The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools

Harald Motzki

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THE ORIGINS OF ISLAMIC JURISPRUDENCE

Meccan Fiqh before the Classical Schools

BY

HARALD MOTZKI

translated from the German

by

MARION H. KATZ

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Since the publication in 1991 of my Die Anfänge der islamischen Jurisprudenz. Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts several English-speaking colleagues have suggested that it be made available in English. The realization of the project, which had already begun in 1993, was not making good progress until it received a fresh stimulus in 1999 by a new demand for the translation from the Middle East.

The text has been thoroughly revised. The errors which I detected in the course of time or which were brought to my attention by colleagues and reviewers have been corrected. Recent literature has been added but only where appropriate. The references in the notes serve to support the argument; completeness of references was not aspired to. In some places I reacted to critical comments by reviewers and tried to remove misunderstandings.

I am grateful to Dr. Marion H. Katz (Mt. Holyoke College) for her accurate translation of the German text, to Fransje Zweekhorst, M. A., who compiled the index, and to Dr. Lawrence I. Conrad (Wellcome Institute for the History of Medicine) who was the first to suggest translation of the book. I owe a great debt to Shaykh Niẓām Yaʿqūbī (Manāma) who made the publication of the book possible by supporting its translation and editing with a grant. I also wish to thank Professor Wadād al-Qāḍī (University of Chicago) who agreed to accept the book for publication in her series Islamic History and Civilization and offered valuable corrections and suggestions.
INTRODUCTION

The question of when, where, and how Islamic jurisprudence came into being has occupied research in Islamic studies for over a century. Initially, a continuous development starting in the lifetime of the Prophet and ultimately leading into the legal schools of the second and third centuries A.H. (approximately the eighth and ninth centuries A.D.) was assumed. This has also been the Muslim view of things since medieval times. This view was put into question toward the end of the nineteenth century of our era by Ignaz Goldziher, and was refuted definitively by Joseph Schacht in his book *The Origins of Muhammadan Jurisprudence*, which appeared in 1950. The different opinions are essentially dependent on the state of the sources available. If one considers the Qur’ān as a work which—at least in its earthly form—originated in the lifetime of Muḥammad and was put down in writing in the course of about two decades after his death, a hole of almost 150 years yawns between it and the first collections of legally relevant texts which are recognized as authentic, i.e. which really go back to the author or compiler claimed for them. The debate has thus revolved around the question of what historical worth the texts of these works have as sources for the preceding phase.

Schacht’s theory was largely accepted in western Islamic studies and strongly influenced subsequent research. The present study attempts to demonstrate that Schacht’s conceptions, in substantive points, are no longer tenable or are greatly in need of modification—above all, that he estimated the beginnings of Islamic jurisprudence a good half to three-quarters of a century too late. The reservations about Schacht’s conclusions result in part from the nature of his work itself: it contains a number of questionable premises, historical inferences, and methods. This is described in the first chapter of the present study, which contains an outline of the history of research on the subject. For, one can better demonstrate the problems of research, understand Schacht’s approach, and clarify the point at which the present study begins when the earlier, pre-Schachtian, and the more recent studies as well as the critical voices addressing the theses of Schacht and his followers are reviewed.
Decisive arguments, however, are here provided by the utilization of a new source which was not yet at Schacht’s disposal, the *Muṣannaf* of the Yemeni ‘Abd al-Razzāq al-Ṣanʻānī (d. 211/826). This work and its author are introduced in the second chapter. It is an important source for the history of law, if only because its author, although a contemporary of al-Shāfi‘ī (d. 204/820), whose work Schacht took as a point of departure, was clearly not influenced by al-Shāfi‘ī. Thus, in contrast to the classic *Hadith* collections of the third/ninth century, it represents an earlier stage of the development of the reception of tradition, and is several times more voluminous than comparable older works like the *Muwaṭṭa* of Mālik ibn Anas (d. 179/795). However, the special significance of ‘Abd al-Razzāq’s *Muṣannaf* lies in the fact that it contains sources from the first half of the second/eighth century which are lost as independent works or at least have not surfaced until today. It is the principal concern of the second chapter to demonstrate this.

The method of reconstructing sources which is used in this study, and which consists of extracting older texts or tradition complexes out of later works on the basis of the statements of transmission (*isnāds*), is not new. In Biblical, and especially Pentateuch, research it has a long history reaching into the eighteenth century. And it was students of the Old Testament, such as Julius Wellhausen, who introduced it to western Islamic Studies.¹ These methodological attempts were followed up, supplemented and refined by Heribert Horst, Fuat Sezgin, Georg Stauth, Albrecht Noth, Gernot Rotter, Walter Werkmeister and Khalil Athamina, to name only a few.² The principle is acknowledged; differences of opinion persist only on details, like the form of such sources (authored books or not) and the mode of their transmission (written, oral, or a combination). The

¹ J. Wellhausen, “Prolegomena zur ältesten Geschichte des Islams,” *Skizzen und Vorarbeiten*, vol. 6 (Berlin, 1899).
argument over the textuality or orality of transmission in early Islam, however, miss the historical realities. Gregor Schoeler has pointed this out repeatedly,\(^3\) and the present study confirms it.

The question now presents itself: what meaning do the newly tapped older sources have for the early history of Islamic jurisprudence? It is true that Schacht, in his utilization of the legally relevant tradition collections of the second half of the second/eighth century, like Mālik’s *Muwatta* and the Āthār of Abū Yūsuf (d. 182/798) and al-Shaybānī (d. 189/805), noticed that they also contain older sources. For example, he assumed that the Āthār of these two Kufans originated predominantly with their teacher Abū Ḥanīfa (d. 150/767), and that Mālik used a source of Nāfi’s which Schacht dated to the middle of the second/eighth century.\(^4\) But his mistrust of the chains of transmission (*iṣnād*) which precede the individual texts blocked him from undertaking a consistent source analysis aimed at reconstructing the history of transmission. Instead, he relied primarily on the criterion of content and attempted to place the texts chronologically by ordering them “in the overall context of a problem.”\(^5\) He resorted to the *iṣnād* when its statements could be reconciled with the chronology developed through content; otherwise he rejected the *iṣnād* as forged.

This study advances the thesis that Schacht’s premise, that portions of the *iṣnāds* which extend into the first half of the second/eighth and the first/seventh century are without exception arbitrary and artificially fabricated is untenable, at least in this degree of generalization. A relative chronology of the texts based primarily on aspects of content, and a representation of the development of Islamic jurisprudence constructed upon it, do not lead to definite conclusions. The third chapter attempts to demonstrate this. The central question

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under consideration is this: Is it possible to find criteria which enable us to determine whether the information about the provenance of the earlier sources contained in 'Abd al-Razzāq’s Musannaf is trustworthy or forged?

Using the examples of two strands of sources, it is possible to show that a number of arguments, which I call criteria of authenticity, speak for the credibility of the statements of transmission which are made by the authors or compilers of these sources of the first half of the second/eighth century. The criteria of authenticity on which I fall back relate predominantly to form and not to content, such as the distribution of the texts among sources; the shares of raʾy and Hadith; the ratios of traditions going back to the Prophet, the sahāba and the tābiʿūn; the use and the quality of chains of transmitters; the terminology of transmission; the existence of personal raʾy; divergent or contradictory comments about texts; indirect transmission found next to direct transmission; uncertainty about exact wording; the reporting of changes of opinion, of contradictions, of cases of ignorance in legal matters, and so forth.

The conclusion that the texts which 'Abd al-Razzāq’s informants claim to have received from specific people do indeed go back to them makes it possible, in turn, to extract from within these strands of sources older sources which can be dated to the first quarter of the second/eighth century. They supply a firm and extensive textual basis for delineating the state of the development of law towards the end of the first and the beginning second/eighth century. They thus bring us back into a period in which, according to Schacht, only a few reliable traditions existed which can, however, seldom be firmly assigned to historical persons.

By the same method—the determination of criteria of authenticity and forgery—it is possible, starting out from this new textual basis, to venture further back into the first/seventh century. In Islamic terminology this is the generation of the sahāba, which represents the link to the Prophet himself. There are good arguments that a number of the traditions attributed to this generation are reliable. Occasionally it is even possible to verify among them reports about the Prophet which quite probably are authentic, that is, they were really reported by one of the Prophet’s contemporaries, and their genuineness, that is, that they have a historical kernel, cannot be simply dismissed.

For argumentation and for the development of the criteria of authenticity not all of the major strands of older sources contained
INTRODUCTION

in 'Abd al-Razzāq’s *Musannaf* will be used, but only the Meccan ones. The purpose is to combine the critical analysis of the sources with a study of early Meccan legal scholarship, about which next to nothing is known. Thus the third chapter is divided according to the most important legal scholars of Mecca in the first and second Islamic centuries. The findings about those scholars which are derived from the textual material transmitted by them, are then contrasted with the biographical traditions about them. The investigation of the Meccan strands of sources leads to the conclusion that the roots of legal scholarship in Mecca can be traced back to the middle of the first/seventh century, and that their further development up to the middle of the second/eighth century can be ascertained with a stunning wealth of detail that exceeds our dreams.

One issue which has played a large role in the scholarly discussion of the genesis of Islamic jurisprudence since the nineteenth century will be consciously bracketed in the present investigation: the possible influences on Islamic jurisprudence by pre-Islamic non-Arabic systems of law. One reason lies in the conclusions of this study itself. Starting from the assumption that Islamic jurisprudence developed only toward the end of the Umayyad period, scholars have sought its pedigree in Islamic Iraq (Schacht) or Syria (Crone). Our conclusions, conversely, limit the scope for such an influence, temporally, to the end of the first/seventh century (including pre-Islamic times) and, spatially, to the Arabian Peninsula.6 It is true that, even within these temporal and spatial limits, fertilization by Near Eastern provincial law, which was strongly infused with Roman law, and especially by Jewish legal forms, is conceivable; but since we so far know nothing precise about the dissemination and substance of these laws in the Arabian Peninsula in the sixth and seventh centuries of our era, or about pre-Islamic law in Mecca, concrete proofs of the development of Islamic legal institutions out of other systems of law or of their being influenced by them are difficult to adduce. Patricia Crone has recently attempted this.7 Her study is extremely ingenious, and shows how one can approach the problem. The dating and localization, however, remain speculative.8

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6 This statement concerns only issues which can be ascertained to be early. There might have been later influences as well.
In the decade since the publication of the original German edition of the present study, two books with a similar title have been published: Norman Calder's *Studies in Early Muslim Jurisprudence* (1993) and Yasin Dutton's *The Origins of Islamic Law* (1999). They deal with the emergence of the juridical schools associated with the names of early legal scholars such as Abū Ḥanīfa, Mālik and al-Shāfi‘ī, i.e. the stage of development that followed the period on which the present study focuses. Both books, which are valuable in themselves, ignore the results of the present study. Dutton considers Mālik's *Muwatta'* as "our earliest formulation of Islamic law" and as "our earliest record of that law as a lived reality." He is concerned only with the interpretation of the *Muwatta'* and the description of the state of juridical development which it reflects. The period before the *Muwatta'* remains outside his scope and is only perfunctorily touched on in the conclusions. For Calder "Islamic jurisprudence is an organic product of Arabic-speaking Muslim society in the third century." He claims that "the instability or creativity of oral or notebook traditions," "organic texts, pseudoepigraphy, and long-term redactional activity" prevent us from recovering earlier stages of history and, for that reason, he doubts whether 'Abd al-Razzāq’s *Musannaf* really goes back to him and whether it can be used as a basis for the history of Islamic *fiqh* in the second/eighth century. This is an "ideological" statement which is based neither on a literary analysis of the *Musannaf* nor on a critical dialogue with the literary analysis which I have presented of this work. Calder’s theories and literary analyses of juridical texts certainly raise crucial issues but they are in many respects not convincing, as some reactions to his book have already shown.

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The present book tries to leave aside generalizing preconceptions about the reliability of textual elements, such as isnāds and mutān, or of genres of sources, such as Prophetic hadiths or biographical reports; and it does not take for granted special characteristics of the transmission process such as stability, creativity, organic growth, and the like. It analyzes the sources with the same goal that my teacher, the late Albrecht Noth, formulated in his source-critical study of the early Arabic historical tradition: “[to] establish reliable criteria according to which individual traditions or groups of traditions can be assessed—not only for their ‘historicity,’ but in other ways as well.”

If this study can contribute to bringing back the debate on the origins of Islamic jurisprudence and early traditions in general to a more “philological” level of interpreting the texts—“philological” does not necessarily mean “uncritical” or “essentialist”—then it will have fulfilled its purpose.

Nijmegen, December 2000

HARALD MOTZKI

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CHAPTER ONE

THE BEGINNINGS OF ISLAMIC JURISPRUDENCE IN THE RESEARCH OF THE NINETEENTH AND TWENTIETH CENTURIES

The good old custom of preceding or following the investigation of a problem with a sketch of its research history pertains in Islamic studies as well. Think, for instance, of Friedrich Schwally's research report in his adaptation of Theodor Nöldeke's *Geschichte des Qoräns*, on which many a scholar has fed since then, and which is still worth reading today. Following his example and that of many others, let us precede this study as well with a chapter not only about the state, but also about the history of research on the origins of Islamic law and its jurisprudence. It will clarify the point at which my investigation commences and the problem which it attempts to solve.

The conclusions of historical research are fundamentally determined by two factors: firstly, by the questions that are asked, i.e., by the knowledge in which the researcher is interested. This is subject to constant change, and can sometimes also be dependent on external conditions and developments—political, social, economic, and ideological, among others. Secondly, by the sources that are available. The tapping of new sources or revised findings about already known material can lead to the rejection of existing theories and to the formulation of new hypotheses. The question what intellectual interest motivated specific orientalists who concerned themselves with the origins of Islamic law and Islamic jurisprudence, and whether specific subjective attitudes to Islam and to political and legal developments in the Islamic countries influenced their framing of questions and their results, is a delicate but legitimate subject of scholarly reflection. However, it is not to this that we will now turn.

our attention, but to the connection between the state of the sources and the conclusions of research. That is, I will undertake an attempt to sketch the history of research on the emergence of Islamic law and Islamic jurisprudence from the point of view of the sources on which the contributions are based, and to ask what effect the selection and evaluation of the sources have on their theories and representations.

A. Early Research

The question of the origins of Islamic law and the development of jurisprudence up to the beginnings of the classical schools of law has occupied Islamic studies intensively since the second half of the last century. The prerequisites for any in-depth work on this subject were provided by the sifting of the oriental manuscripts scattered in Europe and their listing and description in catalogues, which intensified at the beginning of the nineteenth century, as well as the editing and publication of numerous works. The first significant attempt to illuminate the problem on the basis of the sources accessible to him was made by Eduard Sachau in an essay which appeared in 1870 under the title "Zur ältesten Geschichte des muhammedanischen Rechts." Sachau assumes that Islamic law "can be traced back to two fundaments," the Qur'an and the sunna of the Prophet. He does not understand this only to mean that these are the theoretical sources, but also historically: the Qur'an and the sunna in the form of traditions about statements and active or passive behaviors of the Prophet stand at the beginning of the development of Islamic law as the legacy of Muḥammad. The "earliest adherents of the new teaching," the "Companions," availed themselves of these two sources in order to reach a verdict in cases of conflict. This legal situation

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5 Sachau, op. cit., p. 699.

characterized the entire first/seventh century, until the generation of the Companions had died out. The following generation of "Successors" resorted in cases which were not covered by Qurʾān and sunna to "opinions and decrees of the Companions, which had been unanimously shared by them and decreed on similar occasions (ʾijmāʿ al-ṣaḥāba)." According to Sachau, this is the third source of Islamic law. At the same time, that is, starting in the second/eighth century, jurisprudence begins to establish itself "as an independent science" "through systematic treatment of the confrontation of the facts with the regulations of the Qurʾān and the sunna." This is reflected first in the emergence of the concept of ra’y, which according to Sachau originally means the same thing which is later characterized by the term qiyās (deduction) and regarded as the fourth source of law, and in the differentiation between ʿaṣḥāb al-ḥadīth (scholars of Tradition) and ʿaṣḥāb al-raʾy (jurists). This development culminates around the middle of the second/eighth century in the elaboration of complete systems of law which become the points of departure for the later schools of law.

This depiction of the beginnings of Islamic law rests essentially on the Sunnī teaching of the ʿusūl al-fiqh, the theoretical sources of law, which has been a branch of Islamic jurisprudence since al-Shāfīʿī (d. 204/819–20). Sachau drew his information on this subject mainly from the heresiographical work Kitāb al-Milal wa-l-nīṣāḥ of al-Shahrastānī (d. 528/1134), the Prolegomena (Muqaddima) of Ibn Khaldūn (d. 808/
1405-6) on the philosophy of history, and the lexicon of technical scientific terms of al-Tahānāwī (d. 1158/1745), which contains quite lengthy excerpts from standard works. A true book of ʿusūl was not yet available to him. Characteristic of Sachau’s approach is that—following the example of his sources—he historicizes the categories of ʿusūl, which are actually systematic, and uses them to describe the genesis of law. He fills out the framework thus formed with his own hypotheses about the causes and driving forces of the development of law and with information from biographical and historical sources. Among his a priori assumptions is, for example, that the conquests and the associated economic, political and social upheavals were important causes for “the foundation of a jurisprudence,” and that this arose from “a practical need,” which he illustrates by references to an early elaboration of the law of inheritance—the Companions Zayd ibn Thābit and Ibn ʿAbbās were considered the first specialists in this area—, of war, of slavery, and of the dhimma. In the first/seventh century, however, law “was not yet independently developed and elaborated into a system,” and jurisprudence consisted “merely of applied knowledge of Qurʾān and sunna.” He attempts to demonstrate this through a portrayal of “the practical administration of the law” in this period. He cites the reports about Companions and Successors who made names for themselves as judges (ṣaddīq) or legists (fuqahāʾ). The list begins with ʿAlī and Muʿādh ibn Jabal, who are supposed already to have performed the duties of qādī in the time of the Prophet, and ends with the “seven Medinan jurists.” The material comes mainly from biographical sources, above all from the Kitāb al-Maʿārif of Ibn Qutayba (d. 276/889–90) and the Tahdhīb al-asmāʾ of al-Nawawī (d. 676/1277–8). It is lacking in

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17 Sachau, op. cit., p. 702.
20 Handbuch der Geschichte, ed. F. Wüstenfeld (Göttingen, 1850).
substantive statements about the legal decisions and opinions of the persons named.

“How a complete system of law was built up from these four sources of law—Qur’ān, sunna, consensus of the Companions and qiṣṣās—by the Successors (al-tābi‘ūn) and the “Successors of the Successors” (tābi‘ū t-tābi‘īn) by the time of Abū Ḥanīfa is still partially discernible from the available reports.”22 Sachau leaves the researching of this process to future legal historians—indicating, however, that the biographical works should be consulted for this purpose. He then turns his attention to the men “who first assimilated and unified the material accumulated from the foundation of Islam until the middle of the first half of the second/eighth century into complete systems of law as they still in our time, with relatively minor modifications, form the legal basis in the life of all Muhammedan nations”:23 Abū Ḥanīfa (d. 150/767), al-Awzā‘ī (d. 157/774), Suфиān al-Thawrī (d. 161/778) and Mālik ibn Anas (d. 179/795–6). Of these, al-Thawrī and al-Awzā‘ī produced no lasting effect, and thus almost nothing is known of them. Of the works of the four, according to Sachau, nothing is preserved, but the oral and written transmission of their views forms the basis of the entire Islamic legal literature of subsequent times,24 whose actual founder does not come until al-Shaybānī.25 Sources for these statements are the above-mentioned biographical literature and the bibliographical opus Kūbū al-Fihrist of Ibn al-Nadīm (wrote 377/987–8).26 The fact that no writings are preserved from the great jurists of the first half of the second/eighth century does not mean that there was no written transmission at this time. Sachau assumes that “the recording of relatively large quantities of traditions had already begun in the third decade of the second century” and became generally prevalent “between the years 120 and 150.”27 Al-Zuhrī (d. 124/742), Ibn Jurayj (d. 150/767) and Sa‘īd ibn abī ‘Arūba (d. 156/773 or 157/774) are regarded as the protagonists of written transmission; a dozen other scholars of the second/eighth century followed their example.28 The older compilations—before ca. 140/

22 Sachau, op. cit., p. 716.
26 It was available to him in manuscript.
757–8—should hardly be imagined as completely ordered books. These appeared only between 140 and 150/767. These statements of Sachau’s, too, rest indirectly on biographical sources, even when they are drawn from other works.

This first attempt to portray the beginnings of Islamic law and jurisprudence makes use of certain types of sources and methodological approaches which were subsequently used over and over again: 1. The sequence of the sources of law (usūl) serves as a historical framework for the development of law until the middle of the second/eighth century. This is assumed as a historical necessity. 2. Details about individual persons who played a role in the development are drawn from the biographical and bibliographical sources.

Alfred von Kremer, who does not mention Sachau’s essay, proceeds similarly in his Culturgeschichte des Orients unter den Chalifen. At the death of Muḥammad the two fundamental sources of Islamic law, Qurʾān and sunna, were present. The first four caliphs, who were among the closest confidants of the Prophet, made do with them and otherwise shaped their juridical practice in conformity with the ideas of the Prophet. The sahāba added new traditions to those available according to need, and likewise the following generation of the tābiʿūn, so that the sunna swiftly assumed enormous dimensions. The transmission of the traditions of the Prophet was initially predominantly oral, but also partially in writing. The process of ordering, sifting, and systematic compilation began, according to von Kremer, “not only at the middle, but already at the beginning of the second/eighth century after Muḥammad and perhaps even earlier.” He emphasizes more strongly than Sachau the role of Medina in the discipline of Tradition: Medina was the site “where Tradition flowed from the purest springs, where the most genuine memories” lived on and “where the complete mass of traditions recognized as trustworthy and well-authenticated was first collected in a great corpus juris divini et humani.” Here knowledge of a new source, the Muwatta’ of Mālik ibn Anas (d. 179/795–6), which Sachau did not mention and with which he was probably not yet familiar, makes itself notice-

32 Op. cit., p. 476. This is probably directed against Sachau.  
Nevertheless, von Kremer’s portrayal of the “legal school of Medina” is based mainly on biographical sources—in addition to al-Nawawī’s Taʿlīdīb, Ibn al-Athīr’s (d. 630/1233) Usd al-ghāba—although it is also conceivable that he used the Muwaṭṭa’ as a guideline without citing it. Accordingly, “a school of Tradition and law was already formed under the first caliphs.” Its founders were ‘Abd Allāh ibn Masʿūd and ‘Abd Allāh ibn ‘Abbās. They were followed by the seven legal scholars of Medina. They “sifted and put in order the excessively rich material, they gave a large portion of the Tradition the scholastic stylistic form, they collected in addition to it the decisions of the first caliphs, used them as a source of law and brought Qur’ānic exegesis into being.” Thus Medina can be seen as “the oldest workshop of Islam, where the still fluid ideas, opinions and dogmas were forged, cemented and given definite form.” Mālik was able to build upon the preliminary work of the “Seven.” “Thus, his corpus juris is the embodiment of the legal views which achieved general acceptance in Medina itself in the first century,” which Mālik arranged systematically.

In addition to the Medinan, “historical school of law”—historical, because it rested essentially upon Tradition—there developed in Iraq at the same time, according to Kremer, “the school of the speculative jurists (ašāb al-raʿy),” who made “extensive use of the deductive method (qiyās),” “by means of which they reached decisions in cases for which there was no precedent in Qur’ān, sunna and athār.” Von Kremer draws details about their earliest representatives, Ibn ʿAbī Laylā (d. 148/765–6) and Abū Hanīfa (d. 150/767), from the biographical literature—Ibn Qutayba, al-Nawawī—but, as in the case of Medina, he is in a better situation than Sachau, because a manuscript of Abū Yūsuf’s (d. 182/798) Kitāb al-Kharāj was available to him. He believes that this work literally reproduces the legal views of the author’s teacher Abū Ḥanīfa but does not use it to illuminate

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34 Printed with the commentary of al-Zurqānī, Būlāq, 1280/1863.
35 Printed Cairo, 1286/1869.
the latter’s legal methodology in greater detail, simply drawing from it the conclusion that Abū Ḥanīfa’s foundation of public and administrative law is ultimately connected with the ‘Abbasids’ ascension of the throne and the transfer of the seat of government to Iraq. He reports on Abū Yūsuf, al-Shaybānī, al-Shafī‘ī and Ibn Ḥanbal, among other important legal scholars of the second/eighth and third/ninth century, only from the well-known biographical and bibliographical sources.

Von Kremer evaluates the traditions of the Prophet distinctly more critically than Sachau. According to him, they were largely created by the generations of the Companions and the Successors. A few of the Prophet’s wives—like ‘Ā’isha—and Companions—like Ibn ‘Abbās—particularly distinguished themselves in the creation of legends and the fabrication of traditions of the Prophet. The seven legal scholars of Medina are not to be counted among the inventors of hadiths, but were provided with a constant flow of forgeries for almost all legal problems. In their day the demands for authentication of traditions by means of the isnād were not solidly formed. A stricter criticism of Tradition began only with Mālik ibn Anas, but even then the large scale forgery which was being performed did not cease—a fact which can be seen from the collections of traditions, which become ever more extensive as time goes on. The Kufans in particular were known as notorious forgers. The method of Muslim source criticism, which attempted to distinguish false from genuine traditions through evaluation of the quality of the chains of transmission, should be regarded as “a very clumsy, a blunt weapon,” with which it was impossible to succeed in filtering the authentic matter from the mass of forged traditions. One must doubt whether the biographical reports about the vast number of transmitters are really trustworthy, and take into account the fact that religious orthodoxy tended toward the acceptance of those traditions “which cor-

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13 In contrast to Sachau (see p. 5, note 26), von Kremer could already use G. Flugel’s edition of the Führst (Leipzig, 1871/2).
responded with the prevailing religious views."\(^{50}\) This critical evaluation of the *sunna* of the Prophet, with which von Kremer prepares the terrain for Goldziher, takes its orientation from early intra-Islamic criticism, especially that coming from the ranks of the Mu'tazila. The details come from unnamed sources on *Hadith* criticism and from historical works like Ibn al-Athîr's (d. 630/1232–3) *Kāmil,\(^{51}\) Ibn 'Asâkir's (d. 571/1175–6) *Ta'rikh madinat Dimashq\(^{52}\) and al-Maqrîzî's (d. 845/1441–2) *Khitat.\(^{53}\) Finally, von Kremer devotes himself intensively to the question of outside influences—above all, that of Roman law—on Islamic law, and discusses the possible modes of transfer. Similarities and parallels between a few Ḥanafî and Roman legal institutions and terms form the point of departure.\(^{54}\)

The pattern of interpretation sketched by the pioneering works of Sachau and von Kremer remained unchallenged in its basic features for decades. In two essays from the years 1882 and 1898,\(^{55}\) Christian Snouck Hurgronje further elaborated the portrayal of early legal history starting out from the development of *uṣūl* on the basis of several *uṣūl* works in manuscript—especially the *Waraqāt* of Imām al-Haramayn (d. 478/1005–6). His first contribution is still quite speculative, the second draws supplementarily on historical sources about the early period—Ibn al-Athîr's *Kāmil, al-Ṭabarî's* (d. 309/921–2) *Ta'rikh,\(^{56}\) the *Chronicles of the city of Mecca*\(^{57}\)—and on al-Bukhārî's (d. 257/871) *Ṣaḥīh.\(^{58}\)

Alois Sprenger's "Skizze der Entwicklungsgeschichte des muslimischen Gesetzes," which appeared in 1892,\(^{59}\) presents substantially

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\(^{50}\) Op. cit., p. 482.

\(^{51}\) *Cronicon quod perfectissimum (el-Kāmil) inscribitur*, ed. C. J. Tornberg (Lugduni Batavorum, 1851–1876).

\(^{52}\) Which he has used as manuscript.

\(^{53}\) Printed Bulaq, 1270/1853.


\(^{56}\) Annales, ed. J. Barth et al. (Lugduni Batavorum, 1879–1901).


\(^{58}\) Printed Bulaq, 1290/1873.

nothing new other than a few additional biographical details; many statements are imprecise or false, sources are seldom cited, and the entire argumentation lags behind the above-mentioned works as a result of its vagueness. Similarly without exact citation of sources, but much more precise, is the outstanding overview of the state of the discussion reached at the end of the nineteenth century which B. Duncan MacDonald offers in his book *The Development of Muslim Theology, Jurisprudence and Constitutional Theory.*

D. S. Margoliouth too proceeds according to the usual nineteenth-century pattern of generating the origins of Islamic jurisprudence from the *usūl*, the sources of law, in his "lectures" held in 1913, entitled "The early development of Mohammedanism." Nevertheless, he offers a number of new details and conclusions which are based chiefly on his reading of al-Shāfi‘ī’s newly accessible work *Kitāb al-Umm* and on greater consideration of historical sources, chiefly al-Ṭabarī’s *Ta’rikh al-rusul wa-l-mulūk*, while biographical sources are hardly used. Margoliouth places "the construction of a system of jurisprudence" approximately at the beginning of the second/eighth century. It was made possible by the classificatory groundwork of the Medinan jurists of the first/seventh century, and climaxes with the "great Pandects, which were compiled by the doctors of the second century." The fabrication of traditions of the Prophet relevant to law took place predominantly, if not exclusively, in the first/seventh century.

Common to all of the above-mentioned works is that they pad out the *usūl* schema used as a historical framework, sometimes speculatively, sometimes with biographical or historical reports about the early period derived from relatively late sources—between them and the events about which they report lie two or more centuries. At the same time, an increasingly critical stance toward the biographical and historical statements is discernible, but no clear method for their evaluation.

It was Ignaz Goldziher who turned against the idea that Islamic jurisprudence developed out of the application of the fundamental

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60 New York, 1903, pp. 65–117.
63 Margoliouth, op. cit., pp. 91 f.
sources of law, Qur’ān and sunna, an idea which presupposed that the sunna of the Prophet and the Companions was available from the earliest times and offered sufficient material for the purpose. His position should be scrutinized in more detail, since it deeply influenced the research of the twentieth century. In his study about the "legal school" of the Zāhirīyya, which developed in the mid-third/ninth century, he already emphasizes the importance of ra’y—decision according to personal insight—in the first/seventh century, and assumes that this method developed "in Muhammedan jurisprudence as an inevitable postulate of the exigencies of practical legal life in the performance of the legal office" in addition to "the study of the traditional sources." Out of the indefinite and unsystematically handled ra’y of the sahāba generation there later—i.e., in the first half of the second/eighth century—developed the domesticated "logical form of analogy (giyās)." The hypothesis that a source of the forging of traditions was to be seen in the effort to escape from ra’y, and that fabricated traditions simply represented ra’y clothed in the form of hadiths, is already present here. In other words, a portion of the sunna is only a consequence of jurisprudence based on ra’y, and thus secondary. Goldziher states these assumptions more precisely in later works. In his Muhammedanische Studien, he speaks of the "few stones laid" and "scanty material" of the first/seventh century for the development of jurisprudence, and expresses the opinion that "a freer development of the study of the traditions of the Prophet" came only with the religious policies of the ‘Abbāsids, and that only from that point was there a large-scale quest for Prophetic documentation for halāl wa-harām (the permissible and the forbidden), that is, for a legal basis for religious and social life.

Goldziher most clearly formulated his theory that Islamic jurisprudence developed primarily from ra’y, and not from Qur’ān and sunna,
in his article “Fikh” in the *Encyclopaedia of Islam*.73 “In the oldest period of the development of Islam the authorities entrusted with the administration of justice and the conduct of religious life had in most cases to fall back on the exercise of their own ra'y owing to the scarcity of legislative material in the Kūrān and the dearth of ancient precedents.”74 Ra'y was, along with ʻilm—the “knowledge of the legal decisions handed down from the Prophet and the companions”—an equally valid factor, and the ra'y of early authorities later became an element of ʻilm.75 In addition to the thesis of the meagreness of both of the sources (uṣūl) of Islamic law later regarded as fundamental, it emerges from the statements quoted that Goldziher considered the level of jurisprudence in this time extremely poor. For him, its development actually begins only at the beginning of the second/eighth century, and really gets under way only from its second quarter. He expresses this most clearly in the article mentioned above: “In the beginning of the second century,” “in Medina, Syria and the ‘Irāq” “the first endeavor” was made “to evolve a finished system of Muhammedan law.” “The sporadic attempts that were made during the ‘Omayyad period in the field of Law”76 did not lead to a systematic codification of the material in existence. It was only with the rise of the ‘Abbāsid caliphate that this attempt was made, favoured and indeed even furthered by the pronounced religious character of the government.”77

On what are Goldziher’s opinions, which diverge from those of his contemporaries, based? Methodologically he does not proceed very differently from Sachau, von Kremer or Snouck Hurgronje. However, he takes as his starting point not the doctrines of uṣūl which gained acceptance from the third/ninth century, but the conflict between the ahl al-hadith (scholars of Tradition) and the ahl al-ra'y (speculative legal scholars), which reached a climax in the second

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half of the second/eighth century, and draws from it hypothetical conclusions about the first and early second/eighth century.78 While Sachau and von Kremer illustrate their historicized usūl theories with biographical reports, Goldziher is highly critical of them insofar as they concern the time of the Prophet and the Companions. He, like Snouck Hurgronje,79 considers the evidence for the express recognition of ra'y as a source of law in this early phase apocryphal, a projection back from later times.80 He laments the "lack of nonpartisan sources for the history of the earliest development of Muhammedan law," the "tendentious coloring of the data—which are largely invented ad hoc—upon which such [a history] could be constructed."81 Nevertheless, he does not completely eschew this material. Goldziher accepts reports about legal scholars of the generation of the tābiʿūn and their opinions, such as Mujāhid, Sa`īd ibn al-Musayyab, ‘Aṭa’ ibn abī Rabāh, Ḥammād ibn abī Sulaymān or Ibn Shihāb al-Zuhri, who were active in the last quarter of the first/seventh century and in the first quarter of the second/eighth,82 or about the earlier systematizers of the second/eighth century such as Abū Ḥanīfa, al-Awzāʿī, al-Thawrī, or Mālik,83 as long as they do not strike him as excessively anecdotal, polemical or anachronistic. For this purpose, he uses a multitude of works of various literary genres—not only biographical and historical—but preferred Ibn Saʿd’s Ṭabaqāt after this work became available in print.84

Goldziher’s critical treatment of biographical-historical traditions makes his statements about the beginnings of the development of law seem more speculative and less precise than the earlier portrayals. Because of his evaluation of the sources, he can produce almost nothing about the first/seventh century and little that is definite

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78 Cf. Goldziher, Die Zāhiriten, Chaps. I and II.
81 Goldziher, Die Zāhiriten, p. 12.
84 Kitāb al-Ṭabaqāt al-kabīr, ed. E. Sachau et al. (Leiden, 1905–1917). The preference is discernible in his article “Fīkh.” In his earlier studies Goldziher used primarily al-Nawawī’s Tahdhib and al-Dhahabi’s Ṭabaqāt al-huffāẓ (ed. F. Wüstenfeld, Göttingen, 1833–1834; the newer editions have the title Tadhkīrat al-huffāẓ) as biographical works.
about the first half of the second. Thus it is understandable that he has the development of jurisprudence truly begin only in the second/eighth century and attributes the decisive impetus to the ‘Abbāsid dynasty, because it is only in this period that for him the first “systematic codification” of fiqh is demonstrable in the form of preserved works or bibliographically and biographically certain information.  

Let us leave aside the question of whether this conclusion of causality from a chronological coincidence, on the basis of the sources he considered usable, is tenable. What is more problematic is that inferences of this kind become the standard of source criticism. That is, whether Goldziher accepts a historico-biographical tradition as trustworthy depends less on aspects of the history of transmission, form, or genre than on the compatibility of their content with his theories of development. These, however, are primarily derived from inferences from the development as displayed in fortuitously preserved later legal and Ḥadīth works, i.e., on the basis of data which, although secure, are incomplete. Because this procedure started a trend, let us demonstrate its implications by an example from Goldziher: his ideas about the beginnings of the legal and Ḥadīth literature.

In his *Muhammedanische Studien* he opposes the view that the *collection* of Ḥadīths was the point of departure of juridical literature, and that the law books only developed from the theoretical and practical assimilation of these sources. “The facts of literary history show us precisely the opposite line of development for this literature. The true literature of jurisprudence, which represents the result of synthetic thought, precedes Ḥadīth literature in terms of chronology.” This is demonstrated not only by the existence of the works of Abū Ḥanifa, Abū Yūṣuf, al-Shaybānī and al-Shafī‘ī, but by the many early works on individual areas of law which are listed in the *Fihrist* of Ibn al-Nadīm (written 377/987-8) but are lost today. This statement is surprising, because it basically contradicts his own ideas about the early textuality of a portion of Ḥadīth transmission. He harmo-

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86 See below, pp. 18–27.


88 Cf. op. cit., pp. 9 f., 38, 194–196. Goldziher does not consider all statements about early books credible, but he definitely assumes the existence of written records as early as the first century.
nizes the existence of older *suḥuf* and *kutub* of *Hadīth* with his theory by supposing that these should not be imagined as books in the literary sense, but as “scripta,” collections of individual sayings intended for private use. In addition to reports about early notebooks and books, Goldziher is faced with reports about initial efforts to collect *Hadīth* material. Since, firstly, the pious Umayyad caliph ‘Umar ibn ‘Abd al-‘Azīz appears as their instigator, secondly, some contradictions are noticeable in the traditions about them, and, finally, the oldest appear only in al-Shaybānī’s version of the *Muwātta* and not in the other recensions, Goldziher considers these reports apocryphal. However, his arguments are anything but compelling—the last one is very weak in view of the many different recensions of the *Muwātta* to which Goldziher himself refers in other places.

After Goldziher has ruled out the existence of collections of *Hadīth* in the Umayyad period, he investigates corresponding indications about the early ‘Abbasid epoch. According to a statement of Ahmad ibn Ḥanbal (d. 241/855–6) found in later biographical works, for instance al-Nawawī’s *Tahdīb*, Ibn Jurayj (d. 150/767) in the Hijāz and Sa‘īd ibn abī ‘Arūba in Iraq were the first to compose books organized into chapters (*awwal man sannafa l-kutub*). Contrary to the view of the Muslim “historians of literature” Goldziher is of the opinion that these were not collections of *Hadīth* but books of *fiqh*, “first attempts at codices organized according to the chapters of the law, not without utilization of the appropriate transmitted material from the *sunna*.“ He considers the information itself trustworthy; he disputes only the “literary-historical fact derived from it.” He argues this mainly on the basis of the statements of Ibn al-Nadīm’s *Fihrist*, which characterizes Ibn Jurayj’s book as a *sunan* work, exhibiting the division into chapters which was later customary in books of *fiqh*—

93 Ibid. It is still held by some people today; cf. Sezgin, *Geschichte des arabischen Schrifttums*, vol. 1, p. 58.
94 Goldziher, op. cit., p. 212. Sachau was not at all certain how he should class these books, but believed that they consisted largely of traditions (cf. “Zur ältesten Geschichte,” pp. 722 f.); Sprenger, on the other hand, characterizes Ibn Jurayj’s book as “pandects” (cf. “Eine Skizze,” p. 12.—The death date of Ibn Jurayj given here as being 707 should be corrected to 767).
a conclusion which is not convincing, since the great Ḥadīth collections of the musannaf type from the third/ninth century also have such chapter divisions and are sometimes also characterized as sunan works. The argument that legal compendia better corresponded to the practical needs of the ‘Abbāsid regime than “comprehensive works of Ḥadīth” does not hold either, because connections between the Meccan Ibn Jurayj and the ‘Abbāsids in Iraq are unknown and rather unlikely, and his work probably originated at a time when the ‘Abbāsids had only just come to power.⁹⁵ Until today, the sunan-book of Ibn Jurayj has been considered lost. In this study I will show that this is not the case, at least that Goldziher’s statement “not a line,” “no citations preserved”⁹⁶ is no longer accurate, and that his idea that it is a compendium of fiqh and not a collection of Ḥadīth is not confirmed by the portion which survives. It is neither the one nor the other, if one understands Ḥadīth exclusively as traditions from the Prophet. It is, however, to be categorized more as a work of Tradition in the broader sense than as a legal codex. It is better to drop this distinction altogether as inadequate. It is artificial, and only serves Goldziher to prove that there were collections of Ḥadīth which could be regarded as Ḥadīth literature only from the third/ninth century on. Goldziher also pursues this goal in his portrayal of Mālik’s Muwaṭṭa’ as “a corpus juris, and not a corpus traditionum”⁹⁷—an unproductive distinction, because it is both—which only serves to bring the work into harmony with the starting thesis, that in the development of legal literature “plain fiqh” stands at the beginning, and the Ḥadīth collections organized according to legal aspects stand at the end.⁹⁸

Goldziher’s treatment of biographical and historical reports is certainly more critical than that of Sachau, von Kremer and Sprenger, but by too quickly dismissing those reports which do not fit into his preconstructed theories as inauthentic or fabricated he leaves himself open to criticism.

In the twenties of this century, Gotthelf Bergsträsser made two contributions to the question of the beginnings of Islamic legal history. In his reflections on the “beginnings and character of juridical

⁹⁵ On this see below, pp. 274 f.
⁹⁶ Goldziher, Muslim Studies, p. 213.
thought in Islam,” which are characterized as “provisional,” he takes a methodological path which before him had been used only in rudimentary form:99 to draw from the oldest preserved legal works, especially Mālik’s Muwatta’, conclusions about the development which proceeded them. Bergsträsser sees in Mālik’s Muwatta’ “the most important source for the history of old Medinan, and thus also of primitive Islamic law,” in addition to “reports about old Medinan decisions and teachings” in other sources, for example in the ikhtilāf works.100 The goal of juridical thinking which is revealed in the Muwatta’ is the pervasion of legal life with ethico-religious ideas.101 This presupposes on the one hand material to be pervaded, which Bergsträsser identifies as the customary law (sunna and ijmā’) of Medina, and on the other ethico-religious points of view.102 Thus the achievement of the earlier jurists did not consist in “elaborating the sparse framework of Islamic law which was created by Muḥammad to satisfy the more multiform needs of the time after his death, in part by borrowing from alien forms of law,” but in “fleshing out according to a series of Islamic ethico-religious principles” “the customary law of Medina, which was not at all primitive, but was sufficient to rather high demands of social interaction and itself already contained many elements of non-Arabian origin, especially from Roman provincial law.”103 In addition, this existing law will have been further developed mainly in the practice of the administration of justice, but also through theoretical casuistry.104

Bergsträsser follows this hypothetical attempt to specify the basic outlines of the early development of Islamic law in his Grundzüge des

101 Bergsträsser, “Anfänge,” p. 79.
102 Ibid.
104 Ibid.
Islamischen Rechts\textsuperscript{105} with a rather conservative overview of its development, which reproduces without citation of sources much of what was already current in the nineteenth century.

### B. More Recent Research

It was a quarter of a century\textsuperscript{106} before another attempt to solve “the secret of the development and the origins of fiqh”\textsuperscript{107} was published: Joseph Schacht’s *The Origins of Muhammadan Jurisprudence*.\textsuperscript{108} Schacht, a student of Bergsträsser and Snouck Hurgronje, followed up the methodological approach which his teacher Bergsträsser had introduced in his essay entitled “Anfänge und Charakter des juristischen Denkens im Islam.” However, he takes as his point of departure not the *Muwatta* of Mālik ibn Anas (d. 179/795–6), which originated around the middle of the second/eighth century and is considered the oldest preserved legal work, but the tractates of al-Shāfi‘ī, which originated towards the end of the second/eighth century to the beginning of the third/ninth, and in which he critically analyzes the theory and practice of the jurisprudence of his time (i.e., in the second half of the second/eighth century) and attempts to place Islamic fiqh on methodologically firm foundations.\textsuperscript{109} Mainly from the indications that this source material provides about the “ancient schools of law”—i.e., the trends of legal scholarship which were prevalent in the Hijāz,
Iraq and Syria in the second half of the second/eighth century—and from the older sources which have been preserved from this period, such as the two recensions of Mālik's Muwatta' and the Āthār of Abū Yūsuf (d. 182/798–9) and al-Shaybānī (d. 189/805), Schacht reconstructs “the development of legal theory.” That is, he pursues the question of which sources of law the “ancient schools of law” take as a basis and to what extent, and compares al-Shāfī‘ī’s conception of the subject. Schacht extrapolates the lines of development thus produced back approximately to the beginning of the second/eighth century, partially on the basis of indications which he draws from sources of the first half of the second/eighth century like the Risāla fi l-ṣāḥāba of Ibn al-Muqaffa’ (d. ca. 140/757–8)110 or from still older texts like the dogmatic tractate of al-Ḥasan al-Ṯānī (d. 110/728–9) written at the request of the Umayyad caliph ‘Abd al-Mālik,111 less frequently from later historical and biographical works, and sometimes speculatively. The most important results of this part of Schacht’s investigation have to do with the juridical relevance of the different kinds of Tradition and the conception of the ṣunna in the “ancient schools of law” of the second half of the second/eighth century. Their adherents did not yet recognize the absolute priority of Prophetic ḥadīths which al-Shāfī‘ī demands, but argued mainly with traditions of Companions and Successors.112 Thus it sometimes happened that they neglected or interpreted away traditions of the Prophet in favor of systematic conclusions or traditions of the Companions.113 Even a more or less clearly manifested resistence against ḥadīths of the Prophet can be demonstrated.114

From these facts Schacht draws historical conclusions which are methodologically problematic. For instance, he establishes that among the Iraqis traditions of the Companions predominate in terms of quantity, and that these are regarded as equal in value to ḥadīths of the Prophet. From this he concludes that reference to the generation of the Companions is the older procedure.115 He further observes that for the Iraqi’s the traditions of the Successors are at the same

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110 Cf. Schacht, Origins, pp. 58 f., 95, 102 f.
111 Cf. op. cit., pp. 74, 141.
level as the traditions of the Companions, and are even cited more frequently. From this he concludes that reference to the Successors preceded reference to the Companions. \textsuperscript{116} Thus he succeeds in constructing a schema of development in which reference back to the Successors is the earliest, and that to the Prophet the latest, stage. The conclusion that the lesser quantity of the textual attestations is an indicator of the lesser age of their use or of the texts themselves appears, in view of the fact that—as Schacht expressly emphasizes—they were considered of equal value, not to be plausible. The opposite could just as well be true. Quantity and age do not necessarily coincide.

Schacht notices a defensive posture of the ancient schools toward traditions of the Prophet, and sees in it “the natural reaction of the early specialists on law against the introduction of a new element.” From this he concludes 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.” \textsuperscript{117} This conclusion contradicts his own statements that the opposition of the ancient schools was not directed at the traditions of the Prophet as such, but at those which were newly appearing, at the recent growth of Hadith, which threatened to destroy the “living tradition” of the schools. \textsuperscript{118} Their reaction is understandable only if at the same time the demand was raised that the traditions of the Prophet must have superior authority. It is not reference to traditions of the Prophet which is the innovation, but their demand for recognition. The enmity toward newly appearing hadiths which were not compatible with the existing doctrines says nothing about the role which hadiths per se played in the schools of law. Schacht is surely right when he writes, “It is not the case, as has often been supposed \textit{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.” \textsuperscript{119} Probably no one—even in the ranks of the Muslim scholars—has ever seriously supported such a universal statement. But neither the observation that hadiths of the Prophet as such only achieved primacy as a source of law rather late, nor

\begin{itemize}
\item \textsuperscript{116} Cf. op. cit., pp. 32–33.
\item \textsuperscript{117} Op. cit., p. 40.
\item \textsuperscript{118} Op. cit., p. 60.
\item \textsuperscript{119} Op. cit., p. 57.
\end{itemize}
the fact that in the second/eighth and third/ninth centuries the number of the Prophetic traditions greatly swelled, justify the conclusion that no hadīths of the Prophet were significant in the beginnings of Islamic jurisprudence. Through such exaggerated conclusions, correct observations become errors.

Schacht's theory produced in this way can be summarized as follows: The "living tradition" of the ancient schools, which was originally anonymous and has been secondarily and arbitrarily assigned to certain personalities of the generation of the Successors, was largely based on individual thought (ra'y); this "living tradition" was put under the aegis of Companions only in a second stage; and this entire system was finally disturbed and influenced by traditions of the Prophet which were brought into circulation by "traditionists" in the middle of the second/eighth century. Schacht attempts to refine his theory by an investigation of the growth of traditions. One goal of this enterprise was supposed to be the development and testing of a method making it possible to reconstruct the development of legal doctrine in the pre-literary phase, for which the traditions are the sole source. Methodologically, Schacht proceeds by attempting to determine when, and attributed to which authorities, specific texts or opinions first appear in the legal works and the Tradition collections of the second half of the second/eighth century and the third/ninth century. Starting from the assumption that legal traditions were adduced as arguments as soon as they came into circulation, he concludes that traditions, as long as they produced no precipitate which was literary or datable through the isnād, were unknown, i.e., did not exist. This is a conclusio e silentio. Schacht is aware of the general problems surrounding such a conclusion, but in this case considers it safe.

As the result of this investigation it emerges that all three kinds of traditions, those of the Prophet, the Companions, and the Successors, exhibit a process of growth between 150/767 and 250/864, which in the case of the Prophetic hadīths was particularly strong in the

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120 Cf. op. cit., pp. 84 ff., 113 f. This, too, is not a necessary deduction from the sources used. The concept of the "living tradition" is a construct of Schacht's which pretends a greater doctrinal homogeneity of the "ancient schools" than is demonstrable, at least for the first half of the second/eighth century.

121 Cf. op. cit., p. 138.

122 Ibid.

fifty years between al-Shāfi‘ī and the classical collections, which Schacht attributes to the joint influence of al-Shāfi‘ī and the traditionists.124 Since he postulates the same growth process for the pre-literary period as well,125 he comes to the conclusion that the legally relevant traditions of the Prophet and the generation of the sahāba are to be regarded as generally fictive, and the traditions of the tābi‘un as largely inauthentic.126 Although the growth of Tradition in this period is indisputable, in view of the many uncertainties which adhere to the e silentio procedure this conclusion too, in its generality, must be provided with several question marks. Among the interfering factors which Schacht does not take sufficiently into account are the following: 1. Not all the texts that Schacht compares are elements of a legal discussion which would necessarily demand the naming of all usable traditions. 2. A number of compilations are only textual selections. 3. The volume of the surviving sources is only a fraction of the originally existing stock. 4. Given the relatively prolonged regionally separated development of jurisprudence and Tradition, which—as Schacht himself assumes and this work will show—still prevailed in the first half of the second/eighth century, the lack of a text in a regional source says little as long as we have no contemporary sources from the other centers.127

Another central element of Schacht’s argumentation has to do with the meaningfulness of the chains of transmitters with which legal traditions are generally provided. Schacht claims that there are no grounds to assume that the regular practice of using isnāds is earlier than the beginning of the second/eighth century.128 However, this is not meant as cautiously as it is formulated, because he adds that the idea that the origin of the isnād is in the last quarter of the first/seventh century is untenable. It is not clear upon what this absolute certainty is based. The regular practice of the use of isnāds at the beginning of the second/eighth century does not preclude an origin at the end of the first/seventh century. On the contrary! Both

127 It is true that Schacht assumes a “common ancient doctrine” and an influence by Iraq on the Hijāz, but he nevertheless presumes separate developments in the individual centers. Cf. op. cit., pp. 214–223 and passim. Cf., however, also the criticisms of Fück and Azami; see below, pp. 28 f., 39 f.
pieces of evidence Schacht adduces tend to speak in favor of an origin in the first/seventh century. Only his prejudice that there were not yet any isnāds in the first/seventh century induces him to interpret them otherwise.

According to a statement of Ibn Sīrīn which he cites, the use of isnāds began as a result of “the fitna.” Because an isnād in the first/seventh century is unthinkable for Schacht, he interprets “the fitna” as the murder of al-Walīd ibn Yazīd in the year 126/744, along with the subsequent events which led to the fall of the Umayyads. Since this conflicts with the fact that Ibn Sīrīn died already in 110/728–9, he declares the attribution to Ibn Sīrīn to be fabricated. He thus assumes that the tradition originally had another author and that someone was later interested in transferring the origin of the isnād into an earlier time, not the end of the Umayyad period, and for this reason fathered it on Ibn Sīrīn. He does not even consider as a conceivable possibility that this observation could really come from Ibn Sīrīn and that “fitna” perhaps means an episode other than the murder of al-Walīd, for example one of the great fitnas of the first/seventh century, which would actually be the more natural interpretation. Even if the tradition were forged, the forger would have expressed by the reference to Ibn Sīrīn that he meant a fitna of the first/seventh century. The claim that only the name Ibn Sīrīn is fabricated is arbitrary; it would only be defensible if other clear indications spoke for the development of the isnād toward the end of the Umayyad period. Schacht’s other piece of evidence, however, does not do this either: the tradition that Sa`īd ibn Jubayr (d. 95/713–4) rebuked a listener who asked him for an isnad for a tradition. It implies only that at the end of the first/seventh century there were people who demanded isnāds—consequently, there must also have been people who customarily named isnāds—but that Sa`īd ibn Jubayr, for unspecified reasons, (once?) refused this.

129 This note is found in Hadith collections of the third/ninth century. Cf. Schacht, op. cit., p. 36.


It cannot be interpreted to mean that no *isnāds* existed in the first/seventh century or that the custom was not generally prevalent. The examples show that Schacht’s conclusions must be approached with caution, because they have a tendency toward exclusivity which results from preformed opinions.

Schacht considers the *isnāds* of traditions highly arbitrary constructs which are often very carelessly cobbled together. The transmitters, according to him, were sometimes chosen at random. He derives this assumption from the observation that alternative names appear in otherwise identical *isnāds* of identical or similar texts, “where other considerations exclude the possibility of the transmission of a genuine old doctrine through several persons.”¹³³ What the “other considerations” are specifically, one does not learn, although it would actually be important to know why, for instance, two students of the same teacher or two different members of the same family should not be in a position to pass on traditions about them almost identically.

The *isnāds* were—according to Schacht—initially rudimentary, were gradually improved, and achieved their complete and unbroken form only in the classical collections of the third/ninth century. This backward growth of the *isnāds* is a process related to the projection of teachings back to earlier and thus higher authorities. Thus the general rule applies: The most complete *isnāds* are the latest.¹³⁴ This leads to the conclusion: As a result of the artificial growth of the *isnāds* and of the ballooning of the number of traditions in the pre-literary and literary periods, neither the legally relevant traditions from the Prophet nor those of the *ṣahāba* are to be considered authentic. The latter are thus also not responsible for the extensive forging of *ḥadīths*.¹³⁵ Here, too, the problem presents itself whether correct observations cannot become false through generalization. Can one—or should one, for methodological reasons—rule out the possibility that there were complete *isnāds* from the beginning? In Schacht’s earliest sources incomplete and unbroken *isnāds* are found side by side. The fact that holes were later filled and invented texts were supplied with complete chains of transmission does not permit the conclusion that all *isnāds* were originally discontinuous, and in consequence all complete chains of transmission are forged.

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¹³³ Cf. op. cit., p. 163.
Although Schacht considers the chains of transmission to be wholly or partially fabricated, he uses the *isnāds* to establish from what time a tradition came into circulation. In this context he refers to the curious phenomenon that numerous traditions which are preserved with several different *isnāds* have one or several common transmitters—Schacht calls them “common links.” The earliest common link in the *isnāds* of a tradition marks—according to Schacht—the point in time at which, at the earliest, a text was brought into circulation, whether by the common link transmitter himself or by anonymous persons who used his name.\(^{136}\) Since the early common links belong predominantly to the first half of the second/eighth century, Schacht concludes that the origin of the greater part of the legal traditions present at the beginning of the literary period (ca. 150/767) is to be placed in this period.\(^{137}\) That this supplies a sure criterion for dating, as Schacht believes, is to be doubted.\(^{138}\) Firstly, it is inoperative—according to his own theory about the development of the traditions of the Prophet—in the case of all texts which are attested only in the classical collections and not earlier, since these texts and their chains of transmitters were fabricated only in the third/ninth century. This consequence was later taken into consideration too little. Secondly: The fact that there can be several common links at different stages of the process of transmission and that numerous common links are known as collectors or compilers of works which, among other things, contained traditional material—for example al-Zuhri, Ibn Jurayj, Ibn ‘Uayna\(^{139}\)—at least permits the additional possibility of explaining the common link phenomenon as a result of the activities of these people as collectors and the spread of their compilations by systematic teaching. That is, their material would generally be earlier and might come from the sources named. This does not preclude the possibility that they also occasionally produced forgeries or were taken in by them.

As the most important result of his investigation of the development of legal theory and legal traditions Schacht emphasizes that

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\(^{136}\) Op. cit., pp. 171–175. The Prophet or a *saḥābi* are—according to Schacht—fabricated as a common link and are excluded from consideration for dating.


\(^{139}\) Cf. op. cit., pp. 174 f.
the beginnings of Islamic jurisprudence lie essentially in the waning Umayyad period, i.e. in the first three decades of the second/eighth century. The point of departure is represented not by the Qurʾān and the *sunna* of the Prophet, but by the legal practice of this time, which cannot be regarded as specifically Islamic and which was Islamicised by the "religious specialists." As a consequence, Schacht cannot identify himself with the conventional picture of the development of the Islamic schools of law in the pre-literary phase which is drawn by the Arabic sources—especially in legal theory and biography—since the third/ninth century and was to a great extent adopted by western scholarship. Eschewing these sources, he develops a counter-outline based purely on the basis of the early legal works and collections of traditions which were at his disposal. The guiding methodological principle is the idea that all statements about the pre-literary period which are not verifiable are subject to the suspicion of having been forged or falsely attributed to someone. Verification can be attempted by the methods developed by him, such as consideration of the stages of growth of traditions, the common link, and so forth.

Schacht's picture of the development of Islamic jurisprudence in the pre-literary period looks like this:

1. The Iraqis: The teachings attributed to their early authorities who lived in the first/seventh century, such as ʿAbd Allāh ibn Masʿūd and his companions, Shurayḥ, al-Ḥasan al-Baṣrī, al-Shaʿbī and Ibrāhīm al-Nakhaʾī, are generally not authentic. The first who can be considered to be fully historical is Ḥammād ibn ʿAbī Sulyāmān (d. 120/738), the teacher of Abū Ḥanīfa (d. 150/767). With the latter, the Kūfān school of law enters the literary phase. His contemporary al-Thawrī (d. 161/777–8) is an independent representative of the ancient school of Kūfā whose views are only fragmentarily preserved.

2. Medinans: The so-called seven legal scholars of Medina, who died around 100/718–9 (± 10) are not a group which was established early. The names vary. The information about their teachings is

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140 Op. cit., pp. 190–193. These views were already held by Bergsträsser and Goldziher (see above, pp. 12, 17), many of whose ideas in Hadith criticism Schacht adopted.
largely inauthentic. The "living tradition" of Medina is originally anonymous.\textsuperscript{144} Only starting with al-Zuhrī (d. 124/742) can authentic Medinese doctrines be established with some certainty. Of Mālik's traditions from al-Zuhrī, however, at best only his answers to questions and the "heard" traditions can be considered authentic. Thus, in many traditions he was introduced into the isnād ex post facto.\textsuperscript{145} The same is true of Rabī'ā ibn 'Abd al-Rahmān (d. 136/753–4) and Yaḥyā ibn Sa‘īd al-Anṣārī (d. 143/760–1). Schacht regards the latter as a forger. All three were teachers of Mālik (d. 179/795–6), with whom the Medinan school entered its literary period.\textsuperscript{146}

In both centers there was an oppositional minority with a strong inclination for the material of the traditionists, who were trying to change the prevailing teachings with traditions of the Prophet and the Companions.\textsuperscript{147} "The intellectual center which Islamic jurisprudence took as its point of departure, and which played the role of a kind of intellectual pioneer, was not Medina—as is usually assumed—, but Iraq.\textsuperscript{148} The Qur'ān was not generally the first and pre-eminent basis of early legal theory, but was in many cases adduced as evidence only secondarily.\textsuperscript{149} Schacht's ideas about the origins and the development of Islamic jurisprudence are diametrically opposed to the Muslim view, which in its fundamentals—with the exception of Goldziher—had also been adopted by the older research in Islamic studies.

Schacht finishes his study with the words, "I trust that the sketch by which I have tried to replace it [the conventional picture of the development of Muhammadan jurisprudence] comes nearer to reality. Beyond the detailed evidence on which this book is based, the coherence of the picture which emerges ought to confirm its essential outlines."\textsuperscript{150} In view of the problematic premises and methods on which his portrayal is based, this will have to be provided with a question mark.

The immediate echo of Schacht's book was predominantly positive to enthusiastic. H. Ritter: "[...] This thorough methodical and

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  \item\textsuperscript{145} Op. cit., p. 246.
  \item\textsuperscript{147} Op. cit., pp. 240 ff., 248 f.
  \item\textsuperscript{148} Op. cit., pp. 222 f.
  \item\textsuperscript{149} Op. cit., pp. 324–327.
  \item\textsuperscript{150} Op. cit., p. 329.
\end{itemize}
highly original book, has advanced considerably our knowledge of the early development of one of the most important branches of the history of Islamic thought and has established a methodical base for investigations of this kind.\footnote{151} H. A. R. Gibb: "[...] What emerges is no theoretical reconstruction; on the contrary, the pattern of events is so consonant with the general development of the early Islamic society and so adequately documented that it will become the foundation of all future study of Islamic civilization and law, at least in the West." "[...] His main structure is not likely to be impugned on any but a priori grounds."\footnote{152}

Similar unreserved endorsement was expressed by, for instance, the Hadith specialist J. Robson,\footnote{153} the Qur'ān experts A. Jeffery\footnote{154} and R. Paret,\footnote{155} the kalām and sīra authority W. Montgomery Watt,\footnote{156} the expert on pre-Islamic Arabia G. Ryckmans,\footnote{157} and J. N. D. Anderson,\footnote{158} an authority on Islamic law and the legal systems of the modern Islamic countries.

The hymns of praise of this select chorus of fellow specialists were jarred by only a few voices like those of A. Guillaume\footnote{159} and J. W. Fück.\footnote{160} That these should be precisely two experts on Ibn Ishāq is no coincidence, because their principle objections rest upon the demonstration that several of Schacht's conclusions cannot be reconciled with evidence in Ibn Ishāq's Sīra, which is earlier than the legal sources used by Schacht. Fück dealt most thoroughly with Schacht's Origins and presented his criticism unvarnished. Several of his remarks and assessments are worth quoting. Fück observes that Schacht constructs from his analysis of the development of usūl under al-Shāfi‘ī and his predecessors and of their method of construction of juridical concepts and argumentation a developmental progression\footnote{161}
"which leads from primitive forms of law, rough analogical conclusions and simple maxims through abstract principles of law to ever more complicated concepts, until it finds its crowning conclusion at the end of the second/eighth century in al-Shāfi‘i’s system. Schacht equates the stages of this developmental progression with the historical course of Islamic jurisprudence in the second/eighth century and thus produces a standard for the chronological placement of the legal principles, decisions, and doctrines transmitted in the sources, while he declares inauthentic the reports which will not fit into this schema.”¹⁶² Schacht’s dating of traditions with the help of the e silentio procedure is not compelling and in a number of cases is refutable through material in Ibn Ishāq’s Sīra.¹⁶³ The same is true of his thesis of the late development of the isnād.¹⁶⁴ In the evaluation of chains of transmission his hypotheses about the development of juridical thought lead him to false interpretations or the unjustified rejection of statements about sources. Fück demonstrates this on the example of Schacht’s statements about “the golden chain” Mālik—Nāfi‘—Ibn ‘Umar, and he comes to the conclusion: “If the traditions of Nāfi‘ thus show an advanced stage of juridical thinking, they prove only that Islamic jurisprudence is older than Schacht wishes to admit.”¹⁶⁵ Fück puts Schacht’s theory on a level with Lammens’ theses about the sīra: “It, too, rests on the inadmissible generalization of individual observations and fails [...] because of its incompatibility with the sources.”¹⁶⁶

Schacht subsequently composed several outlines of legal history, all of which were based—for the early period—on his book The Origins of Muhammadan Jurisprudence.¹⁶⁷ A further development or substantial revision of the theses put forward there is not observable in

them. His portrayal of the beginnings of Islamic jurisprudence became a standard work in non-Muslim legal and Islamic studies. The Origins—although a book which demands the highest degree of motivation and endurance from the reader—has been reprinted regularly since its appearance,\(^\text{168}\) even in a paperback edition. Beyond this, as the author of articles on legal subjects in the second edition of The Encyclopaedia of Islam,\(^\text{169}\) Schacht managed to ensure the greatest possible diffusion for his theories. Despite the extensive acceptance with which Schacht's study was received in western scholarship, in the case of some scholars a certain ambivalence in their evaluation is noticeable. H. A. R. Gibb, who in his review characterizes Schacht's central conclusions as unassailable, does revise the chapters on Hadith and sharīʿa in the second edition of his book Muhammedanism\(^\text{170}\) "in the light of recent studies,"\(^\text{171}\) but the changes do not indicate that he completely identifies with them,\(^\text{172}\) at least as far as the development of Hadith and the evaluation of its historical relevance are concerned.\(^\text{173}\) The same is true of J. Robson, who in an essay appearing shortly after Schacht's book does still unreservedly endorse his conclusions—"impossible to discover an authentic saying of the Prophet in the Tradition,"\(^\text{174}\)—, but only two years later distances himself from them and registers significant doubts about Schacht's statements about the genesis of isnād and Hadith: "There seems to be some genuine early material."\(^\text{175}\)

S. G. Vesey-Fitzgerald also indicates an ambivalence toward Schacht's theses on the worth of hadīth in an essay which appeared together with an outline of the early development of law written by Schacht.\(^\text{176}\)

\(^{169}\) In the first edition, among others, the articles "Sharīʿa" and "Uṣūl" come from him. In the second edition he revised Goldziher's contribution "Fīkh." A list of all of Schacht's publications is found in Studia Islamica 31–32 (1970), pp. xv f.  
\(^{170}\) The first edition appeared in 1949, the second in 1953.  
\(^{172}\) This has been pointed out by D. Forte, who gives some examples which could be multiplied, in: "Islamic Law: The Impact of Joseph Schacht," Loyola of Los Angeles International and Comparative Law Annual 1 (1978), pp. 1–36, esp. 16–18.  
Vesey-Fitzgerald assumes that there was already fabrication of hadiths from the earliest period, the generation of the Companions, and that later as well much was projected back into the early period, "but the unreal clarity with which this process invests these traditions does not always preclude a foundation in fact."\(^{177}\) What he means by this he demonstrates on the example of the tradition of Mu‘ādh, which had already been categorized as inauthentic by Snouck Hurgronje and Goldziher.\(^{178}\) According to him it has a genuine historical nucleus, which was later enlarged by additions; the fact that the Prophet delegated a man as qāḍī and agreed with him on appropriate rules of conduct can be inferred from it, only its wording is unmistakably a projection into the past. "It is the formalism rather than the substance of the tradition which lays it open to suspicion, and also its attempt to create a legal theory out of what can hardly have been more than administrative advice."\(^{179}\) This was an interpretation which—despite Goldziher—was current in the first half of the twentieth century,\(^{180}\) and which Schacht considered himself to have just refuted.\(^{181}\) On the other hand, he states that Schacht has given "very strong reasons" for the thesis that at the time of the founders of the Sunnī schools of law the forgery of traditions was pursued on such a scale that no purely legal tradition of the Prophet can be considered immune to suspicion. "The new evidence revealed by Schacht’s researches raises the strong suspicions of previous scholars to the level of proof."\(^{182}\)

The objections of Erwin Gräf tend in a similar direction. In his Untersuchung zur Entwicklung der islamischen Jurisprudenz,\(^{183}\) which appeared in 1959, he writes: "After the pathbreaking works of Goldziher, Snouck-Hurgronje and J. Schacht have definitively destroyed naïve credulity toward the statements of Islamic tradition and thus opened the way for true historical consideration, there is now a danger,

\(^{178}\) See above p. 13, notes 79, 80.
\(^{181}\) Cf. Schacht, Origins, p. 4.
\(^{182}\) Vesey-Fitzgerald, op. cit., p. 94.
\(^{183}\) Thus the subtitle. The main title: Jagdbeute und Schlachttier im islamischen Recht (Bonn, 1959).
which already becomes discernible with the masters of this area of research, that source criticism may grow into a misleading scepticism toward the sources and an overly great confidence in one’s own exegetical judgment. If this method were to be carried through one-sidedly, our sources would desintegrate more and more into an ultimately uncontrollable force-field of multiple tendencies.¹⁸⁴ Contrary to Schacht, Gräf is of the opinion that the formation of Hadith in jurisprudence was closed, at the latest, at the time of the founders of the schools—i.e., Mālik, al-Shaybānī, al-Shāfi‘ī. The process of the genesis of legally relevant hadiths is more complicated than Schacht assumes and has a longer pre-history, which reaches back into the first/seventh century. It is necessary—according to Gräf—to differentiate between the literary form and the content: “Seen from the point of view of literary form, all hadiths are late, revised according to the needs of fiqh.” “This literary-historical judgment, however, does not yet say anything about the age of the content.”¹⁸⁵ However, Gräf does not believe that the authenticity or inauthenticity of all components of a hadith—exceptions aside—can be established with certainty. Thus, for the moment one must limit oneself to the observation: “The development of the Islamic jurisprudence of the 150 years between the Qur’ān and the first works of fiqh is reflected in the Hadith.”¹⁸⁶ To which individual early jurists the decisive advances in this progress are owed, cannot be said exactly. Gräf does agree with Schacht that rationales for judgments were regarded as necessary only relatively late, but he thinks that the quest for authorities which began in this way leads through pure practice into jurisprudence already in the second half of Umayyad rule (ca. 80/700–130/747–8).¹⁸⁷

Both—Gräf and Schacht—start largely from the same sources in making their judgments, but Gräf’s is an impression from his work, not a concrete proof which Schacht claims for his conclusions. Starting out from an approach like those of Vesey-Fitzgerald and Gräf¹⁸⁸—the distinction between literary form and content—, Noel Coulson attempted to evade and take the sting out of Schacht’s posi-

¹⁸⁶ Ibid., p. 338.
¹⁸⁸ He mentions, however, neither of them.
tion. It is true that in *A History of Islamic Law* he declares Schacht’s thesis about the origins of Islamic law to be “irrefutable in its broad essentials” and adopts his schema of historical development in its broad outlines and in many of its details: the role of legal practise and the significance of the activities of the *qādīs* as a preliminary stage; the genesis of a jurisprudence at the beginning of the second/eighth century as a reaction and counter-movement on the part of “pious scholars” against prevalent practices; the development of “the early schools of law” with their concepts and methods which fuelled the process of the Islamic revision of law; and al-Shāfi’ī’s decisive role in the victory of the idea that the *sunnah* of the Prophet embodied in the traditions from him—must have superior authority in legal determinations. However, he attempts to do away with the discontinuity arising in Schacht’s theory of legal development between the activities of Muḥammad and the “early legal schools” which only came into being a hundred years later. He assumes that the substance of many traditions from the Prophet and the first caliphs—especially those traditions dealing with every-day legal problems that inevitably emerged from Qur’ānic regulations—despite their fictive *iṣnāds* and possible later recasting, have authentic nuclei and were preserved through originally oral transmission until they were gathered into the stock of traditions of the early schools of law. From this he derives the methodological principle: “An alleged ruling of the Prophet should be tentatively accepted as such unless some reason can be adduced as to why it should be regarded as fictitious—a method which is diametrically opposed to Schacht’s of regarding all traditions as fabricated until the contrary is proven. It allows Coulson to extend the legal development of the second/eighth century backward, and to describe the legal situation in Muḥammad’s lifetime not only through the Qur’ān but through—what he conjectures to be—authentic traditions of the Prophet and the epoch of the “Rāshidūn” and the Umayyad caliphs on the basis of legal verdicts ascribed to them or to their governors and *qādīs*. Thus,

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190 Coulson, op. cit., p. 4.
193 Cf. op. cit., p. 22.
194 Cf. op. cit., pp. 23–35.
he allies himself with the ideas of earlier research. Coulson relies essentially on the source material set forth by Schacht in his *Origins*.

Schacht reacted to Coulson’s book extremely sharply. In a twelve-page review with the indicative title “Modernism and Traditionalism in a History of Islamic Law,” he accuses him of “minimizing” the “accepted conclusions” of “modern scholarship,” which were based primarily on his—Schacht’s—own researches and those of R. Brunschvig, and of undermining them with assumptions that were sometimes “fanciful” and sometimes “old-fashioned.” Schacht largely contents himself with noting Coulson’s divergences from his teachings in schoolmasterly fashion and dismissing them as “incorrect,” “fanciful,” “quite out of date,” “misunderstood,” or “positively wrong,” or simply contradicting him. However, on the key point, that of the methodological treatment of Islamic traditions, he condescends to a more thoroughly grounded refutation of Coulson’s theses, using an example that the latter had used for demonstration.

Coulson responded to this discussion with an open—no less outspoken—letter which appeared in the same journal, and attempted to show that Schacht’s arguments against him are not compelling. Both lines of argumentation are very speculative. Theoretically, Schacht’s more critical position is certainly superior to Coulson’s, but the latter is correct in his thesis that the historical inferences that Schacht draws, among other things, from the “formal criteria” of traditions like the *ismād*, are “artificial” and scarcely as certain as he claims, and that other conclusions are at least as conceivable or probable as Schacht’s. The unprofitable discussion between the two does, however, make one thing clear: The placement of a tradition

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197 Cf. op. cit., p. 389.


within the development of law, i.e., whether it is rudimentary or advanced—a question which plays a central role for Schacht as well as for Coulson—is difficult to determine objectively, and with both depends decisively on the premises upon which their picture of the development of Islamic law is based. A resolution of the dilemma on the basis of the the sources utilized by Schacht and Coulson does not seem to be possible.

The reaction of Muslim scholars to Schacht’s depiction of the origins of Islamic jurisprudence was just as mixed as that of western scholarship. Some simply ignored his works, others rejected them without engaging in a discussion, others accepted them on substantive points but nevertheless set aside his theses about the discipline of Tradition or at least limited them.\(^{201}\) Only a few accepted the challenge to seek for points of departure from which to refute Schacht’s theory. Their efforts tended in two directions: The indirect method aimed to test and shake some of Schacht’s fundamental assumptions: his ideas, based on the work of Goldziher, about the authenticity of Hadîth and its development from its beginnings to the emergence of the classical collections. Here, it was above all necessary to deal with the works of Goldziher. Another possibility was to attack Schacht’s Origins directly and to attempt to prove him guilty of methodological or factual errors.

Fuat Sezgin opened the debate in 1956 with the first variation. In his *Bukhârî’nin kaynakları hakkında araştırmalar*,\(^ {202}\) and later in the introduction to the chapter “Hadîth” of his *Geschichte des arabischen Schriftums*,\(^ {203}\) he attempts to demonstrate that the classical Hadîth collections of the third/ninth century do not represent the beginning of the Hadîth literature—as Goldziher assumed—but the continuation of a process of recording such traditions in writing which began in the lifetime of Muḥammad and led to collections as soon as the beginning of the second/eighth century and soon thereafter to ordered compilations, that is, to the Hadîth literature. In doing this he depends on biographical source material in the broadest sense, which he draws chiefly from works of Muslim Hadîth scholarship such as the *Tagyîd al-‘ilm* of al-Khaṭîb al-Baghdâdî (d. 403/1012–3)—a work which had

\(^ {201}\) D. Forte gives an overview of these reactions, “Islamic Law,” op. cit., pp. 26–31.


\(^ {203}\) Leiden, 1967, pp. 53–84.
long been known to western scholars—the *Jāmiʿ bayān al-ʿilm* of Ibn ʿAbd al-Barr (d. 463/1070–1), the *al-Muḥaddith al-fāsil* of al-Rāmūrī (d. 360/971) and others, as well as from *rijāl* and bibliographical works from the third/ninth to ninth/fifteenth centuries. Sources of this nature had been completely neglected by Schacht in his *Origins*—not, however, by Goldziher. Sezgin concludes, firstly, “that the *isnāds* by no means indicate oral transmission, but that they name authors and authorized transmitters of books,” secondly, that the *isnāds* did not emerge only in the second/eighth century, and thirdly, that the names of the transmitters were not invented, as Schacht assumed. It is in this generalization of numerous and quite valuable observations and their extension to other branches of Islamic tradition that the weak point of Sezgin’s argumentation, which sparked off criticism, lies.

Sezgin’s theses received support from other works. In 1961 there appeared M. Z. Siddiqi’s book *Hadith Literature,* Muḥammad Hamīd-ullāh’s edition of the *Sahīfat Hammām ibn Munabbih* provided with an English-language introduction, and Muṣṭafā al-Sibā’ī’s book *Al-sunna wa-makānātuhā fī l-tashrīʿ al-islāmī* in 1963, Muḥammad ʿAjjāj al-Khaṭīb’s study *Al-sunna qabla l-tadwīn,* in 1967 and 1968 the studies of Nabia Abbott, who is certainly not Muslim, and of Muhammad M. Az[a]mi. Methodologically, they are all similar to

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[209] 5th ed., Luton 1961. Whether the first edition, which appeared in Damascus in 1953, already contained the introduction I have not been able to determine.

[210] Cairo, 1961 (it was written at the beginning of the forties).


Sezgin’s studies; they use primarily the same type of sources and supplement the material set forth by Sezgin with much additional evidence. Was Schacht’s theory of the late emergence of the Prophetic hadiths, or—from a methodological point of view—the impossibility of demonstrating the existence of authentic Prophetic traditions, or of ones originating as early as the first/seventh century, thus refuted? Surely not for the adherents of Schacht’s thesis, for in view of the supposedly massive dimensions of the forgery which was pursued in the second/eighth and third/ninth centuries and which—although not on this order of magnitude—was certainly admitted by the Muslim scholars, no more credence can be lent to the reports about the early transmitters than to the reports from them, especially when the bulk of this information derives from sources which came into being 200 years and more after the time about which they report.

Some of the above-named authors attempted to counter this objection by concretely pointing out texts or fragments of texts of early Hadith collections whose existence is asserted in these sources, but which had thus far not been discovered. A beginning had been made by Hamidullah, who published the Sahifat of Hammâm ibn Munabbîh (d. 101/719–20), supposedly the oldest preserved Hadith work, in 1953. Sezgin unearthed the ûmûr of Ma’mar ibn Râshîd (d. 153/770) and assigned it to its place in the development of Hadith literature; Azâmi edited three small manuscripts of Tradition collections, as the authors of which he named Nâfî’ (d. 117/735), the mawlû of Ibn ʿUmar, al-Zuhrî (d. 124/742), and Suhayl ibn abî Šâlih (d. 138/755–6); and Abbott edited and annotated a series of papyrus fragments, among which was a small collection of hadiths, as the author of which she identified al-Zuhrî.

Were Schacht’s theses about Hadith thus rendered absurd? In the eyes of their sympathisers, scarcely. None of these texts is an autograph. Who can guarantee that the supposed Sahîfa of Hammâm ibn Munabbîh is not a forgery or a collection of fabricated traditions by Ma’mar ibn Râshîd (d. 153/770) or by ʿAbd al-Razzaq (d. 211/827),

To this group also belongs the more recent work of S. H. Abdulghaffar, Criticism among Muslims with Reference to Sunan Ibn Maja (2nd ed., London, 1986; 1st ed., 1983), which more strongly emphasizes the significance of Muslim Hadith criticism since the first century for the question of the authenticity of the isnâd.

