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# The Jurisprudence of Ibn Šihāb az-Zuhrī. A Source-critical Study\*

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## I

What do we know about the legal doctrine of Ibn Šihāb az-Zuhrī, one of the leading scholars in Medina during the first quarter of the second century A.H.?<sup>1</sup> Joseph Schacht wrote about the issue in his epoch-making work *The Origins of Muhammadan Jurisprudence*: “Those cases in which Mālik explicitly states that he asked Zuhrī or heard Zuhrī say something can *unhesitatingly* be regarded as genuine.”<sup>2</sup> Schacht based his conclusion on Mālik’s *Muwattaʿa*. He continues: “There are other opinions ascribed to Zuhrī which are *obviously* authentic.”<sup>3</sup> As a source where these opinions are to be found, Schacht mentions the *Muwattaʿa* again and Saḥnūn’s *Mudawwana*. Then Schacht states: “But towards the end of the second century A.H., Zuhrī had already been credited with many *spurious* and often contradictory opinions, and his name inserted in *isnāds* of traditions which did not yet exist in his time and from which *fictitious* statements on his supposed doctrine were abstracted.”<sup>4</sup> In Schacht’s opinion, these fictitious transmissions from Zuhrī are to be found for example in Šaibānī’s recension of the *Muwattaʿa*, in Šāfiʿī’s treatises and in the *Mudawwana*.

In view of this presentation one would expect Schacht to exclude Mālik’s *Muwattaʿa* from the suspicion of containing forged Zuhrī traditions. That is not the case, however, as other parts of his *Origins* make clear.<sup>5</sup> Although referring to “the end of the second century” as the time in which fictitious Zuhrī traditions were circulated, Schacht actually thinks that they were fabricated during the entire second half of the second century and that they are found in all sources of this period, in-

cluding Mālik's *Muwatta'*. Earlier sources were not available to Schacht. He assumes that only a part of what Mālik in his *Muwatta'*, as transmitted by Yaḥyā b. Yaḥyā al-Laiṭī, claims to have received from Zuhri actually comes from him. As the only evidence of authenticity, Schacht accepts Mālik's own statement that he asked or heard Zuhri's opinion on a subject. Yet these texts are quite rare in Mālik's Zuhri transmission. Most consist, instead, of simple sayings and traditions, i.e. texts in which Zuhri appears only as transmitter. In these cases, Schacht decides the question of whether Zuhri really was – or at least could have been – Mālik's source for a text by placing the content of the text in the general context of legal developments as he himself had reconstructed them.

Schacht's ideas concerning the development of Islamic jurisprudence were deeply affected by his appreciation of the sources. He maintains that, generally, traditions referring to the generation of the so-called Successors (*tābi'ūn*) represent the earliest stage in the process of projecting the legal development of the second century back into the first century; Companion (*ṣaḥāba*) texts are a younger level; and the traditions of the Prophet are the youngest element in this chain. Zuhri traditions, in which he is only Mālik's informant for doctrines of earlier authorities (Successors, Companions, the Prophet), cannot be accepted, therefore, as authentic elements of Zuhri's legal teaching. "He appears as the common link in the *isnāds* of a number of traditions from the Prophet, from Companions and from Successors; Zuhri himself was hardly responsible for the greater part of these traditions."<sup>6</sup> Schacht regards even Zuhri texts referring to *tābi'ūn* as fictitious, i.e. not really going back to Zuhri and by no means to the alleged Successor. "This makes it impossible to regard information on the Medinese lawyers in the time of the Successors as genuine, unless it is positively shown to be authentic. It would be rash to exclude this possibility a priori, but as far as I have been able to investigate the development of the Medinese doctrine, *I have not found any opinion ascribed to one of these ancient lawyers which is likely to be authentic.*"<sup>7</sup>

Until recent times Schacht's work on the origins of Islamic jurisprudence has deeply affected research into the history of Islamic law. It influenced especially western scholars, but a few Muslim ones as well. Yet Schacht's assumptions are not as plausible as they appear at first sight. To start with, one can ask: Where does he derive the certainty that, on the one hand, Zuhri's legal opinions which Mālik reports he asked Zuhri about or heard from him (for example with the formula “*‘an Ibn Šihāb annahu sami‘tuhu yaqūl*”, i.e. from Ibn Šihāb, that he heard him say)<sup>8</sup> are really authentic, whereas, on the other hand, *ra’y* which Mālik introduces with, for example, “*‘an Ibn Šihāb annahu qāla: sami‘tu Abā Bakr b. ‘Abdarraḥmān yaqūl*” (from Ibn Šihāb, that he said: ‘I heard Abū Bakr b. ‘Abdarraḥmān say)<sup>9</sup> do not derive from Ibn Šihāb and by no means from his authorities? Could a forged legal case not be given the form of question and answer or of a “heard” tradition just as well as the form of a simple saying? Moreover, the method of placing a text in the historical development of legal doctrine by following in the first place the text (*matn*) and taking the *isnād* only secondarily into account depends on certain premisses and subjective considerations which are not necessarily shared by everyone. The results of this method are not always tenable, as I have shown elsewhere.<sup>10</sup>

For this reason it is not advisable to follow Schacht's method of collecting the traditions concerning individual legal topics, then comparing their texts, ordering them chronologically according to criteria of content and, only then, evaluating the transmission lines (*asānīd*) and quality of the collections in which the traditions are found. In the following, the reverse procedure has been chosen. My investigation focuses on the issue of the sources that could be used as a basis for a reconstruction and critical evaluation of Zuhri's legal doctrines and traditions.

Schacht had only Mālik b. Anas' (d. 179/795) *Muwatta'* as an early source for Zuhri's jurisprudence (*fiqh*) at his disposal, preserved in the two recensions by Yaḥyā b. Yaḥyā and Muḥammad aš-Šaibānī. Nowadays we can refer to more early text corpora. I would like to mention only two of them which are particularly im-

portant, both because of the large number of Zuhrī texts they contain and because of their age, for they originate from before or, at least, the same period as Mālik's *Muwatta*'. I am referring to the transmissions of Ma'mar b. Rāšid (d. 153/770) and 'Abdalmalik Ibn Ğuraiġ (d. 150/767) contained in 'Abdarrazzāq aṣ-Ṣan'ānī's *Muṣannaf*. As I have shown elsewhere in more detail, their transmissions are old and genuine and were originally contained in the written works of these scholars. 'Abdarrazzāq received their material when studying with the two scholars and later integrated it into his much larger compilation of traditions.<sup>11</sup>

In biographical literature Ma'mar and Ibn Ğuraiġ are known, like Mālik, as Zuhrī's students. Yet this is no reason for accepting all their transmissions from him as authentic Zuhrī material, as Schacht's evaluation of Mālik's Zuhrī material shows. To answer the question whether Ma'mar's and Ibn Ğuraiġ's Zuhrī texts are genuine or not, I did not follow Schacht's method of proceeding from hypotheses about the early development of Islamic jurisprudence which are based on Šāfi'ī's treatises and information deriving from the second half of the second century A.H. and later. Rather, I have studied, first, the early compilations which contain large numbers of texts attributed to Zuhrī with the aim of finding out whether their authors should be regarded as forgers of the material that they present. Only then have their Zuhrī traditions been analysed.

## II

Among the three corpora most of the Zuhri texts are to be found in Ma‘mar b. Rašid’s corpus, which can be reconstructed on the basis of the *asānīd*, i.e. the transmission chains, in ‘Abdarrazzāq’s *Muṣannaf*. When we classify the persons from whom Ma‘mar says he derived legal opinions or traditions according to their frequency, a remarkable picture emerges: Most often, he mentions the Medinan scholar Zuhri (28%),<sup>12</sup> followed by the Baṣran Qatāda (25%). He reports much less from the Baṣran Ayyūb [b. Abī Tamīma] (11%), even less from the Yemenite Ibn Ṭāwūs (5%), the Baṣrans Yaḥyā b. Abī Kaṭīr (3%) and Ḥasan [al-Baṣrī] (3%), the Medinan Hišām b. ‘Urwa (2%), and the Kūfans Ḥammād [b. Abī Sulaimān] (1%) and al-A‘maš (1%). He reports from more than 75 other people only sporadically (less than 1%). Besides these, a relatively high percentage (7%) of anonymous traditions is to be found, i.e. traditions in which Ma‘mar does not mention his direct informant.

These percentages do not match the assumption that Ma‘mar generally fabricated his transmission data to ascribe his own legal opinions to earlier authorities or to provide traditions circulating anonymously with *asānīd*. A forger moved by such goals would have proceeded otherwise, either more unsystematically or more systematically, by ascribing all of his texts to only a few important informants instead of to a large number of – partly unknown – people. Anonymous traditions, gaps in the *asānīd* and, moreover, texts reflecting Ma‘mar’s own *ra’y* do not match at all with the picture of a presumed forger. If Ma‘mar really had been a forger of transmission data, one could also ask what induced him to choose a Medinan scholar as one of his main authorities although he generally preferred scholars from Basra. After all, he originated from Baṣra and later moved to Yemen to become a teacher there.

On the basis of these considerations the hypothesis that Ma‘mar forged his traditions appears very unlikely. The percentages of Ma‘mar’s informants can more

plausibly be explained by historical circumstances: In his hometown Baṣra he mainly studied with Qatāda, but occasionally also with other scholars, and he continued his studies in Medina, mainly with Zuhri and sporadically with other Medinan scholars. He may have obtained his materials deriving from other centres of jurisprudence during his trips or his stay in the Ḥiǧāz hearing pilgrim scholars. The doubts about the forging hypothesis deepen when comparing the text corpora of Ma‘mar’s two main informants: Zuhri and Qatāda.

Two thirds of Ma‘mar’s Zuhri texts reproduce his personal opinion (*ra’y*) and only one third traditions (*ātār, aḥādīṭ*), in which Zuhri only posits as transmitter. In these transmissions four *tābi‘ūn* from Medina prevail: Sa‘īd b. al-Musayyab (19%), Sālim b. ‘Abdallāh b. ‘Umar and ‘Urwa b. az-Zubair (13% each) and ‘Ubaidallāh b. ‘Abdallāh b. ‘Utba (8%). Other known *tābi‘ūn* from Medina like Sulaimān b. Yasār, Abū Salama b. ‘Abdarraḥmān, al-Qāsim b. Muḥammad and Abū Bakr b. ‘Abdarraḥmān, or Syrian ones like Qabiṣa b. Du‘aib appear much more rarely. It is remarkable that the material of three of Zuhri’s four main authorities consists exclusively of traditions transmitted by them from earlier authorities; only the Ibn al-Musayyab texts contain his personal *ra’y* as well as traditions at approximately the same rate. The predominance of traditions over *ra’y* in the texts of Zuhri’s informants is typical in Ma‘mar’s material. Even so, *asānīd* are not given regularly. 40% of Zuhri’s transmissions from other persons lack information on the informants or chains of transmitters. This is not only the case for the *ṣaḥāba*-traditions, but also for those from the Prophet. Precedents or legal opinions of *ṣaḥāba* are mentioned twice as frequently as those of the Prophet and three times more frequently than those of *tābi‘ūn*. Among the *ṣaḥāba*, ‘Umar is the most prominent, followed in frequency at some distance by his son ‘Abdallāh, then by ‘Uṭmān, ‘Ā’iṣa, Ibn ‘Abbās and Zaid b. Ṭābit.

Ma‘mar’s Qatāda texts consist – like the ones he ascribes to Zuhri – mainly of Qatāda’s *ra’y* (62%) and only to a lesser extent of traditions that Qatāda transmits

from others. Differently from Zuhri, they are dominated by only two *tābi'ūn*: al-Ḥasan al-Baṣrī (31%) and, at some distance, the Medinan scholar Sa'īd b. al-Musayyab (20%). Other *tābi'ūn* like the Kūfans Ibrāhīm an-Naḥa'ī and Šuraiḥ or the Baṣran Abū š-Ša'tā' [Ġābir b. Zaid] appear rather rarely. Contrary to the comparable Zuhri traditions, the texts which Qatāda transmits from *tābi'ūn* usually reproduce their *ra'y*; 84% of the texts attributed to Ḥasan al-Baṣrī consist of his legal opinions and those referring to Ibn al-Musayyab contain no transmissions from other authorities at all in the sample analysed here. In Zuhri's Ibn al-Musayyab material, on the contrary, there is – as mentioned above – a balance between *ra'y* and traditions.

Notably underdeveloped in comparison to the Zuhri texts is the use of the *isnād* in Qatāda's traditions. In 60% of Zuhri's traditions one comes across an *isnād* or information about an informant; in Qatāda's traditions such texts amount to only 12%. Ma'mar's Qatāda texts also differ from Zuhri's in the distribution of the authorities mentioned: the older *tābi'ūn* dominate at the expense of the *ṣaḥāba*. Also contrary to Zuhri's *ṣaḥāba* traditions, we find that in Qatāda's texts 'Alī and Ibn Mas'ūd prevail over 'Umar in frequency of quotations; Ibn 'Abbās follows at a considerable distance, whereas other Companions are only sporadically mentioned. Traditions from the Prophet are quite rare in Ma'mar's transmission from Qatāda, while Ma'mar transmits them from Zuhri five times more frequently. Finally, a difference in the terminology of transmission must be pointed out: Ma'mar often reproduces Zuhri's *ra'y* in the form of an answer (*responsum*) to his own question, for example with the formula: "I asked Zuhri about ... He said...".<sup>13</sup> This text genre occurs only very rarely in Ma'mar's Qatāda material.<sup>14</sup>

The characteristic differences described above between the text corpora of Ma'mar's two most important authorities for legal opinions and traditions render very unlikely the assumption – which could be made on the basis of Schacht's theo-



ries – that Ma‘mar faked the origin of the texts in order to legitimate his own teachings through a Medinan and a Baṣran authority.

There are other indications to support this thesis: Ma‘mar often<sup>15</sup> refers to the fact that Zuhri’s and Qatāda’s opinions agree on a legal problem.<sup>16</sup> He usually introduces such a text with the words “‘an az-Zuhri wa-Qatāda, qālā” (from Zuhri and Qatāda, both said),<sup>17</sup> or he sometimes puts a note at the end of a Zuhri text, such as “wa-qālahu Qatāda” (so said Qatāda [as well]),<sup>18</sup> or “‘an Qatāda miṭlahu” ([I transmit] the same from Qatāda).<sup>19</sup> This means in fact that in those cases where he only quotes the Medinan scholar on a legal issue, Ma‘mar either did not know a relevant statement of Qatāda’s, or it appeared to him not worth mentioning, or, maybe, it was so different that it needed a separate text, or the Qatāda text was left out by ‘Abdarrazzāq. The same is true in cases where Ma‘mar only presents Qatāda’s opinion without mentioning Zuhri’s.

