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ABHANDLUNGEN FÜR DIE KUNDE  
DES MORGENLANDES  
Band 106

Kahlan al-Kharusi

Āthār al-Rabī' b. Ḥabīb

Edition and Study



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## INTRODUCTION

Various circumstances have led to the Ibāḍiyya being one of the least known of all Islamic sects. However, 'they certainly preserve a considerable number of works said to have been written before *c.* 800, when the sources of the mainstream tradition begin to flow freely', as Crone and Zimmermann neatly put it.<sup>1</sup>

Access to this tradition was for long difficult, as those Western scholars who were interested in it were to find out. However, a dramatic change was to follow the accession of the present ruler of Oman, Sultan Qaboos bin Said in 1970. The Sultanate was prudently modernized, and among many developments, emphasis was placed on the editing and publication of the major works that have long lain hidden in libraries, not only in Oman but also in North Africa and in Cairo. These publications were intended primarily for the Ibāḍiyya themselves, but copies are now beginning to trickle through to Western libraries, and it is to be hoped that Western scholars will soon have wider knowledge of what is available and easier access to the works they are interested in. However, bringing these works into the public domain remains a huge task, because of the large amount of material still to be edited. This study is a modest attempt to help in this task. It offers an annotated edition of what appears to be the oldest extant work devoted to Ibādī *fiqh*, the *Āthār al-Rabī' b. Ḥabīb*.

The origins of the Ibāḍiyya are clear in general terms but not in any detail. Their roots are always confused with the so called Khārijite groups that came into existence in the First Civil War (36/656–41/661). There appear to have been widely differing attitudes among these groups, the majority preferring the policy of confrontation with the *ahl al-qibla* who opposed their views, whilst a minority opted for a quietist, peaceful, isolationist, live-and-let-live stance. In the early stages of the Second Civil War (65/688–73/692) Muslims split into distinctive political groups, and it was one of these, holding the quietist view and based mainly in Basra, that became the Ibāḍiyya. The name traditionally derives from 'Abd Allāh b. Ibāḍ al-Tamīmī,

<sup>1</sup> *The epistle of Sālim ibn Dhakwān*, Oxford 2001, p. 1.

about whose dates and views there is much uncertainty and disagreement. Apart from the central point about quietism, it may be futile to try to sift the evidence for his views. These may well have been superseded during the development of Ibādī *kalām* and *fiqh* and lost. Equally it may well have been that he was much more important politically, as a member of Tamīm, than as thinker, where he was almost certainly overshadowed by the figure of Jābir b. Zayd. Thus it may be that the view that 'Abd Allāh b. Ibād was the founder and Jābir b. Zayd the first *imām* of the Ibādīyya reflects a basic reality, with their mutual strengths providing the basic impetus for the new movement to cohere. For a time the movement looked set to carve a niche for itself in the central heartland of the Empire, most particularly in Basra. Any hopes of this were seriously diminished when al-Ḥajjāj turned against the movement and imprisoned or exiled its leaders.

In my opinion Jābir b. Zayd died in 93/711 whilst al-Ḥajjāj was still governor.<sup>2</sup> His position as leader of the Ibādīyya was assumed by Abū 'Ubayda at some time after the latter's release from prison on the death of al-Ḥajjāj. During the brief reign of 'Umar b. 'Abd al-'Azīz (99/717–101/719) things seemed promising for the Ibādīyya, but thereafter their position in Iraq deteriorated. To mitigate this, Abū 'Ubayda, who showed himself to be an excellent organizer and leader, began to send out missionaries (*ḥamalāt al-'ilm*) to outlying countries to win Muslims over to the Ibādīyya way of thinking. They gained many adherents, and took over in some areas, but eventually there were clashes with the governors appointed by the central authorities and there were rebellions in Tripolitania in 128/745–131/749; in South West Arabia in 127/744–130/748; and in Oman in 132/750–134/752. In all of these, despite initial defeats, the Ibādī communities survived. It is not clear when al-Rabī took over from Abū 'Ubayda.<sup>3</sup> Al-Rabī remained leader until his death sometime between 175/791–180/796. It is against this brief historical background that the *Āthār al-Rabī' b. Ḥabīb* is set.

The doctrinal issues both in regard to the Sunnīs and also to the Azāriqa and the Najdiyya are dealt with in satisfying detail in Crone and Zimmermann's *Epistle* and need not be dealt with extensively in this study.<sup>4</sup> In short, the Ibādīs differed strongly from the Azāriqa and the Najdiyya in their attitude towards their opponents. The quietist views of the Ibādīyya ensured their survival in a way that was honourable to them. What was honourable to the Azāriqa and the Najdiyya led to savage fighting and their eventual destruction.

2 See below pp. 146–148.

3 See below p. 142.

4 *The epistle of Sālim ibn Dhakwān*, Oxford 2001, pp. 186–250.

When we turn to Ibādī *fiqh* it has hitherto been impossible to say anything very certain about the early period. However, the *Āthār al-Rabī' b. Ḥabīb* begins to open up the subject for us. It is not unfair to say that it provides a first insight into the legal views of early influential Ibādī authorities. It presents the views of Jābir b. Zayd and, not less important, it points to an actual system of Islamic law that was growing up and prevailing in a time that can be described as a pre-formative time of Islamic schools of law.

I have attempted, where ever possible, to take a closer look at the way of thinking of early Ibādī authorities, how they expounded their arguments and what devices they used to proclaim certain judgements. On the premise that this work antedates most, or apparently all, known Islamic literature on *fiqh*, I believe that it shows that they did so in a very cohesive thoughtful manner, which contemporary scholars need to take into account when studying the formation of Muslim schools of law and the development of their legal theories.

It can be perceived from the *Āthār al-Rabī' b. Ḥabīb* that this thoughtful manner followed by early Ibādīs earned them genuine respect from their contemporaries on matters of religious performance. Jābir was questioned on various occasions by non-Ibādīs about religious matters, his opinions were transmitted by non-Ibādīs, and, on the other hand, his Ibādī students seemed to have no strict reservations on referring to other authorities in the community. This is a mutual relation that is rarely observable in later Muslim times. However, the beginnings of early division between Muslim authorities on *fiqh* principles, and consequently on legal views, are also traceable in this book. These divisions are noticeable but not yet distinctive. This is apparently due to the early date of the work on the one hand, but also to the broader perspective early Ibādī authorities followed to consolidate the position of their movement (in Basra in particular).

For those who have interest in the anthropology of early Islamic societies, the book of *Āthār al-Rabī' b. Ḥabīb* will be useful as well. It illustrates, in many of its traditions, a picture of real early Islamic society affairs. There are traces of the day-to-day activities of the community, signs of the clothing people used to wear, and natural images of the social and economical aspects of the society at that time.

It is, therefore, a fact rather than a suggestion that the *fiqh* dealt with in this work of al-Rabī' b. Ḥabīb opens further the doors for detailed studies and for revising our understanding of many theories regarding the formation of Islamic schools. Most significantly among these theories are: the labelling of certain sects and authorities, the mutual relationships of early authorities, take the example of Anas b. Mālik, al-Ḥasan al-Baṣrī, Jābir b. Zayd, their students, etc., and not least of all the characteristic features that led to the

development of different Muslim schools of law. The findings of such studies could be of great value for the world of Islamic scholarship, not just at the intellectual level but also in terms of the general Islamic heritage. This, I believe, is a crucial task that should not be played down on the notion that a minor Muslim school of law is fairly similar to the orthodox Islamic schools, nor should it be affected by the other distracting notion, that a particular school, as in the case of Ibādī *madhhab*, is the closest *fiqh* example to that of the Sunnīs. The reality, as revealed in the *Āthār al-Rabī' b. Ḥabīb*, is that the development of Ibādī *fiqh* is closer to the time of the Prophet and his Companions than that of the Sunnī schools (which therefore cannot be normative).

In addition, the *Āthār al-Rabī' b. Ḥabīb* is to be credited with enabling us to elucidate useful biographical information of some early authorities and transmitters. This will be appreciated by researchers who have been, or are still, doing studies about the Ibādīyya. Looking, hand in hand, at historical and at *fiqh* sources, such as the work under current study, can indeed contribute substantially to the establishment of better prosopographical information.

I do not claim that it is possible at this stage to give a full account of all these grounds. The crucial emphasis has had to be on making the text available and giving it the necessary background notes. To go beyond what I have done would have been to embark on a major undertaking that is beyond the scope of any thesis. Nevertheless, it is hoped that this study was able to outline these accounts and to cast light on new areas.

## CHAPTER ONE

### ABOUT THE *ĀTHĀR AL-RABĪ' B. ḤABĪB*

#### The Book, Its Identification and the Authorities Who Mention It

This is a work known by several titles. Perhaps the one we should take most seriously is that found in the three manuscripts. However, as the three manuscripts are in some way related, this can only be treated as one piece of evidence.

When we look at sources that quote or refer to the work, we find other titles mentioned. It would appear that the first surviving references to the work under investigation are to be found in the *Ajwibat Ibn Khalfūn* by the sixth/twelfth century Ibādī scholar Ibn Khalfūn al-Mazātī.<sup>1</sup> He depends prominently on this work and specifies at his first quotation that he is referring to "*Kitāb Abī Ṣufra 'Abd al-Malik b. Ṣufra* on the authority of al-Rabī' transmitted from Ḍumām from Jābir b. Zayd that so and so",<sup>2</sup> where the *matns* (texts) are always identical to the texts of the work we have.<sup>3</sup> Ibn Khalfūn's explicit references to this work total at least twelve extracts;<sup>4</sup> all are exactly the same in both *sanad* and *matn*.

Later came the well known Ibādī biographer Abū al-Qāsim al-Barrādī<sup>5</sup> (the beginning of the ninth/fifteenth century). He included in his list of Ibādī works *Ḥifẓ Abī Ṣufra*.<sup>6</sup> Although he does not claim to have seen the book or

1 *Ajwibat Ibn Khalfūn*, Ennami, A. (ed.), Beirut 1974, p. 13.

2 *Ibid.*, p. 65.

3 The Egyptian copy (see below, p. 4), f. 74/i.

4 See, for example, the following pages of *Ajwibat Ibn Khalfūn*: 65, 69 (6 extracts), 80 (5 extracts).

5 For a biography of al-Barrādī, see: *Mu'jam a'lām al-Ibādīyya min al-qarn al-awwal al-Hijrī ilā al-'aṣr al-ḥādir – qism al-Maghrib al-'arabī*, (1420/1999), vol. 2, p. 341, biography no. 735.

6 *Al-Jawāhir al-muntaqāt fī mā akhalla bihi ṣāhibu al-Ṭabaqāt*, (lith., 1302/1885), p. 218.

part of it, as he usually does when he has really seen a work, he states that the work "is well known among us as *Kitāb Ḍumām* (*al-ma'rūf 'indanā bi-kitāb Ḍumām*)"<sup>7</sup> which means that he has no doubt about the book he is describing. Yet from those two sources one cannot draw a definitive clue about the exact name of the work. Thus we have, apart from the title extant in the manuscripts of the work, three different titles so far: *Kitāb Abī Ṣufra*, as Ibn Khalfūn names it, *Ḥifẓ Abī Ṣufra* according to al-Barrādī at his first mention and *Kitāb Ḍumām* as he calls it later.

Al-Shammākhī (d. in the ninth/fifteenth century) provides no more information apart from the very important fact that he calls the work *Āthār al-Rabī' b. Ḥabīb* and ascribes its collection to Abū Ṣufra when he talks about him and describes the work as 'a famous one (*mashhūr*)'.<sup>8</sup> This popularity of the book mentioned by al-Shammākhī could mean that it was a widely available source. But this assumption evaporates with the ignorance of the work by al-Darjīnī (d. 670/1271) who would certainly have mentioned the work if he had had access to it. So the most appropriate interpretation of al-Shammākhī's sentence is that the work had a high reputation but was not necessarily widely available. On these grounds one can understand the fact that the work is rarely cited in the *Mashriqī Ibādī* references. Despite the abundance among them of early works on *fiqh*, they hardly refer to this particular work. The only reference I found to a work by Abū Ṣufra is to the *Jāmi' Abī Ṣufra* in *Bayān al-shar'* of Muḥammad b. Ibrāhīm al-Kindī (d. most probably in 508/1114). There seem to be some quotations usually commencing with: "and from (*wa-min Jāmi' Abī Ṣufra*)"; then al-Kindī gives the chain of transmitters followed by the tradition. But when these quotations<sup>9</sup> are compared to our book, the dissimilarity between them and the work under consideration becomes obvious. They do not even present the opinions of Jābir b. Zayd. This draws one's attention to one possible assumption: that we have two different works of Abū Ṣufra: one is named *Jāmi' Abī Ṣufra* and the other is *Kitāb Abī Ṣufra*. The latter seems to be the one described above by Ibn Khalfūn, al-Barrādī and al-Shammākhī. This explanation is supported by the treatise *al-Lum'a al-murḍiyya* of the much later Omani scholar 'Abd Allāh b. Ḥumayd al-Sālimī (d. 1332/1914). In it he mentions two works: *Kitāb Ḍumām* and *Jāmi' Abī Ṣufra*. He describes the first work as compiled by Abū Ṣufra 'Abd al-Malik b. Ṣufra in which he transmitted the opinions

7 *Loc. cit.*

8 Al-Shammākhī, *Kitāb al-siyar*, 1:109.

9 There are about seven quotations distributed in the 72-volume *Bayān al-shar'* as follows: 35:18; 42:195, 201; 43:217, 224, and 45:7, 65 (Ministry of National Heritage, Muscat 1984).

and traditions of Jābir b. Zayd,<sup>10</sup> while he says nothing about the latter work except that it is one of the very early works which has been described to him but he "has not obtained any copy of it".<sup>11</sup> This clearly indicates that the two different works share the same author (or the same transmitter): one is *Jāmi' Abī Ṣufra*, which is the one most likely to have been used by al-Kindī, and the second work is *Kitāb Abī Ṣufra*, which is the one under consideration here.

To sum up, there are apparently three titles given or used to refer to this work: Ibn Khalfūn used *Kitāb Abī Ṣufra*, al-Barrādī said that the book is known as *Kitāb Ḍumām*, al-Shammākhī called it *Āthār al-Rabī'*, and finally al-Sālimī, who probably derived his information from al-Barrādī, as can be noticed in many places of his treatise, called it *Kitāb Ḍumām*.

Yet it is difficult to ignore the name used in the three copies of the manuscript which is *Āthār al-Rabī' b. Ḥabīb*, reinforced as it is by al-Shammākhī. It should be added that the differences found in external sources over its name do not discredit the authenticity of the work. On the contrary, it seems natural for a very early work, as we shall see later in Chapter IV, that is cited and described only by a few sources, to have all the attention on its content and on its significant transmitters rather than on its title, if it was given a specific title at its first existence.<sup>12</sup> However, all the titles given to this work are, indeed, not far from reality: (1) the book has been named after *Ḍumām*<sup>13</sup> (*Kitāb* or *Riwāyāt Ḍumām*) because it is the only work that gathers traditions transmitted on his authority, (2) and named after Abū Ṣufra<sup>14</sup> (*Jāmi'* or *Kitāb Abī Ṣufra*) because he is the key transmitter of the work. On the other hand it has not been referred to as *Āthār al-Rabī'*, with (3) the only exception of al-Shammākhī, simply to distinguish it from his other work *Musnad al-Rabī'*. And because the confusion of intermixing the two works of al-Rabī' was removed after the representation of the *Musnad* by Abū Ya'qūb al-Warjlānī (d. 570/1174),<sup>15</sup> after which it was renamed *al-Jāmi' al-ṣaḥīḥ*, I think it is reasonable to stick to the name of *Āthār al-Rabī' b. Ḥabīb* even if

10 *Al-Lum'a al-murḍiyya*, p. 19 (Ministry of National Heritage, Muscat 1983).

11 *Ibid.*, p. 24.

12 One may see this in the example of the early, though not the earliest, transmission of Muḥammad b. al-Ḥasan al-Shaybānī of Imām Mālik's *Muwaḥḥa*'. As Dr. Dutton rightly describes, "what the *Muwaḥḥa*' of al-Shaybānī thus illustrates is the flexible nature of 'books' at that time, and how the primary use of the *Muwaḥḥa*' for him was as a vehicle for teaching rather than a fixed text." Review of Calder's *Studies in Early Muslim Jurisprudence*, in *Journal of Islamic Studies*, 5 (1), 1994, p. 104.

13 See below Ch. IV, p. 143.

14 For his biography, see below Ch. IV, p. 140.

15 See the introduction of al-Sālimī on *al-Jāmi' al-ṣaḥīḥ*, (Oman 1993), vol. 1, pp. 2-6.

all the previous names are examined and used throughout my investigation of who referred to the book, as all these names were of the same book, apparently, except *Jāmi' Abī Šufra*.

## The Copies of the Manuscripts

### A. The Egyptian Copy

I was first introduced to the work coincidentally when I was searching for another Ibādī work called *Mudawwanat Abī Ghānim al-Khurāsānī* preserved under the number B/21582 in the Dār al-Kutub al-Miṣriyya. I later discovered that it is a mixed-content manuscript, that includes in parts of it the work of *Āthār al-Rabī' b. Ḥabīb*.

This Egyptian copy (referred to hereafter as E) is in very bad condition and hardly legible in very many places. It is in a very small Maghribī hand with 163 folios,<sup>16</sup> each consisting of an average of 41 lines with approximately 40 words in each line. The size of each page is about 20 x 28 cm. The name of the scribe appears a few times at various places in the whole manuscript: he is Abū Zayd b. 'Abd al-Raḥmān b. 'Umar b. Muḥammad b. 'Umar b. Ismā'īl al-Zawwārī, a name which is totally unknown to me. He might be from Zawwāra in Mzāb.<sup>17</sup>

Although E is titled – according to Dār al-Kutub al-Miṣriyya – as *Mudawwanat Abī Ghānim al-Khurāsānī* and ascribed to the transmission of Aflāḥ b. 'Abd al-Wahhāb,<sup>18</sup> this information is sadly incomplete and even the information it gives cannot be taken for granted. The manuscript contains not only the traditions narrated by Abū Ghānim al-Khurāsānī, part of it starts: the “*Kitāb al-'ummāl wa-man yalī 'alayhim*” which runs from f. 2/i to 8/i. This is followed by the “*Kitāb al-mumtani' in 'an al-imām*” up to f. 13/ii. At this point it breaks off without any clarification from the copyist about the rest of this chapter. I later found it at f. 93/i with a marginal note from the copyist that it is the completion of the previous incomplete chapter of *al-ḥudūd* from part one. This completion goes on until f. 97/i. The *Kitāb al-kaḥālāt*, ff. 13/i–

16/ii, and *Kitāb abwāb al-salam wa-l-buyū'*, ff. 16/ii–20/i, are also parts of *Mudawwanat Abī Ghānim*. The manuscript then provides a different section devoted to *Kitāb al-nikāḥ min qawl Jābir b. Zayd*, ff. 20/i–24/i, followed by many parts of *Kitāb al-shighār li-Ibn 'Abd al-'Azīz* (part 1 from f. 24/i to f. 30/ii, part 3, ff. 30/ii–36/i, part 4, ff. 144/ii–149/i). The manuscript also contains parts 1 to 7 of *Qawl Qatāda* starting at f. 36/i until f. 73/i. It might be that *Kitāb al-shuf'a wa taqnīn uṣūlihā* (ff. 80/ii–91/i), *Kitāb al-aḥkām* (ff. 97/i–103/ii), *Kitāb al-farā'id* (ff. 103/ii–107/i), *Kitāb mā yalzamu min ḍamān al-ab li-banātih* up to f. 113/ii with *Kitāb al-waṣāyā* and *Risālat al-shaykh Abī 'Ubayda fī l-zakāt*, ff. 114/ii–116/ii, are all parts of *Mudawwanat Abī Ghānim*, but this is not certain. After all these parts and sections come different parts that are not consistent with the previous parts in their style; like *Kitāb kaḥfārāt al-aymān*, f. 116/i, *Kitāb al-wadā'i wa-l-'āriyāt*, *Kitāb al-qisma*, and they end with *Kitāb al-ḥayḍ*, f. 161/i–163/ii. At the end of each part the manuscript says that what has been mentioned in each part is “of the opinion of the Kufans shown to Ibādī scholars – *min qawli ahli al-Kūfa ma'rūḍayni ṣaḥīḥayni 'alā al-Ibādīyya*”.<sup>19</sup> This might be the reason for which Ennami gives the whole manuscript the name of “*al-Dīwān al-ma'rūḍ 'alā 'ulamā' al-Ibādīyya*”.<sup>20</sup>

Our concern, the text in question, starts at f. 73/i of E at the place where the scribe (or less probably the author) says “Part one of *Āthār al-Rabī'*” (*Kitāb al-juz' al-awwal min Āthār al-Rabī' b. Ḥabīb*) and it ends at f. 80/i where he says “The book (*kitāb*) of al-Rabī' ends here”. The statement on f. 73/i implies that there is a second part to this book. The claim is echoed at f. 140/i of E where all the following folios up to f. 153/i have been given the title of “part two of *Futyā al-Rabī' b. Ḥabīb*”. This part commences: “I asked him about (*wa sa'altuhu 'an*)” and goes on in the same pattern of “I asked him – he replied to me” or similar statements of question-answer sentences. This part is divided by sub-titles according to its contents.

A careful comparison between the two parts shows that they are not of the same work; i.e., the part which the copyist called part two of *Futyā al-Rabī'* has no relation to the previous part of *Āthār al-Rabī' b. Ḥabīb*. The reasons for this can be summarized as follows. First, the title given for each part is different from the other. Part one is named *Āthār al-Rabī' b. Ḥabīb* while part two is *Futyā al-Rabī'*; and it is well known – within the Ibādī school at least – that there are various works ascribed to al-Rabī' b. Ḥabīb, some of which were committed to writing by his students at early stages,

16 The numbering of the folios appears to have been done by Dār al-Kutub al-Miṣriyya, and I kept it as it is except that I divided each folio into two pages by adding the number i, ii after each folio's number.

17 It first appears at f. 36 then ff. 43, 103, 126, but the explicit description of him as a copyist occurs at f. 144, 149.

18 The third Rustamid Imām in Tahert (171–208/787–823). He was a distinguished scholar and the most famous Imām in the Rustamid family. He died in 258/871 (*Mu'jam al-'ulamā' al-Ibādīyya*, 1:60, biography no. 116).

19 E, ff. 69/ii, 122/ii, 161/ii.

20 Ennami, *Studies in Ibādism*, (1971), pp. 154, 159–164.

especially his *fatāwā* (legal opinions). Secondly and most importantly, the style and pattern of each part clearly indicate that they are not of the same work. The *sanad* (chain of transmitters) of each part is different from that of the other. Part one or *Āthār al-Rabī' b. Ḥabīb* consists of traditions transmitted on the authority of Ḍumām from Jābir b. Zayd or a similar chain, whereas part two or *Futyā al-Rabī' b. Ḥabīb* has no mention of transmitters: it is a 'question-answer' compilation, with only occasional statements about who was asking and who was responsible for the answers. Besides, the contents of the two parts seem inconsistent. *Āthār al-Rabī'* is devoted to the opinions of Jābir b. Zayd without any headings whereas *Futyā al-Rabī' b. Ḥabīb* is devoted mostly to the legal opinions of al-Rabī' in reply to questions put to him. The argument becomes more complicated when we look at f. 156 of E where the copyist says at the end of a section that "part two of *Futyā al-Rabī'* will follow". But after the formal introduction he starts to transcribe *Kitāb al-qisma wa taqnīn uṣūlihā*, setting out traditions and opinions of Abū 'Ubayda b. al-Qāsim<sup>21</sup> and Ibn 'Abd al-'Azīz<sup>22</sup> until the end of the transcription of the book where he finishes by writing that "this is the end of *Kitāb al-qisma* of the opinions of the Kufans". All this leaves two possibilities: either the copyist mistakenly copied another work (*Kitāb al-qisma*) instead of copying *Futyā al-Rabī'* or he has made no mistake and he really meant that this part is (or is supposed to be) part two of *Āthār al-Rabī' b. Ḥabīb*. There are no good grounds for accepting this latter possibility.

However, both possibilities lead to the same conclusion, that this part, from f. 154/ii to f. 161/ii, is not part of the *Āthār al-Rabī' b. Ḥabīb* and has no connection with it at all.

Yet the question of whether the work of *Āthār al-Rabī' b. Ḥabīb* has another part or not remains unanswered. Although one cannot be certain about that, it seems fair to say that E has nothing that can be considered as part two of *Āthār al-Rabī'*. This is a conclusion which seems reasonable in other respects, as no scholar, biographer or historian, to the best of my knowledge, has mentioned that the work of *Āthār al-Rabī' b. Ḥabīb* is divided into various parts.<sup>23</sup>

To complicate matters still further, I feel forced to conclude that within the only part of *Āthār al-Rabī'* extant in E there are interpolations that do not

belong to the work.<sup>24</sup> The *Āthār al-Rabī'* concludes at f. 78/i where it says "wa-balagh ḥadd al-zakāt". All sections from *bāb ghusl al-janāba* till the explicit *tamma Kitāb al-Rabī'* at f. 80/ii are not from the same book. The style and method change dramatically at that point (f. 78/i); there is no mention of transmitters at all in these subsequent passages and the content is different from that of the earlier part. This new style is a question-answer method whereas the previous method was in a narrative way, with a precise transmission of all the authorities to whom each tradition is ascribed. Also the answers of these last few pages are not of Jābir b. Zayd or of any of his contemporaries. There are some answers ascribed to Abū Bakr al-Mawṣilī,<sup>25</sup> Wā'il b. Ayyūb,<sup>26</sup> 'Abd Allāh b. Abd al-'Azīz<sup>27</sup> and surprisingly to al-Rabī' himself, an ascription not found in the work proper. No information about this text (ff. 78/i–80/ii) is available in any external source. Thus one is forced to analyse the text through its content only. This of course makes such analytical views and conclusions derive from the internal evidence; i.e. the style of the work, the method of the author, the content and the kind of problems dealt with, the only source of information we could have.

Finally the date of E is too disputable. E concludes with a colophon that records the date to be Thursday of Ramadan the year 41/661. This appears to indicate that the actual date is one thousand and forty one (1041/1631), on the assumption that the scribe has omitted the thousand because it is quite usual to do so at the first century of every new millennium. This is perhaps more likely than that it was a slip of the pen.

### B. The First Tunisian Copy (T1)

This is one of the copies that Ennami was able to use when he edited and studied *Ajwibat Ibn Khalfūn*. From the numbering of this copy, which is most probably done by him, it is easy to tell that this was the copy that he gave the siglum (1) in his edition of *Ajwibat Ibn Khalfūn*. This Tunisian copy will be referred to as T1 in this study. I have used a photocopy of it from the archive of Dr. John Wilkinson, now at Exeter University, as my attempts to have access to the original manuscript from Tunis were unsuccessful.

Like E, this copy is part of a mixed content manuscript. Although the photocopy of *Āthār al-Rabī' b. Ḥabīb* is the only part I have of this manuscript, the first and last pages of the photocopy contain information that

21 Abū 'Ubayda 'Abd Allāh b. al-Qāsim: an Ibāḍī scholar who lived in Mecca in the first half of the second/eighth century (al-Darjīnī, *Ṭabaqāt al-mashāykh*, 2:253; al-Shammākhī, *Kitāb al-siyar* 1:87–88).

22 'Abd Allāh b. 'Abd al-'Azīz: An Egyptian Ibāḍī scholar and a contemporary of al-Rabī' b. Ḥabīb (see *Ajwibat Ibn Khalfūn* – Ennami, A. (ed.), Beirut 1974, p. 107).

23 See pp. 1–3 of this study.

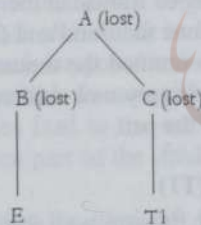
24 These interpolations are given numbers [S1] to [S19] in the text and, therefore, will not be commented on as they do not actually belong to the original text.

25 F. 80/i of E.

26 *Loc. cit.*

27 F. 80/ii of E.

shows that the content of the whole manuscript is similar to that of E as the passages immediately preceding and following our text indicate. Yet from the preceding passage, the scribe of T1 seems to be following a different order from that of E; he stops at the end of part seven of *Qawl Qatāda* and says that some scribes attach the book of Ḥabīb b. Abī Ḥabīb to it and do not end the work of *Qawl Qatāda* until they have completed transcribing *Kitāb Ḥabīb b. Abī Ḥabīb*,<sup>28</sup> which is exactly what the copyist of E did. Does this mean that E was the exemplar of T1? From the recorded date of T1, it is obvious that it is later than E: the scribe, whose name is Ṣāliḥ b. Sālim b. Sulaymān b. Yadar al-Sadrāfī, reported that he finished transcribing the book on Monday the twenty-third of Shawwāl of 1191 H/the twenty-fourth of November 1777.<sup>29</sup> It is also important to point out that T1 has six additional traditions that are not extant in E, and two other traditions are missing from T1 but are in E. There are four places at least where there is haplography in E,<sup>30</sup> but the full version is preserved in T1. This means (a) that E is not the exemplar of T1 or *vice versa* (though that can be established on the manuscript dates); (b) it is highly unlikely that E and T1 share a common exemplar, so that the descent of the manuscript is likely to be:



However the scribe of T1 was aware of arrangement differences either in E or, perhaps more likely in B. [Another possibility is that the scribe of C was aware of what was in B].

There are lesser differences also, and these are some times crucial and undeniable;<sup>31</sup> for example, additional traditions, completeness of missing sentences due to a slip of the pen at similar words, change in the order of some traditions and different order of words and phrases that are joined by conjunctive words, are some of these differences. This ultimately tends to suggest variant origins. Thus the argument remains with no certain clue unless further evidence turns up.

28 T1, p. 1.

29 The scribe's name and the date appear at the end of each book included in this Ms.

30 See traditions [165], [170], [223] and [257].

31 All differences will be shown in the edited text below.

However, T1 offers better readings than E as far as linguistic and orthographic patterns are concerned. It seems that it has been preserved in, relatively, good condition. *Āthār al-Rabī' b. Ḥabīb* covers 32 pages of medium size in a Maghribī handwriting. Like E this copy has also another part under the title of 'Part Two of *Futyā al-Rabī' b. Ḥabīb*', which starts immediately after *Āthār al-Rabī'*, covering eighteen pages. For the same reasons illustrated above when describing E, this is not actually of the same work<sup>32</sup> nor do the interpolated extracts within the work itself (pp. 13–15) belong to *Āthār al-Rabī'*.<sup>33</sup>

### C. The Second Tunisian Copy (T2)

This is the second Tunisian copy that Ennami used in his edition of Ibn Khalfūn. He refers to it by the siglum (⊖). It came down to me from the private library of Shaykh Aḥmad b. Ḥamad al-Khalīlī, the current Grand Mufti of Oman. As we have seen in E and T1, this is part of a codex of what was thought to be *Mudawwanat Abī Ghānim* or *al-Dīwān al-ma'rūḍ 'alā 'ulamā' al-Ibādīyya*. Unfortunately, *Āthār al-Rabī' b. Ḥabīb* is the only part available to me. It does not carry the name of the scribe or the date. The only information recorded by a previous possessor of the codex is that it belongs to al-Ḥājj Mūsā Bashīr b. Mūsā and he gave it the title "*Jāmi' Abī Ṣufra 'Abd al-Malik b. Ṣufra*". But the scribe has not mentioned his name anywhere in this part I obtained nor has he recorded a date of his transcription, let alone his ancestral copy. A careful reading of T2 leads to the conclusion that it is almost identical to T1 except for some minor orthographical differences. And because of the lack of essential information about T2 it is difficult to determine which one was the exemplar of the other. The most likely possibility is that both derive from the last exemplar I have named C. This, of course, does not mean that T2 is not important or that it has not been referred to when it incorporates a reading of the text that appears to have a better basis. It helped to solve some illegible words and phrases from both E and T1 as well as corroborating the reliability of T1.

T2 is also in a Maghribī handwriting of 33 pages of the actual work of *Āthār al-Rabī'*. It contains the interpolations found in E and T1. T2 seems to have two different numberings: one is the numbering of the whole codex, in which *Āthār al-Rabī'* covers pages from 441 to 492 and the other is for the work of *Āthār al-Rabī'* starting at page one. This was probably done by Ennami, as his footnote references in *Ajwibat Ibn Khalfūn* indicate.

32 See p. 5–6 above.

33 For the same reasons discussed above on p. 6–7.

## The Significance of the Book

The *Āthār al-Rabī' b. Ḥabīb* presents an early contribution of the Ibādī school in the field of Islamic scholarship, since it dates from as early as the beginning of the second/eighth century.<sup>34</sup> As such, the work throws light on the formation, not only of the Ibādī school of thought, but on that of other Islamic schools as well. It might even change some of the 'facts'<sup>35</sup> that have long been taken for granted by many scholars about the history of Islamic thought and jurisprudence. Let us take, for the sake of this particular aspect, the question of the chronological location of the origins of Islamic *fiqh*. This work helps to solve the arguments among Western scholars about the chronology of the development of Islamic *fiqh*. It is difficult to take into account works that are lost or unavailable, except in a general and theoretical way. However, this is what Schacht did as far as the Ibādīs/Khārijīs were concerned, and it was part of the reasoning that made him decide to fix the origins of *fiqh* in the early years of the second century. Schacht's views were considered to be 'problematic' by Calder, who wished to place the development in the first part of the third century.<sup>36</sup> Calder's stance appears to be due to incorrect dating on the one hand,<sup>37</sup> but also because of a narrow focus on the Sunnī world.<sup>38</sup> With a work like *Āthār al-Rabī' b. Ḥabīb* available, he would surely have changed his stance.

Apposite to this regard is the influence of this work on the study of the formation and the characteristics of Muslim schools of law other than the Sunnī mainstream. The picture of the *fiqh* material and the jurisprudence of most non-Sunnī schools is mostly distorted in Sunnī sources, the ones most readily accessible. Anyone who has any doubt about this may look at what people like al-Shahrastānī and Ibn Ḥazm<sup>39</sup> say about the Ibādī principles of law. The accessibility of the *Āthār al-Rabī' b. Ḥabīb* will help greatly towards the rectification of that distorted image.

The discovery of such works<sup>40</sup> verifies the view of the Ibādīyya that their thinking and indeed the whole construction of their *madhhab* reached a high

34 See below Ch. IV, The Date of *Āthār al-Rabī' b. Ḥabīb*.

35 For details and examples, see below Ch. IV, Evaluation of the *Fiqh* Material in *Āthār al-Rabī'*.

36 Calder, N., *Studies in early Muslim jurisprudence*, (Oxford 1993), p. 199.

37 Dutton proves that Calder has 'inexcusable errors in dating' (in his review of Calder's book in *Journal of Islamic Studies*, 5 (1), 1994, p. 103).

38 Calder, *op. cit.*, *passim*.

39 Al-Shahrastānī, *al-Fiṣal fī al-mīlāl wa al-niḥāl*, vol. 1, article al-Ibādīyya; and Ibn Ḥazm, *al-Mīlāl wa al-niḥāl*, article Ibādīyya.

40 A valuable amount of early Ibādī works has been recently discovered like: *Kitāb al-*

state of maturity at a time when many leaders (*imāms*) of other schools and sects had not yet been born. Ennami rightly describes this perception by stating that:

"They [Ibādīs] did not derive their law from the orthodox Sunnī schools because law was established before the Sunnī schools came into existence. When Jābir b. Zayd, the founder of the Ibādī school, died, Mālik b. Anas, the master of the Mālikī school, was about three years of age, and Abū Ḥanīfa, the master of the Ḥanafī schools, was about 12 years of age."<sup>41</sup>

That maturity, of course, does not merely mean the adoption of doctrinal and political stances that influence the general peculiarities of the *madhhab* but expands to include the juristic basis as well as the socio-political trends followed by Ibādī leaders towards very sensitive and vital issues at that time. The most crucial of such issues are the preservation of their own tenets, dealing carefully and very cautiously with governors and their subordinates, creating active and secure means of communication between followers and leaders and, not least of all, gaining and selecting more disciples. The book has examples, not many but still significant, of all these issues.

The first thing that one notices in this work is the attention given to the authenticity of every transmission. Although most of the material of the book consists of juristic opinions narrated on the authority of Jābir b. Zayd, it has been transmitted in a very consistent narrative method, a method usually used for recording *ḥadīth* but not *fiqh*. A good example of how these early authorities applied rules of transmitting *ḥadīth* on legal opinions (*fatāwā*) is tradition [4] in the text where Jābir gave his opinion and when told about Ibn Mas'ūd's opinion, Jābir replied: "If we had found this reported through a credible trustworthy transmitter we would have taken it". We should bear in mind that most of the events and questions in our text arose in Iraq, where the system for transmitting and reporting non-Prophetic traditions was not strictly adhered to<sup>42</sup> in the way found in the Ḥijāz nor was the reliance on

*nikāḥ*, K. *al-ṣalāt* and *al-Rasā'il* (correspondences) of Jābir b. Zayd, the treatise of Abū 'Ubayda on *al-zakāt*, the *Mudawwanat Abī Ghānim al-Khurāsānī* and this work of *Āthār al-Rabī'*.

41 Ennami, *Studies*, p. 103.

42 This does not mean that a distinct line can be drawn between the two schools (Iraqī and Ḥijāzī) but as a general feature the Iraqis use *ra'y* and *qiyās* in their discussions and arguments rather than being traditionalists like the Ḥijāzīs. See for a good analysis 'Abd al-Majīd, Maḥmūd, *al-Madrasa al-fiqhiyya li-l-muḥaddithīn*, (1972), pp. 19-79, and C. Melchert, *The formation of the Sunnī schools of law*, Ch. I, II & III.

Prophetic *ḥadīths* in deriving legal opinions at the same level of that of *ahl al-Ḥijāz*.<sup>43</sup> Thus being in Basra has influenced early Ibādī authorities through the prevalence of the use of the Iraqi method of analogical deduction (*qiyās*) and individual judgment (*ra'y*), yet has not prevented them from making full use of the Ḥijāzī mechanism of transmitting traditions and focusing on mostly practical, or rarely theoretical, issues.<sup>44</sup> The Ibādī school uses both these ways of handling material<sup>45</sup> but in a logical natural mechanism rather than in an adopted technical method, for we are talking about the beginnings of the second/eighth century where division between *ahl al-ra'y* and *ahl al-ḥadīth* has not yet flourished.

Another interesting feature in this short but valuable work is that it does not confine itself simply to the opinions of Jābir b. Zayd or other Ibādī scholars. It also presents other opinions, especially of 'the Kufans', who later became represented by the Ḥanafī school, although "there are", as Melchert points out, "severe limits to how precisely we can know when the school of Kufa became completely, by self definition, Ḥanafī".<sup>46</sup> On many occasions, a statement of Jābir is followed by another, showing a different opinion, whether it is of another Ibādī scholar, possibly a student of Jābir, or quite often of a non-Ibādī. This may be seen as the forerunner of what later was known as comparative legal studies (*ilm al-khilāf*) and could indicate how flexible and eager Ibādī scholars were to take into account opinions of people who did not hold Ibādī views.

In addition, this work of *Āthār al-Rabī' b. Ḥabīb* presents a special focus of the Ibādī school, that of following the evidence and not the mere opinions of their authorities.<sup>47</sup> This principle has always been stressed and emphasised

43 This differentiation between Iraqi and Hijazi schools is apparent in many early works of different schools of Islamic law, for instance: *al-Ḥujja 'alā ahl al-Madīna* of Muḥammad b. al-Ḥasan al-Shaybānī, *Ta'wīl mukhtalif al-ḥadīth* of Ibn Qutayba who was straightforward against *ahl al-ra'y*, as he names them. And when he refutes their opinions he explicitly calls them *ahl al-Ṭrāq* and states, in his examples, with disapproval of opinions ascribed to Abū Ḥanīfa. Other relevant sources are the two books of al-Dihlawī, *Shāh Walī Allāh, al-Ḥujjat al-bāligha* and *al-Insāf fī bayān asbāb al-ikhtilāf*, ed. Abū Ghudda, (Beirut 1993), *passim*.

44 Ibn Qutayba, *Ta'wīl mukhtalif al-ḥadīth*, ed. 'Abd al-Qādir A. 'Aṭā, (Cairo 1982), pp. 70–74, and note that Ibn al-Qayyim also classifies scholars and their methodologies accordingly in his *A'lām al-muwaqqi'īn*, 1:1–50.

45 Within the Ibādī school the term "Irāqīs", meaning Ḥanafīs, has been used as early as Ibn Baraka in his *Jāmi'*, 1:392.

46 Melchert, *Formation*, p. 35, and details on pp. 36–38.

47 This could be one of the most important reasons of not naming the Ibādī school after Jābir unlike other Sunnī schools which have been named after their first founder or teacher (*imām*).

within the Ibādī school. For instance, Abū Sa'īd al-Kudamī (a distinguished Omani scholar of the first half of the fourth/tenth century) held an opinion on a certain juristic matter that contradicted the opinion of most previous Ibādī scholars. When he was opposed about his disapproval of the opinion of the majority, he said: "The Prophet has ordered to do so, and his [the Prophet's] statement is worthy of following". Abū Ya'qūb al-Warjlānī (d. 570/1175) also articulated this principle when he was standing at the grave of the Prophet, by stating that 'there is no *taqlīd*, except for the person buried here' pointing at the grave.<sup>48</sup> Ibādī scholars down to the present day have followed this line of giving more weight to the evidence of their authorities than to the authorities themselves. For example, a key twentieth century Libyan figure expresses the view that:

"Many Muslim sects decided that with the passing of a certain age the gates of *ijtihād* should be closed ... Ibādīs from an early time sensed that such a stagnant approach did not go hand in hand with the spirit of Islam, ... Since, Ibādīs believed that what God had made open for the first members of this community cannot be denied to the last of it, and that the gate of *ijtihād* ... can only be closed by a jurisprudent of no understanding, they began to discuss the question of *ijtihād* ... with much tolerance, clarity and open-mindedness, they used to discuss problems with reference to the actions of Companions and Successors, and the way of life of the righteous predecessors. They do not deny access to that which knowledge has opened up, nor do they deem illicit that which religion has made licit, nor do they let the problems of successive generations accumulate at the gates of *ijtihād*, ...".<sup>49</sup>

However, the Sunnī *madhāhib* effectively closed the gates of *ijtihād*, and this can be seen clearly in many standard texts, as, for example, we see in al-Maqrīzī's *Khiṭaṭ*.<sup>50</sup> My statement does not ignore the fact that various Sunnīs, and sometimes Western scholars such as Watt whose view was adopted

48 For this and similar quotations, see al-Qannūbī, S., *Qurraṭ al-'aynayn*, (Oman, 1997), pp. 12–17.

49 Mu'ammār, A. Y., *al-Ibādīyya fī mawkiḥ al-tārīkh: Nash'at al-madhhab al-Ibādī*, pp. 71–73.

50 *Al-Mawā'iz wa al-i'tibār bi dhikr al-khiṭaṭ wa al-āthār*, also known as *al-Khiṭaṭ al-maqrīziyya*, (2<sup>nd</sup> edn., a photocopy of the Bulāq edition), 2:343–44. I quoted him with comments and analysis in a previous paper titled '*Ulamā' al-Islām wa 'ilāqatuhum bi al-naṣṣ wa al-ijtihād*', in: *al-Ijtihād fī al-Islām* proceedings from the 6<sup>th</sup> conference of Mu'assasat Āl al-Bayt, held in Muscat, December 1998, pp. 15–17.

strongly by Hallaq,<sup>51</sup> at different periods have claimed that the gates of *ijtihād* were not shut,<sup>52</sup> and it is the case that many modern Sunnī writers argue that there was no closure.<sup>53</sup> Such claims basically reinforce the view that closure did take place, because they are the claims of a minority trying to change entrenched attitudes. It is also true that selective (*intiqā'ī*) *ijtihād* is possible, but it is of a strictly limited kind compared to creative (*inshā'ī* or *muṭlaq*) *ijtihād*.

This is one of the issues on which the Sunnīs and the Ibādīs show greatest contrast. And it is not unfair to say that the use of *ijtihād* observable in the *Āthār al-Rabī' b. Ḥabīb* would have been enormously influential in drawing the Ibāḍiyya towards their stance of keeping the door of *ijtihād* open.

The principle of practising *ijtihād* freely and considering the evidence rather than the opinions of authorities is observable in the *Āthār al-Rabī'*. It presents throughout its text the approval of Ibādīs for the opinions of other authorities in the community. Actually we find in the book on some occasions more than a mere presentation of the opinions of different authorities; i.e. these 'other' opinions are apparently assumed, by Jābir's students, to be strong enough to override the opinions of Jābir. It clearly offers an early practical example of the implementation of this postulate within the Ibādī school as will be detailed later on in this study.<sup>54</sup> This obviously intensifies the importance of the work and confirms the early maturity mentioned earlier.

It is also appropriate to point out that, for the Ibādīs at least, this work is a very valuable compilation of the opinions of their real founder Jābir b. Zayd that are transmitted by his great student Ḍumām b. al-Sā'ib, a chain that has been long described and mentioned, but on only the slightest evidence outside this text<sup>55</sup>. It refutes many denials, that were regarded reasonable

51 A brief but valuable illustration of this argument can be found in Michel Hoebink, 'Two halves of the same truth: Schacht, Hallaq and the gate of *ijtihād*: An inquiry into definitions', in *Middle East Research Associates (MERA)*, 1994, pp. 1–19.

52 Best examples are presented by the claims of Ibn Taymiyya and al-Suyūfī, see the latter's *al-Radd 'alā man akhlada ilā al-arḍ wa jahila ann al-ijtihād fi kulli 'aṣrin fard*, ed. Khalīl al-Mays, Beirut 1983.

53 Michel Hoebink, *op. cit.*, p. 2–3.

54 See below Ch. IV, pp. 153–159, esp. 155 and 158.

55 Al-Shammākhī for example says when talking about Ḍumām: "and what he (Ḍumām) recorded and transmitted from Jābir was greater than that of Abū 'Ubayda ..." *al-Siyar*, vol. 1, p. 81. He also describes his answers when he replaced Imām Jābir in one Ḥajj season that his answers were: "I heard Jābir saying", or 'he was asked' or 'I heard him', ... and he was the transmitter of Jābir (*rāwiyat Jābir*)", *ibid.*, 1:82.

before this text became available, about the existence of such a chain and about the role of Ḍumām in transmitting the knowledge of Jābir and the basis of his *madhhab*.<sup>56</sup> Although Ḍumām's role in this book is no more than a transmitter, this is particularly what needs to be proved. It testifies that Abū 'Ubayda is not the only transmitter of Jābir b. Zayd, as is the situation in the already published *Musnad al-Rabī'*, where there are no more than three traditions reported on Ḍumām's authority. Furthermore, this work, by showing the role of Ḍumām, fills the gap in the chain of the authorities of the Ibādī religious roots (*silsilat nasab al-dīn*)<sup>57</sup> which links descendants and disciples, who are authorities on knowledge, to their ancestors until the chain reaches the Prophet.

Moving to a more general examination and analysis of the subject of the book, one can readily perceive that the basic stance of the work is juristic (*fiqh*), rather than that of *ḥadīth*.<sup>58</sup> Most of the points and issues discussed have been dealt with and argued about over the ages by scholars of all Muslim schools; yet when we take the early date of the work into account, as well as the diversity of subjects and opinions in it, and compare it with similar compilations of the same time – if there are any<sup>59</sup> –, the significance of the work becomes clearer. For Ibādīs, it is unquestionable that this work preserves a rich mine of the knowledge of their first leaders and scholars on different issues;<sup>60</sup> for non-Ibādīs, on the other hand, it includes opinions and views of many Followers and later generation scholars, and it shows at least the kind of questions that were discussed in the community at that early period.<sup>61</sup>

Someone wanting to trace back some of the Ibādī *fiqh* features to their origins will have to conclude from the evidence of the book that the Ibādī juristic features were formed as early as the formative time of Ibādism. Some of these features are: the recitation of *sūrat al-Fātiḥa* only in *al-ẓuhr* and *al-'aṣr* prayers as in tradition [9], the *safar* prayer: when a traveller should start shortening his prayer and for how long (traditions [175], [211], [260], [296], [298], [299], [303], [304] and [306]); disapproval of wiping one's footwear when performing *wuḍū'*; and the disapproval of reciting *du'ā' al-qunūt*

56 Wilkinson, J. C., 'Ibādī ḥadīth: an essay on normalization', in: *Der Islam*, 62, 1985), p. 235.

57 Ibn Sallām al-Ibādī (d. 273/887): *Bad' al-Islām wa sharā'i' al-dīn*, ed. Schwartz, V. and S. Ya'qūb, (Dār al-Fatḥ, Beirut 1974), p. 114.

58 There are only three traditions ascribed explicitly to the Prophet.

59 See footnote 39 above.

60 The book contains opinions that were not thought to be adopted by the Ibāḍiyya: e.g. traditions [41], [43], [46], [56], [93].

61 See below Ch. III, Notes on the Edited Text.

(invocation of God against certain enemies, inserted in the prayer). There are many such juristic points in the book but the ones just mentioned are the ones which characterise the Ibādī school down to the present time as far as *fiqh* is concerned. This, however, does not mean that other opinions and traditions are of no significance. On the contrary, they give us a brilliant picture of many aspects of the society of Basra at the time of the compilation of the material of this work. A large number of the matters discussed were about slaves and their rights, relationships with their masters and different legal ways of liberating them (*‘itq, mukātaba, tadbīr, etc.*). There are many items regarding non-Muslims living in Basra – Christians, Jews and Zoroastrians: their food, marriage affairs, social conduct, criminal affairs, embracing Islam, etc.<sup>62</sup>

The juristic treatment of the topics discussed in the book offers an opportunity to increase our understanding of Ibādī *fiqh*, not only because of the insufficiency of earlier studies about this particular aspect – even more than the doctrinal and political ones – but also because the work we have appears to be a good example of an early Ibādī reference text on *fiqh*. Certain features stand out. The first of them is that it is based on evidence (the Qur’ān and the sound *Sunna*) whenever available. There are many examples of this principle in the book. One of these is tradition [273], where Jābir is asked by a woman called Hind about a man who made a proposal to marry one of her slaves. Jābir told her not to accept. The man made his proposal a second time and was refused. The third time Hind told Jābir that the man said he would commit adultery with the slave if she refused him again. At this point Jābir said: Yes, you should accept now; and he quoted the Qur’ān (This is for those of you who are afraid of committing fornication) (*al-Nisā’*: 25). On another occasion he was asked about drinking *nabīdh al-jarr* (alcoholic drink stored in clay jars usually sealed with pitch). Jābir forbade it, but the questioner asked him again and insisted, so Jābir responded: “The Prophet forbade it and whatever he forbade is *ḥarām*” (tradition [238]).

However, what is said here does not mean that Ibādīs accept every single *ḥadīth* regardless of its authenticity even if it is regarded as sound *ḥadīth* by non-Ibādīs.<sup>63</sup> It seems that Jābir doubts some traditions when they contradict the Qur’ān, as in the example of wiping one’s footwear when doing *wuḍū’*, or if they have not been transmitted in an authentic *sanad*, as in the case when he was asked about a man who gets married to a woman and dies before determining her dowry. Jābir’s opinion was that she has no right to have a

62 See below p. 71, Table of Topics of *Āthār al-Rabī’*.

63 *Musnad al-Rabī’ b. Ḥabīb*, *ḥadīth* no. 40, p. 17, and see examples in al-Qannūbī, *al-Rabī’ b. Ḥabīb: makānatuh wa musnaduh*, p. 112.

dowry but only her portion from his inheritance. Then somebody said to him that Ibn Mas’ūd says that she has to have a dowry like similar women of her case. Nonetheless, Jābir denies this tradition and says: “if we find this [transmission] from Ibn Mas’ūd through a credible (*thiqa*) person we would accept it” (tradition [4])<sup>64</sup>.

The second feature is the practice of what was later to become known as *ijtihād* when there is no textual evidence.<sup>65</sup> There are many examples of this ‘controversial’ feature in the work of *Āthār al-Rabī’*, some of which may well involve the use of *qiyās* (analogy). Somebody told Jābir that his father prevented him from performing *ḥajj*. Jābir asked him: ‘How many prayers do you have to perform every day?’ The man said: ‘Five.’ Jābir said: ‘So if your father asked you not to perform one of these five will you omit it?’ The man said: ‘No.’ Jābir said to him: ‘Then you have to do *ḥajj*’ (Tradition [292]).<sup>66</sup>

Thirdly there is the recognition of necessities and unusual circumstances, such as performing the prayer sitting instead of standing when performing it in a ship, for example, or not to prostrate if the earth is wet due to bad weather conditions.

Finally there is flexibility of opinion when good intentions are recognized. A good example of this is tradition [268] regarding someone who had made a mistake in his *talbiya* of *ḥajj* and recited the *talbiya* of *‘umra* instead; Jābir said that this is all right, since the man was intending *ḥajj* and not *‘umra*, whereas the Kufans say that it is according to his statement not his intention. On other occasions we find this flexibility very apparent with Jābir’s *fatāwā* (legal opinions) when there is a necessity as in traditions [298], [310] and [313].

All these features can be found in other Muslim schools but their presence in the *Āthār al-Rabī’ b. Ḥabīb* antedates any evidence in other works of other *madhāhib*. This means that the legal notions of the Ibādīyya were present at a very early stage. Thus any overview of the Ibādīyya that ignores this and simply concentrates on political and doctrinal principles is at the very least incomplete.

