

THE ORIGINS OF
Muhammadan
Jurisprudence

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CHAPTER 4

THE EVIDENCE OF *ISNĀDS*

WE have often had occasion, particularly in the preceding chapter, to use indications contained in the *isnāds* for the dating of traditions. In the present chapter we shall consider some of these indications in detail. Although the *isnāds* constitute the most arbitrary part of the traditions, the tendencies underlying their creation and development, once recognized, enable us to use them for the dating of traditions in many cases. It is common knowledge that the *isnād* started from rudimentary beginnings¹ and reached perfection in the classical collections of traditions in the second half of the third century A.H. This, together with our previous results concerning the growth of traditions, makes it impossible for us to share the confidence of the Muhammadan scholars in what they consider first-class *isnāds*. Their whole technical criticism of traditions, which is mainly based on the criticism of *isnāds*,² is irrelevant for the purpose of historical analysis. In particular, we shall see in the following chapter that some of those *isnāds* which the Muhammadan scholars esteem most highly are the result of widespread fabrications in the generation preceding Mālik³.

The *isnāds* were often put together very carelessly.⁴ Any typical representative of the group whose doctrine was to be projected back on to an ancient authority, could be chosen at random and put into the *isnād*. We find therefore a number of alternative names in otherwise identical *isnāds*, where other considerations exclude the possibility of the transmission of a genuine old doctrine by several persons. Such alternatives are particularly frequent in the generation preceding Mālik, for instance Nāfi' and Sālim (*passim*), Nāfi' and 'Abdallāh b. Dīnār (*Muw.* iv. 204 and *Ikh.* 149 f.), Nāfi' and Zuhri (*Muw.*

¹ On the time of its origin, see above, p. 36 f.

² See above, p. 36 ff.

³ Caetani has studied the *isnāds*, with particular reference to historical traditions (*Annali*, i. Introduction, §§ 9-28). In so far as his conclusions apply to legal traditions, I find myself in substantial agreement with his analysis, except in one respect for which see below, p. 169.

⁴ See significant examples above, p. 53 f. and below, p. 263.

iii. 71 and *Muw. Shaib.* 258), Yaḥyā b. Sa'īd and 'Abdallāh b. 'Umar 'Umarī (*Muw.* ii. 197 and *Muw. Shaib.* 207), Yaḥyā b. Sa'īd and Rabi'a (*Muw.* ii. 362 and *Tr.* III, 42). An example from the generation before that is the alternation between Muḥammad b. 'Amr b. Ḥazm and Abū Bakr [b. 'Amr] b. Ḥazm (*Muw.* i. 259 and *Tr.* III, 101). The following are further examples of the general uncertainty and arbitrary character of *isnāds*.

In *Muw.* iv. 49 we find: Mālik—Muḥammad b. 'Abdalaḥmān b. Sa'd b. Zurāra—Ḥaḥṣa killed a *mudabbar* slave of hers who had bewitched her. But in *Muw. Shaib.* 359 and in *Tr.* III, 93 we find: Mālik—Abul-Rijāl Muḥammad b. 'Abdalaḥmān [b. Jāriya]—his mother 'Amra—'Ā'isha sold a *mudabbar* slave of hers who had bewitched her. One of these versions is modelled on the other, and neither can be regarded as historical. It is obvious that the story was put into circulation in the generation preceding Mālik on the fictitious authority of one Muḥammad b. 'Abdalaḥmān, and this name was completed in such a way as to refer to two different persons in the two versions; it is at least doubtful whether Mālik met either of them.¹

A tradition in *Muw.* i. 371 reads: Mālik—Hishām—his father 'Urwa—'Umar prostrated himself [on a certain occasion which is described], and the people prostrated themselves together with him. As 'Urwa was born in the caliphate of 'Uthmān, this *isnād* is 'interrupted' (*munqaṭi'*). Bukhārī has a different, uninterrupted *isnād*. But old copies of the *Muwaffa'* have 'and we did it together with him', which is impossible in the mouth of 'Urwa. This of course is the original text of the *Muwaffa'*. The same words occur in the text of a different tradition from the Prophet on the authority of Abū Huraira. This shows that the formulation of the text of the tradition came first, the *isnād* was added arbitrarily and improved and extended backwards later.

