of the question.

Information of this kind may seem unimportant to many, and their reporting unnecessary. This is not by any means the case, for the transmitters of the second/eighth century clearly did consider them noteworthy. Their motivation results less from a love of detail or of delicate subjects than it is to be understood in the context of learned debates of the second/eighth and third/ninth centuries in which the questions of dying the hair,¹⁰⁰⁵ of perfuming and of *mut'a* alliances were subjects just as significant and passionately discussed as that of divine predestination. Aside from this, for the historian the information about Ibn Jurayj's *mut'a* practices, for instance, is valuable for several reasons. The fact that they are mentioned in the biographical sources at all can be regarded as an indication that reports about a person were not suppressed even if they were unpleasant and detracted from the evaluation of his reliability, which is predominantly positive. The conflict emerges clearly from a comment of al-Dhahabī's: "There is agreement on his reliability, *although* he

¹⁰⁰⁰ Ibn Qutayba, *Ma'ārif*, p. 167 (source: Abū Hilāl).

¹⁰⁰¹ al-Dhahabī, *Tadhkira*, vol. 1, p. 171 (source: 'Abd al-Razzāq).

¹⁰⁰² al-Dhahabī, *Tadhkira*, vol. 1, p. 170 (source: Abū 'Aṣim [al-Ḍaḥḥāk], d. 212/827–8).

¹⁰⁰³ al-Dhahabī, op. cit.

¹⁰⁰⁴ al-Dhahabī, op. cit., pp. 170–171. Idem., *Mizān*, vol. 2, p. 151. Ibn Ḥajar, *Tahdhīb*, vol. 6, p. 406.

¹⁰⁰⁵ Cf. Juynboll, "Dyeing the Hair."

contracted *mut'a* alliances with 90 women. He was of the opinion that it was permitted.¹⁰⁰⁶ Since the institution of *mut'a* was accepted only among the Shī'a and was rejected by the Sunnī legal schools, one might be tempted to think that the statements about Ibn Jurayj's *mut'a* practices were perhaps invented in order to discredit him or to claim him for the Shī'a. Such an assumption is, however, not very probable. Some of the informants for the report do come from Kufa, but since it is also reported by al-Shāfi'ī, who is neither suspected of Shī'ism nor in principle hostile to Ibn Jurayj, was a student of two students of Ibn Jurayj's and as a Meccan well informed of the situation in his home town, it probably describes a historical fact. For the history of *mut'a* as a juridical problem and a social practice, the statement about Ibn Jurayj's *mut'a* alliances is a very important piece of information. From it, it can be concluded that the question was still open in the first half of the second century and was not a specifically Sunnī-Shī'ite controversy. Rather, it represents a Meccan school tradition which was already advocated by Ibn 'Abbās and established by 'Aṭā',¹⁰⁰⁷ and which was actually practiced in the first two centuries—at least in Mecca and its environs—although 'Umar had forbidden it during his caliphate.¹⁰⁰⁸

55% of the reports on which the biographical literature about Ibn Jurayj is based are derived from contemporaries and students of Ibn Jurayj's, and thus from persons who knew him themselves, 45% from indirect informants—from about 40 people altogether. In the first group of sources dominate the materials of Ibn Jurayj's students Yaḥyā ibn Sa'īd al-Qaṭṭān (33%), Sufyān ibn 'Uyayna (14%), 'Abd al-Razzāq (10%) and al-Wāqidī (6%), in the second group those of the scholars of the end of the second/eighth and the first half of the third/ninth century, who were students of the students of Ibn Jurayj. They are above all Aḥmad ibn Ḥanbal (35%), Yaḥyā ibn Ma'īn (16%), and 'Alī ibn al-Madīnī (9%). Altogether, they provide over 80% of the indirect information. The rest comes predominantly from scholars of the second half of the third/ninth century—such as Ibn Kharrāsh, al-'Ijlī, Muḥammad ibn Ismā'īl, al-Bardījī and al-Bazzār—, and very little from those of the fourth/tenth century, such as Ibn Ḥibbān

¹⁰⁰⁶ al-Dhahabī, *Mizān*, vol. 2, p. 151.

