

THE ORIGINS OF
Muhammadan
Jurisprudence

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CHAPTER 3

SHĀFI'Ī AND LEGAL TRADITIONS

THE main theme of Shāfi'ī's discussion with his opponents is the function of the traditions from the Prophet. Shāfi'ī insists time after time that nothing can override the authority of the Prophet, even if it be attested only by an isolated tradition, and that every well-authenticated tradition going back to the Prophet has precedence over the opinions of his Companions, their Successors, and later authorities. This is a truism for the classical theory of Muhammadan law, but Shāfi'ī's continual insistence on this point shows that it could not yet have been so in his time.

Shāfi'ī, it is true, claims that his opponents agree with his essential thesis: 'Q.: Is there a *sunna* of the Prophet, established by a tradition with an uninterrupted chain of transmitters (*isnād*), to which the scholars in general refuse assent? A.: No; sometimes we find that they disagree among themselves, some accepting it and others not; but we never find a well-authenticated *sunna* which they are unanimous in contradicting.'¹ But Shāfi'ī's introduction of the element of unanimity into the discussion and, even more so, the actual doctrines of the ancient schools of law which provide him with the subject-matter for his sustained polemics, show that his claim of a general agreement is only a clever debating point made by him. With their own legal theory much less developed, and forced by Shāfi'ī to confront a problem of which they had not been consciously aware, the ancient schools of law had no answer, and Shāfi'ī made the most of his opportunity. This explains the influence that his doctrine was to have on the legal theory of all schools.

Shāfi'ī prides himself on having always held this attitude towards traditions from the Prophet, and he declares: 'I have unwaveringly held, thanks be to Allah, that if something is reliably related from the Prophet, I do not venture to neglect it, whether we have a great or a small opposition of Companions and Successors against us.'² We find, nevertheless, traces of an attitude corresponding to that of the ancient schools in some of

¹ *Ris.* 65 and, with more details, *Ikh.* 338 f.

² *Tr.* III, 148 (p. 247).

his early treatises, and in other instances it can be inferred from later information. But these are exceptions, and on the whole Shāfi'ī's doctrine on this point is as consistent as he claims it to be. His development from a natural acceptance of the Medinese doctrine in which he grew up, to the systematic acceptance of the traditions from the Prophet, is reflected in *Ris.* 38 where he tells how he learned a certain formula in his youth from his masters, later heard the *isnād* which belonged to it and which carried it back to the Caliph 'Umar, and finally heard his companions [that is, the traditionists] relate different forms on the authority of the Prophet.

The main text, in which Shāfi'ī puts forward his theory of traditions, is *Tr. III*, directed against the Medinese. He begins by stating his case: 'Every tradition related by reliable persons as going back to the Prophet, is authoritative and can be rejected only if another authoritative tradition from the Prophet contradicts it; if it is a case of repeal of a former ordinance by a later, the later is accepted; if nothing is known about a repeal, the more reliable of the two traditions is to be followed; if both are equally reliable, the one more in keeping with the Koran and the remaining undisputed parts of the *sunna* of the Prophet is to be chosen; traditions from other persons are of no account in the face of a tradition from the Prophet, whether they confirm or contradict it; if the other persons had been aware of the tradition from the Prophet, they would have followed it' (*Tr. III*, Introd.). Shāfi'ī repeats and elaborates this statement, the second half of which is particularly important, with tedious monotony.

It is significant that Shāfi'ī insists on these repeated statements of a principle which was to become a commonplace later, when discussing problems on which he and the Medinese follow the same traditions from the Prophet. The battle is joined in earnest when Shāfi'ī comes to those numerous cases where the Medinese set aside traditions from the Prophet in favour of traditions from other persons. He confesses that he has tried hard to find an excuse which would justify this procedure in his own eyes or in the eyes of any other scholar, but has been unable to find it. This, he says, applies only to traditions transmitted by reliable persons, but these must be accepted unquestioningly, and no tradition from the Prophet can be set

aside for anything but another tradition from him; men need the guidance of the Prophet because Allah has obliged them to follow him. What Shāfi'ī has said ought to convince his interlocutor Rabi' that he must never reject a tradition from the Prophet except for another tradition from him, if both disagree.¹

The Medinese, then, and the ancient schools of law in general, had already used traditions from the Prophet as the basis of many decisions, but had often neglected them in favour of the reported practice or opinions of his Companions, not to mention their own established practice. Shāfi'ī realized that this gave no consistent and convincing basis for legal decisions, and the only certain authority he could find was that of the Prophet. So he made the traditions from the Prophet, to the exclusion of everything else, the basis of his doctrine. This simple solution enabled him to find a way through the maze of conflicting traditions from the Prophet, the Companions, and other authorities.² But by restricting himself to traditions from the Prophet, which were in his time a purely accidental group, Shāfi'ī cut himself off from the natural and continuous development of doctrine in the ancient schools of law.

