

THE MUṢANNAF OF ʿABD AL-RAZZĀQ AL-ṢANʿĀNĪ
AS A SOURCE OF AUTHENTIC AḤĀDĪTH OF
THE FIRST CENTURY A.H.*

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I

THE question of when and where *aḥādīth*—especially those of the Prophet—arose is nearly as old as the *ḥadīth* itself. Muslim scholars tried generally, but not exclusively, to check the path of transmission of the traditions (*isnād*) and the transmitters (*rijāl*) mentioned in each *isnād*. Western studies of Islam since the second half of the nineteenth century have pointed out that this method of *ḥadīth* criticism is unreliable and have concentrated on the content of the text when judging the authenticity of a *ḥadīth*. Ignaz Goldziher's thesis that the traditions ascribed to the Prophet and the Companions (*ṣaḥāba*) contained in the classical collections of *aḥādīth* are not authentic reports of these persons but rather reflect the doctrinal and political developments of the first two centuries after Muḥammad's death¹ is based primarily on analysis of the content of the *ḥadīth* (*matn*) and not the transmitters.

Joseph Schacht, too, when trying to date *aḥādīth*, first studied their contents and classified them within the framework of the development of the issue to which they refer.² He considered criteria from the *asānīd* only secondarily and only if they were consistent with the chronology first arrived at after consulting the contents (*mutūn*). Otherwise, he rejected the information of the *asānīd* as false or fabricated. Like Goldziher, Schacht proposed general statements concerning the time when certain groups of traditions and types of transmissions originated. He regarded these general conclusions on the development of the *ḥadīth* not as heuristic assumptions, but as historical facts, and he did not limit his conclusions to the legal *aḥādīth* on which he had based his theories.³

The low esteem in which Goldziher and Schacht held the *isnād* and Muslim *isnād* criticism in tackling the problem of dating *aḥādīth* was challenged by a research approach which may be called "tradition-historical" ("überlieferungsgeschichtlich"). This approach, familiar in Western Islamic studies since the work of Julius Wellhausen, tries to extract earlier sources from the compilations we have at hand, which are not preserved as separate works, and it focuses on the materials of certain transmitters

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¹ See I. Goldziher, *Muhammedanische Studien* (Halle, 1888–90), vol. 2, p. 5 and passim.

² See J. Schacht, "A Revaluation of Islamic Tradition," *Journal of the Royal Asiatic Society* 49 (1949): 143–54, esp. 147; idem, *The Origins of Muhammadan Jurisprudence* (Oxford, 1950), p. 1 and passim.

³ See n. 2 above.

rather than on *ḥadīth* clusters dealing with specific topics. The source-analytical works of Heribert Horst, Georg Stauth, Fuad Sezgin, and others⁴ suggest that Goldziher and especially Schacht, viewed the *isnād* too skeptically and that they generalized too quickly from single observations. The tradition-historical method, however, runs the risk of overestimating the historical value of the *isnād*, as Schacht rightly emphasized in connection with the work of Leone Caetani.⁵

In this article, I will once again address the source-analytical and tradition-historical approaches and try to show how we can ascertain whether, or to what degree, the chains of transmission of *ahādīth* are reliable. A few valuable source-analytical studies exist in the field of *tafsīr*,⁶ but I will show in what follows that the issue can also be examined successfully in the realm of legal traditions, those on which the *ḥadīth* theories of Schacht depend. As did Schacht,⁷ I maintain that the methods used and the results obtained in this special area of traditions apply, in principle, in other areas as well, for example, in the realm of historical traditions.⁸

II

Among the many existing *ḥadīth* compilations, the *Muṣannaf* of the Yemenite ʿAbd al-Razzāq al-Ṣanʿānī (d. 211/826) is, for reasons which will be explained below, especially well suited for a source-analytical approach. This work, the eleven-volume edition of which is based on the rare manuscripts of it which survive,⁹ admittedly raises some questions regarding completeness and original composition because it is compiled from different *riwāyāt* (transmissions). Ninety percent of it, however, goes back to one single transmitter, Ishāq b. Ibrāhīm al-Dabārī (d. 285/898). He probably received it in written form from his father, a pupil of ʿAbd al-Razzāq, but skipped his father in the *riwāya* because he had, or claimed to have had, an *ijāza* (permission to transmit) for the *Muṣannaf* from ʿAbd al-Razzāq himself, having attended his lectures as a child together with his father. Ishāq was six or seven years old when ʿAbd al-Razzāq died.¹⁰ The great age difference between ʿAbd al-Razzāq and Ishāq al-Dabārī does not seem to effect the validity of his transmission, at least for a historian. There is no hint that Ishāq fabricated the texts *in toto* or even partially and ascribed them to ʿAbd al-Razzāq. Other than a few rare notes of transmitters, ʿAbd al-Razzāq must be considered the real author of the *Muṣannaf*.

Even a cursory reading of the work reveals that most of its books (*kutub*) contain materials said to come mainly from three persons: Maʿmar, Ibn Jurayj, and ath-

⁴ H. Horst, "Zur Überlieferung im Korankommentar at-Ṭabarī," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 103 (1953): 290–307; G. Stauth, *Die Überlieferung des Korankommentars Muḡāhid b. Gabr* (Gießen, 1969); F. Sezgin, *Buḥārī'nin kaynakları hakkında araştırmalar* (Istanbul, 1956).

⁵ Schacht, "Revaluation," p. 148.

⁶ See n. 4 above.

⁷ Schacht, "Revaluation," pp. 148, 150 f.

⁸ The arguments covered in this article are more fully developed and documented in my forthcoming book *Die Anfänge der islamischen Jurisprudenz—*

Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts, Abhandlungen für die Kunde des Morgenlandes, vol. 50, 2 (Wiesbaden, 1990).

⁹ ʿAbd al-Razzāq b. Hammām al-Ṣanʿānī, *Al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, 11 vols. (Simlak, 1391/1972).

¹⁰ Adh-Dhahabī, *Mizān al-ʿitidāl fī naqd al-rijāl*, ed. M. B. al-Naʿsānī (Cairo 1325/1907), vol. 1, p. 58; Ibn Hajar al-ʿAsqalānī, *Lisān al-mizān* (Hyderabad, 1329–31), vol. 1, pp. 349 f.; al-Ṣafadī, *Al-Wāfī bi-l-wafayāt: Das biographische Lexikon des Ṣalāḥaddīn b. Aibak* (Wiesbaden, 1972), vol. 6, pp. 394 f.

Thawrī. Exceptions are the books *al-Maghāzī* and *al-Jāmiʿ*, which are overwhelmingly composed of texts from Maʿmar, and the *Kitāb al-Buyūʿ*, where transmissions from Ibn Jurayj occur only rarely. On the basis of a representative sample of 3,810 single traditions—comprising 21 percent of the relevant sections of the entire work¹¹—the supposed origins of the texts transmitted by ʿAbd al-Razzāq can be more exactly defined: 32 percent of the material comes from Maʿmar, 29 percent from Ibn Jurayj, and 22 percent from ath-Thawrī. Transmissions from Ibn ʿUyayna (4 percent) follow. The remaining 13 percent of the texts are said to stem from about 90 different persons (from each only 1 percent or less), among them famous legal scholars of the second century A.H. such as Abū Ḥanīfa (0.7 percent) and Mālik (0.6 percent).

If the particulars ʿAbd al-Razzāq gives about the origin of his material are correct, then the work is compiled from three large sources which are themselves made up of several thousand traditions. The enormous size of the supposed sources suggests that we may be dealing with either originally independent works—or at least parts of them—or with the contents of the teachings of the three named authorities who could, judging from their age, be teachers of ʿAbd al-Razzāq, or both. On the other hand, we cannot rule out a priori the possibility that ʿAbd al-Razzāq generally fabricated the information on the origin of his material and attributed it fictitiously to these people. Which of these two hypotheses is the more probable could perhaps be decided with the help of biographical and bibliographical reports about the persons in question. But since the reliability of such reports is no more certain than that of the statements of our author, we have to find a solution from the work of ʿAbd al-Razzāq itself. The clue to it can be found by analyzing the four largest clusters, or complexes, of transmissions in a bit greater depth.

Let us suppose that ʿAbd al-Razzāq had arbitrarily ascribed his material to the four above-mentioned informants: Maʿmar, Ibn Jurayj, ath-Thawrī, and Ibn ʿUyayna. If this were the case, we would expect that the transmission structure of these four groups of texts would be similar because they were put together at random—a procedure that Schacht proposed for certain links in the *asānīd*.¹² As background, I have summarized below the information on the origins attributed to the traditions contained in the four groups of texts.

1. In the group of texts which allegedly came from Maʿmar [b. Rāshid], 28 percent of the material is said to stem from al-Zuhrī, 25 percent from Qatāda [b. Diʿāma], 11 percent from Ayyūb [b. Abī Tamīma], a little more than 6 percent from anonymous persons, and 5 percent from Ibn Ṭāwūs. Maʿmar's own statements amount to only 1 percent. The rest (24 percent) is distributed among 77 names.¹³
2. In the group of transmissions ascribed to Ibn Jurayj, 39 percent is supposed to go back to ʿAṭā [b. Abī Rabāḥ], 8 percent to unnamed persons, 7 percent to ʿAmr b. Dīnār, 6 percent to Ibn Shihāb [al-Zuhrī], and 5 percent to Ibn Ṭāwūs. Assertions by Ibn Jurayj himself amount to only 1 percent, and the remaining 37 percent is spread among 103 persons.