If one wishes to see in Ma‘mar’s method of quotation circumstantial evidence of forgery and if one wishes to claim that Ma‘mar tried in this way to create additional authorities for his own legal opinions, the question remains as to why he had not done it more often. Further evidence against the assumption of forgery is the fact that in some cases Ma‘mar explicitly refers to a difference of opinion between Zuhri and Qatāda without clarifying which of the two he prefers. Here are two examples:

‘Abdarrazzāq from Ma‘mar from Zuhri; he said: “When a man buys a divorce from his wife, it is *ḥul’* (ransom divorce).” Qatāda said: “It is not *ḥul’*.”<sup>20</sup>

‘Abdarrazzāq from Ma‘mar from Zuhri and Qatāda; both said: “Her right to divorce (*am-ruhā*) is in her hand until she decides [on the offer of divorce].”<sup>21</sup> Qatāda said [moreover]: “... Even if her husband has sex with her [*aṣābahā*], before she decides.”<sup>22</sup>

In the first case we have contradictory opinions, in the second case we just see an extension or concretisation of the opinion ascribed to both Zuhri and Qatada. In both cases it is not clear which opinion Ma‘mar himself favours.<sup>23</sup> Why should Ma‘mar have falsely ascribed such cases of diverging opinions to his main authorities, of whom he more often reports agreement? It is even more difficult to defend the forgery thesis in view of texts in which Ma‘mar opposes the *ra’y* of his authority. An example:

‘Abdarrazzāq from Ma‘mar from Qatāda about a man, who gave his wife the right to divorce (*amr*) in her own hands. He [Qatāda] said: “If one of them dies before she has made a decision, neither of them inherits from the other. When he puts the power to divorce her in another man’s hands, and this man to whom the power of divorce has been given dies before deciding anything, he cannot marry her again until she has first married another man. If one of them dies before he [i.e. the one entrusted with the power of divorce] has made a decision, they cannot inherit from another.

Ma‘mar said: “I heard somebody say: ‘When the man into whose hands the power to divorce her has been put dies before making a decision, that is nothing [i.e. this should not be considered a divorce].’ I prefer this [opinion] to that of Qatāda’s.”<sup>24</sup>

The circumstantial evidence presented above goes against the idea that Ma‘mar forged or invented his information on the origin of his texts. As a consequence, until the contrary is proven, we must consider his Zuhri and Qatada texts as authentic, i.e. really received from the persons named. The attempt to avoid this consequence by assuming that a part of Ma‘mar’s material, e.g. the traditions from earlier authorities, is the work of anonymous forgers – as Schacht argued<sup>25</sup> – is not convincing. These forgers would have been Ma‘mar’s contemporaries, i.e. active in the second quarter of the second century A.H., and they must have produced Zuhri and Qatada traditions in huge numbers. These “workshops of forgers” could not have remained undetected by a long-serving student of Zuhri and Qatada. There is, however no hint of such “workshops” either in Ma‘mar’s or in his pupil ‘Abdarrazzāq’s texts. Moreover, the *asānīd* in Ma‘mar’s Zuhri and Qatada traditions are too

fragmentary. We would expect more sophisticated *asānīd* from professional forgers of this time

The existence of Ma‘mar’s Zuhrī and Qatāda texts should be interpreted, therefore, as follows: Ma‘mar was for a longer period of time a student of both teachers. The large number of texts and the fact that he occasionally points to tiny differences in his teachers’ opinions certainly presuppose written notes made during or after the lectures as memory aids. The differences between both bodies of transmission reflect different circumstances in which the texts were received. For example, the fact that Ma‘mar rarely transmits Qatāda’s answers to his own questions whereas he frequently does so in the case of Zuhrī may be a result of the fact that Ma‘mar was still very young when studying with Qatāda and was therefore not allowed to ask questions. The situation changed when he later became a student of Zuhrī and was no longer counted as a beginner. Another explanation for the differences may lie in the two legal scholars’ different stages of development and in regional peculiarities in legal teaching in both centres of learning. This could explain, for example, the more frequent use of the *isnād* in Zuhrī’s traditions or the rarer occurrence of *aḥādīth* from the Prophet in Qatāda’s texts. Interpreted in this way, the texts transmitted by Ma‘mar enable us to get detailed insights into the state of development that legal thinking and teaching had reached in the first quarter second century A.H.

For this reason Ma‘mar’s Zuhrī transmission can be regarded as a useful source for the legal doctrines and traditions of this famous Medinan scholar. This conclusion does not exclude the possibility of Ma‘mar’s having occasionally made mistakes when preserving or transmitting the material received from Zuhrī.

The conclusions drawn up to now are based solely on Ma‘mar’s texts as contained in ‘Abdarrazzāq’s *Muṣannaḥ*. I did not refer to biographical traditions about Ma‘mar, as this type of information about Islamic scholars living during the first

two centuries A.H. is regarded as generally unreliable by many non-Muslim scholars. However, the preserved biographical traditions about Ma‘mar confirm the results obtained through our text analysis to a large extent. Let us have a look at the biographical material.

Ma‘mar b. Rāšid, a *maulā* of the tribe al-Azd, grew up in Baṣra, where he began his studies – as he himself said – in the year when al-Ḥasan al-Baṣrī died, i.e. in 110/728-9, when he was 14 years old. It is possible that he still heard him, but that is not confirmed in the biographical sources. Again according to himself, he then studied with Qatāda.<sup>26</sup> He left Baṣra, where he had formed a close friendship with Ayyūb b. Abī Tamīma, either shortly before or after Qatāda’s death (117/735) and became a student of Zuhri. He is indeed considered, along with Mālik b. Anas, as one of Zuhri’s most important students. He occasionally returned to Baṣra for visits and took the opportunity to study with some of the scholars there. At an unknown date he moved to Ṣan‘ā’, the centre of learning in Yemen, where he died in 153/770 or 154/771 (less probable alternatives given are 150 or 152) aged 57 or 58, surrounded by his students, among whom was ‘Abdarrazzāq.<sup>27</sup>

Ma‘mar belongs among the first *muṣannifūn*,<sup>28</sup> i.e. those who ordered their texts thematically. His *muṣannaf* works do not seem to have been widely dispersed because their existence or their titles are rarely mentioned in the biographical sources. Yet one of his *muṣannaf* works entitled *Kitāb al-Ġāmi‘* is preserved in the transmission of his disciple ‘Abdarrazzāq, and forms the last “book” of his *Muṣannaf*.<sup>29</sup> Ma‘mar’s wider *muṣannaf* compilation is probably preserved only in the (scattered) form in which ‘Abdarrazzāq integrated it into his own *Muṣannaf*.

The evaluation of early Islamic scholars by the later Muslim *ḥadīth* critics and *rijāl* experts which developed after the second half of the second century is useful for historical research in many respects. Their results must be handled with great care, however, for they are strongly linked to later norms of *ḥadīth* transmission which

were not generally followed by the traditionists of the first half of the second century A.H., to say nothing of the early *fuqahā'* who mainly taught their own *ra'y*. Nevertheless, it is worth pointing out that Ma'mar's transmission from Zuhri is considered very reliable by the *ḥadīth* critics.

### III

Another important early source for Zuhri's *fiqh* is the transmission of the Meccan scholar Ibn Ḡuraiḡ (d. 150/767). Like the one by Ma'mar it is contained in 'Abdarrazzāq's *Muṣannaf* and it can be reconstructed on the basis of the chains of transmission. Since I have already discussed the value of Ibn Ḡuraiḡ's transmission elsewhere,<sup>30</sup> I shall limit myself to the essential points which are important for the comparison with other early sources and for the Zuhri texts. The Ibn Ḡuraiḡ transmission in 'Abdarrazzāq's *Muṣannaf* is *qua* extension only slightly inferior to Ma'mar's and contains more than 5000 individual texts.<sup>31</sup> As we have already seen, Ma'mar's corpus is dominated by two authorities, including Zuhri, whereas Ibn Ḡuraiḡ's material presents only one main authority, the Meccan *faqīh* 'Aṭā' b. Abī Rabāḥ. Nearly 40% of Ibn Ḡuraiḡ's texts are ascribed to him. The rest are ascribed to a large number of informants (more than 100 persons), among whom five names are mentioned more frequently than others: the Meccan 'Amr b. Dīnār (7%), the Medinan Ibn Ṣihāb (6%), the Yemenite Ibn Ṭāwūs (5%), the Meccan Abū z-Zubair (4%) and the 'Irāqī 'Abdalkarīm [al-Ḡazarī] (3%).

As in the case of 'Abdarrazzāq's Ma'mar transmission, I consider the strongly varying attribution of texts to informants which is found in Ibn Ḡuraiḡ's corpus, along with the fact that it also contains legal opinions of his own and a conspicuous number of anonymous traditions, as evidence against the forgery theory. By forgery theory I mean the hypothesis that Ibn Ḡuraiḡ falsely ascribed his own legal opinions and those of other scholars at Mecca and elsewhere, as well as traditions (*ātār* and *aḥādīth*) circulating during his lifetime, to the previous generation of scholars. It

seems more plausible to explain the peculiar attribution of texts to informants found in Ibn Ğuraiğ's material by historical circumstances during his lifetime. For example, the fact that he has only one main authority, 'Aṭā', may be due to the fact that 'Aṭā' was his most important teacher, with whom he studied the longest and from whom he learned the most.

Other arguments against the forgery theory can be found in a comparison of the texts ascribed by Ibn Ğuraiğ to different persons. A comparison between Ibn Ğuraiğ's transmissions from 'Aṭā' b. Abī Rabāḥ and Zuhri, whom he usually calls Ibn Šihāb, will do as an example.

Let's first have a look at the peculiarities of Ibn Ğuraiğ's transmission from 'Aṭā'. The 'Aṭā' texts reproduce for the most part (80%) his *ra'y*. Only a fifth of them contain traditions from others in which 'Aṭā' is only the transmitter. The forms in which Ibn Ğuraiğ presents 'Aṭā's' *ra'y* are striking. Beside the usual sayings (*dicta*) we find an almost similar number of *responsa*, i.e. answers which 'Aṭā' gave to questions asked by Ibn Ğuraiğ himself or, more rarely, by other people, known by name or not. When classifying 'Aṭā's' *ātār* and *aḥādīṭ* according to the authorities to which they refer, we get the following result: He quotes the *ṣaḥāba* most frequently, the Prophet much less, and his contemporaries only sporadically. Furthermore, a large number of quotations from the Qur'ān are notable. Among the Companions it is Ibn 'Abbās who clearly dominates. 'Aṭā' refers to him nearly three times more than to 'Umar b. al-Ḥaṭṭāb, the second most frequently mentioned Companion, who himself is quoted three times more than 'Alī or 'Ā'īša. The Companions Ğabir b. 'Abdallāh, Abū Huraira, Ibn 'Umar and others appear only rarely. The *aḥādīṭ* of the Prophet are clearly outnumbered by 'Aṭā's' references to Ibn 'Abbās, but the Prophet follows in second place, ahead of all other *ṣaḥāba*. 'Aṭā' only sporadically gives his informants for the Companion traditions, and among his *aḥādīṭ* from the Prophet only a quarter have a – partly incomplete – *isnād*.

In sharp contrast to his transmission from ‘Aṭā’, in which the latter’s *ra’y* dominates, Ibn Ğuraiġ’s transmission from Zuhri consists mostly of traditions in which Zuhri functions only as transmitter (58%). The texts which contain Zuhri’s *ra’y* are fewer, but nevertheless noticeable in number (42%). The *ra’y* appears, in most cases, in the form of sayings (*dicta*) and seldom as answers (*responsa*). In striking contrast to Ibn Ğuraiġ’s *responsa* transmitted from ‘Aṭā’, where Ibn Ğuraiġ often asks the questions himself, his *responsa* transmitted from Zuhri are only exceptionally of that type. Among Ibn Ğuraiġ’s traditions transmitted from Zuhri, ‘Urwa b. az-Zubair is the most important informant of Zuhri. In that function he clearly outdoes other Medinan scholars such as Abū Salama b. ‘Abdarraḥmān, Sālim b. ‘Abdallāh b. ‘Umar, ‘Ubaidallāh b. ‘Abdallāh b. ‘Utba, Sulaimān b. Yasār and others.

Most of Zuhri’s traditions (*ātār* and *aḥādīṭ*) refer to individuals of the Companion generation as authorities. Only half as many of his traditions refer to Successors or the Prophet. Among the Prophet’s Companions ‘Umar is mentioned most frequently, followed by ‘Uṭmān, Ibn ‘Umar and ‘Ā’iṣa. Zaid b. Ṭābit, Abū Huraira, Ibn ‘Abbās and other, less famous, *ṣaḥāba* occur more rarely. If these authorities are ordered according to frequency, the Prophet is in first place, in sharp contrast to what we find in ‘Aṭā’s traditions. After the Prophet the second caliph ‘Umar comes only at some distance. Furthermore, it is remarkable that the caliphs are strongly represented, even the Umayyads like ‘Abdalmalik and ‘Umar b. ‘Abdal‘azīz. About half of Zuhri’s traditions have an *isnād*, though not always a complete one; his traditions from the Prophet usually have an *isnād*.

The comparison of two of Ibn Ğuraiġ’s text corpora, the one transmitted from ‘Aṭā’ b. Abī Rabāḥ and the one ascribed to Ibn Šihāb (az-Zuhri), shows that they are very different with regard to volume (i.e. absolute number of texts); importance of *ra’y*; text genres; use of *isnād*; authorities preferred etc. Ibn Ğuraiġ can hardly have fabricated both corpora. By fabricated I mean that he himself composed

the texts and supplied them arbitrarily with *asānīd*. There is other evidence, which I have presented elsewhere,<sup>32</sup> that supports the hypothesis that Ibn Ğuraiġ in fact acquired his ‘Aṭā’ texts from ‘Aṭā’ himself, for example: Ibn Ğuraiġ’s personal legal opinions; his comments on ‘Aṭā’’s texts; his conscious deviations from ‘Aṭā’’s opinions; occasional indirect transmission from ‘Aṭā’; and the reporting of different solutions of ‘Aṭā’’s to the same problem. Similar peculiarities can also be recognised in Ibn Ğuraiġ’s transmission from Ibn Šihāb, for example the indirect transmission from him,<sup>33</sup> or references to contradictory statements.<sup>34</sup> Finally, it is not easy to understand why the Meccan scholar Ibn Ğuraiġ, who mainly refers to authorities from this town, should have fabricated texts reproducing the *ra’y* and traditions of a Medinan *faqīh* and transmitter.

All this lends support to the hypothesis that the texts which Ibn Ğuraiġ reproduces really come from the persons indicated in the *isnād*. Alternatively we would have to imagine that Ibn Ğuraiġ received his material from anonymous forgers rather than from of the persons he names. Yet such an assumption means the problem would only be shifted to the realm of speculations which cannot be checked. It cannot be accepted as a scientifically permissible explanation for the differences between the two corpora.