The Iraqi doctrine which extends the right of pre-emption to a neighbour is expressed in two legal maxims: 'the neighbour is entitled to the benefit of his proximity' (*al-jār aḥaqq bi-ṣaḡbih*), and 'the neighbour of the house is entitled to the house of the neighbour' (*jār al-dār aḥaqq bi-dār al-jār*). The first has the *isnād* 'Amr b. Sharīd—Abū Rāfi'—Prophet (*Tr.* I, 49; *Ikh.* 260), the second the *isnād* Qatāda—Ḥasan Baṣrī—Samura—Prophet (Ibn Ḥanbal, v. 8 and often; Ibn Qutaiba, 287). But the second was also provided with

¹ Zurqāni, ii. 268, points out that the name and identity of 'Abdalmalik b. Qurair, another immediate authority of Mālik, are uncertain. See further above, p. 154, on the two different 'Alqanas.

an alternative form of the *isnād* of the first: 'Amr b. Shu'aib—'Amr b. Sharīd—Sharīd—Prophet (*Tr. I*, 50; Ibn Ḥanbal, iv. 389, 390), and with the mixed *isnād* Qatāda—'Amr b. Shu'aib—Sharīd—Prophet (Ibn Ḥanbal, iv. 388).¹

A significant example of the arbitrary creation of *isnāds* occurs in *Tr. II*, 6 (a) and (b). Here we have first three versions of an Iraqi tradition that 'Alī said, or gave orders to say, prayers over the tomb of Sahl b. Ḥunāif. The prayer over the tomb was an Iraqi invention, but did not become prevalent in Iraq (*Muw. Shaib.* 166 and Shāfi'i, loc. cit.). Nor did it become prevalent in Medina, although a tradition from the Prophet in its favour found currency there (*Muw.* ii. 11 and Zurqānī, ad loc.; *Muw. Shaib.*, loc. cit.). The *isnād* of this tradition uses the son of Sahl b. Ḥunāif: Mālik—Zuhri—Abū Umāma b. Sahl—the Prophet said prayers over the tomb of a poor woman. This can be dated with certainty in the generation preceding Mālik. It is *mursal*; the *isnād* was later completed by inserting Sahl himself and by creating new *isnāds* through other Companions (*Comm. Muw. Shaib.*, loc. cit.).

The gradual improvement of *isnāds* goes parallel with, and is partly indistinguishable from, the material growth of traditions which we have discussed in the preceding chapters; the backward growth of *isnāds* in particular is identical with the projection of doctrines back to higher authorities.² Generally speaking, we can say that the most perfect and complete *isnāds* are the latest. As is the case with the growth of traditions, the improvement of *isnāds* extends well into the literary period, as the following examples will show. The Muhammadan scholars chose to take notice of one particular kind of interference with *isnāds*, the *tadlīs*;³ we saw that Shāfi'i disapproved of it, but minimized its occurrence.

Āthār A.Y.: the editor has collected in the Commentary the parallels in the classical and other collections; a comparison shows the extent of the progressive completion, improvement, and backward growth of *isnāds*.

Muw. iii. 172 and *Muw. Shaib.* 364: Mālik—Zuhri—Ibn Musaiyib and Abū Salama—Prophet; this tradition is *mursal*. Shāfi'i (*Ikh.* 258 f.) has the same, but knows it also with the full *isnāds* Zuhri—Abū Salama—Jābir—Prophet, and Ibn Jurāij—Abul-Zubair—Jābir—Prophet. According to *Comm. Muw. Shaib.*, Ibn Mājashūn,

¹ For other examples of borrowed *isnāds* see above, pp. 139, n. 6, 154.

² See above, p. 156 f.

³ See above, p. 37.

Abū 'Aṣim Nabil, and Ibn Wahb give it with a full *isnād* through Abū Huraira instead of Jābir, and so it occurs in Ṭaḥāwī, ii. 265: Abū 'Aṣim Nabil—Mālik—Zuhri—Ibn Musaiyib and Abū Salama—Abū Huraira—Prophet. But Ṭaḥāwī remarks that the most reliable of Mālik's companions, including Qa'nabī and Ibn Wahb, relate it with an imperfect *isnād*, that is, *mursal*.