¹¹ The three "atypical" books had been left out.

¹² See Schacht, *Origins*, pp. 163 ff.

¹³ The calculations are based on the sample mentioned on p. 2 of this article.

3. In the material said to have been received from ath-Thawrī, his own legal opinions dominate, representing 19 percent of the total, followed by texts from Maṣṣūr [b. al-Muṭamir] (7 percent) and Jābir [b. Yazīd] (6 percent), and from anonymous persons (3 percent). The remaining 65 percent is said to come from 161 different authorities or informants.

4. The texts put under the name of Ibn ʿUyayna consist of up to 23 percent of transmissions from ʿAmr b. Dīnār; 9 percent are said to come from Ibn Abī Najīh, 8 percent from Yaḥyā b. Saʿīd [al-Anṣārī], 6 percent from Ismāʿīl b. Abī Khālid; 3 to 4 percent of the texts are anonymous, and the remainder (50 percent) is said to come from 37 persons. There is no *raʾy* (opinion) of Ibn ʿUyayna himself.

These profiles indicate that each of these four collections of texts has quite an individual character. It seems very improbable that a forger arranging material in a specific order and labeling them falsely would have produced such highly divergent collections. Besides, we have to bear in mind that these profiles are no more than coarse grids and that differences emerge the more we go into details and ask, for instance, about the geographic origins of the authorities or informants, formal peculiarities of the texts, etc. The investigation of the transmission structures of ʿAbd al-Razzāq's *Muṣannaf* leads, therefore, to the conclusion that the materials he places under the name of his four main authorities are genuine sources, not the result of fictitious attributions which he has invented himself.

There are several other formal features of ʿAbd al-Razzāq's presentation of transmissions that indicate that they are authentic. One of these is the fact that he is sometimes uncertain about the precise origin of a tradition and that he admits this openly. In one case, for instance, a tradition is introduced by: "ʿAbd al-Razzāq from ath-Thawrī from Mughīra or someone else—Abū Bakr [i.e., ʿAbd al-Razzāq] was uncertain about it—from Ibrāhīm, who said: . . ."¹⁴ An actual forger would surely not express such doubts, since it would undermine his main purpose, that of forging a definite and uninterrupted transmission from an acknowledged authority. Furthermore, ʿAbd al-Razzāq gives the impression that he received thousands of texts directly from Ibn Jurayj, ath-Thawrī, and Maṣṣar. This could be untrue, but if so, we may ask why we also find *asānīd* such as "ʿAbd al-Razzāq from ath-Thawrī from Ibn Jurayj . . ."¹⁵ or—more rarely—"ʿAbd al-Razzāq from Ibn Jurayj from ath-Thawrī . . .,"¹⁶ or "ʿAbd al-Razzāq from ath-Thawrī from Maṣṣar . . ."¹⁷ The fact that there are also *indirect* transmissions from his main authorities supports my argument still further. The origin of his material is not arbitrary; but he specifically labels the source the tradition comes from.

Forgery seems still more unlikely because there are also anonymous transmissions by ʿAbd al-Razzāq from authorities for whom he cites, in most cases, one of his main informants as a source. Two examples state "ʿAbd al-Razzāq from a Medinese *shaykh* who said: I heard Ibn Shihāb report from . . ." or "ʿAbd al-Razzāq from a man (*rajul*)

¹⁴ ʿAbd al-Razzāq, *Muṣannaf*, vol. 6, no. 11825.

¹⁶ Ibid., vol. 6, no. 10984.

¹⁵ Ibid., no. 11682; vol. 7, nos. 12631, 13020, and 13607.

¹⁷ Ibid., no. 10798.

from Ḥammād from”¹⁸ Such *asānīd* are strange because, in general, ʿAbd al-Razzāq receives Ibn Shihāb’s traditions from Ibn Jurayj or Maʿmar and Ḥammād’s material from ath-Thawrī or Maʿmar.

Let us turn to the biographical literature; as noted above, this material requires a separate treatment for methodological reasons, since the authenticity of the biographical traditions is as controversial as that of the *aḥādīth* and early legal texts. According to the biographical literature, at the age of eighteen, ʿAbd al-Razzāq attended the lectures of the Meccan scholar Ibn Jurayj (d. 150/767) when the latter visited the Yemen, probably in 144/761–62.¹⁹ Maʿmar b. Rāshid (d. 153/770) is said to have been ʿAbd al-Razzāq’s most important teacher. Baṣran by origin, he later lived at Ṣanʿāʾ, the birthplace of ʿAbd al-Razzāq. He studied seven to eight years with Maʿmar, probably from 145/762–63 until his death in 153/770.²⁰ The Kufan Sufyān ath-Thawrī (d. 161/778) was in Yemen in the year 149/766,²¹ and the Meccan scholar Sufyān b. ʿUyayna (d. 198/814) was there in 150/767 and 152/769.²² It is quite likely that on these occasions ʿAbd al-Razzāq received the bulk of the material transmitted from these authorities. The statements in the biographical literature about ʿAbd al-Razzāq’s teachers thus coincides broadly with our findings from the *Muṣannaḥ* itself, the main sources of his work.

In addition, it is important to keep in mind that these four, ʿAbd al-Razzāq’s most important teachers, are numbered among the first authors of works of a similar type. They are regarded as the pioneers of *muṣannaḥ* literature. Ibn Jurayj, probably one of the first *muṣannaḥ* authors, is said to have compiled a book called *Kitāb al-Sunan*; ath-Thawrī, the *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr*; and Ibn ʿUyayna, the *Kitāb al-Jawāmiʿ fī l-sunan wa-l-abwāb*.²³ There are no titles of Maʿmar’s books preserved in biographical or bibliographical literature, as far as I know. All these works seem to be lost, but it is obvious that they must have been the sources from which ʿAbd al-Razzāq compiled his *Muṣannaḥ*. The fact that the author of the *Kitāb al-Jāmiʿ*, which is attached to the *Muṣannaḥ*, is not ʿAbd al-Razzāq himself but without doubt his teacher Maʿmar further supports my argument.

This evidence leads to the conclusion that the the bulk of the *Muṣannaḥ* of ʿAbd al-Razzāq is a compilation of texts from older works of varying size, which can be

¹⁸ Ibid., vol. 7, nos. 12795 and 13622.

¹⁹ Ibn Abī Ḥatīm, *Taqdimat al-maʿrifā li-kitāb al-jarḥ wa-t-taʿdīl* (Hyderabad, 1371/1952), pp. 52 f.; Ibn Ḥajar al-ʿAsqalānī, *Tahdhīb al-tahdhīb* (Hyderabad, 1325–27), vol. 6, pp. 311–12. Adh-Dhahabī, *Mizān*, vol. 2, p. 127.

²⁰ See Ibn Abī Ḥatīm, *Kitāb al-Jarḥ wa-t-taʿdīl* (Hyderabad, 1371–73/1952–53), vol. 3, p. 38; Adh-Dhahabī, *Tadhkirat al-ḥuffāz* (Hyderabad, 1375), vol. 1, p. 364; idem, *Mizān*, vol. 2, p. 126 (instead of ʿUmar it has to be read Maʿmar).

²¹ See Ibn Saʿd, *Kitāb al-Ṭabaqāt al-kabīr*, ed. E. Sachau et al. (Leiden, 1905–17), vol. 5, p. 365 (biography of Ibn ʿUyayna; source of information is Ibn ʿUyayna); Adh-Dhahabī, *Tadhkira*, vol. 1, p. 346 (biography of Hishām b. Yūsuf; source: Ibrāhīm b. Mūsā); Ibn Ḥajar, *Tahdhīb*, vol. 6, pp. 311 and 313.

²² Ibn Saʿd, *Ṭabaqāt*, vol. 5, p. 365.

²³ See Ibn al-Nadīm, *Fihrist* (Cairo, 1348), pp. 315–16. According to him, Ibn ʿUyayna did not have a book but, rather, that people could only hear him speak. This does not necessarily mean that he did not write his transmissions down, but only that he did not use a book in his lectures and/or did not place a book at his pupil’s disposal for copying. There are works ascribed to him which, therefore, must be records of his lectures made by his pupils: a *Tafsīr* (see Ibn al-Nadīm, *Fihrist*, p. 316) and a *Kitāb al-Jawāmiʿ fī l-sunan wa-l-abwāb* (see Abū Ṭālib al-Makkī, *Qūt al-qulūb* [Cairo, 1961], vol. 1, p. 324 and Sezgin, *Buḥārī’nın kaynakları*, p. 42). For Maʿmar’s *Jāmiʿ*, see Sezgin, “*Hadis musannefatının mebdai ve Maʿmer b. Rāşid’in ‘Cami’i*,” *Türkiyat* 12 (1955): 115–34.

reconstructed, at least partly, from the *asānīd* of the texts. ʿAbd al-Razzāq acquired his four main sources between the years 144/671 and 153/770. They were composed in the course of the first half of the second century A.H. and are among the oldest known compilations of *aḥādīth* and legal texts of relatively large size.

