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CONTACTS AND INTERACTION

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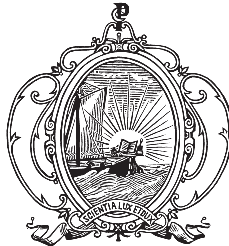
JAAKKO HÄMEEN-ANTTILA, PETTERI KOSKIKALLIO
and ILKKA LINDSTEDT



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CONTENTS

Foreword XI

Mari Kristin ARAT – Strasbourg
Fethullah Gulen's *Hizmet* Movement Based on
the Teaching of Said Nursi 1

Roswitha BADRY – Freiburg
Rifāʿa Rāfiʿ al-Ṭahṭāwī (1801–1873) as an Early Advocate
for Women's Rights: An Analysis of His *Murshid al-amīn*
li-l-banāt wa-l-banīn 17

Carmela BAFFIONI – London
The Ikhwān al-Ṣafāʾ and Abū Yaʿqūb al-Sijistānī on
the Relationships between Intellect-Universal Soul and
Universal Soul-Nature 31

Cristiana BALDAZZI – Trieste
A Passage to Italy: Contacts and Interactions between
Orient and Occident in the 19th Century 43

Ingrid BEJARANO ESCANILLA – Séville
Les femmes des communautés rurales de l'Euphrate syrien :
contact et interaction avec l'environnement naturel
(Le present et la tradition) 55

Ana María CABO GONZÁLEZ – Séville
Les femmes des communautées rurales de l'Euphrate syrien :
contact et interaction avec l'environnement naturel
(La tradition et le passé) 71

Laura BOTTINI – Catania
The 'Science of Transmitters' and the
Khulāṣat al-aqwāl fī maʿrifat al-rijāl by al-Ḥillī 83

Ursula Bsees – Wien
Zwischen „Eifer, ihn zu erfreuen“ und „ich mache dich fertig“: das emotionale Spektrum zweier arabischer Briefe auf Papyrus (P.Vind.inv. A.P. 6452) 95

Agostino Cilardo – Naples
Musnad al-Imām al-Rabīʿ: Preliminary Remarks about Its Authenticity 107

Rocio Daga Portillo – Munich
Fiqh in Its Historical Context: A Question of Blasphemy Law? 119

Montse Díaz-Fajardo – Barcelona
La méthode de calcul utilisée pour configurer tables astrologiques dans un manuscrit de Rabat 133

Jean-Charles Ducène – Paris
Abū Bakr ibn Bahrām al-Dimashqī (m. 1102/1691) et sa *Risāla fi-l-jughrāfiyā* 143

Marek M. Dziekan – Łódź
Der Glaube an den bösen Blick unter den Arabern und Slawen: Eine vergleichende Untersuchung ausgewählter Aspekte 159

Jaakko Hämeen-Anttila – Helsinki
Ibn al-Muqaffaʿ and the Middle Persian Book of Kings 171

Máté Horváth – Budapest
The *Sijill* Documents as Sources for Fatimid History during Badr al-Jamālī’s Vizierate (466/1074–487/1094) 185

Agnes Imhof – Göttingen
ʿArīb and Ibrāhīm b. al-Mudabbir: An Intellectual Friendship in Abbasid Times 197

Eva-Maria von Kemnitz – Lisbon
Contacts and Interaction: Some Remarks on the Symbol of the Hand in the Shiʿi Context 209

Hilary KILPATRICK – Lausanne
The Arabic Culture of Christians in Syria
in the 16th and 17th centuries 221

Anna Flóra KIS – Budapest
The Logic of Questions: Interrogatives in Arabic Rhetoric . . . 233

Krzysztof KOŚCIELNIAK – Cracow
Elements of Islamic Ideology of *jihād* in *Tactica* by Emperor
Leo VI (866–912) in the Context of the Arab-Byzantine
Struggles in the 7th–10th Centuries 245

Magdalena KUBAREK – Toruń
In Search of an Identity: Modern Islamic Literature as an
Ideological Confrontation between the East and West 261

István LÁNCZKY – Budapest
Avicenna on Individuality:
Some Considerations on Its Antecedents 273

Richard VAN LEEUWEN – Amsterdam
Utopia and Nomadic Life:
Visions of Wāw in al-Kūnī's *al-Majūs* 285

Ilkka LINDSTEDT – Helsinki
Sources for the Biography of the Historian Ibn Aʿtham al-Kūfī 299

Miklós MARÓTH – Budapest
ʿAlāʾ al-Dīn al-Ṭūsī on the Scope of Theology and Philosophy 311

Bernadette MARTEL-THOUMIAN – Grenoble
Portrait du sultan mamlouk Barqūq (784–791/1382–1389 ;
792–801/1390–1399) en chrétien renégat 323

Janne MATTILA – Helsinki
Philosophical Prayer in Early Arabic Philosophy 335

Christopher MELCHERT – Oxford
Why Non-Muslim Subjects Are to Pay the *jizya* 347

Barbara Michalak-Pikulska – Cracow
The Concept of *shīma* on the Basis of the qasida *Shīma al-ʿAnqariyyah* 357

Katarzyna Pachniak – Warsaw
The Interpretation of Existential Philosophy in the Arab Middle East 363

Antonino Pellitteri – Palermo
The Biography of the Emir ʿAlī b. al-amīr ʿAbd al-Qādir al-Jazāʾirī: From Damascus to Libya (1911) 373

Irmeli Perho – Helsinki
An Arabic Manuscript of David's Psalms as Instruments of Magic 381

Jan M. F. van Reeth – Anvers
Le *Vaticinans Puer* II: L'enfant Jésus dans le Coran 393

Giuseppe Scattolin – Rome
Western Studies on Ibn al-Fāriḍ's Sufi Poetry 405

Arie Schippers – Amsterdam
The *Khuṭba* (Preface) of the *Dīwān* of Ibn Khafāja 419