To explain their respective peculiarities, we should consider, instead, different conditions as to how Ibn Ğuraiġ received his material, and different individual and/or regional peculiarities of ‘Aṭā’’s and Zuhri’s legal scholarship. The large number of *responsa* in Ibn Ğuraiġ’s transmission from ‘Aṭā’ may mirror the manner in which Ibn Ğuraiġ acquired his legal knowledge from this teacher. The predominance of *ra’y*, the high frequency of texts from Ibn ‘Abbās and the rare occurrence of *asānīd* may be typical of ‘Aṭā’’s doctrine and/or that of the Meccan *fiqh* in general at the beginning of the second century A.H. On the contrary, the rare occurrence of direct questions put by Ibn Ğuraiġ to Ibn Šihāb and the only sporadic references to a *samā’* (hearing) from him may be circumstantial evidence that Ibn



Ġuraiġ was not one of Zuhri's regular students. He may have acquired a part of his Zuhri texts not by hearing, but by copying a written source which Zuhri or one of his pupils put at Ibn Ġuraiġ's disposal. In Ibn Ġuraiġ's Zuhri material, the predominance of traditions over his *ra'y*, the higher frequency of informants given for traditions, and the eminent role played by the Prophet as a legal authority may be typical of Zuhri's and/or Medinan jurisprudence in this period. Such a historical explanation does not lack plausibility – to my mind – and offers the advantage that it is falsifiable. For this reason we should maintain, until the contrary is proven, that the texts which Ibn Ġuraiġ ascribes to Ibn Šihāb [az-Zuhri] do really derive from the latter.

This conclusion and our assumptions as to how Ibn Ġuraiġ could have come by his texts are based so far exclusively on 'Abdarrazzāq's texts as preserved in his *Muṣannaf*. I have left aside biographical information *about* Ibn Ġuraiġ for the reasons already mentioned above. This will be remedied now.<sup>35</sup>

'Abdalmalik b. 'Abdal'azīz b. Ġuraiġ, a *maulā* of the Umayyad clan Āl Ḥālid b. Asīd, was born in the year 80/699, probably in Mecca, where he grew up. He started studying when he was 15 under the patronage of 'Aṭā' b. Abī Rabāḥ, the leading Meccan scholar of that time. He frequented his study circle for about 18 years but he separated from his teacher one or two years before his death in 115/773 to join the younger scholar 'Amr b. Dīnār whose lessons he attended for about seven years. This information corresponds to the picture we found when investigating the frequency of transmitters in Ibn Ġuraiġ's corpus: 'Aṭā' is by far the most frequently quoted, followed by 'Amr b. Dīnār.<sup>36</sup> In this period Ibn Ġuraiġ probably also studied with other scholars, for example, the Meccan Ibn Abī Mulaika (d. 117/735 or 118/736) and the Medinan scholar Nāfi' (d. 118/736 or 119/737), the *maulā* of Ibn 'Umar, who stayed at Mecca from time to time. All this information, transmitted by Ibn Ġuraiġ's students, is usually based on his own statements. He died in 150/767.

Ibn Ğuraiġ is one of the first authors – if not the first – of books of traditions compiled in the *muṣannaf* style, i.e. ordered according to legal topics. His book was probably entitled “*Kitāb as-Sunan*”.<sup>37</sup> Most of it must have been comprised of what his pupil ‘Abdarrazzāq transmitted from him in his *Muṣannaf*. His work had already become famous beyond Mecca during his lifetime and it probably gave an impulse to other scholars, such as Ma‘mar b. Rāšid, Sufyān at-Taurī and Mālik b. Anas, to compose similar works.

In biographical literature, Ibn Ğuraiġ is considered an excellent *faqīh*, Qur’ān reciter and exegete. His disciples composed a “*Kitāb at-Tafsīr*” from his Qur’ān lessons.<sup>38</sup> Yet the judgment of the *ḥadīth* critics on him was controversial. Some younger contemporaries like Mālik or Ibn Ğuraiġ’s pupil Yaḥyā b. Sa‘īd al-Qaṭṭān already showed reservations concerning some parts of his transmission. His transmissions from ‘Aṭā’ b. Abī Rabāḥ, ‘Amr b. Dīnār, Ibn Abī Mulaika, Nāfi‘ and some others, however, are usually excluded from the critics’ negative assessment.<sup>39</sup> Criticism is directed mainly against certain forms of transmission used by Ibn Ğuraiġ which from the middle of the second century A.H. onwards came to be seen as inadequate. Criticism is also directed against the fact that he did not always make these forms of transmission clear in his transmission terminology.<sup>40</sup> For example, Ibn Ğuraiġ used an informant’s written material which the latter had left to him or which Ibn Ğuraiġ had copied himself and which he had obtained permission to transmit, but which he had not personally “heard” or read out to the informant. In some cases, the manuscript Ibn Ğuraiġ had copied may have been only a collection of texts belonging to one of the informant’s students. This was a method of transmission widely used during the first half of the second century A.H. and not yet generally scorned. In this way, for example, Ibn Ğuraiġ obtained his *aḥādīth* transmitted from Zuhri, as he himself is reported to have admitted.<sup>41</sup> This corresponds to the results we obtained when analysing Ibn Ğuraiġ’s Zuhri texts. In sharp contrast to his ‘Aṭā’ transmission, we found in the corpus of Zuhri texts hardly any *responsa* to Ibn

Ġuraiġ's questions or references to having heard Zuhri (*samā'*). But there are a few, as the following example shows:

‘Abdarrazzāq from Ibn Ġuraiġ; he said: Ibn Šihāb transmitted to me, [when] *I asked him* about a man who divorced his wife three times while he was suffering pains (*fī waġa'*) [i.e. during an illness]: ‘How is it? Must she observe her waiting period when he dies, and does she inherit from him?’ He (Ibn Šihāb) said: ‘Uṭmān decided about a wife of ‘Abdarraḥmān [b. ‘Auf], that she had to observe her waiting period and that she inherits from him. He let her inherit from him after she had concluded her waiting period. ‘Abdarraḥmān had suffered pains for a long time.’<sup>42</sup>

Texts such as this one show that one cannot generalise about the biographical reports about how Ibn Ġuraiġ received Zuhri's *aḥādīth*. Indeed it is also mentioned in biographical literature that Ibn Ġuraiġ had personal contacts with Zuhri. He was not one of his regular students, however. This latter fact does not exclude the possibility that he “heard” from him occasionally or asked him questions, maybe during one of Zuhri's stays in Mecca for the *ḥaġġ*. This explains the occasional *responsa* to Ibn Ġuraiġ's answers. It would be unwarranted to regard Ibn Ġuraiġ as unreliable or as a forger only because of a few cases of contradiction between the information he is giving about his mode of transmission and the biographical information preserved about him. A historian need not necessarily share the *ḥadīth* critics' reservations regarding Ibn Ġuraiġ's Zuhri transmission. Even if Ibn Ġuraiġ received most of Zuhri's “*aḥādīth*” – that term does not necessarily include his *ra'y* – in written form, that is, without hearing them from him or reading them out to him, it does not mean that they should be considered as false or unreliable for that reason, but only that these sources do not meet the high standards of the later Muslim *ḥadīth* criticism. If the historian were only permitted to use sources which met these criteria, most of the sources on which historians of Islam rely would be unusable.

Our investigation of the evidence concerning Ibn Ġuraiġ which can be found in biographical literature leads, on the whole, to a picture very similar to the one

that we could outline on the basis of his texts. This could lead to the supposition that the biographical traditions could have been extrapolated from the texts. However, there is hardly any evidence for such a claim. Only the later voluminous lists of teachers and pupils as we find them, for example, in Ibn Ḥaḡar's *Tabdīb*, probably arose, at least partially, in that way.<sup>43</sup> Thus, on the basis not only of Ibn Ğuraiġ's texts but also of the biographical information on him, which goes back for the most part to his students, we are justified in considering his Zuhrī transmission as authentic, in the sense that he in fact received the texts from Zuhrī.

#### IV

The smallest but no less important of the three early corpora of transmissions from Zuhrī is that of Mālik b. Anas in his *Muwatta'*.<sup>44</sup> The *Muwatta'* is basically a *muṣannaḡ* work similar to those by Ma'mar and Ibn Ğuraiġ, but more fully amplified with annotations. If analysed according to the alleged origin of its transmissions, the following picture emerges: Mālik refers most frequently to Ibn Šihāb [az-Zuhrī] (21 %), who, for this reason, can be considered his main informant. Texts from Nāfi', the *maulā* of Ibn 'Umar, and from Yaḡyā b. Sa'id al-Anṣārī follow at some distance (14 % each). Rabī'a b. Abī 'Abdarraḡmān, 'Abdarraḡmān b. al-Qāsim, Hišām b. 'Urwa, and 'Abdallāh b. Abī Bakr are among the informants mentioned less frequently (4 – 2 %). They are all Medinan scholars. A large number of names appear only sporadically. In Mālik's *Muwatta'*, the stock of anonymous traditions is much more substantial (18 %) than in the text corpora of Ma'mar and Ibn Ğuraiġ.<sup>45</sup>

Faithful to the method I have followed so far, I take this striking distribution of texts among Mālik's informants as the first circumstantial evidence against the possible suspicion that Mālik forged his transmission. If he had wanted to hide or fake the real origin of his traditions and ascribe them to particularly important authorities instead, the question arises why he chose to do so in such an irregular distribution. Why does he not prefer the older Nāfi' as his main authority instead

of Zuhri? Why does he only quote Nāfi' as often as Yaḥyā b. Sa'īd, who is a generation younger? And, finally, why does Mālik fail to name informants for so many traditions?

A comparison of the texts which Mālik ascribes to his most important informants supplies further evidence in favour of my hypothesis. I shall limit myself to a comparison of the transmissions from Ibn Šihāb and Nāfi': The texts referring to Ibn Šihāb consist for the most part of traditions in which Ibn Šihāb is only a transmitter and Mālik's informant for the legal opinions of earlier authorities (63 %). The remaining part (37 %) which contains Zuhri's own opinions (*ra'y*) is nevertheless considerable. Only little more than half of the *ra'y* transmissions take the form of *responsa* to Mālik's questions or point to a personal communication (*samā'*). Is the rest transmitted indirectly? Frequently Zuhri's *ra'y* is introduced in the *Muwatta'* in a such a way as to suggest, indeed, an indirect transmission, i.e. by the mediation of an anonymous third person. For example:

[Yaḥyā b. Yaḥyā] transmitted to me from Mālik that he had been told (*balāghu*) that Sa'īd b. al-Musayyab, Sulaimān b. Yasār and Ibn Šihāb used to say: ...<sup>46</sup>

This occurs, however, only in collective quotations in which other earlier authorities are mentioned besides Zuhri. Such anonymous references by Mālik to the *ra'y* of late first century A.H. Medinan *tābi'ūn* are to be found in Yaḥyā b. Yaḥyā's recension of the *Muwatta'* in large numbers. They take the following form:

[Yaḥyā b. Yaḥyā] transmitted to me from Mālik that he had been told (*balāghu*) that al-Qāsim b. Muḥammad...<sup>47</sup>

Anonymous traditions like this one are usually not found transmitted from Ibn Šihāb alone in the *Muwatta'*. So we have to conclude that the anonymous reference to Ibn Šihāb in collective quotations is an inexact, because shortened, form of quotation which actually should run as follows:

[Yaḥyā b. Yaḥyā] transmitted to me from Mālik from Ibn Šihāb, and that he had been told (*balāghahu*) about [the Successors] X and Y that they used to say: ...

This more elaborate but more precise form of collective quotation occurs only occasionally.<sup>48</sup> Mālik's anonymous indirect reference to Ibn Šihāb in collective quotations should not be considered, therefore, as a real indirect transmission. Such examples do not prove at all that Mālik derives the major part of Ibn Šihāb az-Zuhrī's *ra'y* from sources which he passes over in silence. Real indirect transmissions from Zuhrī are to be found in Mālik's *Muwatta'* only rarely. In them Mālik refers to Zuhrī through a third person called by name.<sup>49</sup> Even if such indirect transmissions are quite unusual, their sheer existence shows that we can hardly impute to Mālik the ambition to relate directly all Zuhrī texts known to him, even those which he had not heard from Zuhrī himself, suppressing the names of the informants from whom he actually received the Zuhrī texts.

The *ātār* and *ḥādīths* of Mālik's Zuhrī transmission mostly refer to the *ṣaḥāba* generation; only half as many go back to the Prophet and the smallest number go back to the *tābi'ūn*. Anyway, the Prophet is the most frequently mentioned among all single authorities; he occurs twice as often as 'Umar or 'Uthmān, Ibn Šihāb's favourites among the Companions of the Prophet. Among the *ṣaḥāba* traditions, those with an *isnād* prevail over those without; among the traditions from the Prophet both types of transmission are even frequent, whereas the Successor traditions are for the most part anonymous, i.e. lack any *isnād*.

These findings generate several questions for the advocates of the forgery theory: Why does Mālik, who via Ibn Šihāb mostly refers to the *ṣaḥāba* or to the Prophet, appeal to Ibn Šihāb's *ra'y* at all, if he wanted to base his own *fiqh* fictitiously on earlier and more eminent authorities? Does it make sense to assume that

Mālik invented Prophetic traditions with incomplete *asānīd*, lacking one or even two transmitters, as well as traditions with complete chains of transmitters?

Mālik's Nāfi' transmission is totally different from his Ibn Šihāb az-Zuhrī texts. It generally does not contain traditions about Nāfi's *ra'y*,<sup>50</sup> but consists almost entirely of traditions which Nāfi' transmits from other people. About two thirds of them relate to the *ra'y* or the legally relevant behaviour of 'Abdallāh b. 'Umar who is counted among the *ṣaḥāba*. The rest refer to the Prophet, his wives, or to a Companion like Zaid b. Tābit, often in connection with a member of 'Umar's or Ibn 'Umar's family. Nāfi's informant is for the most part his patron Ibn 'Umar, more rarely the latter's wife Šāfiyya bint Abī 'Ubaid, his son Sālim or other family members. Generally, we find informants given in this material for traditions from the Prophet and Companions other than Ibn 'Umar. There are hardly any *responsa* by Nāfi' to questions asked by Mālik himself<sup>51</sup> or indications that he heard him personally (*samā*).

As in the case of Ma'mar and Ibn Ğuraiġ, it is possible to explain – hypothetically – the astonishing differences between Mālik's Ibn Šihāb [az-Zuhrī] and Nāfi' transmissions by historical circumstances. For example: The fact that Mālik frequently transmits from Zuhrī *responsa* to his own questions as well as texts which Mālik explicitly says he heard from Zuhrī, whereas he hardly transmits any of these types of texts from Nāfi', may be the result of different forms of teaching. Nāfi' may have had his pupils only copy texts and read them out – or Mālik may have only attended such lessons – whereas Zuhrī may have held additional question times or discussions about legal topics. The finding that Mālik reports from Zuhrī many instances of his *ra'y*, and, by comparison, almost none from Nāfi', may have similar reasons or – more likely – it may mirror the fact that Nāfi' did not teach his own *ra'y* at all, but confined himself in his classes to the transmission and diffusion of traditions only.