Careful reading of the text allows us to extract important information about the political and doctrinal principles of the early Ibādīs, especially in Basra where many significant confrontations took place and many secret and non-secret opposition movements flourished. One of these topics is regarding the assassination of the third caliph ‘Uthmān b. ‘Affān (in 35/656). This

64 See below Ch. II, Notes on the Edited Text: [4], and for the use of the term *thiqa*, see p. 131–133.

65 More light is thrown on this point in Ch. IV, Evaluation, see pp. 155–158 below.

66 There are other examples in the book of the same line: traditions [38], [47], [317].

particular tradition [18] is not ascribed to Jābir b. Zayd or any of his Ibādī contemporaries. Instead, it is reported that 'Alī b. Abī Ṭālib once mentioned 'Uthmān in a speech and he said about him: "Truly, Allah killed him while I was with Him". This statement not only summarizes the Ibādī view on that distinctive issue; but by ascribing it to 'Alī it also indicates their attitude towards later vital political events, such as the revolt of Ṭalḥa and al-Zubayr (36/656) which led to the Battle of *al-Jamal* and the rebellion of Mu'āwiya which led to the encounter at Ṣiffīn in 37/657. Both revolts were activated by the ostensible aim of bringing the murderers of 'Uthmān to justice.<sup>67</sup> The above mentioned quotation encapsulates the view that both revolts were illegitimate and more importantly makes clear the Ibādī perception that 'Alī approved of the assassination of 'Uthmān. Another parallel example is tradition [248] which presents the opinion of 'Abd Allāh b. 'Umar on the situation in Mecca during the confrontation between 'Abd Allāh b. al-Zubayr and 'Abd al-Malik b. Marwān<sup>68</sup> (73/692), and his advice to Muḥāhid not to enter Mecca as the people there have turned "*kuffār* smiting each other's necks". This statement of Ibn 'Umar not only summarizes the Ibādī view<sup>69</sup> on that incident but apparently provides phraseology that legitimises the use of *kuffār*<sup>70</sup> when describing what had happened or who had been involved. Of similar substance also is tradition [290] which also reports that 'Abd Allāh b. 'Umar asked a group of people – probably some of his students – who were used to visiting leaders and Umayyad caliphs of that time, what they said to them when visiting them. They said: 'We say what pleases the caliph'. Ibn 'Umar then replied to them that 'by God this is *nifāq* (hypocrisy)'. This view of Ibn 'Umar, which has also been quoted in non-Ibādī sources,<sup>71</sup> meant much for Ibādī organisers at that time, in categorizing the supporters of the dominating regime as *munāfiqūn* though not *mushrikūn*. This particular example provides grounds of fair refutation to the accusation thrown at Ibādīs

67 For more details of these events and the Ibādī stance see al-Barrādī, *al-Jawāhir al-muntaqāt fī-mā akhalla bihi ṣāhibu al-Ṭabaqāt*, (liih. 1302/1885), pp. 54–145.

68 See Ibn Kathīr: *al-Bidāya wa al-nihāya*, (Egypt, Maṭba'at al-Sa'āda), 8:329–333.

69 For a general view of the participation of so called Khawārij on this particular confrontation between Ibn al-Zubayr and 'Abd al-Malik b. Marwān see al-Bakkāy, *Ḥarakat al-Khawārij*, (Beirut 2001), p. 100–104.

70 This phrase has influenced many writers to include Ibādīs among the Khawārij regardless of the crucial difference in the meaning and therefore the implications of this term between Ibādīs and Khawārij. For Ibādīs it can either be used for unbelieving and for being ungrateful. Cf. Crone, P., and Zimmermann, F., *The epistle of Sālim b. Dhakwān*, (Oxford University Press 2001), pp. 195, 198–203; and Cook, M., *Early Muslim Dogma*, pp. 64–65.

71 See below Ch. III, Note on the Edited Text, [290].

on their attitude towards their opponents. The peaceful and tolerant approach the Ibādīs followed, not only made them distinct from the violent, activist Khārijite groups but enabled them to live in harmony with other Muslims. Early Ibādī authorities rejected labelling their fellow Muslims as polytheists. Instead, they used the terms *ahl al-qibla*, *muwaḥḥidūn* (monotheists), *munāfiqūn* (hypocrites) and *kuffār ni'ma* (infidels-ingrate), all of which is far from considering their opponents as infidels or polytheists. The last two terms are demonstrated in the *Āthār al-Rabī'* as described above. As an attempt to briefly clarify the Ibādī standpoint regarding this matter, two interesting facts need to be elaborated here:

- 1) Ibādīs among all early Muslim theological schools were the most concerned with condemning and refuting in writings the violent approach and extremist views of the Khawārij. They have a rich literature of epistles, letters, treatises and debates with Azāriqa, Najdiyya, and also other groups such as Qadariyya, Murji'a, ... etc.<sup>72</sup> The question of the attitude towards opponents always tops the list of their arguments. In short, 'Ibādīs' as Ennami describes, 'never broke this principle; they never killed women or children of their opponents or killed the injured or followed a routed enemy of them, nor did they take their property for spoils'.<sup>73</sup>
- 2) Ibādīs do not limit the labelling of *munāfiqūn*, *kuffār ni'ma* to non-Ibādīs. They also use them for committers of great sins and for unjust rulers of their own<sup>74</sup> in the same way other schools call them *fussāq* (pl. of *fāsiq*, corrupt) and *ahl al-kabā'ir* (committers of great sins). This means that the disagreement between Ibādīs and Sunnīs on this matter is a mere linguistic debate.<sup>75</sup>

All the examples mentioned in this section (assassination of 'Uthmān, revolts of Ṭalḥa and al-Zubayr, the Battle of *al-Jamal*, the conflict of Ṣiffīn and the use of *kuffār* and *munāfiqūn*) present what are considered by non-Ibādīs as Khārijī links. Ibādīs on the contrary rejected this connecting of them to the Khawārij by showing that they were not the only ones to criticize the general political atmosphere and that they did not invent the terms they used since

72 See Kāshif, *al-Siyar wa al-jawābāt al-'umāniyya*, passim; and al-Sālimī, *al-Lum'a*, pp. 16–30.

73 Ennami, *Studies*, p. 133.

74 A good summary of the evidence of the Ibādīyya with a detailed discussion about this issue is to be found in Mu'ammār, *al-Ibādīyya fī mawḥib al-tārīkh*, pp. 89–92.

75 A good account on this dilemma is in al-Warjlānī, *al-Dalīl wa al-burhān*, 2:338–346.

these terms were used by the Prophet and his Companions. And they hold the position that sharing some stances with the Khawārij should not be interpreted as an approval of all their views, and thus should not lead to include Ibādīs in the negative image of the violent Khārijism of the Azāriqa and Najdiyya.

Moreover, this work contains good evidence of how Ibādī leaders were watching events very closely. We see this in the emphasis of Jābir b. Zayd on attending *al-Jum'a* (Friday) prayer with al-Ḥajjāj,<sup>76</sup> his *fatwā* regarding the acceptance of the gifts of governors<sup>77</sup> and asking his fellows not to abandon or even weaken their relationships with him and with one another.<sup>78</sup> The book contains a few but valuable traditions that show the success achieved by following this strategy to the extent that distinguished Ibādī personalities referred to Jābir in most of their religious matters, as in traditions [253], [254], [257] and [260]. This enabled them to consider every step they should take to maintain their relation with the mainstream and avoid any disruption to their movement.<sup>79</sup> It seems that this purpose was the essential Ibādī priority at that time, along with the proper scholarly and religious preparation (*tarbiya*). Thus we find in the book (in tradition [296]) that they preferred not to become involved in the rebellion of 'Abd al-Raḥmān b. Muḥammad b. al-Ash'ath in 81/700<sup>80</sup>.

*Āthār al-Rabī' b. Ḥabīb* also provides us with a general picture of the difficulties and hardships that Ibādīs had to suffer. One of them was *bay'at Ibn Ziyād* (forcing the public by the sword to give allegiance to 'Ubayd Allāh b. Ziyād). Ibādīs found it Islamically unacceptable. Yet expressing this view would ultimately obliterate their movement; and therefore the only solution, though not an easy solution, was to hide for a time until their concern was sorted (tradition [303]). Another example is tradition [286] where it is ascribed to Ka'b b. Siwār that he enjoined Muslims to fear God as there was going to be war and bloodshed and that he asked them to keep themselves isolated (*amarahum bi-l-i'tizāl*) from these problems.

In addition, there are some traces in *Āthār al-Rabī'* of the caution required in dealing with the regime that led to compromises about which people were uneasy. A good paradigm of this is tradition [293]. It shows

76 See traditions: [65], [254], [316].

77 See tradition: [275].

78 Tradition: [87].

79 *EI*<sup>2</sup>, III, p. 649, s.v. al-Ibādīyya.

80 Most – though not all – Sunnī historians claim that all scholars and dignities in Basra supported Ibn al-Ash'ath in his revolt, see for example: Ibn Kathīr: *al-Bidāya wa al-nihāya*, (Egypt, Maṭba'at al-Sa'āda, n.d.), 9:37.

Jābir b. Zayd very close to one of al-Ḥajjāj's secretaries, Yazīd b. Abī Muslim who was, more or less, sympathetic to the Ibādī movement and its leaders. Yet Jābir having his own reservations about Yazīd, as could be seen in his statement, was compelled not to damage this relationship, in the presence of Yazīd at least.

To conclude this section about the significance of the work of *Āthār al-Rabī' b. Ḥabīb*, it is plausible to state that this work provides strong grounds for what Zimmermann and Crone describe when they say that “the Ibādīs constitute less than one percent of the total number of Muslims today, but, unlike many other tiny sectarian groups dotted about the landscape of the Middle East, they have a rich literary heritage stretching back to the formative centuries of Islam”.<sup>81</sup>

This work of al-Rabī' b. Ḥabīb is, in sum, a typological reflection of Ibādīsm at its earliest existence. It is true that most of the material in the work is *fiqh*, which as shown above provides good grounds for further studies, yet with all its traces of important historical events, its samples of Ibādī founding political organisation, authorities involved, dogmatic perceptions and many other aspects in it, are witnesses of the general significance of this work.

81 *The epistle of Sālim ibn Dhakwān*, p. 1.

## CHAPTER TWO

### ĀTHĀR AL-RABĪ' B. ḤABĪB ARABIC TEXT

#### Sigla

#### Text

- [1] numbers given to each tradition according to the first Tunisian copy
- [E1] numbers given to traditions that are missing in the Tunisian copies but found in the Egyptian copy
- / end of a page or folio in the manuscripts; the copy and the page/folio number are shown on the left margin next to /
- < كان > conjectural addition
- { المثنى }
- † قف... و... † illegible text
- ﴿ ﴾ Quranic quotation
- [S1] numbers used to indicate sections that I consider spurious, on paragraphs with such a number (they come between [233] and [234]), see p. 53–56

#### Footnotes

- T1 first Tunisian copy
- T2 second Tunisian copy
- E the Egyptian copy
- T reading shared by T1 and T2
- MSS reading shared by T1, T2 and E
- E not in E
- + قد T1 T1 additionally has قد
- Q: 16:75 quotation from the Qur'ān, *sūra* number 16, verse 75

## Edited Text

\* بسم الله الرحمن الرحيم و<sup>1</sup> صلى الله على سيدنا محمد<sup>2</sup> وآله وأصحابه<sup>4</sup>  
الطاهرين<sup>6,5</sup>

هذا<sup>7</sup> الجزء الأول من آثار الربيع<sup>8</sup> عن ضممام عن جابر بن زيد<sup>9</sup>

[1] حدثنا أبو صفرة عبد الملك بن صفرة قال: حدثنا الهيثم عن الربيع بن حبيب عن ضممام بن السائب عن جابر بن زيد الأزدي<sup>10</sup> - رضي الله عنه - عن رجل كذف امرأته ولم يتلاعنا ولم يترافعا ولم يردا ذلك ثم مات أحدهما، قال: يرثه صاحبه.

[2] الربيع عن<sup>11</sup> ضممام عن أبي الشعثاء قال: الطعام والصوم والعتق في الظهر قبل أن يتماسبا.

[3] الربيع عن ضممام عن أبي الشعثاء قال: إن شاء المحرم باع ثيابه التي <كان> فيها وهو محرم واشترى غيرها<sup>12</sup>.

\* E starts with then comes the *basmala* and *ṣal'ama*...

1 - T1,E

2 + النبي الكريم E

3 + على E

4 E,T2: صحبه

5 - E,T2

6 + وسلم تسليما E

7 E: كتاب

8 + بن حبيب E

9 - E

10 - E

11 E: قال

12 - E

[4] الربيع عن ضممام عن أبي الشعثاء قال في رجل تزوج امرأة ولم يفرض لها صداقا ثم مات قال: لا صداق لها وعليها العدة ولها الميراث . وقال أبو علي: إجماع<sup>13</sup> من

الفقهاء أن لها صداق نساؤها أو من كان مثلها من أهل بيتها، وروي ذلك عن ابن مسعود أن لها الصداق، قال: لو نجد ذلك<sup>14</sup> عن ابن مسعود و<sup>15</sup> عن ثقة لأخذنا به.

[5] الربيع عن ضممام عن أبي الشعثاء في رجل طلق امرأته / وهو مريض، قال: ترثه ما دامت في العدة، فإذا انقضت العدة فلا ميراث لها.

[6] الربيع عن ضممام عن أبي الشعثاء أنه أوصى أن تغسله امرأته.

[7] الربيع عن ضممام و أبي<sup>16</sup> نوح عن جابر بن زيد في المختلعة قال: لا يأخذ منها أكثر مما أعطهاها. قال أبو علي: لا بأس أن يأخذ أكثر مما أعطهاها إذا كان ذلك بطيب من نفسها، والبصريون يقولون: لا<sup>17</sup> يأخذ أكثر مما أعطهاها.

[8] الربيع قال أخبرنا أبو نوح قال: متع أبو الشعثاء بخمسين درهما والسعر<sup>18</sup> يومئذ رخيص.

[9] الربيع قال أخبرنا ضممام عن أبي الشعثاء في قراءة<sup>19</sup> الظهر والعصر بفاحة T1: 1 الكتاب/ لا يزيد على ذلك.

[10] الربيع عن ضممام عن أبي الشعثاء أنه لم ير بأسا بالسواك<sup>20</sup> للصائم في أول النهار وكرهه في آخره.

[11] الربيع عن ضممام عن أبي الشعثاء في موضحة العبد على نحو موضحة الحر من قيمته، وكان يقيس جراحات العبيد بجراحات الأحرار من قيمتهم.

[12] الربيع عن ضممام عن أبي الشعثاء في رجل أهل بعمره فأبطأ به<sup>21</sup> السير فخاف الفوت، قال: يقلب<sup>22</sup> عمرته حجا ويمضي إلى عرفات ولا يأتي البيت فإذا رجع طاف

13 E: إجماعا

14 E: هذا

15 - E

16 E: أبا

17 - E

18 E: المتاع

19 + صلاة E

20 E: بالسواك بأسا

21 E: له

22 E: يُقلب

- لهما جميعا. وقال غيره: إذا خاف فوات الوقت رفض العمرة وأهل بالحج فإذا<sup>23</sup> رجع و<sup>24</sup> فرغ من تمام حجه أهل بالعمرة من التنعيم<sup>25</sup> وطاف وعليه دم لرفض العمرة: شاة يذبحها ويتصدق بلحمها.
- [13] الربيع عن ضممام عن أبي الشعثاء قال: أدركاة الفطر قبل أن تخرج إلى المسجد.<sup>26</sup>
- [14] الربيع عن ضممام عن أبي الشعثاء قال دية الخطأ أخماس<sup>27</sup>: عشرون بنت مخاض، وعشرون بنت لبون، وعشرون حقة، وعشرون جذعة، وعشرون بنو<sup>28</sup> ليون ذكور<sup>29</sup>، وقال: في<sup>30</sup> دية العمد ثلاثون بنت / لبون وثلاثون حقة وأربعون جذعة إلى بازل عامها كلها خلفات، وقال غيره: إنما الخطأ شبه العمد، وقال أصحابنا فيما أرى: من لم يكن من أهل الإبل فعليه عشرة آلاف درهم وإن كان من<sup>31</sup> أهل الذهب فألف مثقال ذهبا<sup>32</sup>.
- [15] الربيع عن ضممام عن أبي الشعثاء في رجل أهل بعمرة في غير أشهر الحج، فقال: متعة إذا قدم في أشهر الحج.
- [16] الربيع عن ضممام عن أبي الشعثاء قال /: يصوم المتمتع الثلاثة<sup>33</sup> أيام وهو محرم E: 73/1 ويجعل آخرها يوم عرفة. قال محبوب بن الرحيل: إذا أحرمت صام ثلاثة أيام، وإن كان ذلك قبل يوم عرفة <فهو> جائز.
- [17] الربيع عن ضممام عن أبي الشعثاء قال: إذا لم يصم المتمتع الثلاثة<sup>34</sup> أيام حتى يمضي يوم عرفة فليس بعد ذلك صوم. وقال غيره: إذا لم يصم الثلاثة قبل يوم النحر وجب عليه دم، وقال أهل الحجاز: يكون عليه صوم ثلاثة أيام يأتي بها متى شاء<sup>35</sup>.

وإذا E: 23  
24 - E  
السعي T2: 25  
26 - E  
أخماسا MSS: 27  
بني T1: 28  
ذکر T: 29  
30 - E  
31 - T  
ذهب T1,E: 32  
ثلاثة E: 33  
ثلاثة T: 34

- [18] الربيع عن ضممام عن أبي الشعثاء قال<sup>36</sup>: سمعت سويدا<sup>37</sup> يقول: سمعت عليا وهو يخطب وعليه برنوس<sup>38</sup> من صوف فذكر عثمان فقال: إن الله قتل قتيلًا وأنا معه.
- [19] الربيع عن ضممام عن أبي الشعثاء قال<sup>39</sup>: لا يصوم<sup>40</sup> المتمتع السبعة أيام حتى يأتي إلى أرضه وقراره.
- [20] الربيع عن ضممام عن أبي الشعثاء قال: الطعام في كفارة اليمين مُدٌّ لكل مسكين، وكان يعجبه الإعطاء به<sup>41</sup>. وقال غيره: في كفارة اليمين نصف صاع لكل مسكين من بر.
- [21] الربيع عن ضممام عن أبي الشعثاء قال: صوم كفارة اليمين متتابع.
- [22] الربيع عن ضممام عن أبي الشعثاء في رجل طلق امرأته وهو مريض قبل أن يدخل بها، قال: لها نصف الصداق ولا ميراث لها ولا عدة عليها.
- [23] الربيع عن ضممام عن أبي الشعثاء قال: تزويج المريض جائز.
- [24] الربيع عن ضممام عن أبي الشعثاء في رجل قال لرجل قد زوجتك أول<sup>42</sup> ابنة<sup>43</sup> تلدها امرأتين / وقال الآخر قد<sup>44</sup> قبلت، قال جابر: لا يجوز تزويج الحمل<sup>45</sup>.
- [25] الربيع عن ضممام عن أبي الشعثاء أنه يقول: لا ترى<sup>46</sup> بأسا بذبيحة المرأة.
- [26] الربيع عن ضممام عن أبي الشعثاء في نصراني أو يهودي قذف<sup>47</sup> مسلما، قال: لا يبلغ ضربه الثمانين وكذلك العبيد. وقال غيره والكوفيون: يجلد<sup>47</sup> / الذمي ثمانين و العبد أربعين.
- [27] الربيع عن ضممام عن أبي الشعثاء قال: ليس بين المسلم والأمة والنصرانية لعان.

35 - T2  
سمعت أبا الشعثاء يقول E: 36  
سوید T1: 37 E  
برنوسا E: 38  
39 - T  
صوم E: 40  
له T: 41  
أولى E: 42  
43 - T  
الحبلى T: 44  
قال لم نر E: 45  
قذفا E: 46  
يُحد E: 47

[28] الربيع عن ضممام عن أبي الشعثاء قال<sup>48</sup>: يضرب القاذف ضرباً شديداً. وقال الكوفيون: ضرباً خفيفاً.

[29] الربيع عن ضممام قال: دخل داخل على أبي الشعثاء هو وامرأته آمنة يأكلان نهاراً في رمضان فقال<sup>49</sup> لهما<sup>50</sup>: تأكلان نهاراً في شهر رمضان؟ فقال<sup>52</sup>: أما أنا فقدمت من السفر<sup>53</sup>، وأما هي فقد<sup>54</sup> طهرت<sup>55</sup> من حیضتها<sup>56</sup>، وليس علينا بأس<sup>57</sup>.

[30] الربيع عن ضممام عن أبي الشعثاء قال: يزكى الحلي. وقال غيره: قال أصحابنا فيه الزكاة ورووا<sup>58</sup> ذلك عن ابن عباس.

[31] الربيع عن ضممام عن أبي الشعثاء في رجل جعل امرأته عليه<sup>59</sup> كظهر أمه فمكث بعد ذلك<sup>60</sup> أربعة أشهر، قال: هو بمنزلة الحلف يلزمه الإيلاء. وقال الكوفيون: لا يكون مولياً<sup>61</sup>.

[32] الربيع عن ضممام عن أبي الشعثاء قال: الصوم ينويه<sup>62</sup> من الليل<sup>63</sup>

[33] الربيع عن ضممام عن أبي الشعثاء قال: الدية مائة<sup>64</sup> من الإبل في الغلا والريخص

[34] الربيع عن ضممام عن أبي الشعثاء قال: المستحاضة إذا رأت الدم السائل<sup>65</sup> اغتسلت وجمعت بين الصلاتين

- 48 - E  
49 E: قال  
50 - T  
51 - E  
52 E: قال  
53 E: سفر لي  
54 - E  
55 E: فطهرت  
56 E: حیضها  
57 T: بأساً  
58 MSS: وروا  
59 - T  
60 E: فتركها  
61 E as a marginal note. إنه في الإيلاء والظهار يعد أربعة أشهر +  
62 E: ينوي ذلك  
63 MSS: الليل  
64 MSS: مائة  
65 MSS: السائل

[35] الربيع عن ضممام عن أبي الشعثاء قال: إذا قدم المفقود فما أنفقت امرأته في أربع سنين فهو له لازم، وقال بعض أصحابنا: وعليها نفقة الأربعة<sup>66</sup> أشهر والعشرة أيام<sup>67</sup> التي اعتدت فيها في مالها

[36] الربيع / عن ضممام عن أبي الشعثاء <قال>: إذا رأت المرأة الكُدْرَةَ والصفرة<sup>68</sup> T2: 4  
<sup>69</sup> استنققت و<sup>70</sup> توضأت وضوء الصلاة

[37] الربيع عن ضممام عن أبي الشعثاء قال: تجزئ أم الولد في كفارة الظهار وكفارة القتل. وقال غيره: لا بأس به

[38] الربيع عن ضممام عن أبي الشعثاء أنه يكره الصلاة فوق الكعبة

[39] الربيع عن ضممام عن أبي الشعثاء في رجل يسوق بَدَنَةً تطوعاً فعضبت؟ قال: ينحرها و<sup>71</sup> ليس عليه في نحرها شيء

[40] الربيع عن ضممام عن أبي الشعثاء في رجل يبعث بحدية بدنة تطوعاً مع رجل فعضبت فنحرها، قال: ليس على الرسول ضمان ولا على صاحبها بدل، فلا يأكل

منها الرسول، وإن كانت واجبة أكل منها وعلى صاحبها البدل<sup>72</sup>، و<sup>73</sup> كان<sup>74</sup> الكوفيون يكرهونه

[41] الربيع عن ضممام عن أبي الشعثاء أنه لم يرَ بأساً بسور<sup>75</sup> الحمار الأهلي

[42] الربيع عن ضممام عن أبي الشعثاء أنه كره الصلاة في الحجر قدر أربعة أذرع مما يلي البيت

[43] الربيع عن ضممام عن أبي الشعثاء أنه لا يرى بأساً على<sup>76</sup> المحرم أن يلبس الثوب الذي عُسِّل من الزعفران والورس والعصفر

- 66 T2: أربعة  
67 T: عشرة  
68 E: الصفرة والكُدْرَة  
69 + و E  
70 - T  
71 - T2, T1: قال  
72 E: بدل  
73 - E  
74 E: قال  
75 MSS: بسور  
76 E: لم يرا بأساً للمحرم

[44] الربيع عن ضممام عن أبي الشعثاء في رجل تزوج امرأة وهو مريض ثم طلقها ولم يدخل عليها<sup>77</sup>؟ قال: لها نصف الصداق ولا عدة عليها ولا ميراث لها

[45] الربيع عن ضممام عن أبي الشعثاء قال: لا يحجب من لا يرت

[46] الربيع عن ضممام عن أبي الشعثاء أنه لا يرى<sup>79</sup> بأساً بألبان الأتان<sup>80</sup>، والكوفيون يكرهون ذلك

[47] الربيع عن ضممام عن أبي الشعثاء في امرأة توفيت وتركت ابني<sup>81</sup> عمها أحدها زوجها والآخر أخوها<sup>82</sup> لأمها<sup>83</sup>؟ قال: للزوج النصف وما بقي فللأخ<sup>84</sup> من الأم<sup>85</sup>.

T1: 3 وقال الكوفيون: للزوج النصف ولأخيها لأمها وهو ابن عمها السدس والباقي بينهما نصفان وهو قول / علي وابن مسعود

T2: 5 [48] الربيع عن ضممام عن أبي الشعثاء قال: الأصابع عشرة لكل أصبع عشرة من الإبل/

[49] الربيع عن ضممام عن أبي الشعثاء قال: يحرم من الرضاع ما يحرم من النسب

[50] الربيع عن ضممام عن أبي الشعثاء في رجل قذف امرأته ولم<sup>86</sup> يرد ملاعنتها؟ قال: لا بأس عليه في مجامعتها، ولا بأس عليه<sup>87</sup> في ذلك

[51] الربيع عن ضممام عن أبي الشعثاء قال < في > أصبع<sup>88</sup> أم الولد إذا قطع عُشْرَ ثَمَنِهَا وفي عينها نصف ثَمَنِهَا

[52] الربيع عن ضممام عن أبي الشعثاء في رجل توفي وترك أم ولده حاملاً<sup>89</sup> وليس لها ولد؟ قال: يعتقها من جميع المال

77 E: قيل أن

78 E: بها

79 E: لم يرا

80 E: الأثن + T1 الأثن،

81 T2: بني

82 E: أخيها

83 T2: من أمها

84 T: للأخ

85 E: للام

86 E: فلم

87 - T1

88 E: صبع

89 E: حامل

[53] الربيع عن ضممام عن أبي الشعثاء في رجل ضرب أمة حاملاً<sup>90</sup> فألقت ولدها فاستهل ومات؟ قال: عليه قيمة الولد. وقال الكوفيون: إن كان غلاماً<sup>91</sup> أو جاريةً فنصف عُشْرِ قيمة الأمة

[54] الربيع عن ضممام عن أبي الشعثاء قال: إن شاء المحرم أبدل ثيابه، وقد يستحب ثياباً<sup>92</sup> نَقِيَّةً<sup>93</sup>

[55] الربيع عن ضممام عن أبي الشعثاء في رجل مملوك أو حر تزوج مكاتبه<sup>94</sup> ثم أدت كتابتها<sup>95</sup> قال: لا خيار لها. وقال الكوفيون: لها الخيار

[56] الربيع عن ضممام عن أبي الشعثاء قال: لا بأس أن يلف المحرم على صدره ثوباً<sup>96</sup>

[57] الربيع عن ضممام عن أبي الشعثاء في رجل تزوج أمة فعتقت بشراء<sup>97</sup> نفسها أو بمكاتبته<sup>98</sup>، قال: تختار<sup>99</sup>

[58] الربيع عن ضممام عن أبي الشعثاء قال<sup>100</sup>: لا بأس أن يلبس المحرم الطيلسان {المثني}<sup>101</sup> ولا {يزوره}<sup>102</sup> عليه

[59] الربيع عن ضممام عن أبي الشعثاء أن زنجية لامرأة يقال لها عجيكة سُرقت، فقلنا لأبي الشعثاء: تكلم<sup>103</sup> فيها، فقال أبو الشعثاء: انطلقوا فارشوا<sup>104</sup> عليها

[60] الربيع عن ضممام عن أبي الشعثاء قال: يكره بيع المصاحف، ولم يكره شراها<sup>105</sup>

90 MSS: حاملة

91 E: غلام

92 E: ثياب

93 E: نقي

94 E: مكاتبته

95 E: مكاتبته

96 E: ثوب

97 T1,E: بشرا

98 E: بكتابة

99 E: لها الخيار

100 - E

101 MSS: المتنا

102 E: يزوره

103 E: اتكلم

104 E: فارسوا

105 T1: شراها , E: شراوها

- [61] الربيع عن ضمّام عن أبي الشعثاء قال: المرأة نصف العقل في جميع الأشياء كلها
- T2: 6 [62] الربيع عن ضمّام عن أبي الشعثاء في رجل قال: الحلال عليه حرام؟ قال: كفارة يمين، و قال الكوفيون إن نوى طلاقاً فهو ما نوى وإن لم ينو طلاقاً<sup>106</sup> لم تجرم عليه<sup>107</sup> امرأته / وعليه / كفارة يمين
- E: 73/2 [63] الربيع عن ضمّام عن أبي الشعثاء أنه لا يرى بأساً<sup>108</sup> بذبيحة الغلام الذي<sup>109</sup> عقل الصلاة
- [64] الربيع عن ضمّام عن أبي الشعثاء أن رجلاً دخل على امرأته فاحتوشه ولده منها فأقبل<sup>110</sup> عليها فقال: أخري<sup>111</sup> عني<sup>112</sup> نغولك، فقلنا لأبي الشعثاء وأعلمناه أن النغل فينا ولد الزنا، قال: انطلقوا فاستروا ما ستر الله
- [65] الربيع عن ضمّام عن أبي الشعثاء قال: صلوا مع السلاطين ما صلّيت<sup>113</sup> لوقتها
- [66] الربيع عن ضمّام عن أبي الشعثاء قال: إذا وقع قرّان من الشمس فلا تصلوا على الجنائز<sup>114</sup> حتى تغرب الشمس
- [67] الربيع عن ضمّام عن أبي الشعثاء لم يَرِ بأساً أن يطرح المحرم عليه الخشوع { يدي } به وفي القطيفة يستدفي<sup>115</sup> بها ولا يغطي<sup>116</sup> رأسه
- [68] الربيع عن ضمّام عن أبي الشعثاء قال: للأمة الخيار إذا أعتقت<sup>117</sup> حرا كان زوجها أو عبداً
- [69] الربيع عن ضمّام عن أبي الشعثاء في النصرانيين أسلم أحدهما وله ولد صغير، قال: المسلم أحق بالصغير

106 E: الطلاق  
107 - T  
108 E: يرا ..... بأساً  
109 E: إذا  
110 T: وأقبل  
111 MSS: آخر  
112 T: علي  
113 T: صلّيت  
114 MSS: الجنائز  
115 E: ليستدفي  
116 E: يغط  
117 T: عتقت

- [70] الربيع عن ضمّام عن أبي الشعثاء قال: المتلاعنان<sup>118</sup> يفرق بينهما ولا يجتمعان أبداً
- [71] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير بأساً أن تكون للغلام غلة فيعطيه مولاه دراهم فيزيده في غلته<sup>119</sup>
- [72] الربيع عن ضمّام عن أبي الشعثاء قال: ليس بين العبد وسيدته ربا
- T1: 4 [73] الربيع عن ضمّام عن أبي الشعثاء / قال: أيُّ الأبوين أسلم وله ولد صغير لم يقبل من<sup>120</sup> الولد الصغير إلا دين والده المسلم وإلا قتل<sup>121</sup>
- [74] الربيع عن ضمّام عن أبي الشعثاء قال: البقرة و الجوز تجزي عن سبعة
- [75] الربيع عن ضمّام عن أبي الشعثاء قال: تُقَصَّرُ المرأة من شعرها ما بين الربيع والخمس
- [76] الربيع عن ضمّام عن أبي الشعثاء قال: تقصّر المرأة من شعرها<sup>122</sup> في عمرها أقل مما تقصّر في حجها
- [77] الربيع عن ضمّام عن أبي الشعثاء أنه قال<sup>123</sup>: الحامل المتوفى عنها زوجها نفقته من نصيبها
- T2: 7 [78] الربيع عن ضمّام عن أبي الشعثاء قال: عدة الحامل المتوفى عنها زوجها آخر الأجلين وإن كان قد مضى من حملها شهر أو شهران<sup>124</sup> ثم مضت بعد ذلك أربعة أشهر وعشر<sup>125</sup> انقضت عدتها<sup>126</sup>، وقال الكوفيون: إذا وضعت حملها حلّت للأزواج
- [79] الربيع عن ضمّام عن أبي الشعثاء في رجل يقال له خالد<sup>127</sup> أعتق عند موته ثلاثة<sup>128</sup> مماليك، وإن عبيد بن خالد سأل جابر بن زيد عن ذلك، فقال: قد أعتق من<sup>129</sup> كل واحد منهم الثلث، ويستسعون<sup>130</sup> في باقي أثمانهم

118 E: المتلاعنان  
119 - E  
120 E: عن  
121 E in the margin إن لم يسلم ابن المسلم قتل +  
122 - E  
123 - T  
124 E: شهرين  
125 T2: وعشرا  
126 - T  
127 - T

- [80] الربيع عن ضمّام عن أبي الشعثاء في مكاتب مات و ترك<sup>131</sup> عليه ذئباً<sup>132</sup>؟  
قال: مولاه والغرماء<sup>133</sup> فيما ترك سواء<sup>134</sup>، و<sup>135</sup> قال الكوفيون: الغرماء أولى والموت  
{ حاجز }<sup>136</sup>
- [81] الربيع عن ضمّام عن أبي الشعثاء في رجل اشترى أمة و<sup>137</sup> لها زوج، قال: لا  
يقرها حتى يطلقها زوجها
- [82] الربيع عن ضمّام عن أبي الشعثاء قال: لا يأكل المحرم لحم الصيد الذي بصيده  
الحل
- [83] الربيع عن ضمّام عن أبي الشعثاء قال: خطأ الصيد وعمده في الحرم يُحْكَم عليه  
وما أصاب في الحل من خطأ وهو محرم وضع عنه
- [84] الربيع عن ضمّام عن أبي الشعثاء > قال: < إذا كانت للرجل على المرأة رجعة  
وقد احتاجت إلى أن تترين فلتترين
- [85] الربيع عن ضمّام عن أبي الشعثاء > قال: < إذا أوصى الرجل بحج ثم<sup>138</sup>  
مات حُج عنه
- [86] الربيع عن ضمّام عن أبي الشعثاء قال: إذا ابتليت المرأة بكسر فخذه أو  
رجلها<sup>139</sup> فلم يجدوا لها بدا من الطبيب داواها رجل فستر<sup>140</sup> كل شيء منها إلا ذلك  
الموضع ويحضرها أولياؤها
- [87] الربيع عن ضمّام عن أبي الشعثاء أنه كان يقول: إنكم إذا جفوتونا وتركتمونا  
أنكرنا أنفسنا

128 E: ثلاث  
129 E: عن  
130 E: ويسعون  
131 - E  
132 MSS: دين  
133 MSS: والغرماء  
134 MSS: سوا  
135 - E  
136 - T  
137 - E  
138 E: فمات  
139 T: رجل  
140 E: ويستتر

- [88] الربيع عن ضمّام عن أبي الشعثاء أنه كره نكاح السر
- [89] الربيع عن ضمّام عن أبي الشعثاء أنه كره<sup>141</sup> أن يكون نكاح إلا بإذن الولي أو  
في جماعة من العشيّة
- [90] الربيع عن ضمّام عن أبي الشعثاء قال إذا لم يكن للمرأة وليّ<sup>142</sup> وليّ نكاحها  
عريفُ العشيّة وكان ذلك أمراً علانية
- [91] الربيع عن ضمّام / عن أبي الشعثاء أنه قال: من لم يَحُلْ بينه وبين منزله  
الليل<sup>143</sup> فعليه الجمعة
- [92] الربيع عن ضمّام عن أبي الشعثاء قال: إذا كانت المرأة في بعض القرى<sup>144</sup> ولم  
يكن لها وليّ وليّ نكاحها الوالي ويكون ذلك علانية
- [93] الربيع عن ضمّام عن أبي الشعثاء قال: المتوفى عنها زوجها تنتقل، وقال  
الكوفيون: لا تخرج إلا من عذر<sup>145</sup>
- [94] الربيع عن ضمّام عن أبي الشعثاء قال: لا يأكل المحرم قديد اللحم
- [95] الربيع عن ضمّام عن أبي الشعثاء / قال: دية اليهودي والنصراني واليهودي ثلث  
دية المسلم، وقال الكوفيون: الناس كلهم في الدية سواء<sup>146</sup>
- [96] الربيع عن ضمّام عن أبي الشعثاء قال: يكره كراء<sup>147</sup> الأرض للزروع بالدرهم،  
وقال الكوفيون: لا بأس<sup>148</sup> به
- [97] الربيع عن ضمّام عن أبي الشعثاء قال: اللعب في التزويج و الطلاق و العتاق  
جائز<sup>149</sup> على أهله
- [98] الربيع عن ضمّام عن أبي الشعثاء قال: لا يقتل مسلم بمشرك يهودي أو نصراني
- [99] الربيع عن ضمّام عن أبي الشعثاء قال: لا يشتري المحرم قديد الصيد للمحل<sup>150</sup>

141 E: يكره  
142 E: وليا  
143 MSS: الليل  
144 MSS: القرى  
145 E: ضرر  
146 T1,E: سوا  
147 T1,E: كرا  
148 E: يأمر  
149 MSS: جائز  
150 T: المحل

- [100] الربيع عن ضممام عن أبي الشعثاء: قال يُقتل الجوسي باليهودي والنصراني، ويُقتل اليهودي بالجوسي
- [101] الربيع عن ضممام عن أبي الشعثاء قال: شهادة أم الولد بمنزلة شهادة الأمة
- [102] الربيع عن ضممام عن أبي الشعثاء في رجل يُزوج<sup>151</sup> أمة<sup>152</sup> وهي أم ولده<sup>153</sup> رجلاً<sup>154</sup> بصداق عاجل و آجل<sup>155</sup> فدخل بها ثم مات السيد، قال: ما كان على الزوج<sup>156</sup> لها من الصداق فهو لورثة الميت
- [103] الربيع عن ضممام عن أبي الشعثاء قال: يجوز بيع أم الولد وشراؤها<sup>157</sup> وعتقها
- [104] الربيع عن ضممام عن أبي الشعثاء في مكاتب تزوج حرة فولدت له وهو مكاتب، قال: الولاء<sup>158</sup> لموالي الأب، وقال الكوفيون: ولاء الابن المولود للمرأة ما لم يؤد<sup>159</sup> لهم جميع الكتابة
- [105] الربيع عن ضممام عن أبي الشعثاء / قال المكاتب إذا عجزت وقد ولدت فليس T2: 9 لمواليها بيع ولدها في تمام مكاتبتها ولكنها<sup>160</sup> تطالب وقال الكوفيون تباع وبياع ولدها إذا عجزت
- [106] الربيع عن ضممام عن أبي الشعثاء أنه لم ير<sup>161</sup> بذبيحة الصبي بأساً للنسك إذا عقل الصلاة
- [107] الربيع عن ضممام عن أبي الشعثاء في ذبيحة اليهودي والنصراني إذا خلا بذبيحته فلم يُدر<sup>162</sup> سُمي<sup>163</sup> أو لم يسم<sup>164</sup>؟ قال: تؤكل

151 T: تزوج, E: تزوج

152 - E

153 T: ولد

154 T: رجل

155 MSS: واجل

156 T: للزوج

157 E: وشراها

158 MSS: الولا

159 E: يودي

160 MSS: لانكها

E has the next question first, i.e 107 comes before 106

161 E: يرا

162 T: تدر

163 E: اسما

164 E: يسمي

- [108] الربيع عن ضممام عن أبي الشعثاء لم ير بذبيحة ما ذبح لغير القبلة خطأ بأساً إذا < لم > توجه الذبيحة<sup>165</sup> للقبلة، وقال الكوفيون: إذا †قف...و...و...† أكل والا فلا تؤكل
- [109] الربيع عن ضممام عن أبي الشعثاء قال: لا يباع المدبّر<sup>166</sup> وإن احتاج صاحبه
- [110] الربيع عن ضممام عن أبي الشعثاء قال: لا يباع المدبر في الدّين
- [111] الربيع عن ضممام عن أبي الشعثاء قال: الطعام للمساكين في كفارة الظهار مد لكل مسكين. وقال الكوفيون: نصف صاع من حنطة أو صاع من تمر أو شعير لكل مسكين<sup>167</sup> وإن أعطى<sup>168</sup> قيمة ذلك فضة أجزاءه<sup>169</sup>
- [112] الربيع عن ضممام عن أبي الشعثاء قال: طعام المساكين في فدية الصوم مد لكل مسكين
- [113] الربيع عن ضممام عن أبي الشعثاء قال: طعام المساكين في فدية الجزاء<sup>170</sup> مد لكل مسكين، وقال غيره: نصف صاع
- [114] الربيع عن ضممام عن أبي الشعثاء قال: فيما سقت السماء والأثمار والعيون العشر وفيما سقي<sup>171</sup> بالسواني<sup>172</sup> والدوالي والنضح نصف العشر
- [115] الربيع عن ضممام عن أبي الشعثاء أنه كره أن يضحى بالأبتر
- [116] الربيع عن ضممام عن أبي الشعثاء في رجل يزوج أم ولده لرجل، قال: هي بمنزلة الأمة يطؤها<sup>173</sup> إذا نزعها

165 E: ذبيحة

166 E: مدبر

167 - E

168 MSS: اعطا

169 MSS: اجزاه

170 MSS: الجزا

171 E: سقا

172 E: السواقي

173 MSS: يطاها

- [117] الربيع عن ضممام عن أبي الشعثاء قال: ليس على قاذف الأمة حد وإن كان لها زوج<sup>174</sup> مسلم حر<sup>175,176</sup>. وقال الكوفيون: إن كانت معروفة بالصلاح / أدب E: 74/1 إما بسجن وإما بتسريح إن كان من أهل المروءة<sup>177</sup> وإن كان من أهل السفه فالأدب بالضرب
- [118] الربيع عن ضممام عن أبي الشعثاء في رجل أعتق<sup>178</sup> أم ولده في مرضه، T2: 10 ماذا / عليها؟ قال: عليها ما على الأمة<sup>179</sup> إذا أعتقها<sup>181</sup> رجل في مرضه T1: 6
- [119] الربيع عن ضممام عن أبي الشعثاء في<sup>182</sup> المكاتب يحصن الحرة والمكاتبه تحصن الحر
- [E1] الربيع عن ضممام عن أبي الشعثاء في أم ولد تحت حر زنت؟ قال: لا تُرجم<sup>183</sup>
- [E2] الربيع عن ضممام عن أبي الشعثاء قال: ليس بين أم الولد وزوجها لعان إذا كان حراً<sup>184</sup>
- [122] الربيع عن ضممام عن أبي الشعثاء قال: تجوز شهادة المكاتب والمكاتبه، وقال الكوفيون: لا تجوز
- [123] الربيع عن ضممام عن أبي الشعثاء قال: من نذر نذراً ولم<sup>185</sup> يسم<sup>186</sup> فيقطع في ذلك أجراه مد لكل مسكين
- [124] الربيع عن ضممام عن أبي الشعثاء قال: ما أقر به المكاتب من دين أو حد<sup>187</sup> لزمه

- 174 E: ولد  
175 E: حراً  
176 E: حد +  
177 T1,E: المروءة  
178 T: عتق  
179 E: أمة  
180 - E  
181 E: أعتق  
182 E: قال  
183 - T  
184 - T  
185 E: فلم  
186 E: يسمي

- [125] الربيع عن ضممام عن أبي الشعثاء قال<sup>187</sup> في رجل أوصى مكاتبه، قال: هو جائز وهو وصي، وقال غيره: الوصية إليه جائزة ما لم يعجز فإن عجز بطلت وصيته، وقال آخرون<sup>188</sup>: هو عبد لأوليائه ولا وصية له، ويقيم القاضي وصياً للميت<sup>189</sup> غيره
- [126] الربيع عن ضممام عن أبي الشعثاء في مكاتب عجز قال: لا يُرَدُّ في الرق ولكن<sup>190</sup> يطلب
- [127] الربيع عن ضممام عن أبي الشعثاء في رجل أوصى لأم ولده بمال، ثم مات وليس لها ولد منه بعد؟ قال: ما أوصى به لها يرد للميراث<sup>191</sup>
- [128] الربيع عن ضممام عن أبي الشعثاء في رجل كاتب<sup>192</sup> غلامه ثم مات الرجل وترك بنين وبنات، وقد بقي على المكاتب من كتابته فأدى<sup>193</sup> إلى ولد الرجل بقية كتابته بعد موته < قال >: فالولاء<sup>194</sup> للميت وعنه يورث الولاء
- [129] الربيع عن ضممام عن أبي الشعثاء عن مكاتب مات وترك أولاداً وترك عليه بقية من كتابته، قال: يؤدون<sup>195</sup> ما بقي من كتابته وما بقي فهو ميراث لولده
- [130] الربيع عن ضممام عن أبي الشعثاء قال: للمكاتب أن يتزوج بغير إذن مواليه، وقال الكوفيون: لا يتزوج
- [131] الربيع عن ضممام عن أبي الشعثاء قال: شراء<sup>196</sup> المكاتب وبيعه جائز وهبته كذلك<sup>197</sup>
- [132] الربيع عن ضممام عن أبي الشعثاء في مكاتب حل عليه / غرم نجومه فكفل T2: 11 به رجلاً<sup>198</sup> قمت المكاتب؟ قال: لزم الرجل ما تكفل به عنه
- [133] قال أبو الشعثاء: يُزوج الرجل أم ولده ولا يستأمرها

- 187 - E  
188 E: اخر  
189 E: للميت وصياً  
190 MSS: لاكن  
191 E: في الميراث  
192 E: كاتبه  
193 MSS: فأدا  
194 MSS: الولا  
195 MSS: يودوا  
196 T1,E: شرا  
197 E: وبيعه وهبته جائز  
198 MSS: رجل

[134] الربيع عن ضممام عن أبي الشعثاء قال: لا يخرج المعتكف إلى قادم من سفر ولا شاخص

[135] الربيع عن ضممام عن أبي الشعثاء قال: المعتكف لا يجيب الدعوة، وإن أوجب<sup>199</sup> عليه فليأب<sup>200</sup>

[136] الربيع عن ضممام عن أبي الشعثاء عن رجل اعتمر في أشهر الحج ثم رجع<sup>201</sup> إلى أهله ثم حج في<sup>202</sup> عامه ذلك؟ قال: عليه الهدى، وقال الكوفيون: لا يكون عليه الهدى لأنه رجع إلى أهله

[137] الربيع عن ضممام عن أبي الشعثاء قال: المعتكف لا يدخل الحمام ولا يخرج لشراء ولا لبيع. وقال الكوفيون: لا يضره ما احتبس بعد أن يكون ساعة، فإن تشاغل أكثر من نصف يوم استأنف الاعتكاف

[138] الربيع عن ضممام عن أبي الشعثاء في الإيلاء إذا مضت أربعة أشهر فهي تطليقة<sup>203</sup> بائة

[139] الربيع عن ضممام عن أبي الشعثاء في رجل قال: الحلال عليه حرام وله امرأة أرادها ولم يرد الطلاق بذلك؟ قال: كفارة بمين

[140] الربيع عن ضممام عن أبي الشعثاء قال: إذا كان قميص كفن الميت إزارا<sup>204</sup> من فوق القميص ورداء<sup>205</sup> و يدس / من فوق

T1: 7

[141] الربيع عن ضممام عن أبي الشعثاء قال: لا يخرج المعتكف لجنائز إلا لجنائز من يلي الصلاة عليها

[142] الربيع عن ضممام عن أبي الشعثاء قال: {الحميل} يُصَدَّق ويورث إلا مسلماً<sup>206</sup> يقول لرجل<sup>207</sup> من المشركين: فلان أخي، فإن مات الرجل المسلم ولم يكن

- 199 *Scriptsi*. MSS. أجيب عليه.  
200 MSS: فليأب  
201 E: عاد  
202 E: من  
203 T1,E: بائة  
204 E: إزار  
205 MSS: ورداء  
206 MSS: مسلم  
207 E: رجل

له وارث؛ يصدق أخوه<sup>208</sup> المشرك إذا أسلم وورثه. وقال الكوفيون: لا يُصَدَّق وسئل<sup>209</sup> هذا البيه

[143] الربيع عن ضممام عن أبي الشعثاء قال: إذا وهبت هبة في حق أو صلة رحم T2: 12 سوى<sup>210</sup> الولد جاز قَبِيضَه أو لم يَقْبِضَه / وقال الكوفيون: لا تجوز<sup>211</sup> الهبة لأحد من الناس إلا مقبوضة معلومة محوزة

[144] الربيع عن ضممام عن أبي الشعثاء أنه كان لا يرى<sup>212</sup> بأسا بما<sup>213</sup> وطئ<sup>214</sup> وقعد عليها من النمارق، وكره ما نصب من التصاوير

[145] الربيع عن ضممام عن أبي الشعثاء قال: المعتكف لا يعود مريضاً

[146] الربيع عن ضممام عن أبي الشعثاء قال: المعتكف يجمع ويقيم في المسجد ما بداله

[147] الربيع عن ضممام عن أبي الشعثاء في رجل طلق امرأته وهي حائض<sup>215</sup>، قال: لا<sup>216</sup> تعد بتلك الحيضة من أقرائها

[148] الربيع عن ضممام عن أبي الشعثاء أنه لا يرى<sup>217</sup> بتزويج الصغار شيئاً حتى يبلغا ويستأمرا، وقال الكوفيون: إذا زوج الأب فالتزويج جائز<sup>218</sup> كذلك زوج أبو بكر الصديق<sup>219</sup> عائشة رضي الله عنه م<sup>220</sup> فإذا بلغوا فلا خيار لهم وإن كان الذي زوج ولياً<sup>221</sup> غير الأب فإذا بلغت فلها الخيار

- 208 E: أخاه  
209 E: وسئل T1: وسئل  
210 E: سوا  
211 T1: يجوز  
212 MSS: يرا  
213 - T1  
214 MSS: وطئ  
215 MSS: حائض  
216 - E  
217 E: يرا  
218 MSS: جائز  
219 - T  
220 E reads: أبو بكر الصديق رضي الله عنه عائشة  
while T1 reads: أبو بكر رضي الله عنه عائشة رضي الله عنها  
221 E: ولي

[149] الربيع عن ضمّام عن أبي الشعثاء <sup>222</sup> في رجل ظاهر من أمته؟ قال: ليس له

أن يمسه حتى يكفر كفارة الظهار

[150] الربيع عن ضمّام عن أبي الشعثاء في رجل ظاهر من أمته و <sup>223</sup> يمسه قبل أن

يكفر؟ قال: حرّمت عليه، وقال الكوفيون: الظهار من الأمة باطل

[151] الربيع عن ضمّام عن أبي الشعثاء في رجل مات وترك امرأته حاملاً <sup>224</sup>؟ قال:

إن أرضعته وكان لابنه مال كان ذلك في ماله

[152] الربيع عن ضمّام عن أبي الشعثاء قال: على الرجل نفقة امرأته حتى ينتهي

إليها طلاقه لأنها لا تقدر على التزويج. وقال الكوفيون: عليه النفقة حتى تنقضي العدة

إذا كان قد دخل بها

[153] الربيع عن ضمّام عن أبي الشعثاء أن عبد الملك بن مروان أتى برجل تزوج

امراً ابنة، فقال: إني جهلت وما ظننت به بأساً، فقال: لا جهل ولا تجاهل في

الإسلام، فضرب عنقه، فرضي أبو الشعثاء فغله واستحسنه <sup>225</sup>، وقال الكوفيون /: إن T2: 13

كان تزوجها على جهالة أخذ وعليه صداق مثلها

[154] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير بأساً أن يُرْمَل بالبيت يوم النحر

[155] <sup>226</sup> الربيع عن ضمّام أبي الشعثاء أنه كان يكره الصلاة في الكعبة

[156] الربيع عن ضمّام عن أبي الشعثاء قال: إذا جعل الرجل امرأته مثل أخته أو

<sup>227</sup> حالته أو عمته أو ابنته <sup>228</sup> هو بمنزلة واحدة

[157] الربيع عن ضمّام عن أبي الشعثاء أنه قال: إذا ورث الرجل <sup>229</sup> أمه صارت

حرة

[158] الربيع عن ضمّام عن أبي الشعثاء أنه كان يكره الإقران بين الأصابع في E: 74:2

الصلاة /

222 E: عن

223 E: ثم

224 E: حامل

225 E: وحسنه

226 - E

227 E: عمته أو خالته

228 E: قال +

229 E: الولد

[159] الربيع عن ضمّام عن أبي الشعثاء قال: لا ينصرف الرجل من <sup>230</sup> طوافه إلا

عن وتر

[160] الربيع عن ضمّام عن أبي الشعثاء قال: لكل طواف ركعتان <sup>231</sup> / T1: 8

[161] الربيع عن ضمّام عن أبي الشعثاء قال: لا نرى للمملوك طلاقاً وقال: ﴿عبداً

مملوكاً لا يقدر على شيء﴾ <sup>232</sup>

[162] الربيع عن ضمّام عن أبي الشعثاء قال: ليس للمختلعة نفقة

[163] الربيع عن ضمّام عن أبي الشعثاء قال: إذا فقد الرجل في حرق <sup>233</sup> أو غرق

تتربص امرأته أربع سنين ثم يُدعى أولياء <sup>234</sup> المفقود فيطلقون على صاحبهم ثم تعد