III

The question now is whether we can prove the authenticity of the materials contained in ʿAbd al-Razzāq's principal sources. This has to be decided for each source separately. For a trial solution, however, I have chosen the transmission of the Meccan scholar Ibn Jurayj which covers about one third of the entire *Muṣannaf*.²⁴ From these more than 5,000 traditions, a representative selection of about 20 percent was examined.²⁵ The following conclusions are based on this sample.

According to the information Ibn Jurayj gives about the origin of his material, it is distributed among different authorities in a rather striking way. The largest part, about 39 percent, is said to come from ʿAṭāʾ b. Abī Rabāḥ. The following five scholars taken together compose 25 percent: ʿAmr b. Dīnār (7 percent), Ibn Shihāb (6 percent), Ibn Ṭāwus (5 percent), Abū l-Zubayr (4 percent), and ʿAbd al-Karīm (3 percent). The next five together constitute only 8 percent: Hishām b. ʿUrwa and Yaḥyā b. Saʿīd (2 percent each), Ibn Abī Mulayka, Mūsā b. ʿUqba, and ʿAmr b. Shuʿayb (between 1.5 and 1 percent each). Another group of ten names compose 7 percent, each only between 1 and 0.5 percent. The remaining 20 percent come from 86 persons, each with very few texts. Ibn Jurayj's own legal opinions are rare (1 percent).

This strange distribution of authorities in the work of Ibn Jurayj argues—in my view—against the suggestion, which cannot be ruled out a priori, that he is a forger who projects his own *raʾy* and the accepted legal opinions and practices in Mecca during his lifetime backwards onto the preceding generation of scholars. Why would he have made the work of forgery so difficult for himself? Is it not more plausible to expect that a forger would mention only one, or at most a few, of the most famous older *fuqahāʾ*, and these more or less with the same frequency? Why would he have run the risk of having the entire forgery detected by introducing a host of additional minor informants?

There may be still another reasonable interpretation for the varied distribution of Ibn Jurayj's authorities: the Meccan *faqīh* ʿAṭāʾ b. Abī Rabāḥ (d. 115/733) could have been the teacher of Ibn Jurayj over a longer period of time. Since he was the oldest of his more important authorities—this conclusion arrived at by their dates of death—I believe that he probably was his first teacher. After ʿAṭāʾ's death, or even during his lifetime, Ibn Jurayj may have heard the lectures of other—somewhat younger—scholars of Mecca, such as ʿAmr b. Dīnār and Abū l-Zubayr. He may also have sought *ʿilm* from scholars who lived not permanently in his city, such as the Medinese Ibn Shihāb and others, or with whom he may have come in contact while they were in Mecca for the *ḥajj*. He may have traveled to them or have acquired copies of their lectures from their pupils. In my opinion, the high number of sporadic authorities and informants

²⁴ See p. 2 above.

10243–14053 (*kitāb al-nikāḥ*, *kitāb al-ṭalāq*).

²⁵ ʿAbd al-Razzāq, *Muṣannaf*, vols. 6–7, nos.

can be explained by his living in Mecca, which as the place of the pilgrimage gave him many opportunities to meet scholars from all over the Islamic world, and this picture coincides with what we read in the biographical literature.

If Ibn Jurayj had been a forger who ascribed his texts more or less arbitrarily to certain older authorities, we would expect that the materials summarized under the different names would not be essentially different from each other, at least formally. But if one studies the transmissions from his 21 most frequently cited authorities and informants—these amount to 79 percent of the entire source—it becomes clear that the differences are so significant that we have to regard them as coming from distinct and different sources. The divergences in these groups of transmission ascribed by Ibn Jurayj to different individuals can be observed on several levels.

1. The proportion of *raʿy* to traditions in the said sources or in the texts of their principal authority varies substantially. The ratio of *raʿy* is, for example, 80 percent in the material of ʿAṭāʾ b. Abī Rabāḥ, 85 percent in Ibn Ṭāwūs from Ṭāwūs, 42 percent in Ibn Shihāb, 42 percent in ʿAmr b. Dīnār, 40 percent in Ibn ʿUrwa from ʿUrwa b. al-Zubayr, 30 percent in Yaḥyā b. Saʿīd from Ibn al-Musayyab, and 31 percent in ʿAbd al-Karīm. Others such as ʿAmr b. Shuʿayb, Sulayman b. Mūsā, Ibn Abī Mulayka, and Mūsā b. ʿUqba, rarely or never cite their own legal opinions.

2. There are remarkable variations, too, if we look at the relationship between Ibn Jurayj's informant and the main authority of that informant and the number of accounts transmitted from him. In some cases, the relationship was that of a pupil to his teacher, as in the cases of ʿAṭāʾ b. Abī Rabāḥ and Ibn ʿAbbās, ʿAmr b. Dīnār and Abū l-Shaʿthāʾ, Abū l-Zubayr and Jābir b. ʿAbd Allāh, Yaḥyā b. Saʿīd and Ibn al-Musayyab, and Mūsā b. ʿUqba and Nāfiʿ. But there are also other relationships, such as the transmission by a son from his father, as in the cases of Ibn Ṭāwūs and Ṭāwūs, Hishām b. ʿUrwa and ʿUrwa b. al-Zubayr, and Jaʿfar b. Muḥammad and Muḥammad b. ʿAlī. There are traditions of a *mawlā* which come from his patron, as in the case of Nāfiʿ and Ibn ʿUmar. Some of these pairs are almost exclusive, that is, the younger informant transmits only material from the respective master or father and from nobody else; this is the case with Ibn Ṭāwūs and Ṭāwūs, Ibn ʿUrwa and ʿUrwa, Mūsā b. ʿUqba and Nāfiʿ, and Jaʿfar b. Muḥammad and Muḥammad b. ʿAlī. Others rely more or less heavily, but not exclusively, on their most important teacher, for example, ʿAṭāʾ b. Abī Rabāḥ, ʿAmr b. Dīnār, Abū l-Zubayr, Yaḥyā b. Saʿīd, and Ayyūb b. Abī Tamīma. In addition, there are sources where such relationships of pupil/teacher or son/father do not dominate the transmission but in which we find either many different authorities—as in the case of Ibn Shihāb, Sulaymān b. Mūsā, and others—or a choice which focuses on a certain region or on a certain group of authorities, a phenomenon that can be observed, for instance, in the cases of ʿAbd al-Karīm, ʿAṭāʾ al-Khurāsānī, ʿAmr b. Shuʿayb, and Ibn Abī Mulayka.

3. Ibn Jurayj's sources vary considerably in their proportions of traditions from the Prophet, the *ṣaḥāba*, and the *tābiʿūn*. Only one transmission, that of ʿAmr b. Shuʿayb, contains mainly prophetic *aḥādīth*. In other collections, the proportion of this type of transmission oscillates between 20 and 30 percent, as, for example, in that of ʿAṭāʾ b.

Abī Rabāḥ, Abū l-Zubayr, Ibn Abī Mulayka, Ibn Shihāb, Hishām b. ʿUrwa, and ʿAṭāʾ al-Khurāsānī. Some have only a few or no prophetic traditions at all, such as ʿAmr b. Dīnār, Ibn Ṭāwūs, Yaḥyā b. Saʿīd, Mūsā b. ʿUqba, ʿAbd al-Karīm, and Nāfiʿ. High proportions of *ṣaḥāba* traditions can be found in the works of ʿAṭāʾ b. Abī Rabāḥ, Abū l-Zubayr, Ibn Abī Mulayka, Mūsā b. ʿUqba, Nāfiʿ, Yaḥyā b. Saʿīd, ʿAbd al-Karīm, and ʿAṭāʾ al-Khurāsānī; the proportions are only between 35 and 45 percent with ʿAmr b. Dīnār, Ibn Shihāb, and Hishām b. ʿUrwa, and there is a remarkably low percentage in ʿAmr b. Shuʿayb's and Ibn Ṭāwūs's work, the transmission of the latter containing mainly *tābiʿūn* material. Regarding Ibn Jurayj's other authorities, the texts from *tābiʿūn* reach only a ratio of 30 to 40 percent, as in the case of ʿAmr b. Dīnār, Hishām b. ʿUrwa, Yaḥyā b. Saʿīd, and ʿAbd al-Karīm. Many fewer *tābiʿūn* texts are found in the collections of Ibn Shihāb, Abū l-Zubayr, ʿAṭāʾ b. Abī Rabāḥ, Ibn Abī Mulayka, and ʿAmr b. Shuʿayb, and none are found in the Mūsā b. ʿUqba, Nāfiʿ, and ʿAṭāʾ al-Khurāsānī collections.