Muw. iv. 35 and *Muw. Shaib.* 239: Mālik—Zuhri—Ibn Musaiyib—Prophet; this tradition is *mursal*. Shāfi'i (*Tr. VIII*, 14) has it with a complete *isnād* through 'a reliable man' (identified by Rabi' as Yahyā b. Ḥassān)—Laith b. Sa'd—Zuhri—Ibn Musaiyib—Abū Huraira—Prophet. The name of Abū Huraira was inserted in the period between Mālik and Shāfi'i and taken from the *isnād* of a parallel version with a sensibly different text (*Muw.* and *Muw. Shaib.*, loc. cit.). In the same context, Shāfi'i records the doubts of some Medinese regarding *isnāds* in general.

Muw. iv. 44: Yahyā b. Sa'id—'Amr b. Shu'aib—'Umar gives a decision, referring to an inconclusive statement of the Prophet.¹ Ibn Māja (*Abwāb al-farā'id*, *Bāb mīrāth al-qātil*), however, has a tradition with the *isnād* Muḥammad b. Sa'id or 'Umar b. Sa'id—'Amr b. Shu'aib—his father [Shu'aib b. Muḥammad]—his grandfather 'Abdallāh b. 'Amr—Prophet: a wordy, explicit statement, part of a composite speech.

Ris. 45: Shāfi'i does not remember having heard a certain tradition with a reliable *isnād* and doubts whether it is well authenticated. But it exists in Bukhāri and Muslim with a first-class *isnād* (see *ed. Shākir*, p. 315).

Ibid. 59: Mālik—Rabi'a—several scholars—'Umar; Shāfi'i states that this *isnād* is 'interrupted'. But it has become complete in Ibn Ḥanbal, Bukhāri, and Muslim (see Zurqāni, iv. 200 and *ed. Shākir*, p. 435).

Ibid. 64: Shāfi'i states that a tradition is *mursal* and generally not acted upon, implying that it is not confirmed by any version with a complete *isnād*. But it appears with a different, full *isnād* in Ibn Ḥanbal (see *ed. Shākir*, p. 467) and Ibn Māja (see Graf, *Wortelen*, 63, n. 1).²

Parallel with the improvement and backward growth of *isnāds* goes their spread, that is the creation of additional authorities or transmitters for the same doctrine or tradition. The spread of *isnāds* was intended to meet the objection which used to be made to 'isolated' traditions.³

¹ See above, p. 159.

² See also above, pp. 141, 147, 153, n. 3, 158; below, p. 265.

³ See above, pp. 50 ff.

Mālik (*Muw.* ii. 54) refers, without *isnād*, to the instructions on the *zakāt* tax which 'Umar gave in writing. The same instructions are projected back to the Prophet, with *isnāds* through 'Umar and through other Companions, in Ibn Ḥanbal and the classical collections (see Zurqānī, ad loc.). The two oldest examples are two traditions in *Tr. II*, 9 (b): the one Medinese, through Ibn 'Umar from the Prophet, with the added remark that 'Umar instructed his agents to the same effect; the other Iraqian, quoted above, p. 73. An earlier form of traditional authority for the identical Iraqian doctrine is represented by a tradition through Ibrāhīm Nakha'ī from Ibn Mas'ūd (*Āthār A.Y.* 423; *Āthār Shaib.* 49); the tradition from 'Alī in *Tr. II*, 9 (b) represents an unsuccessful primitive effort to systematize.¹

Mālik's tradition on the *khiyār al-majlis*,² with the *isnād* Nāfi'—Ibn 'Umar—Prophet, must be later than the doctrine to the contrary which is common to the Medinese and the Iraqians (*Muw.* iii. 136; *Muw. Shaib.* 338). The classical collections (quoted in Zurqānī, iii. 136) have additional *isnāds*, some of which eliminate Nāfi' and branch off directly from Ibn 'Umar, or even eliminate Ibn 'Umar and go back to the Prophet through another Companion. These are certainly later developments.