أربعة أشهر وعشراً ثم تزوج، وقال الكوفيون <sup>235</sup>: لا تنكح أبداً حتى يجيء خبر <sup>236</sup>

موته أو طلاقه

[164] الربيع عن ضمّام عن أبي الشعثاء أنه كان لا يرى على النساء رملاً بالبيت،

ولا بين الصفا والمروة، ويُشرَعْنَ في المشي

[165] الربيع عن ضمّام عن أبي الشعثاء قال: إذا قدم المفقود وقد تزوجت امرأته

<sup>237</sup> أو علم حياته فُرّقَ بينها وبين هذا الآخر <sup>238</sup> ويُخَيَّرُ القادِمُ بين الصداق وبين امرأته؛

فإن اختار امرأته فلها الصداقان جميعاً ولا يَمَسُّها الأول حتى تنقضي عدتها من هذا

الآخر

230 E: عن

231 E: ركعتين

232 Q: 16:75

233 E: حرب

234 T1,E: أولياء

235 - E

236 - T

237 - E

238 T2: الأخير

[166] الربيع عن ضممام عن أبي الشعثاء قال: يُخَيَّرُ المفقود بين امرأته وبين صدق الآخر فإن اختار الصدق وكان مثل صدقه فله / وإن كان أقل<sup>239</sup> من ذلك فليس له T2: 14  
إلا مثل الذي أصدقها وترك<sup>240</sup> على حالها عند زوجها الآخر، وقال الكوفيون: لا يخير إن شاء طلق وإن شاء أمسك

[167] الربيع عن ضممام عن أبي الشعثاء فيمن ضيع رمي الجمار أولاً<sup>241</sup> و آخر<sup>242</sup> قال: عليه دم، وما بين ذلك ففيه الصوم والصدقة

[168] الربيع عن ضممام عن أبي الشعثاء في النذر الذي لم يُسَمِّهِ<sup>243</sup> صاحبه فيه<sup>244</sup> شيئاً<sup>245</sup> قال: فيه صوم يوم أو يومين أو إطعام مسكين أو مسكينين، وقال الكوفيون: إذا لم ينو شيئاً فعليه إطعام عشرة مساكين فهي<sup>246</sup> كاليمين  
[169] الربيع عن ضممام عن أبي الشعثاء في قوله تعالى<sup>247</sup>: ﴿الحج أشهر

معلومات﴾<sup>248</sup> قال: شوال وذو القعدة وعشرة<sup>249</sup> من ذي الحجة  
[170] الربيع عن ضممام عن أبي الشعثاء قال: إذا جعل الرجل عليه الحج<sup>250</sup> ماشياً

<sup>251</sup> فعليه الحج ماشياً فإن عجز فليحج ركباً مرتين أو يحج مرة ويجعل معه ركباً فينفقه، وقال الكوفيون: بمشي<sup>252</sup> فلن<sup>253</sup> عبي ركب وعليه شاة يذبحها ويتصدق بلحمها

- 239 - T  
240 E: يتركها  
241 E: أول  
242 E: آخر  
243 E: يسمى  
244 - T  
245 E: شيء  
246 E: وهي  
247 - T1,E  
248 Q: 2:197  
249 E: عشر  
250 - T2  
251 - E  
252 T: وإن  
253 MSS: عيا

[171] الربيع عن ضممام عن أبي الشعثاء سئل<sup>254</sup> عن الجبن؟ فقال<sup>255</sup>: لا يؤكل إلا مضموناً، يعني من عمل المصلين<sup>256</sup> و<sup>257</sup> اليهود والنصارى، ولا يؤكل<sup>258</sup> من الجبن ما عملت الجحوس، فقال له رجل: فالسمن؟ فزجر السائل<sup>259</sup> فلم يسأله<sup>260</sup> بينهما. وقال الكوفيون: لا بأس به ما لم يعلم<sup>261</sup> نجاسة أو ميتة

[172] الربيع عن ضممام وأبي<sup>262</sup> نوح صالح الدهان أن أبا الشعثاء قال: المكاتب لا يُدبر ولا يُباع ولا يُرد في الرق ولا يباع من حاجة

[173] الربيع عن ضممام وأبي<sup>263</sup> نوح أن أبا الشعثاء كان يقول: الخلع ليس بطلاق وإن راجعها عدت ثلاث<sup>264</sup> تطليقات، وقال غيره: هي تطليقة {كهيئتهن}، وقال الكوفيون: إن نوى<sup>265</sup> ثلاثاً<sup>266</sup> فثلاث<sup>267</sup> وإن لم تكن له نية فهي<sup>268</sup> واحدة<sup>269</sup> بائنة<sup>270</sup>، وهي أملك بنفسها

[174] الربيع عن ضممام عن أبي الشعثاء قال: المعتق عن دبر من <رأس> المال / T2: 15  
وقال الكوفيون: من الثلث

[175] الربيع عن ضممام عن أبي الشعثاء أنه كان يجمع بين الصلاتين في السفر

[176] الربيع عن ضممام عن أبي الشعثاء أنه كان يقول: تمتعوا بالعمرة في الحج فإن > التمتع <بالعمرة أفضل

- 254 T1,E: سأل , T2: سأل  
255 T: قال  
256 E: المسلمين  
257 E: النصارى واليهود  
258 MSS: يوكل  
259 T1,E: السائل  
260 E: يسأولي  
261 E: يعمل  
262 E: أبو  
263 E: أبو  
264 T: ثلاثة  
265 MSS: نوى  
266 MSS: ثلاثة  
267 T: ثلاثة  
268 - T  
269 MSS: واحد  
270 MSS: بائين

- [177] الربيع عن ضممام عن أبي الشعثاء في رجل طاف بالبيت ولم يطف بالحجر في شوط منها واحترق الحجر احتراقاً، قال: شوطه ذلك باطل
- [178] الربيع عن ضممام عن أبي الشعثاء في رجل قذف ابنه <sup>271</sup> الملاعة، قال له <sup>272</sup>: إنك لابن زانية ولست بابن فلان. للذي لاعن أمه. قال: عليه الحد، وقال الكوفيون: لا حد عليه لأنه قذفها بمولود مُعْتَلِّ النسب فيمراً <sup>273</sup> عنه <sup>274</sup> الحد بالشبهة
- [179] الربيع عن ضممام عن أبي الشعثاء في صغير أسلم أحد أبويه ثم مات الصغير؟ قال: يليه آله <sup>275</sup> المسلمون ويدفن في مقابرهم
- [180] الربيع عن ضممام عن أبي الشعثاء أنه لم ير <sup>276</sup> بأساً بدبيحة الحائض
- [181] الربيع عن ضممام عن أبي الشعثاء قال يجزيء الرجل <sup>277</sup> طواف واحد لحجه وعمرته <sup>278</sup>
- [182] الربيع عن ضممام عن أبي الشعثاء في رجل تزوج ابنة <sup>279</sup> عم له فوصلها عند دخوله بغلام معروف بعينه فوهبه لها، قال: هو جائز <sup>280</sup> لها، دخل بها أو لم يدخل بها
- [183] الربيع عن ضممام عن أبي الشعثاء في رجل قال لرجل: قد زوجت ابنتي وهو لاعب، فقال <sup>282</sup> الآخر: قد قبلت وهما لاعبان، قال: النكاح جائز <sup>283</sup> إذا كان الشهود، وقال الكوفيون: إذا كان الشهود فجائز وإن لم يحضر الشهود فباطل
- [184] الربيع عن ضممام عن أبي الشعثاء في رجل يستأجر الأرض من رجل سنين للزرع يعطيه مائة <sup>284</sup> درهم كل سنة يزرعها بنفقتة وغلمانها، فكره ذلك ، وقال الكوفيون: لا بأس بكراء <sup>285</sup> الأرض

271 E: من  
272 - E  
273 T: قد دري  
274 T: عليه  
275 - E  
276 E, T2: يرا  
277 E: طوافا واحدا  
278 E: لعمرته  
279 E: بنت  
280 MSS: جاييز  
281 - E  
282 E: وقال  
283 T1, E: جاييز  
284 E: مائة, T2: مية

- [185] الربيع عن ضممام عن أبي الشعثاء أنه لم ير بأساً أن يتخذ الخذاء <sup>286</sup> من جلد الحمار الأهلي، وقال الكوفيون: لا بأس إذا كان مدبوغاً
- [186] الربيع عن ضممام عن أبي الشعثاء قال: تعطى صدقة الفطر / عن اليهودي T2: 16 المملوك والنصراني
- [187] الربيع عن ضممام عن أبي الشعثاء في رجل يُزَوِّج ابنته مدركة بكراً <sup>287</sup> في عياله قال: يستأمرها، ذلك إليها
- [188] الربيع عن ضممام عن أبي الشعثاء أنه كره أن يصلي الرجل وبين يديه شيء منصوب فيه تصاوير
- [189] الربيع عن ضممام عن أبي الشعثاء قال: للمعتمر <sup>288</sup> في أشهر الحج إذا قام إلى الحج أجزأه طواف واحد <sup>289</sup>
- [190] الربيع عن ضممام عن أبي الشعثاء أنه لم ير <sup>290</sup> بأساً بدبيحة اليهودية والنصرانية
- [191] الربيع عن ضممام عن أبي الشعثاء <sup>291</sup> أنه قال في رجل أصبح لا يطبق <sup>292</sup> الصوم في شهر رمضان فأصبح فاطراً، قال: له أن يأكل بقية يومه وإن لم يخف ضعفاً، وكذلك قال الكوفيون
- [192] الربيع عن ضممام عن أبي الشعثاء قال: ليس على قاذف أم ولد حد ما لم تتحق
- [193] الربيع عن ضممام عن أبي الشعثاء قال: إذا لاعن الرجل امرأته ثم كذب <sup>293</sup> نفسه في العدة لم يجتمع، وقال غيره: إذا كذب <sup>294</sup> نفسه جُلِدَ <sup>295</sup> الحد ويتراجعان

285 T1, E: بكرا  
286 T1, E: الخذا, T2: الجلد  
287 E: مكرهه, T: بكر  
288 E: المتمتع  
289 E: طوافا واحدا  
290 MSS: يرا  
291 E: عن  
292 T: لم يطبق  
293 E: أكذب  
294 E: أكذب  
295 E: ضرب

- [194] الربيع عن ضمّام عن أبي الشعثاء في رجل تزوج أم ولده رجلاً ثم أعتقها، قال: لها الخيار حراً كان أو عبداً
- [195] الربيع عن ضمّام عن أبي الشعثاء في رجل غشي<sup>296</sup> مكاتبته فحملت، قال: عليه الحد وهي على كتابتها ولا تصير بذلك أم / ولده، وقال الكوفيون: لا حد عليه T1: 10 وهي بالخيار إن شاءت مضت على كتابتها وأخذت منه العقر تستعين به على كتابتها<sup>297</sup>، وإن شاءت عجزت وصارت أم ولده
- [196] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير بأساً أن يدخل المعتكف المسجد وإن كان {مسقفاً}
- [197] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير<sup>298</sup> بأساً بذيبة العجمي و<sup>299</sup> إن كان زنجياً إذا كان مسلماً
- [198] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير<sup>300</sup> بأساً بلحم الفرس والبرذون والبهل
- [199] الربيع عن ضمّام عن أبي الشعثاء في رجل قال لامرأته: فرجني على فرجك حرام، قال: لا يجرم عليه ولا يكون طلاقاً ولا أدري أن<sup>301</sup> يجعل<sup>302</sup> عليه كفارة يمين أم لا، وقال / الكوفيون: إن نوى<sup>303</sup> طلاقاً أو ظهاراً فهو ما نوى وإن نوى يميناً<sup>304</sup> فكذلك وإن تركها أربعة أشهر بانت منه / بالإيلاء<sup>305</sup>، وإن لم يذكر شيئاً فكفارة يمين E: 75/1
- [200] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير<sup>306</sup> بأساً بالصلاة على الجنائز<sup>307</sup> ليلاً

296 E: يغشي  
297 E: الكتابة  
298 MSS: يرا  
299 - E  
300 MSS: يرا  
301 - E  
302 E: أيجعل  
303 MSS: نوا  
304 E: يمين  
305 MSS: بالإيلاء  
306 E: يرا  
307 MSS: الجنائز

- [201] الربيع عن ضمّام عن أبي الشعثاء في رجل تزوج امرأة في مرضه ولم يفرض لها ثم طلقها في مرضه<sup>308</sup> قبل أن يدخل بها، قال: لا ميراث لها ولا عدة عليها ولا صداق لها، وقال الكوفيون: لها المتعة وهو قولنا، والكوفيون يقولون: ثلاثة أثواب درع وخمار وملحفة ولا عدة عليها ولا ميراث لها
- [202] الربيع عن ضمّام عن أبي الشعثاء في امرأة يكون زوجها غائباً<sup>309</sup> فتتدين<sup>310</sup> وتتفق على نفسها وتطلبه على ذلك، قال: لها أن تأخذه بذلك، وقال الكوفيون: ما استدانن فعلى نفسها لا يلزمه من ذلك شيء إلا أن يكون قد حكم عليه القاضي بذلك
- [203] الربيع عن ضمّام عن أبي الشعثاء أنه كان يكره أن يربي الرجل فيما بينه وبين مكاتبه
- [204] الربيع عن ضمّام عن أبي الشعثاء أنه يكره أن يتزوج الرجل مكاتبته إلا بإذنها، وقال الكوفيون: النكاح فاسد
- [205] الربيع عن ضمّام عن أبي الشعثاء في رجل كاتب عبده على وصيف وألف درهم فعجل<sup>311</sup> له الوصيف فلا بأس بذلك
- [206] الربيع عن ضمّام عن أبي الشعثاء في عبد قتل حراً عمداً، قال<sup>312</sup>: إن شاءوا عفا وإن شاءوا استرقوا وإن شاءوا قتلوا، وقال الكوفيون: لا يُسْتَرْقُ<sup>313</sup> العبد إن شاءوا قتلوا وإن شاءوا عفا<sup>314</sup> فإن عفا فملك العبد لسيدته الأول
- [207] الربيع عن ضمّام عن أبي الشعثاء قال جنابة المعتق عن دبر على سيده<sup>315</sup>
- [208] الربيع عن ضمّام عن أبي الشعثاء <قال>: لا تعقل العاقلة على المدبر ولا على العبد ولا على أم الولد
- [209] الربيع عن ضمّام عن أبي الشعثاء في عبد بين رجلين كاتب أحدهما نصيبه

308 E: مرضها  
309 T1,E: غائب  
310 MSS: فتدان  
311 T2: فجعل  
312 - T  
313 T: يسترقوا  
314 - T  
315 - E

T2: 18 دون صاحبه، قال: ما أخذ فهو بينهما نصفان، وقال الكوفيون: الذي لم يكتب يطل الكتابة، وإن / لم يطلها ولم يقبض الآخر شيئا حتى مات فإن<sup>316</sup> الكتابة باطلة نصفه<sup>317</sup> بينهما، وإن قبضها في حياة المكاتب أعتق وما أخذ منه فيهما نصفان ويصير لشريكه نصف قيمة العبد

[210] الربيع عن ضمّام عن أبي الشعثاء في عبد بين رجلين كاتب أحدهما نصيبه دون صاحبه فمات المكاتب وترك مالا، قال: يكمل ما بقي من مكاتبته<sup>318</sup> وما / T1: 11 بقي يعطى لشريكه نصف القيمة أو نصف ثمنه فإن بقي شيء كان لورثة المكاتب [211] الربيع عن ضمّام عن أبي الشعثاء قال: يصلي الرجل ركعتين في سفره حتى يدخل المصر وإن رأى<sup>319</sup> البيوت

[212] الربيع عن تميم بن حويص سأل جابرا، فقال له مثل ذلك [213] الربيع عن ضمّام عن أبي الشعثاء في الرجل يبيع من الرجل متاعا بدرهم؟ فقال<sup>320</sup>: لا بأس أن يشتري > منه < بتلك الدراهم متاعا من<sup>321</sup> ذلك<sup>322</sup> الصنف ومن غيره

[214] الربيع عن ضمّام عن أبي الشعثاء في رجل يبيع من الرجل متاعا بنسيئة، قال: لا بأس أن يشتري منه ذلك المتاع بعينه بأقل<sup>323</sup> من ذلك أو أكثر، و<sup>324</sup> قال الكوفيون: الشراء<sup>325</sup> الثاني فاسد وهو من ضرب الربا<sup>326</sup>

- 316 T: إن  
317 T: نصفه  
318 E: كتابته  
319 MSS: رءا  
320 E: قال  
321 - E  
322 E: بذلك  
323 - T1,E  
324 - T  
325 E: الشراء  
326 E: الربوا

[215] الربيع عن ضمّام عن أبي الشعثاء في رجل كاتب عبدین، فأدى<sup>327</sup> أحدهما وعجز الآخر، قال: يمضي عتق الآخر والأول، ثم يستسعى<sup>328</sup> الذي لم يؤد<sup>329</sup> ما عليه،<sup>330</sup> وقال الكوفيون: إذا قبضت<sup>331</sup> الكتابة عتق والآخر على كتابته حتى يؤدي قسطه ثم يُعتق

[216] الربيع عن ضمّام عن أبي الشعثاء في رجل أكذب نفسه بعد الملاعة، قال: يلزمه الولد ولا<sup>332</sup> يجتمعان أبدا، و<sup>333</sup> قال الكوفيون يلزمه الولد ويجلد الحد و يجتمعان إذا جلد الحد، وقال آخرون<sup>334</sup>: لا يجتمعان أبدا

[217] الربيع عن ضمّام عن أبي الشعثاء قال: لا يُقتص لأهل الذمة من المسلمين، و<sup>335</sup> قال الكوفيون: إذا كانت الجراحات عمدا بالحديد فينهما القصاص إلا أن تكون امرأة؛ فإنه<sup>336</sup> ليس<sup>337</sup> بين الرجل والمرأة قصاص

[218] الربيع عن ضمّام عن أبي الشعثاء قال: لا يخرج المعتكف لئسأل الميت ولا لإغماضه

[219] الربيع عن ضمّام عن أبي الشعثاء في<sup>338</sup> رجل اعتمر في ذي الحجة بعد الحج، قال: ليس عليه هدي

T2: 19 [220] الربيع عن ضمّام عن أبي الشعثاء في رجل لاعن امرأته فالتعن / ثم مات قبل أن يلتعن، قال: يلحق به الولد وكذلك إن ماتت بعد أن تشهد<sup>339</sup> أربع شهادات بالله قبل أن تشهد<sup>340</sup> الخامسة

[221] الربيع عن ضمّام عن أبي الشعثاء قال: ليس على<sup>341</sup> العبد<sup>342</sup> إيلاء، إنما

- 327 E: فأدا  
328 E: يستسعا  
329 E: يؤدي  
330 - E  
331 E: قبض  
332 E: فلا  
333 - T2  
334 E: الآخر  
335 - T1  
336 - T  
337 T: فليس  
338 E: عن  
339 E: أشهد  
340 E: يشهد

- عليه يمين، و<sup>343</sup> قال الكوفيون: إن كان له زوجة فإيلاؤه<sup>344</sup> جائز<sup>345</sup>
- [222] الربيع عن ضممام عن أبي الشعثاء قال في الجوهر واللؤلؤ<sup>346</sup> والحزب والحجارة والحلي للتجارة: فيه<sup>347</sup> الزكوة<sup>348</sup>
- [223] الربيع عن ضممام عن أبي الشعثاء في عبد<sup>349</sup> بين رجلين، <قال>: يعطيان<sup>350</sup> عنه صدقة الفطر،<sup>351</sup> وقال الكوفيون: ليس على واحد منهما صدقة الفطر
- [224] الربيع عن ضممام عن أبي الشعثاء في رجل طلق امرأته تطليقة أو تطليقتين أو ثلاث<sup>352</sup> ثم قذفها، قال: يلحق بها الولد ولا أدري أيتلاعنان<sup>353</sup> أم<sup>354</sup> يجلد أنا أشك في ذلك وكذلك إن قذفها ثم طلقها واحدا أو ثلاثاً<sup>355</sup>، وقال الكوفيون: إن طلقها واحدا أو اثنتين<sup>356</sup> غير بائنة<sup>357</sup> ثم إنه قذفها فإنه يلاعن وإن طلقها ثانية أو ثالثة<sup>358</sup> فإنه يجلد ولا يلاعن
- [225] الربيع عن ضممام عن أبي الشعثاء في حر تحته أمة فمات وهي حامل: فلا<sup>359</sup> نفقة لها
- [226] الربيع عن ضممام عن أبي الشعثاء أنه لم ير<sup>360</sup> بأساً أن يطرح المحرم الثوب عن منكبيه ويتوشح به

- 341 - E  
342 E: للعبد  
343 - T  
344 T: فايلاه، E: فايلاه  
345 MSS: جائز  
346 MSS: اللؤلؤ  
347 - T2  
348 MSS: الزكوة  
349 E: مملوك  
350 E: يوديان  
351 - E  
352 MSS: ثلاثة  
353 E: يتلاعنان  
354 E: أو  
355 MSS: ثلاثة  
356 T: اثنتين  
357 T1,E: بائنة  
358 E: ثلاثة  
359 E: ولا

- [227] الربيع عن ضممام عن أبي الشعثاء أنه لا يرى<sup>361</sup> بأساً أن يعتكف الرجل في غير المسجد الجامع الأعظم
- [228] الربيع عن ضممام عن أبي الشعثاء أنه لم ير<sup>362</sup> بأساً / أن يرثدي<sup>363</sup> المحرم T1: 12 القميص<sup>365</sup> و{الثَّيَاء}
- [229] الربيع عن ضممام عن أبي الشعثاء أنه قال إذا أسلم المجوس يان<sup>366</sup> فهما على نكاحهما
- [230] الربيع عن ضممام عن أبي الشعثاء أنه قال: مَنْ وُورث من أمه شيكفا صارت حرة وتستسعي في البقية لشركائها<sup>367</sup>
- [231] الربيع عن ضممام عن أبي الشعثاء في رجل قذف امرأته وهي حامل وانتفى<sup>368</sup> من حملها فالتعن ولم تلتن حتى وضعت حملها في ذلك الأمر وماتت ، قال: يلحق بالولد
- [232] الربيع عن ضممام عن أبي الشعثاء قال<sup>369</sup>: إذا أقر <الرجل> بالولد من امرأته ساعة؛ لزمه الولد
- [233] الربيع عن ضممام عن أبي / الشعثاء قال: إذا قذفها وليس بها حمل فالتعن، ثم T2: 20 استبان بما حمل فوضعت بعد القذف فإنه يلزمه الولد
- [S1]\* وقال محبوب بن الرحيل: لا يصلح السلم إلا<sup>370</sup> أن تسمى صنفاً منه ويجعل<sup>371</sup> له أجلاً بينهما وموضعا يقبضه فيه وكثيراً معلوماً فإن ترك شيئاً من هذه الخصال فسد السلم وليس له إلا رأس ماله

- 360 T1,E: يرا  
361 E: لم يرا  
362 MSS: يرا  
363 T: يان  
364 MSS: يرتدي  
365 T: بالقميص  
366 E: المجوسان  
367 T1,E: لشركائها  
368 T: فانتفى  
369 - T

Here start the interplotations that I consider spurious, their numbers are from [S1] to [S19], for details see pp. 6-7, 9 above. The text proper

[S2] ولو أن رجلا قال لعبيده أنت حر إن لم أتزوج فليس له أن يبيعه حتى يتزوج فإن مات قبل أن يتزوج فهو حر وإن باعه ثم مات السيد قبل أن يتزوج كان العبد حراً ويروى على المشتري الثمن وقال الكوفيون له أن يبيعه ولو كاتبه رد ما أخذ منه وما كان تصدق به عليه في مكاتبته رده على أهله إن عرفهم وإن لم يعرفهم وضعه في المكاتبين [S3] وعن امرأة أدركت في شهر رمضان قال تصوم ما بقي من الشهر ثم تقضي ما فاتها من أول الشهر وكذلك الغلام إذا أدرك والمشارك إذا أسلم في نصف<sup>372</sup> شهر رمضان صام ما بقي من الشهر ثم قضى ما فاته من أول الشهر وقال الكوفيون إنما يصوم / من يوم أسلم أو بلغ فقط

[S4] وعن رجل قال لامرأته أن لم أحملك فأنت طالق ثلاثة قال إذا جامعها مرة واحدة فليعتزلها فإن حاضت ثلاث حيض فقد بانث منه بثلاث<sup>373</sup> وإن حملت فهي امرأته وقال الكوفيون بجامعها ثم يمسك بعد الجماع فإن حاضت علم أنها لم تحبل ثم يعاودها فيغشاها وهو في مهل حتى يموت أو تموت فإن مات أو ماتت وقع الحث

[S5] وعن المختلعة أينفق عليها قال لا وقال عدة المختلعة مثل عدة المطلقة وقال الكوفيون لها النفقة إلا أن يكون الزوج اشترط عليها ألا تكون<sup>374</sup> لها نفقة

[S6] وعن امرأة اختلعت من زوجها وشرط عليها أنك إذا ولدت أرضعت ولدي حتى تقطمي فولدت اثنين قال عليها واحد ترضعه حتى تقطمه

[S7] وعن رجل عرض لامرأته جنون فأمسكها بما عليه فاختلعت<sup>375</sup> منه قال لا يجوز خلعهما إلا بإذن الأولياء وقال الكوفيون لا ينال / ذلك إلا الأب أو الجد<sup>376</sup>

[S8] وعن رجل قال لامرأته اختاريني أو اختاري أخاك فقالت قد اخترت أخي قال إن نوى طلاقا فهو طلاق وقال الكوفيون لا يكون الخيار إلا في الأب والأم والنفس أو

بقول اخترت الأزواج

restarts at [234] on p. 57 below.

370 - E

371 E: وتجعل

372 T: بقية

373 MSS: بثلاثة

374 E: تكون

375 E: واختلعت

376 E: جد

[S9] وقال أرسل الغطريف / بدرهم يصالح بما امرأته وتبريه مما عليه بقي<sup>377</sup> من 13 T1: صداقها ويطلقها وكان قد أساء إليها<sup>378</sup> وحبس ما عنده عنها وتزوج عليها فقال<sup>379</sup> أبو الشعثاء خذوها فأعطوها من زوجها الذي أساء إليها لنفقتها<sup>380</sup>

[S10] وعن السقط ما دبتة قال إن خرج حيا يرتكض فدية كاملة وإن كان<sup>381</sup> أنثى فدية أنثى إذا قامت بينة عدول وإن خرج ميتا فعبد أو أمة

[S11] وعن امرأة أرادت من زوجها الخلع فكرهه عليها فقالت بعني تطليقة بألف درهم وزعمت أنها لا تريد بما خلع<sup>382</sup> فقال<sup>383</sup> إن المرأة خدعت زوجها وصار له ما أخذ منها من قليل أو كثير ومضى<sup>384</sup> خلعه وبطل طلاقه بعد ذلك وهي أملك بنفسها

[S12] وعن رجل قال لامرأته اختاري قالت قد قبلت قال ليس ذلك بطلاق إلا أن تكون نوت واحدا أو اثنين أو ثلاثة

[S13] وقال في رجل قال لامرأته اختاري فقالت أنا عليك مثل أمك أو عمك أو خالتك قال قد حرمت عليه

[S14] وقال في الرجل المريض لا يجوز له من<sup>385</sup> ماله إلا الثلث والرجل يكون في الحرب في المطاعنة والمسابقة لا يجوز له من ماله إلا الثلث والرجل يكون داخل الحريق لا يقدر أن ينجو فليس له من ماله إلا الثلث<sup>386</sup> والرجل يكون في البحر فوصل<sup>387</sup> إلى حد الغرق فليس يجوز له من ماله إلا الثلث والمرأة الحامل ضربها المخاض فليس يجوز لها من مالها إلا الثلث وقال بعضهم إذا دخلت شهرها فليس لها إلا الثلث

[S15] وسألته عن عريش عليه ناس وتحتة مربط دابة تبول وتروث أيسلني فوفه قال

377 E: بقية ما عليه

378 E: عليه

379 E: وقال

380 E: للنفقة

381 E: كانت

382 E: خلعة

383 E: وقال

384 MSS: مضى

385 E: في

386 - T

387 E: قد صار

لا بأس بالصلاة فوقه

[S16] وسألته هل يجوز أن يخضب يوم الجمعة / غير الإمام ويصلي الإمام؟ قال: T2: 22

نعم إذا كان للإمام عذر من علة<sup>388</sup> وكان حاضراً وأمر غيره أن يخضب فأمره بمنزلة

فعله عندي يجوز له ذلك وإن بعثه أن يخضب قبل أن يجيء الإمام فلا أرى<sup>389</sup> عليه

بأساً<sup>390</sup> وليس له أن يفعل ذلك إلا بإذن الإمام

[S17] وسألته عن مشرك من أهل الحرب دخل دار الإسلام بأمان فأصاب عرقه<sup>391</sup>

ثوب رجل من المسلمين أو أصاب جسده جسمه المسلم فأصابه من عرقه قال يغسل

ذلك وقال الكوفيون ليس عليه شيء

[S18] وسألته عن رقيق الهند والزنج يجلبهم<sup>392</sup> المسلمون قال على المسلمين أن

يأمرهم<sup>393</sup> بالصلاة حين يملكونهم قلت فإنهم مقيدون أو مغلولون<sup>394</sup> قال وإن كانوا

مقيدين أو مغلولين من قليل كانوا أو كثير فعليهم أن يعلموهم الصلاة ويأمرهم بما

[S19] وسألته عن الخوس هل يشرب عندهم اللبن قال يكره الشرب في شيء من

آنتيتهم إلا الزجاج إذا غسل ونقوي<sup>395</sup>، قلت: فإن حلب اللبن بين يدي؟ قال: لا بأس

بذلك وإن لم تره<sup>396</sup> و جعل في آنتيتهم فلا تشربه قلت فالمصل قال وكذلك

المصل وإن لم يكن في آنتيتهم أنفحة<sup>398</sup> اجتنبه حينئذ<sup>399</sup> كراهية لآنتيتهم ولا يشرب

من مائتهم<sup>400</sup> وتوكل معهم الفاكهة مثل الرمان والجوز واللوز والفستق / وما يؤكل

داخله

T1:14

388 E: إذا instead of و

389 MSS: أرا

390 T: بأس

391 E: عرق جسده

392 E: إذا جلبهم

393 E: يأمرونهم

394 - E

395 MSS: ونقا

396 T1,E: تراه

397 + إن E

398 T2: أنفحة، T1: انفحة

399 MSS: حينئذ

400 MSS: مائهم

\* See note marked with \* on p. 53 above.

[234] الربيع عن ضمام عن أبي الشعثاء في عبد ظاهر؟ قال: ليس عليه عتق ولا

إطعام، ويقول: عليه الصوم

[235] الربيع عن ضمام عن أبي الشعثاء أنه لم ير<sup>401</sup> بأساً في نثر الدابة، تنفخ<sup>402</sup>

منخرها ويخرج منه<sup>403</sup> النثر

[236] الربيع عن ضمام عن أبي الشعثاء قال: تجوز شهادة النساء في كل شيء في

حد أو عتق أو غير ذلك إلا الزنا، فذلك موضع لا يُدعى إليه النساء. وقال الكوفيون:

لا تجوز شهادة النساء في حد ولا في<sup>404</sup> قصاص

[237] الربيع عن ضمام عن مسلم<sup>405</sup> بن أبي كريمة. رحمه الله. أن رجلاً ذكر لأبي

الشعثاء أنه جعل ناقته هدياً لبيت / الله، فقال: اهداها<sup>406</sup>. فقال: إن ماتت! فقال: T2: 23

اهد إذا مثلها. قال الكوفيون: فإن أوجب ناقة بعينها فهلكت فلا شيء عليه، وإن

قال: لله علي أن أهدي بدنة فعليه الوفاء<sup>407</sup> بيدنة

[238] الربيع عن ضمام وأبي<sup>408</sup> نوح أن رجلاً سأل أبا الشعثاء عن تبيذ الجر فنهاه

عنه، فأعاد عليه فأكثر، فقال<sup>409</sup>: غي<sup>410</sup> عنه رسول الله صلى الله عليه وسلم<sup>411</sup>،

وما نعى<sup>412</sup> عنه رسول الله<sup>413</sup> فهو حرام

[239] الربيع عن أبي نوح قال: كنتُ عند أبي الشعثاء في المسجد الجامع، فقال له

رجل: يا أبا الشعثاء: أين وضع الله على النساء جلايبهن عند آبائهن<sup>414</sup>؟ فقال:

﴿لا جناح عليهن في آبائهن ولا أبنائهن ولا إخوانهن ولا أبناء إخوانهن ولا

401 E: يرا

402 E: ينفخ

403 T: منها

404 - T

405 - E

406 E: اهديتها

407 E: الوفاء

408 E: أبا

409 E: قال

410 MSS: نها

411 - E

412 MSS: نها

413 E: عليه السلام +

414 E: ابائهن

- أخواتهن ولا نسائهن ولا ما ملكت أيمانهن<sup>415</sup> قال ههنا وضع عنهن الجلابيب
- [240] الربيع عن أبي نوح عن أبي الشعثاء في رجل تزوج امرأة فدخل بها ثم طلقها، قال: لا يتزوج أختها حتى تنقضي عدتها
- [241] الربيع عن أبي نوح عن أبي الشعثاء قال <في> الأختين المملوكتين: إذا وطئ<sup>416</sup> إحداها ثم تركها لم يطأ الأخرى حتى يبيعها أو يهبها أو يزوجه
- [242] الربيع عن مسلم بن أبي كريمة قال: قلت لأبي الشعثاء: اشتريت من رجل سمنا في وعائه فقال إني أكلت فيه كذا وكذا، فهل عليّ أن آخذه بكيه وأنا أصدق؟ قال أبو الشعثاء: استوف<sup>418</sup> الثانية
- [243] الربيع عن ضممام قال: طهرت امرأة في حجها وليس معها ماء، فأمرناها أن تتوضأ وتصلي، فأتينا مكة فذكرنا ذلك لأبي الشعثاء، فقال: أصبمت
- [244] الربيع عن مسلم عن أبي الشعثاء في رجل أسلف في الطعام، قال: لا تأخذ إلا رأس مالك أو طعامك إلا أن يكون مفصلاً: النصف في كذا والنصف في كذا
- [245] الربيع عن أبي الشعثاء أنه صلينا خلفه في منى أيام التشريق فلم<sup>419</sup> يكبر
- [246] الربيع عن مسلم عن أبي / الشعثاء أنه كره المزايدة للمحرم
- [247] الربيع عن مسلم عن أبي الشعثاء في رجل أصاب صيدا متعمدا وهو محرم ثم عاد، قال: يحكم فيه ذوا عدل
- [248] الربيع عن مسلم عن مجاهد قال: أقبلت مرابطا حتى إذا كنت غير بعيد فلقيني ابن عمر خارجاً، فقال: يا مجاهد أين تريد؟ إني تركت هؤلاء كفاراً يضرب بعضهم رقاب بعض

[249] الربيع عن مسلم قال: إذا معك الرجل القملة انتقض وضوءه<sup>420</sup>

[250] الربيع عن حيان عن أبي الشعثاء قال: لو أن رجلاً رمى<sup>421</sup> رجلاً ببعرة عمدت لأقيد<sup>422</sup> به. وقال الكوفيون: لا قود إلا بالحديد<sup>423</sup>، وقال غيرهم<sup>424</sup>: إذا كانت

415 Q: 33:55

416 MSS: وطئ

417 E: يزوجه أو يهبها

418 MSS: استوفى

419 T: ولم

E has the next question first

420 MSS: وضوءه

- حشبة عظيمة يقتل
- [251] الربيع عن حيان عن أبي الشعثاء أنه كان يميز شهادة الأب لابنه صغيراً كان أو كبيراً، وحيان يردّها
- [252] الربيع عن ضممام عن أبي الشعثاء في / الصلاة على الجنائز<sup>425</sup> قال: إذا أنت T1: 15 كبرت خلف الجنائز فاقراً بفاتحة الكتاب، فإذا كبرت الثانية فاحمد الله وصل على النبي<sup>426</sup> صلى الله عليه وسلم، واستقبل شأن الميت<sup>427</sup> ما بين الثالثة والرابعة
- [253] الربيع عن ضممام عن حيان العامري قال: سألت أبا الشعثاء قلت: إذا خرجت إلى الصباخ فوجدت كبشا قد انكسر قرن<sup>428</sup> له والدم يجري على وجهه فاشترته؟ قال: انطلق فضحه<sup>429</sup>
- [254] الربيع عن ضممام أنه قال أتيت أبا الشعثاء يوم الجمعة، فلما حضره<sup>430</sup> الرواح قال لي: قم حتى نطلق إلى الجمعة، فقلت: أخلف الحاج؟ قال: نعم فإنما صلاة جامعة وسنة متبعة
- [255] الربيع عن أبي الرحيل أن رجلاً سأل أبا الشعثاء فقال: إن أخي هلك وترك في حجره عيالاً. بني أخي. ولهم مال، فما ترى<sup>431</sup> في زكاته؟ قال: زك<sup>432</sup> مال بني أخيك، وقال الكوفيون: لا زكاة في مال الطفل حتى تجب عليه الصلاة
- [256] الربيع عن أبي الرحيل قال: ذبحنا ثوراً بمكة ضحية نسكا، فاشتركتنا فيه. فقال لي أبو الشعثاء: بع<sup>433</sup> جلده، قال الكوفيون /: يُصدق به أحب إلينا، وإن انتفع به لم يضره شيء

T2: 25

421 MSS: وما

422 MSS: لأقاد

423 E: بحديد

424 T2 at the margin + ضممام

425 E: الجنائز

426 - T

427 T: الجنائز

428 E: قرنا

429 E: فضحيه

430 E: حضر

431 MSS: ترا

432 T1,E: زكي

433 T: بيعوا

- [257] الربيع عن أبي الرحيل أن أباه سأل أبا الشعثاء عن أم الرحيل أنها عجزت عن الصوم، فأمره بالصوم عنها،<sup>434</sup> ثم عاد إليه العام المقبل فأخبره أنها عجزت، فأمره بالإطعام، قال: فكان يأمرها عاماً بالإطعام وعاماً بالصوم<sup>435</sup>
- [258] الربيع<sup>436</sup> عن عمارة بن حيان قال: أقبلنا من واسط ومعنا أبو الشعثاء في سفينة، فأوماً لهما قاعداً بين أيدينا
- [259] الربيع عن عمارة قال: رأيت أبا الشعثاء يصلي تطوعاً محتبياً بعدما كبر، يومي<sup>437</sup> برأسه لهما
- [260] الربيع عن تميم بن حويص قال: أقبلتُ من سفر، فنزلت البيعة التي خلف الجسر الأصغر فلُقمت<sup>438</sup> به ليالي<sup>439</sup> على ذلك أصلي ركعتين، فسألت أبا الشعثاء عن ذلك، فقال: أصبت
- [261] الربيع عن تميم بن حويص عن أبي الشعثاء في رجل صلى على أرضه، فأراد رجل أن يشتريها، قال: إنما عليه الصدقة
- [262] الربيع قال: كتب عمر بن عبدالعزيز: أتت رجل صلى أو امرأة مصلية كانت لهم أرض تؤخذ منها الجزية؛ أخذ منها الصدقة ورفعت عنها الجزية
- [263] الربيع عن ضمّام عن أبي الشعثاء أنه لم ير<sup>440</sup> بأساً أن يكون للرجل غلام<sup>441</sup> يهودي<sup>442</sup> أو نصراني<sup>443</sup> يؤدي له<sup>444</sup> الغلة وكذلك لم ير<sup>445</sup> بأساً بالسواك الرطب للصائم<sup>446</sup> من أول النهار
- و قال<sup>447</sup> لا يأخذ المحرم من شعر المحل ولا من أظفاره

434 - E  
435 T2: بالصوم و عاماً بالإطعام  
436 - E  
437 MSS: يومي  
438 T: ففقت  
439 E: لياليا  
440 E: برا  
441 E: غلاماً  
442 E: يهودياً  
443 E: نصرانياً  
444 - E  
445 E: برا  
446 MSS: للصائم  
447 - T

- [264] الربيع عن عباس بن الحارث أن أبا عبيدة سأل أبا الشعثاء فقال إن لي مالا<sup>448</sup> كثيراً<sup>449</sup> فتحضر الزكاة<sup>450</sup> ولي دين على الناس منهم <الغني><sup>451</sup> ومنهم الفقير قال يا عبدالله إذا كان وقت الزكاة فما كان على من لا تقدر على الأخذ عليه<sup>452</sup> فدعه وما كان على ملي<sup>453</sup> مذك<sup>454</sup> فزكه<sup>455</sup> وقال الكوفيون لا تؤد<sup>456</sup> على الدين / حتى تأخذه فإذا أخذته أو<sup>457</sup> زكاته لما مضى من السنين
- [265] الربيع عن عباس بن الحارث والوليد بن يحيى<sup>458</sup> في رجل جعل امرأته طالقاً<sup>459</sup> إن لم يضرب عبده، قال: إن مضت أربعة أشهر قبل أن يضربه فقد / بانت T1: 16 منه، وإن مسها قبل أن يكفر بمبينة فقد حرمت عليه
- [266] الربيع عن عباس عن أبي الشعثاء في رجل أوصى لغير أقاربه، قال: يجوز لهم الثلث من الثلث ويُرد ثلثاً<sup>460</sup> الثلث على القرابة. وقال الكوفيون: يضعه حيث شاء
- [267] الربيع عن الوليد بن يحيى عن أبي الشعثاء قال: ما كان لليتيم من نخل أو زرع أو ماشية أو إبل أو بقر فإنه<sup>461</sup> تؤخذ منه الصدقة. وقال الكوفيون: ليس على اليتيم في شيء من ماله صدقة إلا في الأرض وحبها
- [268] الربيع عن الوليد بن يحيى عن أبي الشعثاء في رجل أراد أن يلبى بالحج فلبى بالعمرة أو أراد أن يلبى بالعمرة فلبى بالحج، فقال: ليس عليه من غلظه شيء، وقال الكوفيون: هو على ما لفظ به
- [269] الربيع عن الوليد بن يحيى عن أبي الشعثاء أنه يكره أن يُعطى<sup>462</sup> رأسُ المخرم

448 MSS: مال  
449 MSS: كثير  
450 MSS: الزكاة  
451 MSS: الحي  
452 - E  
453 T: مسلم  
454 T: مزكي E: حي  
455 E: فزكته  
456 MSS: تؤد  
457 E: أدى  
458 T: whenever this name occurs in T it is written: يحيى  
459 E: طالق  
460 MSS: ثلثي  
E has the next question before this one  
461 - T

إذا مات، وقال الكوفيون: لا بأس أن يغطي<sup>463</sup>

[270] الربيع قال: أخبرني الوليد بن يحيى أن أبا الشعثاء أمرهم بكفن الميت بلفافة

وإزار إذا لم يُؤخذَ غيرها ثم ييسط عليهما الإزار ثم يلف فيها، وإن كان قميص

فإزار<sup>464</sup> من فوق القميص

[271] الربيع عن الوليد عن أبي الشعثاء أنه لبث عامة عمره يفصل بين الوتر وبين

الركبتين، حتى كان آخر عمره وصل به

[272] الربيع عن الوليد عن أبي الشعثاء في رجل قذف القوم جميعا، قال: إن فرق

فُرق عليه، وإن كانت قذفة واحدة يجلد حدا واحدا.

[273] الربيع عن أبي الشعثاء أن امرأة يُقال لها هند أتت أبا الشعثاء فقالت: إن

رجلا خطب إلي جاريتي فأزوجه؟ قال: لا تزوجه، فعاد إليها الرجل فعادت إلى أبي

الشعثاء، فقال: /: لا تزوجه، فأتاها الرجل ثالثة فقال<sup>465</sup>: زوجينيها<sup>466</sup> ولا ركبت

الحرام، فأتت أبا الشعثاء، فقال: زوجيه «ذلك لمن خشي العنت منكم»<sup>467</sup>

[274] الربيع عن الوليد عن أبي الشعثاء أنه كان يعتكف في رمضان في غير المسجد

الجامع

[275] الربيع عن الوليد عن أبي الشعثاء أنه كان لا يرى<sup>468</sup> بجائزة<sup>469</sup> السلطان بأسا

إذا لم يكن حراما بعينه أو معتصبا

[276] الربيع عن الوليد وعباس عن أبي الشعثاء فيمن جمع نساءه<sup>470</sup> في ظاهر

واحد، قال: كفارة واحدة، وإن فرقهن كان عليه في كل امرأة كفارة<sup>471</sup>. وقال

الكوفيون: إن فرق أو جمع فعليه لكل واحدة ظهارة جديدة على حدة

[277] الربيع عن يحيى عن الضحاك بن مزاحم قال: ليس على أم الولد حد

462 MSS: يغطا

463 MSS: يغطا

464 E: إزار

465 - E

466 E: زوجيني إياها

467 Q: 4:25

468 MSS: يرا

469 T1,E: بجائزة

470 E: نساؤه

471 E واحدة +

[278] الربيع عن يحيى أن رجلا أتى<sup>472</sup> أبا الشعثاء بكتاب من رجل فحسبه عليه،

فقال: متى قدمت؟ فقال منذ أيام، > فقال: منذ أيام< والكتاب في يدك لم تدفعه

لي<sup>473</sup> عسى أن تكون لصاحبه فيه حاجة! ما أدب الأمانة

[279] الربيع عن يحيى عن أبي الشعثاء قال: لا بأس بالسلف في الحيوان إذا سمى<sup>474</sup>

ثنيا أو ربا أو سداسا وأجلا معلوما، وقال الكوفيون: السلف في الحيوان باطل

[280] الربيع عن أبي الشعثاء في رجل طلق امرأته فلقية رجل فقال: أطلقت امرأتك؟

قال: نعم، فلقية آخر فقال: طلقت<sup>475</sup> امرأتك؟ قال نعم، فلقية آخر فقال:

طلقت<sup>476</sup> امرأتك؟ قال: نعم، وهو ينوي التطليقة الأولى، فقال: هي نيته، وقال

الكوفيون: فيما بينه وبين الله إذا أراد الخبر الأول فواحد وفي الحكم قد بانث منه

[281] الربيع عن يحيى عن أبي الشعثاء في رجل قال لرجل: يا ابن الزانين / قال: E: 76/2

حد واحد

[282] الربيع عن يحيى بن قرة<sup>477</sup> عن أبي الشعثاء أنه نحى<sup>478</sup> عن العضبة

والمستأصلة من<sup>479</sup> ذنبها من<sup>480</sup> الغنم والإبل / والمتصرمة أظلافها والعرجاء<sup>481</sup>، ولم

ير<sup>482</sup> بكسر القرن بأسا

T1: 17

[283] الربيع عن يحيى بن قرة عن أبي الشعثاء أنه قال: ليس في مال لا يرجوه<sup>483</sup>

صاحبه زكاة<sup>484</sup> والمسروق كذلك

T2: 28

[284] الربيع قال: سمعت مسلم بن أبي كريمة قال: جاء رجل قارن في الحج فنهاه أبو

الشعثاء عن الإقران، قال: قد فعلت! قال: أما الآن انطلق فطفف<sup>485</sup> بالبيت وصل

472 MSS: أتا

473 - E

474 E: سميت

475 E: أطلقت

476 E: أطلقت

477 E: أن أبا

478 MSS: نها

479 - T2

480 - T2

481 MSS: والعرجا

482 E: يرا

483 E: يرجوا

484 MSS: زكاة

- ركعتين ثم تجدد إحراما آخر، ولم يأمره بالإحلال، وقال: قم على إحرامك  
 [285] الربيع عن يحيى أن رجلا خطب امرأة فسألوه: ألك امرأة؟ قال: لا، فأتى أبا  
 الشعثاء فسأله، فقال: كذبة وليس بطلاق  
 [286] الربيع عن ضممام عن {سدي} قال: قال كعب بن سوار: اتقوا الله قبل أن  
 ينشب الحرب، وأمرهم بالاعتزال {وإن شره يتاوله وسقمه}  
 [287] الربيع عن ضممام<sup>486</sup> قال: سمعت مسلما يقول: إن أبا الشعثاء قال: {يجزي  
 المكاتبين في الحج وفي الكراء}  
 [288] الربيع عن ضممام أن الحسن يأمر بالمتعة ويحث عليها  
 [289] الربيع عن ضممام عن مولى لأنس بن مالك قال: ما شرب أنس بن مالك  
 نبيذ الجر قط  
 [290] الربيع عن سليم<sup>487</sup> بن عبيد قال: حدثنا عبدالرحمن بن عبدالحبار قال: كنا  
 حول ابن عمر ذات يوم في عقب صلاة، فتذاكرنا دخولنا على أمير المؤمنين وحديثنا  
 إياه، فقال: لقد أكثرتم ذكر الأمير، فقال: ماذا تقولون إذا دخلتم عليه؟ فقالوا: نقول  
 ما يوافقنا<sup>488</sup> قال: هذا والله النفاق  
 [291] الربيع عن سليم بن عبيد قال سألت أبا الشعثاء إن لي إبلا<sup>489</sup> خمسا<sup>490</sup>  
 أفأحج الفريضة؟ قال: حجج فقد أوجب الله عليك الحج  
 [292] الربيع عن سليم بن عبيد قال: قلت لأبي الشعثاء: إن أبي منعني أن أحج  
 الفريضة فما تقول؟ قال<sup>491</sup>: فكم الصلوات؟ قال: قلت خمس، قال: أخبرني لو نحاك  
 أن تصلي واحدة أكنت تاركها؟ قلت: لا، قال: فحج  
 [293] الربيع عن عمارة أن أبا الشعثاء عطره يزيد<sup>492</sup> بن أبي مسلم فانطلق إلى النهر  
 فجعل يغسل ذلك العطر عنه وهو يقول ﴿أذهبتم طيباتكم في حياتكم الدنيا﴾<sup>493</sup>

485 مفطاف: MSS  
 486 - T  
 487 سليمان: E  
 488 نوافقه: E  
 489 إبيل: E  
 490 خمسة: MSS  
 491 فقال: T  
 492 زيد: MSS  
 493 Q: 46: 20

- [294] أبو الحارث عن الحازم<sup>494</sup> بن عمر عن أبي الشعثاء في رجل سأله عن أرض  
 فقال: أزرعها / بالنصف أو بالثلث أو بالربيع؟ قال: لا، وقال غيره: فاسد، وقال آخر: T2: 29  
 جائر<sup>495</sup> إذا دفعها بنصف ما يخرج منها من الزرع  
 [295] حازم عن تميم بن حويص قال: قال جابر بن زيد في مجوسي صلى على أرضه  
 وهي في يده قال: اشتروا منهم واقبلوا منهم الهدية، وإن منحوكم فآزرعوا في أرضهم  
 [296] عن تميم عن حازم قال أقبلت من بنات أدر في هزيمة بن الأشعث، والناس  
 دائمون<sup>496</sup>، فنزلت على الجسر الأصغر والنهر بيني وبين البصرة وأسمع الأذان للصلاة  
 وأصلي ركعتين، فلما أتيت ودخلت البصرة فبدأت بجابر بن زيد فسألته وأخبرته بفعلي  
 ذلك سبعة أيام، فقال: أصبت ووقفت<sup>497</sup>  
 [297] حازم عن تميم قال: كنت مع جابر بن زيد بمكان يقال له قصر النعمان بيننا  
 وبين المدينة فرسخان<sup>498</sup>، فركبنا الدواب فسرنا فرسخين، فمررنا بماء موضوع للناس  
 يشربون منه ويتوضؤون<sup>499</sup> منه وكان<sup>500</sup> يوم رداغ مطير وتوضأت أنا وجابر  
 [298] حازم عن تميم قال صحبت جابر بن زيد من بنات أدر، فلما كنا ببعض  
 الطريق وحضرت الصلاة ويوم مطر ورداغ، فأما جابر بن زيد قائما<sup>501</sup> بين أيدينا فركع  
 / وسجد أخفض من ذلك الركوع والسجود قائما<sup>502</sup>، صلينا ركعتين فانصرفنا، فقلت  
 لجابر: لم لا تسجد؟ قال: إذا كان مكان الطين ورداغ لم يكن سجود وإنما هي إتياء  
 [299] حازم عن تميم قال: سألت جابر بن زيد قلت: بيني وبين حال لي  
 فرسخان<sup>503</sup> وربما زرته وأقمت<sup>504</sup> معه اليوم واليومين والثلاثة وأكثر من ذلك، كيف

494 حازم: E  
 495 جابيز: T1,E  
 496 دايمون: T1,E  
 497 ووافقت: T  
 498 فرسخين: MSS  
 499 يتوضؤون: MSS  
 500 - E  
 501 قائما: MSS  
 502 قائما: T1,E  
 503 فرسخين: MSS  
 504 فنمت: E