The difference between Mālik’s transmissions from Ibn Šihāb and Nāfi‘ was noticed by Schacht as well. Yet he did not see in this difference any evidence of a possible authenticity of both text transmissions. On the contrary, he tried to solve the problem by postulating that one or more forgers had invented these texts and falsely ascribed them to both scholars (Nāfi‘ and Zuhri) during the first half of the second century. According to Schacht, Mālik adopted these fabricated texts – those connected with Nāfi‘’s name possibly from a manuscript – in good faith, thinking that they were genuine, but did not indicate that his transmission was indirect.<sup>52</sup> Schacht implies with this assumption that Mālik acted against the rules of the later science of *ḥadīth* and practised a method of transmission for which, according to biographical information, Mālik fiercely criticised others, for example Ibn Ğuraiġ.<sup>53</sup>

Schacht gives several reasons for his aversion to the *isnād* “Mālik – Nāfi‘ – Ibn ‘Umar”, considered by Muslims as particularly trustworthy:<sup>54</sup> Firstly, the quantity of Mālik’s Nāfi‘ traditions is too large for the marked difference in age between them – Nāfi‘ died in 117, Mālik in 179 A.H.<sup>55</sup> Secondly, the *isnād* “Nāfi‘ ‘an Ibn ‘Umar” is what he calls a “family *isnād*”, which must be generally suspected of having been fabricated. Thirdly, the traditions provided with this *isnād* reflect, in Schacht’s opinion, a secondary stage in legal development; he writes: “Many Nāfi‘ traditions represent unsuccessful attempts at influencing the doctrine of the Medinese school.” “...These traditions are later than the established Medinese doctrine.”<sup>56</sup>

These arguments are not convincing, however. First, according to biographical reports, Mālik was 23 or 24 years old when Nāfi‘ died.<sup>57</sup> This is certainly not an age that precludes the taking over of his Nāfi‘ tradition, which is not particularly large, by copying or reading it out. Secondly, it is not plausible that transmission from relatives and family members should be considered *a priori* as untrustworthy. On the contrary, we can imagine that they are especially reliable because of the longer and more intimate contact that had existed between the transmitter and his informant.<sup>58</sup> Thirdly, Schacht’s last argument<sup>58</sup> is part of a circular reasoning; he uses



hypotheses on the doctrine of a presumed old “Medinese school” which he himself constructed on the basis of conjectures which already contained his prejudices concerning the value of the *asānīd* of the second century. Finally, we can question why Mālik should have faked a direct transmission from Nāfiʿ, though he does not shrink from quoting him occasionally *via* a third person, for example, Nāfiʿ’s son Abū Bakr.<sup>59</sup>

Our comparison of the text corpora of Mālik’s most important informants leads to the conclusion that we must assume that Mālik’s transmissions from both Nāfiʿ and Zuhri really derive from them, until the contrary is proven.

This conclusion, based only on Mālik’s *Muwattaʿa*, remains tenable even when we look at the biographical reports preserved about Mālik. Schacht has dealt with Mālik’s biography in detail.<sup>60</sup> He thinks that we hardly have any reliable information about the period of Mālik’s studies. Schacht only accepts the report that Mālik studied *fiqh* with Rabīʿa b. Farrūḥ, though this information is only found in later sources. He seems to reject as untrustworthy other reports, even early ones, concerning other teachers of Mālik. Schacht emphasises that the fact of Mālik’s transmitting from Nāfiʿ and Zuhri is not proof that he studied with the authorities in question.<sup>61</sup>

Schacht is surely right in being suspicious of the steady increase in teachers’ and pupils’ names in the biographical sources because they probably are based, at least partially, on the *asānīd* known to their authors. Yet the reports about Mālik that go back to his immediate pupils cannot be rejected indiscriminately, as Schacht did. In doing so, he was guided by his prejudices concerning the state of development which Islamic *fiqh* had reached in the first quarter of the second century and he concluded from the content of the texts that they could not derive from the generation of Mālik’s supposed teachers. Some of the gaps in Schacht’s portrayal of Mālik’s biography will be filled in the following paragraph.

According to Mālik himself, as transmitted by his student Yaḥyā b. Bukair, he was born in 93/712.<sup>62</sup> This date is preferable to all other dates for which no sources are given. That means that he was 23 or 24 when Nāfi‘ died. The ‘Irāqī scholar Šu‘ba [b. al-Ḥaḡḡāḡ], a slightly older contemporary of Mālik’s, even reported that Mālik already had his own circle (*ḥalqa*) of students when he, Šu‘ba, came to Medina a year after Nāfi‘’s death.<sup>63</sup> Mālik’s students, like Yaḥyā b. Sa‘īd al-Qaṭṭān, regarded their teacher as one of Nāfi‘’s most important “transmitters” – and by this they mean pupils. Critical *ḥadīth* scholars, like ‘Alī b. al-Madīnī, Yaḥyā b. Ma‘īn and Aḥmad b. Ḥanbal, belonging to the generation of the pupils of Mālik’s students, considered Mālik a student (*ṣāḥib*) of both Nāfi‘ and Zuhri and the latter, i.e. Zuhri, as his most important teacher. They probably obtained their information from their teachers, i.e. Mālik’s students, even in the cases when they do not say that explicitly. Among Zuhri’s pupils they preferred Mālik to all others, mentioning besides him as important students his older contemporary Ma‘mar b. Rāšid and – with reservations – the slightly younger Ibn ‘Uyaina. The latter reported that Mālik and Ma‘mar took over their material from Zuhri by copying manuscripts and reading them out (*‘arḍan*), whereas he himself only took over material by listening (*samā‘*),<sup>64</sup> possibly because he was, due to his age, only a novice in Zuhri’s circle.

The correspondence between early biographical traditions *about* Mālik and the results we obtained by investigating the Mālik’s transmission from his teachers as contained in the *Muwatta‘* corroborates my assumption that Mālik’s Zuhri traditions in the *Muwatta‘* are genuine, i.e. their content really does go back to Zuhri. They deserve our trust until the contrary is proven, not the opposite, as Schacht demanded.

As we have shown, the investigation of the three earliest corpora containing large numbers of Zuhri texts gives rise to the conclusion that the Zuhri transmission of all of them cannot be considered as fabrications of the compilers of these corpora, i.e. texts falsely ascribed to Zuhri. This does not exclude the possibility that they may contain errors which crept in during the process of transmission. If it is true that Ma‘mar’s and Ibn Ğuraiġ’s transmissions found in ‘Abdarrazzāq’s *Muṣannaf* and Mālik’s transmission in the *Muwatta‘* independently go back to Zuhri, then we could expect that these three transmission stocks contain, at least partially, similar materials. Whether this is the case will be examined now.

To start with, we have to record that, on the face of it, there are similarities and differences between the three transmission corpora. For example, Ma‘mar’s contains many more texts than the other two, yet this does not necessarily mean that its additional material is fabricated. To explain the difference, we can imagine that, for some reason, Mālik and Ibn Ğuraiġ did not communicate everything they knew from Zuhri and/or that they had learned less from him than Ma‘mar had, maybe because they did not study with Zuhri as long as Ma‘mar did. The fact that in Ma‘mar’s corpus Zuhri’s *ra‘y* predominates, whereas in Ibn Ğuraiġ’s and Mālik’s corpora his traditions from earlier authorities are more frequent, may have similar causes or may mirror Ma‘mar’s stronger interest in Zuhri’s *ra‘y*. Likewise, we can explain the different distribution of Zuhri’s informants in the traditions of the three text corpora. The fact, for example, that Ibn al-Musayyab and Sālim b. ‘Abdalāh b. ‘Umar are more frequently mentioned in Ma‘mar’s Zuhri traditions than in those of the other two can, perhaps, be explained by the observation that Ibn Ğuraiġ transmits many Ibn al-Musayyab traditions from other informants, like Yaḥyā b. Sa‘id, and many Ibn ‘Umar traditions from Nāfi‘ and Mūsā b. ‘Uqba (*‘an* Nāfi‘). He may have been less interested in Zuhri’s transmission from them. Something

similar is true in Mālik's case. In addition, it is important to bear in mind that Mālik often does not mention his informants for the traditions from the Successors, though, in many cases, Zuhri probably is Mālik's source for them.

A comparative analysis the texts (*mutūn*) contained in the three corpora will offer more substantiated conclusions. For the sake of clarity, I distinguish between Zuhri's *ra'y* and his traditions. The question I will answer first is: How similar are the texts reproducing Zuhri's *ra'y* contained in the tree corpora?

If the Zuhri transmission by Ibn Ğuraiġ is compared to the one by Ma'mar from this point of view, the result is that more than half of all *ra'y* texts transmitted by Ibn Ğuraiġ have a parallel in Ma'mar's corpus. Most of them have the same content, i.e. differ only in the choice of words or in the fullness of the text; some texts are completely identical; others deal with a somewhat diverging point of the same legal issue; obvious contradictions are only rarely found. Here are some examples:

In his *Muṣannaf* 'Abdarrazzāq often reproduces sayings (*dicta*) of Zuhri which are transmitted by both Ma'mar and Ibn Ğuraiġ in the same or very similar words by quoting only one text in full, as a rule that of Ma'mar, and giving from the other one only the *isnād*, for example “‘an Ibn Ğuraiġ ‘an Ibn Šihāb” together with the remark “*miṭlabu*” (the same).<sup>65</sup>

Examples of texts with the same content but different wording are:

- a) 'Abdarrazzāq from Ma'mar from Zuhri: There is no objection marrying a free [woman] in addition to a slave woman, [but] it is not permitted to marry a slave woman in addition to a free [wife]. If [a man], married already to a free woman, marries a slave woman, he must be separated (*furriqa*) from the slave woman and he is to be punished. If he marries a free woman in addition to a slave woman while she knows that he is [already] married to a slave woman, she has the right to the same number (*qisma*) [of nights] and maintenance. [But] if she married [him] without knowing that he is mar-

ried to a slave woman, she has the right to decide: If she wants, she can separate from him or stay with him.<sup>66</sup>

- b) ‘Abdarrazzāq from Ibn Ğuraiġ; he said: Ibn Šihāb transmitted to me about the free woman who is married [by a man] in addition to a slave woman: The *sunna* concerning the [woman] with whom a free man does that [i.e. marries her] is that the free man is not permitted to marry a slave woman if he finds the financial means (*tūl*) to [marry] a free woman.<sup>67</sup> If he does not find the financial means, marriage with a slave woman is allowed. If he then marries a free woman in addition to her [the slave woman], he can do that provided that the free woman knows that he is [already] married to a slave woman. If she did not know, the free woman can choose between separation from him and staying with him for the same number (*qisma*) [of nights] and maintenance. [However,] if he marries a slave woman in addition to her [the free woman], she [the slave woman] will be taken away from him, and he will be punished.<sup>68</sup>

Differences such as the large number of texts tallying only in content but not in wording show that the texts did not result from copying of manuscripts but from notes made during and/or after the lessons. Such a procedure appears to have been quite normal for the type of legal teaching in which questions were asked and legal problems were discussed (as opposed to *ḥadīth* instruction where texts were recited or read out). The fact that occasionally a different point of a legal issue is emphasised may reflect different personal interests and individual students’ different background knowledge. Furthermore, we have to take into account that our three transmitters of Zuhri’s legal opinions (Ma‘mar, Ibn Ğuraiġ and Mālik) probably did not study with him at the same time so that their different presentations of the material may be due to Zuhri himself who, perhaps, did not always express his doctrines in exactly the same words.

The rare parallel texts in which obvious contradictions appear are not easily explained. An example:

- a) ‘Abdarrazzāq from Ma‘mar from Zuhri about the one who gratifies his sexual desires with an animal (*ya’tī al-babīmata*). He said: “He must be flogged 100 times; it does not matter whether he is *muḥṣin* (*aḥṣana*, i.e. has been married before] or not.”<sup>69</sup>
- b) ‘Abdarrazzāq said: Ibn Ğuraiġ transmitted to us; he said: Ibn Šihāb told about a man who cohabitates with a gregarious animal (*yaqa‘u ‘alā l-babīmati min al-an‘ām*) the following: “I have not heard a *sunna* about it, but we consider him like the one who has illegitimate sexual intercourse [with a human being] (*az-zānī*); it does not matter whether he is *muḥṣin* (*aḥṣana*) or not.”<sup>70</sup>

In the last text the punishment is not mentioned expressly, but we can infer it, for only the *zānī* who is *not muḥṣin* is flogged while the *muḥṣin* is stoned.<sup>71</sup> Obviously, there is a contradiction between both texts. It is not easy to tell how this came about. We can imagine a change of mind on Zuhri’s part, which would not be at all unusual,<sup>72</sup> or a misunderstanding by one of the pupils who transmitted the text.

When Mālik’s quotations of Zuhri’s *ra’y* found in the *Muwatta’* are compared with Ma‘mar’s and Ibn Ğuraiġ’s *ra’y* transmissions from Zuhri contained in the *Muṣannaf*, the correspondences are even higher (80%) than between Ma‘mar and Ibn Ğuraiġ. Here, too, completely identical texts are rather unusual; the majority only have the same content; and we occasionally find contradictions as well. The causes of the sometimes smaller, sometimes bigger differences are probably the same as mentioned above.

An example of identical and similar texts:

- a) [Yaḥyā] transmitted to me from Mālik from Ibn Šihāb that he said: “Every divorced woman has the right to an allowance (*mut‘a*).”<sup>73</sup>
- b) [‘Abdarrazzāq from]<sup>74</sup> Ma‘mar from Zuhri; he said: “Every divorced woman has the right to an allowance (*mut‘a*).”<sup>75</sup>

- c) ‘Abdarrazzāq from Ibn Ğuraiġ<sup>76</sup> from Ibn Šihāb; he said: “The allowance is the same for the woman who had marital intercourse and for the one who had not.” He said [moreover]: “They both have the right to allowance.”<sup>77</sup>

An example of contradictory texts:

- a) Yaḥyā transmitted to me from Mālik, that he asked Ibn Šihāb about the oath [of sexual abstinence] (*ilā*) of a slave [concerning his wife]. He [Ibn Šihāb] said: “It is like the *ilā*’ of the free man; it is binding, [but] the *ilā*’ of the slave [covers only] two months.”<sup>78</sup>
- b) ‘Abdarrazzāq from Ma‘mar from Zuhri; he said: “The slave’s oath [of sexual abstinence] to a slave woman [covers] four months.”<sup>79</sup>

The facts that such contradictions are an exception and that the majority of the Zuhri *dicta* expressing his *ra’y* correspond in content corroborate my conclusion that all three source corpora contain genuine traditions of Zuhri’s *ra’y*. It is very unlikely that the three compilers – one living in Ṣan‘ā’, another in Mecca and the third in Medina – independently of one another can have ascribed arbitrarily so many similar texts to Zuhri. In this case of forgery contradictions would occur more frequently. Another possible assumption, namely that all three scholars actually obtained their material from the same “counterfeit workshop” or fell victim to a wandering “pious swindler” who circulated fabricated Zuhri doctrines, and that they then concealed the source of their material by suppressing the names of their informants in the *asānīd*, is unconvincing as well. Schacht assumed this for a part of Mālik’s Zuhri transmission, though he did not suspect Mālik of *pia fraus* expressly. The practical difficulties of this hypothesis apart, in such a case we could expect more correspondence in wording between the texts of the transmitters.

Perhaps, Schacht would have gone so far as to recognise as genuine the complete *ra’y* of Zuhri as transmitted by Mālik, but in the case of his Zuhri traditions from earlier authorities no compromise was possible for Schacht, for this would

have contradicted his ideas about the development of Islamic jurisprudence. What can be said about Zuhri's *ātār* and *aḥādīt* in our three early sources? An extensive comparison of the numerous texts would be desirable but cannot be done in the framework of this essay. Such a comparison should consist of a synopsis of the traditions corresponding in content; it should underline the differences and suggest explanations for them. However, a few results of such an investigation will at least be presented and illustrated with examples.

