

## THE ROLE OF NON-ARAB CONVERTS IN THE DEVELOPMENT OF EARLY ISLAMIC LAW\*

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### *Abstract*

Western scholarship has attached considerable importance to the role played by scholars of non-Arab descent in the formative period of Islamic law and jurisprudence. This view can be challenged. In a sample taken from a biographical collection of important legal scholars compiled in the fifth/eleventh century, "true" Arabs constituted the majority; three quarters of the non-Arab scholars had an eastern background and came from the regions of the former Sassanian empire; and only a few scholars had clearly Christian or Jewish roots. This result lends no support to the assumption that jurists of non-Arab descent brought solutions from their natal legal systems—Roman, Roman provincial and Jewish law—to early Islamic law.

### *Introduction*

ONE FINDS THE FOLLOWING TRADITION in Abū Ishāq al-Shīrāzī's *Ṭabaqāt al-fuqahā'*, a prosopography of Muslim jurists written in the fifth century of the Islamic era/eleventh century CE: "When the 'Abādila had died—'Abd Allāh b. 'Abbās, 'Abd Allāh b. al-Zubayr, 'Abd Allāh b. 'Umar and 'Abd Allāh b. 'Amr b. al-Āṣ—legal knowledge in all countries passed to the *mawālī* [i.e. clients of non-Arab origin]. The lawyer of Mecca was 'Aṭā', that of Yemen Ṭāwūs, that of the Yamāma Yaḥyā b. Abī Kathīr, that of Baṣra al-Ḥasan [al-Baṣrī], that of Kūfa Ibrāhīm al-Nakha'ī, that of Syria Makhūl, that of Khurāsān 'Aṭā' al-Khurāsānī. The only exception is Medina; God gave to this city a man from [the tribe of] Quraysh, an undisputed lawyer [named] Sa'īd b. al-Musayyab."<sup>1</sup>

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<sup>1</sup> Abū Ishāq al-Shīrāzī, *Ṭabaqāt al-fuqahā'* (Beirut 1401/1981), 58, quoting 'Abd al-Raḥmān b. Zayd b. Aslam (d. 182/798-99), who was a *mawlā*. Shīrāzī mentions this tradition in the lemma of Ibn al-Musayyab without further comment. It is unlikely that he agreed with 'Abd al-Raḥmān's opinion regarding the role of

This statement suggests that in the first generation after the Prophet Muḥammad, legal knowledge (*fiqh*) was held mostly by Arabs, but that already in the second generation, that is to say, in the second half of the first Islamic/seventh century CE, legal knowledge had passed to converts of non-Arab origin in nearly all parts of the Islamic realm.

If this statement is true, it raises several questions. What were the reasons for this change? Was the dominance of *mawālī* in this branch of knowledge only a short interval or did this phenomenon continue? Where did the non-Arab clients come from? What culture did they bring with them? What impact did they have on Islamic *fiqh*?

Western scholarship has tackled these issues since the second half of the nineteenth century. Writing in 1866, Paul de Lagarde observed that there was *no* Semite among the Muslims who was brilliant in scholarship.<sup>2</sup> Alfred von Kremer was a little more cautious: "Fast scheint es dass diese wissenschaftlichen Studien (Koranlesung, Exegese, Traditionskunde und Rechtswissenschaft) in den ersten zwei Jahrhunderten *vorwiegend* von Klienten betrieben werden".<sup>3</sup> This judgment was shared by Goldziher, who admitted that some Arabs engaged in scholarship, but thought that only a *tiny minority* were successful.<sup>4</sup> Convinced of the numerical superiority of the non-Arabs in Muslim scholarship, Goldziher predicted that a statistical study of this issue would prove the point.<sup>5</sup>

A statistical study such as that proposed by Goldziher has not been undertaken until the present time. Perhaps the authority of the

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the *mawālī* scholars since his collection of *fuqahā'* contradicts it. A similar statement purportedly was made by al-Zuhri in a dialogue between himself and the caliph 'Abd al-Malik, but here two other names are added—Yazid b. Abi Ḥabīb (Egypt) and Maymūn b. Mihrān (al-Jazīra); Sa'īd b. al-Musayyab and Yahyā b. Kathīr are missing; and al-Daḥḥāk b. al-Muzāḥim replaces 'Aṭā' as the leading scholar of Khurāsān. Cf. I. Goldziher, *Muhammedanische Studien* (Halle 1889), I, 114-15. Another version of this dialogue is found in Ibn Manẓūr, *Mukhtaṣar Tārīkh Dimashq li-Ibn 'Asākir* (Damascus 1984-88), XVII, 70-71. Here Ibrāhīm al-Nakha'ī is classified as an Arab.

<sup>2</sup> P. de Lagarde, *Gesammelte Abhandlungen* (n. p., 1866 [Osnabrück, 1966]), 8, n. 4 (emphasis mine). See also Goldziher, *Studien*, I, 109.

<sup>3</sup> A. von Kremer, *Culturgeschichtliche Streifzüge auf dem Gebiete des Islams* (Leipzig, 1873), 16 (emphasis mine). See also Goldziher, *Studien*, I, 109.

<sup>4</sup> Goldziher, *Studien*, I, 112: "Damit will nicht gesagt sein, dass die Araber sich der Pflege der Wissenschaft völlig verschlossen. Die Gelehrten-geschichte des Islam weist manchen echten Araber auf...". 113: "Dies gelang nur einer *kleinen Minorität*, welche auf geistigem Gebiete von den neuerworbenen Fremdlingen, die ihren mitgeborenen Bildungstrieb nur auf die durch die Eroberung erzeugten Verhältnisse anzuwenden hatten, leicht überflügelt wurde." (emphasis mine).

<sup>5</sup> Ibid. 114: "Eine statistische Behandlung dieser Verhältnisse schlosse für alle Fälle sehr zu Ungunsten der Araber".

influential and highly respected Islamicist prevented it. In any case, similar opinions are current today.<sup>6</sup> The general view of recent Western scholarship, as expressed by Patricia Crone, may be summarized as follows: Following the Arab-Muslim conquest of the Middle East, there began a process of integration of non-Arabs into Arab-Muslim society. Although non-Arabs initially were exposed to ethnic prejudices, "their education, skills and sheer number was such that they rapidly achieved positions of influence", "came to dominate the world of scholarship" and "played a crucial role in the formation of the Islamic faith".<sup>7</sup> The underlying idea is that the former local élites of the conquered territories were rapidly assimilated into Muslim society, putting their superior skills and culture to the service of their new masters, the Arabs. The idea seems plausible and until recently I concurred with it. After reading extensively in the biographical literature, however, I have been persuaded that the number of Arab scholars was not as low as I thought. In an effort to substantiate this impression, I decided to undertake a statistical investigation of the issue.

The view that non-Arabs dominated Islamic scholarship is not intended simply as a statement of fact. It is often linked—sometimes implicitly—with the idea that the high level of Islamic culture cannot be the product of people living at the fringe of the advanced civilizations of the ancient world. Thus, non-Arab scholars, with their higher education and culture, must have been responsible for this achievement, as von Kremer and Goldziher believed.<sup>8</sup>

Additionally, the "crucial role" of non-Arab scholars would explain the many instances of borrowing from Roman, Roman provincial, and, to a minor extent, Persian civilization, and from Christianity and Judaism, which Western scholars have detected in Islamic civilization during its formative period. Two advocates of this view were Goldziher and Joseph Schacht.<sup>9</sup> Schacht dated the beginning of Iranian and

<sup>6</sup> M.J. Kister concludes a recent article with the statement: "The transmission of *ḥadīths*, edifying stories, stories of the prophets and saints, was widely disseminated by the new generations of scholars [i.e. from the beginning of the second century onwards, H.M.], among whom the *mawālī* probably formed the majority." (emphasis mine). See M.J. Kister, "...*Lā taqra'ū l-qur'āna 'alā l-muṣḥafīyyīn wa-lā taḥmilū l-'ilma 'anī l-ṣaḥafīyyīn*... Some Notes on the Transmission of *Ḥadīth*", in *Jerusalem Studies in Arabic and Islam* 22 (1998), 127-62, esp. 162.

<sup>7</sup> P. Crone, "Mawla", in *EI*<sup>2</sup>, VI, 874-82, esp. 877.

<sup>8</sup> Goldziher regarded Islamic scholarship as "fremde Bildung", cf. *Studien* I, 112 and II, 53.

