

THE ORIGINS OF
Muhammadan
Jurisprudence

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CHAPTER 6
ARGUMENTS FOR AND AGAINST
TRADITIONS

A. ADVERSARIES OF TRADITIONS IN GENERAL

IN the time of Shāfi'ī, traditions from the Prophet were already recognized as one of the material bases of Muhammadan law. Their position in the ancient schools of law was, as we have seen, much less certain. The early sources give ample evidence of the process by which traditions from the Prophet gained recognition, and of the opposition which their claims provoked. Some of this evidence has been collected by Goldziher and need not be duplicated here.¹ The new evidence, with which this chapter is concerned, shows that the hostility towards traditions came not only or even mainly from unorthodox circles, from 'philosophers, sceptics and heretics', but rather that it was the natural reaction of the early specialists on law against the introduction of a new element, a reaction traces of which survive in the attitude of the ancient schools of law. It follows that the traditions from the Prophet do not form, together with the Koran, the original basis of Muhammadan law, but an innovation begun at a time when some of its foundations already existed.

Shāfi'ī knows two groups of anti-traditionists: those who reject the traditions altogether, and those who reject the *khābar al-khāṣṣa*. We shall see² that the latter are simply the followers of the ancient schools of law. As regards the former, *Tr. IV*, 250-4, contains a discussion with a learned representative of them. Their arguments are that the Koran 'explains everything' (Koran, xvi. 89) and must not be interpreted in the light of traditions; no individual authority for the traditions is quite reliable, and a man may challenge traditions without becoming an unbeliever; how then can they serve as a guide to the uniformly plain meaning of the Koran and be put on the same footing as the Koran? 'Why do you', they ask Shāfi'ī, 'accept

¹ *Muh. St.* ii. 135 f.; further in *Z.D.M.G.* lxi. 860 ff.; and in *Islam*, iii. 230 ff.

² Below, p. 41 ff

traditions of this doubtful quality, whereas we only accept something that is beyond doubt, as the Koran is?' The interlocutor, who has become converted by Shāfi'i's arguments, explains that there are two schools of thought amongst his former companions: some confine themselves strictly to the Koran, others accept only explanatory traditions on subjects mentioned in the Koran. On the other hand, the anti-traditionists acknowledge the consensus on the ground that the Muslims, Allah willing, would not agree on any given doctrine unless they were right, and so their majority ('*āmmatuhum*) could not be mistaken as to the meaning of the Koran, even if individuals might be.¹

Those who reject the traditions altogether are the same as the *ahl al-kalām*, which is Shāfi'i's term for the Mu'tazila.² This is made certain by *Ikh.* 29 ff., where the relevant point is that the *ahl al-kalām*, in rejecting the traditions altogether, are more consistent than the adherents of the ancient schools; an Iraqi opponent uses this argument against the Medinese (p. 33 f.), and Shāfi'i has heard some of the *ahl al-kalām* use it against the Iraqians (p. 37). This identification is confirmed by the general attitude and the detailed arguments of the *ahl al-kalām* as they appear in the whole of Ibn Qutaiba's *Ta'wīl Mukhtalif al-Ḥadīth*. The *ahl al-kalām* are the extreme wing of the anti-traditionists.

The moderate wing is represented by those who reject the *khabar al-khāṣṣa*, that is, traditions based on the authority of individual transmitters only.³ It was Shāfi'i who, for polemic reasons, applied this name to them,⁴ and they do not, in fact, reject the *khabar al-khāṣṣa* on principle. Shāfi'i discusses their doctrine in detail in *Tr. IV*, 254-62; the whole passage shows that they are identical with the followers of the ancient schools of law, who prefer the 'living tradition' of the school to individual traditions from the Prophet.⁵ The actual attitude of the ancient schools to 'isolated' traditions, which will be considered

¹ See also *Tr. III*, 148 (p. 242): 'They say: "We acknowledge only the consensus".'

² See below, p. 258.

³ This term is slightly wider than, although it largely coincides with, those commonly used for 'isolated' traditions (*khabar al-wāḥid*, *khabar al-infrād*; see below, p. 50).

⁴ See particularly *Tr. IV*, 256 (towards the end).

⁵ The actual opponents in this passage are Iraqians, but the Medinese hold the same opinion (p. 257).

later,¹ is the same as that ascribed by Shāfi'i to those who reject the *khābar al-khāṣṣa*.²

According to Shāfi'i, their doctrine rests on the following bases:

- (a) what is related by many from many (*mā naqalat-hu 'āmma 'an 'āmma*), such as the main duties on which one can be absolutely certain of the orders of Allah and of the Prophet;
- (b) the Koran, in cases where several interpretations are possible, that is, in so far as it does not fall under (a). In these cases the Koran should be taken in its literal (*zāhir*) and general (*'āmm*) meaning, unless there is a consensus to the contrary;³
- (c) the consensus of the Muslims (including the consensus related from the preceding generations), even if it is not based on the Koran or a *sunna* [that is, a tradition from the Prophet]. The consensus is as good as a generally accepted *sunna*, and it is never an arbitrary opinion (*ra'y*) because this last is subject to divergencies;⁴
- (d) traditions based on the authority of individual transmitters. But these may serve as an argument only if they are transmitted in a way which makes them safe from error;
- (e) analogy. But a conclusion by analogy may only be drawn if the two problems in question are exactly parallel.