Mónika Schönléber – Budapest
Notes on the Textual Tradition of Ibn Aʿtham's *Kitāb al-futūḥ* 427

Maria Grazia Sciortino – Palermo
Arabic Literary Biography: Contacts between Maghribi and Sudanese *ʿulamāʾ* in 16th–17th-Century Biographical Dictionaries 439

Daniele Sicari – Palermo
ʿUlamāʾ and Power: The Case of al-Manīnī Family in Late-Ottoman Damascus . . 451

Antonella Straface – Naples
The Duty of Being Charitable in Knowledge:
The *zakāt* in al-Sijistānī's *Kitāb al-iftikhār* 459

Zoltan Szombathy – Budapest
Quoting the Quran in Literary Texts:
A Fatwa by al-Suyūṭī on *Iqtibās* 467

Johannes Thomann – Zurich
The End of the *Arabian Nights* in Early MS Tradition 477

Mauro Zonta – Rome
Medieval Arabic Philosophical Terminology: New Hypotheses 487

Dora Zsom – Budapest
Sobriety and Intoxication in Mystical Sayings
from the Cairo Genizah 493

MUSNAD AL-IMĀM AL-RABĪʿ: PRELIMINARY REMARKS ABOUT ITS AUTHENTICITY

Agostino Cilardo
Naples

Introduction

Jābir b. Zayd (d. 93/711), a Successor, a disciple of Ibn ʿAbbās, highly esteemed both by his followers and the Sunni community, was considered one of the greatest scholars of Baṣra, well-versed in the science of the Quran, besides the *fiqh* and *ḥadīth*.[1] Jābir appears to be as "the real founder of the sect in the Ibāḍī literature".[2] Abū ʿUbayda (d. 158/775) and al-Rabīʿ b. Ḥabīb (d. between 180/796 and 190/806) were amongst his pupils.

The earliest source among the early works and documents dealing with Jābir's learning is *Rasāʾil al-imām Jābir b. Zayd al-Azdī*.[3] It is Jābir's correspondence including 18 letters containing his replies to questions addressed to him by his followers. The work of Qatāda (d. 118/736),[4] a Successor, is another valuable source for the knowledge of the doctrine of Jābir. It is a collection of legal *responsa* and traditions including reports from Jābir.

Jābir's doctrine was also transmitted by al-Rabīʿ in his *Min Jawābāt al-imām Jābir b. Zayd*[5] and *al-Jāmiʿ al-ṣaḥīḥ, Musnad al-Imām al-Rabīʿ b.*

[1] Ibn Ḥajar, *Kitāb Tahdhīb al-tahdhīb*, 12 vols., Ḥaydarābād, 1325–27/1907–09 (reprint: Beirut, 1968), II, pp. 38–39, no. 61.

[2] J. C. Wilkinson, The Early Development of the Ibāḍi Movement in Baṣra, in G. H. A. Juynboll (ed.), *Studies on the First Century of Islamic Society*, Carbondale–Edwardsville, IL, 1982, p. 133.

[3] Edited under this title by Faraḥāt b. ʿAlī al-Jaʿbīrī, ʿUmān, 1434/2013. The MS is entitled *Jawābāt al-imām Jābir b. Zayd*, *al-Bārūniyya*, *Fiqh Ibāḍī*, no. 1, fols. 64–91; cf. ʿA. Kh. Ennami, A Description of New Ibāḍī Manuscripts from North Africa, *Journal of Semitic Studies* 15 (1970), pp. 65–66.

[4] *Aqwāl Qatāda*, MS *al-Bārūniyya*, *Fiqh Ibāḍī* (not numbered), fols. 1–140. Copyist: Ṣāliḥ al-Sidrīnī, the 15th of Shawwāl 1191/the 17th of November 1777.

[5] Ed. Saʿīd b. Khalaf al-Kharūṣī, ʿUmān, 1404/1984.

Ḥabīb.[6] The *Musnad* is a collection of Ibāḍī *ḥadīth*s in which traditions of the Prophet and Companions were handed down through the *imām*s of the school. However, some doubts have been raised about its actual attribution to al-Rabīʿ.[7]

Methodology

Criticism on the authenticity of the *Musnad* has mainly focused both on the *isnād* (al-Rabīʿ – Abū ʿUbayda – Jābir) and *matn*s, which are under the form of legal maxims. This structure reminds the Zaydī *Corpus Iuris* (*Majmūʿ al-fiqh*) of Zayd b. ʿAlī (d. 122/740), which cannot be attributed to Zayd, as has conclusively been demonstrated.[8] The criticism on the authenticity of the *Musnad* is even stronger if its analysis is focused on the Ibāḍī literary production during the centuries, according to the approach of Wilkinson,[9] who concluded that this *ḥadīth* collection seems to be integrated into the great works of the Ibāḍī renaissance and its origins in its *Tartīb* form can at least be traced back to the 6th/12th century.

Another methodology, grounded on a comparative approach, can be used, which may turn out to be basic in order to verify the authenticity of a work. In the case under discussion, the comparison will be done between the issues treated in the *Musnad* and the solutions given both in the earliest and the subsequent Ibāḍī works, in order to verify whether there has been continuity in the Ibāḍī doctrine, and whether some of them may really go back to Jābir. Moreover, a comparison will be done between the Ibāḍī and the Sunni sources in order to highlight whether there has been interdependence between the Ibāḍī doctrine and the Sunni elaboration. I will apply such methodology to the few reports present in the *Musnad* regarding the inheritance.

