

THE ORIGINS OF
Muhammadan
Jurisprudence

JOSEPH SCHACHT

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CHAPTER 4
TRADITIONS IN THE ANCIENT
SCHOOLS OF LAW

THE attitude of the Iraqians and of the Medinese to legal traditions is essentially the same, and differs fundamentally from that of Shāfi'ī. *Ikh.* 30 ff. shows that both the Iraqians and the Medinese neglect traditions from the Prophet in favour of systematic conclusions from general rules, or of opinions of the Companions; Shāfi'ī argues first (pp. 30 ff.) against the Medinese from the point of view of the Iraqians, and then (pp. 34 ff.) in turn against these; he says: 'these same arguments apply to you when you follow the same method with regard to other traditions from the Prophet'; he states that both groups of opponents use the same arguments, and that his own arguments against both are the same, and he uses each party in order to refute the other. There are several other passages to the same effect.

Shāfi'ī finds their attitude a mass of inconsistencies: 'You diverge from what you yourselves relate from Ibn 'Umar, and from what others relate from the Prophet, without following the opinion of any Companion or Successor from whom you might transmit it, as far as I know. I do not know why you transmit traditions: if you transmit them in order to show that you know them and diverge from them in full knowledge, you have achieved your purpose and shown that you diverge from the doctrine of our forebears; if you transmit them in order to follow them, you are mistaken when you neglect them, and you neglect much of the little that you transmit; but if the proof, in your opinion, does not lie in traditions, why do you go to the trouble of transmitting them at all, using that part of them with which you agree as an argument against those who disagree?' (*Tr.* III, 146).

Even if this and other passages were not part of Shāfi'ī's polemics, it would be obvious from the sources other than his writings, that they give no complete picture of the attitude of the ancient schools of law to tradition,¹ and we shall investigate

¹ Compare Shāfi'ī's caricature in *Tr.* III, 65, with Mālik's statement of his doctrine in Ṭabarī, 81.

the unifying idea behind this seeming inconsistency in Chapter 7; for the moment, we are concerned with the actual treatment of traditions from the Prophet and others in the ancient schools.

The first striking fact is that the traditions from the Prophet are greatly outnumbered by those from Companions and Successors. As regards the Medinese, Mālik's *Muwatta'* contains, according to one of the lists quoted by Zurqānī (i. 8), 822 traditions from the Prophet as against 898 from others, that is, 613 from Companions and 285 from Successors. The edition of the *Muwatta'* by Shaibānī contains, according to the Commentary (pp. 36 ff.), 429 traditions from the Prophet as against 750 from others, that is, 628 from Companions, 112 from Successors, and 10 from later authorities. In *Tr. III*, where Shāfi'ī discusses the points on which the Egyptian Medinese diverge from traditions transmitted by themselves, §§ 1-61 deal with traditions from the Prophet, §§ 63-147 with traditions from others, mostly from Companions (§§ 101 and 105-8 deal with traditions from Successors and later authorities). As regards the Iraqians, the references of Ibn Abī Lailā, Abū Ḥanīfa, and Abū Yūsuf to the Prophet in *Tr. I*, where Shāfi'ī discusses the inter-Iraqian differences of doctrine, are much less numerous than those to Companions and Successors. The *Kitāb al-Āthār* of Abū Yūsuf contains 189 traditions from the Prophet, 372 from Companions, 549 from Successors. In the (incomplete) *Kitāb al-Āthār* of Shaibānī we find 131 traditions from the Prophet, 284 from Companions, 550 from Successors, and 6 from later authorities. Only the Syrian Auzā'ī, in the fragments which are preserved in *Tr. IX* and in Ṭabarī, refers to the Prophet much more frequently than to Companions, but mostly in general terms and without a proper *isnād*; also the subject-matter sets these historical traditions apart from the legal traditions proper.

A. THE MEDINESE

Mālik enjoins that traditions be followed (Ṭabarī, 81); the details of his doctrine show that he harmonizes an old-established tradition from the Caliph Abū Bakr with historical traditions from the Prophet (*Mud.* iii. 7 f.). The Egyptian Medinese 'reproach others immoderately with diverging from traditions from the Prophet, blame them for rejecting them or interpreting them arbitrarily', but, Shāfi'ī adds, they do the

same themselves (*Ikh.* 124). Shāfi'ī boasts that he has better traditions than the Medinese (*Tr.* III, 53); but Ibn Wahb collects an imposing array of them on the problem in question (*Mud.* iv. 28). For Shāfi'ī, however, the Medinese are not serious in the respect they pay to traditions; he calls them 'self-professed followers of traditions', and says of one of them: 'He only affected respect for the traditions in general, and then diverged from their meaning' (*Ikh.* 323).

