

THE ORIGINS OF
Muhammadan
Jurisprudence

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CHAPTER 2

THE GROWTH OF LEGAL TRADITIONS IN THE LITERARY PERIOD. CONCLUSIONS ON THE PRE-LITERARY PERIOD

THE aim of the present chapter is to provide a firm starting-point for the systematic use of traditions as documents for the development of legal doctrine, by investigating the growth of legal traditions in the literary period, roughly from A.H. 150 to 250, between Abū Ḥanīfa and the classical collections of traditions, with a few extensions into the first half of the second century.¹ The evidence presented here is only the most significant part of what could be collected, and the most important result is that whereas the growth of legal traditions from the Prophet went on over the whole period, it was particularly vigorous in the fifty years between Shāfi'ī and the classical collections, a result which can be ascribed to the joint influence of Shāfi'ī and the traditionists. The evidence must, in the nature of things, be cumulative, and whilst care has been taken to verify the presence or absence of the traditions in question in or from the sources available, an occasional oversight or the well-known incompleteness of our sources does not invalidate the general conclusions. The best way of proving that a tradition did not exist at a certain time is to show that it was not used as a legal argument in a discussion which would have made reference to it imperative, if it had existed. The evidence collected in the present chapter has been chosen with particular regard to this last point, and in a number of cases one or the other of the opponents himself states that he has no evidence other than that quoted by him, which does not include the tradition in question. This kind of conclusion *e silentio* is furthermore made safe by *Tr. VIII*, 11, where Shaibānī says: '[This is so] unless the Medinese can produce a tradition in support of their doctrine, but they have none, or they would have produced it.' We may safely assume that the legal traditions with which we are concerned were quoted as arguments by those whose

¹ This kind of investigation was desired by Goldziher, *Muh. St.* ii. 218, n. 1.

doctrine they were intended to support, as soon as they were put into circulation.

Traditions later than Ḥasan Baṣrī

Although the dogmatic treatise of Ḥasan Baṣrī¹ is not concerned with matters of law, it is appropriate to begin with it, because it shows that even dogmatic traditions which are, generally speaking, earlier than legal ones, hardly existed at the time of its composition, that is, in the later part of the first century A.H. There is no trace of traditions from the Prophet, and the author states explicitly: 'Every opinion which is not based on the Koran, is erroneous.'

Tradition originating between "Ibrāhīm Nakha'i" and Ḥammād

Āthār A.Y. 206: Abū Ḥanīfa—Ḥammād—Ibrāhīm—Ibn Mas'ūd did not follow a certain practice. *Āthār Shaib.* 37: Abū Ḥanīfa—Ḥammād—Ibrāhīm did not follow it; the same is related from Ibn Mas'ūd. But there is a tradition from the Prophet to the contrary. *Āthār A.Y.* 207: Abū Ḥanīfa—Ḥammād—'Abdalkarīm²—with an *isnād* going back to the Prophet, that he did follow it. *Āthār Shaib.* 37: Shaibānī—'Umar b. Dharr Hamdānī—his father—Sa'id b. Jubair—Ibn 'Abbās—Prophet: a tradition in favour of the practice, polemically directed against the other opinion. The same tradition with another Iraqian *isnād* occurs in *Tr. II*, 19 (t).

It will be shown that the name of Ibrāhīm Nakha'i is often a label for the ancient Iraqian doctrine.³ This and the then recently produced tradition from the Prophet to the contrary were transmitted by Ḥammād to Abū Ḥanīfa, and the tradition from the Prophet soon acquired better *isnāds*.

Traditions originating between "Ibrāhīm Nakha'i" and Abū Ḥanīfa

A certain tradition from the Prophet is unknown to Ibrāhīm (*Āthār Shaib.* 22), known to Abū Ḥanīfa without *isnād* (*Āthār A.Y.* 251), and appears with a full *isnād* in *Muw.* i. 275; *Muw. Shaib.* 122; *Tr. II*, 19 (g) and in the classical collections.⁴

For another example, see above, p. 60. It has been shown there that certain traditions from the Prophet on a question of ritual were as yet unknown to Ibrāhīm, but that one version in favour of a certain practice was followed by Shāfi'i. Another version which, by implica-

¹ See above, p. 74.

² This link is very weak, see the Commentary.