[6] *Al-Jāmiʿ al-Ṣaḥīḥ, Musnad al-Imām al-Rabīʿ b. Ḥabīb ..., ʿalā tartīb al-shaykh ... Abī Yaʿqūb b. Ibrāhīm al-Warjalānī*, ed. ʿAbdallāh b. Ḥumayd al-Sālimī, Maktabat al-Istiqāma, ʿUmān, 1388/1968. Abū Muḥammad ʿAbdallāh b. Ḥumayd b. Sallūm al-Sālimī al-ʿUmānī (d. 1332/1914) wrote a *Ḥāshiya ʿalā-l-Jāmiʿ al-ṣaḥīḥ (li-Rabīʿ b. Ḥabīb al-Azdī al-Ibāḍī*, d. 170/786), 2 vols, lithographed in Cairo, 1326.

[7] See, for instance, J. van Ess, Untersuchungen zu einigen Ibāḍitischen Handschriften, *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 126 (1976), pp. 36–38; idem, *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra: Eine Geschichte des religiösen Denkens im frühen Islam*, 6 vols., Berlin, 1992, II, p. 134; J. C. Wilkinson, Ibāḍī Ḥadīth: An Essay on Normalization, *Der Islam* 62 (1985), pp. 231–232; idem, The Early Development of the Ibāḍi Movement in Baṣra, p. 142; M. Cook, *Early Muslim Dogma*, Cambridge, 1981, p. 56. F. Sezgin (*Geschichte des arabischen Schrifttums* I, Leiden, 1967, p. 93, no. 8) mentions the *Tartīb Musnad al-Rabiʿ* as arrangements ("Bearbeitungen") by al-Warjalānī.

[8] Cf. A. Cilardo, *Teorie sulle origini del diritto islamico*, Rome, 1990, pp. 19–35.

[9] Wilkinson, Ibāḍī Ḥadīth, p. 232.

Inheritance law

The *Musnad* devotes a short chapter to the inheritance, containing six *ḥadīths* (*Bāb fī al-mawārīth*, pp. 176–177, nos. 666–671). Three further *ḥadīths* are included in three different chapters: *Bāb fī al-diyāt wa-l-ʿaql* (pp. 175–176, no. 664), *Bāb fi al-ʿitq* (p. 177, no. 675), *Bāb al-waṣiyya* (p. 178, no. 676). However, the issues concerned can be reduced to four.

1. Patronage

> Abū ʿUbayda, from Jābir b. Zayd, from Ibn ʿAbbās, from the Prophet. He said: The patronage is a relationship like kinship by blood (*al-walāʾ luḥma ka-luḥmat al-nasab*).[10]

This maxim implies a reciprocal inheritance right between a patron and his manumitted slave. However, this doctrine is in contrast to the peculiar Ibāḍī doctrine; in fact, Ibāḍī jurists insist that patrons do not inherit anything from their clients, as explicitly stated by al-Bisyawī (d. mid-5th/11th): *wa-l-mawālī lā yarithūna shayʾan maʿa qawl aṣḥābinā mimman aʿtaqahum aw aʿtaqūhu*.[11] On the one hand, this statement means that they do not inherit each other; on the other, this was the usual practice among the Ibāḍīs. But, most importantly, the *Musnad* supports a doctrine in contrast to what Jābir himself maintains in his *Rasāʾil*.[12]

Instead, this legal maxim, with different *isnāds*, was well-known to the Sunnis, even if it is quoted few times and in late traditionistic literature. Indeed, it is reported by al-Dārimī[13] (d. 255/869) and al-Bayhaqī[14] (d. 458/1066). The Ḥanafī jurist al-Sarakhsī[15] (d. 483/1090) and the Ḥanbalī jurist Ibn Qudāma[16] (d. 620/1223) simply report the Prophetic maxim, but without *isnād*.

This maxim appears to be an element foreign to the Ibāḍī thinking. The compiler of the *Musnad*, Abū Yaʿqūb al-Warjalānī (d. 570/1174),

[10] *Musnad Rabīʿ*, pp. 176, no. 666 & 177, no. 675.

[11] Al-Bisyawī, *al-Mukhtaṣar*, ed. ʿAbd al-Qādir ʿAṭā & Muḥammad ʿAlī Zurqa, ʿUmān, 1397/1977, pp. 149, 157. See also Ibn Qays, *Mukhtaṣar al-khiṣāl*, ʿUmān, 1403/1983 (Chapter 29: *Bāb dhikr bayān al-qawl fī mīrāth al-jins*); al-Muṣʿabī, *Kitāb al-Nīl wa-shifāʾ al-ʿalīl*, 2 vols., Cairo, 1305/1887–1888, II, pp. 387–388.

[12] *Letter* no. 17, pp. 153–154, no. 216.

[13] Al-Dārimī, *al-Musnad al-Jāmiʿ* or *al-Sunan*, ed. ʿAbdallāh Hāshim Yamānī al-Madanī, 2 vols., Cairo, 1386/1966, II, p. 287, no. 3163.

[14] Al-Bayhaqī, *al-Sunan al-kubrā*, 10 vols., Ḥaydarābād, 1354–56/1925–27, VI, p. 240.

[15] Al-Sarakhsī, *Kitāb al-Mabsūṭ*, 30 vols., Cairo, 1324–31/1906–13, XXX, p. 39.

[16] Ibn Qudāma, *Al-Mughnī*, 12 vols., Cairo, 1341–48/1922–30, VII, pp. 239–241, 244–245, 254, 263–264, 275–276.

seems to have assumed this maxim from a Sunni source, regardless its opposition to the doctrine both of the proto-Ibāḍī school and his school at his time as well.