¹⁰⁰⁷ See pp. 142–145.

¹⁰⁰⁸ See p. 143.

and al-Dāraqūṭnī. Since the knowledge of the second generation after Ibn Jurayj probably also derives largely from his immediate students and auditors, one can say that almost the entire biography of Ibn Jurayj is based on sources which may be classed as eye- and ear-witness reports. The little that later sources contribute adds next to nothing that was not already known from earlier ones.

4. *The source value of the biographical material
about the three legal scholars*

The study of the biographical reports about the three leading *fuqahā'* of Mecca in the second half of the first/seventh and in the first half of the second/eighth century has been carried out, for methodological reasons, within the genre. The question was and is whether indications of forgery—e.g. internal contradictions, anachronisms, and so forth—or of unreliability resulting from an excessively large remove between the sources and the time about which they report, emerge from this material itself. The results can be summarized as follows:

1. The biographical literature of the third/ninth to ninth/fifteenth century which has been studied contains scarcely any traditions recognizable as conscious forgeries whose motives and originators could be identified. There are mistakes, inaccuracies, errors in transmission, exaggerations and *topoi*. These can usually be identified as such with the aid of the transmitted variations. The credibility of some individual pieces of information whose provenance remains obscure is thus still in doubt. However, by and large the biographical material, although a conglomeration of heterogeneous reports of different provenance, is internally consistent. Possible biases which may have determined the selection of the biographical traditions reported in some works are neutralized by other, more complete collections. The fact that even negative facts about the persons in question which were visibly uncongenial to the compilers were not suppressed, and that often the texts of later authors can be documented word for word in earlier ones, speaks for the assumption that they did not falsify the material.

2. The biographical literature's information about the three Meccan *fuqahā'* largely goes back to persons in contact with them or the latter's students. It thus derives from the second/eighth century, was gathered in biographical and other works in the third/ninth century,

and was also probably transmitted for a time in instruction, outside of closed compilations. Already from the middle of the third/ninth century, however, the sources begin to dry up. Reports that go back to informants of the second half of the third/ninth century are relatively rare, and they rarely report facts not already known from earlier sources. That is, the biographical material consists mainly of primary sources (statements of eyewitnesses) with a smaller proportion of secondary sources (reports at second or third hand).

3. The biographical traditions in later works are generally no worse than those in the earlier ones. They frequently report the earlier material—usually correctly—, which speaks for their general reliability, but also contain pieces of information from works which have been lost or have not yet reappeared.¹⁰⁰⁹ Where they name the source of their reports, these texts—until the opposite is proven, in individual cases—are to be considered just as credible as those for which early parallels are attested. The general distrust towards reports in the biographical literature about persons of the first/seventh and second/eighth centuries which is widespread among non-Muslim scholars seems to be based on unjustified prejudices and the anecdotal material of the *adab* literature. This source is probably better than its reputation, which is not to say that *all* reports communicated in it are reliable.

The verdict reached from the investigation within the genre of the biographical traditions *about* ‘Aṭā’, ‘Amr and Ibn Jurayj about their extensive authenticity and credibility is confirmed by the results yielded by the analysis of the traditions *from* them. The two genres of tradition are—despite occasional identical transmitters—to be regarded as two fundamentally different historical sources. The biographical tradition consists—from a source-critical point of view—primarily of deliberate, intentional testimonies which consciously aim to give information about the persons in question. In contrast, the traditions about their teachings and legal opinions, when one uses them—as I have—as a source for biographical questions, are largely to be classed as involuntary and unintentional testimonies. Ibn Jurayj’s intention in transmitting ‘Aṭā’s teachings was surely not to communicate something about the latter’s teachers, students, style of instruction and so forth, but to report their content as accurately as

¹⁰⁰⁹ Cf. also Juynboll’s comments on Ibn Ḥajar’s *Tahdhīb* and its sources in: *Muslim Tradition*, pp. 134–136.

possible. However, used in this way, divorced from their original intent, they are an especially reliable source. Where the knowledge gained from them corresponds to the statements of the biographical literature, the latter's historicity is certain. On the other hand, their meaningfulness—as is usually the case with “residues”—is limited. For this reason, conclusions of biographical nature can be drawn from this material only with great caution and with reservations. The actual biographical tradition is thus a welcome supplement and check for the biographical information drawn from the *Muṣannaf* of ‘Abd al-Razzāq. Many suppositions are confirmed by it; many connections which remained unclear become more distinct in its light. The two genres of sources complement and mutually support each other. Errors and forgeries in one source can sometimes be uncovered and corrected through the information in the other.