4. The use of the *isnād*, or the mentioning of informants for traditions, varies in the several sources of Ibn Jurayj. *Asānīd* from ʿAṭāʾ b. Abī Rabāḥ and Ibn Ṭāwūs occur very rarely, the occurrence of *asānīd* in the transmissions from Ibn Abī Mulayka, ʿAmr b. Shuʿayb, ʿAbd al-Karīm, and ʿAṭāʾ al-Khurāsānī is under 50 percent. They are frequent, however, in the materials of the Medinese, such as Ibn Shihāb, Hishām b. ʿUrwa, Yaḥyā b. Saʿīd, and Mūsā b. ʿUqba, but also in that of the Meccans ʿAmr b. Dīnār and Abū l-Zubayr; one of these generally exhibits some Medinan influences, and the other is known to have Medinan origin.

5. Considerable differences are to be observed when checking the terminology of transmission, that is, how Ibn Jurayj quotes his sources. The use of the word "*an*," for instance, varies between never in the case of Ibn Abī Mulayka and 60 to 80 percent in the transmissions of Yaḥyā b. Saʿīd, Mūsā b. ʿUqba, and ʿAmr b. Shuʿayb. Between these extremes lie transmissions with relatively few *an* traditions, such as those of Abū l-Zubayr and ʿAmr b. Dīnār, and others that show a frequency between 30 and 45 percent, such as those of Hishām b. ʿUrwa, Ibn Shihāb, Ibn Ṭāwūs, ʿAṭāʾ b. Abī Rabāḥ, and ʿAbd al-Karīm. There are similar fluctuations in the use of the formula "*samiʿtu*." With some of his authorities, Ibn Jurayj does not use it at all; with others, he uses it sporadically. Sometimes, however, it appears frequently, as in the traditions of Ibn Abī Mulayka. Similar preferences for certain terms of transmission are to be found in the work of some of Ibn Jurayj's authorities too, for example, the nearly exclusive use of *samiʿtu* by Abū l-Zubayr. The heterogenous structure of transmission speaks, in the final analysis, against the suggestion that it might be possible to decide, on the basis of the transmission terminology, the question of whether the material was received in oral or written form. In the case of Ibn Jurayj's transmission, such conclusions are generally not safe, except in the odd case, such as that of Mujāhid.

The above are the five most important levels by which the differences among the several chains of transmissions can be formally described. They indicate that each source has an individual character. This clearly contradicts the assumption that Ibn Jurayj produced all the characteristic variations, fabricated the texts himself, projected them back on older authorities, or forged the transmission chains or parts of them. Such a diversity can hardly be the result of systematic forgery, but, rather, must have

developed over the course of time. We must, therefore—until the contrary is proven—start from the assumption that the traditions for which Ibn Jurayj expressly states a person as his source really came from that informant, and thus Ibn Jurayj's transmission, in my opinion, should be regarded as authentic.

There are common explanations adopted by critics to reject the authenticity of a transmission in such a case. For example, it could be maintained that the respective transmitter—in our case Ibn Jurayj—was not the actual forger, or only the partial forger, but that the forgery was the work of others, his contemporaries perhaps, those from whom he actually took the material and then called it his own. Another explanation might be that a later author arbitrarily used his name. These are the sort of arguments Schacht proposed: "The bulk of the traditions which go under his [Nāfiʿ's] name must be credited to anonymous traditionists in the first half of the second century A.H."²⁶ But suggesting as an explanation for the contradictions in a transmission that instead of a single transmitter named in the text that many anonymous forgers must have been at work cannot be accepted as a scholarly sound argument because it shifts the problem from the level of facts, which can be checked, to the sphere of speculation. I do not argue against the possibility that there were forgers of *aḥādīth* and *asānīd* in the first and second centuries of Islam. It is indeed one of the most important tasks of the historian to detect if in fact texts and transmission chains were fabricated, and if so, where, how, and why it was done. Schacht himself pointed to the fact, already well known to Muslim *ḥadīth* critics, that the *asānīd* of later collections are much better and more complete than those of the older ones. This is one possible point of departure in the attempt to unmask forgeries of and improvements on *asānīd* and their authors. But the mere fact that *aḥādīth* and *asānīd* were forged must not lead us to conclude that all of them are fictitious or that the genuine and the spurious cannot be distinguished with some degree of certainty.

The study of one chain of transmission in an early collection of traditions, i.e., the material of Ibn Jurayj in the *Muṣannaḥ* of ʿAbd al-Razzāq, shows that it is indeed possible to separate trustworthy from suspicious traditions or texts of uncertain reliability. A comparison of this early state of transmission (first half of the second century A.H.) with that of the more recent collections of the second half of the third century and later could certainly give insights into the extent of fabrication, the forgers, and their motives. This is certainly a topic for future research.²⁷

IV

The reliability of Ibn Jurayj and the authenticity of his sources can be further examined. To demonstrate, I have chosen the largest of his sources, i.e., his transmission from ʿAṭāʾ b. Abī Rabāḥ. At first, it is striking that this material consists of

²⁶ Schacht, *Origins*, p. 179 and passim.

²⁷ G. H. A. Juynboll has recently tackled the question of the authenticity of the *ḥadīth* anew. He has concentrated on the biographical material, especially that of Ibn Ḥajar, and the *aḥādīth* of the Prophet as preserved in the classical and other collections of the third century A.H. and later. See his *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early Ḥadīth* (Cam-

bridge, 1983). His research has produced many valuable results, especially concerning the extension and the techniques of *isnād* falsification, partly known even to the Muslim scholars themselves. But he has treated the early *muṣannaḥ* works such as that of ʿAbd al-Razzāq and Ibn Abī Shayba quite harshly. In my opinion, they offer us many interesting new ideas, as will be argued in this article.

texts of two different genres which appear with nearly the same frequency. One half of the texts may be classified as *responsa*, the other half as *dicta*. By *responsa*, I mean answers of ʿAṭāʾ on questions of Ibn Jurayj himself or anyone else, named or unnamed. *Dicta* are defined as statements of ʿAṭāʾ which are not preceded by a question. Both genres contain opinions (*raʾy*) of ʿAṭāʾ himself or traditions from others (*aḥādīth*, *āthār*).

By far the largest number of the *responsa* consist of the answers of ʿAṭāʾ to Ibn Jurayj's own questions. Anonymous questions do not amount to 10 percent, and those from other named persons are very rare. The *responsa* are dominated by ʿAṭāʾ's own *raʾy*, whereas the traditions have a frequency in this genre of only 10 percent. Among the *dicta*, the difference is not so marked; here the proportion of *raʾy* to traditions is 70 to 30 percent. Comparing the ratio of these two principal genres in ʿAṭāʾ, 50:50, to the material of other important authorities of Ibn Jurayj, a remarkable result emerges: among the texts of ʿAmr b. Dīnār, the proportion of *responsa* is only 9 percent (exclusively on questions of Ibn Jurayj); among that of Ibn Shihāb about 14 percent (here only 1.5 percent on questions of Ibn Jurayj!); from Ibn Ṭāwūs, 5.5 percent are reported; from ʿAbd al-Karīm, 8 percent *responsa* (all on questions of Ibn Jurayj); and from Abū l-Zubayr, there is not even one *responsum*.

How does the study of genres contribute to the question of text authenticity? The mere fact that the two main genres are distributed in the sources of Ibn Jurayj in such a different way seems to contradict the possibility of a systematic projection backwards upon the preceding generation of scholars. If this were so, we would expect more uniformity in the way they were forged. The same is true for the varied frequency of types of questions among the *responsa* which Ibn Jurayj transmits from ʿAṭāʾ. Can we explain the different kinds of questions—the direct, the indirect, the anonymous, and those from named authorities other than ʿAṭāʾ as mere stylistic devices which Ibn Jurayj had used according to the principle of *variatio delectat*?

The pattern of question and answer implies a strong claim of authenticity, inasmuch as the question is asked by the transmitter, or pupil himself, and is immediately answered by the respective authority, or teacher. With his question, the questioner has a share, in some way, in the answer (as the actual instigator of it). The directness of transmission can hardly be expressed more strongly. Formulas such as "*samiʿtuhū yaqūl*," "*akhbaranī*," or "*qāla lī*," which indicate direct oral transmission as well (which does not exclude their being written down), clearly suggest less reliability, not to mention the totally uninvolved "*an x qāla*."²⁸ If one supposes, on the strength of the many direct questions of Ibn Jurayj to ʿAṭāʾ, that he intended to simulate the highest degree of authenticity, how can the following two introductions be explained? Ibn Jurayj said: "I charged someone to ask ʿAṭāʾ about . . . , because I could not hear him," or: "I sent someone to ʿAṭāʾ with the question about . . . ?"²⁹ Why would he have invented, in addition to the many direct questions, several anonymous ones, questions which are generally taken to be less authentic because they identify the transmitter only in a passive and not active role? Why, then, does Ibn Jurayj transmit

²⁸ In this context, I interpret these words with their normal meaning, and I do not rely on the rules connected with these terms by the later "science of *ḥadīth*," since it cannot be assumed that these rules

were systematically followed in earlier times.

²⁹ ʿAbd al-Razzāq, *Muṣannaf*, vol. 6, no. 10825; vol. 7, no. 13893.

in addition to the *responsa* so many *dicta* from ʿAṭāʾ, two-thirds of them with the simple formula *ʿan ʿAṭāʾ qāla*”? Those who propose this theory of projection or forgery based on this type of transmission must examine the question further. I propose that the study of the genres argues against the hypothesis of outright forgery.