2. Bequest to an Heir

> Abū ʿUbayda, from Jābir b. Zayd, from Ibn ʿAbbās, from him [the Prophet]. He said: No bequest to an heir (*lā waṣiyya li-wārith*).[17]

The doctrine that an heir has no right to a bequest was established in the most ancient sources. Mālik (d. 179/795) clearly writes:

> If he asks permission of his heirs to grant a bequest to an heir while he is well and they give him permission that is not binding on them,[18]

but Mālik doesn't refer the maxim. Instead, it was uttered by ʿAbdallāh b. ʿAbd al-ʿAzīz, in his answer to a question posed to him, but as a *fatwā* of his own, without *isnād*, as reported by Bishr b. Ghānim (d. c. 200/815).[19] This information is particularly interesting because Ibn ʿAbd al-ʿAzīz was a jurist who played an independent role alongside al-Rabīʿ and later remained renowned for his free use of *qiyās*; besides, he often argued its own opinion against Jābir and Abū ʿUbayda.[20] Further, Bishr b. Ghānim refers his own statements[21] and a statement on the authority of Abū ʿUbayda,[22] denying the right of an heir to receive a bequest, but they are under the form of *fatāwā*.

On these premises, it may be concluded, firstly, that Abū ʿUbayda did not utter the maxim, as it is instead in the *Musnad*; secondly, Bishr b. Ghānim does not mention Jābir in this context; lastly, Bishr b. Ghānim refers the Prophetic *ḥadīth*: *fa-lā tajūzu li-wārith waṣiyya*,[23] but not the legal maxim. It may be concluded that its primogeniture can be attributed to Ibn ʿAbd al-ʿAzīz.

These considerations lead to underline the problematic attribution of this *ḥadīth* to Jābir. Such assumption is further supported if we consider

[17] *Musnad Rabīʿ*, pp. 176, no. 667 & 178, no. 676.

[18] Mālik, *Al-Muwatta, The First Formulation of Islamic Law*. English translation by A. A. Bewley, London, 1989, p. 316.

[19] Bishr b. Ghānim, *Kitāb al-Mudawwana al-kubrā*, ed. Muḥammad b. Yūsuf Aṭfayyish, 2 vols., ʿUmān, 1404/1984, II, p. 215.

[20] See J. van Ess, *Theologie und Gesellschaft* II, p. 208.

[21] Bishr b. Ghānim, *Mudawwana* II, p. 219.

[22] Bishr b. Ghānim, *Mudawwana* II, p. 209.

[23] Ibid.

the Ibāḍī sources. Abū al-Ḥawārī[24] (d. late 3rd/9th) and al-Hawwārī[25] (d. c. 290/903) neither mention this maxim nor have any reference to Jābir in their *tafsīr*s. Ibn Baraka[26] (d. 4th/11th), al-Bisyawī[27] and al-Shammākhī[28] (d. 792/1389) quote this maxim as a Prophetic maxim, without *isnād*.

In the Sunni milieu, this legal maxim is still unknown to Mālik and al-Dārimī,[29] but it began to appear in the *ḥadīth* literature in the first half of the 3rd century. It is reported, for instance, by Ibn Ḥanbal (d. 241/855),[30] al-Bukhārī (d. 256/870),[31] Abū Dāwūd al-Sijistānī (d. 275/888).[32]

3. Impediments to Inherit

a) Impediment caused by a murder

> Through the same line of transmission [Abū ʿUbayda, from Jābir, from Ibn ʿAbbās], from him [the Prophet]: The manslayer does not inherit from his victim, be a manslaughter premeditated or by fault.[33]

Deep divergences among the Muslim scholars began to appear in the second half of the 1st century. The different doctrines show a gradual rethinking of the question.

The first step was that an intentional manslaughter, and all the more a murder by fault, do not cause the exclusion of a murderer from the inher-

[24] Abū al-Ḥawārī, *al-Dirāya wa-kanz al-ghināya fī muntahā al-ghāya wa-bulūgh al-kifāya fī Tafsīr khams miʾa Āya min Tafsīr al-Qurʾān al-Karīm*, Sūriyā–Lubnān, 1394/1974. Abū al-Ḥawārī shortly comments the Quranic verses on inheritance, pp. 109–113.

[25] Al-Hawwārī *Tafsīr Kitāb Allāh al-ʿAzīz*, ed. Bi-l-Ḥājj b. Saʿīd al-Sharīfī, *Dār al-Gharb al-Islāmī*, 4 vols., Beirut, 1990. On this *tafsīr*, see Aḥmad Muḥammad Maḥmūd Sāmī, *Minhaj al-shaykh Hūd b. Muḥakkam al-Hawwārī fī tafsīrihi "Tafsīr Kitāb Allāh al-ʿAzīz" (Dirāsa wa-naqd)*, a thesis of Magister, discussed at the Islamic University, Ghazza in 1423/2002; both traditions are not mentioned in the list of the Prophetic *ḥadīth*s (pp. 273–277).

[26] Ibn Baraka, *Kitāb al-Jāmiʿ*, ed. Abū al-Qāsim ʿĪsā Yaḥyā al-Bārūnī, 2 vols., ʿUmān, 1983, II, pp. 562, 583, 596.

[27] Al-Bisyawī, *Mukhtaṣar*, p. 136.

[28] Al-Shammākhī, *Kitāb al-siyar*, Cairo, 1301/1883, IV, p. 92.

[29] Al-Dārimī, *Musnad* II, pp. 301, no. 3261, 301–302, no. 3263 (*lā yajūzu li-wārith waṣiyya* or its variant *lā yajūzu waṣiyya li-wārith*).

[30] Ibn Ḥanbal, *al-Musnad*, 6 vols., Beirut, 1405/1985 (5th edition), IV, pp. 186, 187, 238; V, p. 267.

[31] Al-Bukhārī, *The Translation of "The Meanings" of Sahih al-Bukhari* (Arabic-English), by Muhammad Muhsin Khan, 9 vols., New Delhi, 1987 (reprinted and revised edition), IV, p. 6.

[32] Abū Dāwūd al-Sijistānī, *Kitāb al-Sunan*, 4 vols., ed. Muḥyī al-Dīn ʿAbd al-Ḥamīd, Maṭbaʿat al-Saʿāda, Cairo 1370/1951, III, pp. 155, no. 2870; 398–400.