- أصلي؟ قال: صلّ ركعتين، قلت: إنه رستاق واحد؟ قال: فاقم<sup>505</sup> أربعة فإذا خرّجت فصلّ ركعتين، قال حيان: قد بيّن لك ولكنك خاصمته
- [300] حازم عن تميم قال: جاء رجل يسأل جابر بن زيد عن الجبن، قال له: لا تأكل إلا ما سألت عنه فإن كان ذكياً فكلّ منه وإلا فلا تأكل / منه، وقال الكوفيون: T2: 30 كُمل ما لم تعلم ولا تسأل فإذا علمت فلا تأكل، قال الرجل لجابر: ما تقول في السمّن أيسأل عنه؟ قال: لا أدركنا أصحاب النبي<sup>506</sup> عليه السلام يسألون عن الجبن ولا يسألون عن السمّن
- [301] حازم عن تميم قال سألت جابر بن زيد قلت: أمسح على الخفين؟ قال: لا، قلت: الثلج؟ قال: اخلعهما، قلت: لا أستطيع، قال جابر: الآن جاء<sup>507</sup> العذر
- [302] حازم عن تميم بن حويص قال: أخبرني بعض أصحابنا أنه صحب جابر بن زيد غدوة قبل صلاة الفجر، فمروا بمسجد فأقام الصلاة وقام الإمام فاستفتح القراءة، فلما دخلوا إذا هو قد استفتح بسورة طويلة، فتأخر جابر<sup>508</sup> وصاحبه وترك الصف وصلى وحده، فلما انصرف قال: إن صلاة العتمة خوف وصلاة الغداة<sup>509</sup> فوت فينبغي أن يقرأ بسورة قصيرة
- [303] حازم عن تميم بن حويص قال: قمنا في بيعة ابن<sup>510</sup> زياد أياما خلف الجسر أصلي<sup>511</sup> فيه ركعتين حتى رجعت
- [304] حازم عن تميم قال صحبت جابر بن زيد من بنات أدر إلى البصرة، فأقمنا<sup>512</sup> في الطريق وقصر الصلاة
- [305] حازم عن تميم أن جابر بن زيد كره إمامين في المسجد الواحد لصلاة واحدة<sup>513</sup>.
- [306] حازم عن تميم قال: قال لي جابر بن زيد: إذا خلّفت هذا النهر الذي يلي

505 E: فأقيم  
506 MSS: النبيء  
507 - T1  
508 E: بن زيد +  
509 E: الغدوة  
510 MSS: بن  
511 E: ركعتين فيه  
512 T: وقمنا  
513 E: الواحدة

- شرف البصرة فصلّ ركعتين حتى ترجع
- [307] حازم عن تميم أنه سمع جابر بن زيد<sup>514</sup> يكره أن يتقبل الرجل الأرض البيضاء بشيء مسمى على أن يغرس فيها أو يزرعها فما أخرجت فينبه وبين أصحابها<sup>515</sup>، وقال غيره: هذا باطل، و<sup>516</sup> قال غيره: هو جائز<sup>517</sup> على ما اشتراط، ومن كرهه > قال < يكون كل ما في الأرض للزراع<sup>518</sup> والغارس ولهذا أجر مثل أرضه
- [308] حازم عن تميم قال سمعت جابر بن زيد يكره أن يأبي الرجل الأرض ذات النخل والشجر فيتقبلها على أن يزرعها ويقوم عليها فما أخرجت شطر ذلك وكذا T2: 31 وكذا / درهما
- [309] حازم عن تميم عن جابر بن زيد أنه يكره أن يتقبل الرجل الأرض البيضاء<sup>519</sup> على أن البذر والبقل من المتقبل وما أخرجت الأرض فينبهها
- [310] حازم عن تميم قال سمعت جابر بن زيد يقول في رجل أقرح رأسه كله فطلاه كلاً وأراد أن يتوضأ وقد تغطى الشعر بالدواء<sup>520</sup>، فلم يستطع أن ينزع الدواء<sup>521</sup> قال: بمسح عليه
- [311] حازم عن تميم قال: سمعت جابراً يقول في رجل برأسه جرح وعليه خرقة لا يستطيع أن ينزعها عنه من ثلج أو برد: <sup>522</sup>مسح فوق خرقة الجرح في الوضوء و كان<sup>523</sup> غيره يقول: فاسد إن لم يمسح رأسه وقال غيره يجزيه أن يمسح عليه
- [312] حازم عن تميم عن حيان في رجل أصاب رجله كسر<sup>524</sup> فحجرت<sup>525</sup> وأراد الوضوء فلم يقدر على أن ينزع الجبائ<sup>526</sup> / قال: يمسح عليها
- T1: 19

514 T يقول +  
515 E: صاحبها  
516 E: قد +  
517 MSS: جائز  
518 T2: للزراع  
519 MSS: البيضاء  
520 MSS: بالدوا  
521 T1,E: بالدوا  
522 - T  
523 T: قال  
524 - E  
525 E: مجبرة  
526 MSS: الجباير

- [313] حازم عن تميم قال سمعت جابرا يقول في المريض إذا لم يستطع أن يسجد على الأرض قال: يومي<sup>527</sup> إيماء ويكون السجود أخفض من الركوع.
- [314] أبو بكر بن نعامة قال: كنت مع أنس بن مالك - وأنس يومئذ مريض - فأتى أنساً مولى له فأكب عليه فقال: توفي جابر بن زيد، فقال: إنا لله و إنا إليه راجعون، ثم إنا لله و إنا إليه راجعون / توفي<sup>528</sup> أبو الشعثاء؟ قال له مولا: نعم والله اليوم، فقال: مات أعلم الناس بالله، يرحم الله جابر بن زيد
- [315] عمارة بن حبيب قال: سمعت ضممام بن السائب<sup>529</sup> يقول: سمعت جابر بن زيد يقول: نهي<sup>530</sup> رسول الله صلى الله عليه وسلم عن كراء<sup>531</sup> الأرض و<sup>532</sup> كراء الماء
- [316] عمارة بن حبيب قال سمعت أبي يقول: كنت عند جابر بن زيد يوم الجمعة وهو يسرح حمارة فقال: أريد إلى الجمعة، فقلت: إن الحجاج يؤخر الصلاة عن وقتها، فقال وإن حبسها<sup>533</sup> فانطلقنا فضلينا خلف الحجاج
- [317] عمر<sup>534</sup> قال: حدثنا حيان الأعرج قال: أتت امرأة إلى جابر بن زيد رضي الله عنه وغفر له فقالت: يا أبا الشعثاء إن أبي كان غائباً<sup>535</sup> وأنا<sup>536</sup> جعلت لله علي يمينا إن هو جاء لأجعلن في بيتي سرورا لا أنام ليلي حتى أصبح في هو وحديث، وقد جاءني فما تأمرني؟ قال: أمرك / أن تعمدني إلى هذه الليلة التي جعلت لله فيها عليك ما جعلت<sup>537</sup> فتعمدين في مسجد فتصلين وتذكرين الله وكفري يمينا

527 MSS: يومي  
528 E: مات  
529 T1,E: السائب  
530 MSS: نها  
531 T1,E: كرا  
532 E: عن +  
533 MSS: احبسها  
534 E: عمرو  
535 MSS: غائبا  
536 E: إني  
537 T: جعلته

- [318] عمر<sup>538</sup> قال: حدثنا صالح أبو<sup>539</sup> نوح قال: صمنا في شهر رمضان حتى إذا كنا في آخر يوم والناس يتجهزون لفطرمهم إذ رأى الناس الهلال ضحى، فتنادى الناس بالإفطار، ورهط عكوف في مسجد التحمد قالوا: يا صالح أنت رسولنا إلى جابر بن زيد، فأتيته وأخبرته وكنت فيمن رآه<sup>540</sup> قال: بين يدي الشمس أو خلفها؟ قال: قلت بين يدي الشمس، قال: فإن يومكم<sup>541</sup> هذا من رمضان قل<sup>542</sup> لأصحابك فليتصوموا صومهم وليتعدوا في مسجدهم، وقال الكوفيون: لا بأس به.
- [319] عن جابر أنه كره أن تلبس الحزمة القرط والسوار، أبو عبيدة قال: سألت جابر بن زيد قال: يكره، ثم أعدت<sup>543</sup> عليه فأعرض عني
- [320] أبو<sup>544</sup> الأشهب جعفر بن حيان قال: سألت جابر بن زيد عن القنوت، قال: الصلاة كلها قنوت فأما الذي يصنعون فما أدري ما هو
- [321] أبو الأشهب قال: تعدت<sup>545</sup> امرأته من يوم مات
- [322] همام<sup>546</sup> بن يحيى قال: صلى جابر بن زيد على جنازة فسلم تسليمه واحدة<sup>547</sup> أولها عن يمينه وآخرها<sup>548</sup> عن يساره
- [323] وقال جميل الخوارزمي: أخبرنا الربيع بن حبيب عن أبي عبيدة عن جابر بن زيد عن ابن عباس أنه قال: لا تؤكل ذبيحة الأكلف ولا يجوز تزويجه ولا شهادته ولا يصلى خلفه، وقال جميل: إن صلى<sup>549</sup> خلفه أحد فعليه الإعادة، وإن تزوج واختن قبل أن يدخل بها فلا بأس، وإن جامعها قبل أن يختن فكان الربيع يقول: التفریق بينهما ولا يجتمعان أبدا. وقال الكوفيون: تؤكل ذبيحته ويصلى خلفه وتقبل شهادته

538 E: عمرو  
539 E: أبي  
540 MSS: رءاه  
541 E: يومك  
542 E: فقل  
543 T: عدت  
544 E: أبي  
545 E: بعث  
546 E: ضممام  
547 - E  
548 MSS: ءاخرها  
549 - E

إذا كان عادلا، وترويجه جائز<sup>550</sup>

T1: 20 [324] وقال جميل أيضا /: حدثنا أبو أيوب وائل<sup>551</sup> بن أيوب عن الربيع بن حبيب

عن أبي عبيدة عن جابر بن زيد عن ابن عباس أن من وجد من الغنيمة خمسة

دنانق<sup>552</sup> ففيها الخمس، يخرج منها خمسها دانق ، وقال جميل أيضا: إن أصاب ترابا

T2: 33 وعالجه حتى صار فضة أو ذهباً فليس فيها خمس / وهو لمن أصابه كله إلا أن يكون

يبلغ حد الزكاة<sup>553</sup>

550 MSS: جائز

551 MSS: وائل

552 MSS: دنانيق

553 T1,E: الزكاة

## CHAPTER THREE

### NOTES ON THE EDITED TEXT

#### I. Table of Topics of *Āthār al-Rabī' b. Ḥabīb*

(Listed in the traditional order found in works of *fiqh* and *ḥadīth*)

Topic	Traditions	Total number
<i>Tafsīr</i> (exegesis)	[169], [239]	2
<i>Tahārāt</i> (acts of purification)	[34], [36], [41], [185], [235], [243], [249], [301], [310], [311], [312], [323]	12
<i>Ṣalāt</i> (prayer)	[9], [38], [42], [65], [66], [91], [155], [158], [175], [188], [200], [211], [212], [252], [254], [258], [259], [260], [271], [297], [298], [299], [302], [304], [305], [306], [313], [316], [320], [322]	30
<i>Zakāt</i> (alms-tax)	[13], [30], [114], [186], [222], [223], [255], [264], [267], [283], [324]	11
<i>Ṣawm</i> (fasting)	[10], [29], [32], [112], [191], [257], [263], [318]	8
<i>I'tikāf</i> (retreat while fasting for devotion)	[134], [135], [137], [141], [145], [146], [196], [218], [227], [274]	10

Topic	Traditions	Total number
<i>Hajj</i> and 'Umra (pilgrimage)	[3], [12], [15], [16], [17], [19], [39], [40], [43], [54], [56], [58], [67], [74], [75], [76], [82], [83], [85], [94], [99], [113], [136], [154], [159], [160], [164], [167], [170], [176], [177], [181], [189], [219], [226], [228], [245], [246], [247], [256], [263], [268], [269], [284], [287], [291], [292], [319]	48
<i>al-Dahāyā</i> (sacrifices-animal slaughtering)	[74], [115], [253], [282]	4
<i>Shurūt al-dhabh</i> (conditions for slaughtering)	[25], [63], [106], [107], [108], [180], [197]	7
<i>al-Buyū'</i> (sales and transactions)	[60], [203], [213], [214], [242], [244], [279]	7
<i>al-Muzāra'a wa al-musāqāt</i> (agriculture and irrigation)	[96], [184], [294], [307], [308], [309], [315]	7
<i>Zawāj</i> (marriage)	[4], [23], [24], [49], [88], [89], [90], [92], [97], [148], [182], [183], [187], [204], [240], [273], [288]	17
<i>Firāq</i> (divorce of various kinds)	[2], [5], [7], [8], [22], [27], [31], [37], [44], [62], [84], [97], [111], [138], [139], [147], [149], [150], [156], [161], [162], [173], [199], [201], [221], [234], [265], [276], [280], [285]	30
<i>al-Nafaqa</i> (maintenance)	[35], [77], [151], [152], [202], [225]	6
<i>al-'Idda</i> (the time a divorced woman or a widow should stay before getting married again)	[78], [93], [321]	3

Topic	Traditions	Total number
<i>al-Faqd</i> (missing in obscure circumstances)	[35], [163], [165], [166]	4
<i>al-Jināyāt</i> (criminal law)	[1], [11], [14], [26], [27], [28], [33], [48], [50], [51], [53], [64], [70], [95], [98], [100], [117], [E1], [E2], [153], [178], [192], [193], [195], [206], [207], [208], [216], [220], [224], [231], [232], [233], [250], [272], [277], [281]	37
<i>al-Shuhūd</i> (witnesses)	[61], [101], [122], [236], [251]	5
<i>Huqūq al-mayyit</i> (rights of the dead)	[6], [139], [140], [200], [252], [269], [270]	7
<i>al-Waṣāyā</i> (wills and testaments)	[85], [127], [266]	3
<i>al-Mirāth</i> (inheritance)	[4], [22], [44], [45], [47], [142], [157], [230]	8
<i>al-Aymān wa al-nudhūr</i> (oaths and vows)	[20], [21], [123], [168], [170], [237], [317]	7
<i>al-Aṭ'ima wa al-ashriba</i> (food and drink)	[46], [171], [198], [238], [289], [300]	6
<i>al-'Itq</i> (manumission of slaves)	[52], [79], [97], [109], [110], [118], [128], [241]	8
<i>Mu'āmalāt al-raqīq</i> (deals and matters of slaves)	[55], [57], [68], [71], [72], [80], [81], [102], [103], [104], [105], [116], [119], [124], [125], [126], [129], [130], [131], [132], [133], [161], [172], [174], [194], [205], [209], [210], [215]	29
<i>Aḥkām ghayr al-muslimīn</i> (matters of non-Muslims)	[69], [73], [107], [179], [190], [217], [229], [261], [262], [263], [295]	11
<i>al-Akhlāq</i> (good manners)	[86], [87], [143], [144], [278]	4

Topic	Traditions	Total number
<i>al-Siyar wa al-aḥdāth</i> (political and historical events)	[18], [59], [248], [275], [286], [290], [293], [296], [303], [314]	10

## II. Notes on Individual Sections of the Arabic Text

[1] For biographies of the transmitters of *Āthār al-Rabī' b. Ḥabīb* see Chapter IV, pp. 137–151 of this study. The opinion that both husband and wife are entitled to inherit from each other even if the husband accuses his wife of unchastity (*qadhafa*) but the procedure of *li'ān*<sup>1</sup> is disturbed by the death of one of the partners is also the opinion of Ibrāhīm al-Nakha'ī and 'Aṭā' (see Ibn Abī Shayba, *al-Muṣannaḥ*, 4:168–169). Another opinion attributed to Jābir b. Zayd is that the wife inherits from her husband unless she refuses to either affirm the accusation or take the oath (cf. *Muṣannaḥ 'Abd al-Razzāq*, 7:107–109 and Ibn Abī Shayba, *al-Muṣannaḥ*, 4:169).

[2] This statement is derived from the Qur'ān (As regards those who make (their wives) unlawful to themselves by *zihār*<sup>2</sup> and wish to free themselves from what they uttered, (the penalty) in that case is the freeing of a slave before they touch each other... And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And he who is unable to do so, should feed sixty destitute persons (*masākīn*.) Q: 58:3–4. The majority of scholars emphasize that the *kaffāra* should be made before marital intercourse. For the Ibāḍīs see Abū Sa'īd al-Kudamī, *al-Jāmi' al-mufīd min aḥkām Abī Sa'īd*, 4:225 in contrast to Abū Ḥanīfa as in al-Qurṭubī, *al-Jāmi' li-aḥkām al-Qur'ān*, 17:283.

[3] This is an agreed view amongst most, if not all, *fuqahā'* of Muslim schools. For Ibāḍīs Ibn Ja'far says: *wa yastabdilu bi-himā ...* he (the *muḥrim*) can change them (*iḥrām* clothes). (See Ibn Ja'far, *al-Jāmi'*, 3:307.) For other schools of law Ibn Abī Shayba narrates that the Prophet changed at al-Tan'īm

1 The husband affirms before court under oath that his wife has committed unchastity or that the child born of her is not his, and she affirms under oath the contrary.

2 The use of the formula "you are for me (as untouchable) as the back (*zahr*; *pars pro toto*, for body) of my mother", Schacht, *An Introduction to Islamic law*, (Oxford 1982), p. 165.

while he was *muḥrim* (*al-Muṣannaḥ*, 3:346 (14785)) and ascribes the same opinion to Ibrāhīm al-Nakha'ī, Thābit b. Jubayr, 'Aṭā' and Ṭāwūs (*op. cit.*, 14786–90).

[4] This has been a debatable issue from the first century of *Hijra* onwards. The key question is regarding the *mahr* or *ṣadāq* (dowry) of the widow if her husband died before the *dukhūl* (consummation) without determining the amount of the dowry. An identical tradition with a slight difference is to be found in Ibn Ja'far, *al-Jāmi'*, 5:379. It reads:

ربيع عن ضمّام عن أبي الشعثاء في رجل تزوج امرأة ولم يفرض لها صداقاً ثم مات، فقال: لا صداق لها وعليها العدة ولها الميراث. قال ضمّام: فقلت لأبي الشعثاء إن ناساً يزعمون أن ابن مسعود قال: لها الميراث وعليها العدة ولها الصداق. قال لو نجد هذا عن ابن مسعود عن ثقة لأخذنا به. قال غيره: لعل هذا الرد على المسألة الأولى.

Ibn Ja'far (or maybe a commentator on his book) does not mention his source for this tradition. Apart from that, he gives the additional information that Ḍumām was quoting Ibn Mas'ūd's opinion to Jābir. He then concludes by adding that this could be a refutation of a former tradition which seems to be the opinion of Abū Sa'īd [probably al-Kudamī] when he says on the same problem, *op. cit.*, p. 378:

وعندي أن عامة قول أصحابنا أن لها الميراث وعليها العدة، ومعني أن في بعض قولهم أن لها صداق المثل ولها الميراث وعليها العدة.

This means that among Ibāḍī scholars there is no agreement on the issue of whether the widow ought to have a dowry as it has not been named (specified) or not, although they all agree that she has the right to inherit from her ex-husband and has to keep the *'idda* (waiting-period of a woman after termination of marriage). (See al-Janāwunī (lived in the first half of the fifth/eleventh century), *Kitāb al-nikāḥ*, p. 87.) However, Jābir's view is also ascribed to Imām al-Shāfi'ī (*al-Umm*, 7:172) and a similar statement to what is reported here to Jābir b. Zayd (*law najidu dhālika... la-akhadhna bih* – if we were to find this attributed to ibn Mas'ūd by a credible, trustworthy [transmitter] we would adopt it) is also ascribed to al-Shāfi'ī (*wa bi-hādha naqūlu illa an yathbuta ḥadīth Barwa'* and this what we say unless *ḥadīth Barwa'* is authentic). By contrast, the Ḥanafīs and Mālikīs do rely on the *ḥadīth* of Barwa' b. Wāshiq, which states that the Prophet has declared that [in such a case] the woman has the right to a dowry a woman like her could properly expect, together with the inheritance; and she has to keep the *'idda*. (See al-Shaybānī, *al-Ḥujja*, 3:335, and Ibn Abī Shayba, *al-Muṣannaḥ*, 3:39). Tradi-

tion [4] also includes a problematic opinion ascribed to Abū 'Alī (who seems after a careful search in early Ibādī sources to be Mūsā b. 'Alī b. 'Azra al-Izkawī (177/793–230/844), one of the distinguished influential Omani scholars of his time [al-Baṭṭashī, *Ithāf al-a'yān*, 1:238–248].) Abū 'Alī claims that there is a consensus between jurists (*ijmā' min al-fuqahā'*...) that the widow in this case is entitled to a fair dowry. I would suggest that the term *ijmā'* here is not used by Abū 'Alī in the technical sense of denying any disagreement on the issue but to emphasize that 'the *ḥadīth* of Ibn Mas'ūd' is authentic; hence there should be no other opinion except on the authority of the Prophet. However, this statement ignores another view ascribed to Abū 'Alī elsewhere. (See Ibn Ja'far, *al-Jāmi'*, 6:214–215).

[5] From [22] and [44] below it is obvious that this tradition is dealing with a wife with an actual marital status, consummation (*madkhūl bi-hā*). Jābir's opinion which later became the standard Ibādī view is that the right of the wife to inherit her husband cannot be frustrated by repudiation, because the wife who has been definitely repudiated (*ṭalāq bā'in*) during the illness in which the husband died inherits if she is still in her 'idda (Ibn Ja'far, *al-Jāmi'* 6:224, 422 where Ibn Ja'far emphasizes that an intention of causing harm (abandoning of inheritance) from the husband to his wife should be observed in him pronouncing *ṭalāq* during his fatal illness). Parallel to this opinion is that of Abū Ḥanīfa. (See al-Shaybānī, Muḥammad b. al-Ḥasan, *al-Hujja* where he ascribes this view to *ahl al-'irāq* (people of Iraq) 4:78–82; Mālik, *al-Muwatta'*, 2:571 (1183); and 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:61.)

[6] On the question of a spouse carrying out *ghusl al-mayyit* of the other partner, most scholars say that it is permissible. (See al-Kindī, *Bayān al-shar'*, 16:46, Ibn Qudāma, *al-Mughnī*, 2:398). Ḥasan al-Baṣṣī, al-Sha'bī and Abū Ḥanīfa do not allow such an undertaking because, according to them, the marital tie between the spouses is ended by the death of one of them. (See *Muṣannaḥ 'Abd al-Razzāq*, 3:409, and Ibn Abī Shayba, *al-Muṣannaḥ*, 2:456).

[7] This is the first tradition reported by Abū Nūḥ. (See Chapter IV, p. 140 below). It is another argument that has remained controversial since the time of the Companions. The opinion of Jābir b. Zayd stated here, although it presents the view of the majority of Ibādī scholars is thoroughly questioned by Ibn Baraka. (See *al-Jāmi'*, 2:195, and al-Kindī, *al-Muṣannaḥ*, 38:43). Most Sunnī Imāms accept the opinion of Jābir b. Zayd that the husband may take more than the *mahr* (dowry) that he paid if the wife proposes *khul'*.<sup>3</sup> (Cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 4:124–125, *Muṣannaḥ 'Abd al-Razzāq*, 6:501–

504). Imām al-Shāfi'ī on the other hand accepts the opposite view. (See *al-Umm*, 5:196–197).

[8] On the basis of Q: 2:236 (... But bestow on them a provision (*mut'a*), the rich according to his means and the poor according to his means, a provision of reasonable amount is a duty on the doers of good ...) and Q: 2:241 (And for repudiated women, provision (should be provided) on a reasonable (scale). This is a duty on those who fear God (*al-muttaqūn*)). There is no determination of the amount required to be paid or given. This tradition shows that Jābir gave generously at a time when the usual provision is low. The same tradition is quoted in many Ibādī sources. (See Ibn Ja'far, *al-Jāmi'*, 6:215; al-Kindī, *Bayān al-shar'*, 47:103, and al-'Awtabī, *al-Diyā'*, 8:369, 412.) For different opinions on the amount of the *mut'a* payable to the repudiated women, see Ibn Abī Shayba, *al-Muṣannaḥ*, 4:140–142.

[9] Reciting only *al-Fātiḥa* (Q: 1) in the prayers of *al-zuhr* and *al-'aṣr* is one of the *fiqh* features of the Ibāḍiyya. Ibn Baraka makes it a distinctive view between "...*aṣḥābinā* [our fellows, i.e. Ibāḍīs]" and those who are "*mimman khālafanā* [of our opponents]" and he claims that there is consensus – *ijmā' al-umma* – about this view. (See Ibn Baraka, *al-Jāmi'*, 1:477–479). Although Ibn Baraka puts forward a very sensible argument, his claim about consensus is far from reality. (Cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 1:318, and *Muṣannaḥ 'Abd al-Razzāq*, 2:126).

[10] For more opinions on the use of *siwāk* during the days of *Ramaḍān*, see Ibn Baraka, *al-Jāmi'*, 2:14; Ibn Ja'far, *al-Jāmi'*, 3:184, 224; Ibn Abī Shayba, *al-Muṣannaḥ*, 2:294–296, and *Muṣannaḥ 'Abd al-Razzāq*, 4:200–203.

[11] Although the beginning of this tradition is dealing with the penalty of a special degree of wounds, *muwaḍḍiḥa* (a wound that shows the bone), it concludes with a general rule on all wounds (*jirāḥāt*) caused to slaves. A conclusion that was accepted by all Ibādī authorities is that the percentage of the blood-money paid to them is like the percentage paid to free people, though the total value of their *diyya* will be less. (See al-Kudamī, *al-Jāmi'* *al-muḥḍid min aḥkām Abī Sa'īd*, 5:280; al-Kindī, *al-Muṣannaḥ*, 41:161; *Muṣannaḥ 'Abd al-Razzāq*, 10:3, and Ibn Abī Shayba, *al-Muṣannaḥ*, 5:388).

[12] The same two opinions are found in many sources but without ascription in any of them to Jābir b. Zayd. (Cf. Ibn Ja'far, *al-Jāmi'*, 3:315–316, Ibn Baraka, *al-Jāmi'*, 2:57). It is not clear who is quoted in the second opinion mentioned in this tradition "*wa qāla ghayruḥ*...". It could be that a narrator of the *Āthār al-Rabī' b. Ḥabīb* was commenting on the book by showing other Ibādī or even non-Ibādī views. The latter are sometimes more explicit when a statement of Jābir is followed by another opinion ascribed to the Kufans, see

3 A form of divorce by which the wife redeems herself from the marriage for a consideration (Schacht, *Introduction*, p. 164).

for example [28], [31], [40], [201]. Both views are also ascribed to Ibrāhīm al-Nakha'ī, Ḥammād, Mujāhid, 'Aṭā' and Ṭāwūs. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 3:404–406).

[13] This is one of three traditions in this book that discuss *zakāt al-ḥajj*. The other two are [186] and [223]. Unlike the other two, the term used here is *zakāt al-ḥajj* and not *ṣadaqat al-ḥajj*. Muslim and al-Bukhārī in their *Ṣaḥīḥs* only occasionally use *zakāt* instead of *ṣadaqa* (al-Bukhārī tends to use *ṣadaqa* largely in his subtitles of the book). Al-Sālimī comments on these names by saying that *zakāt al-ḥajj* and *ṣadaqat al-ḥajj* and *ḥajj al-ʿabdān* are simply names for the same thing (*Sharḥ al-Jāmi' al-ṣaḥīḥ*, 2:58). However, this tradition here is about the timing of *zakāt al-ḥajj* and it is a Prophetic tradition in other sources such as Muslim (*Ṣaḥīḥ*, 2:679 [986]) and al-Bukhārī (*Ṣaḥīḥ*, 2:547 [1432]).

[14] *Diya* (blood-money), whether *mughallaḥa* (heavy), for intentional homicide, or *mukhaffafa* (light), for unintentional, amounts to one hundred camels. There is a slight disagreement on the determination of the quality of the camels for both *diyas*. The Ibādīs choose the opinion of Jābir stated here (see Ibn Baraka, *al-Jāmi'*, 2:514). This is also reported in Ibn Abī Shayba, *al-Muṣannaḥ*, 5:346 (26748), as a Prophetic saying. He also gives other opinions.

[15] The early twentieth century Ibādī scholar Aṭfayyish quotes this opinion of Jābir b. Zayd without mentioning his authority (see *Sharḥ al-nīl*, 4:60), but states that Jābir's opinion is disapproved of. Al-Qurṭubī indeed ascribes the same opinion to Ṭāwūs and says that it is a very strange (أشد شذوذاً) view and that no scholar has uttered it (*al-Jāmi' li-ahkām al-Qur'ān*, 2:390). There are other places below in which Jābir gives opinions that corroborate his opinion here that if someone performs *'umra* before the months of the *hajj* when he was able to make *hajj* during its months of the same year he is considered as doing the *mut'a* rite of the *hajj*. Cf. [136] and [189].

[16] As in many other traditions, there are some conditions that are understood though not mentioned. The *mutamatti*<sup>4</sup> is asked to sacrifice an animal, but if he is not capable of doing so he has to fast ten days: three while he is doing *hajj* and the rest (seven days) when he returns home (Q: 2:196). From this tradition Jābir seems to specify the end of the three days to be the day of 'Arafa (the ninth of *Dhū al-ḥijja*) while Maḥbūb b. al-Ruḥayl (a distinguished Omani scholar who was contemporary with al-Rabī') says that they could be

4 A pilgrim who performs *'umra* first and then *hajj* and in-between the two is free of all prohibitions that pilgrims are asked to avoid.

at any time before the day of 'Arafa. (Cf. al-Jīṭālī (d.750/1349), *Qawā'id al-Islām*, 2:174, and Ibn Abī Shayba, *al-Muṣannaḥ*, 3:153).

[17] See [16] above. Note that the opinion attributed here, for the first and the only time, to *ahl al-Ḥijāz* is the opinion of Ibn 'Umar and 'Ā'isha (Ibn Abī Shayba, *al-Muṣannaḥ*, 3:154) and 'Alī (al-Qurṭubī, *Tafsīr*, 2:400). It is also approved by Imām Mālik (*al-Mudawwana al-kubrā*, 2:389), which clearly justifies the use of this term '*wajaba 'alā*'. (See also Chapter IV below, p. 130).

[18] See Chapter I, p. 17 of this study. For detailed discussion on the assassination of the third Caliph 'Uthmān b. 'Affān from an Ibādī standpoint see al-Qalḥātī, *al-Kashf wa al-bayān*, 2:220–228.

[19] Like [16] and [17] above, this tradition is dealing with *ṣawm al-mutamatti*, but about the other seven days that he has to fast when he returns home. It seems from the statement of Jābir that he does not allow fasting while the pilgrim is on his or her journey back home. This is an opinion which adheres to the apparent meaning of the Quran (... he should observe *ṣawm* three days during the *hajj* and seven days after his return to (his home) making ten days in all ...). Q: 2:196. Many scholars state that a pilgrim in such a condition may start fasting before arriving home. (See for example, al-Jīṭālī (d.750/1349), *Qawā'id al-Islām*, 2:174, and Ibn Abī Shayba, *al-Muṣannaḥ*, 3:153).

[20] According to Q: 5:89 (... for its expiation (a deliberate oath) feed ten destitute persons (*miskīn*), on a scale of the average of that with which you feed your own families ...) the amount of the food is not precisely determined. Most *fuqahā'* specify *niṣf ṣā'* for each *miskīn*, cf. Ibn Ja'far, *al-Jāmi'*, 3:424; Ibn Baraka, *al-Jāmi'*, 2:98–99. This opinion is ascribed to 'Alī, 'Ā'isha, 'Umar, Sa'īd b. al-Musayyab, Ibrāhīm al-Nakha'ī and Mujāhid while Jābir's view mentioned here is the opinion of Ibn 'Abbās, Zayd b. Thābit, 'Abd Allāh b. 'Umar and 'Aṭā'. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 3:70–73, and *Muṣannaḥ 'Abd al-Razzāq*, 8:506–510).

[21] Observing *ṣawm* of three days is the last alternative in the *kaffāra* of one's oath. In Q: 5:89 there is no mention of whether these three days must be consecutive or not, though Ubay's non-canonical reading is (*fa-ṣiyāmu thalāthati ayyāmin (mutatābi'āt)*). This is parallel to what is ascribed to Jābir here and seems to be a point of agreement. Probably that is why it is not followed by showing another opinion as the case with [20] above. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 3:88).

[22] It is fascinating that on this particular issue there are different views, and Jābir b. Zayd has his own opinion which is not approved by his student Abū 'Ubayda, who in his turn has a view that is not accepted by his student Abū Šufra, whose own opinion is disregarded by his contemporary Muḥammad b. Maḥbūb (see al-Kindī, *al-Muṣannaḥ*, 29:254–255.) The disagreement on the effect of the repudiation of a woman before *dukhūl* (consummation of marriage) during the death illness of the husband is a debatable issue within all Sunnī schools as well (cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 4:10).

[23] It is clear that this statement is placed after the last one to avoid the suggestion that what is said there about the invalidity of some actions of the sick person could also be true about him getting married. Jābir, al-Ḥasan, Ibrāhīm, and al-Sha'bī allow it whereas 'Aṭā' and al-Zuhrī say the opposite. (Cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 4:24–25).

[24] Although this question seems more relevant to the kind of subjects discussed within the Ḥanafī school, I could not trace any parallel to this tradition except in *al-Umm* of al-Shāfi'ī (5:22) where he states that there is "no marriage for the unborn".

[25] This quotation of Jābir's opinion is extant in many Ibādī early references but without indication of the transmitters. (See Ibn Ja'far, *al-Jāmi'*, 3:577; al-Bisyawī, *Jāmi'*, 3:208–209, and cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:481–483).

[26] This opinion of Jābir is approved by Ibādīs. (Cf. al-Kindī, *al-Muṣannaḥ*, 40:100). However al-Ḥasan al-Baṣrī and al-Sha'bī say that Muslims and *Dhimmīs* are alike in the *ḥadd* of *qadhif* (penalty of false accusation of unchastity). (See Ibn Abī Shayba, *al-Muṣannaḥ*, 5:486).

[27] 'Abd Allāh b. 'Amr, al-Zuhrī, 'Aṭā', Mujāhid and Ibrāhīm are of the same view that is ascribed to Jābir here. It relies on a Prophetic *ḥadīth*. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:126–128.) On the other hand Muḥammad b. Maḥbūb (Ibādī) (see al-Kindī, *al-Muṣannaḥ*, 40:113), Qatāda, al-Ḥasan and Sa'īd b. al-Musayyab say the opposite ('Abd al-Razzāq, *op. cit.*).

[28] There is no disagreement on the *ḥadd* of the *qādhif* being eighty lashes, but the disagreement that occurs is on how powerful should they be. (Cf. al-Kindī, *al-Muṣannaḥ*, 40:95; Ibn Abī Shayba, *al-Muṣannaḥ*, 5:529).

[29] This, as far as I know, is the earliest source that gives the name of Jābir's wife Āmina. Regarding the question set out here, see al-Kindī, *al-Muṣannaḥ*, 7:115; Mālik, *al-Muwaṭṭa'*, 1:296; al-Shaybānī, *al-Ḥujja*, 1:381. On the other hand, the opposite opinion has been also ascribed to Jābir b. Zayd in some

early Ibādī works such as Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 1:287; al-Jiṭālī, *al-Qawā'id*, 2:102.

[30] Although Ibādīs agree on the view of Jābir quoted here (see al-Kindī, *al-Muṣannaḥ*, 6:132), they do not mention his statement, as far as I can discover. (See, for example, Ibn Ja'far, *al-Jāmi'*, 3:101; al-Bisyawī, *Jāmi'*, 2:177–180). However, Jābir's opinion is reported in non-Ibādī sources alongside authorities that take the same position. (Cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 2:383–384, and *Muṣannaḥ 'Abd al-Razzāq*, 4:81).

[31] For definition of *zihār* see the note on [2] above. *Īlā'* is an oath of abstinence from intercourse by the husband (Schacht, *Introduction*, 164). The majority of Ibādī scholars follow the same opinion as Jābir that if four months pass and the husband does not make the *kaffāra* of *zihār* his wife is considered repudiated. However, there are a few other Ibādī scholars that say there is no timing for the *zihār*. (See al-Kindī, *al-Muṣannaḥ*, 38:147, and al-'Awtabī, *al-Diyā'*, 10:72). Sa'īd b. al-Musayyab, al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakha'ī, Ṭāwūs, al-Sha'bī, Ḥammād hold this viewpoint, and it is ascribed to 'Alī as well. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 4:107–108).

[32] A detailed summary with all the famous opinions and evidence is to be found in Ibn Baraka, *al-Jāmi'*, 2:6–8, and *Muṣannaḥ 'Abd al-Razzāq*, 4:271–275.

[33] See [14] above. Jābir has reported on the authority of Ibn 'Abbās that the Prophet says: "the *diyya* is one hundred camels". (See al-Rabī', *Musnad*, 1:259 (661), and cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 5:344–346.) It seems that behind this determination of the *diyya* comes what should be considered as a normative standard of the *diyya* (see al-Sālimī, *Sharḥ al-jāmi' al-ṣaḥīḥ*, 3:426–427).

[34] Similar Prophetic *ḥadīths* are to be found in al-Rabī', *al-Musnad*, 1:221–222 transmitted by Jābir b. Zayd. (Cf. Mālik, *al-Muwaṭṭa'*, 1:61–63; Ibn Baraka, *al-Jāmi'*, 2:200).

[35] Ibādī sources such as Ibn Ja'far (*al-Jāmi'*, 6:410) and al-Kindī (*al-Muṣannaḥ*, 28:282–283) agree with the opinion of Jābir stated here about the maintenance of the wife of a *maṣfūqūd* (person missing in apparently disastrous circumstances) but without any reference to Jābir. However, Ibn Abī Shayba (*al-Muṣannaḥ*, 4:143) quotes Jābir b. Zayd narrating that Ibn 'Abbās and Ibn 'Umar differed on this matter. Jābir's opinion is the same as Ibn 'Umar's.

[36] See [34] above. (Cf. al-Kindī, *al-Muṣannaḥ*, 39:37, and al-Shāfi'ī, *al-Umm*, 1:61).

[37] This, as are questions [101], [103], [118], [E1] and [E2] below, is based on the opinion that an *umm walad* (a female slave who has borne a child to her owner) is no different from an *ama* (female slave). (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:193; Ibn Baraka, *al-Jāmi'*, 2:246, 252–253). This is a view shared by 'Alī, Ṭāwūs in one narration, and by Ibrāhīm, while al-Ḥasan, al-Zuhrī, al-Sha'bī and Ḥammād claim that an *umm walad* cannot meet the required *'itq* (manumission) of the *'kaffāra* of *zihār*' (see [31] above) and of homicide (Ibn Abī Shayba, *al-Muṣannaf*, 3:77).

[38] There is a similar tradition with more details in Ibn Baraka, *al-Jāmi'*, 1:489–490. It reads: “Jābir b. Zayd saw somebody performing his prayer on [the top of] the *Ka'ba*, and said: “Who is the person praying? He has no *qibla*”. There are other scholars who dislike the performance of the prayer on the top of the *Ka'ba*, such as 'Aṭā' and al-Zuhrī (cf. 'Abd al-Razzāq, *al-Muṣannaf*, 5:85–86). On the other hand, there are other scholars who say that it is alright to do so, as can be understood from al-Shāfi'ī (*al-Umm*, 1:170).

[39] *Aṭaba* in this context means to be affected by an illness that might cause *halāk* (death). (See *Lisān al-'arab*, 1:610). Most scholars say the same. (See Ibn Ja'far, *al-Jāmi'*, 3:387; Ibn Abī Shayba, *al-Muṣannaf*, 3:400).

[40] Unlike [39] above, here the *badana* (a camel to be sacrificed in Mecca) is sent with somebody, though it is also not an obligatory matter. Thus Jābir b. Zayd does not allow the person taking the animal [deputy] to eat any of it, while 'Aṭā' and Sa'īd b. Jubayr permit him to eat and to feed destitute people as well. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 3:401). On the other hand, if the *badana* sent is an obligatory one, as in the case of a *mutamatti'* (see [16] above), he has to replace it with another one. This is why the person taking the animal is allowed to eat from it according to Jābir, in contrast to a Prophetic tradition narrated in Muslim (*al-Ṣaḥīḥ*, 2:962). This could explain the last sentence in this tradition “... *wa kāna al-kūfiyyūn yakrahūnah* – the Kufans were not in favour of it”.

[41] *Su'r* in *Lisān al-'arab*, 4:339 is the “residue of something” and it is used in this context for the water left after the donkeys have drunk. For the Ibādī view on this issue see Ibn Baraka, *al-Jāmi'*, 1:402, and Ibn Ja'far, *al-Jāmi'*, 1:273–274, 6:74, and for other opinions and arguments see Ibn Abī Shayba, *al-Muṣannaf*, 1:35.

[42] *Al-ḥijr* here means *ḥijr al-Ka'ba* which is the unbuilt part of the *Ka'ba* at its northern side. (See *ET*, IV, p. 317, s.v. *Ka'ba*). For the argument of performing *ṣalāt* – especially obligatory ones – inside the *ḥijr*, see Ibn Ja'far, *al-Jāmi'*, 2:133; Ibn Baraka, *al-Jāmi'*, 1:489. Jābir's opinion is quoted in Aṭfayyish (*Sharḥ al-nīl*, 4:133). 'Ā'isha, 'Alī b. al-Ḥusayn and Sa'īd b.

Jubayr say that there is no harm in doing so. (See Ibn Abī Shayba, *al-Muṣannaf*, 2:238).

[43] *Za'farān* (saffron), *wars* and *'usfur* are all colours used for dyeing cloth. (See *Lisān al-'arab*; *Mukhtār al-ṣiḥāḥ*). Ibn Ja'far (*al-Jāmi'*, 3:307) states that the smell remaining in the clothes after they have been washed must go in order to allow the *muḥrim* (see [3] above) to wear them. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 3:168 where it seems that it is a matter of colour rather than smell).

[44] See [5] and [22] above.

[45] Bases of exclusion from inheritance are difference of religion, being a slave and having caused the death of the deceased. But whether or not they may influence other heirs, by totally preventing him or her from his or her succession or partly by reducing it, is another issue. (Cf. Ibn Ja'far, *al-Jāmi'*, 5:360 where he makes the same statement but later points out that other opinions are also to be found and they are “all correct”, *op. cit.*, p. 383.) The statement of Jābir is also ascribed to 'Umar and 'Alī. (See Ibn Abī Shayba, *al-Muṣannaf*, 6:251). 'Abd Allāh b. 'Umar says that persons excluded from inheritance for any reason do prevent other heirs. (See *Muṣannaf 'Abd al-Razzāq*, 10:279).

[46] *Atan* (and *atān*) is a female wild ass (*Lisān al-'arab*, 13:6; *Mukhtār al-ṣiḥāḥ*, 1:2) as opposed to the domestic donkey. Most scholars, such as al-Ḥasan, Sa'īd b. Jubayr, Mujāhid, Ḥammād and Ibrāhīm, have either disliked or forbidden the milk of wild asses, while a few of them say that it is allowed or allowed for necessity, e.g. medication, as ascribed to Jābir here and to 'Aṭā' elsewhere. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 5:55; 'Abd al-Razzāq, *al-Muṣannaf*, 9:256–257).

[47] Although Jābir's opinion here is clear and explicit, Ibādīs held varying views on the issue as early as the compilation of our book. For we find that two distinguished scholars and possible transmitters of *Āthār al-Rabī' b. Ḥabīb*, Muḥammad b. Maḥbūb and Mūsā b. 'Alī (see Chapter IV) disagreed on this particular question. (See Ibn Ja'far, *al-Jāmi'*, 5:386). Yet I could not find the view that is ascribed here to the Kufans, 'Alī and Ibn Mas'ūd to be of the latter. I could, however, find references taking it back to 'Alī – as mentioned in the text –, 'Umar and to Zayd b. Thābit. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 6:245–246). Shurayḥ seems to have hesitated on the same problem, once expressing one opinion and once another. (See 'Abd al-Razzāq, *al-Muṣannaf*, 10:288, and cf. Ibn Abī Shayba, *al-Muṣannaf*, 6:246).

[48] This tradition is an explanatory one of a Prophetic *ḥadīth* that states that the fingers are equal in *diyā*, an opinion on which there is agreement among the Ibādīs. (Cf. Ibn Baraka, *al-Jāmi'*, 2:501, and Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:294). It is also the opinion of most scholars and *imāms*, except, as I found, Ibrāhīm. (Cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 5:367–368, and 'Abd al-Razzāq, *al-Muṣannaḥ*, 9:346, 384).

[49] “Foster suckling relationship (*raḍā'*) renders marriage unlawful, just as the corresponding birth (blood) relationship” is a Prophetic *ḥadīth* narrated on the authority of many reporters including Jābir b. Zayd. (See al-Rabī' b. Ḥabīb, *al-Musnad*, 1:210, and 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:474; cf. Ibn Ja'far, *al-Jāmi'*, 6:256).

[50] For *qadhif* see note [1] above. “... *wa lā ba'sa 'alaiyhi fi dhālika* – there is no harm on him in that” – at the end of the question might sound redundant, but indeed it is not. It is referring to the husband intending not to sue his wife for *mulā'ana* (or *li'ān*) whereas the first *lā ba'sa 'alaiyhi ...* is for having marital intercourse with her.

[51] See [37], [116], [118], [E1] and [E2] with my notes on them.

[52] On the manumission of *umm al-walad* on the death of her owner, Jābir's opinion as given in the manuscripts is that it is to be debited to the whole of the assets. However, although all copies of the manuscript agree on the reading of this tradition, I think that there is a slip of the pen on the word *lahā* – for her – because if she already had a child there would not be any need to state that she is pregnant. What makes the issue worth discussion is the owner having no other heir who might share the ownership of *umm al-walad* with her child. Thus I would suggest the word *lahu* – for him – to replace *lahā*, so the tradition would read:

الربيع عن ضممام عن أبي الشعثاء في رجل توفي وترك أم ولده حاملاً  
وليس له ولد؟ قال: يعتقها من جميع المال.

For a good Ibādī discussion, see Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:194–195; Ibn Ja'far, *al-Jāmi'*, 6:15. (Cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 9:146).

[53] *Istahalla* means the baby cried at the birth. (See *Lisān al-'Arab*, 11:702; *Mukhtār al-ṣiḥāh*, 1:290). See [11] above and Ibn Baraka, *al-Jāmi'*, 2:506. For causing abortion Imām Mālik says that the provision is one tenth of the value of its mother (*al-Muwaṭṭa'*, 2:856) unlike the opinion ascribed here to the Kufans that it is a twentieth.

[54] See [3] and [43] above.

[55] *Mukātaba* is manumission by contract. All traditions regarding *mukātaba* in this book, e.g. [57], [104], [119], [122], [124], [126], [130], [287] make it clear that Ibādīs consider the *mukātaba* as a free person from the time that the contract is written between him or her and the owner. They base all details regarding his or her status accordingly, e.g. getting married to a free woman, transactions, penalties, etc. (Cf. Aṭṭāyish, *Sharḥ al-nīl*, 5:207, and al-'Awtabī, *al-Diyā'*, 8:112).

[56] This tradition here does not explain the way in which this *thawb* – covering of cloth – is worn “over the chest of a *muḥrim*” (see [3] above). But the argument on the clothes of a *muḥrim* can also be found in Ibn Ja'far, *al-Jāmi'*, 3:307; al-Kindī, *al-Muṣannaḥ*, 8:138–139. (Cf. Ibn Abī Shayba, *al-Muṣannaḥ*, 3:449).

[57] Ibādīs from the time of Jābir b. Zayd have agreed that if a female slave is married to either a free man or to a slave, she has the choice to stay with him or to get divorced as soon as she is freed. Of this opinion are 'Ā'isha, al-Sha'bī, Ibn Sīrīn, Sa'īd b. al-Musayyab and Ṭāwūs. Other scholars of the Companions such as Ibn 'Umar and the Followers like al-Ḥasan and al-Zuhrī say that if she is freed and her husband is a free man she does not have this right. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:253–254, and al-Jaṣṣāṣ al-Rāzī (d. 370/980), *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:363–364, no. 866).

[58] *Ṭaylasān* is like an un-sewn mantle. Interesting descriptions of it and its history with different arguments about this kind of clothing are to be found in al-Suyūṭī, *al-Aḥādīth al-ḥiṣān fi faḍl al-ṭaylasān*, ed. Albert Arazī, Jerusalem 1983. *Wa lā yazruruhu* means not to fasten it over him or her (the *muḥrim*). This permission to wear a *ṭaylasān* without fastening (knotting) is ascribed to Ibn 'Umar, while Ibn 'Abbās allows it without this condition. (See al-Shaybānī, *al-Mabsūṭ*, 4:139). There are many scholars who agree with Jābir's opinion like Sa'īd b. Jubayr, 'Aṭā', al-Ḥasan, Ibrāhīm, and others. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 3:328). And although Ibādīs do not often mention this permission, some distinguished authorities have used it. Wā'il b. Ayyūb<sup>5</sup> wore it for his *iḥrām* according to Muḥammad b. al-Ḥawārī. (See *Jāmi' Abī al-Ḥawārī*, 3:51).

[59] This tradition is a brilliant example of the political approach Ibādīs followed under the corrupt Umayyad governors of Iraq, see above Ch. I, pp. 19–21. Although Ibādīs' statements on giving or accepting bribes are

<sup>5</sup> A student of al-Rabī' at Basra, from Ḥaḍramawt, he succeeded al-Rabī' in Iraq after the move of the latter to Oman. He participated in the revolt of 'Abd Allāh b. Yahyā al-Kindī in Yemen, see Ennamī (ed.), *Ajwibat Ibn Khalfūn*, p. 110.

very strict, to the extent that they consider it *kufir*,<sup>6</sup> and they interpret *suḥt* mentioned in the Qur'ān (Q: 5:42) with it specifically. (See al-Kindī, *al-Muṣannaf*, 10:276, 13:102, and Aṭṭfayyish, *Sharḥ al-nīl*, 13:75–76.). They permit it during times of corrupt governors to avoid bigger harm or injustice against them. Jābir b. Zayd is quoted in many early Ibādī and non-Ibādī sources saying “there was nothing more beneficial for us – i.e. Ibādīs – than bribery at the time of ‘Ubayd Allāh b. Ziyād”. Similar statements are abundant in al-‘Awtabī, *al-Diyā*, 4:426; Aṭṭfayyish, *Sharḥ al-nīl*, 16:560, and *Muṣannaf ‘Abd al-Razzāq*, 8:149. Al-Ḥasan al-Baṣrī also approves this opinion. (Cf. *loc. cit.*).

[60] The opinion that the selling of the *muṣḥafs* is disliked though there is no harm in buying them is mentioned in many Ibādī sources without any reasoning of this differentiation. (See for instance, Ibn Ja‘far, *al-Jāmi*, 5:138). The disagreement on this issue is a famous one from the early time of Islam to the extent that some scholars of the Followers narrate that Ibn ‘Umar says: “I wish hands were to be cut off in cases of the selling of *muṣḥafs*” while scholars like al-Ḥasan and al-Sha‘bī say that it is alright to sell them. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 4:287–288, and *Muṣannaf ‘Abd al-Razzāq*, 8:110–113). Imām Mālik is of the same opinion as Jābir according to *al-Mudawwana al-kubrā*, 11:418.

[61] *Al-‘aql* here means *diya*, see [11], [14] and [33] (*Lisān al-‘Arab*, and *Mukhtār al-ṣiḥāḥ*, s.v. عقل). The tradition is talking about a famous principle in criminal law in Islam, that the *diya* of women is half of that of men. For details of this principle and disagreements on them see Ibn Abī Shayba, *al-Muṣannaf*, 5:411–412, and *Muṣannaf ‘Abd al-Razzāq*, 9:395, and note what Imām al-Shāfi‘ī claims in *al-Umm*, 6:306, that there is consensus on the principle.

[62] For a husband to say to his wife such a sentence is a case of investigation by *fuqahā*’ whether it should be considered a statement of divorce or not. Many scholars link this to the Qur’ān (66:1–2). The earliest Ibādī sources I found discussing this matter are *al-Mudawwana al-kubrā* of Abū Ghānim al-Khurāsānī, 2:67–68; *Jāmi ‘Abī al-Ḥawārī*, 4:31, and *Jāmi ‘Ibn Ja‘far*, 6:389. More discussions and details are to be found in Sunnī references. (See for example, Mālik, *al-Mudawwana al-kubrā*, 5:395; al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-‘ulamā*, 2:413–415 where Jābir is quoted saying the same opinion mentioned here, cf. *Muṣannaf ‘Abd al-Razzāq*, 8:440–441).

[63] This opinion of Jābir b. Zayd is identically quoted in Ibn Ja‘far, *al-Jāmi*, 3:577, and it seems to be the only approved opinion within the Ibādī school and most, if not all, scholars from other schools. (Cf. *Muṣannaf ‘Abd al-Razzāq*, 4:481–483, and al-Qaffāl al-Shāshī, *Ḥilyat al-‘ulamā*, 3:421).

[64] *Fa-ḥtawashahu* ... the verb *ḥtawash* from *ḥawash* means they surrounded him or gathered all around him (*Lisān al-‘Arab*, s.v. حوش), *naghal* as explained in the text means illegitimate child (*Lisān al-‘Arab*, نغول). The first source that mentioned this tradition with its story is *Kitāb al-siyar* of al-Shammākhī, 1:82. Ḍumām according to al-Shammākhī was asked by a woman about what her husband had said and Ḍumām then asked Jābir. The other source where I found this tradition is the late Omani scholar al-Sālimī in his *al-‘Iqd al-thamīn* (1<sup>st</sup> edn.), 3:83–84. Al-Sālimī, though he gives more details and with a record of the name of the husband, has not mentioned his source. In a reply to a question about this narration he says that a man called Abū Wāqid from al-Mukallā (Yemen) bought a watermelon and when he brought it home his children surrounded him and thus he said what is asked about in the tradition. However, this incident is more likely to have taken place in an Ibādī surrounding, as the people involved are all Ibādīs and they do not seem to have asked any other scholar rather than Jābir which could explain the ignorance, as far as I could find, of Sunnī references to such a question.

[65] This tradition is an example of the steps that the first founder of the Ibādī school followed and advised his followers to follow to maintain their relations with the mainstream and avoid any disruption to their movement. Jābir b. Zayd narrates on the authority of Ibn ‘Abbās a Prophetic *ḥadīth*:

إنكم ستدركون من بعدي أئمة يؤخرون الصلاة عن وقتها فإذا أدركتم ذلك فاجعلوا صلواتكم معهم سبحة أي نافلة.