<sup>9</sup> See Goldziher, *Studien*, II, 75-76 ("Das *Fikh* ist ebensowenig Produkt des arabischen Geistes, wie es die Grammatik (*nahu*) und die dogmatische Dialektik (*kalām*) sind. Und die Muhammedaner älterer Zeiten hatten ein klares Bewusstsein

Hellenistic influences on Arab-Islamic civilization to the second half of the first century of Islam (c. 670-720) and he saw this process reaching its zenith in the second century. Its first fruits became recognizable in the field of law.<sup>10</sup> How did the influence take place? According to Schacht, Islamic jurisprudence "started in Iraq about AH 100", "at a time when the door of Islamic civilization became widely open to the potential transmitters who were educated non-Arab converts to Islam".<sup>11</sup> Christian converts to Islam, for example, were supposedly responsible for parallels between Islamic law and canon law of the Christian Eastern churches.<sup>12</sup> To explain the influence of Roman law in a region such as Iraq, which never was a Roman or Byzantine province, Schacht refers to "persons with an [sic] Hellenistic education".<sup>13</sup> He does not assume that the first Muslim jurists consciously adopted principles of foreign laws by consulting lawbooks, but that the converts among them were inspired by their traditional education which contained elements of jurisprudence.<sup>14</sup>

I propose to challenge the idea that Islamic jurisprudence is mainly the product of non-Arab scholars who were responsible for the alleged borrowings from, or influences on, pre-Islamic laws from outside the Arabian peninsula. I do not intend to replace this idea with a new one, but only to show that we cannot be sure about it and that the issue requires the further attention of Islamicists. My arguments are based on a statistical analysis of biographical data available about the most important jurists of the first and second centuries AH (excluding the generation of the Prophet's companions). I shall concentrate on the following issues: What is the ratio of jurists of Arab to those of non-Arab descent? Is there really a domination of non-Arabs? Is the ratio the same in the different centers of jurisprudence? What are the origins

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von diesem importierten Charakter des *Fikh*"). For a summary of Goldziher's opinion cf. P. Crone, *Roman, provincial and Islamic law. The origins of the Islamic patronate* (Cambridge, 1987), 102-06.

<sup>10</sup> *The Legacy of Islam*, ed. J. Schacht/C.E. Bosworth (Oxford, 1974), 6. A convenient summary of the history of the issue of influences and borrowings from pre-Islamic law systems is given in Crone, *Roman*, ch. 1.

<sup>11</sup> J. Schacht, "Foreign Elements in Ancient Islamic Law", in *Journal of Comparative Legislation* (1950), 9-17, esp. 13.

<sup>12</sup> *Ibid.* 17.

<sup>13</sup> *Ibid.* 15.

<sup>14</sup> J. Schacht, "Droit byzantin et droit musulman", in *Convegno di scienze morali storiche e filologiche, 1956* (Rome 1957) (Accademia nazionale dei Lincei. Fondazione Alessandro Volta. Atti dei convegni, 12), 97-218, esp. 201-03. Schacht's identification of Hellenistic rhetorical education as possible source of borrowings has been rejected by Crone. Cf. her *Roman*, 9-10.



of the non-Arabs scholars? What is their degree of integration into Arab-Muslim society?

To identify "important legal scholars", I have used al-Shīrāzī's aforementioned *Ṭabaqāt al-fuqahā'*. The book provides a selection of those *fuqahā'* whom al-Shīrāzī (d. 476 AH/1083 CE) regarded as most important. His selection has two advantages. First, it is available—whereas it will be some time before we have a large and readily accessible database of Muslim *fuqahā'* who flourished during the first two centuries. Second, it is of a limited size, which makes it well suited for a pilot study such as the present one. Al-Shīrāzī's sample appears to have certain shortcomings, but these shortcomings, in my view, are not fatal, as I shall explain: (1) Some may argue that the limited size of the sample affects the reliability of the results. This is true but it does not render the results insignificant. They are provisional, of course, and need to be checked on the basis of a larger sample.<sup>15</sup> (2) Al-Shīrāzī's selection may be biased in favor of Shāfi'ī scholars. This objection is unwarranted, as there is no indication that al-Shīrāzī had a preference for one or more early regional centers of jurisprudence at the expense of others. Even the most important scholars of the rival schools are represented.<sup>16</sup> (3) Schacht has argued that Islamic jurisprudence did not *exist* in the first century AH; if this were true, Islamic traditions concerning the *fuqahā'* of the first century would not be trustworthy. But as I have shown elsewhere Islamic jurisprudence started already one-half or three quarters of a century earlier than Schacht posited.<sup>17</sup>

<sup>15</sup> A step in this direction is the sample of 1,049 Muslim scholars of the first four centuries of Islam that has been compiled by Monique Bernards and John Nawas within the framework of the Netherlands Ulama Project (NUP). The project, which was initiated by the universities of Nijmegen, Utrecht and Leiden and is funded by the Netherlands Organization for Scientific Research (NWO), contains other databases as well. For a general description of the NUP see J. Nawas and M. Bernards, "A preliminary report of the Netherlands Ulama Project (NUP): The evolution of the class of 'ulamā' in Islam with special emphasis on the non-Arab converts (*mawālī*) from the first through fourth century AH", in *Law, Christianity and Modernism in Islamic Society. Proceedings of the Eighteenth Congress of the Union Européenne des Arabisants et Islamisants held at the Katholieke Universiteit Leuven (September 3 - September 9, 1996)*, ed. U. Vermeulen and J. M. F. van Reeth (Leuven 1998), 97-107.

<sup>16</sup> As we shall see below, this is corroborated by a comparison of the results of the present study with the main database of the NUP.

<sup>17</sup> Cf. H. Motzki, *Die Anfänge der islamischen Jurisprudenz. Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts*, (Stuttgart, 1991); idem, "The *Muṣannaf* of 'Abd al-Razzāq al-Ṣan'ānī as a source of authentic *aḥādīth* of the first Islamic century", in *Journal of Near Eastern Studies* 50 (1991), 1-21; idem, "Der *Fiqh* des -Zuhri: die Quellenproblematik", in *Der Islam* 68 (1991), 1-44; idem, "Quo vadis *Ḥadīth*-Forschung? - Eine kritische Untersuchung von G.H.A. Juynboll: 'Nāfi' the *mawālī* of Ibn 'Umar, and his position in Muslim *ḥadīth* Literature", in

I used al-Shīrāzī's selection of *fuqahā'* only as basis to form a sample. I added a few scholars who are not mentioned by al-Shīrāzī, but who I consider important, and a few others who are mentioned by al-Shīrāzī in the framework of the classical schools of jurisprudence, but who belong to the second century. I left out a few individuals mentioned in his collection because they belong to the third century. The final sample consists of 115 individuals, 108 taken from al-Shīrāzī and seven added by myself. Because al-Shīrāzī's information concerning the scholars is mostly very concise and limited, I generally took the information on them not from him but from Ibn Ḥajar's (d. 852 AH/1449 CE) *Tahdhīb al-tahdhīb*. In addition, al-Shīrāzī's information has been used, and other biographical compilations have been consulted as well.<sup>18</sup>

The easiest method to identify scholars of non-Arab descent is to determine whether an individual is explicitly referred to as a *mawlā* in the sources. If there is no such qualification, the individual can be taken to be an Arab. This is the method followed in my investigation. It is in accordance with Crone's opinion that the term *mawlā*, "applied to the inferior party in an Islamic context, ...almost always means a client of the type recognized in early Islamic law..." and that this type of client "was a non-Arab freedman, convert or other newcomer in Muslim society".<sup>19</sup> This assumption is corroborated by my own experience using the late biographical literature, where the term *mawlā* indicates non-Arab descent.

This clear-cut distinction conceals several problems, however. The concept of *walā'* and the term *mawlā* referred originally to a social status, not an ethnic origin. In pre-Islamic times there were several forms of *walā'*, the most important being *walā' al-ḥilf* (confederacy), *walā' al-jiwār* (neighborhood) and *walā' al-ʿitāqa* (relationship between a patron and his former slave after the slave has been freed and become a client).<sup>20</sup> All three types of *mawālī* could be Arabs or non-

*Der Islam* 73 (1996), 40-80; 193-231; idem, "Die Entstehung des islamischen Rechts", in *Der islamische Orient—Grundzüge seiner Geschichte*, ed. A. Noth/J. Paul (Würzburg, 1998), 151-73; idem, "The Prophet and the Cat: on dating Mālik's *Muwaṭṭa'* and legal traditions", in *Jerusalem Studies in Arabic and Islam* 22 (1998), 18-83.

<sup>18</sup> Ibn Ḥajar's *Tahdhīb al-tahdhīb* is especially well suited for my purpose because the author (based on a critical evaluation of earlier sources) consistently mentions whether a scholar must be considered as a *mawlā*.

<sup>19</sup> Crone, "Mawlā", 874.

<sup>20</sup> Cf. Goldziher, *Studien*, I, 105-06 and J. Juda, *Die sozialen und wirtschaftlichen Aspekte der Mawālī in frühislamischer Zeit*, Ph.D. thesis, Fakultät für Kulturwissenschaften (Tübingen 1983), ch. 1.

Arabs; they could be integrated into an Arab tribe and thereby receive or claim this tribe's genealogy. Besides, non-Arabs (and Arabs of course) could be adopted by Arabs and in this way receive an Arab genealogy. Consequently, an individual with an Arab genealogy was not necessarily always a "true" Arab, and a *mawlā* was not always a non-Arab. This confusing situation and terminology changed gradually during the first Islamic century as a result of social and conceptual changes brought about by the development of the Islamic community as a new type of society in Arabia (e.g. the prohibition of adoption, *ḥilf* and the enslavement of Arabs) and by the expansion of the new community into areas inhabited by non-Arabs. These changes resulted in an enormous influx of non-Arabs, slaves and free people, so that the category of *mawālī* was filled nearly exclusively by non-Arabs and the term was restricted to them. In general, the terminology seems to have been inspired by the later concept, but there are a few instances in which the judgment of biographers and genealogists that an individual is an Arab is contradicted by other information. I call such individuals Arab *mawālī*.