Mālik and the Medinese in general anticipate Shāfi'ī's harmonizing interpretation of traditions, both from the Prophet and from Companions. But, compared with Shāfi'ī, they use this method sparingly, and they generally seem to make an arbitrary choice between conflicting traditions. Mālik sometimes expresses this by the words 'I prefer' (*aḥabb ilaiya*).¹

Whereas Shāfi'ī professes to follow the traditions from the Prophet and to disregard everything else in all circumstances, the Medinese choose freely among the traditions from the Prophet and from others, and even reject both kinds altogether. Rabi' says explicitly: 'Our doctrine is to authenticate only those traditions that are agreed upon by the people of Medina, to the exclusion of other places' (*Tr.* III, 148, p. 242). In the opinion of the Medinese, sound reason and analogy supersede traditions (*Tr.* III, 145 (a)). Mālik considers it necessary to justify his doctrine not only by a harmonizing interpretation of traditions, but also by legal and moral reasoning,² and he declares himself ignorant of what a particular tradition from the Prophet may mean, in view of the practical difficulties of its application.³

Traditions from the Prophet are often superseded by traditions from Companions, or even disregarded without any apparent reason. They are regularly interpreted in the light of traditions from Companions, on the assumption that the Companions know the *sunna* of the Prophet best.⁴ Mālik therefore reasons: 'There is no evidence that the Prophet gave the command in question after the battle of Hunain;⁵ that he gave it

¹ But Mālik's expression 'the best that I have heard' (*aḥsan mā sami'ti*) does not usually refer to traditions; see below, p. 101, n. 1.

² Compare *Tr.* III, 13 with *Muw.* iii. 103 and *Mud.* x. 91.

³ Compare *Tr.* III, 31 with *Muw.* i. 67 and *Mud.* i. 5.

⁴ Zurqāni, *passim*, goes as far as to suppose that traditions from Companions go back to the Prophet merely because their contents seem to warrant it.

⁵ This was corrected in the parallel text *Muw.* ii. 305 into 'except on the day of

then is an established fact which is not disputed, but there is no evidence that he ordered it or acted upon it afterwards; and although Abū Bakr sent out many military expeditions, there is no evidence that he did so either, nor did 'Umar' (Ṭabarī, 87). And the Medinese interpret a tradition from the Prophet in the light of a judgment of 'Umar, 'because 'Umar would not be unaware of, and would not act against, the orders of the Prophet'.¹ Opinions of a Companion prevail over what the same Companion may relate from the Prophet.² We also find traditions from the Prophet minimized or interpreted restrictively without the justification of traditions from Companions.³ On the whole we can say that the Medinese give preference to traditions from Companions over traditions from the Prophet. This attitude, which is reflected in an anecdote on Zuhri and Ṣāliḥ b. Kaisān in Ibn Sa'd (ii, 135), is of course unacceptable to Shāfi'i.

In his polemics against the Medinese, Shāfi'i repeatedly attacks the idea that the practice of the first Caliphs Abū Bakr, 'Umar and 'Uthmān, to whom he sometimes adds Ibn 'Umar and even the later Umayyad Caliph 'Umar b. 'Abdal'azīz who is technically a Successor, might either confirm or weaken the authority of a tradition from the Prophet (*Tr. III*, 2 and often). We must not conclude from this that the Medinese doctrine was based consciously or to any considerable extent on a group of traditions from the first Caliphs as such. This is already disproved by the contents of *Tr. III* which contains traditions from Abū Bakr only in §§ 63-5 and from 'Uthmān only in § 89, as opposed to traditions from 'Umar in §§ 66-88 and from Ibn 'Umar in §§ 111-47. Shāfi'i himself, within the limits which he assigned to traditions from Companions, considered the decisions of the first Caliphs more authoritative than traditions from other Companions,⁴ and he forced this concept of the practice of Abū Bakr, 'Umar, and 'Uthmān, a concept which was narrower than the corresponding idea of the Syrians,⁵ on the Medinese as a rationalization of their attitude to traditions from Companions, only in order

Ḥunain'. Mālik had overlooked the fact that the day of Ḥunain was the last relevant battle during the life of the Prophet.