Taking Mālik's *Muwatta'* as a starting point we can detect that for the majority (85 %) of his texts in which Ibn Šihāb functions as transmitter for earlier authorities there are parallel texts in the corpora of Ma'mar and/or Ibn Ğuraiġ. A minority of texts is transmitted only by the latter two or by one of the three scholars alone. The correspondence varies from identical texts to only a vague resemblance in content. I cannot detect any difference in variation concerning certain types of traditions such as those referring to the *tābi'ūn* generation, the *ṣaḥāba* or the Prophet. From the point of view of literary genres, short legal maxims are found beside elaborated cases and detailed narratives (*qiṣas*).

These facts provide evidence against the suspicion, held by Schacht and others, that the traditions labelled as Zuhri transmissions in the *ḥadīt* compilations emerged only after his death, and that they were falsely ascribed to him and happened to reach the authors of our three compilations by oral transmission – oral because of the many differences between the texts. Firstly, the body of Zuhri traditions is too large to fit this theory. Secondly, the period of time between Zuhri's death (124/742) and the “publication” of our three authors' compilations is too short. They probably composed their works some time before their deaths. Ibn Ğuraiġ was already dead by 150/767 and Ma'mar died in 153/770. Mālik's *Muwatta'* must have existed around 150 at the latest because Šaibānī, who was born in 132/750,<sup>80</sup> probably received his version of the *Muwatta'* as a young student of Mālik's – according to biographical reports at the age of 20.<sup>81</sup> The year 150 can be



considered, therefore, as the *terminus ante quem* of the existence of all three compilations; but most probably they had already been compiled much earlier. If this is accepted, it remains difficult to explain how the three authors, who lived far away from one another, came into possession of this huge number of texts, which are similar in content but often vary in wording, if one assumes at the same time that the texts were forged by others. Finally, it seems a very odd coincidence that each of the three compilers suppressed their real informant(s) or their common source(s) as if they had agreed to this fraud.

In the following I shall present an example to show the differences between the Zuhri traditions in our three corpora and to clarify the conclusions reached so far.

- a) [Yaḥyā] transmitted to me from Mālik from Ibn Šihāb from Sa‘īd b. al-Musayyab and Sulaimān b. Yasār, that Ṭulaiḥa as Asadiyya<sup>82</sup> was married (*kāna taḥta*) to Rušaid aṭ-Ṭaqafī. He divorced her and she remarried in her waiting period.<sup>83</sup> ‘Umar b. al-Ḥaṭṭāb had her and her husband flogged (*daraba*) with an oxen scourge (*mihfaqa*) and he sentenced them to be separated (*farrāqa bainahumā*). Then, ‘Umar b. al-Ḥaṭṭāb said: “If a woman (*ayyumā mra’atin*) marries during her waiting period and if the man who married her has not consummated the marriage (*daḥala bibā*) [yet], both must be separated (*furriqa bainahumā*); she must [first] observe the remaining part (*baqiyya*) of her waiting period of [the marriage with] her first husband and then the second man can marry her again (*kāna ḥāṭiban min al-ḥuṭṭāb*). [However,] if he has consummated the marriage with her, both must be separated; she must observe [first] what remains of the waiting period of [the marriage with] her first husband, than the waiting period of the second one, and then both are forbidden to marry another again for ever (*lā yaḡtami‘āni*)<sup>84</sup>.”

Mālik said:<sup>85</sup> Ibn al-Musayyab said: “She [the woman in the last case] is entitled to her bride wealth [as a compensation] for what was permitted to him from her<sup>86</sup>.”<sup>87</sup>

In the notes, the differences found in Šaibānī’s *Muwatta’* recension are given. These differences consist of additions, varying names, and variations in the text that

sometimes look like specifications and sometimes like errors. The omission or suppression of the words “*qāla Mālik*” before the Ibn al-Musayyab *dictum*, added at the end of the text, means that it is to be understood as a constituent part of Ibn Šihāb’s transmission. Originally this additional remark to the tradition from ‘Umar was probably anonymous, like so many of Mālik’s references to Ibn al-Musayyāb found in Yaḥyā’s *Muwattaʿa*’ version.<sup>88</sup> All in all, the correspondence between both variants of Mālik’s text is so close that it must have been recorded in writing. Let us have a look at the parallels:

- b) ‘Abdarrazzāq from Ma‘mar from Zuhri from Ibn al-Musayyab, that Ṭulaiḥa bint ‘Ubaidallāh married (*nakaḥat*) Rušaid at-Ṭaqafī in her waiting period. ‘Umar had them flogged (*ḡalada*) with a whip (*dirra*). He decided (*qaḍā*): “If a man (*ayyumā raḡulin*) marries a woman during her waiting period and consummates the marriage with her (*ašābahā*), both must be separated (*yufarraqu bainahumā*); then, both are forbidden to marry another again (*yaḡtami‘āni*); she must complete (*tastakmilu*) what remains (*bāqiyata*) of the waiting period [of the marriage with] the first [husband] and then turn (*tastaqbilu*) to her waiting period of [the marriage with] the second one. [However,] if he has not [yet] consummated the marriage with her (*lam yuṣibhā*), both must be separated (*yufarraqu bainahumā*) until she has completed (*tastakmilu*) what remains of the waiting period of [the marriage with] the first [husband]; then, he [the second one] can marry her again (*yaḡtubuhā ma‘a l-ḥuṭṭāb*).”

Zuhri said: “I do not know how many [lashes] that flogging amounted to.” He said [moreover]: “‘Abdalmalik had both of them flogged with 40 lashes in that [i.e. such a case]. Qabiṣa b. Du‘aib was questioned on it [‘Abdalmalik’s verdict]. He said: “If you had diminished it and flogged each of them with 20 lashes [, it would have been more appropriate].”<sup>89</sup>

- c) ‘Abdarrazzāq from Ma‘mar from Zuhri from Sulaimān b. Yasār, that ‘Umar b. al-Ḥaṭṭāb imposed her complete bride wealth on the one [who] had married her during her waiting period [as compensation] for the claim he had (*istaḥaqqā*) on her [to sexual intercourse]; both must be separated (*yufarraqu bainahumā*); both are forbidden to

marry again (*yatanākahāni*) for ever, and she must observe her waiting period (*ta'taddu*) of both [marriages].<sup>90</sup>

- d) 'Abdarrazzāq from Ma'mar from Zuhri, that Sulaimān and Ibn al-Musayyab had different opinions. Zuhri said: [Ibn al-Musayyab said:]<sup>91</sup> "She is entitled to her bride wealth." Sulaimān said: "Her bride wealth goes to the treasury (*bait al-māl*)."<sup>92</sup>

The comparison between the *Muwatta'* text and Ma'mar's version from Ibn al-Musayyab (text b), both of them certainly deriving from a common source, supports our hypothesis that some of Šaibānī's deviations from Yaḥyā's text are specifications and others are mistakes. The original name in Zuhri's traditions was certainly Ṭulaiḥa, perhaps even Ṭulaiḥa b. 'Ubaidallāh; "al-Asadiyya" seems to be an addition by Yaḥyā; Šaibānī added the *nasab* (*bint Ṭalḥa b. 'Ubaidallāh*).<sup>93</sup> The problem is that the two notions are incompatible, for Ṭalḥa b. 'Ubaidallāh was of Taim b. Murra, not of Asad. Ma'mar's "Ṭulaiḥa bint 'Ubaidallāh" completes the confusion, but it is probably the original version because it is corroborated by another early tradition, that of 'Abdalkarīm [al-Ġazarī] (d. 127/745),<sup>94</sup> transmitted by Ibn Ġuraiġ (here the woman is called "Ṭulaiḥa bint 'Ubaidallāh, the sister of Ṭulaiḥa b. 'Ubaidallāh").<sup>95</sup> Uncertainty about the reading of a hand-written text lacking diacritical points may have led to doubts about the correct name of the second husband (Ibn Munabbih or Ibn Munayyah) which appears only in Šaibānī's version.

Ma'mar's and Mālik's versions are hardly the result of copying the same manuscript. The differences not only in vocabulary but also in the sequence of the arguments are too great for such an assumption. That means either that one or both transmitters obtained the text by oral transmission – this does not exclude the possibility that also written notes were used as memory aids – or that Zuhri did not always tell the tradition in exactly the same form, or that both possibilities occurred at the same time.

Ma‘mar reports the caliph ‘Umar’s verdict in two very different versions from two different informants of Zuhri’s (Ibn al-Musayyab, Sulaimān b. Yasār), whereas Mālik gives only one text from the same two scholars. This suggests that the state of affairs offered by Ma‘mar is the more original one because it is not probable that two different persons told the same story in exactly the same words. The collective version of Ibn al-Musayyab and Sulaimān must have been created later, either by Zuhri himself or – more likely – by Mālik. It was probably Mālik as well who deleted Sulaimān’s opinion about the issue of who was entitled to the bride wealth due for the void marriage, because it neither corresponded to his own doctrine nor to that of Zuhri, as can be inferred from another tradition.<sup>96</sup>

Ibn Ğuraiġ’s version of the story is as follows:

- e) ‘Abdarrazzāq from Ibn Ğuraiġ; he said: Ibn Šihāb transmitted to me from [‘Ubaidallāh b.]<sup>97</sup> ‘Utba and Abū Salama b. ‘Abdarrahmān, that ‘Umar b. al-Ḥaṭṭāb separated (*far-raqa baina*) a woman, who had married in her waiting period, from her husband. Then he decided (*qaḍā*): “If a woman (*ayyumā mra’atin*) marries in her waiting period [but] her husband did not [yet] consummate the marriage (*lam yadhul bihā*), both must be separated (*yufarraqu bainahumā*); she must complete what remains of her waiting period (*ta’taddu mā baqiya*); when it is finished, the second man can marry her [again] (*ḥaṭaba fī l-ḥuṭṭāb*); if she wants she can marry him, if she does not want [anymore], she can abstain from it. [But] if he has consummated the marriage with her [already], then both are forbidden to marry (*yaġtami’āni*) another again for ever; she must complete [first] her waiting period of [the marriage with] the first [husband], then observe the waiting period (*ta’taddu*) of [the marriage with] the second one.<sup>98</sup>

In Ibn Ğuraiġ’s transmission, ‘Umar’s *dictum* shows greater similarity in structure and vocabulary with Mālik’s version than with Ma‘mar’s, though there are also variations. The historical introduction is missing, as well as the names of the persons involved, and, most oddly, two other persons are mentioned as Zuhri’s informants of the case. Must we conclude from these facts that Ibn Ğuraiġ shortened the original text and consciously changed the names of Zuhri’s informants? Or did

he forget the original version and then cover up the gap in his memory by producing arbitrarily two other names as informants? Such conclusions are not compelling. According to the biographical information mentioned above, Ibn Ğuraiğ obtained most of his Zuhri traditions not by hearing them from him or reading them out to him, but in written form – perhaps he even copied the manuscript of one of Zuhri’s students – together with an *iğāza*, i.e. a permission to transmit the material.<sup>99</sup> If this was so, fading memory cannot have been the cause of the differences in his version. Furthermore, Ibn Ğuraiğ usually does not hesitate to admit memory gaps and mark them as such. If fading memory is not the cause, why then should he have fabricated the names? At least, this was not his habit, as I have shown elsewhere.<sup>100</sup>

If Zuhri knew two different traditions about ‘Umar’s judgment – Ibn al-Musayyab’s and Sulaimān b. Yasār’s – it is possible that the story of the case was more widely known and that other Medinan scholars commented upon it as well, for example, the scholars mentioned by Ibn Ğuraiğ. This is corroborated by the fact that the story is also reported from other people. Apart from Zuhri, Ibn Ğuraiğ transmits it from the ‘Irāqī scholar ‘Abdalkarīm [al-Ġazarī], who had been for some time a student of Ibn al-Musayyab’s, and from the Meccan scholar ‘Amr [b. Dīnār], who likewise had contacts with the Medinan *fuqahā*, but Ibn Ğuraiğ does not give the informants from whom these scholars obtained the tradition. Ma‘mar quotes it in a short form through his Baṣran colleague Ayyūb [b. Abī Tamīma] from the latter’s teacher Abū Qilāba, and Sufyān at-Ṭaurī transmits a reminiscence of it via Ḥammād from Ibrāhīm [an-Naḥa‘ī].<sup>101</sup>

It is not plausible to assume that Zuhri himself invented additional informants, for he could more easily have named them all in a collective *isnād* instead of fabricating special texts for them. At most, we can assume that Zuhri could not always correctly remember his sources when quoting the story from memory. Such a hypothesis, however, seems less plausible than the idea that several different versions

of one and the same case were in circulation. The peculiarity that Ibn Ğuraiġ names informants other than Ma‘mar and Mālik for Zuhri’s traditions can be explained, therefore, by the assumption that he reproduces variant traditions of Zuhri’s which are independent of those transmitted from him by Ma‘mar and Mālik. The fact that the historical background of the case is lacking in Ibn Ğuraiġ’s version may be in its favour as well.

We have compared the variants of one single Zuhri tradition about a verdict of the caliph ‘Umar b. al-Ḥaṭṭāb as contained in three very early corpora of traditions. What is the final result of this comparison? 1) This tradition probably really comes from Zuhri. So the story already circulated in the first quarter of the second century A.H. 2) Ibn Šihāb hardly invented it himself or picked it up from someone whose name he concealed, naming other persons as his informants, since he reports also the *iḥtilāf*, i.e. the differences of opinion of his informants, and he admits his ignorance concerning a detail of the story (the question as to how many lashes ‘Umar sentenced each of the culprits to).<sup>102</sup> 3) The story certainly goes back to the *tābi‘ūn* generation, i.e. dates from the last quarter of the first century A.H. Having regard to the early date, it shows a considerably high level of literary skill and legal reflection. The story contains many formal elements that, according to Schacht’s criteria, are to be considered late or secondary: a. an introduction containing narrative elements (*qiṣṣa*) and names of the persons involved in the case; b. a very long and complex legal sentence which not only offers a solution in a concrete case – here, a marriage concluded during the waiting period – but also reflects hypothetical conditions which may be relevant in similar cases (the marriage during the waiting period with or without consummation). 4) The *dictum*, which in Mālik’s version consists of 47 words, is not in accordance with the short “legal maxims” which Schacht put at the beginning of the development of Islamic jurisprudence. Yet the *dictum* belongs to its beginnings. This shows that a reconstruction of the development of the *fiqh* that is based primarily on the text (*matn*) of the legal traditions does not lead to reliable results. 5) If it is true that the case and its solution by ‘U-

mar were transmitted in varying versions by different *fuqahā'* of the *tābi'ūn* generation, the story must go back to a common source or have a historical core. Since there is no circumstantial evidence for a common source, we must assume a historical core, even if none of Zuhri's informants can have really experienced the time of 'Umar's caliphate because of their age, let alone have witnessed the case in question. We can imagine that the tradition transmitted by Zuhri from Sulaimān b. Yasār (text c) relates the historical core, i.e. the concrete case and the caliph's solution. The extension to the hypothetical cases of whether consummation occurred or not and the questions of how to deal with the waiting periods and whether remarriage is possible may be the result of the discussion that took place afterwards among the *fuqaha'* who transmitted the case. We cannot be certain whether the concrete case was really solved by the second caliph in the form reported, since none of the transmitters was an eye-witness. But the possibility that 'Umar dealt with such a case cannot be ruled out. In view of the early date of the tradition it is more than just a possibility.