214 See p. 36, note 209.
who both appear before Hammām in the isnād? ‘Abd al-Razzāq is the common link of all preserved versions of the text216. What assurance does one have that the supposed texts of al-Zuhrī really originate with him and were not ascribed to him by anonymous persons or by the Shu‘ayb ibn abī Ḥamza (d. 162/788–9) or Abū l-Yamān (d. 222/837)217 named in some riwāyāt, or ‘Uqayl ibn Khalid (d. 142/759–60 or 144/761–2) or al-Layth ibn Sa‘d (d. 175/791–2) named in another riwāya?218 In his review of Abbott’s book, John Wansbrough summed up the reservations of the adherents of Schacht toward the evidential value of the works mentioned above: “In illuminating the dark centuries of Islam she [Abbott] is not content to shed just a little light, but proclaims from nearly every page the existence of written records from the very beginning.” “But this is surely zdām, not burhān! Unless these records can be produced, the present situation will not have much altered. We have never lacked for assertions that such (oral or written) existed.” “It has been suggested that this kind of tradition was put into circulation from the first half of the second/eighth century (Schacht, Islamic Law, 34), and that the elaboration of isnāds can be dated from the generation preceding Mālik (idem, Origins, 163 ff.). [. . .] These papyri do not take us further back than that, if indeed so far, and do not really make more compelling the arguments for a genuine sunnat al-nabī [. . .].”219 Thus opinion stands against opinion, without either of the two sides being able to deliver to the other proofs which will convince them.

The other path on which some Muslim scholars embarked was that of directly engaging oneself with Schacht’s results and the sources and methods he used. For instance, Fazlur Rahman attempted to defuse Goldziher’s and Schacht’s results interpretatively. He distinguishes—like some of Schacht’s western critics220—between unhistorical form (ḥadīth) and authentic content (sunna), and regards the Ḥadīth as having “developed” from the Prophetic sunna, the latter as its basis, the former as its “gigantic and monumental commentary [. . .] by the early community.”221 Ahmad Hasan, a student of Fazlur

216 Cf. Hamidullah, op. cit., p. 69.
220 See pp. 31–34.
221 Cf. Fazlur Rahman, Islamic Methodology in History (Karachi, 1965), pp. 1–87,
Rahman, developed a depiction of the early development of Islamic jurisprudence\textsuperscript{222} on the basis of essentially the same basic sources which Schacht took as his point of departure, which is intended to show that on the basis of these sources one must not necessarily come to Schacht's conclusions, but may also reach some which are completely compatible with the traditional picture conforming to the theory of \textit{uṣūl}. True, many of his conclusions from the sources of the second half of the second/eighth century and later are speculative and more postulative than demonstrative, but this is just as true of Schacht, for instance, of his thesis of Umayyad praxis as the point of departure of Islamic jurisprudence\textsuperscript{223} or his conception of the "living tradition" of the ancient schools,\textsuperscript{224} of a common early doctrine,\textsuperscript{225} et cetera. The decisive difference between the two approaches is that Schacht regards the Prophetic traditions as a late creation, while Ahmad Hasan does not accept this in this degree of generalization, but assumes the existence of the conception of the \textit{sunna} of the Prophet and of a quantity, if a limited one, of Prophetic \textit{hadiths} as early as the first/seventh century.\textsuperscript{226} It is true that in his study Ahmad Hasan at various places explicitly distances himself from Schacht,\textsuperscript{227} but he scarcely attempts to show him guilty of concrete errors. In general, he contents himself with presenting his own interpretation.

In contrast, Az[al]mi sought direct and occasionally polemical engagement with Goldziher and Schacht. He confronted their statements with the evidence from the sources upon which they relied, and attempted to demonstrate that their interpretations were wrong or one-sided or impermissibly generalized specific pieces of information and neglected others. Already in his \textit{Studies in Early Hadith Literature} (1968) he attacked Schacht's ideas about the inauthenticity of the \textit{Hadith} material and the \textit{isnāds}, as well as the methods which he used in his work, more thoroughly than any other critic.\textsuperscript{228} Seventeen years later he published a renewed refutation in book

\textsuperscript{222} The Early Development of Islamic Jurisprudence (Islamabad, 1970).
\textsuperscript{224} Cf. op. cit., pp. 58 ff.
\textsuperscript{225} Cf. op. cit., p. 214.
\textsuperscript{226} Ahmad Hasan, \textit{The Early Development}, pp. 88–95, 109.
\textsuperscript{227} Cf. op. cit., pp. xvi, 28–30, 45 ff., 89 f., 135 f., 145 f., 159 f.
form, under the title *On Schacht's Origins of Muhammadan Jurisprudence*,
this time going into even greater detail and taking into account Schacht's conclusions about legal history. Since it is the only truly substantive critique since Fück of a work which has deeply influenced western Islamic studies and Islamic legal history in the last four decades—Azami ironically calls it "the bible of Orientalists"—, let us examine its argumentation more closely. Azami’s accusations are grave: "Schacht has apparently failed to consult some of the most relevant literature; he often misunderstands the texts he quotes; the examples he uses frequently contradict the point he is trying to make; on occasion he quotes out of context; and most important, he applies unscientific methodology for his research, thus drawing conclusions that are untenable when the evidence of the text as a whole is weighed." However, if one goes into Azami's arguments in detail one will have to class these accusations as highly exaggerated and excessively generalized. Azami often simply offers another interpretation which he postulates as the correct one, and his polemical attitude toward Schacht’s statements sometimes clouds his vision of what Schacht meant by them. Thus, his criticism is often inaccurate, rests on misunderstandings, and at most convinces those who consider his premises correct a priori. A few examples:

Schacht considers Islamic law more as a corpus of religious duties than as a true system of law. "Law [in the strict sense] lay to a great extent outside the sphere of religion, was only incompletely assimilated to the body of religious duties, and retained part of its own distinctive quality. No clear distinction, however, can be made." Azami declares that this is untrue; the dichotomy of secular law and religious teaching does not exist in Islam, "in theory at least." "Law can be seen to be an integral part of Islam. There was no aspect of behavior that was not intended to be covered by the revealed law." The concept of Islamic law is already given by the Qur'ān.

The emphases clarify the differences in point of view. Schacht’s statements are quantitative and aim at a description of historical reality. Strictly speaking, he does not differentiate between religion and law,

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229 Riyadh, 1985, 237 pages.
231 Azami, op. cit., p. 3.
233 Azami, op. cit., p. 3.
religious and secular—as Azami accuses—but between law in a more or less technical sense or with a more or less religious content. Azami's statements, on the other hand, are qualitative. They are descriptions of the norm or theory. As such, Schacht would not dispute them.

Schacht is of the opinion that it was not Muhammad's aim to create a new, comprehensive system of law. His authority as prophet and lawgiver was not legal in the narrower sense, but religious or political. The Prophet's legislation was an innovation within the legal system of Arabia. Schacht's description of the role of the Prophet depends only on the Qur'an as a source. Here he is not interested in the question of whether Muhammad had the intention or the idea of creating a completely new, comprehensive system of law or not—the expression "aim" here is open to misinterpretation—but whether he in fact did and, if so, with what sources this can be proven. From the Qur'an at most the idea can be verified, but not such a system itself, at most beginnings of one. Azami responds to this that the Qur'an accords the Prophet legislative, interpretative, judicial and executive functions. Consequently, it was God's intention to create a new system of law, ergo the Prophet did so. His systematic legal activities are present in his sunna. While Schacht describes that which is historically palpable and in doing so leaves the sunna aside, since its authenticity is not assured, Azami depends on theory and reasons from the possibility of facts to their probability or reality, in doing which he merely asserts the authenticity of the sunna but does not prove it.

It is Schacht's thesis that for the greater part of the first/seventh century, Islamic law in the technical sense of the word did not exist. The first caliphs did not lay the foundations of later Islamic legal administration. Corresponding biographical reports are products of the third/ninth century. Where there were no religious or moral objections, pre-Islamic legal practices were preserved. Schacht

236 Cf. op. cit., p. 11.
237 Ibid.
240 Cf. op. cit., pp. 3, 17.
depends for this on sources of the second half of the second/eighth century. Azami disputes this and adduces as evidence for the existence of Islamic law at the time of the Prophet and in the first/seventh century: legal rulings of the Prophet (source: Ibn Tallā', d. 497/1103–4, Ḩaqiyat Rasūl Allāh, who supposedly has his material from sources of the second/eighth and third/ninth century), a list of judges appointed by him (according to sources of the second/eighth century and later), a list of the qādis of Basra (primarily compiled according to Khalīfa ibn Khayyāt’s, d. 240/854–5, Ṭabagāt), letters of ‘Umar to his qādis (source: ‘Abd al-Razzāq, d. 211/827, Muṣannaf), rulings of other figures of the first/seventh century which are based on the sunna of the Prophet (source: Malik, d. 179/795–6, Muwaṭṭa’), and texts of legal content from the first/seventh century (according to sources of the third/ninth century and later). From this evidence he concludes that Schacht’s theory of the emergence of Islamic law in the early second/eighth century is untenable. This conclusion is surely not compelling: firstly, strictly speaking Schacht does not mean the beginning of Islamic law, but of Islamic jurisprudence, and secondly he considers reports from later sources about the first/seventh century to be generally unreliable and sometimes neglects them intentionally. Azami does nothing more than to assert their authenticity without supplying proofs. Thus, at most one can evaluate his depiction of the legal development as an antithesis, but not as a refutation of Schacht.

Azami engages himself very intensively with Schacht’s theory of the development of the conception of the sunna. Here, too, he fields facts against him which Schacht did not dispute in the first place, overlooks Schacht’s fine distinctions in his apologetic zeal, and postulates the opposite on the basis of sources whose authenticity remains unclarified. Meanwhile, he occasionally attempts to prove that Schacht misunderstood his sources. However, only in the rarest cases is this accusation justified. An illustrative example is Schacht’s and Azami’s interpretation of the Risāla of Ibn al-Muqaffa’ (d. ca. 140/757–8). Schacht’s main argument is: Ibn al-Muqaffa’ observes that in his time sunna is not based on authentic precedents of the Prophet and

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the first caliphs, but largely on administrative regulations of the Umayyad dynasty. Azami contradicts him, but in doing this does not refer to Ibn al-Muqaffa's observation of fact, but on the conception that the latter himself has of sunna: *Sunna should rest on precedents of the Prophet or of the "rightly guided" caliphs (is the 'Abbāsid dynasty also meant?).* Schacht: According to Ibn al-Muqaffa, the caliph is free to establish and to codify the supposed sunna. Azami: According to Ibn al-Muqaffa, the caliph must follow the Qur'ān and the sunna, that is, the sunna of the Prophet and of the rightly-guided caliphs of the pre-Umayyad period. Schacht refers to Ibn al-Muqaffa's statement that the caliph alone has the right to make decisions on the basis of ra'y in cases in which no tradition [of precedents of the Prophet and the imāms] is available (*al-hukm bi-ra'y fī-mā lam yakun fīhi athar*). Azami, on the other hand, emphasizes the following sentence: The caliph alone has the right to impose [Qur'ānic] penalties and sentences on the basis of the scripture and of the sunna (*imdā' al-hudūd wa-l-aḥkām 'alā l-kitāb wa-l-sunna*). Schacht stresses the caliph's right of revision on the basis of his divinely inspired ra'y according to Ibn al-Muqaffa, Azami his suggestion that it was the scholar's task to explain on what sunna or what *qiyaṣ* their judgments and norms were based.²⁴⁴

Azami argues that one cannot deduce from the Ibn al-Muqaffa text that law in the first/seventh century was not based on Qur'ān and sunna. Schacht does not draw such a conclusion from this source at all; rather, he only wishes to demonstrate with it that at the end of the Umayyad period the legal practice postulated as sunna was not generally based on the precedents of the Prophet and the early caliphs. Ibn al-Muqaffa does assert precisely that, and later al-Shāfi'i reproached the scholars of his time with it. The two—Schacht and Azami—accentuate different aspects of the text which are not mutually exclusive. Azami distorts Schacht's argumentation and also does not take into account all of his references to the text of Ibn al-Muqaffa.²⁴⁵ The accusation that Schacht understands this source incorrectly is unjustified. Azami does not understand Schacht correctly. Similarly twisted and unconvincing reinterpretations of Azami's, in making which he sometimes does not correctly reproduce the


²⁴⁵ He neglects pp. 95 and 102 f.
literal sense of the source,246 are found in his discussion of the conceptions of the early schools as well.247 It is frequently to be observed that Azami draws conclusions from the material cited by Schacht which Schacht did not draw, or did not draw in this way, and fathers them on Schacht, and that he then refutes these ostensibly Schachtian theses. Naturally, he only discusses those examples which he believes himself able to refute, and ignores others. Azami also proves Schacht guilty of some manifest misinterpretations, it is true, and, for example, his reservations with respect to the evidential value of al-Shāfi‘ī’s often polemical statements about his contemporaries are not to be dismissed. But Azami’s apologia for the classical conception of the development of Islamic law—based on the source material used by Schacht to reconstruct the “ancient schools of law” and reinterpreted by Azami—can only convince those who believe in the authenticity of the traditions of the Prophet from the outset.

Stronger, and in places convincing, is Azami’s treatment of Schacht on the subject of Hadith and isnād. He shows that the e silentio method stands on a very insecure basis, and that Schacht’s datings can easily be shaken by sources which escaped him or which have newly emerged.248 His objections with respect to Schacht’s dating of the beginnings of the isnād, his evaluation of certain types of isnād and his common-link theory249 are partially well-founded, even if in the process he occasionally adduces evidence the authenticity of which remains unproven, and now and then polemically distorts Schacht’s argumentation. The reservation as to whether the Hadith material contained in the fiqh literature, which Schacht used as the basis for his theses on the isnād, allows generalizations of this kind at all is also justified.250 However, Azami’s counter-depiction of the emergence and development of Hadith is based completely on sources of the third/ninth to eighth/fourteenth centuries,251 without his even

246 Cf., for example, Azami, op. cit., p. 44: Schacht translates “Qāla Malik: ‘Alā dhahāika l-sunnatu llatī lā ikhīlāfa fhā ‘indam” more correctly as “… to the same effect is the sunna …” (Origins, p. 61). Azami: “… this is the sunna …,” a small, but decisive difference of which Azami takes advantage for his thesis.


posing the question to what extent the information about the first/seventh and second/eighth centuries contained in them is reliable, or whether conclusions about the technique and criticism of transmission of earlier centuries may be drawn from later practice. Even if they were datable as early as the second/eighth century, are they then to be assumed for the first/seventh century? His representation of the development of the isnād rests primarily on conjectures. The existence of multiply twigged branches of transmission for individual hadiths is not yet any proof for the authenticity of their isnāds. Schacht’s adherents will not be moved to abandon his entire theory as absurd by Azami’s proof that a few of Schacht’s datings and textual interpretations are incorrect. His argumentation is too imprecise and polemically tinged to convince. What he offers as a substitute for Schacht’s theory is based on sources whose reliability is doubted by many non-Muslim scholars. Azami has not eliminated this doubt.

The most recent works of western Islamic studies dealing with the beginnings of Islamic law, appearing since the seventies, all stand under the influence of Schacht’s researches. Some adopt his results without qualification; others see in it a by and large assured and acceptable representation of the development of Islamic jurisprudence but have reservations on some points or suggest concrete modifications. Thus, for instance, Klaus Lech in his Geschichte des islamischen Kultus, vol. 1: “These [Schacht’s] theses have proven themselves extremely fruitful in many respects…” “Aside from the contribution of having made an initial examination of the voluminous and remarkably difficult material and established at least debatable ordering schemata for the evaluation of Muslim legal development, a number of important individual observations remain completely secure.” “At the same time, it also becomes clear that in the future we should proceed differently methodologically.”

G. H. A. Juynboll is an admirer of Schacht’s Origins and has taken his inspiration from Schacht’s methodology. It is true that he estimates the origins of the Hadith to be earlier than does Schacht,

254 Das ramadān-Fasten (Wiesbaden, 1979), pp. 4, 5.
255 Cf. Muslim Tradition (Cambridge, 1983), p. 3. Schacht’s methodological example is particularly clear in chapters three and five.
specifically, in the second half of the first/seventh century and the beginning of its standardization, the *ismād*, towards its end, but this does not conflict with his theory about legal development in general and of the role of tradition in it. Nevertheless, Schacht would probably have had serious misgivings about Juynboll’s representation of the preliminary stages and beginnings of *Hadīth*, because it is essentially based on biographical and historical tradition material from sources of the third/ninth century and later, toward which he had strong reservations. He certainly would not have been able to acquire a taste for “awā’il evidence.”

David S. Powers begins his *Studies in Qurʾān and Hadīth—The Formation of the Islamic Law of Inheritance* with a discussion of Schacht’s theses: “The writings of the late Joseph Schacht, in which he sketches the broad outlines of the history and development of Islamic law, constitute the benchmark of all modern studies on this subject.” He reports on a few critiques and sums up, “Schacht’s thesis, despite these negative considerations, has stood the test of time.” He himself, however, has objections similar to Coulson’s: Schacht underestimates the importance of the Qurʾān for the development of law in the first/seventh century, when it is difficult to imagine a vacuum—an *a priori* assumption, as Powers himself admits. By means of a sharper differentiation between “law” and “jurisprudence,” he attempts to leave Schacht’s theses to a large extent unscathed and at the same time to clear the way for an investigation of “positive law” in the first/seventh century. This, however, then turns out to be very speculative and lacks Schacht’s critical standard in the treatment of tradition material, especially where Powers uses the content of texts which he identifies as late anecdotes directed against the traditional Qurʾānic interpretations of the *fuqahāʾ* to describe historical facts of the first half of the first/seventh century.

Patricia Crone’s study *Roman, Provincial and Islamic Law. The Origins of the Islamic Patronate* stands completely in the Schachtian tradi-

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258 Berkeley and Los Angeles, 1986.
262 Cf. my review in *Der Islam* 65 (1988), pp. 117–120.
tion. It is true that she considers his contributions to the question of the influence of extra-Islamic legal systems—a problem which plays only a passing role in the Origins, but was later taken up by Schacht several times264—to be meager, and attempts to replace them with better founded hypotheses; but to a large extent she identifies with the basic outlines of the Schachtian schema of development and, although she admits some methodological inconsistencies in his dating of hadiths, she defends his Hadith-critical position against dilutions such as those which had been suggested by Coulson and others.265 Crone, like Schacht, emphasizes the importance of “pre-classical law” as a decisive source for the investigation of origins,266 and largely neglects biographical material of later Muslim sources. “Pre-classical law,” according to Crone, can be reconstructed partially from the “early Hadith,” partially through “a systematic comparison of Sunnī and heretical law.”267 As sources of early Hadith, according to Crone, the classical compilations do not come into consideration, but rather the two earlier collections of ʿAbd al-Razzāq (d. 211/827) and Ibn abī Shayba (d. 235/849–50), the much later one of al-Bayhaqī (d. 458/1066), and a few later legal works, such as those of Ibn Ḥazm (d. 456/1064), Ibn Qudāma (d. 620/1223), and others.268 She assumes that into these later sources earlier ones are assimilated, although the indices of what can be considered old are not precisely defined by her. The criterion that a tradition is not contained in the “classical” collections is surely not sufficient. It also remains unclarified why the material of the pre-classical collections can lay claim to more authenticity than that of the classical ones—aside from the fact that they were compiled a few decades earlier—and why the isnāds can serve as indicators of the origin and age of the traditions contained in these works, in view of Schacht’s conclusion that as late as the second half of the second/eighth century and the third/ninth century traditions of every kind—even ones from tābiʿīn269—were fabricated.270


265 Cf. P. Crone, Roman, Provincial and Islamic Law, Chap. 2.

266 Cf. op. cit., p. 16.

267 Ibid.

268 Cf. op. cit., pp. 26–27.

269 Cf. Schacht, Origins, p. 245.

270 For an appreciation of her actual subject—the influence of extra-Islamic law—
The history of research on the question of the origins and beginnings of Islamic law and its jurisprudence, regarded from the point of view of the source basis used, displays some characteristic lines of development. It began with depictions drawing on the material of the Muslim discipline of *uṣūl*, that is, the science of the “fundaments” of Islamic jurisprudence, from sources of the fifth/eleventh century and later, as well as from biographical and historical sources of the third/ninth century and later. To a large extent, they mirror the Muslims’ traditional ideas about the development of their jurisprudence. At most, doubts were registered about the authenticity of a portion of the traditions from the Prophet. Through his studies of Hadith, Goldziher came to the conviction that in the first century the *sunna* of the Prophet was not yet a “generally valid norm” — except perhaps in Medina—and that consequently the theory of the *uṣūl* scholars did not correspond to the historical facts. Accordingly, in questions of legal development he chose another type of source as a point of departure: the earliest preserved legal works of the second half of the second/eighth century. They had become accessible in print only towards the end of the nineteenth century, and could provide definite information about the development during the second half of the second/eighth century. From them one could also draw reasonably reliable conclusions about pre-history back to approximately the beginning of that century, which could in some cases be supported with biographical source material in the widest sense. Further back, into the first/seventh century, it was possible to proceed only speculatively. Bergsträsser offered an example of how the development might have looked. Both, the traditional and the source-critical points of view—as I would like to call them—had their proponents in the first half of the twentieth century, nor were syncretisms lacking.

Schacht attempted to gain the source-critical trend exclusive recognition. His schema of development, based on criteria of form and content and illustrated by rich textual material, seemed consistent
and at first glance hardly refutable, as the immediate response to his *Origins* shows. He depended almost exclusively on the early legal works and the Tradition material contained in them and in the classical *Hadîth* collections, which, however, he accepted only as a source for the second/eighth and third/ninth century. He used biographical reports from other works rarely and with the greatest distrust. The result was that he abbreviated the timespan about which he could make definite statements by two more decades. Only from 120/738 on did he believe that he had historically reliable information about the early *fuqahâ’*. If one accepts Schacht’s source-critical premises, one can indeed scarcely go further back on the basis of the legal works of the second half of the second/eighth century.

The reaction against Schacht’s depiction of the beginnings of Islamic jurisprudence consisted primarily of contesting his source-critical premises. Insofar as this did not take place on the theoretical plane only—for example, through proof of impermissible or faulty methods and conclusions—, but through recourse to the sources, people turned again to the biographical material, which meanwhile had become quite voluminous through the editing of a number of works on the science of *Hadîth* and of biographical lexica. At the same time, the quest for the testimony of older Islamic and extra-Islamic sources was activated. However, until now all efforts to dispel the suspicion of forgery to which biographical reports and supposedly earlier sources are exposed by source-critical research have failed. The fact that the majority of Schacht’s critics have been Muslims probably contributed to the fact that their objections and attempts at refutation have met with little approval from the Schacht’s adherents. That is the present state of affairs. The opinions are contrary and irreconcilable. A solution to the dilemma has not yet emerged. As long as no one succeeds in finding juridical sources from, or biographical materials about, *fuqahâ’* or *‘ulamâ’* before 120/738 whose genuineness is demonstrable, one will have either to content oneself with the realization that on the basis of the available sources no definite statements about the development of law and jurisprudence before 120 A.H. are possible, or to expose oneself to the accusation of uncritical use of the sources.
CHAPTER TWO

NEW SOURCES FOR THE HISTORY OF THE BEGINNINGS OF ISLAMIC JURISPRUDENCE

The term *muṣannaf* designates a specific kind of *Ḥadīth* work, namely, the collection of *ḥadīths* ordered in chapters by subject. Al-Bukhārī's and Muslim's *Jāmiʿ*"s are considered typical examples of this genre. Therefore, it is a widespread idea that *muṣannaf* works are as a rule collections of *ḥadīths* of the Prophet. However, the earliest preserved works known under the title of *Muṣannaf*, for example the *Muṣannaf* of ʿAbd al-Razzāq (d. 211/827) or that of Ibn ʿAbī Shayba (d. 235/849–50), show that *muṣannaf* works were not originally compilations limited to *ḥadīths* in the narrower sense—that is, traditions of the Prophet. Rather, they contain reports of the statements and modes of behavior of all past generations, including the immediate teachers of the compilers. Traditions of the Prophet represent only part of the collected material. The earlier *muṣannaf* works can thus better be compared to the compilations of the second/eighth century such as the *Muwatāṭa* of Mālik and the ʿĀthār of Abū Yūsuf than with the classical *Ḥadīth* collections of the third/ninth century. The latter represent special forms of the *muṣannaf* type.

Like the *Muwatāṭa* and the ʿĀthār, which have played a central role in the works about the emergence of Islamic jurisprudence, the earlier *muṣannaf* works thus come under consideration as potential sources for the early history of Islamic law and Islamic jurisprudence. While the versions of the *Muwatāṭa* are limited primarily to the transmission from Mālik and the ʿĀthār almost exclusively to that from Abū Ḥanīfa, and thus contain Medinan and Kufan material respectively, the *Muṣannaf* works of ʿAbd al-Razzāq and Ibn ʿAbī Shayba are more broadly structured and are not confined to a single scholarly tradition. Both works have been available in edited form only since the

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seventies and were not available, for instance, to Schacht. It is thus to be expected that through them the picture of the development of Islamic law in the second century, which until now has been strongly centered on Medina and Kufa, can be broadened, and that perhaps knowledge can be gained which will necessitate modifications of the depiction of the emergence of Islamic jurisprudence which is largely accepted in western Islamic studies.²

The usefulness of the *muṣannaf* works as historical sources is, however, dependent on the solution of a central problem, namely, whether the materials they contain can be dated and geographically located with reasonable certainty, or more precisely, whether and to what extent one can lend credence to the statements about their provenance in the chains of transmitters. The problem is as old as Ḥadith itself. The Muslim science of Ḥadith has engaged itself with it intensively since the close of the second/eighth century and set forth its results in the classical collections of Ḥadith and the works on criticism of transmitters and transmission.³ For centuries, they were largely the object of consensus and, exceptions aside, were accepted at least in Sunnī circles. However, they have been placed generally in question by European scholars, especially by the work of Goldziher and Schacht, since the beginning of this century. Since then, the Ḥadith material as a whole—traditions of the Prophet, saḥāba, and tābīʿūn—has been subject to an all-encompassing suspicion of forgery, and they are consequently usable as historical sources only when the authenticity of their alleged origin is demonstrable or the forgery can be dated, unless one contents oneself with a wholesale date of origin in the second/eighth or third/ninth century, depending on the date of origin of the collection that one is using. In his investi-

² Both works have been used repeatedly since their appearance, for instance by: J. van Ess, Zwischen Ḥadīth und Theologie (Berlin, 1975). Cook, Early Muslim Dogma (Cambridge, 1981). M. Muranyi, Ein altes Fragment medinensischer Jurisprudenz aus Qairawān (Stuttgart, 1985). P. Crone, Roman, Provincial and Islamic Law (Cambridge, 1987). The latter very explicitly indicates their importance for “pre-classical law” (see p. 47), as does Muranyi in Materialien zur mālikīschen Rechtsliteratur (Wiesbaden, 1984), p. 26, note 39. M. J. Kister, in addition to Sezgin, was among the first who recognized the value of ‘Abd al-Razzāq’s *Muṣannaf* and Ma’mar’s *jāmī*. He used them even before they were edited. Cf. his “Ḥaddīthū ‘an bani Isrā‘īla wa-lā ḥaraja,” Israel Oriental Studies 2 (1972), pp. 215–239.

³ Cf. Goldziher, Vorlesungen, p. 38 and the surveys of the literature in question in Siddiqi, Ḥadith Literature, Chaps. 4, 5, 7, 8; Azami, Ḥadith Methodology, Part 2.
gation of the origins of Islamic jurisprudence, Schacht expended a great deal of effort and ingenuity on the solution of these problems and employed a combination of internal criteria (of content) and external criteria (having to do with the isnād) in order to place individual traditions historically. Nevertheless, in examining his decisions about authenticity or forgery and his datings one is often unable to avoid the impression that a great deal of arbitrariness and uncertainty is in play, and that he does not apply his methods uniformly and consistently. Because of this, and because Schacht’s ideas have met with broad acceptance in western Islamic studies, one cannot overlook his judgments on the worth of the muṣannaf works and the material contained in them.

The following early works of the muṣannaf type were available to Schacht: The two Āthārs of Abū Yūsuf and al-Shaybānī and the two Muwatta’ versions of al-Shaybānī and Yahyā ibn Yahyā. In the case of the Āthār he assumes that the ascription of the material to Abū Ḥanīfa is credible,4 but that even the latter’s own informants are not always the true authors or transmitters of the traditions presented under their names, and that their citation of figures of the end of the first/seventh century is almost completely fictive.5 The certainty with which Schacht accepts Abū Ḥanīfa as the true source of the Āthār, for which he gives no detailed rationale, is surprising in view of his opinion, expressed in another context, that Abū Yūsuf and al-Shaybānī were in the habit of ascribing their own opinions to their teacher Abū Ḥanīfa, which according to him was a customary procedure.6 Similarly, Schacht assumes that the materials indicated as originating with Mālik by al-Shaybānī and Yahyā ibn Yahyā in their recensions of the Muwatta’ were in fact received from him,7 although the two versions are inconsistent in a number of ways. On the other hand, in many cases he expresses doubts about the authenticity of the statements of origin with which Mālik supplied his traditions,8 and rejects the ascription of texts to the so-called

6 Ibid.
“seven lawyers of Medina” as largely unhistorical. Even if he does not explicitly place Abū Ḥanīfa and Mālik under suspicion of forgery, he does insinuate that they at least presented as directly received traditions which they did not have directly from the indicated authorities, and that they either did not know that the texts they indirectly adopted were forgeries or knowingly passed on fictive traditions. Both premises are so weighty that they require independent proofs, that is, ones which do not depend on his theories. Schacht does not supply these. He does not even provide plausible reasons for the assumption that, for example, Abū Yūsuf’s reference to Abū Ḥanīfa is reliable, that of Abū Ḥanīfa to Hammād not necessarily so, and that of Hammād to Ibrāhīm al-Nakha’ī only rarely credible. 9

It does not seem advisable to adopt such a procedure, which rests on unfounded and unproven presuppositions, for the analysis of the newly accessible sources. It presents itself as an alternative to investigate the muṣannaf works from the point of view of their history of transmission and to seek concrete evidence of falsification of the information about sources, thus not asserting it a priori but—when possible—proving it. In order to test the practicability of this procedure, I have preferred the Muṣannaf of ‘Abd al-Razzāq as experimental material for two reasons, among others: It is the earlier of the newly accessible muṣannaf works, and its structure of transmission is at first glance more homogeneous than that of Ibn abī Shayba.

A. ‘Abd al-Razzāq’s Muṣannaf—The Work and Its Sources

1. The Edition

The Muṣannaf of ‘Abd al-Razzāq ibn Hammām al-Ṣaḥānî (d. 211/827) has been available since 1972 in an eleven-volume edition prepared by Ḥabīb al-Raḥmān al-Aḍzamī and published by al-Majlis al-‘Ilmi, Beirut. It is unfortunate that an introduction to the manuscripts used and the principles of editing is lacking. One was planned as an inde-

9 He only gives reasons why particular texts from them are inauthentic, for instance: “express secondary stages in the development of the Iraqi doctrines,” among other things (cf. p. 235); but the criterion he is applying is based on a fictitious legal development constructed with the exclusion of early material.
pendent publication, but never saw the light of day. 10 From remarks of the editor and some illustrations of manuscripts used, it is possible roughly to reconstruct the manuscript basis:

1. The manuscript Murād Mullā (Istanbul) is the basic text. 11 It consists of five sections and is—by al-Aʿzāmī's estimation—complete, aside from small losses at the beginning of the first and fifth sections. 12 This judgement can only apply to the part of the text covered by this manuscript, because the end of the work is missing. This manuscript dates from the year 747/1346–7. 13 It represents the basis for volumes one through ten, page 145 of the edition.

2. For the rest, the manuscript Fayḍ Allāh Efendi (Istanbul), from the year 606/1209–10, was used. 14

Al-Aʿzāmī consulted three other fractional texts for comparative purposes:

3. A manuscript of the Zāhiriyaa (Damascus) from the seventh century. It begins on page 15 of vol. 1 and ends on page 57. 15

4. A manuscript from al-Maktab al-Islāmī (Damascus). It begins on page 353 of vol. 3 and ends in vol. 4, approximately on page 406. 16

5. A manuscript from Ḥaydarābād which comprises the text from vol. 9, page 271 to vol. 11, approximately page 23. 17

The work as a whole consists of 33 "books" (kutub), which are subdivided into chapters (abwāb) and provided with headings. They do not all originate from the same transmission; rather, five different riwāyas are to be observed: these are found at the beginning of the kitāb in 22 books, in four books they are repeated once or several

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12 AM 1, p. 1. There are photographs of a few pages of the manuscript on pp. [15], [17], [21], [22].
13 See AM 10, p. 145.
15 Cf. Sezgin, Geschichte, p. 99 (here identified as a separate Kitāb al-salāt; this should probably be corrected).
16 See the photographs of the first folio in AM 1, pp. [19], [20]. The beginning and approximate end of the manuscript can be inferred from the references in the notes.
17 Sezgin lists further, later manuscripts, Geschichte, p. 99; he is lacking the two last named, however, about which no more precise information can be derived from the edition.
times at the beginnings of chapters, and eleven books have no explicit riwayne before ʿAbd al-Razzāq. In general, this probably means that that of the preceding text is still applicable. In three cases, however, the heading of the book is also missing, which could be the result of the loss of a folio. In one case the riwayne changes without indication as a result of this.\(^{18}\)

1. **Riwayne A.**\(^{19}\) Abū Saʿīd ʿAlī ibn Muḥammad ibn Ziyād ibn Bishr al-Aʿrābī al-Baṣrī—Abū Yaʿqūb Ishāq ibn Ibrāhīm ibn ʿAbbād al-Dabārī—ʿAbd al-Razzāq. From this tradition come the first fourteen books, that is, vols. 1–5 of the edition, book 16 (*al-nikāḥ*) and 17 (*al-ṭalāq*), that is, two thirds of vol. 6 and all of vol. 7, and books 27 (*al-ashriba*) to 29 (*al-tuqta*) in vols. 9 and 10.\(^{20}\) It ends with the manuscript Murād Mullā.

2. **Riwayne B:** Abū ʿAlā ʿAlī ibn Aḥmad al-ʿIṣbahānī in Mecca—Muḥammad ibn al-Ḥasan ibn Ibrāhīm ibn Ḥishām al-Ṭūsī—Muḥammad ibn ʿAlī al-Najjār—ʿAbd al-Razzāq. It is found in only three books of the manuscript Murād Mullā: in book 15 (*ahl al-kitāb*), that is, at the beginning of vol. 6, in book 18 (*al-buyūʿ*) and probably also the immediately following *kitāb al-shahādāt* with which vol. 8 starts. This tradition is externally distinguished from the first in that it much more regularly introduces ʿAbd al-Razzāq with “akhbaranā.”

3. **Riwayne C:** Abū ʿAl-Qāsim ʿAbd al-Aʿlā ibn Muḥammad ibn al-Ḥasan ibn ʿAbd al-Aʿlā al-Būṣi, qāḍī in ʿ Ṣanʿāʾ—Abū Yaʿqūb Ishāq ibn Ibrāhīm ibn ʿAbbād al-Dabārī—ʿAbd al-Razzāq. It begins in vol. 8 with the twentieth book (*al-mukātabāt*) and probably extends to the end of the *kitāb al-mudābbar* in vol. 9. This is not completely certain, because in these books the riwayne is either missing or reduced to the last link (al-Dabārī). This could also indicate riwayne A, which is externally hardly different from C.

These three riwayne are limited to the manuscript Murād Mullā, and the next two to the manuscript Fayḍ Allāh Efendi.


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\(^{18}\) AM 10, p. 146.

\(^{19}\) The sigla for the riwayne are mine.

\(^{20}\) In vol. 9, p. 271 one should probably read Abū Saʿīd ʿAlī ibn Muḥammad instead of “ʿAbd al-Razzāq ʿAlī ibn Muḥammad.”
This manuscript probably begins with it (vol. 10, p. 146). Since the beginning of the thirtieth book is missing along with its heading, one can conclude this only from the outer form, which corresponds to that of the following book (al-farā’īd). There, and in the last (33rd) book, the kitāb al-jāmi’, the riwāya is specified. It generally introduces the individual traditions with “akhbaranā ‘Abd al-Razzāq,” and is differentiated by this from the following riwāya.

5. Riwāya E: Abū ‘Umar Aḥmad ibn Khālid [ibn Yazīd al-Qurṭubī]—Abū Muḥammad ‘Ubayd ibn Muḥammad al-Kashwārī—Muḥammad ibn Yūsuf al-Ḥudhāqī—‘Abd al-Razzāq. It is limited to the kitāb ahl al-kitābatayn and the waṣāyā cited in its appendix, and is externally to be distinguished from all of the other riwāyas in that ‘Abd al-Razzāq is not named before each individual tradition.

The riwāyas A, C and D run through Isḥāq ibn Ibrāhīm al-Dabarī. Thus, 29 of the 33 books of the Muṣannaf derive from his tradition, that is, the greater part (90%) of the text available in the edition.

The existence of different strands of transmission in one and the same manuscript indicates that the textual stock it presents is a collection of parts of the work. This implies that we cannot be sure whether the work is really complete and the order of all the books really original. The collectors who put together the existing recensions between the second half of the fourth/tenth century and the beginning of the seventh/thirteenth or the eighth/fourteenth century do not seem to have had at their disposal a complete version in a single riwāya. This also makes it difficult, if not impossible, to determine with certainty whether all the “books” contained in the edition were originally part of the Muṣannaf. This question presents itself not only in the case of the last book, the kitāb al-jāmi’, which the editor characterizes as a work of Ma’mar ibn Rāshid transmitted by ‘Abd al-Razzāq,21 but also in the case of the kitāb al-maghāzi, which also contains primarily texts of Ma’mar. 22 However, both books contain not exclusively traditions of Ma’mar, but also—if in smaller

numbers—ones which ‘Abd al-Razzāq purports to have from others. Thus, it is possible that ‘Abd al-Razzāq or his students already regarded them as part of his tradition work. This, in any case, is the view of the earliest manuscript (Fayḍ Allāh Efendi), which closes the kitāb al-jāmi‘ with the comment: Tamāma kitābu l-jāmi‘ [. . .] wa bitamāmihi tamāma jami‘u kitābi l-muṣannafi li-abī Bakr ‘Abd al-Razzāq ibn Ḥammām ibn Nāǧī al-Ṣan‘ānī al-Yamānī [. . .] ([With this] closes the kitāb al-jāmi‘, and with its completion the entire Kitāb al-Muṣannaf of ‘Abd al-Razzāq, and so forth, is complete). This does not exclude the possibility that the Kitāb al-jāmi‘ of Ma‘mar is contained virtually in toto in the section of ‘Abd al-Razzāq’s Muṣannaf of the same name.

2. The Sources of the Work

Even in a fleeting overview of the work, it is conspicuous that most of its books (kutub) contain materials which are supposed to derive largely from three people: Ma‘mar, Ibn Jurayj and al-Thawrī. Exceptions to this rule are the books al-maghāzī and al-jāmi‘, which contain primarily texts of Ma‘mar, and the kitāb al-buyū‘, which has only very few traditions of Ibn Jurayj. On the basis of a representative spot check of 3810 individual traditions—or 21% of the relevant parts of the entire work—the supposed origin of ‘Abd al-Razzāq’s texts appears, more precisely, as follows: about 32% are from Ma‘mar, 29% from Ibn Jurayj and 22% from al-Thawrī. Traditions from Ibn ‘Uyayna follow at a wide remove (4%). The remaining 13% are distributed over 90 names, to which only 1% or less are attributed; among them are found other famous legal scholars of the second/eighth century, such as Abu Ḥanīfa (0.7%) and Mālik (0.6%).

Let us assume for the moment that ‘Abd al-Razzāq’s statements of origins are correct. Then the work is compiled from three major sources. Each of the three major sources contributed several thousand individual traditions. This enormous volume makes it natural to suppose that they are either originally independent works, or parts

23 AM 11, p. 471.
24 The three “atypical” books have been excluded.
thereof, or the content of the instruction of these three figures, who in terms of age could have been his teachers, recorded in writing by ‘Abd al-Razzāq. On the other hand, the possibility that ‘Abd al-Razzāq fabricated his statements of origin in general is not to be precluded. The question which of the two hypotheses is more probable can, without recourse to external—for instance, biographical or bibliographical—sources, most readily be answered on the basis of the four more voluminous complexes of tradition. Assuming that ‘Abd al-Razzāq arbitrarily attributed them to the four people named—Ma‘mar, Ibn Jurayj, al-Thawrī and Ibn ‘Uyayna—, they ought to be similar in their structure of transmission. To make a comparison possible, it suffices to quantify the statements of origin of the four sources and assemble them into profiles.

1. The Ma‘mar source consists 28% of materials from al-Zuhrī and 25% of materials from Qatāda. 11% goes under the name Ayyūb, just over 6% is anonymous, and 5% comes from Ibn Tawūs. Ma‘mar’s own statements make up only 1%. The remainder (24%) is distributed among 77 names.25

2. The Ibn Jurayj source consists 39% of material from ‘Ata‘, 8% is anonymous, 7% is allotted to ‘Amr ibn Dīnār, 6% to Ibn Shihāb [al-Zuhrī], and 5% to Ibn Tawūs. Ibn Jurayj’s own material comes to 1%. The remainder (34%) is divided among 103 persons.

3. In the case of the al-Thawrī source, his own statements dominate with over 19%; there follow, at some distance, the material of Mansūr (7%) and of Jābir (6%); 3% of the texts are anonymous, and the remaining 65% is distributed among 161 sources.

4. The Ibn ‘Uyayna source contains 23% traditions of ‘Amr ibn Dīnār; 9% are allotted to Ibn abī Najīḥ, 8% to Yahyā ibn Sa‘īd, 6% to Iṣmā‘īl ibn abī Khālid, 3–4% are anonymous, and the remaining 50% represent 37 persons. His own opinion is not present.

Arranged in a table, the results appear as follows:

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25 The calculations are based on the sampling given on pp. 58, 74 and 78, note 13.
These profiles show that each source has a completely individual face. It is unlikely that a forger ordering materials and equipping them with false labels would create units so strongly differentiated from each other. At the same time, it is to be noted that the profiles only represent very rough outlines and that the differences are rein-

<table>
<thead>
<tr>
<th>Sources:</th>
<th>Ma'mar</th>
<th>Ibn Jurayj</th>
<th>al-Thawrî</th>
<th>Ibn 'Uyayna</th>
<th>'Abd al-Razzâq</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of main informants:</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Shares of the main informants:</td>
<td>28/25%</td>
<td>39%</td>
<td>—</td>
<td>23%</td>
<td>32/29/22%</td>
</tr>
<tr>
<td>Number of less frequent informants:</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Shares of less frequent informants:</td>
<td>11/6/5%</td>
<td>7/6/5%</td>
<td>7/6%</td>
<td>9/8/6%</td>
<td>4%</td>
</tr>
<tr>
<td>Number of rarer informants:</td>
<td>77</td>
<td>103</td>
<td>161</td>
<td>37</td>
<td>90</td>
</tr>
<tr>
<td>Residual shares of rarer informants:</td>
<td>24%</td>
<td>34%</td>
<td>65%</td>
<td>50%</td>
<td>13%</td>
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<td>Personal material:</td>
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<td>1%</td>
<td>19%</td>
<td>0%</td>
<td>0.03%</td>
</tr>
<tr>
<td>Anonymous material:</td>
<td>6%</td>
<td>8%</td>
<td>3%</td>
<td>3–4%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Number of traditions per informant:</td>
<td>17</td>
<td>10.4</td>
<td>5.6</td>
<td>4.7</td>
<td>40.5</td>
</tr>
</tbody>
</table>

26 These numbers are limited to the sampling; the others are representative of the work as a whole.
27 This is the quotient from the total number of traditions and the number of transmitters.
forced as one goes into greater detail, for instance, inquiring into the geographical affiliations of the sources or the formal characteristics of the texts. Thus, analysis of the structure of transmission of the Muṣannaf of ʿAbd al-Razzāq and his main sources leads to the conclusion that we are more probably dealing with real sources than with fictions of ʿAbd al-Razzāq’s.

Some further formal characteristics which are conspicuous in ʿAbd al-Razzāq’s presentation of the traditions point in the same direction, for instance, the fact that ʿAbd al-Razzāq occasionally expresses his uncertainty about the exact origin of a tradition. An example:

ʿAbd al-Razzāq from al-Thawrī from Mughrīra or someone else—Abū Bakr [i.e., ʿAbd al-Razzāq] was unsure about it—from Ibrāhīm, who said: . . .

In the case of a notorious forger such doubts are scarcely to be expected, because they would compromise his actual aim, the feigning of certain and unbroken transmission.

ʿAbd al-Razzāq claims to have received thousands of texts directly from Ibn Jurayj, al-Thawrī and Maʿmar. This could be a fabrication. However, the fact that, for instance, isnāds such as ʿAbd al-Razzāq—al-Thawrī—Ibn Jurayj . . . or—more rarely—ʿAbd al-Razzāq—Ibn Jurayj—al-Thawrī appear, and thus that indirect transmission from his main informants also occurs, is an indicator that ʿAbd al-Razzāq’s statements about origins are not arbitrarily chosen but really designate the sources from which the relevant traditions derive. This fact is just as un reconcilable with the forgery theory as ʿAbd al-Razzāq’s transmitting anonymous reports from people for whom he otherwise names one of his main sources, for instance, ʿAbd al-Razzāq from a Medinan scholar (shaykh), who said: I heard Ibn Shihāb report from . . ., or ʿAbd al-Razzāq from someone (rajul) from Ḥammād from . . .

28 I use the term “tradition,” in addition to its common meaning, as a synonym for ḥadīth, athar or khabar.
29 AM 6: 11825 (The number before the colon indicates the volume; the number after it is always the number of the text).
30 Cf. AM 6: 11682; 7: 12631, 13020, 13607.
31 Cf. AM 6: 10984.
32 Cf. AM 6: 10798.
33 Cf. AM 7: 12795, 13622.
general, he has traditions of Ibn Shihāb from Ibn Jurayj or Maʿmar and texts of Ḥammād from al-Thawrī or Maʿmar.

The results obtained from within the work find confirmation through reports of biographical character contained in various later works. Separate evaluation of these sources is advisable for methodological reasons, because the authenticity of the biographical traditions is no less controversial than that of the Ḥadīth and the early legal traditions.

**B. The Author and His Work in the Light of the Biographical Sources**

According to the biographical literature, his full name is ʿAbd al-Razzāq ibn Ḥammām ibn Nāfiʿ.42 As nisbas we find: al-Ṣanʿānī, 35 al-Yamānī 36 and al-Ḥimyarī.37 The last should indicate that he was a mawlā of the Ḥimyar.38 Born in the year 126/744,39 he grew up in Yemen and studied there, but also undertook business trips to Syria which surely led him through Mecca and Medina, where he used the opportunity to meet with the scholars there.40 Later he lived and taught in Yemen and died there at the age of 85 years 41 in the middle of the month of Shawwāl of the year 211/827.42

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38 See note 34 and Ibn ʿAsākir, Taʾrīkh, vol. 36, pp. 164, 166.


‘Abd al-Razzāq’s most important teacher was Ma‘mar ibn Rāshid, who originated from Basra but had settled in Yemen.43 According to his own statements, he studied with him for seven, eight or nine years.44 On the basis of his age, this must have been in the last years of the life of Ma‘mar, who died in 153/770.45 He was present at his death;46 presumably at that time he was still his student. The beginning of his studies with Ma‘mar is thus to be dated approximately in his twentieth year.47 Earlier, however, he seems to have taken advantage of a visit of the Meccan Ibn Jurayj in Yemen to attend his lectures.48 According to the statement of an older classmate of ‘Abd al-Razzāq’s, the later muftī and qādī of Ṣan‘ā’49 Hishām ibn Yūsuf (d. 197/812-3),50 he was then 18 years old;50 that is, Ibn Jurayj’s trip to Yemen would have to have taken place in the year 144/761-2. That is quite possible, since Ibn Jurayj’s journeys in the last years of his life—he died in 150/767-8—are documented elsewhere as well, and his presence is indicated in Basra in the following year.51 Sufyān al-Thawrī (d. 161/777-8) also numbers among ‘Abd al-Razzāq’s more significant teachers.52 He made a stay in Yemen in the year 149/766,53 and ‘Abd al-Razzāq probably obtained

45 Variants: 152, 154.
47 This is probably what is referred to by al-Dhahābī’s statement, Mizān, vol. 2, p. 126, that he devoted himself to the study of Tradition (jalaba l‘ilm) at the age of 20. On the relationship between ‘Abd al-Razzāq and Ma‘mar cf. also Ibn Ḥajar, Tahdhib, vol. 6, pp. 311, 312, 313.
48 Cf. also Ibn abi Ḥātim, Taqdimā, pp. 52 f. Also Ibn Ḥajar, Tahdhib, vol. 6, pp. 311, 312.
51 See below, p. 282.
the bulk of the material transmitted from him on this occasion. The same is true of Sufyân ibn 'Uyayna (d. 198/813-4), who visited Yemen in the years 150/767 and 152/769\(^{54}\) and is named in the biographical literature as a teacher of 'Abd al-Razzâq.\(^{55}\) That at this time he was already studying with Ibn 'Uyayna can be inferred from a remark of 'Abd al-Razzâq's that he presented a hadîth of Ibn 'Uyayna to Mâ'mar.\(^{56}\) Furthermore, it is not impossible that 'Abd al-Razzâq repeatedly contacted the Meccans Ibn Jurayj and Ibn 'Uyayna, as well as the Kufan al-Thawrî, who spent most of the years 155/772-160/777 in Mecca,\(^{57}\) on the occasion of the hajj. Aside from the people named, further names of informants are listed in the biographical works, among them 'Ubayd Allâh ibn 'Umar, al-Awzâ'î and Mâlik, to name only the better known.\(^{58}\) Most can also be documented as such in the Musannaf. Thus, the statements of the biographical literature about 'Abd al-Razzâq's teachers to a large extent correspond to the information which can be gained from his work itself about his more significant sources. Since, as far as I can tell, a direct dependence of the biographical reports on the work of 'Abd al-Razzâq—in the form of their being extracted from it—is not to be observed, they may be regarded as an independent confirmation of the conclusions drawn from the work itself.

'Abd al-Razzâq achieved such fame as a scholar in the last quarter of the second/eighth century that he attracted students from all corners of the Islamic oikoumene. Among them were the Iraqis Ahmad ibn Hanbal and Yahyâ ibn Ma'âin, two of the outstanding 'ulama’ of the first half of the third/ninth century, who studied with him for a year before the turn of the century.\(^{59}\) Also found among the numerous students of 'Abd al-Razzâq is the name Ishâq ibn Ibrâhîm al-

\(^{54}\) Ibn Sa'd, as in note 53.


\(^{57}\) Cf. al-Baghdâdî, Tarîkh, vol. 9, pp. 71, 153, 159 f.


Dabarī, from whom a large part of the version of the Muṣannaf which has come down to us derives.

ʿAbd al-Razzāq’s reputation rested above all on his book or books. The earliest references to them derive from his students Ibn Maʿīn (d. 233/847) and Ibn Hanbal (d. 241/855–6) and their student al-Bukhārī (d. 256/870). From them it can be inferred only that the books came into being before the turn of the century and that, among other things, they contained hadiths, but the references provide neither a title nor any details about their structure. Ibn al-Nadīm (d. 385/995) mentions a Kitāb al-Sunan fī l-fiqh and a Kitāb al-Maghāzī by him. The designation “sunan book” leads one to assume that it was a work of the muṣannaf type. This is also implied by a number of characterisations of his work from the fourth/tenth century and later: Ibn ʿAdi (d. 365/975–6) remarks of ʿAbd al-Razzāq that he possessed asnāf and a voluminous Hadith. Ibn Hibbān (d. 354/965) numbers him among those who gathered (jamaʿa) and ordered thematically (ṣanṭafa). Al-Khushanī (d. 371/981–2) speaks of a “Kitāb ʿAbd al-Razzāq fī khitilāf al-nās fī l-fiqh.” Ibn Khayr (d. 575/1179–80) knows the Muṣannaf by ʿAbd al-Razzāq in different riwāyas and mentions a kitāb al-maghāzī and a kitāb al-jamiʿ as parts of it.

Al-Dhahabi (d. 748/1347–8) writes: “Ṣanṭafa al-Jāmiʿ al-kabīr” (he composed the Jāmiʿ al-kabīr arranged according to subject areas), and in another place, “He was the author of al-Taṣāfīf.” al-Ṣafadī (d. 764/1363) has: “Ṣanṭafa l-Taṣfīr wa-l-Sunan.” This last indicates the existence of a Taṣfīr transmitted from him. Ibn Kathīr (d. 774/1372–3) mentions him as the author of the Muṣannaf and of the

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63 Ibn Ḥajar, Tadhkīb, vol. 6, pp. 313, 314.
68 al-Ṣafadī, Nakt, p. 192.
Musnad, al-Šafadī and Ibn al-Imād (d. 1089/1687) as the composer of the Musannafât. It is to be assumed that the Kitāb al-sunan fī l-fiqh, the Jāmī’ al-kabīr, the Tašānfīf, the Musannaf and the Musannafât are one and the same work, of which the present edition of the manuscripts entitled al-Musannaf represents a recension. Possibly all of these titles do not derive from the author himself, but designate the genre.

However, ‘Abd al-Razzāq was already controversial in his lifetime. Several reasons for this can be discerned: 1. Inaccuracies in his oral transmission. It is true that it is emphasized by his students that he knew the /fadf.th of Ma’mar by heart and was better versed in this area than other students of Ma’mar, that his transmission from Ibn JuraY.i was more reliable than that of others, and that the material of his book consisted exclusively of direct, “heard” traditions, but Yahyā ibn Ma’īn and ʿAḥmad ibn Ḥanbal were able to observe

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70 Ibn Kathīr, Bīdāya, vol. 9, p. 265. al-Dabbāgh (d. 696/1297) also has “Musannaf” in Ma’ālīm al-imān, according to Muranyi, “Das Kitāb Musnad Ḥadīth Mālik,” p. 134.
73 It would be wrong, however, to conclude, as G. R. Hawting did in his review in Bulletin of the School of Oriental and African Studies 59 (1996), p. 142, that early scholars did not associate a work called al-Musannaf with ‘Abd al-Razzāq simply because the title “al-Musannaf” appears only late in Islamic biographical literature. ‘Abd al-Razzāq’s Musannaf was known by this title to Ibn Mufarrij (d. 380/990–1), i.e. in the fourth/tenth century al-Andalus (cf. Ibn Khayr, Fahrasa (Saragossa, 1894), pp. 128–130), and—obviously independently from that transmission—to Ibn abī Zayd al-Qayrawānī (d. 386/996) (cf. M. Muranyi, Beiträge zur Geschichte der Ḥadīth- und Rechtsgelehrsamkeit der Mālikyya in Nordafrika bis zum 5. Jh. d. H. (Wiesbaden, 1997), p. 256). Muranyi also mentions (p. 206) that al-Dabārī’s transmission had already been brought to Qayrawān a generation earlier by Ibn abī Ḥanṣūr (d. 337/948) under the title Kitāb ‘Abd al-Razzāq fī khatilāf al-nās fī l-fiqh. The fact that the work was transmitted with different titles almost from the beginning does not necessarily mean that the work achieved its literary stabilization only much later, as Hawting suggests (op. cit., p. 143). If the work is not an authored book but—as I think—the transcription of ‘Abd al-Razzāq’s lectures in which he transmitted his thematically arranged collections of legally relevant traditions, it is easily understandable that the whole had no title given to it by ‘Abd al-Razzāq himself. The lack of title does not mean, however, that there was no work by him at all or that it was very different from that presented in the manuscripts written in the seventh/thirteenth and eighth/fourteenth centuries.
that he made mistakes when he was not reading from his written texts.\textsuperscript{77} It was also reported of him that he once let himself be prevailed upon to read aloud hadiths written by others that were unknown to him, which was regarded as passing on materials one had not heard oneself and was strongly condemned by the critical scholars.\textsuperscript{78} Because of this, Yahyā refused to write down traditions from 'Abd al-Razzāq which were not recorded in his "book."\textsuperscript{79} Al-Bukhārī followed him in this, and considered as "ṣahih" only the traditions contained "in his book."\textsuperscript{80} 2. In the last years of his life 'Abd al-Razzāq lost his eyesight\textsuperscript{81} and could not himself check against the original the copies of his book presented to him, but depended in cases of doubt on the versions of the students whom he knew to be particularly accurate,\textsuperscript{82} a procedure which he had perhaps also practiced before becoming blind. Furthermore, he is supposed to have dictated texts from memory. Because of this, Ahmad ibn Ḥanbal deemed the traditions of people who studied with him in this period to be da'īf (unreliable).\textsuperscript{83} Later scholars such as Ibn al-Ṣalāḥ (d. 643/1245–6) joined him in this opinion\textsuperscript{84} and—following al-Nasa'I (d. 303/915–6)—insisted that texts deriving from 'Abd al-Razzāq be tested, whether to distinguish the later from the earlier, good transmission, or because they generally distrusted him and only wanted to accept the traditions attested elsewhere as well.\textsuperscript{85}

3. Such fundamental reservations were based less on 'Abd al-Razzāq’s transmission practices than on his sympathy for the Shi'a. It is attested by his profession to Yahyā ibn Ma’in and by numerous pro-'Alid statements.\textsuperscript{86} 'Abd al-Razzāq was won for the Shi'a——

\textsuperscript{80} al-Bukhārī, \textit{Ta’rīkh}, vol. 3/2, p. 130.
\textsuperscript{82} al-Baghdādī, \textit{Kīya}, p. 259 (source: Ishāq ibn abī Ṭirīfī, i.e., Abū Ya’qūb ibn Ibrāhīm al-Marwazī, d. 245/859–60, a student of 'Abd al-Razzāq’s. On him cf. al-Dhahābī, \textit{Tadhkīra}, vol. 2, pp. 484 f.).
\textsuperscript{84} al-Dhahābī, \textit{Mīzān}, vol. 2, p. 128.
clearly only at a rather advanced age—by Ja'far ibn Sulaymān al-Ḍubaṭī (d. 178/794–5) during the latter's sojourn in the Yemen.\(^87\)

Some of his students deserted him for this reason,\(^88\) but Ḥadīth specialists such as Yahyā ibn Ma'īn and Al'Āmad ibn Ḥanbal did not regard his transmission as devalued by it. The statement is reported from Yahyā: “Even if 'Abd al-Razzāq were to lapse from Islam, we would not give up his Ḥadīth.”\(^89\)

His Shi'ism is generally described as moderate.\(^90\) He is supposed to have distanced himself from more radical movements like that of the Rawāfī.\(^91\)

Nevertheless, some later scholars apparently took his conversion to the Shi'a as an occasion to put his reliability in question. According to Abū Ḥātim (d. 277/890–1), for instance, one may indeed write down 'Abd al-Razzāq’s Ḥadīth, but not depend on it.\(^92\) Others, such as al-Bukhārī (d. 256/870), al-Duhūlī (d. 258/872), al-'Ijī (d. 261/874–5), Abū Dawūd (d. 275/888–9), al-Bazzār (d. 292/905), and al-Dāraquṭnī (d. 385/995), considered him, aside from exceptional cases, to be reliable.\(^93\)

The edition of the Musannaf is based mainly on the version of the work transmitted by Abū Ya'qūb Isḥāq ibn Ibrāhīm ibn 'Abbād al-Dabarī.\(^94\) Not very much can be learned about him from the biographical literature.\(^95\) He came from the village of Dabar near to Ṣa'nā' and already attended 'Abd al-Razzāq’s lectures as a small


\(^{94}\) See p. 57.

boy with his father. He “heard” the *Muṣannaf*96 in 210/825–6—thus, a year before ‘Abd al-Razzāq’s death—under the supervision of his father (bi-‘tinā wālīdīhi), at the age of approximately six years.97 His father was thus a student of ‘Abd al-Razzāq’s, and it is to be assumed that he produced the manuscript which later passed into the possession of his son. Since, however, Ishāq “heard” the text as a child or at least claimed to have done so, he was able to omit his father from the *insād*. Ishāq al-Dabarī is characterized as “ṣaḥīḥ al-samāʾ” (impeccable in oral transmission) and “ṣādūq” (upright),98 but al-Dhahabī (d. 748/1347–8) notes that he also transmitted unacceptable (munkara) hadiths from ‘Abd al-Razzāq, of which it was doubtful whether they really derived from ‘Abd al-Razzāq because they were unique, and texts about the authenticity of which his teacher was himself unsure. Muslim (d. 261/874–5), Abū ‘Awāna (d. 316/928–9), al-Ṭabarānī (d. 360/971), al-Daraqūṭnī (d. 385/995) and others, however, considered him reliable and drew ‘Abd al-Razzāq material from him. The suspicion that he belonged to the Shī’a seems to feed exclusively on the fact that he was a student of ‘Abd al-Razzāq and transmitted some of his pro-‘Alid statements.99 He died in 286/899.100

According to the criteria of critical Ḥadīth scholars of the third/ninth century of the stature of an ʿAbd al-Razzāq’s *Muṣannaf* through Ishāq ibn ʿIbrāhīm should be categorized as worthless. It was took place in the last years of his life, when he had become blind and was no longer able to check what was read to him with the necessary exactitude. The “heard” acquisition of the text by a six-year-old—even with the help of an adult—certainly does not contribute to a more positive evaluation.

The historian must not necessarily adopt the strict standards of Ḥadīth criticism. For his purpose, a purely written, not “heard” textual

98 The precise meaning of this and other termini of evaluation in Ḥadīth criticism is difficult to define and probably varies from author to author. Cf. Juynboll, *Muslim Tradition*, pp. 184 ff.
100 Cf. Ibn Khayr, *Fahrasa*, p. 130. al-Dhahabī’s date of 182 is an error.
transmission is completely usable, even at the risk that it is faultier. It is to be inferred from a comment of 'Abd al-Razzāq's student Ishāq ibn abī Isrā'īl that at lectures several students simultaneously checked over their copies and when differences occurred the master clarified the valid version of the text. Despite his blindness, through this procedure a high degree of agreement between original and copy could be achieved. Since it is to be assumed that Ishāq ibn Ibrāhīm al-Dabari's manuscript was prepared by his father or someone else from a text of 'Abd al-Razzāq's intended for instruction, Ishāq's age has no significance for the written process of transmission. Since, so far as I can see, neither Ishāq nor later transmitters substantially expanded or changed the text—aside from minimal clarifications——, it is to be assumed that Ishāq's tradition is an authentic version of the works of 'Abd al-Razzāq. The fact that

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101 Cf., for instance, AM 7: 12120, 13123, 13855.
102 Specifically, the last version taught in his circle during his lifetime. The possibility cannot be precluded that 'Abd al-Razzāq supplemented or abbreviated his collection several times in the course of his life.

Hawting doubts the conclusion that the part of the text which is ascribed to al-Dabari reproduces 'Abd al-Razzāq's teaching (cf. his review, p. 142). He claims that the text "should be seen as the work of a later generation." His arguments are: 1) "Reports in the sources indicate" that expressions such as "qarā'na 'alā" are "often perfunctory", i.e. are not an indication of direct transmission; 2) most of the traditions in the work begin with "qāla 'Abd al-Razzāq." Neither argument is convincing. 1) Reports (Which reports? In which sources?) that the expression qara'na 'alā was used although the text had not been read to the transmitter or author, cannot be generalized. It is dangerous to conclude on the basis of single reports that this happened "often" or almost always and that the term, therefore, has no specific meaning at all. 2) The claim that "most of the traditions in the work begin with qāla 'Abd al-Razzāq" is not correct. Al-Dabari's riwāya is usually introduced at the top of a kitāb, rarely at the beginning of a chapter, with qara'na 'alā and then mostly confines itself to giving only the name 'Abd al-Razzāq at the head of the isnāds. Only three books of al-Dabari's transmission have "akhbaranā 'Abd al-Razzāq" (vol. 2, p. 335, vol. 9, p. 199 and vol. 10, p. 379) and only two books (vol. 2, p. 271 and vol. 9, p. 137) have "an 'Abd al-Razzāq" in their introductory formulae. This system is frequently interrupted by the expression "akhbaranā 'Abd al-Razzāq" which obviously means the same as "qara'na 'alā 'Abd al-Razzāq." In al-Qurṭubi's riwāya the words "akhbaranā 'Abd al-Razzāq" are even regularly used to introduce the isnāds. Two other transmissions from al-Dabari, those of al-Arābī and al-Būṣi, correspond, however, in not giving akhbaranā every time. Therefore, their method of quotation seems to be al-Dabari's original text which has been systematically corrected by al-Qurṭubi. The method of quotation displayed in the (original) transmission of al-Dabari's text does not necessarily indicate later editing but this method may, of course, have been used by pupils when making copies of the material collected from their teacher.
Ishāq was still a child at the time of ‘Abd al-Razzāq’s death could also speak for the assumption that the text remained largely in its original form and was not supplemented with oral traditions to any great extent.¹⁰³

In comparison, very few texts begin with “qāla ‘Abd al-Razzāq” and they are clearly in most cases additions by ‘Abd al-Razzāq himself to traditions quoted before or they are his comments on them. Strikingly, many of the additional traditions introduced with “qāla ‘Abd al-Razzāq” continue with “samī’tu X” or another expression of samā’ which is normally not the case with the other types of introduction. It is erroneous to assume that the expression “qāla X” necessarily indicates that the text is of a later generation. It may also be a comment made by the author or transmitter of a work during the transmission process written down by the students in the margin of their copies and later integrated in the body of the text, as seems to be the case in al-Dabari’s transmission of ‘Abd al-Razzāq’s Musannaf.


¹⁰³ Hawting objected to such a reconstruction that it was based on an “undynamic view of the tradition” and that “the effects of the continuous reworking of the tradition, the introduction of glosses and improvements, the abbreviation and expansion of material” and so forth, “let alone simple errors of scribes and narrators” do not allow one to speak of authentic material. This objection has three shortcomings: 1) It is not true that I neglect those “effects,” as can be seen, for example, in the discussion of the corpora of traditions ascribed to Ibn Jurayj and Ibn ‘Uyayna, both allegedly going back to ‘Amr ibn Dhnār (see below pp. 180–185) and in my articles “Der Fiqh des -Zuhri,” “Quo vadis Hadīth-Forschung,” “The Prophet and the Cat,” and “The Murder of Ibn Abī l-Ḥuqayq.” 2) The possibility that traditions changed during the transmission process must not lead us to conclude that we must give up the idea of reconstructing their original form and documenting the changes. 3) The concept of “continuous reworking of the tradition” which includes all possible changes is too general to be of any practical use. We must differentiate between types of changes that occur during the transmission process. It is one of the results of this study that ‘Abd al-Razzāq and Ibn Jurayj can be characterized as collectors who tried to reproduce as accurately as possible the material which they had collected. This result does not exclude the possibility that they sometimes made mistakes and that later transmitters, copyists and even the modern editor of the work also made mistakes. I indicated obvious errors where I came across them. But these types of changes do not justify the conclusion that, for example, ‘Abd al-Razzāq’s transmission from Ibn Jurayj is not authentic as a whole, i.e. that we cannot be sure that the texts really go back to him and that they are generally so heavily distorted that they cannot be ascribed to Ibn Jurayj anymore. There are no indications of such dramatic changes. Hawting’s comparison with historical traditions is misleading. The free use of traditions in this genre may not be generalized and transferred to the field of legal Hadīth even if instances of manipulation can be observed here as well.
C. The *Musannaf*—A Source for the Legal History of the First Half of the Second/Eighth Century

Thus we have clarified two prerequisites on which the utility of the work as a historical source ultimately depends:

1. The recension available in an edited form very probably reproduces faithfully 'Abd al-Razzāq's teaching material—aside from the sequence of all the books, textual losses and errors which crept in during copying and editing. In other words, the *Musannaf* represents a text which is in principle trustworthy and whose origins can be dated in the first decade of the third/ninth century—perhaps even earlier.

2. The work itself seems to be a compilation of the texts of older sources of varying size. They can be reconstructed from the statements of provenance (iṣnāds).104 'Abd al-Razzāq came into possession of the materials of his four main sources largely between the years 144/761–2 and 153/770. They are presumably texts which go back to scholars of the first half of the second/eighth century—only Ibn 'Uayna lived much longer—, which the author acquired directly from them. Consequently, the materials of 'Abd al-Razzāq's main sources originated in the course of the first half of the second/eighth century and are thus among the earliest legally relevant textual collections of large dimensions which have appeared to date and whose authenticity can be considered ensured.105

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104 With "reconstruction of sources" I do not mean here that we can reconstruct earlier works in their original form, but only that we can compile all the texts which are ascribed by 'Abd al-Razzāq to main teachers.

105 The word "authenticity" used here must not be misunderstood. I do not mean that the content of the traditions ascribed by 'Abd al-Razzāq to Ibn Jurayj, for example, is reliable, but only that his ascription to Ibn Jurayj can be trusted. Whether the material transmitted by Ibn Jurayj is reliable or not is another issue. Besides, my judgement that the corpus of Ibn Jurayj traditions is authentic is limited to the material contained in 'Abd al-Razzāq's *Musannaf*. Texts ascribed to Ibn Jurayj in other sources are not included. The question as to whether his name was used by someone else to confer legitimacy cannot be answered without a detailed study of the sources in question. In the case of 'Abd al-Razzāq's *Musannaf*, however, it can be ruled out that Ibn Jurayj's name was used by someone else.

G. H. A. Juynboll expressed some reservation about my conclusion that the texts which in the *Musannaf* are ascribed to 'Abd al-Razzāq's main informants Ibn Jurayj, Ma'mar and al-Thawrī really derive from them (cf. his “New Perspectives in the Study of Early Islamic Jurisprudence?”*, Bibliotheca Orientalis 49 (1992), pp. 358–361). He considers it possible that 'Abd al-Razzāq had fictitiously ascribed several or even many texts to his alleged informants. He argues that it was common among *Hadith
Since all four of the scholars from whom ‘Abd al-Razzāq has the greater part of his material are also known as the authors of written works which have until now been considered lost—for instance, the *Kitāb al-Sunan* of Ibn Jurayj or the *Jāmi‘ al-kabīr* and *al-ṣaghīr* of Sufyān al-Thawrī¹⁰⁶—, the question presents itself whether such works—received in lectures—are not completely or partially ‘Abd al-Razzāq’s sources. It is imaginable that he cannibalized them and reworked them into a new synthesis. This impression is unavoidable; whether it is tenable can only be decided after reconstruction and a detailed investigation of the individual strands of sources.

Another important problem is what informational value these sources have for the question of the origins and development of Islamic jurisprudence, how old the material that they contain is, where it comes from, what characteristics it displays in terms of form and content, and what conclusions can be drawn from it with respect to our question. To get to the bottom of these questions and to test scholars of the third/ninth century to invent additional isnāds and *mutūn*. As evidence, Juynboll refers to the fact that collections of the third/ninth century and later contain many traditions ascribed to ‘Abd al-Razzāq, Mālik, Sufyān ibn ‘Uyayna and al-Ṭayālīsī that cannot be found in the collections preserved under their names. These traditions must, therefore, have been forged. This argument is not convincing, however, because it is improbable that these collections are complete records of their teachings. Juynboll thinks, furthermore, that the textual elements which I interpreted as “criteria of authenticity” were introduced by ‘Abd al-Razzāq on purpose “in the expectation that even a critical *hadith* student such as Motzki, living many, say twelve centuries later, might fall for this, being taken in by these frills and tassels as ‘hallmarks of authenticity.’” This and Juynboll’s other highly speculative arguments as to why forgery of informants on a large scale may be “conceivable” need to be substantiated in order to be acceptable. In the meantime we can safely start from the working hypothesis that ‘Abd al-Razzāq’s main sources are not licēuous. I agree with Juynboll that it is desirable to check “diligently every single tradition supposedly transmitted by Ibn Jurayj to his alleged pupil,” by comparing it with similar traditions in all other sources available, in order to be certain whether it really goes back to Ibn Jurayj. Yet testing all traditions of the *Muṣannaf* ascribed to Ibn Jurayj, Ma‘mar, al-Thawrī and others in this manner needs generations of scholars devoting their energies to that enterprise. By comparing single traditions of the *Muṣannaf* with parallels in other sources, I have until now not detected a tradition which ‘Abd al-Razzāq or his transmitters purposely falsely ascribed to one of his main informants.

¹⁰⁶ Cf. Ibn al-Nadīm, *Fihrist*, pp. 315, 316. According to him Ibn ‘Uyayna did not have a book; one could only hear his lectures. This probably means that he did not supply a written text to be copied. However, works are ascribed to him, which consequently are probably notes by his students: a *Tāfṣīr* (thus op. cit., p. 316) and a *Kitāb al-Jawāmi‘ fi l-sunan wa-l-ahwāh* (thus Abū Tālib al-Makkī, *Qūt al-qulūb*, vol. 1, p. 324. Cf. also Sezgin, *Bukhārī’nin kaynakları*, p. 42). On Ma‘mar’s *Jāmi‘*, see above, p. 57, and Sezgin, “Hadis musannefatının mebdei.”
whether they can be answered at all with the help of these sources, I have chosen two of ‘Abd al-Razzāq’s textual traditions—those of Ibn Jurayj and Ibn ‘Uayna—for a pilot study. One reason for this choice is that both are Meccan scholars. Since we know as good as nothing about the development of jurisprudence in Mecca in the first/seventh and second/eighth centuries—conditions in Medina and Kufa have been much more thoroughly researched and depicted—there is an opportunity to fill this gap with the help of the materials of the two figures named. Another, decisive factor was the observation of certain formal characteristics of the Ibn Jurayj source which seemed particularly favorable for the determination of the provenance and authenticity of the texts contained in it.

In view of the predominantly homogeneous structure of the Muṣannaf, it would not have been very efficient to extend the study over the entire work. Despite the expenditure of several extra years, the conclusions would not have looked very different. For this reason, I have chosen a sufficiently large textual basis—the books al-nikāḥ and al-ṭalāq, that is, three quarters of the sixth and the entire seventh volume of the work—but took pains to depict the results in a representative way. In principle, they are valid for the entire work with the exception of the appended kitāb al-jāmi‘ and the kitāb al-maghāzī, which contain material from neither Ibn Jurayj nor Ibn ‘Uayna, and of the kitāb al-buyū‘, where texts of Ma‘mar and al-Thawrī dominate. This limitation, furthermore, will—I hope—contribute to the transparency and testability of the argumentation, which often leave something to be desired in Schacht’s work on the origins of Islamic law, which may in part explain his lasting success. Not least, a certain familiarity with the Islamic law of marriage and divorce resulting from some of my earlier work also played a role in the choice of the extract. It was, in fact, a great help in the clarification of many difficult passages.

108 This book also contains material on al-ridā‘, al-nafaq, al-hadd, al-zinā‘ and so forth, which in later works are often to be found in their own or in other chapters.
CHAPTER THREE

THE DEVELOPMENT OF ISLAMIC JURISPRUDENCE
IN MECCA TO THE MIDDLE OF THE
SECOND/EIGHTH CENTURY

A. The State of Research

Schacht admits in his chapter on the Meccan school of law in the "pre-literary period,"¹ by which he designates the time before the middle of the second/eighth century,² that we know only little about it.³ Its main authority among the Companions of the Prophet was Ibn ʿAbbās and its "representative scholar" at the beginning of the second/eighth century ʿAṭāʾ ibn abī Rābāḥ. He is—according to Schacht—the only one among the Meccan legal scholars of this time who is historically palpable as an individual. The information preserved about him and his teachings contain an "authentic core" which was overlaid with fictive attributions in the course of the second/eighth century.⁴ The sources on which Schacht relies are predominantly al-Shāfiʿī's (d. 204/820) Kitāb al-Umm, from which he draws nine references to him, and later commentaries on the Muwatta' of Mālik ibn Anas such as those of al-Zurqānī (d. 1122/1710), whom he cites three times and who once names as his source the commentary of Ibn ʿAbd al-Barr (d. 463/1070), and al-Lāknawī (d. 1304/1887) (one attestation). In addition, he mentions Abū Yūsuf (d. 182/798), al-Shaybānī (d. 189/805), al-Dārīmī (d. 255/868), and al-Maqīrizī (d. 845/1442)⁵ once each. In an article on ʿAṭāʾ Schacht adds a few biographical sources;⁶ however, he seems to have obtained from them no new information about his teachings.

The basis on which Schacht rests his conclusions is—as one can see—very narrow. A third of it consists of works whose authors lived

¹ Schacht, Origins, p. 228.
² Cf. op. cit., p. 140. Id., Introduction, p. 40.
³ Schacht, Origins, p. 249.
several centuries after ‘Aṭā’ and whose sources are largely unknown. Even between his main source, al-Shāfi‘ī, and ‘Aṭā’ there gapes more than a half-century. The credibility of the reports about the Meccan scholars of the close of the first/seventh century and the beginning of the second/eighth is thus anything but assured. Schacht assumes a critical attitude toward them and takes it for granted that opinions and doctrines were falsely attributed to ‘Aṭā’ after his death. As a criterion to distinguish the authentic from the false serves his theory about the historical development of Islamic jurisprudence, in which Iraq acted as a pioneer with respect to the Ḫiǧāz. This theory was developed essentially on the basis of the writings of al-Shāfi‘ī, and is thus only conditionally appropriate as a criterion to measure the credibility of information which also derives from him. Schacht’s categorization of specific traditions on the basis of their content as authentic, of others as “spurious,” “fictitious,” “forged,” “ascribed,” and so forth is consequently subjective to a high degree, which is sometimes expressed by careful formulations such as “possibly authentic,” “probably genuine,” “presumably genuine,” “certainly fictitious,” or “probably fictitious,” and so forth.7

G. H. A. Juynboll infers from the biographical work of Ibn Ḥajar that ‘Aṭā’ is supposed to have been the most important legal scholar of Mecca in his time, whose legal information was greatly in demand. He considers him to be one of the fuqahā’ whose legal decisions in the course of time were transformed into Prophetic hadīths, either by themselves or by anonymous persons. This assumption is based on the observation that ‘Aṭā’s samā‘ from numerous companions was doubted and that many hadīths were attributed to him which report about the Prophet without naming a source at the level of the Companions (mursalāt).8 Juynboll thus believes that the traditions of the Prophet transmitted under ‘Aṭā’s name are predominantly forgeries in which texts which were originally ‘Aṭā’s were put into the mouth of the Prophet (and probably also of the Companions).

The more recent studies by Muslim scholars on Islamic legal history, too, treat Meccan fiqh grudgingly in comparison to that of Medina and Kufa. One learns only that Ibn ‘Abbās was its founder.

7 Schacht, Origins, pp. 250 ff. and passim.
and that some of his students, above all ‘Ata’ ibn abi Rabah—\(^9\) in addition to him, further names are sometimes given: Mujahid, ‘Ikrima, Tawus and ‘Amr ibn Dinār—\(^10\) elaborated it. Scholars such as Abū l-Zubayr, ‘Abd Allāh ibn Khālid ibn Asīd, ‘Abd Allāh ibn Tawus and after them Ibn Jurayj and Ibn ‘Uayna continued the school. They were followed by Muslim ibn Khālid and Sa’d ibn Sālim. Its endpoint is represented by al-Shāfi‘ī.\(^11\) Ultimately this all derives from biographical source material and is limited to the listing of names and occasionally some additional biographical information.