³ See below, p. 233.

⁴ The link between Mālik and the Companion who relates it from the Prophet is very weak.

tion, is directed against that practice, appears first in Abū Ḥanīfa (*Tr. I*, 157 (b)), and a third version in *Muw. Shaib.* 382.

Tradition originating between "Ibrāhīm Nakha'ī" and Mālik

Āthār A.Y. 98: Ibrāhīm says: 'There is nothing with regard to prayer on which the Companions of the Prophet agreed so fully as saying the morning prayer in full daylight.' This seems to be an authentic statement of Ibrāhīm. Later than this and in favour of saying it in early dawn are traditions from 'Alī and Ibn Mas'ūd (*ibid.*) and from the Prophet (first in *Muw.* i. 19).

Tradition originating between "Aṭā'" and Shāfi'ī

Tr. I, 181: Abū Yūsuf refers to and follows the opinion of 'Aṭā' which he heard personally from Ḥajjāj b. Arṭāt. It is likely that this opinion goes back not even to 'Aṭā' himself but only to Ḥajjāj.¹ But in Shāfi'ī's time it was expressed in a tradition from the Prophet.

Traditions originating between Ibn Abī Lailā and Abū Ḥanīfa

Tr. I, 176: Ibn Abī Lailā does not consider it necessary to fast two consecutive months for having broken the fast of Ramadan by intercourse (see Sarakhsī, iii. 72 on a still milder opinion of Rabī'a); he obviously did not yet know the tradition from the Prophet to this effect, based on an analogy with Koran lviii. 4. Abū Ḥanīfa considers that the two months must be consecutive, and is the first to refer to the tradition from the Prophet, *mursal* and with the suspected transmitter 'Aṭā' Khurāsānī in the *isnād*. The tradition acquires an uninterrupted *isnād* only in the time of Mālik (*Muw.* ii. 99; *Muw. Shaib.* 177).

§ 193: Ibn Abī Lailā does not yet know a tradition from the Prophet which appears in Abū Ḥanīfa (or Abū Yūsuf), Shāfi'ī, and the classical collections.

Tradition originating between Auzā'ī and Mālik

See above, p. 70. It is stated there that Abū Yūsuf does not yet know a tradition from the Prophet, although Mālik, his contemporary, does. Whereas this calls for caution in the use of the argument *e silentio*, it also shows that the tradition was not yet widely known in the time of Mālik.

Tradition originating between Auzā'ī and Ibn Sa'd

See below, p. 180, n. 1.

¹ See below, p. 250.

Traditions originating between Abū Ḥanīfa and Abū Yūsuf

Tr. IX, 42: Abū Yūsuf adduces a tradition with an imperfect *isnād*, not through Abū Ḥanīfa who obviously did not yet know it, but through an anonymous sheikh. Several similar cases occur in *Āthār A.Y.*

See also below, p. 158.

Traditions originating between Abū Ḥanīfa and Shaibānī

Tr. II, 18 (y): Abū Ḥanīfa, for a rule of penal law, can refer only to a tradition from Sha'bi. Shaibānī gives a tradition from the Prophet, not through Abū Ḥanīfa but through another transmitter. The underlying doctrine was not yet acknowledged by Ibn Abī Lailā (see *Tr. I*, 112). Similar cases occur in *Āthār Shaib.*

Tradition originating between Abū Ḥanīfa and the Classical Collections

Tr. I, 169: Abū Ḥanīfa can refer only to Ibrāhīm Nakha'i (also in *Kharāj*, *Āthār A.Y.*, and *Āthār Shaib.*); traditions from the Prophet to the same effect appear in the classical works and, with a fictitious *isnād* in which Abū Ḥanīfa himself appears, in a late version of the *Musnad Abī Ḥanīfa* (see *Comm. ed. Cairo*, p. 125, n. 1).

Tradition originating between Mālik and Shaibānī

Mālik (*Muw.* iii. 129) knows a tradition only from Ibn 'Abbās in a short version which he interprets restrictively, in keeping with his own doctrine. But Shaibānī (*Muw. Shaib.* 331, without *isnād*) and Shāfi'i (*Tr. III*, 95, with full *isnād*) know a fuller version which implicates the Prophet and is followed by Ibn 'Abbās's own extensive interpretation.