## VI

Our analysis of a Zuhri tradition about 'Umar has shown that there are Companion traditions that can be dated to the last quarter or even the last half of the first century A.H., a possibility which Schacht categorically excluded. This is only one of several cases of early Companion traditions. But what should we think of Zuhri's *aḥādīṭ* from the Prophet which, according to Schacht, belong in principle to a still younger stage of legal development than the Companion traditions? This issue will be discussed in the following on the basis of another example.

- a) Yaḥyā transmitted to me from Mālik from Ibn Šihāb, that (*annabu*)<sup>103</sup> he was asked about the suckling of adults (*raḍā'at al-kabīr*); he said: 'Urwa b. az-Zubair transmitted to me:

Abū Ḥudāifa b. ‘Utba b. Rabī‘a –<sup>104</sup> he belonged to the Companions of the messenger of God (eulogy)<sup>105</sup> and<sup>106</sup> took part in [the battle of] Badr<sup>107</sup> – had adopted Sālim,<sup>108</sup> who was called Sālim, the *maulā* of Abū Ḥudāifa, just as the messenger of God (eulogy) had adopted<sup>109</sup> Zaid b. Ḥārīṭa.<sup>110</sup> Abū Ḥudāifa had married Sālim,<sup>111</sup> whom he considered his son, with the daughter<sup>112</sup> of his brother, Fāṭima bint al-Walīd b. ‘Utba b. Rabī‘a.<sup>113</sup> She belonged at that time<sup>114</sup> to the first emigrants and to the noblest (*min afdal*) unmarried women of Qurayš. When God (eulogy)<sup>115</sup> revealed in his book<sup>116</sup> what he revealed about Zaid b. Ḥārīṭa<sup>117</sup> and said:<sup>118</sup> “Call them after their fathers! That is more equitable in God’s eyes. If you do not know their fathers, then [let them be] your brothers in faith and your clients (*mawālī*),”<sup>119</sup> every one<sup>120</sup> of those [adopted sons]<sup>121</sup> was traced back to his father; [but] if his father was unknown,<sup>122</sup> he was traced back (*rudda*) to his patron (*maulā*).<sup>123</sup>

Sahla bint Suhail – she was<sup>124</sup> Abū Ḥudāifa’s wife and belonged to the Banū ‘Āmir b. Lu’ayy – came to the messenger of God (eulogy)<sup>125</sup> and said: “Messenger of God!<sup>126</sup> We considered<sup>127</sup> Sālim as [our] son (*walad*) and he was used to come in to me [even] when I was in underwear (*wa-anā fudul*); we have only one house (*bait*) [in which we cannot live together since Sālim is not our son anymore]. What<sup>128</sup> is your opinion about his case?<sup>129</sup>

The messenger of God<sup>130</sup> (eulogy) said to her:<sup>131</sup> “Suckle him [i.e. give him from your milk] five times (*ḥams radā‘āt*)!” So he became prohibited (*yaḥrumu*)<sup>132</sup> [to marry her] through her milk<sup>133</sup> and she regarded him as a “milk son” (*ibnan min ar-radā‘a*) [and consequently he could frequent her without restrictions].

‘Ā’iṣā, the “mother of the believers”<sup>134</sup> adopted [that method] with the men she wanted<sup>135</sup> to be able to come to see her, and she ordered her sister<sup>136</sup> Umm Kulṭūm bint Abī Bakr aṣ-Ṣiddīq<sup>137</sup> and the daughters of her brother to suckle whichever men<sup>138</sup> she wanted to come in to see her.<sup>139</sup>

The other wives of the Prophet (eulogy) refused to let anyone<sup>140</sup> come in to them on the basis of that [form of] suckling. They said:<sup>141</sup> “No,<sup>142</sup> by God! We consider that what the messenger of God (eulogy)<sup>143</sup> ordered Sahla bint Suhail<sup>144</sup> [to do] only as a permis-



sion of the messenger of God (eulogy)<sup>145</sup> for the suckling of Sālīm alone.<sup>146</sup> No,<sup>147</sup> by God! Nobody can come in to us by this [form of] suckling.”

This was the practice (*‘alā hādā kāna*)<sup>148</sup> of the wives of the Prophet (eulogy)<sup>149</sup> concerning the suckling of adults.<sup>150</sup>

I have presented Mālik’s text in three versions: the one transmitted by Yaḥyā b. Yaḥyā and, in the notes, the differences of the transmissions by Šaibānī and ‘Abdarrazzāq. The differences between the two latter versions and Yaḥyā’s may be summarised as follows: shorter text; some insignificant additions; a few other verbal forms which may be due to copyist errors; and other titles for the Prophet. Yaḥyā’s version seems to offer, to a large extent, the more original text, but it has additions in some places (for example, more complete names) where Šaibānī’s and ‘Abdarrazzāq’s texts correspond to one another against Yaḥyā. In spite of the differences, the texts of the three variants correspond to such a high degree that they must be the result of essentially written transmission from a common source that can be identified as Mālik’s teaching. Whether the differences between the three versions, for example, the varying length of the quotations from the Qur’ān, are due to the students or to a varying transmission by Mālik himself, remains uncertain.

An important difference in ‘Abdarrazzāq’s transmission, not marked in my translation of the text, concerns the *isnād*. Yaḥyā introduces the tradition with “‘an Mālik ‘an Ibn Šihāb...*fā-qāla: aḥbaranī...*”, Šaibānī has “*aḥbaranā* Mālik, *aḥbaranā* Ibn Šihāb...*fā-qāla: aḥbaranī...*” and in both cases the *isnād* ends with ‘Urwa b. az-Zubair. ‘Abdarrazzāq, on the contrary, has the *isnād*: ‘an Mālik ‘an Ibn Šihāb ‘an ‘Urwa ‘an *‘Ā’išā*. This leads one to the conclusion that ‘Abdarrazzāq, who offers a more complete *isnād* from Mālik than Mālik’s two other students, is responsible for the addition “‘an ‘Ā’išā”. For what reason can he have added it? To provide the tradition with an unbroken transmission chain? This seems doubtful in view of the hundreds of *aḥādīṭ* that ‘Abdarrazzāq transmits from the Prophet with a defective *isnād*. It is also difficult to imagine that ‘Abdarrazzāq has not noticed that the story

as a whole cannot possibly have been told by ‘Ā’iṣa because she is mentioned in it not in the first, but in the third person.

A first clue to the solution of this problem is offered by the analysis of the text which is, by the way, one of the most elaborate stories among Mālik’s legal traditions. By dividing the translation of the text into paragraphs, I have tried show that it consists of four independent stories. The tradition starts with the story of Abū Ḥuḍaifa and his adopted son Sālim that is a sort of prologue for the following story about Sahla and the *fatwā* of the Prophet. Two reports about the practice of the Prophet’s wives are added; the first concerns only ‘Ā’iṣa, the second deals with the other wives of the Prophet. The composition is closed by a concluding sentence that recalls again the topic of the entire tradition.

In view of this skilful composition, the issue of authorship must be broken down into the question of who is the author of the entire composition and who are the authors of its different parts. The question whether it was Mālik, Zuhri or ‘Urwa who tied the discrete traditions together cannot be answered on the basis of Mālik’s text. A comparison with other early versions of the tradition will take us a step further.

- b) ‘Abdarrazzāq from Ma‘mar from Zuhri from ‘Urwa from ‘Ā’iṣa; she said: Sahla bint Suhail b. ‘Amr came to the Prophet (eulogy) and said: “Sālim used to be called (*yud‘ā*) after Abū Ḥuḍaifa and [now] God (eulogy) has revealed in his book: ‘Call them after their fathers!’ He used to come in to me while I was in underwear (*fuḍul*) [and this was inevitable since] we live [together] in a flat (*manzil*).” The Prophet (eulogy) said: “Suckle Sālim [so that] you are forbidden (*taḥrumī*) for him.”

Zuhri said: Some of the Prophet’s (eulogy) wives said: “We do not know whether this was only a permission granted for Salim alone (*ḥāṣṣatan*) [or not].”

Zuhri said [moreover]: Until she died, ‘Ā’iṣa used to give the legal advice (*tuftī*) that suckling after weaning makes forbidden [for marriage].<sup>151</sup>

- c) ‘Abdarrazzāq transmitted to us; he said: Ibn Ğuraiġ transmitted to us; he said: Ibn Šihāb transmitted to me (*ahbarani*); he said: ‘Urwa transmitted to me from ‘Ā’iṣa: Abū Ḥudāifa adopted Sālim – he was a client (*maulā*) of a woman from the Anṣār – just as the Prophet (eulogy) [adopted] Zaid. If someone adopted a man in the Ğāhiliyya, people called him his son and he inherited from his inheritance. [This was the habit] until God (eulogy) revealed: “Call them after their fathers. If you do not know their fathers, then [let them be] your brothers in faith.” So they were traced back to their fathers [and] whoever’s father was unknown, [became] a client (*maulā*) and a brother in faith. After it [the revelation] Sahla came [to the Prophet] and said: “Messenger of God! We were used to consider Sālim as [our] son (*walad*) who lived together with us and saw me in underwear (*fudul*). God has [now] revealed what you know.” The Prophet said: “Suckle him five times (*hams raḍa ‘āt*).” So he acquired the status of her “milk son”.<sup>152</sup>

These two Zuhri traditions, the one by Ma‘mar and the other by Ibn Ğuraiġ, are undoubtedly parallel texts to Mālik’s. Ibn Ğuraiġ’s text is limited, however, to a shortened version of the Sahla story and its prologue and it ignores the reactions of the Prophet’s wives to his *fatwā*. The three texts correspond mainly in content, even though many correspondences in wording occur. There are also contradictions. According to Ma‘mar, for example, the wives of the Prophet (apart from ‘Ā’iṣa) confessed that they did not know whether the *fatwā* of the Prophet was meant generally, whereas in Mālik’s version they vehemently reject its general interpretation. This difference can be ascribed to an imprecise way of retelling the story, since Ma‘mar did know the negative attitude of the other wives of the Prophet as well, as we shall see below. Ibn Ğuraiġ’s and Ma‘mar’s versions tally with each other against Mālik’s in that they trace the Sahla story back via ‘Urwa to ‘Ā’iṣa. Since two students independently report this *isnād* from Zuhri, it must be his. This finding helps us to answer the question, asked above, as to why ‘Abdarrazzāq completed Mālik’s *isnād*. It seems likely that he did so because he realised that in Zuhri’s transmission the core of the tradition, the Sahla story, was originally ascribed to ‘Ā’iṣa, rather than because he wanted to fake an unbroken transmission chain for a *ḥadīth* of the Prophet.

In Ma‘mar’s version, Zuhri does not refer explicitly to ‘Urwa when reporting the legal opinions of ‘Ā’iṣa and the other wives of the Prophet.<sup>153</sup> We can only infer from Ma‘mar’s *isnād* of the Sahla story that ‘Urwa may be Zuhri’s informant for these parts as well. Yet there is a way to become certain about it. Ibn Ğuraiġ who, as mentioned above, does not say anything about an opinion or practice of ‘Ā’iṣa in his Zuhri tradition, reports from his teacher ‘Aṭā’ b. Abī Rabāḥ the following:

I heard ‘Aṭā’ when he was being asked. A man told him: “A woman let me drink from her milk after I had become a grown up man. May I marry her?” [‘Aṭā’] said: “No.” I said [to him]: “Is this your *ra’y*?” He said: “Yes.” ‘Aṭā’ said [moreover]: “‘Ā’iṣa ordered [to do] that to the daughters of her brother (*kānat ‘Ā’iṣa ta’muru bi-dālika banāti aḥīhā*).”<sup>154</sup>

The last sentence is obviously a reference to the tradition about ‘Ā’iṣa as it is found in Mālik’s version of Ibn Šihāb’s ‘Urwa tradition concerning the suckling of adults. But who is ‘Aṭā’’s source for it? As ‘Urwa was an older contemporary of ‘Aṭā’ and, explicitly, his informant for several traditions, we can assume that he was ‘Aṭā’’s source for this tradition as well, whereas we can exclude ‘Aṭā’’s having heard it from the younger Zuhri, from whom, as far as I know, he did not transmit.

Was ‘Urwa also Zuhri’s source for the opinion of the other wives of the Prophet? This cannot be ruled out completely, but it seems doubtful in view of a Zuhri tradition transmitted by Ibn Sa‘d via Wāqidī from Ma‘mar:

Muḥammad b. ‘Umar transmitted to me; Ma‘mar and Muḥammad b. ‘Abdallāh transmitted to me from Zuhri from Abū ‘Ubaida from ‘Abdallāh b. Zama‘a from his mother Umm Salama; she said: The wives of the Prophet (eulogy) refused to adopt that [what ‘Ā’iṣa was doing]. They said: “This is only a permission of the messenger of God (eulogy) for Sahla bint Suhail [alone].”<sup>155</sup>

According to this report, Zuhri did not obtain his tradition about the opinion of the other wives of the Prophet from ‘Urwa, but from another informant

(Abū ‘Ubaida)<sup>156</sup> who finally traces the story back to one of the wives of the Prophet, Umm Salama, an old opponent of ‘Ā’iṣā’s. If this is true, we must conclude that Mālik omitted that particular *isnād* and ascribed all parts of Zuhri’s story to ‘Urwa. We do not know his reasons for doing so. Moreover, Mālik left out ‘Ā’iṣā’s name in the *isnād*. He had reasons to do that because she could be the source of neither the report about her own practice in which she is mentioned in the third person, nor the tradition about the objections of the other wives of the Prophet which is clearly critical of ‘Ā’iṣā.

Ma‘mar’s version of the Sahla story reveals, finally, that it was Zuhri who had already put together the Abū Ḥudāifa-Sālim-Sahla tradition with the reports about the practice of opinions of the Prophet’s wives, for Ma‘mar’s and Mālik’s transmission coincide in this respect.

A comparison of the several variants transmitted from Zuhri thus leads to the conclusion that either Zuhri himself circulated the traditions about the suckling of adults at different periods of time in varying form, or that his students are responsible for the differences between the texts. If the latter hypothesis is correct, Mālik’s version must be considered the one that best preserved Zuhri’s original text (apart from the *isnād*). By contrast, the versions of Ma‘mar and Ibn Ğuraiğ look like abbreviated versions. One could also assume, of course, that Zuhri’s original version was short and that Mālik expanded it, but this is less likely in view of the correspondence between Mālik’s version and ‘Aṭā’s reference to the story which shows that the report about ‘Ā’iṣā was already part of the original version. Whatever the case, the important result that our comparison of early variants of a Prophetical *ḥadīth* produces is that it is an authentic Zuhri tradition, i.e. really goes back to Zuhri.