In addition to the two extrinsic formal criteria of authenticity, those of extension and of genres, there are further indicators which suggest that Ibn Jurayj's transmission from ʿAṭāʾ was authentic. I call them intrinsic formal criteria of authenticity because they are based on an investigation of how Ibn Jurayj presents ʿAṭāʾ's material. The leading questions thereby were whether we can recognize a distinctive profile of Ibn Jurayj differing from that of ʿAṭāʾ and whether there are critical remarks of his about the opinions of his teacher, or other formal hints which are not in agreement with the supposition of back-projection and fabrication.

As intrinsic formal criteria of authenticity, I propose six types of material: Ibn Jurayj's own legal opinions, his commentaries on texts of ʿAṭāʾ, indirect transmissions from ʿAṭāʾ, expressions of uncertainty by Ibn Jurayj, the existence of variants, and the reporting of ʿAṭāʾ's deficiencies.

1. ʿAbd al-Razzāq transmits from Ibn Jurayj not only legal opinions which the latter ascribes to earlier authorities, but also his own *raʾy*. If one suggests that Ibn Jurayj was a forger who projected his own legal opinions back upon older authorities with the intention of giving them more weight, one has to find a convincing explanation for the fact that there are legal statements of Ibn Jurayj himself which are not attributed to earlier scholars.
2. That the hypothesis of back-projection is untenable is further evident if we turn to the commentaries which Ibn Jurayj provides for some of ʿAṭāʾ's transmissions. They can be classified as additions, which explain or elaborate, or oppositions. Ibn Jurayj obviously added both types of remarks to the texts later. It is not plausible to suggest that Ibn Jurayj first invented the texts, then falsely attributed them to ʿAṭāʾ, and at the same time, or a later time, embellished them with commentaries and criticisms. But it seems not too far-fetched to suppose that Ibn Jurayj, when he heard the teachings of his master as a young pupil, did not have the competence and self-confidence to complete or criticize them, a competence he surely acquired later.
3. Judging from the amount of transmitted material, ʿAṭāʾ is clearly Ibn Jurayj's principal authority. If the authorship of ʿAṭāʾ were completely or partly fictitious, we would not expect that Ibn Jurayj would also report opinions as having been received indirectly, i.e., through a third person. Such traditions do exist nevertheless.³⁰
4. Sometimes Ibn Jurayj points out that he is uncertain about the very wording or meaning of ʿAṭāʾ's sayings.³¹ This confession of doubt must be seen as proof of his truthfulness and as his intention to reproduce the teachings of his master as exactly as possible.

³⁰ Ibid., vol. 6, nos. 11080, 11348, and 11460; vol. 7, nos. 12553, 12571, 13121, and 14001.

³¹ Ibid., vol. 7, nos. 13138 and 12835.

5. The attempt to relate precisely and word-for-word can also be observed in the cases where Ibn Jurayj records variants of 'Aṭā' in a tradition he heard from him at a different time or which he heard both from him and another informant. The discrepancy may be only slight but can also be accompanied by a real change of meaning.³² Those cases where Ibn Jurayj preserves different versions of the same subject from 'Aṭā' himself are especially difficult to harmonize with the supposition that he also attributed texts falsely to 'Aṭā'. If this were so, the contradictions in his own fabrications would have been realized by Ibn Jurayj. Besides, he adds notes to several of 'Aṭā's legal opinions that this was also a view held by a certain "Companion of the Prophet" or by a caliph. Normally, he states this clearly as his own note, without quoting any informant for it. A forger would hardly have resisted the temptation to claim 'Aṭā's authority for it.

6. The importance of 'Aṭā's teachings for him notwithstanding, Ibn Jurayj does not always let him appear as a legal scholar without fault as one might expect from a forger who falsely attributes his own ideas or commonly heard traditions to a great master of the past. Lacking a better term, I call this "hints at deficiencies of 'Aṭā'." Among them are ignorance, uncertainty, change of opinion, and contradictions.³³

All the extrinsic and intrinsic formal criteria mentioned argue in favor of the authenticity of the 'Aṭā's transmission as preserved by his pupil Ibn Jurayj and contained in the *Muṣannaḥ* of 'Abd al-Razzāq. This material genuinely appears to belong to 'Aṭā, who must have been one of Ibn Jurayj's most important teachers, a conclusion which is also substantiated in the biographical literature. Ibn Jurayj usually differentiates precisely between 'Aṭā's statements, those of other authorities, and his own opinion, and he does not hesitate to deviate from the teachings of his master. In this transmission, we are surely not dealing with conscious back-projections or spurious attributions. In my opinion, his work can be considered a historically reliable source for the state of legal development at Mecca in the first decade of the second century A.H.

V

'Aṭā, who died 115/733, belongs mainly to the generation of the last quarter of the first Islamic century called *al-tābi'ūn*. He is therefore a connecting link between Ibn Jurayj and the generation of the *ṣaḥāba*, i.e., the Companions of the Prophet. The question is now whether in 'Aṭā's materials genuine traditions of the first century A.H. are found and how we can ascertain that fact.

First we must note that the proportion of traditions (*aḥādīth*, *āthār*) in the body of texts from 'Aṭā is not very high. Only 20 percent of it contain traditions, as against 80 percent of his pure *ra'y*. In the genre of the *responsa*, this imbalance is even greater: 8 to 92 percent. This can be taken as an indicator of the fact that traditions conveying

³² Ibid., vol. 6, no. 10532; vol. 7, nos. 13650–51, 13107, 13108, 13110, 13217, and 13220; vol. 6, nos. 10962 (10919, 10951), 10969.

³³ Ibid., vol. 6, no. 11522; vol. 7, nos. 12658,

13655, 14001, and 14030; vol. 6, no. 10780; vol. 7, nos. 11954, 11966, 11680, 12974, and 13391; vol. 6, nos. 11620 (11603, 11618), 11627 (11610), and 11648.

opinions and practices of others played only a minor role in his legal teaching. The conclusion that there were in his time only a small number of traditions or that he did not know more than that, would, however be incorrect and can be easily disproven by the texts. Even if *raʿy* dominates in his teaching (indeed, precisely because of it), the fact that he sometimes relies explicitly upon earlier authorities must not be overlooked. The hierarchy of his authorities according to the frequency of their mention is: (1) Companions of the Prophet (15 percent), (2) the Qurʾān (10 percent), (3) the Prophet (5 percent), (4) anonymous traditions (3 percent), and (5) contemporaries of ʿAṭāʾ (1.5 percent).³⁴ In the following, I confine myself to examining in somewhat more detail two of these “legal sources” which ʿAṭāʾ sometimes quotes: the Companions and the Prophet.

THE COMPANIONS OF THE PROPHET

First of all, a formal matter springs to mind: ʿAṭāʾ’s citing of the Companions in his *responsa* have, as a rule, no *isnād* and are extremely short. Partly, they are mere references which assume either personal contact with the person mentioned or the knowledge of a more detailed tradition about him. In the genre of the *dicta*, on the other hand, longer traditions and sometimes even *asānīd* also appear.

Among the *ṣaḥāba*, ʿAṭāʾ most frequently quotes Ibn ʿAbbās. Sometimes he says expressly that he had heard a statement from him, sometimes not. Regarding the authenticity of ʿAṭāʾ’s transmissions from Ibn ʿAbbās, note the following points:

1. In ʿAṭāʾ’s *responsa*, references to Ibn ʿAbbās are very rare (a little more than 2 percent), and they are, in this genre, mainly of supplementary value, serving merely as confirmation of ʿAṭāʾ’s opinion but without value of their own. Obviously ʿAṭāʾ did not, as a rule, attempt to give his own legal opinions more weight by referring to the authority of an Ibn ʿAbbās or any other Companion.
2. Although, in most cases, ʿAṭāʾ quotes Ibn ʿAbbās directly, sometimes even with *samiʿtu*, there are also indirect references.³⁵
3. In some texts, he refers to him not to confirm something, but rather to contradict him.³⁶

None of these are the usual methods that would be chosen by a forger who claims to have heard a great master and who ascribes his own opinions to him.

4. Whereas most of ʿAṭāʾ’s transmissions from Ibn ʿAbbās contain simple legal *dicta*, there are a few texts of quite another style and content. I would call them stories (*qiṣaṣ*). In them, ʿAṭāʾ presents himself as a pupil of Ibn ʿAbbās.³⁷ Criteria of content point to the authenticity of these reports.

³⁴ The basis of calculation is the quantity of the texts studied.

³⁵ See ʿAbd al-Razzāq, *Muṣannaf*, vol. 6, no. 11076.

³⁶ Ibid., no. 11747. For the opinion of Ibn ʿAbbās, see nos. 11767–69.

³⁷ Ibid., vol. 7, nos. 14021–22.

5. In view of the great many *aḥādīth* of the Prophet that Ibn ʿAbbās is alleged to have transmitted in the biographical literature (the usual number is 1,660),³⁸ it is striking that ʿAṭāʾ, as a rule, does not quote such *aḥādīth*. In the sample of texts I studied, not a single one was to be found.