F. A HISTORICAL OVERVIEW

After this preliminary work it is possible to draft a sketch of the historical development of Islamic jurisprudence of Mecca from the beginnings to the emergence of the classical schools of law which is based on secure facts, that is, on sources whose authenticity is assured.

1. *The beginnings*

Meccan *fiqh* has its roots primarily in the juridical efforts and teaching activities of ‘Abd Allāh ibn al-‘Abbās. This latter was not the eponym, i.e. the fictitious authority, of the Meccan *fuqahā’*, as Schacht assumed,¹⁰¹⁰ rather, he was really the teacher of a number of scholars who later became famous and who were active primarily in Mecca, like ‘Aṭā’ ibn abī Rabāḥ, Mujāhid, ‘Ikrima and Ibn abī Mulayka. From Mu‘āwiya’s assumption of the caliphate Ibn ‘Abbās lived withdrawn from the political stage on which he had played a role under ‘Alī, in the city of Mecca, which he had to leave only under the caliphate of ‘Abd Allāh ibn al-Zubayr, whom he refused to recognize.¹⁰¹¹ In the quarter-century of his residence in Mecca

¹⁰¹⁰ Cf. Schacht, *Origins*, pp. 249 f. Idem, *Introduction*, p. 32.

¹⁰¹¹ Cf. L. Veccia-Vaglieri, “‘Abd Allāh ibn al-‘Abbās,” in: *Encyclopaedia of Islam*, Second Edition, vol. 1, pp. 40 f.

(c. 40–65/660–685)—he died in 68/687–8 in al-Ṭāʾif—he undoubtedly laid the foundations of Meccan scholarship through his teaching activities in the religio-legal area, especially in questions of Qurʾānic exegesis and the definition of an Islamic way of life. As far as can be determined from his students' citations of him which have been ascertained to be reliable, in his legal opinions (*fatāwā*) and his legal teachings he often supported himself with the Qurʾān, but generally not with traditions from or about the Prophet or older Companions.¹⁰¹² His legal teachings are completely *raʾy*. This observation should for the moment not be generalized to the conclusion that Ibn ʿAbbās knew or transmitted no traditions at all. Should it be confirmed by further focused investigations of the traditions from direct students of Ibn ʿAbbās contained in the sources of ʿAbd al-Razzāq's *Muṣannaf*, it will be possible to establish through a comparison between the Prophetic *ḥadīths* of Ibn ʿAbbās in them and those in later sources where the latter come from. One person who spread *ḥadīths* of the Prophet in the name of Ibn ʿAbbās can already be named: ʿAṭāʾ al-Khurāsānī (d. 133/750–1), who in all probability did not himself study with Ibn ʿAbbās, and the origin of whose Ibn ʿAbbās traditions is obscure.¹⁰¹³

2. *The last third of the first/seventh century*

After the death of Ibn ʿAbbās, his students continued the tradition of teaching in Mecca. In the area of *fiqh*, Mujāhid and ʿAṭāʾ ibn abī Rabāḥ particularly distinguished themselves—both were *mawālī*, and thus not Arabs. ʿAṭāʾ, who lived the longest, is best known through the sources as a *faqīh*. Based on the extensive tradition of his student Ibn Jurayj in the *Muṣannaf* of ʿAbd al-Razzāq, the already relatively developed level of legal thinking and the breadth of the subjects treated, which extend to many areas that later formed part of the standard repertoire of the *fiqh* works, can be seen. It is characteristic of ʿAṭāʾ's legal instruction and that of other students of Ibn ʿAbbās that they primarily express their own opinions and cite authorities for them only to a limited extent. Among these sources of ʿAṭāʾ's, the Qurʾān and the legal views of his teacher Ibn ʿAbbās play a

¹⁰¹² See pp. 141, 192.