### B. ‘Ata’ ibn Abī Rabah

1. **The main source: authenticity and mode of transmission**

Unlike J. Schacht in his time, today we have at our disposal a source which—if it is historically reliable—allows a comprehensive and detailed insight into ‘Ata’’s legal scholarship: the tradition of Ibn Jurayj from ‘Ata’ ibn abi Rabah in the *Musannaf* of ‘Abd al-Razzāq. The decisive question is whether or to what extent this tradition can be regarded as authentic. Can this problem be solved with more objective criteria than those used by Schacht?

a. **External formal criteria of authenticity**

**Magnitude**

It is possible to identify a number of formal criteria which speak for the genuineness of the corpus of ‘Ata’ traditions in the work of Ibn Jurayj. Its magnitude should be mentioned first. The traditions of Ibn Jurayj from ‘Ata’ ibn abi Rabah comprise almost 40% of all the texts of Ibn Jurayj contained in the *Musannaf* of ‘Abd al-Razzāq. The next 25% are distributed among the following five scholars:

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CHAPTER THREE

Five further sources to be classed as Meccan or Medinan together have a share of only 8.1%. These are:

Hishām ibn ‘Urwa (2.1%)
Yaḥyā ibn Sa‘īd (2%)
Ibn abī Mulayka (1.43%)
Mūsā ibn ‘Uqba (1.3%)
‘Amr ibn Shu‘ayb (1.25%)

There follows in the list of frequency a group of ten people with a total share of 6.9%. The quota for individuals lies between barely 1 and 0.5%:

Sulaymān ibn Mūsā
‘Aṭā’ al-Khurāsānī
Nāfī’, mawlā of Ibn ʿUmar
Ḥasan ibn Muslim
Mujāhid
Jaʿfar ibn Muḥammad
Dāwūd ibn abī Hind
Ayyūb ibn abī Tamīma
Ibrāhīm ibn Maysara
‘Abd Allāh ibn ʿUbayd ibn ʿUmayr

The remaining 21.5% are distributed among 86 people—among them famous Iraqi ḥujjāh’ such as al-Ḥasan [al-Baṣrī] and al-Ḥakam ibn ʿUtayba, but also a few unknowns, anonymous traditions and Ibn Jurayj’s own views.13

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12 The digits after the decimal point have been rounded off.
13 The frequency calculations are based on a sampling of 1,117 traditions of Ibn Jurayj from the kitāb al-nikāḥ and the kitāb al-talāq (= Vols. 6–7, Nos. 10243–14053). The total number of less frequent informants in the Musannaf as a whole is surely far above 100. The 1% lacking in the total are Ibn Jurayj’s own opinions. On this, see p. 83.
The curious proportions of Ibn Jurayj's alleged sources strongly speak against the possible assumption that he was a forger who projected his own legal ideas and those current in his time in Mecca and elsewhere back into the previous generation of scholars and fathered them upon them. Why should he have made the task so difficult for himself? Would one not expect that he would have referred to one or at the most a few of the most valued earlier fuqahā' and transmitters, and to these practically evenly? Why does he expose himself to the danger of having his hoax uncovered with a legion of sources?

It seems to me more plausible to interpret the distribution of frequency of Ibn Jurayj's sources as follows: 'Aṭā' ibn abī Rabāh was Ibn Jurayj's teacher over a relatively long period of time. Since, measuring by date of death, he was the eldest of Ibn Jurayj's significant authorities—he died in 115/733—one can conclude that he was probably his first teacher. After his death—or perhaps even during his lifetime—Ibn Jurayj also heard the lectures of other Meccan scholars such as 'Amr ibn Dīnār and Abū l-Zubayr and of some who were not resident in Mecca, for instance Ibn Shihāb al-Zuhrī, whether he traveled to them or contacted them when they stayed in Mecca for the ḥajj, or whether he obtained written texts from them or their students. The high number of sporadic informants can be explained by Ibn Jurayj's place of residence, Mecca, which as a place of pilgrimage offered him the opportunity to meet with scholars from all corners of the Islamic oikoumene. The relatively frequent appearance of Medinans with Ibn Jurayj is probably also geographically conditioned.

Genres
A second argument for the authenticity of Ibn Jurayj's 'Aṭā' material can be drawn from an analysis of its genres. From this point of view, one can first divide it into two categories: the genres of responsum and of dicta. By a responsum I mean an answer (jawāb) to a question (mas'ala); in the sources it is occasionally also characterized as a legal opinion (fatwā). An example: Ibn Jurayj said: "I asked 'Aṭā' about ... He said: ..."

A dictum, in contrast, is defined as a statement (qawl, hadīth) which is not preceded by a question in the text. In the material transmitted by Ibn Jurayj from 'Aṭā' the shares of the two genres are practically equal in size. Mixed forms occur relatively rarely. The responsum can be subdivided into the transmitter's, i.e. Ibn Jurayj's, own questions
and those from others; the former can be asked directly or indi-
rectly, i.e., through an intermediary, and the latter anonymously or
not anonymously, i.e., the questioner can be identified by name.

An example of the anonymous type of question: Ibn Jurayj said:
“'Atā’ was asked (su‘ila) about . . . He said: . . .”

On the other hand, the answers—the same is true for the dicta—
can be classified as personal material and that from others. By the
material of others is meant citations of statements or descriptions of
actions of persons other than 'Atā’, thus, for example, ḥadīths and
āthār. Mixed forms occur. 'Atā’'s own material can be subdivided
according to considerations of content, and material from others
according to the circle of people from which it comes or to which
it refers—thus, for instance, the Prophet, sahāba, or contemporaries
of 'Atā’;'. I regard Ibn Jurayj’s occasional statements that 'Atā’
rejected or approved something, and so forth, as disguised dicta. For
a better overview of the classification of the Ibn Jurayj—'Atā’ tra-
dition, let us represent it in a diagram.

\[
\begin{array}{c}
\text{responsa} \\
\text{own questions} \\
\text{direct} \quad \text{indirect} \\
\text{questions of others} \\
\text{anonymous} \quad \text{not anonymous}
\end{array}
\]

\[
\begin{array}{c}
\text{dicta / responsa} \\
\text{own material} \\
\text{ra'y} \quad \text{other} \quad \text{tafsīr} \\
\text{material of others} \\
\text{Prophet} \quad \text{sahāba} \quad \text{tābi'īn}
\end{array}
\]

'Atā’'s answers to questions from Ibn Jurayj comprise by far the
largest portion of the responsa; the anonymous cases do not even
come to 10%, while those from identified other persons are very
rare. In the genre of the responsa personal material predominates
strongly; material from others comes to only 10%. Among the dicta
the difference is not so sharp. Here, the proportion of material from
others is 30%.

If one compares the relationship between the two main genres,
which is 50 : 50 in the case of 'Atā', with that in other important
sources of Ibn Jurayj’s a large difference is conspicuous: In the case
of 'Amr ibn Dīnār the share of responsa is only 9% (exclusively to questions of Ibn Jurayj's), in the case of Ibn Shīhāb approximately 14% (of these, however, only 1.5% to questions of Ibn Jurayj's!), in the case of Ibn Tāwūs 5.5% (exclusively to questions of Ibn Jurayj's), in the material from Abū l-Zubayr no responsa are to be found at all and in that of 'Abd al-Karīm 8% (only to questions of Ibn Jurayj).  

What can the analysis of the genres contribute to the question of the authenticity of the texts? The fact that the two main genres appear in such different proportions in the cases of Ibn Jurayj's various sources in itself seems to me to speak against the assumption of systematic projection back into the preceding generation of scholars. In such a case one would expect more uniformity in the method of forgery. The same applies to the different frequency of the types of question within the responsa that Ibn Jurayj transmits from 'Aṭā'. Can one dismiss the indirect, the anonymous and the non-anonymous questions from others as mere stylistic means that Ibn Jurayj employed according to the principle variatio delectat?  

The question-answer schema implies a strong claim to truthfulness, insofar as the question is directed by the transmitter or student himself to the source or teacher whose statement is reported. Through the question, the questioner participates in the answer to a certain extent as its actual originator. The immediacy of the transmission can scarcely be expressed more strongly. Formulations such as “samī'tuhu yaqūl,” “akhbaranī,” or “qāla li,” also introductions that signal direct, oral transmission—which does not exclude the possibility of written records—have a distinctly lesser authenticity content, not to speak of the simple “an X qāla.” If one assumes from Ibn Jurayj's many direct questions to 'Aṭā' that he wanted to feign the highest degree of genuineness, how does one explain the following two introductions: Ibn Jurayj said: “I asked someone to ask 'Aṭā' about . . ., when I could not hear him (haythu lā asma'u)” or “I sent someone to 'Aṭā' with the question about . . .”? Why does he invent anonymous questions, which have a lesser authenticity content, since they presuppose the transmitter only as a hearer and not

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14 On the basis of the calculations, see p. 78, note 13.
15 Here I am not basing myself on the rules of the later science of Hadith relating to these terms, since they cannot be assumed to have been followed systematically in the early period; rather, I proceed from the plain meaning of the terms.
16 AM 6: 10825; 7: 13893.
as a co-actor? Why does he transmit, instead of exclusively responsa, a quantity of dicta from ‘Atā’ as well, two thirds of them with the simple formula “an ‘Atā’ qāla”?

Whoever defends the hypothesis of projection or forgery must be able to answer these questions plausibly. To me, the analysis of the genres seems to speak against such an assumption. On the other hand, it seems natural to interpret the genres and their differences historically. This may seem somewhat speculative at first glance; however, this impression will be dispelled below.

The large number of ‘Atā’’s responsa to questions from Ibn Jurayj indicates an actual, long-term student-teacher relationship between the two. The questions from others, in which the asker of the question is occasionally identified by name, imply a circle of students around ‘Atā’ or that his instruction was public.17 The quantity of the transmitted material and the precise differentiation between responsa and dicta, as well as between his own questions and those of others, rather certainly presuppose written records of Ibn Jurayj’s.18 It is imaginable that he first wrote down questions which he later asked during instruction. The answers, which are usually very short and pithy, he could have immediately noted down. That he also had the opportunity to ask questions spontaneously is shown by the not infrequent cases in which ‘Atā’’s answer stimulates Ibn Jurayj to further questions, and by the dicta which are immediately followed by questions, whether he demanded a more detailed explanation in this way or attempted to make the case more specific.19 The combination of dicta from ‘Atā’ with a following question from the student makes clear that Ibn Jurayj did not receive the genre of dicta, for instance, in the form of a collection of sayings left in written form, but in the lectures or presentations of his master. One may probably imagine that ‘Atā’ presented legal problems or theoretical cases with his solutions in his classes. Interrupting questions were clearly allowed in such lectures. In addition, there may have been pure question-and-

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18 On the question of written records, see below, pp. 95–99.
answer sessions, perhaps following the treatment of a specific sub-
ject. Ibn Jurayj's many questions can probably best be explained in
this way. The relatively small amount of other people's material in
the *responsa* and its larger share of the *dicta* leads one to suspect that
although 'Atā' was superior in legal questions and lectured without
notes, his knowledge of traditions related to law was limited and it
was necessarily for him to rely on written texts for this.

b. Internal formal criteria of authenticity

In addition to the two external formal criteria of authenticity, mag-
nitude and genre, it is possible to ascertain further indices that speak
for the genuineness of the Ibn Jurayj—'Atā' tradition. I call them
internal formal criteria of authenticity, since they are based on an
investigation of the way in which Ibn Jurayj presents 'Atā'’s mate-
ril. Here, the central question was to what extent a personal profile
of Ibn Jurayj is recognizable and whether there are critical remarks
of his about the views of his teacher or other formal indications
which are not reconcilable with a thesis of projection into the past
or forgery.

Ibn Jurayj's legal opinions

It has already been mentioned in passing that 'Abd al-Razzāq trans-
mits from Ibn Jurayj some of his own legal opinions as well. 20 He
generally introduces them with "*an Ibn Jurayj qāla,*" rarely with
"*samītu Ibn Jurayj yaqūlu.*" 21 It is true that the number of Ibn Jurayj’s
legal *dicta* is small in the context of the tradition as a whole (1%),
but when one compares the frequency of his *dicta* with that of the
material transmitted from his sources, he nevertheless takes twelfth
place. 22 However, the quantity is less important than the fact that
his own legal views exist. If one imputes that Ibn Jurayj projected
his own legal opinions onto earlier legal scholars in order in this
way to lend them greater authority, one must have a convincing
explanation why legal pronouncements which do not refer to his
teachers or any informants are transmitted from him at all.

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20 See above, p. 78, note 13.
21 On the latter formula cf., for instance, AM 6: 10729.
22 According to the frequency list on p. 78, he would be placed at the head of
the group of ten before Sulaymān ibn Mūsā.
Ibn Jurayj’s commentaries
The untenability of the thesis of projection becomes still clearer through the commentaries of his own with which Ibn Jurayj from time to time provides the ‘Atā’ material he transmits. One can classify them into additions, which are of either clarifying or amplifying character, and contradictions. Both types of comment have obviously been added to the text later by Ibn Jurayj. It is clear that the young student—if our assumption that ‘Atā’ was his first teacher is correct—did not have the competence and self confidence to supplement or criticize his master’s remarks at the stage when he received them.

Two examples of additions:

Ibn Jurayj said: I said to ‘Atā’: “The umm walad of Maysara, the mawłā of Ibn Ziyād, claims that her child is not Maysara’s.” [‘Atā’] said: “No [her claim is not accepted], the child belongs to the bed and to him who engages in illegitimate sexual relations belongs nothing (al-walad li-l-frāšh wa-li-l-‘āhir al-ḥajar).” Ibn ‘Ubayd ibn ‘Umayr [thereupon] said to him: “Aren’t the physiognomists (qii.fa) called in for this?” [‘Atā’] said: “The child belongs to the bed and to him who engages in illegitimate sexual relations belongs nothing.” Ibn Jurayj said: “I say: ‘If the woman says this, she is charged with lying and beaten.’”

Ibn Jurayj said: I said to ‘Atā’: “A youth (ghulām) married a woman without having reached [the capability of] emission of semen (lam yablugh an yunzila). After this he committed fornication. Is he stoned?” [‘Atā’] said: “No! I am not of the opinion that he is stoned until he has an emission when he sleeps with her.” I said [to ‘Atā’]: “[Assuming] two men bear witness, ‘We saw him on her belly,’ without adding anything.” [‘Atā’] said: “An example is made of both of them.” Ibn Jurayj said: I say: “Neither of the two receives the hadd penalty, since neither of the two [witnesses] bore witness to fornication, but they receive an exemplary punishment.”

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24 Instead of: “[wa-lā] juridān” I read yazidān, as in AM 7: 13578.
25 AM 7: 13393.
In the first example there is an amplifying addition, in that Ibn Jurayj supplements 'Atā‘’s statement, which is limited to the case of the umrn welad, i.e., the slave, with the case of the free woman. The second example consists of an ex post facto justification of 'Atā‘’s solution.

Even more unequivocally than the additions, the contradictory commentaries speak for the thesis of later additions:

Ibn Jurayj said: I said to 'Atā‘: “The man divorces the woman, and she spends a part of her waiting period. Then he returns to her during the waiting period and divorces her without having slept with her. Starting from what day must she observe her waiting period?” [‘Atā‘] said: “She must complete the rest of her waiting period.” Thereupon he recited: “Thumma țalaq tûhumunna min qalîbî an tamassîhumun”26 ([If] you then divorce them [the women] before you have sexual relations with them). Ibn Jurayj said: “I say: ‘That is in [the case of] marriage; this [however] is a return.’”27

Ibn Jurayj puts ‘Atā‘’s Qur’ānic justification for his legal ruling into doubt by pointing out that the verse cited refers to the case of marriage and not to that of returning during the waiting period. The verse means that in the case of marriage with subsequent divorce before consummation no waiting period is necessary. ‘Atā‘ also uses the verse for the case of returning during the waiting period, which in his opinion is analogous, and concludes from it that no new waiting period is to be observed, but only the remainder of the one that was broken off. Ibn Jurayj, on the other hand, rejects this qiyās.

Ibn Jurayj said: I said to 'Atā‘: “A man is absent from his wife. She had not asked him beforehand for permission to go out. May she leave the house to circumambulate [the Ka‘ba] or to care for an ill blood relative?” [‘Atā‘] said: “No.” [Ibn Jurayj]: He refused this very decidedly.—I said: “[Assuming] her father dies?” He [‘Atā‘] refused to allow it to her in the case of her father’s death]. I [however] say: “She can go to him and to [another] close blood relative. Ibn ‘Umar [even] left the Friday prayer service to see a relative to whom he had been called.”28

A last example:

26 Qur‘ān 33:49.
27 AM 6: 10948.
28 AM 7: 12538.
Ibn Jurayj from 'Atā'.

[Ibn Jurayj] said: I said to him: "A slave married a free woman whom he mislead about himself with the claim that he was a free man. He sent her money that belonged to his master." ['Atā'] said: "Whatever of that same money of his he [the master] can [still] find, he can [again] take possession of; [on the other hand], for whatever she has already used she is not responsible. If, however, the money belonged to the slave, it remains her property." Ibn Jurayj: "I and 'Ubayd Allāh ibn [abī] Yazīd
29 [however] say: My property (māl) and that of my slave are the same. He [the master, may] take it away [from her], [but] she is entitled to the bridal gift of her kind."
30

If Ibn Jurayj had already had a divergent opinion at the reception of these teachings of 'Atā's, then he would have discussed them with his teacher. Such cases are attested, if only rarely.31

The assumption that Ibn Jurayj added the comments to the tradition of 'Atā', and not only those which I have called contradictions but supplements as well, only at a later stage may be considered sufficiently certain.32 The example in which Ibn Jurayj bases his argument on the behavior of 'Abd Allāh ibn 'Umar is particularly conclusive in this respect, since Ibn Jurayj has it from the Medinan tradition of transmission, which he received only secondarily.33 In the tradition of Ibn Jurayj, projection of his own legal opinions or those of others onto 'Atā' is out of the question. His own profile as a legal scholar is clearly recognizable in his legal dicta and his supplementary and critical comments on some of 'Atā's opinions. The development of Meccan jurisprudence after 'Atā' is also reflected in them.34

With Ibn Jurayj's legal dicta and his comments on the tradition of 'Atā', the arguments which can be marshalled in favor of the latter's authenticity are not yet exhausted. Four more points seem to me noteworthy in this connection:

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29 The text has 'Ubayd Allāh ibn Yazīd; intended, however, is probably the 'Ubayd Allāh ibn [abī] Yazīd mentioned also in 7: 12791, 12793. On him cf. Ibn Sa'd, Tabaqāt, vol. 5, p. 354.
30 AM 7: 13072.
31 Cf. AM 6: 10440, 10816, 11496; 7: 12369, 13751.
32 On another type of comment which also supports this hypothesis, see pp. 92 ff.
33 On this see p. 207. A similar case is AM 6: 11113, where Ibn Jurayj prefers, instead of 'Atā's opinion, that in a tradition of 'Umar and Ibn Mas'ūd.
34 On this see pp. 186, 205.
Indirect traditions of 'Atā'

'Atā' is—as has been shown—Ibn Jurayj's main source. If 'Atā'’s authorship of texts were wholly or partially forged, it would not be to be expected that he would also report opinions from 'Atā' of which he claims that he did not get them directly from him, but learned them by way of a third party. There are, however, such traditions. For example:

Ibn Jurayj said: "'Abd al-Hāmīd ibn Rāfi' transmitted to me from 'Atā' after his death that a man said to Ibn 'Abbās: 'A man divorced his wife 100 times.' Ibn 'Abbās replied, 'Take three of them and leave out the 97.'"^{35}

In view of the fact that Ibn Jurayj generally transmits 'Atā'’s traditions of Ibn 'Abbās directly from 'Atā', such a text is to be evaluated as an indicator of the precision and credibility of Ibn Jurayj's statements of origin. Had he been a forger, he would surely have credited this tradition of Ibn 'Abbās to his own account. In another case, Ibn Jurayj transmits a responsum of Ibn 'Abbās both directly from 'Atā' and through someone who heard 'Atā'.^{36} The two versions are not completely identical, which similarly speaks for Ibn Jurayj's precision and credibility, since he could have eliminated the shorter version of his source in favour of his own. Ibn Jurayj also transmits a few legal opinions and hadiths from 'Atā' through his teachers 'Amr ibn Dīnār and 'Abd al-Karīm al-Jazari^{37} or anonymously.^{38}

Ibn Jurayj's uncertainties

Occasionally Ibn Jurayj expresses uncertainty about precisely what 'Atā' meant or said. For example:

Ibn Jurayj said: I said to 'Atā': "May a slave marry four wives with the permission of his master?" Ibn Jurayj: He acted as if he did not reject it.^{39}

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36 Cf. AM 7: 12553 and 12571.
37 Cf. AM 6: 11080; 7: 14001 ('Amr ibn Dīnār); 6: 11460 ('Abd al-Karīm).
38 AM 7: 13121.
39 AM 7: 13138. Perhaps Ibn Jurayj was mistaken in this case, since Ibn 'Uyayna reports from Ibn abī Najīh that 'Atā' was of the opinion that the slave could marry
He is similarly unsure in the case of the concubinate of a slave whether 'Atā' allowed it generally, if the slave financed it from his own money, or only with the permission of the master. This cautious mode of expression in cases of doubt bears witness to Ibn Jurayj's uprightness and to his intention of reporting the teachings of his master as faithfully as possible.

'Atā'\textsuperscript{\textasteriskcentered}'s variants
A concern for exact, verbatim transmission is also to be observed in places where Ibn Jurayj notes 'Atā'\textsuperscript{\textasteriskcentered}'s divergences from traditions which he has obtained from other sources as well as 'Atā', or which he heard from him several times. The following examples are instructive in this respect:

Ibn Jurayj said: 'Atā' transmitted to me (\textit{akhbaran}):

\begin{quote}
“A woman was brought to 'Alī ibn Abī Tālib who had married in her waiting period and with whom the marriage had been consummated. He divorced her and ordered her to complete the remainder of the waiting period, and then to observe the following waiting period. When her waiting period was over, she had the choice: if she wished, she could marry [the man whom she had married in the waiting period again], or not.”
\end{quote}

[Ibn Jurayj:] Someone other than 'Atā' said to me in this \textit{hadith}: “And she has the right to her bridal gift.” ‘Atā’ said [as a supplement to the \textit{hadith} or in another context]: “She has a right to her bridal gift for that which hē received from her [in terms of sexual satisfaction].”

Here Ibn Jurayj differentiates precisely between 'Atā’\textsuperscript{\textasteriskcentered}'s transmission of the text and his own opinion about the case represented, while in another source this view is annexed to the \textit{hadith}, and thus ascribed to 'Alī.

In another place Ibn Jurayj notes 'Atā’\textsuperscript{\textasteriskcentered}'s divergences from a story about a verdict of the caliph 'Umar, which he transmits in full from Hishām ibn 'Urwa from his father, in a similarly meticulous way. ‘Atā’\textsuperscript{\textasteriskcentered}'s variants are quite insignificant; they are two textual expan-

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only two women, but that Mujāhid allowed four (13139). However, it is also conceivable that 'Atā' later changed his mind and that Ibn Jurayj is reporting a later position.\footnote{AM 7: 12835. The text is confused in places, but the meaning is clear.}
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\textsuperscript{\textasteriskcentered} AM 6: 10532. A similar verdict is also transmitted from 'Umar, with the difference, however, that they may not remarry. Cf. Motzki, “Der Fiqh des -Zuhri: die Quellenproblematik,” \textit{Der Islam} 68 (1991), pp. 29–34.\footnote{AM 7: 13650, 13651. The story is relatively long; for this reason, I have eschewed a translation. 13651 begins with the words: “Ibn Jurayj said: I heard 'Atā' report the same (\textit{yuḥaddithu}), but he said: ...”}
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sions of a few words. One may ask oneself why Ibn Jurayj did not cite 'Atā’s version, which he presumably learned earlier, in toto and note 'Urwa ibn al-Zubayr’s divergences instead. This could be for the simple reason that it is simpler to add supplements than omissions. It could also, however, have to do with 'Atā’s defective isnāds— Ibn Jurayj does not name any source from whom 'Atā got this case—a state of affairs which I will have occasion to discuss later.43

Another example of Ibn Jurayj’s striving for exactitude:

Ibn Jurayj transmitted to us from 'Atā: “The Prophet did that: he made her manumission her bridal gift.” [Ibn Jurayj:] “He ['Atā?] did not mention that it was Ṣafiyya.”44

Ibn Jurayj presumably added the note about Ṣafiyya when he became familiar with the corresponding traditions about her. 'Abd al-Razzāq’s Musannaf, it is true, contains—as far as I can see—no corresponding tradition of Ibn Jurayj’s, only one each from Ma’mar ibn Rāshid and Sufyān al-Thawrī,45 but that is clearly no proof that he did not know it. Ibn Jurayj’s note shows how false such a conclusion e silen­tio would be. The following examples as well illustrate the unten­ability of the theory of projection and the weakness of inferences e silentio.


With traditions from the early period of Islam it is sometimes to be observed that later sources, whether compilations or commentaries, provide the names of people involved who are not named in the texts of older collections. It has been concluded from this that these names were not known to the original transmitters and that they are the inventions of later generations. This may occasionally be true, but one may not regard it as the rule, as the following variant of the above tradition proves:

Ibn Jurayj transmitted to us with the words: 'Atā transmitted to me (akhbarani): “Ibn al-Zubayr included Umm Ḥabī—the umm walad of Muḥammad ibn Ṣuḥayb, known as Khālid—in the property (māl) of her son.”47

43 See pp. 151 f., 158.
44 AM 7: 13108.
45 Cf. AM 7: 13107, 13110.
46 AM 7: 13217.
47 AM 7: 13220.
Thanks to the precision and completeness of Ibn Jurayj’s transmission from ‘Atā’, which is visible in such examples, one can conclude that the precise knowledge of details must not eo ipso necessitate their mention. Since only a fraction of the sources from which the Muslim scholars of the third/ninth to fifth/eleventh century could draw are at our disposal today, the greater detail of later sources is in itself no proof for the unreliability of their additional information. Rather, such proof must be adduced case by case. The assumption that in the above text the names originated with Ibn Jurayj or ‘Abd al-Razzāq can be ruled out, since in this case the forger would surely have eliminated the superfluous original version.

The inadmissibility of the conclusion e silentio does not apply only to individual elements of traditions, but also to whole traditions. Schacht often reasons according to the schema: If the tradition T is not yet present with the early compiler E but is present with the later compiler L, then it must have come into existence between E and L.48 That this conclusion is not generally valid is demonstrated by the following two traditions of Ibn Jurayj from ‘Atā’:

Ibn Jurayj said: I said to ‘Atā’: “He divorced her while she was menstruating (hi‘i’dan).” ['Atā'] said: “He should take her [the woman] back (yarudduhā) and then, when she is pure [again], pronounce the divorce or keep [her].”49

In this responsum ‘Atā’ refers to no tradition to support his opinion. If only this text had been preserved, Schacht would have had to conclude that during ‘Atā’’s lifetime no corresponding tradition yet existed, or at least it could not have been known in Mecca, in adherence to his motto: “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. [. . .] We may safely assume that the legal traditions with which we are concerned were quoted as legal arguments by those whose doctrine they were intended to support, as soon as they were put into circulation.”50 This does sound obvious, but is not always correct, as the following responsum of ‘Atā’’s shows:

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49 AM 6: 10962. On ‘Atā’’s opinion about the correct time for divorce, cf. also 10919, 10951.
50 Schacht, Origins, pp. 140–141.
Ibn Jurayj said: I said to ‘Atāª: “He divorces her while she is menstruating (ḥā’îdan).” [‘Atāª] said: “She may not calculate her waiting period according to it [her menstrual period] (lā ta’taddu bihā), [rather,] she should fulfill three [cycles of] menstruation (hayd).” I said: “[Assuming he divorced her in the hour in which she menstruated [i.e., in which her menstrual period began].” [‘Atāª] said: “It was reported to us (balaghpanā) that the Prophet said to Ibn ‘Umar: ‘Take her back until the time when she is pure, then divorce [her] or keep [her].’”

‘Atāª’s Prophetic dictum is a very abbreviated version of a tradition of the Prophet which is preserved in numerous variants. I will return to it in another place. His version strongly resembles the responsum of ‘Atāª’s on this subject mentioned first. Thus we can assume that ‘Atāª already knew the Prophetic hadith in some form when he answered Ibn Jurayj’s question, but did not consider himself obliged to cite it. There are several imaginable reasons, which will be discussed later, for his not doing so.

There are several cases in which Ibn Jurayj quotes a legal solution once as an opinion of ‘Atāª’s and another time as his transmission of a hadith. Another example is the controversial early legal maxim “al-walad li-l-firāsh wa-li-l-āhir al-hajār” (the child belongs to the bed, and to the one who engages in illegitimate sexual relations belongs nothing), which Ibn Jurayj cites twice as ‘Atāª’s ra’y and once as a Prophetic dictum known to him.

The existence of such variants from one and the same authority can hardly be brought into harmony with the assumption that material was merely fathered upon him. One would have to estimate Ibn Jurayj as very limited in intelligence to suppose that he would not have noticed the contradictions.

On the theme ra’y versus hadith let us also give the following example, which similarly contradicts the thesis of projection. Ibn Jurayj notes about a number of ‘Atāª’s legal ideas that this position was also held by one of the Companions of the Prophet or the caliphs. In general he clearly identifies this as his own comment, without citing a source for it. It is hardly likely that a forger would have resisted

51 AM 6: 10969.
52 See pp. 132–136.
53 See pp. 120–123.
55 AM 7: 12369, 12381, 12862. Also see pp. 126 ff.
the temptation to enlist ‘Aṭā’ for the purpose. Two attestations of this:

Ibn Jurayj from ‘Aṭā’ about a man who divorced his wife three times but then slept with her and denied that he had divorced her, against whom [however] the divorce was witnessed. ['Aṭā’] said [about this]: ‘The two are separated; he is not stoned or punished.’ Ibn Jurayj said: ‘It was reported to me (balaghani) that Umar ibn al-Khaṭṭāb ruled accordingly.’ \(56\)

Ibn Jurayj transmitted to us from ‘Aṭā’ the pronouncement: ‘He [the slave] is allowed no renunciation (ilâ) [of his wife, who is also of slave status] without [the permission of] his master, and it is [for a period of] two months.’ Ibn Jurayj said: ‘It was reported to me (balaghani) that Umar ibn al-Khaṭṭāb said: ‘The slave’s renunciation is two months.’ \(57\)

‘Aṭā’’s “weaknesses”

I summarize a further cluster of internal formal criteria of authenticity under the designation of “weaknesses” of ‘Aṭā’. It is not particularly felicitous, since it might suggest value judgments which I would not like to have associated with it. I mean by it simply those data which do not show ‘Aṭā’ as an infallible legal scholar who has the correct answer to all questions and adheres to them unwaveringly. With a student who was passing off his own teachings as those of his teacher in order to share in his glory, one would presumably seek such references to the latter’s deficiencies in vain. With Ibn Jurayj, one finds them in abundance. Four “weaknesses” of ‘Aṭā’—which Ibn Jurayj in some cases surely did not see as such—can be observed in his tradition: ignorance, uncertainty, changes of opinion, and contradictions.

‘Aṭā’ answered a few of Ibn Jurayj’s questions with “mā ‘alimtu,” “lā adrij” (I don’t know) or “lam asma‘ fitha bi-shay”’ (I have heard nothing about that). \(58\) In other cases he nevertheless follows such confessions of ignorance with a conjecture. For instance, Ibn Jurayj asks ‘Aṭā’ after the latter has cited a dictum of Ḥāfṣah’s: “From whom are you transmitting that” (ta’hiru)? ['Aṭā’]: “I don’t know. I think (hasabtu) that I heard ‘Ubayd [ibn ‘Umayr] say it.” \(59\) Or: Ibn Jurayj

\(56\) AM 7: 13408 (emphasis mine).

\(57\) AM 7: 13188 (emphasis mine).

\(58\) AM 6: 11522; 7: 12658, 13655, 14030.

\(59\) AM 7: 14001. The manuscript text is somewhat corrupt: Instead of “qultu” one should, as the editor suggests, read qāla, and instead of “'abdan,” ‘Ubayydan.
said: I said to ‘Atā’: “Is whoever intentionally (‘āmidan) makes a woman permissible to her former husband [through an intervening marriage] to be punished?” ['Atā'] said: “I don’t know. I think he should be punished.”

Ibn Jurayj reports on ‘Atā”s changes of opinion several times with the words: “Earlier I heard him say...” or “later he said...”, in one case noting that he likes ‘Atā”s first opinion better than his later one. An example for illustration:

Ibn Jurayj transmitted to us from ‘Atā’ the statement: “Stoning is not performed when someone who has never yet been married (hikr) or someone who has already been married (thayyib) commits fornication with a female slave. Both [the hikr and the thayyib] are whipped one hundred [strokes] and exiled for a year.” [Ibn Jurayj] said: “The same is true when a free woman commits fornication with a slave. ‘Atā’ used to say something else before that, until he heard that said by Ḫabīb ibn [abī] Thābit. After that he said it [too].”

That ‘Atā’ changes his mind and adopts the legal opinion of a relatively unknown Kufan scholar cannot be a projection.

Finally, it speaks against the thesis that Ibn Jurayj fathered his own views on ‘Atā’ that sporadically he cites contradictory statements from him on the same subject. A glaring example is afforded by two responsa on the question of the īlā’:

Ibn Jurayj said: ‘Atā’ was asked about a man who had sworn not to approach his wife [sexually] for a month, and stayed away from her for five months. ‘Atā’ said: “That is no renunciation (layṣa dhālika bi-īlā’un)”!

To precisely the same question he responds on another occasion: “That is a renunciation (dhālika ṣlā’un), regardless of whether he specified a date or not. When four months have passed—as God, the Exalted, says—it is a [divorce].”

Since ‘Atā’ also shows a further uncertainty in the question of the īlā’ which indicates a process of development and perhaps originates

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60 AM 6: 10780. A further example of this type is present in AM 7: 11954.
61 E.g. AM 7: 11954, 11966.
62 AM 7: 11680, 12974.
63 AM 7: 11680.
64 AM 7: 13391. In the text is Ḫabīb ibn Thābit. Presumably, however, the Ḫabīb ibn abī Thābit mentioned in 6: 10323, 10644 is intended. On him cf. Ibn Sa’d, Tabaqāt, vol. 6, p. 223.
65 AM 6: 11620. Cf. also 11603, 11618.
66 AM 6: 11627. Cf. also 11610.
in the influence of others,\textsuperscript{67} this contradiction could be based on a chronological remove between the two questions. Then we would similarly be dealing with a change of opinion, which Ibn Jurayj does document, but does not—as in some other cases—identify as such. A forger of the stature of Ibn Jurayj—if he in fact were one—could presumably be trusted not to commit the error of discrediting his master through contradictory statements.

c. The results of the test of genuineness

It would be possible to adduce some further internal formal criteria which speak for the genuineness of Ibn Jurayj’s ‘Atā’ tradition. However, I think that the foregoing two external and six internal formal criteria of authenticity are sufficient to support the following conclusions:

Ibn Jurayj’s ‘Atā’ material in the \textit{Muşannaf} of ‘Abd al-Razzāq actually derives from ‘Atā’ ibn abi’ Rabāh, who must have been one of Ibn Jurayj’s most important teachers. Ibn Jurayj generally differentiates precisely between statements of ‘Atā’\textsuperscript{’s}, those of other informants and his own opinion and does not hesitate to diverge from his legal teachings. It is not to be expected that there are intentionally false ascriptions of opinions to ‘Atā’ in this tradition. It can be considered a historically reliable source for the state of legal development in Mecca in the first decade of the second/eighth century. This chronological placement results from the traditional death dates of ‘Atā’ and Ibn Jurayj. ‘Atā’ died in 115/733 and Ibn Jurayj in 150/767.\textsuperscript{68} The difference of 35 years and the assumption that Ibn Jurayj began his studies at the age of 18 make it likely that he studied with ‘Atā’ only in the last two decades of the latter’s life. ‘Atā’\textsuperscript{’}s legal opinions, however, surely did not spring from the void only at this time—that is hard to imagine on the basis of their enormous bulk alone--; rather, their development reaches back at least into the last two to three decades of the first/seventh century. Whether he had predecessors on whom he could rely, i.e., whether the origins of Islamic jurisprudence are to be placed in his time or perhaps even earlier, is to be clarified by an investigation of ‘Atā’\textsuperscript{’}s legal sources.\textsuperscript{69} I have

\textsuperscript{67} AM 6: 11610, 11627 with 11648.
\textsuperscript{68} On this see below, pp. 253 ff., 269 f.
\textsuperscript{69} See Chap. III.B.2.b.
deliberately expended all of this effort in order to substantiate the genuineness of Ibn Jurayj’s ‘Atā’ tradition with features which can be elicited from the form and manner of his representation of ‘Atā’’s statements, without having recourse to their content. It would have been an easy task to point to ostensibly archaic traits of ‘Atā’’s teachings like, for instance, the very subsidiary role of ḥadīths and the practically complete lack of iṣnāds in them or the relatively modest role of the Qurʿān in the argumentation. Such a procedure, however, would run the risk of circular conclusions in which one proves the age of a text by such criteria and then uses it to show that they are archaic. Usually it is possible to carry out a crosscheck by attempting to prove with the same criteria that the text in question could also be late, which is quite possible with the above-mentioned “archaic” characteristics. One escapes the inadmissible circular conclusion only when it is possible to determine the genuineness and age of a source largely independently of features of content.

d. Written or oral reception

In discussing the formal aspects of Ibn Jurayj’s ‘Atā’ tradition, I have until now largely left aside a question to which the research of the last decades has provided very contradictory answers: the problem of the written or oral character of the transmission of knowledge in early Islam. It poses itself with especial acuteness in the case of our source, and because of its age the answer has wide general implications for the history of the technique of transmission in the first two Islamic centuries. With respect to the question of the authenticity or inauthenticity of the source, however, this differentiation is of little help, since forgeries are possible in written just as in oral form.

I will try to clarify whether the reception of the ‘Atā’ material by Ibn Jurayj took place in writing or orally from four points of view: in respect to 1. the formal criteria of authenticity which have been worked out, 2. Ibn Jurayj’s technique of reference, 3. the autonomy of the individual texts, and 4. the terminology of transmission.

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Conclusions from the criteria of authenticity
According to my calculations, the Muṣannaf of ‘Abd al-Razzāq contains approximately 5,250 individual texts from Ibn Jurayj, of which about 2,000 refer to ‘Aṭā’. One half of them are responsa to questions of Ibn Jurayj’s, such texts often consisting of more than one question and answer, the other half dicta and traditions of ‘Aṭā’s, some of which display considerable length. The remaining approximately 3,250 texts are distributed among 100–200 sources, who in turn name up to three or more sources in the isnād. It is quite unlikely that this mass of heterogeneous material was kept by Ibn Jurayj exclusively in his memory and transmitted by heart.

If poems, anecdotes, stories and short legal maxims can be retained relatively well, juridical dialogues and descriptions of intricate legal situations are as inappropriate for memorization as can be imagined. For illustration, let us enjoy the following—admittedly extreme—example:

Ibn Jurayj said: I said to ‘Aṭā’: “[What do you think about] the man’s saying ‘anti khalīyya’ and ‘khalawut minni?’” [‘Aṭā’] said: “[They are] the same [in value].” I said: “[And the words] ‘anti bariyya’ and ‘binti73 minni?’” [‘Aṭā’] said: “[They are] the same.” I said: “[And the words] ‘anti bā’ina’ or ‘qad binti minni?’” [‘Aṭā’] said: “[They are] the same. As to his words ‘anti khalīyya,’ ‘anti sarāḥ,’ ‘tīaddī’ or ‘anti tāliq,’ they are a sumna with respect to which no freedom of choice is left to him (lä yudayyanu); it is a divorce. As to his words ‘anti bariyya’ or ‘anti bā’ina,’ they are something that has been newly introduced (al;dathu); [for this reason] freedom of choice is left to him with respect to them; if he desires divorce, it is one, and if not, then not.” I said: “What is your opinion if he said: ‘anti tāliq,’ ‘anti khalīyya,’ ‘anti bariyya,’ ‘anti bā’ina’ or ‘anti sarāḥ,’ and afterwards said: ‘I intended three [divorces],’ [then] regrets it and loves his wife (ahlahu) [again]?” [‘Aṭā’] said: “He is left no freedom of choice.” I said: “[Assuming] he said nothing indicating divorce?” [‘Aṭā’] said: “[What he said about his intention] is sufficient; he has pronounced a definitive divorce, [and in consequence] she is separated from him; it is a [threefold] divorce.” ‘Amr ibn Dīmār said: “No, rather there is [only] one [divorce], as long as ‘anti bariyya, khalīyya, bā’ina’ or ‘binti minni’ came from his mouth.” He said [further]: “And he is given freedom of choice [whether it should be a divorce at all].”

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72 This is extrapolated on the basis of my sample of about 21% of the total text. Cf. pp. 58, 74, 78, note 13.
73 Clearly a mistake in transmission. Presumably it should originally have been “barītī!”
I said: "If he intended three [divorces] by his words 'qad binni minni' or 'bara'ti minni?" [Amr] said: "It is [nevertheless] only one."

It is hardly imaginable that anyone is in a position to keep such instructional dialogues in his head without notes. It also speaks in favor of Ibn Jurayj's transmission from 'Ata' having depended essentially on written records which he prepared in and immediately following classes with 'Ata' that he cites slightly divergent stances of 'Ata's on the same subject, notes additions or omissions of only a few words in traditions of 'Ata's that Ibn Jurayj knows from other sources as well, is able to differentiate later from earlier views of 'Ata's, and can specify whether he has a text directly from him or through an informant. Ibn Jurayj's commentaries and remarks on the 'Ata' traditions also suggest written documentation. Otherwise how, over the course of time, could he keep separate his teacher's statement and his own explanations and amplifications of it, as he usually neatly does? The criteria adduced for the authenticity of Ibn Jurayj's 'Ata' tradition without exception speak for a written mode of transmission. One can hardly escape this conclusion if one has accepted the premises.

Ibn Jurayj's references

A further argument in favor of this thesis can be derived from Ibn Jurayj's comments. Until now we have spoken only of two types of comments, additions and contradictions. A third type could be called references. They are notes about the opinions or statements of other scholars about the case in question or about a hadith. Just 10% of the traditions from 'Ata' contain such references. They refer to approximately a dozen persons, at their head 'Amr ibn Dinar, from whom Ibn Jurayj also transmits the most after 'Ata'. 60% of the references are to 'Amr. In second place follows 'Abd al-Karim (20%), more rarely Ibn Shihab, Mujahid, ['Abd Allah] Ibn Kathir, Ibn Tawus and others. They are distributed in approximately equal

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74 AM 6: 11190.
75 See pp. 88–92.
76 See pp. 88 f.
77 See pp. 93 f.
78 See p. 87.
79 See pp. 84 ff.
80 See pp. 84–86.
81 See pp. 77 ff.
portions between the two main genres of *responsa* and *dicta*. Since only a few of the references (15%) identify Ibn Jurayj *expressis verbis* as the originator of this form of note with “qāla Ibn Jurayj,” the names and their distribution of frequency are an important indication that they in fact derive from him and not, for instance, from ‘Abd al-Razzāq. Further indicators of this are their content and form. In these respects they are clearly different from the latter’s references. In terms of content, half of Ibn Jurayj’s references say only that “X said the same” (e.g., “wa-qālahu ‘Amr” or “qāla ‘Amr mithlahu”), the other half give concrete indications of additions to or divergences from ‘Aṭā’s statement, but generally only in a few words. The content and size of these references clearly indicate that they are subsequent additions of Ibn Jurayj’s to ‘Aṭā’s traditions. One might imagine that he originally wrote them in the empty lines between the individual texts, between the lines or in the margin and that he himself or a copyist later integrated them into the running text. For this thesis and against the imaginable hypothesis that they are ‘Abd al-Razzāq’s notes on oral commentaries of Ibn Jurayj’s speaks—in addition to the fact, already mentioned, that ‘Abd al-Razzāq’s comments on other texts are different from these—the occurrence of abbreviated references. They consist simply of the conjunction “wa” and a name, e.g., “wa-‘Amr” or “wa-Ibn al-Musayyab wa-‘Amr” and mean the same thing as “wa-qālahu X.” These abbreviated forms appear not only at the end, but also in the middle of the text, which clearly identifies them as marginal notes or the equivalent. An example:

Ibn Jurayj said: I said to ‘Aṭā: “The man gives the divorce, but does not make it irrevocable. Where does she spend her waiting period?” [‘Aṭā] said: “In her husband’s house, where she is.” I said: “What do you think if he allows her to spend the waiting period with her family (aḥḥ)?” He said, “No, then he participates with her in the sin [which she may commit].” [Ibn Jurayj:] “Thereupon he recited: ‘wa-lā yakhrujna illā an yā’tīna bi-fāṭihatin mubayyinatin’ (and they should [or: need] not leave [their houses], unless they have committed a provable [sexual] transgression).” I said: “This verse applies to this?” He said: “Yes.”—and ‘Amr. I said: “It was not abrogated?” He said: “No.”

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82 AM 6: 10976, 11392, 11807.
83 AM 7: 12246; 6: 10422.
84 Quotation from Qur’ān 65:1.
86 AM 6: 11009. Emphasis mine.
From the mode of transmission of Ibn Jurayj's comments one can conclude that 'Abd al-Razzâq copied them and the corresponding text from a written document. This does not exclude the possibility that the material was the subject of lectures of Ibn Jurayj’s in which 'Abd al-Razzâq participated and in which he, a classmate or Ibn Jurayj himself read the texts aloud.87 I will go even further and advance the hypothesis that the references were entered by Ibn Jurayj in his lecture notes from ‘Atā’ in the course of the second phase of his studies, in which he heard ‘Amr ibn Dînâr and other predominantly Meccan and Medinan scholars, while initially90 collecting the others’ texts separately. Here I base myself on the observation that in his traditions from other, uniformly younger, teachers and sources abbreviated references do not turn up at all,89 and those of the type “wa-qâlahû X” only very rarely. He thus did note in his ‘Atā’ documents when others agreed with him or diverged from him, but not in the records of the younger sources what ‘Atā’’s position was and only sporadically the positions of others.

The autonomy of the individual texts
For the solution of the problem whether the transmission of a text or a work took place in writing or orally, one can also, in my opinion, make use of the criterion of autonomy. By this I mean the question of whether the transmitted textual fragments or individual texts are autonomous in themselves and understandable as such, or are not autonomous and are meaningful only within a larger context. Here it seems to me permissible to assume that in general a purely oral tradition reproduces no non-autonomous textual fragments and does not tend as easily as a written one to tear apart autonomous texts in order to incorporate them into other contexts.

In Ibn Jurayj’s tradition from ‘Atā’ often90 non-autonomous texts are to be found which are only meaningful within a context. It is true that a context is created by ‘Abd al-Razzâq, whether it be formed through chapter headings or through thematically related

88 See below, pp. 204 ff.
89 This statement applies to my selection of texts; on this, see p. 78, note 13.
90 In about 16–17% of the cases.
traditions from other sources, but the original context which was constituted by other traditions of 'Atā' is no longer, or only partially, present. An example:

Ibn Jurayj said: I said to 'Atā': 'I sent them my sandals and they were satisfied with this.' ['Atā'] said: 'What good are your sandals to them?' He said [further]: 'It is said [yugālu]: 'The least which suffices is his ring or a dress which he sends.'

Without additional information, only specialists in Islamic law will divine that the subject here is the minimum of the bridal gift. This necessary aid to understanding is offered by the immediately preceding chapter heading and the following texts. Three further texts of 'Atā' on the subject of the bridal gift follow in the Musannaf only seven pages later. In between come 26 traditions from other authorities. The original, reconstructable context of the 'Atā' traditions has been destroyed in the Musannaf in favor of a new thematic composition. The question is whether 'Abd al-Razzāq is responsible or already Ibn Jurayj. From the fact that in the Musannaf the traditions of Ibn Jurayj often appear in blocks one can conclude that 'Abd al-Razzāq found these units ready-made, and thus that he essentially limited himself to cutting up Ibn Jurayj's work and combining it with other sources, in doing which, however, he left related things together. This can also be seen in the above example, which is directly followed by three traditions of Ibn Jurayj: 1. the opinions of 'Amr ibn Dīnār and 'Abd al-Karīm, his most important teachers after 'Atā', 2. a tradition received from 'Amr ibn Dīnār about 'Alī and 3. a Prophetic tradition of Ibn abī l-Ḥusayn. Only after these come texts which 'Abd al-Razzāq has from other sources—Ma'mar, al-Thawrī and others. Before the next traditions of 'Atā', which also form a block, comes a tradition with the isnād Ibn Jurayj—anonymous—Ibn 'Umar—Ibn Mas'ūd, which probably originally ended Ibn Jurayj's chapter, while the 'Atā' texts began a new chapter for him as well. It is thus to be assumed that the headings of the

91 AM 6: 10394. Descriptions of situations by Ibn Jurayj in the first person are very rare. This certainly does not necessarily mean that they describe things which really occurred. Here, too, one should probably mentally add the word "assuming" and understand the sentence as a hypothetical.
92 AM 6, pp. 174 ff.
93 AM 6, pp. 180–81.
two chapters also already derive from Ibn Jurayj. One encounters such compositional features relatively frequently, but not invariably. Individual texts of Ibn Jurayj also occur in the midst of other material. Nevertheless, I think that the conclusion that Ibn Jurayj already organized his material thematically into chapters, and that with him the traditions of ‘Ata’ generally came at the beginning, can be drawn with some certainty from the text of the Musannaf.94 The hypothesis that Ibn Jurayj undertook this ordering of the traditions he had collected exclusively in his head and presented it to his students from memory with the chapter headings is quite unlikely. One will thus not go wrong in assuming that Ibn Jurayj recorded a thematically ordered compilation of legally relevant traditions, including his comments and his own opinions about them, in writing, i.e., that he composed books. One should most likely imagine these as notebooks, each of which contained a “kitab” about a specific subject or part of one and served him as lecture notes, thus, for instance, a kitab al-nikah, a kitab al-talaq, a kitab al-walid. It is not necessarily the case, but highly probable that he did not begin his writing only at a relatively ripe age. Even his collecting activities will have consisted of writing from dictation and copying those texts which he later re-edited. The other features of the Ibn Jurayj tradition already mentioned also speak for this assumption.95

The terminology of transmission
In the discussion of the orality or textuality of early Islamic tradition, and above all of Hadith, until now the defenders of early textuality have particularly invoked the terminology of transmission.96 Because of this it is necessary in closing to examine this question too and to investigate whether it offers such clues in the case of the Ibn Jurayj—‘Ata’ tradition as well.

In order to have opportunities for comparison, it seemed to me useful to classify the isnads separately according to the two genres of

94 Another organizing principle is used in Malik’s Muwatta’, where generally—insofar as they are cited—the traditions from the Prophet come at the beginning and the rest follow according to the seniority of the authorities cited, Malik’s teachers and himself thus comprising the end of a chapter (recension of Yahya ibn Yahya).
95 See pp. 96–97.
responsa and dicta. In both cases the same three main types can be differentiated; however, their frequency in the two genres is completely different.

Type 1 has the basic pattern:


In the case of the responsa it usually has the continuation: “qultu li-‘Atā’,” but also “sa’altu ‘Atā’,” “qultu lahu,” “samītu X yas’alu ‘Atā’” and “qāla X li-‘Atā.’” In the case of the dicta the continuation usually runs “qāla ‘Atā’” or “akhbaranī ‘Atā’,” more rarely “qāla li-‘Atā’” oder “samītu ‘Atā’ yaqūl.” This type represents 70% of the isnāds of the responsa but only 12% among the dicta.

Type 2 has the basic pattern:


Type 3 has the basic pattern:


In the case of the genre of responsa the continuation is usually: “qāla [Ibn Jurayj]: qultu lahu,” more rarely “qāla [Ibn Jurayj]: qultu,” “qāla [Ibn Jurayj]: sa’altu” or “qāla [Ibn Jurayj]: qultu li-‘Atā’”; in a few cases “qāla” is also missing. The dicta continue the isnād in the majority of cases with “qāla,” which sometimes, however, is missing, or—more rarely—with “an X.” Extremely rarely one finds “qāla [Ibn Jurayj]: samītu yuqīl.” This basic pattern has a frequency quotient in the case of the responsa of only 8%, but among the dicta 57%.

Among the responsa the ranking of the basic patterns is thus: type 1: 70%, type 2: 22%, and type 3: 8%, among the dicta, on the other hand: type 3: 57%, type 2: 31%, and type 1: 12%. If one calculates the distribution of frequency of the isnād types in the genre of dicta divided according to personal opinion and material from others,97 in

97 On these sub-categories see above, p. 80.
the case of personal opinion there results the ranking: type 3: 68\%, type 2: 23\%, and type 1: 9\%, in the case of material from others, on the other hand: type 2: 48\%, type 3: 34\%, and type 1: 18\%.

These statistics are to be interpreted as indicating that there are correlations between types of isnād and textual genres: For \textit{responsa} the pattern “Abd al-Razzāq ‘an Ibn Jurayj. \textit{Qāla:}” is preferred, for \textit{dicta}, on the other hand, the pattern “Abd al-Razzāq ‘an Ibn Jurayj ‘an ‘Aṭā’. \textit{Qāla:}”; while the material from others (i.e., ‘Aṭā’\’s reports from others) is most often introduced with: “\textit{akhbaranā} ‘Abd al-Razzāq. \textit{Qāla: akhbaranā} Ibn Jurayj” with the continuation “‘an ‘Aṭā’” or “\textit{qāla: akhbaranā}/ qāla/qulāl l;addathanī ‘Aṭā’.”

These are, however, only tendencies which reflect particular preferences. Type 2, for instance, which introduces almost half of all traditions from others, is nevertheless represented among the \textit{responsa} and ‘Aṭā’\’s own \textit{dicta} with 22\% and 23\% respectively. There is no hard and fast rule that a specific isnād pattern belongs to a specific genre. On the other hand, it is to be observed that almost three quarters of all ‘Abd al-Razzāq—Ibn Jurayj—‘Aṭā’ traditions have the “‘an” or “‘an . . . ‘an” structure, and only a quarter the “\textit{akhbaranā}” pattern. This difference, however, is not to be attributed to a different mode of transmission, for instance, with “\textit{akhbaranā}” indicating the procedure of \textit{qirā‘a}, \textit{jāza} or \textit{munāwala} and “‘an,” in contrast, textual transmission without an \textit{jāza}. Against such an assumption speaks the fact that occasionally the same text, or two texts related in content which Ibn Jurayj must have obtained at the same time, appear with different isnād structures, once with “\textit{akhbaranā}” and another time with “‘an.”

The structure of transmission between Ibn Jurayj and ‘Aṭā’ is simpler and contains only two basic patterns:

Type 1:

Ibn Jurayj \textit{qāla}.

In the case of the \textit{responsa} there usually follows “\textit{qultu lī-‘Aṭā’}” or the equivalent, in the case of the \textit{dicta} predominantly “\textit{qāla ‘Aṭā’},” “\textit{akhbaranī ‘Aṭā’}” or the equivalent. Explicit emphases of \textit{samā‘} occur, but relatively rarely (4\%).

\footnote{Cf. AM 7: 13217 and 13220; 13854 and 13856.}
Type 2:

Ibn Jurayj 'an 'Atā'.

The continuation in the case of the responsa usually runs: "qāla [Ibn Jurayj]:" infrequently the question follows immediately; in the case of the dicta: "qāla"—in a few cases, however, it is missing—or, sporadically, "'an."

Type 1 is more often represented (58%) than type 2 (42%), however, the difference is not large enough to be considered significant. On the other hand, the correlation with the genres is unmistakable. Type 1 occurs primarily with the responsa (78%), type 2 with the dicta (90%); in contrast, in the case of 'Atā’s material from others the distribution is not eccentric: type 1 reaches a frequency of 45%, type 2 of 55%.

In the case of Ibn Jurayj’s transmission from ‘Atā as well, the two isnād types thus correspond to different preferences associated with specific genres, something which is even more apparent here than in the case of 'Abd al-Razzāq—Ibn Jurayj. The two types, however, are not the expression of a truly different method of transmission. This is shown by the examples in which the two genres overlap, in which, for example, a dictum of ‘Atā’s is followed by a follow-up question of Ibn Jurayj’s and ‘Atā’s answer. These texts are uniformly introduced with "'an 'Atā." That proves that this pattern results from the same situation of transmission as that of the responsa. It would be incorrect to assume that "'an 'Atā" indicates textuality, "qāla: qultu li- 'Atā," in contrast, orality. From these formulations alone for the early period it is not possible to conclude either the one or the other. That is only possible with the help of other criteria, such as those which I have already mentioned.

In the case of Ibn Jurayj’s ‘Atā material one will have to assume that oral and textual reception are inextricably intertwined, that Ibn Jurayj heard ‘Atā and wrote down what he heard, as is still the practice in the lecture business today. That he transmitted texts from ‘Atā which he did not hear from him but obtained only in writing is unlikely despite the many "'an" traditions.

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99 See p. 102.
100 Cf. AM 6: 10673, 10816, 10912, 11275, 11926; 7: 12435, 13586, 13786, 14001.
2. Characteristics of ‘Atā’’s legal scholarship and its significance for the history of Islamic jurisprudence

a. General characteristics

Ibn Jurayj’s tradition from ‘Atā’ contains a number of indications that Ibn Jurayj was not his only student, but that ‘Atā’ had a circle of students who regularly heard his lectures. An indicator which has already been mentioned are the texts in which Ibn Jurayj reports not only his own questions but those of other persons. Two examples:

Ibn Jurayj said: ‘Atā’ was asked about [two] men, each of whom married the other to his sister under the condition that each of the two would have to produce [only] a small bridewealth ([jiḥāz]; if he desired, however, he could receive more than that. [‘Atā’] said: “No, the shighar [i.e., the exchange of wives without bridewealth] is forbidden.” I said: “But the two specified a bridewealth!” [‘Atā’] said: “No! Each of the two gave the other permission [to marry] for his own sake (min ajī nafsihi).”

Ibn Jurayj said: I said to ‘Atā’: “A man said to his wife, who had been a slave and then was freed, ‘You have committed fornication since you were freed!’ without offering proof of this. [‘Atā’] said: If he says that without having proof of it, he is whipped.” Someone said to him (qīla lahu): “[Assuming] she committed the fornication as a slave.” [‘Atā’] said: “[In that case] there is no hadd [punishment for the accuser].”

These texts show that not only a dialogue between Ibn Jurayj and ‘Atā’ took place, but that others who also asked questions attended ‘Atā’’s instruction as well. Ibn Jurayj sometimes gives explicit expression to this situation, for instance with formulations such as “qīla li-‘Atā’ wa-ana asma’u” or “sami’tu ‘Atā’ yus’alu” (someone said to ‘Atā’ while I was listening; I heard ‘Atā’ asked). One may assume that there was a steady circle of students who studied with ‘Atā’ and felt themselves to be classmates. They designated themselves as “jualūs

102 The manuscript has only “rajul,” following the suggestion of the editor, one should read rajulayn.
103 AM 6: 10440. Emphases mine.
104 AM 7: 13750. Emphases mine.
105 AM 6: 11522.
106 AM 7: 13883.
ma’a ‘Ata’” (participants in ‘Ata’s sessions), and the master occasionally addresses them directly, for instance, when he responds to a question: “mā turwawna ‘an . . . ?” (what was transmitted to you from . . . ?). In addition, ‘Ata’s meetings were visited by guest auditors who used their stay in Mecca to contact the famous scholar. Thus Ibn Jurayj reports that once a scholar from Kufa took the floor and communicated the opinion of the fuqahā’ of Kufa about a legal question. Perhaps it was also in the circle of ‘Ata’ that the muhaddith Abū Quiz‘a presented a tradition of the Prophet to ‘Ata’ and Ibn Jurayj. Besides Ibn Jurayj, a few more students or auditors of ‘Ata’s can be ascertained from his tradition; one can add other names from other early sources. In various contexts Ibn Jurayj names ‘Ubayd Allāh ibn abi Yazīd, Hishām ibn Yahlīyā, Sulaymān ibn Mūsā, [‘Abd Allāh] ibn ‘Ubayd ibn ‘Umayr, Ya‘qūb ibn ‘Ata’, and also transmits ‘Ata’ material from ‘Abd al-Ḥamīd ibn Rāfī‘, ‘Abd al-Karīm al-Jazārī and ‘Amr ibn Dīnār, whom he consequently accepts as students of ‘Ata’’s. Ma’mar ibn Rāshīd sporadically transmits from ‘Ata’ through Ibn Tāwūs and Ayyūb [ibn abi Ṭāmīmāj], Sufyān al-Thawrī through Abū ʿĪsāq [al-Sabī’i], ʿUyayna through ‘Amr ibn Dīnār and Ibn abi Najīh, ‘Abd al-Razzāq through ‘Abd al-Malik ibn abi Sulaymān and through ‘Amr ibn Ḥawshāb, who all probably studied with ‘Ata’ as well. Later sources know of even more sometime students of ‘Ata’’s, among them such famous names as al-Zuhrī, al-Awzā‘ī and Abū Ḥanīfa.

Instruction took place partially in the form of question-and-answer sessions and partially as lectures or free presentations. This can be
inferred from the two main genres of Ibn Jurayj's tradition, the 
*responsa* and the *dicta*. Among the *responsa*, however, the predominance 
of Ibn Jurayj's questions (88%) in comparison with those of other 
persons is curious and requires explanation. I do not think that this 
is a result of 'Ata's style of instruction, for instance, that only a par-
ticular student and well-known personalities were allowed to ask ques-
tions, but that it has to do with the records of Ibn Jurayj, who noted 
above all his own questions and those of others more rarely. Since 
he studied with 'Ata over a quite long period of time, as is indi-
cated by his statements about earlier and later opinions of 'Ata's,\textsuperscript{121} 
this amount of material could gradually accumulate.

b. 'Ata's sources

In most cases 'Ata does not give reasons for his legal opinions, but 
merely observes that such-and-such is the legal situation. The texts 
in which he refers to some source, whether it be the Qur'ān, the 
Prophet, the latter's Companions, or learned colleagues, constitute 
only one third of Ibn Jurayj's entire 'Ata tradition. Nevertheless, it 
is precisely these which are of decisive significance for the question 
of the origins of Meccan jurisprudence. In order to obtain a nuanced 
picture of 'Ata's sources, I will investigate them divided according 
to genre.

The sources of the *responsa*

If one differentiates between texts in which 'Ata refers to sources 
argumentatively and those in which he merely mentions them—usu-
ally prompted by questions from students—, it emerges that only 
about 14% of the *responsa* contain a recourse to sources which serves 
to support the legal pronouncement. Among them the shares of the 
Qur'ān and of the Companions of the Prophet are approximately 
equally high (about 6% each), and those of the Prophet and of 'Ata's 
contemporaries equally low (about 1% each). That is, when 'Ata 
invoked an authority in order to strengthen his position—which he 
did rarely—as a rule it was either the Qur'ān or one of the sahāba, 
rarely the Prophet or *fugahā* of the tāḥān level. If one adds the 
other kind of references, i.e. sources merely mentioned, the share of

\textsuperscript{121} See pp. 92–94.
the Qurʾān doubles and those of the Prophet and of ‘Atāʾ’s contemporaries rise to approximately half of the value for the Companions of the Prophet, which rises only negligibly.

This shift in ‘Atāʾ’s references to sources reflects the interest of his students. Through their questions, they prompt him to deal with the Qurʾān, the Prophet and contemporary opinions more intensively than he did on his own initiative.

The next question to be clarified is how ‘Atāʾ refers to his sources. From this, it is possible to draw conclusions about their existence in his time and his familiarity with them. I treat them in the order of their significance in ‘Atāʾ’s instruction.

α. The Qurʾān

‘Atāʾ’s references to the Qurʾān can be subdivided into allusions and citations. Allusions are, among other things, those cases in which he simply invokes “God” or the Qurʾān and in doing this assumes that the questioner knows precisely which verse is intended. Two examples:

Ibn Jurayj said: Hishām ibn Yahyā said to ‘Atāʾ: “[What happens] if a man does not know the period of renunciation (ajal al-ilā’) until four months have passed?” [‘Atāʾ] said: “Even if he is ignorant, the period [of renunciation] is as God has established (kamā farāḍa llāhu).”\(^{122}\)

‘Atāʾ refers—as does the question—to Qurʾān 2:226: “Those who renounce their wives [i.e., swear to abstain from them sexually] have a waiting period of four months . . .”

Ibn Jurayj said: I said to ‘Atāʾ: “The man marries the woman, but does not see her until he divorces her. Is she permitted to his son [in marriage]?” [‘Atāʾ] said: “No! It is revealed [in the Qurʾān] (mursala).” I said: “[What does] ʿillā mā qad salafa (with the exception of that which has already taken place) [mean]?” [‘Atāʾ] said: “In the Jahiliyya sons married the wives of their fathers.”\(^{123}\)

Ibn Jurayj’s follow-up question shows that he has understood ‘Atāʾ’s allusion precisely and relates it to Qurʾān 4, verse 2, from which he then quotes.\(^{124}\)

Allusions of this kind are, however, relatively rare. In general, ‘Atāʾ cites the appropriate verse fragments. This offers the opportunity to compare them with the textus receptus. ‘Atāʾ’s Qurʾānic cita-

\(^{122}\) AM 6: 11666. Emphases mine.

\(^{123}\) AM 6: 10805.

tions generally have introductions identifying the text as such. Usually 'Atā' precedes them with "qāla llāhu" (God said:), more rarely "dhakara llāhu" (God mentioned) or "kitābu llāhu" (God's book), or Ibn Jurayj notes, "talā ['Atā']" ('Atā' recited). However, completely unannounced citations, identifiable only to those well-versed in the Qur'ān, also occur. In the questions directed to 'Atā', on the other hand, the Qur'ānic citations of Ibn Jurayj and others are predominantly without mention of the source; it is only sporadically characterized as "qawl allāh" (God's word). 'Atā's Qur'ānic citations, which are without exception only fragments of verses, can be classified into three kinds: 1. Those which are in complete agreement with the textus receptus represent by far the largest portion. 2. Citations which to a large extent correspond to the 'Uthmanic recension, but which contain omissions, and 3. Paraphrases. Two examples of the second and third kind:

['Atā'] said: [...] God, the exalted, said: "Lā taḥillu lāhu ḥattā tānkiḥa zawjan ghayrāhu [...]" 129

The textus receptus of Qur'ān 2:230 runs: "[...] fa-lā taḥillu lāhu min bā'du ḥattā tānkiḥa zawjan ghayrāhu [...]" 130

Ibn Jurayj said: I said to 'Atā': "The woman is divorced, and it is suspected that she is no longer menstruating, without its being completely clear to them. How is that [to be handled]? ['Atā'] said: "As God, the exalted, said: 'If she has given up the hope of it, she must observe a waiting period of three months (îdāh yā'isat min dhālika rābdat thalāthata ashshurīn)."

The fraction of a verse which 'Atā' is paraphrasing runs: "Wa-l-lāhī ya'isna mina l-maḥūdi min nisā'ikum ini rtabtum fa-īddatuhumma thalāthata ashshurīn [...]" (Qur'ān 65:4).

Such abbreviations of Qur'ānic texts also occur in the questions of Ibn Jurayj, whose citations, however, generally agree precisely with the textus receptus. One probably should not infer deficient knowledge of the Qur'ān or divergent readings on the basis of these, even when they seem defective, like the following citation of Ibn Jurayj's:

125 E.g. AM 6: 11094, 11142.
126 AM 6: 11476; 7: 13621 (without eulogy!).
127 E.g. AM 6: 10948, 11357.
128 E.g. AM 6: 10620: "insā'ān bī-ma'rūfīn aw taswī'ūn bī-ihṣānīn" (Qur'ān 2:229).
129 AM 6: 11142.
130 Emphasis mine.
131 AM 6: 11094.
Ibn Jurayj said: I said to ‘Atā’: “What is your opinion [about the following case]: If a woman were to come from the polytheists (ahl al-shirk) to the Muslims today and convert to Islam, would her husband be entitled to compensation for her—in accordance with the word of God in [the sura] al-Mumtaḥana: ‘wa-atūhum mithla mā anfaqū’ (and give them the same [amount] as what they spent)?” [‘Atā’] said: “No! That was just a [an arrangement] between the Prophet and the people of the pact [of al-Hudaybiya], [only] between him and them.”132

The textus receptus of Qurʾān 60:11 runs: “fa-ātū lldhīna dhahabat azwjāhum mithla mā anfaqū.”133

‘Atā’’s and Ibn Jurayj’s references to the Qurʾān allow a number of historical conclusions: If they say “fi l-qur’ān”134 or quote from the “kitāb allāh” (Book of God),135 the Qurʾān must have been a known quantity in their time, i.e., at the beginning of the second/eighth century. The textual content of the verses, too, must have been largely established. That is the presupposition of the mode of citation, which expects of the listener that he be able to place the fractional verses, often consisting of only a few words, in a known context. Had the text of the Qurʾān not been definitely fixed, it would not have have been possible to refer to it in this way.136 The defective quotes and paraphrases which sporadically occur are no counter-argument. They are explained by the tendency to brevity which comes to expression in the allusive mode of citation in general. It results not only in the fragmentary rendition of Qurʾānic verses, but also in their rather free summarization. The thesis that the text of the Qurʾān was established does not preclude the possibility that there were isolated divergent readings of a few verses. An example of a qirāʿa not contained in the textus receptus which was in circulation at the beginning of the second/eighth century is offered by this responsum:

Ibn Jurayj from ‘Atā’. He said: “She [the wife’s mother] is not permitted to him [in marriage]; it is revealed [in the Qurʾān] (mursala).” I said: “Didn’t Ibn ‘Abbas read ‘wa-ummahātu nisāʾikumu llāhi dakhaltum’

132 AM 7: 12707.
133 Emphasis mine.
134 AM 6: 10805.
135 AM 7: 13621.
136 This and the following findings concerning ‘Atā’’s knowledge and use of the Qurʾān contradict J. Wansbrough’s thesis of its late collection, editing and canonization as presented in his Quranic Studies: Sources an Methods of Scriptural Interpretation (Oxford, 1977).
(and the mothers of your wives with whom you have consummated the marriage)?" ['Ata'] said: "We do not read [in this way]!"\(^{137}\)

The text contains, in the first place, only an allusion to the Qur'ān of 'Ātā'\(^{13}\)'s, which Ibn Jurayj, as his follow-up question shows, correctly relates to Qur'ān 4:23. He cites a qirā'a of Ibn 'Abbās's for it, which gives the passage a narrower interpretation than the textus receptus, to which 'Ātā' refers. This runs only, "wa-ummahātu nisā’ikum;" the "allātī dakhaltum" follows only a line later and refers to the mothers of stepdaughters. The qirā'a of Ibn 'Abbās does not intend a general proscription of marriage to the mothers of wives, but only of those with whom the marriage was actually consummated. That is indeed a meaningful interpretation of the passage, but precisely that exposes this qirā'a to the suspicion of being an exegetical addition. 'Ātā' does not dispute that this is a reading of Ibn 'Abbās. This could be for two reasons: Either he considers the statement that Ibn 'Abbās read in this way to be correct, or he himself had not heard his opinion about this passage and for this reason did not want to dispute it. Nevertheless, he rejects it as not being accepted in Mecca in his time and adheres to the version of the textus receptus. The invocation of qirā'āt can be considered an argument for the thesis that the text of the Qur'ān was established.\(^{138}\) The fact that they are considered the deviations of specific persons presupposes a standard text from which they differ. This also becomes clear from the example of other qirā'āt which 'Ātā' himself reports from Ibn 'Abbās.\(^{139}\)

At the time when Ibn Jurayj was studying with 'Ātā', i.e., in the first 15 years of the second/eighth century not only the content of the Qur'ānic verses, however, but probably also their ordering in sūras was largely established. The latter—or at least some of them—already had names by which one could refer to them. This emerges from the responsum cited,\(^{140}\) in which Ibn Jurayj locates his Qur'ānic citation with the remark that it is from "al-Mumtaḥana" (The Tested Woman). It is, in fact, from sūra 60, which has this name in the Egyptian standard edition of the Qur'ān. It is among the few names

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\(^{137}\) AM 6: 10816. I read َلا ناقراُع instead of the meaningless "َلا نتقرأَع" of the manuscript and the edition.


\(^{139}\) See p. 152.

\(^{140}\) See p. 110.
of suras which do not consist of a word in the sura in question.\textsuperscript{141} It is only derived from a word contained in it, namely in the tenth of the thirteen verses, which says: “ja-mtahinuhumna” (and test them! [the women who come to Medina as emigrants]). The designation of the sura as “al-Mumtahana” is in no way obvious, as in the case of many suras which draw their names from a word of the first verse. That such an unusual name for a sura existed so early speaks against the idea, current until now, that the names of the suras accrued to the suras relatively late from oral tradition.\textsuperscript{142} The fact that in the earliest Qur’ān fragments often no sura names appear does not speak against their early use in the domain of instruction. The addition of names to suras is to be attributed at the latest to the first generation of scholars after the definitive redaction of the text of the Qur’ān by the Companions of the Prophet, if not to the latter themselves. In any case, suras which have a name must already have existed as finished units.\textsuperscript{143}

In addition to Ibn Jurayj’s and ‘Atā’s use of a standard version of the Qur’ān—which, as far as can be seen from the citations examined, corresponds to the familiar textus receptus—and of sura names, their familiarity with two exegetical methods which subsequently played an important role in the tafsīr literature is noteworthy: naskh al-qur’ān (abrogation of the Qur’ān, [i.e., of individual elements]) and sabab al-nuzul (occasion of revelation [of individual verses]).

A textual attestation of naskh has already been cited in another context.\textsuperscript{144} There Ibn Jurayj asks ‘Atā whether the sentence “wa-la yakhrūna illā an ya’tina bi-fāhishatin mubayyinatin” (they [f.] should/need not leave [their houses] unless they commit a provable [sexual] transgression) in Qur’ān 65:1 is not abrogated. Clearly Ibn Jurayj is aware of a discussion about the abrogation of this verse fragment,\textsuperscript{145} and ‘Atā, who denies it, is aware of the meaning of the question asked.\textsuperscript{146}


\textsuperscript{143} On another sura name see p. 152.

\textsuperscript{144} See p. 98.

\textsuperscript{145} That “illā an ya’tina bi-fāhishatin mubayyinatin” was abrogated was, for instance, the opinion of ‘Atā al-Kurāsānī (d. 135/757), an informant of Ibn Jurayj’s for a number of Ibn ‘Abbās traditions. Cf. AM 6: 11020 (this tradition, however, comes from Ma‘mar). On ‘Atā al-Kurāsānī see below, p. 233.

The following responsum, for instance, contains a sabab an-nuzūl:

Ibn Jurayj said: I said to ‘Atā’: “What does ‘Wa-l-wālidatu yurdi’na awlā-dahunna hawlayni kāmilayni’ [mean]?” ['Atā'] said: “If a woman wants to shorten [the period of suckling] of two years, it is a duty of his [i.e., the child’s] mother to inform him [the father, about it]. He may not prolong [the period of suckling] beyond two years unless she desires. Divorced [women] and widows are [also intended]. It is reported (yurūfā) that [the verse] [was revealed] among the people when they were in disagreement about the period of suckling.”

The last sentence refers to the occasion of the revelation of the verse. This tradition without precise information about its origins is so meaningless in its generality that one may ask oneself whether it is not the abbreviation of a more concrete and historically detailed version.

That such concrete asbāb al-nuzūl traditions already existed is shown by another example:

Ibn Jurayj said: I said to ‘Atā’: “‘Wa-halā’ilu abnā’ikum’ [and the wives of your sons]. [Assuming that] the man marries the woman but does not see her until he divorces her. Is she permitted to his son?” ['Atā'] said: “It is revealed [in the Qur’ān] (mursala). [There it says:] ‘Wa-halā’ilu abnā’ikumu lladhina min ḥalabikum’ [and the wives of your sons who [come] from your loins]. ['Atā'] said [further]: “We are of the opinion (narā) and transmit (natahaddathu)—God, however, knows best—that it was revealed to Muḥammad when he married Zayd’s wife. The polytheists in Mecca talked about it [disparagingly] and so it was revealed: ‘Wa-halā’ilu abnā’ikumu lladhina min ḥalabikum.’ In addition, it was revealed: ‘Wa-mā ja’ala ad’iyā’akum abnā’akum’ [and he did not make those you call sons [i.e., adoptive sons] you [real] sons] and it was revealed [at that time]: ‘Mā kāna Muḥammadun abā ahadin min ṭijālikum’ [Muḥammad is the father of none of your men].”

While the Zayd-Zaynab affair is obvious as the occasion of revelation of the two latter verses, since Zayd is identified by name in Qur’ān 33:37, this is not as evident in the case of Qur’ān 4:23, even if an indirect thematic reference to the verses from sūra 33 is

147 Qur’ān 2:233.
148 AM 7: 12173.
149 Qur’ān 4:23.
150 Sic!
151 Qur’ān 33:4.
152 Qur’ān 33:40.
Whatever may be true of the historicity of the association—‘Ata’ himself shows a glimmer of uncertainty in the formula “wa-lāhu a’lamu” (God, however, knows best)—, in his responsum there is present a sabab al-nuzūl tradition whose origin is to be dated at the latest in the first decade of the second/eighth century, but probably as early as the second half of the first/seventh century.\(^{155}\)

The thesis that the Qur’ān played a role as a source of law in ‘Ata’s instruction, which has initially been formulated quantitatively,\(^ {156}\) is also supported by more detailed examination of the Qur’ānic material contained in ‘Ata’s responses transmitted by Ibn Jurayj. It reveals, as the examples cited show, not only that ‘Ata’ knew the Qur’ān extremely well but that he was well-versed in Qur’ānic exegesis, and that his students used to obtain from him information about the meaning of parts of Qur’ānic verses. In cases in which he was unsure about the meaning he admitted this and named possible alternatives, as in the following text:

Ibn Jurayj said: I said to ‘Ata’: “What is your opinion about the word [of God]: ‘Mā khalaqa llahufi arbiimihinna’?\(^ {157}\) [‘Ata’] said: “The child [is meant], she may not keep it secret so that he desires her [again]. However, I do not know [for certain], perhaps the menstrual period is [also meant] along with it [i.e., the child] [. . .].\(^ {158}\)

In general, as in this example, ‘Ata’ gave interpretations of the Qur’ān as his own opinion. Occasionally he also supported himself—as in the case of the asbāb al-nuzūl\(^ {159}\)—with traditions, without precisely specifying their origins. Already in ‘Ata’s lifetime, however, the consciousness of a qualitative difference between the two types of statements seems to be in the offing or already present. This becomes clear in a few of ‘Ata’s answers, in which he emphasizes that his interpretation is not only his personal opinion (ru’y) but also rests on “knowledge” (‘ilm),\(^ {160}\) or in which he supplements the introductory

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\(^ {156}\) See pp. 107 f.

\(^ {157}\) Qur’ān 2:228.

\(^ {158}\) AM 6: 11058.

\(^ {159}\) See p. 113 (zurwā).

