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TAXATION IN ISLĀM

VOLUME III

ABŪ YŪSUF'S KITĀB AL-KHARĀJ

TRANSLATED AND PROVIDED WITH
AN INTRODUCTION AND NOTES

by

A. BEN SHEMESH, LL.M., PH.D.

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PREFACE

The Kitāb al-Kharāj, attributed to Abū Yūsuf, Ya'qūb b. Ibrāhīm al-Anṣārī, is the most frequently copied compilation of his time. Brockelmann enumerates many original MSS. of it and Fagnan mentions a few more in the preface to his French translation. To these I would like to add three others, i.e. MSS. Nos. 3487, 3488, and 3489, deposited in the Fātiḥ Collection of the Islamic Department at the Suleymaniye Library in Istanbul. The various MSS. differ in size due to many layers of additions interpolated into the original text by generations of scholars and copyists. No. 3487 Fātiḥ, for instance, contains approximately half of the material found in the first printed edition of this compilation.

It is not certain whether Abū Yūsuf ever saw the Kitāb in the form of a complete book. Ibn al-Nadīm cites it in his "Fihrist" amongst the "Amālī" dictated to his disciple Bishr b. al-Walīd al-Kindī, who later became a judge during the reign of al-Mā'mūn. Brockelmann, however, asserts that Muḥammad b. al-Ḥasan al-Shaybānī was responsible for editing the dictated text of Abū-Yūsuf, without disclosing his source and the authority for this assertion (GAL I, 177 (171)). It may be that al-Sarakhsī's "al-Mabsūṭ", containing Abū Yūsuf's other dictated texts edited by Muḥammad b. al-Ḥasan al-Shaybānī, did, perhaps, influence Brockelmann to contradict Ibn al-Nadīm's clear statement (GAL I, 178 (172)).

The text of the Kitāb was first printed in Cairo in 1302/1885 by the State Printing Office at Būlāq, a suburb of Cairo. This edition was later reproduced in three other editions published by the al-Salafiya Press in Cairo, as follows: (a) Salafiya No. 1 in 1346/1927; (b) Salafiya No. 2 in 1352/1933; (c) Salafiya No. 3 in 1383/1962. However, the Salafiya editors tried to improve their editions by adding some material from another MS., i.e. MS. 674 Fiqh, of Taymur Pasha's collection of MSS. This mixing of texts resulted in the mistaken addition of superfluous material to the Būlāq text. We therefore find in all three Salafiya editions some material which was erroneously added as "improvement" to the Būlāq edition,

whereas it is in fact only a simple repetition. Thus the chapter "On Honey, Nuts and Almonds", which is found on p. 40 of the Būlāq edition,¹ was copied twice, i.e. on pp. 66-67 and 83-84 of the 1st Salafiya edition and on pp. 55-56 and 70-71 of the 2nd and 3rd Salafiya editions. If this could have happened in the printing era of the 20th century, who can be sure how many more "improvements" are included in the Būlāq edition based on MSS. copied and recopied during a period of more than a thousand years?

Fagnan has translated the whole text of the Būlāq edition but I have omitted some duplications and material dealing with History, Criminal Law, Administrative Rules and material which obviously does not belong to a work on taxation. I have also rearranged the text and the chapters. This liberty was taken deliberately in view of the fact that the text does not include any original material on taxation which cannot be found in other works of Abū Yūsuf or other religious and historical books. Only his Address to the Caliph Hārūn al-Rashīd bears the signs of originality. Such an oration, worthy of a Biblical Prophet, could have been made only by a great and courageous spirit like Abū Yūsuf, whose teacher, Abū Ḥanīfa, died in prison for reprimanding a Caliph.

A strict literal translation, except for the Address, seemed to me superfluous in view of the conflated state of the text, but I have tried to preserve the meaning to the best of my understanding. I had to differ, however, in numerous instances from Fagnan's rendering but hope that such differences will, by comparing them, benefit the reader and increase his interest.

I have to record my thanks to Dr. R. B. Sergeant, of the University of Cambridge, for reading the proofs and offering suggestions.

A. BEN SHEMESH

Tel-Aviv, June, 1967

¹Below p. 133.

INTRODUCTION

ABŪ YŪSUF, THE SCHOLAR AND CHIEF JUSTICE

In the preceding volumes of *Taxation in Islam*, I have mentioned some biographical data about Abū Yūsuf¹ and dealt briefly with some aspects of his Kitāb al-Kharāj² also known as "Kitāb al-Risāla fī al-Kharāj ilā al-Rashīd".³

Before discussing the taxation problems, a few preliminary general remarks on Abū Yūsuf's legal views, and on the actual system of taxation prevailing in his time, may not be out of place.

ATTITUDE TO ḤADĪTH AS A SOURCE OF LAW

In the last sentences of his opening address to the Caliph Hārūn al-Rashīd, Abū Yūsuf says: "I have worked hard for you and have spared no effort to give you and the Muslims advice . . . I have also collected for you in this book fine Traditions containing teachings of exhortation and stimulation concerning matters about which you have inquired".⁴

From these passages we learn that according to him the legal opinion comes first and then Traditions supporting it. In his view Traditions should be examined for their intrinsic value and suitability to contribute legal principles to amplify the holy cryptic precepts of the Qur'ān. The main purpose of Ḥadīth-Traditions, therefore, lies in complementing legal reasoning derived from the Qur'ān, the old established customs, and common sense. This opinion was shared by his teacher Abū Ḥanīfa and his followers who were called "Ahl al-Ray". They were opposed to those scholars who saw in every genuine tradition, from the Prophet and his Companions, a sacred source of law which should be followed blindly. The latter were known as "Ahl al-Ḥadīth".

¹ Tax, p. 69.

² Y. pp. 12-17.

³ Fih. p. 287. Fl. p. 203.

⁴ Below p. 39.

The following sayings attributed to, and about, Abū Yūsuf, contain some of his views:

Saying no. 1: Said Abū Yūsuf: Three categories of scholars are not immune from three evils: (a) Those who study Astrology—are not safe from heresy. (b) Those who study Alchemy—are not safe from poverty. (c) Those who seek to explain the oddities in Ḥadīth Traditions—are not safe from falsehood.¹

Saying no. 2: The historian Al-Mas'ūdī (d. 376/957) recites the story about the generous gifts—in gold, silver and valuable property—bestowed on Abū Yūsuf by Zubayda 'Umm Ja'far, wife of the Caliph Hārūn al-Rashīd and mother of the Caliph al-Amīn, for a legal opinion in her favour. On this occasion one of Abū Yūsuf's friends reminded him, no doubt jokingly, of a Ḥadīth containing the Prophet's advice: He who receives gifts has to share them with his friends. To this Abū Yūsuf replied: The Prophet's saying must be construed as referring to the Prophet's time when gifts consisted of milk and dates and cannot be applied to our changed times.²

Saying no. 3: The scholar Sufyān b. 'Uyayna (d. 198/873), a contemporary of Abū Yūsuf, is credited with the following saying: Scholars are of three categories: (a) Those learned in law and in ritual precepts (relating to the worship of God) like Ḥammād b. Salama (d. 167/783); (b) Those learned in ritual precepts but not in law, like Abū al-Ḥajjāj Mujāhid b. Jabr (d. 102/720); (c) Those learned in law but not in ritual precepts, like Abū Yūsuf.³

Now, the meaning of Saying no. 1 is clear and unambiguous. It attacks those scholars who are blindly devoted to Ḥadīth and calls in question the value of Ḥadīth as a sacred source of law. One out of many similar sayings is also attributed to Yaḥyā b. Sa'īd (d. 192/807), a contemporary of Abū Yūsuf, who proclaimed: In nothing do we see pious men more given to falsehood than in Ḥadīth.⁴ To this widespread mendacity, practised by the pious and the unscrupulous alike, does the 'Ilm al-Ḥadīth (Science of Tradition) in fact owe its birth and existence. However, the creators of this science directed

¹ "Al 'Iqd al-Farīd" by Aḥmad b. Muḥammad Ibn 'Abd Rabbihī, Būlāq edition Vol. I p. 199. Cf. Ibn Qutayba, 'Uyūn al-Akḥbār, Cairo 1925-30, Vol. II p. 141 and "Islam" by G. E. Von Grunebaum, London 1964, p. 125 note 40.

² Murūj al-Dhahab, Cairo 1948, Vol. III p. 351.

³ Irshād IV: 135-6.

⁴ Y. p. 12, and cf. Tradition below p. 42 in the name of the Prophet, blessing those who transmit his sayings as they heard them, i.e. without introducing changes.

all their efforts and studies only to the ways and means of recognizing and classifying, out of the already existing stock and the large flowing stream of new Traditions, those to be considered as "sound", "genuine" and "authentic", and distinguishing them from those not sufficiently convincing as to their veracity owing to defects in the chain of persons (Isnād) mentioned as transmitters of a Tradition. For this purpose they have engendered a technical vocabulary of not less than 20 terms classifying doubtful Ḥadīth traditions into categories such as "false", "weak", "doubtful", "contradictory", "abrogated" and similar derogatory descriptions. But while all these efforts were directed to the classification and criticism of the chain of transmitters, the Ahl al-Ḥadīth scholars rarely took into account the substance of the Traditions and the legal principles included in them. It was to this blind acceptance of every story purporting to be told by trustworthy persons that the Ahl al-Ray were opposed.

In Saying no. 2 we have an excellent example of their way of thinking. Without attempting to deny the veracity of the Prophet's saying by trying to find fault with the chain of transmitters, Abū Yūsuf uses his common sense (Ray) and reasonably accepts that the saying of the Prophet can be taken as genuine on its merits whether in fact the Prophet said it or someone else invented it. He only examines the principle involved and logically argues that it cannot be applied to different times and changed habits, entirely unlike those of the Prophet's times. He thus, perhaps, lays down the legal maxim embodied in Article 39 of the Majallah, i.e.: "It is an accepted fact that the terms of law vary with the change in the times."

Abū Yūsuf's refusal to follow blindly even a genuine Tradition and his disbelief in the sacred religious value of such Traditions earned him, perhaps, Sufyān b. 'Uyayna's untrue accusation in Saying no. 3, as: "learned in law but not in ritual precepts", for we find amongst Abū Yūsuf's works, cited in the Fihrist, books on prayers, fasting and zakāt together with a book, still extant, entitled "al-Āthār", which deals with ritual precepts. However, his reputation does not seem to have suffered from Sufyān b. 'Uyayna's saying. We find Ishāq b. Ibrāhīm al-Mawṣilī (d. 235/850)¹ declaring Abū Ḥanīfa and Abū Yūsuf the most learned men in religious law, while Yaḥyā b. al-Mu'in (d. 233/847), one of the pillars of the

¹ Irshād II: 200.

Ahl al-Ḥadīth, describes Abū Yūsuf as learned in Ḥadīth as well as in Sunna, i.e. the established customs and behaviour of the Prophet and his Companions.¹

Thus we see that Abū Yūsuf was renowned for his erudition and vast knowledge in all branches of religious jurisprudence based on the Qur'ān, the Ḥadīth and the Sunna. To these sources he added, like his teacher Abū Ḥanīfa, the use of common sense and reason as an additional method for expounding and interpreting the Quranic precepts. Sufyān b. 'Uyayna's saying, however, reveals the early division between the ritual precepts dealing with the relations between God and man and those dealing with the laws regulating the relations between man and man. This classification, corresponding to a similar division in Jewish law, is embodied in Article No. 1 of the Majallah. The precepts dealing with matters for which a person is made responsible in the "Other World" are called "al-'Ibādāt" and those dealing with matters of "This World", i.e. all precepts dealing with social relations between human beings, are called "al-Mu'āmalāt", e.g. Civil and Criminal laws.

TRADITIONS CITED IN ABŪ YŪSUF'S WORKS

Abū Yūsuf's rejection of the 'Ilm al-Ḥadīth, which concentrates on the form rather than on the contents of a Tradition, is also evident in the manner in which he cites Traditions. About 400 Traditions are cited in his Kitāb al-Kharāj, approximately half of them starting with the opening: "Ḥaddathanī" (in the singular), i.e. "It was transmitted to me etc.", and the others with: "Ḥaddathanā" (in the plural), i.e. "It was transmitted to us etc.". While Fagnan sees in this use an indiscriminate indifference,² Schacht dismisses it as a stylistic device.³ However, such indifference is indeed characteristic of Abū Yūsuf's treatment of the chains of transmitters. A similar carelessness is also evident from other defects in approximately 65 out of the said 400 Traditions. They start with such openings as: *Some of our teachers/scholars told me* (pp. 4, 6, 8, 9, 10, 13, 32, 40, 46, 48, 64, 65, 66, 68, 69, 72, 74, 88, 89, 102, 121, 126, 132)⁴ or, *An old man from al-Shām told me* (pp. 9, 67) or,

¹ Quoted by Goldziher in Muh. St. II p. 12 note (3) from Al-Suyūṭī's "Ṭabaqāt al-Ḥuffāz" VI. no. 41.

² Fagnan p. 6 note (3).

³ "Bibliotheca Orientalis" January-March 1960 p. 118.

⁴ The pages refer to the pagination of the Būlāq edition.

Some of our teachers/scholars from al-Kūfa told me that an *old man* in al-Madīna told them (pp. 10, 67, 75) or, I was told by *more than one* of the scholars of al-Madīna (pp. 14, 26, 35, 75) or, I was told by *some one* other than Ḥuṣayn (p. 18) or, I was told by *some of* the scholars of al-Madīna that an *old man* said (p. 19) or, I have written to an *old man* from al-Ḥīra (p. 22) or, *Some* of those who were supposed to know said (p. 23) or, *An old man* told me: My teachers told me (p. 26) or, I was told by *some* of al-Madīna's inhabitants from among the old scholars (p. 32) or, Abū Ma'shar told us in the name of *his teachers* (p. 58) or, *some* of the scholars say (p. 59) or, I was told by an *old man* from the scholars of al-Baṣra (p. 75) or, I was told by *some* of those having knowledge (pp. 80, 82) or, I was informed by an *old man* of Quraysh (p. 132).

