

# THE AUTHENTICITY OF TRADITIONS: A CRITIQUE OF JOSEPH SCHACHT'S ARGUMENT E SILENTIO

Dr. Zafar Ishaq Ansari

One of the major theses which has gained general acceptance among Western scholars of early Islam is that the traditions (*aĀdāth*) from the Prophet (peace be on him) or from his Companions belong, on the whole, to a period considerably later than that to which they are ascribed. These traditions, it is claimed, arose as a cumulative result of attributing doctrines (in fact arrived at by individual reasoning), via a chain of authorities all the way to the Prophet and his Companions. The obvious motive for doing this on the part of different persons or schools was to gain an authoritative character for their respective doctrines. Put in plain terms, this thesis claims that the corpus of traditions from the Prophet is largely the product of a large-scale, pious forgery.

## I

The trend of questioning, and in fact denying the authenticity of traditions was already evident during the second half of the nineteenth century in the works of prominent Western scholars such as William Muir, Aloys Sprenger, Alfred von Kremer and Theodore Noeldeke.<sup>98</sup> It was, however, in the writings of Ignaz Goldziher, (whose second volume of *Muhammedanische Studien* is devoted to a critical study of *Ādāth*), that this trend found its first most sustained and vigorous expression. Goldziher's main argument was that the traditions reflect the attitudes and viewpoints obtaining in the second and third Islamic centuries and have little to ten about the early part of the first century to which they allegedly belong. This argument instantly, gained a

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<sup>98</sup> See this writer's "The Early Development of Islamic Fiqh in Kēfah with Special Reference to the Works of Abē Yēsuf and Shayb«nā", Ph.D. thesis, (Typescript), Institute of Islamic Studies, McGill University, Montreal, 1966, pp. 193 f. with relevant notes (cited hereafter as Ansari, "Early Development"). For a study of the growth of a sceptical attitude to *aĀdāth* among Muslims see G. H. A. Juynboll, *The Authenticity of the Tradition Literature: Discussions in Modern Egypt*, Leiden. 1969.

wide acceptance among the Western scholars of Islam, and has since remained with them as an established thesis.<sup>99</sup>

After Goldziher a number of Western scholars have used the traditions extensively as a source material in their studies on the early centuries of Islam. Among them two stand out very prominently: A.J. Wensinck and Joseph Schacht. Wensinck used the traditions with a theological bearing to study the development of Islamic theology and adopted broadly the same approach as Goldziher's.<sup>100</sup> Schacht, on the other hand, concerned himself with the "origins" of Muslim jurisprudence and hence considered the role of the traditions in the development of Muslim law— in the development of both substantive doctrines and of legal theory. He not only confirmed Goldziher's essential thesis but went considerably beyond him. He claimed that the tracing of traditions back to the Prophet was developed very late in Islam; that a considerable number of legal traditions from the Prophet were "put into circulation" after circa 150 A. H. which, according to him, marks the beginning of the "literary" period of *Āadāth* transmission. Schacht's scepticism was even more rigorous than Goldziher's. This would be evident from the "methodical rule", which, according to Schacht, follows from Goldziher's results. Schacht has expressed this in the following words:<sup>101</sup>

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<sup>99</sup> There are some notable exceptions, the most outstanding of whom is Nabia Abbott. In her Chicago, 1967 she has *Studies in Arabic Literary Papyri 4 II: Qur'anic Commentary and Tradition*, marshalled over whelming evidence to show the highly exaggerated character, even falsity of the above-mentioned hypothesis. In other studies which, for a variety of reasons have seriously questioned the thesis especially Fūat Sezgin, *Geschichte des Arabischen Schrifttums*, Vol. I, Leiden. For a brief assessment of the significance of the works of these two scholars see C. J. Adams "Islamic Religious Tradition", in L. Binder, ed., *The Study of the Middle East*, New York, London, Sydney and Toronto, 1976, pp. 66–69. A very significant work, which essentially follows the trend of Goldziher and Schacht, has appeared lately. See G. H. A. Juynboll, *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early Āadāth*, Cambridge, London, New York, 1983.