¹⁰¹³ See p. 233.

dominant role; but there is also a small number of *ḥadīths* of the Prophet, rulings of the caliph ‘Umar and traditions from other Companions. Since the important legal scholars of Mecca at the end of the first/seventh century were all students of Ibn ‘Abbās, on many questions there was a consensus among them, and they also seem to have consulted with each other.¹⁰¹⁴ Thus, in this phase it is already justified to speak of the beginning of a local school of legal scholarship. It gained a certain public recognition through the caliphal administration, which filled the post of *muftī* of Mecca from its ranks.¹⁰¹⁵ The school of Ibn ‘Abbās was not limited to Mecca, even if this was its bastion. Important students of Ibn ‘Abbās lived and taught, among other places, in Basra (Abū l-Sha‘thā’), Kufa (Sa‘īd ibn Jubayr), Ṣan‘ā’ (Ṭāwūs), and al-Ṭā’if (Ibn abī Mulayka). ‘Ikrima was a restless soul who moved from city to city.¹⁰¹⁶ Ibn ‘Abbās himself had at times also stayed in Medina, Basra, Damascus and al-Ṭā’if. Since, in addition to this, Mecca was regularly visited by pilgrims from the four corners of the Islamic *oikoumene*, some of whom took the opportunity to slake their thirst for knowledge, the seeds of Islamic jurisprudence sown by Ibn ‘Abbās and his students will have sprouted in other places as well. If it is true that there was a “common ancient doctrine”—as Schacht claims¹⁰¹⁷—one will rather have to seek its roots in the Ḥijāz, in Mecca and Medina, than in Kufa and Basra.

3. The first quarter of the second century

In the first decade of the second/eighth century ‘Aṭā’ was still the doyen of Meccan *fiqh*, but younger scholars like ‘Amr ibn Dīnār (d. 126/744), Abū l-Zubayr (d. around 126), Ibn abī Najīḥ (d. 132/749–50) and Ibrāhīm ibn Maysara (d. 132)¹⁰¹⁸—four *mawālī*—followed him and continued the tradition of the school of Ibn ‘Abbās. Quite a good picture of ‘Amr ibn Dīnār’s teachings can be obtained from the traditions of his students Ibn Jurayj and Ibn ‘Uyayna. He depends on traditions to support his legal views more than ‘Aṭā’ and

¹⁰¹⁴ See p. 172.

¹⁰¹⁵ See p. 248.

¹⁰¹⁶ Cf. al-Shīrāzī, *Ṭabaqāt*, p. 70.

¹⁰¹⁷ Cf. Schacht, *Origins*, pp. 214, 222 f.

¹⁰¹⁸ See pp. 208 ff., 215.

his teacher Abū l-Sha‘thā’, a trend that is already discernible with ‘Aṭā’.¹⁰¹⁹ As his authorities function above all Ibn ‘Abbās from the category of the Companions and the latter’s students, who were also ‘Amr’s most important teachers, but he also has—like ‘Aṭā’—a limited number of Medinan traditions. *Ḥadīths* of the Prophet play only a modest role as sources of law, and ‘Amr’s use of the *isnād* is very imperfect, measured by the later standard. Legal scholarship in Mecca, despite a consensus on many questions, was not uniform. There were different views and justifications even among the students of Ibn ‘Abbās. At the beginning of the second/eighth century in addition to ‘Amr ibn Dīnār there was teaching, for instance, Abū l-Zubayr, who was indeed close to the school of Ibn ‘Abbās but based his teachings primarily on those of his teacher, the Medinan Companion of the Prophet Jābir ibn ‘Abd Allāh.¹⁰²⁰ In addition, from time to time people in Mecca could hear scholars from other centers such as Nāfi‘ or Ibn Shihāb al-Zuhrī from Medina or Iraqis like ‘Abd al-Karīm al-Jazarī or Ayyūb ibn abī Tamīmā.¹⁰²¹