\(^ {160}\) AM 6: 11017. Cf. also 10780.
formula "we are of the opinion" with "and we transmit." This differentiation is probably also the background of a question of Ibn Jurayj’s, whether ‘Aṭā’ has heard “bi-shay’in ma’lūmin” (something based on knowledge) about part of a Qur’ānic verse, which ‘Aṭā’ answers in the negative, although he could surely have said something about its juridical relevance.

‘Aṭā’’s way of treating Qur’ānic material reflects his predominantly juridical interest in it. Purely philological explanations are scarcely found in the responsa. It is permissible to conclude from this that the Qur’ān already had an influence on juridical thinking in this early stage of legal development. This was obviously possible only in the subject areas about which unambiguous statements were to be found in the Qur’ān. Schacht’s thesis “that apart from the most elementary rules, norms derived from the Qur’ān were introduced into Muhammadan law almost invariably at a secondary stage. This applies not only to those branches of law which are not covered in detail by the Qur’ānic legislation [. . .] but to family law, the law of inheritance, and even cult and ritual,” thus seems to me questionable. Schacht underestimates the significance of the Qur’ān for the origins of Islamic jurisprudence. One could, it is true, object that the frequency of only 13% explicit mentions of the Qur’ān in ‘Aṭā’’s responsa transmitted by Ibn Jurayj (including the questions) speak for rather than against Schacht, but the portion of texts that show Qur’ānic influences without its being cited expressis verbis must be included in the calculation. Specifically, it is in no way the case that in every legal solution which he bases on the Qur’ān ‘Aṭā’ makes note of this. He does this rather rarely, often only when he is challenged to do so or provoked by counter-opinions, as in the following two examples:

161 See p. 113.
162 AM 7: 12187.

165 Cf. also Gräf, Jagdbeute, pp. 317 f.
Ibn Jurayj said: I asked ‘Aṭā’ about the man who wanted to divorce his wife and asked her to give him part of her bridal gift. She did so willingly, then he divorced her. [‘Aṭā’] said: “[That is not permissible].”166 I said: “Why? God, the exalted, said: ‘Fa-in ṣībna lakum ‘an shay‘īn minhu’”167 (and if they grant you part of it).” Then [‘Aṭā’] recited: ‘Wa-in aradīmu stibdāla zawjin makāna zawjin’168 (and if you want to exchange one wife for another).169

Only Ibn Jurayj’s objection causes ‘Aṭā’ to cite the Qur’ānic evidence on which his legal view rests. It is similar in this text:

Ibn Jurayj from ‘Aṭā’. He said: “If a slave falsely accuses a free [man, of having committed fornication], he is whipped forty [lashes], regardless of whether he has become muḥṣin [i.e., one who must avoid illegitimate sexual relations]170 (uḥṣina)171 or not.” I said: “There are people who say: ‘He is whipped eighty lashes.’” [‘Aṭā’] disapproved of this and recited: “‘Wa-lldhrna yarmūna l-muḥṣanūti . . . fa-jlidūhum thamānīna jaldatan wa-la taqbalūlahum shahādatan abadan”172 (and those who accuse chaste women [of fornication] . . . , whip them eighty lashes and never again accept testimony from them). There are, however, no testimonies for a slave.”173

The legal questions treated in the two texts are certainly not what Schacht understands by the “most elementary rules.” Especially in the latter case, ‘Aṭā’’s opinion rests on several deductions: 1. The Qur’ānic text, which speaks only of the false accusation of women, is also applicable to men. 2. For the solution of the problem it is immaterial whether the slave has already been married or not, i.e., has iḥrān status. Thus, consideration of Qur’ān 4:25 to this point is to be rejected. An explicit reference to the passage is not present. 3. In general, no testimony is accepted from slaves; consequently, Qur’ān 24:4 is in the first place only to be applied to free persons. 4. Following Qur’ān 4:25, the penalty for slaves can accordingly be determined. This Qur’ānic point of reference, too, is not specifically mentioned.

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166 This answer, which the context requires, is missing in the manuscript, probably as the result of an oversight.
169 AM 6: 11827.
171 The editor vocalizes “aḥsana.”
173 AM 7: 13786.
The example shows that 'Atā' already possessed considerable skill in utilizing the Qurʾān as a legal source and working out solutions to new legal questions through combination of and deduction from parts of Qurʾānic verses. Such lines of reasoning are implicitly contained in many of his legal answers, without a word being expended on the Qurʾānic foundations. One can claim with some certainty that 'Atā' not only was a good scholar and exegete of the Qurʾān, but used this knowledge for the solution of juridical problems.

β. The Companions of the Prophet

Measured by the frequency of their mention, after the Qurʾān the sahāba constitute the second most important source to which 'Atā' resorts in his responsa. Among those more often named are Ibn 'Abbās, 'Umar and 'Ā'isha, among those more rarely mentioned Ibn 'Umar, 'Ali, Ibn al-Zubayr and others. Formally, it is conspicuous that references to Companions of the Prophet in the responsa generally have no isnād and are extremely short. In terms of genre, the dicta (sayings) predominate; acta (actions) and sententiae (verdicts) are more rare. Some have the character of mere references which presuppose either personal contact with the person in question or knowledge of a more detailed report from him.

From the texts investigated by me, a direct relationship can be determined only for Ibn 'Abbās. He is not only the authority among the sahāba to whom 'Atā' refers most often, but also the only one about whom he claims that he "heard" him. E.g.:

Ibn Jurayj transmitted to us. He said: I said to 'Atā': "Aw yafṣūra lldhi bi-yadīhi 'uqdatu l-nikāḥi" (or he who has the contraction of marriage in his hand remits it) [, who is meant by this?] ['Atā'] said: "The [marriage] guardian! I heard Ibn 'Abbās say: 'The one who remits is the one of the two [i.e., the woman herself and the guardian] who is more God-fearing.'" ¹⁷⁶

'Atā' does not emphasize sama from Ibn 'Abbās in every case. Often he limits himself to saying after his own opinion: "kāna Ibn 'Abbās yaqūluhu" (Ibn 'Abbās [too] used to say this). ¹⁷⁷

¹⁷⁴ There was not a single one in my selection of texts.
¹⁷⁵ Qurʾān 2:237.
¹⁷⁶ AM 6: 10851. Emphasis mine.
¹⁷⁷ E.g. AM 7: 12990, 13145.
A number of indicators speak for the authenticity of ‘Aṭā’ī’s Ibn ‘Abbās traditions:

1. Ibn ‘Abbās traditions are found among the responsa only in very small numbers (in just over 2%), and there they are usually additive, simply a confirmation of ‘Aṭā’ī’s statement without great value of its own. Clearly ‘Aṭā’ī does not generally consider it necessary to give more weight to his own legal teachings through the authority of an Ibn ‘Abbās or of another Companion of the Prophet. Thus one can assume that the cases in which he mentions him casually are credible. Otherwise, there is no discernible reason why he mentions him at all.

2. The situation is different in the following text:

Ibn Jurayj said: I asked ‘Aṭā’ī about a man who, after a “ransom” divorce (fidā‘), divorced [normally] (tallaga). [‘Aṭā’ī] said: “This is to be regarded as void, because he divorced a woman whom he did not possess [any more].” Sulaymān ibn Mūsā contradicted him. Thereupon ‘Aṭā’ī said: “Ibn ‘Abbās and Ibn al-Zubayr were in agreement about this in the case of a man who divorced his wife by “buying free” and then after the “buying free” (khul‘) divorced [her normally]. They both agreed that the [normal] divorce after the “buying free” [from marriage] was to be regarded as void, with the words: ‘He did not divorce his wife, but something which he did not possess [any more].’

In this case one might suspect that in view of the criticism of his opinion, ‘Aṭā’ī considered himself compelled to ascribe it to weightier authorities in order to defend it. This assumption, however, is not convincing. A reference to the fact that Ibn ‘Abbās had been of the same opinion would have been sufficient for support. The failed caliph ‘Abd Allāh ibn al-Zubayr, outlawed by the Banū Umayya, is at the beginning of the second/eighth century surely no especially opportune or impressive authority for juridical subtleties. It is rather to be supposed that ‘Aṭā’ī is referring to a real case which took place during the caliphate of Ibn al-Zubayr (64/684–73/692), was brought before the caliph and decided by him. Perhaps Ibn ‘Abbās commented positively on the verdict. As a student of Ibn ‘Abbās, ‘Aṭā’ī could have been present at the time. The fact that he names his

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178 Literally: Of whom he possessed nothing [more].
179 Literally: That after the ransoming he did not [effectively] divorce, and [thus his act] was to be considered void.
180 AM 6: 11772.
source only upon being questioned or contradicted was already to be observed in the case of his Qur'anic evidence. The example is thus not unusual. It confirms my thesis that this scholar usually did not deem it necessary to enhance his statements through reference to older authorities, not even when he had adopted his solution from them. There are, however, indications that even in 'Ata’s lifetime a desire for stronger support of statements through authorities was spreading among scholars. Even ‘Ata’s students seem to have been infected with it, as for instance appears from their occasional demands that he name his source or informant. The inclination to invoke older, famous personalities harbored the danger of arbitrary attributions, i.e., forgeries. This is clear from a responsum of ‘Ata’s:

Ibn Jurayj said: I said to ‘Ata: “Ya’qūb transmitted to me (akhbaran) from you that you heard Ibn ‘Abbās say: ‘If [the man] specifies a period, the period is [binding] for him. That is not a renunciation (īlā). If he does not name it, it is a renunciation [i.e., oath of sexual abstinence].’ [‘Ata] said: “I did not hear anything [at all] from Ibn ‘Abbās about renunciation!” I said: “What do you say [then]?” He said: “Whether he names a period or not [, it is the same], when— as God says—four months have passed, it is a [divorce].”

The text displays an internal sign of genuineness: ‘Ata’ does not claim that Ibn ‘Abbās did not say what was attributed to him or did say something else, as would be expected if ‘Ata’ were invoking Ibn ‘Abbās arbitrarily, but that he did not hear him say anything on this question. This speaks for the credibility of the cases in which ‘Ata’ claims to have something from Ibn ‘Abbās. In addition, this is an example of an early effort at forgery, in which a legal opinion was either falsely put in the mouth of a Companion of the Prophet (matn forgery) or intended to be “supported” by a well-known contact person of this Companion (isnād forgery).

I think that the texts cited suffice as evidence that on the basis of ‘Ata’s responsum it is possible to defend the thesis that—until the

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181 See p. 116.
182 See p. 88.
184 Qur’ān 2:226.
185 AM 6: 11610.
186 Also see pp. 110 f.
187 On a similar case of forgery cf. AM 7: 14021, 14027 (see p. 144).
opposite is proved—the traditions transmitted in the *Musannaf* by Ibn Jurayj from ‘Atā’ from Ibn ‘Abbās may be regarded as reliable transmissions of the latter.

‘Atā’’s references to Companions of the Prophet other than Ibn ‘Abbās do not show that he had direct contact to them. He quotes them without naming his source—e.g., with the note “Umar said this [too]” or “So-and-so used to do such-and-such”\(^{188}\)—, but also sometimes indicates indirect transmission. For example, thus:

Ibn Jurayj said: I said to ‘Atā’: “The waiting period of a [female] slave?” ['Atā'] said: “Two [cycles of] menstruation (haydatâni).” He said [further]: “People have reported [dhakarū] that Umar ibn al-Khattāb said: ‘If I could, I would make it one and a half periods.’”\(^{189}\)

Ibn Jurayj said: I said to ‘Atā’: “[Assuming that] the man marries the woman. How many [days] should he stay with the virgin which are not accorded to the others?” ['Atā'] said: “What has been transmitted to you from Anas ibn Mālik\(^{190}\) is that he said: ‘For the virgin three days, for the one who has already been married (thayyib) two.’”\(^{191}\)

It should not be concluded from the lack of precise statements concerning the provenance of his references to Companions of the Prophet that ‘Atā’ was not familiar with the use of the *isnād*. It could also be for other reasons: firstly, the function of these references within the literary genre—which ultimately represents a reflection of the mode of instruction—could be responsible for it, and secondly the significance of such traditions for ‘Atā’’s legal scholarship in general; and the two are not mutually exclusive. It speaks for the first thesis that ‘Atā’’s citations in his responsa are in general not complete traditions, but only fragments. The original context is left out in favor of that constituted by the question and ‘Atā’’s answer. Usually only the quintessence of the tradition remains. It is for this reason that I call them references. Their function consists simply of serving

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\(^{188}\) AM 6: 10726; 7: 12401, 13198, 13883.

\(^{189}\) AM 7: 12877. Emphasis mine.

\(^{190}\) Instead of “tarawna” I read with the editor turuwawna.

as a reminder that there is a tradition from a Companion of the Prophet which corresponds in tenor to ‘Atā’s teaching. This technique of reference has its natural “Sitz im Leben” in legal instruction, where it is primarily the content which matters and less the form of the legal sources. In principle, it does not exclude the possibility that ‘Atā also knew the traditions in more detail and could cite them with sources, but it may also have led to his only remembering or noting down their essential meanings.

In favor of the second thesis one can marshal the fact that the small number of references to Companions of the Prophet in ‘Atā’s responsa speak for the marginality of their role in his legal instruction. One might explain this by a small number of traditions in circulation in his time. That this is, however, not the reason is proven by: 1. texts from which it emerges that he once referred to a Companion as his source and another time, with the same case, did not, 2. other responsa in which he cites a tradition of a Companion only in response to a follow-up question, or 3. the questions of students which allude to sahāba traditions which are not received from ‘Atā but which—as his answers show—he must have known. He thus knew far more than he used, as shown by the following example:

Ibn Jurayj transmitted to us the words: I heard ‘Atā being questioned; a man said to him: “A woman gave me some of her milk to drink after I was a grown man. May I marry her?” [‘Atā] said: “No!” I said: “That is your opinion?” He said: “Yes!” ‘Atā said: “Ā’isha ordered her brother’s daughters [to do] that.”

Ibn Jurayj’s question whether ‘Atā’s answer is also his opinion (ra’y) seems somewhat odd. It should probably be seen in the context of the distinction between ra’y and ‘ilm which has already been mentioned. Ibn Jurayj wants to know whether the answer is ra’y or ‘ilm. Only understood in this way is it meaningful. ‘Atā’s answer is that it is ra’y. This does not fit with the following reference to the usus of ‘Ā’isha. It is presumably a later addition of Ibn Jurayj’s, who heard the thematically appropriate hadīth about ‘Ā’isha from ‘Atā in another (later?) context. There is a similar case in a dictum about

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192 Cf., in addition to the texts cited below, AM 7: 11948.
193 AM 7: 13883.
194 See pp. 114 f.
195 The fact that ‘Atā’ is named again before the hadīth also suggests that it is an addition.
the Prophet which Ibn Jurayj heard from ‘Atā’ as a tradition of ‘Ā’isha. ‘Amr ibn Dīnār, on the other hand, with an identical text as ‘Atā’ś ra’y. Here, too, it is probable that the reference to ‘Ā’isha is to be placed later chronologically, since Ibn Jurayj is the younger of the two and ‘Amr emphasizes that the matter is a long time in the past.

These facts strengthen me in the assumption that in the course of his decades-long activity as a teacher ‘Atā’ experienced a development from virtually pure ra’y to stronger consideration of traditions. Probably he was compelled to this by the “Zeugeite,” i.e., the blossoming of an interest in traditions of the first/seventh century, to which especially his students succumbed. If one assumes that the incorporation of hadiths represents a secondary stage in ‘Atā’ś legal scholarship, his weaknesses as a transmitter also become understandable. After he had probably considered the citation of traditions superfluous for a relatively long time, it was difficult to make up his deficit in the swiftly rising standard for techniques of transmission. In support of this hypothesis let us first of all cite only one text. Investigation of ‘Atā’ś dicta will bring further clarification.

Ibn Jurayj transmitted to us from ‘Atā’: ‘Ā’isha said: “Until the death of the Messenger of God it was permitted to him to marry whomever (mā) he wished.” I said: “From whom are you transmitting (ta‘thiru) that?” ‘Atā’ said: “I don’t know; I think (hasabtu) that I heard ‘Ubayd say it.”

The student demands from ‘Atā’ that he specify of his source for the sahāba tradition. ‘Atā’ has forgotten who it was. This and the general lack of isnāds in ‘Atā’ś references to traditions of the Companions in his responsa are to be evaluated as indications that for ‘Atā’ the registration and naming of transmitters was—at least for a time—unimportant, and that refraining from this was not injurious to his reputation as a scholar, since he otherwise presumably would have made an effort to eliminate the deficiency. ‘Atā’ś responsa represent a rudimentary stage in the incorporation of traditions from the Companions of the Prophet into the developing discipline of

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196 AM 7: 14001.
197 Instead of “qultu” one should read with the editor qūla.
199 AM 7: 14001.
jurisprudence, rudimentary with respect to the number of the traditions and their reporting. This hypothesis intentionally refers only to ‘Aţă’’s identification of traditions of the sahāba, not also—e silentio—to his teachings being influenced by them, because it is quite possible that he was molded earlier and more strongly by traditional material than is apparent, and that he simply did not consider it necessary to refer to it. Such behavior is observable on his part with respect to the Qur’ān as well.\(^{200}\)

In contrast to ‘Aţă’’s traditions from Ibn ‘Abbās, the authenticity of his references to other sahāba is uncertain, since he did not hear them himself and does not know or does not specify the provenance of the traditions. However, one can at least conclude from them that the corresponding traditions of Companions of the Prophet existed in his time. They cannot be fictions of later times, as Schacht assumes of most of them,\(^{201}\) but most have been in circulation at the latest in the first decade of the second/eighth century. ‘Aţă’’s wavering about whether he heard the cited pronouncement of ‘Ā’ishā’s from ‘Ubayd ibn ‘Umayr (d. 68/687) or from someone else\(^{202}\)—this uncertainty speaks for his honesty!—even makes it possible to push back the origins of sahāba traditions far into the second half of the first/seventh century. This does not preclude the possibility that in the second/eighth century traditions of the Companions were invented and forged—which we have already seen in one example.\(^{203}\) Since ‘Aţă’ usually cites only fragments of the traditions, or only alludes to them, they can be used to date the original versions, since only a one-sided dependence—namely, that of the ‘Aţă’ texts from the more detailed versions—is likely. One can establish the rule: If there is a reference to the matn of a sahāba tradition in the ‘Aţă’ material of Ibn Jurayj as contained in the Muṣannaf, ‘Aţă’’s death date (115/733) is the terminus ante quem of the existence of the tradition in question.

Let us demonstrate the utility of the method with an example:

In the two most important recensions of Mālik’s Muwaṭṭa’ there is an unusually long tradition composed of several individual traditions about the suckling of adults.\(^{204}\) It comprises a tradition of the

\(^{200}\) See pp. 115, 116.

\(^{201}\) Cf. Schacht, Origins, pp. 150 f.

\(^{202}\) See p. 122.

\(^{203}\) See p. 119.

\(^{204}\) Mālik, Muwaṭṭa’ (Y) 30:12 (p. 605), Muwaṭṭa’ (Sh), no. 627.
Prophet provided with several pieces of marginal information, a tradition about 'A'isha and one about the other wives of the Prophet. On the basis of the artful composition alone it is atypical of Mālik's traditions, and for this reason one is tempted to regard it as a relatively late product. Mālik's isnād, however, designates Urwa ibn al-Zubayr (d. between 92/711 and 101/720) as the originator of the story and Ibn Shihāb (124/742) as its transmitter. For “systematic” reasons Schacht does not assign the origins of the individual components even to Ibn Shihāb and his time, and considers the reference to Urwa to be “spurious” in any case. He sees in them counter-traditions from the circles of the “traditionists” against the established opinion of the “ancient school” of Medina and the latter’s counter-traditions against the “traditionists’” attempt to change the doctrine.  

Comparison with a responsuum of 'Ata’’s already cited, however, yields a completely different picture: According to it, 'Ata’, who is surely not to be numbered among the “traditionists,” already accorded the suckling of adults legal efficacy and referred in this context to a usus of 'A'isha’s: “kānat 'A’isha ta’muru bi-dhālika banāti akhīhā.” That is clearly a relic of the more detailed Urwa tradition of the Muwatta’. There it says: “'A’isha [ . . . ] employed this [method] in the case of the men whom she wanted to admit into her presence. She used to order her sister Umm Kulthūm bint abī Bakr [ . . . ] and her brother’s daughters (fa-kānat ta’muru ukhtahā Umm Kulthūm [ . . . ] wa-banāti akhīhā) to suckle the men whom she wished to admit to her presence.”  

This tradition of 'A’isha was thus already known to 'Ata’. 'Ata’ and Ibn Shihāb are drawing from the same source, since the possibility can be excluded that ‘Ata’ was a student of the younger Ibn Shihāb. According to Mālik’s isnād, Urwa ibn al-Zubayr is the original transmitter of the story. Since he is an older contemporary of

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205 Cf. Schacht’s Origins, pp. 48, 246. J. Burton has already depicted the many-faceted spectrum of opinion and tradition in early fiqh on the subject of radā‘a in “The Interpretation of Q. 4,23 and the Muslim Theories of Naskh,” in: Occasional Papers of the School of Abbasid Studies (University of St. Andrews), no. 1 (1986), pp. 40–54. Although he advances a hypothesis which is directed against Schacht’s conception of the secondary role of the Qur’ān for fiqh, his ideas about the process of development of the juridical discussion on the subject remain completely within the framework of the Schachtian way of thinking (see esp. p. 41 f.). However, he avoids—apparently intentionally—the latter’s efforts at dating by means of the isnāds.  

206 See p. 121.
‘Atā’ and his authority for other traditions, he is probably also ‘Atā’s source. The Muwatta’s ‘A’isha tradition is thus to be regarded as a genuine tradition of Urwa and will derive from the second half of the first/seventh century.207

g. The Prophet
‘Atā’ refers to the Prophet very rarely in his answers. Of the over 200 responsa investigated, all of three contain a reference to him by ‘Atā’. That is, he is not named more frequently than, for example, ‘Umar or ‘A’isha and less than Ibn ‘Abbās. In addition there is some information about the Prophet in response to concrete questions from Ibn Jurayj. None of the texts contains an isnād; occasionally there is the formula “balaghānā anna l-nabī/rasūla llāh. . .”208 (it reached us that the Prophet/Messenger of God . . .).

The references and allusions to the Prophet contained in the responsa of ‘Atā’ transmitted by Ibn Jurayj confirm the conclusion that I have drawn from the references to Companions of the Prophet. ‘Atā’ knew many more traditions of the Prophet than he used for juridical argumentation. This emerges from the texts in which Ibn Jurayj specifically brings up the subject of the Prophet with him, for example, after an answer containing only ‘Atā’s opinion, and from the fact that ‘Atā’ cites legal maxims which he knows as traditions of the Prophet without indicating the Prophet as a source.

An example:

Ibn Jurayj said: I said to ‘Atā’: “The man seeks the woman in marriage when he [already] has a wife. At the engagement before the consummation of marriage, he contracts the marriage under the condition that she is entitled to one day and X [the first wife] to two days [of marital care].” [‘Atā’] said: “That is allowed before marriage and, after they have amicably agreed upon it [in marriage].” I said: “Was it revealed with regard to this: ‘Wa-ini mra’atun khāfat min ba‘lihā nushūzan aw īrādan’209 (and if a woman fears quarrelsomeness and aversion from her husband)?” [‘Atā’] said: “Yes!” I said: “Did the Prophet do that with his wives?” He said: “Yes!” I said: “What [does it mean in this context]: ‘Wa-uhdīratu l-anfusu l-shuḥha’ (the souls [of human beings] incline to stinginess).” He said: “[That is meant] in

208 AM 6: 10969; 7: 12632.
209 Qur’ān 4:128.
reference to financial support (nafaqa). It is alleged (za’umû), the woman [with whom the Prophet did this] was Sawdâ’.”\footnote{AM 6: 10651.}

Although it would have been natural, ‘Atâ’ does not at first refer to the Prophet as a precedent for his legal opinion. Ibn Jurayj must painstakingly coax it out of him. The name Sawdâ’, and with it a hint that a concrete tradition is known to him, comes only at the very end.

The case that ‘Atâ’ knows a legal maxim as a \textit{dictum} of the Prophet but does not identify it as such can be attested by the example of the saying, \textit{“Al-walad li-l-frâsh wa-li-l-‘âhir al-ḥajar”} (the child belongs to the bed, and to the one who engaged in illegitimate sexual relations belongs nothing). I have already referred\footnote{See p. 91.} to the fact that ‘Atâ’ uses this legal maxim in two different texts\footnote{One I have already cited on p. 84; the other is AM 7: 12862.} without noting that it was also regarded as a pronouncement of the Prophet. That this was known to him is shown by the following example:

\begin{quote}
Ibn Jurayj said: I said to ‘Atâ’: “What do you think if he [the man] rejects it [the child, i.e., denies paternity] after she has given birth to it?” [‘Atâ’] said: “[In that case] he must curse her (yulâ’inuha), and the child belongs to her.” I said: “ Didn’t the Prophet say: \textit{“Al-walad li-l-frâsh wa-li-l-‘âhir al-ḥajar?”}” [‘Atâ’] said: “Yes! But that was because the people in [the beginnings of] Islam laid claim to children who were born in the beds of [other] men with the words: ‘They belong to us!’ [For this reason] the Prophet said: \textit{“Al-walad li-l-frâsh wa-li-l-‘âhir al-ḥajar.”}\footnote{AM 7: 12369.}
\end{quote}

Only thanks to Ibn Jurayj’s question do we learn that this legal maxim is in reality not a creation of ‘Atâ’’s but a saying which was also ascribed to the Prophet and was already known as such around the turn of the first/seventh century. That this is no isolated case is shown by the texts, already cited in another context, about divorce during menstruation.\footnote{See p. 90. More on this subject, pp. 132 ff.}

The reason that ‘Atâ’ so rarely appeals to the Prophet as an authority or cites his actions as exemplary and worthy of emulation thus cannot be that there simply was no more material about the Prophet at his disposal. The reason should, rather, be sought in the
fact that the idea of the exemplary character of the *sunna* of the Prophet and its possible function as a legal source supplementary to the Qur'ān had not yet made its way into his thinking. This assumption is also reinforced by 'Ātā’s use of the word *sunna*, which for him designates custom in the sense of the recognized social practice in Mecca.\(^{215}\)

For the lack of information about the path of transmission (*isnād*) for 'Ātā’s references to the Prophet, the same reasons can be adduced as in the case of the Companions: It may be conditioned by genre and development.\(^{216}\)

The rule developed on the basis of the *sahāba* material, that with the help of 'Ātā’s references to traditions their *isnāds* can be tested and their time of origin delimited, is also valid for the Prophet. This can be understood, by way of example, through one of the texts already cited:

The earliest detailed traditions about the Prophetic dictum “*Al-walad li-l-firāsh wa-li-l-‘āhir al-ḥajar*” are in the *Muwatta* of Mālik and the *Musannaf* of ‘Abd al-Razzāq. To be distinguished are: 1. Different variations of a *qiṣṣa*, i.e. narrative, version which tells of the dispute between Sa’d ibn abī Waqqāṣ and ‘Abd ibn Zama’a over the *nasab* of a boy. They are supposed to have appealed to the Prophet as an arbitrator, and he to have decided the case with the above saying.\(^{217}\)

2. A short tradition containing only the dictum itself.\(^{218}\)

The *Muwatta*’s version runs:

Yaḥyā said from Mālik from Ibn Shihāb from ‘Urwa ibn al-Zubayr from ‘A’isha, the wife of the Prophet: She said: “*Utba ibn abī Waqqāṣ had [at his death] entrusted (‘ahida) to his brother Sa’d ibn abī Waqqāṣ that the son of Zama’a’s slave woman was his and that he should take


\(^{216}\) See pp. 122 f.


\(^{218}\) AM 7: 13821.
him. In the year of the conquest [of Mecca] Sa'd seized him with the words: 'He is my brother's son; he entrusted him to me.' Thereupon 'Abd ibn Zama'a went to him and said: 'He is my brother, the son of my father's slave woman; he was born in (on) his bed.' They went with their struggle to the Messenger of God. Sa'd said: 'Messenger of God, he is my brother's son; he had entrusted him to me.' 'Abd ibn Zama'a said: 'He is my brother, the son of my father's slave woman; he was born in his bed.' The Messenger of God said: 'He belongs to you, 'Abd ibn Zama'a!' Then the Messenger of God said: 'The child belongs to the bed, and to the one who engaged in illegitimate sexual relations belongs nothing.' Thereupon he said to Sawdā' bint Zama'a: 'Veil yourself in front of him!', because he saw the resemblance [of the boy] to 'Utba ibn abī Waqqās. ['Ā'isha] said: He did not see her [Sawdā', again] until he died (laqīya llāha).

The end of the isnād in all early variations of the qīṣa version is: Ibn Shihāb al-Zuhārī—Urwa ibn al-Zubayr—'A'isha, of the shorter version: the same or al-Zuhārī—Ibn al-Musayyab and Abū Salama—Abū Hurayra. Ibn Shihāb is the "common link" of all of these texts, leaving aside 'Aṭā'ī's references. According to Schacht's procedure of dating with the help of the isnāds, the time of Ibn Shihāb's activity would be the terminus a quo starting from which, at the earliest, the tradition complex came into circulation. Since Schacht reckons with the forging of chains of transmission on a large scale, however, he considers al-Zuhārī "hardly responsible for the greater part of these traditions" from the Prophet, Companions and Successors in whose isnāds he appears as the common link; i.e., he shifts the origin of such traditions into the second quarter of the second/eighth century or later. In the case of the legal maxim in question only the second quarter of the second/eighth century remains to him as a probable time of origin, since he infers from al-Shāfi'i's Kitāb al-Umm that Abū Ḥanīfa (d. 150/767) knew it as a dictum of the Prophet. In addition, Schacht cites a text from the Kitāb al-Aghānī already used by Wellhausen and Goldziher, which reports an argument over paternity that is supposed to have taken place "in the middle Umayyad period." Since the legal maxim is not appealed to in it, Schacht concludes: "it had not yet asserted itself in the time of the dispute recorded in Aghani."
With this, he is convinced that the first/seventh century is completely out of the question as a time of origin for the legal saying and that the reference to the Prophet is historically untenable.

From Ibn Jurayj’s and ‘Atā’”s references to the Prophetic dictum, however, it emerges that Schacht’s chronology is not correct. Since ‘Atā’ mentions it several times, it must already have been widespread in the first decade of the second/eighth century (i.e., the middle Umayyad period). Since ‘Atā’ clearly knew the qīṣṣa version and does not transmit from the younger Ibn Shihāb, but occasionally from ‘Urwa ibn al-Zubayr, the latter is his probable source for the Prophetic saying. This means that it must have been brought into circulation at the latest in the second half of the first/seventh century (‘Urwa died towards the end of the first century), but possibly as early as its first half (Abū Hurayra died in 59/678, ‘Ā’isha in 57/676). Then, the possibility cannot be ruled out that the story has a historical core and Muhammad actually made such an arbitration. Schacht considers this unthinkable for reasons of content—wrongly, in my opinion. In his short discussion of the legal maxim he also adduces systematic and historical legal arguments in support of his thesis, adopted from Goldziher, that the ostensible dictum of the Prophet is possibly influenced by the rule of Roman law, pater est quem iustae nuptiae demonst:rant. He sees no indication that the maxim is based already upon pre-Islamic practice; the ancient Arabian method of resolving paternity disputes was the employment of “professional physiognomists.” He further claims that this legal clause is “strictly speaking incompatible with the Koran” and that the cases that it is supposed to deal with “could hardly arise under the Koranic rule regarding ‘idda.” From this he seems to conclude—without expressing it explicitly—that the saying thus could not derive from Muhammad.

The premise of incompatibility with the Qurʾān is, however, not convincing. The paternity disputes deal not only with cases of waiting periods which have not been correctly observed, as he implies,
but also—and above all—with illegitimate sexual relations. These the Qurʾān energetically combats through its regulations in the area of matrimonial law, but the early texts which depict the application of the maxim, i.e., the qīṣa versions of the Prophetic tradition and ‘Ātāʾ’s responsa,227 show that in social reality there were special problematic areas in which the Qurʾānic norms had no impact yet. One of them was the relationship between master and slave woman, which—as the Qurʾān shows—caused problems even in Muḥammad’s time.228 That is the background of the dispute in which the rule came to be applied. It served to prevent one who committed fornication from then enjoying custody of the child resulting from the illegitimate relationship, and cases of adultery from becoming public. This because the man who raised a claim to a child born of the wife or slave woman of another, or the woman who claimed that the child was not her husband’s or her master’s, implicitly confessed illegitimate sexual relations and risked the corresponding punishment. ‘Ātāʾ limits the application of the maxim to those cases in which the paternity of the husband or owner of the woman was not disputed by the man himself but by others, which presupposes illegitimate sexual relations, and gives as a reason that it was the original intention of the rule to put an end to such paternity disputes. ‘Ātāʾ rejects the pre-Islamic method of letting the qāfa (physiognomists) decide; he seems to consider it superseded by the maxim. The legal maxim is thus completely compatible with Qurʾānic regulations in the area of marriage and family law and with the social situation of early Islam. Influence by Roman law is, on the other hand, pure speculation.229

227 AM 7: 12369, 12381, 12529, 12862. Also see pp. 84, 91 and 126.
229 Cf. also Azami, Studies in Early Hadith Literature, pp. 265 f. In addition, Crone, Roman, Provincial and Islamic Law, pp. 10 f., has shown that the path through late antique rhetoric assumed by Schacht is improbable. Juynboll, Muslim Tradition, p. 15 f. considers Ibn al-Musayyab to be the author of the maxim. His textual basis is definitely too narrow, and his conclusions purely hypothetical. They may occasionally be correct, but must not be generalized. For more texts cf. Rubin “‘Al-Walad li-l-Fīrāsh,’” passim.—Hypothetically, the thesis that the maxim originated in another legal tradition could, however, be salvaged if one places the transfer in pre-Islamic times. Then both Roman provincial law and Jewish-rabbinic law would be imaginable as possible godparents (Crone pointed out a parallel in the Babylonian Talmud, op. cit., p. 11). Perhaps the awā’il tradition which ascribes this maxim already to Aktham ibn Ṣayīf has an authentic core. Muḥammad would then simply have resorted to a legal practice that was already current with some Arab tribes. On Aktham cf. M. J. Kister, “Aktham b. Ṣayīf,” in: Encyclopaedia of Islam, Second Edition, vol. 1, p. 345.
I have chosen the example of “al-walad li-l-firāsh . . .” and discussed it in some detail for the reason that Schacht cites it in his work on the origins of Islamic jurisprudence. My thesis that with the help of ‘Aṭā’”s references to traditions of the Prophet one can tracc these at least into the second half of the first/seventh century undermines central pillars of the Schachtian theory, among others his famous three-stage progression: “Successors, Companions, Prophet.” He assumes that the traditions of the Prophet having to do with legal questions are the most recent link in the chain: “[. . .] Generally and broadly speaking, traditions from Companions and Successors are earlier than those from the Prophet.”230 “One of the main conclusions to be drawn [. . .] 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 toward the middle of the second century A.H., disturbed and influenced this ‘living tradition’, and that only Shafi‘i secured to the traditions from the Prophet supreme authority.”231 “[. . .] 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.”232 “We shall find that the bulk of legal traditions from the Prophet known to Malik 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.”233

In the tradition of the Prophet about the saying “al-walad li-l-firāsh . . .” we have a text which contradicts these theses of Schacht’s about the time of origin of the juridical traditions of the Prophet. To anticipate the objection that a single counter-example is not sufficient to refute the entire theory, let me cite another text in support of my argumentation. It is also contained in Mālik’s Muwāṭṭa’,

230 Schacht, Origins, p. 3.
233 Op. cit., p. 149. Emphases mine. Cf. also Schacht, Introduction, p. 34. Similar ideas have recently also been advanced by Juynboll (cf. Muslim Tradition, pp. 71–73), who, however, does not reject the possibility that beginnings of the hadiths of the Prophet reach back into the generation of the tābi‘īn, and thus the end of the first/seventh century, and Crone (Roman, Provincial and Islamic Law, pp. 29–34).
and the Musannaf of ‘Abd al-Razzāq records several early variants.\textsuperscript{234}

The text of the Muwatta' runs:

Yaḥyā transmitted to me from Mālik from Nāfi': ‘Abd Allāh ibn ‘Umar divorced his wife in the lifetime of the Messenger of God while she was menstruating. Thereupon ‘Umar ibn al-Khaṭṭāb questioned the Messenger of God about it. The Messenger of God said: “Order him to return to her [and] then keep her until she is pure, then menstruates, then is pure [again]. Then if he desires he can still keep her, or he can divorce her before he has sexual intercourse with her. That is the waiting period which God enjoined in order to divorce women.”

Schacht does not deal with this tradition explicitly in his Origins, but he treats the Mālik—Nāfi—Ibn ‘Umar traditions in detail and thus provides the opportunity to fit the above text into his theoretical edifice. Schacht doubts that Mālik can actually have obtained from Nāfi all the traditions which he claimed to have from him, since the difference in age between the two was too great—Nāfi died in 117/735–6, Mālik in 179/795—and wonders whether Mālik “did not take over in written form traditions alleged to come from Nāfi’.”\textsuperscript{235}

He is also disturbed by the fact that the isnād Nāfi—Ibn ‘Umar is a “family isnād,” since Nāfi was a freedman of Ibn ‘Umar’s. He considers such isnāds generally to be suspicious or forged. Neither argument is valid, as has already been emphasized by others,\textsuperscript{236} since Mālik was between 20 and 27 years old at Nāfi’s death and the transmission of families and clan members cannot be considered unreliable a priori.

About the Nāfi traditions Schacht has the impression that they generally reflect a secondary stage of legal development: “Many Nāfi traditions represent unsuccessful attempts at influencing the doctrine of the Medinese school.” “[...] These traditions are later than the established Medinese doctrine.” “It is certain”—thus he sums up—“that even the group of Nāfi traditions in Malik’s Muwatta represents the result of gradual growth. The historical Nāfi was certainly not a representative of the ancient Medinese school of law, but beyond this his personality remains vague, and the bulk of the tra-

\textsuperscript{234} Mālik, Muwatta' (Y) 29:53; (Sh) no. 554; AM 6: 10952–10961.

\textsuperscript{235} Schacht, Origins, p. 177. Emphasis mine.

ditions which go under his name must be credited to anonymous traditionists in the first half of the second century A.H."

On the example of the text about divorce during menstruation one can understand well how Schacht comes to this conclusion. I imitate his method! He would argue as follows: The Medinan fiqh of the second/eighth century is most thoroughly comprehended in Mālik's *Muwatta*. From it, it emerges that the "living tradition" of the Medinan school occupied itself with the question of when the waiting period of a divorced woman is over and the divorce thus becomes definitive. It was solved thus: When the third menstrual period begins, the divorce can no longer be retracted. This is reported from several of the so-called "seven lawyers of Medina" and is illustrated by two traditions from the Companions of the Prophet, neither of which is authentic. A Nāfi', Ibn 'Umar dictum to this effect also exists. Since, however, Nāfi' is not to be numbered among the Medinan school, this will be a later back-projection of the opinion of the school onto the Companion Ibn 'Umar; Nāfi' is fabricated as an authority for this tradition. The clarification of the question was necessary, since Qur'an 2:228 speaks only of three "qurū" (cycles) and Qur'an 2:231 of reaching "their appointed time" (*ajalahunna*), from which it is not clear whether the said time is to be placed at the end of a menstrual period, which thus belongs to the cycle of the preceding period of purity, or at the end of the inter-menstrual phase, the cycle thus beginning with the preceding menstrual period and not with the phase of purity, or whether only the phase of purity is to be regarded as the cycle. The latter opinion was put into the mouth of 'Ā'isha and seems to have been

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241 See p. 132.

the Medinan consensus. On the other hand, there is no indication that people worried about the beginning of the waiting period, i.e., when the divorce should take place if the waiting period is to comprise three cycles. Clearly the practice was that the man could pronounce a divorce at any time and after three menstrual periods, or more precisely with the commencement of the third menstrual period, the waiting period was considered complete. In this way, however, three full cycles were not always fulfilled, as the letter of the Qurʾān provides.

To fill this hole in the doctrine and to take the field against this practice, the said Nāfiʿ—Ibn ʿUmar tradition, whose text is the starting point of our discussion, was invented. This fatwā of the Prophet intends that divorce should take place, not during menstruation and not during an inter-menstrual phase, but at the beginning of the latter. This opinion is also represented in an anonymous Anṣār tradition of Yahyā ibn Saʿīd (d. 144/761) and in a historicising narrative of Rabīʿa ibn ʿAbd al-Raḥmān (d. 136/753) about the ʿsahābī ʿAbd al-Raḥmān ibn Ṭawfīq. This shows that it appeared in the second quarter of the second/eighth century. It is conspicuous that people do not content themselves with Ibn ʿUmar, but simply use him as a peg for a responsum of the Prophet. As if that were not enough, the Prophet is made to emphasize that this is the form of the waiting period desired by God. Another Ibn ʿUmar tradition goes even one step farther along this path. It is not from Nāfiʿ but from ʿAbd Allāh ibn Dīnār, another client of Ibn ʿUmar who appears as an alternative transmitter from the latter “at random” beside Nāfiʿ:

"I heard ʿAbd Allāh ibn ʿUmar recite: Prophet, when you divorce women, divorce them at the beginning of their waiting period (li-qubuli ʿiddatihinna)." That is a “word of God” which is not found in the standard edition of the Qurʾān, a non-canonical Qurʾānic variant. It is surely not original, but, like the Prophet’s fatwā for Ibn ʿUmar, arose from the attempt to give this legal opinion the greatest possible authority. Since reference back to the Prophet is, as a rule, more recent than that to the ʿsahāba, the Nāfiʿ tradition will be

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243 Ṭalḥā, Muwattaʿ (Z), nos. 1262, 1240.
244 Cf. Schacht, Origins, p. 177.
245 Ṭalḥā, Muwattaʿ (Z), no. 1281.
246 It fits in the context of Qurʾān 2:231, but cannot be seamlessly integrated without additions.
yet a little more recent than that of Yaḥyā and Rābi‘a, who would surely have cited it had it been known to them. It must thus have come into existence around the middle of the second/eighth century. As a reason why, despite the available saḥāba traditions, such heavy artillery was brought to bear with the Prophet and a Qur’ānic variant, it is natural to suppose that this legal opinion met with bitter opposition, since it was probably directed against the prevailing practice and dramatically limited the man’s freedom of choice about the timing of divorce.

All of this sounds very plausible, and Schacht would surely have been able to identify himself with this placement of the problem in “the development of legal doctrine”\(^\text{247}\)—as he used to call it—which has been undertaken in his spirit. But the entire lovely edifice collapses like a house of cards if one looks at ‘Atā’s responsa on this question. The texts in question have already been cited in another context;\(^\text{248}\) for this reason, I content myself with simply referring to them. From them it emerges that ‘Atā already held the opinion that divorce during the woman’s menstrual period was not permissible, that the man must take her back and could, when the woman was pure again, divorce her or change his mind.\(^\text{249}\) In one of the two responsa which deal with the question ‘Atā wastes no words on the basis of his opinion. In the other, however, he adds to his answer the comment: “It reached us that the Prophet said to Ibn ‘Umar: ‘Take her back! Then, when she is pure again, divorce [her] or keep [her].’”\(^\text{250}\) These are clear echoes of the Nāfi‘—Ibn ‘Umar tradition as it is contained in Mālik’s Muwatta’. It is true that there ‘Umar is also named as a link between Ibn ‘Umar and the Prophet, but that is only one version of the story, of which there are also variants without ‘Umar, one even from Mālik!\(^\text{251}\)

It is thus established that ‘Atā not only held the legal position but also knew the corresponding tradition of the Prophet. Its origin is not to be shifted to the middle of the second/eighth century, as

\(247\) E.g. Schacht, Origins, p. 1.

\(248\) See pp. 90, 91.

\(249\) See p. 90, note 49. Cf. also AM 6: 10951.

\(250\) See p. 91, note 51.

Schacht would do; rather, it must have been in circulation at the latest at the beginning of the second century. From where could ‘Aṭā‘ have it? Nāfi‘ and Ibn ‘Umar himself are possibilities. Nāfi‘ was a contemporary of ‘Aṭā‘’s. Each of the two stayed for a time in the other’s place of residence, and they could have had contact with each other. This is also true for Ibn ‘Umar, who died in 74/692, and thus later than Ibn ‘Abbas (68/687). A remark of Ibn Jurayj’s is interesting in this context: “We sent to Nāfi‘, who had alighted in the council house (dār al-nadwa) and was preparing himself to travel [back] to Medina—we were participants in the circle of ‘Aṭā‘ (nāhu julūs ma‘a ‘Aṭā‘)—[and asked him:] ‘Did ‘Abd Allāh’s divorcing his wife while she was menstruating, in the Prophet’s lifetime, count [as a divorce]?’ He said: ‘Yes!’” This question clearly refers to the Ibn ‘Umar tradition. The fact that ‘Aṭā‘’s students took advantage of Nāfi‘’s stay in Mecca to ask him about it and ‘Aṭā‘’s anonymous reference to the Ibn ‘Umar story suggest that not Ibn ‘Umar directly but Nāfi‘ was ‘Aṭā‘’s source. From wherever ‘Aṭā‘ may have it, in any case Nāfi‘ is confirmed as a transmitter of the story. Schacht’s doubt of the authenticity of the Nāfi‘—Ibn ‘Umar traditions cannot be upheld. An argument for which Schacht gained recognition in the analysis of isnād speaks for Ibn ‘Umar as the original source of the Prophetic tradition: the “common link.” The transmission of all early variants of the text branches off after him. We are apparently dealing with a very old tradition of the Prophet, perhaps even with a genuine fatwā of the Prophet, since Ibn ‘Umar was about 20 years old when Muḥammad died, old enough to be already divorced.

252 AM 6: 10957.
253 Furthermore, it was transmitted from Nāfi‘ not only through Mālik but also through ‘Abd Allāh ibn ‘Umar [al-‘Umari] (d. 172/788–9) and Ayyūb ibn abī Taḥīma (d. 131/748–9). Cf. AM 6: 10953, 10954.
255 As transmitters from Ibn ‘Umar there appear, in addition to Nāfi‘: Ibn Sirīn and Sa‘īd ibn Jūbayr (AM 6: 10955), Yūnus ibn Jūbayr (10959), Abū Wā‘il (10956) and [‘Ubayd Allāh] ibn ‘Umar (10960, 10961).
256 He is supposed to have been born one year before “the revelation,” i.e. the beginning of Muḥammad’s career as a prophet and to have participated for the first time in the “Battle of the Ditch” at the age of 15. Cf. Ibn Hibbān, Mashāhirī, No. 55. This can only be accepted as an approximate statement of age, since the reports about Ibn ‘Umar’s age at Uḥud and al-Khandaq are contradictory. At Uḥud
δ. 'Atā’s contemporaries
In the responsa of 'Atā studied here no reference by name to the opinions of any of his contemporaries among the fiqhā' was to be found, although he probably was in contact with some of them, for instance to the Medinans Nāfī', 'Urwa ibn al-Zubayr and Sa'īd ibn al-Musayyab, supposedly also to al-Ḥasan al-Baṣrī.257 Some few texts, however, contain anonymous references to the opinions of others who are presumably 'Atā’s contemporaries. For instance:

Ibn Jurayj said: I said to 'Atā: “'Abd al-Malik ruled (qadā) that the daughter of Abu Zuhayr [be given] half of the bridal gift.” ['Atā] said: “People criticized him for ruling this.” (la-qad 'aṣab l-nāsu qadā'ahu bi-dhālikā).258

Ibn Jurayj alludes to a dispute which clearly took place in the time of the caliph 'Abd al-Malik ibn Marwān and was presented to him for adjudication. The situation in question can be inferred in its outlines from a tradition of Ibn Jurayj’s from ‘Amr ibn Dīnār.259 Bint abī Zuhayr had married and had been delivered to the husband; he had divorced her and claimed not to have had sexual intercourse with her, which she confirmed. 'Abd al-Malik probably solved the case with reference to Qur’ān 2:237, but the unanimous opinion of the scholars like ‘Atā, al-Ḥasan al-Baṣrī and Sa'īd ibn al-Musayyab260 was that the wedding with the delivery of the woman to the man was to be considered consummation—regardless of the partners’ statement about what took place on the wedding night—, and that in consequence the entire bridal gift was due.

Since there were scarcely any Companions of the Prophet alive at the time of the caliph 'Abd al-Malik, the criticism will have come from the ranks of the scholars of the following generation. ‘Amr ibn Dīnār has his information about the case from Sulaymān ibn Yasār (d. 107/726), one of the Medinan fiqhā’ who was probably himself among the critics of 'Abd al-Malik’s verdict. Sulaymān reports that the caliph regretted this afterwards. Since 'Atā also knew the story,
it must have caused something of a stir among the scholars in his time. In view of the available textual testimony, its historicity seems to me likely.

The fact that ‘Atā’ was informed about the doctrines of other fuqahā’ living in his time is also attested by the following responsum:

Ibn Jurayj said: I said to ‘Atā’: “How many times may a slave divorce a free woman?” [‘Atā’] said: “[There are] people [who] say (yaqīlu nās): ‘The waiting period and the divorce [generally depend] upon [the status of] the women.’ Others have said (wa-qāla nās): ‘Divorce [depends] on the men, whatever [status] they may have; the waiting period [on the other hand, depends] on the women, whatever they may be.’” I said: “Which of these [opinions] do you prefer?” [‘Atā’] said: “Divorce [depends] on the men, the waiting period on the women” (al-ṭalāq qu li-’l-rjāli wa-l-‘uddatu lī-l-nisāʾī).  

The other traditions in the Muṣannaf of ‘Abd al-Razzāq allow us to identify the “nās” whom ‘Atā’ apparently has in mind. The first-mentioned opinion was held in Iraq (al-Sha‘bī, Ibrāhīm al-Nakha’ī, al-Ḥasan al-Baṣrī),262 the other, with which ‘Atā’ identifies himself, by the Medinans (Ibn al-Musayyab, Sālim ibn ‘Abd Allāh ibn ‘Umar).263 It is true that all of them base themselves on various Companions of the Prophet, but ‘Atā’ will scarcely have his knowledge directly from the Companions and consequently will surely be referring to the generation of their students, and thus his contemporaries. That he also knows the Iraqi point of view is noteworthy and can be considered an indication that the individual centers of scholarship were not completely cut off from each other, at least not Mecca. Since ‘Atā’ only very rarely refers to other opinions—Ibn Jurayj, however, already more frequently—the question whether and to what extent the centers mutually influenced each other at this stage is difficult to decide and must be reserved for a separate study. Schacht’s thesis that the fiqh of the Hijāz was more backward and was influenced throughout by Iraq, but not vice versa,264 is probably not tenable in this degree of generalization, at least not for the period until the middle of the second/eighth century.

261 AM 7: 12945.
262 AM 7: 12953–12956.
263 AM 7: 12944, 12946, 12947, 12949, 12951, 12957–12959. Cf. also Mālik, Muwaṭṭa’ (Z), no. 1271.
264 Schacht, Origins, p. 220.
The sources of the dicta

The authorities on whom ‘Atā’ bases himself and the traditions with which he is familiar have first been investigated only for the genre of responsa, since it has an especially high authenticity content. The question is whether the conclusions reached on the basis of the responsa can also be confirmed through his dicta, whether perhaps modifications must be made or additional aspects come to light.

I have defined as dicta all of ‘Atā’’s statements which are not preceded by questions.²⁶⁵ They can be expressions of ‘Atā’’s opinions on legal situations, on Qur’ānic verses, or on traditions, i.e., dicta in the true sense, or traditions—i.e., hadiths, āthār or akhbār—about statements or actions of others, of the Prophet, his contemporaries, caliphs, governors, qādis, and so forth.

The number of true dicta²⁶⁶ exceeds that of the traditions several times over (70% as compared to 30%). Mixed forms, for instance those in which ‘Atā’ provides his opinion with a tradition, are rare (1%); as a rule, opinions and traditions are cleanly separated. Mere allusions to traditions and references to sources and authorities, too, are even more rarely (1%) to be found than among the responsa, where they accounted for almost 14%.²⁶⁷ The separation of ‘Atā’'s own material from that of others does not, however, mean that we are dealing with disparate material in terms of content. ‘Atā’'s traditions, too, generally have to do with legal situations. Despite their independence, and although their share is twice as large as among the responsa, they too probably functioned in ‘Atā’'s instruction as evidence and references to sources, authorities or precedents. Possibly Ibn Jurayj is responsible for the clear division between ‘Atā’'s traditions and his actual dicta, since he is more to be classed as a transmitter than as a faqīh expressing his own opinions.²⁶⁸ The relatively small proportion of material from others outside of the responsa confirms the impression gained there that in ‘Atā’'s legal instruction, the reinforcement of opinions through reference to authorities played a rather subsidiary role.²⁶⁹ What he communicated to his students was largely his opinions on specific legal situations. Is this generally

²⁶⁵ See p. 79.
²⁶⁶ Some āthār (opinions) are counted as dicta in disguise.
²⁶⁷ See p. 107.
²⁶⁸ On this see p. 205.
²⁶⁹ See p. 107.
a characteristic of the legal instruction of the *fuqahāʾ* of the first/seventh century?

Nevertheless, it cannot be overlooked that ‘Aṭāʾ knows sources and cites them to a limited extent, something which later became an indispensable procedure of Islamic jurisprudence. Since these sources—at least sometimes—can yield information about the prehistory of ‘Aṭāʾ’s legal teachings, special attention should be directed to them. The distribution of frequency appears to be somewhat different in the genre of *dicta* than in the case of the *responsa.* The Companions of the Prophet come in first place (23%); there follow, with almost equal numbers of attestations, the Qurʾān (including the exegetical traditions of *ṣaḥāba* and others) and the Prophet (6–7%); specifically named contemporaries of ‘Aṭāʾ’s are very rare (1–2%).

The ranking of authorities which can be derived from Ibn Jurayj’s *entire* tradition from ‘Aṭāʾ (*responsa* and *dicta* together) thus appears as follows: references to Companions of the Prophet (15%), references to the Qurʾān (10%), *hadiths* of the Prophet (5%), references to anonymous traditions (3%), to contemporaries of ‘Aṭāʾ’s (1.5%).

α. The Companions of the Prophet

‘Aṭāʾ’s Ibn ʿAbbās traditions are the largest group of *ṣaḥāba* traditions. This is even more conspicuous within the genre of *dicta* than in the case of the *responsa.* ‘Aṭāʾ refers to Ibn ʿAbbās almost three times as often as to ‘Umar ibn al-Khaṭṭāb, the next most frequently cited, to the latter three times as often as to ‘Alī or ‘A’isha; Jābīr ibn ʿAbd Allāh, Abū Hurayra, Ibn ʿUmar, Abū Saʿīd al-Khudrī, Muʿawiyah and less famous Companions turn up rarely. Among the *dicta,* the Ibn ʿAbbās traditions represent half of all traditions from the *ṣaḥāba.*

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270 Ibid. It is a ranking, that is, the determination of the frequency of the authorities named within a given number of texts—here only of the *dicta.*

271 The interpretation of such statistical data is, methodologically, not unproblematic. In this case, however, it is legitimate, because Ibn Jurayj’s ‘Aṭāʾ tradition is so extensive. Thus the statistical data can be considered significant. It is, however, not certain whether ‘Abd al-Razzāq’s tradition from Ibn Jurayj is complete or only—as is to be presumed—represents a selection. It is quite possible that further ‘Aṭāʾ material from Ibn Jurayj which can be demonstrated to be authentic will turn up in other works. The conclusions drawn from ‘Abd al-Razzāq’s work, however, could be at most modified, but not definitively refuted by this, since it would itself only represent a selection. (Such texts are, for instance, to be found in the *Miṣṣanāf* of Ibn ʿAbi Shayba; however, their reliability has yet to be clarified.) Since it is a chimerical hope that a complete tradition from early *fuqahāʾ* will ever appear, conclusions based on an extensive and clearly balanced, and thus representative, selection—like that of ‘Abd al-Razzāq—are the most certain possible.
1,660 traditions of the Prophet are supposed to have been transmitted from Ibn 'Abbās.272 As a rule, 'Aṭāʾs Ibn 'Abbās traditions contain no hadiths of the Prophet.273 In them, Ibn 'Abbās is only a learned authority, not a transmitter. The sole source to which Ibn 'Abbās occasionally refers is the Qurʾān. This discrepancy requires explanation. To conclude from it that Ibn 'Abbās did not know and pass on any traditions from the Prophet and that those going under his name are all forgeries would surely be overly hasty. A satisfactory explanation can probably be given only after an investigation of all of 'Aṭāʾ's traditions from Ibn 'Abbās and the Prophet.274

From the references to and citations of Ibn 'Abbās in 'Aṭāʾ's responsa it was possible to advance the hypothesis that these traditions are genuine, i.e., really were opinions and statements of Ibn 'Abbās.275 Further arguments in support of this thesis can be derived from 'Aṭāʾ's remaining Ibn 'Abbās traditions.

Weighty indices of authenticity are yielded by texts in which 'Aṭāʾ indicates that he has something from Ibn 'Abbās only indirectly or that his own opinion does not agree with that of this Companion of the Prophet. No forger who otherwise claimed to have heard a master, and who fathered his opinions on an authority, would do this. One attestation of indirect transmission:

Ibn Jurayj from 'Aṭāʾ. He said: "When a woman is divorced three times without the marriage with her having been consummated, it is only one [divorce]. That reached me (balaghānī) from Ibn 'Abbās.276"

For difference of opinion:

Ibn Jurayj from 'Aṭāʾ. He said: "If a validly-married husband and wife separate, even without the husband's pronouncing a divorce—for instance by mutual waver of rights (mubāra'a) or ransom [fidā']—it is [tantamount to] one divorce [pronounced by the husband]. Ibn 'Abbās, however, did not use to say this."277

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273 There was not one in my excerpt of the text!
274 Critical Hadith scholars of the second half of the second/eighth century like Yabhā ibn Saʿīd al-Qaṭṭān and others estimated the number of Ibn 'Abbās' hadiths of the Prophet at about ten. Cf. Juynboll, Muslim Tradition, p. 29. Possibly a few authentic ones can be found in the 'Aṭāʾ tradition of the Ṣaḥīḥ of Abū Dāwūd.
275 See pp. 117–120.
276 AM 6: 11076.
In addition, there is—as among the responsa—a number of texts with notation of samāʿ (“I heard Ibn ‘Abbas say”). Such notes are otherwise found only in the case of ‘Aṭā’ī’s rare traditions from the Companions of the Prophet Abū Hurayra and Jābir ibn ‘Abd Allāh, who—like Ibn ‘Abbas—died only in the second half of the first/seventh century and whom ‘Aṭā’ī could have heard, and from the early tābiʿī ‘Ubayd ibn ‘Umayr, not, however, in the case of traditions from ‘Umar, ‘Ałī, ‘Āʾisha and Ibn ‘Umar.

In terms of genre, most of ‘Aṭā’ī’s traditions from Ibn ‘Abbas are to be classed as legal dicta whose content does not, as a rule, provide any hint of the “Sitz im Leben” or of the historical situation in which they arose. The rare cases in which ‘Aṭā’ī reports that Ibn ‘Abbas was asked for a legal fatwā or reached a verdict (qāḍāʾ) in a legal dispute do have a stronger reality content, but they do not permit more than the assumption that concrete cases underlie them. Historical “meat” is offered only by ‘Aṭā’ī’s very rare qīṣa traditions from Ibn ‘Abbas. The fact that they are stylistically atypical definitely speaks more for than against their authenticity, once ‘Aṭā’ī’s tradition from Ibn ‘Abbas can be considered generally reliable on the basis of the various other criteria named. The following two sample texts offer not only an insight into the student-teacher relationship between the two men, but also show ‘Aṭā’ī’s precision in the reporting of what he heard, when he admits having forgotten specific facts or emphasizes that Ibn ‘Abbas expressed himself literally in this way. Not least, ‘Aṭā’ī’s statement that he was originally of a different opinion than Ibn ‘Abbas speaks for his honesty and thus for the genuineness of the tradition.

Ibn Jurayj from ‘Aṭā’ī. He said: “The first person from whom I heard [about] muʿā [marriage was] Ṣafwān ibn Yaʿlā. He reported to me (akhbāran) from Yaʿlā that Muʿāwiyah entered into a muṭaʿa union (istamtaʿa) with a woman in al-Ṭāʿif. I [‘Aṭā’ī] disputed that [i.e., the permission of muṭaʿa] with him [Ṣafwān]. [Thereupon] we went into Ibn

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278 E.g. AM 6: 10895, 10897, 11740; 7: 14021.
279 E.g. AM 7: 13680, 12566.
280 AM 7: 13541, cf. also 14001 (see p. 122).
281 AM 7: 13000; 6: 10508.
283 Intended are probably ‘Aṭā’ī and his fellow students, not he and Ṣafwān. Cf. AM 7: 14022. On ‘Aṭāʾī’s companions, see p. 172.
'Abbās' presence and one of us told him [the story, or our difference of opinion]. [Ibn 'Abbās] said to him: 'Yes [, that is permitted]. I could not stop worrying about it, and when Jābir ibn 'Abd Allāh came we went to him in his residence. The people asked him this and that and then [also] mentioned mut'a [marriage] to him. He said: 'Yes [, it is permitted]. We practiced it (istamtā'īnā) in the lifetime of the Messenger of God (eulogy), of Abū Bakr and of 'Umar, until—at the end of 'Umar's caliphate—Amr ibn Hurayth entered into a mut'a union with a woman—['Āṭā']: Jābir named her, but I have forgotten [her name]284, whereupon the woman became pregnant. News of this reached 'Umar. He had her brought [to him] and asked her [about what had been reported to him about her]. She answered: 'Yes [, it is so].' ['Umar] said: 'Who stood witness [at the contraction of the marriage]?' 'Aţā' said: 'I do not know [i.e., remember], if she said: 'My mother' or 'my (her) marriage guardian (uJa/1)'. [Thereupon, 'Umar] said: 'Why no one else [besides one of the two]? ' [Jābir] said: 'He ['Umar] was afraid that this could ultimately (al-ākhīr, sic!) lead to a degeneration of morals (daghal) [, and for this reason he prohibited mut'a].285

'Aţā' said: 'I heard Ibn 'Abbās say [, when the subject of 'Umar's prohibition of mut'a came up]: 'May God have mercy upon 'Umar! Mut'a [marriage] was [by] permission of God (eulogy). With it he had mercy upon the community (umma) of Muḥammad (eulogy). If it were not for his ['Umar's] prohibition of it [mut'a], only a scoundrel (illā shaqiyy) would have need of fornication!' 'Aţā' said: 'By God! It is as if I [still] saw him saying 'illā shaqiyy."

'Aţā' said: "It [mut'a] is what is [meant] in the sūra 'The Women' [by]: 'Fa-mā stamtat'tum bihi minhu'nna286 (and what you have enjoyed of them (f)) until such and such an appointed time, under such and such a condition, without consultation (?);287 and if288 after the appointed time, the two find it best to reach an agreement [about a continuation of the union, that is possible] and [if it seems better to them] to separate, it is [also] good, and no marriage [then] exists [any longer]."289

Ibn Jurayj said: "Aţā' reported to me (akhbaran~) that he heard Ibn 'Abbās express the opinion that it [mut'a marriage] was at present (al-āna) permitted. ['Aţā' also] reported to me that [Ibn 'Abbās] used to

284 According to Abū l-Zubayr, a student of Jābir's (see pp. 209 ff.), she was called Mu'āna and was a client of Ibn al-Hadramī, cf. AM 7: 14026.
285 Cf. AM 7: 14025, 14028, 14029.
286 Qur'ān 4:24.
287 The editor notes, "unclear in the manuscript." Perhaps the consultation of the woman with her marriage guardian is meant.
288 The manuscript seems to be corrupt in this place. I read instead of "qāla" "fa-in". This is also a suggestion of the editor's.
289 AM 7: 14021.
recite: ‘Fa-mā stamtā’tum [bihi]290 minhumna ilā ajalin fa-ātūshunna uyūra-hunna’291 (and what you have enjoyed of them until an appointed time, [for it] give them their recompense). Ibn ‘Abbās said in these very words (bi-harfīn): ‘ilā ajalin.’”

‘Ātā’ said: Someone reported to me from Abū Saʿīd al-Khadrī the words: “One of us contracted a muʿa [marriage] (yastamt{u) for a cup of crushed wheat.” [Ibn] Ṣafwān292 said [about this]: “In his legal opinions, Ibn ‘Abbās declares that to be fornication.”293 Ibn ‘Abbās said [when this reached him]: “I do not declare that to be fornication in my legal opinions! Has [Ibn Ṣafwān] forgotten Umm Urāka?294 Her son is from that [man]? Is he perhaps [a child of] fornication?” [‘Ātā’] said: “A man from the Banū Jumaḥ contracted a muʿa [marriage] with her.”295

In these Ibn ‘Abbās traditions of ‘Ātā’s about the question of muʿa marriage I can discover no indication that ‘Ātā invented them and fathered them on Ibn ‘Abbās. Why should he, who seldom refers to Companions and then usually contents himself with an “Ibn ‘Abbās also said that” or with the citation of a dictum, have thought up such complicated stories? His original opposition to muʿa, which even Ibn ‘Abbās was at first unable completely to dispel, his visit to Jābir ibn ‘Abd Allāh, who reinforced him in his aversion to Umar’s prohibition, Ibn ‘Abbās’ harsh criticism of Umar’s verdict and his reference to the Qur’ān with a qirā’a which ‘Ātā himself never adopted, the story that Ibn Ṣafwān ascribed to Ibn ‘Abbās during his lifetime a view which he did not hold at all, the specific references to three concrete cases of muʿa marriages (Muʿāwiya, ‘Amr ibn Hurayth, Umm Urāka) whose children were probably still alive in ‘Ātā’s time, all of this speaks against forgery of the stories. As a result of external and internal criteria—the former emerge from investigation of ‘Ātā’s Ibn ‘Abbās traditions in general, the latter from the two cited texts them-

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290 Presumably an oversight of the copyist. “Bihā” is in the textus receptus and in 14021.
292 I.e. ‘Abd Allāh ibn Ṣafwān ibn Umayya ibn Khalaf (d. 73/692-3). Cf. Khalīfa ibn Khayyāt, Tabaqāt, pp. 235, 280. Here there is probably a confusion with the previously named Ṣafwān ibn Ya’lā. That it cannot be the latter emerges from the content—he does not seem to have been an opponent of muʿa—and from AM 7: 14027, a parallel in content to this text, where Ibn Ṣafwān is named.
293 Cf. AM 7: 14027.
294 Cf. AM 7: 14024. See pp. 190 ff.
295 AM 7: 14022. Ibn Ṣafwān belonged to the Banū Jumaḥ. The man in question was one of his uncles. Cf. AM 7: 14024, 14027.
selves—they are to be regarded as authentic, i.e., as actual opinions and paraphrases or even literal reports of Ibn ‘Abbās’ statements.

I have cited these two Ibn ‘Abbās traditions in such detail with another, ulterior motive in mind. The subject of muḥa was also dealt with by Schacht in his Origins, and this offers the opportunity to check his conclusions. Schacht suspects that muḥa was already an ancient Arabian institution which was “sanctioned and regulated” by Qur’ān 4:24. It was “certainly” a widespread practice in early Islam, which expressed itself in a more detailed and unambiguous reading in the Qur’ānic texts diverging from the textus receptus which “were attributed” to Ibn Mas‘ūd, Ubayy and Ibn ‘Abbās, and “in a tradition attributed to Ibn Mas‘ūd for Kufa, and in a doctrine attributed to Ibn ‘Abbās and his Companions for Mecca.”

From a tradition of ‘Alī in the Muwatta’ which polemicizes against this teaching of Ibn ‘Abbās, Schacht concludes that it must have been attributed to Ibn ‘Abbās around the middle of the second/eighth century. Since the Medinan traditions from Companions who are against muḥa—in addition to ‘Alī, primarily ‘Umar (in the Muwatta’ in a version other than that of Jābir ibn ‘Abd Allāh)—have a common link in al-Zuhrī, this shows—according to Schacht—“that the explicit rejection of muḥa in Medina is not older than the time of Zuhri at the earliest.” There is no reason to except the tradition about ‘Umar’s prohibition of muḥa and to consider it more authentic that the other “counter-traditions.”

‘Aṭā’ī’s Ibn ‘Abbās traditions about muḥa as they exist in the Musannaf of Abd al-Razzāq show that Schacht’s conclusions about the historical development of the legal problem are to a large extent incorrect. Ibn ‘Abbās’ teaching about muḥa was not attributed to him around the middle of the second/eighth century, but was already known to ‘Aṭā’ at the beginning of the second century and derived from Ibn ‘Abbās himself, and thus from the middle of the first/seventh century. The “counter-traditions” against muḥa, too, are much

296 Schacht, Origins, p. 266.
297 See p. 143.
older than Schacht assumes. They did not arise "at the earliest in the time of al-Zuhri," i.e., in the first quarter of the second/eighth century, but already in the time of Ibn 'Abbās and probably are in fact to be traced back to 'Umar, since Ibn 'Abbās does not dispute that 'Umar was against mut'a, which would have been natural had Jābir made it up. The Jābir tradition is not to be assigned only to the last quarter of the second/eighth century; rather, it is a good century older—Jābir died in 78/697–8.300 From 'Atā"s Ibn 'Abbās traditions it becomes clear—as was already suggested by the references to him in the responsa—that Ibn 'Abbās was 'Atā"s teacher. Other Companions of the Prophet whom he had an opportunity to meet, in contrast, played only a marginal role for him. Viewed overall, he refers to Ibn 'Abbās more frequently than to any other source or authority, including the Qur'an;301 but not, on the other hand, to such an extent302 that one could conclude from it that he necessarily needed him as an authority for his own teachings. This seems to me a weighty argument for the genuineness of his Ibn 'Abbās traditions. If this is the case, we can draw from it not only information about 'Atā"s legal instruction but also about the legal teachings of Ibn 'Abbās himself, i.e., about the development of law in the first half century after Muḥammad's death. Only the investigation of all of 'Atā"s Ibn 'Abbās traditions in the Muṣannaf can produce an exact picture. That must be reserved for a separate work. It is already possible, however, to make a few noteworthy observations on the basis of the selection of texts used here:

1. Qualitatively, there is no obvious difference between Ibn 'Abbās' legal statements and those of 'Atā. Both prefer to express their opinions and only rarely support themselves with sources for justification.

2. With respect to the sources used, it is conspicuous that—as has already been mentioned303—Ibn 'Abbās supports himself only with

300 Cf. Khalifa ibn Khayyāt, Tabaqāt, p. 102. Ibn Ḥibbān, Mashāhīr, no. 25. That 'Umar's prohibition of mut'a is historical is also suggested by a comparison of the 'Atā traditions with others, especially those of Abū l-Zubayr. Cf. AM 7: 14024, 14025, 14028, 14035, 14047. On the institution of mut'a cf. Motzki, "Geschlechtsreife," pp. 537–540 (with further literature). My hypotheses there are in need of revision in the light of this study; at least, the conception can be grasped chronologically earlier than I assumed. A detailed study on mut'a has been published by A. Gribetz: Strange Bedfellows: Mu'ath al-Nisā' and Mu'ath al-Hajj (Berlin 1994).

301 Not infrequently he names him as the source of his Qur'ānic exegesis.

302 Frequency: over 7%.

303 See p. 141.
the Qurʾān, and neither—at least in the traditions of ‘Aṭā’ which have been investigated—with older companions of the Prophet or with the Prophet himself. 3. The main difference between Ibn ‘Abbās and ‘Aṭā’ is quantitative in nature. ‘Aṭā’ expresses opinions on many more legal questions and subjects than his teacher. This may in part have to do with the fact that he does not cite him regularly even in places where he has adopted an opinion from him, and in part with the fact that he was his student only for a period of time and could not hear everything. On the other hand, it probably also reflects a quantitative development of the legal material, a proliferation of problems and questions in the course of the second half of the first/seventh century.

The authenticity of ‘Aṭā’’s traditions from Abū Hurayra and Jābir, and probably also from ‘Abd Allāh ibn ‘Umar, is to be judged in much the same way as in the case of his Ibn ‘Abbās traditions. The infrequency with which they are mentioned speaks for, and the content of the texts in question—as far as I can see—does not speak against their authorship. ‘Aṭā’ explicitly claims to have heard Abū Hurayra and Jābir ibn ‘Abd Allāh.304 In the case of Ibn ‘Umar, only after investigating further ‘Aṭā’ traditions from him will it be possible to decide whether he has them directly from him or through, for instance, Nāfi’.305 ‘Aṭā’’s statements that he heard something from the Companions in question cannot be dismissed as implausible from the outset. Firstly, he reports from them only very little and, in terms of content, rather insignificant things—at least from the point of view of fiqh. Secondly, he does not claim this about all of the Companions who were still alive when he was a student. He is supposed to have been born around 25/645, and thus could have met ‘Ā’ishah, who died in 57/676, which he did in fact claim.306 From her, however, he does not as a rule transmit directly;307 but he does from Abū Hurayra, who died only two years after ‘Ā’ishah. His traditions from Muḥāwiya (d. 60/680),308 Abū Saʿīd al-Khudrī (d. 74/693)309 and Anas

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301 AM 7: 12566, 13680. Also see p. 142.
304 See p. 136.
306 See pp. 150 f.
307 See p. 142.
308 See p. 144.
ibn Mālik (d. 93/711) are likewise indirect; on the other hand, those from Ibn ‘Abbās (d. 68/687) and Jābir ibn ‘Abd Allāh (d. 78/697) are direct. This does not speak in favor of the assumption that ‘Aṭā’s “heard” sahāba traditions are forgeries, since in that case one would expect him to pass off everything as “heard” which, on the basis of the lifetimes of the corresponding Companions, he could have obtained directly from them. Thus, like his Ibn ‘Abbās traditions, his traditions from Abū Hurayra and Jābir ibn ‘Abd Allāh are also to be considered authentic.

The ‘Umar traditions represent the second largest group of ‘Aṭā’s sahāba traditions. Altogether—responsa and dicta combined—they do not, however, even comprise 3% of Ibn Jurayj’s ‘Aṭā tradition. If one classifies them according to genres, it emerges that the majority belongs to those genres which are especially appropriate to ‘Umar’s office of caliph: legal verdicts (aqdīya) and decrees (prohibitions, commands). There are also dicta (which in part may be relics of verdicts or fatwās, i.e. legal opinions) for which caliphal authority was probably also required (criminal law), rarely acta of a more private character. This differentiates the ‘Umar traditions clearly from those of Ibn ‘Abbās, for example, and lends them an air of historicity. The possibility ‘Aṭā forged, i.e. invented, these traditions can be rejected in view of their marginal role in his legal teachings and of the fact that he by no means always accepts ‘Umar’s verdicts. They were clearly already in circulation in his time. From where does ‘Aṭā have them? He does not name any source for most of the ‘Umar traditions; sporadically, he introduces them with “dhakaru” (it was reported [to me]). In a few cases, however, he names his informant. In the text about muṭa marriage already cited it is Jābir ibn ‘Abd Allāh from whom he heard it; he claims to have heard from ‘Ubayd ibn ‘Umayr a decree of ‘Umar’s about the penalty for consuming wine, and ‘Aṭā transmits a fatwā of the caliph’s about

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310 See p. 120.
311 E.g. AM 7: 12401, 12858, 12884, 13651, 14021.
312 AM 7: 13508, 13541.
313 AM 6: 10726; 7: 12877, 12885.
314 AM 7: 13612.
315 AM 6: 11140.
316 E.g. AM 7: 12877.
317 See p. 143.
318 AM 7: 13541.
the *hadd* penalty in the case of fornication by a slave woman from (‘an) al-Ḥārith ibn ‘Abd Allāh, who has it from his father ‘Abd Allāh ibn abī Rabī‘a, a contemporary of the Prophet and of the first caliphs who is supposed to have directed the corresponding question to ‘Umar.\(^{319}\)

There are indications that ‘Aṭā‘ actually obtained those traditions for which he names an informant from the people named. The arguments for the historicity of the Jābir tradition have already been given.\(^{320}\) It speaks for the credibility of the claim to have a tradition of ‘Umar from ‘Ubayd ibn ‘Umayr that in another place he admits not being completely sure about his authority, but that it possibly could be ‘Ubayd.\(^{321}\) This does not fit the assumption that ‘Aṭā‘ arbitrarily named authorities for anonymously circulating traditions. For this reason there are also no grounds for dismissing the family *isnād* “al-Ḥārith ibn ‘Abd Allāh—‘Abd Allāh ibn abī Rabī‘a,” i.e. son from father, as a forgery from the outset. Schacht’s claim that “a ‘family isnad’ [...] is *generally* an indication of the spurious character of the tradition in question”\(^{322}\) is incorrect in this degree of generalization, as I have already shown on an example with the *isnād* “Nāfi‘—Ibn ‘Umar.”\(^{323}\) In any case, the text of the ‘Umar *responsum*, including the question, offers no grounds for the assumption of a forgery. The Qur‘ān leaves open the question of how an unmarried slave woman who commits fornication is to be penalized, but virtually provokes it through its regulation for married slave women.\(^{324}\) ‘Umar’s enigmatic answer makes an archaic impression: “*Alqat farwaṭahā warā‘a l-dār*” (literally: She threw her pelt behind the house). It was understood as a rejection of the *hadd* penalty for the unmarried slave woman.\(^{325}\) Perhaps ‘Umar means by it that the owner should remove her from the house, i.e. sell her.\(^{326}\) Ibn Jurayj and Ibn ‘Uyayna

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\(^{319}\) AM 7: 13612.
\(^{320}\) See pp. 144–146.
\(^{321}\) See p. 122.
\(^{323}\) See pp. 132–136.
\(^{325}\) Thus by ‘Abd al-Razzāq (cf. the other traditions in the chapter) and probably also by Ibn Jurayj, who clearly already had a chapter on this subject himself.
\(^{326}\) Ibn al-ʿAthīr interprets “*farwaṭahā*” as “*veil*” (*qinā‘*), others as her “*hair,*” which should be cut off and with which she should be flogged. (Cf. the editor’s note on AM 7: 13613). Both seem to me rather unlikely: slave women, especially unmarried ones, probably did not wear veils; for the proponents of the “*hair*” interpretation,
also have the tradition with the said *isnād* from ‘Amr ibn Dīnār;\(^{327}\) and it is also transmitted from Ḥkrīma ibn Khālid.\(^{328}\) The common link is al-Ḥārith, which in any case makes ‘Aṭā’\(^{3}\)'s reference to him seem credible, whatever one may think of the ascription to ‘Umar.\(^{329}\)

A picture similar to that formed by ‘Aṭā’\(^{3}\)'s ‘Umar traditions is offered by his few traditions from ‘Ā’isha. From the point of view of genre they are *acta* describing her behavior in concrete familial situations, traditions about herself and the Prophet and *dicta* on questions related to women. The majority of them make the impression of reports of actual incidents. In her case as well he occasionally names his informant, while he does not do this in the case of the other Companions of the Prophet, for instance ‘Ali, whom he cites just as often as ‘Ā’isha.\(^{330}\) The case of ‘Aṭā’\(^{3}\)'s guessing that he obtained an ‘Ā’isha tradition from ‘Ubayd ibn ‘Umayr has already been mentioned,\(^{331}\) as has the fact that he probably obtained another from ‘Urwa ibn al-Zubayr.\(^{332}\) He designates the latter *expressis verbis* as his informant ("*akhbār an‘ Urwa ibn al-Zubayr*")\(^{333}\) for a tradition of the Prophet transmitted from ‘Ā’isha in which she is herself involved.