<sup>100</sup> For more recent studies on the early history of Islamic theology and the use of *Āadāth* materials in them see Josef van Ess, especially *Zwischen Āadāth und Theologie: Studien zurn Entstebten pradistinatianischer Uber lieferung*, Berlin and New York, 1975. See also the recent work of Michael Cook, *Early Muslim Dogma: A Source Critical Study*, Cambridge and New York, 1981.

<sup>101</sup> Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, III impression (Oxford, 1959). p. 149. Cited hereafter as *Origins*.

... every legal tradition from the Prophet, until the contrary is proved, must be taken not as an authentic or essentially authentic, even if, slightly obscured, statement valid for his time or the time of the Companions, but as the fictitious expression of a legal doctrine formulated at a later date.

This was Schacht's position in *Origins* that appeared in 1950. Fourteen years later when *Introduction* came out, he appears to have moved to a position which seems even more pronouncedly extreme: "Hardly any of these traditions, as far as matters of religious law are concerned, can be considered authentic .....<sup>102</sup>

Schacht has frequently used the argument *e silentio* to show the non-existence of many traditions in the early period of Islam. This argument, in his own words, consists of the following:<sup>103</sup>

The best way of proving that a tradition did not exist at a certain time is to show that it was not used as a legal argument in a discussion which would have made reference to it imperative, if it had existed... This kind of conclusion is furthermore made safe by Tr. VIII, 11, where Shayb«nâ says: "Thing is so unless the Medinese can produce a tradition in support of their doctrine, but they have none, or they would have produced it." We may safely assume that the legal traditions with which we are concerned

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<sup>102</sup> Joseph Schacht, *An Introduction to Islamic Law*, (London, 1964), p. 34. Cited hereafter as Introduction.

<sup>103</sup> *Origins*, pp. 140 f. For an example cited by Schacht himself which seems to contradict one of the assumptions on which his argument is based, see *Origins*, p. 142 under the heading, "Traditions originating between Auz«â and M«dik". Here Schacht notes the need for "caution in the use of the argument *e silentio*", though he frequently disregards it.

It is noteworthy that Schacht himself often uses works of a later period as sources for the doctrines prevailing during the first and the second centuries. This would seem to be in flagrant violation of the canons he enunciates (*ibid.*, pp. 140 f.). Schacht cites an argument of Shayb«nâ in favour of a doctrine of his school, for instance, on the basis of a late fifth century work viz., Sarakhsâ (d. circa 483 A.H.), *Mabs«Ç*, and observes that Shayb«nâ "develops the argument in a masterly way and introduces a judicious distinction; this seems to be the argument that Shayb«nâ did really use". (*Origins*, p. 271). Again, an alleged doctrine of the early second century is referred on the basis of 'Iyâ (d. 544 A.H.) quoted in Zurq«nâ Commentary of *MuwaÇÇa'*, (*ibid.*, pp. 107 f.). For other instances see *ibid.*, pp. 273 and 303, and often.

were quoted as arguments by those whose doctrine they were intended to support, as soon as they were put into circulation.

In his actual resort to this argument, however, Schacht is not consistently mindful of his own restrictive stipulation, viz., “that a tradition would be deemed non-existent at a certain time if it was not used *as* an argument in a discussion which would have made reference to it imperative.”<sup>104</sup> His slipshod resort to this argument would seem to suggest that the Muslim scholars of the second and third centuries were in a perpetual state of “discussion”, an assumption which is patently unacceptable to common sense.

The present paper is not concerned with the question of the authenticity of traditions, nor with Schacht’s views on that question as such. Rather it is addressed exclusively to Schacht’s *e silentio* argument on which he mainly bases his case for the non-authenticity of traditions.