The creation of new *isnāds* and additional authorities in Shāfi'ī's time can be observed in the traditions in favour of the important doctrine that the evidence of one witness and confirmed by the oath of the plaintiff constitutes legal proof. The judgments of Tauba b. Nimir, judge of Egypt A.H. 115–20 (Kindī, 344 ff.), show the gradual growth of this doctrine out of the practice; no traditions are adduced in this connexion. In the middle of the second century, we find that the Medinese and the Meccans hold, and the Iraqians and the Syrians reject it.³

The Iraqians claimed correctly that the doctrine was unknown to Zuhri, 'Aṭā', the old Medinese authorities, and the first Caliphs (*Tr. III*, 15; *Umm*, vii. 10); but this does not of course imply the existence of positive information on their attitude to a problem which did not yet exist in their time. The Medinese and Meccans projected their doctrine back to the old authorities Abū Salama b. 'Abdalrahmān and Sulaimān b. Yasār (*Muw.* iii. 182), to 'Aṭā' (*Umm*, vii. 8),⁴ and to the Umayyad Caliphs 'Umar b. 'Abdal'aziz

¹ This does not mean, of course, that the tariff of the *zakāt* tax was not in fact fixed by 'Umar, but this cannot be concluded from the traditions.

² See above, p. 160.

³ For the Syrians, see Ibn 'Abdalbarr, quoted in Zurqānī, iii. 181.

⁴ But Shāfi'ī's quotation from 'Aṭā' in *Tr. I*, 124, which shows a different tendency, is presumably authentic.

(*Muw.*, loc. cit.),¹ 'Abdalmalik and Mu'āwiya (*Muw. Shaib.* 361). At the next stage they ascribed their own doctrine fictitiously to the old Iraqi authorities Shuraiḥ and Sha'bi,² to the Kufian 'Abdal-lāh b. 'Utba b. Mas'ūd, and to the judge of Basra Zurāra b. Aufā (*Umm*, vi. 274 f.). Several of these references to old authorities describe the Medinese doctrine as *sunna*, thereby claiming that it represents the 'living tradition'.

The first tradition from the Prophet in favour of the Medinese doctrine, and the only one known to Mālik, is *mursal* (*Muw.* iii. 181). As Mālik undertakes to justify this doctrine by an elaborate argument, he would certainly have mentioned other traditions from the Prophet, had he known them. In Mecca, the tradition was provided with an uninterrupted *isnād* of Meccan authorities (*Ikh.* 345): this was the only additional version which Shāfi'i knew when he wrote *Tr.* III, 15. When he wrote *Ikh.* 346, he knew a further version with a Medinese *isnād*, relating it from the Prophet on the authority of two Companions. In *Umm*, vi. 273 ff. he quotes the following additional versions.

Ibrāhīm b. Muḥammad—'Amr b. Abi 'Amr the freedman of Muṭṭalib³—Ibn Musaiyib—Prophet. This is *mursal*, and introduces the old Medinese authority Ibn Musaiyib into the *isnād*.

Darāwardī—Rabī'a—Sa'id b. 'Amr b. Shuraḥbīl b. Sa'id b. Sa'd b. 'Ubāda—his father—his grandfather said he found it stated in the papers of Sa'd b. 'Ubāda that the Prophet gave the decision in question.

Darāwardī—Rabī'a—Suhail b. Abi Ṣāliḥ—his father—Abū Huraira—Prophet. Darāwardī mentions that when he asked Suhail about this tradition, Suhail did not remember it but had had it repeated back to him by Rabī'a and consequently related it 'from Rabī'a from myself'. We must conclude that Darāwardī who was a contemporary of Mālik, or a person using his name, put this story with the two *isnāds* into circulation; it acquired an additional transmitter in the following slightly differing version:

'Abdal'azīz b. Muṭṭalib—Sa'id b. 'Amr—his father said he found it stated in the papers of Sa'd b. 'Ubāda that the Prophet instructed 'Amr b. Ḥazm to judge accordingly.

Shāfi'i has also mixed and derived forms; the *isnāds* of some of these are influenced by the *isnād* of the general tradition on evidence.⁴

The old Medinese authority Rabī'a who appears in the *isnāds* of Darāwardī's story, was also directly implicated and was reported to

¹ This is polemically turned against the Iraqians.

² Sha'bi is even made to refer to the Medinese.

³ See on him below, p. 172.

