

THE ORIGINS OF
Muhammadan
Jurisprudence

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CHAPTER 6

THE TRADITIONISTS

WE have met with the traditionists in many parts of this book, and the present chapter is devoted to a discussion of their movement in general. Their activity is an integral part of the development of legal theory and positive legal doctrine during the first half of the second century A.H.¹ What has been known of it so far can be summarized, with Goldziher, by saying that it started in opposition to the general use of *ra'y* in the ancient schools of law and was therefore secondary to it.²

The traditionists³ were distinguished from the lawyers and muftis, from the ancient schools of law and from the *ahl al-kalām*.⁴ They existed 'in all countries', in Iraq, Hijaz, Egypt, and Syria,⁵ and formed groups in opposition to, but nevertheless in contact with the local schools of law.⁶ Shāfi'i who, as far as law was concerned, always considered himself a member of the school of Medina,⁷ nevertheless identified himself with the traditionists, adopted their essential thesis and claimed that a number of his foremost [Medinese] companions and a number of the foremost lawyers in the other countries had also accepted their tenets.⁸

The main thesis of the traditionists, as opposed to the ancient schools of law, is that formal traditions from the Prophet supersede the 'living tradition'. Their most important activity, the creation and putting into circulation of traditions from the Prophet, is of course seldom avowed openly, but its traces are unmistakable. It is openly confessed, for instance, in the traditions which make the Prophet say: '[Sayings attributed to me] which agree with the Koran, go back to me, whether I actually

¹ See above, p. 66 f.

² *Muh. St.* ii. 77 f.; see also *Zāhiriten*, 3 ff.

³ *Ashāb al-ḥadīth*, *ahl al-ḥadīth*; in *Tr. VIII*, 6, *ahl al-āthār*.

⁴ *Ikh.* 37, 91, 338; *Tr. IV*, 256; *Tr. VIII*, 6; Ibn Qutayba, 2.

⁵ This was known to Maqrīzī, *Aḥṣaf*, ii. 333.

⁶ *Ikh.* 376 f.; *Tr. III*, 20, 47, 148 (p. 243); *Tr. IX*, 40; *Umm*, vi. 185 (this refers to *Tr. III*, 57).

⁷ See above, p. 9 f.

⁸ *Ris.* 38; *Ikh.* 28.

said them or not,' and: 'Whatever good sayings there are, I said them.'¹

The traditionists are naturally specialists in the transmission and study of traditions and in the criticism of their *isnāds*; they decide which traditions are transmitted by reliable authorities, they reject traditions which are badly attested, they do not regard *mursal* traditions as reliable, and they never acknowledge *munqaṭi'* traditions.² Traditions with imperfect *isnāds*, such as *mursal* and *munqaṭi'*, are typical of the ancient schools of law, and the criticism of *isnāds* by the traditionists is primarily directed against the less exacting standards of the ancient schools.³ On the other hand, the traditionists accept 'isolated' traditions,⁴ whereas the ancient schools of law reject them;⁵ the creation and transmission of 'isolated' traditions from the Prophet was the main weapon of the traditionists. They are of course not necessarily in favour of every individual tradition from the Prophet, and may be found to reject such traditions for reasons of their own.⁶

Notwithstanding the high qualifications which were demanded, in theory, of a transmitter of traditions,⁷ the standards of reasoning of the traditionists in general were inferior to those of the ancient schools of law. Shāfi'ī complained repeatedly that their superficial and untrained adherence to traditions led them into error, and that their lack of systematic reasoning put them at a disadvantage; in particular, he disavowed those extreme traditionists who accepted all traditions indiscriminately.⁸

Shāfi'ī reports actual discussions with traditionists at some length in *Ikh.* 81 ff. and 88 ff. The traditionist gets the best of the argument in both cases, because Shāfi'ī feels obliged to adhere to the settled opinion on major points of ritual, although the evidence of traditions from the Prophet rather points to the contrary.⁹

Here and elsewhere the traditionists refer, besides traditions

¹ Goldziher, *Muh. St.* ii. 49, from Jāhiz and Ibn Māja; less outspoken parallels have been discussed above, pp. 28 and 45.

² *Ikh.* 32, 53 f., 212, 219, 265, 271, 365 and often; also numerous cases in *Tr. I.*

³ See above, pp. 36 ff.

⁴ Ibn Qutaiba, 89.

⁵ See above, pp. 50 ff.

⁶ See above, p. 155.

⁷ Shāfi'ī enumerates them in *Ris.* 51.

⁸ *Ikh.* 100, 323, 367 f. (translated above, p. 57).

⁹ Cf. above, p. 15, and below, p. 323 l.

from the Prophet, to the Koran and to traditions from Companions as auxiliary arguments. It was natural for them to avail themselves of recognized arguments whenever they happened to be in favour of their own doctrine.¹ But this did not make them any less opposed to the 'living tradition' of the ancient schools of law and to all kinds of human reasoning and personal opinion which were closely connected with it.² The traditions directed against the exercise of *ra'y* in law which are found in Iraq and in Hijaz, some of them attributed to Successors, were put into circulation by the traditionists.³ The traditionists were also responsible for the arguments adduced in favour of traditions from the Prophet, and particularly the statements that Companions and other authorities revised their own decisions on hearing that the Prophet had decided differently.⁴

We have seen that the traditionists were connected with the opposition to the ancient school of Medina.⁵ A group of Medinese Nāfi'—Ibn 'Umar traditions which express an effort, sometimes successful and sometimes unsuccessful, to modify the doctrine of the Medinese school, can be traced to the activity of the traditionists.⁶ A close relationship exists between their opposition in Medina and an Iraqi opposition group which expressed its doctrines in a particular body of traditions from 'Alī.⁷ In contrast to many Medinese Nāfi'—Ibn 'Umar traditions, however, these Iraqi traditions from 'Alī are not carried back to the Prophet and cannot be connected directly with the traditionists. As reference to Companions, which was the usual procedure in the ancient schools of law, preceded, generally speaking, consistent reference to the Prophet as practised by the traditionists, the body of traditions in question seems to represent a stage at which the opposition to the established local schools had not yet adopted the form of traditions from the Prophet.