“You are going to come across *imāms* after my death who postpone the prayers to the end of their timing. If you do, make your prayer with them *nāfila*”. (Cf. *Musnad al-Rabī b. Ḥabīb*, no. 212; *Ṣaḥīḥ Muslim* on the authority of Ibn Mas‘ūd, no. 830; Ibn Abī Shayba, *al-Muṣannaf*, 2:154; *Muṣannaf ‘Abd al-Razzāq*, 2:382).

[66] Cf. Ibn Abī Shayba, *al-Muṣannaf*, 2:485–486; *al-Umm*, 1:149–150.

[67] ... *qatīfah* is a piece of fabric that a *muhrim* wears around his or her shoulders “to keep warm”. See [34], [56] and [58] above.

[68] There is a dispute between *fuqahā*’ on the issue of a married *ama* getting her freedom, from the time of the Companions. The key question is regarding

6 For the use of this term in Ibādī theology see footnote 44 of Ch. I above.

her choice to remain under her husband whether he is a slave or a free man or not remain. For a good view of their arguments see *Muṣannaf 'Abd al-Razzāq*, 7:253–255; Ibn Abī Shayba, *al-Muṣannaf*, 3:507–509; *al-Umm*, 5:123, and *al-Mudawwana al-kubrā*, 6:30. See also references cited on note [57] above.

[69] Note that the question is talking about *Naṣrāniyyayni* – two Christians – instead of the most used term in the Qur'ān “People of the scripture”. Unlike [73] below, this question could refer to a certain incident that took place at that time rather than being a principle set out. (See *al-Umm*, 6:35–36, and *al-Mudawwana al-kubrā*, 4:308).

[70] For a *li'ān* see the note on [1] above. This opinion that after the *mulā'ana* the partners are separated from each other and they cannot remarry each other is the opinion of most scholars from all Muslim schools. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 4:19; *al-Umm*, 5:255; *al-Mudawwana al-kubrā*, 6:108).

[71], [72] Both traditions are based on the basis of the slave being himself owned wholly by his or her master. These statements are also ascribed to Ibn 'Abbās, Ibrāhīm, al-Ḥasan, al-Sha'bī, Ibn Sīrīn and 'Aṭā'. (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:192; Ibn Abī Shayba, *al-Muṣannaf*, 4:273, and *Muṣannaf 'Abd al-Razzāq*, 8:76).

[73] See [69] above. For the differentiation between young children, when one of their parents embraces Islam, and adults, see al-Kindī, *al-Muṣannaf*, 39:129.

[74] This tradition is a Prophetic tradition. (See *al-Muwaṭṭa'*, 2:486; Ibn Abī Shayba, *al-Muṣannaf*, 3:135; *Ṣaḥīḥ Muslim*, 2:955–956).

[75] It is obvious that the question here is regarding women performing *ḥajj* or *'umra* although there is no mention of this whereas [76] below is more detailed. (Cf. Ibn Ja'far, *al-Jāmi'*, 3:342; Ibn Abī Shayba, *al-Muṣannaf*, 3:146–147, and *al-Mudawwana al-kubrā*, 2:402).

[76] See [75] above.

[77] Although Ibādīs state that there is an agreement on this issue amongst them, it seems that there are different opinions with regard the maintenance of a pregnant widow. (See al-'Awtabī, *al-Diyā'*, 10:161, 175–176, 179.) For details of all views and authorities, see *Muṣannaf 'Abd al-Razzāq*, 7:36–39; Ibn Abī Shayba, *al-Muṣannaf*, 4:165–168.

[78] ... *ab'ad al-ajalayn* means the longest period the women must wait before getting married if she is pregnant, i.e. her *'idda* lasts either to the four

months and ten days prescribed in the Qur'ān (65:4) or to her delivery if her pregnancy continues beyond the four months and ten days. Most Ibādī scholars follow this view of Jābir b. Zayd to the extent that al-Hawwārī, (*Tafsīr*, 4:374) says, “this is the opinion of Jābir b. Zayd and Ibn 'Abbās and the vast majority of our *fuqahā'*”. (Cf. al-Kindī, *al-Muṣannaf*, 38:207). Yet most scholars of all other schools of thought are of the opinion ascribed here to the Kufans. (See Ibn Abī Shayba, *al-Muṣannaf*, 3:555–557; *al-Muwaṭṭa'*, 2:589–592; *al-Umm*, 5:224).

[79] Both names, Khālid and his son 'Ubayd, mentioned here are unfamiliar. However, this tradition seems to be derived from a Prophetic *ḥadīth*. (See *al-Muwaṭṭa'*, 2:774; Muslim, *Ṣaḥīḥ*, 1668).

[80] “... *wa al-mawtu ḥājiz*” means that death terminates the contract of *mukātaba*, see [55] and [57] above. More details on this issue can be found in *Muṣannaf 'Abd al-Razzāq*, 8:412–414, and *al-Umm*, 8:85.

[81] It is clear from the context that this tradition is a refutation of the opinion that selling an *ama* is considered in itself to be a divorce from her husband which is ascribed to Ibn 'Umar, 'Alī, 'Ikrima and Mujāhid. (See Ibn Abī Shayba, *al-Muṣannaf*, 4:102–103.) For the evidence and the authorities that approve the first opinion, see al-Kindī, *al-Muṣannaf*, 30:235; *al-Muwaṭṭa'*, 2:617, and cf. Ibn Abī Shayba, *al-Muṣannaf*, 4:103–105.

[82] The basis of this opinion of Jābir stated here is the Qur'ān (5:96) and a *ḥadīth* narrated in *al-Muwaṭṭa'*, 1:350. There are different sources quoting Jābir saying similar statements. (See for example, al-Jīṭālī; *Qawā'id al-Islām*, 2:147; Ibn Kathīr; *Tafsīr*, 2:657, and al-Qurṭubī; *Tafsīr*, 6:322).

[83] Ibn Baraka after quoting this opinion claims that it is “an agreement between our followers – *aṣḥābinā*” (*al-Jāmi'*, 2:62–63). ... *yuhkam* (passive of *yahkum* – adjudge) is a Qur'ānic term (Q: 5:95): (...*yahkumu bihi dhawā'adlin minkum* – adjudged by two just men among you). For details of this argument see *Muṣannaf 'Abd al-Razzāq*, 4:389–394.

[84] Similar traditions are ascribed to Ibrāhīm al-Nakha'ī, al-Ḥasan, Sa'īd b. al-Musayyab, al-Zuhrī and Qatāda. (Cf. Ibn Abī Shayba; *al-Muṣannaf*, 4:164).

[85] Amongst the forty-six traditions in the book regarding *ḥajj* and *'umra*, this is the only one that deals with deputizing for somebody at performing rites of *ḥajj*. This is done in a remarkably generalised way, with no comment on the consequential problems that exercised other scholars, e.g. is it only allowed when *ḥajj* is the obligatory, first one? Can any one do it on behalf of

the dead or should it be a relative? Is this *waṣiyya* (legacy) to be debited to the whole of the assets?, ... etc.

[86] This standpoint of Jābir is a good example of the juristic rule “necessities permit prohibitions”. (See *Muṣannaf 'Abd al-Razzāq*, 9:256).

[87] See Ch. I, pp. 19–21. Although Jābir b. Zayd instructed his followers to keep their ties and to communicate with one another, he was very careful on this to the extent that he on some occasions asked some of his friends not to contact him and he ordered them not to mention his name. (See *Rasā'il Jābir b. Zayd*, ms, letters 1, p. 2, and 5, p. 15).

[88] *Nikāḥ al-sirr* is a marriage contract without witnesses, as understood from the word *sirr*, secret, and as indicated in [90] below. This tradition is identically quoted by the early Ibādī author Ibn Khalfūn, *Ajwiba*, 65. For the differences of views on the same issue, see *al-Muwatta'*, 2:535; Ibn Abī Shayba, *al-Muṣannaf*, 3:495, and *al-Umm*, 5:22.

[89] See [88] above. (Cf. *Ajwibat Ibn Khalfūn*, p. 69).

[90] *'Arīf* is the head of a tribe or a group of people. (See *Lisān al-'Arab*, 9:238). For the argument, see [88] above. *Ibid.*

[91] There are many traditions in the book, let alone elsewhere, where Jābir b. Zayd emphasizes the importance of attending Friday prayer, see [S16], [254] and [316] below. (Cf. Ch. I, p. 21). In the epistle of Maḥbūb b. al-Ruḥayl to the people of Oman he says, “it is revealed to us that people of 'Umān wrote to Jābir b. Zayd asking him: Should those who do not hear the call (*adhān*) for Friday prayer attend it? Jābir replied to them: if only those who hear its call attend, its attendants will be very little ...”. (See Kāshif, *al-Siyar wa al-jawābāt*, 1:288).

[92] See [88], [89] and [90] above.

[93] Although Jābir's great teachers are Ibn 'Abbās and 'Ā'isha, he has a different opinion on the issue of the place at which a widow should stay until the end of her *'idda* (see [78] above). For most of the opinions and traditions regarding this, see *Muṣannaf 'Abd al-Razzāq*, 7:28–35, and Ibn Abī Shayba, *al-Muṣannaf*, 4:155–157.

[94] See [82] above. “... *qadīd* ...” means salty dried slices of meat (*Lisān al-'Arab*, 3:344, s.v. قديد).

[95] For definition of *diyya* see [14] above. Most Ibādī scholars and the majority of Shāfi'īs are of the same opinion of Jābir b. Zayd. (See al-Kindī, *al-Muṣannaf*, 41:153, and *al-Umm*, 6:105, 7:321). But the late Omani scholar

Khalfān b. Jumayyil strongly argued against it (al-Siyābī, *Jalā' al-'amā*, p. 206–207). The Ḥanafīs say that Muslims, Jews, Christians and Zoroastrians are all equal in *diyya*. (Cf. Ibn Abī Shayba, *al-Muṣannaf*, 5:406, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 5:155).

[96] This tradition is not consistent with other traditions ascribed to Jābir on the same issue. In his letter addressed to Yazīd b. Yasār, Jābir states that the only permissible way of *muzāra'a* (a contract of lease of agricultural land) is with specific amount of money. (See *Rasā'il Jābir b. Zayd*, ms, letter no. 8, p. 22). Ibn al-Mundhir claims there is consensus of the Companions on the permissibility of renting the land by means of gold or silver (money). (See al-Sālimī, *Sharḥ al-jāmi' al-ṣaḥīḥ*, 3:179, and cf. Ibn Baraka, *al-Jāmi'*, 2:398).

[97] “... *jā'iz 'alā ahlih* ...”. *Jā'iz* here is not in its common legal use; it means they are accounted for it as we find in *al-Qāmus al-muḥīṭ* (p. 651, جاز):

وأجاز رأيه: أنفذه كجوزه، وأجاز له البيع: أمضاه.

And there is a Prophetic *ḥadīth* proving the same judgment taken from the tradition mentioned here. (See al-Tirmidhī, *Sunan*, 3:490, and Abū Dāwūd, *Sunan*, 2:259).

[98] Ibn Baraka presents this view of Jābir b. Zayd in a detailed discussion with evidence (see *al-Jāmi'*, 2:505–506). There is no agreement on this issue among Muslim scholars of all schools of thought. The Ḥanafīs for example argue that *qishāṣ*, retaliation, is entailed between Muslims and the People of the Scripture. (Cf. al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 5:157). Another point worth looking at in this tradition is the use of the word *mushrik* for Jews and Christians. A quick survey on early Ibādī use of this term indicates that whenever it is used detached from any limitations, i.e. adjectives or adverbs ... etc., it means non-Muslims; otherwise it is according to the context in which it is used. (See Abū Ḥafṣ 'Amr b. Jumay', *Muqadimat al-tawḥīd wa shurūḥuhā* (ed. Ibrāhīm Aṭfayyish), Muscat 1989, p. 107–115).

[99] See [94] above.

[100] See al-Kindī, *al-Muṣannaf*, 41:152.

[101] See [37] above, [116] and [E1] below.

[102] Compared to note [52] above, this tradition ascertains the same conclusion, though in another way. First it verifies that an *umm walad* is an *ama* by stating that her master can let her get marry to another. Second it shows that since she is an *ama*, she does not own even the dowry but her master possesses it and as he deserves it during his life it remains as his right even

after his death when an *umm walad* becomes free (see notes [37] above and [E1] below).

[103] Cf. Ibn Baraka, *al-Jāmi'*, 2:246; Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:193–194, and Ibn 'Abd al-Barr, *al-Tamhīd*, 3:136–138.

[104] See notes [55], [57], [80] above, [119], [122] and [124] below.

[105] See [104] above. (Cf. Ibn Baraka, *al-Jāmi'*, 2:257–258).

[106] See [63] above. This is a famous statement of Jābir b. Zayd quoted in many Ibādī and non-Ibādī sources. (See for example, Ibn Ja'far, *al-Jāmi'*, 3:577–578, and *Muṣannaḥ 'Abd al-Razzāq*, 4:481–483).

[107] See the note on [106] above.

[108] The opinion of Jābir is quoted in Ibn Ja'far, *al-Jāmi'*, 3:578 but without pointing to any other opinion. My searches for passages containing the illegible text at the opinion of the Kufans mentioned here have not yielded any passage that might fit.

[109] "... *mudabbar*..." is a slave who has been manumitted by *tadbīr*<sup>7</sup>. This standpoint of Jābir about not selling a *mudabbar* is mentioned in most early Ibādī sources. (See for example, Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:193, and Ibn Ja'far, *al-Jāmi'*, 6:19). However, it is not the only opinion within the Ibādī *fiqh*. Ibn Baraka for instance mentions two other opinions ascribed to early Ibādīs (see *al-Jāmi'*, 2:245). However, there are many distinguished non-Ibādī scholars who hold the same opinion as Jābir b. Zayd such as Imām Mālik (*al-Muwatta'*, 2:814–815), Shurayḥ, Sa'īd b. al-Musayyab and Sālim b. 'Abd Allāh. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 4:325–327).

[110] See [109] above.

[111] For the opinion of Jābir, see Ibn Ja'far, *al-Jāmi'*, 3:397; Ibn Baraka *al-Jāmi'*, 2:72. For the Kufans, cf. *Muṣannaḥ 'Abd al-Razzāq*, 8:506–507 (16075–77), and Ibn Abī Shayba, *al-Muṣannaḥ*, 3:71, although he also ascribed the same opinion as Jābir, i.e. a *mudd*, to Ibrāhīm al-Nakha'ī. (See Ibn Abī Shayba, *al-Muṣannaḥ*, 3:72).

[112] Unlike [111] above, here the term used is *fidya* as used in the Quran (2:184) and not *kaffāra*. However, the majority of Ibādī scholars do not follow the opinion of Jābir b. Zayd in this matter. They state that the *fidya* of permissible break of fasting is *niṣf ṣā'* and not a *mudd*. (See Ibn Baraka, *al-*

7 A manumission which takes effect at the death of the owner, Schacht, J. *Introduction*.

*Jāmi'*, 1:32; Ibn Ja'far, *al-Jāmi'*, 3:424; Abū al-Ḥasan al-Bisyawī, *al-Jāmi'*, 2:223).

[113] For the use of the term *fidya* see the comments on [111] and [112] above. In this tradition it is not specified to which action or deed *al-jazā'* refers. However, a similar use of the term in Ibn Ja'far suggests that it is regarding the permission in *ḥajj* for shaving one's head if he is sick or has an ailment of the head (Q: 2:196). (Cf. *Jāmi' Ibn Ja'far*, 3:397).

[114] This tradition is a Prophetic one. (See *Musnad al-Rabī' b. Ḥabīb*, (*ḥadīth* no. 331); al-Bukhārī, *al-Ṣaḥīḥ*, 14:112; Muslim, *al-Ṣaḥīḥ*, 981, and Mālik, *al-Muwatta'*, 608). All these sources record it with similar but not identical phrases. *Al-sawānī* is the plural of *sāniya*: the camel used for raising water (see *Lisān al-'arab*, 14:404). *Al-dawālī* is the plural of *dāliya*: a tool used for watering made of wood or fronds (see *Lisān al-'arab*, 14:266).

[115] *Kariha* ..., this verb indicates that Jābir does not forbid the sacrifice of an animal with a cut ear or broken horn. In the book there are other traditions that are of the same line of argument, see the text [282] and [253]. (Cf. Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣuḥrā*, 1:130, and id., *al-Mudawwana al-kubrā*, 1:350; *Jāmi' Ibn Ja'far*, 3:401–403). There are other Ibādī scholars who state that it is forbidden to sacrifice such an animal. (See Abū al-Ḥasan al-Bisyawī, *al-Jāmi'*, 2:291, 3:220).

[116] I could not find a parallel statement on the *umm al-walad* (for definition see [37] above) with regard to allowing her to get married to another man, unlike the *ama* (female slave). However, Jābir b. Zayd according to this narration, equates them. For the case with the *ama*, cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:241–242. *Idhā naza 'ahā* ... seems to refer to the husband, though the *istibrā'* (waiting period of a female slave after a change of owner) refers to the owner and not to the husband in this case. (Cf. *Rasā'il Jābir b. Zayd*, ms, letter no.7, p. 21; al-Bisyawī, *al-Jāmi'*, 3:32, and 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:229). See note [102] above and [133] below.

[117] Unlike [192] below, there are two different opinions on *qadhf al-ama* (false accusation of unlawful intercourse by a female slave) mentioned in this tradition. The first opinion, not to punish the accuser, has been ascribed to al-Ḥasan al-Baṣrī, Ibn Sīrīn, 'Aṭā' and al-Zuhrī. (See Ibn Abī Shayba, *Muṣannaḥ*, nos. 28245–47, 28249; 'Abd al-Razzāq, *al-Muṣannaḥ*, no. 13805 and Mālik, *al-Muwatta'*, 2:568). The second opinion which differentiates between a known female slave of righteousness and others, although fair and reasonable, seems a very rare view that I could not trace in most *fiqh* and *tafsīr* references. There is a statement attributed to Ibn 'Umar from which it can be perceived that he has a similar opinion. (See 'Abd al-Razzāq, *al-*

*Muṣannaf*, 7:439). Yet there is a third opinion ascribed to Ibn 'Umar and 'Umar b. 'Abd al-'Azīz that the accuser should be punished by *ḥadd* exactly as if he has accused a free woman. (Cf. Ibn Abī Shayba, *Muṣannaf*, nos. 282251, 282254).

[118] From the reply of Jābir b. Zayd, it is not clear what the questioner was asking about, although Jābir's reply is apparently plausible to him. From other narrations in the book, one might infer that the key point here is to reveal the similarity of *al-ama* and *umm al-walad*. See notes [101], [103] above. Since the question of *'itq* (manumission) is raised here among all the narrations related to the matters of *umm al-walad*, the only conjecture is that this is about the *'idda* (waiting-period of a female slave, in this context, after her manumission). (Cf. 'Abd al-Razzāq, *al-Muṣannaf*, 7:233, no. 12935–40, and 9:146).

[119] For the arguments regarding the *iḥṣān* (the consummation of a valid marriage with a free partner), see Mālik, *al-Muwaṭṭa'*, 2:787–788; Ibn Abī Shayba, *Muṣannaf*, 4:314–316, and 'Abd al-Razzāq, *al-Muṣannaf*, 8:397–408.

[E1] Like most scholars, Jābir considers the *umm al-walad* like the *ama* (see [37] and [116] above) and therefore their liability as slaves to *ḥadd* punishment is less than free males and females. They are punished with half the *ḥadd* of a free person (Q: 4:25), but because stoning to death cannot be halved, they are not subject to the penalty of being stoned to death (*rajm*). (Cf. al-Ṭabarī, *Tafsīr*, 5:24; al-Shāfi'ī, *Aḥkām al-Qur'ān*, 1:307, and al-Qurtubī, *Jāmi' al-bayān*, 5:145). 'Aṭā', on the other hand, says in one narration that even slaves are punished with the *rajm* applicable to free people. (See: 'Abd al-Razzāq, *al-Muṣannaf*, 7:102).

[E2] Not implementing *li'ān* (for definition see the note on [1] above) between a female slave and a free man is ascribed to many second generation authorities like Ibrāhīm al-Nakha'ī, al-Sha'bī, al-Zuhrī, 'Aṭā' and Mujāhid. (See 'Abd al-Razzāq, *al-Muṣannaf*, 7:127; Ibn Abī Shayba, *Muṣannaf*, 5:509).

[122] As in [119] above, the testimony of the *mukātab* as a witness is dependent on whether one considers him a slave or a freed person. In contrast to Jābir's opinion mentioned here, Ibrāhīm al-Nakha'ī, al-Zuhrī, Ḥammād and Qatāda do not consider the *mukātab* liable to be a witness in court. (See 'Abd al-Razzāq, *al-Muṣannaf*, 8:345, 397).

[123] This opinion of Jābir is also quoted in al-Kindī, *Bayān al-shar'*, 25:91. Non-Ibādī sources like Ibn Abī Shayba, *Muṣannaf*, 3:69, and 'Abd al-Razzāq,

*al-Muṣannaf*, 8:446, have ascribed to Jābir a different opinion but identical to question no. [168] below. *Yusammī* in this context simply means to specify his or her *nadh*r (vow).

[124] This is another example of treating the *mukātab* as a free man, see [119] and [122] above. He is entitled to undertake all kinds of transactions and subsequently he will be accounted for and be responsible for his own actions. For the *mukātab* to be punished if he commits what could make him subject to a *ḥadd* see Ibn Abī Shayba, *Muṣannaf*, 5:492, no. 28290 where according to Ibn 'Abbās he is not liable to *ḥadd* but to a slave's punishment.

[125] "... *waṣī* ..." is an executor and/or a guardian appointed by testament (Schacht, *Introduction*, 120, 173). Again this is another detail on the *mukātab* based on the juristic principle that the Ibādīyya follow that a *mukātab* is a free person from the time the contract is signed (see [55] above).

[126] See [125] above. (Cf. Ibn Baraka, *al-Jāmi'*, 2:257–258, Ibn Abī Shayba, *Muṣannaf*, 4:316–318, and 'Abd al-Razzāq, *al-Muṣannaf*, 8:405–410).

[127] There is no explanation for rejecting the validity of the *waṣīyya* (see [85] above) of a person for his or her own slave ('*abd* – male slave – or *ama* – female slave) except what al-Kindī mentions in his *Muṣannaf*, 28:81–82. Note that Jābir's opinion is not the only opinion on this matter, although it seems to be the one approved by the majority. (Cf. 'Abd al-Razzāq, *al-Muṣannaf*, 9:90, and Ibn Abī Shayba, *Muṣannaf*, 6:222).

[128] See [126] above.

[129] See [126] and [128] above.

[130] Again both opinions mentioned here are based on the same ground of traditions [55], [57], [104], [119], [122], [126] above and [131] and [287] below.

[131] See [130] above.

[132] "... *nujūmuh* ..." pl. of *najm* which means in this context instalments (*Lisān al-'arab*, s.v. نَجْم). (See *al-Muwaṭṭa'*, 2:800–802, and Ibn Abī Shayba, *Muṣannaf*, 4:387).

[133] See [37], [52], [102], [116], [118] and [E1] above.

[134] "... *mu'takif* ..." is the one who is in a state of *i'tikāf* (retreat, especially in a mosque while fasting for devotion). "... *shākhiṣ* ..." v. *shakhaṣa* means travels from place to another (*Mukhtār al-ṣiḥāḥ*, s.v. شَخِص). Most scholars from all schools are of the same view ascribed to Jābir here. (Cf. *al-*

*Muwatta'*, 1:312–317; 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:356–358, and Ibn Abī Shayba, *Muṣannaḥ*, 2:335).

[135] See [134] above. "... *ujība 'alayhi* ...", I could not find this expression in many authorities of Arabic. There could be a slip of the pen on the verb *ujība*, for the context and the language of the tradition tend to suggest the form *ujība* (... *أوجب عليه* – if he is obliged to...), which makes reasonable sense in the context.

[136] The opinion ascribed here to the Kufans is also the opinion of the majority of scholars, Ibādīs and non-Ibādīs, see [15] above. The view of Jābir mentioned here is not considered within the Ibādī school to the extent that it is not quoted or even mentioned. Al-Jīṭālī (d. 570/1174–75) for instance claimed agreement amongst the Ibādīs on this issue and ascribed the opinion of Jābir to al-Ḥasan (see *Qawā'id al-Islām*, (Muscat, 1992), 2:137, and *cf. al-Muwatta'*, 1:345).

[137] See [134] and [135] above. Other scholars of the same opinion are al-Zuhri, Mujāhid and 'Amr b. Dīnār, whereas 'Alī b. Abī Ṭālib permitted the *mu'takif* to go out of the mosque and practice selling and buying. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:361–362).

[138] For definition of *ilā'* see [31] above. According to Ibādīs if a period of four months passes and the husband keeps his oath, it has the effect of a repudiation without any need to pronounce divorce. This is the opinion of Ibn 'Abbās, 'Uthmān b. 'Affān, Zayd b. Thābit and Ibn Mas'ūd while 'Alī b. Abī Ṭālib, Ibn 'Umar, 'Ā'isha, Sa'īd b. al-Musayyab, Ibrāhīm and al-Sha'bī say that it takes its effect only when the husband pronounces divorce. (See Ibn Abī Shayba, *Muṣannaḥ*, 4:128, and 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:509; *cf. Q: 2:226–227*).

[139] See [62] above.

[140] Although the readings of this tradition agree, it seems that either some words are not in their correct order or something is missing. This could be inferred by referring to tradition [270] below. However, what could be perceived from both traditions is that the *qamiṣ* (long sleeved shirt) of the shroud must be under the *izār* (loincloth). (*Cf. Ibn Ja'far, al-Jāmi'*, 2:438–439; Ibn Abī Shayba, *Muṣannaḥ*, 3:17).

[141] See [134], [135] and [137] above.

[142] "*Al-ḥamīl*...", from many sources, I summarise the meaning of this term in the following. First he is any one, mostly a prisoner of war, who is taken young from his home land to an Islamic land; or secondly he is any *manbūdh*

(thrown away, renounced) who is claimed a relative by another. Finally this term is also used for a baby whose mother was pregnant with him when she was taken as a prisoner and then he was born in an Islamic territory. (See *Lisan al-'Arab*, 11:181; Ibn Sallām, *al-Gharīb*, 1:71–72, and *al-Nihāya fī gharīb al-ḥadīth*, 1:442). Surprisingly this term *ḥamīl* although used here in this tradition ascribed to Jābir b. Zayd has not been used in the later Ibādī *fiqh* works to the best of my knowledge. Yet there seem to be profound arguments on this issue of the inheritance of the *ḥamīl* in non-Ibādī references. (*Cf. 'Abd al-Razzāq, al-Muṣannaḥ*, 10:299–300, and Ibn Abī Shayba, *Muṣannaḥ*, 6:277–279). However Ibādīs do discuss the case of what they agree to call *mawlā al-ni'ma* and occasionally *al-laqīṭ* which are similar to the case of the *ḥamīl* mentioned here. (See for example, *Rasā'il Jābir b. Zayd*, ms, letter no. 17, p. 43, and al-Kindī, *al-Muṣannaḥ*, 29:284–285, and al-Sālimī *al-Iqd al-thamīn*, (1<sup>st</sup> ed.), 3:284). Another similar discussion can also be found where Ibn Baraka talks about the *manbūdh*, in his *al-Jāmi'*, 2:446–448.

[143] Most Ibādī authorities state that any *hiba* (gift) does not become complete (*tāmm* or *jā'iz* as in this tradition) except through taking possession as fully as possible. (See Ibn Baraka, *al-Jāmi'*, 2:415–418; Ibn Ja'far, *al-Jāmi'*, 4:343; al-Kindī, *Bayān al-shar'*, 55–56:359, and al-'Awtabī, *al-Diyā'*, 14:108). This obviously contradicts the statement ascribed to Jābir in this tradition though the rest of the statement regarding the Kufans is extant in other sources like 'Abd al-Razzāq, *al-Muṣannaḥ*, 9:107–109; *al-Umm*, 1:261, 4:110.

[144] "... *namāriq* ...", pl. of *numruqa*, a cushion. (See *Lisan al-'Arab*, 10:361). It is clear that the controversy is on using cushions with pictures on them, *taṣāwīr*. (*Cf. Ibn Abī Shayba, Muṣannaḥ*, 5:207–208, and al-Ṭaḥāwī, *Sharḥ ma'ānī al-āthār*, (1<sup>st</sup> ed.), 4:285). Jābir narrates a Prophetic *sunna* on this issue. (See *Musnad al-Rabī' b. Ḥabīb*, 1:114 (no. 274), and *cf. the story of 'Ā'isha with the Prophet in al-Bukhārī, Ṣaḥīḥ*, no. 1963).

[145] See [141] above.

[146] See [145] above.

[147] The basis of this question is the Qur'ān (2:228). There are two famous arguments comprehended from this tradition. First the menstrual period in which the woman is divorced is not counted in her *'idda*. This is not only the opinion of Jābir b. Zayd but of the majority of scholars too. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:307–309; Ibn Abī Shayba, *Muṣannaḥ*, 4:58; Mālik b. Anas, *al-Mudawwana al-kubrā*, 5:422–423). Second, the statement of Jābir quoted here indicates the Ibādī interpretation of the Qur'ānic term *qurū'* (Q: 2:228) or *aqrā'* as in our tradition (both are pl. of *qur'*). Scholars of different

Muslim schools hold varying views on this word, some (Ibādīs and Ḥanafīs) say it means menstruation while others (Mālikīs and Shāfi'īs) explain it as the period of purity after menstruation. (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣughhrā*, 1:229–230; 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:310, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:385–386).

[148] This is one of Jābir's famous opinions. He strictly holds the view that the marriage of minors is illegal, and he assumes the marriage of the Prophet to 'Ā'isha as a special case that cannot be imitated. (See Ibn Baraka, *al-Jāmi'*, 2:123–124; Abū al-Ḥawārī, *al-Jāmi'*, 2:62, and al-Kindī, *Bayān al-shar'*, 47–48:402). The other opinion, that the father has the right to let his minor daughter get married is the opinion of the majority of scholars. (Cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:162–164; Ibn Abī Shayba, *Muṣannaḥ*, 4:17; al-Shaybānī (Muḥammad b. al-Ḥasan), *al-Hujja*, 3:143, and *al-Umm*, 7:155).

[149] See [2], [31] and [37] above. Although this tradition does not specify the *kaffāra* in the case of the *ama*, it is more likely that Jābir b. Zayd uses the phrase "... *kaffārat al-ḏihār* ..." to indicate that there is no difference in the *kaffāra* even if the wife is an *ama*. (See Ibn Ja'far, *al-Jāmi'*, 6:398). For more details on this argument see 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:441 where 'Aṭā' says that the *kaffāra* is half of that for a free woman; and al-Sha'bī has not considered the *ḏihār* from an *ama*. See note [156] below where this opinion is ascribed to the Kufans.

[150] See [148] above. Unlike most Muslim schools of jurisprudence, Ibādīs distinctively state that if the husband touches (i.e. has intercourse with) his wife before he frees himself from his oath, his wife becomes forbidden for him forever. (See Abū Sa'īd al-Kudamī, *al-Jāmi' al-muḥīd min aḥkām Abī Sa'īd*, 4:223, and see [31] above.)

[151] This opinion verifies what has been mentioned earlier; see [77] above, with regard to the maintenance of a pregnant widow.

[152] Note that this *naḥaqa* (maintenance) mentioned here is different from the maintenance of widows. Here a repudiated woman is entitled to maintenance during her *'idda*. However Jābir seems to put this entitlement, generally speaking, under the condition of the repudiation not being definite "... *ḥattā yantahiya ilayhā ṭalāquh* ..." (cf. Ibn Ja'far, *al-Jāmi'*, 6:272; Abū Sa'īd al-Kudamī, *al-Jāmi' al-muḥīd min aḥkām Abī Sa'īd*, 4:277–279). Abū Ḥanīfa gives the repudiated woman the right to claim maintenance (which comprises food, clothing and lodging) regardless of the sort of the repudiation. (See al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:399, and Ibn Abī Shayba, *Muṣannaḥ*, 4:136–137).

[153] The readings of the manuscript all agree that the woman concerned is the man's daughter-in-law while all external sources say that it is his mother-in-law. However, the judgment in both cases is the same from the Ibādī point of view, based on the statement of Jābir quoted in this tradition. The story of 'Abd al-Malik b. Marwān with the man is repeatedly quoted in Ibādī references. (See for instance, al-Janāwunī, *Kitāb al-nikāh*, 31–32; Aṭṭāyish, *Sharḥ al-nīl*, 6:37; al-Sālimī *al-'Iqd al-thamīn*, (1<sup>st</sup> ed.), 4:402). Yet I could not find any trace of this story in non-Ibādī references. For the judgement and different opinions on this matter see Ibn Abī Shayba, *Muṣannaḥ*, 5:549–551; 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:271–273.

[154] *Al-ramal* is jogging around the Ka'ba. From this opinion of Jābir, it is clear that he does not say that the *ramal* is an obligation "... *lam yara ba'san* ... (he did not see any harm ...)". Ibn 'Abbās, Ibn 'Umar and 'Aṭā' are of this opinion. (Cf. *Musnad al-Rabī' b. Ḥabīb*, 1:168; *al-Muwaṭṭa'*, 1:364; Ibn Abī Shayba, *Muṣannaḥ*, 3:277).

[155] See [38] above.

[156] According to the Qur'ān (58:3–4), *ḏihār* (see note on [2] above) is mainly if the husband declares that his wife is like his mother's back. But jurists from all schools of jurisprudence differ on the case of declaring the wife as untouchable as any of his *muḥarramāt* (or *mahārim* pl. of *mahram*, relatives within the forbidden degrees) like daughter, sister, aunt ... etc. Jābir's opinion here presents the Ibādī legal view on this issue. (See al-Kindī, *al-Muṣannaḥ*, 38:149–150). It is also the opinion of al-Thawrī, al-Awzā'ī and approved by Ḥanafīs and Mālikīs. (Cf. al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:484, no.1018, and *al-Muwaṭṭa'*, 2:560).

[157] See [52] above.

[158] The term *iqrān* is not used about fingers in such contexts as I have found. Instead, sources of *fiqh* and *ḥadīth* both talk about *tashbīk* (entwining) of fingers during *ṣalāts*. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 2:271, and Ibn Abī Shayba, *Muṣannaḥ*, 1:420). For details of the minor doings during the performance of prayers and the standpoint of Jābir b. Zayd on such doings, see Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 1:159–163.

[159] It is agreed that a pilgrim has to circumambulate the Ka'ba seven times. Each full circumambulation of seven circuits is called *usbū'*. Jābir b. Zayd preferred for any one wanting to do more than one *usbū'* to do an odd number of circumambulations. This is the opinion of Ibn 'Umar, 'Aṭā', Mujāhid and Ibn Sīrīn whereas 'Ā'isha, 'Amr b. Dīnār and Sa'īd b. Jubayr say that generally the more the better and there is no preference for an odd

number. (Cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 5:499, and Ibn Abī Shayba, *Muṣannaḥ*, 3:407–408).

[160] "... *ṭawāf* ..." is circumambulation consisting of seven circuits. Jābir chooses that after each *usbū'* (see [159] above) there should be a prayer of two *rak'as*. (See Ibn Ja'far, *al-Jāmi'*, 3:293). Opposite to this is the opinion of 'Ā'isha which permits to make all the *usbū'*s first and then perform their prayers. (See Ibn Abī Shayba, *Muṣannaḥ*, 3:347–348).

[161] There is an agreement within the Ibādī school of jurisprudence on this matter based on the view of Jābir b. Zayd which is also ascribed to his great teacher Ibn 'Abbās. (See Ibn Baraka, *al-Jāmi'*, 2:277, and al-Kindī, *Bayān al-shar'*, 55–56:64). Yet there are other opinions on this issue of slaves applying *ṭalāq*, to the extent that Sa'īd b. Jubayr says when somebody told him about Jābir's opinion, "*kadhāba Jābir ... Jābir lied*". (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:238–240). A good discussion on this argument is to be found in *al-Umm*, 5:257, and *al-Mudawwana al-kubrā*, 4:183.

[162] For definition of *khul'* or *mukhāla'a* see the note on [7], above. Regarding *naḥaqa* (maintenance) of woman repudiated by *khul'*. (See Ibn Baraka, *al-Jāmi'*, 2:191). Ibn Ja'far summarises the legal opinion of the Ibādīyya on this issue with a similar statement but he adds an exception of a pregnant woman (*al-Jāmi'*, 6:345, and cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:507–508, and *al-Mudawwana al-kubrā*, 5:474).

[163] For definition of *maḥqūd* see [35] above. For details, opinions and evidence of the period the wife of a *maḥqūd* should wait, see Ibn Ja'far *al-Jāmi'*, 6:408; *al-Muwaṭṭa'a*, 2:575; Ibn Abī Shayba, *Muṣannaḥ*, 3:521, and 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:85–89.

[164] See [154] above. Similar statements are attributed to 'Ā'isha, Ibn 'Umar, Ibn 'Abbās, al-Ḥasan, 'Aṭā' and Ibrāhīm. (See Ibn Abī Shayba, *Muṣannaḥ*, 3:150–152, and *al-Umm*, 2:211).

[165] See [163] above. *Ibid.*

[166] Again this is a repetition of [165] with more detail about the opinion of the Kufans on the same issue. (Cf. al-Jaṣṣāṣ al-Rāzī (d. 370/980), *Mukhtaṣar ikhtilāf al-'ulamā'*, of al-Ṭaḥāwī, 2:329–331).

[167] Although there are detailed discussions on the issue of *ramy al-Jimār* (throwing pebbles at the pillars of Satan) in many sources, the phrase "... *awwalan wa ākhiran* ..." is ambiguous. It could mean the timing of this rite or the way by which it is carried out, or it could even refer to the order of throwing at the three *jamarāt* (pillars of Satan). However, the legal opinion

ascribed here to Jābir b. Zayd is something that *fuqahā'* do discuss concerning certain wrong acts and doings with regard to this particular rite. (See for example, Ibn Ja'far, *al-Jāmi'*, 3:360–366; *al-Muwaṭṭa'a*, 1:406–408; al-Shaybānī, *al-Mabsūṭ*, 2:429; Ibn Abī Shayba, *Muṣannaḥ*, 3:397, and *al-Mudawwana al-kubrā*, 2:419–422).

[168] Note [123] above.

[169] From the five Qur'ānic quotations in this book, this is the only tradition with a mere *tafsīr*, i.e. it is not used to prove another legal case but just showing Jābir's interpretation of the verse. This interpretation of Jābir is quoted in many Ibādī references such as al-Kindī, *Bayān al-shar'*, 21:216. For more details see al-Qurṭubī, *Tafsīr*, 2:405, and al-Ṭabarī, *Tafsīr*, 2:257, where it is clear that this is the opinion of the majority of Muslim scholars. See also [15] and [136] above.

[170] This tradition is a perfect example of depending on *ra'y* (opinion) when there is no textual evidence. Ibn Baraka, *al-Jāmi'*, 2:43 ascribes the opinion of Jābir to "*aṣḥābinā ... (our fellows in madhhab)*" although Ibn Ja'far, *al-Jāmi'*, 3:446 mentions this opinion along with others without stating that it is the opinion of the *madhhab*. The other standpoint however is adopted by the Ḥanafīs – note that it is ascribed to the Kufans in the book. (See al-Shaybānī, *al-Mabsūṭ*, 3:181–183, and cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 8:450–452, and Ibn Abī Shayba, *Muṣannaḥ*, 3:93).

[171] Abundant discussion on the legality of consuming cheese is to be found in 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:538–541; Ibn Abī Shayba, *Muṣannaḥ*, 5:129–132, and al-Qurṭubī, *Tafsīr*, 2:221.

[172] This tradition brings together most of the details that are discussed about *mukātab* in [55], [57], [80], [104], [105], [119], [122], [124], [125], [126], [128], [129] and [130–132]. (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:193).

[173] See [7] and [162] above. The opinion of Jābir b. Zayd that *khul'* is cancellation and not repudiation is the opinion ascribed to him, though not approved in Ibādī sources like Ibn Baraka, *al-Jāmi'*, 2:196; Ibn Ja'far, *al-Jāmi'*, 6:345–347. But other non-Ibādī sources ascribed to Jābir the opposite. (See Yaḥyā Muḥammad Bakkūsh, *Fiqh al-imām Jābir b. Zayd* (1986), p. 446).

[174] See [109] and [110] above. Cf. Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:191, and Ibn Baraka, *al-Jāmi'*, 2:243; 'Abd al-Razzāq, *al-Muṣannaḥ*, 9:138, and *al-Mudawwana al-kubrā*, 8:306.

[175] Although this opinion of Jābir b. Zayd is the opinion of most scholars from all schools of jurisprudence, there is a narration that Jābir himself has limited the allowance of doing *jam* prayer to Muzdalifa and 'Arafā (places at Mecca where special rites take place when doing *hajj*). (See al-'Aynī, *Umdat al-qārī*, 7:150).

[176] For definition of *tamattu'* see [16] above. The question of what are the preferable *nusuk* (*hajj* rituals) is a famous argument amongst *fuqahā'* from the early time of Islamic legislation. Jābir's opinion is also quoted and ascribed to him in non-Ibādī sources like Ibn Qudāma, *al-Mughnī* (1972), 3:494. (Cf. al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:103).

[177] The pilgrim when doing the circumambulation around the *Ka'ba* has to include the *ḥijr* (for definition of *al-ḥijr* see [42] above) in his *ṭawāf* or otherwise his *ṭawāf* is considered *bāṭil* (invalid). (See Ibn Ja'far; *al-Jāmi'*, 3:292; al-Jiṭālī, *Qawā'id al-Islām*, 2:155; 'Abd al-Razzāq, *al-Muṣannaḥ*, 5:56; Ibn Abī Shayba, *Muṣannaḥ*, 3:252, and *al-Mudawwana al-kubrā*, 2:397).

[178] This opinion of Jābir b. Zayd is the same as many authorities like Ibn 'Abbās, Ibn 'Umar, al-Ḥasan, Ibrāhīm, al-Sha'bī, Mujāhid and Ṭāwūs. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:121; Ibn Abī Shayba, *Muṣannaḥ*, 5:508–509, and *al-Mudawwana al-kubrā*, 6:115). On the other hand there is another opinion that directing *qadhif* against children of spouses involved in *li'ān* (see [1] above) is a *shubha* (doubtful matter). That, according to this view, avoids the applicability of *ḥadd* (see [26] and [28] above). (Cf. al-Kindī; *al-Muṣannaḥ*, 40:99).

[179] See references cited on [69] and [73] above.

[180] See [25], [63] and [106] above.

[181] This issue is a point of disagreement from the time of the Companions. Jābir is following Ibn 'Umar's opinion, as did many of his contemporaries such as al-Ḥasan, Sa'īd b. Jubayr, 'Aṭā' and Ṭāwūs. The other opinion which says that the pilgrim has to do *ṭawāf* and *sa'y* for each ritual (*hajj* and *umra*) is ascribed to 'Alī, Ibn Mas'ūd, al-Sha'bī and Ḥammād. (See Ibn Abī Shayba, *Muṣannaḥ*, 3:291–293).

[182] It is noticeable that the terms used in this tradition are precise and decisive: "... *fa-waṣalahā 'inda dukhūlihi bi-ghulāmin ma'rūfin bi-'aynihi fa wahabahu lahā ...*" to indicate that this is a *hiba* (see [143] above) and not part of the dowry and that it is determined and not *mushā'* (joint ownership) as there are disagreements between *fuqahā'* on all these conditions. See references cited on [182] above. (Cf. al-Kindī, *al-Muṣannaḥ*, 34:48–51.)

[183] See [97] above. Note that there does not seem to be any difference between the opinion ascribed to the Kufans and that of Jābir b. Zayd. They both make the marriage complete if there are witnesses, cf. [89] and [90] above.

[184] This tradition is identical to tradition [96] commented on earlier.

[185] Making footwear of donkey's skin is rarely mentioned in most authorities. However, there is a tradition in *al-Muwatta'*, 2:916 that Prophet Moses was wearing shoes made of donkey's skin when he was called by God (O Mūsā (Moses). Verily, I am your Lord! So take off your shoes; you are in the sacred valley, Tuwā) (Q: 20:11–12). (See Ibn 'Abd al-Barr, *al-Tamhīd*, 4:167–169).

[186] See [13] above. The opinion of Jābir is that of Ibn 'Umar, 'Umar b. 'Abd al-'Azīz, 'Aṭā' and Ibrāhīm al-Nakha'ī. (See Ibn Abī Shayba, *Muṣannaḥ*, 2:399). Imām Mālik says the opposite according to *al-Mudawwana al-kubrā*, 2:355, and that is why al-Shaybānī ascribes this latter view to *ahl al-Madīna* (*al-Hujja*, 1:524).

[187] "... *yasta miru-hā ...*" means ask her permission. And note the term *mudrika* which is emphasized as a reminder of Jābir's standpoint of the illegality of the marriage of minors, see [148] above. (See Schacht, *Introduction*, 161–162, and Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:15).

[188] See sources cited on [144] above.

[189] This opinion of Jābir is based on what has been explained earlier on traditions [12] and [15].

[190] I could not find a specific statement of Jābir on animals killed by women of *ahl al-kitāb* (Jews and Christians) except what Ibn Ja'far ascribes to him on animals killed by the people of scripture (*al-Jāmi'*, 3:578), which is commonly discussed in most *tafsīr* and *fiqh* references of all Muslim schools of jurisprudence based on the Qur'ān (Q: 5:5). (Cf. *al-Mudawwana al-kubrā*, 3:67).

[191] Detailed argument on this issue is to be found in Jiṭālī (d.750/1349), *Qawā'id al-Islām*, 2:104; al-Qaffāl al-Shāshī, *Hilyat al-'ulamā'*, 3:176. Jābir's opinion is also quoted in Ibn Qudāma, *al-Mughnī*, 3:72, and it is perfectly consistent with his opinion mentioned here in tradition [29] above.

[192] See similar argument in [27] and [E2] above. (Cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:129).

[193] "... *kadhhaba nafsahu ...*" by withdrawing his false accusation of unchastity after the *li'ān* (see [1] above). The majority of Ibādī scholars approved the same opinion of Jābir b. Zayd mentioned in this tradition. (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣuḡhrā*, 2:276). However, there seems to be another, Ibādī, point of view similar to that ascribed to the Kufans here. (See al-Kindī, *al-Muṣannaḡ*, 40:107, 110, 121.) This latter opinion is also ascribed to the Ḥanafīs. (See al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:506 (1051), and al-Shaybānī, *al-Mabsūṭ*, 7:54). Mālikīs and Shāfi'īs are of the first opinion, al-Shaybānī, *op. cit.*, and Ibn 'Abd al-Barr, *al-Tamhīd*, 15:38–40. (Cf. Ibn Abī Shayba, *Muṣannaḡ*, 4:19–21).

[194] See [55], [57] and [68] above.

[195] This tradition is of the same line of arguments commented on earlier on [55], [80], [104], [105], [119], [122], [124], [125], [126], [129] and [130].

[196] The previous traditions on a *mu'takif*, except [146], talk about his legal status and actions he should avoid, but this tradition discusses the place (a mosque) at which the *mu'takif* devotes himself. There seems to be something missing from this tradition because all *fuqahā'* agree that *i'tikāf* may take place in a roofed mosque, and their disagreement is on whether it can take place in an unroofed mosque. So it is difficult to think that Jābir would say that "there is no harm" on an issue of agreement. This is supported by what Ibn Ḥazm discusses in his *Muḥallā*, 5:193. Also most scholars when talking about the places to which the *mu'takif* is allowed or not allowed to enter do talk about the prohibition of entering roofed homes (not mosques). (See Ibn Ja'far, *al-Jāmi'*, 3:553–554 where he quotes one of Jābir's students named Ḥayyān. See also Ibn Abī Shayba, *Muṣannaḡ*, 2:336).

[197] See Ibn Ja'far, *al-Jāmi'*, 3:403 for an exact quotation of Jābir's statement. The issue of animals killed by non-Arab Muslims (who cannot say the *dhikr* – mention the name of God – in Arabic) is discussed in many sources. (See for example what is ascribed to Ṭāwūs in 'Abd al-Razzāq, *al-Muṣannaḡ*, 4:484).

[198] Eating horses, workhorses and mules is an area of great dispute amongst Muslim scholars. The statement of Jābir described here is relied on in Ibādī *fiqh*. (See for instance Muḥammad b. Ibrāhīm al-Kindī, *Bayān al-shar'*, 27:139, and Aṭṭāyish, *Sharḥ al-nīl*, 4:431). For detailed discussion on this issue, see 'Abd al-Razzāq, *al-Muṣannaḡ*, 4:526–527, and Ibn Abī Shayba, *Muṣannaḡ*, 5:120–122. To summarise their argument: Abū Ḥanīfa, Mālik and al-Awzā'ī say that horses are forbidden, whereas al-Shāfi'ī and the *ṣāhibān* of Abū Ḥanīfa (Abū Yūsuf and Muḥammad) say the opposite. (See al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 3:216).

[199] Similar arguments are commented on earlier, see [62] and [139] above.

[200] For the times at which *ṣalāt al-mayyit* (funeral prayer, see [252] below for details of this prayer) can be performed, see Ibn Abī Shayba, *Muṣannaḡ*, 2:485–487; 'Abd al-Razzāq, *al-Muṣannaḡ*, 3:519–524.

[201] See [5], [22] and [44] above. This tradition is the first to contain a phrase that could refer to the transmitter of the book. He says after quoting the opinion of the Kufans "*wa huwa qawlunā* (it is our saying)". See Chapter IV, pp. 129–131 of this study.

[202] "*Ghāba ...*" here is used for any missing person (and not in apparently disastrous circumstances) (cf. *mafqūd* [35] above). Jābir's opinion is referred to in many early Ibādī sources such as Ibn Ja'far, *al-Jāmi'*, 4:182 (note the verb *فتدين* is mistakenly written *فدينان*). The issue of the maintenance of the wife when her husband is missing is thoroughly discussed in many references. (See, for example, Ibn Abī Shayba, *Muṣannaḡ*, 4:170–172, and *al-Umm*, 5:89, and *al-Mudawwana al-kubrā*, 4:262).

[203] See note [55] above and compare with [72].

[204] Again this presents another branch of the main general principle that the *mukātab* is a free person from the time contract is signed; see references cited earlier for similar arguments ([57], [104], [119], [122], [124], [126], [130], [203] and [287]).

[205] See [204] above. (Cf. Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣuḡhrā*, 1:379; *al-kubrā*, 2:210).

[206] The term *'amd* (deliberate intent) plays a significant role in this tradition; it excludes *shibh al-'amd* (quasi-deliberate intent) and *al-khaṭa'* (mistake). The slave is subject to retaliation for homicide or instead the *awliyā'* (pl. of *walī* the next of kin who has the right to demand retaliation) may choose blood money. There is no disagreement on the permissibility of these two options, Q: 2:178. The disagreement, however, is on the *awliyā'* taking over the ownership of the culprit from his or her own master. Jābir, al-Ḥasan, Qatāda, 'Aṭā' and al-Sha'bī allow it while Ibrāhīm says that they are not entitled to possess him or her but must either retaliate or choose *'afw* (pardon) and take the *diyya* (see [204] above). (See 'Abd al-Razzāq, *al-Muṣannaḡ*, 9:483; Ibn Abī Shayba, *Muṣannaḡ*, 5:384–385, and Aṭṭāyish, *Sharḥ al-nīl*, 15:243).

[207] For definition of "*al-mu'taq 'an dubur*" see [109] above. For the argument mentioned in this tradition, see references cited on [174] above.

(Cf. al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 5:207 (2305), and Abū Sa'īd al-Kudāmī, *al-Jāmi' al-mufīd min aḥkām Abī Sa'īd*, 5:279).

[208] "*Al-'āqila*" consists of one's male relatives. They are responsible for the payment of the *diya* if the homicide is committed by *khaṭa'* or, according to some, *shibh al-'amd*. Yet the *'āqila* are not responsible if the culprit is a slave (*mudabbar*, *'abd*, *umm walad*) according to many scholars such as Jābir b. Zayd, Ibrāhīm al-Nakha'ī, 'Aṭā', al-Zuhrī and others. (See Ibn Abī Shayba, *Muṣannaḥ*, 5:405; al-Kindī, *al-Muṣannaḥ*, 40:182). However, Imām Mālik and Ibn Abī Laylā interpret the tradition that if the culprit is a free person and kills a slave (by *khaṭa'*). (See *al-Muwaṭṭa'*, 2:866). "... *ta'qil* ... *'alā*" the verb *'aqala* in this context means to pay the blood money on behalf of the culprit (subject to conditions, some of which are mentioned above) but it has never been used with *'alā*. Here is what most references say:

عَقَلَ الْقَتِيلَ أَعْطَى دَيْتَهُ وَعَقَلَ لَهُ دَمَ فُلَانٍ إِذَا تَرَكَ الْقَوْدَ لِلدِّيَةِ وَعَقَلَ عَنْ  
فُلَانٍ غَرَمَ عَنْهُ جُنَايَتَهُ وَذَلِكَ إِذَا لَزِمَتْهُ دِيَةٌ فَأَدَاها عَنْهُ فَهَذَا هُوَ الْفَرْقُ بَيْنَ  
عَقَلَهُ وَعَقَلَ لَهُ وَعَقَلَ عَنْهُ وَبَابُ الْكُلِّ ضَرْبٌ.