The consensus is the final argument on all subjects, and not subject to error, but (c) is different from (a); (a) comprises the scholars and the people, that is, all Muslims, and (c) is the consensus of the scholars who have the requisite knowledge. The consensus of the scholars or the lack of it, is an indication of the state of agreement or disagreement in the preceding generation, whether the scholars quote a tradition or not; their agreement is only feasible on the basis of an authoritative

¹ Below, p. 51.

² Or the *khābar al-infrād* (pp. 257, 258).

³ That is, it must not be interpreted restrictively in the light of traditions from the Prophet which are not supported by the consensus.

⁴ *Sunna* is used here in the meaning given to it by Shāfi'i, and Shāfi'i states in fact that he has edited this discussion. The reference to *ra'y* answers Shāfi'i's standing objection that the 'living tradition' of the ancient schools is only a mass of arbitrary opinions.

tradition, and a tradition is authoritative only if they accept it unanimously as such.¹ Shāfi'ī draws the, to him, obvious conclusion that this means depriving the traditions of their authority, and substituting the consensus for them.

To us, if we may anticipate part of the results of Chapter 8 below, Shāfi'ī's doctrine expresses the reaction of a traditionalist against the principle of consensus as embodying the 'living tradition'; this principle had found natural recognition in the ancient schools of law and was to come into its own again in the doctrine of consensus of the classical theory of Muhammadan law, a theory which had to take into account, however, the status which had meanwhile been won by Shāfi'ī for the traditions from the Prophet.

This seemingly simple picture of what Shāfi'ī regards as the anti-traditionist attitude of the ancient schools has to be qualified in two respects. Firstly, at the time when Shāfi'ī appeared, the ancient schools were already on the defensive against the mounting tide of traditions from the Prophet. We find a trace of this in the preceding extract. It becomes clearer still from a passage in the same context (p. 256) where Shāfi'ī claims that the opponents regard as the best authorities on law those who are most knowledgeable on traditions. But the list of ancient authorities on law which Shāfi'ī gives in this connexion and which has been translated before,² contains the names of lawyers and not of traditionists, and the farther we go back, the more we find the lawyers independent of traditions.

Secondly, the ancient schools of law make an exception in favour of traditions from individual Companions of the Prophet. This is only another aspect of the independent authority which they ascribe to certain Companions and which we have discussed in Chapter 4. From the point of view of the traditionists a single Companion, whether he transmits explicitly from the Prophet or gives his own doctrine which can be presumed to agree with a decision of the Prophet, is only a single transmitter. The adherents of the ancient schools had therefore to justify their apparent inconsistency in relying on the authority of single

¹ The assumption that the consensus was necessarily based on traditions, was forced on the ancient schools of law either by Shāfi'ī himself or by the traditionists. See the parallel passage in *Ris.* 65 (below, p. 90 and n. 2). The authentic reasoning of the ancient schools shows no trace of this assumption.

² Above, p. 7 f.

Companions. This is the background of a passage (pp. 258 ff.) which, on the face of it, seems rather surprising in a context which treats of the anti-traditionist attitude of the ancient schools.

The Iraqi opponent, speaking for the ancient schools in general, explains that a *sunna* of the Prophet can be established in the ways (a) and (d) above, and further, if one Companion relates something from the Prophet and no other Companion contradicts him. Then one must conclude that he related it in the midst of the Companions and that they did not contradict him because they knew that he was right. So it can be considered as a tradition from the Companions in general. The same applies to their silence on a decision given by one of them.

This passage makes sense only if we regard the last words as operative, and take it as intended to justify the reliance on the opinions of individual Companions, as practised in the ancient schools of law. The kind of argument which the followers of the ancient schools use here in favour of traditions related by individual Companions from the Prophet, they use elsewhere in favour of Companions' opinions as against traditions from the Prophet.¹ At the stage of discussion which Shāfi'ī has preserved, the followers of the ancient schools used the existence of traditions related by single Companions from the Prophet as an argument in order to justify their reliance on the opinions of the Companions themselves. But Shāfi'ī, in stating the case of the ancient schools polemically, shifted the emphasis to their implicit recognition of 'isolated' traditions from the Prophet.²

B. ARGUMENTS AGAINST TRADITIONS FROM THE PROPHET

We now turn to the individual arguments that were brought forward against traditions from the Prophet.

The most sweeping argument occurs in *Ikh.* 366 ff. Here the representative of one of the two groups opposed to traditions addresses Shāfi'ī: 'You regard two things as grounds for the rejection of a tradition: the ignorance of an unreliable trans-

¹ See below, p. 50.