⁴ See below, p. 187.

have said: 'We impose the oath when there is only one witness; we found this doctrine in the papers of Sa'd' (*Tr. III*, 15). This information on Rabi'a is clearly not authentic.

In the classical collections the *isnād* of the tradition in favour of the Medinese doctrine has become complete and 'widely spread';¹ but Ibn Hanbal at one time still cast doubt on the tradition.²

We sometimes find that *isnāds* which consist of a rigid and formal chain of representatives of a school of law and project its doctrine back to some ancient authority, are duplicated by others which go back to the same authority by another way. This was intended as a confirmation of the doctrine of the school by seemingly independent evidence.

A Medinese example is: Ibn 'Uyaina—'Abdalrahmān b. Qāsim—his father Qāsim b. Muḥammad—the opinions of 'Uthmān, Zaid b. Thābit and Marwān b. Ḥakam (*Tr. III*, 89 (a)). The interruption in the *isnād* above Qāsim was remedied, and 'Abdalrahmān b. Qāsim eliminated, in: Mālik—Yaḥyā b. Sa'īd—Qāsim b. Muḥammad—Furāfiṣa b. 'Umair—'Uthmān (*Muw.* ii. 151). Finally there appeared: Mālik—'Abdallāh b. Abī Bakr—'Abdallāh b. 'Āmir b. Rabi'a—'Uthmān, with a composite anecdote (*Muw.* ii. 192).³

An Iraqian example is: Abū Ḥanifa—Ḥammād—Ibrāhīm Nakha'i—'Alqama b. Qais and Aswad b. Yazīd—Ibn Mas'ūd (*Āthār Shaib.* 22). This became: Muḥammad b. 'Ubaid—Muḥammad b. Ishāq—'Abdalrahmān b. Aswad—his father Aswad b. Yazīd—Ibn Mas'ūd with Aswad and 'Alqama (*Tr. II*, 19 (g)).⁴

This artificial growth of *isnāds*, together with the material growth of traditions in the pre-literary and in the literary period, shows that it would be idle to try to reconstruct the tendencies and characteristics of the doctrine of any particular Companion from the traditions in which he appears as the final authority or of which he is the first transmitter.⁵ Wherever the sources available enable us to judge, we find that the legal traditions from Companions are as little authentic as those from the Prophet. We can indeed recognize the existence of certain groups of legal traditions which go under the name of individual

¹ See Ibn 'Abdalbarr, quoted in Zurqānī, iii. 181.

² See Goldziher, in *Z.D.M.G.* l. 481.

³ For two further Medinese examples, see *Ris.* 44, 45.

⁴ Later developments of this second form are found in some classical and other collections.

⁵ In this particular respect, I disagree with Caetani (*Annali*, i, Introduction, §§ 19, 24-8).

Companions; they are the products of schools of thought which put their doctrines under the authority of the Companions in question.¹ Even here we find that the names of 'Alī and of Ibn 'Umar were used both by the ancient Iraqian and Medinese schools of law and by their opponents.² On the other hand, the name of 'Umar was used both by the ancient Iraqians and Medinese, but this does not make the traditions related from him by both groups any more authentic. The use made by certain schools of the names of individual Companions as authorities for their doctrines accounts for the existence of common tendencies and characteristics, but it would be unwarranted to project these features back to the Companions themselves. It is significant that the earliest authorities of the Iraqians and of the Meccans, respectively, were originally not Ibn Mas'ūd and Ibn 'Abbās themselves, but the 'Companions of Ibn Mas'ūd' and the 'Companions of Ibn 'Abbās'. This makes it pointless to consider the Companions of the Prophet personally responsible for the large-scale circulation of spurious traditions.

There are numerous traditions which claim an additional guarantee of soundness by representing themselves as transmitted amongst members of one family, for instance from father to son (and grandson), from aunt to nephew, or from master to freedman. Whenever we come to analyse them, we find these family traditions spurious,³ and we are justified in considering the existence of a family *isnād* not an indication of authenticity but only a device for securing its appearance.