[33] *Musnad Rabīʿ*, pp. 176, no. 668, 178, no. 676.

itance. This solution was based on a literal interpretation of the Quranic verses, which do not specify the status of the heirs. This opinion (*raʾy*) is attributed to al-Khawārij by the Ḥanbalī Ibn Qudāma.[34] Even if no evidence of such attribution can be found both in the *ḥadīth* literature and legal works, it should not seem strange if we consider the rigorism of the Khawārij. Moreover, the ancientness of this doctrine is evidenced also by the fact that it was professed by the Medinese Saʿīd b. al-Musayyib (d. 94/713) and the Kufan Saʿīd b. Jubayr (d. 95/714). However, it completely fell into oblivion, reasonably because it gives rise to a situation of absolute injustice, allowing a murder to receive a share from the estate of his victim.

According to the opposite doctrine, both a premeditated homicide and a murder by fault cause the exclusion of the murderer from the inheritance both of the estate of his victim and the *diya* due by him. This doctrine was maintained by Abū Ḥanīfa[35] (d. 150/767) and his school. Thereafter it was also followed by al-Shāfiʿī[36] (d. 204/820) and his school, Ibn Ḥanbal[37] and his school.

In the same period the Damascene al-Awzāʿī (d. 157/774) proposed a compromise between the two previous views, making a distinction between the two kinds of murder; only a premeditated homicide causes the exclusion of the murderer from the inheritance both of the estate and blood-money, while a homicide by fault only bars a murderer from receiving his share of the *diya*. Such view was followed by Mālik[38] and his school.

Al-Bayhaqī[39] relates a *ḥadīth* on the authority of Jābir on this subject. But, firstly, neither Abū ʿUbayda nor al-Rabīʿ appear in the *isnād*; on the other hand, both scholars are never mentioned in any other *isnād* present in the Sunni *ḥadīth* literature on this issue. Moreover, the chain of trans-

[34] Ibn Qudāma, *Mughnī* VII, pp. 161–162.

[35] See Abū Yūsuf, *Kitāb al-Āthār*, ed. Abū al-Wafā, Cairo, 1355/1936, p. 161, no. 736; al-Sarakhsī, *Mabsūṭ*, XXX, pp. 46–47; al-Shāfiʿī, *Kitāb al-Umm*, 7 vols., Cairo, 1321–25/1903–08, IV, p. 3; VII, pp. 298–299; al-Muzanī, *al-Mukhtaṣar*, on the margin of vols. I–V of *Kitāb al-Umm* V, pp. 153–154. See also al-Tirmidhī, *Kitāb al-Sunan* or *al-Jāmiʿ al-Ṣaḥīḥ*, ed. ʿAbd al-Wahhāb ʿAbd al-Laṭīf & ʿAbd al-Raḥmān Muḥammad ʿUthmān, 5 vols., Cairo, 1384–87/1965–67, III, p. 288.

[36] Al-Shāfiʿī, *Umm* IV, pp. 2–4; VII, pp. 298–299; al-Muzanī, *Mukhtaṣar* III, p. 139; V, p. 154.

[37] Ibn Ḥanbal, *Musnad* I, pp. 305–306, nos. 346–348; Ibn Qudāma, *Mughnī* VII, pp. 161–162. But also the opposite doctrine is attributed to Ibn Ḥanbal (*Mughnī* VII, p. 163).

[38] Mālik, *Muwaṭṭaʾ*, p. 366, no. 11. See also al-Tirmidhī, *Sunan* III, p. 288.

[39] Al-Bayhaqī, *Sunan* VI, p. 220.

mitters does not go back to Muḥammad, but it stops to Jābir. As far as the *matn* is concerned, the doctrine of Jābir reported by al-Bayhaqī corresponds to that expressed in the *Musnad al-Rabīʿ*, but with the remarkable difference that it is not formulated as a legal maxim. On these premises it may be inferred that this maxim was not transmitted through Jābir – Abū ʿUbayda – al-Rabīʿ, and it is not a Prophetic maxim.

We would expect that later Ibāḍī sources have followed the same doctrine of Jābir. But it is not the case. On the one hand, Ibāḍī jurists diverge on this issue; on the other hand, they shortly report their view, omitting any discussion and historical reference, thus ignoring both Jābir and the *Musnad* of al-Rabīʿ. Ibn Qays[40] (d. c. 520/1126) and al-Muṣʿabī[41] (d. 1223/1808) share the doctrine professed by Jābir. On the contrary, al-Bisyawī[42] follows the Mālikī view.

b) Impediments caused by the difference of religion

> Abū ʿUbayda, from Jābir b. Zayd, who said: I learned from Usāma b. Zayd that he said: The Messenger of God said: An unbeliever (*kāfir*) does not inherit from a Muslim nor a Muslim from an unbeliever.
>
> Al-Rabīʿ said: Unbeliever means a polytheist (*mushrik*).[43]

References to this impediment are in the most ancient Ibāḍī sources:

> Al-Rabīʿ was asked about a man who married a woman belonging to the *ahl al-Kitāb*. She bore him some children. Then the husband died.
>
> He answered: They inherit from their father. If one of them dies while minor, his mother does not inherit from him.[44]

This principle is reiterated in a report attested in *Aqwāl Qatāda* (p. 123_{1-2}):

> ʿAmr [b. Harim] informed us. He said: A Jew and a Christian do not inherit from a Muslim and a Muslim does not inherit from them.

The impediment deriving from the difference of religion dates back to the time of Muḥammad, as attested by Mālik.[45] The case involved ʿAqīl b. Abī Ṭālib, the elder brother of ʿAlī, and his brother Ṭālib b. Abī Ṭālib, who

[40] Ibn Qays, *Mukhtaṣar al-khiṣāl*, p. 217.

