

THE ORIGINS OF  
Muhammadan  
Jurisprudence

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PART II  
THE GROWTH OF LEGAL TRADITIONS

CHAPTER I  
PRELIMINARY REMARKS

THE current opinion regarding the growth of traditions is, roughly, that there originally existed an authentic core of information going back to the time of the Prophet, that spurious and tendentious additions were made to it in every succeeding generation, that many of these were eliminated by the criticism of *isnāds* as practised by the Muhammadan scholars, that other spurious traditions escaped rejection, but that the genuine core was not completely overlaid by later accretions.<sup>1</sup> Most of these and similar assumptions, by which some later writers tended to minimize Goldziher's fundamental discovery of the character of the traditions from the Prophet,<sup>2</sup> are unwarranted and certainly do not apply to legal traditions. One of the main conclusions to be drawn from Part I of this book is that, generally speaking, the 'living tradition' of the ancient schools of law, based to a great extent on individual reasoning, came first, that in the second stage it was put under the aegis of Companions, that traditions from the Prophet himself, put into circulation by traditionists towards the middle of the second century A.H., disturbed and influenced this 'living tradition', and that only Shāfi'i secured to the traditions from the Prophet supreme authority.<sup>3</sup> The aim of Part II is to show that a considerable number of legal traditions, which appear in the classical collections, originated after Mālik and Shāfi'i; to study the growth of legal traditions and of their *isnāds* in detail; to draw conclusions on their origins in the pre-literary period; and thereby to work out and test a method which enables us to trace the development of legal doctrine during this period for which traditions are our only contemporary evidence; in other

<sup>1</sup> The current opinion is well summarized by Lammens, *Islām*, 69 f.

<sup>2</sup> See above, p. 4.

<sup>3</sup> See above, pp. 20, 57, 66 f., 80 f., 98, &c.

words, to replace the static picture of conflicting tendencies which has prevailed so far, by one showing the historical process.

Traditions regarding the biography of the Prophet (*maghāzī*, *sīra*) generally lack proper *isnāds*. Shāfi'ī differentiates between them and legal traditions on this account.<sup>1</sup> On the special subject of the law of war, 'historical' traditions were already used by Auzā'ī to a great extent;<sup>2</sup> but the gradual introduction of 'historical' material into legal discussions continued in the period between Auzā'ī and Shāfi'ī.<sup>3</sup> This reception of 'historical' traditions into legal discussion went parallel with their acquiring increasingly elaborate *isnāds*.<sup>4</sup> All this time, the body of 'historical' information was still growing, and both Abū Yūsuf and Shāfi'ī object to 'historical' traditions adduced by their opponents, because they are unknown to, or not accepted by, the specialists on *maghāzī*.<sup>5</sup> This process was reciprocal, and we find traditions of a properly legal character, but with an 'historical' background, penetrating more or less successfully into the biography of the Prophet.<sup>6</sup>

<sup>1</sup> *Tr. III*, 44; *Tr. IX*, 8, 9 (cf. *Umm*, iv. 69); *Ris.* 21 f.; *Ikh.* 388 f. Also Abū Yūsuf differentiates between *sunna* and *sīra* in *Tr. IX*. 6. 21.

<sup>2</sup> See above, p. 34.

<sup>3</sup> 'Historical' traditions introduced by Mālik: Ṭabari, 81, and *Mud.* iii. 7 f. (see also above, p. 23, n. 5, on Mālik's imperfect knowledge of the biography of the Prophet); introduced by Abū Yūsuf: *Tr. IX*, 1, 11, 30, 36; introduced by Shaibānī: *Siyar*, iii. 94 (cf. *Tr. IX*, 25); *ibid.* iv. 238 (cf. *Tr. IX*, 39); introduced by Shāfi'ī: *Tr. VIII*, 12, 13; *Tr. IX*, 19, 23, 25, 39, 44; *Umm*, iv. 170, &c.

<sup>4</sup> Compare Mālik in *Mud.* iii. 8, Abū Yūsuf in *Tr. IX*, 28 and the biographers of the Prophet (Ibn Hishām, 653, 872 f.; Wāqidī, 163, 369 f.; Ibn Sa'd, ii. 41, 114), with the *isnāds*, through Nāfi', in *Umm*, iv. 161, 174 and *Mud.* iii. 8.

<sup>5</sup> Abū Yūsuf: *Tr. IX*, 10; Shāfi'ī: *Tr. IX*, 6; *Umm*, iv. 66.

<sup>6</sup> e.g. details of the marriage of the Prophet to Maimūna (below, p. 153); the alleged temporary permission of the *mut'a* marriage by the Prophet (below, p. 267); the alleged *qunūt* of the Prophet (below, p. 267 f.); episodes illustrating the effect of conversion to Islam on a previous marriage (below, p. 276). See further the tradition, put into circulation by the traditionists, on the prayer of the Prophet while incapacitated by an accident; this was opposed to the originally biographical tradition on his prayer during his last illness (*Muw.* i. 248; *Muw. Shaib.* 113; *Mud.* i. 81; *Tr. III*, 19; *Ris.* 36 f.; *Ikh.* 98 ff., 136); the full *isnāds* of this last biographical tradition in the legal sources are secondary and borrowed from the other tradition.