All these and a few additional observations indicate that the transmission of ʿAṭāʾ from Ibn ʿAbbās, preserved by Ibn Jurayj and passed on to ʿAbd al-Razzāq, is a generally trustworthy one.

In addition to Ibn ʿAbbās, ʿAṭāʾ emphasizes only from a very few of his other *ṣaḥāba* a *samāʿ*, from Abū Hurayra and Jābir b. ʿAbd Allāh for instance³⁹ (cases which are very rare and archaic in content). Others, on the other hand, he quotes without *samāʿ* or indirectly, i.e., through an informant, although direct contact with them was possible or even probable. From these examples, we can conclude that those traditions of ʿAṭāʾ from *ṣaḥāba* which he explicitly claims to have heard must—until the contrary is proven—be taken as genuine.

References to ʿUmar b. al-Khaṭṭāb are the second largest group of ʿAṭāʾ's transmissions from *ṣaḥāba*. But as a group, they do not amount to even 3 percent of Ibn Jurayj's materials from ʿAṭāʾ. If one classifies ʿUmar's traditions, for example, it appears that they belong mostly to genres which are connected with his role as caliph: legal judgments (*aqḍiya*),⁴⁰ ordinances (interdictions, positive orders),⁴¹ legal answers (*fatāwā*) in which the authority of the caliph may have been sought,⁴² *dicta* which may partly be the results of legal sentences or *fatāwā*⁴³ and, rarely, *acta*, i.e., practices of a more private character.⁴⁴ In this regard, ʿUmar's traditions differ greatly from those of Ibn ʿAbbās, and this gives them an appearance of historical value. That ʿAṭāʾ invented them can surely be ruled out because they are so marginal in his legal teaching and are not always accepted by him as legally binding. They were clearly already current knowledge at his time, but where did ʿAṭāʾ get them from?

For most of his transmissions from ʿUmar, ʿAṭāʾ does not quote any source. Occasionally, he introduces them with the word "*dhakarū*" ("it was reported [to me]").⁴⁵ In a few cases, however, he names the informant from whom he "heard" the tradition or an *isnād* reaching back to a witness who lived during ʿUmar's time. ʿAṭāʾ himself was born after ʿUmar's death.⁴⁶ There are clues in the texts that ʿAṭāʾ actually did acquire the traditions from the informants whom he mentions. This does not mean that they are necessarily genuine, i.e., that they report the truth about ʿUmar, but we can at least be sure that they were in circulation during the lifetime of ʿAṭāʾ's informant. Some of ʿAṭāʾ's traditions about ʿUmar can, therefore, be dated with certainty to before 80 or 70 A.H. We come to similar conclusions when studying ʿAṭāʾ's references to and traditions from ʿĀ'isha and ʿAlī.

³⁸ See Ibn Ḥazm, "*Asmāʾ al-ṣaḥāba al-ruwāt wa-mā li kull wāhid min al-ʿadad*"; idem, *Jawāmiʿ al-sīra*, ed. Iḥsān ʿAbbās and N. al-Asad (Cairo, n.d.), p. 276.

³⁹ See ʿAbd al-Razzāq, *Muṣannaḥ*, vol. 7, nos. 12566 and 13680.

⁴⁰ Ibid., nos. 12401, 12858, 12884, 13651, and 14021.

⁴¹ Ibid., nos. 13508 and 13541.

⁴² Ibid., no. 13612.

⁴³ Ibid., vol. 6, no. 10726; vol. 7, nos. 12877 and 12885.

⁴⁴ Ibid., vol. 6, no. 11140.

⁴⁵ Ibid., vol. 7, no. 12877.

⁴⁶ Ibid., nos. 14022, 13541, and 13612.

Frequently, especially in the *responsa*, ʿAṭāʾ quotes only fragments of traditions known in more detail from other sources. Usually, in these cases, we can safely assume that he knew their complete versions. There is no hint, however, that the fuller versions are secondary and were later expanded from ʿAṭāʾ's short references. This can be helpful for the dating of traditions in that if there is in Ibn Jurayj's material from ʿAṭāʾ a reference to or a short version of a tradition on *ṣaḥāba*, ʿAṭāʾ's date of death (115/733) is the *terminus ante quem* for the existence of the tradition in question.

One example which may demonstrate that this method is helpful for the study of *ḥadīth* is an unusually long tradition about the nursing of adults contained in both of the two most important of the several preserved versions of Mālik's *Muwaṭṭaʾ*.⁴⁷ It is composed of several single traditions: one of the Prophet with some additional information, another about ʿĀʾisha, and a third which concerns the other wives of the Prophet. Because of its artificial composition, it does not seem to fit into the framework of the usual traditions of Mālik. One is thus tempted to consider it a relatively recent addition. But Mālik's *isnād* names ʿUrwa b. al-Zubayr (d. between 92/711 and 101/720) as its author and Ibn Shihāb (d. 124/742) as the transmitter and his own informant. According to Schacht's view of the legal development of the question, the origin of the different parts of the story cannot be attributed to Ibn Shihāb or someone from this period, and the appeal to ʿUrwa must, in any case, be regarded as spurious. Rather, Schacht sees here counter-traditions by the circle of "traditionists" whose aim it was to change established doctrine.⁴⁸ If, on the other hand, we refer to one of the *responsa* of ʿAṭāʾ concerning the same topic, quite another picture of the history of the question emerges. According to it, ʿAṭāʾ—who is certainly not to be counted among the traditionists—already held the opinion that the suckling of adults was legally valid, and, in this context, he refers to a practice of ʿĀʾisha: "*kānat ʿĀʾisha taʾmuru bi-dhālika banāti akhīhā*."⁴⁹ This is connected, without a doubt, to the more detailed tradition of ʿUrwa as preserved in the *Muwaṭṭaʾ*. It reads: "*ʿĀʾisha used this [method] in cases of men she wished to let visit her. She used to command her sister Umm Kulthūm bint Abī Bakr [. . .] and the daughters of her brother (fa-kānat taʾmuru ukhtahā Umm Kulthūm [. . .] wa-banāti akhīhā) to nurse the men she wished to let enter with her.*"^{49a}

The tradition concerning ʿĀʾisha was, therefore, already known to ʿAṭāʾ. He and Ibn Shihāb drew from the same source, since it is unlikely that ʿAṭāʾ attended lectures of the younger Ibn Shihāb. According to the latter, ʿUrwa b. al-Zubayr is the author of the story. He was a slightly older contemporary of ʿAṭāʾ and was his informant for other traditions. It thus seems highly probable that ʿUrwa is ʿAṭāʾ's source as well. If so, then the tradition about ʿĀʾisha as contained in the *Muwaṭṭaʾ* must be considered

⁴⁷ Mālik b. Anas, *Al-Muwaṭṭaʾ*, *riwāyat* Yahyā b. Yahyā, ed. M. F. ʿAbd al-Bāqī, 2 vols. (Cairo, 1370/1951), chap. 30, no. 12; idem, *riwāyat* Muḥammad ash-Shaybānī, ed. ʿAbd al-Wahhāb ʿAbd al-Laṭīf (Cairo, 1387/1967), no. 627.

⁴⁸ See Schacht, *Origins*, pp. 48, 246.

⁴⁹ ʿAbd al-Razzāq, *Muṣannaf*, vol. 7, no. 13883.

^{49a} See n. 47 above. For a more detailed discussion of this tradition and its variants, see my forthcoming article "Der *fiqh* des az-Zuhri: Die Quellenproble-

matik" (*Der Islam* 68 [1991]). The Arabic word used in these texts, *arḍaʿa*, really means "suckle," in this special case probably by mixing breast milk with drinks or food. In this way, a "milk relationship" was created which had the same legal status as a blood relationship: "milk relatives" were forbidden to marry one another or to have sexual intercourse and could, therefore, associate with each other without restrictions.

a genuine transmission from ʿUrwa dating to the second half of the first century A.H. and not to the middle of the following century.

THE PROPHET

In his *responsa*, ʿAṭāʾ very rarely refers to the Prophet. Among the 200 *responsa* studied, only three even hint at him. In addition, there are a few statements about the Prophet that arise through Ibn Jurayj's questions. None of these texts have an *isnād*; sometimes we find the introduction "*balaghanā anna n-nabī/rasūla llāh . . .*"⁵⁰ The proportion of transmissions from the Prophet among ʿAṭāʾ's *dicta* is somewhat higher (6 percent). Whereas in the *responsa*, only references to or fragments of *aḥādīth* are found, most of the prophetic traditions among the *dicta* are complete and quite detailed. Only a quarter of them have an *isnād* although one which is not always complete.