This ostentatious display of disregard for the Isnād, the main pillar and guiding principle of the 'Ilm al-Ḥadīth, is also repeated in Abū Yūsuf's other works. We find the same pattern in some Traditions cited in his treatise, "Al-Radd 'alā Siyar al-Auzā'i."¹ The editor of the Cairo edition, Abū al-Wafā al-Afghānī, mentions al-Shāfi'i's doubts concerning the veracity of one of these Traditions. Who is this teacher to whom he refers?—asks al-Shāfi'i—and how can he cite Zayd b. Thābit as transmitting to Makhūl, if Makhūl never saw Zayd? Al-Shāfi'i's exasperation at Abū Yūsuf's laxity is understandable from the point of view of the Ahl al-Ḥadīth, but not from the point of view of Abū Yūsuf, who seems deliberately to disregard the chain of transmitters.² Abū al-Wafā explains that it was the habit of Abū Yūsuf to cite Traditions with an unclear chain of transmitters, although he knew their names perfectly well. That he knew the proper Isnād, which he intentionally ignores, is clear from the same Tradition which he cites in the Kitāb al-Kharāj with the full chain of transmitters: al-A'mash—Ibrāhīm—'Alqama.³ We find another example of this habit in a tradition from the Prophet, related in the Kitāb al-Kharāj with the full chain of transmitters⁴ but cited in al-Radd with the opening: Some of our teachers told us.⁵ And as if to substantiate and clarify his attitude towards Ḥadīth, Abū Yūsuf also cites the well known Traditions about the Prophet's

¹ Al-Radd, Cairo edition 1357/1938, pp. 10, 23, 73, 81, 82, 85, 88, 102, 118.

² Al-Radd, p. 82 note (1) and p. 23 note (3).

³ Būlāq edition p. 109.

⁴ Below p. 58.

⁵ Al-Radd p. 120 note 4.

warning against accepting as genuine any Ḥadīth in his name, the contents of which do not conform to the precepts of the Holy Qur'ān.¹ This warning, whether genuine or spurious, clearly crystallises the difference of opinion amongst Muslim scholars in their efforts to develop and create a legal system out of the few scattered precepts found in the Qur'ān.

In the absence of a legislative authority to amplify the unalterable sacrosanct precepts and to adjust them to changing times and a new society, quite different from the times and the society for which the Quranic precepts were intended, Muslim scholars tried to introduce adjustments by the device of using the sayings and behaviour of the Prophet as a secondary legislative authority. The same problem has confronted the Jewish scholars in developing their oral law to complement the meagre precepts of the Torah. Their task was, however, easier. For they have accepted the primary, basic proposition, that the Holy Scriptures, i.e. the Written Law, as well as the Traditional Oral Law (both covered by the term "Torah") were received by Moses from God on Mount Sinai. Moses then transmitted them to his disciple Joshua b. Nun, who in turn transmitted them to the Elders, i.e. men of knowledge and experience, including judges who, after the death of Joshua, continued to act as religious guides (Joshua 24 : 31). The Elders then transmitted them to the Prophets (Jeremiah 7 : 25). The Prophets then handed down the Traditional Oral Law to the Great Assembly of spiritual leaders composed of Scribes, Sages and Teachers.² Muslim scholars, however, held no such belief that the Oral Law, contained in the Traditions, emanated from God together with the Written Law of the Holy Qur'ān. Hence their difficulties in finding a medium to amplify the Written Law and to sanctify the Oral Law—a very pressing necessity in the new, developing Islamic Empire. Ḥadīth and Sunna were, therefore, two pertinent instruments for this purpose. Abū Yūsuf uses both of them as a modern lawyer uses precedents containing legal principles. For him traditions are only a channel through which new contemporary legal

¹ Al-Radd p. 25-31; Schacht p. 28. Samples of similar criticism of the Ahl al-Ḥadīth are contained in al-Jāhiz' Kitāb al-Akhbār, attributed to Ibrāhīm al-Nazzām (d. 221/836) and in Ibn Qutayba's (d. 276/889) Kitāb Ta'wīl Mukhtalif al-Ḥadīth, summarized by Josef Van Ess in "Der Orient in der Forschung", published by Harrassowitz in 1967, pp. 170-201.

² The Mishnah, translated by H. Danby, Oxford University Press, 1964, p. 446.

principles can be brought in to fill out the vacuum and omissions of the Written Law. His contemporary 'Abd Allāh b. Lahī'a (d. 177/790) put it bluntly, as if related by one of those who seek innovations: Whenever we like a principle we introduce it in the form of a Ḥadīth.¹ From such a lawyer's point of view it made no difference at all whether the person relating a Ḥadīth had invented it or not. The introduction of a suitable new principle into the newly born legal system was incomparably more important than the question of whether the carrier-transmitter of such a principle was or was not a trustworthy person. The contents of the Ḥadīth were important, and not the personality of the transmitter.² We therefore see Abū Yūsuf making use of Ḥadīth Traditions in all his works, but deliberately displaying his disregard and disrespect towards the rules of the 'Ilm al-Ḥadīth, by concentrating only on the contents of the Traditions. The rules of 'Ilm al-Ḥadīth may have had their justification in trying to prevent the reckless use of fabricated Ḥadīth for religious, secular, sectarian or political purposes in the amorphous and heterogeneous population of those turbulent times, when the personality of the transmitter of a Ḥadīth could betray and reveal his leanings and intentions in spreading a certain Ḥadīth. For the development of a new legal system, however, the Isnād was useless and was treated by Abū Yūsuf accordingly.

DEVELOPMENT OF THE FISCAL SYSTEM

For the first seven decades nothing was changed in the conquered Syrian and 'Iraqi territories with regard to their Revenue Offices. The same non-Muslim Civil Services continued to collect taxes as they had done before the conquest. The Syrian Fiscal Registers were kept in Greek and those of al-'Irāq in the Persian language, as before. Only two major changes are attributed to the Umayyad period. The first was introduced by the Caliph 'Abd al-Mālīk b. Marawān (66/685-86/705), who ordered the official Fiscal Registers to be kept in Arabic instead of in Greek and Persian; and the second was initiated by the Caliph 'Umar b. 'Abd. al-'Azīz (98/717-101/720). He is credited with introducing the principle that the

¹ Quoted by Goldziher in *Muh. St. II*, p. 131.

² Cf. the Tradition containing the Prophet's view about the personality of transmitters of Traditions. Below p. 42.

kharāj tax, levied on landed properties of non-Muslims, must be considered as a tax attached to the land itself, and to be paid by its owners, independently of their religion. Consequently, Muslims, who were previously exempt from the taxes levied on conquered landowners, henceforth became liable to pay the kharāj tax due from any land which they bought from non-Muslim owners. However, this and other measures aimed at equalizing and adjusting the rights of the subjugated inhabitants, composed of many ethnic groups with diverse aspirations and social standards to those of the conquering Arabs, were not sufficient. The agitation and unrest of the Empire's amorphous population—which consisted mainly of the conquered peoples, i.e. those who adopted Islām (the Mawālī) as well as those who remained faithful to their original religious convictions (the Dhimmīs)—was constantly growing. To alleviate this unrest, which helped the 'Abbāsids to topple the Umayyads, was one of the 'Abbāsids' major aims. However, the first 'Abbāsīd Caliph, Abū al-'Abbās 'Abd Allāh b. Muḥammad al-Saffāḥ (132/750–136/754), was mainly preoccupied, during his short reign, with the subjugation of rebels and the extermination of opponents. His brother and successor, Abū Ja'far 'Abd Allāh al-Manṣūr (136/754–158/775), who is considered the real founder of the 'Abbāsīd Caliphate, had still to complete the suppression of many rebellious upheavals and uprisings. To consolidate his rule he rebuilt the village of Baghdād as the new capital of the Empire. He is also credited with many other beneficial measures to establish order and justice and to organize the administrative machinery, which task he accomplished with the help of able governors and efficient secretaries, appointed from the Mawālī and freed non-Arab slaves. Although constantly harassed by external and internal enemies, he nevertheless found the time not only to encourage the revival of religious studies and poetry but also to start the re-organization of the taxation system of his empire. However, the completion of this endeavour was left to his son and successor, the Caliph Abū 'Abd Allāh Muḥammad al-Mahdī (158/775–169/785), who, together with the throne, inherited from his father a most efficient secretary, a converted Jew from Tiberias, by the name of Abū 'Ubayd Allāh, Mu'āwiya b. Yasār, a mawlā of al-Ash'arī tribe, whom al-Mahdī had elevated to the office of Wazīr, i.e. Chief Secretary of State and Prime Minister.

In his work "al-Fakhrī", the historian Muḥammad b. 'Alī b. Ṭabāṭabā, known also as Ibn al-Ṭiḡtaḡā, described al-Mahdī's organization of the Revenue Offices and his Wazīr's part in it, as follows:

"In his time the pomp of the Ministry became apparent, because of the competence of his minister, Abū 'Ubayd Allāh Mu'āwiya, son of Yasār. He collected the revenues of the Kingdom, organized the offices and fixed the principles. He was a unique Secretariat official and without peer in sagacity, learning and experience. This is a short account of his tenure of office: He was a client of the Ash'aris and al-Mahdī's secretary and agent before his accession to the Caliphate. Al-Manṣūr entered him in al-Mahdī's services. He had already purposed making him minister, but he preferred him for the service of his son al-Mahdī. He had complete control of the affairs of al-Mahdī, who did not gainsay anything he said, as al-Manṣūr continually gave him instructions about al-Mahdī and ordered al-Mahdī to follow his advice. When al-Manṣūr died and al-Mahdī sat on the throne of the Caliphate, he entrusted him with the administration of the realm and handed over to him the offices. He was pre-eminent in his calling, and introduced several new precedents. One of these was that he transferred the land-tax to proportionate tribute in kind. The ruler used to take a fixed land-tax from the produce, not proportionately. But when Abū 'Ubayd Allāh succeeded to the Ministry he fixed the matter on a proportion in kind and also put the tax on date-trees and trees, a position which has remained to our present time. He composed a book on the land-tax; he mentioned in it the legal enactments about it, its details and principles. He was the first to compose a book on the land-tax; others who composed books on the land-tax copying him."¹

Al-Mahdī's reorganization is also credited with the introduction of a special levy on market places in Baghdād.²

A change in the existing system introduced by 'Umar b. al-Khattāb, of collecting the Kharāj taxes as a fixed amount of money or a fixed quantity of crops, regardless of the farmer's income, was long overdue. This oppressive and unrealistic system, by which the farmer was always the loser, and the brutal and harsh ways of

¹ Fakhrī pp. 162-163; Derenbourgh's edition pp. 247-248; Whittings' English translation 1947, p. 146.

² Ya'qūbī II, p. 137.

collecting the taxes, not only caused resentment and rebellion but also resulted in a general decline in agricultural output caused by the flight of the farmers from their villages and the abandonment of their farms. The brutality and force used by governors like al-Ḥajjāj and others to stop this process was not the answer. Only a just and fair system of taxation could induce the farmers to cultivate their lands and to continue to develop agriculture. This was found in the age-old custom of accepting from the farmer a proportion of his crops in lieu of arbitrary fixed rates in cash or in kind. To give this system an Islamic foundation, Abū 'Ubayd Allāh based it on the precedent of al-Khaybar lands which were given by the Prophet to their conquered Jewish owners for cultivation against payment of half of the crops as tax.¹

BOOKS ON TAXATION

Al-Fakhrī was written in Moṣul, in the year 701/1301, i.e. after the destruction of the 'Abbāsid Caliphate in 656/1258 by the Mongols. According to it the al-Muqāsama system, prescribing the payment of taxes in a proportion of the produce, was still in force when the book was written.² In other words, the system of taxation introduced by al-Mahdī was not changed from the date of its introduction to the end of the 'Abbāsid Caliphate. Abū 'Ubayd Allāh's Kitāb al-Kharāj explaining al-Mahdī's reorganization and the whole system of taxation in the Empire—no doubt at that time a very much needed basic book and original treatise—must have been completed in the early years of al-Mahdī's reign, i.e. not later than by 160/777. Being the first in time and in originality, it is no wonder that al-Fakhrī describes all the other books bearing such titles as copies. Of these so-called copies we find about 21,³ apart from the works called Kitāb al-Amwāl, al-Aḥkām al-Sultāniya, or historical books like Balādhurī's Futūḥ al-Buldān, and many other religious works which deal *inter alia* also with tax problems.⁴

One must assume that it took some time to put al-Mahdī's fiscal reorganization into practice. Thousands of tax collectors and their numerous assistants had to be informed of and instructed in the

¹ Tax, p. 40 and notes. Below pp. 100-103.

² Fakhrī, p. 163.

³ Y. pp. 3-6.

⁴ Tax. pp. 7-13.

actual procedure of the assessment and valuation of crops and the manifold problems connected with and caused by the change from the old system to the new one. A period of at least ten years must have elapsed before the new order took root and could be reasonably effective throughout the whole vast Empire. In Qudāma's¹ quotation from Abū 'Ubayd Allāh's book we find a concise summary of some of the practical steps connected with the gathering of crops and the apportionment of the share due to the Government. His quotations from Abū 'Ubayd Allāh's book prove that the system which was introduced by al-Mahdī was in fact operative during Qudāma's time and as is stated in al-Fakhrī remained so even after the destruction of the 'Abbāsid Caliphate in the 7/13th century. Ibn Ṭiqtāqā's statement in al-Fakhrī regarding this fact must be taken as conclusive evidence because he was the son of a tax collector in al-'Irāq and therefore had a first-hand opportunity of knowing this system from his own personal observation and his father's experience.

Now if Abū-'Ubayd Allāh had already written a book to introduce and explain the new fiscal system, which remained in force and was never changed, why should Abū Yūsuf write another comprehensive book on the same subject only ten years later? From Qudāma's quotation on irrigation problems,² we may assume that Abū 'Ubayd Allāh's work dealt with all problems of taxation and also those indirectly connected with them. Hārūn al-Rashīd, the son of al-Mahdī, had no doubt known personally his father's close companion and Wazīr and had perhaps read his book which dealt with such an epoch-making fiscal reorganization of the realm. Why should he ask Abū Yūsuf, only a short time later, to write a new book and advise him again on the same problem? Why does Abū Yūsuf not mention Abū 'Ubayd Allāh's work?

The following reasons may perhaps provide us with the answer.

(a) Abū 'Ubayd Allāh, who was a converted Jew, had many enemies who envied him his position. Knowing al-Mahdī's strong hatred of heretics and renegades, they accused Abū 'Ubayd Allāh of neglecting the upbringing of his own son Ṣāliḥ in the study of the Holy Qur'ān. When al-Mahdī examined Ṣāliḥ and found him lacking in Qur'ān studies, he ordered his execution in the presence

¹ Tax. pp. 40-41.