Traditions originating between Mālik and Shāfi'i

Tr. II, 2 (g): Neither the Iraqians who refer to the consensus of the scholars as against a tradition from Ibn Mas'ūd nor the Medinese (*Muw.* i. 100; *Mud.* i. 31) know traditions from the Prophet on the problem in question. Only Shāfi'i gives a tradition from the Prophet.

§ 19 (*ee*): The recommendation to invest the property of orphans, so that the *zakāt* tax may not consume it, is known to Mālik (*Muw.* ii. 49) only as a saying of 'Umar, but to Shāfi'i already as a saying of the Prophet, with full *isnād*.

Tr. IX, 10: Auzā'i had referred to an 'historical' tradition from the Prophet, without *isnād*, but Abū Yūsuf had rejected it as not acceptable to specialists and referred to a tradition from Ibn 'Abbās in favour of his own, different doctrine, shared by Mālik and

Shāfi'ī. It was therefore imperative for Mālik to mention a tradition from the Prophet, if he knew one, but he adduces only the alleged opinion of the ancient Medinese scholars Qāsim b. Muḥammad and Sālim (*Mud.* iii. 34),¹ and *Mud.* adds only a circumstantial but certainly spurious tradition which is set in the time of the Companions. The classical tradition from the Prophet on the problem in question, through Nāfi'—Ibn 'Umar, was still unknown to Mālik and appears for the first time in Shāfi'ī. It is added that Nāfi' related this tradition to 'Umar b. 'Abdal'azīz who gave instructions accordingly; this expresses the attitude of the traditionists.

Ikh. 96: a tradition from the Prophet on an important point of ritual purity, the sound *isnād* of which Shāfi'ī commends, is still unknown to and not followed by Mālik (*Muw.* i. 100; *Muw. Shaib.* 76).

Traditions originating between Mālik and the Classical Collections

Muw. iii. 134: Mālik adds to the text of a tradition from the Prophet his own definition of the aleatory contracts *mulāmasa* and *munābadha*; the same definition appears as a statement of Mālik, not in connexion with any tradition, in *Mud.* x. 37 f. It is, in fact, a current Medinese formula, ascribed to Rabī'a in *Mud.* x. 38, and also occurring as an explanatory addition to the text of two parallel versions of the same tradition, where Mālik does not appear in the *isnād* (*ibid.*). But this interpretation has become part of the words of the Prophet in Bukhārī and Muslim (see Zurqānī, iii. 134); at the same time, Bukhārī and Muslim relate the same tradition without the interpretation, and in Nasā'ī where the addition is slightly longer, it is clearly separated from the text.

Tr. III, 22: Mālik's own words, technically formulated (*Muw.* i. 372; *Mud.* i. 109) and repeated by Rabī' in a discussion which turns on the traditional authority for the doctrine in question, without any suggestion that these words are part of a tradition, have become a tradition from the Prophet in Ibn Māja's collection (quoted *Comm. Muw. Shaib.* 148, n. 3; also in Ṭahāwī, i. 207).

§ 36: Mālik had to rely on a *mursal* tradition from 'Umar, and on a subsumption which Shāfi'ī refutes as contrary to Arabic usage. There are two traditions from the Prophet with Medinese *isnāds* in Muslim's collection (quoted by Zurqānī II. 196).

Traditions originating between Abū Yūsuf and Shaibānī

Tr. IX, 29: Auzā'ī refers to the alleged instruction of Abū Bakr not to lay waste the enemy country; this invokes the authority of a Caliph and Companion of the Prophet in favour of the doctrine of

¹ See above, p. 113.

the Syrians who accepted the practice current under the Umayyads. Abū Yūsuf has the counter-tradition (on the authority of Ibn Ishāq) that Abū Bakr instructed one of his commanders to lay waste every village where he did not hear the call to prayer. In the time of the classical collections, this had produced a tradition from the Prophet, to the effect that the Prophet, on his raids, stopped at dawn, in order to ascertain whether the morning call to prayer was said in the place he intended to attack (see the details in *Comm. ed. Cairo*).¹ The original instruction of Abū Bakr was interpreted away, (a) by making Abū Bakr say that Syria would certainly be conquered [so that there was no point in laying it waste] (*Siyar*, i. 35)—this can be dated between Abū Yūsuf and Shaibānī²—and (b) by *mursal* traditions regarding the instructions which the Prophet gave to the leader of an expedition sent against Syria (Ibn Wahb in *Mud.* iii. 8). Several early Medinese authorities were incorporated in the *isnāds* of these last traditions.