[41] Al-Muṣʿabī, *Nīl* II, p. 380.

[42] Al-Bisyawī, *Mukhtaṣar*, p. 147.

[43] *Musnad Rabīʿ*, p. 177, no. 671. The maxim is also included in a long *matn* (*ḥadīth* no. 664, pp. 175–176).

[44] Al-Rabīʿ, *Jawābāt*, p. 115, no. 539.

[45] Mālik, *Muwaṭṭaʾ*, p. 207, no. 11. See also al-Shaybānī, *Kitāb al-Muwaṭṭaʾ*, ed. ʿAbd al-Wahhāb ʿAbd al-Laṭīf, Cairo, 1387/1967 (2nd edition), p. 255, no. 729; ʿAbd al-Razzāq,

inherited from their father Abū Ṭālib ʿAbd Manāf, with the exclusion of ʿAlī, another son of Abū Ṭālib. The reason was that ʿAqīl, Ṭālib and Abū Ṭālib were unbelievers, while ʿAlī was converted to Islam. Thus the Prophetic legal maxim, related in a *ḥadīth* reported by Mālik,[46] seems nothing that the consistent consequence of the solution given to that case: "A Muslim does not inherit from an unbeliever." However, in his comment to this *ḥadīth* of *al-Muwaṭṭaʾ*, al-Shaybānī[47] (d. 189/805) also quotes, without *isnād*, but as his own sentence, the second part of the maxim: "… and an unbeliever does not inherit from a Muslim". The two parts later became a unique Prophetic maxim in al-Shāfiʿī,[48] omitting however any historical reference to the event which gave rise to that solution. This independent legal maxim was then widespread in the *ḥadīth* literature.[49]

These observations suggest that the first part of the maxim was known in Medina at the time of Mālik, based on the event at its origin, while a second part was formulated by al-Shaybānī as his own statement.

The reports of Jābir[50] and Qatāda seem to ignore the historical reference to Abū Ṭālib, since they are restricted to the specific case regarding the inheritance of a Muslim and the *ahl al-kitāb*, thus lacking a general reference to the *kuffār*. I may conclude that the full legal maxim ascribed to Jābir did not exist at his time yet.

Later Ibāḍī sources reveal that, although the Ibāḍī jurists know and sometimes discuss the Sunni legal literature, nevertheless they ignore their own roots, because they neither quote Jābit nor al-Rabīʿ. Moreover, some late Ibāḍī sources introduce a peculiar and innovative terminology, which is not used in the previous traditionistic works.

al-Muṣannaf, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, 11 vols., Karachi, 1390–92/1970–72, VI, p. 15, nos. 9853–54; X, p. 344, no. 19313.

[46] Malik, *Muwaṭṭaʾ*, p. 207, no. 10. See also al-Shaybānī, *Muwaṭṭaʾ*, p. 255, no. 728; al-Shāfiʿī, *Umm* IV, p. 2.

[47] Al-Shaybānī, *Muwaṭṭaʾ*, p. 255.

[48] Al-Shāfiʿī, *Umm* IV, pp. 2–3, 13–14, 59.

[49] Al-Ḥumaydī, *al-Musnad*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, 2 vols., Karachi, 1382/1963, I, p. 248, no. 541; al-Dārimī, *Musnad* II, pp. 267, no. 2994, 268, nos. 3002, 3004–3005; Ibn Māja, *Kitāb al-Sunan*, ed. Muḥammad Fuʾād ʿAbd al-Bāqī, 2 vols., Cairo, 1372/1972, II, pp. 911–912, nos. 2729–2730; Abū Dāwūd al-Sijistānī, *Sunan* III, p. 84, no. 2909; al-Tirmidhī, *Sunan* III, pp. 286–287; al-Dāraquṭnī, *al-Sunan*, ed. ʿAbdallāh Hāshim Yamānī al-Madanī, 4 vols., al-Madīna, 1386/1966, IV, p. 69, no. 7; al-Bayhaqī, *Sunan* VI, pp. 217–219, 253–254.

[50] Al-Rabīʿ, *Jawābāt*, p. 115, no. 539.

Ibn Baraka[51] treats this issue; but his use of the term *muʾmin* instead of *muslim* is worth of note. Moreover, later on he relates only the first part of the maxim ("a Muslim does not inherit from an unbeliever") as a Prophetic statement,[52] as it is in Mālik. Al-Bisyawī[53] simply reports the full legal maxim, but not as a Prophetic statement. Moreover, he makes uses of the term *mushrik* instead of *kāfir*. This reminds the wording of the *Musnad* of al-Rabīʿ. However, no Sunni source mentions the word *mushrik* in this context.

In the list of the heirs who neither inherit nor exclude any other relative from the inheritance, Ibn Qays[54] includes relatives of different denomination, using however a new terminology; in fact, the Muslim is qualified as *muwaḥḥid*, and the unbeliever as *mushrik*, but he does not mention the Prophetic maxim. Lastly, al-Muṣʿabī[55] does not quote the maxim, but he simply reminds that a polytheist (*mushrik*) does not inherit from a Muslim, according to all jurists, while a Muslim does not inherit from a polytheist, according to the majority of them.

The new terms *muʾmin*, *mushrik* and *muwaḥḥid* are specifically Ibāḍī. They seem to be new elements introduced in the Sunni reports. Thus, the explanatory sentence present in the *Musnad* of al-Rabīʿ ("Al-Rabīʿ said: Unbeliever means a polytheist"), may reveal the late origin of the *matn*, which leads at least to the time of al-Bisyawī. Thus, it is not unlikely that the compiler of the *Musnad*, al-Warjalānī, combined both Sunni and Ibāḍī sources.