That ‘Aṭā’ probably had from ‘Urwa more ‘Ā’isha traditions for which he names no source can be assumed in light of the parallels preserved.\(^{334}\) He seems to have been his main informant for ‘Ā’isha traditions, even if he only rarely cites him by name.\(^{335}\) It is an argu-

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\(^{327}\) AM 7: 13612, 13613.

\(^{328}\) AM 7: 13614.

\(^{329}\) This is not ‘Aṭā’\(^{3}\)'s only tradition from ‘Umar and ‘Abd Allāh ibn abī Rabī‘a. Another is AM 6: 11140, without mention of an informant, who presumably may likewise have been al-Ḥārith. He is one of the elder *tābi‘un* of Mecca. Cf. Khalīfa ibn Khayyāt, *Ṭabaqāt*, p. 279.

\(^{330}\) This observation applies only to my textual basis.

\(^{331}\) See the text on p. 122.

\(^{332}\) See pp. 124–125.

\(^{333}\) AM 7: 13939.

\(^{334}\) E.g. AM 7: 12053 (cf. 12054). In the case of AM 6: 11895 and 7: 11948 I also suspect that he may be ‘Aṭā’\(^{3}\)'s source, since al-Mundhir, a brother of ‘Urwa’s, is a protagonist of the story. However, a variant seems to be preserved in later sources only from al-Qāsim ibn Muhammad, transmitted by his son ‘Abd al-Rahmān. Cf. Mālik, *Muwaṭṭa’* (Y) 29:15. ‘Aṭā’ also seems to have traditions of ‘Umar from ‘Urwa, however; cf. AM 7: 13651 and 13650.

\(^{335}\) Occasionally his brother ‘Abd Allāh also appears as a transmitter from ‘Ā’isha known to ‘Aṭā’. Cf. AM 7: 13911.
ment for 'Ata’s credibility that he admits having 'A‘īsha traditions from anyone else at all, since he himself claimed to have met 'A‘īsha.336

‘Ata’s traditions from 'Abi ibn 'Abī Ṭālib consist of legal verdicts (aqdiya), an excerpt from his testament, and dicta.337 They deal primarily with concrete cases. Even the dicta, which have to do with questions of criminal law, are in harmony with those of a caliph or a claimant to the caliphate. As in the case of the other sahāba traditions it can be observed that neither the genre of the transmitted texts nor their content in principle speaks against possible authenticity. For reasons of age—'Ali died when 'Ata was fifteen years old—direct transmission from him is unlikely, nor does 'Ata claim it. In the case of 'Ali’s testament he says explicitly that the information about it “reached him” or “was reported to him” (balaghahu); otherwise he cites him without indication of the mode of transmission or the transmitter. It is difficult to say where 'Ata obtained his 'Ali traditions. In a few cases there are variants from Ibrāhim [al-Nakha‘ī]338 who, however, himself did not meet 'Ali. Possibly the two are drawing independently of each other from Medinan or Kufan sources. Contacts to Kufans should not be considered unusual for 'Ata, who lived primarily in Mecca. We have already heard of a Kufan legal scholar among 'Ata’s auditors.339 Of 'Ali’s testament 'Ata claims that he asked the latter’s great-grandson Muḥammad ibn ‘Ali ibn Ḥusayn, who was a contemporary of 'Ata’s and lived in Medina, about it again, and that he confirmed his information.340 Certainly it is possible for us to say that 'Ata’s 'Ali traditions are not his own forgeries. They probably derive from 'Alid circles of the second half of the first century.

In 'Ata’s responsa, the citations of the sahāba lack isnāds of any kind.341 The dicta show that it is not permissible to conclude from this circumstance that he did not yet know this mode of citation for traditions or that it did not yet exist. On the contrary! It was both extant and known to 'Ata. It must be for another reason that 'Ata's

336 See p. 147, note 306.
337 AM 6: 10532; 7: 13212, 13414, 13445, 13672.
339 See p. 106.
340 AM 7: 13212.
341 See p. 120.
so seldom names his authorities. It was observable in the *responsa*
that ʿAtāʾ knew traditions but did not necessarily state them. The
same is true, as the *dicta* show, for the *isnād* as well. On the above-
mentioned subject of the penalty for consumption of wine, for exa-
ample, in another text ʿAtāʾ similarly refers to ʿUmar’s decree, but
without citing his informant ʿUbayd ibn ʿUmayr. 342 Since the tradit-
ions of the Companions as such played only a subsidiary role in
ʿAtāʾ’s legal instruction, his defective mode of transmission is not sur-
prising. Presumably it was only his students who induced him occa-
sionally to name his authority343 if he could remember or had made
a note of his source.

β. The Qurʾān
ʿAtāʾ’s citations from the Qurʾān and his traditions with explicit
Qurʾānic references, which are included in the genre of his *dicta*,
confirm the conclusions reached on the basis of the *responsa*. For this
reason, I can limit myself to a short characterization of the textual
material and a few supplements to what has already been said.

The sections of Qurʾānic verses which he cites and interprets with-
out exception agree with the *textus receptus*, i.e. the so-called ʿUthmānic
recesion.344 He knows the names of *sūras*; for example, he states
that the verse fragment “fa-mā stamtā’tum bihi minhunna”345 (and [for
that] which you enjoyed of them) is in the *sūrat* “al-Nisāʾ” (the
Women).346 He cites *qirāʿāt* of Ibn ʿAbbās which diverge from the
*textus receptus* and adopts the exegesis intended, but himself follows
the reading of the *textus receptus*: In the verse named (Qurʾān 4:24),
for example, according to ʿAtāʾ’s statement Ibn ʿAbbās read “fa-mā
stamtā’tum [bihi] minhunna ilā ajāin” (… until an appointed time),347 in
Qurʾān 2:226 instead of “yu‘luna min nisāʾ’ihim” “yuqsimuna min
nisāʾ’ihim” and in 2:227 instead of “wa-in ʿazamū l-ṭalāq” “wa-in
ʿazamū l-sarāḥ”.348

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342 AM 7: 13508. See p. 148.
343 See p. 122.
344 Cf. AM 7: 12251, 13503, 13561, 14021.
345 Qurʾān 4:24.
346 AM 7: 14021.
347 Compare AM 7: 14022 with 14021. Cf. also Abū Dāwūd, *Kitāb al-Maṣāḥif*,
p. 77 and A. Jeffery, *Materials for the History of the Text of the Qurʾān* (Leiden 1937),
p. 197. This reading is also transmitted from Ibn Maṣʿūd and Ubayy. Cf. Abū
348 AM 6: 11643.
the last two qirāʾāt are actually only interpretive synonyms of the words they replace. I have already set forth the conclusions to be drawn from this about the existence and acceptance of the textus receptus around the turn to the second/eighth century,349 likewise the significance of the Qurʾān for 'Atāʾs legal scholarship.350 With the citations, paraphrases and interpretations of the Qurʾān which 'Atāʾ transmits from Companions of the Prophet it is possible to push back further into the first century. Most of them he transmits from his teacher Ibn ʿAbbās, which—as has been shown in the previous chapter—can be considered credible. In addition to his qirāʾāt which diverge from the textus receptus, 'Atāʾ cites some legal situations in which Ibn ʿAbbās explicitly bases his opinion on the Qurʾān. These are mainly paraphrases, not literal quotations, introduced with an indication that the Word of God is intended.351 From this allusive mode of reference, which is also occasionally used by 'Atāʾ,352 it is not permissible to conclude that the text of the Qurʾān was not yet established. Rather, it presupposes that the students of Ibn ʿAbbās were in a position to understand his allusions and relate them to the text of the Qurʾān. Argumentation with an unknown quantity known as the “Word of God” would not be particularly meaningful or convincing. Texts in which his students ask him for the interpretation of part of a particular verse of the textus receptus or use it as an argument against a view of the master's show that it is necessary to reckon with the existence of a Qurʾānic text with an essentially established stock of verses at the latest in the last decade of Ibn ʿAbbās' life. In this context it is understandable that his students took note of divergent readings of their master's. A good example of the fact that the citation of parts of verses, which 'Atāʾ also transmits from Ibn ʿUmar,353 presupposes knowledge of the context, i.e. of the whole verse, is this text:

Ibn Jurayj from 'Atāʾ. He said: Ibn ʿAbbās said: "[If the man] divorces [his wife] while she is pregnant, [but] then dies, the later of the two terms [applies], or if he dies while she is pregnant, then [similarly] the later of the two terms [applies]." 354 It was said to him: "wa-ūlātu l-āhmālī

349 See pp. 110 f.
350 See pp. 114–117.
351 Cf. AM 6: 11919; 7: 12051, 12553, 12571.
352 See p. 108.
353 AM 7: 13911.
354 I.e., either birth or the waiting period of the widow, whichever comes later.
Ibn 'Abbās' answer shows that he has correctly assigned the citation to the verse of the *textus receptus* from the beginning of which it is, in fact, possible to conclude that it deals with the waiting period in the case of divorce.

I have already pointed out the questionable nature of Schacht's thesis "that anything which goes beyond the most perfunctory attention given to the Koranic norms and the most elementary conclusions drawn from them belongs almost invariably to a secondary stage in the doctrine" in the context of the Qur'ānic material in 'Āṭā’i's *responsa*. The example just cited offers an opportunity to add depth to the critique of Schacht's "historical" reconstructions, since he also deals with the legal question of the waiting period of the pregnant widow. He claims: "The common ancient attitude was to consider her 'idda ended and to make her available for another marriage at her delivery, even though this might happen immediately after the death of her husband and long before the completion of four months and ten days." In this he bases himself on Medinan and Iraqi traditions preserved in Mālik's *Muwatta* and the Āthār of Abū Yūsuf and al-Shaybānī. He probably considers this "common" and "ancient" because that is the simplest solution, namely, the application of Qur'ān 65:4, which indeed is held against Ibn 'Abbās in the above text. After Schacht has declared the simplest to be the oldest, he continues in his reconstruction of the historical development of the legal problem: "But there arose the demand, caused by the tendency to greater strictness, that she should keep the 'idda 'until the latter of the two terms'; a demand which was expressed in traditions from 'Alī and from Ibn 'Abbās. This refinement succeeded neither in Iraq nor in Medina [...]."

'Āṭā’i’s Ibn 'Abbās tradition on this legal question shows that Schacht's distinction of primary and secondary solution is artificial and does not correspond to the historical facts. Both interpretations

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356 AM 6: 11712.
357 See pp. 115-117.
are equally old; the teaching of the "latter of the two terms" is no "refinement" which only developed over the course of time as a counter-opinion against the "common ancient attitude" and then was falsely ascribed to Ibn 'Abbās and others, but is really the opinion of Ibn 'Abbās, vouched for by his student 'Atā'. It is methodologically impermissible to postulate that a teaching which is not quite as simple as another—as in the case discussed, in which Ibn 'Abbās combines two Qur'ānic passages (2:234 and 65:4), while the others limit themselves to 65:4—must necessarily be secondary, and so to construct a historical development.

Purely in terms of quantity, 'Atā”s references and allusions to Companions of the Prophet outnumber those to the Qurān or to the Prophet himself. This quantitative situation may not without further ado be interpreted qualitatively and used to conclude that for 'Atā’ the Companions of the Prophet were more binding authorities than the Qurān or the Prophet. Quantity and worth are not necessarily correlated. Quantity can be conditioned by various factors which have nothing to do with value. Thus, for instance, the number of references to the Qurān and to the sahāba is equal if one examines only ‘Atā”s responsa. Why the share of the sahāba in the genre of dicta is higher cannot be said for sure, but the reasons may have to do purely with the practical requirements of instruction or with the history of transmission, for instance, that Ibn Jurayj collected ‘Atā”s Qurān interpretations separately and for this reason included fewer of them in his collection of traditions; on the other hand, it should be kept in mind that there were natural limits to references to the Qurān because of the small number of legal regulations contained in it. On the basis of the quantity of references to sources alone it is not possible to answer the question whether ‘Atā’, or perhaps even older scholars, had developed an evaluation of the various usūl on which they based themselves—even if infrequently, and not in every case expressis verbis—, whether, for example, the Qurān has greater authority if a Companion of the Prophet advances a view diverging from the Qurān. Here only concrete cases, texts from which this can be read clearly, can help. I have found one:

360 See p. 140.
361 See p. 107.
Ibn Jurayj said: ‘Aṭā’ said: “[Regardless of whether] much or little, [suckling] makes her tabu for marriage (yuḥarrimu minhā).” He said [further]: “[Ibn] ‘Umar” said, when it reached him from [‘Abd Allāh] ibn al-Zubayr that the latter was transmitting (ya’thir) from ʿĀʾishah about suckling: ‘[Anything] under seven sucklings does not make [her] tabu for marriage.’ “God is better than ʿĀʾishah! God (eulogy) said: ‘wa-akhawātukum mina l-raḍāʾat’” (and your sisters by suckling); he did not say: ‘[by] one or two sucklings’.”

‘Aṭā’ held a position other than the one expressed in the ‘Āʾishah tradition. He agrees with Ibn ʿUmar, who refers to the Qurʾān in his criticism of ʿĀʾishah’s opinion. For ‘Aṭā’ as well, the Qurʾān thus represents a legal source standing above the opinions of the Companions of the Prophet. The problem of the evaluation of different sources of law, which a century later was extensively discussed by al-Shāfīʿī and in the course of the following century was solved to the satisfaction of consensus through the teaching of the usūl al-fiqh, did not—as Schacht believes—appear only as a result of the conflict between the representatives of the “ancient schools” and the “traditionists” around the middle of the second/eighth century, but is clearly significantly older. ‘Aṭā’ was aware of it as such, at the latest at the beginning of the second/eighth century—not only in this text but, for example, also in the conscious differentiation between “raʾy” and “ʿilm”; however, it has its roots in the second half of the first/seventh century, more precisely in the time of the caliph ʿAbd Allāh ibn al-Zubayr, since ‘Aṭā’’s tradition from ʿAbd Allāh ibn ʿUmar as transmitted by Ibn Jurayj in ‘Abd al-Razzāq’s Musannaf is probably—as the investigation of his traditions from the Companions of the Prophet has shown in general—genuine.

Investigation of the Qurʾānic material in Ibn Jurayj’s ‘Aṭā’ tradition leads to the conclusion that ‘Aṭā’ was familiar with essential questions of the later Qurʾānic sciences: the textus receptus with sūra names, divergent qirāʾāt, juridical exegesis, the theory of nāṣikh and

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362 A lapse of the copyist. According to the suggestion of the editor, and in agreement with AM 7: 13919, “ihn” is to be added.
363 Cf. AM 7: 13919. See p. 181.
364 Qurʾān 4:23.
365 AM 7: 13911.
366 Cf. Schacht, Origins, Part 1, Chaps. 6 and 10.
368 See p. 114.
mansūkh, the sabab al-nuzūl as an exegetical form and the problem of the evaluation of the Qurʾān as one of several sources of law. This means that all of these data—at least in statu nascendi—already existed at the turn from the first/seventh to the second/eighth century at the latest. In isolated cases they can even be followed back into the second half of the first century, i.e. the time between ‘Aṭāʾ and Muḥammad. Here it is to be emphasized that they are primarily significant for ‘Aṭāʾ’s legal teachings and are important to him only in this capacity. All of this indicates that the Qurʾān had greater significance for the early Islamic legal teachers whom Schacht characterizes as representatives of the “ancient schools” than he wished to concede to it.369

γ. The Prophet

Like the proportion of traditions overall, that of traditions of the Prophet in the genre of ‘Aṭāʾ’s dicta is higher (6%) than among the responsa. While there predominantly acta of the Prophet are reported and the few dicta proved to be relics of legal verdicts (aqḍiyya) and opinions (fatāwā),370 the traditions of the Prophet in ‘Aṭāʾ’s dicta are quite evenly distributed among the genres of legal verdicts, legal opinions, dicta and acta of the Prophet. In the responsa only references to and fragments of ḥadīths were to be found; among the dicta, there are primarily complete texts. Only one fourth of them have a—sometimes incomplete—isnād.

The Prophetic traditions of the dicta confirm the conclusions which have already emerged from the investigation of the responsa. The fact that ‘Aṭāʾ so seldom refers to the Prophet, and that he expresses opinions for which he knows traditions of the Prophet without referring to them, speaks against the assumption that ‘Aṭāʾ himself invented traditions of the Prophet. Those which he cites or to which he alludes must thus already have been in circulation in his time, i.e. their origin is predominantly to be dated in the first/seventh century. The possibility of false ascription of these traditions to ‘Aṭāʾ by Ibn Ḫurayj is to be rejected for the reasons already set forth371 and because of

370 See pp. 127 ff. and 132.
the usually absent *ismāds*.\(^{372}\) ‘Ātā’’s *ḥadīths* of the Prophet are—contrary to Schacht’s sweeping judgment—not later than his *ṣaḥāba* traditions, they are not more carefully transmitted and clearly are no more binding for him than the latter. In terms of numbers, *ḥadīths* of the Prophet are far outstripped by references to his teacher Ibn ‘Abbās, but the Prophet ranks before all other Companions such as ʿUmar, ʿĀ’isha or ʿAlī. All of this reflects a very subordinate role for the *ḥadīths* of the Prophet—as for traditions in general—in ‘Ātā’’s legal scholarship, which is perhaps typical of the Islamic jurisprudence of the first/seventh century. It is to be emphasized, however, that they already existed and that they were occasionally employed as sources for the decision of legal questions or justifications of legal opinions. The waning first century seems to mark the beginning of a development in Islamic jurisprudence which had a stormy career in the second century and reached a high point in al-Shāfī‘i’s (d. 204/820) teachings: the penetration and assimilation of Prophetic *ḥadīths* into jurisprudence.

Even though they may have been of only marginal significance for ‘Ātā’’s legal scholarship, for the history of Prophetic *ḥadīths* his traditions are—precisely for this reason—prime witnesses for their existence in the first century. Since only one generation lies between ‘Ātā’ and Muḥammad, these texts are very close to the time and the people about whom they report, and the possibility of their authenticity cannot be rejected from the outset. ‘Ātā’’s Prophetic traditions which have an *ismād* are especially valuable from this point of view. Let us demonstrate this with the following example:

Ibn Jurayj said: ‘Ātā’ transmitted to me (*akhbaran*). He said: “Abd al-Rahmān ibn ʿĀṣim ibn Thābit transmitted to me that Fāṭima bint Qays, the sister of al-Daḥhāk ibn Qays, transmitted to him—she was married to a man of the Banū Makhzūm—, she transmitted to him that he [her husband] divorced her three times and [then] went out on a military expedition (*baʿd al-maghāzī*). He ordered one of his agents to give her some financial support. She, however, regarded it as too little and went to one of the wives of the Prophet. The Prophet (eulogy) happened to come in when she was with her. Thereupon [the Prophet’s wife] said: ‘Messenger of God! So-and-so divorced this Fāṭima bint Qays [here]. He sent her some financial support, but she rejected it. [The man] claimed that it was something which he did as a good

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\(^{372}\) On Ibn Jurayj’s mode of transmission and his *ismāds* see pp. 240–44.
work [, not as a duty, and whose amount he could thus determine himself].’ The Prophet (eulogy) said: ‘He is right!’ Then he said to her [Fāṭima]: ‘Move in with Umm Maktūm and spend the waiting period with her.’ Thereupon he said: ‘No, [don’t do it after all;] Umm Maktūm is a woman who has many visitors; rather, move in with ‘Abd Allāh ibn Umm Maktūm. He is blind.’ She moved in with him until she had completed her waiting period. Then Abū Jahm and Mu‘āwiya ibn abī Sufyān sought her in marriage. She went to the Messenger of God (eulogy) and asked him for advice about the two of them. He said: ‘As for Abū Jahm, I fear for you the way he uses the stick’ (qāṣqāṣatuhu bi-l-‘asā), Mu‘āwiya on the other hand is a poor fellow (amlaq min al-māl)! Thereupon she married Usāma ibn Zayd.’

There are several parallels and variants to this narrative Prophetic tradition of ‘Aṭā’e which should be considered with it. Three versions are very close to ‘Aṭā’e in style and content:

a) Two texts with the isnād “Ma‘mar—al-Zuhrī—‘Ubayd Allāh ibn ‘Abd Allāh ibn ‘Utba,” in which ‘Ubayd Allāh does not, however, claim to have the story directly from Fāṭima, but reports that Marwān—the later caliph—heard of it and thereupon sent to Fāṭima Qabīsā ibn Dhu‘ayb, to whom she told the story and who transmitted it to Marwān. The latter, however, refused to follow it, with the argument: ‘We have heard this hadith only from a woman. We hold to the [continuation of] marital power (iṣma) which—we have found—the people [this probably means the ‘experts’] believe in.’

This answer is supposed to have occasioned Fāṭima to make a reply in which she refers to Qur’ān 65:1 in support of her opinion and argues that this verse, which contains the prohibition of expulsion from or leaving of the house during the waiting period, applies to revocable divorce—which is, in fact, the case—and asks for what reason one would shut in definitively divorced women and [simultaneously] deny them financial support. In one of the two versions ‘Ubayd Allāh also recounts how it came to pass that Fāṭima’s story

373 With the editor I read “lā inna” instead of “illā an”.
374 I.e. blows.
375 AM 7: 12021.
376 AM 7: 12024, 12025.
377 The proponents of the opposite opinion support themselves, in addition to 65:1, with an unconvincing interpretation of Qur’ān 65:6 which can be glimpsed in the argument of the man’s agent. In the Prophet’s answer in text No. 12025, on the other hand, the allusion to this verse is illogical and probably an error (in thinking?) by one of the transmitters, since it stands in contradiction to Fāṭima’s subsequent argumentation. The version No. 12024 does not include this addition.
came to Marwān’s attention in the first place: When he was governor [of Medina],378 ‘Abd Allāh ibn ‘Amr ibn ‘Uthmān—a grandson of the third caliph—irrevocably divorced the daughter of Sa‘īd ibn Zayd.379 Her maternal aunt, the said Fāṭima bint Qays, advised her to move out of the house of her divorced husband. Marwān heard of the affair and asked her how she came to move out during the waiting period. She referred to the “legal opinion” of her aunt, whom Marwān then had thoroughly questioned.

The story of Fāṭima herself diverges in several details from ‘Atā’s version. Missing—as in all other variants—is the indication that she was the sister of al-Daḥḥāk ibn Qays. Instead ‘Ubayd Allāh gives the name of the husband, Abū ‘Amr ibn Ḥafṣ ibn al-Mughīra, and the name of his two agents, while ‘Atā’s informant ‘Abd al-Raḥmān ibn ‘Āṣim only speaks of one. In addition, ‘Ubayd Allāh specifies more precisely what kind of ghazwa it was: Abū ‘Amr had gone with ‘Alī to Yemen.380 In ‘Abd al-Raḥmān ibn ‘Āṣim’s version she first goes to one of the wives of the Prophet; in ‘Ubayd Allāh’s she turns directly to the Prophet, which could be the result of abbreviation. In ‘Ubayd Allāh’s versions the dialogues between the woman and the Prophet are also shorter. Mention that the Prophet first suggested the apartment of a woman, the first name of Ibn Umm Maktūm and the story of the two suitors are also missing. He reports only that the Prophet married her to Usāma ibn Zayd.

b) Malik’s Muwatta’ also offers an early parallel with the isnād “‘Abd Allāh ibn Yazīd, mawla of al-Aswād ibn Sufyān—Abū Salama ibn ‘Abd al-Raḥmān ibn ‘Awf—Fāṭima bint Qays.”381 Abū Salama also gives the name of her first husband, but says that he was on a journey in Syria (bi-l-Shām). He too—like ‘Abd al-Raḥmān ibn ‘Āṣim—speaks of an unnamed agent and specifies that the support consisted of barley. Like ‘Ubayd Allāh he reports that for this reason she went to the Prophet, who confirmed that she was entitled to no support. As in ‘Atā’s version he further recounts that the Prophet first advised her to spend her waiting period with a woman whom, however, he does not call Umm Maktūm but Umm Sharīk, but then thought

378 AM 7: 12025: Instead of the “ṯi mraʿat Marwān” of the manuscript, one should read “ṯi imārat Marwān”.
379 Cf. also Mālik, Muwatta’ (Y) 29:64; (Sh) No. 592. Here ‘Abd Allāh ibn ‘Umar criticizes Bint Saʿīd for her behavior.
380 Cf. the note in Ibn Hishām, Sira, p. 999.
381 Mālik, Muwatta’ (Y) 29:67.
better of it and suggested the blind ‘Abd Allāh ibn Umm Maktūm, and he also has the Prophet’s derisory remarks about Fāṭima’s suitors.

The textual divergences manifested by these three versions—those of ‘Atā’, Ibn Shihāb al-Zuhrī and ‘Abd Allāh ibn Yazīd—may go back to different narratives of Fāṭima’s herself, which is a natural supposition given three different transmitters from her; the factual discrepancies may be caused by the transmitters (abbreviations, misunderstandings). All three versions are independent of each other.

In addition to the complete versions named there are also several short versions:

c) One with the isnād “Ibn Jurayj—Ibn Shihāb—Abū Salama ibn ‘Abd al-Rahmān—Fāṭima bint Qays.” It is a very much abbreviated paraphrase. It, too, contains mention of Marwān’s rejection and, as a distinctly distancing element throwing doubt on Fāṭima’s credibility, twice the introduction “zaʿamal” (she claimed). If it is assumed that Ibn Shihāb’s identification of Abū Salama as his informant is correct, the summary probably derives from Ibn Shihāb, since it displays considerable similarity to the versions of the story which he transmitted from ‘Ubayd Allāh.

d) Another short version with the isnād “Muḥammad ibn Bishr—Abū Salama—Fāṭima bint Qays” is to be found in the Muṣannaf of Ibn abī Shayba. It has echoes of ‘Atā’’s version and that of Abū Salama in the Muwatta’.

e) Two short versions are also transmitted from al-Sha’bī with the isnāds “Ibn ʿUyayna—al-Mujālid—al-Sha’bī—Fāṭima bint Qays” and “[al-Thawrī]—Salama ibn Kuḥayl—al-Sha’bī—Fāṭima bint Qays.” Ibn ʿUyayna’s version has echoes of the one preserved in the Muwatta’ (for example, the mention of Umm Sharīk), but is too abbreviated to permit recognition of true dependence on it.

In addition, in the sources of the second and third centuries there is a number of references to the Fāṭima bint Qays tradition:

f) Ibn Jurayj transmits with the isnād “Ibn Shihāb—‘Urwa” that ‘Ā’isha reproached Fāṭima for this reason.

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382 E.g. al-Shām instead of al-Yaman, Umm Maktūm instead of Umm Sharīk.
383 AM 7: 12022.
384 Cf. note 4 on AM 7: 12027.
386 Further short versions in Ibn abī Shayba, Muṣannaf, vol. 5, p. 149.
387 AM 7: 12023.
g) Yaḥya ibn Sa‘īd transmits from al-Qāsim ibn Muḥammad and Sulaymān ibn Yāsār a disagreement between ‘A‘īsha and Marwān ibn al-Ḥakam, at the time governor of Medina, over the case of a brother of Marwān’s who had his divorced daughter leave the house of her former husband. ‘A‘īsha, alluding to the Qur’ān, asked Marwān to bring her back, which he refused to do, according to Sulaymān ibn Yāsār indicating his inability to assert himself against his brother, and according to al-Qāsim referring to the case of Fāṭima bint Qays. In the latter version, ‘A‘īsha is supposed to have retorted to Marwān that it would be better for him not to mention the hadīth of Fāṭima. Marwān answered: If in her eyes it was a bad thing that the woman had left the house, then the bad things which had occurred between the two of them surely sufficed for her to understand his brother’s measure.\(^{388}\) The two versions are not necessarily mutually exclusive.\(^{389}\)

In view of Marwān’s rejection of the story of Fāṭima, reported by Ibn Shīhāb,\(^{390}\) his attitude in this tradition is inconsistent. Does this prove that the Marwān traditions are forgeries? This conclusion is definitely not necessary. The two texts have their origins in different occasions, and it is quite imaginable that in the first case Marwān followed the opinion which was held in Medina by personalities like ‘A‘īsha and Ibn ‘Umar but later, when a similar case occurred in his own clan, pragmatically chose the path of least resistance without much caring about ‘A‘īsha’s reproaches.

h) Suḥyān [ibn ‘Uyayna] transmits with the isnād “‘Abd al-Raḥmān ibn al-Qāsim—al-Qāsim—‘Urwa ibn al-Zubayr” that ‘A‘īsha criticized the behavior of Bint al-Ḥakam and Fāṭima’s hadīth, and Ibn abī l-Zinād with the isnād “Hishām ibn ‘Urwa—‘Urwa” that she became terribly upset about it and characterized Fāṭima’s case as an exceptional regulation of the Prophet’s which was motivated by the isolation of Fāṭima’s dwelling.\(^{391}\)

i) It is reported with several different isnāds that Ibrāhīm [al-Nakha‘i], when he was confronted with Fāṭima’s hadīth, which contradicted his legal opinion, referred to the caliph ‘Umar ibn al-Khaṭṭāb,

\(^{388}\) Malik, Muwaṭṭa’ (Y) 29:63; (Sh) no. 591.


\(^{390}\) See pp. 159 and 161.

who is supposed to have said about Fāṭima’s ḥadīth: “We do not give up God’s book and the sunna of His Messenger for the statement of a woman of whom we do not know whether she has a good memory or is forgetful (variant: whether she is speaking the truth or lying).”

j) A critical remark about Fāṭima’s ḥadīth is transmitted by Ibn Jurayj through Maymūn ibn Mihrān from, among others, Saʿīd ibn al-Musayyab: “That woman sowed discord among the [learned] people (fatanat al-nās).”

This, in its rough outlines, is the state of transmission of the Fāṭima bint Qays tradition in the oldest sources. Some of the versions of the story are neutral, i.e. they contain no discernible evaluation. That is the case in ‘Aṭā’ī’s version from ‘Abd al-Rahmān ibn ‘Āsim ibn Thābit, in those of Abū Salama ibn ‘Abd al-Rahmān ibn ‘Awf in Mālik’s Munāfa and the Musannaf of Ibn abī Shayba, and those of al-Sha‘bī. The rest take a position against this tradition. This is not very pronounced in the variations of Ubayd Allāh ibn ‘Abd Allāh ibn ‘Uthba transmitted by Ibn Shihāb, but very strongly pronounced in his version of the tradition of Abū Salama and is without exception the tenor of the references to this ḥadīth of the Prophet.

Two legal questions are touched upon by the Fāṭima bint Qays tradition: 1. The question whether an irrevocably divorced woman is entitled to financial support (nafaqa) in the waiting period or not, 2. whether she must spend the waiting period in the house of her divorced husband. One may or may not see an internal connection between the two questions. Both subjects are already addressed in Qur’an 65:1–7, however not so unambiguously that no room remains for interpretation.

Theoretically, the following combinations are possible: a) She is entitled to no support; consequently she also need not remain in the house. b) She is entitled to support; consequently, she must also remain in the house. c) She is entitled to no support, but she must remain in the house. d) She is entitled to support, but she need not remain in the house.

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393 Cf. AM 7: 12038, 12037.
As marginal problems, a possible pregnancy, the difference between the right of habitation and the duty of habitation, and the question of who must carry the costs for the habitation play a role.

As stated by the sources, almost all of the possible combinations were advanced by the early fuqahā': solution a) by 'Atā', al-Hasan al-Baṣrī and al-Sha'bi (Kufa), b) by Ibrāhīm al-Nakha'ī (Kufa), c) by the Medinans Sa'id ibn al-Musayyab, 'Urwa ibn al-Zubayr, Nāfi', Ibn Shihāb and others. Type d) scarcely found advocates, perhaps, Ibn abī Laylā (Kufa).

Fāṭima's Prophetic hadith supports only opinion a). It is thus not surprising that 'Atā' and al-Sha'bi are to be found among the neutral transmitters of the story, and that strong opposition to it is documented from Ibrāhīm, Sa'id, 'Urwa and Ibn Shihāb. After sketching the hadith's state of transmission and the complex of legal problems in which it arises, the question of the development of the corresponding legal solutions and of the dating of the hadith poses itself.

Schacht supports the following thesis on the subject: "In late Umayyad times it must have been the practice for the divorced wife or widow to vacate the house of her husband immediately, without waiting for the end of her 'idda. This practice is clearly stated in two Medinese traditions." He is referring to the story of 'Ā'isha's disagreement with Marwān and to Ibn 'Umar's criticism of the behavior of Bint Sa'id ibn Zayd, both of which are contained in Mālik's Muwatā'. "Late Umayyad times" means the first third of the second century. That is, in order to criticise the practice of the second/eighth century people did not choose the current representative of the Umayyad clan but their ancestor as a target. Since this and other traditions take the field against the Umayyad practice of the second century, they originated at the earliest in this period, which Schacht emphasizes with the statement that they were "ascribed" to

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396 There are different traditions from him, in one case like 'Atā, in another like Ibrāhīm.

397 Cf. AM 7: 12020. The statement applies to the pregnant woman; that she may leave the house is not stated explicitly—it is only said "lā sukna"—but can be inferred from it.

398 Schacht, Origins, p. 197.

399 See p. 160.

400 See p. 160 and note 379 there.
Ibn al-Musayyab and Ibrāhīm al-Nakha'ī. This then also applies—as Schacht consistently would have to conclude—to the Fāṭīma story mentioned in them, which would have to have been brought into circulation to support the Umayyad practice and presupposes the opposing tradition, thus is later and could have been incorporated in the tradition of ‘A’isha and Marwān only secondarily.

In view of the situation of transmission as I have described it, the divorced woman's moving out of the house of her husband during the waiting period cannot be characterized as a late Umayyad practice. As the other traditions about Marwān's behavior in this question show, leaving the house is not to be regarded as typical and generally approved and practiced by the Umayyads. Clearly there were not yet any binding patterns of behavior at all, and if some were already beginning to manifest themselves, it seems rather to have been remaining in the house which was the rule. Ibn Shihāb’s traditions about Marwān are in principle no less credible than those of Yahyā ibn Sa‘īd in the Muwatta'. Schacht probably neglected the former because they were accessible to him only in later sources. Ma'mar’s Zuhrī traditions, however, are at least as old as those of Mālik.

Furthermore, it emerges from the fact that ‘Āṭā’ already knew the Fāṭīma bint Qays tradition in a form which suggests no dependence on the other versions that Schacht’s chronology is not correct. Fāṭīma bint Qays is the common link of all preserved versions of this hadith of the Prophet. This in itself speaks in favor of the assumption that she was really the source of the different versions. ‘Āṭā’’s statements about his authorities for traditions are—as has emerged from the preceding study—to be trusted, that is, the story could at most have been invented by his authority ‘Abd al-Rahmān ibn ‘Āṣim. It speaks against this assumption that he does not appear in the isnāds of the variants. It is thus to be assumed that Fāṭīma herself is the originator. With this, we find ourselves chronologically deep in the first/seventh century and must transfer the emergence of the complex of legal problems to the beginning rather than the end of the Umayyad

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401 Schacht, Origins, p. 198.
402 The two different versions might suggest this.—Schacht treats the point of support during the waiting period in another context (p. 225). Further criteria for dating do not emerge from it.
403 See pp. 159 f., 161.
404 They are to be found, for instance, in Muslim and al-Nasā'ī.
caliphate, more precisely to the time of Mu‘awiya’s caliphate (41/661–
60/680), when Marwān was governor in Medina and ‘A‘isha and
Ibn ‘Umar were still alive. With proof of the genuineness of the
‘Ata’ tradition its variations, whose historicity could until now hardly
be evaluated, gain credibility as well. This is also true of the reports
about the rejection of the tradition, for instance, by his contempo­
raries Sa‘īd ibn al-Musayyab and Ibrāhīm al-Nakha‘ī, since if the
story was known to ‘Ata’ it was probably known to them as well.
This does not mean that all of the traditions cited about it are
authentic. Let us leave aside the question of whether all reports about
‘A‘isha’s criticism of Fātima’s hadith are genuine. It is nevertheless
certain that the legal problem articulated in the Fātima hadith was
already the object of controversies around the middle of the first/sev­
enth century and was already discussed by the generation of the
saḥāba.

Can one go yet a step farther and speak of a genuine tradition
of the Prophet? Or must one assume that Fātima made it up of
whole cloth? Against the thesis of invention speaks the precise infor­
mation about the circumstances and the people involved, some of
whom were still alive at the time when she was spreading this hadith,
such as for instance Mu‘awiya—then caliph—who is supposed to
have been a potential suitor and about whom she has the Prophet
say something which is hardly flattering. Even the traditions about
‘A‘isha’s vehement criticism of Fātima’s story do not claim that
‘A‘isha dismissed the thing as a complete falsehood. It is, of course,
imaginable that the woman’s moving out during the waiting period
was not customary and that in Fātima’s case there were special cir­
cumstances which induced Muhammad to make an exception, as
one ‘A‘isha tradition claims.405 The early intra-Islamic criticism of
the hadith, which in the cases of Ibn Shihāb and Ibrāhīm al-Nakha‘ī
shifts polemically from the issue itself to the woman as a transmit­
ter, does not necessarily mean that people at that time already rec­
ognized it as a forgery, but only that very early other solutions,
clearly based on the Qurʾān, existed which were placed in question
by this hadith. There are definitely no sufficient grounds to dismiss
the Fātima bint Qays story as the pure invention of this woman.
We are probably dealing with a genuine hadith of the Prophet.

405 See p. 161.
Genuine in this case means credibly reported from memory 30 to 40 years after the event.

The excursus about 'Ata’s tradition of Fāṭima bint Qays was intended to illustrate that 'Ata’s traditions of the Prophet are important building blocks for the reconstruction of the development of law in the first/seventh century. The situation is especially favorable when 'Ata also names his authority, which unfortunately he only seldom does. But even the traditions without isnāds are usable when variations of them are known from other sources. On the other hand, it has become clear that the sweeping rejection of the Hadith material as a possible historical source for the first/seventh century which has been advocated by Lammens, Goldziher and in their wake Schacht and many others robs historical research of a significant and usable genre of sources. It is self-evident that they cannot be considered generally reliable. Not even the Muslims themselves have assumed that. Sifting them with the help of criticism of the transmitters was already a quite functional procedure, still useful to the historian today, but laden with many misjudgments. I think that we can and should approach the question of the historicity of the Hadith texts anew through the Hadith material in early Tradition complexes like those of 'Ata, in which the Hadith is not the actual object but only peripheral.

§. 'Ata’s contemporaries
In the genre of dicta as well, 'Ata cites the legal verdicts, opinions or exemplary modes of behavior of contemporaries very rarely. The few examples have to do with the verdicts of caliphs—for instance, of Ibn al-Zubayr in the case of the umm walad of Muḥammad ibn Ṣuhayb406 (a verdict of the same caliph was also contained in the responsa),407 similarly, references to two verdicts of 'Abd al-Malik ibn Marwān408—, of qāḍīs like Shurayḥ (Iraq) and Ibn Bahdal (Syria), or opinions of fuqaha like Ibn Ghanm (Syria) or acta of some learned contemporary, for instance of 'Ubayd Allāh ibn 'Adī, a little-known Medinan who died towards the end of the first/seventh century.409 In no case does 'Ata name a source from which he derives the reports. That he invented them himself is unlikely, since he—as

406 See p. 89.
407 See p. 118.
408 See p. 137 and AM 7: 13385.
evidenced by the majority of his legal teachings—generally had need of no authority, let alone that of the rulers and their henchmen. Rather, it is to be assumed that these are pieces of information about actual incidents which were reported to ‘Atā’ and which he mentioned because they accorded with his opinions or were noteworthy for other reasons.

Schacht—as did already Lammens and Tyan—considers Shurayḥ (d. between 78/697 and 99/717) a legendary figure: “The opinions and traditions ascribed to him are spurious throughout and are the outcome of the general tendency to project the opinions current in the schools of law back to early authorities.”410 The question is why the Meccan ‘Atā’ would have fathered his own opinion on an Iraqi authority. If he had to invent a support, his teacher Ibn ‘Abbās or another of the generation of the Companions would have been closer to hand. ‘Atā’’s Shurayḥ tradition is, it is true, not first-hand, but it is nevertheless probably authentic:

Ibn Jurayj: ‘Atā’ reported to me (akhbaran): “One of their [the Banū Umayya’s?] governors (umāra) had Shurayḥ brought [to him] and asked him about a man who said to his wife: ‘You are definitively (al-battata) divorced.’ Thereupon he asked him [the governor] to be dismissed [from the post of judge], but he declined to dismiss him [in lieu of an answer]. Thereupon he [Shurayḥ] said: Divorce (talāq) is a sunna; definitive [divorce] (al-battata) is a bid‘a (innovation). The sunna in [the form of] divorce you should carry out; leave to him [the man] the decision about the bid‘a ‘definitive’ [in accordance with] his intention [i.e., whether it should be one or three divorces].”411

Schacht cites a variation of this from the Āthār of al-Shaybānī with the isnād “Abū Ḥanīfa—Ḥammād—Ibrāhīm al-Nakhaṭī—Urwa ibn Mughīra” which contains some additional information: It was the said ‘Urwa who, as governor of Kufa, asked Shurayḥ for advice; in response, the latter first cited the mutually contradictory opinions of ‘Umar and ‘Alī and only with difficulty was prevailed upon to submit the above opinion of his own. Compared with it, ‘Atā’’s version is an abridgment. Schacht dates the origin of this Shurayḥ tradition in the generation before Mālik, i.e. in the second quarter of the second/eighth century, and considers it to be a projection back “into earlier

410 Schacht, Origines, p. 229.
411 AM 6: 11182.
Umayyad times.”\textsuperscript{112} That this is out of the question is proven by the existence of ‘Aṭā’\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{'}}}}’s version. From it, it can be concluded that ‘Aṭā’ was already familiar with the legal problem—he himself advanced the same view as Shurayḥ in a \textit{responsum}\textsuperscript{413}, that it already appeared in the first/seventh century and in all likelihood was already solved by Shurayḥ through the compromise reported. Through ‘Aṭā’\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{'}}}}’s parallel, Ibrāhīm al-Nakha’\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{'}}}}’s version—\textit{isnād} included—also gains credibility. Schacht’s claim that the Shurayḥ traditions are “spurious throughout” cannot be upheld in this degree of generalization.

The following tradition also speaks for the historicity of ‘Aṭā’\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{'}}}}’s reports about contemporaries:

Ibn Jurayj from ‘Aṭā’ and Dāwūd ibn abī ‘Āṣim: A woman died in Syria (\textit{bi}-l-\textit{Shām}). She left behind a slave woman [who was divided] among her husband and [other] partners [entitled to inherit]. The husband slept with her, while only a fourth [of her belonged] to him. The [case] came before Ibn Bahdal, a \textit{gāḍī} of the Syrians (\textit{ahl al-Shām}). He said: “Stone him!” [Word of] that [case] reached Ibn Ghanm. He said: “Whip him with three fourths of the \textit{ḥadd} penalty.” He did not order that he be stoned because of the [share] of her which belonged to him.\textsuperscript{414}

Ibn Jurayj transmits no opinion of ‘Aṭā’\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{'}}}}’s on this legal question, so that it is not completely clear why he reports this case at all. Since, however, he does not advocate stoning in the case of fornication with a slave women,\textsuperscript{415} he probably supported the solution of Ibn Ghanm. It is, however, unlikely that to support his own view he invented a tradition from which this view does not clearly emerge, and that he invoked Syrian legal authorities for the purpose. Here, too, it is more likely that we are looking at a historical case which was known and discussed in scholarly circles. It must have taken place before the year 78/697–8, the death date of ‘Abd al-Rahmān ibn Ghanm.\textsuperscript{416} Thus, a historical point of reference for the contro-

\textsuperscript{112} Schacht, \textit{Origins}, p. 195.
\textsuperscript{413} Cf. AM 6: 11171.
\textsuperscript{414} AM 7: 13459.
\textsuperscript{415} Cf. AM 7: 13391.
\textsuperscript{416} Ibn Ghanm can only be ‘Abd al-Rahmān ibn Ghanm, who is supposed to have been active as a legal expert in Syria and Palestine from the caliphate of ‘Umar. Cf. al-Dhahabi, \textit{Tadhkira}, vol. 1, p. 51. I could not find a \textit{gāḍī} Ibn Bahdal in the sources on the Syrian \textit{gāḍīs} of the first century. Probably Hassān ibn Mālik ibn Bahdal is meant, who was governor of Palestine and Jordan under Mu‘awiya
versial question of the vintage of stoning as a penalty for fornication is also provided. Since the verdict of the qāḍī Ibn Bahḍal is mentioned without any commentary, stoning must already have been a current practice in his time, and ‘Āṭā’ī’s comment on Ibn Ghanm’s view also assumes that stoning was a possible penalty for illegitimate sexual relations. That the legal scholar deviated from the verdict of the qāḍī and advocated the Qur’ānic penalty of whipping should not be interpreted as the rejection of a non-Qur’ānic penalty, but has to do with the special case. Here there is an early case of a conflict between a qāḍī and a faqīh. Both penalties—stoning, which is not contained in the Qur’ān but is justified only with precedents from the Prophet, and flogging—seem already to have existed side by side at this time. For the beginning of the second/eighth century this is certain in any case, since both penalties are attested in several responsa of ‘Āṭā’ī’s.418

It is clear from the two textual examples cited that ‘Āṭā’ī’s traditions from his contemporaries can also be valuable sources for the state of development of Islamic jurisprudence and Islamic law in the first century.

e. Anonymous traditions
In discussing the Tradition material in ‘Āṭā’ī’s responsa I have left aside the anonymous traditions, with the exception of those which, although not by name, are clear references to his contemporaries. They are very similar to each other in both genres and often appear in mixed forms of these genres, i.e. in dicta which are followed by questions, so that it is natural to discuss them together. They are contained in approximately 3% of the ‘Āṭā’ texts. Usually ‘Āṭā’ introduces them with “balaghanā”, more rarely with “balaghani” (it reached us or me), “samīṭu,” “samīnā” (I or we heard), “yurwā” (it is reported)


418 See pp. 92–93 and AM 7: 13393, 13445, 13624, 13751.
or “qīla” (it has been said). Usually they are solutions to specific legal questions, but sometimes also reports about earlier incidents and ḥadīths.419

For instance: Ibn Jurayj said: ‘Atā’ said: “It reached us that it is forbidden to have simultaneously [as wives] the woman and her aunt on the maternal or (and) paternal side.” 420

Or: Ibn Jurayj from ‘Atā’. He said: “We heard that the right of disposal over an orphaned girl is vested in her [herself] and marriage by her brother is only allowed with her consent.” 421

It is not clear to which generation of legal scholars these anonymous references refer. They could be teachings of the generation of the Companions, that of the Prophet himself or that of ‘Atā’’s contemporaries. Qualitatively, ‘Atā’ seems scarcely to have differentiated among these. This also becomes clear in the following answer of ‘Atā’’s to some questions from Ibn Jurayj:

Ibn Jurayj said: I asked ‘Atā’ “May a man contract a mut’a marriage (yastamtū) with more than four women simultaneously? Is a mut’a relationship (istimtā’) [associated with acquisition of] a [quality of] iḥsān? Is mut’a (istimtā’) allowed for a woman if her husband irrevocably divorced her?” ['Atā’] said: “I have heard nothing about it and I have [also] not consulted (rajā’tu) my colleagues in this connection.” 422

It has already been mentioned in another context that ‘Atā’ occasionally differentiates between his own opinion (ra’y) and knowledge (‘ilm) or things that have been “heard.”423 This is also reflected in the formulae with which he admits his ignorance on certain questions: “I do not know” (lā adri), “I have heard nothing about it” (lam asma’, fihā bi-shay’). However, with ‘Atā’ one must not overvalue these different linguistic usages. In general, he supports himself with traditions too rarely for one to be able to see in such formulae more than the glimmering of an appreciation of the traditions as a legal source. Precisely the anonymous traditions show that ‘Atā’ actually did not consider it necessary to support himself with authorities, otherwise he would have named or invented them. Traditions introduced by the vague statement “it reached us” will hardly have been

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419 Cf. AM 6: 10969; 7: 12632.
420 AM 6: 10752.
421 AM 6: 10314, similarly 10360.
422 AM 7: 14030.
423 See pp. 114 f.
considered by his students to be better founded than those introduced by "we are of the opinion" and the like. From 'Aṭā'ī's anonymous traditions—as in general from his treatment of traditions, his disinterest in their paths of transmission and the often incidental and casual character of his use of traditions—it becomes clear that in his legal instruction traditions as a legal source already had a place—if still only a subordinate one,—but that the later demands on them, such as literal reporting and identification of authorities, were for him no standard by which he considered himself bound. To what extent this is characteristic of the situation of Islamic legal scholarship at the end of the first/seventh century and the beginning of the second/eighth remains to be clarified. In Mecca, in any case, this was the state of development.

It is conspicuous that 'Aṭā' usually introduces anonymous traditions with "balaghānā" (it reached us), more rarely with the first person singular. The plural is also to be observed in many of his responsa: "lā nagra" (we do not read [in this way]), "nārā" (we are of the opinion), "fi-mā nārā wa-na'lam" (according to what we think and know), and so forth. At first glance one might be tempted to see in this linguistic usage simply a "plural of modesty." However, 'Aṭā'ī's remark that he could give no information about a question became he had neither heard anything about it nor consulted his "colleagues" is an indication that more than a polite cliché is hidden behind the use of the first person plural. Who are 'Aṭā'ī's ašhāb? Whom does he mean when he says "we"? Without doubt they are like-minded people, probably his scholarly colleagues in Mecca, with whom he had attained a large degree of unanimity—a kind of local 'ijmā—on many questions through the mutual exchange of ideas and under the formative influence of common teachers such as Ibn 'Abbās. That such beginnings of school formation and a feeling of commonality, a group consciousness already existed in the great centers of scholarship at the beginning of the second/eighth century is also shown by comments such as "ba'd min ahl Kufa," "ba'd min 'ulamā' Medina" (one/some of the scholars of Kufa or Medina), "'ulamā'unā"

424 AM 6: 10816.
425 AM 6: 10837.
426 AM 6: 11017.
427 See p. 171.
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(our scholars) or “fuqahā’uhum” (their legal scholars), which are attested with Ibn Jurayj and the scholars somewhat younger than ‘Atā’. Thus, the beginnings of local schools of law—schools in the sense of a far-reaching consensus among people teaching and learning in the same place—seem to be reflected in this linguistic usage of ‘Atā’.

C. ‘AMR IBN DINĀR

After ‘Atā’ ibn abī Rabāḥ, ‘Amr ibn Dinār is the authority of Ibn Jurayj’s from whom he transmits the most. From the differing extent and form of Ibn Jurayj’s references to the two and their traditional dates of death—‘Amr died in 126/743-4), thus eleven years after ‘Atā’—it is possible to conclude that Ibn Jurayj first studied for a quite long time with ‘Atā’ and then with ‘Amr. The latter lived and taught, like ‘Atā’, in Mecca, and is seen as a somewhat younger representative of the local scholarship. Schacht does not mention him as a representative of the Meccan “school of law,” but numbers him among the “traditionist group.” That he was, however, also a Meccan faqih can be gathered from Ibn Jurayj’s traditions from him. Thus, special attention should be directed to the question of the role of traditions in his legal instruction. First, however, the authenticity of the texts attributed to ‘Amr ibn Dinār must be subjected to a critical test.

1. The main sources: authenticity and mode of transmission

a. Ibn Jurayj’s tradition from ‘Amr ibn Dinār in the Muṣannaf of ‘Abd al-Razzāq

The observation that the texts which Ibn Jurayj transmits from his teacher ‘Atā’ are not forgeries or projections of a later time, but

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428 Cf. AM 7: 12881, 13073, 13381, 13581, 13626.
429 See pp. 77–78.
431 In the tabaqāt works, the two are placed in different “classes”: ‘Atā’ in the second, ‘Amr in the third tabaq of Meccan scholars. Cf. Khalīfī ibn Khayyāt, Tabaqāt, pp. 280, 281.
432 Cf. Schacht, Origins, pp. 65, 66, 249–252. Schacht devotes to him a total of one line (p. 66) and one note (p. 155, note 2).
authentic teachings and traditions of ‘Atā’’s does earn his ‘Amr ibn Dīnār traditions a certain amount of trust in advance, but nevertheless it is necessary and possible to ensure their genuineness through a number of indices. Here I follow the procedure, which I applied in the case of ‘Atā’, of feeling my way forward from external to internal formal criteria.\(^{433}\) Since the method has already been presented in detail there, the argumentation here can be somewhat shorter. As in the case of ‘Atā’, a complex of characteristics speaks for the authenticity of Ibn Jurayj’s tradition from ‘Amr. Each of them in itself, it is true, scarcely represents a convincing proof, but taken together they are overwhelming.

Against invention by Ibn Jurayj speaks the differing volume of the material which he claims to have from his informants. From ‘Atā’ he drew almost 40% of his entire tradition, from ‘Amr ibn Dīnār only 7%.\(^{434}\) From other famous Meccan scholars of ‘Amr’s generation to whom it would have been obvious to refer, if only as fictive supports, he has widely differing quantities of traditions: from Ibn al-Zubayr about 4%, from Ibn abī Mulayka about 1%, from Mujāhid, Ibrāhīm ibn Maysara, ‘Abd Allāh ibn ‘Ubayd ibn ‘Umayr or ‘Ikrima, the mawla of Ibn ‘Abbās, on the other hand, only very little. This does not speak for systematic forgery.

The same is true when one compares the volumes of the textual tradition classified according to genre. With ‘Atā’ responsa and dicta were represented about equally.\(^{435}\) In the case of ‘Amr, however, the responsa comprise only 8% of the stock, the dicta, on the other hand, 71%. While with ‘Atā’ pure responsa were the rule and questions following dicta the exception, in the ‘Amr material the later predominate. In the genre of dicta Ibn Jurayj transmitted from ‘Atā’ about 70% pure dicta (‘Atā’’s own opinion), but only 30% traditions (material from others); with ‘Amr, on the other hand, only 16% are pure dicta, and the overwhelming majority of texts are traditions from others. In addition there is the genre of references and notes, in which ‘Amr appears very frequently—they comprise a good quarter of Ibn Jurayj’s ‘Amr material—but ‘Atā’ not at all. That is, even purely externally (in terms of genre and extent) Ibn Jurayj’s ‘Atā’ and ‘Amr traditions each have a very individual profile and differ strongly from

\(^{433}\) See Chap. III.B.1.
\(^{434}\) If one takes into account references and notes as well, 9.4%.
\(^{435}\) See p. 80.
each other. This speaks against fabrication by one and the same person. It is rather to be assumed that the different forms of tradition result from actual differences in the traditions themselves, their originators and their conditions of reception. Thus, for instance, the relatively small number of *responsa* and pure *dicta* and the high proportion of references and notes in the case of ‘Amr can plausibly be explained by the fact that Ibn Jurayj, when he studied with ‘Amr, already possessed in the teachings of ‘Atā’ an extensive legal opus, into which it did not make sense to integrate ‘Amr’s doctrines in extenso either for reasons of time or of cost—material to write on was rare: hence the many marginal notes and additions to the ‘Atā’ tradition. They are to be understood as residues of original *responsa* and *dicta* of ‘Amr’s, and compensate for the latter’s conspicuously small number in comparison to the ‘Atā’ material. Someone who forged traditions and wanted to ascribe the same opinion to two authorities would hardly work with such notes, but would mention both of his authorities in the *ismād*, which indeed occurs in many traditions. Ibn Jurayj, too, occasionally makes use of such statements of provenance; for instance, he likes to summarize the concurring opinions of ‘Amr ibn Dīnār and ‘Abd al-Karīm al-Jazari as one tradition and introduces it with “from ‘Amr and ‘Abd al-Karīm. They said: . . .” or the equivalent.436 Had it been Ibn Jurayj’s concern to provide his own opinions and traditions or those which arose in his time with fabricated authorities and sources, he would surely have chosen this simpler method for all his forgeries.

Some internal formal criteria for the authenticity of Ibn Jurayj’s ‘Amr tradition, which speak for his credibility and precision in the reporting and transmission of the texts, are also available: ‘Amr’s additions to and divergences from ‘Atā’ in Ibn Jurayj’s notes, ‘Amr’s commentaries on traditions transmitted by him, Ibn Jurayj’s additions to traditions of ‘Amr, uncertainties about exact wording and the naming of further authorities for the same tradition.

In most references to ‘Amr Ibn Jurayj notes only that he “said the same” as ‘Atā’.*437* In a few cases, however, he makes note of additional statements of ‘Amr’s on the subject or contradictory opinions.*438* This is hardly to be reconciled with the thesis of projection, since—

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436 AM 6: 10395, 11494.
437 See p. 98.
438 Cf. AM 6: 10828, 11190, 11863, 11927; 7: 12881, 13069, 13701.
as already shown\textsuperscript{439}—Ibn Jurayj always expresses his own opinion when he is not in agreement with a view of ‘Atā’s. ‘Amr’s divergences from ‘Atā will derive from actual differences of opinion or different ways of expressing their opinions.

The references to ‘Amr relate practically exclusively to pure questions of law, not traditions from others. But even with these there are special qualities which do not quite fit the theory of forgery. For a number of traditions which ‘Amr cites from older authorities, Ibn Jurayj makes note of comments of ‘Amr’s. This differentiation between tradition and commentary is an indicator against the assumption of forgery or back-projection of the ‘Amr texts by Ibn Jurayj. Some examples:

Ibn Jurayj said: ‘Amr ibn Dīnār transmitted to me (\textit{akhbaranī}) that he heard ‘Ikrima say: “‘Ali considered [his marriage to] Fāṭima permitted only because of [the bridal gift of] an iron breastplate (\textit{bdan}).” ‘Amr said: “To this he [‘Alī] added nothing [more as a bridal gift].”\textsuperscript{440}

A forger would have put this specification directly into the mouth of ‘Ikrima.

Ibn Jurayj said: ‘Amr ibn Dīnār transmitted to me that he heard Abū Salama ibn ‘Abd al-Rahmān say: “The Prophet (eulogy) forbid having a woman and her paternal or maternal aunt simultaneously as sexual partners.” ‘Amr said: “About the cousin on the father’s side (\textit{bint ‘amm}) I have not heard anything.”\textsuperscript{441}

Ibn Jurayj said: ‘Amr ibn Dīnār transmitted to me that he heard ‘Ikrima, the mawlä of Ibn ‘Abbās, say: “Whatever (the) money allows to him [the husband] is no divorce.” He [‘Amr] said: “In my opinion he transmitted that to me only from Ibn ‘Abbās [i.e., it is not a statement of ‘Ikrima’s own].”\textsuperscript{442}

Ibn Jurayj said: [. . .] [‘Amr] transmitted to us (\textit{haddathana}) that ‘Abd Allāh ibn al-Musayyab—Ibn Jurayj: or he said Ibn al-Sā’ib, I am not certain about it—al-‘A‘idh\textsuperscript{443} said to him\textsuperscript{444} [‘Abd Allāh ibn al-Zubayr?]:

\begin{thebibliography}{9}
\bibitem{439} See pp. 84 f.
\bibitem{440} AM 6: 10396.
\bibitem{441} AM 6: 10754.
\bibitem{442} AM 6: 11768.
\bibitem{443} ‘Abd Allāh ibn al-Sā‘ib, who was a Meccan \textit{qāri‘}, is probably correct; an ‘Abd Allāh ibn al-Musayyab is not attested. Cf. Ibn Ḥībān, \textit{Mashā‘iṣ}, no. 631 (there, however, al-‘Abīd) and Ibn Hajar, \textit{Tahdīth}, vol. 5, p. 229 (no. 393) (here: ‘Abd Allāh ibn al-Sā‘ib ibn Abī l-Sā‘ib Šayī‘ ibn ‘A‘idh [or: ‘Abid]).
\bibitem{444} I read “\textit{qāla lahu}” instead of the meaningless “\textit{laqāhu}.”
\end{thebibliography}
“She has no right to support.” He [however] said: “Give her no support if you [do not] like.”

Such admissions of ignorance and uncertainty on the part of 'Amr and Ibn Jurayj as are made in the two last texts speak distinctly against the thesis that Ibn Jurayj fathered these traditions on 'Amr in order to have a well-known authority for them. They are, rather, indices of the precision with which Ibn Jurayj reports what he has heard from 'Amr. A further argument for this is provided by the differences between 'Amr and other authorities for the same tradition of which Ibn Jurayj occasionally makes note. Thus, for instance, he reports that the wife of a certain 'Abd al-Rahmân ibn Mukmil, whom 'Amr ibn Dînâr designates as "ibnat Qâriz," according to 'Uthmân ibn abî Sulaymân had the name Juwayriya. This 'Uthmân is probably somewhat younger than 'Amr and relatively rarely attested as an informant of Ibn Jurayj's. Would a forger projecting traditions back onto famous authorities invent such insignificant details from almost unknown persons?

Just as little would one find, with a forger, uncertainties about the authorities themselves, like this one: Ibn Jurayj said: 'Amr or Abû l-Zubayr transmitted to me from Ibn 'Umar... The occasional naming of two authorities for the same tradition, like: "'Abd al-Karîm and 'Amr transmitted to me," "'Amr ibn Dînâr and Ibn Tâwûs," or "'Atâ and 'Amr" are also more plausible as indicators of accuracy than of forgery, since if Ibn Jurayj had had a need to reinforce traditions with further authorities one must ask oneself why he did this so seldom.

b. Ibn 'Uyayna's tradition from 'Amr ibn Dînâr

In the case of 'Atâ the testing of the genuineness of the texts had to be carried out on the basis of a single tradition, that of Ibn Jurayj, since only from him does a relatively large corpus of 'Atâ traditions exist in an early compilation. The situation is more favorable with

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445 AM 7: 12084. The text is corrupt toward the end.
446 AM 7: 12196 (cf. also 14000). It is not impossible that both are correct.
447 Khalîfa ibn Khayyât, Tabaqât, p. 283 names him in the same tabqa, Ibn Hîbbân, Mashâhîr, No. 1119 in the same class with Ibn Jurayj.
448 The edition has Ibn al-Zubayr; this is probably an error.
449 AM 7: 13199.
450 AM 6: 10541, 11166; 7: 13612, 13998.
respect to ‘Amr ibn Dīnār, from whom the *Musannaf* of ‘Abd al-Razzāq contains two different strands of transmission: besides that of Ibn Jurayj also that of Ibn ‘Uyayna. But it, too, is usable only if its autonomy and reliability can be assured.

After those of Ibn Jurayj, Ma‘mar ibn Rāshid and Sufyān al-Thawrī, Ibn ‘Uyayna’s material is the fourth most extensive tradition in the *Musannaf* of ‘Abd al-Razzāq. In comparison to the three first named it is more modest in extent—4.5%, compared to Ibn Jurayj’s 29.3%—but it suffices to make its characteristics recognizably. Ibn ‘Uyayna’s main authority, from whom he transmits the most, is clearly ‘Amr ibn Dīnār, who has a share of almost 23%, while the two next in rank—Ibn abī Najīh (Mecca) and Yahyā ibn Sa‘īd (Medina)—come to only 8–9%. One can conclude from this that ‘Amr, the eldest of the three, was probably the most important early teacher of Ibn ‘Uyayna. He died in 126/743–4, Ibn ‘Uyayna in 198/813–4. The age difference of 72 years is considerable, but it is not impossible that Ibn ‘Uyayna began his studies with ‘Amr at the age of perhaps sixteen and lived to be 90 years old. If, on the basis of the difference in age, one advances the thesis that Ibn ‘Uyayna’s tradition from ‘Amr is fictive, one must also have a plausible explanation by whom and why it was fathered specifically upon ‘Amr and how the different characteristics brought to light by a comparison of the material transmitted by Ibn Jurayj and Ibn ‘Uyayna came to be. The mere allegation of forgery does not do the job. The first person to come into question as a forger would be ‘Abd al-Razzāq. But why should he have fabricated two strands of transmission in the case of ‘Amr—one with an authority who, in terms of age, was close to the limits of the possible—, but for ‘Atā’ only one? Such questions and a number of others which—as I will yet demonstrate—emerge from Ibn ‘Uyayna’s ‘Amr tradition for the advocates of the theory of forgery and projection and are hardly to be answered convincingly, leave the impression that this hypothesis creates more problems than it solves. Thus I prefer as a working hypothesis to consider ‘Abd al-Razzāq as a student both of Ibn Jurayj and of Ibn ‘Uyayna and these two as students of ‘Amr ibn Dīnār.”

451 On the basis of the calculations see pp. 58, 74, and 78, note 13.
453 Juynboll dismissed this conclusion (cf. his “New Perspectives,” pp. 362–363). He argues that the age difference between Ibn ‘Uyayna and ‘Amr ibn Dīnār is so
If one compares Ibn 'Uyayna's tradition from 'Amr with that of Ibn Jurayj from the same person, a few differences are obvious. 'Abd al-Razzāq has twice as many texts from Ibn Jurayj as from Ibn 'Uyayna, not including Ibn Jurayj's notes in which he refers to 'Amr; there are no texts with such notes in the Musannaf from Ibn 'Uyayna. If one classifies the strands of transmission according to genres, it emerges that that of Ibn 'Uyayna is exclusively the material of others, i.e. hadīths and āthār, but does not contain one dictum or responsum by 'Amr himself. With Ibn Jurayj, on the other hand, there are both responso (8%) and pure dicta (his own ra'iy) (16%).454 The most plausible explanation for this seems to me to lie in the different interests of the two scholars. Because of his long study with 'Ātā', Ibn Jurayj also received and transmitted 'Amr's legal opinions, while for Ibn 'Uyayna only his hadīths were worth passing on. This assumption is also supported by the observation that with Ibn Jurayj there are added to a number of 'Amr's traditions from others legally relevant commentaries of 'Amr's or responso to questions from Ibn Jurayj, which are completely lacking with Ibn 'Uyayna. That a trend of development is reflected here can already be cautiously suggested.455 Finally, it is conspicuous that Ibn Jurayj's tradition from 'Amr is predominantly introduced by "akhbaran" (almost 65%), "qāla lī" or "samītu," more rarely by a simple "an" (about 22%) or "qāla," while that of Ibn 'Uyayna contains exclusively "an" and no indication of samā'.

Purely formally, the two strands of transmission thus have different, individual faces, which does not speak for forgery by 'Abd al-Razzāq.

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454 See p. 174.
455 On this see below, pp. 186, 205 f.
But—one might object—if both Ibn Jurayj and Ibn ‘Uyayna were transmitting from the same teacher, there must be a correspondence—at least partial—between the two traditions. In terms of content, this is in fact the case. In the *Musannaf* of ‘Abd al-Razzāq, for 43.5% of the ‘Amr traditions from Ibn ‘Uyayna parallels from Ibn Jurayj are attested. In addition, for 28% of the ‘Amr traditions from Ibn Jurayj which in the *Musannaf* have no variant from Ibn ‘Uyayna, these are present in other works through students of Ibn ‘Uyayna’s other than ‘Abd al-Razzāq—most from Sa‘īd ibn Manṣūr, some from al-Shāfi‘ī and others. That is, for over half of Ibn Jurayj’s traditions from ‘Amr in the *Musannaf* of ‘Abd al-Razzāq there exist parallel versions from Ibn ‘Uyayna—26.5% in this work itself, 28% in other collections. These parallels, however, are only sometimes completely identical. A number of textual differences are to be observed. In most cases, these constitute proof that the two strands of transmission are independent of each other. The possibility that the Ibn ‘Uyayna material derives from that of Ibn Jurayj and that Ibn ‘Uyayna passed him over in the isnāds, which would have been a simple solution to the problem of Ibn ‘Uyayna’s age, can be precluded.

The divergences between Ibn Jurayj’s and Ibn ‘Uyayna’s parallel versions from ‘Amr can be classified into four types: 1. differing lengths of the *matn*, 2. divergences in the diction of the *matn* with the same meaning, 3. shifts in meaning and 4. differences in the *isnād*. For illustration, a few examples with commentary:

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456 That is 26.5% of ‘Amr’s material from others transmitted by Ibn Jurayj in ‘Abd al-Razzāq.

457 Sa‘īd ibn Manṣūr’s tradition from Ibn ‘Uyayna is found in the former’s *Musannaf*, those of the others primarily in al-Bayhaqī’s *Sunan*. The calculation was made on the basis of the notes of the editor of ‘Abd al-Razzāq’s *Musannaf*, Habīb al-Rahmān al-A‘zāmī. A large corpus of traditions from Sufyān is now available in al-Ḥumaydī’s *Musnad*. Here further parallels are to be found.

458 Juynboll insists on it and considers it one of the two ways how Ibn ‘Uyayna made up his ‘Amr traditions (the other being invention); cf. his “New Perspectives,” p. 363. However, the comparison of Ibn Jurayj’s and Ibn ‘Uyayna’s tradition from ‘Amr does not speak in favour of his claim. This is not to say that Ibn ‘Uyayna obtained all of the traditions directly from ‘Amr. There are indications that he occasionally suppressed his informants. Cf. Ibn Ḥanbal, *Titulat a*, vol. 1, p. 320 (No. 2087). On this cf. also M. Cook, *Early Muslim Dogma*, p. 111. Yet even if Ibn ‘Uyayna received the few traditions from ‘Amr, which are completely identical with those transmitted by Ibn Jurayj, from the latter and falsely ascribed them directly to ‘Amr—a fact that should have been noticed and denounced by other students of Ibn Jurayj—these traditions by Ibn ‘Uyayna were not unreliable since Ibn Jurayj’s tradition from ‘Amr can be considered reliable for several other reasons. We would only lose an additional proof for these traditions.
In cases where the *matn* is largely identical, ‘Abd al-Razzāq generally cites Ibn ‘Uyayna’s version immediately after that of Ibn Jurayj with an independent *ismād* but the remark “mithlahu” (the same), thus not repeating the text twice. E.g.:

‘Abd al-Razzāq transmitted to us (akhbaranā) with the words (qāla): Ibn Jurayj transmitted to us with the words: ‘Amr ibn Dīnār transmitted to me that he heard Ibn ‘Umar being asked by a man: “Do one or two sucklings make [a woman] tabu for marriage?” [Ibn ‘Umar] said: “We know only that the milk sister is tabu for marriage [, nothing about the number of sucklings].” A[other] man said: “The Commander of the Believers—he meant Ibn al-Zubayr—claims that one or two sucklings do not [yet] make [a woman] tabu for marriage.” Thereupon Ibn ‘Umar said: “The decision of God is better than yours and that of the Commander of the Believers.”

Ibn ‘Uyayna’s parallel follows in the following form:

‘Abd al-Razzāq from Ibn ‘Uyayna from ‘Amr ibn Dīnār from Ibn ‘Umar and Ibn al-Zubayr the same.

An example of minor differences in the *matn* with the same meaning, and simultaneously for differing lengths caused by an addition in one of the texts:

‘Abd al-Razzāq transmitted to us (akhbaranā). He said (qāla): Ibn Jurayj transmitted to us. He said: ‘Amr ibn Dīnār transmitted to us that Abū l-Sha‘thā’ said: “If the man transfers to his wife the power of disposal over herself (mallaka amrahā) and if the two leave that meeting before she says anything, she gains nothing by it (fa-lā shay’ā lahā); if he takes back his offer (amrahu) before she says anything [in response to it], she [similarly] gains nothing by it.

The immediately following variant of Ibn ‘Uyayna runs:

‘Abd al-Razzāq from Ibn ‘Uyayna from ‘Amr ibn Dīnār from Abū l-Sha‘thā’. He said: If the man transfers [the power of disposal over herself] to his wife (mallaka), that which she says in her meeting is valid. If the two part and she has said nothing, she gains nothing by it (fa-lā amra lahā). ‘Amr said: [In addition] Abū l-Sha‘thā’ said: “How can [a man] go among people while the power of disposal over his wife (amr imra‘atihī) is in the hand of another?”

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459 AM 7: 13919. Emphasis mine.
460 AM 7: 13920.
461 AM 6: 11933.
462 AM 6: 11934. The divergences are italicized.
The two texts display a number of verbal correspondences, but also such significant divergences—especially in the final sentences—that dependence on each other is unlikely. Both surely derive from the same source—‘Amr ibn Dīnār. The differences may either be caused by ‘Amr himself, if one assumes that he sometimes made quite free with his traditions, or by his students, who did not exactly reproduce his words and combined originally separate *dicta* of Abū l-Sha‘thā’. On the other hand, the possibility that ‘Abd al-Razzāq is responsible for the differences can be precluded in view of the many identical texts which he communicates.

The *isnāds* of ‘Abd al-Razzāq’s ‘Amr variants, it is true, rarely correspond in their formulae of transmission, but they usually correspond in their informants. Occasionally there are to be found especially noteworthy parallels like these:

‘Abd al-Razzāq from Ibn Jurayj. He said: ‘Amr ibn Dīnār transmitted to me that he heard ‘Ikrima, the *mawālī* of Ibn ‘Abbās, say: “Whatever (the) money allows to him [the husband] is no divorce.” He ['Amr] said: “In my opinion he transmitted that to me only from Ibn ‘Abbās [i.e., it is not a statement of ‘Ikrima’s own].”

Ibn ‘Uyayna’s text:

‘Abd al-Razzāq from Ibn ‘Uyayna from ‘Amr ibn Dīnār from ‘Ikrima— I think (*ahsabuhu*)—from Ibn ‘Abbās: “Everything which (the) money allows is no divorce”—he meant buying free [from marriage] (*khul’*).

Ibn ‘Abbās’ reservedly communicated authorship, which is formulated by Ibn Jurayj as an additional comment of ‘Amr’s, with Ibn ‘Uyayna stands in the *isnād* itself. Since—as shown on the basis of the texts—the two corpora of traditions are independent of one another, such a correspondence in a detail of the *isnād* speaks for credible and relatively accurate transmission by the two students from their teacher, and against sweeping hypotheses of forgery.

It is just as difficult to judge the authorship of divergences in the *isnād* as it is in the case of those in the *matn*. There are two types of *isnād* divergences: 1. another informant at one place in the *isnād*, 2. an informant in place of a lacuna in the *isnād*.

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463 AM 6: 11768.
464 AM 6: 11770.
The isnāds of one and the same tradition of 'Ā'isha display a divergence which is at first difficult to explain:


Since such cases of isnād divergence are extremely rare in the 'Amr material, conscious forgery by ‘Abd al-Razzaq—for instance, with the purpose of enhancing the value of the tradition with different isnāds—is not very likely. One should in that case be able to observe it with him more often. One might, of course, think of a confusion by ‘Amr himself, but to me it seems most probable that it is a copying error. Umm Ḥakīm was incorrectly identified as Umm Šālih or vice versa, as can easily happen with bad handwriting. Her father was probably Ṭāriq ibn 'Alqama al-Muraqqi (the cobbler), an early Meccan tābi.467 His name was clearly received by the transmitters only fragmentarily and defectively—whether already by Ibn Jurayj and Ibn ‘Uyayna or at a later stage of the textual history cannot be determined with certainty.

Another interesting isnād divergence for a largely identical matn is the following:


Schacht's adherents would probably declare the latter to be older since it reaches back less far, without bothering themselves with the fact that Ibn Jurayj was considerably older than Ibn ‘Uyayna. But there are indicators which speak for the assumption that Ibn Jurayj’s version is the original and that of Ibn ‘Uyayna is based on an error

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465 AM 7: 13869.
466 AM 7: 13870.
468 AM 7: 13612.
469 AM 7: 13613.
in copying or in recollection. It is decisive that for the version of Ibn Jurayj there is not only ‘Atā’ in addition to ‘Amr as an authority, but also a further independent tradition of ‘Abd al-Razzaq with the Meccan isnād “al-Muthanna ibn al-Şābāh—‘Ikrima ibn Khālid—al-Ḥārith ibn ‘Abd Allāh—his father—‘Umar.” On the other hand, an inadvertent change from “al-Ḥārith ibn Abd Allāh ‘an abī Rabī‘a annahū sa‘ala ‘Umar ibn al-Khaṭṭāb” to “al-Ḥārith ibn Abd Allāh ibn abī Rabī‘a annahū sa‘ala ‘Abd Allāh ibn ‘Umar ibn al-Khaṭṭāb” is imaginable: “‘an abīhi” was overlooked, and as a result “‘Abd Allāh” had to switch places. It also speaks for this that in our source the name element “ibn al-Khaṭṭāb” is customary only with ‘Umar; with Ibn ‘Umar, on the other hand, it would be out of the ordinary. From whom the error derives cannot at the moment be determined; it could even have been made after ‘Abd al-Razzaq.

This type of isnād divergence thus supplies no argument for the hypothesis of forgery. This might more likely be the case with the second type, the filling of lacunae. It is conspicuous that precisely in the case of two ḥadīths of the Prophet Ibn ‘Uyayna’s version is more complete than Ibn Jurayj’s by one link each:

1. ‘Abd al-Razzaq—Ibn Jurayj—‘Amr ibn Dīnār—the Prophet, but: ‘Abd al-Razzaq—Ibn ‘Uyayna—‘Amr ibn Dīnār—Abū Ja‘far—the Prophet. According to the Muslim classification of isnāds the first is mu‘dāl, i.e. it is lacking two links between the Prophet and ‘Amr; the second is nevertheless still mursal, i.e. it lacks the transmitter link of the sāḥība level.


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470 AM 7: 13614.
471 AM 7: 13266 and 13267. Emphasis mine.
In both cases, the suspicion is not to be dismissed that the younger and more "Hadith"-oriented Ibn 'Uyayna improved 'Amr's isnād with the authority who in his opinion was best suited. This pious fraud, branded by the later Muslim Hadith criticism as a form of tālīs (suppression of faults), was frequently used in the second/eighth century, especially with hadīths of the Prophet. This type of isnād forgery must, however, not tempt us generally and sweepingly to reject the traditions of these transmitters. On the one hand these are only individual cases which probably affect above all the hadīths of the Prophet, on the other hand they are not invented texts or projections onto the Prophet. The fact that 'Abd al-Razzāq cites both versions is a further argument for the exactitude and credibility of his transmission.

The comparison between the two strands of transmission from 'Amr ibn Dīnār shows that Ibn 'Uyayna is generally to be regarded as a trustworthy and credible transmitter from 'Amr and that he should not a priori be supposed to have committed matn and isnād forgery. He is a source independent of Ibn Jurayj for the traditions of 'Amr ibn Dīnār, but not for his legal teachings that were not supported by traditions. Texts of 'Amr's which are preserved both from Ibn Jurayj and from Ibn 'Uyayna agreeing either word for word or in meaning can be considered genuine; those which are transmitted from only one of the two can be considered credible until proof of the contrary. Caution is necessary only with respect to Ibn 'Uyayna's isnāds—especially with hadīths of the Prophet—when they are nearly flawless and no parallel from Ibn Jurayj is attested.

2. Characteristics of 'Amr ibn Dīnār's legal scholarship and its significance for the history of Islamic jurisprudence

a. General characteristics

It can be gathered from Ibn Jurayj's questions to 'Amr that instruction with him proceeded very much as with 'Aṭā'. 'Amr presented his own views and reports of opinions, modes of behavior, verdicts and advice of the previous generations of Muslims, and his students

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474 The Prophetic hadīth is found in Muslim's Sahih, also continuous, with the isnād ending: Yahyā ibn abi Kathir—Abū Salama ibn 'Abd al-Raḥmān—Abū Hurayra—Prophet (cf. AM 6: 10755, note). Possibly Ibn 'Uyayna used this version as a model.
could ask questions about them or on other subjects. In contrast to Ibn Jurayj’s texts from ‘Atā’, in those from ‘Amr there are no responsa to questions from other students. This does not necessarily mean that Ibn Jurayj had private instruction with ‘Amr, but probably has to do with the fact that he did not record ‘Amr’s legal teachings as thoroughly as those of ‘Atā’ and his tradition from him is overall not as extensive.