## II

Even a casual reading of the *Origins* makes it evident that Schacht’s “methodical rule” and his line of argumentation are highly sweeping. It would seem altogether unreasonable to claim validity for Schacht’s argument unless we were to make the following assumptions:

- 1) that during the first two centuries of Islam whenever legal doctrines were recorded, their supporting arguments, especially the traditions, were also consistently mentioned;
- 2) THAT THE TRADITIONS KNOWN TO A JURIST (OR TRADITIONIST) WOULD NECESSARILY HAVE BEEN KNOWN TO ALL THE OTHER JURISTS (AND TRADITIONISTS) OF HIS TIME;**
- 3) that all the traditions which were “in circulation” at a particular period of time were duly recorded, were widely publicised and were subsequently preserved so that if we fail to find a tradition in the works of a known scholar that is tantamount to its non-existence in his time – in his own region as well as elsewhere in the realm of Islam.

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<sup>104</sup> *Origins*, p. 271.

None of these assumptions can be corroborated by historical evidence. In fact, it can be positively shown that they do not cohere with the known facts of the period concerned.

The earliest works embodying traditions which have come down to us were composed around the middle of the second century and subsequently.<sup>105</sup> The composition of these works was motivated by a complex of factors. One of these was the desire to record the doctrines followed by the scholar's predecessors, especially the generally accepted doctrines of his school. It was for this reason that often it was deemed sufficient to record the doctrines of one's school, without necessarily recording alongside in support of those doctrines, traditions from the Prophet or Companions.<sup>106</sup>

It is well known that many doctrines derived from the Qur'an were recorded in these writings without any reference to the relevant Qur'anic verses.<sup>107</sup> There is ample evidence to show that this was equally true in regard to traditions. There is a great number of instances where a jurist recorded the doctrine of his school on a legal question but did not care to cite the tradition which was relevant to, and/or was supportive of his doctrine, even though it can be incontrovertibly shown that he knew that tradition.<sup>108</sup> Indeed, it would

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<sup>105</sup> According to Schacht, the literary period of Islamic legal history begins around the year A. H. 150. (See Joseph Schacht, "Pre-Islamic Background and Early Development of Jurisprudence", *Law in the Middle East*, ed. M. Khadduri and J. Liebesney, Washington, D.C., 1959, vol. I, p. 50). Margoliouth's view seems to be substantially the same. (See D.S. Margoliouth, *The Early Development of Mohammedanism*, London, 1914, pp. 39 f.). In our own view while the composition of books began earlier, hardly any of those books is extant. Moreover, the earlier collections were generally small and fragmentary. As more comprehensive collections appeared, the earlier works gradually became superfluous, began to fall into disuse, and in course of time disappeared. For the early period of traditions see Fūat Sezgin, *Geschichte des Arabischen Schrifttums*, *op. cit.*, and Abbot, *op. Cit.* See also M. M. Azami, *Studies in Early Ādāth Literature*, Beirut, 1968.

<sup>106</sup> See Ansari, "Early Development", pp. 62 ff., 218 ff., and 225 ff.

<sup>107</sup> *Ibid.*, p. 192, and chapter 4, n. 51.

<sup>108</sup> See, for instance, Abë Yësuf, *K. al-jthar*, (Cairo, 1355), 1048 and compare it with Shaybānā's *jthar Shaybānā*, (Karachi, circa 1960), 878 which shows that a certain doctrine which was recorded by Abë Yësuf as a tradition from the Prophet and transmitted by lbrkhām, was recorded by Shaybānā in his *jthar* as the doctrine of lbrkhām, without referring to any tradition from the Prophet. (Hereafter cited as *jthar A.Y.* and *jthar Sh.* respectively. Numbers refer to traditions rather than pages). In the same way in Abë Yësuf, *Iktilaf Abā*

be interesting to explore the traditions found in the earlier works but not found in later works. This *would* mean working on the reverse of Schacht's assumption, and would, we may presume, produce quite startling results. We carried this out on a limited scale and found it of considerable significance. For if it can be shown— and in our view it can— that a large number of traditions found in earlier works are not found in works of a later period, let alone in contemporaneous works, and that the jurists of the period under discussion often felt themselves under no obligation to cite the many traditions which were known to them, even those that supported their doctrines, the ground of Schacht's argument is seriously put in doubt. In the following pages we have essayed a comparative study of a fair assortment of legal doctrines of some second century jurists to illustrate the inadequacy of Schacht's assumptions.