ʿAṭāʾ knew many more traditions about the Prophet than he actually used in his legal arguments. This is revealed in texts in which Ibn Jurayj—partly after an answer containing only ʿAṭāʾ's opinion about a problem—expressly asks him about the Prophet and then receives an answer which indicates that ʿAṭāʾ was well acquainted with a prophetic tradition.⁵¹ ʿAṭāʾ also cites legal principles, which he clearly recognized as traditions from the Prophet but in which he does not refer to the Prophet directly. One example of this is the legal statement "*al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*" ("the child belongs the [marriage] bed and he who had illegal sexual intercourse gets nothing").⁵² ʿAṭāʾ makes use of this maxim on two occasions without saying that it was considered a legal judgment of the Prophet.⁵³ One *responsum* of his, however, reveals that he knew that it was:

Ibn Jurayj said: I said to ʿAṭāʾ: "what is your opinion [in the case] when he [the man] rejects [the paternity of] it [the child] after she [the woman] has borne it?" [ʿAṭāʾ] said: "[in that case] he has to anathematize her (*yulāʿinahā*) and the child belongs to her." I said: "did not the Prophet say: '*Al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*'?" [ʿAṭāʾ] said: "Yes! But this was because the people in [the beginnings of] Islam claimed children born in the beds of [other] men as theirs saying: 'They are ours!' [That is why] the Prophet said: '*Al-walad li-l-firāsh wa-li-l-āhir al-ḥajar*'."⁵⁴

Only through Ibn Jurayj's question are we informed that this legal maxim was not a creation of ʿAṭāʾ himself, but one which already was well known and attributed to the Prophet at the turn of the first century A.H. This allows us to test with traditions from the Prophet the rule we formulated when discussing the dating of traditions from *ṣaḥāba*: with the help of ʿAṭāʾ's references to certain traditions or with his fragments of traditions otherwise known, their *asānīd* can be checked and their time of origin defined more exactly. This will be demonstrated further below.

⁵⁰ Ibid., vol. 6, no. 10969; vol. 7, no. 12632.

⁵¹ Ibid., vol. 6, no. 10651.

⁵² The Arabic dictionaries and the commentaries of *ḥadīth* compilations rightly prefer this meaning of *al-ḥajar* to the also possible *rajm*, "stoning." I thank J. Burton for this idea. See Ibn Manẓūr, *Lisān al-ʿarab* (Beirut, n.d.), vol. 4, p. 166; al-

Zabīdī, *Tāj al-ʿarūs* (Cairo, 1306/1888), vol. 3, p. 127; al-Qaṣṭallānī, *Irshād al-sārī ilā sharḥ Ṣaḥīḥ al-Bukhārī* (Bulāq, 1304/1886), vol. 4, p. 10.

⁵³ ʿAbd al-Razzāq, *Muṣannaf*, vol. 7, nos. 12381 and 12862.

⁵⁴ Ibid., no. 12369.

Early detailed transmissions about the Prophet using this maxim, “*al-walad li-l-firāsh wa-li-l-ʿāhir al-ḥajar*,” are to be found in Mālik’s *Muwaṭṭaʿ* and in the *Muṣannaf* of ʿAbd al-Razzāq. Different versions can be distinguished:

1. There are several variants of a story relating the quarrel between Saʿd b. Abī Waqqāṣ and ʿAbd b. Zamʿa concerning who the real father (*nasab*) of a boy was. They had, it was reported, appealed to the Prophet as a judge, and he made a decision uttering this maxim.⁵⁵ This I call the *qiṣṣa* version.

2. There is a short tradition containing only the *dictum* itself.⁵⁶ All the early variants of the *qiṣṣa* version have an *isnād* ending with “Ibn Shihāb al-Zuhrī from ʿUrwa b. al-Zubayr from ʿĀʾisha.” The short version sometimes has this *isnād*, and sometimes the following one: “Al-Zuhrī from Ibn al-Musayyab and Abū Salama from Abū Hurayra.” Ibn Shihāb (d. 124/742) is the “common link” in all of these texts, if we do not count ʿĀṭā’s references to it for the moment.

According to the procedure of dating with the aid of “common links,” as done by Schacht, the time of Ibn Shihāb would be the earliest point at which this complex of traditions came into being.⁵⁷ But since Schacht was convinced that there were extensive forgeries of the chains of transmission, he held al-Zuhrī “hardly responsible for the greater part of these traditions” from the Prophet, the Companions, and the Successors in the *asānīd* of which he appears as a “common link.”⁵⁸ He thus places the origin of such traditions in the second quarter of the second century or later. Schacht felt that the above-mentioned maxim has to be dated to the second quarter of the second century based on the fact that in the *Kitāb al-Umm* of al-Shāfiʿī (d. 204/820) Abū Ḥanīfa (d. 150/767) is reported to have known it as a *dictum* of the Prophet.⁵⁹ In addition, Schacht quotes a text from the *Kitāb al-Aghānī* of Abū l-Faraj al-Iṣbahānī (d. 356/967), used earlier by both Wellhausen and Goldziher, where a dispute about the paternity of a child is reported that allegedly occurred “in the middle Umayyad period.” Since in this case the rule of the Prophet is neither mentioned nor followed, Schacht concludes that “it had not yet asserted itself in the time of the dispute recorded in Aghani.”⁶⁰ It was therefore obvious to him that the first century A.H. cannot be accepted as a possible time of origin of this maxim. Thus the reference to the Prophet must be regarded as historically untenable and as a clear forgery.

If we turn to Ibn Jurayj’s and ʿĀṭā’s references to this maxim of the Prophet, it becomes clear that Schacht’s chronology is incorrect. Since ʿĀṭā quotes the rule several times, it is my opinion that it must have been widely known by the first decade of the second century A.H. (i.e., the middle of the Umayyad period) at the latest. ʿĀṭā obviously knew the *qiṣṣa* version.⁶¹ We have already seen that he did not transmit

⁵⁵ Ibid., nos. 13818 (Maʿmar from al-Zuhrī); 13819 and 13824 (Ibn Jurayj from Ibn Shihāb); “*Aḥādīth Abī l-Yamān*,” no. 1 (Shuʿayb from al-Zuhrī); M. M. Azami, *Studies in Early Hadith Literature* (Indianapolis, 1978), pt. 2 (Arabic texts), pp. 141 f.; Mālik, *Muwaṭṭaʿ* (Yahyā), chap. 36, no. 20 (Mālik from Ibn Shihāb). In most of the *qiṣṣa* versions, the second part of the maxim is lacking; see also Azami, *Studies*, p. 161. The text is also to be found in the “*Ṣaḥīḥān*.”

⁵⁶ ʿAbd al-Razzāq, *Muṣannaf*, vol. 7, no. 13821.

⁵⁷ See Schacht, *Origins*, pp. 177 ff.

⁵⁸ Ibid., p. 246.

⁵⁹ Ibid., p. 182.

⁶⁰ Ibid., p. 181. Cf. Goldziher, *Muhammedanische Studien*, vol. 1, p. 188, n. 2 and Azami, *Studies*, p. 266.

⁶¹ See ʿAbd al-Razzāq, *Muṣannaf*, vol. 7, no. 12369.

from the younger Ibn Shihāb but sometimes directly from ʿUrwa b. al-Zubayr.⁶² ʿUrwa is Ibn Shihāb's informant of the *qiṣṣa* variants according to their *asānīd*, so there is evidence for the assumption that he was ʿAṭā's source as well. If so, the story must have been in circulation by the second half of the first century A.H., since ʿUrwa died about the end of it. But the possibility cannot be ruled out that the tradition was widely known earlier, as the *asānīd* with the alleged authors ʿĀ'isha (d. 57/676) and Abū Hurayra (d. 59/678) claim, and it is possible that the story has a kernel of truth and that Muḥammad really made such a judgment.⁶³

Schacht considered it improbable that the Prophet had anything to do with this legal rule also for other reasons. But in my opinion, he was wrong here, too, as I will demonstrate below. In his short discussion of our legal maxim backed up by systematic and historical arguments, he adopts Goldziher's hypothesis that the alleged prophetic *dictum* may have been taken from Roman Law, which has a similar rule: *pater est quem iustae nuptiae demonstrant*. The pre-Islamic Arabs decided disputes of paternity in another way, by calling in "professional physiognomists" (*qāfa*). From this, he concludes that the maxim cannot be of Arabic origin and was therefore not current in Arabia in Muḥammad's time. Furthermore, he claims that this legal rule was "strictly speaking incompatible with the Koran" and that the problems it should solve "could hardly arise under the Koranic rule regarding *ʿidda*."⁶⁴ He thus seems to conclude—without actually saying it directly—that this *dictum* cannot have been the Prophet's.

These arguments are not convincing, however. Let us begin with his premise that the legal maxim "*al-walad li-l-firāsh*" is incompatible with the Qurʾān: Schacht suggests that the disputes about the paternity of a child arose in cases where the waiting period after the separation from the legitimate sexual partner was not correctly observed. But this is only one possibility which, as he rightly points out, should not arise in Islam. There is another much more important context for disputes over paternity: in cases of illegal sexual intercourse with a married woman or a slave. The Qurʾān struggles with this question by issuing clear legal norms concerning marriage, divorce, and concubinage and by proscribing illegal sexual intercourse with heavy punishments in this world and the world to come. The early texts describing the use of the legal maxim "*al-walad li-l-firāsh*," i.e., the *qiṣṣa* version and ʿAṭā's *responsa*⁶⁵ reveal, nevertheless, that in the early Islamic community there were particular social contexts where the Qurʾānic norms had not yet gained a firm footing. One of these problematic areas was the relation between a master and his female slave, which even in Muḥammad's lifetime was unclear.⁶⁶

This is the background of the disputes in which our legal maxim first emerges in the texts: the possibility that a man who committed fornication with another man's wife or slave would benefit from the child resulting from this illegitimate union was eliminated. Moreover, many cases of adultery were prevented from becoming public be-

⁶² Ibid., no. 13939.