² Tax. p. 62.

of his father Abū 'Ubayd Allāh.¹ This episode cast a shadow on Abū 'Ubayd Allāh's personality as a religious scholar and made his book unworthy and unreliable from a religious point of view.

It is perhaps for this reason that Ibn al-Nadīm does not mention Abū 'Ubayd Allāh in his *Fihrist* and credits someone else by the name of Ḥaḥṣawayh, not mentioned by al-Ṭabarī or Yāqūt or anyone else, with composing the first *Kitāb al-Kharāj*.² However, as a Ḥaḥṣawayh lived in al-Mā'mūn's time, he could not possibly have written such a work before Abū 'Ubayd Allāh.

Abū 'Ubayd Allāh died in 170/786, i.e. 12 years before Abū Yūsuf, who must be assumed to have known him personally. If Qudāma, about 150 years later, still found Abū 'Ubayd Allāh's *Kitāb al-Kharāj* in the archives of the Treasury Department, and discussed it, in his *Kitāb al-Kharāj*, it can be safely assumed that this official work was known to Abū Yūsuf. His reason for ignoring it could have been al-Mahdī's dismissal of Abū 'Ubayd Allāh as *Wazīr* and his denigration as a Muslim religious scholar whose work could serve as a guide and cornerstone to a new Muslim law of taxation.

(b) From time immemorial every new ruler was wont to promise his citizens some relief from oppression and some alleviation of the burden of taxation. In the will of the Caliph Abū Ja'far 'Abd Allāh al-Manṣūr we find such advice to his son al-Mahdī.³ On his accession to the throne, Hārūn al-Rashīd no doubt had been advised to make similar promises. Such promises could have been fulfilled only after a careful study and inquiry into the state of the fiscal laws in existence so that changes in the taxes should conform to the precepts of the religious law of which 'Abbāsīd Caliphs thought themselves to be the protectors and promoters. If Abū 'Ubayd Allāh's book was not considered reliable from a religious point of view, a new book by a learned Muslim religious scholar could provide the real religious foundation of a just and fair system of taxation. For this purpose Hārūn al-Rashīd could not find a more suitable scholar than his Chief Justice, who was one of the founders of the Ḥanāfite school of religious law and whose authority and advice

¹ Ṭabarī III, p. 490.

² Y. p. 4.

³ Ya'qūbī II, p. 131.

could not be challenged. The Caliph therefore asked Abū Yūsuf "to compose for him a comprehensive book, to be used for the purposes of the collection of the Kharāj taxes, the customs duties the Ṣadaqā levies and the Jawālī (poll-tax). A book for him to study and act upon, *designed to avert oppression from his subjects*".¹

To examine the possibilities of islamising the pre-Islamic system and converting it into a system based on pure religious precepts was the pious, wishful desire of Hārūn al-Rashīd. If the Caliph 'Abd al-Mālik b. Marawān had succeeded in replacing the Greek and Persian languages used in the Fiscal Registers by Arabic, why should the Fiscal system of the conquered countries not be replaced by a new comprehensive system based purely on Islamic religious precepts?

ABŪ YŪSUF'S TREATISE

The Kitāb al-Kharāj, attributed to Abū Yūsuf, is in fact a report on the state of the religious precepts dealing with taxation problems, with his recommendations and legal opinions. It is safe to assume that the "queries" which are attributed to the Caliph, at the beginning of the main chapters, are only a stylistic device used by Muslim scholars of that period. Abū Yūsuf himself poses the problems in the form of questions by the Caliph, and tries to find answers and solutions. For a clear-sighted jurist with an acute and practical legal mind it was not an easy task to draw up a new system of taxation out of the multitude of abstract scholarly opinions and controversies dealing theoretically with practical tax problems. A clear expression of his doubts can be found in his frequent use in his book of the phrase *God knows best*.

The origin of this phrase is in the Holy Qur'ān where it occurs 34 times in different combinations, all of them expressing the same meaning, as in Jeremiah 20 : 12, that the Lord "sees the heart and the mind" of human beings. He knows their weakness and wickedness and knows best what is in their minds, although they try to hide and conceal it. The main purpose of these words is to emphasise the helplessness and feebleness of human creatures and their resignation and admission that God knows better and that nothing can be hidden from Him and His judgement. It follows that a

¹ Below p. 39.

human being's use of these words can only be construed as a resignation and the admission of doubtfulness, uncertainty and fallibility in understanding and knowing things and matters even within the grasp of his senses and personal experience.

We find in Abū Yūsuf's Kitāb al-Kharāj many instances where he concludes his legal opinion with the words: "God knows best". His use of this phrase is tantamount to saying "I doubt it" or "I am not sure what the correct view is". If the Chief Justice of the realm is not sure what the law is, how should the tax collectors act upon it and the citizen obey it?

However, such doubts and lack of certainty are an inherent element of any system of law based on sacrosanct religious precepts. Being chained to an unchangeable set of rules, the religious scholar tries all kinds of scholastic ways and means to unfreeze the holy precepts and to adjust them to the changes of time and society. Frequently he gets lost in his own quibbling and mental gymnastics and in desperation seeks refuge in the God responsible for the holy precepts by saying *God knows best* what the law in this case is! The Jewish scholars had the same difficulty in their endless endeavour to adjust the Torah precepts to the changed everyday problems of life and society. In the Talmud we find mainly legalistic discussions and deliberations based on all kinds of means of interpretation, as analogy, comparison, deduction, inference and many other methods and devices by which a rule, suiting the changed times, could be extracted from the Holy Scripture. Rabbi Yishmael, of the 2nd century A.D., is known to have used 13 hermeneutical principles to interpret the rigid law, while Rabbi Eliezer b. Yosī Haglilī of the same century is credited with 32 methods of interpretation. Rabbi Akiba (same century) had a reputation for extracting heaps of rules from the hook of the letter "yod" (the smallest in the Hebrew Alphabet) in the Scripture. But such efforts were not always successful. For in the Talmud we find approximately 100 undecided hypothetical cases ending with the word "Tyqu", which in Aramaic and Hebrew means "It stands" undecided. Rabbi Yomtow Lipman (1579-1654), in his commentary on the Mishnah,¹ mentions the popular homiletical interpretation that the word "Tyqu" is composed of the initials of the phrase: *Tishbi Yetaretz Qushyot Uba'yot*, i.e. Tishbi (the prophet Elijah the Tishbi) will explain

¹ Tosfoth Yomtow, at the end of "Eduyoth" tractate.

undecided problems and insoluble questions when he appears to proclaim the arrival of the Messiah. The word "Tyqu" therefore connotes the same helplessness and despair as the phrase *God knows best* used by Abū Yūsuf in relation to practical, not hypothetical, questions of taxes which had to be collected for the daily needs of the expanding Empire.

THEORETICAL SCHOLARLY CONTROVERSIES

One of the characteristic features of Islamic and Jewish jurisprudence is the difference of opinion and lack of consensus amongst its scholars on many problems of law. This is natural and unavoidable in a system which leaves it to individual scholars to suggest their interpretation of the cryptic holy laws and to propose new meanings to be accepted as if originally embodied in the holy precepts and therefore having a binding authority. Numerous works whose titles start with the words "Ikhtilāf" (controversy) and "al Radd" (reply) testify to these theoretical differences of opinion in Muslim religious law. A saying attributed to the Prophet even makes controversies a blessing to Islām. However, although one may consider theoretical differences of opinion a beneficial source and a stimulating factor for the development and crystalization of a set of new laws, such divergences can hardly be of any use in the practical daily task of collecting dues and taxes to satisfy the needs of a fast growing empire. Who shall decide when the Doctors disagree? Controversies are neither a helpful guide to tax collectors nor a stimulus to tax payers. Consequently they cause only confusion, and provide pretexts for tax evasion. *Lex dubia non obligat* (a doubtful law is not binding) is a legal maxim of special importance to Taxation Laws.

We will list here only some of the controversies concerning taxation precepts:

1. The Prophet allowed the conquered Jews of Khaybar (i.e. Dhimmīs) to cultivate their previously owned lands and orchards on condition that they deliver to him a proportion, a half and a third respectively, of the produce. This historical fact is repeated in many different traditions.¹ From Qudāma's quotation² we have learned

¹ e.g. Y. nos. 97-98. A.U. nos. 1435-1438 and below pp. 100-103, 116-117.

² Tax. p. 40.

that Abū 'Ubayd Allāh used the Khaybar Tradition-precedent as a religious basis for the re-introduction of the ancient pre-Islamic proportional tax system al-Muqāsama. However, Abū Ḥanīfa denied the validity of the Khaybar Tradition as a legal religious basis, while his contemporary Muḥammad b. 'Abd al-Raḥmān Ibn Abī Laylā (d. 148/765) upheld it. Abū Yūsuf, who was a disciple of both of them, mentions this controversy and remarks that the majority of scholars are opposed to Abū Ḥanīfa's view, but adds to his remark the words: *God knows best*,¹ i.e. no human being knows whose opinion is correct.

2. The liability of a debtor to pay zakāt is another problem on which there are differences of opinion between Abū Ḥanīfa and Ibn Abī Laylā.² But this problem is also a source of controversy between other scholars. In his Kitāb al-Amwāl, Abū 'Ubayd al-Qāsim b. Sallām discusses five different opinions on this question and cites more than 50 traditions in support of each of them.³

3. Another controversy deals with the question of whether a Muslim is liable to pay both the Kharāj tax and the 'Ushr tax.⁴ While Abū Ḥanīfa is of the opinion that these two, originally different, taxes cannot both be levied on one person, Ibn Abī Laylā allows it. Abū 'Ubayd discusses this problem under the heading: Has a converted owner of kharāj land to pay 'ushr also?⁵

4. In accordance with the view of Ibn Abī Laylā the minimum taxable quantity is five wasqs of produce, while Abū Ḥanīfa is of the opinion that any quantity is subject to tax, even a bundle of leeks.⁶ Abū Yūsuf reports this controversy without comment,⁷ and so does Abū 'Ubayd.⁸

5. According to Ibn Abī Laylā, wheat, barley, dates and raisins are the only crops taxable if they amount to five wasqs, but Abū Ḥanīfa rules that all produce of the land is taxable without exception. Abū Yūsuf however restricts the taxable crops to wheat, barley and similar cereals from five wasqs upwards and exempts from tax

¹ Ikhtilāf, pp. 41-42; Below p. 115.

² Ikhtilāf pp. 122-123.

³ A.U. nos. 1205-1258 and see Schacht pp. 284-285.

⁴ Ikhtilāf, p. 124.

⁵ A.U. nos. 231-258.

⁶ Ikhtilāf, p. 124.

⁷ Below p. 130.

⁸ A.U. nos. 1434.

fruit and vegetables.¹ However, in his *Kitāb al-Kharāj* he explains that only such yield is taxable which can be preserved for more than a year and can be measured by *qafīz* and weighed by *ruṭl*.² Abū 'Ubayd mentions different traditions dealing with a variety of kinds of crops, taxable or exempt, pointing out that the majority of scholars of al-'Irāq are opposed to the view of Ibn Abī Laylā, supported by Sufyān b. Sa'īd, that only wheat, barley, dates and raisins are taxable.³

6. From 40 cows one cow is taken as *zakāt*, but if one owns 41 cows, then in Abū Ḥanīfa's view, a proportional share should be taken; Ibn Abī Laylā, however, is of the opinion that nothing is due on the difference between the initial taxable number of 40 and the next taxable number of 60 cows.⁴ Abū Yūsuf is of the same opinion as Ibn Abī Laylā but concludes the chapter on this question in his *Kitāb al-Kharāj* with *God knows best*.⁵

7. In accordance with the view of Ibn Abī Laylā the minimum quantity charged with *zakāt* is 20 *mithqāls* of gold or 200 dirhams of silver, but both cannot be added to form a taxable minimum. However, Abū Ḥanīfa is of the opinion that they can be added to form a taxable minimum. Abū Yūsuf allows addition in certain cases, while Abū 'Ubayd mentions five different opinions with many traditions to support each view.⁶

8. Honey is taxable only on *kharāj* lands but not on 'ushr lands. However, Bukhārī states that 'Umar b. 'Abd al-'Azīz did charge something for honey.⁷ But Abū 'Ubayd reports a Tradition that 'Umar b. al-Khaṭṭāb ordered that honey from the plains should be chargeable with 'ushr, while honey gathered in the hills should only be charged with half 'ushr, and Qudāma reports that in his time a *ṭasq*-tax was charged for honey from *kharāj* land.⁸

9. There is also controversy as to the tax which is due from what is taken out of the sea.⁹

10. The levy on minerals and treasure-trove is also not undisputed.

¹ *Ikhtilāf*, p. 125.

² Below p. 130.

³ A.U. 1395.

⁴ *Ikhtilāf* 127.

⁵ Below p. 135.

⁶ *Ikhtilāf*, pp. 128-131; A.U. nos. 1106-1171.

⁷ *Ṣaḥīḥ*, *Bāb al-Zakāt*.

⁸ A.U. no. 1490; *Tax*, pp. 39-40.

⁹ *Tax*, p. 55.

Abū 'Ubayd cites more than 30 conflicting Traditions dealing with the problems of the "Fifth" due on minerals and treasure-trove.¹

In the above mentioned book of Abū Yūsuf which deals with controversies between Abū Ḥanīfa and his Syrian contemporary 'Abd al-Raḥmān b. 'Amr al-Auzā'ī (d. 157/773), he discusses more than 50 problems, concerning spoils of war, their distribution, the right of soldiers to make use of them, the rights and status of prisoners of war, captured traders, renegades, women and children, slaves, and many other problems connected with the conduct of war.² Abū al-Wafā al-Afghānī cites other works on early controversies, amongst them one by Muḥammad al-Thaljī on *Ikhtilāf Ya'qūb* (Abū Yūsuf) and Zufar (b. Huzayl).³

That the controversies amongst the scholars of the 2nd century of Islām still existed at the beginning of the 4th century is clear from the *Kitāb Ikhtilāf al-Fuqahā'* (Book of controversies amongst the religious lawyers), by the famous jurist and historian Abū Ja'far, Muḥammad b. Jarīr al-Ṭabarī (d. 310/923). From 161 problems discussed in this book al-Ṭabarī finds only 56 on which there is a consensus of opinions. In elaborating the old controversies, al-Ṭabarī cites also al-Shāfi'ī, Mālik b. Anas, Abū Thawr Ibrāhīm al-Kalbī, Aḥmad b. Ḥanbal and many other scholars who joined each of the divergent parties, thus enlarging and deepening the controversies. In later generations the same controversies are always repeated in the religious books.