² The term '*sunna* of the Prophet' meant for Shāfi'ī a formal tradition from the Prophet, but it was used by the others, the Iraqians in particular, in order to claim for their 'living tradition' the general authority of the Prophet; see below, p. 73 f.

mitter, and the existence of another tradition to the contrary. Our thesis is that what is possible with one tradition is possible with all of them'—in other words, that the recognized traditions are no more reliable than the rejected ones. Shāfi'ī justifies his attitude by the parallel of a judge who will accept the evidence of a witness whom he knows to be reliable, will reject that of one whose character has been challenged, and will reserve his judgment on the evidence of a third whose status he does not know. Shāfi'ī denies his opponents the right of rejecting traditions to which no direct objection can be made. The same argument recurs in Ibn Qutaiba, 10 f., in the mouth of the *ahl al-kalām*.

Criticism of traditions on material grounds, which is not unknown even to Shāfi'ī,¹ is pushed to the extreme by the *ahl al-kalām*. They point out that many traditions are contrary to reason (*nazar*) and observation ('*iyān*), absurd and ridiculous.² It is worth noticing that this kind of reasoning which occurs continuously in Ibn Qutaiba, is not discussed by Shāfi'ī.³

An argument frequently used by the adversaries of traditions from the Prophet, is that they contradict the Koran which ought to be the main object of study in preference to traditions, and the standard by which traditions are accepted or rejected. Shāfi'ī calls this 'rejecting the traditions by comparing them with the Koran' (*Tr. IX, 5*). This reasoning is put into the mouth of Companions such as 'Ā'isha, 'Alī, Ibn 'Abbās, 'Umar, and even, illogically enough, of the Prophet himself. In *Ris. 32*, the opponent refers to a tradition which makes the Prophet say: 'Compare what is related on my authority, with the Koran; if it agrees with it, I have said it, and if it does not agree, I have not said it.'⁴ Shāfi'ī, however, does not consider this tradition well authenticated. Another tradition to the same effect makes the Prophet say: 'People ought not to shelter behind my authority (*lā yamsikann al-nās 'alaiya bi-shai'*); I allow only what Allah allows, and forbid only what Allah forbids.'⁵ Shāfi'ī

¹ See above, p. 37 f.

² Ibn Qutaiba, 147, 151, 234, 324, and often; Mas'ūdi, i. 270 f.; iv. 26. See also the caricature of a legal discussion in Jāhiz, *Hayawān*, i. 141 ff., 180.

³ The reason is probably that many of the more extravagant of these traditions came into circulation only after the time of Shāfi'ī; see below, p. 256.

⁴ For parallel versions see above, p. 28, and below, p. 253 f.

⁵ For a parallel version, see above, p. 28.

discusses this tradition in *Tr. V*, 264, and explains it away as referring to personal privileges of the Prophet.

The same anti-traditionist reasoning is supposed but refuted in a tradition which makes the Prophet say: 'Let me find no one of you reclining on his couch, and, when confronted with an order or a prohibition from me, saying: I do not know [whether this is authentic or not], we follow [only] what we find in the Koran.'¹ Shāfi'ī quotes this tradition in *Tr. V*, 264, and in *Ris.* 15 on the authority of Ibn 'Uyaina with a full *isnād* back to the Prophet, but in *Ris.* 15 also on the authority of Ibn 'Uyaina from Muhammad b. Munkadir as a *mursal* from the Prophet. This latter form of the *isnād* is certainly the original one and shows that the polemics of the traditionists and anti-traditionists, which are reflected in this tradition, took place in the generation before Ibn 'Uyaina, that is, in the first third of the second century A.H.

This kind of argument drawn from the Koran against traditions from the Prophet is particularly familiar to the Iraqians;² but it is also used by the *ahl al-kalām*.³ As the latter go much farther in their anti-traditionist attitude, we find Shāfi'ī and the Iraqians on common ground against 'those who follow the outward meaning of the Koran and disregard the traditions' (*Umm*, vi. 115).

A secondary stage of this anti-traditionist argument is represented by the assumption that the Koran repeals traditions. In *Ris.* 32 where the opponent uses this argument, Shāfi'ī replies that no scholar will say that. But *Ikh.* 48 shows that an opinion based on this reasoning was held 'to this very day', and *Tr. III*, 60, identifies the holders of this opinion as the Medinese.⁴ Shāfi'ī's final argument in favour of the traditions, here and in other cases, is the truism that to reason in this way would mean whittling away the majority of the *sunnas* of the Prophet (*Ris.* 33 f.).

The followers of traditions went a step farther and formulated the principle that the *sunna* prevails over the Koran, but the Koran does not prevail over the *sunna*,⁵ or that the Koran may

¹ The text contains several expressions typical of the discussions in the second century A.H.

² See above, pp. 28, 30.

³ Ibn Qutaiba, 53, 112, 256.

⁴ For the details, see below, p. 263.

⁵ Dārimi, *Bāb al-sunna qāḍiya 'alā kitāb Allāh*.

be repealed by the *sunna* of the Prophet.¹ As Shāfi'ī identifies himself with the traditionists and shares their other arguments against the adherents of the ancient schools and the *ahl al-kalām*,² it is safe to assume that this extreme position of which I find no trace in Shāfi'ī's writings or before him, was taken or at least gained prominence only after his time.