If one classifies the entirety of Ibn Jurayj’s ‘Amr material into ‘Amr’s own legal opinions and material from others, there emerges a preponderance of 58% reports from others over ‘Amr’s legal statements (dicta, responsa, notes) (42%). Even if one takes into account a minor deficit in Ibn Jurayj’s transmission of ‘Amr’s legal teachings, the proportion is conspicuous in comparison to ‘Atā’, with whom material from others comprises at most 20%. One may probably interpret the difference to mean that the younger ‘Amr ibn Dinar in his instruction more often supported himself with traditions than ‘Atā’ had done, although—as has been mentioned—in the case of the latter, too, greater consideration of Tradition became apparent at the end of his life. Here there becomes visible a development which—as will yet be shown—is steadily continued by Ibn Jurayj: the supplementing, supporting, or replacing of one’s own legal opinion (ra’y) with legal Tradition (hadīth, athar, khabar).

A comparison of ‘Amr’s legal statements with those of ‘Atā’ reveals that there is a large degree of correspondence between the two. The cases in which ‘Amr expressed an opinion different from ‘Atā’’s scarcely amount to 10%. This shows that in Mecca at the latest in the first quarter of the second/eighth century there was already a kind of local ijma’ in many questions of law, a thesis which I have already suggested in the discussion of ‘Atā’s anonymous traditions and which is confirmed by the ‘Amr tradition. This extensive consensus certainly results in part from the fact that as a teacher of law ‘Atā’ was a recognized authority from whom younger scholars took their orientation. Since ‘Amr—if only seldom—transmits from ‘Atā’, he must for a time have numbered among his circle of students. Another component is perhaps to be sought in the fact that both of

475 Cf. AM 6: 10541, 10963, 10972, 11190, 11768; 7: 12736, 13625.
476 It should also be taken into account that I have not evaluated Ibn Jurayj’s entire tradition from ‘Amr, but only a representative selection.
477 See pp. 107, 122.
them come from a common local legal tradition, which then must already have developed in the first century. Whether this hypothesis will hold can be tested by an investigation of the sources to which ‘Amr ibn Dīnār refers and a comparison with ‘Atā’‘s sources. Such an analysis of sources may—as already demonstrated on the example of ‘Atā’—also shed some light on the early development of the body of Tradition in general.

b. ‘Amr ibn Dīnār’s sources

The analysis of ‘Amr’s sources is based on both strands of tradition of the Mūsannaf of ‘Abd al-Razzāq, but treats texts with the same content and isnād as a tradition complex. By “sources” I mean in this context—as previously in the chapter on ‘Atā’—sources of law, i.e. authorities whom ‘Amr cites as positive or negative precedents in order to illustrate or justify a legal position. In the majority of cases—in the tradition of Ibn ‘Uyayna in general—the legal situation is not further commented upon, rather, the source is simply cited, from which the legal background generally emerges. More rarely, traditions occur which are so condensed that their problem can only be inferred from the context where they are found in the collection used.

If one investigates which authorities are named how often, there emerges a somewhat different picture than in the case of ‘Atā’.

As with him, the Companions of the Prophet do stand in first place (37%, with ‘Atā’ 15%), but they are followed neither by the Qurʾān nor by the Prophet, but by the tāḥīṭun (28%), whom in the case of ‘Atā’ I characterized as his contemporaries—which is still true in the case of ‘Amr—and who with the former played only a very subordinate role (1.5–2%). The hadiths of the Prophet, as with ‘Atā’ (5%), take third place (10%), while references to the Qurʾān, which with ‘Atā’ were relatively frequent (10%), appear only sporadically (1–2%) in the tradition from ‘Amr. In comparison with ‘Atā’‘s legal sources, the great significance of scholars of the tāḥīṭun level is unmistakable. An interpretation of this statistical finding is appropriate only after a more detailed investigation of the individual groups of sources.

478 On ‘Atā’‘s sources, see p. 140.
479 The percentage includes all of ‘Amr’s traditions of the Prophet in the textual selection. Some of them are mainly biographical in character. If one takes into account only the legally relevant hadiths, it is 7%.
The Companions of the Prophet

The scale of frequency of 'Amr's traditions from and references to the Companions of the Prophet is informative: Ibn 'Abbās (36%), 'Umar (26%), 'Alī (17%), Ibn 'Umar (11%), Ĩthmān, 'Ā'isha, Ḥafṣa, Fāṭima and anonymous sahāba 2% each. With 'Āṭā', at the top of the scale there was a very similar picture: Ibn 'Abbās dominated, followed by 'Umar and 'Alī; with 'Amr, Ibn 'Umar then takes the place of 'Ā'isha. This statistic is also significant, and explanations can be offered why, for instance, Ibn 'Abbās plays such a paramount role with 'Amr as well, or for what reason Ibn 'Umar is mentioned more often than 'Ā'isha.

Since it has been possible to demonstrate the authenticity of the 'Amr ibn Dīnār tradition in the Musannaf of 'Abd al-Razzāq, it is to be assumed that the traditions from the sahāba, the tābi‘īn and the Prophet that are traced back to him were actually transmitted by him to his students. His date of death, 126/743–4, is the terminus ante quem for their time of origin. It remains to be checked whether he himself invented them and brought them into circulation, and if not where he got them.

In the case of the traditions from Ibn 'Abbās, in about two thirds of all instances 'Amr names a source from whom he got them. They are usually known as students and clients of Ibn 'Abbās: 'Ikrima (d. 105/723–4), Tāwūs (d. 106/724–5), 'Āṭā' ibn abī Rabāḥ (d. 115/733), Abū Ma'bad (d. 104/722–3), Mujāhid (d. 103/721–2 or 104/722–3), Abū l-Sha’thā [Jābir ibn Zayd] (d. 93/711–2). Can one trust these statements of origin? Several indices speak for this: 1. 'Amr ibn Dīnār is supposed to have been born around the year 46/666–7, and Ibn 'Abbās to have died in the year 68/687–8.

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480 AM 6: 10852, 11768; 7: 12736. The dates of death in the biographical literature sometimes vary by a couple of years. Here and below I limit myself, for the sake of simplicity, to the data in Khalīfa ibn Khayyāt’s Tabaqāt.

481 AM 6: 11166, 11771 (?); 7: 12852.

482 AM 6: 10895; 7: 13218.

483 AM 7: 12812, 12843.

484 AM 7: 13615.


486 AM 6: 10895. For the Abū Yahyā, mawla of Mu‘ādh [ibn ‘Afrā‘] named in AM 6: 11609 (cf. Khalīfa ibn Khayyāt, Tabaqāt, p. 163), neither an exact date of death (ca. first quarter of the second century) nor information about his relationship to Ibn ‘Abbās are to be found.

Thus, in his youth he may still have met and heard him in Mecca, as is in fact occasionally asserted in the biographical literature.\footnote{488} Why, then, should he have fabricated sources for Ibn 'Abbās, when he could refer to him directly? 2. In almost a third of his Ibn 'Abbās traditions 'Amr names no source, but neither does he claim to have them directly from him,\footnote{489} although he otherwise likes to emphasize his samā' with formulae like "samītu X yaqūl" (I heard X say) or "akhbaranī X" (X transmitted to me). Consequently, there was no necessity for him to invent sources. 3. Examples in which 'Amr admits that he is not quite sure whether a statement comes from 'Ikrima himself or through his mediation from Ibn 'Abbās, or whether he really got a dictum of Ibn 'Abbās from 'Āṭā',\footnote{490} speak against an assumption of forgery. 4. 'Amr also cites personal legal opinions from most of the sources named for Ibn 'Abbās, and in some texts differentiates between Ibn 'Abbās' statement and additions by the informant,\footnote{491} i.e. his Ibn 'Abbās traditions are not projections of legal opinions of ostensible students of Ibn 'Abbās onto the master himself, since if one assumes that it is hardly explicable why he transmits personal material from his sources for Ibn 'Abbās at all and does not attribute everything to Ibn 'Abbās.

I thus see no plausible reason why 'Amr's statements about the origin of specific traditions from Ibn 'Abbās should not be credible. This does not mean that all of them are genuine statements of Ibn 'Abbās. It is not possible to prove this on the basis of the textual selection I have used, since it contains too few of 'Amr's Ibn 'Abbās traditions. That would require a separate investigation of the entire Musannaf. However, several points can be asserted which speak for the credibility of the traditions of Ibn 'Abbās' above-mentioned students from and about him: firstly, it could be shown that the 'Āṭā'—Ibn 'Abbās tradition of the younger Ibn Jura'yj is in all probability genuine.\footnote{492} Since—as has been observed—there are no grounds to doubt 'Amr's references to students of Ibn 'Abbās like 'Āṭā', the 'Āṭā'—Ibn 'Abbās tradition of the elder 'Amr can also—until proof

\footnote{488} Cf., for instance, al-Dhahabi, as cited in note 486.
\footnote{489} AM 6: 10928; 7: 12084, 12737, 13102, 13903.
\footnote{490} AM 6: 11768 (also see p. 176); 7: 13218.
\footnote{491} E.g. AM 7: 12796.
\footnote{492} See pp. 140–146.
of the contrary—be approached with confidence. Secondly, for 'Amr’s more important sources for Ibn ‘Abbās texts the authenticity of their citations from him can be proven in individual cases. Compare the following two texts:

Ibn Jurayj from 'Amr ibn Dīnār, that 'Ikrima, the mawla of Ibn 'Abbās, reported to him (akhbarahu): “Ibn 'Abbās saw no harm in a man’s having two sisters or a (the) woman and her daughter simultaneously [as concubines].” [. . .].\(^{493}\)

Ibn Jurayj from 'Amr ibn Dīnār, that he heard Abū l-Sha’thā [say] that he did not like Ibn ‘Abbās’ view (ra’y) on simultaneous [concubinage with two sisters or mother and daughter].\(^{494}\)

Here a legal opinion of Ibn ‘Abbās’ is independently documented by two of his students, ‘Ikrima and Abū l-Sha’thā, and Abū l-Sha’thā”s distancing himself from it shows that it was actually his opinion, otherwise he would probably have disputed its authenticity.

In connection with Ibn Jurayj’s ‘Atā’—Ibn ‘Abbās tradition, Ibn ‘Abbās’ opinion on muṭa marriage has already been mentioned and arguments for the authenticity of the corresponding reports have been adduced.\(^{495}\) One part of it runs:


There is a counterpart to this tradition from 'Amr ibn Dīnār:

Ibn Jurayj said: 'Amr ibn Dīnār reported to me from Tāwūs from Ibn 'Abbās the words (qāla): Only Umm Urākā frightened the Commander of the Faithful 'Umar when she went out pregnant. 'Umar asked her about [the origin of] her pregnancy. She answered: “Salama ibn Umayya ibn Khalaf contracted a muṭa marriage with me (istamta‘a bi).” When [Ibn] Ṣafwān disputed with Ibn ‘Abbās part of what he said,

\(^{493}\) AM 7: 12736.
\(^{494}\) AM 7: 12738. Emphasis mine.
\(^{495}\) See pp. 142-146.
\(^{496}\) AM 7: 14022.
he said: “Ask your paternal uncle whether he contracted a *mut'a* marriage.”

On the basis of their differences, the two traditions are to be regarded as independent of one another. A glance into the biographical literature shows that the contradictions between the two versions are based on imprecisions in transmission: “a man of the Banū Jumāḥ” is Salama ibn Umayya ibn Khalaf ibn Waḥb ibn Ḥudhayfā ibn Jumāḥ, a Companion of the Prophet like his brother Ṣafwān, who is supposed to have died in the year 42/662–3 in Mecca. His son, Salama’s nephew, must be the one who criticized Ibn ‘Abbās’ opinion about the *mut'a* relationship. This is also confirmed by another Tāwūs tradition which Ibn Jurayj has from Abū l-Zubayr, which names Ibn Ṣafwān as an antagonist of Ibn ‘Abbās. Who committed the error of substituting Ṣafwān for Ibn Ṣafwān cannot be said exactly. Possibly ‘Abd al-Razzāq or later copyists are responsible.

The correspondences between the traditions of ‘Aṭā’ and Tāwūs from Ibn ‘Abbās are, on the other hand, so conspicuous that the same incident must underlie both of them. Both are thus to be regarded as credible Ibn ‘Abbās traditions. The fact that genuine Ibn ‘Abbās traditions from ‘Ikrima, Abū 1-Sha’tha’, Tāwūs and ‘Aṭā’ can be shown to exist in the tradition of ‘Amr ibn Dīnār throws a favorable light on the credibility of these teachers of his and on his sources for Ibn ‘Abbās in general. Until proof of the contrary, I thus assume that ‘Amr’s Ibn ‘Abbās tradition is authentic. i.e. really goes back to the latter.

Neither are there any reservations against this assumption from the point of view of genre and content. Three-fourths of all texts are legal *dicta*. In addition to these, there are some legal opinions (*fatāwā*), in which either the questioner or the case is specifically mentioned. Examples which show Ibn ‘Abbās in his family circle are reported primarily from his *mawlā* Abū Ma’bad. In a number of texts Ibn ‘Abbās argues through Qur’ānic verses, and a *qirā’ta*

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497 AM 7: 14024.
499 AM 7: 14027.
500 AM 7: 12084, 12736; 6: 11771 (here instead of “I asked Ibrāhīm ibn Sa‘d ibn ‘Abbās,” one should probably read “Ibrāhīm ibn Sa‘d asked Ibn ‘Abbās.”).
501 Cf. AM 6: 10832, 11771; 7: 12736, 12737.
diverging from the *textus receptus* is also transmitted from ‘Amr.502 With the exception of the above-mentioned reaction of ‘Umar’s to the *mu‘a* alliance of Umm Urāka,503 there are, however, no traditions from others in ‘Amr’s Ibn ‘Abbās material. From the point of view of form, ‘Amr’s Ibn ‘Abbās tradition thus resembles that of ‘Aṭā’,504 independently of the overlaps in content. This, too, is an argument in favor of its genuineness.

For his traditions from the caliph ‘Umar ibn al-Khaṭṭāb, who is the most often-cited Companion of the Prophet after Ibn ‘Abbās, ‘Amr usually but not always states their provenance. Very few of his isnāds are beyond reproach by the standards of the Muslim *Hadīth* criticism of the third/ninth century. Usually the last link before ‘Umar is weak, whether it be that the sources named could not for reasons of age have the material reported directly from ‘Umar, like for example his Medinan suppliers of ‘Umar traditions Ibn al-Musayyab, Sulaymān ibn Yasār and Ibn Shihāb, or that the eye or earwitness is anonymous or not definitely identifiable.

Two examples of the latter:

a) ‘Abd al-Razzāq—Ibn Jurayj—‘Amr ibn Dīnār—‘Amr ibn Aws—a man of Thaqīf—Umar.505


The first isnād contains before ‘Umar an anonymous person; the second leaves it open whether Muḥammad ibn ‘Abbād ibn Ja‘far has the story directly from his fellow-tribesman—both belong to the Banū Makhzūm—the *ṣaḥābī* al-Muṭṭalib ibn Ḥantab. Only a few of the isnāds of ‘Amr’s ‘Umar tradition are as unobjectionable as the already mentioned: Ibn Jurayj—‘Amr ibn Dīnār—Ṭāwūs—Ibn ‘Abbās—‘Umar,507 in which, however, Ibn ‘Abbās by no means claims

502 AM 6: 10928. This *qirā‘a* is also attested from Ibn ‘Umar by ‘Abd Allāh ibn Dīnār (see p. 134).
503 See pp. 190 f.
504 See p. 141.
507 See p. 190 f.
to have been a witness, or the *isnād* Ibn Jurayj—‘Atā’ and ‘Amr—al-Ḥārith ibn ‘Abd Allāh—his father ‘Abd Allāh ibn abī Rabī‘a—‘Umar.⁵⁰⁸

These facts show that ‘Amr was, in fact, familiar with the procedure of providing a tradition with a chain of sources reaching the authority named in it, but that either he was not always in a position to provide a continuous *isnād*, or the standard for a satisfactory chain of transmitters in his time did not yet correspond to that which was later demanded by Hadith criticism. The two are not mutually exclusive. Although ‘Amr names sources for most of the ‘Umar and Ibn ‘Abbās traditions, there are some without any *isnād* at all. This speaks for the assumption that he endeavored to name his sources, but was not always able or willing to do so, because he could no longer remember from whom he had the tradition in question or that for other reasons it seemed to him inopportune to state its provenance, e.g. when he had obtained it from a little-known contemporary without an *isnād*. The occasional lack of *isnāds* is, on the other hand, an indication that he was under no compulsion to name his sources even at the expense of truth.

His Medinan *isnāds* Ibn al-Musayyab—‘Umar, Sulaymān ibn Yāsār—‘Umar or even Ibn Shihāb—‘Umar, on the other hand, lead one to suspect that he considered the traditions of these famous scholars to be acceptable even when they were not direct witnesses of what they reported. One may suppose that ‘Amr had received these texts directly from the Medinans mentioned, since there are also examples of indirect transmission from them, like this one: ‘Amr ibn Dīnār ‘Abd Allāh ibn abī Salama⁵⁰⁹—Sulaymān ibn Yāsār—‘Umar.

From these considerations results the conclusion that one may lend credence to ‘Amr’s statements about the provenance of his ‘Umar traditions. This also means that these were already in circulation in the lifetimes of his sources—i.e., in some cases as early as the first/seventh century.

Whether ‘Amr’s ‘Umar traditions are historical in the sense that they report actual events and statements of ‘Umar’s can only be

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⁵⁰⁸ See p. 183.

judged in rare cases in which complete statements about transmitters reaching into the time of 'Umar’s caliphate are present, as for example with the Umm Urâka story to which Ibn ‘Abbâs alludes.  

Seen from the point of view of the genres to which the 'Umar traditions are to be attributed, the majority could be historical. Most are legal verdicts or opinions—it cannot always be determined precisely—or relics of such which suggest by the naming of people involved or other information that concrete incidents underlie them. But all of this can also be invented, and for this reason genre analysis alone does not provide decisive criteria for the determination of the historicity of the reports.

The situation is very similar with respect to ‘Amr’s ‘Ali traditions. For the majority he does name a Meccan (‘Ikrima), Kufan (Sa‘îd ibn Jubayr) or Medinan (Abû Ja’far) source, but in general, for reasons of age, they were probably not in direct contact with ‘Ali; neither is this claimed by any of the people named. It is true that ‘Ikrima, the mawlâ of Ibn ‘Abbâs, according to the biographical works was seventeen years old at ‘Ali’s death, but Abû Ja’far and Sa‘îd ibn Jubayr were born only after it. The latter in fact emphasizes that he has the report about ‘Ali from unnamed sources: “balâghanî” (it reached me). That ‘Amr actually has these traditions from the people named is to be assumed for the same reasons as in the case of his ‘Umar traditions; this also means that in general they derive from the second half of the first century. It is, of course, possible that they report things which really happened, but their historicity is not ensured. Clearly it was enough for ‘Amr that such reports were vouched for by members of ‘Ali’s family—Abû Ja’far was a grand-nephew of ‘Ali’s—or respected scholars of the generation after him.

A curious text deserves special mention: ‘Ali’s testament about his concubines. ‘Amr transmits it without a statement of provenance. It makes the impression of a verbatim excerpt from his will. The text is preceded by the sentence: “If something befalls me in this military venture,” which might have stood on the recto of the folded

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510 See pp. 190 f.
511 AM 6: 10396, 11631.
512 AM 6: 10352; 7: 13271, 13544.
513 See p. 184, note 412.
514 AM 7: 13213.
document and may have served as a heading for the text. The actual text begins with "amma ba'du" and ends with the naming of two witnesses and the date.

‘Abd al-Razzāq from Ibn ‘Uyayna from ‘Amr ibn Dīnār. He said: ‘Alī wrote in his testament (waṣāyla):—If something befalls me in this military venture (ghazwa)—I have nineteen slave women with whom I have (sexual) intercourse, among them mothers of children who have their children with them, pregnant women and those who have no children. I decree: if something befalls me in this military venture, those who are not pregnant and have no children shall be unconditionally (li-wajhi ilāhi) free. No one shall have a right to them. Those who are pregnant or have a child shall be held with their child (tuḥbasu). They belong to his share [of the inheritance]. If their child dies while they are still alive, they are unconditionally free. I decree this over my nineteen slave women by God, from whom I ask protection (wa-llīhi l-mustaṣān). Witnessed by Hayāj ibn abr Sufyān and ‘Ubayd Allāh ibn abī Rāfī. It was written in Jumādā of the year 37.

The content of this testamentary passage is reported without a statement of origin by ‘Ata’, as well, who, however, states that he inquired from ‘Alī’s great-nephew Muḥammad ibn ‘Alī ibn Husayn whether this was really in ‘Alī’s testament, which he affirmed. 515 Such a document must thus have existed around the turn of the first/seventh century. If it is a forgery, it would have to have originated in ‘Alī’s family. On the other hand, it is conspicuous that the provisions of the testament—e.g., that his concubines who were pregnant by him or had living children after his death should not be free but a component of their children’s portion of the inheritance, as long as the latter lived—correspond to the teachings and verdicts of Meccan legal authorities of the first/seventh century like Ibn ‘Abbās and ‘Abd Allāh ibn al-Zubayr, as vouched for by ‘Atā’, 516 and that the testament was transmitted precisely by Meccan fuqahā’ like ‘Atā’ and ‘Amr, who presumably do not come into question as its forgers. Now, one cannot assume that the ‘Alid family produced a forged testament in order to identify itself with the legal opinions of an Ibn ‘Abbās or Ibn al-Zubayr. Rather, one can conclude that the fate of the umm walad was a legal problem which arose very early and was already solved in some fashion by individual Companions of the

515 Cf. AM 7: 13212.
516 Cf. AM 7: 13216–13218, 13220.
Prophet. If—as is certain—by Ibn ‘Abbās, then why not by ‘Alī? If only the simple expression of an opinion were transmitted from him, one would be able to reach no verdict about its historicity in the present state of the sources. The documentary form of this ‘Alī tradition, however, seems to me—in the context of confirmed similar opinions of Ibn ‘Abbās—to speak for its authenticity. 517

The assumption that ‘Amr’s tradition about ‘Alī’s testament is authentic does not necessarily imply that ‘Amr’s text reproduces the document exactly. The date “Jumādā 37” is problematic. It is strange that the month is not given more precisely: Jumādā l-ūlā or Jumādā l-ākhira. 518 The number may have been omitted by a transmitter or copyist, or Jumādā is a misreading of another month. Which ghazwa is meant? If Jumādā 37 was correct it would have been written only after the battle of Sīthin which took place in Safar 37. 519 Was there a ghazwa immediately afterwards? The ghazwa against the Kharijites

517 M. Muranyi argues against the authenticity of the testament. According to his view, the similarity between the legal opinions of the two Meccan scholars and ‘Alī’s alleged testament suggests that ‘Aṭā’ and ‘Amr ibn Dīnār may have fabricated the document and brought it into circulation to back up their doctrines. The documentary form of the testament in ‘Amr’s tradition could easily have been forged by this scholar (cf. his review in Zeitschrift der Deutschen Morgenländischen Gesellschaft 143 (1993), p. 409). Muranyi would be right if we had only the two traditions of ‘Aṭā’ and ‘Amr at our disposal. In that case we would not be able to decide whether they are forgeries or not, the documentary form would be of no avail, and we would have to consider more seriously the possibility that the two scholars fabricated their traditions about ‘Alī’s testament. Yet the method followed in the present study of forming a judgment on an individual text based on an analysis of a large number of texts transmitted from the same scholar enables us to be more definite. In view of the whole corpora of ‘Aṭā’s and ‘Amr’s teaching transmitted by Ibn Juraqj and Ibn ‘Uyayna, the assumption that they forged a testament by ‘Alī in order to back up their own doctrines makes no sense. Besides, a testament by ‘Alī forged by Meccan scholars who were not members of ‘Alī’s family is improbable, because their swindle would not have remained undetected. Therefore, I argued that if it is a forgery, then it must have been produced by ‘Alī’s family. But for the reasons mentioned above such an assumption does not seem convincing. Only at this stage of argument does the unusual documentary structure of the text become significant.

The fact that the two texts dealing with ‘Alī’s testament are not identical is not necessarily a point against the hypothesis that ‘Alī’s family really had such a document at the turn of the first century. ‘Amr ibn Dīnār’s version with its documentary form may be based on knowledge of the document itself. ‘Aṭā’s short paraphrase, on the contrary, seems to reflect only oral information about it. This is indeed suggested by ‘Aṭā’s comment on the text that he asked a member of ‘Alī’s family whether this was really the content of the document. 518 Cf. Muranyi, op. cit., p. 409.

at Nahrawān which perhaps took place early in Dhū l-Ḥijja 37\(^\text{520}\) could be meant. But if the arbitration at Dūmat al-Jandal lasted until early Dhū l-Qā‘da 37\(^\text{521}\) there was no battle imminent in Jumādā 37. Dhūl Qā‘da would fit better. Is Jumādā a misreading of this? A definite answer is difficult, not least because the dates for the events mentioned are disputed. If Jumādā is correct, the battle meant may be that against the coalition of al-Zubayr, Ṭalḥa and ‘Ā‘isha which took place on 15 Jumādā 36. Then the year to which the testament is dated would be a misreading.

After ‘Alī, finally, Ibn ‘Umar is among the Companions of the Prophet to whom ‘Amr refers relatively frequently. ‘Amr himself heard him, as is attested by a text already cited:

Ibn Jurayj said: ‘Amr ibn Dīnār reported to me that he heard Ibn ‘Umar when a man asked him...\(^\text{522}\)

One can trust this statement, since there are also Ibn ‘Umar traditions from ‘Amr which he does not claim to have directly from him and ones which contain neither a source nor an indication of samā‘. That his sources for Ibn ‘Umar are not forged is apparent from the same facts. The Ibn ‘Umar traditions about which he notes that he heard them himself can be classed as authentic and those of his sources as probably credible, when no problems of content exist.

‘Amr ibn Dīnār’s traditions from Companions of the Prophet—as has been shown by this investigation—are not invented by the former himself, but either derive—as in the case of Ibn ‘Umar—from direct contact to the person in question or have been communicated to him by named or unnamed informants, usually older contemporaries. When these latter are reporting on the younger saḥāba—like Ibn ‘Abbās and Ibn ‘Umar—with whom they had contact, their statements will generally be trustworthy because ‘Amr could check them by asking other pupils of them. With the older Companions, ‘Amr’s isnāds reach a contemporary witness only in rare cases. They are usually reports about them deriving from the following generation.

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\(^{521}\) Cf. op. cit., p. 254.

\(^{522}\) See p. 181.
In contrast to the case of ‘Ațā’, who only sporadically names sources for his traditions of the Companions, 80% of ‘Amr’s have a statement of provenance (isnād). This difference between the two, like ‘Amr’s more frequent reference to traditions in general, probably reflects a development of the discipline of legally relevant tradition and its technique. ‘Amr was twenty years younger than ‘Ațā’, in whose instruction traditions did not play any great role as a source of law and informants were very rarely named. Is such a transformation within one generation conceivable? One might imagine that the disappearance of the last šaḥāba gave rise to a feeling of uncertainty and perhaps scepticism towards the scholars who had not themselves been alive to meet the Prophet and a need for more security in the decision of legal questions through resort to the teachings and decisions of the Companions of the Prophet. The younger ‘Amr, who was not moulded as deeply or as long by the learned authorities of the generation of the Companions as ‘Ațā’, could have paid tribute to this trend. Whether that was really the cause which led to greater attention to traditions from older authorities cannot be determined with certainty. Others are conceivable. The fact that ‘Amr’s isnāds, which vouch for the provenance of such traditions, in the case of the reports from older šaḥāba are usually incomplete at the end in any case allows the conclusion that the procedure of the isnād was still young and was not widespread in the generations of the šaḥāba and the older tābi‘ūn.

It also becomes clear from ‘Amr ibn Dīnār’s šaḥāba traditions that he—like ‘Ațā—has preferences for particular Companions of the Prophet. Ibn ‘Abbās dominates with both, which in the case of ‘Ațā’, as his student, is not surprising but requires explanation in the case of ‘Amr. Although it is possible that he encountered Ibn ‘Abbās—at his death he was probably about 22 years old—it cannot be inferred from his Ibn ‘Abbās traditions that he heard them from him. Most of them are indirect. But precisely the sources whom he names for them are the key to answering the question why he refers to Ibn ‘Abbās so often. The significance of these sources for ‘Amr’s legal scholarship will, however, become completely clear only through the investigation of his tābi‘ūn traditions. For this reason, let us postpone the answer for the time being. However, one can certainly say that in the preference of the two—‘Ațā’ and ‘Amr—for the opinions of Ibn ‘Abbās there lies a further cause for their extensive concurrence in legal questions and the development of a broad local
consensus among the Meccan legal scholars as early as the end of the first/seventh century.

On the other hand, it cannot be overlooked that there is a receptivity to the legal opinions of a few other Companions as well, above all ‘Umar’s but also ‘Ali’s, Ibn ‘Umar’s and ‘A’isha’s. This is to be observed in the case of ‘Amr just as in that of ‘Atā’; the latter’s higher proportion of ‘A’isha traditions is probably to be explained by the fact that he met her personally, while ‘Amr refers more to Ibn ‘Umar since he met him himself, but not ‘A’isha.523

‘Amr’s contemporaries

After the Companions of the Prophet, ‘Amr refers most to legal opinions, verdicts and legally relevant modes of behavior of older contemporaries. Here it is conspicuous that over half of ‘Amr’s references to this group of people fall to a single name: Abū l-Sha‘thā’. In contrast, the next most frequently mentioned ‘Ikrima does not even reach 9%. From this I conclude that Abū l-Sha‘thā’ was the most significant legal scholar for ‘Amr, the one who influenced him most deeply. As in the case of the pair ‘Atā’—Ibn ‘Abbās, one will be able to assume a student-teacher relationship between the two. That ‘Amr attended the instruction of Abū l-Sha‘thā’ is explicitly emphasized in some traditions from him by “sami‘ahu”, “akhbarahu”,524 and once by the remark “Abū l-Sha‘thā’ told me to ask ‘Ikrima about . . .”525

Who is Abū l-Sha‘thā’? From ‘Amr’s traditions from him one can gather no more than this kunya and the facts that he is occasionally mentioned in the same breath with Ibn ‘Abbās’ students ‘Ikrima, ‘Atā’ and Tāwūs526 and that once an opinion of Abū l-Sha‘thā’s diverging from that of Ibn ‘Abbās is mentioned. On this basis, one might guess that he was also a student of Ibn ‘Abbās, which is confirmed by a glance into the early biographical literature. He is Jābir ibn Zayd al-Azdī, a scholar resident in Basra who died in 93/711–2 (according to others 103/721–2).527 Since Ibn ‘Abbās stayed

523 The fact of having met with a Companion does not mean that all traditions from him must have been obtained directly.
524 AM 6: 11039; 7: 12738, 13934.
525 AM 7: 12775.
526 AM 6: 11080.
in Basra for several years in the time of ‘Alī’s caliphate, 528 Abū l-Shaʿthā could have encountered him during this period, which does not exclude the possibility that he maintained contact with him later as well, when Ibn ‘Abbās had settled in the Ḥijāz.

If one did not know something about Abū l-Shaʿthā’s relationship with Ibn ‘Abbās from other sources, one would hardly be able to infer it from ‘Amr ibn Dīnār’s tradition in the recensions of Ibn Jurayj and Ibn ‘Uyayna. It contains no actual Ibn ‘Abbās traditions; to be more exact, there are hardly any traditions in it at all. 529 From Abū l-Shaʿthā ‘Amr transmits primarily his legal *dicta*. Texts like the anecdote which Abū l-Shaʿthā is supposed once to have told about his dispute with a Qur’ān reciter and Shurayḥ’s arbitration are very rare. 530 In contrast, from the other legal scholars of the level of the ṭabīʿīn whose legal opinions ‘Amr reports fairly frequently, like ‘Ikrima and Tāwūs, he additionally cites traditions of Ibn ‘Abbās and others. 531

It is certainly a very conspicuous phenomenon and one greatly in need of explanation that ‘Amr, who possessed so many *sahāba* traditions and was so interested in them, transmits none from Abū l-Shaʿthā, his most significant teacher. A similar situation was already to be observed in the case of ‘Atāʾ’s Ibn ‘Abbās tradition. 532 From both Ibn ‘Abbās and Abū l-Shaʿthā, however, *ḥadīths* are attested in other sources. 533 If one does not wish to declare these forged from the outset and without examination, one will have to limit oneself for the time being to simply observing the facts, and can at most cautiously conclude that at the time when ‘Amr ibn Dīnār attended the lectures of Abū l-Shaʿthā either the latter did not communicate any traditions of the *sahāba* and the Prophet or ‘Amr for some reason did not cite them.

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529 The statement is limited to the section of the *Musannaf* studied here. See pp. 74 and 78, note 13.

530 AM 6: 11039.

531 Cf. AM 6: 10320, 10396, 10852, 11166, 12548, 12736, 12852, 14024.

532 See p. 141.


If one examines the ṭabi‘ūn on whom ‘Amr relies both as a legal scholar and as a transmitter according to their affiliation with or dependence on one of the early centers of scholarship or on a teacher, it emerges that 68% are either students of Ibn ‘Abbās or Meccans or both, and 24% are Medinans. He has only very little material from scholars of Kufa, Basra or Yemen who are not influenced by Ibn ‘Abbās.

From all of the above observations on ‘Amr’s tradition from and about his contemporaries one does not get the impression that they must be forged, fabricated or projected, but rather that they are authentic, i.e. actual statements or modes of behavior of the people named as sources.

Decisive arguments against the thesis of projection are:

1. There exist numerous legal dīcta and responsa from ‘Amr himself; thus, he was under no compulsion to pass off his own opinions as those of others.

2. If one assumes that he did so anyway, it is incomprehensible that in addition to Ibn ‘Abbās he also referred to the latter’s students. A forger would presumably have projected their opinions too onto this Companion of the Prophet.

3. The difference between the profiles of the traditions from his teachers, for instance between ‘Amr’s Abū l-Sha’thā and ‘Ikrima traditions, can scarcely be explained by the thesis of forgery.

The large number of students of or transmitters from Ibn ‘Abbās in the tradition of ‘Amr ibn Dīnār now also answers the question why Ibn ‘Abbās traditions are so dominant with him. ‘Amr received his education in legal questions primarily from former students of Ibn ‘Abbās—besides those already named, also from Mujāhid and

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534 Cf. AM 6: 11080.
535 Cf. AM 6: 11671.
536 Cf. AM 6: 10484, 10672, 10867.
537 AM 6: 10770. The edition has erroneously Ḥasan ibn Ḥusayn ibn ‘Alī.
538 AM 6: 10770; 7: 12739.
Sa‘īd ibn Jubayr—and necessarily adopted from them many teachings of Ibn ‘Abbās. Thus, in addition to Ibn ‘Abbās himself his circle of students is to be considered as a further component which played a role in the development of the local juridical consensus which is to be observed at the beginning of the second/eighth century in Mecca.

The Prophet

In terms of numbers, ‘Amr’s references to the Prophet come far behind those to Companions and their Successors. This is also true when one takes individual persons as a standard of comparison: Abū l-Sha‘thā’ or Ibn ‘Abbās is named far more frequently as a legal authority than the Prophet, who ranks about equally with ‘Alī. This is a first argument against the assumption that the traditions of the Prophet were fabricated by ‘Amr himself to provide his own legal opinions with more authority. If he had done that, it would be incomprehensible that he generally refers to names such as Abū l-Sha‘thā’ or ‘Ikrima and not to the Prophet.

75% of the statements of provenance which accompany ‘Amr’s ḥadīths of the Prophet are defective; only a few have a continuous isnād. A large portion has no source at all before ‘Amr. The provenance of these texts and the time when they arose thus cannot be determined. All that is certain is that they existed in ‘Amr’s lifetime, thus at the latest in the first quarter of the second/eighth century. Others end with an older contemporary of ‘Amr’s, i.e. with tābi‘īn such as ‘Ikrima, ‘Aṭā’ or Abū Salama ibn ‘Abd al-Raḥmān. Since many traditions of the Prophet are also cited by ‘Amr without any source at all, one may probably lend credence to his statements of sources, especially since the isnāds are incomplete. These traditions of the Prophet will have come into circulation at the latest in the last quarter of the first/seventh century. In both groups, occasional versions with better isnāds are attested.

For example:

‘Abd al-Razzāq from Ibn Jurayj from ‘Amr ibn Dīnār. He said: “The Prophet accepted the [division of] inheritance which took place in the

539 Cf. AM 6: 11631; 7: 12455, 13203, 13615.
540 Cf. AM 7: 12637, 13113, 13266, 13998, 14000.
541 Cf. AM 6: 10320, 10754; 7: 12455, 12548, 14001.
Jahiliyya. [However,] whatever was not yet divided at the advent of Islam, he divided according to the division of Islam.\footnote{AM 7: 12637.}

This tradition is also transmitted in this form from 'Amr ibn Dīnār by Ibn 'Uuyayna. On the other hand, Muḥammad ibn Muslim,\footnote{Cf. Khalifa ibn Khayyat, Ṭabaqāt, p. 275; Ibn Ḥiibbān, Mashāḥir, no. 1176.} a contemporary of Ibn 'Uuyayna, names as 'Amr’s source Abū l-Sha‘thā.\footnote{Cf. the editor’s notes on AM 7: 12637.} A half century later, it turns up in Abū Dāwūd’s Sunan work with a continuous isnād ending Muḥammad ibn Muslim—‘Amr ibn Dīnār—Abū l-Sha‘thā—Ibn ‘Abbās—the Prophet.\footnote{Ibid.} Since both Ibn Jurayj and Ibn 'Uuyayna transmit the hadīth as mu‘dal and the trustworthiness of their transmission from 'Amr is probable, the other versions are to be classed as ex post facto attempts to improve the isnād: Abū l-Sha‘thā should be chalked up to Muḥammad ibn Muslim, Ibn ‘Abbās to a transmitter after him. Such examples can be multiplied.\footnote{AM 6: 10754, 10755; 7: 12548, 13266 (13267), 14001.} For this reason, the more complete isnāds of hadīths which are also transmitted as mu‘dal or mursal are to be approached with distrust, especially when they are to be found only in later works.

Since the majority of 'Amr’s hadīths of the Prophet contain incomplete statements of provenance, it is not to be assumed that he has himself fabricated the few complete chains of transmitters which are to be found. Rather, it is to be assumed that he obtained them from the sources whom he names. Whether, however, their statements about the provenance of the traditions are correct is in most cases hardly to be determined. Examples of such isnāds are: 'Amr ibn Dīnār—Sa‘īd ibn Jubayr—Ibn 'Umar—the Prophet\footnote{Or Muḥabbīq. Cf. Khalifa ibn Khayyat, Ṭabaqāt, p. 36; Ibn Ḥiibbān, Mashāḥir, no. 248.} or 'Amr ibn Dīnār samā’tu al-Ḥasan al-Ḥāṣirī—Qabiṣa ibn Dhu‘ayb—Salama ibn Muḥbīq\footnote{AM 7: 12455.}—the Prophet\footnote{AM 7: 13418.} or 'Amr ibn Dīnār—Ḥasan ibn Muḥammad ibn 'Alī—Jābīr ibn 'Abd Allāh and Salama ibn al-Akwa’—the Prophet (through a messenger).\footnote{AM 7: 14023.}

On the other hand, the isnād 'Amr ibn Dīnār—al-Ḥasan ibn Muḥammad ibn ‘Alī—Abū l-‘Āṣ ibn al-Rabī‘ ibn 'Abd al-‘Uzza ibn
‘Abd Shams ibn ‘Abd Manaf—the Prophet\textsuperscript{551} is only externally continuous. The claim that Ḥasan obtained the information from Abū l-‘Āṣ (akhbarahu—sic!) cannot be correct, since the latter died already in the year 12/633–4, but al-Ḥasan only around the turn of the century.\textsuperscript{552} This defect in the isnād naturally does not prove that the report itself is false or forged, and since it is not certain who is responsible for it, neither must al-Ḥasan’s trustworthiness necessarily be put into question.

Whether the isnād is incomplete or defective ultimately makes no difference. Authenticity can be considered ensured only up to ‘Amr’s informants, most of whom died around the turn from the first/seventh to the second/eighth century. This means that ‘Amr’s traditions of the Prophet for which he names a source existed at the latest in the last quarter of the first/seventh century. They are thus at least as old as—if not older than—‘Amr’s traditions from Companions of the Prophet and their Successors, ‘Amr’s older contemporaries. There can be no question here of a chronological progression according to the schema tābi‘ūn—ṣaḥāba—Prophet, in which the hadīths of the Prophet would be the latest products, like the one Schacht has in mind. It is conspicuous that the number of legally relevant traditions of the Prophet lags far behind those from the ṣaḥāba and tābi‘ūn; even in the case of ‘Aṭā there is not such a steep gradient in this respect as with ‘Amr. Since, however, the latter is receptive to traditions (ḥadīths, āthār) in general, this can only be explained by the fact that the number of “juridical” traditions of the Prophet which were in circulation in Mecca in his time and were accepted by him was far smaller than that of the traditions of the Companions. In his legal instruction—and, since the same is true of ‘Aṭā, we may say in Meccan fiqh until the end of the first quarter of the second/eighth century—the hadīths of the Prophet played only a very modest role.

D. Ibn Jurayj

If one compares the profiles of Ibn Jurayj’s traditions from ‘Aṭā ibn abī Rabāḥ and ‘Amr ibn Dīnār with that of the material which

\textsuperscript{551} AM 7: 12643.
\textsuperscript{552} Cf. Ibn Ḥibbān, Mashāhīr, no. 156; Khalīfa ibn Khayyāt, Tabaqāt, p. 239.
'Abd al-Razzāq transmits from Ibn Jurayj, one encounters a con­spicuous fact: 80% of 'Atā’s tradition consists of his own legal opinions, 42% of 'Amr’s, but only 1% of Ibn Jurayj’s. Here the question presents itself why he should be regarded as a legal scholar at all. The investigation of 'Amr revealed that a greater concern with traditions is to be observed with him, but that they have an almost exclusively legal background and are used by him as “sources of law,” i.e., to support or illustrate his own opinions. Only rarely does he cite opinions that contradict each other. For this reason he is to be classed not as a muhaddith in the true sense but as a faqīḥ with an interest in legally relevant traditions. In principle, the same is true of Ibn Jurayj. Nevertheless, almost 40% of his material consists of the transmission of the legal teachings and traditions of 'Atā'. In his tradition from 'Amr, too, a constant interest in his legal opinions and commentaries is to be observed, which is not the case in Ibn 'Uyayna’s 'Amr traditions. Presumably, the small number of Ibn Jurayj’s own legal opinions which have been preserved is also in part due to a disinterest toward them on 'Abd al-Razzāq’s part in view of the quantity of older fiqh material transmitted by Ibn Jurayj, comparable to Ibn 'Uyayna’s disinterest in 'Amr’s legal dicta. The small number of Ibn Jurayj’s preserved legal dicta thus says nothing about his quality as a legal scholar and must not lure us to the conclusion that he had as good as no legal opinions of his own. Against this speak his preserved legal dicta, his sometimes ingenious questions to 'Atā’ and the examples in which he distances himself from 'Atā”’s opinion and expounds his own. On the other hand, it is indisputable that he far outstrips his teacher 'Amr in knowledge of traditions. With Ibn Jurayj one can really speak of an encyclo­pedic interest in traditions, since he collected traditions of highly diverse provenance and passed on to his students even those which collided with his own opinions and those of Meccan fiqh. Nevertheless, his passion for collecting is directed toward legally relevant Tradition material. This juridical “function” of Ibn Jurayj’s traditions is also discernible in the organizing principle according to which he arranged them. It has been indicated in connection with the question of the

553 See p. 78, note 13; 83.
554 See p. 179.
555 See pp. 84 f., 86.
authenticity of the 'Atā tradition that 'Abd al-Razzāq's chapter divisions in part derive from those of Ibn Jurayj, who is to be regarded as the author of a written collection of traditions. They were organized according to juridical criteria: into books comprising specific subject areas like marriage, divorce, fasting, ḥajj ceremonies, and so forth, and within these books into individual paragraphs which were probably already provided with headings. Ibn Jurayj was thus undoubtedly above all a legal scholar. In the fact that from 'Atā through 'Amr to Ibn Jurayj the proportions of ra'y and Hadīth in the texts transmitted by them is reversed, one may probably also see a reflection of the actual development of Meccan legal instruction between 70/690 and 150/767, which is characterized by a progressive decline in expressions of personal opinion in favor of legal traditions.

In view of such a development, the question presents itself whether or to what extent Meccan fiqh thus developed in terms of content as well and reached new solutions through the influx of legal traditions from other centers. It would really be quite strange if no influencing at all had taken place. In individual cases, this can in fact be documented. For example, Ibn Jurayj turns away from some views of 'Atā's in favor of Medinan and Iraqi teachings which were known to him in the form of traditions from Ibn 'Umar, 'Umar and Ibn Mas'ūd. On the other hand, there are also instances in which he defends the Meccan point of view against Iraqi doctrines. In general, one gets the impression from Ibn Jurayj's expressions of his own opinion that he largely remains faithful to the Meccan solutions and cites the teachings diverging from them largely from a kind of collector's interest. Since Ibn Jurayj's own ra'y is not very extensive, the question of degree cannot be answered with finality. On the other hand, it is possible to observe where his traditions come from, and thus how strong the possible alien impulses were.

1. The provenance of Ibn Jurayj's tradition material

80% of 'Amr ibn Dīnār's traditions come from sources who are to be counted among the class of the tābī'un or the generation follow-

556 See pp. 100 f.
557 Cf., for instance, AM 6: 11113 (also 11095, 11098); 7: 12538.
558 Cf. AM 6: 11690, 11694, 11697.
ing them, i.e., older and younger contemporaries of ‘Amr’s. The remainder consists primarily of traditions of the ṣaḥāba and the Prophet without statements of provenance; in very few cases, they go back to a direct contact with a Companion. Two-thirds of his sources are students of Ibn Ṭabīb or people living primarily in Mecca, one quarter are Medinans. The Medinan share allows us to infer a certain openness at least toward the traditions that originated in Medina, the neighboring scholarly center. Traditions of other provenance (Basra, Kufa, Yemen), on the other hand, are practically negligible.

A similar picture is offered by the tradition of Ibn Ḫurayj. Traditions from Meccan authorities and informants form the backbone with 54%, of which ‘Aṭā and ‘Amr take the lion’s share with 45%. If one adds to these the traditions from the school of Ibn Ṭabīb, like those of the Yemenite Ibn Ṭawūṣ and of the Syrian ‘Aṭā al-Khurāsānī, one reaches a total of 60%. Medinan informants are represented with 13%; genuine Syrian and Basran traditions make up only 1% each. A special place is to be accorded to ‘Abd al-Karīm al-Jazārī, who is associated with the region of the Jazīra (northern Mesopotamia) but clearly spent a relatively long time in Mecca and is one of Ibn Ḫurayj’s significant sources (3.3%). This sketch of the geographic or educational affiliations of Ibn Ḫurayj’s most important teachers and informants shows a clear local preponderance of material of Meccan provenance or bearing the stamp of Ibn Ṭabīb, but in addition an openness for legal teachings and traditions from other centers, especially for Medinan Tradition material and to a smaller extent for Iraqi and Syrian material.

From the designation of the origins of the texts transmitted by ‘Amr and Ibn Ḫurayj, it can be seen that the growth of the Tradition
material in Meccan *fiqh* was not merely caused by an inundation with traditions from other legal centers, but to a large extent represents an independent local development as well.

For several reasons, it is worth while to examine in more detail the Tradition material of those sources of Ibn Jurayj’s from whom he obtained a relatively large quantity. Firstly, further aspects of the early legal development can be demonstrated in this way; secondly, the observations made thus far about the beginnings of the discipline of Tradition can be supplemented; and thirdly, the arguments for the authenticity of the Ibn Jurayj tradition which were marshalled at the beginning of this study can be completed. For the sake of clarity, I organize Ibn Jurayj’s sources according to geographical or intellectual provenance.

a. *Ibn Jurayj’s Meccan sources*\(^{563}\)

What Ibn Jurayj transmits from his most significant Meccan teachers—‘Atā’ ibn abī Rabāḥ and ‘Amr ibn Dīnār—has already been set forth in detail. Further Meccans whom he cites relatively frequently as authorities or as informants for traditions are: Abū l-Zubayr, Ibn abī Mulayka, ‘Amr ibn Shu‘ayb, Ḥasan ibn Muslim, Mujāhid, Ibrāhīm ibn Maysara and ‘Abd Allāh ibn ‘Ubayd ibn ‘Umayr.

**Abū l-Zubayr**

Full name: Muḥammad ibn Muslim ibn Tadrus. He died in the caliphate of Marwān ibn Muḥammad (127–132/744–750), according to others before ‘Amr ibn Dīnār, i.e. 126/743–4 or earlier.\(^{564}\) His tradition\(^{565}\) displays several peculiarities. It contains no opinions from Abū l-Zubayr himself, but only traditions from others. These he introduces in 95% of all cases with “*samā‘tu*” (I heard). Such a high number of *samā‘* notations is found with no other source of Ibn Jurayj’s, i.e. the use of this formula probably derives from Abū

\(^{563}\) Diverging from my use of the term “source” in connection with the traditions of ‘Atā’ and ‘Amr, where “legal source, legal authority” was intended when I spoke, for instance, of ‘Atā’’s “sources,” a “source of Ibn Jurayj’s” means the provenance of his various traditions. This is the usual meaning of the term, as in the phrase “statement of source” (*Quellenangabe*). Thus, for instance, ‘Atā’ and ‘Amr are sources of Ibn Jurayj’s for *hadiths* of the Prophet.


\(^{565}\) Proportion of the entire work of Ibn Jurayj: ca. 4%. 
l-Zubayr himself. This is one of several points which speak against
the assumption of forgery of the entire tradition by Ibn Jurayj. 60%
of the authorities from whom he transmits are Companions of the
Prophet, 27% are hadiths of the Prophet, 10% are traditions of the
tabi'un, and 3% are anonymous. Among the sahāba, Jābir ibn ‘Abd
Allāh takes first place. Two thirds of all of his references to Companions
are to Jābir. They predominantly have the form of simple legal dicta;
more rarely, responsa to anonymous questions occur. Stylistically, they
are comparable to the dicta and responsa of Ibn ‘Abbās transmitted
by ‘Atā'. In addition to Jābir’s legal dicta and responsa, he transmits
from him—far less frequently—traditions in which he is only a source.
Abū l-Zubayr’s Jābir texts are always direct, generally transmitted
with “sami’tu.” This is sometimes the case with his few Ibn ‘Umar
traditions as well; those from other sahāba, like Ibn ‘Abbās, ‘Umar
and Mu‘āwiya, on the other hand, all come through an informant.
This speaks in favor of the assumption that Abū l-Zubayr was actu­
ally a student of Jābir ibn ‘Abd Allāh, who according to the Muslim
biographers died in 78/697–8 at the advanced age of 94 years.566 If
one supposes that his references to him are forged, one must be pre­
pared to be asked why he does not directly cite Ibn ‘Abbās (d.
63/687–8 or 70/689–90) as well, and why he cites Ibn ‘Umar some­
times with and sometimes without an informant. Abū l-Zubayr’s tra­
ditions of the Prophet usually have an isnād, not infrequently an
incomplete one. It is conspicuous that while he has relatively many
traditions of the Prophet, he has only few from his teacher and main
informant, the Companion of the Prophet Jābir. These few make a
very archaic impression and are probably genuine statements of
Jābir’s about the Prophet. Some examples:

Ibn Jurayj said: Abū l-Zubayr reported to me that he heard Jābir ibn
‘Abd Allāh say: “The Messenger of God (eulogy) forbid the shūhār [i.e.,
exchange of wives through marriage with evasion of the bridal gift].”567

Ibn Jurayj said: Abū l-Zubayr reported to me that he heard Jābir ibn
‘Abd Allāh say: “In the lifetime of the Prophet (eulogy), we used to sell
[our] concubines who had born children [to us] (ummahāt al-awlād) and
see no harm in it.”568

567 AM 6: 10432.
568 AM 7: 13211.
Ibn Jurayj said: Abū l-Zubayr reported to me that he heard Jābir ibn ‘Abd Allāh say: “The Prophet (eulogy) had a man of Aslam, a Jew and a woman stoned.” 569

Ibn Jurayj said: Abū l-Zubayr reported to us that he heard Jābir ibn ‘Abd Allāh say: “My maternal aunt was divorced and wanted to tend her date palms. A man prevented her from going out [to the palm grove]. Thereupon she came to the Prophet (eulogy) [and told him about it]. He said: “No, tend your date palms! Perhaps you will give alms [from them] or do good (ma'rūfan).” 570

If, on the other hand, one compares the narrative traditions of the Prophet that Abū l-Zubayr transmits from ‘Urwa ibn al-Zubayr through ‘Abd al-Rahmān ibn al-Ṣāmit from Abū Hurayra or through an unnamed Medinan from the tābi‘ Abū Salama ibn ‘Abd al-Rahmān, it becomes clear that he is unlikely himself to be the forger of such stylistically diverse texts. One can probably lend credence to his statements about the people from whom he has his traditions, especially since Ibn Jurayj also has from him traditions of the Prophet of indefinite origin. 574

Among scholars of the older tābi‘ generation, he cites as “heard” authorities primarily Abū l-Sha‘thā, more rarely Tāwūs. 575 From the latter derives the single responsum to a question of Abū l-Zubayr’s in the textual selection investigated. It is from him and the other students of Ibn ‘Abbās ‘Ikrima, Mujāhid and Sa‘īd ibn Jubayr that he has his Ibn ‘Abbās traditions. 576 There is no discernible reason why this should not be accurate. Abū l-Zubayr’s ‘Umar traditions, on the other hand, generally derive from Jābir ibn ‘Abd Allāh. 577 The same applies to them as to all other Jābir texts from Abū l-Zubayr: they are to be regarded as authentic. The possibility that they report actual facts about ‘Umar cannot be precluded. There are no problems of content, and as long as there is no recognizable motive for which he should have falsely ascribed things to ‘Umar one will have to regard them as good ‘Umar traditions.

569 AM 7: 13333.
570 AM 7: 12032.
571 AM 7: 13008.
572 AM 7: 13340.
573 AM 6: 10304.
574 AM 6: 11843.
575 Cf. AM 6: 10617, 10947, 11923.
576 Cf. AM 6: 10431, 11608, 11918.
577 Cf. AM 7: 12817, 12875, 13889, 14029.
Seen overall, for Ibn Jurayj Abū l-Zubayr is primarily a source for legal opinions and traditions of Jābir ibn 'Abd Allāh and for those of Ibn 'Abbās and his students. Most Abū l-Zubayr texts are introduced with the formula “akhbaranī (nā),” rarely with “an” or “qāla Abū l-Zubayr.”

Ibn abī Mulayka
His full name is: 'Abd Allāh ibn 'Ubayd Allāh ibn abī Mulayka. He died in 118/736. Ibn Jurayj usually calls him Ibn abī Mulayka, rarely 'Abd Allāh ibn 'Ubayd Allāh or by his full name. In his tradition Ibn Jurayj states more frequently than usual that he has “heard” him. Otherwise he uses the formula “akhbaranī (nā),” more rarely “haddathanī,” only very rarely “qāla.” Probably he attended his circle in Mecca for a time.

Ibn abī Mulayka’s tradition contains primarily traditions of the saḥāba; only a quarter are hadiths of the Prophet, and references to contemporaries are rare. Conspicuous in his case is the dominance of caliphs as authorities to whom he resorts. In the generation of the Companions, in addition to 'Umar, Mu‘āwiya especially but also 'Uthmān, who scarcely figure with 'Āṭa’ and ‘Amr ibn Dīnār, are relatively frequently mentioned. Traditions about other Companions such as ‘Ā’ishā, Ibn ‘Umar and Ibn ‘Abbās are less frequent. The references to contemporaries usually have to do with verdicts of Umayyad caliphs such as ‘Abd al-Malik ibn Marwān, but there is also a responsum of the caliph Ibn al-Zubayr. It appears that he saw in the verdicts and legal opinions of caliphs—in addition to those of the Prophet—important sources of law.

Only a little more than a third of his traditions contain statements of provenance, and these are sometimes incomplete. There are traditions about 'Umar, 'Uthmān, ‘Ā’ishā and the Prophet sometimes with and sometimes without an isnād. For the verdicts of Mu‘āwiya and 'Abd al-Malik, the informant is always lacking. The possibility that Ibn abī Mulayka was eyewitness to them can probably be

579 Cf. AM 6: 11139; 7: 12605, 13521, 13705.
580 Cf. AM 6: 10633, 10636, 11887.
581 Cf. AM 6: 11887; 7: 12192.
582 Cf. AM 6: 11887; 7: 12731, 13537.
583 Cf. AM 6: 10703; 7: 12192, 13514.
rejected; in one case it is clearly indicated that he learned it from an unnamed person. These predominantly defective statements of provenance show that the necessity for complete statements of transmission was unknown to him. That his *insāds* are forged is quite unlikely; they are much too rare and too fragmentary for that. For this reason they are probably credible and usable as a source for the historian. From them it can be seen who brought what traditions into circulation in the first century.

`Amr ibn Shu'ayb

His full name is `Amr ibn Shu'ayb ibn Muḥammad ibn 'Abd Allāh ibn 'Amr ibn al-`Āṣ. He was from Mecca but later settled in al-Ṭā'if, where Ibn `Abbās also spent the twilight of his life. He died in 118/736. From him Ibn Jurayj has primarily traditions of the Prophet, some traditions of the *sahāba*, very few from contemporaries and from himself. In the textual excerpt under investigation the material is not extensive enough to draw definitive conclusions from it, but it suffices to formulate hypotheses.

It speaks for the assumption that Ibn Jurayj did not fabricate him as his source that he occasionally states that he heard him, but on the other hand also transmits from him through an intermediary. `Amr is a *faqīḥ* who clearly has the inclination to refer to the Prophet whenever possible, if the Qurʾān is not sufficient for the solution of a question. This is shown not only by the numerous *ḥadīths* of the Prophet but also by his own legal *dicta*. They are stylistically unusual and seem almost like little tractates in the argumentation of which he often refers to a corresponding decision of the Prophet without citing a concrete tradition. His *ḥadīths* of the Prophet are of varying provenance. Some have the *insād* "his father—`Abd Allāh ibn `Amr ibn al-`Āṣ" and thus end with his great-grandfather, the

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584 AM 6: 10703.
586 The proportion of Ibn Jurayj's total work is somewhat above 1%.
587 Cf. AM 6: 11462; 7: 13941.
589 Cf. AM 6: 10739; 7: 12597.
Companion of the Prophet. This *iṣnād* must not necessarily be forged simply because it contains members of a family.\(^{590}\) It speaks against the thesis of forgery that 'Amr transmits Prophetic traditions not only from his great grandfather but also through other *iṣnāds*,\(^ {591}\) and above all that the majority have no statement of provenance at all.\(^ {592}\) One can conclude from this that in the cases in which he names an informant he actually has the corresponding traditions from that person. This means that such texts were already in circulation in the first/seventh century.

Among the *ṣaḥāba*, 'Amr ibn Shu'ayb quotes his great-grandfather and Ibn 'Abbās as authorities directly,\(^ {593}\) i.e. without an informant—which does not necessarily mean that he was actually an earwitness; for 'Umar and 'Uthmān, on the other hand, he names the Medinan Sa'īd ibn al-Musayyab as a source, which can be accepted as credible, since for 'Umar the latter is not a source whom a forger would choose.\(^ {594}\)

The few contemporary scholars from whom he reports *responsa* to a legal question which he himself asked them are also Medinans. In this context the credibility and precision of Ibn Jurayj reveals itself again, since in one case he admits that 'Amr named the Medinan *shaykh* to him but that he did not remember one of them; he thinks that Ibn al-Musayyab and Abū Salama were probably among them.\(^ {595}\)

Through his preference for the Prophet as a legal authority, 'Amr ibn Shu'ayb diverges from what has so far been established as typical for Meccan *fiqh*. Whether that is an individual peculiarity of this man or derives from the influence of some circle of scholars cannot be determined for the moment. At any rate, a special affinity to Medina is discernible, so that intellectually he may have inclined more to this legal tradition than to that of Mecca. It is also imaginable that there is a connection with the *Ṣaḥīḥa* of 'Abd Allāh ibn 'Amr, in which the latter is supposed to have compiled *ḥadiths* of the Prophet. That 'Amr ibn Shu'ayb possessed it and transmitted

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\(^{590}\) These *ḥadiths* are, it is true, not found in the "*Ṣaḥīḥa*", but are in the collections of al-Bayhaqī, Ibn Māja, Ibn Ḥanbal and Abū Dāwūd, respectively. Cf. the notes on the passages cited in note 589.

\(^{591}\) E.g. AM 6: 11455.

\(^{592}\) Cf. AM 6: 10650; 7: 12631, 13318, 13571, 13851.

\(^{593}\) Cf. AM 7: 12508; 6: 10568.

\(^{594}\) Also see p. 223.

\(^{595}\) AM 6: 11462.
from it is attested early. Ibn Jurayj usually introduces his traditions with "'an 'Amr ibn Shu'ayb," more rarely with "akhbaran" or simple "qāla."

From the following four Meccan scholars Ibn Jurayj transmits only about half as much as from Ibn abi Mulayka or 'Amr ibn Shu'ayb. Although the textual basis is relatively small, some characteristics can be stated. They are to be regarded only as provisional "impressions" and are in need of greater depth.

Hasan ibn Muslim
In full: Hasan ibn Muslim ibn Yannāq. His exact date of death is unknown; however, he is supposed to have died before Tawūs, i.e. in the year 106/724–5 or earlier. With him sahāba traditions referring to Ibn 'Abbās, 'Umar and Ibn 'Umar predominate. As sources for them he names Ibn 'Abbās' students Sa'id ibn Jubayr and Tawūs, but also the Medinan Ibn Shihāb. There is also one tradition from 'Umar and one from the Prophet without an isnād. He refers to legal opinions of Tawūs more frequently than to the Prophet or an individual sahābi. Ibn Jurayj usually introduces Hasan's traditions with "akhbaran," rarely with "'an."

Mujāhid ibn Jabr
This famous Meccan scholar and student of Ibn 'Abbās died in 102/720–1, 103 or 104. From him Ibn Jurayj transmits primarily his own opinions—sometimes in the form of notes to his material from 'Aṭā' and others, some responda of Ibn 'Abbās, a verdict of 'Umar's, and a historical note about the Prophet’s son al-Qāsim, who died soon after birth. Mujāhid generally has no infor-
mant; in one case, however, Ibn Jurayj remarks that he transmitted a *responsum* of Ibn ‘Abbās not directly, but from his father.\(^{604}\) This is evidence of Ibn Jurayj’s precision and speaks against the thesis of forgery. It is conspicuous in comparison with his other Meccan sources that he introduces his Mujāhid traditions almost exclusively with “qāla Mujāhid.” This might mean that he drew these texts from a written source with material from Mujāhid, without having heard them from him himself (*wjāda*).\(^{605}\)

**Ibrāhīm ibn Maysara**

From al-Ṭā’if by birth, he later lived in Mecca and died in the caliphate of Marwān ibn Muḥammad (127/745–132/750), according to others—more precisely—in the year 132.\(^{606}\) Ibn Jurayj transmits from him some traditions of the Prophet, ‘Umar and Ibn ‘Abbās, but also legal opinions of Ibn ‘Abbās’ students Mujāhid and Ṭāwūs. The latter is, in addition, his source for Ibn ‘Abbās and once even for a *dictum* of the Prophet. Ibrāhīm’s *insād* either are discontinuous or contain anonymous or unknown links. For example, he transmits a *fatwā* of the Prophet which his maternal aunt recounted from a “trustworthy woman” or a *fatwā* of ‘Umar’s from a “man from Sawā’a by the name of Ubayd Allāh ibn Makkīyya, about whom he said nothing but good,” from the latter’s father or grandfather. There can be no doubt that neither Ibn Jurayj nor Ibrāhīm ibn Maysara can be supposed to have himself invented traditions with such weak *insāds*. He probably actually has them from the people named. In other words, the *fatwā* of the Prophet in question derives at least from the first century. Whether it is really historical is another question. Ibn Jurayj usually cites Ibrāhīm with the formula “*akhbaranf*,” rarely with “*an*.” He does not transmit legal *dicta* of his own from him.

‘Abd Allāh ibn ‘Ubayd ibn ‘Umayr

He has the *nisba* al-Laythī and died in 113/731–2.\(^{607}\) Ibn Jurayj generally introduces him with “*sami’tu*,” only exceptionally with “*akhbaranī*.” He transmits without *insād* from the Prophet, ‘Umar, ‘Alī, and—through the Medinan al-Qāsim ibn Muḥammad—a story from the

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604 AM 6: 11352.
Prophet’s wives Umm Salama and ‘Ā’isha. As authorities among the older tābi‘ūn he names his father ‘Ubayd ibn ‘Umayr and ‘Atā’. Legal dicta of ‘Abd Allāh’s own are absent. He belonged to the circle around ‘Atā’.

Ibn Tāwūs

His full name was ‘Abd Allāh ibn Tāwūs ibn Kaysān al-Hamdānī al-Khawlānī and he died in 132/749–50. He lived and was active primarily in Yemen and, in the geographical sense, is not a Meccan. I include him in this category, however, since his tradition is kindred in spirit to that of Mecca. With almost 5%, it is among the more extensive in Ibn Jurayj’s work and differs from all the others in a characteristic way. It consists exclusively of teachings of his father Tāwūs ibn Kaysān (d. 106/724–5) and a few legal opinions of his own. 85% of what he transmitted to Ibn Jurayj from his father is the latter’s ra’y in the form of dicta (80%) and responsa (20%)—usually to questions of Ibn Tāwūs. Of the few traditions of Tāwūs, half fall to his teacher Ibn ‘Abbās; the remainder consists of hadiths of the Prophet and traditions of the sahāba. Tāwūs generally does not name informants. The story of the Prophet’s fatwā in the case of the divorce of ‘Abd Allāh ibn ‘Umar, which he states that he “heard” from Ibn ‘Umar—probably ‘Āsim, not ‘Abdallāh himself—is an exception.

All of these characteristics are reminiscent of Ibn Jurayj’s tradition from ‘Atā’ and that of ‘Amr ibn Dīnār from Abū l-Sha‘thā: predominantly ra’y, few or no traditions, rarely isnāds. This correspondence is noteworthy since all three are approximately the same age and students of Ibn ‘Abbās, and were considered the most outstanding legal scholars of their time in the region in which they lived and taught: Tāwūs in Yemen, ‘Atā’ in Mecca and Abū l-Sha‘thā in Basra. That there are also many correspondences in the content of their teachings is noticeable even through cursory reading, but would have to be investigated in greater detail. That cannot take

608 Cf. AM 6: 10324, 11037, 11896; 7: 12448, 12604, 12862.
609 See pp. 84, 106.
611 Presumably he studied in Mecca. Ibn Ḥazm also includes him with Meccan fiqh (“Ašāb al-fīqh,” p. 324).
612 AM 6: 10961.
place in this context. It should only be kept in mind that the characteristic features of the *fiqh* of ‘Atā' are clearly not unique, but can also be demonstrated in other centers of scholarship. Whether they can be considered paradigmatic for the Islamic *fiqh* of the first/seventh century in general can be definitively answered only when the early history of jurisprudence in Medina and Kufa, Basra and Damascus as well is investigated in greater detail.

Ibn Jurayj usually cites Ibn Tāwūs with the formula “akhbanī (nā)” (58%), but also frequently with “an” (35%). Questions from Ibn Jurayj to Ibn Tāwūs occur in isolated cases, as do the simple “qāla lī” and “za'ama.” He also occasionally appears in Ibn Jurayj’s comments on his ‘Atā’ tradition.613

b. Ibn Jurayj’s Medinan sources

After the scholars of Mecca, it is above all Medinans from whom Ibn Jurayj reported the most. The most important are Ibn Shihāb, Hishām ibn ‘Urwa, Yaḥyā ibn Sa‘īd, Mūsā ibn ‘Uqba, Nāfi’ and Ja‘far ibn Muḥammad. But a number of the informants who occur more rarely also come from Medina. This fact is surely explained above all by its geographical proximity to Mecca.

Ibn Shihāb

His full name was Muḥammad ibn Muslim ibn ‘Ubayd Allāh ibn Shihāb ibn ‘Abd Allāh ibn Zuhra ibn Kilāb. Ibn Jurayj never cites him as anything but Ibn Shihāb, others—for example Ma‘mar ibn Rāshid—only with the *nisba* al-Zuhri.614 He died in 124/742.615 In terms of volume, traditions from him come in third place after those of ‘Atā’ and ‘Amr ibn Dīnār in the work of Ibn Jurayj (almost 6%). They too have a characteristic profile: 54% are Ibn Shihāb’s legal *dicta* (42%) and *responsa* (12%)—of the latter, only a few to questions from Ibn Jurayj himself. Less than half are traditions from others. Among them, traditions of the *ṣaḥāba* dominate; most frequently mentioned are ‘Umar, then ‘Uthmān, Ibn ‘Umar and ‘Ā’isha, more

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613 E.g. AM 6: 11298; 7: 13276.
614 The different forms of his name are probably a function of regional preferences. Compare the two recensions of Mālik’s *Muwaṭṭa*': in Yahyā ibn Yahyā (al-Andalus) Mālik generally refers to Ibn Shihāb, in al-Shaybānī (Iraq) to al-Zuhri.
rarely Zayd ibn Thābit, Abū Hurayra, Ibn ʿAbbās and lesser-known Companions. References to such authorities have a share of approximately 45%, those to tābīʿūn—above all the caliphs ʿAbd al-Malik and ʿUmar ibn ʿAbd al-ʿAzīz, more rarely Medinan scholars such as Ibn al-Musayyab and Abū Bakr ibn ʿAbd al-Rahmān—25%, and hadīths of the Prophet 23%. As an individual, on the other hand, the Prophet is most frequently represented; he is followed only at some remove by ʿUmar (14%). It is conspicuous that the caliphs are very strongly represented (41%) among Ibn Shihāb’s authorities, a phenomenon which was to be observed with Ibn abī Mulayka as well. Ibn Shihāb names sources for his traditions of the Prophet and ʿĀʾisha generally, for ʿUmar and Ibn ʿUmar more often than not, for ʿUthmān rarely. He usually refers to tābīʿūn directly. With one exception, Ibn Shihāb’s sources belong to the class of the tābīʿūn. He transmits most frequently from ʿUrwa ibn al-Zubayr, then from other early Medinan scholars such as Abū Salama ibn ʿAbd al-Rahmān ibn ʿAwf, ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUthba ibn Masʿūd, Sālim ibn ʿAbd Allāh ibn ʿUmar, Sulaymān ibn Yaṣār, Qāṭiṣa ibn Dhuʿayb and Muḥammad ibn ʿAbd al-Rahmān ibn Thawbān. The only Companion of the Prophet among his informants for the Prophet is Sahl ibn Saʿd. He died in 91/710 or 88/707 in Medina as one of the last in the ranks of those who were alive to meet the Prophet. That Ibn Shihāb has the hadīth in question directly from him is thus not out of the question. On the other hand, it should be remembered that he sometimes reports without an isnād about ʿUmar and ʿUthmān, whom he cannot have met, but about ʿAbd Allāh ibn ʿUmar, to whom contact was possible, more often with than without a source.

It is surely not sensible to assume that Ibn Jurayj invented the entire tradition of Ibn Shihāb or even simply its statements of provencance. Firstly, it differs too much from the material which he presents from ʿAṭāʾ ibn abī Rabāḥ, ʿAmr ibn Dīnār, Ibn Ṭawūs and others for this. Each of these traditions has a very individual stamp—I call it a profile—which can hardly derive from one and the same forger. Secondly, the advocate of the thesis of forgery would have

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616 See p. 211.
617 AM 7: 12446, 12447.
to be able to answer the question why the Meccan Ibn Jurayj, who relies predominantly on Meccan teachers, should have fabricated traditions with Medinan sources. That Ibn Jurayj actually has his Ibn Shihāb traditions from the latter is not in doubt. It is, however, also difficult to understand why Ibn Shihāb should have himself fabricated his traditions from others and their sources. Firstly, his own raʾy predominates over his traditions from others; for him there was thus clearly no necessity to invent traditions from the Prophet or his Companions in order to give expression to a legal opinion. Secondly, it would be odd that he should have falsely referred to older contemporaries and Companions and simultaneously fabricated so many hadiths of the Prophet. Had he had the need to lend his legal opinions greater authority through projections, would he not then generally have cited the Prophet or at least ʿUmar? Thirdly, it is incomprehensible why he should have invented informants for some traditions and not for others, for some continuous isnāds and for others discontinuous ones. Thus, for example, the isnād Abū Salama ibn ʿAbd al-Rahmān (d. 94/712–3 or 104/722–3)—ʿUmar (d. 23/644)—is defective, since Abū Salama cannot have been eyewitness of a verdict of this caliph if he—as noted in the biographical literature—died at the age of 72. On the other hand, Ibn Shihāb does not hesitate to report on the first caliphs, and other saḥāba whom he himself did not meet, without any isnād. All of this speaks against the assumption that he himself invented his traditions from others and fabricated the sources named for them. Rather, he probably obtained them from the latter and, where an isnād is lacking, from unnamed persons. The traditions of the Prophet and the saḥāba for which he names an informant thus in all probability derive from the first/seventh century, the anonymous ones at the latest from the first quarter of the second/eighth century.

This conclusion also puts other Ibn Shihāb traditions like, for instance, those of Mālik in the Muwāṭṭa—to name only the best-known—in a more favorable light. Schacht wanted at most to accept Ibn Shihāb’s direct responsa to questions of Mālik’s and the latter’s “heard” dicta as without doubt authentic, but considered him “hardly

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619 AM 6: 10540. The second informant should probably be ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUba instead of ʿAbd Allāh ibn ʿUba.
621 Cf. AM 6: 11245; 7: 12092, 12093, 12097, 12198, 13322, 13540, 13970.
responsible” for the greatest part of the traditions transmitted through him from the Prophet, from Companions and their Successors. Since, however, Ibn Jurayj has an Ibn Shihāb tradition independent of Ṭāḻik—another is offered by Maʿmar ibn Rāshid—on this broad source basis it is possible to reach a better-founded evaluation of the traditions attributed to Ibn Shihāb. This is an aspect which would have to be taken up in the context of an investigation of the early legal development of Medina.

In the case of Ibn Shihāb, Ibn Jurayj’s introductory formula is not uniform: “Samiʿtu” and direct questions of Ibn Jurayj to Ibn Shihāb appear sporadically (together 6%). The anonymous questions usually begin directly with “suʿīla Ibn Shihāb.” References to him are also found in Ibn Jurayj’s comments on other traditions.

Hishām ibn ʿUrwa
Hishām ibn ʿUrwa ibn al-Zubayr ibn al-ʿAwwām died in 145/762–3 or 146. His tradition, which makes up about 2% of Ibn Jurayj’s work as a whole, also has a very characteristic profile. It contains almost exclusively the traditions, responsa and dicta of his father ʿUrwa (d. 94/712–3 or 99/717–8). In this respect it resembles that of Ibn Ṭāwūs. But in contrast to Ṭāwūs, with ʿUrwa the traditions of others (ca. 60%) predominate over his own legal opinions. If one takes only individual persons as a basis for calculation, ʿUrwa’s own material is followed first by the hadīths of the Prophet and only at a large remove by reports about ʿUthmān, ʿUmar, ʿAlī, Abū Hurayra and others. That is, after ʿUrwa himself a clear preference is accorded to the Prophet as an authority in the Ibn Ṭawūs tradition.

In general, ʿUrwa has various informants for his traditions of the Prophet and the sahāba. It is noteworthy that he does not rely exclusively on his aunt, ʿAʾisha, and his brother, the later caliph ʿAbd Allāh, who is still considered a Companion of the Prophet, but

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623 For a first evaluation of Ibn Shihāb’s figū based on the sources mentioned cf. Motzki, “Der Fiqh des -Zuhri.”
624 Cf. AM 6: 10561, 11863, 11924; 7: 12053.
626 See p. 216.
627 Cf. AM 7: 13925, 13940.
628 He was born in the year 1, and was thus ten years old at the death of the Prophet. Cf. Ibn Ḥibbān, Mashāhīr, no. 154.
on many others as well. From 'Umar and 'Uthmân he transmits sometimes directly, sometimes through informants, but not firsthand from 'Alî and Abû Hurayra, with whom he probably had extensive contact. His sources are on the one hand well-known Companions of the Prophet like 'A'îsha, 'Abd Allâh ibn al-Zubayr and Miswar ibn Makhrâma, on the other hand—sometimes little- or unknown—tâbi’un like Jamhân, al-Ḥajjâj ibn al-Ḥajjâj al-Aslâmî, Zaynab bint abî Salama, 'Abd Allâh ibn Ja'far (a nephew of 'Alî) or Yaḥyâ ibn 'Abd al-Rahmân ibn Khaṭâb (a younger (!) contemporary of Urwa’s). Hishâm also transmits from his grandmother Asmâ’, the sister of 'A'îsha, and from his wife Fâṭima bint al-Mundhir, a granddaughter of Asmâ’’s, instead of from his father Urwa. This variety and the weak points in Urwa’s isnâds do not speak for the thesis of forgery.

After all the information that has been compiled about his tradition up to this point, the possibility that Ibn Jurayj forged these texts or isnâds can be dismissed. I will spare myself enumerating all the arguments again. It is just as implausible that Hishâm ibn 'Urwâ made up this heterogeneous material from his father, or even simply the sources named for it, from whole cloth. For the Prophet he had—had he wished to project legal opinions onto him—a flawless isnâd in the names “Urwa—'A’îsha—Prophet”; he had an excellent source for the older sahâba—why does he support himself with them at all, if he wished to engage in forgery?—in his uncle 'Abd Allâh ibn al-Zubayr, the later caliph, and for the younger Companions in his father Urwa. Why should he, for instance, produce hadîths of the Prophet with the isnâds “Urwa—al-Ḥajjâj [ibn al-Ḥajjâj] al-Aslâmî—abûhu—the Prophet” or “Urwa—‘Abd Allâh ibn al-Zubayr—the Prophet”? It is much more probable that Hishâm really has his tradition from his father Urwa. The arguments mentioned against the thesis of forgery apply to him as well, so that it is to be assumed that Urwa has his reports about the Prophet or the Companions from the person whom he names and, in places where he reports

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629 Cf. AM 6: 11760; 7: 12194 [here “an abîhi” is probably missing from the isnâd as a result of inattention on the part of later transmitters], 13644, 13650.