Insoluble divergences concerning practical daily problems of taxation can only be explained by the fact that they only existed in the theoretical proposals of scholars dealing with an ideal future system of taxation which should be built on pure Islamic precepts. The controversies and differences of opinion could flourish and remain insoluble only because they were completely out of touch with real life and the factual and actual fiscal secular administrative rules which were the only rules officially recognized and acted upon during the whole existence of the Islamic Empire. These were the rules laid down through al-Mahdī's fiscal reorganization, which were never changed or abrogated.

¹ Below pp. 54-5; Tax. p. 54.

² Al-Radd.

³ *Ikhtilāf*, p. 3; Tax. pp. 8, 28.

OPENING CHAPTER OF ABŪ YŪSUF'S KITĀB AL-KHARĀJ

Abū Yūsuf, who was not only a Chief Justice renowned for his erudition and knowledge, but also a shrewd practical lawyer, saw life as it was in reality. He knew very well that in an absolute monarchy the character and will of the ruler are the decisive factors in the administration of order and justice in the state. He therefore starts his work with a whole chapter dealing solely with the duties and obligations of the monarch towards those under his rule. For this purpose he uses the metaphor of a shepherd and his flock. He reiterates repeatedly, and with great emotion, the shepherd's responsibility to the owner of the flock, i.e. the almighty God, who appointed and elevated him to this high and responsible position. The eloquence and pathos of Abū Yūsuf's address, fortified by many Traditions containing moral and religious preachings and exhortations, leave no doubt as to Abū Yūsuf's conviction that only the moral and just behaviour of the ruler can safeguard the rights of the citizen and serve as solid foundations for the state if built and based on law and order. "Such building cannot last if it is not based on godfearingness, for Allāh will smite its foundations and destroy it on top of him who built it",¹ is his warning to the monarch.

DIFFERENT TAXES AND CUSTOMS DUES

Let us now examine, one by one, all the different taxes mentioned in the religious works dealing with taxation and find out what their origins are.

1. The Kharāj Tax

Attention has already been drawn to the admission in old traditions of the pre-Islamic origin of the kharāj-tax.² However, the pious attempts of religious Muslim scholars to find a link between the existing secular fiscal system and the Holy Qur'ān never ceased. We have also mentioned the work of Ibn Rajab (d. 795/1393),³ where, after citing a tradition from Yaḥyā b. Adam confirming the Persian origin of the kharāj tax, he nevertheless attempts to find in verse 74 Sūrah 23 a possible reference to kharāj. Another verse cited by him is verse 93 Sūrah 18, which reads: "They said: O Dhu

¹ Below p. 35.

² Y. p. 6.

³ Tax, p. 12.

al-Qarnain, Yajūj and Majūj are working corruption in the earth; shall we pay thee tribute (kharj^{an}) on condition that thou placest between us and them a barrier?" Ibn Rajab's desperate efforts, about 150 years after the destruction of the Caliphate, to find some shadow of proof that the term "kharāj" is mentioned in the Holy Book only confirms that this pre-Islamic term had not, in spite of scholarly efforts during many centuries of Islām, gained religious recognition and was always considered a secular pre-Islamic tax. A modern Muslim scholar observes about kharāj: "The kharāj or tribute was not introduced by the Muslims but was merely retained by them from their non-Muslim predecessors. To mention only later times, it was a common enough form of State revenue in Imperial Rome, the States of classical Greece, Christian Byzantium, Sassanian Iran, medieval Europe before and after the introduction of Christianity, etc."¹

2. The Jizya (Poll) Tax

The term "al-Jizya" is only once mentioned in the Holy Book. "Fight against those who do not believe in Allāh nor in the Last Day, and do not make forbidden what Allāh and his Messengers have made forbidden and do not practice the religion of truth, of those who have been given the Book, until they pay the Jizya offhand being subdued" (Q.9 : 29). It is clear that the meaning of "Jizya" in this verse is: a collective punitive tribute. This meaning was changed by the religious scholars and given to the poll-tax, a pre-Islamic tax, used in the Persian and Byzantine empires and adopted by the conquering Muslims together with all other taxes and imposts collected by the fiscal administration of the conquered countries. Jizya and kharāj are used by Muslim scholars indiscriminately and interchangeably, sometimes to denote land tax and sometimes poll-tax. The early religious books are full of expressions such as "kharāj on their heads", meaning poll-tax, and "jizya on their lands", meaning land tax. Later these two terms were used more cautiously so that "Jizya" came to mean "poll-tax" only and "Kharāj" "land tax". But there is no doubt about it that "Jizya" in the above-mentioned verse in the Holy Book did not refer to the poll-tax which existed as a well established tax prior to the advent of Islām and that there is nothing Islamic about it. In Egypt the poll-tax

¹ Zayas p. 202, note (1).

was called *Jāliya* (pl. *Jawālī*), and *Abū Yūsuf* in his address to *Hārūn al-Rashīd* mentions only "*Jawālī*" and not "*Jizya*".¹ The Arabic root *jza* connotes "to punish, to compensate", which is what is meant in verse 29 *Sūrah* 9. Relying on this verse therefore the familiar pre-Islamic secular poll-tax became a special religious burden on non-Muslim citizens. The differences between the pre-Islamic poll-tax and the Islamic *jizya* are as follows:

- (1) The *jizya* was not a general poll-tax but a tax collected only from conquered people, with a few exceptions, e.g. the *Banū Taghlib* and the *Najrān* Christian tribes and some others.²
- (2) It was considered a sign of degradation and subjection, which made those who paid it second-class citizens, suffering many deprivations, and with indignities attached to it, e.g. the legal duty to wear certain humiliating clothes and other degrading restrictions.³

3. 'Ushr

The *Qur'ān* does not contain the term "'ushr". It is used by Muslim religious scholars in a very confusing manner. *Yaḥyā b. Adam* and *Abū Yūsuf* use 'ushr, *ṣadaqa* and *zakāt* interchangeably. *Yaḥyā* says clearly that 'ushr is the *ṣadaqa*, which is the *zakāt* levied on the crops and fruits of Muslims. He cites "And give due portion of it on the day of its harvesting" (Q.6 : 142) as referring to 'ushr.⁴ and so do *Abū Yūsuf*⁵ and *Qudāma*.⁶ *Abū 'Ubayd* also cites Traditions from the Prophet and *Ibn 'Umar* declaring that Muslims do not pay 'ushr.⁷ If we examine the Traditions nos. 396-420, in *Taxation in Islām Vol. I*, dealing with the verse "And give the due portion of it on the day of harvesting" (Q.6 : 142) we find that some of them do not lay down that 'ushr means tithe. According to *Sufyān b. 'Uyayna* from *Mujāhid* this verse means: A handful is given and you let the poor follow the harvesters and what is left by the scythe they take (T. no. 402). In another Tradition from *Mujāhid* this verse is explained by him as meaning: If a man harvests and the poor appear, he gives them some ears of corn etc.

¹ Below p. 35.

² Below pp. 90-91.

³ Below p. 93.

⁴ Y. 396-420, 350, 613, 624.

⁵ Below pp. 132-133.

⁶ Tax. p. 23 (3).

⁷ A.U. nos. 1639, 1642.

(T. no. 403). Yet in another Tradition from Mujāhid it is explained that the verse refers to what is given to the poor "apart from what is due otherwise" (T. no. 408). However, in another Tradition from Ibn 'Umar it is said that it does not mean apart from the *ṣadaqa* (T. no. 412).

It appears therefore that the early learned scholars, such as Mujāhid and Ibn 'Umar, did not agree that the above mentioned verse referred to 'ushr. It is more likely that this verse deals with the same subject that is dealt with in the Bible: "When you reap the harvest of your land, you shall not reap your field to its very border, neither shall you gather the gleanings after your harvest. And you shall not strip your vineyard bare, neither shall you gather the fallen grapes of your vineyard: you should leave them for the poor and for the sojourner". (Lev. 19 : 9-10). It must have been a well known and old custom to give something to the poor who have no fields and no harvest. The explanations to the effect that this custom was replaced by the verses about *zakāt*, cannot make 'ushr a Muslim tax.

However in some traditions the term is frequently used in the plural, and denotes "customs duties" and other taxes collected from traders, which taxes were strongly denounced by the Prophet and all the early religious scholars. The tax collector was generally called "al-*Āshir*", whether he collected 'ushr, i.e. a tenth, or more or less, or whether he collected *ṣadaqa-zakāt* or any other impost which he was entitled to collect compulsorily or to accept only if offered voluntarily.¹ Aḥmad b. Alī al-Maqrīzī (d. 845/1442) rightly traces the term "'ushr" to the Bible (Gen. 14 : 18-20)² where the Hebrew term "ma'ser" is mentioned in connection with the payment made by Abram to Mālki-Zedeq, the King of Shalem who was also a priest of the "Lord God Most High", as a voluntary donation to God. This is clear also from Abram's promise in his prayer to God (Gen. 28 : 22). Al-Maqrīzī mentions also that the Torah prescribes a contribution of a *ma'ser* to be paid by the Israelites to the Levites, the priests: "All the tithe of the land, whether of the seed of the land or of the fruit of the trees is the Lord's; it is holy to the Lord" (Lev. 27 : 30). "And all the tithe of herds and flocks, every tenth animal of all that pass under the herdsman's staff, shall be holy to the Lord" (Lev. 27 : 32). This is also repeated

¹ A.U. nos. 1644-1647.

² Al-Khiṭaṭ, Būlāq edition 1270/1853, p. 123.

in Numbers 18 : 21-28. Al-Maqrīzī is therefore far from considering the 'ushr tax as an Islamic religious institution. It is also very doubtful if the 'ushr tax was in fact one tenth of the yield or produce as it is explained in the Bible. Abū Yūsuf asserts that the Caliph has the right to increase the 'ushr-tax to 20 per cent.¹ on lands granted to Muslims from the State lands, and so does Qudāma.² We must therefore conclude that the insistence of the scholars that the 'ushr tax is the same as ṣadaqa and zakāt, which are considered as voluntary alms-giving, takes away from the 'ushr all elements of a compulsory tax imposed by the state. The Caliph could impose a tax on lands held by Muslims, which might be similar to kharāj or any other impost, as he might deem appropriate. Abū Yūsuf concludes his advice concerning the rate of the 'ushr tax to be levied on such lands with the words "It is up to you to do what is best".³ Furthermore, the uncertainty as to which was kharāj-paying land and if it remained in this category if bought by a Muslim, puts the whole tax called 'ushr in the category of abstract scholarly discussions. A tax which is not clearly defined as either voluntary alms or as a compulsory tax cannot have existed in reality. The voluntary aspect of the 'ushr as ṣadaqa or zakāt could survive only in the religious theoretical books but not in reality. This forced 'Umar b. 'Abd al-'Azīz to declare that the kharāj tax is a state tax attached to the land, and has to be paid also by Muslims purchasing such land from Dhimmīs who had to pay it as second-class citizens, who pay "jizya on their lands" as afore-mentioned.

Etymologically 'ushr is similar to the Assyrian *ish-ru-u*⁴ which means a tribute paid in kind to sanctuaries through priests. When the Muqāsama system was introduced by al-Mahdī all crops and fruits were taxed accordingly. A fixed proportion of the produce was collected as tax for the Treasury without any distinction being made between kharāj and 'ushr lands. The Ottoman Land Code of 1274/1858, which codified the Muslim legal precepts dealing with land in the Muslim Ottoman Empire, makes no distinction between Arāḍī 'Ushriya, i.e. lands distributed amongst the Muslim conquerors, and Arāḍī Kharājiya, i.e. land left in the hands of the

¹ Below pp. 73, 103-104.

² Tax. p. 38.

³ Below p. 131.

⁴ Sh. E. I. p. 610.

original non-Muslim owners. The law considers both these categories to be *Arāḍī Mamlūka*, i.e. lands held in full ownership in the same way as goods, chattels or any other private property.¹

The term 'ushr and all the abstract unrealistic discussions about it in early Muslim literature had never any foundation in reality or in any practice in the Muslim Empire.

4. The Maks Taxes

"Maks" is another term which is found in the Bible but not in the *Qur'ān*,² and which also means tribute. However, in early Muslim literature it is used for denoting customs duties, excise, road tolls and similar duties which were loathed and condemned as being of non-Muslim origin. Qudāma claims that the detestation of the collectors of "Maks" refer only to the pre-Islamic imposts on traders.³ The term "Maks" was used in Egypt, and al-Maqrīzī excels in his condemnation of those who rob the people by means of all kinds of dues and tributes under the name of "Mukus" (pl. of "Maks"). He devotes a whole chapter⁴ to the origin of "al-Maks" which was collected in pre-Islamic times. He mentions the three times repeated verse: "And defraud not the people of their things" (Q. 7 : 8; 11 : 86; 26 : 183) as if referring to "al-Maks" dues. He cites also many Traditions found in Abū Yūsuf's *Kitāb al-Kharāj*, where 'ushr and 'ushūr refer to customs duties imposed on all traders whether Muslims, Dhimmīs or Ḥarbīs. In a similar Tradition by Yaḥyā b. Sa'īd from Ruzayq b. Ḥayyān the term "Maks" is used, thus making it clear that they deal with the same customs duties which Yaḥyā b. Adam calls 'ushr. This levy, called 'ushr, is to be collected in full from Ḥarbī merchants, half of it from Dhimmī merchants and a quarter of it from Muslim merchants.⁵ The Prophet's curses and condemnation of the *Ṣāhib al-Maks*, i.e. the customs collector of pre-Islamic times, are understandable from the point of view of the Prophet's clan, the traders of Mecca, who could not tolerate any restrictions on their freedom to trade. We see the same tendency in three Traditions cited by Abū Yūsuf

¹ O.L.C. Article 2.

² Numbers 31 : 28, 37-41.

³ Tax. p. 56.

⁴ *Al-Khiṭāṭ*, pp. 121-122.