¹ *Ikh.* 325. See also *Tr. III*, 26 (*Muw.* i. 263), 27 (*Muw.* i. 246; *Muw. Shaib.* 133), 83, 119.

² This doctrine is ascribed to Qāsīm b. Muḥammad: *Tr. III*, 148 (p. 246 f.).

³ Mālik, quoted in Zurqāni, i. 184, says: 'Not everything that occurs in a tradition is to be taken literally' (compare this with *Ikh.* 177 ff.). See also *Tr. III*, 38 (*Muw.* ii. 348), 48, 67 (*Mud.* xv. 195). ⁴ See above, p. 18. ⁵ See below, pp. 70 ff.

to refute it.¹ In later times, however, the idea took root in the Mālikī school; Khaṭṭābī (quoted in Zurqānī, ii. 169) makes the continuous practice of the first three Caliphs a criterion for choosing between conflicting traditions, and 'Iyād (quoted *ibid.* i. 248) gives an argument *e silentio* from the first four Caliphs, in order to show that a certain tradition from the Prophet does not contain a general ruling but refers to a personal privilege of his.

The two particular authorities of the Medinese among the Companions are 'Umar and Ibn 'Umar. The role of 'Umar as a main authority of the Medinese is explicitly stated in many passages in *Tr. III*, for instance in § 87: 'You reply: If something is related from 'Umar, one does not ask why and how, and one does not counter it by interpreting the Koran differently.' The doctrine that a decision of 'Umar ought to prevail over a tradition from the Prophet, is expressed in a Medinese tradition which reflects the discussions in the generation before Mālik: Shāfi'ī—Mālik—Zuhri—Muḥammad b. 'Abdallāh b. Ḥārith b. Naufal—Sa'd b. Abī Waqqāṣ and Ḍaḥḥāk b. Qais differed on the practice of *tamattu'* at the pilgrimage; Ḍaḥḥāk disapproved of it, and Sa'd blamed him; Ḍaḥḥāk referred to 'Umar's prohibition, Sa'd to the example of the Prophet. Mālik prefers the opinion of Ḍaḥḥāk, because 'Umar would be better informed about the Prophet than Sa'd. Shāfi'ī tries to minimize and to explain away 'Umar's order (*Tr. III*, 39).²

Ibn 'Umar is still known to Maqrīzī (ii. 332) as the main authority of the Medinese. His role appears from numerous polemical passages in *Tr. III*, such as: 'You neglect the tradition from the Prophet on the strength of an analogy based on the opinion of Ibn 'Umar, and say: 'Ibn 'Umar cannot be ignorant of the doctrine of the Prophet'' (§ 119); 'we find that you are indignant at the thought of ever differing from Ibn 'Umar' (§ 145 (a)).³

¹ This is obvious from *Tr. III*, 148 (p. 242). See also below, p. 26.—The tradition in which the Prophet enjoins observance of his *sunna* and of the *sunna* of the well-guided Caliphs (Abū Dāwūd, *Bāb fī luzūm al-sunna*; Tirmidhī, *Abwāb al-'ilm*, *Bāb mā jā' fil-akhdh bil-sunna*; Ibn Māja, *Bāb ittibā' sunnat al-khulafā' al-rāshidīn*), bears the hall-mark of the early 'Abbāsīd period. See its prototype below, p. 62 n. 2.

² Wensinck in *Acta Orientalia*, ii. 178, 197 ff., has shown, with particular reference to Tirmidhī's collection of traditions, how an ideal picture of 'Umar, created partly after that of St. Peter, was made the half-inspired basis of a great part of religious law.

³ On 'Umar b. 'Abdal'azīz as an auxiliary authority of the Medinese see below, p. 192.