What should we think of Zuhri’s claim, however, that he obtained the Sahla story and the report about ‘Ā’iṣā’s practice from ‘Urwa b. az-Zubair (d. 93/711-2 or

94/712-3)?<sup>157</sup> There are several arguments against the assumption that Zuhri invented the tradition about the suckling of adults himself. First, one can point to the fact that the tradition ends with an *ih̄tilāf*, a difference of opinion between the wives of the Prophet, which leaves open the question about the author's own point of view. Secondly, we know from another early tradition, reporting Zuhri's *ra'y*, that he objected to the practice described in the *ah̄ādīṭ* from the Prophet and 'Ā'iṣa.<sup>158</sup> It is hard to imagine that Zuhri faked those *ah̄ādīṭ* that were completely inconsistent with his own legal opinion, or that he would have accepted them from someone he did not know very well.<sup>159</sup> Furthermore, the reference of the Meccan scholar 'Aṭā' to the practice of 'Ā'iṣa suggests, as argued above, that 'Urwa was the source of the tradition. This all tends to support the assumption that Zuhri really received the tradition from 'Urwa, as he claims in his *isnād*.

In 'Urwa's case we can ask the same questions. Is he the author of the texts? Did he actually obtain his information from 'Ā'iṣa, as claimed in the *isnād*? We can only weigh the pros and cons of the evidence offered by the texts. There is an argument against the assumption that 'Urwa invented the tradition in question: the fact that he himself and other Medinan *fuqahā'* of his generation, such as the leading scholar Ibn al-Musayyab, disapproved of the suckling of adults and denied that it had any legal consequences.<sup>160</sup> It does not seem reasonable to assume that 'Urwa fabricated a *ḥadīṭ* from the Prophet that contradicted his own legal doctrine so blatantly. Yet if he obtained the *ḥadīṭ* from somebody, the question arises as to whom he got it from. His aunt 'Ā'iṣa is a possible or even obvious source, but more convincing is the fact that he reports from her a practice that was rejected both by the other wives of the Prophet and the leading early Medinan *fuqahā'*, himself included. So, 'Urwa's claim that he obtained the tradition from 'Ā'iṣa seems to be substantiated.<sup>161</sup> That means that the *ḥadīṭ* about the Prophet's *fatwā* for Sahla is a very early one that can be dated to the first half of the first century A.H. ('Ā'iṣa died 58/678). Probably this *ḥadīṭ* is not only early but is also an authentic tradition from the Prophet, i.e. it reports – decades later, it is true – an event that actually occurred

during the life of the Prophet. Circumstantial evidence for this assumption may be that Umm Salama in the tradition transmitted from her does not dispute the event as such, which we would expect if ‘Ā’iṣā had invented the entire story.

The results of our source-critical analysis contrast sharply with Schacht’s ideas about this type of legal tradition. Schacht would not have accepted that Mālik’s *ḥadīth* about the suckling of adults is early because of its length; the narrative elements and the names contained in it; and, last but not least, because of the simple fact that it is a tradition from the Prophet. Schacht would have seen various tendencies at work in this tradition and would have argued as follows:

The part of the tradition which describes the practice of ‘Ā’iṣā is a product of the “traditionists” aimed at changing the doctrine of the old Medinan school of jurisprudence. This originally anonymous doctrine, that was probably advocated by Zuhri, had somewhat earlier been fictitiously ascribed to Ibn al-Musayyab and ‘Urwa b. az-Zubair. In the forged ‘Ā’iṣā tradition, a typical tactic of the “traditionists” can be seen, namely, attributing their “countertraditions” to the same persons who are claimed by the “ancient schools” as representatives of their doctrine, in this case, Zuhri, Ibn al-Musayyab and Sulaimān b. Yasār. Zuhri as transmitter of the tradition is, therefore, a fake and the argument based on the practice of ‘Ā’iṣā must have emerged after Zuhri’s death. The followers of the “ancient schools”, now on the defensive, struck back with a tradition saying that all other wives of the Prophet rejected the attitude of ‘Ā’iṣā. This tradition must be somewhat later than that about ‘Ā’iṣā. The “traditionist” reacted by producing the story about Sahla together with a *fatwā* of the Prophet himself. This tradition is, accordingly, the last link in the chain of arguments. Finally, the particular elements of the debate were put together in a single tradition which Mālik found, if he did not produce it himself. All these developments must have occurred between Zuhri’s death and the compilation of Mālik’s *Muwatta’*. The origin of the tradition about the suckling of adults as

found in the *Muwattaʿ* must then be dated to around the middle of the second century A.H.

Schacht did not deal with this tradition as thoroughly as I did here in adopting his method of reasoning. He only gave hints as to how to interpret it.<sup>162</sup> Yet whoever is familiar with his way of thinking will recognise it in my aforementioned summary. In view of the results gained by a source-critical study of the early transmissions from Zuhri in general and of two traditions transmitted from him in particular – one referring to ‘Umar, the other to the Prophet – Schacht’s method and his ideas about the origins of Islamic jurisprudence are questionable.

## VII

To summarise the arguments presented in this article let us return to the starting point. According to the view decisively shaped by the writings of Joseph Schacht and since then current among Western scholars of Islam, the number of reliable legal traditions going back to Ibn Šihāb az-Zuhri is very small. It must be limited to the information about Zuhri’s *ra’y* which Mālik in his *Muwattaʿ* explicitly says he heard himself or asked Zuhri about. This view has been challenged in this article. Apart from the *Muwattaʿ* other early sources have become available since the publication of Schacht’s *Origins* that can be used for a reconstruction of Zuhri’s legal doctrines and traditions. A source-critical study of the early sources now available shows that the number of texts that can be attributed to Zuhri is much larger than Schacht thought. A comparison of the Zuhri texts preserved in early sources leads to the conclusion that his legal teaching did not at all consist of *ra’y* alone, but also included – for an important part – traditions about the legal opinions and the practice of the preceding generations of Muslims, Successors, Companions and the Prophet. On the basis of the numerous legal texts that Zuhri’s students transmitted in their compilations, a detailed picture of his jurisprudence can be drawn. But



what is more, the state of development which Islamic jurisprudence had reached in the first quarter of the second century A.H. can be reconstructed, and partly even the preliminary stages of the first century. The sources are now available to venture on such reconstructions.

## Notes:

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<sup>1</sup> Cf. for Zuhri’s biography J. Horowitz, “Al-Zuhri”, in: *Enzyklopädie des Islām*, 1<sup>st</sup> edition, Leiden/Leipzig 1913-1934, vol. 5, pp. 1342-1343.

<sup>2</sup> J. Schacht, *The Origins of Muhammadan Jurisprudence*, London 1950, p. 246. Emphasis mine.

<sup>3</sup> Ibidem. Emphasis mine

<sup>4</sup> Ibidem. Emphasis mine

<sup>5</sup> Cf. op. cit., pp. 163, 175.

<sup>6</sup> Op. cit., p. 246.

<sup>7</sup> Op. cit., p. 245. Emphasis mine. A similar judgement concerning Zuhri’s transmissions was made by G.H.A. Juynboll in his book *Muslim Tradition. Studies in Chronology, Provenance and Authorship of early Ḥadīth*, Cambridge 1983, p. 158: “...it is no longer possible to sift the genuine Zuhri traditions from the fabricated ones, or as is my contention, even the genuine Ibn Shihāb al-Zuhri traditions from the possible hundreds of pseudo-Zuhri ones.”

<sup>8</sup> Mālik, *Muwatta’* 29:30 (quoted is the number of the book and after the colons the number under which the transmission in the current edition of M.F. ‘Abdalbāqī is found).

<sup>9</sup> Mālik, *Muwatta’*, 29:55.

<sup>10</sup> Cf. my book *Anfänge der islamischen Jurisprudenz. Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts*, Stuttgart 1991 and the article “The *Muṣannaf* of ‘Abd al-Razzāq al-Ṣan‘ānī as a source of authentic *aḥādīth* of the first Islamic century”, in: *Journal of Near Eastern Studies* 50 (1991).

<sup>11</sup> See the preceding note.

<sup>12</sup> The percentages are rounded. They are based on a sample of 1499 texts of Ma‘mar’s, contained in the books “*Kitāb an-Nikāḥ*” and “*Kitāb at-Ṭalāq*” of ‘Abdarrazzāq’s *Muṣannaf*, i.e. vol. 6 and 7, nos. 10243-14053. This sample is representative for most of the books of the *Muṣannaf*.

<sup>13</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 10838. For the different genres cf. Motzki, *Anfänge*, pp. 72-75.

<sup>14</sup> For example: ‘Abdarrazzāq, *Muṣannaf*, 10806, 10922. In Zuhri’s texts this genre appears five times more often.

<sup>15</sup> Frequency: 18% in Zuhri’s, 22% in Qatāda’s texts.

<sup>16</sup> This occasionally occurs in traditions as well. Cf. for example ‘Abdarrazzāq, *Muṣannaf*, 10924.

<sup>17</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 10519.

<sup>18</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 10681.

<sup>19</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 11110.

<sup>20</sup> ‘Abdarrazzāq, *Muṣannaf*, 11756.

<sup>21</sup> Additions in square brackets are added by me for a better understanding.

<sup>22</sup> ‘Abdarrazzāq, *Muṣannaf*, 11943.

<sup>23</sup> But such cases can be found sporadically, as in ‘Abdarrazzāq, *Muṣannaf*, 10702.

<sup>24</sup> ‘Abdarrazzāq, *Muṣannaf*, 11962.

<sup>25</sup> Cf. Schacht, *Origins*, p. 179.

<sup>26</sup> For Qatāda as traditionist according to biographical sources cf. G. Vitestam, “Qatāda b. Di‘āma as-Sadūsī et la science du *ḥadīth*”, in: *V<sup>o</sup> Congrès international d’arabisants et d’islamists*, Actes, Bruxelles 1970, pp. 489-498.

<sup>27</sup> Cf. Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 397; Buḥārī, *Ta’rīḥ*, vol. 4/1, pp. 378-379; Ḍahabī, *Tadkīra*, vol. 1, pp. 190-191; Ibn Ḥaḡar, *Ṭabḍīb*, vol. 10, pp. 243-246. That is only a selection of sources. Other im-

portant biographical traditions about Ma‘mar are to be found in Ibn ‘Asākir’s *Ta’rīḥ Madīnat Dimāšq* and Ḍahabī’s *Siyar a‘lām an-nubalā’*.

<sup>28</sup> Cf. Ibn al-Madīnī, *Ilal al-ḥadīth*, p.17 ff.

<sup>29</sup>F. Sezgin was one of the first to mention it in his article “Hadis musannefatinin mebedei ve Ma‘mer b. Rāšid’in Cāmi‘i”, in: *Türkiyat* 12 (1955) pp. 115-134. M.J. Kister was one of the first using it even before it was published. Cf. his article “Ḥaddithū ‘an banī isrā’īla wa-lā-ḥaraja”, in: *Israel Oriental Studies* 2 (1972), pp. 215-239.

<sup>30</sup> Cf. Motzki, *Anfänge*, p. 70-87, 157-167, 209-212.

<sup>31</sup> The following observations are based on the same text corpus as in the previous chapter, see note 12.

<sup>32</sup> Cf. Motzki, *Anfänge*, p. 70-85.

<sup>33</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 12498 (Ibn Ğuraiğ – Ayyāš – Ibn Šihāb).

<sup>34</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 13632.

<sup>35</sup> The biographical information about him has been mainly taken from the following works: Ibn Sa‘d, *Ṭabaqāt*, vol. 5, p. 361-362; vol. 7/2 p. 163; Ḥalīfa b. Ḥayyāt, *Ṭabaqāt*, p. 283; Buḥārī, *Ta’rīḥ*, vol. 3/1, p. 422-423; Ibn Qutaiba, *Ma‘ārif*, p. 167; Ibn Abī Ḥātim, *Taqdima*, passim; id., *Ĝarḥ*, vol. 2/2, p. 356-359; Ibn Ḥibbān, *Mašābir*, n° 1146 and others; id., *Tiqāt*, vol. 7, p. 93-94; Ibn an-Nadīm, *Fibrīst*, p. 316; Bağdādī, *Ta’rīḥ*, vol. 10, p. 400-407; id., *Kifāya*, p. 258, 320; Širāzī, *Ṭabaqāt*, p.71; Nawawī, *Tahdīb*, vol. 2, p. 297-297; Ibn Ḥallikān, *Wafayāt*, vol. 2, p. 348; Ḍahabī, *Duwal*, p. 79; id., *Mizān*, vol. 2, p. 151; id., *Tadkira*, p. 169-171; Ibn Ḥağar, *Tahdīb*, vol. 6, p. 402-406. For a detailed analysis of this text see Motzki, *Anfänge*, p. 239-254.

<sup>36</sup> See above p. 9-10.

<sup>37</sup> Cf. Bağdādī, *Ta’rīḥ*, vol. 10, p. 402; Širāzī, *Ṭabaqāt*, p. 71; Ibn Ḥağar, *Tahdīb*, vol. 6, p. 404; Ibn Abī Ḥātim, *Ĝarḥ*, vol. 2/2, p. 357; Ibn an-Nadīm, *Fibrīst*, p. 316.

<sup>38</sup> Cf. Ibn Ḥanbal, *Ilal*, vol. 1, p. 349; Bağdādī, *Ta’rīḥ*, vol. 10, p. 404, vol. 8, p. 237; Ḍahabī, *Tadkira*, vol. 1, p. 170; Ibn Abī Ḥātim, *Ĝarḥ*, vol. 2/2, p. 357.

<sup>39</sup> Cf. Ibn Ḥağar, *Tahdīb*, vol. 6; p. 406; Ibn Abī Ḥātim, *Taqdima*, p. 241; Bağdādī, *Ta’rīḥ*, vol. 10, p. 406; Abū Ḥaiṭama, ‘Ilm, p. 117 (no. 34).

<sup>40</sup> Cf. Bağdādī, *Kifāya*, p. 258, 320; id., *Ta’rīḥ*, vol. 10, p. 404; Ibn Ḥağar, *Tahdīb*, vol. 6, p. 404-406; Ḍahabī, *Tadkira*, vol. 1, p. 170.

<sup>41</sup> Cf. Ibn Abī Ḥātim, *Taqdima*, p. 245; Ḍahabī, *Tadkira*, vol. 1, p. 170; Ibn Ḥağar, *Tahdīb*, vol. 6, p. 405-406.

<sup>42</sup> ‘Abdarrazzāq, *Muṣannaf*, 12193. It follows a note about the name of the woman which probably belonged originally to the preceding tradition. For examples of *samā’* cf. ‘Abdarrazzāq, *Muṣannaf*, 10680, 13803. For a better understanding of the text it has to be noted that the reported decision of the caliph ‘Uṭmān shattered the plan of a man who, during his illness knew he would die, separated from his wife to exclude her from his inheritance and to avoid the Qur’ānic inheritance rules.

<sup>43</sup> To show it in detail, a special analysis would be necessary.

<sup>44</sup> In the following the recension of the *Muwatta’* by Yaḥyā b. Yaḥyā al-Laitī is taken as the point of reference. The shorter version by Šaibānī will be used only occasionally. As in the case of ‘Abdarrazzāq’s *Muṣannaf*, the three books *Kitāb an-nikāḥ*, *Kitāb aṭ-ṭalāq* and *Kitāb ar-riḍā’* are chosen as sample.