Muw. i. 108 and 111 gives two traditions whose family *isnāds* have identical lower parts (Mālik—Hishām—his father 'Urwa). Both deal with the same problem, but there is a different woman in the generation of the Companions involved in each case. The version of p. 111 where the Prophet is not mentioned, contains an obvious confusion of persons (see Zurqānī, ad loc.), and it was passed over in silence by Shāfi'ī in *Tr.* III, 30; the version of p. 108 improves this by a change of persons and by introducing the Prophet, but it does not thereby become any more authentic.

The Iraqian and the different Medinese doctrine on a question of divorce are both ascribed to Zaid b. Thābit, the former with the

¹ See above, pp. 25, 31 f.; below, p. 249 f.

² See below, pp. 240, 249.

³ See above, pp. 73, 114, 153, 153, 164, 166, 168 f.; below, 173.

usual Iraqian *isnād* Abū Ḥanīfa—Ḥammād—Ibrāhīm (*Āthār A.Y.* 633; *Āthār Shaib.* 79), the latter with the *isnād* Mālik—Sa'īd b. Sulaimān b. Zaid b. Thābit—Khārija b. Zaid—Zaid b. Thābit (*Muw.* iii. 37; *Muw. Shaib.* 254). The Iraqian *isnād* is *mursal*, and, as such, older than the Medinese family *isnād*. Both doctrines are harmonized in a tradition with the *isnād* Nāfi'—Ibn 'Umar (*Muw.* and *Muw. Shaib.*, loc. cit.).

Muw. iii. 38 gives two traditions on 'Ā'isha's interference in matters of marriage, both with the *isnād* Mālik—'Abdalraḥmān b. Qāsim—his father Qāsim b. Muḥammad—Qāsim's aunt 'Ā'isha, but in one case with 'Abdalraḥmān b. Abī Bakr and his wife, and in the other with Mundhir b. Zubair and his wife who was the daughter of 'Abdalraḥmān b. Abī Bakr. Both are parallel but incompatible versions of the same anecdote; a legal point on a question of divorce is made in an additional remark which is out of place in the second version.

Zurqāni discusses the contradictions in the family *isnāds* of the several versions of a tradition in *Muw.* i. 39, regarding Mālik's immediate authority 'Amr b. Yaḥyā Māzīni; this tradition is a compromise between several doctrines.

Whereas late traditions, as we saw, were provided with first-class *isnāds*, relatively old traditions sometimes failed to develop satisfactory *isnāds* and were therefore passed over by Bukhārī and Muslim.¹

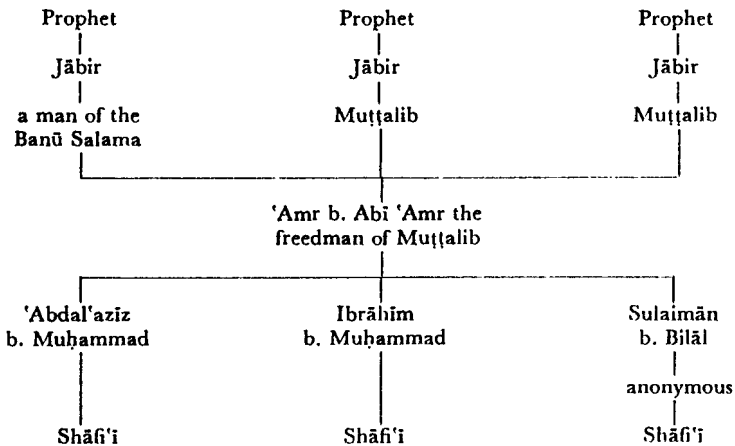
These results regarding the growth of *isnāds* enable us to envisage the case in which a tradition was put into circulation by a traditionist whom we may call N.N., or by a person who used his name, at a certain time. The tradition would normally be taken over by one or several transmitters, and the lower, real part of the *isnād* would branch out into several strands. The original promoter N.N. would have provided his tradition with an *isnād* reaching back to an authority such as a Companion or the Prophet, and this higher, fictitious part of the *isnād* would often acquire additional branches by the creation of improvements which would take their place beside the original chain of transmitters, or by the process which we have described as spread of *isnāds*. But N.N. would remain the (lowest) common link in the several strands of *isnād* (or at least in most of them, allowing for his being passed by and eliminated in additional strands of *isnād* which might have been introduced later).