The references in Shāfi'ī to 'Umar and Ibn 'Umar as the main authorities of the Medinese are invariably accompanied by the charge of inconsistency which he levels against them, because they often disagree with their own authorities. We shall have to draw the conclusions from this in Chapter 7, and are concerned for the moment only with establishing the fact that the Medinese at the time of Mālik thought themselves free to reject traditions from Companions.¹ Shāfi'ī declares that they do so for no good reason: 'You contradict Ibn 'Umar and 'Urwa [a Successor]'. Rabi' replies: 'But you also hold this opinion'. Shāfi'ī explains: 'Yes, because the Prophet did it, and then Abū Bakr, 'Umar and 'Uthmān'. Rabi' concludes: 'So we agree with you'. Shāfi'ī retorts: 'Yes, but without knowing why' (*Tr. III*, 119). This passage, incidentally, confirms that reference to the practice of the first Caliphs is not an argument of the Medinese but peculiar to Shāfi'ī.

In Shāfi'ī's time the Medinese had not yet gained the reputation for a particular interest in traditions with which they were credited later. In *Tr. III*, 146, Shāfi'ī charges them with neglecting much of the little that they transmit, and in § 85 he says: 'If you abandon the tradition from the Prophet on . . . [here Shāfi'ī mentions a particular case] for the doctrine of 'Umar, and the doctrine of 'Umar on . . . [here Shāfi'ī mentions another case] for that of Ibn 'Umar, and Ibn 'Umar's doctrine in countless cases for your own opinion, your alleged traditional knowledge is only what you think yourselves.'

Traditions from Successors play a considerable part in the doctrine of the Medinese (see the statistics at the beginning of this chapter). They are carefully transmitted as relevant and often supersede traditions from Companions, for instance in *Tr. III*, 121, where Shāfi'ī says: 'If it is permissible to disagree with Ibn 'Umar on the strength of the opinion of some Successor, may then others also disagree with him for the same reason, or do you forbid others what you allow yourselves? Then you would not be acting fairly, for you may not disregard Ibn 'Umar on account of some Successor and on account of the opinion of your master [Mālik], and in another case consider the opinion of Ibn 'Umar as an argument against the *sunna*

¹ The Medinese say: 'This does not look like a decision of 'Umar' (*Tr. III*, 82; see also *Muw.* iii. 66).

[that is, a tradition from the Prophet].² The Medinese presume that when the Successor Ibn Musaiyib gave an opinion, 'he would not have done so unless it were based on his knowledge of an authority for his doctrine' (*Tr. III*, 77). But traditions from Successors are not followed automatically. The main Medinese authorities in the generation of the Successors will be discussed later.¹

B. THE IRAQIANS

The Iraqians were alleged by their opponents to care little for traditions, or at least less than the Medinese, and a slightly modified form of this view has remained part of the present common opinion. But the contemporary texts show that this is not so. We have seen that it is not the Iraqians but the Medinese that Shāfi'ī charges with neglecting much of the little that they transmit². In more than one passage, the Iraqians show themselves more knowledgeable on traditions than the Medinese or the Syrians, and Abū Ḥanīfa and Abū Yūsuf are both ahead of Mālik in the systematic collection of traditions.³ Against this, it is without importance that Shāfi'ī in an isolated passage taunts the Iraqians with deriving their knowledge of traditions from remote sources and possessing nothing like the knowledge of his companions the Medinese.⁴

The argument that the opinions of their opponents are not based on traditions from the Prophet, is common to the Iraqians and the Medinese in their polemics against one another.⁵ We shall see from the following analysis that the attitude of the Iraqians to traditions is essentially the same as that of the Medinese, but that their theory is more developed.

According to Shāfi'ī, it is Shaibānī's principle that no opinion on law is valid unless it is based on binding information⁶ or analogy (*Tr. VIII*, 3); a binding tradition, one from a Companion in the case in question, has precedence over analogy (*Ikh.* 117 f.); it is equally inexcusable to contradict the text of a tradition or to make a mistake in applying it (*Ikh.* 282).

¹ Below, p. 243 ff.

² Above, pp. 21, 23.

³ See below, p. 33 f.

⁴ *Tr. VIII*, 13. This argument hardly plays a role elsewhere.

⁵ *Tr. III*, 24, 26.

⁶ *Khabar lāzim*; on the meaning of this term, see below, p. 136, n. 2.