§ 38: Abū Yūsuf could reject a tradition as irregular (*shādhah*), but Shaibānī knew more of the same kind and therefore followed them (*Siyar*, iv. 87).

Tradition originating between Shaibānī and Shāfi'i

Shāfi'i and his predecessors discuss the question whether the major ritual ablution (*ghusl*) is necessary before the Friday prayer or not. The traditions on this point are difficult to reconcile. A harmonizing tradition from the Prophet to the effect that the minor ablution (*wuḍū'*) is sufficient but the major ablution better, is known neither to Mālik (*Muw.* i. 184) nor to Shaibānī (*Muw. Shaib.* 72). It occurs first in Shāfi'i (*Ikh.* 181). *Āthār A. Y.* 357 knows this solution simply as the opinion of Ibrāhīm Nakha'i, that is, the doctrine of the Iraqi school, and Shaibānī (loc. cit.) gives his opinion to the same effect.

Tradition originating between Shaibānī and the Classical Collections

Tr. VIII, 1: The fixing of the rate of exchange of gold and silver for purposes of weregeld is ascribed to 'Umar both by the Iraqians and the Medinese; Shāfi'i too, although he knows a tradition from the Prophet in favour of the Medinese rate, bases himself on the decision of 'Umar. The Iraqi rate (1 dīnār = 10 dirham) underlies traditions from the Prophet in the classical collections (see the details in Guidi-Santillana, ii. 680). It was imperative for Shaibānī

¹ The original instruction of Abū Bakr was also projected back to the Prophet: Sarakhsī in *Siyar*, i. 35 f.

² Also Shāfi'i refers to it in *Tr. IX*, 29 and in *Umm*, iv. 173 ff.

to quote them as a necessary part of his argument in *Tr. VIII*, 1, had he known them; they must therefore be later.¹

Traditions originating between Shāfi'ī and Ibn Ḥanbal

Tr. III, 31: Compared with *Muw.* ii. 9 and Shāfi'ī's text, the traditions known to Ibn Ḥanbal are more numerous, and still more are known to Ibn 'Abdalbarr (see Zurqānī, ii. 9).

§ 143: Neither Shāfi'ī nor the Medinese (see also *Muw.* iii. 124, 126) know a tradition from the Prophet, forbidding the sale of animals with anticipated payment and deferred delivery; it occurs in Ibn Ḥanbal and the classical collections (see Zurqānī, iii. 126). Shaibānī (*Muw. Shaib.* 344) knows this only as a tradition from 'Alī, and adds that he heard that the Prophet prohibited it; also Abū Yūsuf (*Tr. IX*, 5) refers to the prohibition given by the Prophet, but without an *isnād*.

Ikh. 59: Shāfi'ī gives as his own opinion a harmonizing interpretation of traditions, and so does Shaibānī for himself and for Abū Ḥanīfa in *Muw. Shaib.* 47; the same doctrine is expressed in traditions from the Prophet in Ibn Ḥanbal and later collections (see *Comm. Muw. Shaib.* 47).

Ibid. 149: Neither Shāfi'ī nor Mālik (*Muw.* iv. 204) nor Shaibānī (*Muw. Shaib.* 280) know the traditions according to which the Prophet prohibited eating lizards because they might be a lost tribe changed into animals; they occur in Ibn Ḥanbal, the classical collections and others (see *Comm. Muw. Shaib.* 280; also Ṭaḥāwī, ii. 314). This kind of tradition, beloved by Ibn Qutaiba, seems to become prominent early in the third century A.H. (see also the following remark).

Ibid. 162: The tradition declaring that a black dog is a devil is still unknown to Shāfi'ī, as well as to Mālik (*Muw.* i. 277) and to Shaibānī (*Muw. Shaib.* 148). But Ibn Ḥanbal knows it (see Zurqānī, i. 277), and so does Jāhīz (*Ḥayawān*, i. 141 ff.).