The contradictory information concerning the Arab *mawālī* can be explained by several assumptions: (1) The individual in question had a non-Arab descent but tried to disguise it with a fabricated Arab genealogy. His deception was detected, however, by some people. (2) The ancestors of a scholar were non-Arabs who were integrated into an Arab tribe by *ḥilf* or other form of *walā'* already in pre-Islamic times, so that the descendants came to be considered as Arabs although their true origin was not forgotten completely. (3) The scholar in question was of Arab descent but one of his ancestors had been a slave or *ḥalīf* and, as such, was integrated into an Arab tribe to which he did not originally belong. (4) The contradiction results from a misunderstanding of reports concerning the scholar in question.<sup>21</sup> With regard to assumptions (2) and (3), continuity of the earlier and broader concept of *walā'* in the period of transition from pre-Islamic times to the second century AH may have contributed to the confusion.

### Numbers

According to al-Shīrāzī there were nine centers of Islamic jurisprudence in the period of the "*fuqahā' al-tābi'in*" (the Successor jurists):<sup>22</sup>

<sup>21</sup> For a possible example see below note 36.

<sup>22</sup> By this term he means the independent jurists who do not belong to the classical *sunni* schools of jurisprudence.

Medina, Mecca, Yemen, Syria and al-Jazīra (the northern part of Mesopotamia), Egypt, Kūfa, Baṣra, Baghdad and Khurāsān. The scholars belonging to this class were active roughly between 50 AH/670 CE and 300 AH/912 CE. Since my study is limited to the first two centuries, I have disregarded all Baghdādī scholars mentioned by al-Shīrāzī because they belong to the third century AH/ninth century CE. I will now go over the groups center by center in the order presented by al-Shīrāzī:<sup>23</sup>

*Fuqahā' of Medina*

- Sa'īd b. al-Musayyab (A),<sup>24</sup> 'Urwa b. al-Zubayr (A), al-Qāsim b. Muḥammad b. Abī Bakr (A), Abū Bakr b. 'Abd al-Raḥmān (A), 'Ubayd Allāh b. 'Abd Allāh b. 'Utba b. Mas'ūd (A), Khārijja b. Zayd b. Thābit (A), Sulaymān b. Yasār (n), Abū Salama b. 'Abd al-Raḥmān b. 'Awf (A), Sālim b. 'Abd Allāh b. 'Umar (A), Muḥammad b. 'Alī b. Abī Ṭālib (A), Qabīṣa b. Dhu'ayb (A), 'Abd al-Malik b. Marwān (A)
- 'Alī b. al-Ḥusayn b. 'Alī (A), al-Ḥasan b. Muḥammad b. al-Ḥanafiyya (A), [Nāfi', *mawlā* of 'Abd Allāh b. 'Umar] (n), Muḥammad b. Muslim b. 'Ubayd Allāh b. Shihāb al-Zuhri (A), 'Umar b. 'Abd al-'Azīz b. Marwān (A), Muḥammad b. 'Alī b. al-Ḥusayn b. 'Alī (A), 'Abd al-Raḥmān b. al-Qāsim b. Muḥammad (A), Rabī'a b. Abī 'Abd al-Raḥmān Farrūkh (n), Abū Zinād 'Abd Allāh b. Dhakwān (n), 'Abd Allāh b. Yazīd b. Hurmuz (n), Yaḥyā b. Sa'īd b. Qays al-Anṣārī (A)
- Muḥammad b. 'Abd al-Raḥmān b. al-Mughīra b. Abī Dhi'b (A), 'Abd al-'Azīz b. 'Abd Allāh b. Abī Salama [Dīnār or Maymūn] al-Mājishūn (n), 'Abd Allāh b. Muḥammad b. Abī Sabra (A), Kathīr b. Farqad (A), Mālik b. Anas (A)

Our sample contains twenty-eight names<sup>25</sup> divided into three generations (*ṭabaqāt*). It begins with Sa'īd b. al-Musayyab (d. around 94 AH/714 CE) and closes with Mālik b. Anas (d. 179 AH/796 CE).<sup>26</sup> The first generation includes twelve persons of whom only one is a

<sup>23</sup> The names of Arabs mentioned by Shīrāzī have sometimes been shortened; the genealogies of non-Arab scholars, on the contrary, have been completed [in brackets] with elements taken from other sources.

<sup>24</sup> (A) means "of Arab descent", (n) "of non-Arab descent".

<sup>25</sup> Twenty-seven from Shīrāzī and one (Nāfi') added by myself.

<sup>26</sup> Shīrāzī, *Ṭabaqāt*, 57-68.

non-Arab *mawlā*. The others were mostly members of Quraysh, the tribe of the Prophet. Many of them were sons or nephews of his Companions who played a leading role after his death. The second generation includes eleven scholars, of whom four were *mawālī*, while the others were mostly grandsons of leading Companions. The third generation includes five persons, of whom two were from Quraysh, two were from Medinese tribes and one was of non-Arab origin. In total, then, there were twenty-two Arabs and only six scholars of non-Arab origin at Medina (ratio 8:2).

*Fuqahā' of Mecca*

- 'Aṭā' b. Abī Rabāḥ [Aslam](n), Mujāhid b. Jabr (n), 'Abd Allāh b. 'Ubayd Allāh b. Abī Mulayka (A), 'Amr b. Dīnār (n), 'Ikrima, *mawlā* of 'Abd Allāh b. 'Abbās, (n), [Abū l-Zubayr Muḥammad b. Muslim b. Tadrus] (n)
- 'Abd Allāh b. Abī Najīḥ [Yasār] (n), 'Abd al-Malik b. 'Abd al-'Azīz b. Jurayj (n)
- Muslim b. Khālīd [b. Farwa or Qarqara of Jarja] al-Zanjī (n)
- Muḥammad b. Idrīs [al-Shāfi'ī] (A)

For Mekka we have ten names.<sup>27</sup> The first is 'Aṭā' b. Abī Rabāḥ (d. 114 AH/733 CE), the last is al-Shāfi'ī (d. 204 AH/820 CE). In the first generation we find five *mawālī* and one Arab, in the second generation two scholars, both non-Arabs, in the third one *mawlā*, and in the fourth generation one Arab scholar. Altogether there were two Arabs and eight non-Arabs (ratio 2:8), almost the opposite of the situation in Medina.

*Fuqahā' of Yemen*

- Ṭāwūs b. Kaysān (n), 'Aṭā' b. Markabūdh (n),<sup>28</sup> Sharāḥīl b. Shuraḥbīl (n), Ḥanash b. 'Abd Allāh (n), Wahb b. Munabbih (n)
- [Ma'mar b. Rāshid] (n)
- ['Abd al-Razzāq b. Hammām b. Nāfi'] (n)

<sup>27</sup> Nine given by Shirāzī, *Ṭabaqāt*, 73 and one (Abū l-Zubayr) added by myself.

<sup>28</sup> Cf. Ibn Sa'd, *al-Ṭabaqāt al-kubrā* (Beirut, n.d.), V, 533, 544.

Yemenite legal scholarship is represented by seven persons,<sup>29</sup> all of non-Arab origin. The first is Ṭāwūs b. Kaysān (d. 106 AH/725 CE), the last ‘Abd al-Razzāq (d. 211 AH/827 CE). Three of the Yemenite jurists (Ṭāwūs, Ma‘mar and ‘Abd al-Razzāq) are *mawālī*, the other four are from the *abnā’ al-furs* (or *al-fāris*), the descendants born in Yemen of members of the Persian colony which was established by the Sassanian kings in the last decades of the sixth century CE and who administered the country until the time of Muḥammad’s prophetic activity.<sup>30</sup>

*Fuqahā’ of Syria and the Jazīra*

- Abū Idrīs ‘Ā’idh Allāh b. ‘Abd Allāh al-Khawlānī (A), Shahr b. Ḥawshab al-Ash‘arī (A)
- ‘Abd Allāh b. [Abī] Zakariyyā’ (A), Hānī’ b. Kulthūm (A), Rajā’ b. Ḥaywa al-Kindī (A), Makhūl b. ‘Abd Allāh [Suhrāb] (n), Abū Ayyūb Sulaymān b. Mūsā al-Ashdaq (n), (al-Jazīra) Maymūn b. Mihrān (n)
- ‘Abd al-Raḥmān b. ‘Amr b. [Abī ‘Amr] Yaḥmid al-Awzā‘ī (n), Yazīd b. Yazīd b. Jābir (A), ‘Abd al-Raḥmān b. Yazīd b. Jābir (A), Yaḥyā b. Yaḥyā al-Ghassānī (A), Muḥammad b. al-Walīd b. Ghāmīr al-Zabīdī (A), Sa‘īd b. ‘Abd al-‘Azīz al-Tanūkhī (A)

As the most important lawyers of Syria and the Jazīra, Shīrāzī gives fourteen names. The list is headed by Abū Idrīs al-Khawlānī (d. 80 AH/689 CE) and closes with Sa‘īd b. ‘Abd al-‘Azīz al-Tanūkhī (d. 166 AH/783 CE).<sup>31</sup> The first generation includes two scholars, both Arabs, but one of them a *mawlā*.<sup>32</sup> The second generation comprises six persons, three Arabs and three non-Arabs, the third generation includes

<sup>29</sup> Five from Shīrāzī, *Ṭabaqāt*, 73-74 and two (Ma‘mar b. Rāshid, ‘Abd al-Razzāq) added by myself.

<sup>30</sup> Cf. K.V. Zettersteen, “*al-Abnā’* (II)”, in *EL*<sup>2</sup>, I, 102.