We would start *our* study by comparing the two Muwaḥḥas, viz., those of Mḥlik and Shayb«nâ. Mḥlik's Muwaḥḥa', as we know, is a repertory of the legal doctrines of the Medinese school and also a major early collection of *aĀ«dâth*. Mḥlik (b. circa 95 A.H.), the founder of the Mḥlikâ school, was considerably older than Shayb«nâ (b. 132 A.H.). Shayb«nâ, who belonged to the legal school of Abë Āanâfah (d. 150 A.H.), prepared an edition of Mḥlik's Muwaḥḥa'. Besides incorporating the opinions expressed, and the traditions recorded by Mḥlik, Shayb«nâ's edition also presents the variant doctrines of the author and his school, occasionally followed by traditions in support of those doctrines.

A large number of traditions found in the Muwaḥḥa' of Mḥlik are not to be found in the Muwaḥḥa' of Shayb«nâ and this in spite of the fact that Shayb«nâ was the younger of the two.<sup>109</sup> What is even more curious is that

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*Āanâf« wa Ibn Abâ Layl«,* Cairo, 1358, 116 (cited hereafter as V. 1, and cited according to its paragraph-division, for which see *Origins*, pp. 321 f.). Abë Āanâf«'s disciple Abë Yësuf mentions a certain tradition from the Prophet while *yth«r* A.Y., 738 mentions it only as a doctrine of Abë Āanâfa. Abë Yësuf, *K. al-Kbar«j*, (Cairo, 1352), p. 91 reproduces a tradition from the Prophet with *isnad* on the question of *muḥ«ra'a* cited by Ibn Abâ Layl« (a doctrine with which Abë Yësuf agrees), mentions the same tradition but without its *isnad*.

<sup>109</sup> It might be contended that the comparison between the two *Muwaḥḥas* and the kind of conclusion we are drawing from it are not justified. The main reason for it is that the *Muwaḥḥa'* of Mḥlik in fact signifies the edition of the work prepared by YaĀy« b. YaĀy«

occasionally the traditions of M«dik’s MuwaÇÇa’ [*Mum.*] which are supportive of the doctrines of Shayb«nâ’s school are not found in his Shayb«nâ’s MuwaÇÇa’ [*Mum. Sb.*]. The following will illustrate this.

- The section on timings of the prayers in *Mum.* (pp. 3 ff.) contains in all 30 traditions, out of which only three have been mentioned in *Mum.Sb.* (pp. 42 ff.).

- On the question of the preferred time for morning prayer, the disagreement between the Kufans and the Medinese is well known. ‘The Medinese were in favour of performing the morning prayer when it was still dark, while the Kufans were of the view that prayer should preferably be held a little later when there was some light. *Mum. Sb.* (p. 42) mentions this doctrine of the Kufans. Strangely enough, Shayb«nâ makes no mention of a tradition from the Prophet which is found in *Mum.* (pp. 4 f.) and which supports the doctrine of his school.<sup>110</sup>

- On the question whether touching of the genital parts necessitates fresh ablution, there are six traditions in *Mum.* (pp. 42 f.) whereas *Mum.Sb.* (p. 50) has only two. The omitted traditions include one from the Prophet and another from Ibn ‘Urnar.

- On the question of *ghusl* owing to *jan«ba*, *Mum.* (pp. 44 L) has four traditions, out of which only one is found in *Mum. Sb.* (pp. 70 f.). The omitted traditions include two traditions from the Prophet.