630 Cf. AM 6: 11734; 7: 13925, 13940.

631 Cf. AM 6: 11760; 7: 13644, 13910, 13947, 13956, 14006.


about them directly, has them from an unnamed source or witnessed them himself.634

Ibn Jurayj’s Hishām ibn ‘Urwa tradition thus contains not only authentic texts about ‘Urwa’s fiqh but also traditions of the saḥāba and the Prophet whose authenticity is to be assumed not only for ‘Urwa and his time but sometimes also for the generation between him and the Prophet. In contrast to Schacht—“I have not found any opinion ascribed to one of these ancient lawyers which is likely to be authentic”635—I thus also consider Mālik’s Hishām ibn ‘Urwa material in the Muwatta to be no less credible than that of Ibn Jurayj. Whether this assumption is correct could be tested by a detailed investigation of both strands of transmission—to which those of Ma‘mar and al-Thawrī would also have to be added. This belongs in a work on Medinan fiqh.636

The formulae of transmission of the Ibn Jurayj—Hishām ibn ‘Urwa texts are primarily “akhbaranī (nā)” (43%) and “ḥaddathanī (nā)” (26%); a simple “‘an” appears in smaller numbers.

Yaḥyā ibn Sa‘īd
Yaḥyā ibn Sa‘īd ibn Qays al-Anṣārī died in 143/760–1.637 He is thus a—probably only a few years older—contemporary of Ibn Jurayj, which precludes fabricated reference to him. In Ibn Jurayj’s work his tradition has approximately the same magnitude as that of Hishām. It too has a characteristic profile. It consists largely—almost three fourths—of the legal dicta and the traditions of the Medinan Sa‘īd ibn al-Musayyab, who died in 93/712 or 94.638 Legal dicta of Yaḥyā’s own occur rarely. In approximately one third of all of Yaḥyā’s texts the ra’y of Ibn al-Musayyab is reported. Since Yaḥyā frequently quotes him with “samīṭu,” one may probably assume that he was Yaḥyā’s teacher. The traditions which Yaḥyā cites from him are

635 Schacht, Origins, p. 245.
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without exception traditions of ʿUmar. Besides the material of Ibn al-Musayyab, Ibn Jurayj also has from Yaḥyā a few hadīths of the Prophet and traditions of ʿUmar from other Medinan scholars—such as al-Qāsim ibn Muḥammad, ʿAmrat bint ʿAbd al-Raḥmān and ʿAbd Allāh ibn Dīnār—and anonymous material.

Yaḥyā’s—and probably already Ibn al-Musayyab’s—legal authority of choice is clearly ʿUmar, not the Prophet. It is not to be assumed that Yaḥyā fathered the ʿUmar traditions on Ibn al-Musayyab since, firstly, he also transmits from ʿUmar without a source and, secondly, Ibn al-Musayyab is too poor a choice for a scholar from the first half of the second/eighth century who wanted to forge an isnād for ʿUmar. Ibn al-Musayyab is supposed to have been born in the year 15/636-7, which means that he was just eight years old when ʿUmar died, too young to have been present for all of his legal verdicts and advice. If the ʿUmar traditions thus actually derive from Saʿīd ibn al-Musayyab, is he then to be considered as a forger or as one who projected his own legal views onto ʿUmar? Against this speaks the large number of his own legal opinions. From this I conclude that he was not compelled to shore up his views with authorities, and thus had no motive to invent traditions of ʿUmar. Since he himself can hardly have experienced ʿUmar’s caliphate from the standpoint of a faqīḥ, he probably has them second-hand. Presumably he collected such precedents without noting down or remembering the source. Such “negligence” was also to be observed with ʿAṭāʾ. It led to the result that later, when the demand for identification of informants arose, people could no longer fulfil it. This could explain the discontinuity between ʿUmar and Ibn al-Musayyab. It is true that the Ibn al-Musayyab traditions are not demonstrably authentic reports about ʿUmar, but they are ones which were circulating in the first/seventh century—presumably quite early in the first century, at a time when isnāds were not an issue yet.

An investigation of Meccan fiqh is not the place to make definitive statements about Medinan legal scholars. The basis of material used is too narrow for this. In addition to Ibn Jurayj’s tradition from Yahyā, that of Mālik in the Muwaṭṭa’ and those of Ibn ʿUyayna, Maʿmar and al-Thawrī in the Musannaf of ʿAbd al-Razzāq and that of Ibn ʿAbī Shayba, among other works, would have to be taken into account. However, even on the basis of the analysed section of Ibn Jurayj’s tradition from Yaḥyā in the context of Ibn Jurayj’s work as a whole it can be seen that Schacht’s evaluation of Yaḥyā’s traditions
is not tenable. He advanced the opinion: "Yahyā is responsible for the transmission of a considerable amount of fictitious information on the ancient Medinese authorities, information which had come into existence in his time; he also transmits recently created traditions and isnads."\(^{639}\)

Yahyā’s traditions are introduced by Ibn Jurayj primarily with "an" (59%), but also with "akhbaran" (32%), rarely with "haddathani" or "samī′tu."

Mūsā ibn ‘Uqba
He died in 135/752–3 or 141/758–9.\(^ {640}\) His father was a mawlā (freedman) of al-Zubayr. Nevertheless, his tradition is completely different from that of the Zubayrids Hishām ibn ‘Urwa—‘Urwa. It is pure Nāfī′ material which contains neither legal dicta of Mūsā’s own nor those of Nāfī′, but only traditions in which Nāfī′—i.e. the mawlā of ‘Abd Allāh ibn ‘Umar—who died in 118/736 or 119,\(^ {641}\) is his informant.\(^ {642}\) They are exclusively traditions from and about the family of ‘Umar and ‘Abd Allāh ibn ‘Umar. Hadīths about the Prophet and other sahāba—such as Abū Bakr—are very rare. They, too, have an isnād of the family of Ibn ‘Umar.

Ibn Jurayj probably actually has these traditions of Nāfī′ from Mūsā. Since he himself also transmits directly from Nāfī′, it is not comprehensible why he should fabricate an extra intermediary link. The fact that he himself met Nāfī′\(^ {643}\) and perhaps in this way came into contact with Mūsā speaks for the assumption that Mūsā’s material actually derives from Nāfī′. Ibn Jurayj would surely have recognized forgeries. The hypothesis that the two could have colluded to fabricate Nāfī′ traditions is not acceptable as long as no sensible motive for the Meccan Ibn Jurayj to forge Medinan traditions of ‘Umar and Ibn ‘Umar—not hadīths of the Prophet!—is discernible.

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\(^ {639}\) Schacht, Origins, p. 248. Emphases mine.


\(^ {642}\) The one exception—AM 7: 13312: Mūsā ibn ‘Uqba—Ṣafiyya bint abī ‘Ubayd—Abū Bakr—is probably based on an oversight by later (?) transmitters who forgot Nāfī′ between Mūsā and Ṣafiyya.

\(^ {643}\) Also see pp. 136, 279.
Let us set aside the question of whether Nāfi' invented it all. This will surely be brought out by an analysis of the preserved Nāfi' material, in which, among others, the strands of transmission of Ibn Jurayj—Nāfi' in the Muṣannaf and Mālik—Nāfi' in the Muwaṭṭā' will have to be consulted. 644

Ibn Jurayj cites Mūsā ibn 'Uqba either with "an" (60%) or with "akhbār an" (40%).

Nāfi'

The tradition which Ibn Jurayj has not from Mūsā ibn 'Uqba but directly from Nāfi' is very similar to that of Mūsā. It too is largely limited to traditions about or from the family of 'Umar, but sporadically contains Nāfi's own legal dicta. 645 Texts of 'Abd Allāh ibn 'Umar transmitted directly by Nāfi' dominate. 646 For isolated reports about the wives of the Prophet 'A'isha or Ḥafṣa, 'Umar's daughter, he names as sources 'Umarids such as Ṣalīm ibn 'Abd Allāh ibn 'Umar or Ṣafiyya bint abī 'Ubayd, the wife of 'Abd Allāh ibn 'Umar; 647 however, he also sometimes cites 'Umar directly, which must be at second hand and in one case presumably derives from Ṣafiyya. 648 Some indicators speak for the assumption that Ibn Jurayj's reference to Nāfi' is authentic. He emphasizes having heard many Nāfi' traditions; 649 however, he cites the majority with a simple "an." It has already been mentioned elsewhere that Ibn Jurayj, when he was still a student of 'Atā's, took advantage of a stay in Mecca by Nāfi' to question him through an intermediary about a tradition of Ibn 'Umar, 650 which—because of the intermediary—is presumably not invented. What was said in connection with Mūsā ibn 'Uqba applies to the question of the genuineness of the Nāfi' material. 651

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644 Also see my remarks on Schacht's evaluation of the Mālik—Nāfi' tradition on pp. 132–136.
645 E.g. AM 7: 12516.
646 Cf. AM 7: 13018, 13205, 13255.
647 AM 7: 13928, 13929.
648 AM 7: 13470, 13471.
649 AM 7: 12516, 13928, 13929.
650 See p. 136.
651 G. H. A. Juynboll has argued that probably there was "not a man called Nāfi', the mawla of Ibn 'Umar" and that all transmissions claimed from him are fictitious. Cf. his "Nāfi', the Mawla of Ibn 'Umar, and his Position in Muslim Ḥadīth Literature," Der Islam 70 (1993), pp. 207–244 and my answer in "Quo vadis Ḥadīth-Forschung."
Ja'far ibn Muhammad
 His full name is Ja'far ibn Muhammad ibn 'Ali ibn Husayn ibn 'Ali ibn abi Talib. He died in 148/765-6. The tradition of this great-grandchild of 'Ali's contains exclusively texts which he acquired from his father, similarly to those of Ibn Tawis and Hishām ibn 'Urwa. However, legal opinions of Muhammad ibn 'Ali are not among them; rather, they are primarily traditions about his great-grandfather 'Ali and a few hadiths of the Prophet, thus a pure family tradition. It is noteworthy that Muhammad ibn 'Ali—also known by his kunya Abū Ja'far—, who died in 114/732-3 or 118/736 at the age of 63 years, names no informants for his traditions, neither for 'Ali (d. 40/660) nor for the Prophet. Presumably he drew on his family tradition. That he does not simply fill the gap with his father and grandfather and thus produce an isnad which would be above all criticism speaks against forgery by Ja'far and probably also by his father. This means that we are dealing with traditions about 'Ali and the Prophet which were circulating in the 'Alid family in the second half of the first/seventh century.

c. Ibn Jurayj's Iraqi sources

The proportion of traditions from Iraqi informants in the work of Ibn Jurayj is significantly smaller than that of the Medinans. Of the more frequently mentioned sources only 'Abd al-Karīm, Dāwūd ibn abi Hind and Ayyūb ibn abi Tamīma are from Iraq.

'Abd al-Karīm

'Abd al-Karīm is among Ibn Jurayj's five most frequently mentioned sources after 'Atā'. Usually he gives only this name, but in a few cases there is more complete information, allowing a more precise identification: 'Abd al-Karīm ibn al-Mukhariq and 'Abd al-Karīm ibn abi l-Mukhāriq. One might assume that this supplied his full name;

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653 In AM 6: 10984 "an abīhi" has probably been lost through the negligence of a transmitter.


655 AM 6: 10571, 11460.

656 AM 6: 11717.
however, a look into the biographical literature shows that they are two people of the same name. In Ibn Sa’d’s (d. 230/844–5) *Tabaqāt* only an Abū Umayya ‘Abd al-Karīm ibn abī l-Mukhāriq is registered, who died in 126, but citations from Ibn Sa’d about ‘Abd al-Karīm al-Jazārī in Ibn Ḥajar’s *Tahdhib* show that the *Tabaqāt* originally contained his biography as well. In Khalīfa ibn Khayyāt’s (d. 240/854–5) work of the same name there is only an Abū Sa’īd ‘Abd al-Karīm ibn Mālik from Ḥarrān in the Jazīra. This should be Ibn Jurayj’s al-Jazārī. Al-Bukhārī (d. 256/870) mentions both in his “al-Ta’rīkh al-kabīr”: about al-Jazārī he additionally notes that he was a mawlä (freedman) of ‘Uthmān or Mu‘āwiya, came originally from Iṣṭakhr, was a close cousin (ibn ‘amm laḥḥan) of Khaṣṣīf [ibn ‘Abd al-Rahmān, d. 137/754–5, also a mawlä of Banū Umayya and a resident of Ḥarrān] and died in 127/744–5. About Ibn abī l-Mukhāriq he states that he had the nisba al-Baṣrī, died in 127 and was also called ‘Abd al-Karīm ibn Qays by some.

Although all of these data suggest the conclusion that the two ‘Abd al-Karīms are different scholars of the same name (ism) who lived at the same time, G. H. A. Juynboll is of the opinion that they are one and the same person. In this he supports himself primarily with the many similarities which are to be observed in Ibn Ḥajar’s biographical articles about the two. However, this conclusion is not compelling. In al-Bukhārī the correspondences are limited to one common teacher (Mujāhid) among others, two common students (al-Thawrī, Mālik) among others and the same date of death, which, however, differs by one year according to Ibn Sa’d. Such parallels in two biographies are not improbable. One cannot discard different

657 Cf. Ibn Sa’d, *Tabaqāt*, vol. 7/2, p. 18 (in the *tabaqāt* of the Baṣrians) and vol. 5, p. 365 (1st line); ‘Abd al-Karīm al-Jazārī is mentioned in Ibn Sa’d in at least two places (vol. 7/2, p. 71, line 10; p. 182, line 18), but has no biographical entry of his own in the preserved recensions of the text.

658 G. H. A. Juynboll has pointed this out in “Dyeing the Hair and Beard in Early Islam. A Hadith-analytical Study,” *Arabica* 33 (1986), p. 64. In addition to the passage mentioned by him, Ibn Ḥajar, *Tahdhib*, vol. 6, p. 374 (line 9), he is also cited on p. 375 (line 8) with the death date 127. Citations on ‘Abd al-Karīm al-Jazārī from Ibn Sa’d are also attested 200 years earlier in al-Nawawī, *Tahdhib*, vol. 1, p. 308.


660 al-Bukhārī, *Ta’rīkh*, vol. 3/2, pp. 88–89.

661 See note 659.


kuˈnɑs, fathers' names, nisbas and the judgment of the early Muslim biographers as irrelevant on this basis.

Juynboll does not clearly state how, in his opinion, all this is to be explained. He seems to assume that one of the names—he inclines to al-Jazari—was invented in order to separate distasteful ‘Abd al-Karīm traditions from acceptable ones. One may ask whether such a forgery is likely as early as the beginning of the third/ninth century—Ibn Sa’d had both names. It speaks clearly against the thesis of forgery that in the Muṣannaf of ‘Abd al-Razzāq not only ‘Abd al-Karīm (al-Jazari) but also ‘Abd al-Karīm Abū Umayya al-Baṣrī appear in isnāds of different sources—in addition to Ibn Jurayj also Ibrāhīm ibn ‘Umar,664 Ma’mar,655 al-Thawrī,666 and others667—and that the different names are consequently attested as early as the second century, thus at a time when the sifting of hadīths and the criticism of transmitters had not yet really gotten under way. It thus seems more sensible to follow the assignment of these name components to two different persons, as was undertaken by the Muslim biographers of the first half of the third century. They themselves or their teachers still had contact with the two ‘Abd al-Karīms, and thus are not to be scorned as sources of information. The increase in biographical correspondences between the two in later works can be explained as the result of—conscious or unconscious—conflations caused by the fact that often in the isnāds only the name ‘Abd al-Karīm is given and it remains open which of the two is intended. Since the two are contemporaries, sometimes refer to the same authorities, and sometimes are quoted by the same students, this is in fact difficult to decide. This uncertainty also appears clearly in Ibn Ḥajar’s material, and because of the possibility of conflation al-Dhahabī explicitly mentions also Ibn abī l-Mukhāriq in his article on al-Jazari.668 One also confronts this problem in the case of Ibn Jurayj. From the fact that he occasionally refers to ‘Abd al-Karīm in the form of notes and that in one note the addition al-Jazari appears, I conclude that the ‘Abd al-Karīm in Ibn Jurayj’s tradition had the

664 AM 6: 10248.
655 AM 6: 10073, (12704).
This also fits the observation that ʿAbd al-Karīm al-Jazarī refers to Medinan and Meccan scholars, which is also most often the case with ʿAbd al-Karīm. Since in addition to ʿAbd al-Karīm [al-Jazarī] Ibn Jurayj cites ʿAbd al-Karīm ibn abi l-Mukhāriq, he probably obtained traditions from the latter as well. It is, however, unlikely that he himself did not differentiate between the two ʿAbd al-Karīms. In the case of ʿAṭāʾ ibn abi Rabāḥ, for instance, he generally speaks simply of ʿAṭāʾ, and differentiates the other ʿAṭāʾ from him by the addition al-Khurāsānī. It is thus to be assumed that he designated the second ʿAbd al-Karīm by the patronymic Ibn abi l-Mukhāriq. If this is the case, he refers to the latter only rarely. ʿAbd al-Karīm [al-Jazarī] on the contrary is the scholar, after ʿAmr ibn Dīnār, to whom Ibn Jurayj refers most often in his notes on the ʿAṭāʾ material. This, and the relatively extensive tradition from him in the work of Ibn Jurayj, allows the assumption that after ʿAṭāʾ he was one of his teachers in addition to ʿAmr ibn Dīnār. This might mean that ʿAbd al-Karīm spent some time in Mecca, which is also confirmed by some of his traditions that assume direct contact to Medinans and Meccans.

The share of ʿAbd al-Karīm’s raʾy in his tradition as a whole—including Ibn Jurayj’s references to him in notes—is about 31%.

In ‘Abd al-Karīm’s traditions of the saḥāba there dominates a person whom we have not yet encountered in the investigation of Ibn Jurayj’s sources: Ibn Masʿūd. He is followed at some remove, and almost even with each other, by ʿUmar and ʿAlī; other scholars such as ʿAmr ibn al-ʿĀṣ, Ibn ʿUmar, Zayd ibn Thābit and Ibn ʿAbbās are mentioned more rarely. The preponderance (almost 60%) of reports from Ibn Masʿūd and ʿAlī among the traditions of the Companions of the Prophet shows that ʿAbd

\[\text{nisba} \text{ al-Jazarī.}\]

\[\text{In comparison: With ʿAṭāʾ it was 80%, with ʿAmr ibn Dīnār 42%. This means either that the proportion of raʾy in the instruction actually decreased, or that Ibn Jurayj’s interest in raʾy diminished.}\]

\[\text{An additional 4% are anonymous.}\]

\[\text{Cf. AM 6: 10244, 10722, 10827, 10878, 10990, 11098, 11163, 11716; 7: 13657, 13668.}\]

\[\text{Cf. AM 6: 10541, 10626, 10722, 10877, 10990, 11361; 7: 12337, 12523, 13434, 13557, 13668, 13888.}\]

\[\text{Cf. AM 6: 10612, 10992, 11361.}\]
al-Karīm’s tradition draws for the most part from Kufan sources. This is to be observed—if not so markedly—in the case of his traditions of the tābi‘īn as well: He refers most often to “the companions (ašḥāb) of Ibn Mas‘ūd”\(^{674}\) and Shurayh,\(^{675}\) but also to Tāwūs, Ibn al-Musayyab, Abū Salama ibn ‘Abd al-Rahmān, Nāfi’, Sa‘īd ibn Jubayr and ‘Aṭā’ ibn ābī Rabāḥ.\(^{676}\) In addition to his Kufan strand of transmission a Hijazī one is thus also discernible.

Of ‘Abd al-Karīm’s traditions of the Companions, two thirds have no isnād. He usually cites Ibn Mas‘ūd, who died in the year 32/652–3\(^{677}\) and whom he cannot himself have met, without identifying informants; sometimes, however, he names as a source the “companions of Ibn Mas‘ūd,”\(^{678}\) from whom he probably has—directly or indirectly—the entire tradition of Ibn Mas‘ūd. He practically never cites sources for ‘Umar; an exception is formed by an ‘Umar/‘Alī dictum from al-Ḥasan [al-바istry?].\(^{679}\) A few of ‘Abd al-Karīm’s ‘Alī traditions and one ‘Amr ibn al-‘Āṣ tradition have more precise statements of provenance: He has them primarily from Kufan tābi‘īn such as Abū ‘Ubayda ibn ‘Abd Allāh ibn Mas‘ūd (d. 83/702),\(^{680}\) Abū Mūsā, i.e. probably Mālik ibn al-Ḥārith al-Sulami (d. shortly before 95/713–4),\(^{681}\) Sālim ibn ābī l-Ja‘d (d. between 99/717–8 and 101/719–20),\(^{682}\) but also the Meccan Mujāhid. In addition there are also “the companions of ‘Alī”\(^{683}\) as a rough statement of provenance for traditions of ‘Alī without any isnād at all. ‘Abd al-Karīm’s few ḥadīths of the Prophet sometimes have a continuous isnād—like the Hijazī: ‘Amr ibn Shu‘ayb—ābūhu—‘Abd Allāh ibn ‘Amr [ibn al-‘Āṣ]—the Prophet,\(^{684}\) sometimes no isnād.\(^{685}\) From tābi‘īn ‘Abd al-Karīm generally reports directly; from the Hijazī scholars they are usually responsa to questions which he asked them himself. All in all, one must class

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674 Cf. AM 6: 10827, 11301, 11393; 7: 13772.
675 Cf. AM 6: 10878, 11163, 11183.
676 Cf. AM 6: 10571, 11460; 7: 13765, 13770, 13880, 13916.
677 Cf. Khalīfa ibn Khayyāt, Ṭabaqāt, p. 16.
678 Cf. AM 6: 10827, 11098; 7: 13657.
679 AM 6: 10877.
681 Cf. the editor’s note on AM 6: 10626 and Ibn Ḥibbān, Mashāhir, no. 786.
682 Cf. Khalīfa ibn Khayyāt, Ṭabaqāt, p. 156.
683 E.g. AM 7: 13657.
684 AM 6: 10750.
685 E.g. AM 7: 13864 (Ibn Jurayj is missing between ‘Abd al-Razzāq and ‘Abd al-Karīm through an oversight of the editor or of a transmitter).
his use of the *isnād* as rather under-developed in comparison to other contemporaries. This does not speak for the assumption that Ibn Jurayj or ‘Abd al-Karīm himself invented this traditions. In the cases where he states an informant, he probably actually has the tradition in question from him. He clearly draws the rest from usually Kufan sources of the second half of the first/seventh century which he either could not remember in detail or did not think it necessary to name.

Ibn Jurayj’s tradition from ‘Abd al-Karīm is introduced with approximately the same frequency by the formulae “*akhbaranī*” and “*an*,” rarely by “*qāla* (iḥ).” There are also direct questions to him by Ibn Jurayj.686

Dāwūd ibn ābī Hind

He is considered one of the scholars of Basra and died in 137/754–5, 139/756–7 or 140.687 Ibn Jurayj’s tradition from him is not very extensive.688 Nevertheless, some characteristics can be noted. He transmits only material of others, no *dicta* of Dāwūd’s own. It contains in equal parts traditions about Companions of the Prophet and their Successors, and only rarely *hadiths* of the Prophet. His traditions of the *sahāba* and the Prophet generally have *isnāds*, which, however, sometimes display anonymous links. Dāwūd’s sources for these traditions are not always Basrans or Iraqis—as one might suspect—, rather, in addition to Kufan *isnāds*689 there are also those with Syrian and Meccan informants.690 Of the scholars of the *taβūn* generation he cites exclusively *dicta* and *responsa* of the Medinan Sa‘īd ibn al-Musayyab which he heard from him himself.691 The tradition of Dāwūd ibn ābī Hind is thus not typically Basran or Iraqi but has—so far as one can see from the narrow textual basis—a Ḥijāzī infusion. Ibn Jurayj usually introduces it with “*akhbaranī*,” seldom with “*haddathanā*” or “*an*.”

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686 E.g. AM 6: 10827, 10878, 10973.
688 About 0.6% of the total work.
689 E.g. AM 7: 12322 (NN—‘Abd al-Rahmān ibn abī Laylā—‘Umar), 13074 (‘Āmir al-Sha‘bī—[instead of “*aw*” one should read “*an*”] ‘Abd Allāh ibn Qays [i.e., Abū Mūsā al-Ash‘a‘rī]—Uthmān).
691 Cf. AM 6: 11048, 11359; 7: 12431.
Ayyūb ibn abī Tamīma
He has the nisba al-Sakhtiyānī and is likewise is one of the scholars of Basra. He died in 131/748-9 or 132. His tradition with Ibn Jurayj has a clearly Basran background. His main source for traditions of the Prophet and the šahāba is Ibn Sīrīn (d. 110/728 9), more rarely Yahyā ibn abī Kathīr (d. 129/746-7), but he also transmits from Meccan and Syrian informants. Insāds are generally present. Legal opinions of tābiʿūn and of his own are absent. Ibn Jurayj’s introductory formulae are primarily “an,” more rarely “akhbaran.”

d. Ibn Jurayj’s Syrian sources
Only two Damascene scholars are relatively frequently cited by Ibn Jurayj: Sulaymān ibn Mūsā and ‘Atā’ al-Khurāsānī. Together they comprise less than 2% in the work of Ibn Jurayj as a whole.

Sulaymān ibn Mūsā
He died in 115/733-4 or 119/737. Ibn Jurayj’s tradition from him contains, in addition to some legal dicta of Sulaymān’s own, primarily dicta and responsa of Syrian tābiʿūn such as Qabīṣa ibn Dhū‘ayb (d. 86/705), Makhūl (d. 112/730-1, 113 or 114), Rajā‘ ibn Ḥaywa (d. 112) and verdicts or statements of Umayyad caliphs such as ‘Abd al-Malik and ‘Umar ibn ‘Abd al-‘Azīz, but also a few traditions of the Prophet and ‘Umar. The hadīths of the Prophet derive from Medinan circles (Ibn Shihāb—Urwa ibn al-Zubayr, Nāfi’); their insāds are sometimes continuous, sometimes defective, and the ‘Umar traditions have no insād. For ‘Umar ibn ‘Abd al-‘Azīz the source is Rajā‘ ibn Ḥaywa; the ‘Abd al-Malik reports have anonymous sources or none at all. The tradition of

693 Cf. AM 6: 10257, 10317, 10346; 7: 13010.
694 E.g. AM 6: 10306.
697 Cf. AM 7: 12514, 12692, 13155, 13299.
698 Cf. AM 7: 12496, 12515, 13787.
699 Cf. AM 7: 12515, 13409, 13739, 13787.
700 AM 6: 10472; 7: 12638.
701 AM 6: 10877; 7: 13155.
Sulaymān ibn Mūsā is largely to be regarded as genuinely Syrian. Ibn Jurayj usually cites it with “akhbaranī,” more rarely with “an,” “qāla (lī),” “samūtu” or “saʿaltu.”

ʿAṭāʾ al-Khurāṣānī

ʿAṭāʾ ibn abī Muslim al-Khurāṣānī died in 133/750–1. Ibn Jurayj’s tradition from this younger Damascene scholar has a completely different profile from that of Sulaymān. It is largely (70%) a tradition of Ibn ʿAbbās supplemented with a few traditions of the Prophet, ʿUmar and ʿUthmān. Some times it refers to Ibn ʿAbbās himself as a legal authority, sometimes he functions only as the transmitter of legal verdicts of the Prophet and the first two caliphs. ʿAṭāʾ al-Khurāṣānī names informants neither for his Ibn ʿAbbās material nor for his ḥadīths of the Prophet which do not run through Ibn ʿAbbās. Only in one case does he specify Ibn Shihāb as his source for decisions of ʿUmar’s and ʿUthmān’s with the formula “akhbaranī.” This is not a proper ʿisnād. For this reason one may wonder whether ʿAṭāʾ has his Ibn ʿAbbās traditions, which furthermore have no indication of direct reception from Ibn ʿAbbās, from the latter himself or at second hand. Between the death dates of the two lies a timespan of 65 years. If he was over 80 years old at his death, he could still have heard from Ibn ʿAbbās in his youth. It is true that the rijāl experts give 50/670 as his year of birth—accordingly he would have been 18 years old at the death of Ibn ʿAbbās, but they are nevertheless unanimously of the opinion that he did not himself study with Ibn ʿAbbās. Since ʿAṭāʾ does not reveal his sources, the age, provenance and authenticity of these Ibn ʿAbbās traditions cannot be determined more exactly. To Ibn Jurayj, however, either ʿAṭāʾ’s personality or his tradition or both seem have merited consideration, otherwise he would not have passed on these texts. He usually introduces them with “akhbaranī,” more rarely with “an.”

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2. The value of Ibn Jurayj’s sources for the history of early Islamic jurisprudence

a. The authenticity of Ibn Jurayj’s tradition

The profiles of Ibn Jurayj’s 21 most-quoted sources allow a number of conclusions. One has to do with the authenticity of the Ibn Jurayj material. In the context of my argumentation for the authenticity of his tradition from ‘Atā’ ibn abī Rabāḥ I had adduced the strongly differing magnitude of the sources to which Ibn Jurayj refers, and within these sources the differing distribution of the literary genres, as important criteria of authenticity. The preceding profiles, from ‘Atā’ ibn abī Rabāḥ up to ‘Atā’ al-Khurāsānī, show that the differences between Ibn Jurayj’s individual sources go far beyond aspects of magnitude and genre and that actually the tradition of each individual source has very distinctive features, even if certain regional commonalities or ones conditioned by provenance are discernible. The differences which make up the profile of each source are to be observed on several levels:

1. The proportion of ra’y to traditions from others in the source itself or from its main authority is subject to great fluctuations. For instance, the share of ra’y with ‘Atā’ ibn abī Rabāḥ is 80%, Ibn Ṭawūs—Ṭawūs 85%, Ibn Shihiḥ 54%, ‘Amr ibn Dīnār 42%, Ibn Urwa—Urwa ibn al-Zubayr 40%, Yahyā ibn Sa’īd—Ibn al-Musayyab 30%, and ‘Abd al-Karīm 31%, while with others such as, for instance, ‘Amr ibn Shu‘ayb, Sulaymān ibn Mūsā, Ibn abī Mulayka, and Mūsā ibn ‘Uqba little or no personal material is to be recorded.

2. Equally significant differences are disclosed when one takes into consideration the relationship between Ibn Jurayj’s source and the latter’s main authority and the amount transmitted from him. In some cases there are student-teacher relationships, as with ‘Atā’—Ibn ‘Abbās, ‘Amr—Abū l-Sha‘thā, Abū l-Zubayr—Jābir ibn ‘Abd Allāh, Yahyā ibn Sa’īd—Ibn al-Musayyab, and Mūsā ibn ‘Uqba—Nāfi’; with others also son-father relationships, as in the case of Ibn Ṭawūs—Ṭawūs, Hishām ibn ‘Urwa—‘Urwa ibn al-Zubayr, and Ja‘far ibn Muḥammad—Muḥammad ibn ‘Alī, or ties of clientage, as with Nāfi’—Ibn ‘Umar. Some of these pairings are almost exclusive in character, i.e. they have material only from their father or master and from no one else, such as Ibn Ṭawūs—Ṭawūs, Ibn ‘Urwa—‘Urwa, Mūsā ibn ‘Uqba—Nāfi’, and Ja‘far ibn Muḥammad—
Muḥammad; some simply depend more or less strongly on their most important teachers, such as ‘Aṭā’, ‘Amr, Abū l-Zubayr, Yahyā ibn Sa'īd and Ayyūb ibn abī Tamīma.

In addition there are sources in which such student-teacher or son-father relationships do not set the tone; rather, either a multiplicity of sources—as with Ibn Shihāb, Sulaymān ibn Mūsā and others—or a specific regional selection or one centered on a specific group of authorities sets the scene, as is conspicuous, for instance, with ‘Abd al-Karīm, ‘Aṭā’ al-Khurāsānī, ‘Amr ibn Shu‘ayb and Ibn abī Mulayka.

3. Ibn Jurayj’s individual sources vary strongly in their proportions of traditions from the Prophet, the saḥāba, and the ṭābī‘ūn. Only one tradition—that of ‘Amr ibn Shu‘ayb—contains primarily hadīths of the Prophet; in some their proportion fluctuates between 20 and 30%, thus for instance with ‘Aṭā’ ibn abī Rabāḥ, Abū l-Zubayr, Ibn abī Mulayka, Ibn Shihāb, Hishām ibn ‘Urwa and ‘Aṭā’ al-Khurāsānī, while others—such as ‘Amr ibn Dīnār, Ibn Ṭāwūs, Yahyā ibn Sa‘īd, Mūsā ibn ‘Uqba, ‘Abd al-Karīm, Nāfī’—have only few traditions of the Prophet or none at all. High proportions of traditions of the saḥāba are found, for instance, with ‘Aṭā’ ibn abī Rabāḥ, Abū l-Zubayr, Ibn abī Mulayka, Mūsā ibn ‘Uqba, Nāfī’, Yahyā ibn Sa‘īd, ‘Abd al-Karīm and ‘Aṭā’ al-Khurāsānī; they make up between 35 and 45% with, for instance, ‘Amr ibn Dīnār, Ibn Shihāb, and Hishām ibn ‘Urwa; ‘Amr ibn Shu‘ayb and Ibn Ṭāwūs have conspicuously few.

Only the tradition of Ibn Ṭāwūs contains a preponderance of material from the ṭābī‘īn; with some a volume of 30–40% is to be observed, as for instance with ‘Amr ibn Dīnār, Hishām ibn ‘Urwa, Yahyā ibn Sa‘īd and ‘Abd al-Karīm; Ibn Shihāb, Abū l-Zubayr, ‘Aṭā’ ibn abī Rabāḥ, Ibn abī Mulayka, and ‘Amr ibn Shu‘ayb have distinctly fewer; none at all are found with Mūsā ibn ‘Uqba, Nāfī’ and ‘Aṭā’ al-Khurāsānī.

4. The use of the isnād or the identification of informants for traditions varies in the individual sources of Ibn Jurayj. Isnāds are very rare with ‘Aṭā’ ibn abī Rabāḥ and Ibn Ṭāwūs; they reach less than 50% with, for instance, Ibn abī Mulayka, ‘Amr ibn Shu‘ayb, ‘Abd al-Karīm and ‘Aṭā’ al-Khurāsānī. Chains of transmission and informants are frequent above all with the Međīnans like Ibn Shihāb, Hishām ibn ‘Urwa, Yahyā ibn Sa‘īd, and Mūsā ibn ‘Uqba, but also with the Meccans ‘Amr ibn Dīnār and Abū l-Zubayr, who show a
quite pronounced Medinan influence in other ways as well or who are known to be of Medinan origin.

5. Large variations are to be observed in the terminology of transmission with which Ibn Jurayj cites his sources. For instance, the usage of the word “"an” varies between 0 with Ibn abī Mulayka and 60 to 80% with Yahyā ibn Sa‘īd, Mūsā ibn ‘Uqba and ‘Amr ibn Shu‘ayb. Between the two lie those with relatively few “"an” traditions, such as those of Abū l-Zubayr and ‘Amr ibn Dīnār, and others in which “"an” occurs with a frequency between 30 and 45%, as in the cases of Hishām ibn ‘Urwa, Ibn Shihāb, Ibn Ṭāwūs, ‘Aṭā’ ibn abī Rabāḥ and ʿAbd al-Karīm. The usage of the formula “samī’tu” displays fluctuations as well. With some informants Ibn Jurayj uses it not at all, with others rarely, but in individual cases conspicuously often, as, for instance, in the traditions of Ibn abī Mulayka. Similarly unusual preferences for specific termini of transmission are sometimes also observable on the part of Ibn Jurayj’s informants, for instance, the almost exclusive use of “samī’tu” with Abū l-Zubayr. The heterogeneity of the structure of transmission furthermore speaks against the assumption that one can use it to determine written or oral transmission of individual traditions. With the tradition of Ibn Jurayj at least—with a few exceptions, like that of Mujāhid—this is not possible.704

These are the five most importance dimensions by which the differing characters of the individual source-profiles can be formally represented. The individuality of each individual source and the many characteristic differences between them reduce to absurdity the thesis that Ibn Jurayj forged it all, produced the texts himself, projected them onto older authorities and fabricated the chains of transmission or informants for them. Such diversity cannot be the result of systematic forgery, but can only have developed historically. This means that the traditions for which Ibn Jurayj names specific persons as sources actually derive from them and are in this sense authentic. A popular trick to circumvent the problem that the texts are too heterogeneous to have been forged by a single person is to claim that the transmitter in question—in this case Ibn Jurayj—was not, or only in part, the forger, but rather a multiplicity of unnamed

704 Only the assumption that the formulae “samī'tu,” “qāla li,” and so forth designate heard texts is probable. This, however, does not preclude the possibility that they were also recorded in writing.
contemporaries from whom he obtained his material and adorned it with his name; or that it was later generations who illegitimately made use of his name. This is a Schachtian mode of argumentation ("the bulk of the traditions which go under his name must be credited to anonymous traditionists in the first half of the second/eighth century"). Such invention of anonymous parties as supposed originators of the inconsistencies cannot, however, be accepted as a scientifically satisfactory explanation, since it transfers the problem from the known and testable to the realm of speculation. I do not dispute that there were forgers of ḥadīths and isnāds in the first/seventh and second/eighth century and that it is among the duties of the historian to discover who fabricated traditions and chains of transmission, when, where, how, and why. However, I consider the prevailing theory which assumes—to overstate the case somewhat—that the stock of traditions up to the emergence of the great collections of the third/ninth century and beyond is primarily the work of hundreds of unknown forgers, while the names of transmitters stated in the traditions themselves have little to do with it, to be a great error and devoid of all historical probability.

To the wholesale denial of the credibility of the information about transmitters which has led to paralysis of research in this area one may object that it is possible to detect forgeries through comparison of the traditions in early and late collections. Schacht himself mentioned the fact, already known to Muslim Ḥadīth criticism, that the isnāds of later collections are considerably better and more complete. This is a possible point of departure to unmask forgeries and amendments of isnāds and their originators. From the observation that chains of transmission and ḥadīths were forged one may not conclude that everything was forged, or that the authentic and the fake can no longer be distinguished from each other. Investigation of a strand of transmission in an early collection of traditions—the material of Ibn Jurayj in the Musannaf of ʿAbd al-Razzāq—shows that criteria can certainly be developed to separate credible traditions from questionable ones or those which cannot be evaluated. A comparison of this early stock of traditions (first half of the second/eighth century) with that of the collections of the second half of the third/ninth century and later may yield rather precise information about the volume

705 Cf. Schacht, Origins, p. 179 and passim.
of forgeries, the forgers and their motives. This is a research task which has yet to be taken in hand.\textsuperscript{706}

b. \textit{Characteristics of the early legal centers}

In addition to significant criteria of authenticity, Ibn \textit{Jurayj}'s more important sources yield further insights into the structures of development of Islamic jurisprudence between 50/670 and 150/767. They supplement the picture emerging from the traditions of 'Atā' and 'Amr, and permit a view beyond Mecca into other centers of legal scholarship.

'Atā' ibn abī Rabāḥ owes a portion of his legal knowledge, and probably also the impetus to pursue such questions, to his teacher Ibn 'Abbās.\textsuperscript{707} The formative influence of this personality on the development of Meccan legal scholarship is also to be detected in the case of the younger 'Amr ibn Dīnār, who received his education primarily from students of Ibn 'Abbās through whom he also received and passed on his teachings.\textsuperscript{708} A similar situation is to be observed with a few other Meccan contemporaries of the two men. Mujāhid was, like 'Atā', a student of Ibn 'Abbās, and cites him with corresponding frequency. Abū l-Zubayr,\textsuperscript{709} Ḥasan ibn Muslim,\textsuperscript{710} and Ibrāhīm ibn Maysara\textsuperscript{711} transmit many legal opinions and traditions from students of Ibn 'Abbās such as Abū l-Sha'thā and Ṭāwūs, among others. This “school” clearly dominated among the scholars of Mecca. A characteristic of the students of Ibn 'Abbās which decisively shaped Meccan \textit{fiqh} is that primarily their own legal opinions and only relatively few traditions from others are preserved in the work of the Meccan Ibn Jurayj. This is true of 'Atā', Ṭāwūs, Mujāhid and Abū l-Sha'thā. When they name authorities, they naturally cite

\textsuperscript{706} The works of G. H. A. Juynbolls are the most recent ventures in this area. His concentration on the biographical material, and practically exclusively on the traditions of the Prophet, has resulted in a number of remarkable conclusions, especially with respect to the scope and technique of \textit{isnād} forgery, which were in part familiar to the Muslim scholars themselves. Through the inclusion of older sources which do not contain only \textit{hadiths} of the Prophet, like the \textit{Musannaf} of 'Abd al-Razzāq or of Ibn Abī Shayba, it will, however, certainly be possible to get further.

\textsuperscript{707} See p. 146.

\textsuperscript{708} See pp. 201 ff.

\textsuperscript{709} See pp. 208 ff.

\textsuperscript{710} See p. 214.

\textsuperscript{711} See p. 215.
their teacher Ibn 'Abbās most frequently, but aside from him they like to refer to decisions of the second caliph, 'Umar. 'Umar is a standard authority in Mecca; he is valued by scholars who do not belong to the circle of Ibn 'Abbās—such as 'Amr ibn Shu'ayb— as well. With those students of Ibn 'Abbās who taught primarily their own legal opinions, the Prophet played no prominent role; he is generally cited more rarely than Ibn 'Abbās, by some about as frequently as 'Umar, by others scarcely at all.

One may not, however, generalize these preferences. In Mecca there were also legal scholars who were unconnected with the school of Ibn 'Abbās or were only partially committed to it, like Ibn abi Mulayka and Abū l-Zubayr. No personal legal opinions are reported from either of them. Ibn abi Mulayka seems particularly to have collected caliphal rulings, while Abū l-Zubayr was formed by the legal views of the Companion of the Prophet Jābir ibn 'Abd Allāh. These were—this is also confirmed by traditions of 'Atā', like those of Ibn 'Abbās and Ibn 'Umar, in demand in his lifetime, but they did not become as influential as the teachings of the latter. While the Meccan scholars of the first/seventh and opening second/eighth century preferred to cite legally knowledgeable Companions of the Prophet, in neighboring al-Ṭā'if there was a faqīh who based his ra'y not only on the Qur'ān, which was fundamental in the school of Ibn 'Abbās as well, but primarily on hadiths of the Prophet: 'Amr ibn Shu'ayb.

The school of Ibn 'Abbās was not limited to Mecca. Through Abū l-Sha'ṭhā' (Basra), Sa'īd ibn Jubayr (Kufa) and Tāwūs (Ṣan'ā') it spread in Iraq and in Yemen, and its influence is discernible in Syria as well with a scholar such as 'Atā' al-Khurāsānī. These branches did not develop in isolation from each other, but continued to exercise a fertilizing effect on Mecca—which can be considered as the center of the school, since most of the students of Ibn 'Abbās had settled there—as is shown by Abū l-Sha'ṭhā's influence on 'Amr ibn Dīnār and the wide reception of the fiqh of Tāwūs and of 'Atā' al-Khurāsānī's Ibn 'Abbās material by Ibn Jurayj.

712 See pp. 212 f.
713 See p. 143.
714 See pp. 212 f.
715 See p. 199.
716 See pp. 216, 233.
This is not the place to depict the development of Medinan fiqh, but since it exercised influences on the Meccan fuqahā’ on the basis of which it is possible to reach conclusions about the early legal scholarship of Medina, let us permit ourselves some remarks on the subject.\footnote{They are to be considered provisional, not only because of the relatively small textual basis, but also because the latter represents only a selection from Ibn Jurayj.}

The teachings of the more important early Medinan fuqahā’ contain a larger proportion of traditions than is the case with the students of Ibn ‘Abbās such as ‘Atā’ and Ĥāwūs, who taught primarily their own ra’y. With Sa’īd ibn al-Musayyab and Ibn Shihāb, it is true, their own legal opinions are also well represented, but ‘Urwa ibn al-Zubayr and—in an extreme form—Nāfi’ give preference to hadīth. For the scholars of Medina as well, the second caliph ‘Umar was an important legal authority, cited with greater or lesser frequency by all. In addition to him there dominates no individual personality like Ibn ‘Abbās in Mecca; rather, Medinan fiqh refers to several sources: above all to the Prophet (‘Urwa ibn al-Zubayr, Ibn Shihāb) and ‘Abbās ibn ‘Umar (Nāfi’, Ibn Shihāb), but also to the third caliph Uthmān, among others.

About the situation of fiqh in Syria and Iraq in the course of the first century, on the basis of Ibn Jurayj’s tradition from Sulaymān ibn Mūsā and ‘Abd al-Karīm\footnote{See pp. 226–232.} one can say only that there too there was a local tradition which articulated itself in ra’y and hadīth, and that in Iraq Ibn Mas‘ūd and ‘Ali in addition to ‘Umar were preferred reference figures for juridical precedents.

c. The use of the isnād

A third point which may be kept in mind as a result of the examination of Ibn Jurayj’s sources relates to the use of the isnād or the naming of informants for traditions of which one was not the eye- or earwitness. It has already been mentioned that the use of the isnād varies greatly with the early fuqahā’, that the Meccans—especially the students of Ibn ‘Abbās—and the Iraqi ‘Abd al-Karīm transmit more often without than with an isnād, while in the case of the Medinans and those Meccans who display stronger Medinan influences the opposite is true.\footnote{See pp. 235 f.} This could be an indication that the naming
of informants and transmission with *isnāds* were practiced particu-
larly in Medina, and that the custom perhaps also originated there. 
This hypothesis gains even more weight if one examines more closely 
the *isnāds* of a few non-Medinans: one finds in them abundant 
Medinan informants. On the other hand, it is to be observed that 
above all Ibn Jurayj’s older informants, who flourished in the first/sev-
enth century, more seldom supply *isnāds* than those who died after 
118/736. One can probably interpret this to mean that in the first/sev-
enth century the supplying of an *isnād* was rather the exception than 
the rule, but that from the beginning of the second/eighth century 
the use of the *isnād* asserted itself more and more. This should only 
be understood as a tendency. Among the older transmitters there 
were already some who provided the majority of their indirect tra-
ditions with statements of provenance—for instance, Nāfi’ or Sulaymān 
ibn Mūsā—and among the younger ones there were some—like ‘Abd al-Karīm or ‘Aṭā’ al-Khurāsānī—who did this more seldom. 

On the other hand, with respect to quality there is at first glance 
no trend from worse to better *isnāds* up to the middle of the sec-
ond/eighth century to record. It is true that ‘Aṭā’ ibn abī Rabāḥ 
has few *isnāds*, but these are usually continuous; ‘Amr ibn Dīnār uses 
the *isnād* much more frequently, but only about 60% of his *isnāds* 
are complete. A similar situation pertains with, for instance, Ibn abī 
Mulayka (d. 118/736), who has few but continuous indications of 
transmitters, while many defective *isnāds* are found with Yaḥyā ibn 
Sa’īd (d. 143/760–1). This fact does not speak for the assumption 
that in the first half of the second/eighth century *isnāds* were already 
being systematically forged. If one investigates more precisely where 
the weaknesses of the *isnāds* lie, it becomes clear that except in the 
rarest of cases the responsibility lies not with Ibn Jurayj’s sources, 
but with their informants; that is, the discontinuities usually date 
from the first century. This conclusion fits the observation made 
above, that at this time the use of the *isnād* was not yet customary. 
This explains the weaknesses of *isnāds* with the scholars of the sec-
ond half of the first/seventh century. That they were not eliminated 
also speaks against the hypothesis of forgery. It is interesting to note 
that with hadīths of the Prophet the use of the *isnād* is, it is true, 
more frequent and their *isnāds* are often more complete than in the 
field of other authorities, but that the discrepancy is much less 
significant that one might suspect: 68% of the traditions of the Prophet 
have an *isnād*, which in 69% of the cases is continuous; with the
others 59% have isnāds, of which 62% are complete. It is true that a tendency to make fuller statements of origin for traditions of the Prophet is beginning to become apparent up to the middle of the second century, but it is not yet highly pronounced.

d. **Ibn Jurayj's anonymous traditions**

In addition to material from others for which Ibn Jurayj specifies his sources, he also transmits material without naming his informant. It comprises about 7.9% of his work as a whole. He introduces these texts of anonymous origin with various formulae. Most often occur “ukhbirtu” or “ḥuddithtu ‘an/anna” (it was reported to me from/that), more seldom “balaghānī ‘an/anna” (it reached me from/that), “akhbaranī rajul ‘an/anna” (someone reported to me), “man ṭaddāq” (someone I consider reliable), “man smā‘a X” (someone who heard X), “ghayr X” (someone other than x), “ba‘d min” (some people from), or simply “qāla” of a person who cannot be documented as a direct source of Ibn Jurayj’s.

At the head of the authorities to whom these anonymous traditions refer stands the Prophet (23%). He is followed by ‘Umar (13%), ‘Alī and Ibn Mas‘ūd (8% each), a number of completely anonymous traditions (6%) and Ibn ‘Abbās (4%). Next place is taken by a group of caliphs and scholars of the generation of the tābi‘ūn (4–3%): ‘Umar ibn ‘Abd al-‘Azīz, ‘Abd al-Malik, Sa‘īd ibn Jubayr, Sa‘īd ibn Musayyab, Shurayh and al-Hasan al-Baṣrī. The next place in the scale of frequency is shared by a number of Companions of the Prophet (2–1%): ‘Uthmān, Salmān al-Fārisī, ‘A‘isha, Zayd ibn Thābit, al-Zubayr, Ibn ‘Umar, Abū Hurayra and ‘Amr ibn al-‘Āṣ. The final place is again taken by scholars of the generation of the tābi‘ūn (1%): Nāfī‘, ‘Aţā‘ ibn abī Rabāḥ, Ibn Shihāb, Tāwūs, al-Sha‘bī, ‘Urwa ibn al-Zubayr and Sulaymān ibn Yāsār.

By an anonymous tradition I mean simply one for which Ibn Jurayj names no direct source. “Anonymous” does not mean that no informant at all is named as a link. That may be the case, but need not be. Between the elder tābi‘ūn and Ibn Jurayj lies a gap of

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720 That with Ibn Jurayj the formulae “ukhbirtu” and “ḥuddithtu” indicate reception in the form of wujudā (cf. Sezgin, Geschichte, vol. 1, pp. 78 f.) is in most cases unlikely, but possible in some, e.g. in the indirect references to traditions of ‘Ikrima [mawla of Ibn ‘Abbās], Sa‘īd ibn Jubayr, al-Hasan [al-Baṣrī] and Makhūl.
only one generation. Thus, further informants for his anonymous traditions from them are scarcely to be expected, since it is precisely the link to them which is not named. In the anonymous texts informants for tābi‘īn do, in fact, appear only in exceptional cases.\(^{721}\) On the other hand, in those from the saḥāba and the Prophet partial isnāds are not unusual. Sometimes they lack only the link immediately before Ibn Jurayj. It is conspicuous that with the anonymous hadīths of the Prophet usually (78%) such a—sometimes multiply—interrupted isnād is present, and thus that only a very small portion are cited by Ibn ‘Abbās without any statement of provenance at all. The case is different with the traditions of the saḥāba. Here it is only the texts from Ibn ‘Abbās for which one of his students is usually named as an indirect source, while those from ‘Umar, ‘Alī and Ibn Mas‘ūd only very rarely have further informants.

The textual group of anonymous traditions in the work of Ibn Jurayj contains a number of features which confirm the foregoing conclusions about the authenticity of the Ibn Jurayj material in the Musannaf of ‘Abd al-Razzāq and the knowledge it yields about the early discipline of juridical tradition.

1. The fact that Ibn Jurayj claims to have 90% of his material from specific informants but leaves 8% without statements of provenance speaks against the assumption that his informants are fabricated; since, if he had a motive to father his traditions on others, it would have affected all the texts. It is, however, largely the same authorities whom he cites both with and without statements of source. If he is a forger, why does he report anonymously from ‘Urwa ibn al-Zubayr, whose texts he generally records having from the latter’s son Hishām? Why does he cite Nāfi’, Ibn Shihāb and even his teacher ‘Aṭā‘ indirectly and anonymously, although he was in contact with them and otherwise always passes on their teachings and traditions directly? For what reason does he transmit hadīths of the Prophet which for a continuous isnād lack only the link before himself, which would be so easy to fabricate, and traditions of the Prophet completely without informants, although he was familiar with a number of good isnāds? On the contrary, all of these indices suggest that Ibn Jurayj’s statements of sources, when he makes them, are credible and that he actually received from his informants the traditions

\(^{721}\) E.g. AM 6: 11146 (balaghāt ‘an Jābir [ibn Yazīd ibn al-Ḥārith?] ‘an al-Sha‘bī).
ascribed to them. The question of the form in which he obtained them from them—whether he heard them, read them out loud himself or simply copied from a written text—is, it is true, not unimportant, but it is not significant for the problem of the general authenticity of the tradition of Ibn Jurayj. The anonymous traditions are probably explained on one hand by Ibn Jurayj's honesty and precision: he left texts whose precise provenance he could no longer trace without a statement of origin, even in cases where particular informants absolutely forced themselves upon him, as, for instance, with 'Urwa ibn al-Zubayr and Tawus. In other cases—for instance, when he says "akhbaranī mun usaddiq" he dispenses with the naming of the informant for some reason, although he presumably knew who it was.

With respect to the early discipline of tradition, Ibn Jurayj's anonymous traditions demonstrate that among the hadiths in circulation in the first half of the second/eighth century those from the Prophet were more frequently and better equipped with isnads than those from 'Umar, 'Alī and Ibn Mas'ūd. Such a tendency is also to be observed in Ibn Jurayj's sources which are known by name. This allows us to conclude either that people began early to pay closer attention to the provenance of hadiths of the Prophet than they did with the traditions of the caliphs and the Companions, or that they early began to ascribe hadiths of the Prophet to well-known scholars. The two are not mutually exclusive, but neither will have been a generally disseminated procedure, but rather limited to specific groups of people or circles of scholars. Ibn Jurayj's anonymous hadiths of the Prophet with isnads show that he did not even always consider it necessary to retain and transmit his immediate source. In Mecca in the first half of the second/eighth century the naming of continuous chains of transmission—even for hadiths of the Prophet—thus cannot have been part of the general standard of the juridical technique of transmission.

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722 With 'Umar, for instance, in 62% of the cases informants are named, but only 40% of the isnads are continuous.
723 That it was not very different in Medina is shown by Mālik's Muwatta'. On this cf. Goldziher, Muslim Studies, vol. 2, p. 218.
E. THE EARLY MECCAN LEGAL SCHOLARS IN THE LIGHT OF THE BIOGRAPHICAL SOURCES

The depiction of the development of Meccan fiqh has taken place exclusively on the basis of the teachings of its most important representatives—'Atā' ibn abī Rabāh, 'Amr ibn Dīnār and Ibn Jurayj—, which were collected and transmitted by their students. Up to this point I have largely neglected the biographical reports about them. Only the chronological and geographical placement of the figures, i.e. approximately when they died and where they lived and worked, has been derived from the tabaqāt works. This "one-sidedness" was intentional and has a methodological rationale. The credibility of the traditions about figures of the first/seventh and second/eighth century contained in the biographical works is just as controversial as the teachings and traditions which are ascribed to them. Schacht and the majority of the non-Muslim scholars of this century consider the biographical information about the sahāba and tābi‘ūn, i.e., the figures of the first century, to be largely unhistorical and legendary, and see scarcely any possibility of unraveling the tangle of truth and fiction. There is also a deep distrust toward the biographical information about figures of the second/eighth century, especially when it relates to their contacts to the preceding generation of scholars. Generally only the names, information about the place or places where they were active, and the death dates are accepted; everything else is generally subject to the suspicion of forgery, and it is left to the taste of the individual researcher what part of it he considers credible or otherwise. The claim that the traditions from the early legal scholars are predominantly later fictions necessarily goes hand in hand with the thesis that the information about them must also be forged to a greater or lesser extent. It was thus not advisable to make the analysis of the Tradition material from the Meccan fuqahā’ dependent on unconfirmed biographical traditions about them.

Since it has emerged that 'Abd al-Razzāq’s tradition from Ibn Jurayj and the latter’s tradition from 'Atā', 'Amr and others are reliable, that based on them historically secure statements about the teachings of legal scholars of the first and second centuries are possible, and that, conversely, the hypothesis of forgery fails as a universal explanatory model for the development of the legal traditions ascribed to them, the question of the source-value of the biographical literature about the early fuqahā’ must be posed anew. Methodologically,
I proceed by gathering all the information about ‘Aţā’, ‘Amr and Ibn Jurayj from the biographical lexica accessible to me, which naturally represent only a sample of the extant biographical reports overall, in order to be able to determine on the basis of reported implausibilities, contradictory or tendentious statements whether forged traditions about them exist. In addition, I will attempt to identify the sources from which the biographical reports about the figure in question derive.

1. ‘Aţā’ ibn abī Rabāḥ\textsuperscript{724}

He had the \textit{kusna} Abū Muḥammad; his father’s name was Aslam.\textsuperscript{725} The latter is supposed to have been a Nubian who earned his living by weaving baskets.\textsuperscript{726} His mother was a Negro by the name of Baraka.\textsuperscript{727} ‘Aţā’ came from Yemen, more precisely from the town Muwalladī al-Janad\textsuperscript{728}—the variants Walad al-Janad\textsuperscript{729} and al-Janad\textsuperscript{730} are probably only inaccurate renditions—but grew up in Mecca. He was a \textit{mawāla} (client) of the family (\textit{āl}) of Abū Khuthaym al-Fihrī\textsuperscript{731}—variants: of Abū Maysara ibn abī Khuthaym al-Fihrī\textsuperscript{732} of the Banū


\textsuperscript{725} Variant: Sālim—probably a misreading of Aslam. It and the name of the grandfather, Ṣafwān, are only in Ibn Khallikān, \textit{Wafayāt}, vol. 2, p. 423 (without statement of source).

\textsuperscript{726} Only in Ibn Ḥajar, \textit{Tahdhib}, vol. 7, p. 200 (following Abū Dāwūd [al-Sijistānī], d. 275/888–9).


\textsuperscript{729} Ibn Qutayba, \textit{Ma‘ārif}, p. 154.

\textsuperscript{730} Ibn Ḥibbān, \textit{Thiqāt}, vol. 5, p. 198.


Fihr, 733 of Ibn Khuthaym al-Qurashi al-Fihri, 734 of Ḥabība bint Maysara ibn abī Khuthaym 735—or of Banū Jumah, 736 both belong to Quraysh. ‘Aṭā‘ is described as black-skinned, flat-nosed and kinky-haired, 737 which fits with the statements that both parents were Negroes. He had only one healthy eye, and later became completely blind; he was crippled, and limped. His hand is supposed to have been cut off at the downfall of the caliph Ibn al-Zubayr. 738 Under the suspicion of sympathizing with the Murji‘a, in the year 93/711 he—like Mujahid, ‘Amr ibn Dīnār and Sa‘īd ibn Jubayr, who was executed for this reason—for a time imprisoned at the instigation of al-Ḥajjāj, the governor of Iraq. 739

From his own statement that he consciously experienced the murder of ‘Uthmān (35/656) and recognized its implications, 740 it can be inferred that he was born at the beginning of ‘Uthmān’s caliphate and was about six to ten years old at his death. In addition to this approximate information about his age, the statement is also transmitted from him that he was born two years after ‘Uthmān assumed the caliphate—which was in the year 23/644. 741 Then he would have been ten years old at his death. The year 27/648 is also named as a birth-date; 742 this seems to be based on a calculation assuming the year 115/733–4 as the date of death and a lifespan of 88 (lunar) years. 743 A longer lifespan is assumed by those who place his birth in the caliphate of ‘Umar. 744 Only seldom is his birth dated to the end of ‘Uthmān’s caliphate. 745 Ibn Sa‘d already names 114/732 as well as 115 as an alternative year of death. Khalīfa ibn Khayyāt has

736 See notes 733 and 735.
737 “Kinky-haired” appears only starting with al-Shīrāzī.
741 Ibn Ḥajar, op. cit.
744 Only al-Dhahabī, Tadhkira, vol. 1, p. 98. Also see note 749.
This uncertainty runs through the later biographical works, but 114 is considered most likely.747 He is supposed to have died in the month of Ramaḍān.748 His lifespan is usually given as 88 years; only later appear the numbers 90 and 100,749 which, however, similarly seem to be drawn from early sources. ‘Atā‘ had a son named Ya‘qūb.750

At the beginning of his career (?) he taught the Qur‘ān,751 however, he was above all considered a legal scholar and transmitter. Numerous biographical traditions show that learned and simple people came to ‘Atā‘ in order to question him about legal and ritual information. In Mecca his activities as a muftī sometimes had an official character; probably on the basis of a decree of the governor of the Umayyad caliph, only ‘Atā‘ and, in his absence, Ibn ābī Najīh, were permitted to act as muftī.752 He was—next to Mūjahīd753—considered as Ibn ‘Abbās’s successor in the position of muftī of Mecca754 and as the most important and best muftī Mecca possessed around the turn of the century.755 His sessions, in which he answered questions and taught, took place in the mosque, i.e. in the Haram, where he also spent the night for the last two decades of his life.756 His

750 Ibn Qutayba, Ma‘ārif, p. 154.
younger contemporaries considered him one of the, if not the, greatest of the scholars of his time. He was considered an eminent authority in the area of the hajj ceremonies, which is not surprising for a Meccan.

While in the second and third centuries ‘Aṭā’ was uncontested as a faqih, as a Hadith scholar he received mixed reviews. On one hand, it is said that he knew many hadiths and concerned himself with the study of Tradition (talab al-‘ilm), that among ‘Aṭā’hui’s contemporaries his hadiths were coveted and that scholars like Abū Ḥanīfa and al-Awzā’i, who for a time numbered among his students, thought highly of him; on the other hand, Hadith scholars of the second half of the second/eighth century such as Ya‘ya ibn Sa’d and al-Shāfi‘i, in the first half of the second/eighth century, already take a critical stance towards those hadiths of the Prophet which he transmitted indirectly (mursal), i.e., without an informant of the generation of the saḥāba. At the same time, they did not imply that his hadiths were inauthentic or forged, but found fault in the fact that he supposedly received them from anyone, i.e., probably without testing the credibility of his informant, and suspected that he also received a good deal from unnamed written sources. Later critical scholars such as Ahmad ibn Ḥanbal (d. 241/855-6) and ‘Alī ibn al-Madīnī (d. 234/848-9)—both students of Ya‘ya’s—followed this judgment. ‘Alī ibn al-Madīnī also noted another flaw: two of his most important students, Qays ibn Sa’d and


763 Ibn abi Ḥātim, Taqādima, pp. 130, 243, 244. al-Dhahabi, Mizān, vol. 2, p. 197.

Chapter Three

Ibn Jurayj, left 'Ata' towards the end of his life, clearly—even if al-Dhahabi does not want to admit it—because his intellectual powers were flagging. Nevertheless, in the third/ninth century—in the heyday of the winnowing of Hadith—he seems to have been rated as generally dependable and credible, as the judgments of Yahya ibn Ma'in (d. 233/847-8)—also a student of al-Qaṭṭān—and of Abū Zur'a [al-Razi] (d. 264/877-8) demonstrate. Aḥmad ibn Ḥanbal, too, clears him of the suspicion of having suppressed informants (tadlis). This valuation dominates in the later rija'il literature.

In Ibn Sa'd's Ṭabaqāt, the earliest preserved biographical work, in several articles not devoted to 'Ata' himself there are indications that 'Ata' was a student of the Companions of the Prophet Jābir ibn 'Abd Allāh and Ibn 'Abbās and met with 'Ā'isha. An early list of the Companions of the Prophet from whom he transmitted appears in al-Bukhārī (d. 256/870). It includes only those from whom he "heard": Abū Hurayra, Ibn 'Abbās, Abū Sa'id [al-Khudrī], Jābir [ibn 'Abd Allāh] and Ibn 'Umar. Some of them appear again and again in the later works as well, which, however, add new names: Rāfi' ibn Khadij, Jābir ibn 'Umayr (?), Mu'āwiya ibn abi Sufyān and 'Ā'isha, about whom it is explicitly observed that he heard her; this is also supposed to have been the case with [Abd Allāh] Ibn al-Zubayr, 'Abd Allāh ibn 'Amr and Zayd ibn Khālid al-Juhānī. In the eighth/fourteenth century Umm Salama and Usāma ibn Zayd are added. This development culminates with Ibn Ḥajar (d. 852/1448-9) in a list of twenty names of Companions from whom he is supposed to have transmitted directly and four sahāba from whom he is supposed to have transmitted mursal. This supple-

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769 al-Bukhārī, Ta'rikh, vol. 3/2, p. 464. Also cf., however, Ibn al-Madhīnī (d. 234/848-9), Ḥa'il, pp. 81 f.
770 Not attested. Perhaps Jābir [ibn 'Abd Allāh ibn 'Amr] and/or ['Ubayd] ibn 'Umayr is intended.
menting of ‘Ata’s authorities by Ibn Hajar is probably based on his own research on the ‘Ata hadiths known to him or his source al-Mizzī. This is also suggested by his selection of tābī‘un from whom ‘Ata transmitted, who are generally not named in early biographies. However, he also reports the judgments of Hadith scholars of the third/ninth century, such as Aḥmad ibn Hanbal, ‘Alī ibn al-Madīnī, Abū Zur‘a and Abū Ḥātim, that ‘Ata did not hear from Ibn ‘Umar, Abū Sa‘īd al-Khudrī, Zayd ibn Khālid, Umm Salama, Rāfi‘ ibn Khadīj, or Usāma, among others, even if he saw some of them, and that one may only cite ‘Ata’s ‘A‘isha traditions from the Prophet if he explicitly says that he heard them. Ibn Ḥajar himself declares that, in view of his date of birth, ‘Ata cannot have heard from two of the saḥāba in his list.

A similar picture is offered by the reports about ‘Ata’s students and auditors. The early biographical works name only a few, al-Bukhārī only ‘Amr ibn Dīnār, Qays ibn Sa‘d and Ḥabīb ibn abī Thābit; Ibn abī Ḥātim (d. 327/938) cites his father with the names Sulaymān ibn Mūsā, Qays ibn Sa‘d, Abū l-Zubayr and ‘Abd al-Malik ibn abī Sulaymān. These lists of names—like those on ‘Ata’s authorities—make no claim to exhaustiveness, which is already clear from the fact that one of ‘Ata’s most important students—Ibn Jurayj—is not mentioned, even though Ibn Sa‘d already knows traditions of Ibn Jurayj’s about ‘Ata which clearly identify him as his teacher. Later works add further auditors of ‘Ata’s;—Ibn Jurayj does not appear before al-Dhahabī. Finally, Ibn Ḥajar names 42 transmitters from ‘Ata, which—as he says—is only a selection.

The biographical literature contains only little information illuminating ‘Ata’s relationship with, and way of dealing with, traditions. We learn from an eyewitness that in his circle hadiths were presented, both those which he had himself transmitted and others, and that

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781 Ibn Ḥajar, Tahdhib, vol. 7, p. 200. The selective character of such statements of Ibn Ḥajar’s is also emphasized by Juynboll, Muslim Tradition, p. 109, note 58.
upon questioning from his students he specified whether a statement he had made was his personal opinion (ra'y) or a tradition (atha, 'ilm).

The fact that this was not always externally apparent in his teachings implies the absence of isnads. This also fits the answer which 'Ata' is supposed to have given a listener from Kufa upon his asking from whom his legal solution derived: "That upon which the community (umma) agrees is stronger for us than the isnad." 

There is no concrete indication that 'Ata' possessed written notes. It is true that in the first half of the second/eighth century there existed a booklet with traditions which 'Ata' heard from Companions of the Prophet, but it is not clear whether they were compiled by 'Ata' himself or by his son Ya'qūb, who belonged to his circle of students. According to the statement of Sufyān ibn 'Uyayna (d. 198/813-4), who examined it, it contained only a fraction of the 'Ata' traditions known to him. Since 'Ata' had also been an elementary school teacher (mu'allim), it was customary in his classes to write down questions and answers, he encouraged his students to do so and even aided them with paper and ink, the possibility cannot, however, be precluded that he himself sometimes took notes as well.

The biographers have collected a number of traditions which illustrate 'Ata's virtues and his piety. He is supposed to have given alms for his parents—probably on the occasion of the Ḥīd al-Fitr (the holyday of breaking the fast)—, although they were dead, and only worn very simple clothing. The mark of prostration was visible on his forehead; his zeal and his way of performing the salāh were extolled by his students. Even when he had become old and weak, he used to stand up for the salāh and in this posture, without mov-

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785 Ibn Ḥātim, Taqdimā, p. 39.
786 Cf. al-Dārimi, Sunan, vol. 1, p. 106.
787 Azami, Studies in Early Hadith Literature, p. 80 (following Ramhurmuzi, al-Muhaddith al-fāṣil bayna l-rāwī wa-l-wāfī (MS), 35 b. This work, which has since been edited, was not accessible to me.
ing, recite 200 verses of the surat “al-Baqara.”792 The holy mosque of Mecca was his home, which for decades he did not leave even at night to sleep.793 He is supposed to have participated in the hajj 70 times.794 ‘Atā’ colored his hair and beard with hinnā’ and sufra.795

None of these tesserae, which I have taken from works of different dates and assembled into a biography, if a meager one—the same method was followed by the Muslim biographers themselves—makes the impression of an intentional forgery. This does not preclude the possibility that the statements about him and traditions from him contain exaggerations, rounding of numbers, false conclusions and errors. This is already clear from the fact that there are discrepancies on some points of his life history. These, however, can in part be explained with reference to their history of transmission.

The question whose mawla he was is probably to be decided in favor of the family of Abū Khuthaym al-Fihri. The variations which occur in the name are based partially on refinements and partially on errors in transmission. Ibn Sa’d names this family without hesitation, while Khalīfa ibn Khayyāt, who brings the Banū Jumāh into play in addition to the Banū Fihr, is uncertain and clearly had no precise information about it.

Among the various statements about ‘Atā’s year of death, al-Dhahabī considers the year 114/732 the best verified.796 This is probably by reason of the following tradition: Ḥāmīd ibn Salama (d. 167/783–4), a Basran scholar, reports that in this year he came to Mecca and ‘Atā’ was still alive. He wanted to go to him after the period of fasting, probably to hear him lecture. ‘Atā’, however, died in the course of Ramaḍān.797 The date 115/733 could be explained by the fact that reports from Mecca usually were spread by returning pilgrims, which could lead to confusions between years. On the other hand, the date 115 derives from students of Ibn Jurayj—Sufyān

796 See p. 248.
ibn ‘Uyayna, Muḥammad ibn ‘Umar al-Wāqīdī, Ibn ‘Ulayya—
and clearly goes back to ibn Jurayj himself. As a Meccan and a
former student of ‘Aṭā’ī’s he must have been particularly affected by
his death, which would tend to speak in favor of his statement. The
year 114 is probably based on an error of Hammād’s. The date 117
is documented only in Khalīfa ibn Khayyāt and is supported by no
further source. Since the provenance of his information is unknown,
it should be classed as probably erroneous. Perhaps it is based on
a confusion between sab’a and arba’a. No motive is discernible for an
intentional falsification.

Age and year of birth are usually problematic for figures of the
first/seventh century, since they often did not known this themselves.
Variations of a few years are thus preordained. The statement that
‘Aṭā’ī was 88 years old at his death derives from Ibn Jurayj’s stu-
dent al-Wāqīdī, who presumably has it from Ibn Jurayj. On the
other hand, the statement that he was born when two years of the
caliphate of ‘Uthmān had passed is from ‘Aṭā’ī himself. Accordingly,
at his death in the year 115/733 he would already have been 90
years old. This number is in fact named by al-Dhahabī, but with
him it seems to be only an approximate, rounded estimate which is
not based on the ‘Aṭā’ī tradition. The year 25/646 is most likely as
the year of birth. 27 is based on the stated age of 88 years and is
not quite as credible, but approaches the probably correct date very
closely. The statements that he lived to be 100 and was born in
the caliphate of ‘Umar deviate from this significantly. Here one might
be tempted to see an intentional falsification, which would have had
the motive of making it possible for ‘Aṭā’ī to have more contacts
with Companions of the Prophet than was actually the case. However,
it seems to me questionable that this is the original background. The
statement that ‘Aṭā’ī lived 100 years goes back to Ibn abī Laylā (d.
148/765–6), who attended ‘Aṭā’ī’s lectures for a while but did not
number among his permanent students. That Ibn abī Laylā, who is

\footnote{Ibn Ḥajar, op. cit.}
\footnote{Ibn Sa’d, Ṭabaqāt, vol. 5, p. 346.}
\footnote{See p. 248, note 749.}
\footnote{Were one to consider this advanced age implausible, one would have to place
‘Aṭā’ī himself under the suspicion of having consciously misstated his date of birth.}
not considered one of the critical Hadith scholars, already had the aforementioned motive for forgery is improbable. 100 is probably meant more as a symbolic number of very great age than as an exact figure. Since al-Dhahabi's placement of 'Atâ''s birth in the caliphate of 'Umar is not verified by early sources, it probably derives from calculations using Ibn abî Laylâ's statement of age or it results from a misreading of the name of the caliph. Al-Dhahabi may have preferred this because he was clearly concerned to dispel possible doubts as to 'Atâ''s reliability. Both, the high age and the early birth, are thus unhistorical, but—at least originally—probably not intended as deliberate falsifications.

The discrepancies in the valuation of 'Atâ''s traditions are explained by the development of the discipline of Tradition and of Hadith criticism. In the first half of the second/eighth century people collected in a much more carefree way, and the demands made on hadiths were not yet as strict as they would later become. The reputation of the person from whom one transmitted still played a large role and masked possible defects in the evidence of the provenance of the tradition. Traditions from famous tabi'un were thus coveted as such. At a growing remove from them, and with the enormous growth of the Hadith material, from the second half of the second/eighth century the demand for continuous statements of transmission—which at the beginning was probably directed primarily at the links of the second/eighth century—became louder. In this way, however, the traditions of the tabi'un, which had no or defective isnâds, also came into the crossfire of criticism. This explains the objections which the critical Hadith scholars of the end of the second and the third/ninth century had against some of 'Atâ''s hadiths.

The growing number of 'Atâ''s informants and students is primarily conditioned by the fact that in the early works only a few names are more or less arbitrarily selected. It is only Ibn Ḥajjar who—based of course on his source al-Mizzî—attempts greater completeness and systematization. On the other hand, it should be taken

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805 Ibn abî Laylâ's statement that he made the ḥajj seventy times is probably also a rough estimate. Cf. Ibn Khalikân, op. cit.
806 al-Dhahabi, Tadhkira, vol. 1, p. 98.
807 This becomes very clear in al-Dhahabi, Mizzân, vol. 2, p. 197.
808 Also see Juynboll, Muslim Tradition, p. 177 (a statement of Shu'ba ibn al-Ḥajjâj, d. 160/776–7).
into account that the scholars of the third/ninth century sometimes made stricter demands on traditions from Companions of the Prophet than later generations. They did not accept some of ‘Aṭā’ī’s informants named in Ibn Ḥajar, since they doubted his samāc from them. They were less interested in whether the traditions in question actually derived from ‘Aṭā’ or were merely fathered on him. Other traditions of ‘Aṭā’ they rejected because of their state of transmission after ‘Aṭā’. Abū Nu‘aym collected 34 hadīths of the Prophet which supposedly derive from ‘Aṭā’ and are outerly continuous. Only eight of them are categorized as saḥīh. This shows that there were more traditions from ‘Aṭā’ in circulation—authentic and forged—than were accepted by Hadīth criticism. They appear again and again in later collections, and from them the later biographers draw their knowledge about ‘Aṭā’’s authorities and students who are not mentioned in the older biographical works. The information about ‘Aṭā’’s informants and students thus cannot be considered definitely reliable; it is based only partially on biographical traditions, and partially on isnāds. As far as I can see, it does not contain intentional falsifications. The groundlessness of such an assumption is also shown by the fact that precisely Ibn Ḥajar, who has the most names, questions direct contact with some of the persons whom he himself enumerates on grounds of age, and thus considers the corresponding isnāds to be defective.

In the biographical material about ‘Aṭā’ there are only a few texts which nourish the suspicion that they are forged or intentionally altered:

The following text is contained in Ibn Ḥajar: Khālid ibn abī Nawf—‘Aṭā’: “I have met 200 of the Companions of the Prophet.” In view of the significance that this “meeting” of informants later had in the Muslim discipline of Tradition, and taking into consideration the fact that it cannot be inferred from the tradition of Ibn Jurayj that ‘Aṭā’ referred to numerous contacts to Companions of the Prophet, it is natural to suspect that this statement was forged and fathered on ‘Aṭā’. Older variants of this text show, however, that such a conclusion would be overly hasty. In Ibn Ḥajar only a fragment is preserved. ‘Aṭā’’s statement runs in its entirety: “I met

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200 Companions of the Prophet in this mosque—i.e., in the mosque of the Haram; when the imām said: ‘wa-lā l-dāllīna,’ they answered aloud: ‘Amen.’

Thus it is not personal, individual contact to 200 persons which is meant, as Ibn Ḥajar’s version suggests, but a mass meeting; the number represents only an estimate, ‘Atā’ī’s age is unspecified, and transmission from them is not in question. Since the context is lacking, it remains unclear what ‘Atā’ intended by this comment. Such a statement on his part is not unthinkable. Textual reports that distort the meaning as does that in Ibn Ḥajar, however, occur rarely.

Is there a motive behind it? It could also be carelessness.

The fact that the traditions in the biographical literature are usually isolated from the concrete situations in which they originated, that we do not know and cannot reconstruct the reason, context, addressees, and so forth of a dictum, must be taken into account in deciding whether a forgery is present or not. An example is the tradition of ‘Abd al-‘Azīz ibn Rufay, a Meccan who died in 130/747-8 or 131.

‘Atā’ was asked about a problem and said: “I do not know (lā adrī).” Thereupon someone said to him: “[Why] do you not give your opinion about it?” [‘Atā’] answered: “I would be ashamed before God for people on earth to profess (yudāna) my opinion (ra’f).”

Since on the basis of Ibn Jurayj’s tradition from ‘Atā’ it is established that the latter taught primarily his own ra’y, the dictum does not seem to fit ‘Atā’. About it Schacht—although he had only two traditions of ‘Atā’ as a basis for comparison, whose authenticity he was just as unable to prove—reached the verdict: forged. With what justification? What did a forger hope to achieve by fathering such a statement on ‘Atā’, of all people, of whom—at least in the second/eighth and third/ninth centuries—it was surely known that his fiqh consisted mainly of expressions of his opinion? Are there not

811 Ibn Ḥibbān, Mashāhir, no. 1593. Similarly al-Bukhārī, Ta’rīkh, vol. 3/2, p. 464, but here Khālid ibn abi Thawr is named as a transmitter, which is probably an error—of later transmitters. I could not verify a person of this name.


813 Cf. Ibn Ḥibbān, Mashāhir, no. 616.


815 Schacht, Origins, pp. 131, 251.
conceivable situations in which 'Atā’ could have made such a statement, although it contradicted his practice? For example, towards the end of his life the trend towards shoring up legal solutions with traditions could have been so pronounced that he paid tribute to it. It would also be conceivable that the presence of certain persons or simply a disinclination to answer the question prompted him to make the statement. Since many biographical reports are torn from their original context, one must be very careful with accusations of forgery. Since among the many reports from and about ‘Atā’ in the biographical literature real forgeries can scarcely be demonstrated, in this case as well I consider the accusation of forgery purely on the basis of the dictum to be insufficiently grounded. Schacht adduces as a further argument that the isnād “in its lower, historical part” contains exclusively transmitters of the city of Rayy. 816 Aside from the fact that the distinction between a historical and a non-historical part of the isnād is completely arbitrary, this cannot count as a criterion of forgery, since transmission by students who come from the same place as their teacher or settled there need not for this reason be worse than that of auditors who sojourned there only temporarily. That such a statement was later eagerly seized upon by opponents of ra’y-based fiqh is not surprising. If it was a forgery by scholars of the city of Rayy, one must ask oneself why they resorted to the Meccan ‘Atā’ at all, when from the middle of the second/eighth century—the earliest possible date of forgery according to Schacht’s view—Companions of the Prophet or the Prophet himself had supposedly already taken the place of the tābi’un as authorities.