The anti-traditionist attitude showed itself further in unwillingness to relate traditions from the Prophet, insistence on their small number, warnings against careless attribution of traditions to the Prophet, and similar considerations which were especially popular in Iraq.³ Statements to this effect voiced originally the opposition of the ancient Iraqians to the growing number of traditions from the Prophet and attempted to justify the Iraqians' customary reliance on later authorities. By an easy transition, this kind of reasoning could be adopted by the moderate traditionists and used by them as a proof of the care with which, they claimed, traditions from the Prophet had been transmitted.

Such arguments, however, could not prevent the growth of traditions from the Prophet, and the followers of the ancient schools had to explain away traditions which contradicted their own established doctrine. We have already given details of the interpretation of traditions from the Prophet as practised by Shāfi'ī and by the followers of the ancient schools,⁴ and are concerned here only with one particular aspect of their interpretative reasoning. This is the fact that the method of interpreting traditions, practised in the ancient schools, tended to disparage and reject traditions from the Prophet,⁵ whereas Shāfi'ī, by harmonizing interpretation, did his utmost to acknowledge and maintain them.⁶

According to *Ikh.* 328 ff., the Iraqians are inclined to look for contradictions in the traditions, and where two are contradictory to reject one.⁷ Shāfi'ī, who applies harmonizing interpreta-

¹ Ibn Qutaiba, 243 ff., 250, 260.

² See below, section C.

³ Dārimī, *Bāb man hāb al-futyā*.

⁴ Above, pp. 13 f., 23, 30.

⁵ This tendency prevailed, too, among the *ahl al-kalām* who used considerations familiar to the Iraqians in particular, with an extreme anti-traditionist bias: Ibn Qutaiba, 182, 195 ff., 241 ff., 256, 343.

⁶ See below, p. 56 f.

⁷ Also the *ahl al-kalām* point out contradictions in traditions: Ibn Qutaiba, 153, 268 ff. and often.

tion, considers their destructive criticism of traditions as a 'perversion of straightforward interpretation' and a 'screen in front of those who are not perspicacious enough' (p. 331 f.). The Iraqians go so far as to suppose that two contradictory traditions cancel each other out, thus leaving the way free for the use of analogy (*Ris.* 81). Ṭaḥāwī often reasons in the same way; as do the Mālikīs, except that they substitute practice ('*amal*') for analogy (e.g. *Zurqānī*, iii. 36).

An easy method of explaining away traditions from the Prophet was the gratuitous assumption of repeal. We find this assumption made by the Iraqians (e.g. *Muw. Shaib.* 142), by the Medinese, who refer to the different practice of Medina (e.g. *Ikh.* 217 f.), and by Auzā'ī, who refers to the different practice of Abū Bakr (*Tr.* IX, 29). Shāfi'ī refused to recognize this method, since its use would enable all traditions to be whittled away (*Ris.* 17).

Another easy method of disposing of traditions from the Prophet by interpretation was to represent them as particular commands, applicable only to the occasion on which they were given. This argument is exemplified by a tradition on the artificial creation of foster-parentship between adults (*Muw.* iii. 89). According to it, 'Ā'isha made a habit of this practice, but the other wives of the Prophet regarded his ruling as a special one for the benefit of the individual in question. The argument is meant to invalidate the tradition related from 'Ā'isha in favour of the practice. The anti-traditionist argument in its turn was met by two counter-arguments. According to one 'Ā'isha referred, against her fellow wife Umm Salama, to the example of the Prophet (Muslim, quoted in *Zurqānī*, *ad loc.*). According to the second the other wives of the Prophet were engaged in the same practice.¹ In Shāfi'ī's time, the ancient schools had systematized the anti-traditionist argument by regarding particular commands of the Prophet as based on the exercise of his discretion (*ijtihād*), and concluding that the imam, the head of the state, was authorized to do the same.² The examples adduced here are Medinese, but Iraqians also used this argument.

¹ Two traditions to this effect are related by Nāfi': *Muw.* iii. 87 f.; *Muw. Shaib.* 272.

² *Tr.* III, 61 (cf. *Zurqānī*, iii. 204). To the pair *ḥukm* and *ijtihād* in *Tr.* III corresponds the pair *fatwā* and *ḥukm* in *Zurqānī*.

A further method of invalidating traditions by interpretation was to regard them as referring to personal privileges of the Prophet. This method, which is a special case of the one discussed in the preceding paragraph, is refuted, and therefore supposed to exist, in two traditions. In one of them (*Muw.* ii. 89; *Muw. Shaib.* 178) the Prophet declares explicitly that a certain practice is no special privilege of his and says: 'I hope that I am the most god-fearing and the most learned among you.' According to the other (*Muw.* ii. 92; *Muw. Shaib.* 180), a man sends his wife to consult Umm Salama, a wife of the Prophet, on a certain practice; Umm Salama replies that the Prophet has this practice, but the man is all the more dejected because the Prophet has special privileges, and sends his wife again; the Prophet declares angrily that he is more mindful of Allah's orders than anyone. There is a further tradition about this particular case (*Muw.* ii. 94) which presents the anti-traditionist tendency directly. In this version 'Ā'isha declares that the Prophet had indeed the practice in question, but adds: 'The Prophet kept himself more under control than all of you.'