<sup>45</sup> In comparison: in Ma‘mar’s corpus 6 %, in that of Ibn Ğuraiğ 8 %.

<sup>46</sup> Mālik, *Muwatta’*, 29:33.

<sup>47</sup> Mālik, *Muwatta’*, 28:19. Such traditions are lacking generally in Šaibānī’s version of the *Muwatta’*.

<sup>48</sup> For example in Mālik, *Muwatta’*, 28:40.

<sup>49</sup> Such texts are not in our sample, but cf. Mālik, *Muwatta’*, 48:8 (via Yaḥyā b. Sa‘id) and 51:3 (via Ziyād b. Sa‘d).

<sup>50</sup> However, cf. Mālik, *Muwatta’*, 3:56 (not in my sample).

- <sup>51</sup> Cf. the preceding note.
- <sup>52</sup> Cf. Schacht, *Origins*, p. 177, 178 f. G.H.A. Juynboll has expressed similar reservations about this *isnād*: “Very many forged traditions supported by this *isnād* probably originated during Mālik’s lifetime (90-179/708-95).” *Muslim Tradition*, p. 143.
- <sup>53</sup> Cf. p. 13 above and the biographical traditions on Mālik in Ibn Ḥaḡar, *Tabdīb*, vol. 10, pp. 6, 9.
- <sup>54</sup> Cf. Ibn Ḥaḡar, *Tabdīb*, vol. 10, p. 6.
- <sup>55</sup> Cf. Schacht, *Origins*, p. 177.
- <sup>56</sup> Op. cit., p. 177.
- <sup>57</sup> See below p. 19.
- <sup>58</sup> Of a similar opinion are J. Robson, “The *Isnād* in Muslim Tradition”, in: *Transactions of the Glasgow University Oriental Society* 15 (1953-54), p. 22 f. and M.M. Azami, *Studies in Early Ḥadīth Literature*, 2<sup>nd</sup> edition, Indianapolis 1978, p. 245 f. and id., *On Schacht’s Origins of Muhammadan Jurisprudence*, Riyad 1985, p. 171.
- <sup>59</sup> Cf. Mālik, *Muwatta’*, 48:13, 51:1 (not in my sample).
- <sup>60</sup> Cf. Schacht, “Mālik b. Anas”, in: *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., vol. 6, pp. 262-265.
- <sup>61</sup> Op. cit., p. 263.
- <sup>62</sup> Cf. Ḍahabī, *Tadkira*, vol. 1, p. 212.
- <sup>63</sup> Op. cit., p. 208. For a discussion of this report cf. also H. Motzki, “*Quo vadis Ḥadīth-Forschung? Eine kritische Untersuchung von G.H.A. Juynboll: ‘Nāfi’*, the *marwā* of Ibn ‘Umar, and his position in Muslim *Ḥadīth* Literature”, in: *Der Islam* 73 (1996), pp. 51-64, 193-231, esp. 65-67.
- <sup>64</sup> Cf. Ibn Ḥaḡar, *Tabdīb*, vol. 10, pp. 7-9.
- <sup>65</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 12243, 12244; 13595, 13596; 13807, 13808.
- <sup>66</sup> ‘Abdarrazzāq, *Muṣannaf*, 13095.
- <sup>67</sup> For this sentence there is also a special transmission by Ma‘mar; cf. ‘Abdarrazzāq, *Muṣannaf*, 13081 (13080).
- <sup>68</sup> ‘Abdarrazzāq, *Muṣannaf*, 13096.
- <sup>69</sup> ‘Abdarrazzāq, *Muṣannaf*, 13498. For the concept of *iḥṣān* cf. H. Motzki, “*Wal-muḥṣanātu mina n-nisā’i illā mā malakat aimānukum* (Koran 4:24) und die koranische Sexualethik”, in: *Der Islam* 63 (1986), 192-218 (with further literature).
- <sup>70</sup> ‘Abdarrazzāq, *Muṣannaf*, 13500.
- <sup>71</sup> Cf., among others, the Zuhri texts collected by ‘Abdarrazzāq under the title “*Bāb ar-raḡm wal-iḥṣān*”; *Muṣannaf*, vol. 7, pp. 315 ff.
- <sup>72</sup> For similar cases concerning ‘Aṭā’ b. Abī Rabāḥ cf. Motzki, *Anfänge*, p. 85.
- <sup>73</sup> Mālik, *Muwatta’*, 29:46.
- <sup>74</sup> Lacking in the manuscript probably due to an transmission error.
- <sup>75</sup> ‘Abdarrazzāq, *Muṣannaf*, 12238.
- <sup>76</sup> The text of the edition has Ma‘mar, but this is certainly an error, for in Ma‘mar’s *asānīd* the name Zuhri is always used.
- <sup>77</sup> ‘Abdarrazzāq, *Muṣannaf*, 12239.
- <sup>78</sup> Mālik, *Muwatta’*, 29, chap. 7.
- <sup>79</sup> ‘Abdarrazzāq, *Muṣannaf*, 13190.
- <sup>80</sup> Cf. the introduction by ‘Abdalwahrāb ‘Abdallaṭīf, the editor of Šaibānī’s *Muwatta’* recension, p. 22.
- <sup>81</sup> Op. cit., p. 23. As sources Ḍahabī’s *Manāqib Abī Ḥanīfa* and Ḥaṭīb al-Baḡdādī’s *Ta’rikh Baḡdād* are mentioned (note 2).
- <sup>82</sup> Š: “the daughter of Ṭalḡa b. ‘Ubaidallāh” instead of Ṭulaiḡa al-Asadiyya. The letter Š refers to Šaibānī’s *riwāya* of the *Muwatta’*
- <sup>83</sup> Š adds: Abū Sa‘īd b. Munabbih or Abū l-Ḡulās b. Munayya.
- <sup>84</sup> Š: *lam yankahhā*.
- <sup>85</sup> in Š lacking.
- <sup>86</sup> Š: from her vagina.

- <sup>87</sup> Mālik, *Muwattaʿ*, 28:27; id., *Muwattaʿ* (Š), no. 545.
- <sup>88</sup> This does not preclude that Mālik, nevertheless, received the tradition from Zuhri.
- <sup>89</sup> ‘Abdarrazzāq, *Muṣannaf*, 10539.
- <sup>90</sup> ‘Abdarrazzāq, *Muṣannaf*, 10544.
- <sup>91</sup> This name was probably lost, as the context of the traditions show.
- <sup>92</sup> ‘Abdarrazzāq, *Muṣannaf*, 10538.
- <sup>93</sup> For Ṭalḥa b. ‘Ubaidallāh, one of the prominent Companions, cf. W. Madelung, “Ṭalḥa b. ‘Ubayd Allāh”, in: *Encyclopaedia of Islam*, 2<sup>nd</sup> edition, vol. 10, pp. 161-162.
- <sup>94</sup> For this scholar and the problems of identification cf. Motzki, *Anfänge*, pp. 202-204.
- <sup>95</sup> ‘Abdarrazzāq, *Muṣannaf*, 10541. Ibn Sa‘d mentions a man called Ṭulaiḥa al-Asadī in his *Ṭabaqāt*, but gives no further information about him.
- <sup>96</sup> Cf. ‘Abdarrazzāq, *Muṣannaf*, 10551 (Ma‘mar).
- <sup>97</sup> This element of the name probably was dropped by carelessness during the later transmission of the text or the editing process. As a rule Zuhri does not transmit from ‘Utba.
- <sup>98</sup> ‘Abdarrazzāq, *Muṣannaf*, 10540.
- <sup>99</sup> See above, p. 13.
- <sup>100</sup> Cf. Motzki, *Anfänge*, passim.
- <sup>101</sup> ‘Abdarrazzāq, *Muṣannaf*, 10541, 10542, 10543. In the first two texts “Rušaid at-Ṭaqafī” appears as the name of the second husband. This accords with Ma‘mar’s version (see text b) and this was probably Ibn al-Musayyab’s text. Mālik’s version seems to be due to a mistake.
- <sup>102</sup> Cf. the text b of Ma‘mar on p. 26-27.
- <sup>103</sup> Š: *wa*. The translation is based on Yaḥyā b. Yaḥyā’s recension of the *Muwattaʿ*. The differences found in the versions of Šaibānī and ‘Abdarrazzāq are given in the notes. The letters ‘A refer to ‘Abdarrazzāq’s *riwāya* from Mālik, the letter Š again to Šaibānī’s text
- <sup>104</sup> Š: *wa* is missing.
- <sup>105</sup> ‘A: *wa-kāna min aṣḥāb* ff. is missing.
- <sup>106</sup> Š: *wa* is missing.
- <sup>107</sup> ‘A: *wa-kāna Badriyyan* instead of *wa-kāna qad šahida Badran*.
- <sup>108</sup> ‘A: *la-kanā* (?) instead of *tabannā*.
- <sup>109</sup> ‘A: *kannā* instead of *tabannā*. Š: *kamā tabannā* ff is missing.
- <sup>110</sup> ‘A: “b. Ḥārīṭa” is missing.
- <sup>111</sup> Š: both names are missing.
- <sup>112</sup> ‘A: *ibnat* instead of *bint*.
- <sup>113</sup> ‘A: “b. Rabī‘a” is missing.
- <sup>114</sup> ‘A: *yauma’idin* is placed before *min afdal*.
- <sup>115</sup> Š: without eulogy. ‘A: *‘azza wa-ğalla* instead of *ta‘ālā*.
- <sup>116</sup> Š: *fī kitābihi* is missing.
- <sup>117</sup> Š: “b. Ḥārīṭa” is missing. ‘A: *dālika* instead of *fī kitābihi* ff.
- <sup>118</sup> Š/‘A: *fa-qāla* is missing.
- <sup>119</sup> Qur’ān 33:5. Š: *fa-in lam ta‘lamu* ff. is missing. ‘A: *al-āya* instead of *huwa aqṣaṭu* ff.
- <sup>120</sup> Š: *aḥad* instead of *wāḥid*.
- <sup>121</sup> Š: *tubunniya* instead of *min ulā’ika*. ‘A: *siyy* (?) is added.
- <sup>122</sup> Š: *lam yakun yu‘lamu* instead of *lam yu‘lam*.
- <sup>123</sup> Š/‘A: *mawālīhi*.
- <sup>124</sup> Š: *wa-biya* is missing.
- <sup>125</sup> Š: *fī mā balağānā* is added. ‘A: *ilā rasūli llāhi* is missing.
- <sup>126</sup> Š: *yā rasūla llāh* is missing.
- <sup>127</sup> ‘A: *anna* is added.
- <sup>128</sup> Š: *mā* instead of *māḍā*.
- <sup>129</sup> ‘A: *fī ša’nihi* is missing; *qāla Zubrī* is added.
- <sup>130</sup> ‘A: *rasūlu llāhi* is missing.

- <sup>131</sup> Š/‘A: *fī mā balaḡanā* is added. ‘A: *wa-llāhu a‘lamu* is added.
- <sup>132</sup> Š/‘A: *taḡarrama*.
- <sup>133</sup> Š: *bi-labanika au bi-labanihā*.
- <sup>134</sup> Š/‘A: *umm al-mu‘minīn* is missing.
- <sup>135</sup> ‘A: *turīdu* instead of *tuḡibbu*.
- <sup>136</sup> Š/‘A: *uḡtabā* is missing.
- <sup>137</sup> Š: “bint Abī Bakr aṡ-Ṣiddīq” is missing. ‘A: *ibnat* instead of *bint*, “aṡ-Ṣiddīq” is missing.
- <sup>138</sup> Š/‘A: *an* is missing; *labā* is added
- <sup>139</sup> Š: *aḡabna* instead of *aḡabbat*, *min ar-riḡāl* is missing.
- <sup>140</sup> ‘A: *aḡadun min an-nās* is missing.
- <sup>141</sup> Š: *li-‘Ā’iša* is added. ‘A: *wa* is missing.
- <sup>142</sup> Š/‘A: *lā* is missing.
- <sup>143</sup> ‘A: *nabī* instead of *rasūlu llāh*, *bibi* follows the subject, not the predicate.
- <sup>144</sup> ‘A: “bint Suhail” is missing.
- <sup>145</sup> Š: *min rasūli llāhi* comes only at the end of the sentence; *labā* is added. ‘A: *min rasūli llāhi* is missing.
- <sup>146</sup> ‘A: end of the text.
- <sup>147</sup> Š: *lā* is missing.
- <sup>148</sup> Š: *ra’y* is added.
- <sup>149</sup> Š: *rasūli llāh* instead of *an-nabī*.
- <sup>150</sup> Mālik, *Muwaṡṡa’*, 30:12; *Muwaṡṡa’* (Š), no. 627. ‘Abdarrazzāq, *Muṡannaf*, 13886. We must imagine the “suckling” of adults in the form of putting drops of mother milk into a dish or a drink.
- <sup>151</sup> ‘Abdarrazzāq, *Muṡannaf*, 13885.
- <sup>152</sup> ‘Abdarrazzāq, *Muṡannaf*, 13887.
- <sup>153</sup> He does not speak of a practice of ‘Ā’iša in Ma‘mar’s version.
- <sup>154</sup> ‘Abdarrazzāq, *Muṡannaf*, 13883. Cf. also Motzki, *Anfānge*, pp. 112 ff. and id., “The *Muṡannaf* of ‘Abd al-Razzāq”, p. 15.
- <sup>155</sup> Ibn Sa‘d, *ṡabaqāt*, vol. 8, p. 198.
- <sup>156</sup> On him cf. Ibn Ḥaḡar, *ṡabḡīb*, vol. 12, p. 159, no. 760.
- <sup>157</sup> On him cf. G. Schoeler, “‘Urwa b. al-Zubair”, in: *Encyclopaedia of Islam*, 2<sup>nd</sup> edition, vol. 10, pp. 910-913.
- <sup>158</sup> Cf. ‘Abdarrazzāq, *Muṡannaf*, 13908.
- <sup>159</sup> There is also a biographical report, preserved in a biographical lexicon of Andalusian ‘ulamā’, that Zuhri transmitted traditions which run counter to his own legal doctrine; the *isnād* goes back through Andalusian and Egyptian transmitters to ‘Abdarrazzāq and via him to Ma‘mar. Cf. Ḥumaidī, *Ḡadwat al-muṡtabis*, ed. Muḡammad b. ṡāwīt aṡ-ṡaḡḡī, Kairo n.d., p. 83 f. I owe the reference to M. Fierro.
- <sup>160</sup> Cf. Mālik, *Muwaṡṡa’*, 30:10, 11. ‘Abdarrazzāq, *Muṡannaf*, 13900, 13904, 13905.
- <sup>161</sup> A tradition transmitted by Ibn Ḡuraiḡ from his Meccan teacher Ibn Abī Mulaika corroborates this conclusion. The latter reported that he obtained ‘Ā’iša’s *Sahla*-story from the Medinan scholar al-Qāsim b. Muḡammad b. Abī Bakr. Cf. ‘Abdarrazzāq, *Muṡannaf*, 13884.
- <sup>162</sup> Cf. Schacht, *Origins*, pp. 48, 246 f.

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