- The Section entitled “Ghisl al-mar’« idh« ra’at fâ al-man«m...” in *Mum.* (pp. 51 L) has two traditions whereas *Mum. Sh.* (p.79) has only one. Of these, the latter work does not contain the tradition that has

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al-Laythâ (d. 234). Thus, contrary to what we have done, the *Mum.* of M«dik should be treated as a later work than *Mum. Sb.*

In response to this, two points are to be made. First, that Schacht himself treats *Mum. Sb.* as the later work and draws certain conclusions on that ground. See *Origins*, p. 143. Second, were we to accept *Mum.* as the later work and then compare its traditions with those of *Mum. Sb.*, the results yielded by such a comparison would even more seriously undermine the foundations of Schacht’s methodology.

<sup>110</sup> It is interesting to note that in Shayb«nâ, *K. al-‘Anjaj*, (Lucknow, 1888) (pp. 1 f.), where Shayb«nâ cited several traditions in support of the doctrines of his school, the above-mentioned tradition of *Mum.* has been cited. (The above-mentioned work is cited hereafter as *Anjaj*).

been recorded in *Muw.* (pp. 51 L) as a tradition from the Prophet with the *asn«d*: M«dik - Umm Salina - Umm Sulaym, - the Prophet.

- The entire section entitled “*al-Wu«i« min al-qubla*” in *Muw.* (pp. 43 f.), is not found in *Muw. Sh.*
- The whole section entitled “*al-n«b«r f« al-m«*” “ (*Muw.* pp. 22 ff.) is not found in *Muw. Sh.*
- The sections on *-al-Bawl q«‘iman* “ and on “*al-Siw«k*” (pp. 64 ff.) are not found in *Muw. Sh.*
- The section “*al-Nid« f« al-Äak«*” (*Muw.* PP. 67 ff.), if compared with the corresponding section in *Muw. Sh.* (pp. 82 ff.), shows that several traditions of *Muw.* (viz, nos. 1, 3, 5, 6, 7, 9) are not found in *Muw. Sh.*
- The section entitled “*Kafan al-mayyit*”, (*Muw.*, pp. 223 f.) contains three traditions, of which *Muw. Sh.* (p. 162) has only one (no. 1 in *Muw.*), a tradition from ‘Abd All«h b. ‘Amr b. al-‘ys. Out of the two traditions which it does not contain, one reports the manner in which the Prophet was wrapped in the coffin.
- The section on “*Zak«t al-fiÇr*” in *Muw. Sh.* (p. 176) does not contain the tradition from Ibn ‘Umar found in *Muw.* (p.283).
- The traditions found in the sections of *Muw.* entitled “*Man k« tajib ‘alayh zak«t al-fiÇr*” (p.285)” *Mak«lat zak«t al-fiÇr*” (p. 283), are not found at all in *Muw. Sh.*
- In the section on “*Isti’dh«n al-bikr wa al-ayyim*” three traditions are found in *Muw.* (pp. 524 f.), while only one is found in *Muw. Sh.* (p. 239). The missing ones include a tradition from - the Prophet.<sup>111</sup>
- The section on “*li‘«n*” in *Muw. Sh.* (p. 262) does not contain several traditions found in the corresponding section in *Muw.* (pp. 566 ff.).
- The section on the prohibited forms of the sale of dates in *Muw. Sh.* (pp. 330 L) contains only one out of the three traditions

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<sup>111</sup> *The non-citation* of this tradition does not prove that Shayb«n« was unaware of that tradition for he refers so to it in *Äujaj*, p. 289 with exactly the same *asn«d* as found in *Muw.* and bases his doctrine on this very tradition. And this precisely is our point: that it is unjustified to assume that a scholar always cited the tradition that he knew, and even more so that the non-citation of a tradition by a scholar necessarily indicated its non-existence.



mentioned in *Muw.* (pp. 623 L), even though all three go back to the Prophet.