Both Iraqians and Medinese used this method of assuming a personal privilege on the part of the Prophet, and the traditionists themselves adopted it when they wanted to invalidate a tradition which contradicted their own. Shāfi'i's reply is always the same: 'If one started that line of reasoning, there would be no end to it . . . and the *sunnas* would be whittled away' (*Tr.* IX, 39).

There is further the assumption that actions of the Prophet as reported in traditions represent only his personal taste or preference.¹ The idea that one ought to follow the Prophet even in his personal tastes was as yet unknown to Shāfi'i, though it had already found expression before him.²

These examples are not meant to be exhaustive, but are sufficient to show the importance of anti-traditionist interpretations in the period before Shāfi'i.

We have seen in Chapter 4 that the ancient schools of law based their doctrines, generally speaking, on traditions going

¹ *Muw.* iv. 204 and *Ikh.* 149. This example is Medinese; the Iraqians minimize the effect of the tradition in question by interpretation, see *Muw. Shaib.* 280.

² See *Muw.* iii. 32. Ibn Qutaiba (58 f.) still rejected the idea although it was voiced in Mu'tazila circles. In Ṭahāwī, ii. 314, it has become part of the accepted doctrine.

back to Companions rather than on those going back to the Prophet. Their common thesis that the Companions could not be unaware of the *sunna* of the Prophet and would know it best, takes its place beside the other arguments put forward against traditions from the Prophet. The extreme group of anti-traditionists use the same reasoning as that used by the adherents of the ancient schools of law.¹ They point out that other Companions are more knowledgeable than a certain Abū Tha'laba, whose tradition from the Prophet is to be rejected.² And in direct opposition to the Iraqian tradition which claims for the doctrine of Ibn Mas'ūd, by implication, the authority of the Prophet,³ a counter-tradition makes 'Alī say: 'The word of a bedouin from the tribe Ashja' cannot prevail over the Koran' (*Comm. Muw. Shaib.* 245, n. 1). Here, an originally anti-traditionist argument is used in the polemics of the ancient schools.⁴

Finally, there is the argument based on the lack of documentation of traditions from the Prophet. In its simplest form, common to all types of anti-traditionist, it says that an 'isolated' tradition, that is, a tradition transmitted by a single individual (*khābar al-wāhid, khābar al-infirād*), cannot be accepted as well authenticated. The simplest variant of the argument maintains that a tradition, to be accepted, must be transmitted by at least two reliable witnesses, as is the case with legal evidence. This conclusion is expressed in a tradition by which 'Umar is shown as not content with the information of a single individual on a decision of the Prophet, but asking for confirmation by another person.⁵ But a tradition based on the statement of one person can, as is the case with legal evidence, be accepted if it is confirmed by oath.⁶

This parallel between traditions and legal evidence is drawn explicitly by the representative of the ancient schools in the detailed discussion in *Ris.* 52 f., and it is indeed so obvious that

¹ See above, pp. 25, 31.

² *Ikh.* 46. Further reasoning of the *ahl al-kalām* against the Companions: Ibn Qutaiba, 24 ff.

³ See above, p. 29, n. 3.

⁴ See below, p. 227 f.

⁵ *Ris.* 59 f.; *Muw.* iv. 200. Parallel traditions, also on 'Umar, are in Bukhārī, *Kitāb al-i'tisām bil-kitāb wal-sunna*, and in Zurqānī, iv. 44. See also Ibn Qutaiba, 48.

⁶ See the tradition on 'Alī referred to, together with the tradition on 'Umar, by Abū Yūsuf in *Tr. IX*, 5; above, p. 28.

even Shāfi'ī, who argues strongly for the acceptance of traditions even if they are transmitted by single individuals only, has to acknowledge it to a certain extent.¹ He points out, among other things, that the number of witnesses demanded for legal evidence is not always two. This fact is used in favour of the *khābar al-wāḥid* in two traditions which make 'Uthmān and Zaid b. Thābit respectively accept the information of one woman on certain decisions of the Prophet (*Ris.* 60). For these decisions concern feminine matters, and a widely held doctrine admitted the evidence of one woman on such subjects.

The disparagement of the *khābar al-wāḥid* was, in fact, so typical of the ancient schools of law that Shāfi'ī, using a synonym, could refer to them as 'those who reject the *khābar al-khāṣṣa*'.² According to them, it is ignorance to accept the *khābar al-infirād* (*Tr.* IV, 256, at the end). Abū Yūsuf warns against isolated traditions³ and says: 'We consider an isolated tradition irregular, and do not follow it' (*Tr.* IX, 9). Shaibānī points out that a certain tradition is isolated, and states that the majority of scholars do not follow it (*Muw. Shaib.* 148). According to Ṭahāwī, ii. 280, an isolated tradition cannot serve to establish matter additional to the Koran and to generally recognized traditions, or prove their repeal. The Medinese reject isolated traditions from the Prophet (*Tr.* III, 148, p. 242), and hold that their own consensus takes precedence over them (*Ris.* 73). They are not consistent, however, and Shāfi'ī can say to them: 'If Mālik objects that this is an isolated tradition,⁴ then what does he think of all those cases where he relates isolated traditions and relies on them? Either the isolated tradition is a reliable argument . . . or it is not; and if not, you must discard all those cases in which you rely on isolated traditions' (*Tr.* III, 148, p. 249). The same applies to the Iraqians.

