

THE ORIGINS OF
Muhammadan
Jurisprudence

JOSEPH SCHACHT

OXFORD
AT THE CLARENDON PRESS

CHAPTER 3

AUZĀ'Ī'S REASONING

WE have already given an account of the extent to which Auzā'ī uses explicit systematic reasoning;¹ it is overshadowed by his reliance on the 'living tradition'.² This concept, as Auzā'ī understands it, is the result of scrutiny, by the scholars, of the idealized practice. We are therefore justified if, in order to gain some idea of the quality of Auzā'ī's legal thought, we not only draw on his explicit systematic reasoning, but consider the whole known body of his doctrine.³ It remains uncertain, however, how much of it is Auzā'ī's own, and how much he took over from his predecessors. Auzā'ī (and this may include the Syrians in general) was certainly influenced by Iraqi reasoning, not only in legal theory,⁴ but in the solution of at least one particular problem as well.⁵

Auzā'ī's opinions, as a rule,⁶ represent the oldest solutions adopted by Muhammadan jurisprudence, whether he maintains the current practice,⁷ or regulates it,⁸ or Islamicizes it as is usual with him, or gives a seemingly simple and natural decision as yet untouched by systematic refinements.⁹ The archaic character of Auzā'ī's doctrine makes it likely that he, who was himself a contemporary of Abū Ḥanīfa, conserved the teaching of his predecessors in the generation before him.

When the doctrine which goes under the name of Auzā'ī was formulated, the Islamicizing and systematizing tendencies of earliest Muhammadan jurisprudence had, it is true, already started to act, but they were still far from having permeated the whole of the raw material offered by the practice. The doctrine as given by Auzā'ī therefore often appears inconsistent.

This inconsistency is perhaps most immediately noticeable in the case of Islamicizing: a strong tendency to Islamicize is

¹ Above, p. 119.

² See above, pp. 70 ff.

³ The references in this chapter are to *Tr. IX*, unless the contrary is stated.

⁴ See above, p. 76.

⁵ See above, p. 278. — In § 20 Auzā'ī counters an objection which corresponds to an Iraqi doctrine.

⁶ For an exception see above, p. 277, n. 1.

⁷ e.g. § 16 (see above, p. 277 f.).

⁸ e.g. § 27 (see above, p. 70).

⁹ e.g. § 38 (see above, p. 277).

unmistakable¹ and produces the historically false notion of an ancient practice opposed to the present, actual one;² but the strict observance of a religious scruple in § 2 leads to an inconsistency with the parallel case of § 14 where the current practice is followed without misgivings;³ and in § 13 (and in the parallel in Ṭabari, 87) the religious scruple, identical here with strict systematic reasoning, is only beginning to assert itself against an old-established practice.⁴

Auzā'ī's explicit systematic reasoning is on the whole rudimentary,⁵ and the legal thought which we can postulate as underlying some of his decisions shows as a rule a rigid formalism, as in § 12, or in § 20 where he defends his unsystematic but seemingly practicable and natural decision by a rigorously literal interpretation of an *isnād*-less tradition from the Prophet. There is an appreciable amount of systematic reasoning underlying Auzā'ī's doctrine; he shows a positive interest in legal problems as opposed to the actual practice⁶ and, once his doctrine is established as correct, he is prepared to accept its consequences even if they prove undesirable in practice.⁷ How far systematizing went in his time may be gathered, perhaps, from the estimate that the balance between noticeable consistencies and inconsistencies, in the material we have, is just about equal.⁸

¹ See above, p. 72.

² e.g. § 1 (see above, p. 71).

³ See above, p. 285.

⁴ See above, p. 70 f.

⁵ See above, p. 119.

⁶ e.g. § 16 f. (see above, p. 277 f.).

⁷ Ṭabari, 89, parallel to § 1 (see above, p. 72).

⁸ See also *E.I.*², s.v. *al-Awzā'ī*.