¹ See, e.g., *Tr. IX*, 7-10, with *Comm. ed. Cairo*.

Whether this happened to the lower or to the higher part of the *isnād* or to both, the existence of a significant common link (N.N.) in all or most *isnāds* of a given tradition would be a strong indication in favour of its having originated in the time of N.N. The same conclusion would have to be drawn when the *isnāds* of different, but closely connected traditions showed a common link.

The case discussed in the preceding paragraph is not hypothetical but of common occurrence. It was observed, though of course not recognized in its implications, by the Muhammadan scholars themselves, for instance by Tirmidhī in the concluding chapter of his collection of traditions. He calls traditions with N.N. as a common link in their *isnāds* 'the traditions of N.N.', and they form a great part of the traditions which he calls *gharīb*, that is transmitted by a single transmitter at any one stage of the *isnād*.

A typical example of the phenomenon of the common transmitter occurs in *Ikh.* 294, where a tradition has the following *isnāds*:



'Amr b. Abī 'Amr is the common link in these *isnāds*. He would hardly have hesitated between his own patron and an anonymous transmitter for his immediate authority.

The following example will show how the argument drawn from a common transmitter can be used, together with other considerations, in investigating the history of legal doctrines.

In the first half of the second century A.H., the sale of the *walā'* of a manumitted slave¹ was customary and considered valid. Ibn Sa'd, v. 309, relates of Abū Ma'shar: 'He was the *mukātab* slave² of a woman belonging to the Banū Makhzūm; he paid [the stipulated instalments] and became free; later, Umm Mūsā bint al-Ḥimyariya [the mother of the Caliph Maḥdī] bought his *walā'*, and he considered himself henceforth a client of the ruling house.' The common reaction of the Iraqians and the Medinese was to forbid this practice; see *Muw. Shaib.* 343 for the Iraqians, *Muw.* iii. 257 for the Medinese.³ This common doctrine was expressed in a Medinese tradition (*Muw.*, loc. cit.), with the *isnād* Mālik—'Abdallāh b. Dīnār—Ibn 'Umar—Prophet, to the effect that the Prophet prohibited selling or giving away the right of *walā'*. As Zurqānī points out, 'Abdallāh b. Dīnār is the common link in the *isnāds* of its several versions, and it can therefore be dated in the generation preceding Mālik. The reason for this doctrine appears in one of the versions quoted by Zurqānī, which considers *walā'* as a kind of kinship (*luḥma*), in the same way as relationship by blood.

But the Medinese still allowed the sale of the *mukātab* slave.⁴ This doctrine is expressed in a tradition with the *isnād* Mālik—Hishām—his father 'Urwa—his aunt 'Ā'isha—Prophet, to the effect that a certain Barīra, a *mukātab* slave-woman, found it difficult to meet her obligations under the contract, that 'Ā'isha offered to pay for her, provided she ('Ā'isha) could have the right of *walā'*, that the owners of Barīra were willing to sell her to 'Ā'isha, provided they retained the right of *walā'*, and that the Prophet advised 'Ā'isha to agree to their condition because it would be invalid and the right of *walā'* would belong to her by law, as she was the actual manumitter; and the Prophet afterwards proclaimed this rule of law (*Muw.* iii. 251). Hishām is the common link in the several versions of this family *isnād*, although a parallel version, through Zuhri—'Urwa—'Ā'isha, passes him by (see Zurqānī ad loc.). As this tradition shows the Prophet and 'Ā'isha in a disconcerting light, the crucial point was formally mitigated in a version with the new *isnād* Mālik—Yaḥyā b. Sa'id—'Amra—'Ā'isha, and a shortened one with the *isnād* Mālik—Nāfi'—Ibn 'Umar—'Ā'isha (*Muw.* iii. 255, 256).

¹ See above, p. 161.

² See below, p. 279.

³ But the Meccan scholar 'Aṭā' seems to have held that a master could allow his manumitted slave to enter into *walā'* with whom he wished; this information is presumably genuine. A tradition which implicates Ibn 'Abbās, the customary authority of the Meccans, in a contract of sale of *walā'*, seems to show that no objections were raised in Mecca. See *Comm. Muw. Shaib.* 343.