(See *Mukhtār al-ṣiḥāḥ*, 1:187; *Lisān al-'arab*, 11:460). Yet all readings of the manuscript agree on *'alā*. This, if not a slip of the pen on all the copies of the book, is worth more attention and deserves analysis from a linguistic point of view in addition to its legal implications. External sources indicate what has been described at the beginning of this tradition.

[209] Based on the rule mentioned earlier (note [55] above), the Ibādīs, Ibn Abī Laylā and Aḥmad b. Ḥanbal consider a shared slave (joint property) free if one owner manumits his share by means of *mukātaba*. (See Ibn Ja'far, *al-Jāmi'*, 6:29, and al-Marwazī, Muḥammad b. Naṣr, *Ikhtilāf al-'ulamā'*, 1:229). But most scholars of other Muslim schools consider such an act from one owner without permission from the other illegal. (See al-Shaybānī, *al-Mabsūṭ*, 3:493, and *al-Mudawwana al-kubrā*, 7:179). The last sentences of this tradition "*wa in qabaḍahā fī ḥayāt ...*" does not seem plausible; the verb *qabaḍ*, though all readings of the manuscript agree, makes no sense. The direction of this opinion tends to make the *mukātaba* subject to permission from the other owner. Thus if he or she disapproves it, it is illegal; and if he or she approves the act of his company it becomes complete. This leads me to suggest that the relevant verb required to give this meaning is *qabil* and not *qabaḍ* so the sentence will read: "*wa in qabilahā fī ḥayāt ... وإن قبلها في حياة*".

[210] See references cited on [209] above.

[211] *Ṣalāt al-safar* (travel prayer) is one of the key issues that differentiate the Ibādīyya as a *madhhab* from other Muslim schools. More details are

given in Ch. IV, pp. 154–156 below. It is true that they all agree that a *musāfir* (traveller) should shorten the *ṣalāt* but there is a great controversy on the distance at which he or she starts *qasr* (shortening) the prayer and for how long a traveller can remain performing *qasr* prayer. This tradition presents Jābir's, and therefore the Ibādī view on the latter question. It makes no consideration about the period of time involved as long as he or she has not returned to his or her home town. (See Abū Ghānīm al-Khurāsānī, *al-Mudawwana al-ṣuḡhrā*, 1:77–80; *al-Mudawwana al-kubrā*, 1:172; *al-Muwaṭṭa'*, 1:145; Ibn Abī Shayba, *Muṣannaḥ*, 2:203–205, and *al-Umm*, 7:187, and *al-Mudawwana al-kubrā*, 1:122). A good summary of different views on this issue can be found in al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 1:359–360 where it can be easily seen that the Ibādī standpoint is unique amongst living Muslim schools although it has been ascribed to the *sunna* and some of the Companions. (See Ibn Qayyim al-Jawziyya, *Zād al-ma'ād*, (1991), 3:561–565). Also Ibn Taymiyya who is a distinguished Ḥanbalī scholar, has approved it in his *fatwās*. (See *Majmū' fatāwā shaykh al-Islām Ibn Taymiyya*, 24:18, 136–137).

[212] This is the first tradition transmitted through Tamīm b. Ḥuwayṣ, for biography of whom see Ennami (ed.), *Ajwibat Ibn Khalfūn*, p. 113–114, and al-Dhahabī, *Tārīkh al-Islām*, 5:50. For the argument see [211] above.

[213], [214] "... *yabī'u min* ..." this verb used in both traditions means 'to buy' rather than 'to sell' as the verb *bā'* is of the *aqdād* (verbs equally giving two contradictory meanings). (See *Lisān al-'arab*, 8:23). The two traditions are discussing similar transactions except that the price is paid immediately in the first and is delayed in the latter. These transactions are discussed in detail under the so called *al-'īna* or *bay' al-'īna*. (See Schacht, *Introduction*, 79, 153; *al-Muwaṭṭa'*, 2:640–642, 675; 'Abd al-Razzāq, *al-Muṣannaḥ*, 8:186–188; Ibn Abī Shayba, *Muṣannaḥ*, 4:282–284, and *al-Mudawwana al-kubrā*, 9:89, 131).

[215] See references and sources cited on [55] and [209] above.

[216] With addition to sources cited on [193] above, see Ibn Ja'far, *al-Jāmi'*, 6:58, where there is an opinion ascribed to Ḍumām (who is of course the transmitter of our book) contradicting Jābir's and actually the majority of Ibādīs' opinion on this issue. (Cf. Ibn Baraka, *al-Jāmi'*, 2:531).

[217] This issue has been commented on earlier, see [98] above.

[218] See [134], [137], [141] and [196] above.

[219] See references cited on [136] and [189] above.

[220] The basis of this tradition is the same as that of tradition [1] above. See references cited there and on [70], [193] and [216] above. (Cf. al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, of al-Ṭaḥāwī, 2:512).

[221] For definition of *ilā'* see [31] and [138] above. Regarding the details of the issue of slaves repudiating their wives with *ilā'*, see al-Kindī, *al-Muṣannaḥ*, 38:164; 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:283, and Ibn Abī Shayba, *Muṣannaḥ*, 4:135. Cf. the argument discussed earlier on [161] above.

[222] Most Muslim scholars are of the same opinion as that of Jābir mentioned here. The only tradition, regardless of its authenticity, indicating a different opinion is ascribed to Abū al-Mulayḥ. (Cf. Ibn Abī Shayba, *Muṣannaḥ*, 2:375, and *al-Mudawwana al-kubrā*, 2:292). However, the Ibādīs' statements are identical to that ascribed here to Jābir b. Zayd. (See, for example, Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣuḡhrā*, 1:151–152).

[223] For definition of *ṣadaqat al-ḥajr* see [13] above, and for the argument see references cited on [186] earlier. The opinion of the Kufans mentioned here is ascribed to Abū Hurayra in Ibn Abī Shayba, *Muṣannaḥ*, 2:423, and it is explicitly ascribed to Imām Abū Ḥanīfa in Ḥanafī sources like al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 1:474 (no. 465). Jābir's opinion here does not state how much each owner should pay for their slave: either it is according to their shares, as ascribed to Imāms Mālik and al-Shāfi'ī (*ibid.*) or this does not matter and what matters most is the payment of *ṣadaqat al-ḥajr* by any means.

[224] See references and sources cited on [220] above. It is not clear to whom the sentence (*wa lā adrī aya talā'anāni am yujlad, anā ashukku fī dhālika* – and I do not know should they take oaths of *li'ān* or should he be punished, I have doubt about that) refers. It could be Jābir's being indecisive on this issue, or that a transmitter of the tradition was not certain about the exact statement of Jābir. External sources add no information. Early Ibādī scholars differed on this issue. (See al-Kindī, *al-Muṣannaḥ*, 40:108–109, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:514).

[225] See references cited on [77] and [151] above.

[226] "... *yaṭraḥu ... 'an*" means to take off his garment and "*yatawashshahu bihi*" means to put it around his shoulder and his waist. There is disagreement on doing so for a *muḥrim*. For opinions of scholars and evidence, see Ibn Abī Shayba, *Muṣannaḥ*, 3:441; *al-Umm*, 2:150, and *al-Mudawwana al-kubrā*, 2:461.

[227] Scholars have discussed the conditions of a mosque in which *i'tikāf* can take place (see [134] above). Some scholars specify the three sacred mosques

*al-masjid al-ḥarām* of Mecca, *al-masjid al-nabawī* of Madīna and *al-masjid al-aqṣā* of Jerusalem; others extend it to all mosques where Friday prayer is performed; while the majority, like Jābir b. Zayd, allow it to be performed in all mosques. (See for details *al-Muwaṭṭa'*, 1:313; Ibn Abī Shayba, *Muṣannaḥ*, 2:337; al-Shaybānī, *al-Mabsūt*, 2:269–270, and *al-Umm*, 2:205).

[228] This tradition is a very strange one, because it contradicts a Prophetic *ḥadīth* transmitted by Jābir b. Zayd on the prohibition of wearing a *qamīṣ* (shirt) for the *muḥrim* (*Musnad al-Rabī' b. Ḥabīb*, 104, no. 406) and by Nāfi' on the authority of Ibn 'Umar (*al-Muwaṭṭa'*, 1:324; *Ṣaḥīḥ al-Bukhārī*, 2:559; *Ṣaḥīḥ Muslim*, 2:835). The early twentieth century Ibādī scholar al-Sālimī quotes 'Iyād (probably al-Qāḍī) claiming consensus on this prohibition. (See *Sharḥ al-jāmi' al-ṣaḥīḥ*, 2:182). The situation with *qabā'* is less strange, because there is a disagreement on the *muḥrim* putting on the *qabā'*. Yet for us to understand what different opinions there are and why it is an issue of controversy, we need to understand what the *qabā'* really is. Arabic dictionaries do not provide much information about it; they talk about something seems to be well known at that time to the extent that we find in *Mukhtār al-ṣiḥāḥ*, p. 218: "*al-qabā'*, *alladhī yulbas* – is what is worn"), the same 'explanation' is in *Lisān al-'arab*, 5:72. Of course this does not help us much to determine exactly what are they talking about although theoretically it could be useful to refer to sources that discuss this issue like Ibn Abī Shayba, *Muṣannaḥ*, 3:449; al-Kindī, *al-Muṣannaḥ*, 8:136–137; al-Shaybānī, *al-Mabsūt*, 2:480, and *al-Umm*, 2:150.

[229] For the opinions of Ibādī scholars and their implementations of Jābir's view, see Ibn Ja'far, *al-Jāmi'*, 6:251–252, and al-Kindī, *al-Muṣannaḥ*, 33:90–93. For more details of the standpoints of other Muslim schools, see al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:335–338 (no. 831), and *al-Mudawwana al-kubrā*, 4:235–236.

[230] Along with references cited on [52] above, see al-Kindī, *Bayān al-shar'*, 45–46:266; Ibn Ja'far, *al-Jāmi'*, 6:12–13, al-Qurṭubī, *Tafsīr*, 5:6. "*Shiqṣan ...*". A *shiqṣ* is a share of something (*Lisān al-'arab*, 7:48). From these sources it seems that there is an agreement that a mother becomes free if owned (or partly owned) by her child. (Cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 9:183, and Ibn Abī Shayba, *Muṣannaḥ*, 4:276–277). The disagreement however is on other *maḥrams* (see [156] above).

[231] See [1] and [224] above.

[232] *Li'ān* (see note on [1] above) can also be a process of contesting the paternity of a child, but only if the father has never admitted it even for a moment. If he does, so the child is his, and he cannot use *li'ān* for this

purpose according to many scholars like 'Umar, 'Alī, Jābir b. Zayd, al-Ḥasan, al-Sha'bī, Ibrāhīm and Ḥammād, and unlike Mujāhid who says the opposite. (See Ibn Abī Shayba, *Muṣannaḥ*, 4:39–40; *al-Umm*, 5:296, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2:511–512).

[233] This is so because the *li'ān* was not to negate his paternity of the child (see comment and references cited on [232] above). (Cf. al-Kindī, *al-Muṣannaḥ*, 40:116–118).

[234] See references cited on [221] above. Most scholars, however, do not state explicitly that an *'abd* cannot take all the options of the *kaffāra* of *zihār* (see [2] above). Their statements are all about fasting. (See for instance *al-Muwaṭṭa'*, 2:561, and *al-Mudawwana al-kubrā*, 6:59, where a statement ascribed to Ibn Sīrīn is identical to that of Jābir mentioned here).

[235] "*Nathra* ..." is the steamy discharge from the nose. This issue is rarely discussed amongst *fuqahā'* and I could not find any trace of a similar or parallel tradition or opinion. They do, however discuss the saliva of animals, their perspiration and the *su'r* ([41] above) of animals. (Cf. Ibn Abī Shayba, *Muṣannaḥ*, 1:131).

[236] The right of women to act as witnesses has always been an issue of dispute between Muslim schools of law. The Ibādīs, based on Jābir's standpoint, accept the evidence of women as valid concerning matters of which women have a special knowledge (such as birth, *raḍā'*, see [49] above, virginity, etc.) and concerning matters of penal law (punishments and retaliation) except adultery. (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:230, and Ibn Ja'far; *al-Jāmi'*, 4:21). The other opinion ascribed here to the Kufans is actually that of the Ḥanafīs. (See al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 3:345). It is also ascribed to al-Ḥasan, Ibrāhīm, Ḥammād and others. (See Ibn Abī Shayba, *Muṣannaḥ*, 5:533). There are other significant views on this matter. (Cf. *al-Umm*, 7:84–88; *al-Mudawwana al-kubrā*, 6:44–46, and 'Abd al-Razzāq, *al-Muṣannaḥ*, 8:330–333).

[237] This tradition is the first to be transmitted on the authority of Abū 'Ubayda Muslim b. Abī Karīma, and it is one of two traditions in the book on which the older student and essential transmitter of Jābir b. Zayd in this book, Ḍumām, is reporting a younger, though not less significant figure, Muslim b. Abī Karīma. For the question itself, see sources cited on [39] and [40] above.

[238] "*Nabīdh al-jarr*" is an alcoholic drink prepared in clay jars sealed with pitch. The question of this kind of drink seems to have been very problematic, either because it is not clear what is really meant by this and similar drink, or there are other traditions that allow it. One can even infer this from

the insistence of the questioner and his repetition of the question about this drink and equally from the reply of Jābir to the man where it is the first and the only place in our book he uses the term *ḥarām* (forbidden). There is an interesting story quoted in al-Kindī, *Bayān al-shar'*, 27:188:

روى لنا محمد بن محبوب عن أبي صفرة عن والده محبوب — رحمه الله — أن جابر بن زيد دخل على رجل من المسلمين يقال له أبو قفاس<sup>8</sup>، فقدم إليه النبيذ، فقال أبو الشعثاء: باعد عنا هذا النبيذ. فقال له: ما أنكرت منه يا أبا الشعثاء فقد كنت تشربه عندي؟ فقال: أراه شديد السواد، ولا أرى الذباب يعيف عليه. فقال: أما شدة السواد فإني كنت أعصره ولا أطبخه ثم إنني طبخته فصار في السقاء أسود، فقال: وأما الذباب فذلك حين أرخيت الستر فوق الذباب على النبيذ. فقال جابر: هات الآن، فأعطاه، فقال: ما زاده الطبخ إلا خيرا، وشرب منه جابر.

(See al-Faḍl b. al-Ḥawārī, *al-Jāmi'*, 3:227; 'Abd al-Razzāq, *al-Muṣannaḥ*, 9:202–205; Ibn Abī Shayba, *Muṣannaḥ*, 5:85–88; *al-Umm*, 6:179, and Ibn 'Abd al-Barr, *al-Tamhīd*, 3:226–227).

[239] This tradition affirms the high status of scholarship and Islamic knowledge Jābir achieved in the society at that time. People knew him for that and did raise questions in different subjects to him as the case in this tradition we have. The *masjid al-jāmi'* 'grand mosque' is probably at Basra, where both Jābir and Abū Nūḥ spent most of their lives although neither the text nor external sources provide information about this mosque. The question itself might sound a normal one, but actually it is not. There is a controversy on the meaning of the verse Q: 33:55 Jābir quoted to the questioner. The verse reads (It is no sin on them (Prophet's wives) if they appear before their fathers, or their sons, or their brothers ... etc). It says nothing about how to appear before those mentioned in this verse. Jābir's opinion is that it means to appear without *jilbāb* (gown or loose garment) while others such as Qatāda say that it means to appear unveiled. (See al-Ṭabarī, *Tafsīr*, 22:41–42).

[240] This is the opinion of the majority of Muslim scholars. Some however, have distinguished between revocable repudiation and definite repudiation. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:211–212; Ibn Abī Shayba, *Muṣannaḥ*, 3:525, and Muḥammad b. Naṣr al-Marwazī, *Ikhtilāf al-'ulamā'*, (2<sup>nd</sup> ed., 1986), 1:135).

<sup>8</sup> Abū Fiqās al-Aswad b. Qays, a friend of Jābir b. Zayd used to accompany him to *hajj* (cf. al-Shammākhī, *al-Siyar*, 1:89).

[241] The same opinion is ascribed to Ibn Mas'ūd, Ibn 'Umar and 'Alī, whereas the permission is recognised by 'Uthmān, Mu'āwiya and by Muḥammad b. al-Ḥanafīyya. (See Ibn Abī Shayba, *Muṣannaf*, 3:482).

[242] Jābir here insists on a principle thoroughly described by many scholars as a fundamental rule in Islamic law of contract. The object of the contract, in particular, must be explicit (*ma'lūm*, 'known'), especially as regards objects which can be measured or weighed (Schacht, *Introduction*, 147). (Cf. Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:116, 118; 'Abd al-Razzāq, *al-Muṣannaf*, 8:40, 131; Ibn Abī Shayba, *Muṣannaf*, 4:275, 528; al-Shaybānī, Muḥammad b. al-Ḥasan, *al-Ḥujja*, 2:696, and for an opposite view see *al-Muwatta'*, 2:675, and *al-Mudawwana al-kubrā*, 9:136).

[243] This tradition although dealing with a very normal issue, presents another good example of the authority of Jābir b. Zayd among his followers and their eagerness to consult him in all matters. See Ch. IV, p. 157–159.

[244] *Salaf* or *salam* is a contract of delivery with prepayment, see Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:120–122 where he states that this view of Jābir is also that of Ibn 'Abbās, although al-Rabī', Jābir's student, does not approve of this view. (Cf. Ibn Abī Shayba, *Muṣannaf*, 4:269, and *al-Mudawwana al-kubrā*, 9:39).

[245] This opinion of Jābir is quoted by al-Sālimī, *Ma'āriḥ al-āmāl*, 11:131 as a proof that *takbīr* is not obligatory at *ayyām al-tashrīq* (eleventh, twelfth and thirteenth of *Dhū al-ḥijja*). For more details see *al-Muwatta'*, 1:404; Ibn Abī Shayba, *Muṣannaf*, 2:7.

[246] "*Al-muzāyada*" is rarely used in such context. What the *fuqahā'* do discuss is the interpretation of Q: 2:197 (... so whosoever intends to perform *hajj* (by assuming *iḥrām*) should abandon *rafath* (sexual relations with his wife), *fusūq* (sin) and *jidāl* (unjust dispute) during the *hajj* ...). Also in other sources that describe Jābir's character and manners we find that "he used not to dispute or argue on three occasions: on the fee for transport to Mecca, on buying a slave for manumission and on the animal for sacrifice" (see Abū Nu'aym, *Hilyat al-awliyā'*, 3:85).

[247] See references cited on [82], [83] and [99] above.

[248] See analysis of this tradition in Ch. I, p. 17–18 of this study.

[249] "... *ma'aka* ..." is to rub down (*Mukhtār al-ṣiḥāh*, 1:262). For different views on the impurity of lice if killed or rubbed down, see Ibn Ja'far, *al-Jāmi'*, 1:300, 404, 5:354; 'Abd al-Razzāq, *al-Muṣannaf*, 1:449; *al-Umm*, 1:5, and Ibn 'Abd al-Barr, *al-Tamhīd*, 1:338.

[250] This issue is one of the real controversial issues in Islamic penal law. The Ibādīs, or at least most of them, recognise Jābir's opinion that it is the intention which counts in a crime of homicide, not the tool used, unless there is a claim from the culprit that he has no intention to commit homicide. (See Abū Sa'īd al-Kudamī, *al-Jāmi' al-muḥīd min aḥkām Abī Sa'īd*, 5:298). Identical statements to that ascribed here to the Kufans are also reported from Ibrāhīm, al-Ḥasan and al-Sha'bī. (See Ibn Abī Shayba, *Muṣannaf*, 5:432, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 5:85–91).

[251] From the tradition itself, it is obvious that there is a disagreement between scholars within one school, let alone of different schools. Ibādī sources for instance record a different opinion of Jābir on this matter from the one ascribed to him here. It is the view that older relatives can testify for their offspring but not for their favour in matters involving money. (See Ibn Ja'far, *al-Jāmi'*, 4:34–35). Note that the opinion ascribed to Ḥayyān (Ch. IV, p. 145 for biography) here is actually the view of Imām Mālik (*al-Mudawwana al-kubrā*, 13:155–156).

[252] Early Ibādī sources quote this description of funeral prayer. (See for example, Abū Sa'īd al-Kudamī, *al-Jāmi' al-muḥīd min aḥkām Abī Sa'īd*, 1:286; Ibn Ja'far, *al-Jāmi'*, 2:455. Cf. 'Abd al-Razzāq, *al-Muṣannaf*, 3:486–490, and Ibn Abī Shayba, *Muṣannaf*, 2:488–490).

[253] See for similar argument sources cited on [110] above. This story is extant in Ibn Ja'far, *al-Jāmi'*, 3:403 with minor changes. Ḥayyān al-'Āmirī is written "al-Ghāfirī" and instead of "al-Ṣibākh" it reads "al-Siyāh". (For Ḥayyān, see Ibn Ḥajar, *Tahdhīb al-tahdhīb*, (1<sup>st</sup> ed., 1984), 3:60, 9:153, and Yāqūt al-Ḥamawī, *Mu'jam al-buldān*, 2:187). Neither reference provides information regarding his family name. If we turn to Ibādī sources, again not much is available. Al-Shammākhī mentions in a list of unknown transmitters of Jābir that al-Rabī' depends on a man named Ḥassān al-'Āmirī (*al-Siyar*, 1:111). "Al-Ṣibākh" appears to be for al-Sibākh, which is a name of a place or a market in Basra at that time according to *al-Qamūs al-muḥīd*, p. 323 (under سبخ).

[254] There are abundant traditions and records that Jābir b. Zayd was very keen always to attend Friday prayer even with those whom he considered as corrupt and unjust governors. This is obvious in this tradition from the reaction of the questioner, Ḍumām, when he asked him with embarrassment "a-khalfa al-Ḥajjāj?". Jābir's persistence on attending Friday prayer and his encouragement to his followers and colleagues is observed from its tactical aims by most writers. (See for example, *Rasā'il Jābir b. Zayd*, ms, letter no.3 (addressed to Ṭarīf b. Khulayd), p. 9; Kāshif, *al-Siyar wa al-jawābāt – Sīrat*

*Maḥbūb b. al-Ruḥayl ilā ahl Ḥaḍramawt*, 1:291–292, 309, 2:139; Ibn Ja'far, *al-Jāmi'*, 2:305, 396, 401, 406, and al-Kindī, *Bayān al-shar'*, 15:71).

[255] The question of paying *zakāt* out of properties owned by minors has long been an issue of investigation. Jābir is quoted in many references, Ibādī and Sunnī, saying that *zakāt* must be taken from minors. (See for example Abū 'Ubayda Muslim b. Abī Karīma, *Risāla fī al-zakāt*, p. 24; al-Kindī, *Bayān al-shar'*, 17:69, and Ibn Qudāma, *al-Mughnī*, 2:493). This is the opinion of 'Umar, 'Alī, 'Ā'isha, Ibn Sīrīn, 'Atā', Mujāhid, Mālik and al-Shāfi'ī; whereas the opinion ascribed here to the Kufans is approved by al-Ḥasan al-Baṣrī, Ibrāhīm, Sa'īd b. al-Musayyab and the Ḥanafīs. (See Bakūsh, *Fiqh al-imām Jābir b. Zayd*, p. 264).

[256] This tradition is another example of al-Rabī' transmitting from a younger contemporary of his, Abū al-Ruḥayl Maḥbūb b. al-Ruḥayl (see Ch. IV, p. 140). The issue discussed here is a normal one discussed in most *fiqh* sources of all schools. (Cf. al-Shaybānī, *al-Mabsūṭ*, 2:434–435; *al-Mudawwana al-kubrā*, 2:354, and Aṭṭfayyish, *Sharḥ al-nīl*, 4:214). The story is also recorded in Ibn Ja'far, *al-Jāmi'*, 3:404.

[257] This tradition makes clear that Abū al-Ruḥayl is Maḥbūb b. al-Ruḥayl who is better known as Abū Sufyān rather than Abū al-Ruḥayl. He was the stepson of al-Rabī' b. Ḥabīb, and his father was living at the time of Jābir b. Zayd. (See al-Darjīnī, *Ṭabaqāt al-mashāyikh*, 263–273; al-Shammākhī, *al-Siyar*, 117–119). For the tradition, see its implementation in Ibn Ja'far, *al-Jāmi'*, 3:167–168, and note that Ibn Ja'far mentions two narrations of the story, the first transmitted by Abū Sufyān and the second by his son Muḥammad b. Maḥbūb who ascribed the story to his great-grandmother. (Cf. al-'Awtabī, *al-Diyā'*, 6:337, and al-Kindī, *Bayān al-shar'*, 20:168–174).

[258] This is the first tradition transmitted through 'Amāra b. Ḥayyān (see Ch. IV, p. 142 of this study). Wāsiṭ is the town in Iraq (*al-Qāmūs al-muḥīṭ*, s.v. *وسط*), halfway between Basra and Kufa built by al-Ḥajjāj between the years 75/694 and 78/697. (See al-Wāsiṭī, Aslam (d.292/905), *Tārīkh Wāsiṭ*, (1<sup>st</sup> ed., 1986), 1:38–39). Regarding the performance of prayer on boats and ships, see Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 1:185–186; al-Kindī, *Bayān al-shar'*, 14:215–216; 'Abd al-Razzāq, *al-Muṣannaf*, 2:580–583, and Ibn Abī Shayba, *Muṣannaf*, 2:68–70.

[259] This tradition, apart from its *fiqh* opinion, is one of the few that describes Jābir's late life. From the description given by 'Amāra, who was an orphan brought up at Jābir's house, worked with him and accompanied him in his travels (al-Darjīnī, *Ṭabaqāt al-mashāyikh*, 2:212) we know that Jābir reached an old age during which he was not able to perform some of his

prayers in the normal way. For "... *muḥtabiyan* ..." see *Lisan al-'arab*, 14:160–161 (under *حبا*). For performing *ṣalāt* in the way ascribed here to Jābir, see al-Kindī, *Bayān al-shar'*, 15:232.

[260] This issue is related to the question discussed earlier; see references cited on [211] above.

[261] This tradition, along with the next one, deals with the issue of *kharāj* (land-tax). Some scholars say that *kharāj* remains a charge on the land, even if its owner adopts Islam (as the case in this tradition) or it otherwise becomes the property of a Muslim (see [262] below). Jābir b. Zayd in particular and the Ibādīs in general disapprove of this opinion and state that there is only one tax from a land depending on its owner (a Muslim or non-Muslim). For details of opinions and evidence, see Abū Yūsuf (al-Qāḍī), *Kitāb al-kharāj*, 59–61; Ibn Abī Shayba, *Muṣannaf*, 2:418–419, and Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣughrā*, 2:264.

[262] See comment and references cited on [261] above. And note that the expression "... *ṣallā ... muṣalliya* ..." is used to indicate that he or she adopts Islam. Here al-Rabī' reports that 'Umar b. 'Abd al-'Azīz ordered his governors not to impose the *kharāj* on a Muslim who has "*arḍ kharājīyya*" tax paid lands. This is also ascribed to him in *al-Mudawwana al-kubrā*, 2:283 whereas some sources ascribed to him the contrary. (See 'Abd al-Razzāq, *al-Muṣannaf*, 6:101, 10:335; Ibn Abī Shayba, *Muṣannaf*, 2:419, 6:436, and *al-Mudawwana al-kubrā*, 2:346). It could be that 'Umar had had two opinions and each transmitter reported one.

[263] This tradition is the only one in the book that deals with more than one issue. For the first issue, see sources cited on [71] above and the second has also been commented on, in [10] above. For the last part regarding the *muḥrim*, the same opinion is adopted by the Ḥanafīs (al-Shaybānī, *al-Mabsūṭ*, 2:432) while the Shāfi'īs say that it is alright for a *muḥrim* to cut the hair or clip the nails of a non-*muḥrim* (*al-Umm*, 2:206.) Imām Mālik on the other hand differentiates between cutting the hair and clipping the nails; the latter, unlike the first, is allowed (*al-Mudawwana al-kubrā*, 2:428.)

[264] For biography of 'Abbās b. al-Ḥārith see Ch. IV, p. 138. This opinion is also ascribed to Jābir b. Zayd in non-Ibādī sources, such as Abū 'Ubayd al-Qāsim b. Sallām, *al-Amwāl*, 431, and Ibn Qudāma, *al-Mughnī*, 2:638–642. (Cf. Ibn Abī Shayba, *Muṣannaf*, 2:389). The opinion ascribed here to the Kufans is also that by Ibn 'Abbās and 'Alī b. Abī Ṭālib. (See Abū 'Ubayd al-Qāsim b. Sallām, *al-Amwāl*, 430, and Ibn Khalfūn, *Ajwibat*, 61–63).

[265] For biography of al-Walīd b. Yaḥyā see Ch. IV, p. 150 of this study. Similar forms of *ta'līq al-talāq* (conditional repudiation) are discussed in most early references such as Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 1:287–290; Ibn Ja'far, *al-Jāmi'*, 6:314–316; Ibn Abī Shayba, *Muṣannaḥ*, 4:174; *al-Mudawwana al-kubrā*, 6:8, 92.

[266] Cf. al-Kindī, *Bayān al-shar'*, 61–62:100; Aṭṭāyish, *Sharḥ al-nīl*, 12:380; Ibn Qudāma, *al-Mughnī*, 6:418, and note that most scholars are in favour of approving such a will. (See Ibn Abī Shayba, *Muṣannaḥ*, 6:213–215; Ibn 'Abd al-Barr, *al-Tamhīd*, 13:300–301).

[267] See references cited on [255] above. Note that this tradition uses the term *ṣadaqa* instead of *zakāt* (used so frequently in this book) although it is the term used in the Qur'ān (9:60, 103).

[268] If a pilgrim mistakenly recites the *talbiya* of the 'umra instead of that of the *hajj*, his intention matters most and his merit is for what he intends not what he pronounces by mistake, a rule that includes many detailed issues. (See Ibn Ja'far, *al-Jāmi'*, 3:306). Some scholars claim consensus on this rule. (See Ibn Qudāma, *al-Mughnī*, 3:126, and *al-Umm*, 2:155). But I could not find the other opinion ascribed to the Kufans here.

[269] On this particular issue Jābir narrated a Prophetic tradition, *Musnad al-Rabī' b. Ḥabīb*, 1:164. (Cf. Ibn Abī Shayba, *Muṣannaḥ*, 3:303). The other view is ascribed to Ibn 'Umar and adopted by the Ḥanafīs. (See al-Shaybānī, *al-Ḥujja*, 1:351).

[270] See references cited on [140] above.

[271] This tradition has been commonly quoted by Ibādī sources. (See for example, al-Kindī, *Bayān al-shar'*, 14:15; al-'Awtabī, *al-Diyā'*, 5:121, and al-Shammākhī, *al-Īdāh*, 1:691, and cf. 'Abd al-Razzāq, *al-Muṣannaḥ*, 3:27, and Ibn Abī Shayba, *Muṣannaḥ*, 2:90; al-Shaybānī, *al-Ḥujja*, 1:90, and Ibn 'Abd al-Barr, *al-Tamhīd*, 13:249–251).

[272] For definition of *qadhf*, see note on [1] and [26] above. If false accusations are directed to a group of people, the times of applicability of *ḥadd* is an issue of disagreement. For details see *al-Muwaṭṭa'*, 2:829; 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:432–434, and Ibn Abī Shayba, *Muṣannaḥ*, 5:482–484; Ibn Qudāma, *al-Mughnī*, 9:88.

[273] This is the first source to mention this story, though it has been quoted later in other sources such as al-Darjīnī, *Ṭabaqāt al-mashāyikh*, 2:208; al-Shammākhī, *al-Siyar*, 1:70, and al-Janāwunī, *Kitāb al-nikāh*, 153. Jābir's reply to the women is a good example of using the Qur'ān as a proof for his

opinions about getting married to an *ama* (female slave), which is an area of much detailed argument. (Cf. al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 2:158, 5:138; *al-Muwaṭṭa'*, 2:536; 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:263, and Ibn Abī Shayba, *Muṣannaḥ*, 3:466).

[274] See references cited on [227] above.

[275] Accepting gifts from unjust rulers and corrupt governors is a policy Jābir followed to keep relations with them and to avoid any doubts about the opposition of his community. Ibādī references provide various examples of implementing this policy. (See al-Kindī, *al-Muṣannaḥ*, 10:291–292, and al-Warjlānī, *al-Dalīl wa-l-burhān*, 3:57). For other scholars following a similar line with corrupt authorities, see also Ibn 'Abd al-Barr, *al-Tamhīd*, 4:117–119.

[276] On the issue of *zihār* (see [2], [37], [111], [149] and [150] above) from more than one wife either in one occasion or separately, Jābir adopted an opinion ascribed to 'Umar b. al-Khaṭṭāb and approved by most scholars except the Ḥanafīs. (See al-Kindī, *al-Muṣannaḥ*, 38:161; 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:438–439; al-Shaybānī, *al-Mabsūṭ*, 2:221, and *al-Mudawwana al-kubrā*, 6:54).

[277] For al-Ḍaḥḥāk b. Muzāḥim see al-Dhahabī, *Siyar a'lām al-nubalā'*, 4:598–600. For the applicability of *ḥadd* punishments to slaves (males, females *ama* and *umm walad*) see discussion on [E1] above.

[278] This incident shows part of the structural bases, both social and political, Jābir was establishing within his followers. In his correspondence to some of his colleagues and disciples, he asked them to write to him on all matters regarding their *da'wa* (movement propaganda) and events in the society in general. (See *Rasā'il Jābir b. Zayd*, ms, Ennami (ed.), letters: no. 2 addressed to 'Uthmān b. Yasār, p. 5; no. 3 addressed to Ṭarīf b. Khulayd, p. 9; no. 4 addressed to Ghīṭrīf b. 'Abd al-Raḥmān, p. 12.) Thus it is not strange that he named the man carrying a letter to him and keeping it “for days” as unworthy of trust. This source seems to be the only one to mention this story as far as I could find.

[279] In addition to references cited on [244] above, see 'Abd al-Razzāq, *al-Muṣannaḥ*, 8:23–25; Ibn Qudāma; *al-Mughnī*, 4:187, and Ibn 'Abd al-Barr, *al-Tamhīd*, 4:65.

[280] All this dialogue and the resulting legal opinions are also extant in Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣughrā*, 1:283; 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:375; Ibn Abī Shayba, *Muṣannaḥ*, 4:69–70.

[281] Most Ibādī scholars follow this opinion of Jābir b. Zayd mentioned here. (See al-Kindī, *al-Muṣannaḥ*, 40:89). Cf. references cited on [272] above although we cannot generalize from the judgements stated there. For example, there are differences about whether a phrase is *qadhif* or not; e.g. Ibn Qudāma differentiates between “*yā bna al-zāniyayn* – O son of adulterers” and “*yā bna al-zānī wa al-zāniya* – O son of adulterer and adulteress”. (See *al-Mughnī*, 9:89, and *al-Umm*, 7:153–154 respectively).

[282] There are long discussions on the conditions of the animal sufficient for *daḥiyya* (sacrifice), as there are certain ‘*uyūb*’ ‘defects’ which render the animal inadmissible, based on a Prophetic *ḥadīth* found in *al-Muwaṭṭa’*, 2:482. (Cf. Ibn Baraka, *al-Jāmi’*, 2:59; Ibn Ja’far, *al-Jāmi’*, 3:404; ‘Abd al-Razzāq, *al-Muṣannaḥ*, 7:347–350; Ibn Abī Shayba, *Muṣannaḥ*, 2:369–371). “... *al-‘aḍba*” is a cleft-eared animal, “*al-musta’šala min dhanabihā* ...” an animal with its tail cut off, “... *al-mutašarrimat azlāfuhā* ...” animal with a cleft in its hoof, “... *‘arjā*’...” lame animal. (See *Lisān al-‘Arab*, under *عضب*, *عرج*, *أصل*, *صرم*, *عرج*).

[283] See references cited on [264] above.

[284] This tradition contradicts what has been ascribed to Jābir b. Zayd earlier in this book (see [12], [181] and [189] above), but it verifies the opinion ascribed to Jābir in many non-Ibādī sources such as al-Qurtubī, *Tafsīr*, 2:386–387; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 8:163; Ibn Qudāma, *al-Mughnī*, 3:494 that the *qārin* has to perform two *ṭawāfs* and two *sa’ys*. This is also the opinion of Abū Ḥanīfa, al-Thawrī, al-Awzā’ī, Ibn Abī Laylā and is ascribed to ‘Alī and Ibn Mas’ūd. To harmonize the two contradictory opinions, I would suggest that Jābir recommends performing one *ṭawāf* only for those who are late and cannot do two *ṭawāfs* and two *sa’ys* as in the case of the man who asked him in tradition [12] above; otherwise he recommends the pilgrim, whether *mutamatti’* or *qārin*, to perform two *ṭawāfs* and two *sa’ys*.

[285] This issue of a man being asked if he is married or not and his false reply that he is not married is not considered repudiation by many scholars like Jābir, such as al-Ḥasan, al-A’mash and ascribed to ‘Umar. (See Ibn Abī Shayba, *Muṣannaḥ*, 4:110–111; *al-Mudawwana al-kubrā*, 5:401–403, and Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣuḡhrā*, 1:282).

[286] Although all readings of the manuscript agree on the name of Ka’b b. Siwār, most references give his name as Ka’b b. Sūr (not Siwār) who was a *qāḍī* in Basra from the time of ‘Umar b. al-Khaṭṭāb until he was killed in the Battle of *al-Jamal*. These sources confirm what is ascribed to him here. They all describe his role at the *fitna* of *al-Jamal* and that he used to walk between the two front lines of both armies and warned them of the consequences of

the war, hanging the *muṣḥaf* around his chest. (See Ibn Ḥibbān, *Mashāḥir ‘ulamā’ al-amṣār*, 1:101; *al-Thiqāt*, 5:333; Ibn Ḥajar, *Tahdhīb al-kamāl*, 13:420–422, Ibn ‘Abd al-Barr, *al-Isṭī‘āb*, 3:1318–1320). Who narrated this tradition back to Ka’b remains unsolved as the name mentioned in the manuscripts is illegible and external sources do not provide anything that helps in solving this problem. See Ch. I, p. 20 of this study. Note that the last sentence of this tradition could read: *وإن شرره يناله وسقمه* rather than what it reads in the copies of the manuscript *وإن شرره ينالوه وسقمه* to give a plausible meaning.

[287] Amongst all the traditions related to *mukātaba* in the book ([55], [57], [104], [119], [122], [124], [126], [130]), this tradition does not give a standing meaning. And no other source provides information on such an issue which discusses in one pattern *mukātaba*, *ḥajj* and *kirā’* (hiring or leasing).

[288] This tradition is the only to discuss the issue of *nikāḥ al-mut’a* (temporary marriage). Although the Ibādīs stand with the Sunnīs on the prohibition of this kind of marriage, there seem to be some traditions (regardless of their authenticity as it is beyond our purpose in these notes) approving the opinion of its legality and validity, which is adopted by most Shī‘īs, though not the Zaydīs. Abū al-Ḥawārī for example ascribes this opinion to some distinguished Ibādī scholars such as Abū Ṣufra,<sup>9</sup> Muḥammad b. Maḥbūb and Abū al-Ḥasan (probably al-Bisyawī). (See Muḥammad b. al-Ḥawārī, *Jāmi’ Abī al-Ḥawārī*, 3:135, and al-Kindī, *al-Muṣannaḥ*, 33:6–7). For details of opinions and evidence see *al-Muwaṭṭa’*, 2:542; ‘Abd al-Razzāq, *al-Muṣannaḥ*, 7:496–507; Ibn Abī Shayba, *Muṣannaḥ*, 3:551–553; al-Ṭaḥāwī (Abū Ja’far), *Sharḥ ma’ānī al-āthār*, 3:24; Ibn Qudāma, *al-Mughnī*, 7:136–139, and *al-Umm*, 5:174–177. Note that our book is the only source to ascribe this opinion to al-Ḥasan (al-Baṣrī). Elsewhere the contrary is normally given.

[289] See references cited in [238] above.

[290] For biographies of Salīm b. ‘Ubayd see Ch. IV, p. 150 of this study. For comment on this tradition see Ch. I, p. 18. There are several sources I found mentioning this story such as *Ṣaḥīḥ al-Bukhārī* (Ibn Ḥajar, *Faṭḥ al-bārī*, 13:181), and al-Dhahabī (*Siyar a’lām al-nubalā’*, 11:435) with similar phraseology. Ibn Ḥajar says that Ibn Abī Shayba also transmitted this tradition on the authority of Abū al-Sha’thā’, Jābir b. Zayd, although I could not find it in his *Muṣannaḥ*, and that he (Ibn Abī Shayba) gives the name of the governor as Yazīd b. Mu’āwiya (*Faṭḥ al-bārī* 13:182).

9 Who is the key transmitter of this work and this is, may be, the reason for the transmission of such a tradition. Otherwise the text does not explicitly use the word *nikāḥ*, which gives scope for interpreting the *mut’a* used in the text as *muta’āt al-ḥajj*.

[291] This tradition indicates that Jābir's interpretation of the *istiṭā'a* (capability) required from the *mukallaf* (responsible person) to perform *hajj* is based on the Qur'ān (3:97), cf. Ibn Ja'far, *al-Jāmi'*, 3:275; *al-Umm*, 2:113; Ibn 'Abd al-Barr, *al-Tamhīd*, 9:125–128, and Ibn Qudāma, *al-Mughnī*, 3:86–88.

[292] This conversation between Jābir b. Zayd and his questioner, Salīm b. 'Ubayd, reflects two important things; first the use of *qiyās* (analogy, reasoning) by Jābir b. Zayd and secondly it reflects an image of the method Jābir uses to teach and convince his followers in a manner of question-answer basis. (Cf. Ibn Qudāma, *al-Mughnī*, 9:171).

[293] It is worth mentioning that Yazīd b. Abī Muslim mentioned here is one of al-Ḥajjāj's assistants or secretaries by whom Jābir was respected and so much welcomed. (See al-Shammākhī, *al-Siyar*, 1:70–71, 88; Ibn Ja'far, *al-Jāmi'*, 4:267; al-Warjlānī, *al-Dalīl wa al-burhān*, 3:45, and *ET*<sup>2</sup>, I, p. 649, s.v. al-Ibādīyya). More details on this story are given in other Ibādī sources such as al-Shammākhī, *al-Siyar*, 1:70–71. Yet despite these strong ties and apparent good relations with influential authorities in the government, Jābir was very critical of them, though mostly in a secret or careful way, and also was very conscious of himself not to be tempted, in any way, by what he received from them. This is clear in our story where he stopped at the river and cleaned of the perfume given to him from Yazīd while quoting the Qur'ān (46:20): (You received your good things in the life of the world, and you took your pleasure therein ...). On al-Shammākhī's record of this story he adds that Jābir also said "O God, do not make my fortune with You as my stature with these people" (*ibid.*).

[294] For Abū al-Ḥārith and Ḥāzim b. 'Umar, see Ch. IV, p. 138, 145 of this study. And note that the rest of traditions – from [294] to [324] – are all transmitted through Ḥāzim b. 'Umar. For the issue discussed here, refer to sources cited on [96] and [184] above.

[295] See references cited on [261] and [262] above.

[296] The revolt of Ibn al-Ash'ath has been commented on in Ch. I, p. 20. "Banāt Udar" is most possibly a place in Iraq although I could not find it in such authorities as *Mu'jam al-buldān* of Yāqūt al-Ḥamawī or *Tārīkh Baghdād* of al-Khaṭīb al-Baghdādī. However "al-Jisr al-aṣghar" is a known place in Basra. (See al-Ṭabarī (Abū Ja'far), *Tārīkh*, 3:426, 427). For the issue focused on (*ṣalāt al-safar* – traveller's prayer) here, see references cited earlier on [211], and comment [260] above.

[297] This tradition and [298] below provides the evidence for what has been said about the relationship of Tamīm b. Ḥuwayṣ and Jābir, see [212] above. It can be seen from the tradition that the "Qaṣr al-Nu'mān" is a place two *farsakhs* (leagues) from the city (of al-Ḥīra, not al-Madīna, as no source talks about a place with this name in Arabia). (See for example, al-Bakrī Abū 'Ubayd, *Mu'jam mā sta'jam*, (3<sup>rd</sup> ed.), 2:515). "... *radāgh* ..." means 'mud' according to *Mukhtār al-ṣiḥāḥ* (under رذغ).

[298] It is clear that the main aim of this tradition is to show that Jābir uses *rukhsa* (allowance, exemption "a lenient view of law based on a legal excuse for hardship"). The tradition is quoted in Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 1:185, and it is certainly linked to tradition [258] commented on above.

[299] The topic of this tradition, although presented in a different style is of the same line of traditions [211], [260] and [296] discussed earlier. "*Rustāq*" means a kind of land (*Lisān al-'arab*, under رستق).

[300] See references cited on [171] above. Note that this tradition is the first and the only one in which Jābir states explicitly that he is relying in his legal opinion on what he found the Companions doing.

[301] All Ibādī sources agree on the rejecting wiping over footwear when doing *wuḍū'*. Ibn Khalfūn says "all our followers (i.e. Ibādīs) agree on the disapproval [of wiping over the footwear] such as Jābir b. Zayd, Abū 'Ubayda, Abū Nūḥ Ṣāliḥ al-Dahhān, Rabī' al-Aḥwal, Ḥājib, al-Rabī' b. Ḥabīb, ['Abd Allāh] b. 'Abd al-'Azīz, Abū al-Mu'arrij ..., they all do not accept wiping over footwear; and Abū Sa'īd al-'Umānī in his comments on *al-Ashrāf* [of Ibn al-Mundhir] said: All our people agree on the rejection of wiping over footwear" (*Ajwibat Ibn Khalfūn*, 81–82). On another occasion Jābir is reported to have said, "How should I wipe over footwear for ablution while God commands us to wash the feet?" (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 1:24; Abū Sa'īd al-Kudamī, *al-Mu'tabar*, 2:65). On the other hand, most, if not all – generally speaking – Sunnī schools approve wiping over footwear, with differences on some of its details. (See *al-Muwatta'*, 1:35–37; 'Abd al-Razzāq, *al-Muṣannaḥ*, 1:191–198; Ibn Abī Shayba, *Muṣannaḥ*, 1:161–173; al-Ṭaḥāwī (Abū Ja'far), *Sharḥ ma'ānī al-āthār*, 1:79–83; *al-Umm*, 1:32–36, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā'*, 1:137–142).

[302] Not many scholars have allowed the possibility of a person leaving the *jamā'a* prayer (congregational prayer) after joining it if he finds out during the prayer that the *imām* is reciting long *sūras*. However, this might be an opinion of Jābir subject to certain circumstances, as it is alluded from Jābir's

justification of what they, he and his companion, did when he says, "The prayer of *al-ishā* 'evening prayer' is apprehensiveness, and the prayer of *al-fajr* 'dawn' is elapse". Surprisingly, Ibādī sources that have recorded this story quote it without any comment or explanation. (See for example Ibn Ja'far, *al-Jāmi*, 2:297, and al-Kindī, *Bayān al-shar*, 13:117). For leaving congregational prayer due to long recital of the Qur'ān in the prayer, there is a Prophetic *ḥadīth* in which a companion did leave the prayer when the *imām*, who was Mu'ādh, started reciting *sūrat al-Baqara* at *al-ishā* prayer. (See Ibn Ḥajar, *Fath al-bārī*, 2:226–229; Ibn Abī Shayba, *Muṣannaḥ*, 1:405).

[303] See comment on this issue in Ch. I, pp. 15, 20 of this study. For the *fiqh* matter of *qaṣr al-ṣalāt* (shortening prayer) for travellers, see [211] above. It is important to mention here that although this tradition does not state that Jābir b. Zayd was among them (those who escaped "*bay'at Ibn Ziyād*"), other sources provide information that he did the same thing and it is very possible that it is the same incident, al-Kindī (*al-Muṣannaḥ*, 5:350) says:

قال [أبو عبد الله] أخبرني أبو صفرة - رحمه الله - أن جابر بن زيد - رحمه الله - كان في سفر، فلما قدم يريد البصرة وصار بالجيش بلغه أن بالبصرة بيعة، فكره أن يدخل البصرة، وأقام بالجيش أياماً وهو يقصر الصلاة، وذلك الموضع يسمع منه الأصوات بالبصرة.

[304] See comments on traditions dealing with similar issue, [211], [260], [297] and [303] above.

[305] Cf. *al-Umm*, 1:176; al-Shaybānī; *al-Mabsūt*, 1:179; Ibn Ja'far, *al-Jāmi*, 2:255 where this statement is quoted but without mentioning its ascription to Jābir b. Zayd.

[306] Notice the great emphasis given to details of the distance from which the prayer is shortened (*ṣalāt al-safar*) and to the period the *musāfir* (traveler) stays doing *qaṣr* prayer. See sources cited on [211], [260], [296], [303] and [304] above.

[307] This issue has been commented on earlier in more than one occasion, see for example [96], [184] and [294] above. Note that most opinions are illustrated in this tradition in more details than the mentioned ones.

[308] See [307] above.

[309] Again this tradition is on the theme of issues concerning *kirā' al-arḍ* (renting land for agricultural investments). All of them are dealing with Jābir's disapproval of certain kinds of contracts, but none of them shows us what are the conditions of Jābir b. Zayd on this matter by which such

contracts are allowed. Moreover, we have seen that external sources ascribe to him different opinions, see [96] above.

[310] *Aqraḥ ra'suh* means 'having injuries to his head' (*Mukhtār al-ṣiḥāh*, under *قرح*). This tradition is one that has been in Ibādī *fiqh* at an early stage. Ibn Khalfūn has a record of it with its *sanad* (*Ajwibat Ibn Khalfūn*, p. 80) and Ibn Ja'far also used this tradition ascribing it to Jābir with identical phrases (*al-Jāmi*, 1:405). However, this is another good example of *fatwās* based on *rukḥṣa* (see [298] above). On the same issue of *al-maṣḥ 'alā al-jabā'ir* (wiping over bandages), most if not all authorities are of the same opinion. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 1:159–162; Ibn Abī Shayba, *Muṣannaḥ*, 1:126–127, and al-Jaṣṣāṣ al-Rāzī, *Mukhtaṣar ikhtilāf al-'ulamā*, 1:152).

[311] See references cited on [310] above.

[312] Another example of the same issues discussed on [310] and [311] above.

[313] See references cited on [258], [259] and [298] above.

[314] This story shows the strong and special relationship between Jābir b. Zayd and one of his great teachers Anas b. Mālik, the statement of Anas at the death of Jābir and his testimony of Jābir's status of knowledge and righteousness (note that Anas said; "*a'lamu al-nās bi-llāh*, the most knowledgeable of God amongst people") is also reported by al-Shammākhī, *al-Siyar*, 1:70. In addition, this tradition proves that Jābir's death was not long before Anas b. Mālik though it does not give a specific date but it says that Anas too was sick. Ennamī used this tradition to conclude Jābir's date of death. (See Ennamī, *Studies*, p. 65–66).

[315] See comments and references cited on [96], [184], [294] and [309] above.

[316] See comments and references cited on [91] and [254] above.

[317] For the *nadh'r* (vow) of unlawful deeds, as in the case in this tradition, there is disagreement on how should the person release himself from such *nadh'r*. Jābir seems to adopt the opinion which deems *kaffāra* necessary (see [20] and [21] above). Jābir has narrated a Prophetic *ḥadīth* on the prohibition of *nadh'r* to commit sins or unlawful deeds. (See *Musnad al-Rabī' b. Ḥabīb*, 1:258; *Ṣaḥīḥ al-Bukhārī*, 6:2464). For details of this issue see 'Abd al-Razzāq, *al-Muṣannaḥ*, 8:433–436; Ibn Abī Shayba, *Muṣannaḥ*, 3:66–68. It is also important to point out that the word *lahw* used in the tradition is a term used to mean *ghinā* (singing with musical sounds) according to many scholars such as Ibn 'Abbās, about whom Jābir b. Zayd reported with approval

that he (Ibn 'Abbās) interprets (*lahw al-ḥadīth*, idle talk) in the Qur'ān (Q: 31:6) by music and singing. (See Abū Ghānim al-Khurāsānī, *al-Mudawwana al-ṣuḡhrā*, 2:95–98, and Ibn Kathīr, *Tafsīr*, 31–76, of *sūra* 31).

[318] This tradition is dealing with a famous argument on what is the valid *ru'ya* (observation) of the moon of Ramaḍān, i.e. which moon should be considered a start (or an end) of the month, is it the moon which is seen during the day before sunset, is it of the night before or the coming night. Jābir here, as ascribed to him elsewhere, is saying that in such case, it is of the night before. This is the opinion of 'Umar b. al-Khaṭṭāb, Anas b. Mālik, Ibn 'Umar, 'Uthmān and Sa'īd b. al-Musayyab. (See *al-Muwatta'*, 1:287; al-Jīṭālī, *Qawā'id al-Islām*, 2:72; 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:162; Ibn Abī Shayba, *Muṣannaḥ*, 2:318–321; *al-Umm*, 2:95). Unlike all other traditions in the book, the *sanad* of this tradition is not of the same pattern. None of the usual transmitters of the book except Abū Nūḥ Ṣāliḥ al-Dahhān who was part of the story is extant. It starts with "Umar said". This is unknown in Ibādī sources. However, Ibn Abī Shayba has a unique record of this story, he says:

حدثنا أبو داود عن عمر بن فروخ عن صالح الدهان قال ...

This makes it clear that he is 'Umar b. Farrūkh. (See al-Dhababī, *Mizān al-ītidāl*, 5:339; Ibn Ḥibbān, *al-Thiqāt*, (1<sup>st</sup> ed., 1975), 7:95). The name of the mosque is not mentioned in Ibn Abī Shayba's record of the story and I could not find a mosque of this name in the sources I have.