⁵ Y. nos. 636-640.

concerning the plea of the poor people of Mecca for regulation of the prices of commodities raised by merchant-hoarders during a crisis. To this plea the Prophet replied: Prices, high or low, are in the hands of God, and I cannot interfere. Abū Yūsuf accepts the supremacy of God in fixing prices and explains: sometimes there is much food but the prices rise, and sometimes there is little food and the prices fall.¹

5. Ṭasq Tax

Qudāma mentions that when state lands are let the rent is called "Ṭasq". It is collected in kind and amounts in certain districts to half of the crops.² In the Babylonian Talmud, which was compiled during the Persian rule preceding the Muslim conquest, we find traces of the Persian fiscal system. The term "Ṭasqa" is used for a land tax in the nature of a ground rent paid for state land let to farmers, i.e. it is the same tax as described by Qudāma.³ The sources in the Talmud are from the 3rd century, so that nothing Islamic can be attributed to this tax.

6. Zakāt and Ṣadaqa

We have seen that not one of the taxes discussed in the preceding pages and in the religious legal Muslim treatises has its origin in the Quranic precepts, as all of them were parts of old established Persian or Byzantine systems of taxation taken over by the conquering Muslims together with the existing fiscal administration. The only term for a quasi-tax-alms levy which is mentioned in the Holy Qur'ān is "Zakāt". However, if we examine the verses where this term appears, we find it in a different spelling. In all the 32 verses where it is found it is spelt "Zakūt", corresponding exactly to a similar Hebrew word. On the other hand, we find in the Qur'ān another term denoting almsgiving, "Ṣadaqa", whose spelling also corresponds exactly to the same Hebrew word. Both terms are not derived from Arabic roots but were taken over from the Hebrew as used by the Jews. They appear to be synonyms for "almsgiving", and are so used interchangeably by the religious Muslim scholars. What,

¹ Below pp. 101-102.

² Tax. p. 38.

³ Newman, pp. 161-186.

then, is the meaning of "Zakūt" in the Qur'ān? Let us examine how contemporary Muslim scholars explain it.

A recent work called "The Law and Philosophy of Zakāt" by Miss Farishta G. de Zayas was published in Damascus (Syria) in 1960. Omar A. Farrukh, Member of the Arab Academy, Damascus, and of the Islamic Research Association, Bombay, India, writes in his Introduction to Zayas' book as follows: "Zakāt is a yearly premium on all forms of accumulated productive wealth, as well as on a variety of agricultural products, calculated at various rates according to the nature of the wealth or product, and due to the needy individuals of the Muslim community for their rehabilitation. It is the third of the five Pillars of Islām and the counterpart of the Christian Tithe . . . Besides its basic religious value, zakāt has a social aspect which aims at freeing the community from the blight of poverty. It has also an economic aspect of driving hoarded money into circulation. This in turn helps to relieve the community of most of its charitable burdens . . . Zakāt, after all, is neither ordinary charity nor voluntary alms-giving. It is a right which, as some jurists hold, *the poor may claim by force from the rich. Though zakat was an official Institution for a very short time only, and afterwards became the concern of individuals instead, and so worked imperfectly, still it has barred the way of Communism to Islam. It has done so because real socialism was wisely interwoven into the Institution of zakat.*"¹ (Italics mine).

In a foreword to Miss Zayas' work, H. E. al-Syed Abdul Ḥamīd al-Khaṭṭeb, ex-Ambassador of Saudi-Arabia to Pakistan, and Lecturer in the Holy Mosque at Mecca, describes the author, Zayas, thus: "A Pakistani Muslim scholar of repute, who studied Arabic and had dedicated many years to the study of Islamic jurisprudence . . . and has taken special interest in making a thorough and exhaustive study of the Institution of zakāt . . . Primarily written for the information of present-day Muslims who are seeking *to mould Muslim society and government on Islamic lines* (italics mine) . . . The Government of Pakistan, the largest Muslim state, has evinced keen interest in the matter of the zakāt and has appointed a committee to study the ways and means of reviving this Institution on modern lines."² Zayas' book is dedicated to the late Syed Ghaleb Shah Abbasi, "to whose inspired guidance I owe my understanding of

¹ Zayas, pp. XV-XVI.

² Zayas, pp. XVIII-XIX.

Islām and of the Philosophy of zakāt'. A. Z. Abbasi edited the work, and other scholars helped her with valuable suggestions.

In the preface to her book the author says *inter alia*: Second only to prayer as an essential Article of the Faith, zakāt forms an integrant compulsory and inseparable part of the Islamic way of life, *the non-observance of which is tantamount to a negation of the Faith itself.*¹ (Italics mine).

We have therefore before us the latest work on zakāt which aims, as did the old works of the first centuries of Islām, to mould Muslim society and government on Islamic lines. We have seen in the preceding pages that the whole system of taxation which prevailed during the existence of the Muslim empire was a secular one, and that the early Muslim scholars had little success in their efforts to islamicize the pre-Islamic systems of taxation or to imbue them with some Muslim religious colour. That in a modern Muslim state of non-Arab origin, newly established in the 20th century, a repetition of the unsuccessful efforts of the first centuries of scholars and founders of Islamic jurisprudence should be undertaken proves only how blind religious zeal can be.²

We shall later draw attention to some attempts by this modern scholar to distort facts of history and language in her efforts to adapt them to her imaginary ideas. For a better discussion of our thesis let us now follow the author from her first chapter, i.e.: Fundamental Rules of the Law of Zakāt: What is Zakāt? *The exact meaning of the Arabic word "zakat" is: growth, and, by extension, growth in purity of the soul through honest actions and dealings.* (Italics mine). The word zakāt occurs in the Quranic text in this sense. It also occurs in a figurative sense to designate the contribution that every Muslim, man or woman, of means must make to further social assistance and subsidize establishments and works of public welfare for the benefit and progress, i.e. the growth, of the Islamic Nation. The Arabic word "ṣadaqa", meaning charity or alms in a general sense, also occurs both in the Quranic text and in the old versions of the law of zakāt, as referring to the obligatory aspect of charity, constituted by the zakāt tax itself. Care must therefore be taken to distinguish between the use of the term "ṣadaqa" with

¹ *Ibid.*, p. XXII.

² See, however, Baljon, pp. 12, 76-81 on the new trends among contemporary Muslim scholars against Zakāt and Fasting.

reference to the voluntary aspect of charity and its use in reference to the obligatory aspect thereof. For whereas both aspects of charity are covered by the term *ṣadaqa*, only the term *zakāt* designates exclusively its obligatory aspect. As will be readily appreciated from the method of payment, *zakāt* is not an income tax. In fact *zakāt* is not at all a government tax in the modern sense of the term . . . Mr. S. A. Siddiqi's definition of *zakāt* as "one generic term applicable to all ordinary compulsory contributions which an Islamic State levies on its Muslim inhabitants" ("Public Finance in Islam" by S. A. Siddiqi, Lahore 1948, p. 10), is dangerously misleading and apt to create a good deal of confusion as to the true nature of *zakāt* and the exact place this Institution occupies in the structure of the Islamic body politics . . . In the first place *zakāt* is *not a tax imposed by the State*. (Zayas' italics). Nor is *zakāt* a tax destined to the State as such.¹ What is more, *zakāt* does not even primarily depend on the State for its function. Once properly organized, in full conformity with the Quranic Principles relating thereto and with due deference to the instructions given by the Prophet, the very nature of the Institution of *zakāt* requires that the part the State is to play in its function be merely one of *supervision* (Zayas' italics) and not one of full control as is the case where Government taxes are concerned. In fact, in Islām, the main responsibility of all obligatory duties devolves on the individual and not on the State.²

We have considered it useful for our purpose to cite at length the view of a modern Muslim scholar about the one quasi-tax of Quranic origin. With the rest of Miss Zayas's book we are not concerned. It is a fantastic, elaborate scheme with endless particulars and figures of the rates of *zakāt* to be paid in accordance with her utopian propositions, with tables showing the system of weights and measures in al-Madīna with corresponding weights in grammes, tolas, seers and troy ounces,³ and similar tables containing figures and calculations together with other details which make her work a complete fantasy detached from any sense of reality whatsoever. We have seen how Pakistan, the largest Islamic State, has solved the problem of religious *zakāt* duties by offering to the public *zakāt*-stamps to be bought by anyone who so desires.⁴ The Pakistanis and

¹ Zayas, pp. 3-5.

² *Ibid.*, pp. 3-5.

³ Zayas between pp. 72-73.

⁴ Tax, p. 14.

Muslims all over the world will hardly agree with Miss Zayas' daring declaration that second only to prayer as an essential Article of Faith, zakāt forms an integral, *compulsory* and inseparable part of the Islamic Way of Life, *the non-observance of which is tantamount to a negation of the Faith itself.* (Italics mine). Only ignorance of Islamic Faith and precepts can produce such a fantastic and baseless conception. A good example of Miss Zayas's ignorance of Islamic history and Arabic language is her explanation of the kharāj tax. She says *inter alia*: "Tributary or kharāj lands are described as follows: all lands left to their non-Muslim owners following their conquest by the Muslims become 'kharāj' lands by virtue of their constituting legitimately recognized property of non-Muslims. This rule applies both to the non-Muslim conquered subject or 'Taghallubi', *i.e. the non-Muslim who has been defeated by force of arms and brought under Muslim rule.*"¹ (Italics mine). It appears that Miss Zayas read 'Taghallubi' instead of 'Taghlibī', *i.e.* one of the well-known Christian tribes of Arab origin with whom 'Umar b. al-Khaṭṭāb made a peace treaty and never fought them. This historical event is clearly stated in most historical and religious books.

Yaḥyā b. Adam devotes a whole chapter to Banū Taghlib and other Dhimmīs,² and so does Abū Yūsuf.³ Balādhurī deals with this event in his historical work Futūḥ al-Buldān.⁴ In his Kitāb al-Amwāl Abū 'Ubayd discusses this event in many traditions and mentions in his notes several other authorities on the special peace treaty concluded with the tribe of Banū Taghlib.⁵ If Miss Zayas was looking for a term to denote "conquered people", she could have found it in the well-known classical Arabic term "Anwa", a term used in all religious and historical books. How can one dare to invent "taghallubi", from the name of the Banū Taghlib, the very tribe which is singled out in all the books for the special *peace conditions* which 'Umar had allowed them because they were too strong to be conquered by force, is beyond any comprehension. The Arabic verb *gh l b* = conquer, subdue, has misled her into creating a new, grammatically incorrect term never heard of before.

¹ Zayas, pp. 202-203.

² Y. nos. 200-225.

³ Below, pp. 90-92.

⁴ B. p. 285.

⁵ A.U. nos. 70-72, 1693-1699.

Now let us turn to Miss Zayas's definition of zakāt. According to her the exact meaning of the Arabic word "zakāt" is "growth". This is the primary meaning of the Arabic root "zaka" in accordance with the Arabic dictionaries. But this is not its only meaning and it is certainly not what all Muslim religious scholars thought it was. The well established meaning of zakāt is: alms-giving to the poor and needy of the Muslim community. It was initiated in the early days of the small Muslim community which was poor and needed help. Alms-giving was and is still today a well established part of a religious ceremony during prayer time in Jewish synagogues and Christian churches. The call for zakāt, in the Qur'ān, is therefore, always preceded by the call to prayer. We find however many other precepts ordering the Muslim to give to the poor from what God bestowed on him without mention of zakāt, e.g. Sūrah 2 verse 3. From a critical, non-religious point of view, zakāt, ṣadaqa and other precepts ordering Muslims to donate to the poor, follow the age-old custom of sustaining the needy members of the community. The Scriptures are full of such calls: "For the poor will never cease out of the land, therefore I command you: You shall open wide your hand to your brother, to the needy and to the poor in the land". (Deuteronomy 15 : 11).

The position of Zakāt as one of the "Five Pillars" of the faith, is based on a saying attributed to the Prophet: Islām was built on five pillars: (1) The testimony that there is no God beside Allāh; (2) Prayer; (3) Zakāt; (4) Fasting; (5) Pilgrimage to Mecca.¹ However, modern Muslim scholars view these Pillars with severe criticism and construe them as referring to the Prophet's era but not to modern times. Al-Mashriqi, the Muslim Indo-Pakistani scholar, has proposed to replace them by a Decalogue of Basic Islamic Principles.² Some Muslim scholars interpret Zakāt as: goodness, liberality, righteousness and payment of debts.³

We have mentioned above that the terms "zakāt" and "ṣadaqa" are of Jewish origin, adopted and incorporated in the Qur'ān, as are many other terms. We have already mentioned that in Arabic the root "zaka" does not denote "almsgiving" nor does the root "sdq",

¹ Mabsūṭ, Vol. II, p. 149.

² Baljon, pp. 12, 76-81.

³ The Call of the Minaret by Kenneth Cragg, Oxford University Press 1964, pp. 127-129.

which primarily denotes: to speak the truth, to keep one's promise, to believe and trust, to treat as a friend, to certify, to fix a dower. *Ṣadaqa*, meaning almsgiving, was taken from the same Hebrew word, "*ṣdaqa*" which primarily denotes: justice, honesty. It is found in the Bible with this meaning, but in post-Biblical times it was used to denote: charity and almsgiving. We observe the same development in the Hebrew root "*zakah*" which in the Bible means: purity, credit, acquittal, merit, guiltlessness and virtue, but which in post-Biblical times acquired also the meaning: to give in charity, to donate to the poor. It appears with this meaning in the Talmud. We find there many passages where a story is told about someone meeting a poor man who begs, saying: "Do *zakah* with me and give me something".¹ It is significant to note that in the Aramaic version of the Bible, the Hebrew word "*ṣdaqa*" = righteousness (in Gen. 15 : 6) is translated as "*zaku*", and also as "*zakūta*" (in Deut. 6 : 25). It may be that the meaning of "*ṣadaqa*" and "*zakūt*" as synonyms for almsgiving and charity is of Aramaic origin and was so used in the Talmud which is mainly written in Aramaic, the popular language of those centuries.