One may have doubts about the authenticity of texts which contain praise of ‘Atā’’s legal scholarship by Companions of the Prophet. Ibn Ḥajar cites from Khalid ibn abī Nawf: Ibn ‘Abbās said: “You throng around me, Meccans, while ‘Atā’ is among you!” 817 This tradition is suspicious for three reasons: It is questionable whether ‘Atā’ was already active as a muftī or legal teacher in the lifetime of Ibn

816 Schacht, Origins, p. 131. ‘Abd al-‘Azīz ibn Rufay’ was a Meccan (cf. Ibn Hibbān, Mashāhīr, no. 616); the following informant, Abū Khaythama [Zuhayr ibn Mu‘āwiya], came from Kufa, lived for a time in Damascus and in the jazīra, and died in 173/789–10 or 174 (cf. Khalfīa ibn Khayyāt, Tabaqāt, p. 168; Ibn Hibbān, Mashāhīr, no. 1482; al-Dhahabī, Tadhkira, vol. 1, p. 233). Schacht means only the next two transmitters.

'Abbās, although it is not impossible. More serious is the fact that Khalīd ibn abī Nawf does not name an informant from whom he got the statement of Ibn 'Abbās. Direct contact to him is precluded by reasons of age. In addition there is the fact that almost literally the same thing is transmitted from Ibn 'Umar. This version appears for the first time in Ibn abī Ḥātim (d. 327/939) and goes through Sufyān—either Ibn 'Uyayna or al-Thawrī—back to 'Umar ibn Sa‘īd, a Meccan who was a contemporary of Ibn Jurayj. He claims to have the information from his mother. In later works 'Umar ibn Sa‘īd becomes 'Amr ibn Sa‘īd, which is surely erroneous, since no person of this name fits chronologically and geographically; and instead of his mother his father functions as an informant, which looks like an ex post facto improvement of the isnād but could also be based on the negligence of a transmitter.

The tradition about Ibn 'Umar is not only more probable for historical reasons—after the death of Ibn 'Abbās, 'Atā‘ became the leading legal scholar of Mecca—but also better authenticated—the naming of the mother speaks rather against than for a forgery. It is thus to be presumed that the Ibn 'Abbās dictum is merely a plagiarism of the Ibn 'Umar tradition. Whether it is an intentional forgery by Khalīd ibn abī Nawf or merely an inadvertent confusion, I do not venture to decide.

A similar statement about 'Atā‘ with a supplement is also transmitted from Abū Ja‘far. However, it seems to be independent of the Ibn 'Umar tradition, fits with Abū Ja‘far’s other laudatory comments about ‘Atā‘, and is also impeccable with respect to the transmitter. Both dicta, that of Ibn 'Umar and that of Abū Ja‘far, can thus—until the opposite is proven—be considered trustworthy.

Also suspect, finally, is the report that 'Atā‘ put his slave women at the sexual disposal of his guests. Ibn Khallikān found it in the "Sharḥ mushkilāt al-waṣīf wa-l-wājīz" of Abū l-Futūh al-‘Ijadi. It could have been invented in order to discredit 'Atā‘. It seemed very odd
even to Ibn Khallikan, and he seems to have asked around among his colleagues who were better versed in the history of early fiqh, who informed him that ‘Aṭā’ was of the opinion that sexual relations with [other people’s] slave women was permissible with the permission of their owners. Nevertheless he considers the report about ‘Aṭā’’s behavior improbable, specifically for two reasons: masculine pride and jealousy would have prevented him, and such an opinion on the part of such an outstanding “imām” was utterly inconceivable. 823

His arguments cannot convince the historian. He has at his disposal a source, in the form of the tradition of Ibn Jurayj from ‘Aṭā’ in the Muṣannaf of ‘Abd al-Razzāq, with which it is at least possible to decide the question of whether ‘Aṭā’ advanced the view attributed to him:

Ibn Jurayj said: ‘Aṭā’ reported to me (akhbāramī) [on the question of whether a man could allow another his slave for sexual intercourse]: “[That] was practiced [before]; the man even allowed his slave woman to his [male] slave, son, brother, and the woman [her slave woman] to her husband. [However], I do not like people to do this, and I have not heard [permission for it] from any dependable [informant], but it was reported to me that the man [may] send his slave woman to his guest.” 824

There are also traditions to this effect from ‘Amr ibn Dīnār, Ibn Tāwūs and others from Tāwūs and Ibn ‘Abbās. 825 Thus, this opinion seems to have been advanced by the “school of Ibn ‘Abbās.” To this extent, the information that Ibn Khallikan received from his colleagues is correct. His argumentation that, even if it were true, theory and practice are different kettles of fish may be ingenious, but it is not convincing. To a Muslim of the seventh/thirteenth century like Ibn Khallikan, who was familiar only with forms of concubinate which had been established for several centuries and defined in the classical madhhabs it must have been a strange idea that in the early period of Islam not only were views other than those of the classical madhhabs expressed, but people acted accordingly, and that masculine pride (muru’ā) and jealousy (ghayra) are also products of societal norms. It is true that it cannot be proven that ‘Aṭā’ acted as he thought as long as the source from which al-‘Ijī’s report derives

824 AM 7: 12850.
825 AM 7: 12851–12854.
remains unknown, but such behavior in Mecca in the first/seventh century is not as impossible as Ibn Khallikān assumes, as the practice of mut'a "marriages" there also shows.\textsuperscript{826}

From what sources is the biographical literature's knowledge about 'Atā' drawn? Altogether about 60 persons are named from whom the majority of the reports about him ultimately derive. About two thirds of them met 'Atā' themselves; among them are a sahābi (Ibn 'Umar), six contemporaries and colleagues of 'Atā' (for example, Abū Ja'far, Qatāda, Abū l-Zubayr, 'Ubayd Allāh ibn abī Yazīd, Maymūn ibn Mihrān), some of whom can also be categorized as auditors of 'Atā' s, 25 students or auditors of 'Atā' s (like Ibn Jurayj, from whom by far the most direct information about 'Atā' derives, Qays ibn Sa'd, Ibn abī Laylā, al-Awzā'i, Abū Ḥanīfa, to name only the best known). Of six people it is said only that they saw 'Atā', among them may also be auditors of 'Atā' s. Classified according to their geographical affiliations, the Meccans form the largest group of direct informants (10), followed by Kufans (8), Medinans (4), people from the Jazīra and Iran (3), from Basra and Damascus (two each). 11 names cannot be placed, or cannot be placed with assurance.\textsuperscript{827}

A third of the statements about 'Atā' come from 18 persons who themselves had no contact with 'Atā'. Five of them are students or auditors of students of 'Atā' s—usually of Ibn Jurayj (for instance Ibn 'Uyayna, who is also the most important transmitter of eyewitness material, al-Wāqidi, Yaḥyā ibn Sa'd al-Qaṣṭān, Ibn 'Ulayya)—, 11 or 12 students or auditors of former students of Ibn Jurayj or other students of 'Atā' (among them al-Shāfi'i, Āḥmad ibn Ḥanbal, ‘Alī ibn al-Madīnī, Khalīfa ibn Khayyāt, Muḥammad ibn Sa'd and al-Bukhārī). Only two or three (Abū Ḥātim, Abū Dāwūd) belong exclusively to the fourth generation after 'Atā'. Among their teachers were the aforementioned figures of the first half of the third/ninth century.\textsuperscript{828}

Since these scholars, who flourished from the second half of the second century, are largely also the transmitters of eye- and earwitness reports of 'Atā', it is to be assumed that their statements and judgments are largely based on traditions about 'Atā' from the first half

\textsuperscript{826} See pp. 283 f.
\textsuperscript{827} The geographical classification is largely based on the information in Khalīfa ibn Khayyāt, Ṭabaqāt and Ibn Ḥibbān, Mashāhir.
\textsuperscript{828} The statements about teacher-student relationships are based on al-Dhahabī, Tadhkira and Ibn Ḥajar, Tahdhib.
of the second/eighth century, which they are only reporting, summarizing or utilizing, without naming the source. The fact that many reports are documented for the first time only in the later works does not mean that they were forged. Rather, it can be explained by the fact that on the one hand the works before Ibn Ḥajar made only a small sampling of the reports accessible to them and, on the other hand, the sources used by Ibn Ḥajar and others before him are sometimes not preserved or not yet accessible.

2. ‘Amr ibn Dīnār

His epithet was al-Athram (the gap-toothed). Like ‘Aṭā’, he had the kunya Abū Muḥammad; and like him, he was a mawlā, specifically of Mūsā ibn Bādhān\(^{829}\) from Madhhij (sic)\(^{830}\)—variants: mawlā of Bādhān\(^{831}\) (of the abnā’ [al-Furs]),\(^{832}\) of the family of Bādhān,\(^{833}\) and of Banū Jumāḥ\(^{834}\)—variant: Banū Makkūm. This Bādhān is supposed to have been a governor of the Sassanids in Yemen. As ‘Amr’s birthdate the year 46/666–7 is sometimes named.\(^{835}\) It is clearly based on a calculation assuming 126/744 as the year of his death and a lifespan of 80 years. While 126 as a year of death is probably correct, since it is transmitted by his student Ibn ‘Uyayna\(^{836}\)—variants: 125


\(^{830}\) Ibn Ḥibbān, *Thiqāt*, vol. 5, p. 167. Probably Banū Madhhij is meant. Mūsā ibn Bādhān is said to have been a mawlā of them or of the Banū Jumāḥ. Cf. al-Mızzī, *Tadhkīrā*, vol. 5, p. 408 (no. 4949)


\(^{832}\) al-Shīrāzī, *Ṭabaqāt*, p. 70.


or 129—, the number 80 should be regarded only as a rough estimate which apparently derives from al-Wāqidi (d. 207/822–3). 'Amr's precise age was not known to his direct students, as Ibn 'Uyayna reports. For this reason, those Muslim biographers probably come closest to the truth who assume that he lived to be “more than 70 years” old or was born “around” the year 46/666–7, even if they name no sources for this.

About the place or places in which 'Amr grew up and received his education nothing is transmitted. Since according to Ibn 'Uyayna the “companions,” i.e. students, of Ibn 'Abbās—and probably also the latter himself—were among his most important teachers, he probably spent his time primarily in this circle, i.e. in Mecca and al-Taʾif. At the latest around the turn of the century, he was so famous as a scholar of Mecca that Tawlis, living in Yemen, advised his son to study with him. He lived at some distance from the mosque where he held his sessions, and came to it regularly on a donkey. Although it is not reported that he had a physical disability, his students had to carry him into and out of the mosque. Sometimes he also spent the night there in teaching and prayer, but Ibn 'Uyayna, who studied with him in the last years of his life, does not seem to have witnessed this himself. After 'Aṭāʾ's death the Umayyads offered him the post of muftī of the city of Mecca, which was endowed with a stipend from the state treasury, but 'Amr declined.

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successor was his student Qays ibn Sa'd, who, however, died after only a few years.\textsuperscript{848} After this 'Amr seems to have assumed the post of muftı after all and to have held it until his death. He was succeeded in it by Ibn abî Najîh (d. 130/747–8 or 131).\textsuperscript{849}

'Amr ibn Dīnár had an aversion against his students' recording his teachings in writing. This applied both to his legal views—with the justification that he might perhaps abandon them the next day—and to his traditions. However, his attacks on recording in writing show that this was customary among some of his auditors. Sufyân ibn 'Uyayna claims that he wrote down nothing from 'Amr, but that he and other students learned his traditions—surely it was primarily these which were in question—by heart.\textsuperscript{850} On the other hand, an eyewitness reports that Ibn 'Uyayna had tablets (alwāh) with him at 'Amr's classes,\textsuperscript{851} from which it can be concluded that he did write down 'Amr's traditions initially, but used his notes only as mnemonic devices until he had committed them to memory. This can also be inferred from the fact that, according to his own statement, 'Amr forbade Ibn 'Uyayna to write down the hadîths of his teacher—with the exception of their beginnings (aṭrâf)—for Ayyûb [ibn abî Tamîma]\textsuperscript{852} from Basra, when the latter was staying in Mecca.\textsuperscript{853} By forbidding note-taking and the spreading of his teachings in written form, 'Amr probably wanted to urge people to study with him and hear traditions from him personally.\textsuperscript{854}

From some reports about 'Amr one gets the impression that he was somewhat eccentric: not only did his students have to carry him, which may have had other reasons, but it is also reported that to express his displeasure he threw himself weeping to the ground or


\textsuperscript{850} Ibn Sa'd, \textit{Tabaqāt}, vol. 5, p. 353 (source: Ma'mar [ibn Râshid], d. 153/770).

\textsuperscript{851} Op. cit.

\textsuperscript{852} Ibn abî Ḥâïm, \textit{Jarh}, vol. 2/1, p. 226 (source: Ḥammâd ibn Zayd, d. 179/795–6).

\textsuperscript{853} Ayyûb ibn Mûsâ is out of the question as a Meccan who could hear 'Amr himself. That it was Ayyûb ibn abî Tamîma can be inferred indirectly from Ibn Sa'd, \textit{Tabaqāt}, vol. 7/2, p. 42 (line 18): Ayyûb together with the Basran Abû 'Amr ibn al-A'lā?.

\textsuperscript{854} Ibn Sa'd, \textit{Tabaqāt}, vol. 5, p. 353; cf. also vol. 7/1, p. 161 (line 14).

pretended to have a stomach ache or to be blind, and that he withheld answers from questioners without any discernible reason, which earned him the reproach of having bad manners.\footnote{Op. cit., p. 353. Abû Nu‘aym, *Hilya*, vol. 3, p. 348 (sources: Ibn ‘Uyayna, Iyyâs ibn Mu‘awiyâ, Hammâd ibn Zayd, Ma‘mar).} In contrast to ‘Ata‘ and Jurayj, he did not dye his hair.\footnote{Ibn Sa‘d, *Tabaqât*, vol. 5, p. 353 (source: Sufyân [ibn ‘Uyayna]). Also see pp. 253, 283.}

‘Amr ibn Dînâr was highly regarded as a scholar. Very positive judgments are transmitted from two of his teachers: Tâwûs advised his son to study with ‘Amr,\footnote{Ibn Sa‘d, *Tabaqât*, vol. 5, p. 353 (source: Ibn Tawiis, d. 132/749-50).} and ‘Ata‘ is supposed to have recommended to his students that they study with ‘Amr after his death,\footnote{Abû Nu‘aym, *Hilya*, vol. 3, p. 348 (here erroneously Tâwûs instead of Ibn Tâwûs in the *ismâ‘id*). al-Shirâzî, *Tabaqât*, p. 70.} which Ibn Jurayj, for instance, actually did.\footnote{Abû Nu‘aym, op. cit.; al-Shirâzî, op. cit.; Ibn Hajar, *Tahdhib*, vol. 8, p. 30 (source: Sufyân ibn ‘Uyayna without an informant).} Colleagues of approximately the same age as ‘Amr like the Meccan Ibn âbî Najîh\footnote{Ibn Hajar, op. cit., p. 30 (source: Ibn ‘Uyayna).} and the Medinan al-Zuhri\footnote{Ibn Hajar, *Tahdhib*, vol. 2, p. 27. al-Dhahâbî, *Tadhkira*, vol. 1, p. 113. Ibn Hajar, *Tahdhib*, vol. 8, p. 29.} gave him the highest praise. By some students and auditors—for instance Ibn ‘Uyayna, Shu‘ba ibn Hanbal, Abû Ḥâtim and al-Nasâ‘î also considered him dependable and trustworthy, even more so than his Basran colleague and contemporary Qatâda ibn Dî‘âma.\footnote{Ibn Hajar, *Tahdhib*, vol. 8, p. 30. Such comparative evaluations probably have the character of a topos and should be understood as a stylistic device, since opposite evaluations occur in the articles of the figures rated lower. Cf. Juynboll, *Muslim Tradition*, p. 163, note 4.} The positive estimation of ‘Amr as a *Hadîth* transmitter, which is surprising in light of Ibn ‘Uyayna’s remark that he transmitted “according to the meaning” (*bi-l-*ma‘âni*), that is, not
necessarily literally,865 also runs through the later rijāl works.866 Only Ibn Ḥajar draws the conclusion from some remarks of scholars of the third/ninth century that he is to be considered a mudallis,867 that is, that he transmitted hadiths from Companions of the Prophet from whom he did not hear them himself. The provenance of the statement that he was a Shiʿite, which appears late and which al-Dhahabī dismisses as unfounded (bāṭil),868 could not be determined.

For the Hadith scholars it was a vital question which of the Companions of the Prophet ʿAmr ibn Dīnār heard himself. Al-Bukhārī (d. 256/870) names only Ibn ʿAbbās, Ibn ʿUmar and Ibn al-Zubayr. ʿAbd Allāh ibn Jaʿfar [ibn abī Tālīb] he is only supposed to have seen.869 Ibn abī Ḥātim (d. 327/939), citing his father (d. 277/890–1), adds the sahāba Jābir ibn ʿAbd Allāh and Abū Shurayh.870 It is explicitly disputed by scholars of the third/ninth century that he heard Abū Hurayra and al-Barāʾ ibn ʿĀzib.871 In addition, Ibn ʿAmr and al-Miswar are named by al-Nawawī (d. 676/1277–8),872 Anas ibn Mālik by al-Dhahabī (d. 748/1347–8),873 and Abū Hurayra, Abū Ṭufayl and al-Sāʾib ibn Yazīd by Ibn Ḥajar (d. 852/1448–9).874 Since a very early tradition exists only about his samāʾ from Ibn ʿAbbās,875 information about sahāba informants is to be treated with caution, since they could be extrapolated from available traditions whose authenticity is not established.

The list of tābiʿūn from whom ʿAmr is supposed to have transmitted also swells in the biographical works in the course of time, and in Ibn Ḥajar reaches the number of 27 names, without making a claim of exhaustiveness.876 Most of them probably come from the isnāds of the traditions of ʿAmr available to Ibn Ḥajar, and thus are not necessarily reliable. Of this generation, only Ibn ʿAbbās' stu-

872 al-Nawawī, Taḥdīḥ, vol. 2, p. 27.
874 Ibn Ḥajar, Taḥdīḥ, vol. 8, p. 29.
876 Ibn Ḥajar, Taḥdīḥ, vol. 8, p. 29.
students Tawüs, Sa‘íd ibn Jubayr, ‘Ikrima, ‘Aṭā’ and ‘Amr ibn Kaysân are documented by early biographical sources as his teachers.877 The enumerations of his students and hearers are based partially on the biographical traditions about him and also partially on isnâds. With them, as well, the later sources sometimes know other names than the earlier ones. Ibn abî Ḥātim’s list of students consists of five people—some well-known students, like Ibn Jurayj for instance, are missing—, and Ibn Ḥajar’s of 24 names.878 There can be no sweeping answer to the question of whether all of them really attended ‘Amr’s lectures.

The critical Ḥadîth scholars of the third/ninth century accept without reservation only a small portion of the Ḥadîths of the Prophet deriving from ‘Amr ibn Dînâr. This is shown by the selection of 21 such texts in Abû Nu‘aym (d. 430/1038–9), of which only five receive the evaluation sahih, muttafaq ‘alayh (flawless, generally accepted) on the basis of their isnâds.879 The deprecation of the others generally implies no doubt in ‘Amr’s credibility or dependability, but is based on a critical examination of the text’s state of transmission, especially after ‘Amr. Stated clearly: the reference to ‘Amr is considered questionable.

If one investigates the sources on which ‘Amr’s biography primarily draws, it emerges that approximately two thirds of the reports derive from persons—twenty-three are named—who were in direct contact with him. Of this group, three-fourths of all information comes directly (75%) or indirectly (25%) from his student Ibn ‘Uyayna, the rest from other students or contemporaries of ‘Amr’s. Of the statements of those who did not know ‘Amr ibn Dînâr themselves, about half come from students of his students—like al-Fâqî ibn Dukayn, Yaḥyâ ibn Ma‘în, Yaḥyâ ibn Sa‘íd al-Qâṭîn, Aḥmad ibn Ḥanbal or al-Wâqidi—, and half from the generation of their students—like Abû Zur‘a, al-Bukhârî, Abû Ḥâtim, al-Tîrmîdhi, al-Nasâ‘î. They are primarily judgments about ‘Amr’s quality as a muḥaddith and about his informants. They contribute little to his actual biography.

Neither in terms of content nor in terms of their history of transmission do the biographical traditions about ‘Amr ibn Dînâr provide clues that they are completely or partially forged. It is true that

the material collected in the biographical works contains some gaps—for instance, indications of the importance of Abū l-Sha' thā' as his teacher, which can be inferred from his texts, are lacking—and it is one-sided, specifically, strongly marked by the perspective of Ibn ʿUyayna, but by and large it can be regarded as trustworthy.

3. Ibn Jurayj

Behind this commonly-used name is hidden ʿAbd al-Malik ibn ʿAbd al-ʿAzīz ibn Jurayj, thus actually Ibn ibn Jurayj. His grandfather Jurayj (George) was a slave of Byzantine origin (rūmī = “Roman”) in the possession of a certain Umm Ḥābib bint Jubayr, the wife of ʿAbd al-ʿAzīz ibn ʿAbd Allāh ibn Khalīd ibn Asīd ibn abī l-ʿĪs ibn Umayya. Jurayj's descendants belonged to the clientel of this Umayyad clan, al-Khalīd ibn Asīd—variants: Ibn Umayya Khalīd, Abī Khalīd ibn Asīd—and took their nisba, al-Qurashī.
Umawi. Ibn Jurayj’s father is already supposed to have been a faqih in Mecca. However, not much is known about him. Ibn Jurayj had the kufyya Abū l-Walīd, and probably also a second: Abū Khālid. He was born in the year 80/699. This date is not based on counting back, but on the tradition that he came into the world in the year in which Mecca was hit by a natural disaster, a flood probably caused by torrential rains, which caused great damage in the city (ṣām al-juḥāf). This tradition probably derives from Ibn Jurayj himself. On the other hand, the statement that he was born in the seventies is to be classed either as a concession to the reports about his age or as a confusion with his age. According to the statement of his student Muhammad ibn ‘Umar [al-Wāqīḍī], Ibn Jurayj died on the eleventh of Dhu ’l-Hijja of the year 150/768. Because of its exactitude, this date is to be preferred over all other statements—105/723–4, 147/764–5, 149/766–7, 151/768.
160/776–7901—which all come from later sources, and of which probably only the discrepancies of plus or minus one year actually go back to scholars of the first half of the third/ninth century, while the other dates are based on errors in transmission. The date 150 is also supported by the tradition of Khalid ibn Nazzār al-Aylī, who wanted to study with Ibn Jurayj but was too late to meet him alive.902 105 and 147 are probably the products of misreadings of the numbers 150 (khams instead of khamsīn) and 149 (sab' instead of tīs');903 160 is attested only late and without an informant. Consequently, Ibn Jurayj lived to be 70. This obvious number is, strangely, nowhere attested. On the contrary, it is claimed that he was older than 70 at his death. Ibn Sa'd reports 76 years from al-Wāqīdī,904 although he names 80 as the year of birth and 150 as the year of death. In addition to this odd discrepancy in Ibn Sa'd, it is conspicuous that the number 76 never again appears in later sources, although Ibn Sa'd was frequently used as a source. For this reason, I suspect that the number 76 originally was not in Ibn Sa'd at all, but that it derives from a misreading of nayyi'ī wa-sab'in (a good seventy), which could have been intended either as a rough or—more likely—as an exact statement of age. Assuming that Ibn Jurayj was born at the beginning of the year 80, at his death in the month of Dhū l-Ḥijja 150 he would already have been almost 71. This would fit with the fact that 'Alī [ibn al-Madīnī] (d. 234/848–9) gives Ibn Jurayj's age as "over 70" (jāza/jāwaza l-sab'in),905 which simply represents another formulation of nayyi'ī wa-sab'in.906 On the other hand, the isolated and late claim that he was over 100907 is a pure figment of the imagination.

903 That khams was mistakenly read for khamsīn by later transmitters or by the editor can also be inferred from the fact that Khalīfa correctly places Ibn Jurayj in the ṭabaga of those born around 150, and al-Baghdādī, Ta'rīkh, vol. 10, p. 407, transmits this date from Khalīfa. 149 is reported from 'Amr ibn 'Alī and 'Alī ibn al-Madīnī; since both were students of Ibn 'Uyayna, this date may derive from him. The misreading of 147 instead of 149 in al-Bukhārī is thus likely, since 147 is isolated and Ibn Ḥībbān and al-Dhahābī, who used al-Bukhārī, have 149. Sab' and tīs' are easily confounded in undotted texts.
906 Perhaps al-Dhahābī's isolated birth date, "wulida sanata nayyi'īn wa-sab'in," is also based on a confusion of al-Bukhārī's statement of age, "wa-huwa ibn nayyi'īn (instead of: sit) wa-sab'ūna sanatan."
From the mode of dating Ibn Jurayj’s birth, one may infer that he was born in Mecca. Here he also received his education. Already at an early age—thus he himself related to his students—he had a lively interest in unusual poems and genealogies. Through a suggestion, he became aware of ‘Aṭā’ and wanted to join him as a student.908 When he came to ‘Aṭā’’s circle, however, the latter’s companion, the old ‘Abd Allāh ibn ‘Ubayd ibn ‘Umayr (d. 113/731-2) made it clear to him that he did not have the necessary prerequisites to follow ‘Aṭā’’s instruction; for Ibn Jurayj could not recite the Qurʾān, neither had he mastered the rules of inheritance (farīda). After he had learned all of that, he was accepted in the circle of ‘Aṭā’.909 That must have been around the middle of the nineties of the first/seventh century, when he was about 15 years old, since Ibn Jurayj stated that he studied 18 or 19 years910—variants: 17911 or 20912 years—with ‘Aṭā’, but left the latter before his death to study with ‘Amr ibn Dinār. The different numbers given can be explained in terms of the history of transmission or the context. The exact statement “18 or 19 years minus about a month” is most often attested and, as a lectio difficilior, is probably reliable. It derives from his student ‘Abd al-Wahhāb ibn Hammām. From him and his brother ‘Abd al-Razzāq is also transmitted the simple span of 18 years, which is probably a choice of the first of the two numbers made for reasons of brevity. The variant 17 years, which is also attributed to ‘Abd al-Wahhāb, is presumably a misreading of 19 (sab‘ instead of tīs‘), ‘Abd al-Wahhāb’s alternative. The number 20, which appears relatively late and for which no source is named, could nevertheless go back to Ibn Jurayj himself. In its context it is clearly intended as an estimated statement of time and is probably a rhetorically motivated exaggeration. If one takes 18 years as the period of study with

912 al-Shīrāzī, Ṭabaqāt, p. 71.
‘Aṭā’ and its end as 1–2 years before his demise, one reaches the years 95–96 as a starting point. The background of the break with ‘Aṭā’ is obscure, but a fellow student of Ibn Jurayj’s, Qays ibn Sa’d, who left ‘Aṭā’ with him, made hints from which it can be inferred that—as a result of age—his memory, and thus his qualities as a transmitter of traditions, declined.\textsuperscript{913} Traditions were, however, the trend of the time, and probably more in demand than ever. After ‘Aṭā’, Ibn Jurayj attended the circle of ‘Amr ibn Dīnār,\textsuperscript{914} who was more strongly oriented towards traditions than ‘Aṭā’, for seven more years, that is, approximately until 120/738. In this time he also attended the lectures of other scholars, for instance Ibn abī Mulayka, who died in 117/735 or 118, and Nāfī, the mawla of Ibn ʿUmar, who died in 118/736 or 119.\textsuperscript{915}

The biographical articles about Ibn Jurayj contain, in addition to such statements about his teachers deriving from Ibn Jurayj himself, lists of persons whose lectures he is supposed to have attended or from whom he allegedly transmitted. Among them are both teachers whose circles he attended for a relatively long time and informants whom he encountered only sporadically—if at all. Early there appear lists in which, in addition to ‘Aṭā’, two other students of Ibn ʿAbbās, Tāwūs (d. 106/724–5) and Mujāhid (d. 103/721–2) are named as informants from whom he heard material.\textsuperscript{916} Can one trust this information in view of Ibn Jurayj’s educational career as it has been depicted? Mujāhid lived in Mecca, and contact with him was easily possible for Ibn Jurayj. Tāwūs, on the other hand, taught in Yemen; at most, he could have met him during his stays in Mecca on the occasion of the hajj. The assertion that Ibn Jurayj heard material from the two of them derives from his student Yaḥyā ibn Saʿīd al-Qaṭṭān.\textsuperscript{917} Not only this speaks for its credibility; so does the comment of the same Yaḥyā, reported elsewhere, about \textit{what} he heard.

\textsuperscript{913} Ibn Ḥajar, \textit{Tahādhib}, vol. 6, p. 202 (source: Sulaymān ibn Ḥarb). But cf. also al-Shīrāzī, \textit{Tabaqāt}, p. 71, where other problems are also apparent.


\textsuperscript{916} al-Bukhārī, op. cit.

\textsuperscript{917} Ibn abī Ḥātim, \textit{Taqdima}, p. 245.
from them: a single hadith or a legal opinion from each. Ibn Jurayj’s meeting with them cannot have been more than an isolated occurrence. This fits, for example, with Ibn Hibbān’s statement, which surely goes back to earlier sources, that Ibn Jurayj had the tafsīr of Muḥāhid, which he occasionally cites, only from the written records of al-Qāsim ibn abī Bazza and had not heard it himself. In the later works, the list of informants from whom Ibn Jurayj transmitted swells more and more—among others, Ibn Shihāb al-Zuhrī, Ibn abī Mulayka, Abū l-Zubayr, Nāfi’, Ibn Ṭāwūs, Hīshām ibn ‘Urwa, Yahyā ibn Sa‘īd al-Anṣārī and ʿAmr ibn Shu‘ayb are added. Ibn Ḥajar expands the very incomplete information of earlier works about his teachers and his sources into a circle of 64 persons, whose enumeration he ends with the words “and many more.” Among them are most of the people whom I have worked out to be his more important sources on the basis of the texts contained in the Musannaf of ʿAbd al-Razzāq. Missing in Ibn Ḥajar are only Sulaymān ibn Mūsā, Dāwūd ibn abī Hind and Ibrāhīm ibn Maysara. Doubtless Ibn Ḥajar’s list is based not primarily on traditions about Ibn Jurayj’s informants, but on his own research on the basis of the isnāds known to him. For this reason it is not possible to reach a wholesale verdict on them, even if most of the names are credible.

The situation is similar with respect to the lists of Ibn Jurayj’s students and auditors. In early works they are short; in later ones they become more extensive: al-Bukhārī names only two, Ibn abī Ḥātim seven, al-Baghdādī 22, al-Nawawī eight, al-Dhahābī nine, and finally Ibn Ḥajar 49 names. Some of them go back to reports by these students themselves in which they speak of themselves or their teachers. One could name as examples, among others:

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919 Ibn Hibbān, Mashāhīr, no. 1153 (biography of al-Qāsim).
924 al-Baghdādī, Ta’rikh, vol. 10, p. 400.
927 Ibn Ḥajar, Tadhkīb, vol. 6, p. 403.
Muḥammad ibn ʿUmar [al-Waṣṣāl, ʿAbd al-Razzāq ibn Hammām, Sufyān ibn ʿUyayn and Yaḥyā ibn Saʿīd al-Qaṭṭān. Most, however, are presumably extracted from the isnāds of traditions.

In contrast to ʿAṭāʾ ibn ʿAbī Rabāḥ and ʿAmr ibn Dīnār, Ibn Jurayj was the author of a real book, and one of a completely new type. He himself asserted: “No one [before me] arranged (dawwana) traditions (ṣannāfa l-kutub) the way I did.”928 His student ʿAbd al-Razzaq supports this opinion: “The first who arranged books according to subject (ṣannāfa l-kutub) was Ibn Jurayj.”929 His book or books were thus a “mudawwand” or a “muṣannaf,” probably with the title “Kitab al-Sunan”; at least, this is the only title which—although only in the fourth century—is reported.930 Ibn al-Nadīm (d. 385/995), who was familiar with the book, writes that it “contained what sunan books generally contain, for example [a kitāb] “al-ṭahāra,” [a kitāb] “al-ṣiyām,” [a kitāb] “al-ṣalāḥ,” [a kitāb] “al-zakāh” and others.”931

Already the students of Ibn Jurayj speak sometimes of “his book”932 and sometimes of “his books.”933 In the latter case as well, however, they seem simply to have been speaking of the sunan work, which was divided into chapters called “books” which perhaps consisted of separate booklets. That only his sunan work was a real book emerges from a remark of Ibn Ḥanbal’s that Ibn Jurayj’s “Kitāb al-Tafsīr” was not a book, but was simply his lectures (“dictations”) transmitted by his students.934 Otherwise, his method of instruction was that his students read aloud from their copies of his book and he checked their correctness.935 Ibn Jurayj’s book was already known beyond the

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930 Ibn al-Nadīm, Fihrist, p. 316.


934 Cf. note 933.

boundaries of Mecca in his lifetime, and because of it students came to him from all over.\textsuperscript{936} He himself promoted it vigorously by showing it to other scholars to hear their advice and acquire additional material.\textsuperscript{937} Even the ‘Abbāsid caliph Abū Ja‘far al-Manṣūr (136/753–158/775)—according to the statement of ‘Abd al-Razzāq—, when he once came to Mecca, had “the Hadīth” of Ibn Jurayj brought to him and examined it.\textsuperscript{938} From this comment one may not conclude that Ibn Jurayj’s \textit{sunan} work was purely a collection of hadīths of the Prophet, like those known from the third/ninth century. That would be an anachronism.\textsuperscript{939} Rather, it is to be assumed that it largely contained what ‘Abd al-Razzāq transmits from Ibn Jurayj in his \textit{Musannaf}.

Ibn Jurayj’s and ‘Abd al-Razzāq’s opinion that no one before him had composed a book of this kind is naturally subjective. With the reservation that at least no earlier works of this kind were known to them, one can accept it. According to Ahmad ibn Ḥanbal (d. 241/855–6), Ibn Jurayj must share the rank of the first \textit{musannaf} with the Basran scholar [Sa‘īd] ibn ‘Arūba (d. 156/773).\textsuperscript{940} It is also known of other contemporaries of his, like, for example, Ḥammād ibn Salama (Basra, d. 165/781–2),\textsuperscript{941} Zā‘ida ibn Qudāma (Kufa, d. 161/777–8),\textsuperscript{942} Ma‘mar ibn Rashid (Yemen, d. 153/770) and Sufyān al-Thawrī (Kufa, d. 161) that they composed \textit{sunan} works or passed on their traditions in this form.\textsuperscript{943} Nevertheless, it is quite possible that Ibn Jurayj’s \textit{musannaf} was really the first extensive work of this kind in the first half of the second/eighth century and that the others followed his example.

Ibn Jurayj’s piety and scholarship were recognized and praised by many of his contemporaries and by later generations of scholars. His

\textsuperscript{936} Cf. al-Dhahabī, op. cit.

\textsuperscript{937} Azarni, \textit{Studies in Early Hadith Literature}, p. 113 (following Ibn abī Khaythama, \textit{Ta’rīkh}, (MS) III, 39b).

\textsuperscript{938} al-Baghdādī, \textit{Ta‘rīkh}, vol. 10, p. 404.

\textsuperscript{939} This was already noted by Goldziher, \textit{Muslim Studies}, vol. 2, p. 212.


\textsuperscript{941} Ibn al-Nadīm, \textit{Fihrist}, p. 317.

\textsuperscript{942} Ibn al-Nadīm, \textit{Fihrist}, p. 316.

teacher 'Ata' already saw in him his future successor\textsuperscript{944} and one of the stars of the rising generation of scholars.\textsuperscript{945} Ibn Jurayj's students lauded his exemplary manner of performing the \textit{salāh}, and traced it back through his teacher 'Ata' to the Prophet.\textsuperscript{946} He inspired people with his rhetoric,\textsuperscript{947} impressed them with his almost constant fasting,\textsuperscript{948} which he ceased for only three days each month, and gave ample alms to beggars.\textsuperscript{949} He shone not only as a \textit{faqīh} and an 'ālim, i.e. as a legal or religious and traditional scholar, but also as a Qur'ān recitor (qārī) and exegete (mufassir).\textsuperscript{950} However, as a \textit{Hadīth} scholar he is not uncontroversial. Even from his students, in addition to laudatory judgements critical remarks are also reported. Al-Waqidi considers him reliable (\textit{thiqā}),\textsuperscript{951} Ibn 'Uyayna one "who brought \textit{Hadīth} onto the right path,"\textsuperscript{952} and Yaḥyā ibn Sa'īd al-Qaṭṭān reports that he and his classmates called Ibn Jurayj's books "books of reliability."\textsuperscript{953} He is considered matchless for some traditions, for instance for those of 'Āṭā, 'Amr ibn Dīnār—more reliable than Ibn 'Uyayna—, Nāfi'—better than Mālik—, and Ibn ābī Mulayka,\textsuperscript{954} although Ibn 'Uyayna claimed to have the better version, in cases of doubt, from their common teacher 'Amr ibn Dīnār.\textsuperscript{955}

The Medinan Mālik ibn Anas (d. 179/795–6) and the Basran Yazīd ibn Zuray'\textsuperscript{c} (d. 182/798–9 or 183), in contrast, made very disparaging remarks about their somewhat older colleague Ibn Jurayj:

\textsuperscript{949} al-Dhahabī, \textit{Tadhkira}, vol. 1, p. 171 (source: 'Abd al-Razzāq).
\textsuperscript{953} al-Baghdādī, \textit{Ta'rikh}, vol. 10, p. 404.
\textsuperscript{955} Ibn ābī Ḥātim, \textit{Taqdīmā}, pp. 49, 52.
He was a “ḥāṭib layl” (Mālik), literally: “one who collects wood by night,” i.e. one who takes everything he gets his hands on, or a “ṣāhib ghūthā” (Yazīd), literally: “owner of refuse.” Such sweeping judgments about a colleague are to be treated with caution, as long as their background is unknown. They could be based on personal antipathies and rivalries among the centers of scholarship. However, the causes of the negative attitude of scholars like Mālik and Yazīd can be determined with some probability. The reservations of Ibn Jurayj’s student Yaḥyā ibn Saʿīd al-Qaṭṭān (Basra, d. 198/813–4) are instructive: He does consider some of Ibn Jurayj’s traditions excellent and also praises his book; but he also expresses concrete criticisms of him. They relate to four points: 1. Ibn Jurayj did not have a good memory. When he lectured not from his book or other books, but by memory, he made mistakes. 2. He transmitted texts that he did have permission to transmit, but which he had neither heard nor read aloud. As an example he names Ibn Jurayj’s traditions from ʿAṭā’ al-Khurāsānī. 3. He transmitted from written documents material which he did not know by heart. 4. Ibn Jurayj occasionally concealed discontinuities in the isnād or suppressed informants.

This predominantly positive evaluation of Ibn Jurayj, which nevertheless does not conceal weaknesses, continues with the scholars of the third/ninth century as well. ʿAbd al-Malik al-Quraṣṭānī, for instance, on the one hand speaks of him enthusiastically, but on the other hand warns against his ḥadīths introduced with “qāla X” and “ukhbīrtu,” i.e. those only acquired in writing or transmitted while concealing the informant, and against those transmitted by memory, and names sources from which he transmitted texts without having heard them himself. He is similarly evaluated by Yaḥyā ibn Maʿīn (d. 233/
847–8), 965 ʿAlī ibn al-Madīnī (d. 234/848–9), 966 and al-Dhuḥlī (d. 258/872). 967 Exclusively positive statements are recorded from al-ʿIjī (d. 261/874–5), 968 ʿAḥmad ibn Ṣālīḥ al-Miṣrī (d. 248/862–3), 969 Abū Zurʿa (d. 264/877–8), Abū Ḥātim (d. 227/841–2)970 and others. This ambiguous evaluation—thiqa, but mudallīs also runs through the later rijāl works, while his tadlis occasionally—for instance, by al-Dāraquṭnī (d. 385/995–6)971—is rated as very questionable, in contrast to that of others, e.g. that of Ibn ʿUyayna. 972

The critical evaluation of Ibn Jurayj as a muḥaddith is based on facts, specifically, on traditions about the manner in which he collected and then presented his material. Ibn Jurayj is recorded, on the basis of biographical traditions, to have received texts in five forms: 1. He attended the lectures of his informants or questioned them and recorded what he heard in writing973 and/or learned it by heart. 2. He copied a manuscript which he had obtained from the transmitter or one of his students and read it aloud to the former. 3. He obtained written notes which the transmitter had prepared himself as a gift, without having heard them from him or read them to him. 4. He copied a text from the informant and got permission to transmit it, without hearing it or reading it aloud. 5. He came into possession of a manuscript or copied it without getting formal permission to transmit it further, be it that the owner in question was no longer alive or did not meet him, or be it that he refused him the ḫāza.

Type 1 occurs in his tradition from his teachers ʿAṭā ibn Rabāḥ and ʿAmr ibn Dīnār, and sometimes from Nāfi and others. These texts, even later, were considered sahiḥ and above all criticism. Already in Ibn Jurayj’s time, type 2 was considered equal in value

967 Ibn Ḥajar, Tahdhib, vol. 6, p. 405.
971 Ibn Ḥajar, op. cit.
973 He is supposed first to have done this on the large leaves of the ʿushār tree and later to have made a fair copy on other material (papyrus, parchment?—in the text: ʿīl ʿl-bayād). al-Fasawī, Maʿrifā, vol. 2, p. 26. Cf. also Azami, Studies in Early Hadith Literature, p. 113.
to the first. He himself expressed this view to his student al-Wāqidī:

Muḥammad ibn ʿUmar [al-Wāqidī]: I asked Ibn Jurayj about reading Ḥadīth aloud to the muḥaddith. He answered: Someone like you is asking something like that?! The scholars (al-nās) are in disagreement about notebooks (ṣaḥīfa) which someone takes and says: “I am transmitting (ḥaddithu) what is in it” without having read it aloud, but if he has read it aloud, it is equal (ṣawāʾ) [to hearing it].” 974

In this form Ibn Jurayj received, for instance, some of his material from Naḥī and probably from Ibn ābī Mulayka. In the case of Naḥī this emerges from his statement, “Naḥī gave me a saddlebag. It contained what I had read [aloud] and asked.” 975

Type 3 occurs, for instance, in Ibn Jurayj’s tradition from Ābū Bakr ibn ʿAbd Allāh [ibn Muḥammad] ibn ābī Sabra (d. 162/778–9 or 172/788–9, muftī in Medina, later qādī in Baghdad). Al-Wāqidī reports that this Ābū Bakr related to him the following:

“Ibn Jurayj said [to me]: ‘Write me sunan-ḥadīths!’ 976—variant: some of your good ḥadīths!’ 977 [Ābū Bakr]: I wrote him 1,000 ḥadīths and then sent them to him. He neither read them to me, nor I to him.”

Muḥammad ibn ʿUmar [al-Wāqidī]: Later I heard Ibn Jurayj transmit many ḥadīths with the words: “Ābū Bakr ibn ābī Sabra transmitted to us (ḥaddathānā)”—variant: “Later I saw that Ibn Jurayj had included many of his ḥadīths in his book with the words: ‘Ābū Bakr ibn ʿAbd Allāh—i.e. Ibn [ābī] Sabra—transmitted to me!’” 978

Of type 4 are the traditions from Ibn Shihāb al-Zuhrī, Hishām ibn ʿUrwa, Abān ibn ābī Ayyāsh and ʿAṭāʾ al-Khūrāsānī. Ibn Jurayj’s

974 Ibn Saʿd, Ṭabaqāt, vol. 5, p. 361. Cf. also Ibn Qutayba, Maʿārif, p. 167; Sachau, “Zur ältesten Geschichte,” pp. 721–722 and F. Sezgin, Geschichte, p. 74 (his translation of “sawāʾ” with “fine” (“in Ordnung”) is not correct. What is meant is shown by Ibn Qutayba’s variant: “fa-hiwa wa-l-samāʾ waḥhid.” Clearly, Ibn Jurayj considered even the transmission of a notebook that had not been read aloud to be “fine” (see below).


977 Ibn Qutayba, Maʿārif, p. 167 (biography of Ābū Bakr). The version in Ibn Saʿd, as a lectio difficilior with the meaning of sunan which was customary before al-Shāfī (cf. Schacht, Origins, pp. 2, 3), is probably more authentic.

student Yaḥyā ibn Saʿīd reports that he could get from him no confirmation that he had “heard” hadiths from al-Zuhrī. Ibn Jurayj himself is supposed to have admitted this: “I did not hear from al-Zuhrī, rather, he gave me a book [or: notebook] (juz'), I copied it, and he permitted it to me [to transmit].” Various eyewitnesses report similar things about the acquisition of his texts from Hishām ibn ‘Urwa: The latter had lent a notebook (ṣahīfa) with his hadiths to someone. Ibn Jurayj first got assurance from Hishām that it was actually his notebook. When the latter confirmed this, he clearly copied it, but then returned to him with the copy and said: “These are your hadiths—variant: This is your hadith. I would like to transmit them from you!” [Hishām]: “Yes! [You may].’ He went and asked me nothing more.” Nevertheless, Ibn Jurayj later cited Hishām ibn ‘Urwa with the formula “haddathana” as well. Such a procedure is also known in the case of Ibn Jurayj’s transmission from Abān ibn abī ‘Ayyāsh. In this way he is also supposed to have gotten hold of the material from ‘Atā’ al-Khurāsānī, and also to have passed on his own work.

His tradition from Mujāhid seems to be based on type 5. At least, this is asserted of his material from the latter’s tafsīr and is probably true of other material from him, since it is conspicuous that in the Musannaf of ‘Abd al-Razzāq he introduces him almost exclusively with the formula “qala Mujāhid.” He is supposed to have gotten the tafsīr from a manuscript of al-Qasim ibn abī Bazza, a student of Mujāhid’s who “heard” it from him, whom, however, he does not

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979 Ibn abī Ḥātim, Taqdimā, p. 245.
983 See note 981.
987 Ibn Ḥibbān, Mashāḥīr, no. 1153. Cf. also G. Stauth, Die Überlieferung, pp. 71 f.
name as an informant, evidently because he did not have permission for transmission from him. Perhaps he also got the other Mujāhid texts from him.

The last three of the enumerated types of transmission used by Ibn Jurayj were met by scholars of the second half of the second/eighth century and later with shaking of heads and derisive comments. However, from the fact that people like Ibn Shihāb, ‘Aṭā’ al-Khurāsānī, Hishām ibn ‘Urwa, Ibn Jurayj and other transmitters of the first half of the second/eighth century used such forms of transmission it can be inferred that they did not evaluate them negatively. This means that it was only from about the middle of the second/eighth century that the view began to assert itself that only transmission of hadiths by hearing or reading aloud was acceptable. That this requirement was already familiar to Ibn Jurayj is shown by his remark that the transmission of a notebook that had not been read aloud was a subject of controversy among the scholars.

The situation is similar—and this is probably related to the still-undecided question of the types of transmission—with respect to the terminology of transmission. In the first half of the second/eighth century it was not yet attached to specific forms of reception, even if certain customs were beginning to establish themselves. Students of Ibn Jurayj like al-Wāqīdī and Yahyā ibn Sa‘îd registered with surprise or displeasure that he cited materials which he had neither heard nor read aloud with the formula hadathānī, which they already understood as a technical term for samā‘ or qirā‘a. They report that Ibn Jurayj himself indicated that what he reported from ‘Aṭā‘, he had in every case heard; even if he said “qāla ‘Aṭā‘” and not “samā‘u ‘Aṭā‘,” and that, for instance, Ibn Jurayj’s texts from Ibn abi Mulayka were “sahih” even if he had only “‘an” as an introduction instead of “hadathānī.” What is astonishing is that a critical student of Ibn Jurayj’s like Yahyā ibn Sa‘îd, even though he was familiar with his undifferentiated terminology of transmission, sometimes acts as if it conformed to the later standard. He notes,

989 See p. 279.
992 Ibn abi Ḥātim, Taqdim, p. 241 (source: the same).
for instance, that one can accept as trustworthy (ṣadūq) what Ibn Jurayj introduces with “ḥuddathani” and “akhbarani” as a sign of samā‘ or qirā‘a, but that when he says “qāla” it is—since it is a purely written reception—worthless. 993 Obviously he wanted in this way to salvage the credibility of at least a portion of his tradition. Other contemporaries of Yahyā’s, such as Mālik ibn Anas and Yazīd ibn Zurayj, judged him more rigorously and seem to have categorized his traditions en masse as untrustworthy, 994 whether because of some of his methods of reception, because of his inconsistent terminology, or because of the reception of many texts from persons whose credibility was later put in question. However, the position of Yahyā ibn Sa‘īd largely asserted itself: that only the texts of Ibn Jurayj’s which clearly are based on wijdā, i.e. written reception without permission for transmission, or those which are perhaps heard but in which the informant remains anonymous, are to be avoided, but his traditions identified with the formulae of samā‘ and qirā‘a can generally be accepted. It was advanced by Almad ibn Ḥanbal. 995 Occasionally individual traditions, like those from al-Zuhrī, are excluded from this positive evaluation. 996

Ibn Jurayj lived in Bi‘r Maymūn, about three miles outside of Mecca. 997 He seems to have spent most of his life exclusively in the Ḥijāz. Only as an old man did he undertake trips to the Yemen and Iraq; he is attested to have sojourned in Ṣan‘ā’, Basra and Baghdad in the caliphate of al-Manṣūr (136–158/754–775). 998 He is supposed to have had a brother Muḥammad, a son by the name of ʿAbd al-ʿAzīz and a grandson called al-Walid. 999 A few intimate

993 Ibn ʿHajar, Tahdhib, vol. 6, p. 404.
994 See pp. 276 f. Further study is in order to determine how the many informants from whom Ibn Jurayj has only a few reports are evaluated in Ḥadīth criticism, and whether some of them can be put into the context of larger textual complexes in other sources. As long as these are not available, it is scarcely possible to reach a conclusion about these reports’ authenticity beyond the level of Ibn Jurayj’s informant on the basis of the texts themselves.
995 See p. 277.
996 See p. 278, note 965.
details are also known about Ibn Jurayj. He had a reddish-brown skin color,\textsuperscript{1000} colored his hair with black dye and scented himself with ghāliya,\textsuperscript{1001} a perfume made of musk and amber. He is supposed to have been married to a pious woman\textsuperscript{1002} but also to have contracted mut'a alliances, i.e. temporally limited relationships similar to marriage. Jarīr [ibn ‘Abd Allāh al-Ḍabbi] (d. 188/804, Kufa) gives the number of his mut'a “marriages” as 60,\textsuperscript{1003} and al-Shāfi‘ī (d. 204/819–20) as 70—variant: 90. In old age he injected himself—according to al-Shāfi‘ī—with an ounce of sesame oil as a stimulus to his libido.\textsuperscript{1004} The discrepancy in the numbers transmitted by al-Shāfi‘ī is probably based on a misreading of sab‘īn as tis‘īn, a confusion which is often to be observed. The divergence between al-Ḍabbi's statement and al-Shāfi‘ī's is to be explained by the fact that the numbers, which probably derive from Ibn Jurayj himself, are not bookkeeping data but estimates, in which—despite his obviously great sexual vitality—exaggerations are not out of the question.

Information of this kind may seem unimportant to many, and their reporting unnecessary. This is not by any means the case, for the transmitters of the second/eighth century clearly did consider them noteworthy. Their motivation results less from a love of detail or of delicate subjects than it is to be understood in the context of learned debates of the second/eighth and third/ninth centuries in which the questions of dying the hair,\textsuperscript{1005} of perfuming and of mut'a alliances were subjects just as significant and passionately discussed as that of divine predestination. Aside from this, for the the historian the information about Ibn Jurayj's mut'a practices, for instance, is valuable for several reasons. The fact that they are mentioned in the biographical sources at all can be regarded as an indication that reports about a person were not suppressed even if they were unpleasant and detracted from the evaluation of his reliability, which is predominantly positive. The conflict emerges clearly from a comment of al-Dhahabi's: “There is agreement on his reliability, \textit{although} he

\textsuperscript{1000} Ibn Qutayba, \textit{Ma‘ārif}, p. 167 (source: Abū Hīlāl).
\textsuperscript{1003} al-Dhahabi, \textit{op. cit.}
\textsuperscript{1005} Cf. Juynboll, “Dyeing the Hair.”
contracted *mut'a* alliances with 90 women. He was of the opinion that it was permitted.\(^\text{1006}\) Since the institution of *mut'a* was accepted only among the Shi'a and was rejected by the Sunnī legal schools, one might be tempted to think that the statements about Ibn Jurayj's *mut'a* practices were perhaps invented in order to discredit him or to claim him for the Shi'a. Such an assumption is, however, not very probable. Some of the informants for the report do come from Kufa, but since it is also reported by al-Shāfi‘ī, who is neither suspected of Shi‘ism nor in principle hostile to Ibn Jurayj, was a student of two students of Ibn Jurayj's and as a Meccan well informed of the situation in his home town, it probably describes a historical fact. For the history of *mut'a* as a juridical problem and a social practice, the statement about Ibn Jurayj’s *mut'a* alliances is a very important piece of information. From it, it can be concluded that the question was still open in the first half of the second century and was not a specifically Sunnī-Shi‘ite controversy. Rather, it represents a Meccan school tradition which was already advocated by Ibn ‘Abbās and established by ‘Atā’\(^\text{1007}\) and which was actually practiced in the first two centuries—at least in Mecca and its environs—although ‘Umar had forbidden it during his caliphate.\(^\text{1008}\)

55% of the reports on which the biographical literature about Ibn Jurayj is based are derived from contemporaries and students of Ibn Jurayj’s, and thus from persons who knew him themselves, 45% from indirect informants—from about 40 people altogether. In the first group of sources dominate the materials of Ibn Jurayj’s students Yahyā ibn Sa‘īd al-Qaṭṭān (33%), Sufyān ibn ‘Uyayna (14%), ‘Abd al-Razzāq (10%) and al-Waqīdī (6%), in the second group those of the scholars of the end of the second/eighth and the first half of the third/ninth century, who were students of the students of Ibn Jurayj. They are above all Ḥamad ibn Ḥanbal (35%), Yahyā ibn Ma‘īn (16%), and ‘Alī ibn al-Madīnī (9%). Altogether, they provide over 80% of the indirect information. The rest comes predominantly from scholars of the second half of the third/ninth century—such as Ibn Kharrāsh, al-Ṯilī, Muḥammad ibn Ismā‘īl, al-Bardī and al-Bazzār—and very little from those of the fourth/tenth century, such as Ibn Ḥībbān


\(^{1007}\) See pp. 142–145.

\(^{1008}\) See p. 143.
and al-Dāraqūtī. Since the knowledge of the second generation after Ibn Jurayj probably also derives largely from his immediate students and auditors, one can say that almost the entire biography of Ibn Jurayj is based on sources which may be classed as eye- and ear-witness reports. The little that later sources contribute adds next to nothing that was not already known from earlier ones.

4. The source value of the biographical material about the three legal scholars

The study of the biographical reports about the three leading fuqahā' of Mecca in the second half of the first/seventh and in the first half of the second/eighth century has been carried out, for methodological reasons, within the genre. The question was and is whether indications of forgery—e.g. internal contradictions, anachronisms, and so forth—or of unreliability resulting from an excessively large remove between the sources and the time about which they report, emerge from this material itself. The results can be summarized as follows:

1. The biographical literature of the third/ninth to ninth/fifteenth century which has been studied contains scarcely any traditions recognizable as conscious forgeries whose motives and originators could be identified. There are mistakes, inaccuracies, errors in transmission, exaggerations and topoi. These can usually be identified as such with the aid of the transmitted variations. The credibility of some individual pieces of information whose provenance remains obscure is thus still in doubt. However, by and large the biographical material, although a conglomeration of heterogeneous reports of different provenance, is internally consistent. Possible biases which may have determined the selection of the biographical traditions reported in some works are neutralized by other, more complete collections. The fact that even negative facts about the persons in question which were visibly uncongenial to the compilors were not suppressed, and that often the texts of later authors can be documented word for word in earlier ones, speaks for the assumption that they did not falsify the material.

2. The biographical literature's information about the three Meccan fuqahā' largely goes back to persons in contact with them or the latter's students. It thus derives from the second/eighth century, was gathered in biographical and other works in the third/ninth century,
and was also probably transmitted for a time in instruction, outside of closed compilations. Already from the middle of the third/ninth century, however, the sources begin to dry up. Reports that go back to informants of the second half of the third/ninth century are relatively rare, and they rarely report facts not already known from earlier sources. That is, the biographical material consists mainly of primary sources (statements of eyewitnesses) with a smaller proportion of secondary sources (reports at second or third hand).

3. The biographical traditions in later works are generally no worse than those in the earlier ones. They frequently report the earlier material—usually correctly—, which speaks for their general reliability, but also contain pieces of information from works which have been lost or have not yet reappeared.\textsuperscript{1009} Where they name the source of their reports, these texts—until the opposite is proven, in individual cases—are to be considered just as credible as those for which early parallels are attested. The general distrust towards reports in the biographical literature about persons of the first/seventh and second/eighth centuries which is widespread among non-Muslim scholars seems to be based on unjustified prejudices and the anecdotal material of the \textit{adab} literature. This source is probably better than its reputation, which is not to say that \textit{all} reports communicated in it are reliable.

The verdict reached from the investigation within the genre of the biographical traditions about 'Atā', 'Amr and Ibn Jurayj about their extensive authenticity and credibility is confirmed by the results yielded by the analysis of the traditions from them. The two genres of tradition are—despite occasional identical transmitters—to be regarded as two fundamentally different historical sources. The biographical tradition consists—from a source-critical point of view—primarily of deliberate, intentional testimonies which consciously aim to give information about the persons in question. In contrast, the traditions about their teachings and legal opinions, when one uses them—as I have—as a source for biographical questions, are largely to be classed as involuntary and unintentional testimonies. Ibn Jurayj's intention in transmitting 'Atā's teachings was surely not to communicate something about the latter's teachers, students, style of instruction and so forth, but to report their content as accurately as

\textsuperscript{1009} Cf. also Juynboll's comments on Ibn Ḥajar's \textit{Tahdīb} and its sources in: \textit{Muslim Tradition}, pp. 134–136.
possible. However, used in this way, divorced from their original intent, they are an especially reliable source. Where the knowledge gained from them corresponds to the statements of the biographical literature, the latter’s historicity is certain. On the other hand, their meaningfulness— as is usually the case with “residues”— is limited. For this reason, conclusions of biographical nature can be drawn from this material only with great caution and with reservations. The actual biographical tradition is thus a welcome supplement and check for the biographical information drawn from the Musannaf of ‘Abd al-Razzāq. Many suppositions are confirmed by it; many connections which remained unclear become more distinct in its light. The two genres of sources complement and mutually support each other. Errors and forgeries in one source can sometimes be uncovered and corrected through the information in the other.

F. A Historical Overview

After this preliminary work it is possible to draft a sketch of the historical development of Islamic jurisprudence of Mecca from the beginnings to the emergence of the classical schools of law which is based on secure facts, that is, on sources whose authenticity is assured.

1. The beginnings

Meccan fiqh has its roots primarily in the juridical efforts and teaching activities of ‘Abd Allâh ibn al-‘Abbâs. This latter was not the eponym, i.e. the fictitious authority, of the Meccan fiqah, as Schacht assumed;\(^{1010}\) rather, he was really the teacher of a number of scholars who later became famous and who were active primarily in Mecca, like ‘Aṭâ’ ibn abî Rabâh, Mujâhid, ‘Ikrima and Ibn abî Mulayka. From Mu‘awiya’s assumption of the caliphate Ibn ‘Abbâs lived withdrawn from the political stage on which he had played a role under ‘Alî, in the city of Mecca, which he had to leave only under the caliphate of ‘Abd Allâh ibn al-Zubayr, whom he refused to recognize.\(^{1011}\) In the quarter-century of his residence in Mecca


(c. 40–65/660–685)—he died in 68/687–8 in al-Ṭāʾif—he undoubtedly laid the foundations of Meccan scholarship through his teaching activities in the religio-legal area, especially in questions of Qur'anic exegesis and the definition of an Islamic way of life. As far as can be determined from his students’ citations of him which have been ascertained to be reliable, in his legal opinions (fuṭūmahā) and his legal teachings he often supported himself with the Qur’ān, but generally not with traditions from or about the Prophet or older Companions.\footnote{1012} His legal teachings are completely raʾy. This observation should for the moment not be generalized to the conclusion that Ibn ʿAbbās knew or transmitted no traditions at all. Should it be confirmed by further focused investigations of the traditions from direct students of Ibn ʿAbbās contained in the sources of ʿAbd al-Razzāq’s Muṣannaf, it will be possible to establish through a comparison between the Prophetic hadiths of Ibn ʿAbbās in them and those in later sources where the latter come from. One person who spread hadiths of the Prophet in the name of Ibn ʿAbbās can already be named: ʿĀṭāʾ al-Khurasānī (d. 133/750–1), who in all probability did not himself study with Ibn ʿAbbās, and the origin of whose Ibn ʿAbbās traditions is obscure.\footnote{1013}

2. The last third of the first/seventh century

After the death of Ibn ʿAbbās, his students continued the tradition of teaching in Mecca. In the area of fiqh, Mujāhid and ʿĀṭāʾ ibn ʿAbī Rabāḥ particularly distinguished themselves—both were mawālī, and thus not Arabs. ʿĀṭāʾ, who lived the longest, is best known through the sources as a faqīh. Based on the extensive tradition of his student Ibn Jurayj in the Muṣannaf of ʿAbd al-Razzāq, the already relatively developed level of legal thinking and the breadth of the subjects treated, which extend to many areas that later formed part of the standard repertoire of the fiqh works, can be seen. It is characteristic of ʿĀṭāʾ’s legal instruction and that of other students of Ibn ʿAbbās that they primarily express their own opinions and cite authorities for them only to a limited extent. Among these sources of ʿĀṭāʾ’s, the Qur’ān and the legal views of his teacher Ibn ʿAbbās play a

\footnote{1012} See pp. 141, 192.  
\footnote{1013} See p. 233.
dominant role; but there is also a small number of hadiths of the Prophet, rulings of the caliph 'Umar and traditions from other Companions. Since the important legal scholars of Mecca at the end of the first/seventh century were all students of Ibn 'Abbās, on many questions there was a consensus among them, and they also seem to have consulted with each other.\textsuperscript{1014} Thus, in this phase it is already justified to speak of the beginning of a local school of legal scholarship. It gained a certain public recognition through the caliphal administration, which filled the post of muftī of Mecca from its ranks.\textsuperscript{1015} The school of Ibn 'Abbās was not limited to Mecca, even if this was its bastion. Important students of Ibn 'Abbās lived and taught, among other places, in Basra (Abū l-Shā' thâ'), Kufa (Sa'īd ibn Jubayr), Ṣan‘ā' (Ṭawwūs), and al-Ṭā'īf (Ibn 'Abī Mulayka). 'Ikrima was a restless soul who moved from city to city.\textsuperscript{1016} Ibn 'Abbās himself had at times also stayed in Medina, Basra, Damascus and al-Ṭā'īf. Since, in addition to this, Mecca was regularly visited by pilgrims from the four corners of the Islamic oikoumene, some of whom took the opportunity to slake their thirst for knowledge, the seeds of Islamic jurisprudence sown by Ibn 'Abbās and his students will have sprouted in other places as well. If it is true that there was a "common ancient doctrine"—as Schacht claims\textsuperscript{1017}—one will rather have to seek its roots in the Ḥijāz, in Mecca and Medina, than in Kufa and Basra.

3. The first quarter of the second century

In the first decade of the second/eighth century 'Atā' was still the doyen of Meccan fiqh, but younger scholars like 'Amr ibn Dīnār (d. 126/744), Abū l-Zubayr (d. around 126), Ibn abī Najīh (d. 132/749–50) and Ibrāhīm ibn Maysara (d. 132)\textsuperscript{1018}—four mawālī—followed him and continued the tradition of the school of Ibn 'Abbās. Quite a good picture of 'Amr ibn Dīnār's teachings can be obtained from the traditions of his students Ibn Jurayj and Ibn 'Uyayna. He depends on traditions to support his legal views more than 'Atā' and

\begin{itemize}
\item \textsuperscript{1014} See p. 172.
\item \textsuperscript{1015} See p. 248.
\item \textsuperscript{1016} Cf. al-Shīrāzī, Ṭabaqāt, p. 70.
\item \textsuperscript{1017} Cf. Schacht, Origins, pp. 214, 222 f.
\item \textsuperscript{1018} See pp. 208 ff., 215.
\end{itemize}
his teacher Abū l-Sha‘thā’, a trend that is already discernible with ‘Aṭā’.1019 As his authorities function above all Ibn ‘Abbās from the category of the Companions and the latter’s students, who were also ‘Amr’s most important teachers, but he also has—like ‘Aṭā’—a limited number of Medinan traditions. *Hadīths* of the Prophet play only a modest role as sources of law, and ‘Amr’s use of the *isnād* is very imperfect, measured by the later standard. Legal scholarship in Mecca, despite a consensus on many questions, was not uniform. There were different views and justifications even among the students of Ibn ‘Abbās. At the beginning of the second/eighth century in addition to ‘Amr ibn Dīnār there was teaching, for instance, Abū l-Zubayr, who was indeed close to the school of Ibn ‘Abbās but based his teachings primarily on those of his teacher, the Medinan Companion of the Prophet Jābir ibn ‘Abd Allāh.1020 In addition, from time to time people in Mecca could hear scholars from other centers such as Nāfi‘ or Ibn Shihāb al-Zuhārī from Medina or Iraqis like ‘Abd al-Karīm al-Jazarī or Ayyūb ibn abī Tamīma.1021

4. *The second quarter of the second century*

After the death of Ibn abī Najīḥ, Ibn Jurayj—a *mawlā*, like almost all important Meccan *fuqahā* after Ibn ‘Abbās—became the central figure of Meccan *fiqh*, which he studied and recorded in writing primarily with ‘Aṭā’ ibn Rabī‘ and ‘Amr ibn Dīnār. Ibn Jurayj was even more strongly oriented toward traditions than ‘Amr ibn Dīnār and also collected legally relevant traditions of other centers, especially from Medina.1022 Nevertheless he was above all a *faqīh*, in contrast to his younger colleague Ibn ‘Uuyayna, a pure *muḥaddīth*. Unfortunately, only a small amount of his *ra‘y* has been preserved, but in compensation all the more of his traditions, which make it possible to trace the history of Meccan *fiqh* from the beginnings into his time. He was one of the first Muslim scholars of the second/eighth century who put a portion of the knowledge he collected into the form of a book organized according to juridical criteria and used it

1019 See p. 186.
1020 See pp. 208 ff.
1022 See pp. 207 f.
as the basis of his lectures. Ibn Jurayj’s activities as a collector provided Meccan fiqh with a mass of source material which could serve to shore up its practice with older authorities. He collected especially large quantities of material from Ibn ‘Abbās and his students, including those who were not active in Mecca. Hadīths of the Prophet comprised only about 14% of the collection of texts preserved from him in ‘Abd al-Razzāq’s Musannaf. How many of them he considered as binding sources of law is difficult to say. Surely not all of them; presumably only those that were compatible with the Meccan legal tradition. Thus, even in the first half of the second/eighth century hadīths of the Prophet played only a subordinate role in Meccan fiqh. However, from the first/seventh century their share grew constantly: in the first century there seem to have been no, or only a very few, traditions of the Prophet from Ibn ‘Abbās in circulation; with ‘Atā’ ibn abī Rabāḥ traditions of the Prophet comprised 5%, with ‘Amr 10%, and by Ibn Jurayj 14% of the texts they transmitted. Ibn Jurayj’s isnād technique is very underdeveloped: not even half of his hadīths of the Prophet have continuous chains of transmitters, and with the traditions of the sahāba the proportion is even smaller.

5. The second half of the second/eighth century

The foregoing study of the tradition of Ibn Jurayj, on the results of which this sketch of the history of Meccan jurisprudence has been based to this point, can actually contribute nothing more to the question of its subsequent fate. However, one fact that one can draw from it allows a view beyond the first half of the second/eighth century: The development of Meccan fiqh from the end of the first/seventh century as I have described it on the basis of ‘Abd al-Razzāq’s Musannaf corresponds in its main points, specifically, in the persons involved, to the picture that the Muslim “legal historians” already drafted in medieval times on the basis of biographical reports. The material for it is already present in the first tabaqāt works from the first half of the third/ninth century. A biographical work

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1023 See pp. 274 ff.
composed specifically from the point of view of the development of fiqh, the َتَبَّاقَتِ َاتِ-الفعاَتِ of Abū Ishāq al-Shīrāzī (d. 476/1083–4), is most appropriate for a comparison: in the chapter on the *fiqah* among the Companions of the Prophet one finds Ibn ‘Abbās and his most important students.\(^{1026}\) The section on the legal scholars of Mecca begins with articles on ‘Atāʾ ibn ābī Rabāḥ, Mujāhid, Ibn ābī Mulayka, ‘Amr ibn Dinār and ‘Ikrima; the second generation is represented by Ibn ābī Najīḥ and Ibn Jurayj.\(^{1027}\) According to al-Shīrāzī, the series of *muṣfīlīn* of Mecca is continued after Ibn Jurayj by his student Muslim ibn Khālid, with the epithet al-Zanjī (d. 179/795–6 or 180).\(^{1028}\) As the last important *faqīḥ* of Mecca he names Muḥammad ibn Idrīs, known as al-Shāfī’ī. He was born in the year in which Ibn Jurayj died and at an early age associated himself with Muslim ibn Khālid, from whom he learned *fiqh*.\(^{1029}\) al-Shāfī’ī is supposed to have been such a successful student that his teacher Muslim already allowed him to issue legal opinions at the age of fifteen. He studied *Ḥadīth* with Ibn ‘Uayahna. After he had mastered the Meccan tradition of scholarship, he learned Mālik’s *Muwaṭṭa* by heart and went to study with him.\(^{1030}\)

The proportion and the importance of Meccan *fiqh* in the work of al-Shāfī’ī has not yet been properly appreciated by research. Until now it has always been assumed that the decisive influence on al-Shāfī’ī emanated from Mālik and Medinan jurisprudence. One of the reasons for this assessment is probably to be sought in the fact that almost nothing was known of Meccan *fiqh*. This has now changed, and a comparison of the sources Ibn Jurayj and Ibn ‘Uayahna in the *Musannaf* of ‘Abd al-Razzāq with al-Shāfī’ī’s *Kitāb al-Umm* might solve the question and perhaps lead to a new evaluation of his work.

The old Meccan legal tradition probably did not survive the activities of al-Shāfī’ī, which took place primarily outside of his home town, for long. Two of his students, ‘Abd Allāh ibn al-Zubayr and


\(^{1029}\) al-Shīrāzī, op. cit., p. 71.

Ibn abī l-Jarūd, established his fiqh in Mecca. Thus the old Meccan jurisprudence flowed into the madhhab of al-Shāfi’ī, and was superseded as an independent school of law. The Shāfi’īs were later still quite aware of their origins, as the following observation of al-Nawawī (d. 676/1277 8) shows:

Al-Shāfi’ī received his legal knowledge from several [teachers], among them Mālik ibn Anas, the imām of Medina. Mālik’[s teachings are based] on Rabī’ā from Anas and Nāfī’ from Ibn ‘Umar, both from the Prophet (eulogy). Al-Shāfi’ī’s second teacher was Sufyān ibn ‘Uyayna. [He had his knowledge] from ‘Amr ibn Dīnār, [and he] from Ibn ‘Umar and Ibn ‘Abbās. Al-Shāfi’ī’s third teacher was Abū Khalid Muslim ibn Khālid, the mufti of Mecca and the imām of its residents. Muslim[’s teachings] go back to Abū l-Walīd ‘Abd al-Malik ibn ‘Abd al-‘Azīz ibn Jurayj, and [those of] Ibn Jurayj to Abū Muhammad ‘Aṭā’ ibn Aslam Abī Rabāḥ. ‘Aṭā’’s fiqh is based on Abū l-‘Abbās ‘Abd Allāh ibn ‘Abbās, and Ibn ‘Abbās obtained [it] from the Messenger of God (eulogy), from ‘Umar ibn al-Khaṭṭāb, ‘Alī, Zayd ibn Thābit and numerous Companions, [and these] from the Messenger of God (eulogy).1032

CHAPTER FOUR

THE BEGINNINGS OF ISLAMIC JURISPRUDENCE

It would surely be a mistake to generalize the development of Meccan *fiqh* and to postulate that the situation in Medina, Damascus, Kufa or Baṣra followed the same schema. Nevertheless, I believe that on the basis of the foregoing study it is possible to correct, or at least to place in question, a few of the ideas taken to be established in Islamic studies.

1. It will not be possible to shake Goldziher’s and Schacht’s thesis that the classical theory of *usūl* in Islamic jurisprudence, according to which Qurʾān, Prophetic *sunna* and the consensus of the community constitute the roots of the law, does not represent a reflection of the historical development of Islamic law and its jurisprudence, and that the foundations were laid through the theoretical and practical efforts—i.e., the *ra'y*—of the first Muslim jurists. But the conclusion drawn from this, that the “roots” played a completely or largely secondary role—in Schacht’s words, that “the legal subject-matter in early Islam did not primarily derive from the Qurʾān or from other purely Islamic sources”¹—is false at this level of generalization. Schacht’s representation of the beginnings of Islamic law is a historicization of this anti-*usūl* theory which, however, is just as little in harmony with the historical truth as its opposite. The truth, as is often the case, probably lies in the middle. The present study has offered some evidence for this. Thus it was to be observed that already in the first/seventh century people consciously resorted to the Qurʾān and to rulings of the Prophet as sources of the law, if not as extensively as in later times.²

2. Schacht’s assumption that “two generations before al-Shāfi‘ī reference to traditions from Companions and Successors was the rule, to traditions from the Prophet himself the exception, and it was left to al-Shāfi‘ī to make the exception his principle”³ is accurate, at least

² See pp. 114–116, 125, 131, 135 f., 156 f., 167, 204.
³ Schacht, *Origins*, p. 3.
for the leading Meccan fuqahā'. The conclusions he draws from this, that "generally and broadly speaking, traditions from Companions and Successors are earlier than those from the Prophet," and "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," are too generalized and too absolute. Authentic traditions from the Prophet and the Companions can certainly be detected. The whole theory of an originally anonymous "living tradition" which was retroactively projected back first onto the Followers, then onto the sahāba and finally onto the Prophet, is a construct which is not tenable in this form. Certainly there occurred many projections of opinions onto the Prophet and the sahāba, but this is a phenomenon which set in rather late, not the manner in which traditions generally originated.

3. In view of the conditions ascertained for Mecca the following assumptions made by Schacht must be revised: that for the better part of the first/seventh century there existed no Islamic law "in the technical meaning of the term," that the foundations of what later became Islamic law were laid by the qādīs and governors of the Umayyad dynasty, who in the first/seventh century were for the most part complete juristic parvenus; and that the process of the Islamization of the "popular and administrative practice of the late Umayyad period," aside from "modest beginnings towards the end of the first/seventh century" was driven forward by the "ancient schools of law" only in the first decades of the second/eighth century. The rulings of judges and governors or caliphs of the Umayyad period played—at least in the area of "private law"—a very marginal role in the formation of the opinions of the early fuqahā'. In the sphere of criminal and "public" law the situation was probably somewhat different, but here too one must not underestimate the influence in the opposite direction. The beginnings of a law that was Islamic in the true sense of the word and of theoretical occupation with it are placed too late by a good half to three quarters of a century. Regional schools of legal and religious scholarship can already be discerned

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4 Ibid.
in the last three decades of the first/seventh century, even if their differences probably were consciously recognized as dependent on "schools" only at the beginning of the second/eighth century.

4. The development from a jurisprudence primarily articulated through ra'y to one based on Tradition was a process that began already at the end of the first/seventh century within the schools, and which—at least in the Hijaz—is to be understood as the result of the collection, not merely of forging of traditions. The collection and transmission of texts was carried out not only with the intention of supporting particular opinions of the school, but also independently of this, as is shown by the example of Ibn Jurayj or Ibn 'Uayyna: both of them certainly transmitted on several problems contradictory hadiths of the Prophet or opinions of Companions that were opposed to their school tradition. The growth of the stock of traditions within and outside of the schools is not necessarily to be laid at the door—as Schacht assumes—of forgers opposed to the ancient schools and counter-forgers within the schools. Although cases of intentionally incorrect attributions of opinions can be demonstrated as early as the first century,9 it has been possible to demonstrate that "typical common links" like 'Amr ibn Dinar, Ibn Jurayj and Ibn 'Uayyna are not generally to be considered as forgers or propagators of contemporary forgeries, as Schacht identified them.10 This is not to say that the entirety of the material they collected is authentic. The age—the texts are mostly earlier than Schacht dated them—and provenance of the traditions is, however, in many cases determinable. The prerequisite is that one rely whenever possible on those collections whose chains of transmission are still in their original state of the first half of the second/eighth century. A comparison of the early stocks of traditional material, as they appear, for instance, in the Musannaf of 'Abd al-Razzaq, with the later collections could contribute much to answering the question of how the Hadith of the Prophet grew and acquired its continuous isnāds.11

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9 See p. 119 (beginning of the second/eighth century), 144 (before 68/687–8).
11 Some examples of Prophetic hadiths from 'Aṭā' which were forged later or had their isnāds improved are found in Ibn abī Hātim, 'Ijāl, Vol. 1, pp. 401, 429, 431, 432 and in Ibn al-Jawzi, Kitāb al-Mawḍūʿāt, passim. M. Muranyi has already demonstrated with some good examples how older traditions of the sahāba become hadiths of the Prophet and marāṣil become marfīṭāt in his commentary on a fragment of the Kitāb al-Hajj of al-Mājishūn. Cf. Muranyi, Ein altes Fragment, pp. 40–84 passim.
AFTERWORD

The present study deals primarily with the problem of how the early history of Meccan jurisprudence can be reconstructed, what sources are available for this reconstruction and how reliable and significant these sources are. A completely different question, which is no less important but is meaningful only after such preliminary work, is that of the substantive development of Meccan fiqh, which one could follow through specific thematic complexes such as marriage, divorce, fasting, ḥajj, and so forth. As a further perspective for further research, one might compare the substantive state of development of legal studies in various centers in specific periods in limited legal subject areas, e.g. in Mecca, Medina, Kufa and Basra at the end of the first/seventh or the beginning of the second/eighth century. Through this it would be possible to come closer to a solution of the problem of a supposedly originally common doctrine which later developed into separate branches, the question of mutual influences, of the protagonists for specific kinds of traditions, and so forth. The prerequisite is that preliminary work, like the one which has been done here for Mecca, follows for the other important legal centers.

I believe that I have shown not only that, but also how it is indeed possible to make definite statements even about the legal teachings and traditions of individual tābi‘ūn and sahāba.
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