4. *The second quarter of the second century*

After the death of Ibn abī Najīḥ, Ibn Jurayj—a *mawlā*, like almost all important Meccan *fuqahā’* after Ibn ‘Abbās—became the central figure of Meccan *fiqh*, which he studied and recorded in writing primarily with ‘Aṭā’ ibn abī Rabāḥ and ‘Amr ibn Dīnār. Ibn Jurayj was even more strongly oriented toward traditions than ‘Amr ibn Dīnār and also collected legally relevant traditions of other centers, especially from Medina.¹⁰²² Nevertheless he was above all a *faqīh*, in contrast to his younger colleague Ibn ‘Uyayna, a pure *muḥaddith*. Unfortunately, only a small amount of his *ra’y* has been preserved, but in compensation all the more of his traditions, which make it possible to trace the history of Meccan *fiqh* from the beginnings into his time. He was one of the first Muslim scholars of the second/eighth century who put a portion of the knowledge he collected into the form of a book organized according to juridical criteria and used it

¹⁰¹⁹ See p. 186.

¹⁰²⁰ See pp. 208 ff.

¹⁰²¹ See pp. 136, 217–220, 229, 232.

¹⁰²² See pp. 207 f.

as the basis of his lectures.¹⁰²³ Ibn Jurayj's activities as a collector provided Meccan *fiqh* with a mass of source material which could serve to shore up its practice with older authorities. He collected especially large quantities of material from Ibn 'Abbās and his students, including those who were not active in Mecca. *Hadīths* of the Prophet comprised only about 14% of the collection of texts preserved from him in 'Abd al-Razzāq's *Muṣannaf*. How many of them he considered as binding sources of law is difficult to say. Surely not all of them; presumably only those that were compatible with the Meccan legal tradition. Thus, even in the first half of the second/eighth century *hadīths* of the Prophet played only a subordinate role in Meccan *fiqh*. However, from the first/seventh century their share grew constantly: in the first century there seem to have been no, or only a very few, traditions of the Prophet from Ibn 'Abbās in circulation; with 'Aṭā' ibn abī Rabāḥ traditions of the Prophet comprised 5%, with 'Amr 10%, and by Ibn Jurayj 14% of the texts they transmitted. Ibn Jurayj's *isnād* technique is very under-developed: not even half of his *hadīths* of the Prophet have continuous chains of transmitters, and with the traditions of the *ṣaḥāba* the proportion is even smaller.¹⁰²⁴

5. *The second half of the second/eighth century*

The foregoing study of the tradition of Ibn Jurayj, on the results of which this sketch of the history of Meccan jurisprudence has been based to this point, can actually contribute nothing more to the question of its subsequent fate. However, one fact that one can draw from it allows a view beyond the first half of the second/eighth century: The development of Meccan *fiqh* from the end of the first/seventh century as I have described it on the basis of 'Abd al-Razzāq's *Muṣannaf* corresponds in its main points, specifically, in the persons involved, to the picture that the Muslim "legal historians" already drafted in medieval times on the basis of biographical reports. The material for it is already present in the first *ṭabaqāt* works from the first half of the third/ninth century.¹⁰²⁵ A biographical work

¹⁰²³ See pp. 274 f.

¹⁰²⁴ See pp. 240–242.

¹⁰²⁵ Especially in Ibn Sa'd. An overview of the school of Ibn 'Abbās is also found in Ibn al-Madīnī, *Iḥal*, pp. 47–49, 54.

composed specifically from the point of view of the development of *fiqh*, the *Ṭabaqāt al-fuqahā'* of Abū Ishāq al-Shīrāzī (d. 476/1083-4), is most appropriate for a comparison: in the chapter on the *fuqahā'* among the Companions of the Prophet one finds Ibn 'Abbās and his most important students.¹⁰²⁶ The section on the legal scholars of Mecca begins with articles on 'Aṭā' ibn abī Rabāḥ, Mujāhid, Ibn abī Mulayka, 'Amr ibn Dīnār and 'Ikrima; the second generation is represented by Ibn abī Najrīh and Ibn Jurayj.¹⁰²⁷ According to al-Shīrāzī, the series of *muftūn* of Mecca is continued after Ibn Jurayj by his student Muslim ibn Khālīd, with the epithet al-Zanjī (d. 179/795-6 or 180).¹⁰²⁸ As the last important *faqīh* of Mecca he names Muḥammad ibn Idrīs, known as al-Shāfi'ī. He was born in the year in which Ibn Jurayj died and at an early age associated himself with Muslim ibn Khālīd, from whom he learned *fiqh*.¹⁰²⁹ al-Shāfi'ī is supposed to have been such a successful student that his teacher Muslim already allowed him to issue legal opinions at the age of fifteen. He studied *Ḥadīth* with Ibn 'Uyayna. After he had mastered the Meccan tradition of scholarship, he learned Mālik's *Muwatta'* by heart and went to study with him.¹⁰³⁰