According to Shāfi'ī the traditions from the Prophet have to be accepted without questioning and reasoning: 'If a tradition is authenticated as coming from the Prophet, we have to resign ourselves to it, and your talk and the talk of others about why and how is a mistake. . . . The question of how can only be applied to human opinions which are derivative and devoid of authority; if obligatory orders, by asking why, could be subjected to analogy or to the scrutiny of reason, there would be no end to arguing, and analogy itself would break down' (*Ikh.* 339).

When confronted with two or more traditions from the Prophet which contradict one another Shāfi'ī uses harmonizing interpretation. His *Kitāb Ikhtilāf al-Ḥadīth* is particularly devoted to this subject. If one knows two seemingly contradictory traditions and finds that they can be harmonized by distinguishing between their respective circumstances, one must do so (p. 271). Shāfi'ī never considers two traditions from the Prophet contradictory, if there is a way of accepting them both; he does not invalidate a single one, because all are equally bind-

¹ *Tr.* III, 18. Similar passages *Ris.* 47, *Ikh.* 19, and often.

² This consideration is obvious from *Tr.* III, 6, and from *Ikh.* 133.

ing; he considers them contradictory only when one cannot possibly be applied without rejecting the other (p. 330). He gives a detailed statement on his method of interpreting traditions in *Ris.* 30 f.

When conflicting traditions cannot be harmonized Shāfi'ī's declared intention, as we have seen, is to choose the one more in keeping with the Koran and the remaining undisputed parts of the *sunna* of the Prophet. He elaborates this rule in several passages, such as *Ris.* 40 f., where he says: 'If two traditions are contradictory, the choice between them must be made for a valid reason; for instance, one chooses the one which is more consistent with the Koran. If there is no relevant text in the Koran, one chooses the more reliable tradition, the one related by men who occur in a better-known *isnād*, who have a greater reputation for knowledge, or better memory, or else one chooses the one related by two or more authorities in preference to a single authority, or the one which is more consistent with the general tendency of the Koran or with the other *sunnas* of the Prophet or more in keeping with the doctrine of the scholars or easier with respect to analogy, and finally the one followed by the majority of the Companions.'¹ But Shāfi'ī often has to fall back on the artificial expedient of counting the traditions and letting the greater number prevail, an expedient which was already used before him.² The affirmative statement prevails over the negative one because it implies a better memory, and the fuller statement which contains additional matter, is to be preferred to the shorter one.³ But Shāfi'ī himself acts against this last rule in *Ikh.* 364 f., and even gives theoretical reasons for doing so.⁴ All these considerations do not afford him a sure guidance, and he is reduced to affirming, in the manner customary in the ancient schools of law, that those traditions and variants which he does not accept, are unreliable.⁵

¹ See for the application of this method, *Ikh.* 208, 219 f. (below, p. 319), 222 f., 234, 267, &c.

² For its use by Shāfi'ī, see *Tr.* III, 89; *Ikh.* 165, 206 f., 212, 230 f., 290; for its use before Shāfi'ī, see *Ikh.* 243.

³ The affirmative statement is preferred: *Ikh.* 212, 215; the fuller statement is preferred: *Ikh.* 228, 409.

⁴ *Tr.* I, 49; *Ikh.* 379. The ancient schools of law, particularly the Iraqians, are inclined to prefer the negative and the shorter statement, and to argue *e silentio*: *Tr.* III, 10, 17; *Ikh.* 48, 50.

⁵ *Tr.* III, 17. Further on Shāfi'ī's method of interpretation, see below, pp. 47, 56.