Ibid. 310: Shāfi'ī knows no explicit tradition from the Prophet, to the effect that the triple divorce, pronounced in one session, counts as a single divorce, apart from the implication of a tradition from Ibn 'Abbās which he is at pains to explain away.² Neither does Mālik (*Muw.* iii. 36). But Ibn Ḥanbal (see Zurqānī, iii. 36) has a tradition through Ibn 'Abbās from the Prophet, who declares that the triple divorce, pronounced in one session, counts as a single divorce and is revocable. Shāfi'ī also states explicitly (p. 315) that

¹ See below, p. 204.

² The several *isnāds* of this tradition converge in Ibn Jurajj, and we may conclude that it originated in his time, i.e. in the generation preceding Mālik.

as far as he knows the Prophet never blamed the triple divorce; but a tradition condemning it occurs in some classical and other collections (Zurqānī, *ibid.*).

Traditions originating between Shāfi'ī and the Classical Collections

Tr. I, 109: Shāfi'ī states explicitly that the oldest authority of the Iraqians for their doctrine on the evidence of non-Muslims, in lawsuits between themselves, is Shuraiḥ; the tradition from the Prophet to the same effect in Ibn Māja (see *Comm. ed. Cairo*) is later.

Tr. III, 21: Shāfi'ī adduces traditions from others than the Prophet as a confirmation; this shows that the traditions from the Prophet which he mentions are all that he knows. But further traditions occur in the classical and other collections (see *Comm. Muw. Shaib.* 103).

§ 29 (a): Shāfi'ī is positive that there exists no authority in traditions from the Prophet for a certain ancient doctrine which is based on practice; Rabī' can adduce none, and there is no trace of any in *Muw.* i. 149 or in *Muw. Shaib.* 101. But Bukhārī, Muslim, and others know a tradition from the Prophet to this effect (see Zurqānī and *Comm. Muw. Shaib.*, *loc. cit.*).

§ 29 (c): Zurqānī, i. 155, states correctly that Mālik in the whole relevant section does not mention one tradition from the Prophet; neither does Shāfi'ī nor Shaibānī in *Muw. Shaib.* 128. Zurqānī and *Comm. Muw. Shaib.* supply several from the classical and other collections. Considering Shāfi'ī's vehement polemics, it is certain that these traditions were still unknown to him and his predecessors.

§ 40: The Medinese follow traditions from 'Umar, through Ibn 'Umar, as against a tradition from the Prophet, through 'Ā'isha; or historically speaking, the Medinese doctrine found its expression in traditions from 'Umar, and the tradition from the Prophet is later. This doctrine was justified by a harmonizing interpretation of the tradition from the Prophet (*Muw. Shaib.* 197; Ṭahāwī, i. 363; Zurqānī, ii. 152), and this interpretation underlies a tradition in Muslim (see Zurqānī, *loc. cit.*) which must be later than the discussion between Shāfi'ī and Rabī'. Shāfi'ī follows the tradition from the Prophet, through 'Ā'isha, and disregards the traditions from 'Umar on principle; this attitude was also embodied in a tradition in Bukhārī and Muslim (see *Comm. Muw. Shaib.* 197), according to which Ibn 'Umar decided in keeping with what was the Medinese doctrine, but was contradicted by 'Ā'isha who referred to the example of the Prophet. This, too, is later than Shāfi'ī who would not have failed to refer to it in his polemics with the Medinese, had he known it.

§ 43: Shāfi'ī states that there is no tradition from the Prophet on the weregeld for a Jew or a Christian; but the classical collections (see Zurqānī, iv. 41) have a tradition from the Prophet in favour of a doctrine for which Mālik (*Muw.* iv. 41) could only refer, without *isnād*, to 'Umar b. 'Abdal'aziz.

§ 60: Mālik and Shāfi'ī know only one tradition from the Prophet, with a very imperfect *isnād*, on an important point of ritual (see Zurqānī, i. 70). Several other traditions from the Prophet, with improved *isnāds*, occur in the classical collections (see *Comm. Muw. Shaib.* 67).

§ 89 (a): Shāfi'ī is explicit that there is no directly relevant tradition from the Prophet, and only a tradition from Ibn 'Umar, in favour of the Medinese doctrine; but it appears, in the form of a tradition from the Prophet, in the classical collections (see Zurqānī, ii. 151).