The same can be illustrated by comparing the works of Abë Yësuf and Shayb«nâ, particularly *jth«r A.Y.* and *jth«r Sh.* for a large number of traditions recorded in *jth«r A.Y.* are not found in *jth«r Sh.*, although the author of the former work was older.<sup>112</sup>

- *jth«r A.Y.*, 845 a tradition from Ibn Mas‘ed on *mu‘«raba* is not found in *jth«r Sh.*
- *jth«r A.Y.* 830, a tradition from the Prophet regarding disagreement on price between the buyer and the seller is not found in *jth«r Sh.*
- *jth«r A. Y.*, 666, a tradition from ‘Umar found in the section on divorce and *‘idda* is not found in *jth«r Sh.*
- On the question of *nafaqa* and *sukna*’, *jth«r A. Y.* has several traditions, i.e. 592, 608, 726 and 728. These are not found in *jth«r Sh.*
- *jth«r A. Y.* 704, 707 709 which are related to *li‘«n* are not found in *jth«r Sh.*
- *jth«r A. Y.*, 492, 092, and 696 which deal with *ü«r* are not found in *jth«r Sh.*
- *jth«r A. Y.*, 857, a tradition from Silim on *muz«ra‘a*, is not found in *jth«r Sh.*
- *jth«r A.Y.*, 779 and 780 which refer to *far«‘ü* are not found *jth«r Sh.*
- *jth«r A.Y.*, 399, 401, 597,607, etc., on miscellaneous subjects are not found *jth«r Sh.*<sup>113</sup>

This shows that even though there is no reason to believe that Shayb«nâ did not know these traditions, his work does not record them - a fact which falsifies the assumption underlying the method followed by Schacht in his

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<sup>112</sup> This was in spite of the fact that Shayb«nâ was younger than Abë Yësuf, who in fact was also his teacher. Moreover, Shayb«nâ edited the works of Abë Yësuf and himself composed works which were either based on or parallel to those of Abë Yësuf. Hence, if a considerable number of traditions which are mentioned by Abë Yësuf are not found in the parallel works of Shayb«nâ, it greatly undermines the validity of those assumptions (mentioned above p. 4) which alone can validate the *e silentio* argument of Schacht.

<sup>113</sup> See Ansari, ‘Early Development’ chap. 4, nn. 115, 116 and 120.

attempt to establish the “growth of traditions.” In this connection the following possibilities, each one of which is plausible, have been altogether ignored.

1. That the person concerned might have heard and then forgotten the tradition in question;<sup>114</sup>
2. That he might have heard that tradition, but might not have considered it authentic;
3. That he might have known a tradition, but owing to the fact that not the entire quantity of traditions known to the jurists has come down-to-us, especially of the jurists of the relatively early period of Islam, there is no mention of those traditions in the works presently available to us, even though those traditions might once have existed.

To brush aside all these considerations and much evidence to the contrary and insist on an immoderate scepticism can hardly be considered worthy of mature historians.

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<sup>114</sup> For explicit mention of forgetting traditions, or their *isnad*, or of loss of books containing these traditions, and of not citing all the traditions that one knew, see *Kharǧ* p. 57, and al-Shaʿfiʿi, *Risāla*, ed. Ahmad Muhammad Shaʿkir, Cairo, 1940, p. 431. Shaʿfiʿi’s passage is all the more instructive. He mentions the following (1) there are several traditions which he has cited in his work as interrupted even though he had heard them as *muttaʿil* and *masbūr*. He preferred, however, to mention them as interrupted traditions because of his lack of full memory. (2) He lost several of his works and so he had to get the traditions which he (still) remembered verified by scholars. (3) He omitted several traditions for fear of increasing the bulk of his work. He put forth what was enough, says Shaʿfiʿi, without attempting to record A that he knew. See Shaʿfiʿi, *K. al-Umm*, 7 vols., Bēlǧ, 1321-5, vol. IV, p. 177; vol. VI, pp. 3, and 172; and vol. VII, p. 4].