'The assumption of repeal is not resorted to, unless it can be established by a tradition from the Prophet, or by a chronological indication showing that one tradition comes after the other, or by a statement coming from those who have heard the tradition from the Prophet, or from the generality of the scholars, or by another method through which the repealing text and the repealed one become clear' (*Ikh.* 57). But Shāfi'ī is not always able to apply his own method. In *Ikh.* 88 ff., in face of the settled opinion on a major point of ritual, he assumes repeal and neglects an otherwise well-authenticated tradition, basing himself on traditions from persons other than the Prophet, and making assumptions of a kind which he rejects indignantly when they come from his opponents.¹

As regards the repeal of traditions or, technically, the *sunna* of the Prophet by the Koran and vice versa, Shāfi'ī holds that the Koran can be repealed only by the Koran, and not by the *sunna* which is supplementary to it; the *sunna*, on the other hand, can be repealed only by another *sunna*. Whenever Allah changes His decision on a matter on which there is a *sunna* the Prophet invariably introduces another *sunna*, repealing the former. Otherwise it would be possible to reject any tradition from the Prophet which did not agree with the Koran, and every *sunna* could be abandoned if it stood beside a Koranic passage which was couched in general terms even though the *sunna* could be made to agree with it.² This theory seems to balance Koran and *sunna* evenly, but it makes the *sunna* as expressed in traditions from the Prophet prevail over the Koran because, as we shall see, the Koran is to be interpreted in the light of the traditions. Shāfi'ī's theory of repeal breaks down over the problem of punishments for adultery and fornication.³

'The Koran does not contradict the traditions, but the traditions from the Prophet explain the Koran' (*Tr.* IX, 5). 'The *sunna* of the Prophet is never contradictory to the Koran, but explanatory; no tradition from the Prophet can possibly be regarded as contradicting the obvious meaning of the Koran; no *sunna* ever contradicts the Koran, it specifies its meaning' (*Ris.* 33). 'The best interpretation of the Koran is that to which

¹ *al-aghlab* 'I prefer to think', *yashbah* 'presumably'. See also *Ikh.* 245 f., 258.

² *Ris.* 17 f. (to be corrected after *ed. Shākir*, p. 112), 30 ff.; *Ikh.* 41 f., 48.

³ *Ris.* 20 ff.; *Ikh.* 44, 249 ff.

the *sunna* of the Prophet points, and the best way of interpreting traditions is not to make them contradictory, because we must accept the information of trustworthy persons as much as possible' (*Ikh.* 296). Shāfi'ī repeats and elaborates these statements in other passages.¹ He speaks contemptuously of those who dare to criticize traditions because they seem to contradict the Koran: 'If it were permissible to abandon a *sunna* for the opinions of those who are ignorant of the place which is assigned to it in the Koran itself, one might as well regard a number of fundamental doctrines, all of which are based on enactments of the Prophet, as repealed by the Koran. Whoever holds this, spirits away the majority of the *sunnas* of the Prophet, and that is ignorance' (*Ris.* 33 f.).

Shāfi'ī bases his unquestioning acceptance of traditions from the Prophet on the Koranic passages which make it a duty to obey the Prophet.² He interprets the term *ḥikma* 'wisdom', which is used in the Koran together with 'book' as a name for the divine revelation, as referring to the *sunna* of the Prophet expressed in traditions (*Tr. IV*, 251). On the question whether the *sunna* of the Prophet is to be regarded, like the Koran, as divinely inspired (*wahy*), Shāfi'ī shows himself non-committal.³ But, in any case, 'the enactments of the Prophet are accepted as coming from Allah in the same way as the explicit orders of the Koran, because Allah has made obedience to the Prophet obligatory' (*Tr. VII*, 271), and 'everything legally relevant that the Prophet has allowed or forbidden, has in fact been allowed or forbidden by Allah, because Allah has ordered the Prophet to allow or forbid it' (*Tr. IX*, 5).

All this applies to traditions from the Prophet only. Shāfi'ī distinguishes sharply between them and traditions from Companions and others; even in his terminology he generally reserves the term *athar* for the latter. Traditions from Companions carry no authority when they conflict with information from the Prophet; they are not of the same standing, and are irrelevant beside them. One of the most detailed statements to this effect occurs in *Ikh.* 138 ff.:

¹ This is the doctrine of the traditionists; see Ibn Qutaiba, 312: 'The traditions from the Prophet explain the Koran and make its meaning clear.'

² *Ris.* 17; *Tr. V*, 262; *Ikh.* 41, and often.