It is noteworthy that a book on *zakāt* by Abū Yūsuf is cited in the *Fihrist* among his works. This book is not extant, but the inadequate mention of the term "*zakāt*" in his *Kitāb al-Kharāj* suggests, perhaps, that in this book on *zakāt* Abū Yūsuf expressed the same views against this obsolete institution as those expressed by Omar A. Farrukh, Member of the Arab Academy of Damascus, i.e. that *zakāt* was an official Institution for a very short time only and afterwards became the concern of individuals instead.² The conjecture that Abū Yūsuf has written a book against *zakāt* is, perhaps, strengthened by a slanderous story that Abū Yūsuf used to avoid the payment of *zakāt* on his own properties by selling them fictitiously to his son, before the end of the year when *zakāt* was supposed to be paid, and then buying them back from his son.³ Such a grave accusation against the all-powerful Chief Justice of the realm and the eminent religious scholar could have only been fabricated by a fanatic scribe who read Abū Yūsuf's book against *zakāt* decades

¹ Talmud Yerushalmi, Tractate Shekalim 5 : 4 and many other instances.

² Zayas, pp. XV-XVI.

³ Muslim Institutions by M. Gaudefroy-Demonbynes, 1961, Allen & Unwin, pp. 105-106.

after Abū Yūsuf's death. The work of Miss Zayas proves how religious zeal can mislead scholars even in the 20th century.

CONCLUSION

A comparison between the theoretical precepts mentioned in the works of Abū Yūsuf, Yaḥyā b. Adam, Qudāma b. Ja'far, and other works of their contemporaries and of later generations reveal no differences worth mentioning. In reality, however, these precepts were not considered binding on the secular fiscal authorities except in some cases for the purpose of extorting more taxes.¹ The only system of taxation which did prevail from al-Mahdī's time to the destruction of the Muslim empire was the system of al-Muqāsama, i.e. the collection of a certain fixed share of the produce in lieu of tax. Abū Yūsuf recommends this scheme to Harūn-al-Rashīd as the best and most just system of taxation, without mentioning its initiator, al-Mahdī's secretary, Abū 'Ubayd Allāh Mu'āwiya b. Yasār, whose Kitāb al-Kharāj was copied by all later generations of writers, as stated in the historical work "Al-Fakhri" as afore-mentioned. That the accusations against him were baseless, is proved by the fact that his grandson, Muḥammad b. 'Abd al-Wahhāb, later occupied the high position of a secretary in the Government offices.²

One has, therefore, to agree with Lokkegaard that the Fiqh literature dealing with taxation is not a picture of the real state of affairs, and that it only furnishes us with certain ideas of what would be most acceptable to the Sharī'a.³

It is, therefore, no wonder that most Muslim States have nowadays adopted modern Income Tax Laws, as well as Civil and Criminal Codes from non-Muslim secular systems of laws.

¹ Tax. pp. 5-6.

² Al-Mas'ūdī, Murūj al-Dhahab, Cairo 1948, Vol. III, p. 322.

³ Islamic Taxation, Copenhagen 1950, p. 73.

KITĀB AL-KHARĀJ

attributed to

Abū Yūsuf Ya‘qūb b. Ibrāhim*

translated from the Būlāq edition of
1302-1885

* Muslim biographers trace his origin to a nomadic tribe, but the three generations of Biblical names suggest, perhaps, another origin.

CHAPTER ONE

EXHORTATION AND STIMULATION

2*

ADDRESSED TO THE CALIPH HARŪN-AL-RASHĪD

IN THE NAME OF ALLĀH, THE COMPASSIONATE THE MERCIFUL

May Allāh lengthen the life of the Commander of the Faithful and perpetuate his splendour with complete well-being and continued honour, and follow up what He grants him here with the bliss of the Other World, a bliss which shall not cease and not pass, in the company of the Prophet, Allāh bless him and grant him salvation!

The Commander of the Faithful, may Allāh strengthen him, has requested me to compose for him a comprehensive book, to be used for the purposes of the collection of the *kharāj* taxes, the customs duties, the *Sadaqāt* levies and the *Jawālī* (Poll-tax). A book for him to study and act upon, designed to avert oppression from his subjects and to benefit their interests. May Allāh prosper the rule of the Commander of the Faithful, guide him and help him with his duties and preserve him from everything he fears and guards against. I have also been requested to explain to him, and to elucidate and expound, how he should act in matters at his discretion. And indeed, I have elucidated and expounded it.

O Commander of the Faithful! Allāh, His name be praised, has appointed you to a tremendous position, the reward of which is exceedingly great but the punishment of which is exceedingly severe: He has appointed you to look after the affairs of his nation. Behold, between morning and evening you build the life for many creatures over whom Allāh has appointed you shepherd and trustee, whose cares He has laid upon your shoulders and with whose affairs He has charged you. Such a building cannot last if it is not based on godfearingness, for Allāh will smite its foundations and destroy it on top of him who built it or helped to build it. Do not waste the command which Allāh has given you over this nation, his flock! The success of a task depends on Allāh's permission! Do not put off today's activity until tomorrow; if you do so, you will lose. Death is close to hope; therefore anticipate death by action, for

* The marginal numbers refer to the pagination in the *Būlāq* edition.

there is no activity after death. The rulers are responsible to their Creator, as the shepherd is to his master. Dispense justice, and be it only for an hour every day, in all matters entrusted and assigned to you by Allāh. The happiest of shepherds appearing on the Day of Resurrection before Allāh will be the shepherd whose subjects were happy under his rule. Do not go astray, lest you cause your subjects to stray. Beware of biased orders and of decisions given in anger. When considering two matters, one aimed at the Other World and the other at This World, prefer the matter of the Other World to the matter of This World, for the Other World will abide and This World will pass. Be warned of the duty to fear Allāh. May all persons, the near and the far, be equal in your eyes when you enforce the commandments of Allāh, and do not be deterred on this, your path, by condemnation and reproof. Take care—carefulness is in the heart, and not in the mouth—and fear Allāh, for godfearingness is strength and Allāh protects those who obey him. Strive for a clearly defined aim, a trodden path, a paved road, well established practices and accepted legal sources. Such a source is the dispensation of justice by the supreme authority, which causes hearts to throb and false pleadings to stop, of the power of the ruler, whose prowess overwhelms, in whose hands the people are, to whose judgment they look forward and whose punishment they fear even before it had been carried out.

3

There will be grief and repentance aplenty, on that Day, on that sublime occasion, for him who knew and did not do. On that day, feet will become unsteady and faces will change colour, the trial will be expansive and the reckoning will be stern. For so said Allāh, blessed be He, in His book: "But a day with thy Lord is as a thousand years of your counting." (Q.22 : 46; 32 : 4. Cf. Psalm XC v. 4); and He said, exalted be He: "This is the Day of Distinction; We have brought together you and those of olden time." (Q.77 : 38); and He said, extolled be He: "Lo, the Day of Distinction is their rendezvous, all of them." (Q.44 : 40); and he said, "On the day when they see what they are being promised, it will be as if they had not remained (in the grave) more than an hour of the day" (Q.46 : 34-35), and He said: "On the day when they see it, it will be as if they had not tarried more than an evening, or its morning" (Q.79 : 46). Woe unto the transgressors for the sins for which there is no atonement, and woe for the repentance that will not help them!

Time, by the succession of night and day, wears away everything new, brings nearer everything distant and calls for compliance with every promise. Allāh requites each person according to his deeds, and He is quick of reckoning. Allāh is the only God! Life is short and existence full of dangers. This World, with everything that is in it, is perishable and only the Other World is the world of eternity. Do not meet Allāh someday, while you are walking on the road of the transgressors. He judges people, on the Day of Judgment, according to their actions and not according to their status. Allāh has warned you, so take warning: you were not created to no purpose, and you will not be abandoned for no reason. Allāh will make you responsible for your behaviour and your actions, so prepare your replies. And know that no man's foot will appear before Allāh, blessed be He, save after inquiry, as the Prophet, Allāh bless him and grant him salvation, said: No man's foot will pass through the gate of Heaven on the Day of Resurrection before he has been asked four questions: (a) What did he do with what he was taught? (b) How did he spend his life? (c) How did he earn his livelihood and how did he expend his earnings? (d) How did he wear out his body?¹ Prepare therefore, O Commander of the Faithful, answers to these questions, for what you have done and what you will prove will be proclaimed over you later and remember that your mask will be removed from you when you appear before Allāh, at the Place of the Assembly of the Witnesses in the Other World.

I recommend to you, O Commander of the Faithful, to take care of what Allāh has assigned to your care and to guard what He has entrusted to your rule, to pay no heed in these matters except to Him, and to rely only on Him. If you do not do so, the smooth straight path will become rough for you, your eye will be blinded, the land-marks of the path will vanish and its width will become narrow; you will not recognize the part of it which you know and you will see that of it which you do not know. Engage your soul in a struggle, the object of which is to give it victory and not to vanquish it. For the shepherd who loses any of his flock is responsible for that which has been lost through his fault, which, had he been careful, he could, with Allāh's help, have kept from perdition and returned to life and safety. If he has been negligent and has caused a loss because he has been preoccupied with other matters,

¹ Cf. Al-Manāqib, Khawārizmī, 'Irāq, 1965, p. 35.

he will suffer an early and disastrous end. But if he has behaved rightly he will be happy and Allāh will pay him his reward several times over. Beware of losing any of your flock, lest the owner of the flock collect its value from you and deduct from your wages the price of what you have lost. A building must be propped to prevent a collapse. Everything you do for those entrusted to your care is for your good, but anything you lose is to your detriment. Do not forget to look after the affairs of those committed to your charge, lest you be forgotten. Do not neglect them and their interests, lest you be neglected. You will not lose your share in This World during the days and nights when you move your tongue[†] mentioning Allāh in psalms of praise, glorification and thanksgiving and in prayers for His Messenger, the prophet of mercy and leader on the straight path, Allāh bless him and grant him salvation. Yea, Allāh in His grace and mercy has appointed the rulers to be His viceregents on earth and has granted them the light of wisdom which illuminates the confused affairs of their subjects and makes clear to them the rights and duties about which they are in doubt. The wisdom of the rulers is manifested in fixing punishments and in restoring established and proved rights to the owners thereof, by absolute and clear orders. For this purpose, the revival of the study of Precedents and Traditions, laid down by the pious and devout, is extremely important. The study of them is one of the good deeds which endure and do not perish.

The iniquity of a shepherd spells ruin for his flock, and his reliance other than on righteous and reliable officials spells disaster for the community. Complete the good which Allāh has granted you, O Commander of the Faithful, by redressing wrongs, and endeavour to increase it by giving thanks. For thus said Allāh, blessed and exalted be He, in His precious Book: "Assuredly if ye are thankful I shall increase you, but if ye disbelieve My punishment is severe" (Q.14 : 7). Nothing is loved more by Allāh than good deeds, and nothing is hated more by Him than corruption. Disobedience is ingratitude. Few are the ungrateful whom Allāh did not deprive of their greatness and made them subject to their enemies unless they repented. And I, O Commander of the Faithful, ask Allāh, who has favoured you with all that He has bestowed upon you, that He may not abandon you, and that you may receive what His

[†] Cf. Q. 75 : 16.

friends and His beloved ones receive from Him, for He bestows the favours and to Him we turn.

Yea, I have written for you what you have commanded, and have expounded and explained it to you. Learn it, ponder it and re-read it until you remember it. I have worked hard for you, and have spared no effort to give you and the Muslims advice, seeking thereby only Allāh's favour and reward and fearing only His punishment. I hope that if you act in accordance with these explanations Allāh will grant you your taxes in abundance, without oppression of Muslim or Dhimmī, and will cause your subjects to be loyal to you. Their loyalty is also ensured by fixing sanctions on them and by averting oppression and injustice from them and from their rights.

I have also collected for you in this book fine Traditions, containing teachings of exhortation and stimulation concerning matters about which you have inquired and what you intend to do, Allāh willing.

May Allāh grant you success in everything that pleases Him and be good to you and through you.¹

TRADITIONS²

Yahyā b. Sa'īd—Abū al-Zubayr—Ṭā'ūs—Mu'ādh b. Jabal: The Prophet said: Nothing can save a man from hell more than prayer. When he was asked: And not, O Messenger of God, participation in the holy war for God's cause? he replied: And not participation in the holy war, even if you strike with your sword until it is broken, and then you strike again until it is more broken, and again until it is completely broken.

However, O Commander of the Faithful, the credit for participation in a holy war is nevertheless very great and its reward very considerable.

Some of our scholars—Nāfi'—Ibn 'Umar: Abū Bakr, the Caliph, ordered Yazīd b. Abū Sufyān with an army to Syria and accompanied them for nearly two miles. When he was asked to discontinue his march he refused and said: I have heard the Prophet saying: Those legs which were covered with dust from marching for God's cause, will be safe from the fire of hell.

Muḥammad b. 'Ajlān—Abū Ḥāzim—Abū Hurayra: The Prophet

¹ This Address is reproduced from Vol. II pp. 71-74, with some changes in the translation.

² Most traditions start with "Said (Qāl) Abū Yūsuf" or simply "Said" but sometimes with "Said Abū Yūsuf, mercy of God on him".

said: To devote one's time from dawn to dusk to God's causes is worth more than This World and all there is in it.

We were informed that Makḥūl explained this saying to mean: Any devotion you perform in person is worth more than if it is performed through others even by spending as much as the value of This World and all its contents.

Abān b. Abī 'Ayyāsh—Anas b. Mālik: The Prophet said: He who prays for me one prayer, will be blessed by God ten times and will be forgiven ten sins.

Some of our scholars—'Abd Allāh b. al-Sā'ib—'Abd Allāh b. Mas'ūd: The Prophet said: God's angels roam around the world and inform me about the well-being of my nation.

Al-A'mash—Abū Ṣāliḥ—Abū Sa'id: The Prophet said: How can I enjoy life when the angel holding the horn has already raised it to his mouth, bending his head eagerly awaiting the order? So we asked: And what should we say, O Messenger of God? and he replied: Say: Our final reckoning is with God and we rely on Him and His Messenger's favours.

Yazīd b. Sinān—'Ā'idh Allāh b. Idrīs: Shaddād b. Aws, when delivering a sermon to the public, said: I heard the Prophet saying: The complete righteousness is in Paradise and the complete viciousness in Hell. However, Paradise is surrounded by repulsiveness and Hell by a hedge of passions. When an entrance is opened in the repulsive surroundings of Paradise and a person is waiting patiently he will be accepted in Paradise and remain there. If, however, an entrance is opened in the hedge of passions and desires, then the person who enters it will go to Hell and remain there. So behave with justice for the day when it will be judged only with justice, that you may dwell in the Abodes of Justice.