The *ahl al-kalām* go farther and demand that a tradition, to be accepted, must be transmitted by many from many (*mā rawāh al-kāffa* 'an *al-kāffa*) or widely spread (*khābar al-tawātur*).⁵ In defining this condition they disagree: 'They disagree as to how a tradition becomes certain. Some say: through one

¹ See *Ikh.* 3 f., 35, 366 ff., and elsewhere.

² See above, pp. 41 ff.

³ See above, p. 28.

⁴ In this case not from the Prophet, but from a Companion.

⁵ On another term see above, p. 42.

veracious transmitter; others say: through two, because Allah demands two trustworthy witnesses; others say: through three, because the Koran says (ix. 122): "a troop of every division of them", and the smallest number to which the term troop can be applied, is three; others say: through four, because Allah demands four witnesses [in the case of adultery]; others: through twelve, because the Koran says (v. 12): "We raised up of them twelve wardens"; others: through twenty, because the Koran says (viii. 65): "If there be of you twenty patient men"; others: through seventy, because the Koran says (vii. 154): "And Moses chose from his people seventy men" (Ibn Qutaiba, 78 f.). The most commonly held opinion demanded twenty transmitters in each generation.¹

According to Shāfi'ī, the *khābar al-wāḥid*, if related by a trustworthy transmitter, is sufficient to establish the *sunna* of the Prophet; it cannot be refuted by conclusions drawn from the Koran or from another tradition which is capable of several interpretations; and it does not matter that it is transmitted by only one person (*Tr. III*, 10). It can be invalidated only by a greater number of traditions to the contrary (*Ikh.* 165; *Ris.* 40). Shāfi'ī devotes three long passages to a detailed argument for the *khābar al-wāḥid*.² He even claims a consensus of the scholars, past and present, in its favour;³ but this claim is belied by the strength of the opposition. His only concession is that the *khābar al-wāḥid* is weaker than a unanimously recognized *sunna* and does not produce absolute knowledge, although it must serve as a basis for action.⁴

The later theory on the *khābar al-wāḥid* did not go as far as Shāfi'ī's doctrine.⁵ Among the authors of collections of traditions, Bukhārī (*Kitāb akhbār al-āḥād*) repeats Shāfi'ī's essential arguments, Muslim (*Bāb ṣiḥḥat al-iḥtijāj bil-ḥadīth al-mu'an'an*) takes the acceptance of the *khābar al-wāḥid* as common ground, Tirmidhī (at the end) includes it in his category of *gharīb* ('strange') traditions, thus setting it apart, and Dāraquṭnī (p. 361) accepts it only with certain qualifications.

¹ See Nyberg, in *E.I.*, s.v. Mu'tazila.

² *Tr. IV*, 258 ff.; *Ikh.* 4 ff.; *Ris.* 51 ff.

³ See particularly *Ikh.* 25 f.

⁴ *Ris.* 82 (quoted below, p. 135); *Ikh.* 5.

⁵ See Marçais, *Taqrib* (in *J.A.*, 9th ser., xviii. 113, n. 1).

C. ARGUMENTS IN FAVOUR OF TRADITIONS
FROM THE PROPHET

We have had to review in section B, in connexion with the arguments brought forward against the traditions from the Prophet, a number of those adduced in their favour. The present section is, therefore, confined to those arguments of the traditionists which have not been already discussed.

The argument that the Koran is more authoritative than traditions from the Prophet is countered by the assertion that the Prophet to whom the Koran was revealed, knew best how to interpret it, and that he acted as Allah ordered him to act (*Ikh.* 404). This reasoning is put into the mouth of Sa'id b. Jubair and of 'Umar himself.¹ The fear is expressed that unsound doctrine will follow a widespread knowledge of the Koran,² and the Prophet is made to declare that the Koran alone is no guarantee against error.³ One decision of the Prophet is put in a pointed manner under the aegis of the Koran, although it does not occur there.⁴ A tradition related by Muṭṭalib b. Ḥanṭab from the Prophet claims that the *sunna*, as embodied in traditions from the Prophet, contains all orders and prohibitions in the same way as the Koran; it makes the Prophet say: 'I have left nothing on which Allah has given you an order, without giving you that order, and nothing on which Allah has given you a prohibition, without giving you that prohibition' (*Ris.* 15). This Muṭṭalib b. Ḥanṭab, who is mentioned also elsewhere in Shāfi'i, is ostensibly a Companion of