³ *Tr. VII*, 271; *Ris.* 16. See also Ibn Qutaiba, 246 ff., for a later harmonizing opinion.

'The only criterion for the reliability of a tradition is its transmission from the Prophet by reliable men, and the fact that some Companions have agreed with it does not strengthen it, nor does the fact that some Companions have acted against it warrant its rejection, because they are themselves, together with all Muslims, dependent on the orders of the Prophet, and not qualified to confirm them or to detract from them by their concurring or dissenting opinions. If it is objected that a tradition from the Prophet becomes suspect if some Companions act differently, the tradition [regarding the action] of those Companions may as well be suspected for the same reason, or both be suspected equally, but what is transmitted from the Prophet deserves more consideration. As to opinions which are not transmitted from the Prophet, nobody may regard them as going implicitly back to him, because some Companions were unaware of the orders of the Prophet, and they must be quoted only as their private opinions, as long as the Companion does not relate them from the Prophet. If one pretends that the opinion of a Companion cannot have originated but with the Prophet, one ought never to disagree with the opinions of the Companion in question; yet there is no man, after the Prophet, whose opinions are not partly accepted and partly rejected in favour of those of another Companion. Only the words of the Prophet cannot be rejected on account of the opinions of another.'

As he did with his doctrine on traditions from the Prophet, Shāfi'ī claims that this supplement to it is common ground for him and his opponents, particularly the Iraqians,¹ but again it is obvious from Shāfi'ī's sustained polemics and from passages such as *Tr. VIII*, 40, that he forces his point of view on them, rejects their rudimentary theory, and puts them in a position which leaves them without justification for their different attitude.

In Shāfi'ī's view it is ignorance to interpret a *sunna* of the Prophet in the light of a tradition from a Companion, as if it would be confirmed thereby; traditions from others than the Prophet ought rather to be interpreted in the light of what is related from the Prophet (*Tr. I*, 51); he even goes so far as to say that the words of the Prophet are a better indication of what the Prophet meant than the statement of another person, and that no conclusions on what the Prophet meant can be drawn

¹ *Tr. III*, 148 (p. 244).

except from his own words (*Ikh.* 325). The tradition of a Companion from the Prophet must prevail over the differing action of the same Companion (*Tr. II*, 3 (*t*)).

Shāfi'ī's own reasoning does not always reach this standard. But no sacrifice of principle is involved when he argues *ad hominem* from traditions from Companions against the representatives of the ancient schools.¹

On the other hand, Shāfi'ī does not hesitate to use traditions from Companions as additional evidence besides information from the Prophet on his *sunna*. This is sometimes meant also as an argument *ad hominem*, but mostly not, and it plays indeed a considerable part in Shāfi'ī's reasoning in *Tr. I*, *Tr. II*, *Tr. III*, and elsewhere. Occasionally Shāfi'ī uses traditions from the first four Caliphs, or from Companions and from later authorities, in order to show, in the style of the ancient schools of law, the continuity of doctrine from the time the Prophet gave his ruling or performed his model action. Apart from this Shāfi'ī often uses traditions from Companions as authorities in cases where no traditions from the Prophet are available.² He says explicitly: 'As long as there exists a ruling in Koran and *sunna*, those who are aware of it have but to follow them; if it does not exist, we turn to the opinion of the Companions of the Prophet or of one of them, and we prefer the opinion of the Caliphs: Abū Bakr, 'Umar or 'Uthmān. . . .'³ If no opinion is available from the Caliphs, the other Companions of the Prophet have a sufficient status in religion to justify us in following their opinion, and we ought rather to follow them than those who come after them.⁴

This reference to the opinions of the Companions is called *taqlīd*.⁵ It was common to Shāfi'ī and to the ancient schools of law, and while Shāfi'ī, as a matter of principle, subordinated

¹ *Tr. III*, 68, 72, and often.

² See, e.g., *Tr. I*, 59, 86, 89, 130, 139, 216, 234; *Tr. II*, 10 (*e*), 10 (*j*), 12 (*i*), 21 (*g*); *Tr. III*, 140, 141 (subsidiary to the Koran); *Tr. VIII*, 1; *Tr. IX*, 6, 7 (the tradition from the Prophet is not well authenticated), 11, 29; *Umm*, iv. 11. In *Tr. III*, 68 Shāfi'ī says: 'It is awkward to disagree with 'Umar alone, and still more awkward if 'Umar is supported by the *sunna*' (i.e. a tradition from the Prophet).