The proportion and the importance of Meccan *fiqh* in the work of al-Shāfi'ī has not yet been properly appreciated by research. Until now it has always been assumed that the decisive influence on al-Shāfi'ī emanated from Mālik and Medinan jurisprudence. One of the reasons for this assessment is probably to be sought in the fact that almost nothing was known of Meccan *fiqh*. This has now changed, and a comparison of the sources Ibn Jurayj and Ibn 'Uyayna in the *Muṣannaf* of 'Abd al-Razzāq with al-Shāfi'ī's *Kitāb al-Umm* might solve the question and perhaps lead to a new evaluation of his work.

The old Meccan legal tradition probably did not survive the activities of al-Shāfi'ī, which took place primarily outside of his home town, for long. Two of his students, 'Abd Allāh ibn al-Zubayr and

¹⁰²⁶ Ed. Iḥsān 'Abbās, Beirut 1970, pp. 48 f.

¹⁰²⁷ Op. cit., pp. 69-70.

¹⁰²⁸ Op. cit., p. 71. Cf. also Ibn Sa'd, *Ṭabaqāt*, vol. 5, p. 366. al-Bukhārī, *Ta'rikh*, vol. 4, p. 260. Ibn abī Ḥatīm, *Jarh*, vol. 4/1, p. 183. Ibn Ḥibbān, *Thiqāt*, vol. 7, p. 448. al-Nawawī, *Tahdhīb*, vol. 2, p. 92. Ibn Ḥajar, *Tahdhīb*, vol. 10, p. 128. al-Dhahabī, *Mizān*, vol. 3, p. 165. Idem., *Tadhkira*, vol. 1, pp. 255 f.

¹⁰²⁹ al-Shīrāzī, op. cit., p. 71.

¹⁰³⁰ Op. cit., p. 72.

Ibn abī l-Jarūd, established his *fiqh* in Mecca.¹⁰³¹ Thus the old Meccan jurisprudence flowed into the *madhhab* of al-Shāfi'ī, and was superseded as an independent school of law. The Shāfi'īs were later still quite aware of their origins, as the following observation of al-Nawawī (d. 676/1277 8) shows:

Al-Shāfi'ī received his legal knowledge from several [teachers], among them Mālik ibn Anas, the *imām* of Medina. Mālik['s teachings are based] on Rabī'a from Anas and Nāfi' from Ibn 'Umar, both from the Prophet (eulogy). Al-Shāfi'ī's second teacher was *Sufyān ibn 'Uyayna*. [He had his knowledge] from *'Amr ibn Dīnār*, [and he] from Ibn 'Umar and Ibn 'Abbās. Al-Shāfi'ī's third teacher was Abū Khālīd *Muslim ibn Khālīd*, the *muftī* of Mecca and the *imām* of its residents. Muslim['s teachings] go back to Abū l-Walīd *'Abd al-Malik ibn 'Abd al-'Azīz ibn Jurayj*, and [those of] Ibn Jurayj to Abū Muḥammad *'Aṭā' ibn Aslam Abī Rabāḥ*. *'Aṭā'*'s *fiqh* is based on Abū l-'Abbās *'Abd Allāh ibn 'Abbās*, and Ibn 'Abbās obtained [it] from the Messenger of God (eulogy), from 'Umar ibn al-Khaṭṭāb, 'Alī, Zayd ibn Thābit and numerous Companions, [and these] from the Messenger of God (eulogy).¹⁰³²

¹⁰³¹ Op. cit., pp. 99–100. A similar overview of the *fuqahā'* of Mecca, which contains a few more names—e.g. Ṭāwūs and Ibn Ṭāwūs, 'Ubayd ibn 'Umayr, 'Amr ibn Shu'ayb and others—is also given by his contemporary Ibn Ḥazm (d. 456/1064) in *'Ashāb al-fuṭyā min al-ṣaḥāba wa-man ba'dahum*, p. 324.