<sup>31</sup> Shīrāzī, *Ṭabaqāt*, 74-77. I have arranged individuals at the end of his list in the proper chronological order.

<sup>32</sup> Shahr b. Ḥawshab al-Ash‘arī. According to Ibn Ḥajar al-‘Asqalānī, *Tahdhīb al-tahdhīb* (Hyderabad, 1325-27/1907-09), IV, 369 Shahr b. Ḥawshab al-Ash‘arī was a *mawlā* of Asmā’ bint Yazīd b. al-Sakan, who belonged to the Aws. In W. Caskel, *Gamharat an-nasab. Das genealogische Werk des Hišām ibn Muḥammad al-Kalbī* (Leiden, 1966), I, 273 a Shahr b. Khawshab (*sic*) is mentioned among the Banū Ash‘ar. The difference in the father’s name seems to be due to a scribal error or misreading (both Ibn Sa‘d, *Ṭabaqāt*, VII, 449 and Shīrāzī give the name of the father as Ḥawshab) and in both cases the same person seems to be meant. Here we have a case of an Arab *mawlā*.

six scholars of whom only one is a *mawlā* of non-Arab descent. Altogether, only four of the Syrians could be identified as non-Arabs by descent. One of the Arab scholars was probably descended from an Arab family which had been formerly Christian.<sup>33</sup> In terms of proportion, 30 percent were non-Arab scholars while 70 percent were Arabs. In Syria as in Medina, the Arabs obviously outnumbered the non-Arab scholars.

*Fuqahā' of Egypt*

- 'Abd al-Raḥmān b. 'Usayla al-Ṣunābhī (A), 'Abd Allāh b. Mālik al-Jishānī (A), Marthad b. 'Abd Allāh al-Yazanī (A)
- [Yazīd b. Abī Ḥabīb] (n), Bukayr b. 'Abd Allāh b. al-Ashajj (n), Abū Umayya 'Amr b. al-Ḥārith b. Ya'qūb (n)
- al-Layth b. Sa'd b. 'Abd al-Raḥmān (n), ['Abd Allāh b. Lahī'a] (A)

For Egypt, our sample contains only eight scholars. The first is Ibn 'Usayla al-Ṣunābhī (d. between 70 and 80 AH/690-700 CE), the last 'Abd Allāh b. Lahī'a (d. 174 AH/791 CE).<sup>34</sup> The first generation consists of three Arabs, the second generation of three *mawālī*. The third generation consists of one Arab and one non-Arab scholar. For Egypt, the number of Arab jurists (4) and the number of *mawālī* (4) is equal.

*Fuqahā' of Kūfa*

- 'Alqama b. Qays al-Nakha'ī (A), al-Aswad b. Yazīd al-Nakha'ī (A), Masrūq b. al-Ajda' al-Ḥamdānī (A), 'Ubayd b. 'Amr al-Ḥamdānī (A), Shurayḥ b. al-Ḥārith (A), al-Ḥārith [b. 'Abd Allāh] al-A'war [al-Ḥamdānī] (A)
- 'Āmir b. Sharāḥīl al-Sha'bī [al-Ḥimyarī] (A), Sa'īd b. Jubayr b. Hishām (n), Ibrāhīm b. Yazīd b. al-Aswad al-Nakha'ī (A)
- al-Ḥakam b. 'Utayba al-Kindī (n), Ḥammād b. Abī Sulaymān [Muslim] (n), Ḥabīb b. Abī Thābit [Qays b. Dīnār] (n), al-Ḥārith b. Yazīd al-'Uqlī (A), al-Mughīra b. Miqsam al-Ḍabbī (n), Ziyād b. Kulayb [al-Tamīmī] (A), al-Qa'qā' b. Yazīd (A), [Sulaymān b.

<sup>33</sup> Yahyā b. Yahyā al-Ghassānī, a conclusion based on his and his father's name and his descent from the Ghassān, a tribal group which accepted Christianity before the advent of Islam. Cf. I. Shahīd, "Ghassān", in *EI*<sup>2</sup>, II, 1020-21.

<sup>34</sup> Added to Shirāzī's list (see *Ṭabaqāt*, 77-78) by myself. In addition, I added Yazīd b. Abī Ḥabīb in the second generation. Shirāzī mentions him as pupil of Marthad b. 'Abd Allāh al-Yazanī but not among the important *fuqahā'*.

- Mihrān] al-Aʿmash (n), Manṣūr b. Muʿtamir (A), ʿAbd Allāh b. Shubruma [al-Ḍabbī] (A), Muḥammad b. ʿAbd al-Raḥmān b. Abi Laylā [Yasār] (A), Sufyān b. Saʿīd b. Masrūq al-Thawrī (A), al-Ḥasan b. Ṣāliḥ b. Ḥayy al-Ḥamdānī (A), Sharik b. ʿAbd Allāh b. Abi Sharik al-Nakhaʿī (A), Abū Ḥanīfa al-Nuʿmān b. Thābit b. Zūʿā b. Māh (n)
- [Abū Yūsuf Yaʿqūb b. Ibrāhīm] (A), [Muḥammad b. al-Ḥasan b. Farqad al-Shaybānī] (n)

With twenty-six names, Kūfa is second only to Medina in terms of the number of scholars.<sup>35</sup> The first is ʿAlqama b. Qays (d. 62 AH/682 CE), the last Muḥammad al-Shaybānī (d. 189 AH/805 CE). The first generation consists of six persons, collectively designated as “the students of ʿAbd Allāh b. Masʿūd”. All of them are of Arab origin.<sup>36</sup> In the second generation, we find two Arabs<sup>37</sup> and one *mawlā*.<sup>38</sup> In the

<sup>35</sup> Shirāzī, *Ṭabaqāt*, 79-86 lists among the “successors” only twenty-three scholars. Since his list of important Kūfan scholars stops at the middle of the second century, I added two scholars of the second half of the century (Abū Yūsuf and al-Shaybānī) who are not included in his list of *tābiʿūn* scholars because he classified them as members of the Ḥanafī school.

<sup>36</sup> Shurayḥ b. al-Ḥārith, the famous judge of Kūfa, is generally regarded as an Arab of the tribe of Kinda (see Ibn Hajar, *Tahdhīb*, IV, 326, Ibn Saʿd, *Ṭabaqāt*, VI, 131, and Caskel, *Ġamharat*, I, 233, II, 533), but according to some he was *min awlād al-furs*, i.e. a descendant of the Persians who remained in Yemen after the Sassanian occupation (cf. Ibn Hajar, *Tahdhīb*, IV, 326 and Ibn Manẓūr, *Mukhtaṣar*, X, 294-302). In some traditions he says of himself that he is a Yemenite registered in the *diwān* of Kinda (*ʿidādi fī Kinda, diwāni fī Kinda*); in one instance this is taken to mean that he was a *mawlā* in the sense of being of non-Arab descent (cf. Ibn Saʿd, *Ṭabaqāt*, VI, 132), but this interpretation is not necessarily correct. The tradition seems to have the hidden objective of playing down the difference between Arabs and *mawālī*. Possibly, the opinion that he was *min awlād al-furs* derives from the failure to grasp the bias of such traditions.

<sup>37</sup> Ibrāhīm al-Nakhaʿī is considered by most authors as an Arab (cf. Ibn Saʿd, *Ṭabaqāt*, VI, 270; Caskel, *Ġamharat*, I, 264, II, 352; Ibn Hibbān, *al-Thiqāt* (Hyderabad 1398/1978), IV, 8; Shirāzī, *Ṭabaqāt*, 82, Dhahabī, *Tadhkira*, I, 73; Ibn Hajar, *Tahdhīb*, I, 177). A few traditions indicate that he was a *mawlā*: ʿAbd al-Raḥmān b. Zayd b. Aslam took him for one in the tradition quoted at the beginning of this article (see also note 1), and in Balādhurī, *Ansāb al-ashraf* (Beirut 1398/1978), III, 95 it is reported that he was registered as *mawlā* in the *diwān* (*al-jund*) of al-Nakhaʿī (on this and other cases of *mawālī* registered in the *diwān* cf. Juda, *Mawālī*, 120-31, esp. 127). These traditions are contradicted, however, by the information that his mother was an Arab woman (Mulayka bint Qays b. ʿAbd Allāh b. Mālik b. ʿAlqama b. al-Nakhaʿī; cf. Caskel, *Ġamharat*, I, 264, II, 352), the sister of ʿAlqama b. Qays al-Nakhaʿī (cf. Ibn Hibbān, *al-Thiqāt*, IV, 8); the marriage between a non-Arab *mawlā* and an Arab woman was disapproved in the first Islamic century and such marriages were rare (cf. Juda, *Mawālī*, 178-81). This is another case of an Arab *mawlā*.

<sup>38</sup> According to Ibn Hajar, *Tahdhīb*, IV, 11 and Shirāzī, *Ṭabaqāt*, 82, Saʿīd b. Jubayr was a *mawlā* of the Wāliba b. al-Ḥārith, a division of Banū Asad, and



third generation the ratio between Arabs and non-Arabs becomes more balanced, nine Arabs versus six non-Arabs.<sup>39</sup> In the fourth generation we have one Arab and one *mawlā*. Altogether the Arab scholars of Kūfa (18) outnumber the *mawālī* (8) in a ratio of 7:3.