⁴ Or of the rights accruing to the master from the contract of manumission; see Zurqānī, iii. 256, 265.

The whole Barīra tradition is artificial, and later than the legal maxim 'the Muslims must abide by their stipulations' (*al-Muslimūn 'alā shurūṭihim*), because it makes the Prophet refer to that maxim polemically in his final speech. The maxim itself is put into the mouth of Qāsim b. Muḥammad, who belongs to the generation preceding Hishām (*Muw.* iii. 220; *Tr.* III, 41). Shāfi'i knows it also as a tradition from the Prophet, but doubts its authenticity (*Ikh.* 32); it is likely that it had been put into the form of a tradition from the Prophet only recently.¹

The Iraqians, on the other hand, prohibit the sale of the *mukātab* (Zurqāni, iii. 256, 265), and dispense with the Barīra tradition; Shaibāni (*Muw. Shaib.* 344) quotes only the third, shortened version which does not contradict his doctrine explicitly. The introduction of Ibrāhīm Nakha'i into two *isnāds* of the Barīra tradition (Ṭahāwī, ii. 220) is a late counter-move.

Some significant common transmitters are:

'Abdallāh b. Dīnār: see above, p. 173; below, p. 199.

A'mash: see below, p. 209, n. 8.

'Amr b. Dīnār: see above, p. 155, n. 2.

'Amr b. Yaḥyā Māzīnī: see below, p. 184.

Darāwardī: see above, p. 168; he gave spurious information on old Medinese authorities (see below, p. 195); he was an adversary of Mālik (*Tr.* III, 148, p. 248), but followed some of Mālik's opinions (see above, p. 7).

Ḥajjāj b. Artāt: see *Tr.* IX, 36 and *Comm. ed. Cairo.*²

Ḥasan b. 'Umāra: see above, p. 158.

Ibn Abī Dhī'b: see above, p. 54 f.; below, p. 181.

Ibn Juraij: see above, p. 146, n. 1.

Ibn 'Uyaina: he appears in the *isnād* of a tradition from the Prophet praising the 'scholar of Medina', who was usually identified with Mālik; but also with 'Abdal'azīz b. 'Abdallāh 'Umari: Ibn Ḥanbal ii. 299 and Tirmidhī, *Abwāb al-'ilm, Bāb mā jā' fī 'ālim al-Madīna*. As Shāfi'i, who is Ibn 'Uyaina's contemporary and often relates traditions from him, does not, as far as I know, refer to this tradition in his polemics, Ibn 'Uyaina himself seems hardly to be responsible for it.

Ibrāhīm b. Sa'd: see below, p. 182.

Mu'tāmir b. Sulaimān: see above, p. 56.

Sa'd b. Iṣḥāq b. Ka'b b. 'Ujra: see below, p. 198, n. 2.

Sha'bī: his name was used for the *isnāds* of several groups of traditions; see above, p. 131; below, p. 203 n. 4, 231, 241.

¹ It had gained full status in the time of Ṭahāwī (ii. 246) and Ibn 'Abdalbarr (quoted in Zurqāni, iii. 219).

² See below, p. 250.

Shu'ba: see above, p. 106.

Zaid b. Aslam: see *Muw.* i. 20 and Zurqānī, ad loc.; and below, p. 251 f.

Zuhri: he is the common transmitter of most Medinese traditions directed against the temporary marriage (*mut'a*): see below, p. 267. See further above, p. 162; below, pp. 186, 199, 222, 246. Zuhri himself is hardly responsible in the greater part of these cases.

The existence of common transmitters enables us to assign a firm date to many traditions and to the doctrines represented by them. This consideration which takes into account the fictitious character of the higher parts of *isnāds*, must replace the uncritical acceptance at their face value of *isnāds*, as far back as the time of the Companions.¹ We must, of course, always reckon with the possibility that the name of a common transmitter was used by other, anonymous persons, so that its occurrence gives only a *terminus a quo*. This applies particularly to the period of the Successors. We shall discuss the typical case of Nāfi' in the following chapter.

Similar considerations apply to the *isnāds* of traditions relating to history.²

¹ See above, pp. 169 f.

² See above, p. 139, and my paper in *Acta Orientalia*, xxi. 1953, 288-300.