³ Other lists include 'Ali, and Shāfi'ī says in *Tr. II*, 5 (*f*): 'If we considered this tradition from 'Ali well authenticated, we should follow it.'

⁴ *Tr. III*, 148 (p. 246).

⁵ *Tr. I*, 10, 184; *Tr. III*, 85, 87, 128, 148 (p. 246); *Tr. VIII*, 10. On the later meaning of *taqlīd*, see above, p. 6, n. 2.

traditions from Companions to traditions from the Prophet and to his *sunna*, he nevertheless attacked both the Iraqians and the Medinese for not following the traditions from the Companions consistently enough.¹

Notwithstanding his reference to the position of authority occupied by the Companions of the Prophet, Shāfi'ī is unable to produce a stringent argument in favour of accepting their opinions: 'Q.: What do you say of the opinions of the Companions of the Prophet, if they disagree? A.: We adopt those which agree with the Koran or the *sunna* or the consensus, or are more correct from the point of view of analogy. Q.: What of the opinions of a single Companion, on which neither agreement nor disagreement of the others is known: is an argument in favour of adopting them to be found in the Koran or the *sunna* or the consensus? A.: There is no argument in the Koran or in the *sunna*, and the scholars sometimes adopt the opinion of a single Companion and sometimes discard it, and differ concerning some of those opinions which they adopt.' Shāfi'ī's own attitude is to follow them if there is no ruling in the Koran or the *sunna* or the consensus, nor anything that can be deduced from these sources by analogy, but it is rare to find an opinion of an isolated Companion which is not contradicted by another (*Ris.* 82). So Shāfi'ī is reduced to repeating the argument of the ancient schools: 'The Companions knew the meaning of the Koran best and their opinion, we trust, does not disagree with the Koran' (*Umm*, vii. 20). But this is inconsistent because he refuses, as a matter of principle, to assign to the Companions the same role with regard to the *sunna* of the Prophet. In so far as the Companions act as transmitters of traditions from the Prophet, Shāfi'ī claims that 'all are reliable, thanks to Allah's grace' (*Ikh.* 360), but he does not yet know the tradition from the Prophet which was to be used later to justify reference to them as authorities: 'My Companions are like lodestars.'

Traditions from Companions are superseded not only by explicit traditions from the Prophet, but by analogical and other conclusions drawn from these last.² They are not superseded by later authorities or by personal opinion (*ra'y*).³ In his earliest

¹ *Tr.* I, 183; *Tr.* III, 29, 69, 137.

² *Tr.* III, 16, 76 f., 83 f.; *Tr.* IX, 40; *Ris.* 75.

³ *Tr.* III, 57, 148 (p. 248).—*Tr.* III, 73, 77.

treatises Shāfi'ī followed traditions from Companions even if they went against systematic analogy, but later, though still in his early period, he let analogy prevail.¹ He interprets traditions from Companions in the same harmonizing way as he does traditions from the Prophet, but shows his reserved attitude to them by his frequent doubts as to whether they are well authenticated.

Traditions from the Successors, the generation following that of the Companions of the Prophet, enjoy still less authority: 'traditions from Companions are preferable to those from Successors, or at least equal to them' (*Ikh.* 51); opinions of Successors are not a decisive argument.² But although every systematic justification is lacking, Shāfi'ī uses them from time to time as subsidiary arguments or when higher authorities are not available.

Shāfi'ī had to fight in order to secure for the traditions from the Prophet the overriding authority which he claimed for them, and in particular to make them prevail over the traditions from Companions. He still recognized these last in a subordinate position, but was unable to find a conclusive systematic justification for their use. The same applies even more to traditions from Successors. We must conclude that his opponents, the adherents of the ancient schools of law, did not as yet acknowledge the absolute precedence of the traditions from the Prophet, and argued mainly from traditions from Companions and Successors. The authority that Shāfi'ī still leaves to these, is an unsystematic survival from the earlier period, and his preference, as a matter of principle, for the traditions from the Prophet is his great systematic innovation.

¹ See for his earlier doctrine *Tr. VIII*, 15 and *Tr. I*, 195, for his later doctrine *Tr. VII*, 275 (middle); these three passages refer to the same problem.

² *Tr. III*, 148 (p. 246); *Tr. VIII*, 10; *Ris.* 74.