The traditionists were presumably responsible for some of the traditions directed against Umayyad popular and administrative practice,⁸ although it is not always possible to determine whether a particular doctrine originated in traditionist circles or within the ancient schools of law. The 'Islamicizing' which

¹ Cf. above, p. 230.

⁴ See above, pp. 53 ff.

⁷ See above, p. 241.

² See above, p. 128 f.

⁵ See above, p. 248 f.

⁸ See above, pp. 192 ff.

³ See above, pp. 129 ff.

⁶ See above, p. 178 f.

is one aspect of the process by which Muhammadan law was created out of Umayyad practice,¹ was by no means a distinctive interest of the traditionists; they were preceded in this by the ancient schools of law themselves.

The general tendency of the traditionists is the same as that of the opposition in Iraq and in Medina: a certain inclination towards strictness and rigorism, not without exceptions, however.² They endeavour to subordinate the legal subject-matter to moral considerations,³ but are also interested in purely legal issues such as the ancient Meccan custom of *khiyār al-majlis*.⁴ This concern with the legal sphere is not older than the second century A.H. It is reasonable to suppose that the differences of opinion which Ibn Qutaiba (p. 103) attests for them about the middle of the third century, existed already at an earlier period. From the time of Shāfi'i onwards, we notice the growth of extravagant 'mythological' traditions sponsored by them, such as the tradition which declares a black dog to be a devil.⁵ This kind of tradition is common among those collected and defended by Ibn Qutaiba.

Shāfi'i made the essential thesis of the traditionists prevail in legal theory, and their movement culminated in the classical collections of traditions of the third century A.H. The legal doctrine of Ibn Ḥanbal is purely traditionist. But the recognition which the traditionist principle won outside the Mu'tazila did not cause the Ḥanafīs and Mālikīs, who continued the ancient Iraqian and Medinese schools, to change their positive legal doctrine appreciably from what it had been at the beginning of the literary period.⁶

¹ See below, pp. 283 ff.

² They are in favour of the greater ritual ablution (*ghusl*) before the Friday service (see *Ikh.* 178), but are less exacting with regard to ritual ablution in another case (see *Ikh.* 88).

³ See above, pp. 178, 183 f. (a legal maxim).

⁴ See above, p. 160 f.

⁵ See above, p. 146.

⁶ For lists of traditionists, see Ibn Qutaiba, *Ma'ārif*, 251 ff. and *Fihrist*, 225 ff. Several traditionists have been discussed elsewhere in this book, e.g.:

'Abdallāh b. Dinār: above, pp. 163, 173, 199.

'Amr b. Dīnār: above, pp. 65 f., 155, n. 2.

'Amr b. Shu'aib: below, p. 280, n. 7.

Ibn Abī Dhi'b: above, pp. 54 f., 65, 181. Shāfi'i is uncertain whether Ibn Abī Dhi'b is reliable or not: *Ikh.* 244.

Ibn 'Uyaina: above, pp. 54, n. 2, 65 f., 131, 160, 174.

Mu'tamir b. Sulaimān: above, pp. 56, 131.

The one traditionist of whom texts of any length are easily available at present, is Ibn Qutaiba, and we have used his *Kitāb Ta'wīl Mukhtalif al-Ḥadīth* repeatedly in order to ascertain the doctrine of the traditionists on various points of legal theory.¹ Ibn Qutaiba is, however, influenced by Shāfi'ī and by the ancient schools of law:² he considers himself one of the Medinese, and at the same time looks back to the great scholars of the past, Iraqians, Medinese, Syrians and traditionists, with the same kind of respect; on points of detail, he is definitely eclectic, but his opinions mostly coincide with the Mālikī doctrine.³ This attitude must not be projected back into the second century A.H. Ibn Qutaiba was a highly cultured man of letters; all the more significant is the defective character of his own legal reasoning which we are entitled, on account of Shāfi'ī's remarks to the same effect, to attribute to the traditionists. Whenever we find good legal reasoning and credible interpretations in Ibn Qutaiba, they have almost invariably been anticipated by Shāfi'ī. Ibn Qutaiba's own interpretation of traditions is arbitrary and forced, and his own legal reasoning confused and bad.⁴

¹ See above, p. 16, n. 1, on traditions from the Prophet explaining the Koran; *ibid.*, n. 3, on the Prophet being inspired; p. 47, n. 1, on the repeal of the Koran by the *sunna*; p. 77, n. 3 on the identification of *sunna* with traditions from the Prophet; p. 94, n. 3, on the concept of consensus; p. 128 f. on the rejection of *ra'y*.

² See above, pp. 69, n. 2, 132.

³ See, e.g., Ibn Qutaiba, 238 f.

⁴ See, e.g., Ibn Qutaiba, 112 f., 114 f., 332 f.—*Ibid.* 67 (compare with *Tr. VIII*, 12), 251, 444.