[319] For women wearing their jewellery during *iḥrām*, see Ibn Abī Shayba, *Muṣannaḥ*, 3:281–283; *al-Mudawwana al-kubrā*, 2:462; Ibn Ja'far, *al-Jāmi'*, 3:311. Abū al-Muhājir Ḥāshim b. al-Muhājir (a third/ninth century Ibādī scholar from Ḥaḍramawt and a student of al-Rabī' (al-Darjīnī, *Ṭabaqāt*, 1:5)) seems to disapprove of this view of Jābir. (See al-Kindī, *al-Muṣannaḥ*, 8:163).

[320] Ibādīs without exception have agreed on the disapproval of *qunūt* (invocation of God against certain enemies, inserted in the prayer), to the extent that it becomes a distinctive feature of the Ibādī school of law. By analysing Jābir's statement of this issue we notice that he always gives definitive answers that refute any other view on this issue. Here he states that "all the prayer is *qunūt*. As for what those do, I have no idea about it". In an addition narrated by Abū Ghānim al-Khurāsānī in *al-Mudawwana al-ṣuḡhrā*, 1:67 he says: "this is an innovation that we do not know nor do we ascribe it to any of the ancestors of this *umma*". (Cf. Ibn Ja'far, *al-Jāmi'*, 2:246; *Musnad al-Rabī' b. Ḥabīb*, 1:124 where this disapproval is ascribed to Ibn 'Abbās and Ibn 'Umar). Otherwise most if not all Muslim schools of law, generally speaking, accept *qunūt* with differences on some details, such as

when to do it, which prayer, at which part of the prayer ... etc. (Cf. *al-Muwatta'*, 1:159; 'Abd al-Razzāq, *al-Muṣannaḥ*, 3:105–122; Ibn Abī Shayba, *Muṣannaḥ*, 2:95–101; *al-Mudawwana al-kubrā*, 1:101–103; *al-Umm*, 7:248, and al-Shaybānī, *al-Mabsūt*, 1:164).

[321] Based on the Qur'ān (2:234), scholars have disagreed on when a widow should start her *'idda*: is it from the time of the death?, as Jābir says here, which is also ascribed to Ibn 'Abbās, Ibn 'Umar, 'Ikrima, 'Aṭā', Mujāhid, Ibn Sīrīn and al-Zuhrī; or from the time she receives the news of his death?, the view of 'Alī, al-Ḥasan and Qatāda. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 6:327–329; Ibn Abī Shayba, *Muṣannaḥ*, 4:160–162, and *al-Umm*, 5:216–218, and cf. note on [163] above).

[322] For the transmitter of this tradition Hammām b. Yaḥyā, see Ch. IV, p. 144. Regarding the issue, see references cited on [252] above.

[323] For biography of Jamīl al-Khawārizmī, see Ch. IV, p. 148. The question of the legal status of an uncircumcised man has long been problematic. Some scholars do not deem animals killed by him lawful; his marriage, according to them, is illicit; and he is not entitled to give testimony in court or it is rejected. This opinion is ascribed to Ibn 'Abbās here and elsewhere, as in Ibn Abī Shayba, *Muṣannaḥ*, 5:21, and Abū Ghānim al-Khurāsānī, *al-Mudawwana al-kubrā*, 2:224. On the other hand there is another opinion which is the contrary of the first one and is ascribed to al-Ḥasan and Ḥammād. (See 'Abd al-Razzāq, *al-Muṣannaḥ*, 4:483, and Ibn Qudāma, *al-Mughnī*, 9:311).

[324] Most *fuqahā'* agree that of *ghanīma* (booty) taken from the enemy in war as well as of the *ma'din* (mine) and of *rikāz* (treasure), one fifth is to be paid in terms of *zakāt* or to the public treasury. Yet they differ on whether it (*ghanīma*) should be subject to stipulations of *zakāt* with regard to its amount, i.e. the *niṣāb* (the minimum amount of wealth necessary before *zakāt* is due). For details of this, see Abū Yūsuf, *al-Kharāj*, 21–22; *al-Umm*, 4:143–144. For the influence of Jābir's view on the Ibādī schools of law, see al-Sālimī, *Ma'ārij al-āmāl*, 14:147. And for a good summary of different opinions and evidence see al-Qaraḍāwī, *Fiqh al-zakāt*, 1:434–436, and al-Kindī, *al-Muṣannaḥ*, 6:159.

## CHAPTER FOUR

### DATE OF THE *ĀTHĀR AL-RABĪ' B. ḤABĪB*, AUTHORITIES TRANSMITTING, AND EVALUATION OF IBĀDĪ *FIQH* MATERIAL IN THE WORK

#### 1) Date of the *Āthār al-Rabī' b. Ḥabīb*

My attempt to date the compilation of this work has three focal points:

1. Establishing the dates of the author's life, since it is certain that he set about compiling (or at the very least, bringing together) the materials for this work in some final form, whether written or oral, at some point during his lifetime. After his death, his students set about transmitting this work from him to subsequent generations.
2. A close scrutiny of the language employed in the work as a means to gauging the period to which it belongs, especially the ways in which phrases are structured so as to demonstrate legal stipulations. As well as an examination of the legal issues with which the work is concerned, there is an investigation of the history of these issues and an inquiry into them.
3. The third issue, somewhat less complicated than the previous two, is reference to contemporary political events and historical incidents mentioned in the work. Though there are very few, they provide some approximate indicators for the period during which the work in question was put together.

#### 1) The Author of *Āthār al-Rabī' b. Ḥabīb*

As has been mentioned, the primary title of the work appears to be *Āthār al-Rabī' b. Ḥabīb*.<sup>1</sup> I should also add here that the first tradition in this work begins with "It has been reported to us from Abū Ṣufra 'Abd al-Mālik b. Ṣufra— al-Haytham— al-Rabī' b. Ḥabīb ...". This not only serves to confirm

<sup>1</sup> See pp. 1-4 of this study.

the ascription of the work to al-Rabī' b. Ḥabīb; it also falls into a pattern commonly found in legal and *ḥadīth* compilations that have come down to us from the second and third centuries A.H. These open in the same way, with an introductory *isnād*, and then follow the various narratives and *ḥadīths* beginning with the author's name. One such example is the *Muwatta'* of the Imām Mālik b. Anas: while all agree that he is the author of this work, we find nonetheless that the *Muwatta'* always begins with the names of the transmitters of the work reporting from Mālik, e.g., "he said; it was reported to me by al-Laythī from Mālik b. Anas", or "it was reported to me by Yaḥyā from Mālik"<sup>2</sup>. Similarly, the *Mudawwana al-kubrā* is ascribed to Imām Mālik, even though at the beginning of the work the transmission mentioned is that of Saḥnūn b. Sa'īd—'Abd al-Raḥmān b. al-Qāsim<sup>3</sup>. Likewise, in the *Kitāb al-aṣl*, known also as *al-Mabsūṭ*, which is undoubtedly the work of Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/804), we find at the beginning, "Abū Sulaymān al-Jūzjānī [reported] from Muḥammad b. al-Ḥasan, who said ..."<sup>4</sup>. The same can be said of the *Risāla* of Imām al-Shāfi'ī where in the introduction we find, "al-Rabī' b. Sulaymān said ..."<sup>5</sup>. Again, the same pattern can be seen in the *Muṣannaḥ* of Ibn Abī Shayba and other works. This is exactly what we find in the *Āthār al-Rabī' b. Ḥabīb*, where every tradition after the first tradition begins with, "al-Rabī' ...". In sum, all this serves to confirm the validity of the work's ascription to al-Rabī' b. Ḥabīb.

Despite all the arguments that have been made regarding the biographical information about al-Rabī' b. Ḥabīb<sup>6</sup>, my preference is for the findings I made in a previous paper<sup>7</sup>, namely that al-Rabī' b. Ḥabīb died between the years 175–180/791–796, which would mean that the work in question here was composed not later than this period. However, I would not necessarily posit that the work was composed in the last years of his life, since it does not mention any of the events that took place during the final years of al-Rabī' b. Ḥabīb's lifetime. On the contrary, one might suggest that he composed this work during the Umayyad period on account of the absence of any reference to Abbasid names or events relating to this last period, and on account of his

2 See *ḥadīths* 1 & 2 of *al-Muwatta'*.

3 See *al-Mudawwana al-kubrā*, p. 2.

4 See al-Shaybānī, *Kitāb al-aṣl al-ma'rūf bi al-Mabsūṭ*, (ed. Abū al-Wafā' al-Afghānī), p. 27.

5 Al-Shāfi'ī, *al-Risāla*, (1<sup>st</sup> edn., Egypt 1940), p. 7.

6 A detailed exposition of these arguments is best given by Crone & Zimmermann, *The epistle of Sālim b. Dhakwān*, (Oxford, 2001), pp. 305–308.

7 In a previous essay submitted for the M.St., University of Oxford (1999) under the title of "The *Ibādīyya* and *Ḥadīth*: An Overview", pp. 6–9.

overwhelming reliance on what he heard from Ḍumām b. al-Sā'ib,<sup>8</sup> and the fact that there are three narrations in the work (nos. [245], [273] and [280]) which al-Rabī' transmitted directly from Jābir b. Zayd. In any case, at this point these are only surmises, upon which further light may be shed by what follows.

## 2) The Language Used in the Work and Its Legal Peculiarities

There are virtually no attempts to deal with the question of the evolving nature of the language employed in Islamic legal compilations during different periods. The only basic evidence available is to be found in the comment that some authors make about their method of composition. In the case of *Āthār al-Rabī'*, we find that there are several phrases used in the text which could provide pointers for the dating of the compilation of this work. Among these are certain expressions drawn from every-day, non-technical Arabic that are used to demonstrate a particular legal stipulation. For example, *lam yara ba'san*, *lā yarā ba'san fī ...*, *lā narā ba'san ...*, *kāna yujūzu ...*, *laysa 'alayhi shay'un ...* are used to indicate in a very natural way that a matter is permitted; and *kariha*, *kāna yakrahu*, *fa-nahāhu 'an*, or *nahā 'an*, the construction *lā taf'al* or *lā yaf'al* normally indicate that a certain matter is prohibited.<sup>9</sup> On the other hand, the phrase *lā yajūzu* appears only once, where the text says, "it is forbidden to marry off the unborn" (tradition [24]). That text does not explicitly, otherwise, use the term *tahrīm*. On one occasion where an individual persistently repeated a question about some kinds of wine, Jābir said, "the Messenger of God forbade it, and any thing that the Messenger of God forbade is illicit (*ḥarām*)" (tradition [238]).

Similarly, the term *bā'il* appears six times, but only one of which appears to be of the saying of Jābir b. Zayd (tradition [177]). The rest are found in sayings which the work's transmitter (or transmitters) additionally ascribed, along with Jābir's, to the Kufans. Moreover, we do not find the names of any particular legal school or sect, except where the text uses the terms *aṣḥābunā* or *al-Kūfiyyūn*. The use of these two terms seems to go back to one of the work's transmitters. The term *aṣḥābunā* appears for the first time in tradition [14], in statements, other than those of Jābir b. Zayd, which the transmitter had chosen to include on the topic in question. It appears a second time in tradition [30] in order to confirm the fact that the saying of Jābir b. Zayd is that of "our companions or fellows" (*aṣḥābunā*), for they transmitted this saying from Ibn 'Abbās elsewhere. As for the third occurrence, this is found

8 Al-Shammākhī, *Kitāb al-siyar*, 1:81–82.

9 On the use of "*karāha*" for prohibition, see Ibn Qayyim al-Jawziyya, *A'lām al-muwaqqi'īn 'an Rabb al-'ālamīn*, (Beirut 1991), 1:32–35.

in tradition [35], and is used in the same way as in tradition [14]. The usage of this term, however, in tradition [302] would seem to be slightly different. The transmitter, Tamīm b. Ḥuwayṣ narrates the report from one of “our companions, who had accompanied Jābir b. Zayd ...”. But this does not have to be understood in the same context as other instances where the term appears. For the intended meaning here might possibly be that, “he accompanied him during some journey or on a short trip”. Admittedly, the overall sense suggested by the narration and its arrangement does not support such an interpretation, but the possibility, however weak, remains.

The use of the term (*aṣḥābunā*) to indicate members of the same religious school, thought or opinion is a well-known usage in compilations of legal topics, *ḥadīths* and creed, both early and late. Although it is not possible to establish a date for the first occurrence of this term, it does appear in *al-Mudawwana al-kubrā* of Imām Mālik (93–179 A.H.) (see for example 1:4, 4:269, 5:337). It also appears in *al-Umm* of al-Shāfi‘ī (150–204 A.H.) (see 1:131, 137, 190); he also makes abundant use of it in his *Risāla* (see 1:326, 529, 539). In the oldest Ḥanafī works, we also find it in *al-Mabsūṭ* and *al-Ḥujja ‘alā ahl al-Madīna* of Muḥammad b. al-Ḥasan al-Shaybānī (d. 189); in the *Ikhtilāf al-‘ulamā’* of Abū ‘Abd Allāh Muḥammad b. Naṣr al-Marwazī (d. 294). As for the term “the Kufans”, this appears frequently in the work under study here (approx. 77 times). Having scrutinized the traditions in which these “Kufans” appear, I am forced to accept the view that they are those who later became known as the Ḥanafīs.<sup>10</sup> Through a number of sayings in this work ascribed to Kufans, one is able to ascribe them only to the Ḥanafī school and not to any other Muslim Sunnī schools. Good examples of this are provided by the following traditions: [78], [93], [95], [152], [163], [223], [267], [268], [269].<sup>11</sup> The use of the term “the Kufans” or “the people of Kufa”, as opposed to “the people of Hijaz”, which appears only once (in tradition [17]),<sup>12</sup> is one that was also adopted at an early stage in the composition of legal and *ḥadīth* works. In fact, some contemporary scholars have shown that these two terms made their first appearance towards the end of the first century A.H., only a short period before the appearance of the terms “rationalists” (*ahl al-ra’y*) and “traditionists” (*ahl al-ḥadīth*).<sup>13</sup>

10 Maḥmaṣānī, states that it was in Kufa that *al-madhab al-Ḥanafī* flourished, for, Abū Ḥanīfa (80/699–150/767) was at Kufa, where he studied under his great teacher Ḥammād b. Abī Sulaymān (d. 120/737) (cf. Maḥmaṣānī, *Falsafat al-tashrī‘ fi al-Islām*, p. 41).

11 See above ‘Notes and Comments’ on these traditions.

12 It is explained in ‘Notes and Comments’, on [17], to whom this term is referring.

13 ‘Abd al-Majīd Maḥmūd, *al-Madrasa al-fiqhiyya li-l-muḥaddithīn*, (Cairo, 1972).

From all of this, we can clearly see that there is a paucity of technical terms from either *fiqh* or *uṣūl al-fiqh* in *Āthār al-Rabī‘ b. Ḥabīb*. This leads us to conclude that the compiling of the work preceded the appearance of such specialized (scientific or technical) terms, terms peculiar to jurisprudence and the principles of religion. This finds support in Ibn Qayyim al-Jawziyya (d. 751 A.H.) who, in his *A‘lām al-muwaqqi‘īn* (edn. Beirut: Dār al-Kutub al-‘ilmiyya 1991, vol. I, p. 32), cites Imām Mālik as saying:

“It is not the case, nor was it ever the case with our forefathers, nor have I ever met anyone who has ever adopted the practice of saying, ‘this is *ḥalāl*’ or ‘this is *ḥarām*’; they could never do such a thing. Instead, they use to say, ‘this we find detestable; we think this is good, and so one should do this’, or ‘we disagree’; they never used to say *ḥalāl* or *ḥarām*”.

This saying of Imām Mālik is an apt summary of what happens in *Āthār al-Rabī‘*, and we might properly infer that the *Āthār al-Rabī‘* belongs to the very period of development about which Imām Mālik is talking.

Nothing against this argument arises from the (single) occurrence of *thiqa* in tradition [4]. Here Imām Jābir uses the term *thiqa* to mean ‘an authority’, as a prerequisite for any transmitter as in the case when transmitting reports from ‘Abd Allāh b. Mas‘ūd. My point here is not concerned with the various implications of such a prerequisite (this will be dealt with in due course), but with the expression *thiqa*, which undoubtedly became one of the most well-known technical terms used in the science of *ḥadīth* (*al-jarḥ wa al-ta‘dīl*, *rijāl*-criticism, *ḥadīth* technical terms). Prior to this, it had been used in legal contexts, such as establishing the integrity of witnesses. It is also frequently used in law books in chapters dealing with women embarking on travel, alms-giving, and the rules governing deposits and trusts. For this reason, it is difficult to establish any particular date for the emergence of this term in the sense in which it is used in this tradition. Nevertheless, it does have some bearing, albeit small, on that with which we are concerned here, namely, the dating of the work through an examination of the language used in it. For, this term is used in this sense in several early legal works. For example, we find it in *al-Mudawwana al-kubrā* of Imām Mālik; it also reappears in al-Shāfi‘ī’s *Risāla* and *al-Umm*, and in Muḥammad b. al-Ḥasan al-Shaybānī’s (d. 189) *al-Aṣl al-ma‘rūf bi al-Mabsūṭ*, and in *al-Ḥujja ‘alā ahl al-Madīna*. Both ‘Abd al-Razzāq and Ibn Abī Shayba use it in their respective *Muṣannafs*, not to mention its use in later books and compilations. As regards the prerequisite set by Jābir b. Zayd, this would not counter my

argument that the work is early<sup>14</sup>. Many of those who have written about the history of Islamic legislation have stated that the fabrication of *ḥadīths*, their false attribution to the Messenger of God, and the invention of reports began at a very early stage. In fact, some would attribute these fabrications to the Prophet's lifetime on the basis of the *ḥadīth* in which he says, "Whoever ascribes false sayings to me knowingly, let him look forward to his place in hell". Certain reports from Ibn 'Abbās corroborate the fact that such fabrications and lies in *ḥadīth* did appear, forcing Ibn 'Abbās himself only to accept *ḥadīths* which he was sure about.<sup>15</sup> In the introduction to his *Ṣaḥīḥ*, Muslim relates that Ibn Sīrīn said, "They never used to ask about *isnāds* (chains of transmission), but when the *fitna* (first civil war) took place, they began to inquire about the names of transmitters: in the case of the people of the *sunna*, their *ḥadīths* would be accepted, while those of the people of innovation (*ahl al-bida'*) would not".<sup>16</sup> In addition, this phenomenon was particularly widespread in Iraq, and this made scholars very wary of reports that came to them from there,<sup>17</sup> even when it might have been attributed to Kufan authorities like 'Abd Allāh b. Mas'ūd.<sup>18</sup>

Another aspect worth mentioning is the lack of theoretical jurisprudence in this work. Almost nowhere in the *Athār al-Rabī' b. Ḥabīb* is there any interest in hypothetical cases. Most, if not all, of the legal questions included in the work are concerned with everyday practical cases and problems encountered by people.<sup>19</sup> This is all the more remarkable when one bears in mind that this work, judging by the evidence of its transmitters and topics, belongs to the Iraqi milieu, where "the phenomenon of putting forth hypothetical situations and enumerating [legal] questions constitutes one of the most salient features of Iraqi jurisprudence as practiced during the second century of the Hijra, a reputation that spread throughout the lands".<sup>20</sup>

We also note that the contents of this work do not follow the standard arrangement of legal compendiums and *ḥadīth* collections that have come

14 The famous story of Sufyān al-Thawrī (d. 161/777) condemning Abū Ḥanīfa (d. 150/767) does support my argument; "Sufyān al-Thawrī", as Dr. Melchert describes, "is quoted as saying, 'Neither a trustworthy (*thiqa*) nor a reliable (*ma'mūn*)', which at least", Melchert comments "became, if they were not already in his time, technical terms of *rijāl* criticism" (*Formation*, p. 5).

15 For a good summary of this, see Amīn, *Fajr al-Islām*, pp. 211–215.

16 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 1:84.

17 For explanation and details of this phenomenon, see al-'Azamī, Ḥusayn, *al-Wajīz fi uṣūl al-fiqh wa tārīkh al-tashrī'*, p. 187.

18 Ibn Qayyim al-Jawziyya, *A'lām al-muwaqqi'īn*, 1:14, 21.

19 See above: Table of Topics of *Āthār al-Rabī'*, p. 71–74.

20 Maḥmūd, *al-Madrasa al-fiqhiyya li-l-muhaddithīn*, (Cairo 1978), pp. 48–49.

down to us as products of the first centuries.<sup>21</sup> For example, the *Muwatta'* of Imām Mālik (composed *circa* 163/777 according to Maḥmaṣānī,<sup>22</sup> or in the first half of the second century A.H., as proposed by Dr. Yasin Dutton<sup>23</sup>) is arranged according to chapters, each dealing with a single legal issue. Similarly, Muḥammad b. al-Ḥasan al-Shaybānī's *Kitāb al-aṣl al-ma'rūf bi al-Mabsūṭ* relates the sayings of Imām Abū Ḥanīfa and Abū Yūsuf in an organized and scholarly manner, enumerating sub-topics and expounding his own views, only occasionally mentioning proofs.<sup>24</sup> The same is true of Abū Yūsuf's *Kitāb al-kharāj*, which the author composed at the request of the caliph Hārūn al-Rashīd.<sup>25</sup> The book is concerned with a specific subject, is divided into several parts, with each part having further subdivisions; the author of this book employs technical terms of *ḥadīth* and *fiqh* (such as *al-tarjīḥ*, *ahl al-Hijāz*, *ahl al-Madīna*, *aṣḥābunā*, *ḥaddathanā*, *ḥaddathanī*, *ruwwīnā*, *balaghanā*, *naqalahu ilaynā rijālun ma'rūfūn ...* etc.).

On the basis of this, our work could possibly be earlier than the works just mentioned above, since it is most likely the case that at an initial stage legal compilations were not arranged chapter by chapter. The development that saw such compilations include authoritative arguments and certain opinions being given more weight than others, did not take place until the second half of the second century A.H. at the earliest. This is indicated by the fact that Muḥammad b. al-Ḥasan al-Shaybānī, one of the earliest and most prolific authors of the Ḥanafī school arranged most of his works himself, as attested by the transmitter of al-Shaybānī's *al-Jāmi' al-ṣaḥīḥ*.<sup>26</sup> He also states that he did not arrange this work (*al-Jāmi' al-ṣaḥīḥ*) in the same way he arranged other works, which allows us to deduce, along with other reasons shown below, that the *al-Jāmi' al-ṣaḥīḥ* is one of the first works compiled by Muḥammad b. al-Ḥasan al-Shaybānī. Actually some Ḥanafī biographers state that *al-Jāmi' al-ṣaḥīḥ* of al-Shaybānī was the second book he wrote amongst his tens of works.<sup>27</sup> Thus, we can see similarities, to some extent,

21 This study is not concerned with arguments about who was the first to write down collections of *ḥadīths* and *fiqh*. Thus, I only refer to extant early works and books or works made or said to have been put together by scholars: so for example, *Majmū' al-fiqh* of Zayd b. 'Alī (d. 122/739), Ibn Ishāq, Abū Bakr b. Ḥazm, Ibn Shihāb al-Zuhrī, Ibn Jurayj ... etc. are not cited, nor referred to in any comparisons made with our book.

22 Maḥmaṣānī, *Falsafat al-tashrī' fi al-Islām*, (Beirut 1961), p. 52.

23 Dutton, *The Origins of Islamic Law*, (Curzon 2002), p. 29–30.

24 See the editor's introduction to *Kitāb al-aṣl al-ma'rūf bi al-Mabsūṭ* of Muḥammad b. al-Ḥasan al-Shaybānī, (ed. Abū al-Wafā' al-Afghānī), pp. 11–20.

25 Abū Yūsuf, *Kitāb al-kharāj*, (Cairo, al-Maṭba'a al-salafiyya, 1352/1933), p. 3.

26 Al-Shaybānī, *al-Jāmi' al-ṣaḥīḥ*, at the margin of Abū Yūsuf's *Kitāb al-kharāj*, (1<sup>st</sup> edn., Būlāq 1885).

27 Al-Laknawī (Abū al-Ḥasanāt), *al-Fawā'id al-bahiyya fi tarājim al-Ḥanafīyya*, (Cairo

with the *Āthār al-Rabī' b. Ḥabīb*, specifically, the lack of any arrangement (bearing in mind the date of composition). We also find that in both works each matter begins with a chain of transmission. There are also very few proofs for the opinions given in these two works, with the principal emphasis being on the opinions of an individual scholar, Imām Jābir b. Zayd in the *Āthār al-Rabī'*, and Imām Abū Ḥanīfa in the *Jāmi' al-ṣaghīr*. As regards the legal language, it is clearly more sophisticated in the latter work, and there are certain legal questions dealt with in the second work that do not appear in the first, such as the question of opening the daily prayer and of saying the required *dhikr* or name of God when killing animals, in Persian,<sup>28</sup> and the use of certain expressions (*al-qaḍā'*, *al-ijzā'*, *al-qiyās*, *al-istihsān*),<sup>29</sup> which are in effect technical terms of the principles of jurisprudence. This straightforward comparison serves to confirm that the *Āthār al-Rabī' b. Ḥabīb* is an early work, and even if it does not provide a precise date for its composition, it does reaffirm what I have been able to deduce from the legal peculiarities of early works compiled during the 2<sup>nd</sup> century of the Hijra.

Finally, we should not ignore one particular fact which could indeed provide evidence for establishing the date of this work. Namely, the fact that the work, in its enumeration of legal matters, does not mention or discuss any of the political currents or movements of the age (Khawārij, Shī'a, Murjī'a or pro-Umayyad factions). Thus, the work does not mention any of the legal questions concerning the prerequisites for caliphal office, the oath of allegiance (*bay'a*), dismissal from office, rebellion against the ruler, and the rules regarding affiliation and dissociation (*al-walāya wa al-barā'a*) etc. Nor do we find those terms used in dogmatic discussions that appeared during that period, such as *al-i'tizāl*, *al-irjā'* (suspension of judgement), *qadar* ('free will') or *jabr* ('predestination').<sup>30</sup>

It is also necessary, I think, to make a comparison between this *Āthār al-Rabī' b. Ḥabīb* and other works ascribed to him, in order to examine where does this work fall within the overall works of al-Rabī'. First, we may look at the *Āthār al-aqīda* that al-Rabī' compiled on different disputed dogmatic subjects and attached by Abū Ya'qūb al-Warjīlānī to the *Musnad al-Rabī'* after his arrangement or recasting of it. It is clear that *Āthār al-Rabī'* is earlier than *Āthār al-aqīda*. For the material of the latter work is well arranged

according to subject matter.<sup>31</sup> It contains many theological issues that only surfaced years later after the time of *Āthār al-Rabī'*. Also the chain of transmitters that is not often mentioned in the doctrinal traditions is longer than that of *Āthār al-Rabī'* and it involves people of a later century than of the *Āthār al-Rabī'*, such as Abū Qubayṣa, Muḥammad b. Ya'lā, Bishr al-Marīsī, Ismā'īl b. 'Ulayya and others of this generation.

Al-Rabī's other work *Futyā al-Rabī' b. Ḥabīb* which is still only extant in its manuscript<sup>32</sup> form seems to be compiled by one of his students, possibly Abū Sufyān Maḥbūb b. al-Ruḥayl. For at the beginning of each topic it starts with "*wa sa'altuhu 'an ... fa qāl ...*" or "*akhbirnī 'an ... fa qāla ...*" or "*arayta in ...*". This work is also divided into chapters according to subject matters. This book does not commit itself to the opinions of Jābir b. Zayd but to later scholars such as Abū al-Mu'arrij, 'Abd Allāh b. 'Abd al-'Azīz, Wā'il b. Ayyūb, Abū al-Muhājir and others who are contemporaries or even of a younger generation than al-Rabī'. The topics discussed in this work also indicate that it is later than *Āthār al-Rabī' b. Ḥabīb*. There are questions on "*al-zawāj bi al-nahāriyyāt*" for instance, on which the husband stipulates that he will only come to his wife during the days (not the nights).<sup>33</sup> Al-Rabī's reply to this issue indicates that it is something that only occurred later in his life. He said "*lam yakun hādihā min ṣanī' al-nās* – this was not of the use of the people". Another example of such issues that have no mention in *Āthār al-Rabī'* is carving on trees and their fruits.<sup>34</sup>

Based on all of the above, I am prepared to suggest that this work was composed during the first decades of the second century A.H. (i.e. circa 100–130/719–748). This claim may find further support from one other issue on which I will depend for the dating of the work.

### 3) The Historical Events Mentioned in the Work

The historical topics that have found their way into the work as political events are few and far between, and mostly took place during the Umayyad period, up until the time of the caliph 'Umar b. 'Abd al-'Azīz. I list these events here in their chronological order:

31 Some contemporary researchers think that the arrangement of this work was carried out by al-Rabī' himself, see al-Būsa'īdī, *Riwayāt al-ḥadīth 'inda al-Ibādīyya*, (Oman 2000), p. 125–126.

32 The same collection of works in which *Āthār al-Rabī' b. Ḥabīb* is extant, contains this book of *Futyā al-Rabī'*, however, I referred for my citations here to the second Tunisian Copy (T2).

33 T2: f. 499. Note that I used the numbering that appears at the top of folios of the Ms for there are mistakes on the numbering that appears at the bottom of the folios.

34 T2: f. 499–500.

1324), p. 163.

28 *Ibid.*, p. 10.

29 *Ibid.*, pp. 11, 14, 17.

30 Al-Dhahabī, *Tadhkirat al-ḥuffāz*, 1:77, mentions people like 'Amr b. 'Ubayd, Wāṣil b. 'Aṭā', al-Jahm b. Ṣafwān and Muqātil b. Sulaymān as belonging to the beginning of the Abbasid regime.

- 1) The assassination of the third caliph 'Uthmān b. 'Affān in the year 35 A.H. (tradition [18]).
- 2) The revolt of Ṭalḥa and al-Zubayr (the Battle of the Camel) in the year 36/656 (traditions [18] and [286]).
- 3) The revolt of Mu'āwiya b. Abī Sufyān and the Battle of Ṣiffīn in the year 37/656 (tradition [286]).
- 4) The caliphate of Yazīd b. Mu'āwiya (d. 64/683), (tradition [290]), based on what Ibn Ḥajar mentions in his *Fath al-bārī*.<sup>35</sup>
- 5) The *bay'a* of 'Ubayd Allāh b. Ziyād in the year 64/683 (tradition [303]).
- 6) The revolt of 'Abd Allāh b. al-Zubayr and his war against al-Ḥajjāj around the Meccan sanctuary in the year 73/692 (tradition [248]).
- 7) The revolt of 'Abd al-Raḥmān b. Muḥammad b. al-Ash'ath in the year 81/700 (tradition [296]).
- 8) The story about a man who married his son's wife at the time of 'Abd al-Malik b. Marwān (d. 86/705) (tradition [153]).
- 9) The death of Jābir b. Zayd in the year 93/711 (tradition [314]).
- 10) The caliphate of 'Umar b. 'Abd al-Azīz (99–101/717–719) (tradition [262]).
- 11) Finally, there is a report transmitted by al-Ḍaḥḥāk b. Muzāḥim (tradition [277]). There is disagreement over the date of his death, which is variously given as 102/720, or 105/723, or 106/724.<sup>36</sup>

The above mentioned are all of the political events that I have been able to discern from the text of the *Āthār al-Rabī' b. Ḥabīb*. As is clear, all of these events go back to the end of the first and the beginning of the second century A.H.<sup>37</sup> This does not necessarily mean that al-Rabī' compiled the work soon after this period. But we know that the Ibādīs were able to establish a state (or states)<sup>38</sup> towards the end of the Umayyad period, independent from the central Umayyad government. Al-Rabī' b. Ḥabīb was the leader, in terms of knowledge and spiritually, of the Ibādīs at that time, but we do not find any allusion to matters concerning the organization of the state, its problems or its

35 See Notes and Comments, [290].

36 Al-Dhahabī, *Siyar a'lām al-nubalā'*, 4:598–600.

37 Cf. Schacht, J., and C. E. Bosworth (eds.), *The Legacy of Islam*, (2<sup>nd</sup> edn.), p. 406.

38 The first Imamate is that of Ṭālib al-Ḥaqq 'Abd Allāh b. Yaḥyā al-Kindī in Yemen in the year 129; the second is the one established in Oman by al-Julandā b. Mas'ūd in 132; and the third was led by Abū al-Khaṭṭāb 'Abd al-'Alā' b. al-Samḥ al-Ma'āfirī in al-Maghrib in 144 later succeeded by Imām 'Abd al-Raḥmān b. Rustam in the year 160 in Tāhart. See. al-Sālimī, *Tuḥfat al-a'yān*, (Cairo 1931), 1:72–86, and E. C. Ross, *Annals of Oman*, (1984), p. 12; cf. Watt, 'Khārigism under the 'Abbāsids', in: *Recherches d' Islamologie*, (Louvain 1978), pp. 383–384, 386–387.

leading personalities. We do find, however, a certain amount of caution and wariness involved in the selection of topics and the attribution of opinions to the persons in question.

From all these points deduced at 1), 2) and 3) above, it appears that there are satisfactory reasons to conclude that al-Rabī' b. Ḥabīb compiled the work (*Āthār al-Rabī' b. Ḥabīb*) before the establishment of an independent Ibādī state, i.e. before 132/749. Naturally, this cannot be a definitive dating, since it is based on my analysis and investigation of the text, and not on any explicit statement about when al-Rabī' compiled the work; I do not think that such evidence exists. However, I feel that scholarly analysis permits me to suggest the above dating with confidence.

## II) Authorities Transmitting the *Āthār al-Rabī' b. Ḥabīb*

Both chronological and bibliographical information are required to help us to further understand this early Ibādī work. The importance given to transmitting the book requires some information on the transmitters. There are difficult problems about the order in which to give to the biographies of the transmitters. The logical one of putting them in the order they occur in the text is found by many to be difficult. This leaves two alternatives: (a) to put them in alphabetical order; (b) to put them in chronological order. Chronological order would be the better, but for the sad state of our knowledge of when the majority of them actually lived. That limits us to alphabetical order.

However, a very tentative dating is attached, showing, on the basis of present knowledge, an estimate of when most of these transmitters lived. In one case I argue that even this is not possible, and there are just question marks. This information has been separated from the main section of transmitters because the quality of the evidence is quite different. It is possible that further research will eventually clarify some of these dates, but I am not optimistic.

Where recent studies have thrown light on figures extant in the list<sup>39</sup> I have not repeated that information but given cross-references to those works.

39 A comprehensive work worth mentioning is *Mu'jam a'lām al-Ibādīyya min al-qarn al-awwal al-hijrī ilā al-'aṣr al-ḥādir – qism al-Maghrib al-'arabī*, by M. Bābā 'Ammī, I. Baḥḥāz, M. Bājū, and M. Sharīfī in two volumes published in 2000 by Dār al-gharb al-Islāmī, Beirut. There is also *Appendix 1: The Ibādī leaders in Basra* in Zimmermann and Crone, *The epistle of Sālim b. Dhakwān*, (OUP 2001), as well as the work of al-Baṭṭāshī, *Ithāf al-a'yān fī tārikh ba'd 'ulamā' Umān*, 2 volumes, (Muscat 1998); Ṣaqr, *al-Imām Jābir b. Zayd al-Azdī wa atharuh fī al-ḥayāt-il fikrīyya wa al-siyāsīyya*, (a MA thesis submitted to the University of Āl al-bayt of Jordan, 2000).

### 1. 'Abbās b. al-Ḥārith

The only source to mention this name is *al-Siyar* of al-Shammākhī.<sup>40</sup> But unfortunately he only puts him under his list of unknown transmitters from Jābir b. Zayd, from whom al-Rabī' reported. This enables us to place him somewhere between Jābir and al-Rabī'; or in other words he is of the category of Abū 'Ubayda Muslim and Ḍumām (see below). Note that this person could be the transmitter of tradition [294] where he is named as Abū al-Ḥārith.

### 2. Abū al-Ashhab Ja'far b. Ḥayyān

Unlike most of the transmitters of *Āthār al-Rabī'*, Abū al-Ashhab Ja'far b. Ḥayyān al-'Utāridī is well reported in most Sunnī authorities on the identification of *ḥadīth* transmitters. He is a famous blind Basran traditionist, born, according to unconfirmed records, as al-Dhahabī set it out, in the year 70 A.H. He died in 163 or 165 A.H.<sup>41</sup> He reports from many of the *tābi'in* and was in turn reported by many distinguished transmitters of the following generation. Aḥmad b. Ḥanbal described him as *thiqa* and *ṣadūq* and Yaḥyā b. Ma'in also vouched for his credibility.<sup>42</sup> Further al-Dhahabī described him as *al-imām al-ḥujja*.<sup>43</sup> He is also one of the transmitters used by al-Bukhārī and Muslim.<sup>44</sup> The *Āthār al-Rabī' b. Ḥabīb* contains only two traditions on his authority, [320] and [321]. These are insufficient to allow us to determine his doctrinal background – although it seems likely that he is Sunnī in view of the high appreciation given to him in most if not all Sunnī references, on the one hand, and the Ibādī neglect of him on the other.

### 3. Abū Ayyūb Wā'il b. Ayyūb al-Ḥaḍramī

As mentioned above, it is extremely difficult to write about many early Ibādī figures. Usually no specific dates are given, and the biographical details are sometimes confusing. Wā'il b. Ayyūb falls into the category of those about whom no specific dates can be attested. Al-Darjīnī placed him in the same category as al-Rabī' b. Ḥabīb, i.e. the fourth category (150–200/767–815) and described him as being 'his mate and successor – *ṣinw al-Rabī' wa til-*

*wuh*'.<sup>45</sup> This means that he was a student of Abū 'Ubayda and a contemporary, though probably younger, of al-Rabī' (d. 175–180/791–796). Zimmermann and Crone seem sceptical about this because of his role in Ḥaḍramawt at the time of the revolt of Ṭālib al-ḥaqq ('Abd Allāh b. Yaḥyā al-Kindī) 129–130/746–748.<sup>46</sup> However, I would place Wā'il's lifespan in an earlier time than the one suggested by them (100s–190/720s–810). My suggested dates are 90s–185/710s–800. We find a frequent mention of Wā'il in al-Darjīnī's third category (100–150/718–767). He was involved in the above mentioned revolt of Ṭālib al-ḥaqq, he gave *fatwās* to Abū al-Ḥurr b. al-Ḥuṣayn and he consulted Abū Mawdūd Ḥājib<sup>47</sup> on certain events that took place in Ḥaḍramawt.<sup>48</sup> All these people are considered to belong to the generation of Abū 'Ubayda. This estimate will give him a short period of time as a leader of the Ibādīs in Basra. This is the probable reason why there is no indication of his role as a leader in the early Ibādī sources. His leadership is mentioned by the late al-Sālimī<sup>49</sup> and Ennami,<sup>50</sup> both without disclosing their sources of information and the authority for this assertion. Neither organisational decisions nor known students are ascribed to Wā'il b. Ayyūb. This, however, does not mean that I underestimate his role or that I doubt his leadership; it only means that a short period of leadership is the most likely probability in the case of Wā'il.

### 4. Abū Bakr b. Na'āma

This is possibly Yazīd b. Na'āma al-Ḍabbī mentioned by many authorities,<sup>51</sup> though he does not appear in them with the name of Abū Bakr. Instead he is known as Abū Mawdūd. However, he is a Basran transmitter of Anas b. Mālik, to whom the only tradition of Ibn Na'āma in our book, [314], is linked, and also from whom 'Umar b. Farrūkh,<sup>52</sup> who appears in tradition [318], he has transmitted. This makes me think that he is the transmitter we are looking for. Most sources consider him a *tābi'ī* although he did transmit one Prophetic *ḥadīth* directly from the Prophet.<sup>53</sup>

40 Al-Shammākhī, *op. cit.*, 1:111.

41 Al-Bukhārī, *op. cit.*, 2:189, 363; Ibn Abī Ḥātim, *op. cit.*, 2:476; Ibn Zubar al-Rabī', *Mawlid al-'ulamā' wa wafayātuhum*, (Riyadh 1990), 1:379.

42 Ibn Abī Ḥātim, *ibid.*

43 Al-Dhahabī, *Siyar al-'ulamā' al-nubalā'*, 7:286, and see also Ibn Ḥajar, *Lisān al-mizān*, 7:380.

44 Al-Ḥākim al-Naysābūrī, *Tasmiyyat man akhrajahum al-Bukhārī wa Muslim*, (Beirut 1987), 1:89.

45 *Ṭabaqāt*, 2:278.

46 *Epistle*, p. 308.

47 Al-Baḥāshī says that Ḥājib died before Abū 'Ubayda (*Ithāf al-a'yān*, 1:212).

48 For this information see al-Darjīnī, *op. cit.*, pp. 2:261, 271, 251 respectively.

49 Who was the source of Crone and Zimmermann in their list of Ibādī leaders at Basra (*Epistle*, p. 301, note 1).

50 Ennami, *Studies*, Ch. V., p. 138.

51 Al-Bukhārī, *op. cit.*, 8:351, 363; Ibn Abī Ḥātim, *op. cit.*, 4:32, 9:292; Ibn Ḥajar, *Tahdhīb al-tahdhīb*, 11:319.

52 Al-Mizzī, *Tahdhīb al-kamāl*, 32:255.

53 Ibn 'Abd al-Barr, *al-Istī'āb*, 4:1580.

### 5. Abū Nūḥ Ṣāliḥ al-Dahhān

Abū Nūḥ Ṣāliḥ b. Nūḥ al-Dahhān is from Basra.<sup>54</sup> He is believed to be one of Jābir's great students to the extent that al-Rabī' (see above) listed him as one of his teachers beside Abū 'Ubayda and Ḍumām.<sup>55</sup> This is also clear from *Āthār al-Rabī' b. Ḥabīb*. Non-Ibādī sources have good accounts of him as well.<sup>56</sup> Yet no precise dates are given about his lifetime, though he is considered among the scholars of the first half of the second century. The following works give abundant information about Abū Nūḥ:

al-Rāshidī, *al-Imām Abū 'Ubayda Muslim b. Abī Karīma al-Tamīmī wa fiqhuh*, pp. 601–603; Mu'jam a'lām al-Ibādīyya min al-qarn al-awwal al-hijrī ilā al-'aṣr al-ḥādir – qism al-Maghrib al-'arabī, (Beirut 2000), p. 234; Ennami (ed.), *Ajwibat Ibn Khalfūn*, (Beirut 1974), pp. 109–110.

### 6. Abū al-Ruḥayl Maḥbūb b. al-Ruḥayl

It should be re-emphasised that our book is the only source to name Maḥbūb b. al-Ruḥayl as Abū al-Ruḥayl. Otherwise he is mostly known as Abū Sufyān. I have pointed out earlier<sup>57</sup> that both names are for the same person. Excellent biographies of him are to be found in the following sources:

al-Rāshidī, *op. cit.*, pp. 242–244; Crone and Zimmermann, *op. cit.*, pp. 309–315 (where he is wrongly referred to as Maḥbūb b. al-Raḥīl), and al-Baṭṭāshī, *Ithāf al-a'yān*, (2<sup>nd</sup> edn., Oman 1998), 2:217–219.<sup>58</sup>

### 7. Abū Ṣufra 'Abd al-Malik b. Ṣufra

Although this name is prominently quoted in many early Ibādī sources, not much is known about him. The only detailed study is that of Ibrāhīm Bū Larwāḥ at the Institute of Islamic Sciences in Muscat as a graduation requirement as recent as 2002. His study '*Min Jāmi' Abī Sufra wa fiqhīh*' is unpublished yet but I do have a copy. There is also a brief passage in

54 Ibn Sallām, *Bad' al-Islām wa sharā'i' al-dīn*, 134.

55 Al-Darjīnī, *op. cit.*, 2:254; al-Shammākhī, *op. cit.*, 1:82.

56 Ibn Ḥajar, *Lisān al-mizān*, (Beirut 1986), 3:178; Ibn Abī Ḥatīm, *al-Jarḥ wa al-ta'dīl*, (Beirut 1952), 4:393; Ibn Ḥibbān, *al-Thiqāt*, (1<sup>st</sup> edn., 1975), 7:665.

57 See Notes and Comments, [257].

58 Unlike al-Sālimī, Crone and Zimmermann, al-Baṭṭāshī rightly argues that the dispute between Maḥbūb and Hārūn b. al-Yamān took place during the reign of Imām Ghassān b. 'Abd Allāh (d. 207/822) and not Muhannā b. Jayfar (226–237/841–852), see *Ithāf*, 2:219. This of course solves what Zimmermann and Crone tried with difficulty to solve (cf. *Epistle*, 311).

Francesca, *La fabbricazione degli Isnād nella Scuola ibādīta: il Musnad ar-Rabī' b. Ḥabīb*.<sup>59</sup>

It is important, I think, to point out first that Abū Ṣufra was cited in both early and recent materials to be the key transmitter and the one responsible for recording *Āthār al-Rabī' b. Ḥabīb*.<sup>60</sup> Al-Sa'dī (thirteenth/eighteenth century) says, without mentioning his source, that he is from Basra<sup>61</sup> or an Omani settled in Basra<sup>62</sup>. His dates are problematic, for many researchers<sup>63</sup> consider him a student of al-Rabī', while no direct transmission is recorded between the two men. A good example of that is *Āthār al-Rabī' b. Ḥabīb* which he transmitted through an intermediary – al-Haytham – from al-Rabī'. Thus Bū Larwāḥ argues<sup>64</sup> that he is not a student of al-Rabī' but of his successors (Wā'il b. Ayyūb and Abū Sufyān Maḥbūb, see below). He extends this argument and suggests that Abū Ṣufra was born in the last third of the second century and died in the first third of the next century (170–230). His argument would have been plausible if I had not found the following quotation in *Bayān al-shar'* where al-Kindī says, "*wa min Jāmi' Abī Ṣufra 'an al-Rabī' qultu ...*"<sup>65</sup>, and in another place he says, "*wa min Jāmi' Abī Ṣufra 'an Hammād 'an Ibrāhīm wa 'an al-Rabī' annahum qālū ...*"<sup>66</sup>. Obviously, neither Hammād nor Ibrāhīm transmit on the authority of al-Rabī' but Abū Ṣufra could and that is why he says "*wa 'an*". There are actually a handful of places<sup>67</sup> that one can trace in *Āthār al-Rabī'* of this pattern which makes it quite possible that Abū Ṣufra had met al-Rabī' for a short while before al-Rabī' died. Therefore I would suggest an earlier birth date than Bū Larwāḥ that is to say he was born somewhere around 160 and agree with his conclusion about the time of his death.

Finally there are two points I would like to make here. First it is important not to confuse this Abū Ṣufra with Abū Ṣufra the father of the Muhallabid family. For the latter, see Ibn Ḥajar, *al-Iṣāba*, 6:387, and Ibn

59 In "*Law, Christianity and Modernism in Islamic Society*", Proceedings of the eighteenth Congress of the Union Europeenne des Arabisants et Islamisants held at Katholieke Universiteit Leuven, p. 46–47.

60 Al-Shammākhī, *Siyar*, 1:109; al-Sālimī, *Sharḥ al-jāmi' al-ṣaḥīḥ*, 1:4, and al-Lum'a al-murḍīyya, 19; Ennami (ed.), *Ajwibat Ibn Khalfūn*, p. 113.

61 Al-Sa'dī, *Qāmūs al-sharī'a*, 8:357.

62 Al-Rāshidī, *al-Imām Abū 'Ubayda Muslim b. Abī Karīma al-Tamīmī wa fiqhuh*, p. 27, f. 4.

63 Mu'ammār, *al-Ibādīyya bayna al-firaq al-Islāmiyya*, p. 29; Ennāmī, *loc. cit.*, and al-Būsa'idī, *Riwayāt al-ḥadīth 'inda al-Ibādīyya*, p. 55.

64 *Op. cit.*, ج-ح.

65 Al-Kindī, *Bayān al-shar'*, 45:7–8.

66 *Ibid.* 43:224.

67 *Ibid.* 35:18.

Ḥibbān, *al-Thiqāt*, 4:400. The second is his role in transmitting *Musnad al-Rabī' b. Ḥabīb*. For it is so far unclear who took the initiative of transmitting that *Musnad* from al-Rabī' and committed it to writing except for an uncertain snippet of information given by al-Shammākhī that Abū Ṣufra "could be its narrator".<sup>68</sup> This, if reliable of course, indicates a great service to the Ibādī *ḥadīth* in addition to his general contribution to Ibādī scholarship.

### 8. Abū 'Ubayda Muslim b. Abī Karīma

Abū 'Ubayda is the successor of Jābir b. Zayd in the leadership of the Ibādīs. The date of his death is disputed, but the most convincing one is that he passed away shortly after 150/767. Fortunately he has been well studied, though most of this work is not known to many Western scholars.<sup>69</sup> I shall not give his biography in detail, but recommend the comprehensive PhD thesis of Mubārak al-Rāshidī, *al-Imām Abū 'Ubayda Muslim b. Abī Karīma al-Tamīmī wa fiqhuh* (published in Oman 1993) which fills almost 700 pages, along with references cited in *Mu'jam a'lām al-Ibādīyya min al-qarn al-awwal al-hijrī ilā al-'aṣr al-ḥādir – qism al-Maghrib al-'arabī*, pp. 418–420 (Beirut 2000).

### 9. 'Amāra b. Ḥabīb

'Amāra b. Ḥabīb is one of the people that al-Shammākhī listed as *majāhīl* (unknown) transmitters of Jābir b. Zayd. There is, however, some information to be got from his traditions in the *Āthār al-Rabī'*. In tradition [315] he states that he heard from Ḍumām (see below), and in the other one [316] he is transmitting from his father Ḥabīb on accompanying Jābir to a Friday prayer. This indicates that he is of the same generation of Ḍumām and his father's surprise action of performing Friday prayer with al-Ḥajjāj could be a clue of his Ibādism as well.

### 10. 'Amāra b. Ḥayyān

'Amāra b. Ḥayyān was an orphan brought up in Jābir's care.<sup>70</sup> He was in addition a student of Jābir, and accompanied him on his travels.<sup>71</sup> Al-Rabī' described him as "*kāna al-shaykh* ['Amāra] *'āliman ṣādiqan* – he was a truthful scholar". He passed on the knowledge he gained from Jābir to later

generations like Abū 'Ubayda, al-Rabī'... etc. (cf. *Mu'jam a'lām al-Ibādīyya min al-qarn al-awwal al-hijrī ilā al-'aṣr al-ḥādir – qism al-Maghrib al-'arabī*, p. 299). We can place him at the late first and early second century A.H., based on him being a source of transmission from Jābir to his great students. There is a mention of him in non-Ibādī authorities such as al-Bukhārī, *al-Tārīkh al-kabīr*, 6:503. Ibn Ḥibbān considers him in his *al-Thiqāt*, 7:262, and Aḥmad b. Ḥanbal in *al-'Ilal wa ma'rifat al-rijāl*, 3:12 where he confirms that 'Amāra transmits from Jābir and Abū 'Ubayda transmits from him ['Amāra] (cf. al-Dhahabī, *Mizān al-i'tidāl fī naqd al-rijāl*, 5:211).

### 11. Ḍumām b. al-Sā'ib

Ḍumām b. al-Sā'ib al-Nadbī is from a family of Omani origin but born in Basra.<sup>72</sup> He belonged to the second generation of Ibādī scholars, that is to say the early disciples of Jābir b. Zayd. He reached a respected scholarly rank<sup>73</sup> at the time of Abū 'Ubayda Muslim b. Abī Karīma, the second Ibādī leader. Ḍumām is one of the most distinguished of Jābir's students to the extent that it has been said that "he studied more with Jābir than did Abū 'Ubayda Muslim b. Abī Karīma".<sup>74</sup> Although his role is relatively minor in the famous *Musnad al-Rabī'*,<sup>75</sup> his contribution in the book under study, *Āthār al-Rabī' b. Ḥabīb*, points to his close relationship with Jābir. Non-Ibādī sources repeatedly refer to Ḍumām, always with the view that he is a reliable transmitter.<sup>76</sup>

Ḍumām was imprisoned by al-Ḥajjāj (governor of Iraq, 76–95/695–714) along with his fellow and great companion Abū 'Ubayda.<sup>77</sup> More details on Ḍumām's life can be found in:

al-Qannūbī, *al-Rabī' b. Ḥabīb, makānatuh wa musnaduh*, (Oman 1995), pp. 37–38; al-Rāshidī, *al-Imām Abū 'Ubayda Muslim b. Abī Karīma al-Tamīmī wa fiqhuh*, pp. 599–601, and the references cited by Ennami (ed.), *Ajwibat Ibn Khalfūn*, p. 112 along with references mentioned here in the footnotes.

72 Ibn Maddād, *Sīra*, ms. no. 156 of the catalogue of Ministry of Heritage and Culture, Oman, p. 6, and Ibn Sallām, *Bad' al-Islām wa sharā'i' al-dīn*, p. 114.

73 Al-Darjīnī, *al-Ṭabaqāt*, 2:246–247.

74 Al-Shammākhī, *al-Siyar*, vol. 1, p. 81.

75 He transmitted no more than three traditions there.

76 Aḥmad b. Ḥanbal, *al-'Ilal wa ma'rifat al-rijāl*, 2:56 and 3:11; al-Bukhārī, *al-Tārīkh al-kabīr*, 5:173.

77 Al-Darjīnī, *op. cit.*, 2:247; al-Shammākhī, *loc. cit.*

68 Al-Shammākhī, *op. cit.*, 1:109.

69 Zimmermann and Crone in their *Epistle of Sālim b. Dhakwān*, Appendix 1, have made thorough use of most works, both Arabic and Western, on writing about Abū 'Ubayda, but nevertheless they seem to be unaware of the work of al-Rāshidī mentioned above.