*Fuqahā' of Baṣra*

- al-Ḥasan b. Abī l-Ḥasan [Yasār] al-Baṣrī (n), Jābir b. Zayd al-Azdī (A), Muḥammad b. Sīrīn (n), Abū l-ʿĀliya Rufayʿ b. Mihrān (n), Ḥumayd b. ʿAbd al-Raḥmān al-Ḥimyarī (A), Muslim b. Yasār (n), Abū Qilāba ʿAbd Allāh b. Zayd al-Azdī (A)
- Qatāda b. Dīʿāma al-Sadūsī (A), Ayyūb b. Abī Tamīma [Kaysān] al-Sakhtiyānī (n), Yūnus b. ʿUbayd [b. Dīnār] (n), ʿAbd Allāh b. ʿAwn b. Arṭabān (n), Ashʿath b. ʿAbd al-Malik al-Ḥumrānī (n), Ibrāhīm b. Muslim al-Makkī (A), Hishām [b. Abī ʿAbd Allāh Sanbar] (n) Dāwūd b. Abī Hind [Dīnār b. ʿUdhāfir or Ṭahmān al-Qushayrī] (n), Ḥumayd b. Abī Ḥumayd [Tayraw, Tayrawayh, Zādhawayh, Dāwaraw, Ṭarkhān, Mihrān, ʿAbd al-Raḥmān or Makhlad] al-Ṭawīl (n), ʿUthmān b. Sulaymān [or Muslim b. Jarmūz or Hurmuz] al-Battī (n),
- ʿUbayd Allāh b. al-Ḥasan al-ʿAnbarī (A), Abd al-Raḥmān b. Mahdī b. Ḥassān (n)

The legal scholarship of Baṣra is represented by nineteen names.<sup>40</sup> The list opens with al-Ḥasan al-Baṣrī (d. 110 AH/729 CE) and closes with ʿAbd al-Raḥmān b. Mahdī (d. 198 AH/814 CE). In the first generation there is already a slight majority of four *mawālī* scholars

according to Ibn Qutayba, *al-Maʿārif* (Beirut, 1407/1987), 253 he was black.

<sup>39</sup> My conclusions concerning the descent of a few scholars in this group calls for a comment: al-Ḥakam b. ʿUṭayba was the *mawlā* of Kinda and must not be confused with al-Ḥakam b. ʿUṭayba b. al-Nahhās (see Ibn Ḥajar, *Tahdhīb*, II, 432; on the latter cf. Caskel, *Ġamhara*, I, 157). He is therefore counted as non-Arab. Maṣṣūr b. Muʿtamir al-Sulamī is an Arab according to Ibn Ḥajar, *Tahdhīb*, X, 312 and Caskel, *Ġamhara*, I, 124, but according to Ibn Qutayba, *Maʿārif*, 268, some said “that he was an Ethiopian” (*min al-Ḥabasha*). He is, however, not explicitly termed a *mawlā*. Therefore, I classified him among the Arabs. Perhaps he was an Arab whose black ancestors had been integrated into Arab tribes for many years. Muḥammad b. ʿAbd al-Raḥmān b. Abī Laylā is generally considered an Arab (cf. Ibn Ḥajar, *Tahdhīb*, IX, 303-03; Caskel, *Ġamhara*, I, 177) and so he is counted here. His grandfather, however, is said to have been a *mawlā* of the Anṣār or, more specifically, of Banū ʿAmr b. ʿAwf (cf. Caskel, *Ġamhara*, II, 591-92; Ibn Ḥajar, *al-Iṣāba fī tamyīz al-ṣaḥāba* (Beirut, n.d.), VI, 369, no. 9465). This would make him an Arab *mawlā*.

<sup>40</sup> I removed one individual (Suwār b. ʿAbd Allāh) mentioned in Shīrāzī, *Ṭabaqāt*, 87-91, because he belongs mostly to the third/ninth century.

against three Arabs. In the second generation, only two of ten persons are Arabs, the others being *mawālī* of non-Arab descent. In the third generation we find one Arab and one *mawlā*. Altogether, at Baṣra, thirteen of the nineteen scholars were of non-Arab descent (ratio: 7:3).

*Fuqahā' of Khurāsān*

- 'Aṭā b. Abī Muslim ['Abd Allāh or Maysara] al-Khurāsānī (n), al-Ḍaḥḥāk b. Muzāhim al-Hilālī (A), 'Abd Allāh b. al-Mubārak al-Marwazī (n)

With regard to Khurāsān, Shīrāzī mentions only three scholars, of whom two are *mawālī*.<sup>41</sup>

\* \* \*

Altogether, the Arab scholars in our sample clearly outnumber the non-Arabs: sixty-three Arabs against fifty-two *mawālī* whose non-Arab origin is either certain or very likely (ratio 55:45). The conventional wisdom in Islamic scholarship that the non-Arab *mawālī* by "sheer number came to dominate the world of scholarship" cannot, therefore, be substantiated, at least as far as the élite of Islamic jurisprudence before the establishment of the classical schools of jurisprudence is concerned.<sup>42</sup>

It is striking that some places or regions had high percentages of non-Arab *fuqahā'* (Yemen 100 percent, Mekka 80 percent, Baṣra 70 percent), while other centers display the opposite pattern (Medina 20

<sup>41</sup> Shīrāzī, *Ṭabaqāt*, 93-94. I left out Ibn Rāhwayh who flourished in the third century AH.

<sup>42</sup> The data contained in the NUP database (see notes 15 and 16) corroborate—on the whole—the results of the present study, even if the difference between both categories of scholars is smaller than in my sample. For the period between 81 and 240 AH the percentage of Arab *fuqahā'* is 49 (count: 58), that of scholars of non-Arab descent is 51 (count: 60). Even if the sample is enlarged by including scholars who are not *fuqahā'* (count 314), the ratio between Arabs and *mawālī* remains almost the same (deviation 0.45 percent). Source: J. Nawas, "The evolution of *fiqh* and the ethnicity of its practitioners over the first four centuries of Islam", paper presented at the International Medieval Congress, University of Leeds, 19-17 July 1997. A more elaborate version of this essay will be published as "The emergence of *fiqh* as a distinct discipline and the ethnic identity of the *fuqahā'* in early and classical Islam", in *Proceedings of the 19th Congress (1998) of the Union Européenne des Arabisants et Islamisants (UEAI)*, ed. H. Kilpatrick, S. Leder, and B. Martel-Thoumian (Halle, in press).

percent, Syria 30 percent, Kufa 30 percent). And contrary to what one might have expected,<sup>43</sup> the number of important non-Arab scholars is as a rule not higher in the centers of jurisprudence situated *outside* the Arabian peninsula. Non-Arab scholars formed merely a minority in certain centers outside Arabia, while dominating certain centers inside Arabia.

If one calculates the proportion of Arab and non-Arab scholars per generation of scholars, in the first generation there were 63 percent Arabs versus 37 percent non-Arabs. In the second generation we find 40 percent Arabs and 60 percent non-Arabs, almost the opposite. In the third generation the proportion again reverses itself and the Arabs enjoy a numerical superiority, with 63 percent. In the fourth generation, which includes only a few scholars, the ratio is equal but too small to be significant. These results contradict the opinion expressed in the Muslim tradition quoted at the beginning of this article, namely, that after the generation of the Companions legal knowledge passed to the *mawālī* in nearly all regions of the Islamic kingdom.

How can we explain the difference between the impression of Muslim and Western scholars on the role of non-Arab scholars and the results of the statistical investigation? As far as the Muslim view is concerned, it seems likely that opinions such as that of ‘Abd al-Raḥmān b. Zayd b. Aslam or of traditions such as those about al-Zuhrī and the caliph ‘Abd al-Malik have their origin in the conflict between the Arabs and the *mawālī* which was a major issue from the end of the first until the beginning of the third Islamic century.<sup>44</sup> The Arabs, who considered themselves the superior race, feared and opposed the growing influence of non-Arabs in the kingdom. Such Arab anxiety is articulated in the traditions reporting the dialogue between al-Zuhrī and ‘Abd al-Malik. The *mawālī*, on the other hand, gave expression to their growing self-assurance by pointing to their achievements and to the services they were supplying to Islam. This seems to be reflected in the statement of ‘Abd al-Raḥmān b. Zayd, himself a *mawālī*.

Western scholarship seems to have been impressed by Muslim traditions which highlight the leading role played by *mawālī* scholars and by the fact that some outstanding jurists and scholars, e.g. al-Ḥasan al-Baṣrī, Abū Ḥanīfa and Muḥammad al-Shaybānī, were

<sup>43</sup> See G.H.A. Juynboll, *Muslim Tradition. Studies in chronology, provenance and authorship of early hadith* (Cambridge, 1983), 132-33.

<sup>44</sup> Goldziher's chapter "Arab und 'Aḡam" remains a useful summary of the conflict between Arabs and *mawālī*. Cf. his *Studien*, I, 101-46.