The Iraqi opponent repeatedly agrees with Shāfi'i that no one has any authority beside the Prophet. We have seen¹ that these statements must be taken with a certain reserve, but a passage such as *Muw. Shaib.* 357, where Shaibānī insists on the decisive role of a decision of the Prophet, shows that the Iraqians had indeed anticipated and explicitly formulated this essential thesis, and applied it occasionally. They are, however, still far from Shāfi'i's unquestioning reliance on traditions from the Prophet alone.

Abū Yūsuf says in *Tr.* IX, 5: 'Take the traditions that are generally known, and beware of those that are irregular (*shādhah*)'; he quotes a tradition that the Prophet declared in the pulpit: 'Traditions from me will spread; those that agree with the Koran are really from me, but what is related from me and contradicts the Koran is not from me'; further a tradition from 'Alī (with an Iraqi *isnād*): 'Traditions from the Prophet are to be interpreted in the most righteous and godfearing way', and a tradition from 'Umar (also with an Iraqi *isnād*), that he warned a group of Companions who were setting out for Kufa, to relate traditions from the Prophet only sparingly, because the people there were humming with the Koran like bees. 'Umar accepted a tradition from the Prophet only on the evidence of two witnesses, and 'Alī refused to accept traditions from the Prophet unless he had them confirmed by oath.

'The wider the spread of transmission', Abū Yūsuf says, 'the easier it is to eliminate those traditions which are not recognized, or are not recognized by the specialists on law, or do not agree with Koran and *sunna*. Beware of irregular traditions and keep to those which are accepted by the community, recognized by the specialists on law, and in agreement with Koran and *sunna*; measure things by that standard; what differs from the Koran does not come from the Prophet, even if it is related from him'. Abū Yūsuf adds a tradition that the Prophet said in his last illness: 'I allow only what Allah allows, and forbid only what Allah forbids; they ought not to shelter behind my authority',² and concludes: 'Make the Koran and the *sunna* which you know, your leader and guide; follow that and measure by it those problems which are not clear to you from Koran and *sunna*.'

¹ Above, p. 11.

² The wording of this tradition is derived from Koran xliii. 43.

This is the opposite of Shāfi'i's interpretation of the Koran in the light of the traditions from the Prophet.

Apart from these restrictions to its application, the Iraqian thesis of the overruling authority of traditions from the Prophet is definitely relegated to a subordinate place by the importance which the Iraqians attach, in theory and practice, to traditions from Companions. We find this principle explicitly formulated in many places, for instance, *Tr. I*, 89: 'They pretend that they differ from no one among the Companions of the Prophet'; § 183: 'Abū Ḥanīfa pretends that he never diverges from the opinions of the Companions'; *Tr. VIII*, 9, where Shāfi'i addresses Shaibānī: 'It is your avowed principle not to disagree with the decisions of any of the Companions, when no other Companion is known to have differed'. It is certainly on account of their explicit formulation of this principle, that Shāfi'i acknowledges repeatedly that the Iraqians have got a better excuse than the Medinese for diverging from traditions from the Prophet.¹

The argument of the Iraqians for attaching this importance to the opinions of the Companions is the same as that of the Medinese, that the Companions would not have been unaware of the practice and the decisions of the Prophet,² and it was claimed that their opinions were likely to coincide with the decisions of the Prophet: 'Ibn Mas'ūd was asked about a problem; he replied: "I am not aware of any decision of the Prophet on this"; asked to give his own opinion (*ra'y*), he gave it; thereupon one of the men in his circle declared that the Prophet had given the same decision, and Ibn Mas'ūd was exceedingly glad that his opinion coincided with the decision of the Prophet.'³ It is therefore not surprising that traditions from Companions supersede traditions from the Prophet, that both kinds of traditions are mentioned on the same level, and that traditions from the Prophet are interpreted in the light of traditions from Companions.⁴

¹ *Tr. III*, 61, and often.

² *Tr. IX*, 40, and elsewhere.

³ *Āthār A.Y.* 607; *Āthār Shaib.* 22; *Muw. Shaib.* 244, all through Abū Ḥanīfa—Ḥammād—Ibrāhīm Nakha'i; the parallel version in Shaibānī's *K. al-Hujaj* (quoted in *Comm. Āthār A.Y.*) has it through Sha'bī; it is not earlier than the period of Sha'bī and Ḥammād. Another version, in which the respect for traditions is even more strongly expressed, is in Ibn Ḥanbal and some of the classical collections; see *Comm. Muw. Shaib.* 244. For a counter-tradition against this, see below, p. 50.