Al-A'mash—Yazīd al-Raqāshī—Anas b. Mālik: When the Prophet was taken to Heaven on his "Night-Journey" he heard, when nearing the skies, some noise, and asked the angel Gabriel about it. The angel replied: This noise is caused by a stone which was thrown 70 years ago from the border of Hell and is now reaching its bottom.

Al-A'mash—Yazīd al-Raqāshī—Anas b. Mālik: The Prophet said: On the dwellers of Hell weeping shall descend and they will cry until their tears dry up and their faces look like furrows.

Muḥammad b. Ishāq—'Abd Allāh b. al-Mughīra—Sulaymān b.

'Amr—Abū Sa'īd al-Khudrī: I heard the Prophet saying: The path on the borders of Hell is surrounded by a prickly hedge. A completely righteous man will step aside and will be saved; some others although scratched will also be saved; however, those entangled in the prickly hedge will go down to Hell.

Sa'īd b. Muslim—'Āmir—'Abd Allāh b. al-Zubayr—'Awf b. al-Ḥārith—'Ā'isha: The Prophet said: O 'Ā'isha! Beware of belittling trifling achievements. God does look for them!

'Abd Allāh b. Wāqid—Muḥammad b. Mālik—al-Birrā' b. 'Āzib: We were with the Prophet at a funeral. When we reached the grave he knelt. So I turned and saw him weeping till the fresh earth became wet. He then said: My Brethren! Prepare for such a day!

Mālik b. Mighwal—al-Faḍl—'Ubayd b. 'Umayr: The grave proclaims: O man! What have you prepared for me? Know you not that I am a place of banishment, of worms and of confinement?

Muḥammad b. 'Amr—Abū Salama—Abū Hurayra: The Prophet said: Allāh said that He has prepared for His righteous servants what no eye has yet seen, no ear yet heard and no one yet imagined. Read in the following verse: "No one knoweth the comfort which is secretly laid up for them as a reward for what they have been doing" (Q.32 : 17). There is a tree in Paradise in whose shade a man can ride one hundred years without interruption as it is stated: "And shade extended" (Q.56 : 29). A small portion of a place in Paradise is better than the whole of This World and all that there is in it, as stated: "Then he who is removed from the Fire and taken into the Garden will have come off well; this present life is only an illusory enjoyment. (Q.3 : 182).

Al-Faḍl b. Marzūq—'Aṭīyya b. Sa'd—Abū Sa'īd: The Prophet said: A just ruler is the most beloved by me and will sit near me on the Day of Resurrection, but the most hated one on that day and the most severely punished will be an oppressing ruler.

Hishām b. Sa'd—al-Daḥḥāk b. Muzāḥim—'Abd Allāh b. 'Abbās: The Prophet said: When God wants to reward people He lets them be governed by forbearing rulers and their fiscal affairs be managed by generous administrators, but over those whom he wants to punish he appoints imprudent rulers and lets their fiscal affairs be governed by mean administrators. Anyone who is appointed over my people and deals generously with their needs, to him God will be generous when he is in need of it, but he who refrains from

attending to their needs will not find God's help in his hour of want and need.

'Abd Allāh b. 'Alī—Abū al-Zinād—al-A'raj—Abū Hurayra: The Prophet said: A ruler is only a shield behind which one fights and on whom one relies. If he behaves justly and orders his people to rely on God he will be rewarded, otherwise he will be considered as failing in his duty.

Yaḥyā b. Sa'īd—al-Ḥārith b. Ziyād al-Ḥimyarī: Abū Dharr al-Ghifārī asked the Prophet to appoint him as a governor but the Prophet refused, saying: You are weak and this is a position of trust and responsibility. On the Day of Resurrection it might turn out to be a cause of punishment and repentance except for a man fit for it, who is capable of complying with what such a position requires.

Isrā'il—Abū Ishāq—Yaḥyā b. al-Ḥuṣayn—his grandmother 'Umm al-Ḥuṣayn: I have seen the Prophet, wrapped in his coat which he raised under his armpits, saying: O you people! Fear God, comply with orders and obey. Even if He appoints over you as a ruler a negro slave whose nose or ears are mutilated, you should obey him, and be loyal to him.

Al-A'mash—Abū Ṣāliḥ—Abū Hurayra: The Prophet said: He who obeys me obeys God and he who obeys his ruler obeys me. However, he who opposes me opposes God and he who opposes his ruler opposes me.

Some of our scholars—Ḥabīb b. Abī Thābit—Abū al-Bakhtarī—Ḥudhayfa: There is nothing in the established precedents which permits you to raise arms against your ruler.

Muṭarrif b. Ṭarīf—Abū al-Jahm—Khālid b. Wabhān—Abū Dharr: The Prophet said: He who withdraws himself from the community and Islām even by one span is considered as if he had rejected the authority of Islām over himself.

Muḥammad b. Ishāq—'Abd al-Salām—al-Zuhrī—Muḥammad b. Jubayr b. Muṭ'im—his father: The Prophet said at the Mosque of al-Khayf in Minā: God will grant an easy life to a person who transmits my Sayings exactly as he heard them; often a transmitter is not a skilled jurist and sometimes he transmits to someone more learned than himself. Three acts strengthen a Muslim's heart: (a) Complete devotion to God; (b) Sincere loyalty to the rulers of the Muslims; (c) Unity in their mutual causes. These will protect them against their enemies.

Ghaylān b. Qays al-Hamadānī—Anas b. Mālik: We were ordered by our elders from among the Prophets' Companions, not to curse our rulers nor cheat nor oppose them but to fear God and have patience.

Ismā'il b. Ibrāhīm b. Muhājir—Wā'il b. Abī Bakr: I heard al-Ḥasan al-Baṣrī saying that the Prophet said: Do not curse your rulers. For if they rule justly they will be rewarded and you should be thankful. However, if they misbehave the responsibility and sin will be only theirs and you should be patient. Rulers are a scourge through whom God punishes those He so decides to punish. So do not meet God's scourge with hot temper and anger but with humility and submission.

Al-A'mash—Zayd b. Wahb—'Abd al-Raḥmān b. 'Abd Rabb al-Ka'ba: I went to see 'Abd Allāh b. 'Umar and found him sitting in the shade of the Ka'ba surrounded by people. I heard him saying: The Prophet said: He who swore allegiance to a ruler and offered him his hand and heart has to adhere to him with all his powers and kill anyone who tries to depose him.

Some of our scholars—Makḥūl—Mu'ādh b. Jabal: The Prophet said: O Mu'ādh! Obey every ruler, follow in prayer every Imām and do not curse any of my Companions.

Ismā'il b. Abī Khālid—Qays: Abū Bakr said during one of his sermons: O you people! read this verse: "O ye who have believed, attend to yourselves; those who go astray will not injure you, if ye let yourselves be guided" (Q.5 : 104). We have heard the Prophet saying: Those who see anyone going astray without correcting him will soon be punished by God.

Yaḥyā b. Sa'īd—Ismā'il b. Ḥakīm: 'Umar b. 'Abd al-'Azīz said: God does not hold a community responsible for the acts of the individual, but if defiance starts and the community does not oppose it, all its members deserve punishment.

Ismā'il b. Abī Khālid—Zubayd b. al-Ḥārith or Ibn Sābiṭ: When Abū Bakr, before his death, sent for 'Umar b. al-Khaṭṭāb to appoint him, as his successor, I heard the people saying: Are you to appoint such a rough brutal person over us who, when appointed, will become more so? What will you say to your Creator when called before Him, if you appoint 'Umar over us? Abū Bakr replied: Do you threaten me with my Creator? I will tell Him: O God! I have appointed over them the best of your people. He then sent for

‘Umar and said to him: I leave you a legacy. If you will follow it you will not fear death, which is inevitable, but if you neglect it there will be nothing more hateful than the death which you cannot avoid. God has a right to ask of you to complete during the night such duties that you cannot comply with during the day, and to complete during daytime the duties which you could not perform during the nighttime. A supererogatory act or prayer cannot be accepted before the obligatory religious duties are complied with. The scales of those who follow the vanity of This World will perforce weigh little because there will be nothing in them on the Day of Resurrection. But the scales of those who follow righteousness in This World will naturally be heavy because of their righteous deeds.¹ So if you will preserve my legacy, death will not frighten you, but if you do not follow it nothing will be more loathsome than the inevitable death.

Mūsā b. ‘Uqba—Asmā bint ‘Umīs, Abū Bakr’s wife, said that he further addressed ‘Umar thus: O Ibn al-Khaṭṭāb! I have appointed you to succeed and take over after me all that I have taken over. I have been one of the Prophet’s Companions and have seen his preoccupation with us and our families more than with himself and his family, to such a degree that we used to give gifts to his family from what he used to give us. You have been my friend and you have observed that I have followed the ways of my predecessor. By God! I have not spent my time in sleep and dreams. I have tried not to commit mistakes and errors and have not left the right path. The first one I warn you against, O ‘Umar, is yourself. Everyone has some passion which, if he give in to it, will lead him to another one. You should also warn those of the Prophet’s Companions whose passions and desires are increasing and who care only for themselves, but are enchanted if one of them slips. Beware of being the one who slips. Know that they will not cease to fear you as long as you fear God, and that they will be straightforward with you as long as your ways are straight. This is my legacy and peace be with you.

‘Abd al-Raḥmān b. Iṣḥāq—‘Abd Allāh al-Qurashī—‘Abd Allāh b. Ḥakīm: Abū Bakr delivered a sermon and said: I recommend you to rely on God and to praise Him as befits Him. Mix your desires with fear and join begging to requests.² God has praised Zakariyā and his family thus: “Verily they used to vie in good deeds and call upon

¹ Cf. Q. 7: 7-8

² Cf. Q. 2: 274

Us out of longing and fear; and to Us they used to humble themselves" (Q.21 : 90). And know, O servants of God, that He holds a pledge on your souls based on your bond to Him under which you exchange the small passing things for the abundant and everlasting, the Holy Book whose wonders do not end and whose light does not extinguish. Trust His word, seek advice from His Book and gather His light for the day of darkness. God has created you for His Service and has appointed gentle scribes to teach you how to serve God. And know, O servants of God, that you spend your mornings and evenings without knowing how long your life may last. So with God's help if you can remain in the service of God until your time comes, do so without delay lest your time expire and you may be judged then on your bad deeds only. Do not act like some people who neglect their future destiny. Hasten! hasten to save your souls because your judge is quick and his judgement swift.

Abū Bakr b. 'Abd Allāh al-Hudhalī—al-Ḥasan al-Baṣrī: A complainant once called out to 'Umar b. al-Khaṭṭāb: Fear God, O 'Umar! and repeated it several times. Some bystander told the man: Keep silent, you have overdone it against the Commander of the Faithful. But 'Umar intervened saying: Leave him alone! For there is nothing good in the silence of people who do not say it to us, and there is nothing good in us rulers if we refuse to listen to such words. He then turned to reply to the person who had admonished him.

'Ubayd Allāh b. Abī Ḥamīd—Abū al-Maliḥ b. Abī Usāma al-Hudhalī: 'Umar b. al-Khaṭṭāb delivered a sermon and said: O you people! We rulers have a right to demand of you that you inform us sincerely about matters not known to us and that you help us in our good deeds. On the other hand governors should know: No clemency is more useful and beloved by God than the forbearance and fairness of a ruler and nothing is more harmful and detested by God than the ignorance and misdoings of a ruler. He who acts with leniency towards those who surround him will be so treated from above.

Dā'ūd b. Abī Hind—'Āmir: 'Abd Allāh b. 'Abbās said: I visited 'Umar after he was wounded and told him: You have nothing to fear, O Commander of the Faithful. Your place in Paradise is secure for you. For you accepted Islām while other people rejected it; you fought together with the Prophet when other people aban-

doned him and when he passed away you were one of his favourites; you were appointed Caliph without opposition and now, even if you die from your wound, you will be considered a martyr. 'Umar asked me to repeat my words which I did and then he said: By God beside whom there is no one! If I had owned all the gold and silver of this world, I would have given it to relieve myself from the terror of the ascension to appear before God.

Some of our scholars—'Abd al-Mālik b. Muslim—'Uthmān b. 'Aṭā' al-Kalā'ī—his father: 'Umar delivered a sermon and after praising God said: I advise you to fear God who will remain for ever while anyone else will perish; for obedience to God strengthens his friends, and disobedience to Him weakens His adversaries. It will not be an excuse for a mortal who persisted in the wrong way to plead that he intended to do the right thing, nor for one who neglected to act justly to contend that he thought it to be wrong. The most important pledge which a ruler is entitled to demand from his subjects is their compliance with their duties to God in accordance with their religion to which God has guided them. However, our duty as rulers is to order you to comply with your duties of obeying God and to warn you against what God has warned you, and that we shall administer God's orders amongst all of you, the near and the far, and not overlook one who is to be blamed. God has prescribed the Prayers in accordance with certain rituals, amongst them: Ablution, the humble casting down of the eyes, kneeling and prostration. And know, ye people, that covetousness is poverty and renouncement is wealth; that in solitary life there is peace from evils caused by mingling with bad people. And know that he who is not satisfied with what he does not like from God's chastisement, will not receive things for which he may owe thanks. And know! God has servants who destroy evil by shunning it and keep alive righteousness by proclaiming it. Those who have a longing for God will feel that God cares for them and those who warn against evil will themselves be warned. Those who are frightened and unsure should follow the true religion and through it see what they have not seen before and will then distinguish and reject what they could not set apart before. The fear of God will secure for them the life which is eternal and death will seem to them precious.

Ismā'il b. Abī Khālīd—Zubayd al-Yāmī: In his testament 'Umar said: I recommend to my successor to fear God and to recognize the

rights and privileges of the early Emigrants and the Companions who first followed the religion of Islām, and that he should take into consideration their good deeds and disregard some mis-deeds. I recommend him also to take care of the inhabitants of the frontier settlements, for they are deterring attacks on Islām and are a thorn for its enemies. As they are also tax-collectors he should not tax them except with their consent, out of their surplus. I recommend him also to treat well the nomads who are the source of the Arab people and the substance of Islām, and that part of the taxes collected from them should be distributed amongst those of them who are poor. As to the Dhimmīs who are under the protection of God and his Prophet, I recommend him to comply with the bonds given to them to defend them against those who persecute them and not to tax them with more than they can bear.¹

Sa'īd b. Abī 'Arūba—Qatāda—Sālim b. Abī al-Ja'd—Ma'dān b. Abī Ṭalḥa al-Ya'marī: One Friday, when preaching, 'Umar b. al-Khaṭṭāb, after praising God and mentioning the Prophet and Abū Bakr, said: God is my witness that I have instructed the governors of the frontier settlements to teach the people their religion and the Sunna of their Prophet; that they should distribute amongst them their shares in the spoils of war; that they should administer justice and refer to me any complicated case.