4) Inheritance from the Prophet

> Abū ʿUbayda, from Jābir, from ʿĀʾisha. She said: When the Messenger of God died, his wives wished to send ʿUthmān b. ʿAffān to Abū Bakr in order to claim their inheritance from the Messenger of God. But I told them: Did not the Messenger of God say: We are Prophets. We do not have any heir; what we leave behind is to be given in charity? From her [ʿĀʾisha]. She said: There are three traditions concerning Barīra.[56]

[51] Ibn Baraka, *Kitāb al-Jāmiʿ*, ed. Abū al-Qāsim ʿĪsā Yaḥyā al-Bārūnī, 2 vols., ʿUmān, 1983, II, p. 274. There is no reference to this subject neither in the *Mudawwana* of Bishr b. Ghānim nor in the *tafsīr* of Abū al-Ḥawārī.

[52] Ibn Baraka, *Kitāb al-Jāmiʿ*, p. 276.

[53] Al-Bisyawī, *Mukhtaṣar*, p. 156.

[54] Ibn Qays, *Mukhtaṣar*, p. 217.

[55] Al-Muṣʿabī, *Nīl* II, p. 380.

[56] *Musnad Rabīʿ*, p. 176, no. 669. The three rules deriving from events concerning Barīra are previously quoted (pp. 144–145, no. 535). They are out of context here, firstly because they concern different legal issues; secondly, they are not present in any other *ḥadīth* regarding the inheritance from Muḥammad.

The issue of the transmission of goods belonging to the Prophet was raised very soon after his death. It required a clear definition in order to establish the position both of the relatives of Muḥammad and his wives regarding the inheritance of his properties at Medina and Fadak and what he left from the one-fifth of the income he annually received from Khaybar. The debate, which took place in the earliest time of Islam, is preserved in the traditionistic material.

The *ḥadīth* reported in the *Musnad* has a parallel in the Sunni collections of traditions. However, as far as the *isnād* is concerned, Sunni traditionists never mention al-Rabīʿ – Abū ʿUbayda – Jābir, while the common link is always ʿĀʾisha. As regards the *matn*, the report of the *Musnad* is similar to that present, for instance, in Mālik,[57] Ibn Ḥanbal,[58] al-Bukhārī,[59] Muslim[60] and Abū Dāwūd al-Sijistānī.[61]

According to a variant of the *matn*, Fāṭima, Muḥammad's daughter, and al-ʿAbbās, Muḥammad's paternal uncle, claimed from Abū Bakr their share from the properties of Muḥammad, Fāṭima having right to the one-half and al-ʿAbbās to the remainder as his closest agnate. Abū Bakr decided according to the sentence of the Prophet; namely, they were prevented from inheriting, because the family of Muḥammad could use his assets only for its own needs.[62] According to another variant, Fāṭima went to Abū Bakr demanding her right to the inheritance of his father, but he rejected her claim.[63]

Another *matn* reports that ʿUmar was asked for a decision about the claim of ʿAlī, demanding the inheritance of his deceased wife Fāṭima, and al-ʿAbbās. ʿUmar handed the endowments at Medina over to them, while the income of the endowments of Fadak and Khaybar were spent for the needs of the community.[64] Lastly, some *ḥadīth*s simply report the Prophetic

[57] Malik, *Muwaṭṭaʾ*, p. 417, no. 27.

[58] Ibn Ḥanbal, *Musnad* VI, p. 262.

[59] Al-Bukhārī, *Ṣaḥīḥ* VIII, p. 475, no. 722.

[60] Muslim, *Ṣaḥīḥ*, bi-sharḥ al-Nawawī, 18 vols., Cairo 1347–49/1929–30, XII, p. 76.

[61] Abū Dāwūd al-Sijistānī, *Sunan* III, p. 199, nos. 2976–2977.

[62] Ibn Ḥanbal, *Musnad* I, p. 4; al-Bukhārī, *Ṣaḥīḥ* VIII, pp. 471–472, no. 718; Muslim, *Ṣaḥīḥ* XII, p. 80.

[63] Ibn Ḥanbal, *Musnad* I, pp. 6–7, 9–10; al-Bukhārī, *Ṣaḥīḥ* IV, pp. 208–209, no. 325; Muslim, *Ṣaḥīḥ* XII, pp. 76–79; Abū Dāwūd al-Sijistānī, *Sunan* III, p. 196, nos. 2968–2969.

[64] Ibn Ḥanbal, *Musnad* I, p. 49; al-Bukhārī, *Ṣaḥīḥ* IV, pp. 209–213, no. 326; VII, pp. 204–207, no. 271; VIII, pp. 472–474, no. 720; Muslim, *Ṣaḥīḥ* XII, pp. 71–76; Abū Dāwūd al-Sijistānī, *Sunan* III, pp. 192–194, nos. 2963–2964, 196–197, no. 2970, 198–199, no. 2975.

maxim, on the authority of ʿĀʾisha[65] or Abū Hurayra:[66] *lā nūrathu; mā taraknā fa-huwa ṣadaqa*.

On this basis, the Sunni law schools, and the Ẓāhirī, Zaydī and Ibāḍī schools as well, barred the wives of Muḥammad and his relatives from inheriting.