*mawālī*. The error is a result of generalization. But why were the many important Arab scholars overlooked? One reason may be that Western scholars tended to think very little of Arab civilization and of the cultural capacities of Arabs at the time of the rise of Islam, and could not imagine that the flowering of Islamic culture could be the work of Arabs. It had to have been the members of the pre-Islamic advanced civilizations, above all the Hellenistic, i.e. "Western", one, who were responsible for the achievements of Islamic culture and civilization.<sup>45</sup>

*The Cultural Background of the Legal Scholars of Non-Arab Descent*

We come now to the second set of questions posed in the introduction: Where did the non-Arab scholars come from? To what extent were they integrated into Arab-Muslim society? Information on the cultural background of non-Arab legal scholars is scarce. Only on occasion do the sources explicitly state where a person of non-Arab descent or his ancestors came from. Mostly, the sources indicate merely that someone was the *mawlā* of a tribe, clan or individual. In such cases, his name, or the names of his ancestors, can provide a clue as to the probable region of origin. Names of early Muslim scholars have only seldom been studied for such a purpose.<sup>46</sup> The following conclusions should therefore be taken as provisional; they need to be verified on the basis of a larger database.

When comparing the names belonging to scholars of Arab and non-Arab descent living in the first two centuries AH, several peculiarities are noticeable: (1) names of the non-Arabs are mostly shorter, i.e. they lack the extensive genealogy borne by many Arabs mentioned in the sources. Sometimes even a father's name is lacking. (2) The use of the *kunya* in the genealogy is more characteristic for the names of *mawālī* than of Arabs. The *kunya* contained in the genealogy of a *mawlā* often replaces a foreign name, and we can assume that the ancestor who bore the *kunya* had converted to Islam. (3) In the genealogies of *mawālī* scholars certain names occur which are not used by Arabs; if the origin of these names could be identified, the cultural origin of the scholar in question would be determined. (4) Some names, although seemingly Arabic, are typical for *mawālī* and are rarely used by "true Arabs". These observations can be helpful in cases in which it is uncertain

<sup>45</sup> Several examples of disparaging remarks on the abilities of the Arabs are found in Goldziher, *Studien*, I, 108, 109, 112.

<sup>46</sup> An exception is R.W. Bulliet, *Conversion to Islam in the Medieval Period. An Essay in Quantitative History* (Cambridge and London, 1979).

whether an individual should be classified as being of Arab or non-Arab descent. In the following, I present some examples of *mawālī* names taken from my sample.

Names which can be identified as Iranian: Farrūkh, Hurmuz, Mihrān, Markabūdh, Zūfā, Māh, Arṭabān, ‘Udhāfir, Tayrawayh,<sup>47</sup> Kaysān, Suhrāb, Sirin, Sanbar,<sup>48</sup> Jarmūz,<sup>49</sup> or al-Mājashūn (or Māji-shūn), which is a nickname.<sup>50</sup> Names like Jurayj and Tadrus are obviously of Greek origin (Georgós, Theōdoros); a name like Yaḥmad may be Indian;<sup>51</sup> Ṭarkhān is Turkish.<sup>52</sup> The name Qarqara or Jarja (two different spellings of the same name) is not Arabic;<sup>53</sup> I could not determine, however, to which language it belongs.

Many *mawālī*, however, had Arabic or seemingly Arabic names which they adopted or received either when they were integrated into an Arab family or upon conversion. This makes it difficult to determine their origin. But even in such cases names can be informative. As mentioned, among the *mawālī* certain names occur with a higher frequency than among Arabs and seem to be typical, even if these names are Arabic and were also used by Arabs, e.g. Yasār, Maysara, Maymūn, Dīnār, Nāfi‘ and Muslim. Yasār (happiness, prosperity)

<sup>47</sup> Cf. Ph. Gignoux, *Iranisches Personennamenbuch, Band II: Mitteliranische Personennamen, Faszikel 2: Noms propres sassanides en moyen-perse épigraphique* (Wien 1986), no. 352: Farrox, no. 448: Hormizd, no. 630: Mihrān, no. 575: Mardbūd, no. 589: Mardaybūd, no. 1088: Zōtiy, no. 510: Māh, no. 125: Ardavān, no. 990: Vēh-Šābuhr, no. 306: Dārāy-veh. I am indebted to R.E. Emmerick (Hamburg) for his advice concerning the names which I suspected to be of Persian origin.

<sup>48</sup> Cf. F. Justi, *Iranisches Namenbuch* (Marburg 1895 [Hildesheim 1963]), 152 a: Kajtān/Kaidān, 312b-313a: Suhrāb (also Gignoux, *Iranisches Namenbuch II*, no. 868: Šahrāb), 302b-303a: Širīn, 281b, 282a: Σαμβαρης / Σαναβαρης.

<sup>49</sup> Probably a misreading of Hurmuz or Hormuzd, also given as an alternative in the sources, cf. Ibn Ḥajar, *Tahdhīb*, VII, 153-54; al-Bukhārī, *al-Ta’rikh al-kabīr* (Beirut, n.d.), III/2, 244 (no. 2287).

<sup>50</sup> According to Ibn Mardawayh in his *Ta’rikh Iṣbahān*, the first bearer of this nickname, Abū Salama Dīnār or Maymūn al-Mājashūn, the grandfather of ‘Abd al-‘Azīz b. ‘Abd Allāh, originated from Iṣbahān. See al-Sam‘ānī, *al-Ansāb* (Hyderabad, 1962ff.), V, 107; Ibn Manẓūr, *Mukhtaṣar*, XXVIII, 43-44; and al-Mizzī, *Tahdhīb al-kamāl fī asmā’ al-rijāl* (Beirut, 1992), XVIII, 155.

<sup>51</sup> The name of the grandfather of al-Awzā‘ī. According to some traditions he was descended from captives of Sind. Cf. Ibn Ḥajar, *Tahdhīb*, VI, 239; Ibn Manẓūr, *Mukhtaṣar*, XIV, 313 ff.

<sup>52</sup> Cf. J. Th. Zenker, *Türkisch-Arabisch-Persisches Handwörterbuch* (Leipzig, 1866 [Hildesheim, 1979], I-II, 277, 597; G. Doerfer, *Türkische und mongolische Elemente im Neupersischen*, vol. 2 (Wiesbaden, 1965), 495 ff.

<sup>53</sup> This is the name of the grandfather of the Meccan scholar Muslim b. Khālid, whose epithet, “al-Zanjī”, indicates that he may have been of African origin; the sources differ, however, as to why he had this *laqab*. Cf. Mizzi, *Tahdhīb*, XVII, 508-09, 512.

seems to be—at least in some cases—the Arabic translation of the Persian name Pērōz (happy, successful).<sup>54</sup> This may also be the case with Maysara and Maymūn, which have a similar meaning. Other names, like Farrūkh, have a meaning in Arabic,<sup>55</sup> but were not names used by Arabs and were homonyms of foreign names.<sup>56</sup> Dīnār (from the Roman *denarius*) and Nāfiʿ (useful) seem to have been popular as names for slaves even if they were borne also by some Arabs. Patrons may also have given the name Muslim to a converted slave, and newly converted fathers obviously favored this name for one of their male children.<sup>57</sup>

My investigation into the origin of the scholars of non-Arab descent, based on their genealogies and on explicit information in the sources concerning their origin, has produced the following results: All of the six *mawālī* active in Medina had a Persian background. Among the eight Meccan *mawālī* there was one of Nubian or Ethiopian origin (ʿAṭāʾ)<sup>58</sup> and one Berber (ʿIkrima). The other six are more difficult to identify: two of them had an ancestor with a Greek-Christian name and could have come from Syria or Egypt (Abū Zubayr, Ibn Jurayj), one may have had a Persian father (Ibn Abī Najīḥ), another an Ethiopian background (Mujāhid),<sup>59</sup> a third came from the Yemen and could have had Persian, Ethiopian or other roots (ʿAmr b. Dīnār), and the origin of the last (Muslim b. Khālid) may be African.<sup>60</sup> Of the seven Yemenite

<sup>54</sup> See the case of al-Ḥasan al-Baṣrī's father (H. Ritter, "Ḥasan al-Baṣrī", in *EI*<sup>2</sup>, III, 247) and the father of Sulaymān (Ibn Manẓūr, *Mukhtaṣar*, X, 193).

<sup>55</sup> The meaning is: "Ears of wheat of which the final condition had become apparent and of which the grain has become organized and compact". E.W. Lane, *Arabic-English Lexicon* (London, 1877), II, 2363. The Arabic word may be of Persian origin.

<sup>56</sup> In our sample the name Farrūkh is borne by individuals who seem to have had a Persian background (see Ibn Qutayba, *Maʿārif*, 274). On the Persian name "Farrox" see note 47. The use of homonym names was noted already by Goldziher, *Studien*, I, 133.

<sup>57</sup> This does not mean that the bearers of these names had always been non-Arabs, non-Muslims or slaves by descent.

<sup>58</sup> According to Abū Dāwūd al-Sijistānī in Ibn Ḥajar, *Tahdhīb*, VII, 200 he was a *nūbī*; according to Ibn Manẓūr, *Mukhtaṣar*, XXII, 219 he was a *ḥabashī*. For a detailed biography of ʿAṭāʾ with a discussion of the reliability of the information on him, see Motzki, *Anfänge*, 219-33.

<sup>59</sup> His father's name, Jabr, is common among Arabs, but it may be a homonym of the Ethiopian name Gäbr (servant). My colleagues, Dr. Veronika Six (Hamburg) and Prof. Dr. Manfred Kropp (Mainz), confirmed my assumption that the name could be Ethiopian. There is also an old Jewish name Geber (cf. L. Koehler/W. Baumgartner, *Lexicon in veteris testamenti libros* (Leiden, 1958), 168; 1 Kings 4: 13, 19), but I could not determine whether the name continued to be used. See also below note 75.