⁴ The doctrine of the decisive character of traditions from Companions persisted in the school of Abū Ḥanīfa.

We must conclude that the reference to traditions from Companions is the older procedure, and the theory of the overruling authority of traditions from the Prophet an innovation, which was as yet imperfectly adopted by the Iraqians and consistently applied only by Shāfi'ī.

Whereas the method of harmonizing interpretation of traditions is not unknown to the Iraqians, and when no harmonizing is possible, the majority of the Companions is occasionally considered as decisive, they usually choose seemingly arbitrarily one out of several contradictory traditions, even if they could be brought into agreement. Shāfi'ī states in *Tr. III*, 13, that they choose 'that one which they find more in keeping with the *sunna*', and we shall see later¹ what the Iraqians mean by it. This acceptance or rejection of traditions, according to whether they agree or disagree with the previously established doctrine of the school, was later developed into a fine art by Ṭahāwī whose efforts at harmonizing are overshadowed by his tendency to find contradictions, so that he can eliminate those traditions which do not agree with the doctrine of the Ḥanafī school, by assuming their repeal. The interpretation by the ancient Iraqians of those traditions which they accept, confirms that their decisive criterion is the previously established doctrine.

The Iraqians reject traditions from the Prophet, because the tradition in question disagrees with the Koran (*Ikh.* 345 ff.); or because the rule expressed in it is not mentioned in the Koran² or in parallel traditions from the Prophet, and nothing similar to it is related from the four Caliphs who carried out the divine commands after the Prophet (*Tr. III*, 10); or because 'everyone has abandoned it' (*Ikh.* 336); or because the general opinion is different, and the traditions from the Prophet to the contrary can be explained away or considered as repealed (*Muw. Shaib.* 142); or simply for systematic reasons, because the tradition in question would make the doctrine inconsistent. Shāfi'ī is justified in charging the Iraqians with accepting traditions more easily from Companions than from the Prophet (*Ikh.* 345 ff.). They had, of course, often to disagree with traditions from Companions too, particularly as many mutually contradictory traditions are related from their two main authorities

¹ Below, pp. 73 ff.

² Mālik argues against this reasoning of the Iraqians in *Muw.* iii. 183.

'Alī and Ibn Mas'ūd. Shāfi'ī collects the points on which the Iraqians diverge from 'Alī and Ibn Mas'ūd, in *Tr. II*.

The role of 'Alī and Ibn Mas'ūd as Iraqi authorities is discussed in *Ikh.* 215 f., a passage which contains a rather one-sided, but from Shāfi'ī's point of view logical, summary of the attitude of the ancient schools of law to their eponyms. The Iraqi opponent states that Ibrāhīm Nakha'ī disapproved of a tradition from the Prophet and said: 'Should Wā'il [the transmitter] be more knowledgeable than 'Alī and Ibn Mas'ūd?'¹ He then acknowledges that Ibrāhīm did not relate from 'Alī and Ibn Mas'ūd that they saw the Prophet act differently from what Wā'il related, but Ibrāhīm supposed that had they seen him act as related by Wā'il, they would have transmitted it or acted upon it. He is forced to admit that Ibrāhīm transmitted no explicit statement from 'Alī and Ibn Mas'ūd, and concedes that Ibrāhīm could not have been aware of all their traditions and actions. He also concedes that not all decisions of Ibrāhīm went back to 'Alī and Ibn Mas'ūd. Therefore, Shāfi'ī concludes, the opponent has no right to draw conclusions from Ibrāhīm's general reference to 'Alī and Ibn Mas'ūd, because Ibrāhīm and others sometimes followed other authorities on points on which these two were silent. Even if Ibrāhīm related something from 'Alī and Ibn Mas'ūd, it would not be acceptable because he was not in direct contact with them, and now, Shāfi'ī says, the opponent wants to invalidate Wā'il's tradition from the Prophet on the ground that Ibrāhīm did not know the opinion of 'Alī and Ibn Mas'ūd on that point. If the opponent, as he does, claims that Ibrāhīm may have had positive information, this does not better his argument because, in fact, he did not transmit it. And if he means that Ibrāhīm's hearers presumed that he transmitted it from 'Alī and Ibn Mas'ūd without saying so, we might as well presume on all points on which nothing is related from him, that he knew [and therefore shared] the correct decision although he did not express it; and if in this case something different were related from 'Alī and Ibn Mas'ūd, the opponent could not use it as an argument.