§ 111: Mālik and Shāfi'ī know only a tradition through Nāfi' from Ibn 'Umar in favour of a certain practice on the pilgrimage, and Rabī' adds that Mālik alone relates it. The classical collections (see Zurqānī, ii. 257), however, have, (a) a tradition through Nāfi' to the effect that Ibn 'Umar did not regard it as *sunna*, together with the statement of the transmitter Nāfi' that the Prophet and the Caliphs after him performed it; (b) a version, through Nāfi'—Ibn 'Umar, from the Prophet together with the statement that the practice of Abū Bakr and 'Umar was the same; (c) a tradition to the effect that 'Ā'isha and Ibn 'Abbās did not regard it as *sunna*, but as an accidental action of the Prophet; and (d) a tradition explaining how the action of the Prophet came about accidentally. All this is later than Mālik and Shāfi'ī.

§ 144: Neither Mālik (*Muw.* ii. 333), nor Shaibānī (*Muw. Shaib.* 323), nor Shāfi'ī, nor Rabī' know a tradition from the Prophet which would be decisive; it occurs in Abū Dāwūd (see *Comm. Muw. Shaib.* 323).

§ 146: Shāfi'ī can quote from the Prophet only a tradition on the Prophet and Ibn 'Abbās; but Bukhārī (see Zurqānī, ii. 83) has a more outspoken tradition on the Prophet and Abū Huraira; this was certainly not yet known to Shāfi'ī.

Ikh. 236: Shāfi'ī knows two contradictory traditions from the Prophet, not explicit and with unsatisfactory *isnāds*; Mālik had contented himself with traditions from Companions (*Muw.* ii. 103; *Muw. Shaib.* 181). An explicit tradition from the Prophet occurs in Nasā'ī and other collections (see Zurqānī, ii. 103). A series of gradual stages of the development of traditions, first from Companions and then from the Prophet, can be established with the material given by Zurqānī.

See also above, pp. 71, 91, 114, n. 6, and below, p. 155.

Traditions originating between Shāfi'i and Ibn Qutaiba

Ibn Qutaiba, 113, has a tradition, through Zuhri—'Urwa—'Ā'isha, to the effect that the Prophet ordered the hand of a woman who had borrowed ornaments and sold them to be cut off. This is unknown to Mālik, Shaibāni (*Muw. Shaib.* 303), and Shāfi'i, but occurs in an improved form, with the explicit mention of theft, in the classical collections.

Ibn Qutaiba, 206, knows the saying of the Prophet: 'I was given the Koran, and together with it its equivalent', referring to the *sunna*. This was certainly unknown to Shāfi'i who would not have failed to mention it, had he known it (see above, p. 16).

See also above, p. 97.

On the whole, the traditions contained, respectively, in the legal works of the second half of the second century, in the classical collections of the second half of the third century, and in the later collections of Ṭahāwī and others represent three successive stages of growth. The same process appears in the several versions of the *Musnad Abī Ḥanīfa*, which were collected by Khwārizmī: the later versions contain many more traditions than the early and authentic ones, the contents of which are confirmed by *Āthār A. Y.* and *Āthār Shaib.* We must postulate the same process of growth for the pre-literary period, and formulate again the methodical rule which follows from Goldziher's results but which has been neglected lately: that every legal tradition from the Prophet, until the contrary is proved, must be taken not as an authentic or essentially authentic, even if slightly obscured, statement valid for his time or the time of the Companions, but as the fictitious expression of a legal doctrine formulated at a later date. Its date can be ascertained from its first appearance in legal discussion, from its relative position in the history of the problem with which it is concerned, and from certain indications in text and *isnād* which will be discussed in the following chapters. The sources available enable us to draw these conclusions in many cases. We shall find that the bulk of legal traditions from the Prophet known to Mālik originated in the generation preceding him, that is in the second quarter of the second century A. H., and we shall not meet any legal tradition from the Prophet which can be considered authentic.