<sup>60</sup> See note 53.

scholars, four or five are regarded as *abnā' al-furs*, descendants of the Sassanian occupation forces who stayed in Yemen during the last decades of the sixth and the first decades of the seventh century CE; the others were *mawālī* (Ṭāwūs, Ma'mar, 'Abd al-Razzāq) of probably Persian origin.<sup>61</sup> Among the four non-Arab scholars of Syria we find one with a Persian ancestry (Maymūn),<sup>62</sup> another whose grandfather originated from the Indus valley (al-Awzā'ī),<sup>63</sup> a third with a Persian or Indian background (Makhūl),<sup>64</sup> while the last came perhaps from a Jewish family of uncertain geographical origin (Sulaymān b. Mūsā).<sup>65</sup> Of the four Egyptians one can be identified as Persian (al-Layth),<sup>66</sup> another as Nubian (Yazīd b. Abī Ḥabīb).<sup>67</sup> I could not determine the descent of the other two. It is striking that among the important Muslim jurists of Syria and Egypt during the first two centuries none were obviously of Syrian, Greek or Coptic Christian origin. The ethnic background of the eight *mawālī* of Kufa is difficult to determine. Two of them were of Persian descent,<sup>68</sup> and one was black.<sup>69</sup> The origin of the other five remains obscure, although I imagine that most of them came from Mesopotamia and the eastern regions of the former Sassanid empire which had been conquered by tribes who had settled at Kufa. Amongst the thirteen *mawālī* scholars of Baṣra, nine clearly had Persian roots,<sup>70</sup> and three others may have had the same back-

<sup>61</sup> Ṭāwūs b. Kaysān was a *mawlā* of the *abnā' al-furs* or of the Banū Ḥamdān (see Ibn Ḥajar, *Tahdhīb*, V, 8; Ibn Qutayba, *Ma'ārif*, 258. Goldziher's statement that he originated from the *abnā'* themselves [*Studien*, I, 113, note 3] is not substantiated by the sources which I have consulted). Ma'mar b. Rāshid, *mawlā* of the Azd, probably had Persian roots because he originated from Baṣra. 'Abd al-Razzāq is considered by most sources as a *mawlā* of the Banū Himyar, but in Ibn Manẓūr, *Mukhtaṣar*, XV, 98 he is identified as a descendant of the *abnā'*. Both can be true. There are other cases of *abnā'* who had been *mawālī*, e.g. Mūsā b. Bādhān, the son of the governor of the Sassanids in Yemen, is said to have been a *mawlā* of the Banū Jumaḥ or Makhzūm or Madhhij (see Mizzi, *Tahdhīb*, XXII, 5; Ibn Ḥajar, *Tahdhīb*, III, 216-18).

<sup>62</sup> According to al-Shirāzī, *Ṭabaqāt*, 77 and Ibn Manẓūr, *Mukhtaṣar*, XXVI, 60-68 his father was among the captives of Iṣṭakhr.

<sup>63</sup> According to Shirāzī, *Ṭabaqāt*, 76 he belonged to the captives of the Yemenites and according to Abū Zur'ā al-Dimashqī he belonged to the captives of Sind (Ibn Ḥajar, *Tahdhīb*, VI, 239).

<sup>64</sup> The information on Makhūl is contradictory: Sind (cf. al-Shirāzī, *Ṭabaqāt*, 75; Ibn Qutayba, *Ma'ārif*, 257), Persia (Ibn Ḥajar, *Tahdhīb*, X, 291).

<sup>65</sup> This conclusion is based solely on the names Sulaymān and Mūsā.

<sup>66</sup> "*Nahnu min al-furs min Iṣbahān*", Ibn Ḥajar, *Tahdhīb*, VIII, 459.

<sup>67</sup> Cf. Dhahabī, *Tadhkirat al-huffāz* (Beirut, n.d.), I, 129.

<sup>68</sup> Sulaymān b. Mihrān (Ibn Ḥajar, *Tahdhīb*, IV, 222-26) and Abū Ḥanīfa (Ibn Ḥajar, *Tahdhīb*, X, 449-52; J. Schacht, "Abū Ḥanīfa al-Nu'mān", in *EI*<sup>2</sup>, I, 123).

<sup>69</sup> Sa'īd b. Jubayr (Ibn Qutayba, *Ma'ārif*, 253).

<sup>70</sup> Al-Ḥasan al-Baṣrī, Muḥammad b. Sīrīn, Abū l-ʿĀliya Rufayʿ, Ayyūb b. Abī Tamima, ʿAbd Allāh b. ʿAwn, Hishām b. ʿAbd Allāh, Dāwūd b. Abī Hind,

ground.<sup>71</sup> The origin of the remaining one (Muslim b. Yasār) is obscure. Of the two *mawālī* scholars of Khurāsān, one is of Persian, the other of Turkish descent.<sup>72</sup>

Most of the scholars of non-Arab descent have an Iranian background. This is certain for 50 percent (26 individuals) and probable for 21 percent (eleven individuals). This gives a total of 71 percent. If we add the scholars of Indian and Turkish origin, the proportion rises to nearly 77 percent. Just under 10 percent came from Ethiopia, Nubia and Northern Africa to the west of Egypt (five individuals). Less than 10 percent (five individuals) had, or can be presumed to have had, a Syrian or Egyptian Christian (two scholars) or a Jewish background (three individuals). The ethnic, cultural or religious origin of 12 percent of the non-Arab scholars remains completely obscure.<sup>73</sup>

How close were these scholars to their origins? Answering this question may give us an impression as to the degree of their integration into Arab-Muslim society. The question can be answered without hesitation in cases in which concrete information on an individual, his ancestors and the circumstances of their entrance into Muslim society is available. This is, however, often not the case. In the absence of such information, conclusions can be drawn from the genealogy, if it contains names that are foreign or typical of slaves and *mawālī*, and from the dates of a scholar's life. Here, however, a problem arises: Did an individual give up his name upon conversion and adopt an Islamic name instead, as usually happens in modern times, or did he keep his original name and give Islamic names only to his children born after conversion?

The fact that in several genealogies of *mawālī* the Islamic names end with a *kunya*, the bearer of which has a foreign or typical *mawālī* name, speaks in favor of the assumption that in principal there was no change of names upon conversion. The new convert adopted only an Islamic or Arabic *kunya* and often (not always) his descendants used

Humayd al-Ṭawil, 'Uthmān b. Sulaymān.

<sup>71</sup> Yūnus b. 'Ubayd, Ash'ath b. 'Abd al-Malik, Ismā'il b. Muslim. Their descent is not mentioned in the biographical literature, and also their genealogies give no clue as to their origin. We can, however, assume that they originated from the Eastern provinces, because they were *mawālī* of Arab tribes garrisoned in Mesopotamia and active in the conquests of the East.

<sup>72</sup> Of Persian descent: 'Aṭā' b. Abī Muslim originated from Balkh; the name of his father was (according to some) Maysara, cf. Ibn Ḥajar, *Tahdhīb*, VII, 212. Of Turkish origin: 'Abd Allāh b. al-Mubārak (his father was *turkī*, his mother *khwarizmiyya*), Ibn Ḥajar, *Tahdhīb*, V, 384.

<sup>73</sup> This is more than 100 percent because the Christian and Jewish scholars are included in the categories of geographical origin.



only this *kunya*. Examples are: Rabi'a b. Abi 'Abd al-Rahmān [Far-rūkh], 'Abd al-'Azīz b. 'Abd Allāh b. Abi Salama [Dīnār/ Maymūn], 'Aṭā' b. Abi Rabāḥ [Aslam], 'Abd Allāh b. Abi Najih [Yasār], al-Ḥasan b. Abi l-Ḥasan [Yasār] al-Baṣrī, Ayyūb b. Abi Tamīma [Kaysān], Hishām b. Abi 'Abd Allāh [Sanbar], Dāwūd b. Abi Hind [Dīnār], Ḥumayd b. Abi Ḥumayd [Tayrawayh/ Tarkhān].

In cases in which no *kunya* is used, we can adopt the rule that the individual who comes after the last bearer of an Arab name converted to Islam. For example, the genealogy of the famous jurist Abū Ḥanīfa is as follows: Abū Ḥanīfa al-Nu'mān b. Thābit b. Zūṭā b. Māh. He and his father Thābit have Arabic names, whereas his grandfather and great-grandfather have Persian names. According to my rule, his grandfather entered Arab-Islamic society and gave his son an Arabic name. This is corroborated by reports in the sources that his grandfather originated from Kābul, became a slave of the Arabian tribe Taym-Allāh b. Tha'laba, converted to Islam and was set free.<sup>74</sup>

As for names used by Arabs but more typical of *mawālī*, like Yasār, Maysara, Maymūn, Nāfi', Dīnār and an Islamic name like Muslim, we can assume that the bearer of the name entered Arab society as a slave and received his Arabic or Islamic name from his owner in place of his original foreign name; or, alternatively, that one of his descendants changed the foreign name into an Arabic one.<sup>75</sup>

The following examples illustrate three cases of scholars who represent different types of integration into Arab-Islamic society: converts of the first, second and third generation.