70 Al-Shammākhī, *al-Siyar*, 1:88.

71 This is said by both al-Darjīnī, *Ṭabaqāt*, and al-Shammākhī, *Siyar*, and is apparent in our book, see for example, traditions [258], [259] and [293].

## 12. Hammām b. Yahyā

There is no mention of this name except in al-Shammākhī's list of unknown transmitters.<sup>78</sup> The readings of the Tunisian MSS provide us with the name of Hammām b. Yahyā who is well identified in many non-Ibādī references.<sup>79</sup> He is a trustworthy Basran transmitter who died in 163 or 164 A.H.<sup>80</sup> Some authorities, although accepting his narrations, did question his memory.<sup>81</sup> He narrates from many *tābi 'īn* such as al-Ḥasan, Ibn Sīrīn, 'Aṭā', Nāfi', Qatāda and Yahyā b. Abī Kathīr.<sup>82</sup> However, he is not mentioned elsewhere, except possibly in al-Shammākhī's list – but there the name is given as Ḍumām b. Yahyā, almost certainly an error.

## 13. al-Haytham

This is an unfamiliar name in Ibādī sources. From my reading I think *Āthār al-Rabī' b. Ḥabīb* is the only Ibādī work to cite his name. However, a careful search on 'books of *rijāl*' (sources of biographies of transmitters of *ḥadīth*) throws up many transmitters with the name of al-Haytham. Fortunately one of them only, al-Haytham b. 'Abd al-Ghaffār, is said to have transmitted from al-Rabī' b. Ḥabīb and Ḍumām. It is likely that he is the one we are looking for, as none of the other Haythams is mentioned in connection with al-Rabī', Ḍumām and Jābir b. Zayd. Furthermore, he is from Basra and said to be "the most knowledgeable of Jābir's opinion".<sup>83</sup> No date is given about his life except that he is a transmitter of al-Rabī', Ḍumām, Qatāda, Hammām b. Yahyā and some others.<sup>84</sup> Yet all authorities of *'ilm al-rijāl* have a poor opinion of this man and they reject his *ḥadīths* and call him a liar.<sup>85</sup> This could mean that he is not an Ibādī, for these sources assume that Ibādīs are Khawārij whose *ḥadīth* is at the highest level of credibility.<sup>86</sup> Apart from the discussions on his credibility found in these sources, it seems that Abū Ṣufra had a favourable view of al-Haytham that convinced him to rely in his trans-

78 Al-Shammākhī, *al-Siyar*, 1:111.

79 Al-Bukhārī, *op. cit.*, 8:237; Ibn Abī Ḥātim, *op. cit.*, 9:107.

80 Ibn Zubar al-Rabī', *op. cit.*, 1:378.

81 Al-Suyūṭī, *Tadhkirat al-ḥuffāz*, (Beirut 1983), 1:93, and al-Dhahabī, *Man tukullima fih*, (1<sup>st</sup> edn., 1986), 1:188.

82 Cf. al-Dhahabī, *op. cit.*, 7:296.

83 Ibn Ḥajar al-'Asqalānī, *Lisān al-mizān*, 6:208; al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 14:55.

84 *Ibid.*

85 Al-'Aqīlī, Abū Ja'far, *al-Du'afā' al-kabīr*, 4:357; Ibn Abī Ḥātim al-Rāzī, *al-Jarḥ wa al-ta'dīl*, 9:85; Ibn al-Jawzī, *al-Du'afā' wa al-matrūkīn*, 3:179; al-Dhahabī, *Mizān al-'i'tidāl fi naqd al-rijāl*, 7:110–111.

86 Al-Suyūṭī, *Tadrib al-rāwī*, 1:326; Ibn Ḥajar, *Muqaddimat fath al-bārī*, 1:432–433, and al-Khaṭīb al-Baghdādī, *al-Kifāya fi 'ilm al-riwāya*, 1:130.

missions particularly on the opinions of Jābir b. Zayd. From the names given as al-Haytham's authorities, it is possible that he was a late second early third century A.H. figure.

## 14. Ḥayyān al-'A'raj al-'Āmirī

Ḥayyān al-'Āmirī (or al-Ghāfirī according to some sources) is a Basran student of Jābir. Not much is known about his role although he seems to have achieved a respected scholarly position at his time. I mentioned earlier in this study<sup>87</sup> that there seems to be a slip of the pen in his name as mentioned by al-Shammākhī in a list of unknown transmitters of Jābir.<sup>88</sup> He is of the *tābi 'ū al-tābi 'īn* authentic traditionists according to Ibn Ḥibbān and Yahyā b. Ma'īn.<sup>89</sup> Further information can be found in the following sources:

*Mu'jam al-'lām al-Ibādīyya min al-qarn al-awwal al-hijrī ilā al-'aṣr al-ḥādīr – qism al-Maghrib al-'arabī*, (Beirut 2000), p. 132; Ennami (ed.), *Ajwibat Ibn Khalfūn*, (Beirut 1974), p. 114; Ennami, *Studies*, p. 66; al-Mizzī, *Tahdhīb al-kamāl*, (Beirut 1980), 7:476–477; Ibn Ḥajar (al-'Asqalānī), *al-Iṣāba*, (Beirut 1992), 2:219, and al-Rāshidī, *op. cit.*, p. 593–594.

## 15. Ḥāzim (or al-Ḥāzim) b. 'Umar

External sources do not provide us with any information about this transmitter. However the *Āthār al-Rabī'* enables us to pick out some details about him. From tradition [294] onwards up to [313] there appears to be a sufficient connection between him and Tamīm b. Ḥuwayṣ (see below) to conclude that they were contemporaries. I would even argue that he is an Ibādī, for many traditions he transmitted are peculiar to the Ibādī law or the Ibādī political stance. Of the first category we find traditions [297], [298], [299], [304] and [306] that are dealing with *qaṣr al-ṣalāt* from an Ibādī perspective. There is also tradition [301] which shows the strict Ibādī view on wiping over footwear. And on the political side, there is firstly a tradition, [296], where he seems to have been hiding away during the revolt of Ibn al-Ash'ath. Then after it was put down he immediately went to Jābir b. Zayd to ask him about what had happened. Secondly, he is the narrator of a tradition, [303], which presents undoubtedly a very Ibādī view on the *bay'at* Ibn Ziyād. From this, I

87 See Notes and Comments, [253].

88 Al-Shammākhī, *al-Siyar*, 1:111 says that al-Rabī' depended on many distinguished transmitters about whom we know very little, one of them is a man named Ḥassān (not Ḥayyan) al-'Āmirī.

89 Ibn Ḥajar, *Tahdhīb al-tahdhīb*, 3:60; Ibn Abī Ḥātim, *op. cit.*, 3:246; al-Ḥamawī, *Mu'jam al-buldān*, 2:187.

think, it is fair to deduce that he is an Ibādī, presumably Basran, narrator of Jābir b. Zayd of the age of Tamīm b. Ḥuwayṣ or probably younger, as most of his narrations in this book are from Tamīm.

### 16. Jābir b. Zayd (Abū al-Sha'thā') (d. 93/711–712)

Jābir b. Zayd has received tremendous attention from many scholars of different backgrounds. But in the light of the *Āthār al-Rabī' b. Ḥabīb*, a further contribution can still be made, particularly about his date of death. We already know the dispute on his death, the dates given are: 91/709, 93/711, 96/714, 103/721 and 104/722. Let us examine some related niceties offered by this work of al-Rabī' b. Ḥabīb. The obvious information we first find is in tradition [314], which is explicit in stating that the death of Jābir was before that of Anas b. Mālik (d. 93/711). Secondly, there is one tradition in *Āthār al-Rabī'* ([262]) ascribed to 'Umar II (d. 101/719), during his caliphate. The transmitter of this tradition is al-Rabī' and not Jābir. If Jābir had been alive at that time he would have been the transmitter, or his opinion on the legal issue discussed in the tradition would have been quoted.

Relevant to this is that there is no record of Jābir being involved, in any way, in the Ibādī delegation to Umar II, nor has a statement been reported from him about the result of this Ibādī mission.<sup>90</sup> I do not think that they would have taken this step without his consent if he was still alive at that time. In addition to information available in the *Āthār al-Rabī'*, it should be noted that the date of 93/711 as a death date of Jābir is recorded by his closest and most distinguished student, Abū 'Ubayda, in *Musnad al-Rabī' b. Ḥabīb*<sup>91</sup> and it is the opinion most adopted by *muḥaddithūn* who were, mostly, more accurate in such information than historians.<sup>92</sup>

However, there are strong sets of counter evidence to this opinion: If al-Ḥajjāj imprisoned Jābir, as some writers claim, and Jābir had died in prison, this would surely have been noted. The implication is that either he was not imprisoned or died after his release. The time of release, if there was one, is hardly likely to have been before the death of al-Ḥajjāj (95/713).

It does not seem to me that Jābir was imprisoned by al-Ḥajjāj for the same reasons that Abū 'Ubayda and his colleagues were. He was imprisoned to prevent him from going to *ḥajj*.<sup>93</sup> It is true, however, that Jābir was exiled to Oman, but he could have returned to Basra during the time of al-Ḥajjāj. There is no reason for al-Ḥajjāj to send him into exile except for the strong

90 Ibn Maddād, *Sīra*, ms. no.156 of the catalogue of Ministry of Heritage and Culture, Oman, pp. 7–10, and al-Darjīnī, *Ṭabaqāt*, 2:232.

91 Al-Rabī' b. Ḥabīb, *al-Jāmi' al-ṣaḥīḥ – musnad al-Rabī' b. Ḥabīb*, p. 193.

92 See al-Qannūbī, *al-Rabī' b. Ḥabīb: makānatuh wa musnaduh*, p. 25.

93 Al-Darjīnī, *op. cit.*, 2:208, and al-Shammākhī, *Sīyar*, 1:68.

relations between the Muhallabids and Jābir.<sup>94</sup> And we know that soon after al-Ḥajjāj turned against the Muhallabids, probably after the death of 'Abd al-Malik b. Marwān (86/705), they got back-up from Sulaymān b. 'Abd al-Malik. That could have made Jābir's return to Basra possible.

It also means that there was a vacuum in the leadership of Ibādī movement between the death of Jābir and the release of Abū 'Ubayda (after the death of al-Ḥajjāj in 95/713) of no less than two years.

But, we should not forget that there were other Ibādī authorities who studied under Jābir and were not less knowledgeable or intellectual than Abū 'Ubayda, such as Ṣuḥār al-'Abdī, Ja'far b. al-Simāk and Abū Mawdūd Ḥājib b. Mawdūd,<sup>95</sup> who might have taken responsibility for looking after the movement.

Locating Jābir's death at the end of the first century H. definitely means that Abū 'Ubayda's tenure of leadership lasted unimaginably more than 50 years.

This could be more problematic than the previous points. Yet there are traces of information, though they are far from certain, which indicate that Abū 'Ubayda handed his authority to al-Rabī' in the latest years of his life because of his illness. He assigned him as a *muffī* for the people during the season of *ḥajj*.<sup>96</sup> It has been reported in many Ibādī sources that Abū 'Ubayda towards the end of his life got the disease known today as hemiplegia.<sup>97</sup> Furthermore, Abū 'Ubayda gave a strong recommendation to al-Rabī' from which it can be perceived that al-Rabī' took over during the life of Abū 'Ubayda. Al-Darjīnī narrates that al-Rabī' was once mentioned before Abū 'Ubayda, Abū 'Ubayda then described him as '*faqīhunā wa imāmunā wa taqīyyunā*'.<sup>98</sup>

We could locate Jabir's date of death somewhere between 93/711 and 99/719 (the year 'Umar II got into office) but the points mentioned above hardly support such an assumption. Thus I feel the date of 93/711 is most likely to be the correct one.

94 *ET*, III, s.v. al-Ibādiyya, p. 649.

95 Al-Darjīnī has a record of a story of courses of *dhikr* and *tarbiya* held by significant Ibādī figures at Ḥājib's house and a record of another story that shows that Ḥājib was looking after his fellow Ibādīs. One day he heard that there were secret congregations of Ibādīs held at the house of another Ibādī called 'Abd al-Malik al-Ṭawīl but they were talking loudly and their neighbours were able to hear them. Having heard about that, Ḥājib sent to them. They admitted what he had been told and said: 'If you command us not to do, we shall obey' ... (see *al-Ṭabaqāt*, 2:248–251).

96 Al-Darjīnī, *op. cit.*, 2:245.

97 *Ibid.*, 2:276.

98 *Loc. cit.*

The best sources to be consulted on other aspects of Jābir's life are the following:

Bakkūsh, *Fiqh al-imām Jābir b. Zayd*, (Beirut 1986); Ennami, *Studies in Ibādism*, Ch. 2; Crone and Zimmermann, *The epistle of Sālim b. Dhakwān*, Appendix 1; *ET*<sup>2</sup>, III, pp. 649–650, s.v. al-Ibādiyya; II, p. 359–360, s.v. Djābir b. Zayd; Sāmī Ṣaqr, *al-Imām Jābir b. Zayd al-Azdī wa atharuhu fī al-ḥayāt al-fikriyya wa al-siyāsiyya*, (Oman 2000), and al-Baṭṭāshī, *Ithāf al-a'yān fī tārikh ba'd 'ulamā' 'Umān*, 1:74–85.

### 17. Jamīl al-Khawārizmī

The last two traditions in *Āthār al-Rabī' b. Ḥabīb* contain the only citations of this name. Elsewhere, there is no mention of such a transmitter. However, there is an Ibādī scholar with the name of Abū Yazīd al-Khawārizmī. His first name is never mentioned, which makes the suggestion that the two names belong to the same transmitter fairly reasonable. For they are both from Khawārizm and belong to the same time, that is the first half of the second century. Abū Yazīd was a distinguished theologian who studied with Abū 'Ubayda and played a significant role in spreading Ibādī principles and thought in Khawārizm.<sup>99</sup> Yet this remains an assumption that requires further investigation, as the two traditions extant in *Āthār al-Rabī'* are transmitted on the authority of Jamīl from al-Rabī' and Wā'il (see below) respectively.

### 18. Al-Rabī' b. Ḥabīb

In recent years, many writers have made thorough studies of the life of Abū 'Amr al-Rabī' b. Ḥabīb al-Farāhīdī al-Azdī. The most detailed of these are: 'al-Rabī' b. Ḥabīb; *makānātuh wa musnaduh*' of the contemporary Omani traditionalist Shaykh Sa'īd b. Mabruk al-Qannūbī, and 'al-Rabī' b. Ḥabīb; *muḥaddithan wa faqīhan*' of al-Kabbāwī, 'Umar b. Mas'ūd. Amongst western scholars, I find that what Crone and Zimmermann wrote about al-Rabī' in *The epistle of Sālim b. Dhakwān*, Appendix 1 is the most comprehensive and accurate. All these sources are highly recommended for an excellent biography and identification of al-Rabī'. I will not repeat what is mentioned there, but I would like to comment on two points deduced from information provided by *Āthār al-Rabī' b. Ḥabīb*. First, it would appear that al-Rabī' lived in the time of (*adraka ḥayātahu*)<sup>100</sup> Jābir b. Zayd because there

<sup>99</sup> For more details, see al-Darjīnī, *Ṭabaqāt*, 2:258; al-Shammākhī, *al-Siyar*, 1:88, 143; *al-Rāshidī*, *op. cit.*, p. 247; Ibn Sallām, *Bad' al-Islām*, p. 135.

<sup>100</sup> This phrase clearly means that their lives overlapped. However, it does not necessarily imply that the two men ever met.

are three traditions in which he transmits from Jābir directly. These three are [245], [273] and [280]. In the first one he says: "ṣallaynā khalfahu [Jābir] fī Minā ... – we prayed behind Jābir [i.e. he led our congregation] at Minā ...", and the other two, though not so explicit, bear witness to the claim that al-Rabī' belonged to the generation of Abū 'Ubayda Muslim b. Abī Karīma<sup>101</sup> (see above). Second, I would agree with Crone and Zimmermann that al-Rabī' b. Ḥabīb did not die in Oman but in Basra,<sup>102</sup> because the evidence for the opposite argument<sup>103</sup> does not stand up together. The claim that Mūsā b. Abī Jābir prayed over him when he died is taken out of its full context. Al-Kindī states "*balaghanā anna Mūsā b. Abī Jābir ṣallā 'alā al-Rabī' bi-lzki*"<sup>104</sup> *hīna balaghahu mawtuhu bi al-Baṣra* – it has been reported to us that Mūsā b. Abī Jābir prayed over al-Rabī' at Izki when he heard of the death of him in Basra".<sup>105</sup> A similar statement is also ascribed to Abū Sa'īd al-Kudamī.<sup>106</sup> This means that the prayer Mūsā performed over al-Rabī' is the so-called *ṣalāt al-ghā'ib* (performance of a funeral prayer away from the dead). The *Āthār al-Rabī' b. Ḥabīb* of course does not have any direct mention of this issue, but we can see that all traditions of the book are from either Iraq or Hijaz, and all transmitters of the book, although with Omani origins, are settlers in Basra.

On a completely different point, al-Rabī''s father, Ḥabīb, is thought to be a student of Jābir b. Zayd<sup>107</sup> on the basis of a statement of al-Kindī<sup>108</sup> that "Ḥabīb, al-Rabī''s father, was with Jābir one Friday. Jābir requested him to accompany him to perform Friday prayer ...". This story is mentioned by al-Kindī without any *sanad* or citation of his source. The book of *Āthār al-Rabī' b. Ḥabīb* however, contains a similar tradition [316] narrated by 'Amāra b. Ḥabīb (see p. 142 above) "that I heard my father say: I was with Jābir one Friday ...". This ultimately reveals that the man involved was Ḥabīb who is the father of 'Amāra and not of al-Rabī'. The similarity in names probably caused this confusion.

Along with references mentioned above, the following sources are also useful:

<sup>101</sup> On the contrary of the conclusion of Wilkinson, *Early Development of the Ibādī Movement in Basra*, p. 246, n. 30, and Zimmermann and Crone, *Epistle*, p. 306.

<sup>102</sup> *Op. cit.*, p. 308.

<sup>103</sup> Approved by most Omani historians and traditionalists. See *op. cit.*

<sup>104</sup> A town in the interior of Oman, not far from Nizwa.

<sup>105</sup> Al-Kindī, *Bayān al-shar'*, 16:188.

<sup>106</sup> Cf. *Lubāb al-āthār*, 2:165–166.

<sup>107</sup> Al-Siyābī, *Ṭalaqāt al-ma'had al-riyāḍī 'alā atbā' al-madhhab al-Ibādī*, p. 30; al-Ḥārithī, *al-'Uqūd al-fidiyya*, p. 150, and al-Qannūbī, *al-Rabī' b. Ḥabīb*, p. 17.

<sup>108</sup> *Bayān al-shar'*, 15:71.

al-Rāshidī, *al-Imām Abū 'Ubayda Muslim b. Abī Karīma al-Tamīmī wa fiqhuh*, (Oman 1992), p. 248–251 and the references cited by Ennami (ed.), *Ajwibat Ibn Khalfūn*, (Beirut 1974), p. 108.

### 19. Salīm b. 'Ubayd

After a careful search for this name, I could not find it. Neither Ibādī sources nor Sunnī authorities mention such a person. Moreover, the Egyptian copy of the MS gives at the first mention of this transmitter his name as Sulaymān (not Salīm) b. 'Ubayd.<sup>109</sup> Editing the text however, leads me to stick to the name given in later traditions in the Egyptian copy and in all the readings of the name in the two Tunisian copies. If, on the other hand, the name of Sulaymān is the right one, there is mention of a Basran transmitter called Sulaymān b. 'Ubayd al-Salamī<sup>110</sup> (al-Nājī according to some)<sup>111</sup> from whom Yaḥyā al-Qaṭṭān (al-Ḥāfiẓ) transmitted. This obviously places him at the late first/early second century A.H., which is confirmed in our book in traditions [291] and [292] where conversations between him and Jābir b. Zayd are reported.

### 20. Tamīm b. Ḥuwayṣ

No extant early Ibādī sources of history and biographies deal with this name, although all the traditions he transmitted in this book<sup>112</sup> make it apparent that he is an Ibādī. However, Abū al-Mundhir Tamīm b. Ḥuwayṣ al-Azdī is a *tābi'ī* from Basra who transmitted from Ibn 'Abbās and was an authentic reporter whose *ḥadīths* are accepted according to many Sunnī authorities.<sup>113</sup> It would appear that Ibn Khalfūn is the only source to introduce Tamīm to Ibādī research workers,<sup>114</sup> when he cites passages from *Āthār al-Rabī' b. Ḥabīb* in his *Ajwiba*.

### 21. Al-Walīd b. Yaḥyā

This is another unknown transmitter from Jābir b. Zayd according to al-Shammākhī.<sup>115</sup> Nonetheless, he has been identified in non-Ibādī sources as a Basran transmitter from Jābir, reported by Jarīr b. Ḥāzim.<sup>116</sup>

109 See footnote 487 of the edited text of the book.

110 Al-Bukhārī, *al-Tārīkh al-kabīr*, 4:25; Ibn Abī Ḥātim, *op. cit.*, 4:129.

111 Ibn Ḥibbān, *op. cit.*, 6:392.

112 See in particular [212], [260], [261], [295–313].

113 Al-Bukhārī, *al-Tārīkh al-kabīr*, 2:154, 6:390; Ibn Ḥibbān, *al-Thiqāt*, 4:86; Ibn Abī Ḥātim, *al-Jarḥ wa al-ta'dīl*, 2:441; al-'Ajli, (Abū al-Ḥasan), *Ma'rifa al-thiqāt*, 2:257; Ibn Ḥajar, *Ta'jil al-manja'a*, 1:60.

114 Ennami (ed), *Ajwibat Ibn Khalfūn*, p. 113–114; *Mu'jam al-lām al-Ibādīyya*, 2:106.

115 *Ibid.*

### 22. Yaḥyā b. Qurra

No information is available about him except that his name is provided in al-Shammākhī's list of the *mashāyikh* that transmitted from Jābir and from whom al-Rabī' transmitted.<sup>117</sup> So at least we can locate him in the same generation as the last two narrators mentioned above.

### A Step towards a chronology

	Name	Date
1.	Jābir b. Zayd (Abū al-Sha'thā')	d. 93/711–712
2.	Abū Bakr b. Na'āma	1 <sup>st</sup> century
3.	Tamīm b. Ḥuwayṣ	late 1 <sup>st</sup> century
4.	'Amāra b. Ḥayyān	late 1 <sup>st</sup> / early 2 <sup>nd</sup> century
5.	Ḍumām b. al-Sā'ib	first half of the 2 <sup>nd</sup> century
6.	'Amāra b. Ḥabīb	first half of the 2 <sup>nd</sup> century
7.	Abū 'Ubayda Muslim b. Abī Karīma	d. shortly after 150
8.	Abū Nuḥ Ṣāliḥ al-Dahhān	mid 2 <sup>nd</sup> century
9.	Ḥāzim (or al-Ḥāzim) b. 'Umar	mid 2 <sup>nd</sup> century
10.	Salīm b. 'Ubayd	mid 2 <sup>nd</sup> century
11.	al-Walīd b. Yaḥyā	mid 2 <sup>nd</sup> century
12.	Yaḥyā b. Qurra	mid 2 <sup>nd</sup> century
13.	Ḥayyān al-A'raj al-'Āmirī	mid 2 <sup>nd</sup> century
14.	Hammām b. Yaḥyā	d. 163 or 164
15.	Abū al-Ashhab Ja'far b. Ḥayyān	d. 163 or 165
16.	'Abbās b. al-Ḥārith	second half of the 2 <sup>nd</sup> century
17.	al-Rabī' b. Ḥabīb	d. between 175 and 180
18.	Abū Ayyūb Wā'il b. Ayyūb	d. About 185
19.	Abū al-Ruḥayl Maḥbūb b. al-Ruḥayl	late 2 <sup>nd</sup> / early 3 <sup>rd</sup> century
20.	Jamīl al-Khawārizmī	???
21.	al-Haytham b. 'Abd al-Ghaffār	late 2 <sup>nd</sup> / early 3 <sup>rd</sup> century
22.	Abū Ṣufra 'Abd al-Malik b. Ṣufra	d. about 230

116 Al-Bukhārī, *al-Tārīkh al-kabīr*, 8:157; Ibn Ḥibbān, *al-Thiqāt*, 9:226, and Ibn Abī Ḥātim, *al-Jarḥ wa al-ta'dīl*, 9:21.

117 Al-Shammākhī, *loc. cit.*

### III) Evaluation of Ibādī *Fiqh* Material in *Āthār al-Rabī' b. Ḥabīb*

We have here a cohesive unmodified<sup>118</sup> work that represents parameters of what, not much later, developed into a 'legal system'.<sup>119</sup> Jābir b. Zayd, who is at the heart of this work, is not a mere transmitter passing on traditions and *ḥadīths* of his predecessors (Companions and the Prophet) as seen in *Musnad al-Rabī' b. Ḥabīb*. Nor are his disciples blind receptionists of every single opinion of him. The *Āthār al-Rabī'* shows the capability of Jābir as a *mujtahid* instinctively using the techniques that were to become required scholarly instruments to weigh different evidence before formulating his own opinions that he put before his disciples. These disciples seem to have discussed his legal precepts and questioned them every so often, which allowed them to have a rich *fiqh* material. Soon after, this raw material was developed into a corpus for the Ibādīs in Islamic law and jurisprudence. It should not be misunderstood, however, that it is just a collection of the knowledge of Ibādī authorities or that it is disclosed only for Ibādīs. On the contrary, the *Āthār al-Rabī' b. Ḥabīb* displays material from a wide range of sources of knowledge and not just the Ibādī community: there are Prophetic traditions, *fatāwā* of the Companions, opinions of some Successors, and not least of all the great amount of Qur'ānic topics discussed in the book. This feature, indeed, should earn special attention. It leads to a closer look at the Ibādī legal system and it definitely assists re-evaluating the preconceptions that many people, including, unfortunately, some scholars and researchers, have about Ibādī *fiqh*.

Ennami, in 1971, attempted to carry out an examination of Ibādī *fiqh*. He was successful in drawing a broader picture of Ibādī jurisprudence and law in terms of its general features, significant authorities, its origins, differences with other Sunnī schools of law and its most important works.<sup>120</sup> Although the work of *Āthār al-Rabī' b. Ḥabīb* provides strong grounds for many of his findings, amongst the most significant is that the Ibādī school of law is one of the oldest, if not the oldest, surviving school of Islamic jurisprudence.<sup>121</sup> There are also other points to be made here. Among the points I wish to

118 Many scholars and researchers, Muslims and Westerners, have treated Ibādī *fiqh* as a modified version of the Sunnī legal system, see for example, Ibn Ḥazm, *Marātib al-ijmā'*, and *Naqd marātib al-ijmā'* of Ibn Taymiyya, both in one volume, (ed. al-Kawtharī, Beirut n.d.), p. 14 f., and Schacht, *Introduction*, p. 16–17.

119 Schacht, *op. cit.*, pp. 3, 16.

120 *Studies*, Ch. IV, Ibādī Jurisprudence.

121 *Loc. cit.*

examine here are the mutual attitudes of Jābir b. Zayd and his predecessors and outstanding contemporaries on the one hand, and the Ibādī school of law attributed to him, as many authorities confirm,<sup>122</sup> on the other.

It is apparent from the *Āthār al-Rabī'* that Jābir b. Zayd's part in Ibādism received much attention within the community. The attitude of Ibādī tradition towards him is unambiguous. Many recognise him as the real founder of Ibādism and many others as its intellectual founder. In either case, his opinions are at the highest level of approval. This approval, however, was not blind. There is good evidence that the teachings of Jābir were not always followed by Ibādīs. The most clear examples in *Āthār al-Rabī'* of this kind are:

- First, his view that the marriage of minors is illegal (tradition [148]). Jābir assumes the marriage of the Prophet to 'Ā'isha to be a special case that is only allowed for the Prophet (*min khusūsiyyāt al-rasūl*), and there is no more explanation ascribed to Jābir of other practices of *zawāj al-ṣighār* as in the case of 'Umar b. al-Khaṭṭāb and Umm Kulthūm bt. 'Alī b. Abī Ṭālib which is a famous instance.<sup>123</sup> However, this opinion of Jābir has not been accepted by Ibādī scholars from the time of Jābir's students, and his claim of *khusūsiyya* is considered baseless.
- Another example of this kind is to be found in Jābir's opinions on some of the conditions of *tamattu'* rite in *ḥajj*. His opinions, as explained in Ch. III above [15] and [136], were felt strange and were unquestionably rejected.<sup>124</sup> Actually Jābir seems to have very detached, though corroborated, views on *tamattu'*. He does not lay down the obligation for someone to do *'umra* and *ḥajj* in the same journey; he considers a performer of *'umra* during the months of *ḥajj* as *mutamatti'* even if he enters the rites of *'umra* before the months of *ḥajj*. He also holds his own opinions on the days that a *mutamatti'* who cannot afford an animal for sacrifice should fast (traditions [16], [17] and [19]).
- Last in this category is his opinion on tradition [302] when he states that a person could leave a congregation prayer if the *imām* recites long *sūras*.

122 See for example, Bakkūsh, *Fiqh al-imām Jābir b. Zayd*, pp. 26–29, 34–37; Schacht, *Origins of Muhammadan Jurisprudence*, pp. 260–261; Watt, *The Formative Period of Islamic Thought*, (Edinburgh 1973), pp. 27–28 where he tried to harmonise the two contradicting arguments of the relationship of Jābir to Ibādīs by stating that though Jābir's "views were close to those of the Ibādites, he did not fully accept them, but that they later claimed to be following him to give their doctrine greater 'respectability' in the eyes of the main body of Sunnites".

123 'Abd-al-Razzāq, *al-Muṣṣannaḥ*, 6:263–264.

124 Aṭfayyish, *Sharḥ al-nīl*, 4:60.

All these matters, extant in the *Āthār al-Rabī'*, show that although Jābir b. Zayd can be seen as the founder of this independent school of law, the evolution of Ibādī *fiqh* developed in a wider attitude and more open atmosphere than just to adopt Jābir's teachings.

It is not unreasonable to say that the development of Ibādī law can be seen as starting as early as the compilation of this work. For the *Āthār al-Rabī' b. Ḥabīb* provides us with significant indications of a formation of consistent legal tenets. There are some standpoints that make Ibādīs distinctive in their *fiqh*, as far as Islamic law is concerned, as early as the time of Jābir b. Zayd and his students, that is to say the beginning of the second century A.H. Of these peculiar *fiqh* features is the disapproval of wiping over footwear in *wuḍū'*. Jābir's opinion mentioned in tradition [301] represents a very Ibādī feature of *fiqh*. It is true that the same view is taken by individual Muslim authorities, but none of the Sunnī schools of law accept it. It was, however, accepted by the Shī'īs, thus providing one of the few legal opinions common to Ibādī and Shī'ī schools of law. Despite the common opposition to the Sunnī view, the dispute between Ibādīs and Sunnīs, on this point, has never been as sharp and crucial as was that between Sunnīs and Shī'īs.<sup>125</sup> Jābir's view was strongly influenced by Ibn 'Abbās, who was his great teacher. Ibn 'Abbās rejected the practice, and he was followed in that by Jābir and the Ibādīs followed him in that, no doubt strengthened in their view by that of 'Ā'isha. She has been quoted reporting to the Prophet that he never wiped his feet and she wished to carry a knife and cut off her feet rather than wipe them.<sup>126</sup> Jābir himself denied that any of the Companions he met had done it or claimed that the Prophet had wiped his feet, he says: "I met plenty (*jamā'a*) of the Companions of the Prophet and asked them if the Prophet had ever wiped his hands over his footwear, and they all said No". Then Jābir commented: "How should we do so while God speaks to us (*yukhāḥibunā*) in His book about *wuḍū'* [of every limb] itself".<sup>127</sup>

Another example extant in *Āthār al-Rabī'*, of an Ibādī *fiqh* peculiarity, is the recital of only *al-Fātiḥa* in *zuhr* and *aṣr* prayers. This, as is clear in tradition [9], is another sign of an independent formation of *fiqh* which originated at the beginning of the second century and has remained an 'unchangeable' Ibādī principle of law since then, although it is not a central issue in religion. Other points are the disapproval of *qunūt* in the prayer and also the distance

125 For a summary of Ibn 'Abbās' opinion and his evidence, see Madelung, "'Abd Allāh b. 'Abbās and Shi'ite Law", in: *Law, Christianity and Modernism in Islamic Society*, pp. 19–21.

126 *Al-Rabī' b. Ḥabīb, Musnad*, 1:62; Ibn Abī Shayba, *al-Muṣannaḥ*, 1:169; 'Abd al-Razzāq, *op. cit.*, 1:221.

127 *Al-Rabī' b. Ḥabīb, loc. cit.*

from which a traveller should shorten his prayer as well as for how long he can stay doing so<sup>128</sup>. Apart from *ṣalāt*, we have seen earlier (Ch. III) that Ibādīs are consistent in treating the *mukātaba* as a free man from the time the contract of *mukātaba* is signed, see for example [55], [57], [104], [119], [122], [124], [126], [130] and [287]. And on the contrary, their treatment of *umm al-walad* as a slave (traditions [37], [52], [102], [E1], [E2], [116] and [118]) contradicts the opinion of Sunnī, but not Shī'ī, schools of law.<sup>129</sup>

Of course, there are similarities in most *fiqh* matters between the Ibādī and Sunnī, and sometimes Shī'ī schools of law, but to have all the above points, let us call them essentially Ibādī legal features, in a relatively brief work of traditions indicates an early establishment of a developed system of jurisprudence and law. This, it seems to me, is what a careful reader will recognise in the work of *Āthār al-Rabī' b. Ḥabīb*. There are other differences between Ibādī *fiqh* and the majority of Muslim schools of law,<sup>130</sup> and on one crucial point the work of *Āthār al-Rabī'* allows us to conclude that there is no apparent link whatsoever with the later *Zāhirī* school. It is therefore wrong to say, as Schacht did, that the "legal thought of the *Zāhirīs*, ... has certain points of resemblance with the doctrine of the *Ḥanbalīs* and of the *Traditionists* in general, but essentially it goes back to a literalist attitude which can be found among the *Khārijīs*".<sup>131</sup>

The methodology Jābir b. Zayd followed in formulating his opinions can also be traced in the *Āthār al-Rabī'*, albeit to a limited extent. His reference to the Qur'ān is clear in traditions [161], [169], [239], [273] and [293]. His attitude to the *sunna* and *ḥadīth* is articulated in a short, though significant statement in tradition [238]. Many of his opinions are based on Prophetic traditions as in [14], [27], [34], [79], [97], [114], [144], [269], [282] and [315]. His appreciation of the opinions of the Companions and his attitude to what he found them doing or approving of is also apparent in *Āthār al-Rabī' b. Ḥabīb*: Most of his opinions are actually ascribed to one or more of the Companions such as Ibn 'Abbās, 'Abd Allāh b. 'Umar, 'Ā'isha and Ibn Mas'ūd. However, Jābir seems to have his own criteria by which he deduces his final legal judgment, but these are not clear from the *Āthār al-Rabī' b. Ḥabīb* alone. A further study will be required to elucidate them. In some occasions he follows 'Ā'isha, as we have seen in wiping over the footwear. Yet on other occasions he followed Ibn 'Umar as in tradition [159] where he prefers the performance of an odd number of circumambulations around the

128 For these three matters, see Ch. III, Notes and Comments, [320], [211] and [303] respectively.

129 Madelung, *op. cit.*, pp. 17–19.

130 Cf. Ennami, *Studies*, pp. 103–112.

131 Schacht, *Introduction*, p. 64.

Ka'ba despite 'Ā'isha's preference of 'the more the better', and in tradition [35] Jābir's opinion is also in accordance with that of Ibn 'Umar. Generally, Jābir admits that he uses the 'amal of the Companions as legal evidence: when he was asked if a Muslim should ask about the source of ghee, he stated "No, we found the Companions of the Prophet asking about cheese and not about ghee" (tradition [300]). As far as analogical reasoning is concerned, Jābir has been described by some scholars "as one who adopts opinion and uses analogical deduction when there is no textual evidence".<sup>132</sup> I will not attempt, within the limit of my focus on this section, to scrutinise the niceties of this conclusion, but shall concentrate on its sphere preserved in the *Āthār al-Rabī' b. Ḥabīb*. The most attractive example of this is tradition [292] when he was asked to decide between doing *hajj* and obeying one's father's commandment of not doing it. Jābir's reply to the questioner explicitly indicates his methodology of balancing between two religious obligations, performing *hajj* and obeying parents. Jābir asked his questioner: "What if your father prevented you from performing an obligatory prayer, would you then obey him?" The man said: "No". So Jābir answered his question by saying that he ought not to listen to his father, for *hajj* and *ṣalāt* are alike and should be treated similarly. There is also his opinion on performing prayer on the roof of the Ka'ba, a point on which no textual evidence (from the Qur'ān or *ḥadīth*) survives. Jābir states that the person who does so has no *qibla*; and thus it is not permissible to do so, as indicated in tradition [38]. We have also seen that Jābir made slave sisters equal to free sisters as far as marital, or *ṭasarrī* and *wa'* issues are concerned.<sup>133</sup> His solution to the woman who made a vow (*nadh'r*) of spending a night dancing and singing when her father returns home, as in tradition [317], is obviously based on reasoning and individual opinions. Many other examples can be quoted from the *Āthār al-Rabī' b. Ḥabīb*<sup>134</sup> to justify and confirm that Jābir retained the use of *qiyās* and individual judgment when forming legal opinions on matters that have not been dealt with in the Qur'ān and *ḥadīth*. This inevitably became an essential part of the recognised methods and procedure of Ibādī jurisprudence and law. It could, additionally, explain the richness of Ibādī *fiqh* material throughout their history in general and from the first formative centuries of Islamic schools of jurisprudence in particular. Ibādīs have evolved a crucial ruling, as far as methodology is concerned, that resulted in this richness and productivity. This characteristic is referred to by Ennami when he says "to Ibādīs the doors to individual judgment (*ijtihād*) have always been wide open; they

132 Al-Kāsānī, *Badā' i' al-ṣanā' i'*, (ed. 'Uthmān), p. 67.

133 See Ch. III, [241].

134 E.g., [64], [101], [191], [199], [241], [268] and [281].

have never been locked at any stage for qualified persons".<sup>135</sup> I think the *Āthār al-Rabī' b. Ḥabīb* bears ample evidence, as indicated earlier, of the freedom given to any knowledgeable person to practice *ijtihād* and issue his own opinion even in contrast with his former respectable teacher. Consequently, outstanding Ibādī *fuqahā'* have always been eager to have considerable acquaintance with all Muslim legal literature. I have mentioned in passing earlier in Ch. I, that within the codex containing the work of *Āthār al-Rabī' b. Ḥabīb*, there are several parts of "*aqwāl ahl al-Kūfa ma'rūdan 'alā 'ulamā' al-Ibādīyya* – the opinions of the Kufans shown to Ibādī scholars". Our work also contains a large number of explicit citations of the opinions of the Kufans, as well as, though not to the same level, opinions of others who have not been named.

In evaluating the *fiqh* material of the *Āthār al-Rabī' b. Ḥabīb*, it is worth mentioning another characteristic observable in its traditions. Jābir b. Zayd is a distinguished authority amongst most Sunnī schools of law. His opinions are prominently acknowledged in *tafsīr*, *ḥadīth* and *fiqh*.<sup>136</sup> Yet records of his opinions are not always the same in Sunnī and Ibādī references. There are some examples of such variant narrations of his legal opinions in *Āthār al-Rabī'*. In tradition [1] we have seen that Jābir's view is that the death of one spouse before the procedure of *li'ān* is complete means they are still under their marital ties and therefore can inherit from each other. This is not the same opinion that we find ascribed to him in external sources.<sup>137</sup> On the same subject of marriage and divorce, there is the question of whether *khul'* should be considered repudiation or cancellation. The latter is Jābir's opinion according to the *Āthār al-Rabī'* while the former is also attributed to him elsewhere.<sup>138</sup> The most interesting example is tradition [175] which deals with performing *jam'* prayers, for most scholars have agreed on the permissibility of doing so for a traveller, yet Jābir has been quoted in some sources<sup>139</sup> as specifying the allowance of doing *jam'* prayer to Muzdalafa (or Muzdalifa according to fewer sources) and 'Arafā. Tradition [123] provides another confirmation of this as well. However, this phenomenon could be interpreted in many ways: first it could be that Jābir has on some issues more than one opinion; second it is possible that a narrator misunderstands or forgets what he has recorded; third it seems natural as we almost find such differences with all Imāms and leading figures. Above all, this could not, and should not, discredit the authenticity of the *Āthār al-Rabī' b. Ḥabīb*. For most of the

135 *Studies*, p. 99.

136 A good account of this is to be found in Bakkūsh, *op. cit.*, pp. 70–74.

137 For details see Ch. III, Notes and Comments, [1].

138 Ch. III, Notes and Comments, [173].

139 Al-'Aynī, *Umdat al-qārī*, 7:150.

opinions ascribed to him are attested by other external sources, be it Ibādīs or Sunnīs.

This survey, I believe, opens the way to a better understanding of the material we have in the text of *Āthār al-Rabī' b. Ḥabīb* and subsequently for the understanding of the nature of Ibādism at its earliest phase within the development of Islamic law in general. We have an early work rich in juristic material showing the opinions of an authoritative, or to be more precise the authoritative figure in his school deriving his legal opinions from the origins of Islamic law in a very conceivable manner and passing it on to his students in an unrestricted way. Jābir's narrators, as apparent in the *sanads* of the work in focus, are not always Ibādīs. In particular, a major role of the transmission of this work is carried out by al-Haytham b. 'Abd al-Ghaffār, who is a non-Ibādī.<sup>140</sup> His opinions, in addition, have not prevented his followers from rejecting some of them and disagreeing between themselves over others. This indicates that the general theory of Hallaq<sup>141</sup> concerning Sunnī schools cannot be comprehensively applied to Ibādī *fiqh*. For, first and foremost, there is no existence in Ibādī law of "a juristic doctrine clothed in the authority of the founding imam, the so-called absolute *mujtahid*",<sup>142</sup> nor were the juristic discourse and hermeneutics "the product of this foundational authority which was made to create a set of positive principles that came to define the school not so much as a personal entity of professional membership, but mainly as an interpretive doctrine to be studied, mastered, and, above all, defended and applied".<sup>143</sup> As far as Ibādīs are concerned, this talk of defence and application is nonsense (and that appears to be the case for many Sunnīs too). Second, it is not true for the Ibādī school of law that this founding *imām* must be followed and whatever *ijtihād* capability a jurist can achieve ought to be limited to inter-*madhhab* *ijtihād*, which is indeed no more than a higher rank of *taqlīd*. And as Ennami concludes, "they [Ibādīs] strongly opposed reliance on the teaching of a master (*taqlīd*)".<sup>144</sup> "It is", he adds, "a duty of those who attain the required standard of knowledge to use their individual judgement".<sup>145</sup> We have seen on different occasions in the *Āthār al-Rabī' b. Ḥabīb* that immediately after the statement of Jābir comes a presentation of another Ibādī opinion that contradicts the statement of Jābir. Furthermore, it is clear from what has been discussed above that some of the opinions of

140 See above, *Biographies of Transmitters*, p. 144.

141 Hallaq, *Authority, Continuity and Change in Islamic Law*, (Cambridge 2001), *passim*.

142 *Op.cit.*, 236.

143 *Loc.cit.*

144 *Studies*, p. 99.

145 *Loc.cit.*

Jābir have never been approved of by the Ibādī school of law. This is also true of the next generations of Ibādī scholars. It is correct, nonetheless, that this feature, despite all its privileges, has not reflected what Hallaq describes as the 'more determinate body of positive law'<sup>146</sup> observed in Sunnī schools of law. This could explain the paucity of attention given to Ibādī *fiqh* unlike dogmatic, doctrinal and political entities or its historical backgrounds.



146 Hallaq, *Authority*, p. 236.

## CONCLUSION

In this study I have tried to put forward analytical views about a new dimension of Ibāḍism. My analyses were based on a newly discovered Ibāḍī work, *Āthār al-Rabī' b. Ḥabīb*, which appears to be one of the earliest works in Islamic law. It originated with Jābir b. Zayd in Basra at the beginning of the second/eighth century. Jābir's role in this work, unlike many other works ascribed to him or transmissions named after him, is not limited to reporting traditions of the Prophet or the Companions or the Successors, rather his role in this book is essentially as a knowledgeable authority, *mujtahid*, who has his own criteria that enabled him to practice *ijtihād* and pronounce his individual legal opinions in its wider sense. This ultimately makes the *Āthār al-Rabī' b. Ḥabīb* a good record of the early basic parameters of the knowledge and attitudes of the first influential Ibāḍī founder.

Making accessible a text of a great historical and legal value is a necessary service for the whole field of Islamic scholarship, particularly, in the fields of sectarian studies (and nothing pejorative is implied in the use of the word 'sectarian'). For the picture of the formation of Muslim schools, the characteristics that distinguish these schools and the role of certain authorities in the establishment of those schools cannot be, and should not be, solely and properly understood without an overall view of all the components and factors that were involved. Religious schools of thought and law were formed gradually and often passively over long periods of time, depending on the nature of the development of new ideas and opinions in life, and on the events and incidents that took place, which were then submitted for analysis under the principles of 'established' religious law (namely the Qur'ān, the *sunna* and the consensus) in order for a legal judgement to be produced, whether such a judgement affects dogma or conduct. I am not claiming that this work documents all this, but I think it offers a crucial basis for such documentation. It also helps to open up our minds further to fascinating observations about the nature of the legal milieu and the evolutionary process in the construction of Islamic schools of law. And if other Ibāḍī early works, and there are still surprising numbers of them have not yet seen the light, are put under detailed scrutiny; the results are going to be significant and of a crucial interest for both Muslim and Western scholars. It is hoped that this current study will attract more attention to the study of the Ibāḍī texts of all kinds, which will lead to proper treatment of the Ibāḍīyya, neither as an insignificant minor sect nor as a surviving example of Khārījism.

تذكرة  
عبد  
الله

When I was doing my notes and comments on the text, I was surprised with what I found when I compared the juristic material of the book, which lays the groundwork for an Ibādī based *fiqh*, to that of Sunnī *fiqh*. There is no single legal opinion by Ibādīs that seems irregular (*shādhdh* or *mubtada* in *fiqh* terms) or contradicting the *fiqh* of the mainstream Muslims. There are, it is true, certain opinions approved of by Ibādīs and became peculiar to them, but even these opinions have their roots back to one or more of the Companions or the Successors, other than Jābir b. Zayd. Some narrators of these opinions are quite often non-Ibādīs. Otherwise if we forget, for a moment, that this is an Ibādī *fiqh* work, it is difficult to distinguish from any Sunnī *madhhab*.

The political and doctrinal information that appears in the book shows greater differences between the Ibādī community and the other *madhāhib*, and this mirrors the split in the early Islamic community. Though this information is not a primary item of concern in the book but incidental, the political events and historical incidents mentioned in the book should lead us to review some of the ambiguities connected with some early personalities and their roles and stances on the conflicts that took place during the first and beginning of the second centuries of Islam, such as the assassination of the third Caliph, the revolt of Mu'āwiya and Ṭalḥa, the Battle of *al-Jamal*, the conflict at Ṣiffīn, some events during the Umayyad reign, etc. Such topics in the *Āthār al-Rabī' b. Ḥabīb* provide a subject of further detailed studies for those who are eager for the study of early history of Islam.

Because of the early date of the work, before 132/749, there are not any discussions on dogmatic issues that apparently surfaced at a later stage, though not much later. Thus, polemics on issues that were thought to have influenced the 'final forms' of different Muslim schools of thought, such as the divine attributes and their unity (*al-ṣifāt wa l-tawḥīd*), predestination and justice (*al-qadar wa l-'adl*), the promise and the threat (*al-wa'd wa l-wa'īd*), etc., need to be reconsidered in the light of early works such as the one we have. It seems that, on the legal features at least, these polemics have not influenced the characterising process of the Muslim school to the extent that it is thought to have. Nor they have great impacts on the approaches of early authorities in their dealing with juristic matters. This work is a good example of this.

Biographical information extant in this book also merits close attention. For, I have to admit, there is not such a paucity of chronological and prosopographical information any researcher would encounter than that in the Ibādī school. Recent attempts to fill this gap have eased this problem to some extent, yet we do need to look at works like *Āthār al-Rabī' b. Ḥabīb*, that is full of names, places and events of day life activities, to get more accurate

information on this infrastructural aspect. This was one of my main aims when writing this study, as I thought that it would provide an addition to the contemporary studies of both Muslim and Western researchers. And I am sure that further studies on this book and other still unstudied works of similar nature will be highly appreciated in the world of scholarship.

It is no exaggeration if I posit that careful studies of such early Muslim works will mark a turning point in our understanding of the early centuries of Islam, particularly the origins of Islamic law, the features of Muslim schools of jurisprudence, the inter-relationships between influential Muslim authorities, and many other important horizons.



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## Abhandlungen für die Kunde des Morgenlandes

Im Auftrag der Deutschen Morgenländischen Gesellschaft  
herausgegeben von Florian C. Reiter (ab Band 53,1)

102:

### Ernst Boerschmann: Pagoden in China

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Ernst Boerschmann war ein Pionier und ist bis heute der profilierteste Vertreter der chinesischen Architekturforschung in Europa. Von 1906 bis 1909 bereiste er China, fotografierte und vermaß die wichtigsten Bauwerke und publizierte seine Ergebnisse. Seine Arbeiten regten die Gründung einer chinesischen Gesellschaft für Bauforschung an (1929). Aufgrund der Einsicht, dass in China wie in Europa viele der bedeutendsten Bauwerke religiösen Ursprung hatten, publizierte er das dreibändige Werk *Die Baukunst und religiöse Kultur der Chinesen*. Der zweite Teil der Monografie über die Pagoden konnte wegen der politischen und wirtschaftlichen Verhältnisse nicht gedruckt werden, obwohl er fertig vorlag und bis zum Ende des Zweiten Weltkrieges laufend aktualisiert wurde. Später galt er als verschollen, und es ist ein Glücksfall, dass ein Durchschlag gefunden wurde, der als Basis für die Erstveröffentlichung diente. Boerschmann brachte nicht nur gediegene Fachkenntnisse mit, sondern stützte sich auf eigene Forschungen vor Ort, beherrschte die chinesische Sprache, und vor allem auch die deutsche – er schrieb in einem klaren und verständlichen Stil.

103: Rainer Brunner

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Die konfessionelle Polemik zwischen Sunniten und Schiiten ist beinahe so alt wie der Islam selbst, und die Liste der Streitpunkte ist lang. Besonders heikel ist der von schiitischen Theologen erhobene Vorwurf der Koranfälschung. Demnach hätten sunnitische Gelehrten sämtliche Hinweise auf 'Alī, den Schwiegersohn Muḥammads und ersten Imam der Schia, und die Familie des Propheten unterschlagen und damit das Wort Gottes korrumpiert. Nicht zuletzt innerschiitische Auseinandersetzungen sorgten dafür, dass das Thema auch in späterer Zeit immer wieder aufgegriffen wurde. Den Endpunkt der innerschiitischen Debatte markierte im späten 19. Jahrhundert der schiitische Gelehrte Ḥusain an-Nūrī aṭ-Ṭabrisī, der sämtliche ihm bekannten Fundstellen aus sunnitischen wie schiitischen Quellen in einem Buch zusammentrug. Von der großen Mehrheit der schiitischen Geistlichkeit, die sich von der eigenen Tradition distanziert, wird er dafür bis heute heftig angefeindet. Zugleich jedoch lieferte sein Buch die wesentliche Grundlage dafür, dass der Vorwurf der Koranfälschung im 20. Jahrhundert von sunnitischen Polemikern aufgegriffen wurde und heute den vielleicht wichtigsten Streitpunkt der konfessionellen Polemik im Islam darstellt.

## Abhandlungen für die Kunde des Morgenlandes

Im Auftrag der Deutschen Morgenländischen Gesellschaft  
herausgegeben von Florian C. Reiter (ab Band 53,1)

104: Lutz Edzard (Ed.)

### The Morpho-Syntactic and Lexical Encoding of Tense and Aspect in Semitic

Proceedings of the Erlangen Workshop  
on April 26, 2014

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105: Silje Susanne Alvestad

### The Uppsala Manuscript of Muḥammed Hevā'ī Ūskūfī Bos- nevī's *Maḵbūl-i 'ārif* (1631) from a Turcological Perspective:

Transliteration, Transcription, and an  
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The object of study in this book is the Uppsala manuscript, O. nova 546, of Muḥammed Hevā'ī Ūskūfī Bosnevī's literary work *Maḵbūl-i 'ārif* from 1631. The manuscript, handwritten in Ottoman script, came from Cairo to the University Library in Uppsala in 1924. *Maḵbūl-i 'ārif* is frequently referred to as the first known Bosnian-Turkish dictionary, but this label is misleading. First, the work consists of three parts – a long and sophisticated foreword and an afterword in addition to the dictionary part. Second, the part of the work that is the cause of this label is not a 'dictionary' in the modern sense of the word: it is versified, dialogue-oriented, and split into chapters according to topic. The versified glossary is the only part where we find Bosnian words (approximately 650).

The main motivation behind this book is the fact that *Maḵbūl-i 'ārif* has received little attention from a turcological perspective. Despite the fact that *Maḵbūl-i 'ārif* is a Turkish, or Ottoman Turkish literary work of art, the vast majority of researchers examine it from a Bosnian cultural and/or linguistic perspective. It is time *Maḵbūl-i 'ārif* receives attention from a turcological point of view, too.



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