So far we have discussed the growth of legal traditions from the Prophet only. The following examples will show that traditions from Companions, too, were put into circulation during the whole of the literary period, including the time after Shāfi'ī. This does not contradict our previous conclusion that traditions from Companions precede, generally speaking, traditions from the Prophet,¹ but shows that the insistence of Shāfi'ī and the traditionists on the overriding authority of the traditions from the Prophet did not prevail at once. Traditions from Companions are as little genuine as traditions from the Prophet, and must be subjected to the same scrutiny in order to ascertain their place in the development of legal doctrine.²

Traditions from Companions originating:

Between "Ibrāhīm Nakha'ī" and Abū Hanīfa:

See above, p. 60, n. 3.

Between "Ibrāhīm Nakha'ī" and Mālik:

See *Āthār Shaib.* 80, compared with *Muw.* iii. 41: a tradition from 'Alī.

See also above, p. 142.

Between "Ibrāhīm Nakha'ī" and Shaibānī:

See above, p. 105.

Between Zuhri and Mālik:

See above, p. 102.

Between Auzā'ī and Shāfi'ī:

See *Tr.* IX, 15: a tradition from 'Umar.

Between Mālik and Ibn Wahb:

Muw. i. 247: Mālik reasons in favour of the Medinese 'practice', as against a tradition from Nāfi'—Ibn 'Umar. Shaibānī (*Muw. Shaib.* 133) makes a pointed remark against the Medinese doctrine. This and Shāfi'ī's polemics against it (*Tr.* III, 27) make it certain that there existed no foundation for it in the form of traditions. But Ibn Wahb (*Mud.* i. 88) gives a tradition through Mālik from Nāfi'—Ibn 'Umar, in favour of that doctrine. This and similar mentions of Mālik in the *isnāds* of Ibn Wahb are obviously not authentic.³

¹ See above, pp. 30, 33, &c.

² See below, p. 169 f.

³ For a parallel case in Shāfi'ī, see below, p. 151.

Muw. i. 263: Mālik opposes his own opinion (*ra'y*) to a tradition from the Prophet, and quotes a tradition from Ibn 'Umar in support. But Ibn Wahb gives (a) a tradition with a formal *isnād* to the effect that 'the *sunna* corresponds to what they do in Medina; Abū Bakr, 'Umar, and 'Uthmān did it, and they still do it in Medina'; (b) a statement without *isnād* to the effect that Ibn 'Umar, Ibn Musaiyib, Qāsim, Sālim, 'Urwa, 'Umar b. 'Abdal'aziz, Yaḥyā b. Sa'id, Rabī'a, and Abul-Aswad did the same (*Mud.* i. 115).

See *Muw.* ii. 51 (and *Tr.* III, 105), compared with *Mud.* ii. 41: a tradition (through Rabī'a) from 'Umar.

See *Tr.* III, 72, compared with *Mud.* xv. 141: traditions from 'Umar (through Zuhri) and from 'Umar b. 'Abdal'aziz.

The same can be shown for numerous other traditions adduced by Ibn Wahb in *Mud.*

Between Mālik and Shāfi'i:

See *Muw.* iv. 39, compared with *Tr.* III, 148 (p. 249): a tradition from 'Umar and 'Uthmān. The roundabout *isnāds* from Shāfi'i to Mālik are spurious, and Shāfi'i's reference to 'a reliable man' is worthless.¹

Between Abū Yūsuf and Shaibānī:

See *Tr.* IX, 18, compared with *Siyar*, iii. 107 (together with *Mud.* iii. 13): a tradition from 'Umar.

Between Shaibānī and Ṭaḥāwī:

See *Muw. Shaib.* 193 ff. (together with *Tr.* III, 39), compared with Ṭaḥāwī, i. 374 ff: traditions from 'Umar.

See *Muw. Shaib.* 266, compared with Ṭaḥāwī, ii. 149: a tradition from Ibn 'Umar.

Traditions from Successors, containing their alleged opinions, underwent the same process of growth during the literary period, and there are many cases of spurious information concerning them in our earliest literary sources.² The 'living tradition' of the school of law in question enables us to recognize doctrines for which the authority of its ancient representatives was claimed illegitimately, by their irregular character, with due regard to the possibility of individual divergences and the development of doctrine within the school.

¹ See above, p. 38.

² See above, pp. 65 f., 69, 78, 85, 101, 114, 117, 130 f., 151, and below, pp. 157 f., 159, 160 f., 167 f., 193 f., 195, 197, 200, 207, 211, 222, 229 ff., 235 f., 244 ff.