> Abū ʿUbayda, from Jābir, from Abū Hurayra, who said: The Messenger of God said: My heirs cannot share even a *dīnār* nor a *dirham*. What I leave behind after paying maintenance allowance to my wives and remuneration to my manager is to go in charity.[67]

This *ḥadīth* has a parallel in the Sunni collections of traditions, which, however, ignore the chain al-Rabīʿ – Abū ʿUbayda – Jābir, but Abū Hurayra is the common link. The *matn* of the *Musnad* is close to the report present in Ibn Ḥanbal[68] and al-Bukhārī,[69] the sole difference concerns the verb *lā yuqsimu* (al-Rabīʿ) and *lā taqtasimu* (Ibn Ḥanbal, al-Bukhārī). The same *matn*, with some negligible omission, is also, for instance, in Mālik,[70] al-Ḥumaydī (d. 219/834),[71] Ibn Ḥanbal,[72] al-Bukhārī[73] and Muslim.[74]

Both the ancient and the most recent Ibāḍī sources do not mention the two *ḥadīth*s present in the *Musnad* of al-Rabīʿ. Indeed, they are not quoted in the two works of Jābir, *Min jawābāt al-Imām Jābir b. Zayd* and *Rasāʾil Jābir b. Zayd al-Azdī*. An indirect evidence that Jābir did not transmit these *ḥadīth*s is provided also by the recent work of Bakkūsh Yaḥyā Muḥammad,[75] who does not refer any tradition from Jābir on this subject. In fact, both traditions are not mentioned in the list of Prophetic *ḥadīth*s (pp. 627–647). Moreover, Bakkūsh does not mention any tradition from

[65] Ibn Ḥanbal, *Musnad* VI, p. 145; al-Bukhārī, *Ṣaḥīḥ* VIII, p. 472, no. 719.

[66] Muslim, *Ṣaḥīḥ* XII, p. 82.

[67] *Musnad Rabīʿ*, pp. 176–177, no. 670.

[68] *Musnad* II, p. 242.

[69] Al-Bukhārī, *Ṣaḥīḥ* IV, p. 29, no. 37.

[70] Mālik, *Al-Muwaṭṭaʾ*, p. 417, no. 28; al-Ṭayālisī (*Musnad*, p. 219, no. 1565; a variant is reported by al-Ḥumaydī, *Musnad* I, p. 132, no. 271) attributes this sentence to ʿĀʾisha, not to the Prophet.

[71] Al-Ḥumaydī, *Musnad* II, p. 480, no. 1134.

[72] Ibn Ḥanbal, *Musnad* II, pp. 376, 464. Ibn Ḥanbal (*Musnad* II, p. 463) also relates a *ḥadīth* which combines the two *matn*s of the two traditions of al-Rabīʿ.

[73] Al-Bukhārī, *Ṣaḥīḥ* VIII, p. 475, no. 721.

[74] Muslim, *Ṣaḥīḥ* XII, pp. 81–82.

[75] *Fiqh al-Imām Jābir b. Zayd*, 2 vols., Ghardāya, 1988.

ʿĀʾisha on this issue (*s.v. ʿĀʾisha, Umm al-muʾminīn*) (p. 668). Lastly, the references used by Bakkūsh in order to outline the *fiqh* of Jābir do not include any work of Jābir (pp. 697–700).

A number of Ibāḍī sources, both ancient and recent, ignore the *ḥadīth*s reported in the *Musnad* of al-Rabīʿ: *al-Mudawwana al-kubrā* of Bishr b. Ghānim; the two *tafsīr*s of Abū al-Ḥawārī and al-Hawwārī; *Kitāb al-Jāmiʿ* of Ibn Baraka; the *Mukhtaṣar* of al-Bisyawī; *Mukhtaṣar al-khiṣāl* of Ibn Qays; *Kitāb al-Muʿtabar*[76] and *al-Jāmiʿ al-mufīd min jawābāt Abī Saʿīd*[77] of al-Kudamī (d. late 4th/10th); *Kitāb al-siyar* of al-Shammākhī; *Kitāb al-Nīl* of al-Muṣʿabī; *Sharḥ al-Nīl wa-shifāʾ al-ʿalīl* of Aṭfayyish (d. 1332/1914).[78]

The previous considerations lead to the conclusion that the *isnād*s in the *Musnad* of al-Rabīʿ were an adaptation of Sunni *isnad*s, replacing the transmitters from ʿĀʾisha and Abū Hurayra onwards with Jābir – Abū ʿUbayda – al-Rabīʿ. As far as the *matn*s are concerned, they are very close to the reports present in the works of Mālik, al-Ḥumaydī, Ibn Ḥanbal, al-Bukhārī and Muslim, namely the most widespread and renowned Sunni collections of traditions. Presumably both *ḥadīth*s derived from those sources. Lastly, the reference to Barīra reveals a misunderstanding on the part of the compiler of the *Musnad*.

The opposite doctrine is maintained by the Twelvers, who believe that Fāṭima inherited the whole estate of his father,[79] because they reject agnation, while ʿAlī inherited the science (*ʿilm*) of Muḥammad.[80]

Conclusion

The compiler of the *Musnad*, presumably al-Warjalānī, took no account both of the previous and most recent Ibāḍī literature; his aim was to compose an Ibāḍī *Musnad* very similar to a Sunni collection of traditions. Moreover, the subjects present in the *Musnad* do not have always a correspondence in the works of Jābir (*Rasāʾil al-imām Jābir b. Zayd al-Azdī*), al-Rabīʿ (*Min Jawābāt al-imām Jābir b. Zayd*) and Qatāda (*Aqwāl Qatāda*), whose authenticity is out of doubts. Lastly, the *matn*s are legal maxims, which generally are a compendium of fully elaborated doctrines; thus they are not a mark of the ancientness of a work.

[76] Al-Kudamī, 4 vols., Wizārat al-turāth al-qawmī wa-l-thaqāfa, ʿUmān, 1405/1984–85.

[77] Al-Kudamī, 4 vols., Wizārat al-turāth al-qawmī wa-l-thaqāfa, ʿUmān, 1405/1985.

[78] Aṭfayyish, 10 vols., al-Maṭbaʿa al-Salafiyya, Cairo 1343/1924–25.

[79] See al-Ṭūsī, *Tahdhīb al-aḥkām*, 10 vols., al-Najaf, 1377–82/1957–62, IX, p. 277, nos. 1002–1003.

[80] Idem, no. 1003.