¹ Cf. *Āthār A. Y.* 105; *Muw. Shaib.* 87; *Mud.* i. 68. It is significant that the original text in these three versions refers to Ibn Mas'ūd and his Companions (see below, pp. 231 ff.); Shāfi'ī, who does not recognize this basis of the Iraqi doctrine, replaces it by "'Alī and Ibn Mas'ūd'.

Beside 'Alī and Ibn Mas'ūd stands 'Umar as an Iraqi authority, and this triad was still known to Khwārizmī who says (ii. 41): 'Abū Ḥanīfa learned law from Ḥammād, Ḥammād from Ibrāhīm Nakha'ī, Ibrāhīm from the Companions of Ibn Mas'ūd, and they in their turn from the specialists on law among the Companions of the Prophet, Ibn Mas'ūd, 'Alī, and 'Umar.'

'Alī as an authority of the Iraqians is opposed to 'Umar as an authority of the Medinese in *Tr.* iii, 87. Ibn Mas'ūd is the authority of the Kufians, as opposed to the Basrians (*Ikh.* 62), and he is still known as such to Maqrīzī (ii. 332). There are traditions opposing his opinion to that of 'Umar, or showing 'Umar as asking for his decision and agreeing with him, and his personal authority is claimed for the doctrine of the school which goes under his name. We have seen that the opinion of Ibn Mas'ūd was supposed to coincide with the decision of the Prophet; but this is only a justification *ex post facto*, and the two *Kitāb al-Āthār* of Abū Yūsuf and Shaibānī, which give the traditional basis of the Iraqi doctrine, contain hardly any traditions through Ibn Mas'ūd from the Prophet. As to 'Umar as an Iraqi authority, Shāfi'ī states that Abū Ḥanīfa often follows 'Umar (by *taqlīd*) and makes him his only authority (*Tr.* I, 184). The few cases where Ibn 'Umar appears as an Iraqi authority seem all copied from the Medinese model.

Traditions from Successors are often adduced by the Iraqians on the same level as traditions from Companions, and even more frequently by themselves alone. In the time of Shaibānī and Shāfi'ī, however, it was recognized that the opinions of Successors as such were not authoritative; this theoretical position contrasts strangely with the extensive use that had been, and still was being, made of them. In *Tr.* VIII, 13, the Iraqi opponent calls Sa'īd b. Jubair 'a certain Successor whose opinion carries no weight'; in § 6 Shaibānī objects to Shāfi'ī (who in this early treatise still uses the old-fashioned argument from authorities other than the Prophet) that the opinions of Ibn Musaiyib, Hasan Baṣrī, and Ibrāhīm Nakha'ī are not authoritative; Shāfi'ī replies that Shaibānī himself sometimes falls into error by following their opinions, and in § 15 he says: 'If Shaibānī's argument is that Ibrāhīm Nakha'ī has said so, then he says himself that Ibrāhīm and other Successors are no authority.'

But the main authority for the Kufian Iraqi doctrine is this

very Ibrāhīm Nakha'ī. Out of the 549 traditions from Successors in the *Kitāb al-Āthār* of Abū Yūsuf, and the 550 in the *Kitāb al-Āthār* of Shaibānī, not less than 443 and 472 respectively are those of Ibrāhīm himself, and a further 15 and 11 respectively are related through Ibrāhīm from other Successors. Ibrāhīm is also the transmitter of a considerable proportion of traditions from the Prophet and from Companions in these two works, namely 53 out of 189 from the Prophet and 147 out of 372 from Companions in *Āthār A.Y.*, and 26 out of 131 from the Prophet and 104 out of 284 from Companions in *Āthār Shaib.* The passage *Ikh.* 215 f. which we have summarized before,¹ shows how the name of Ibrāhīm was used in order to involve higher authorities. The two *Kitāb al-Āthār* and *Tr. II* show that Ibrāhīm is the main transmitter from Ibn Mas'ūd and nevertheless diverges from him frequently, and that Ibrāhīm's doctrine almost invariably prevails with the Kufians.