¹⁰³² al-Nawawī, *Tahdhīb*, vol. 1, p. 19. Emphases mine.

CHAPTER FOUR

THE BEGINNINGS OF ISLAMIC JURISPRUDENCE

It would surely be a mistake to generalize the development of Meccan *fiqh* and to postulate that the situation in Medina, Damascus, Kufa or Baṣra followed the same schema. Nevertheless, I believe that on the basis of the foregoing study it is possible to correct, or at least to place in question, a few of the ideas taken to be established in Islamic studies.

1. It will not be possible to shake Goldziher's and Schacht's thesis that the classical theory of *uṣūl* in Islamic jurisprudence, according to which Qur'ān, Prophetic *sunna* and the consensus of the community constitute the roots of the law, does not represent a reflection of the historical development of Islamic law and its jurisprudence, and that the foundations were laid through the theoretical and practical efforts—i.e., the *ra'y*—of the first Muslim jurists. But the conclusion drawn from this, that the "roots" played a completely or largely secondary role—in Schacht's words, that "the legal subject-matter in early Islam did not primarily derive from the Qur'ān or from other purely Islamic sources"¹—is false at this level of generalization. Schacht's representation of the beginnings of Islamic law is a historicization of this anti-*uṣūl* theory which, however, is just as little in harmony with the historical truth as its opposite. The truth, as is often the case, probably lies in the middle. The present study has offered some evidence for this. Thus it was to be observed that already in the first/seventh century people consciously resorted to the Qur'ān and to rulings of the Prophet as sources of the law, if not as extensively as in later times.²

2. Schacht's assumption that "two generations before al-Shāfi'ī reference to traditions from Companions and Successors was the rule, to traditions from the Prophet himself the exception, and it was left to al-Shāfi'ī to make the exception his principle"³ is accurate, at least

¹ Schacht, *Origins*, p. v.

² See pp. 114–116, 125, 131, 135 f., 156 f., 167, 204.

³ Schacht, *Origins*, p. 3.

for the leading Meccan *fuqahā'*. The conclusions he draws from this, that "generally and broadly speaking, traditions from Companions and Successors are earlier than those from the Prophet,"⁴ and "wherever the sources available enable us to judge, we find that the legal traditions from Companions are as little authentic as those from the Prophet,"⁵ are too generalized and too absolute. Authentic traditions from the Prophet and the Companions can certainly be detected. The whole theory of an originally anonymous "living tradition" which was retroactively projected back first onto the Followers, then onto the *ṣaḥāba* and finally onto the Prophet, is a construct which is not tenable in this form. Certainly there occurred many projections of opinions onto the Prophet and the *ṣaḥāba*, but this is a phenomenon which set in rather late, not the manner in which traditions generally originated.

3. In view of the conditions ascertained for Mecca the following assumptions made by Schacht must be revised: that for the better part of the first/seventh century there existed no Islamic law "in the technical meaning of the term,"⁶ that the foundations of what later became Islamic law were laid by the *qāḍīs* and governors of the Umayyad dynasty, who in the first/seventh century were for the most part complete juristic parvenus;⁷ and that the process of the Islamization of the "popular and administrative practice of the late Umayyad period," aside from "modest beginnings towards the end of the first/seventh century" was driven forward by the "ancient schools of law" only in the first decades of the second/eighth century.⁸ The rulings of judges and governors or caliphs of the Umayyad period played—at least in the area of "private law"—a very marginal role in the formation of the opinions of the early *fuqahā'*. In the sphere of criminal and "public" law the situation was probably somewhat different, but here too one must not underestimate the influence in the opposite direction. The beginnings of a law that was Islamic in the true sense of the word and of theoretical occupation with it are placed too late by a good half to three quarters of a century. Regional schools of legal and religious scholarship can already be discerned

⁴ Ibid.