¹ Dārimī, *Bāb al-sunna qāḍiya 'alā kitāb Allāh; Bāb ittibā' al-sunna.*

² Abū Dāwūd, *Bāb fī luzūm al-sunna.*

³ Tirmidhī, *Bāb mā jā' fī dhahāb al-'ilm:* the Prophet predicts the disappearance of knowledge; Ziyād b. Labid remarks: 'But we have got the Koran'; the Prophet replies: 'Surely you are not one of the scholars of Medina; consider what happened to the Jews and Christians although they had the Torah and the Gospel.' Jubair b. Nufair has it confirmed by 'Ubāda b. Ṣāmit that Abul-Dardā' relates this tradition correctly.—The tradition presupposes the claim of Medina to be the home of the true *sunna*, and is, therefore, later than Shāfi'i (see above, p. 8). The names of the two Companions on whose authority it is related are taken from the two versions of the tradition on Mu'āwiya which expresses a similar tendency in favour of traditions from the Prophet (see below, p. 55).

⁴ *Muw.* iv. 7; *Muw. Shaib.* 305: the Prophet is asked to give judgment according to the Koran, on a married woman and an unmarried man who have committed adultery; he has the woman lapidated and the man flogged and banished. This is obviously later than the Iraqian traditions on the problem of banishment (see below, p. 209).

the Prophet; but the biographical works know him only as a late Successor; a Companion of that name, known to later biographical works only, does not occur in *isnāds*; this shows how carelessly the *isnāds* were sometimes put together.¹

The traditionists defended themselves against the reproach of ignorance of law by quoting the words attributed to the Prophet: 'Luck to the man who hears my words, remembers them, guards them and hands them on; many a transmitter of legal knowledge is no lawyer himself, and many a one transmits legal knowledge to persons who are more learned in it than he is' (*Ris.* 55, 65).²

The practice, prevalent in the ancient schools, of referring to Companions and Successors is countered by numerous traditions which represent, with an obvious polemical tendency, Companions and later authorities as deferring to traditions from the Prophet. Shāfi'i has collected a number of these traditions in *Ris.* 59 and 61 f. The following examples are typical. 'Umar changes his customary decision on hearing that the Prophet has decided differently. 'Umar inquires whether anyone knows of a decision of the Prophet on a problem; when informed of it, he gives judgment accordingly and says: 'Had we not heard this, we should have given another judgment', or: 'We should almost have given judgment according to our own opinion (*ra'y*).' Ibn 'Umar relates: 'We used to conclude the agricultural contract of *mukhābara* and thought it unexceptionable, but we stopped doing it when we heard that the Prophet had forbidden it.'

These traditions, and others, reflect the struggle of the traditionists for the mastery over law. The following two traditions take us directly into the time of this struggle.

(a) Shāfi'i—anonymous—Ibn Abi Dhi'b—Sa'd b. Ibrāhīm gave a judgment according to the opinion of Rabi'a b. Abi 'Abdalaḥmān, and Ibn Abi Dhi'b informed him of a tradition from the Prophet to the contrary; when Sa'd referred his

¹ Sheikh Shākir concludes painstakingly in a note extending from p. 97 to p. 103 of his edition of *Ris.*, that the person in Shāfi'i's *isnād* is another Companion of the same name.

² The *isnād* runs: Ibn 'Uyaina (a main representative of the traditionists)—'Abdalmalik b. 'Umair—'Abdalaḥmān—his father Ibn Mas'ūd—Prophet; the name and authority of Ibn Mas'ūd are borrowed from the Iraqians against whom this tradition is directed.

dilemma to Rabī'a, mentioning that Ibn Abī Dhī'b was reliable, Rabī'a replied: 'You have used your discretion (*ijtihād*) and your judgment is given for good'; but Sa'd said: 'Am I to execute my judgment and reverse the judgment of the Prophet? I will rather reverse my judgment and execute the judgment of the Prophet'; he called for the written document, tore it up, and gave judgment to the contrary.

(b) Shāfi'i—Abū Ḥanīfa b. Simāk Shihābī—Ibn Abī Dhī'b—Maqbūrī—Abū Shuraiḥ Ka'bi—the Prophet in the year of the conquest of Mecca declared that the avenger of a murdered man can choose between wergeld and retaliation; Abū Ḥanīfa Shihābī asked Ibn Abī Dhī'b: 'Do you accept this?' Thereupon Ibn Abī Dhī'b 'pushed my breast, shouted loudly, abused me and said: "I relate to you a tradition from the Prophet and you ask whether I accept it! Yes, I accept it, and this is my duty and the duty of whosoever hears it; Allah has chosen Muhammad from all mankind and guided mankind through him and by him, and has decreed for it what he decreed for him and through him; men have only to follow him with good or bad grace, and no Muslim can escape from that." And he did not cease until I implored him to be silent.' This Ibn Abī Dhī'b is a prominent traditionist. It is obvious that Shāfi'i has taken over the traditionists' argument.