*Nāfi'*, the *mawlā* of Ibn 'Umar. His father's name is unknown. According to the earliest and probably most reliable information, Nāfi' became a slave of Ibn 'Umar during the conquest of the Iranian town of Naysābūr and the surrounding regions in the year 30 AH/651 CE, a

<sup>74</sup> Al-Khaṭīb al-Baghdādī, *Ta'rikh Baghdād* (Beirut n.d.), XIII, 324-25 (according to a grandson of Abū Ḥanīfa). Cf. also Schacht, "Abū Ḥanīfa", 123. For the rule, see also Bulliet, *Conversion*, 19.

<sup>75</sup> For an example of a descendant who changed a foreign name into an Arabic one, cf. Goldziher, *Studien*, I, 133, note 2. The name Yasār may—in some cases at least—also be a homonym of a foreign name; possibly there was an Aramaic equivalent of the Hebrew *yashar* (just, upright, pious, cf. Koehler/Baumgartner, *Lexicon*, 414). That this name (and e.g. the name Jabr, too, see above note 59) was considered as foreign when the bearer of it was a slave or *mawlā* is illustrated by the traditions on the Jewish and Christian "informants" of Muḥammad. On these traditions cf. Cl. Gilliot, "Les 'informateurs' juifs et chrétiens de Muḥammad. Reprise d'un problème traité par Aloys Sprenger et Theodor Nöldeke", in *Jerusalem Studies in Arabic and Islam* 22 (1998), 84-126. A slave could, of course, also receive a typical Arabic name.

campaign in which Ibn 'Umar participated. Since Nāfi' died in 117 AH/735 CE he must have been a small child, perhaps an infant, at the time he became the property of Ibn 'Umar.<sup>76</sup> He surely got his Arabic name from his patron, in whose home at Medina he must have grown up. Consequently, he could not have brought with him much knowledge of his culture of origin. This is one of the few examples of a scholar who entered Muslim society himself.

*Al-Ḥasan al-Baṣrī*. The father of this famous scholar was taken prisoner during the conquest of Iraq. He was brought to Medina, received an Arabic name in place of his Persian one, and was later liberated by his owner, an Arab-Muslim woman, surely only after his conversion to Islam. Al-Ḥasan was born of his father's marriage at Medina to a slave woman who was later liberated, and he grew up in Wādī al-Qurā, north of Medina. In this and most other cases in which the father of a scholar became a member of Arab-Muslim society, the scholar himself received his education in an Arab-Muslim environment, which makes it highly unlikely that he retained much of the culture of his ancestors.

'Abd al-Malik b. 'Abd al-'Azīz b. Jurayj. His grandfather's name was Greek, Jurayj, i.e. Georg(os). The fact that he gave his son a Muslim name—'Abd al-'Azīz—suggests that the grandfather himself had joined Arab-Muslim society and become a Muslim. This conclusion, based on 'Abd al-Malik's genealogy, is corroborated by the information of the sources that his grandfather had been a Byzantine slave owned by Umm Ḥabīb bint Jubayr, the wife of 'Abd al-'Azīz b. 'Abd Allāh b. Khālīd b. Asīd who belonged to the Banū Umayya.<sup>77</sup> Since the descendants of Jurayj are known as *mawālī* of the clan of Khālīd b. Asīd, we can assume that Jurayj was freed after he had converted to Islam. Thus, this Meccan scholar represents an individual whose integration into Muslim society began already with his grandfather. 'Abd al-Malik's father, 'Abd al-'Azīz, was already regarded as a Muslim scholar and traditionist.<sup>78</sup>

If one classifies the scholars according to their date of entrance into Arab-Muslim society, it appears that only a few were first generation converts. Our sample includes no more than five such individuals.<sup>79</sup> Most scholars belong to the second generation, which means that entry

<sup>76</sup> See Motzki, "Quo vadis", 55-57.

<sup>77</sup> See for his biography Motzki, *Anfänge*, 239-54.

<sup>78</sup> See Ibn Ḥajar, *Tahdhīb*, VI, 333.

<sup>79</sup> Nāfi', *mawlā* of Ibn 'Umar, 'Ikrima, *mawlā* of Ibn 'Abbās, Makḥūl, Maymūn b. Mihrān and Rafi' b. Mihrān.

into Arab-Muslim society had already been made by their fathers. This is certain in the case of twenty scholars. Thirteen others, finally, belong to the third generation of *mawālī*. For the rest the information is too scant to allow a classification. I could not find any indication that an important early legal scholar received his education, not to mention a legal education, in his culture of origin and afterwards became a Muslim jurist. This may be due to the scarcity of information provided by the sources. I imagine that in towns in which the Arabs and their clients lived in close proximity to a non-Muslim majority, as in Fustāt, converts continued to have contacts with their former co-religionists, and there are indeed some examples of this;<sup>80</sup> on the other hand I also imagine that converts were expelled from their former religious communities, that contact with them was avoided, and that converts tried to demonstrate the sincerity of their conversions by breaking their relations with their former co-religionists and avoiding anything that could be interpreted as sympathy for their former belief. In any case, among the scholars included in my sample, there are only a few who may have grown up in a mainly non-Muslim milieu.

### Conclusion

Western scholars have attached great importance to the role played, quantitatively and qualitatively, by scholars of non-Arab descent in the formative period of Islamic scholarship in general and jurisprudence in particular. A statistical investigation based on a sample of important Muslim jurists of the first two Islamic centuries, however, lends no support to this assumption. "True Arabs" constitute the majority among the selected group. Equally unfounded is the tacit assumption that the number of scholars of non-Arab descent was higher in the centers situated in the regions of ancient high cultures outside the Arabian peninsula—regarded as crucial in the formative period of Islamic jurisprudence—than it was in Arabia. Although my sample is small, I predict that the result will not be substantially different if a much larger

<sup>80</sup> For example, 'Abd Allāh b. Wahb, who is considered a Mālikī scholar by Shirāzī (*Tabaqāt*, 150) and is not contained in my sample. According to a tradition only rarely encountered in the sources, he learned writing and reading from a Christian (cf. Miklos Muranyi, 'Abd Allāh b. Wahb (125/743-197/812) *Leben und Werk. Al-Muwaffā'*, *Kitāb al-muḥāraba herausgegeben und kommentiert* (Wiesbaden 1992), 18). I wonder, however, whether the learning of reading and writing—or even attendance at a Christian primary school—is likely to have imparted the legal knowledge which Islamic jurisprudence is assumed to have borrowed from Christianity, Roman or Roman provincial law.

database is analyzed (even if the *ḥadīth* scholars are included).<sup>81</sup> This has to be checked by further investigations. It is desirable to study the question of the number and impact of *mawālī* scholars in other fields of Islamic scholarship, such as *tafsīr*, *ḥadīth* and grammar.

According to several Islamicists, Islamic law inherited many solutions from Roman, Roman provincial, Christian or Jewish law.<sup>82</sup> Some of these scholars considered the early Muslim jurists of non-Arab origin as responsible for the purported borrowings. The investigation of the ethnic origin of the non-Arab scholars contained in my sample shows, however, that three quarters of them had an eastern background and came from the regions of the former Sassanian empire. They can hardly have been responsible for Islamic borrowings from Roman and Roman provincial law.<sup>83</sup> Scholars with clearly Christian or Jewish roots are very few in number. Additionally, most of these scholars are Muslims of the second and third generation, whereas most first-generation scholars entered Arab-Muslim society as children and thus grew up in an Arab-Muslim environment cut off from their ethnic roots. These findings lend no support to the assumption that scholars of non-Arab origins brought the purported borrowings with them from their native legal systems.

On the basis of the quantitative analysis presented here I cannot claim that there was no case of borrowing by a non-Arab scholar from the law in which he or his ancestors grew up. The results of this study suggest only that we can no longer take for granted the idea that scholars of non-Arab descent were the most natural vehicles of borrowings from pre-Islamic non-Arab legal systems. It is certainly possible that there were scholars who received their education in their culture of origin, then converted and introduced legal solutions of their former law systems into Islamic jurisprudence. Such cases must, however, be demonstrated. I do not know of such a case from the first two centuries AH.

In principle, the results of this study do not affect the theory that Islamic law borrowed resources from other legal systems. The results do suggest that we should give greater attention to the exact manner in which a proposed borrowing took place. If it is claimed, for example,

<sup>81</sup> See note 42.

<sup>82</sup> See note 10.

<sup>83</sup> Schacht's assumption that this sort of borrowing came into Islamic jurisprudence via the Hellenistic rhetorical education can be dismissed since it "never imparted much legal knowledge", cf. Crone, *Roman*, 9.

that the maxim "*al-walad li-l-firāsh*" was borrowed from the Roman legal maxim "*pater est quem iustae nuptiae demonstrant*",<sup>84</sup> it should be shown that the first Muslim jurists who circulated the maxim were non-Arabs who originated from the former Byzantine territory.

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<sup>84</sup> The Roman origin of the Islamic maxim has been proposed by Goldziher (*Studien*, I, 188) and Schacht (*Origins*, 181-82). Crone (*Roman*, 10-11, 105-06) rejected it, but her argument that there is also a Jewish parallel does not necessarily exclude a Roman origin. On this maxim see also Motzki, *Anfänge*, 76, 83, esp. 115-20 and U. Rubin, "*Al-walad li-l-firāsh*". On the Islamic Campaign against 'zinā', in *Studia Islamica* 78 (1993), 5-26.