This relationship between traditions from a Successor and a Companion corresponds to that between traditions from Companions and from the Prophet, and a parallel conclusion imposes itself: the reference to the Successor preceded the reference to the Companion, and it was only as a consequence of theoretical considerations that the authority was transferred backwards from the Successor to the Companion, just as it was later, and for a similar reason, transferred backwards from the Companions to the Prophet. The Medinese doctrine is not concentrated in one Successor as the Kufian is, but the attitude of the Medinese to Successors and Companions is the same as that of the Iraqians, and the same conclusion must be drawn.

As to individual Iraqians, we find Abū Ḥanīfa already technically interested in traditions. He collects identical traditions with different *isnāds*, and Medinese traditions in addition to Iraqian ones. Abū Yūsuf continues the systematic collection of traditions and shows himself interested and knowledgeable in traditions (*Tr. IX*, 2). Being later, he is subject to a stronger influence from traditions going back to the Prophet and Companions than Abū Ḥanīfa, and compared with the few cases in which Abū Ḥanīfa introduces a tradition into the discussion for the first time or changes the doctrine on account of it, the cases in which Abū Yūsuf does so are more numerous.² Shaibānī's

¹ Above, p. 31.

² See below, p. 301 f.

technical interest in traditions is attested by his edition of Mālik's *Muwaḥḥa*, and his habitual formula 'We follow this' shows the degree to which he is, at least formally, under the influence of traditions. Again we find that he changes the doctrine on account of traditions, particularly those from the Prophet.¹ This does not prevent his being inconsistent and eclectic, thereby laying himself open to Shāfi'i's constant criticism of the representatives of the ancient schools. As Abū Ḥanīfa before him, Shaibānī takes the doctrine of Medinese Successors into account.

C. THE SYRIANS

Auzā'i is the only representative of the Syrians on whom we have authentic information in *Tr. IX* and in Ṭabarī, and his attitude to traditions is essentially the same as that of the Medinese and the Iraqians. Practically all his statements of doctrine are concerned with the law of war, for which narratives on the expeditions of the Prophet of primarily historical import and usually lacking an *isnād* provide a background of precedents sensibly different in character from the legal traditions proper. If, therefore, references to the action of the Prophet occur frequently in Auzā'i, similar references are not less frequent in Iraqi texts on the same subject. (It happens that the law of war is only very succinctly treated in *Muw.* and *Muw. Shaib.*).

Auzā'i states, quoting Koran xxxiii. 21, that 'the Prophet is a good example' (*Tr. IX.* 23), and that 'the Prophet deserves most to be followed and to have his *sunna* observed' (§ 50), but in order to establish the practice of the Prophet he refers to 'what happened at the time of the Prophet and afterwards' (§ 26 and elsewhere). He refers to Ibn 'Umar beside the Prophet (§ 31), and to Abū Bakr, 'Umar, and the Umayyad Caliph 'Umar b. 'Abdal'azīz by themselves.² The usual argument of the ancient schools in favour of the authority of the Companions occurs in Ṭabarī, 103: Auzā'i cannot imagine that anyone could be so bold as to doubt that Abū Bakr and his companions knew the interpretation of the Koran better than Abū Ḥanīfa. In *Tr. IX.* 15, Auzā'i refers to 'the scholars our predecessors', and in Ṭabarī, 70, he regards the opinion of the

¹ See below, p. 306 f.

² *Tr. IX.* 22, 25, 28; Ṭabarī, 82, 87.

scholars as pertinent to the question of whether to accept or to reject a tradition from the Prophet.¹ Ibn Qutaiba, 63, relates that Auzā'ī used to blame Abū Ḥanīfa not because he followed his personal opinion (*ra'y*)—since, he said, all of us do so—but because, when confronted with a tradition from the Prophet, he diverged from it; if this is authentic, it does not go beyond the usual polemics between the schools and does not prove for Auzā'ī an attitude to traditions different from that of the other ancient schools of law. Auzā'ī appears as the authority of Abū Ḥanīfa for several traditions from the Prophet in *Āthār Shaib.*, and he himself knows a Basrian tradition from 'Umar.²

¹ Abū Yūsuf directs the same reasoning against Auzā'ī: *Tr. IX*, 10.

² *Tr. IX*, 22 (cf. *Kharāj*, 126 f.).