The blame which Ibn Abī Dhī'b and Shāfi'i attached to those who did not subordinate their legal doctrine to traditions from the Prophet was projected back into the early period. For example, a tradition informs us that Mu'āwiya concluded a certain contract, and that Abul-Dardā' informed him that the Prophet had forbidden this kind of contract. Mu'āwiya replied that he considered his transaction unexceptionable, but Abul-Dardā' said: 'I give him information from the Prophet, and he informs me of what he thinks (*ra'y*); I will not live together with you in the same country.' Abul-Dardā' then informed 'Umar, and 'Umar forbade Mu'āwiya to conclude this kind of contract.¹ A similar story on the same contract about Mu'āwiya and 'Ubāda b. Ṣāmit is reported in the classical collections of traditions.²

Information coming from the Prophet is opposed to informa-

¹ *Muw.* iii. 112; *Muw. Shaib.* 350; *Ris.* 61, &c.

² e.g. Ibn Māja, *Bāb ta'zīm ḥadīth rasūl Allāh.*

tion derived from other persons in a tradition related by Mu'tamir on the authority of his father, Sulaimān, from Ibn 'Abbās, who is reported to have said: 'Are you not afraid to say: "The Prophet said so-and-so, and N.N. said so-and-so"?'¹ Mu'tamir is the person in whom the *isnāds* of several other traditions of a traditionist bias converge. He or someone using his name must therefore be considered responsible for them. We need not go into the numerous other traditions of the same tendency, couched in more general terms, in the classical collections.²

Finally, to counter the more or less arbitrary interpretations by which the ancient schools of law tended to eliminate traditions, Shāfi'i employed a consistent method of interpretation which he applied both to Koran and traditions and which he opposed explicitly to that used by his predecessors.³ It is based on the distinction between general ('*amm*, *jumla*, *mujmal*) and particular or explanatory (*khāṣṣ*, *mufassir*) statements, a distinction which enables him to harmonize rulings apparently contradictory. A general ruling stated in general terms (*jumla makhrajuhā 'amm*) may still envisage a special case (*yurād biha l-khāṣṣ*).⁴ But every ruling must be taken in its obvious or literal (*ẓāhir*) and unrestricted meaning unless there is an indication to the contrary on the authority of the Prophet or in the consensus of the scholars.⁵ In practice, both considerations work invariably in favour of the acceptance of traditions.⁶ Shāfi'i devotes a considerable part of the *Risāla* and many passages in the *Ikhtilāf al-Hadīth* to the development of this theory of interpretation, and he co-ordinates it with his acceptance of traditions from single individuals. It must be considered as his personal achievement, although considerations of '*amm*, *jumla*, *khāṣṣ*, and *ẓāhir* were not unknown to the ancient schools of law.

Shāfi'i's disciple Muzanī, in his *Kitāb al-Amr wal-Nahy*, takes up the theory of his master and applies it to the question of how far a command, or imperative, may be taken to express a per-

¹ Dārimī, *Bāb mā yuttaqā min tafsīr hadīth al-nabī*.

² See particularly Muslim, introductory chapters; Abū Dāwūd, *Kitāb al-sunna*; Tirmidhī, *Abwāb al-'ilm*; Ibn Māja and Dārimī, introductory chapters.

³ *Ikh.* 37 f., 47, 306, 328 ff.

⁴ *Ris.* 9 f.; *Ikh.* 321.

⁵ *Ris.* 46; *Ikh.* 56, 150 ff.

⁶ See, e.g., *Ris.* 29; *Ikh.* 23 ff., 297, 401.

mission, and whether a prohibition may convey not a total but only a partial interdiction.

Shāfi'ī does not go as far as some extreme followers of traditions of whom he says: 'Another party is simply ignorant, clings to its ignorance and refuses to learn, and therefore becomes embarrassed. These are the people who say: "You reject one tradition and accept another"' (*Ikh.* 367 f.). Shāfi'ī answers them with the same reasoning he uses in his reply to the parallel thesis of their direct adversaries, the extreme anti-traditionists.¹ This is the only important case in which Shāfi'ī does not identify himself with the traditionists.

D. CONCLUSIONS

Most arguments against traditions transmitted from the Prophet are common to the ancient schools of law; the Medinese are in no way more enthusiastic about them than the Iraqians. The arguments in favour of traditions from the Prophet are often derived from, or secondary to, arguments against them; the unwillingness to accept them came first. It is not the case, as has often been supposed *a priori*, that it was the most natural thing, from the first generation after the Prophet onwards, to refer to his real or alleged rulings in all doubtful cases. Traditions from the Prophet had to overcome a strong opposition on the part of the ancient schools of law, let alone the *ahl al-kalām*, before they gained general acceptance. Shāfi'ī still had to fight hard to secure the recognition of their overriding authority. At the same time it is obvious that once this thesis had been consciously formulated, it was certain of success, and the ancient schools had no real defence against the rising tide of traditions from the Prophet. But this relatively late development, which we may call natural, must not blind us to the essentially different situation in the early period.

¹ Above, p. 45. Shāfi'ī's mention of 'those who aspire to a thorough traditional foundation of their doctrine' (above, p. 36) possibly refers to the same group of uncritical traditionists.