⁵ Op. cit., p. 169. Cf. also Schacht, *Introduction*, p. 34.

⁶ Schacht, *Introduction*, p. 19.

⁷ Op. cit., pp. 24–26.

⁸ Op. cit., pp. 27 f.

in the last three decades of the first/seventh century, even if their differences probably were consciously recognized as dependent on "schools" only at the beginning of the second/eighth century.

4. The development from a jurisprudence primarily articulated through *ra'y* to one based on Tradition was a process that began already at the end of the first/seventh century within the schools, and which—at least in the Ḥijāz—is to be understood as the result of the collection, not merely of forging of traditions. The collection and transmission of texts was carried out not only with the intention of supporting particular opinions of the school, but also independently of this, as is shown by the example of Ibn Jurayj or Ibn 'Uyayna: both of them certainly transmitted on several problems contradictory *ḥadīths* of the Prophet or opinions of Companions that were opposed to their school tradition. The growth of the stock of traditions within and outside of the schools is not necessarily to be laid at the door—as Schacht assumes—of forgers opposed to the ancient schools and counter-forgers within the schools. Although cases of intentionally incorrect attributions of opinions can be demonstrated as early as the first century,⁹ it has been possible to demonstrate that "typical common links" like 'Amr ibn Dīnār, Ibn Jurayj and Ibn 'Uyayna are not generally to be considered as forgers or propagators of contemporary forgeries, as Schacht identified them.¹⁰ This is not to say that the entirety of the material they collected is authentic. The age—the texts are mostly earlier than Schacht dated them—and provenance of the traditions is, however, in many cases determinable. The prerequisite is that one rely whenever possible on those collections whose chains of transmission are still in their original state of the first half of the second/eighth century. A comparison of the early stocks of traditional material, as they appear, for instance, in the *Muṣannaf* of 'Abd al-Razzāq, with the later collections could contribute much to answering the question of how the *Ḥadīth* of the Prophet grew and acquired its continuous *isnāds*.¹¹

⁹ See p. 119 (beginning of the second/eighth century), 144 (before 68/687–8).

¹⁰ Cf. Schacht, *Origins*, pp. 146, 160, 174.

¹¹ Some examples of Prophetic *ḥadīths* from 'Atā' which were forged later or had their *isnāds* improved are found in Ibn abī Ḥātim, *ʿIlal*, Vol. 1, pp. 401, 429, 431, 432 and in Ibn al-Jawzī, *Kitāb al-Mawḍūʿāt*, passim. M. Muranyi has already demonstrated with some good examples how older traditions of the *ṣaḥāba* become *ḥadīths* of the Prophet and *marāṣil* become *marfūʿāt* in his commentary on a fragment of the *Kitāb al-Ḥajj* of al-Mājjishūn. Cf. Muranyi, *Ein altes Fragment*, pp. 40–84 passim.

AFTERWORD

The present study deals primarily with the problem of how the early history of Meccan jurisprudence can be reconstructed, what sources are available for this reconstruction and how reliable and significant these sources are. A completely different question, which is no less important but is meaningful only after such preliminary work, is that of the substantive development of Meccan *fiqh*, which one could follow through specific thematic complexes such as marriage, divorce, fasting, *hajj*, and so forth. As a further perspective for further research, one might compare the substantive state of development of legal studies in various centers in specific periods in limited legal subject areas, e.g. in Mecca, Medina, Kufa and Basra at the end of the first/seventh or the beginning of the second/eighth century. Through this it would be possible to come closer to a solution of the problem of a supposedly originally common doctrine which later developed into separate branches, the question of mutual influences, of the protagonists for specific kinds of traditions, and so forth. The prerequisite is that preliminary work, like the one which has been done here for Mecca, follows for the other important legal centers. I believe that I have shown not only that, but also how it is indeed possible to make definite statements even about the legal teachings and traditions of individual *tābiʿūn* and *ṣaḥāba*.

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