⁶³ Juynboll argues that the fact alone that this statement was ascribed to Ibn al-Musayyab has to be regarded as a proof that it cannot be older than that person; see *Muslim Tradition*, pp. 15 f. But this is not convincing because he relies on limited data. His conclusion is purely hypothetical.

⁶⁴ Schacht, *Origins*, pp. 181 f.

⁶⁵ ʿAbd al-Razzāq, *Muṣannaḥ*, vol. 7, nos. 12369, 12381, 12529, and 12862.

⁶⁶ See my article "*Wal-muḥṣanātu mina n-nisā'i illā mā malakat aimānukum* (Koran 4: 24) und die koranische Sexualethik," *Der Islam* 63 (1986): 192–218, esp. 199 ff.

cause both in the case of a man who claimed a child borne by the wife or the slave of another man or in the case of a woman who affirmed that her child was not from her husband or master, the claimant implicitly confessed to illegal sexual intercourse and ran the risk of the punishment for it. ʿAṭā limits the application of the legal maxim to such cases where the paternity of a husband or female slave's master was not rejected by the man himself but which was challenged by another party—thus presupposing irregular or illegitimate sexual relations—and he justifies it by saying that the original intention of the rule had been to stop such paternity disputes. ʿAṭā dismisses the pre-Islamic method of relying on the *qāfa* (physiognomists) who established paternity by comparing the child with the contesting would-be fathers. He appears to maintain that this method has been replaced by the “*al-walad li-l-firāsh*” rule.

This maxim is, therefore, in congruity with the Qurʾānic legislation concerning marriage and family and with the mores of the early Islamic period even if it does not fit so well with the Qurʾānic tendency to insure the real paternity of a child. Is there a legal system in the world wholly free from contradictions? We have to conclude that even the Prophet may have used this legal maxim.

In locating the emergence of Islamic jurisprudence in Iraq at the beginning of the second century A.H. at the earliest and the introduction of this legal maxim in the late second half of the second century A.H., Schacht looked for Roman influences in Islamic law, especially in Iraq, and he suggested late antique rhetoric as the channel. But Patricia Crone has recently shown that this is quite improbable, especially as far as this particular legal maxim is concerned.⁶⁷ If my argument that the maxim was known in *Ḥijāz* by the first century and that it cannot be ruled out that the Prophet himself had used it is sound, the hypothesis of a Roman (or better Roman provincial) origin becomes even more dubious. It could only be possible if we could trace the adoption of this legal rule to pre-Islamic times.

Such a supposition is not as extravagant as it may appear at first sight. The existence of an old Arabian method of deciding paternity disputes by physiognomists does not exclude that in some places, under the influence of other laws, the rule “*al-walad li-l-firāsh*” may have been adopted. That this had indeed been the case is explicitly stated in an *awāʿil* tradition, usually regarded as anachronistic, reporting that the pre-Islamic judge Aktham b. Ṣayfī decided according to that rule.⁶⁸ If this was not a new idea in Arabia—which may be possible—which law could have been behind it? We must consider Jewish, i.e., rabbinical law; there is indeed a parallel in the Babylonian Talmud.⁶⁹ Was the Jewish legal rule adopted from Roman law or was it originally Jewish? Given the present state of our knowledge about pre-Islamic Arabia, too many questions remain open and too much speculation is needed to push the origin of the Islamic legal maxim to before the first century A.H., for neither Jewish nor Roman origin can be proven.^{69a}

⁶⁷ P. Crone, *Roman, Provincial and Islamic Law* (Cambridge, 1987), pp. 10 f. Cf. also Azami, *Studies*, pp. 265 f.

⁶⁸ See Juynboll, *Muslim Tradition*, p. 16.

⁶⁹ See Crone, *Roman*, p. 11.

^{69a} On the general question of possible Roman

influences on Islamic law, see Crone, *Roman, Provincial and Islamic Law*, esp. chap. 1; my review of Crone in *Deṛ İslam* 65 (1988): 342–45; and W. B. Hallaq's article “The Use and Abuse of Evidence: The Question of Provincial and Roman Influences on Early Islamic Law,” *JAOS* 110 (1990): 79–91.

VI

I have chosen and discussed in some detail the example "*al-walad li-l-firāsh*" because Schacht concentrated and relied on it in his monumental work on the origins of Islamic jurisprudence. My thesis that by means of ʿAṭāʾ's references to prophetic traditions this legal maxim can be dated back at least to the second half of the *first century A.H.*, if not to the Prophet himself, undermines some of Schacht's fundamental ideas, among them his well-known theories on the pattern of the development of *ḥadīth*: Successors, Companions, and Prophet, that is, the traditions from the Prophet concerning legal questions are the earliest link in the chain:

[. . .] Generally and broadly speaking, traditions from Companions and Successors are earlier than those from the Prophet.⁷⁰ 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 Shafīʿi secured to the traditions from the Prophet supreme authority.⁷¹ . . . 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.⁷² . . . 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* (italics mine).⁷³

The prophetic traditions connected with the legal maxim "*al-walad li-l-firāsh wa-li-l-ʿāhir al-ḥajar*" are made up of a group of texts which clearly contradict Schacht's theory on the time of the origin of those prophetic legal traditions. This is not an isolated instance.⁷⁴

We have seen that ʿAṭāʾ claims the Prophet only very rarely as an authority and that he also gives his own opinion about legal problems for which he knows a tradition from the Prophet without referring to it. This is one argument against the assumption that ʿAṭāʾ invented prophetic traditions himself. Those he quotes or hints at must have already been in circulation during his lifetime, that is, that they can be placed in the *first century A.H.* For the reasons already explained⁷⁵ and because of the general lack of *asānīd*, it also has to be ruled out that Ibn Jurayj falsely ascribed them to ʿAṭāʾ. His *aḥādīth* from the Prophet are—contrary to Schacht's generalization—not earlier than his traditions from the Companions, they are not transmitted more carefully, and they obviously have no stronger probative force than the latter. In number, ʿAṭāʾ's references to the Prophet are eclipsed by those to his teacher Ibn ʿAbbās, but the Prophet is mentioned more often than all the Companions, such as ʿUmar, ʿĀʾisha, or ʿAlī.

All this reflects the very subordinate role of the prophetic *aḥādīth*—and we can say of the traditions in general—in the legal scholarship and teaching of ʿAṭāʾ, and this

⁷⁰ Schacht, *Origins*, p. 3.

⁷¹ Ibid., p. 138.

⁷² Ibid., p. 149.

⁷³ Ibid.

⁷⁴ Cf. my forthcoming book *Die Anfänge*.

⁷⁵ See secs. III and IV of this article.

state of affairs may be typical for Islamic jurisprudence of the first century A.H. But we have to emphasize that there *were* traditions from *ṣaḥāba* and from the Prophet in the first century, and they *were* sometimes used as sources or arguments by the *fuqahāʾ* of the late first and early second centuries to support their doctrines. We have to conclude that the last quarter of the first century of Islam was the beginning of a development that made stormy progress in the course of the second century, reaching its peak with the doctrines of ash-Shāfiʿī about a century later: the infiltration and incorporation of prophetic *aḥādīth* into Islamic jurisprudence.

The conclusion that the prophetic *aḥādīth* are marginal to the legal teaching of ʿAṭāʾ does not mean that they are worthless for us; on the contrary, they are exceptionally valuable. Since there is only one generation between ʿAṭāʾ and Muḥammad, these texts are very close to the time and the people they report about, and their authenticity cannot be ruled out a priori—as Schacht has done. ʿAṭāʾ's transmissions from the Prophet that have an *isnād* are especially precious in this respect. But his transmissions without an *isnād*, too, can be successfully used to date traditions, if variants from other sources are known.

While studying the *Muṣannaḥ* of ʿAbd al-Razzāq, I came to the conclusion that the theory championed by Goldziher, Schacht, and, in their footsteps, many others—myself included—which, in general, rejects *ḥadīth* literature as a historically reliable source for the first century A.H., deprives the historical study of early Islam of an important and useful type of source.

It goes without saying that this material cannot be regarded as completely truthful. This even the Muslims themselves did not claim. Their method of sifting through the material by means of the critical study of the transmitters was a quite workable method of examination that may be of some use even for the modern historian, but it was not entirely satisfactory and could not avoid misinterpretations. I think that with the help of the newly available sources, such as the *Muṣannaḥ* of ʿAbd al-Razzāq and that of Ibn Abī Shayba, and the *aḥādīth* contained in early complexes of transmissions—such as those of ʿAṭāʾ in ʿAbd al-Razzāq's *Muṣannaḥ*, where the *ḥadīth* is not the real object of the teaching but is only marginal—we are now able to raise the question of the historical value of the *ḥadīth* texts anew.