'Abd Allāh b. 'Alī—al-Zuhrī: A person approached 'Umar b. al-Khaṭṭāb asking: Is it better for me to pay attention in matters of religion, to the reproof of one who reproaches me, or should I rely on my own conscience? 'Umar replied: Those responsible for administering Muslim affairs should not be afraid of a reproof in matters of religion. However, those who are free from such responsibility should act in accordance with their own conscience and be loyal to their administrator.

'Abd Allāh b. 'Alī—al-Zuhrī: 'Umar said: Do not interfere in matters which do not concern you. Stay away from your enemies and beware of your friends, except the trusted one whose value is above everything. Do not associate with the wicked lest he will teach you his vices and do not reveal your secrets to him. Follow in your affairs the advice of those who fear God.

Ismā'il b. Abī Khālīd—Sa'īd b. Abī Barda; 'Umar b. al-Khaṭṭāb wrote to Abū Mūsā al-Ash'arī: The ruler most favoured by God is

¹ Y. nos. 226, 232-236.

the ruler who helps those ruled by him, and the most unbearable the ruler whose subjects suffer from him. Beware of deviating, yourself and those under your command, from the right path, lest you should be considered by God as a cow who cares only to increase her intake of green grass, adding thereby fat to her body, which fatness will hasten her end by causing her to be slaughtered sooner.

Mis'ar—Some person: 'Umar said: No one can uphold God's causes except a person who does not offend nor flatter anyone, and is not covetous, whose strive is diminished and who does not favour relatives when administering justice.

Some of our scholars—Hānī, the client of 'Uthmān b. 'Affān: 'Uthmān, when standing near a tomb, used to cry till his beard was wet. When asked: You do not cry when thinking about Paradise or Hell, so why do you cry because of a tomb? He replied: The Prophet has said: The tomb is the first station of the many stations to the Other World. He who passes it safely will have it easier thereafter, but if it is not passed safely the others will be more difficult. And he said also: I have not seen a more horrible sight than the tomb.

A.Y.: I heard Abū Ḥanīfa saying: When 'Umar became Caliph 'Alī b. Abī Ṭālib told him: If you want to reach the position of your friend, your predecessor, you should personally patch your shirt, reverse your robe, repair your sandals and boots, curtail your aspirations and eat moderately.

Some of our scholars—'Aṭā' b. Abī Rabāḥ: When 'Alī had to send out a patrol he used to warn its leader thus: I advise you to fear God whom you must meet some day and who reigns over This and the Other World. You have to achieve what you are sent for and in a way which may bring you nearer to God, for with him it is different than in This World.

Ismā'il b. Ibrāhīm b. al-Muhājir al Bajalī—'Abd al-Mālik b. 'Umayr: A man from Thaḳīf told me: 'Alī b. Abī Ṭālib has appointed me as a tax administrator over the people of 'Ukbarā' and told me in their presence: See to it that you collect from them the whole kharāj tax which they owe, and beware of allowing them any liberties or showing them any weakness. He then asked me to come to see him again at noon time. When I appeared he said to me: What I told you before was intended to be heard by the representatives of the people over whom you are appointed, because they are

deceitful characters. However, take care when you are there not to sell their winter or summer garments nor their provisions or their working animals for the taxes they owe. You should also refrain from ordering flogging or making them stand in the sun for long periods or selling anything of their belongings to expediate the collection of the *kharāj* tax. We have been ordered to collect from them what they can spare (Q.7 : 198).¹ Therefore, if you disobey my orders only you will be responsible before God, and I will also dismiss you. So I said to 'Alī: If this is the case then I will return to you as I left you. And he replied: Even if you return as you have left! Thereupon I complied with his orders which fact did not cause any decrease in the *kharāj* taxes thus collected.

Some of our scholars—Muḥammad b. Ka'b al-Qurazī: When 'Umar b. 'Abd al-'Azīz became Caliph he asked me to come to see him. When I arrived from al-Madīna I was puzzled by his looks and he asked me for the reason of my bewilderment. The change in your colour—I said—your emaciated body and the disappearance of your hair. And what would you say if you were to see me three days after I have been let down into my grave with the pupils of my eyes streaming over my cheekbones and from my nostrils blood and pus running? You would strongly dislike me then.

Some of our scholars—'Umar b. Dharr: 'Umar b. 'Abd al-'Azīz was mainly concerned with the alleviation of injustice and discord amongst the people.

An old man from Syria: When 'Umar b. 'Abd al-'Azīz became Caliph he spent two months in sorrow and suffering over the state of affairs of his people. He then began to look after their interests by alleviating injustice. His preoccupation with their welfare was greater than with his own, and he continued thus until his death. When, after he passed away, the scholars came to condole with his wife, mentioning the great loss thus suffered by the Islamic people, they also asked her to tell them what was not yet known about her deceased husband. And she said: By God! He did not pray or fast more than you do, but I have not seen a more Godfearing man than 'Umar. He used to devote his body and soul for the people and if he did not accomplish something during the daytime he

¹ Y. nos. 233-4. See M. Bravmann's article "The Surplus of Property", dealing with the meaning of the word "Afw" in the Qur'ān and Muslim literature. *Der Islam*, 1962, Vol. 38, pp. 28-50.

continued at it during the night. One evening when he completed his tasks he called the lantern-bearer, whom he paid from his own pocket, and came home. Then after performing two prostrations while praying, he sat down, holding his hand under his beard, while the tears ran down his cheeks, and remained so till dawn without having any meal. When I asked him if there was a reason for this behaviour he replied: Yes! I am appointed over this nation of coloured and white people and have thought of all the needy poor wanderers, the destitute, the oppressed prisoners and the like in all corners of my empire, and have realized that God will hold me responsible and the Prophet will challenge me about them, and, all of a sudden, I was frightened that neither God nor the Prophet will accept my excuses, and I was terrified.

By God! Even when 'Umar was with me and he would remember the cause of his fear, he would agitate like a bird fallen in water and crying aloud till, pitying him, I would throw off the cover from him and myself. By God! I have then wished that his position as Caliph should have been far away from us, as far as the East from the West.¹

One of our scholars from al-Kūfā: An old man of al-Madīna told me: I have seen 'Umar b. 'Abd al-'Azīz in al-Madīna, when he was one of the best dressed men with one of the best perfumed bodies and an alert way of walking. I have since seen him, after he became Caliph, when he walked like a monk. He who says that the way a man walks is his born natural disposition is wrong, judging from the example of 'Umar b. 'Abd al-'Azīz.

One of our scholars—Ismā'il b. Abī Ḥakīm: One day 'Umar b. 'Abd al-'Azīz, who was short-tempered, got very upset in the presence of his son 'Abd al-Mālīk. When he relaxed his son said: I cannot see why you should be upset being the Commander of the Faithful with God's grace on you and your position over His servants? When 'Abd al-Mālīk, on his request, repeated his words, 'Umar asked him: And you, 'Abd al-Mālīk, are you never angry? And he continued: What is the use of my body if I cannot contain my anger in it until nothing of it can be seen.

¹ Cf. Q. 43: 37.

CHAPTER TWO

DISTRIBUTION OF THE SPOILS OF WAR

You have asked, O Commander of the Faithful, how the spoils of war should be divided. This is prescribed by God in His Book thus: "And know that if ye take anything as spoil—that to Allāh belongs a Fifth of it, and to the Messenger and to the Relatives, the Orphans, the Poor, and the Followers of the Way, if ye have believed in Allāh, and what We sent down to Our Servant on the day of the Salvation, the day the two parties met; Allāh over everything has power" (Q.8 : 42).

MOVABLE BOOTY

This verse, and *God knows best*, refers to the movable properties captured by Muslims from the pagans, i.e. provisions, arms and animals. A fifth of such booty is taken out for those named by God in His Book, and the remaining four fifths are divided amongst the soldiers who captured it whether they are registered in the Diwān lists or not. A cavalry man will get three shares, i.e. two for the horse and one for himself, and an infantry man only one share. This is laid down in Traditions and other sources. No discrimination should be made in favour of horses against other animals used for riding because God said: "Horses too and mules and asses (hath He created) that ye may ride them and as an adornment" (Q.16 : 8), and again: "Prepare for them whatsoever force and cavalry ye are capable of (gathering) to overawe thereby to enemy of Allāh and your own" (Q.8 : 62). The nomad Arabs have one name "al-Khayl" for all these animals and do not distinguish between a mare and a draft horse, which is usually stronger and more amenable for riding. The strong horse is also not preferred over a weak one and so no preference is given in the allotment of the shares to the courageous fully armed man over the faint-hearted who is armed only with a sword.

Abū Ḥanīfa, however, maintained that a beast should not have preference over a Muslim soldier and therefore a cavalry man should be allowed only one share for his horse. He bases his view on a Tradition from Zakariyā b. al-Ḥārith in the name of al-Mundhir b.

Abū Khamīṣa al-Hamadānī that one of 'Umar b. al-Khaṭṭāb's representatives in Syria was allotted one share of a cavalry man for himself and one share for his horse and that 'Umar ratified it after it was brought to his attention. Nevertheless the consensus of opinion is for following the Tradition allowing two shares for a horse. There is no logic in the argument that by allowing two shares for a horse a Muslim soldier is degraded, as it can be argued that by allowing a beast one share and a soldier one share the latter is compared to a beast. The reason for allowing two shares for a horse is to encourage the use of horses in God's causes, which use, however, entails more expenses. The volunteers and the soldiers attached to a Dīwān are allowed the same share.

It is up to you, O Commander of the Faithful, to decide which view to follow. However, in any case, I do not think that one should be allotted the shares of more than two horses.

TRADITIONS

Al-Ḥasan b. 'Alī b. 'Umāra—al-Ḥakam b. 'Uṭayba—Miqsam—'Abd Allāh b. 'Abbās: The Prophet divided the spoils of the Battle of Badr thus: To cavalry men two shares and to infantry men one share.

Qays b. al-Rabī'—Muḥammad b. 'Alī—Ishāq b. 'Abd Allāh—Abū Ḥāzīm: Abū Dharr al-Ghifārī told us that when he and his brother were with the Prophet at the Battle of Ḥunayn and had two horses with them, the Prophet allotted them six shares, four for the horses and two for themselves. They then exchanged, in Ḥunayn, the six shares for two young camels.

Yaḥyā b. Sa'id: Al-Ḥasan al-Baṣrī maintained that if a man owns many horses and is participating with them in a battle he will receive shares for two horses only.

Muḥammad b. Ishāq—Yazīd b. Yazīd b. Jābir—Makhḥūl: For not more than for two horses may shares in the booty be allotted to one cavalry man.

Muḥammad b. al-Sā'ib al-Kalbī—Abū Ṣāliḥ—'Abd Allāh b. 'Abbās: The Fifth was partitioned during the lifetime of the Prophet into five portions: For God and the Prophet one portion, for the Relatives one portion and to each of the Orphans, the Poor and the Followers of the Way one portion. In the times of Abū Bakr, 'Umar, 'Uthmān and 'Alī the two portions, that for God and the Prophet, and that for the Relatives, were cancelled and the whole Fifth

divided amongst the other three categories entitled to it. 'Abd Allāh b. 'Abbās added: 'Umar b. al-Khaṭṭāb first offered us to use the portion of the Relatives for the remarriage of those of the Relatives who were stricken by widowhood and for paying our urgent debts, but when we insisted that he should hand over the portion to us without conditions, he refused and our portion was cancelled.¹

Muḥammad b. Ishāq: I asked Abū Ja'far what was 'Alī's opinion about the portion of the Relatives in the Fifth and he said: 'Alī was of the same opinion as the other members of the family of the Relatives, but was reluctant to oppose Abū Bakr and 'Umar.

Mughīra—Ibrāhīm: The words: "To Allāh belongs a fifth of it" (Q.8 : 42) are only a literary opening to the verse, because everything belongs to Allāh.²

Ash'ath b. Sawwār—Abū al-Zubayr—Jābir b. 'Abd Allāh: The Prophet used to spend from the Fifth for God's causes and for those who represented him. When the incomes increased he allotted portions to the Orphans, the Poor and the Follower of the Way.

Muḥammad b. Ishāq—al-Zuhrī—Sa'id b. al-Musayyib—Jubayr b. Muṭ'im: The Prophet used to allot the portion of the Relatives to the Banū Hāshim and Banū al-Muṭṭalib.

Muḥammad b. 'Abd al-Raḥmān b. Abī Laylā—His father: I heard 'Alī saying: I applied to the Prophet asking to be appointed to supervise the distribution of the portion due to the Relatives. My intention was to establish a precedent in the Prophet's lifetime to prevent anyone from denying us this right after him. The Prophet agreed and I have distributed it during his lifetime. Then Abū Bakr appointed me and I acted accordingly. 'Umar has also appointed me and I kept distributing it until the last year of his reign when plenty of property came in and we lost our portion. It happened thus: 'Umar sent for me and asked me to accept the portion which he set apart for us. When I replied that we could do without it that year while the Muslims might need it, he agreed and spent it on the Muslims in that year. After 'Umar nobody invited us to take our portion. When al-'Abbās b. al-Muṭṭalib met me after I left 'Umar he said to me: O 'Alī, you have deprived us this morning of something which will never be returned to us until the Day of Resurrection.

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¹ Tax. pp. 51-52.

² Tax p. 51.

Muḥammad b. Ishāq—al-Zuhrī—Najdat al-Ḥarūrī wrote to Ibn ‘Abbās asking him to whom the portion of the Relatives belonged and Ibn ‘Abbās replied: It belonged to us, the Relatives, but when ‘Umar proposed to us that we should use it to remarry those of us stricken with widowhood, pay from it our pressing debts and provide servants for our families, and we refused, insisting that he should hand it over to us without any conditions, he rejected our request.

Qays b. Muslim—al-Ḥasan b. Muḥammad b. al-Ḥanafiya. After the death of the Prophet there was disagreement about the two portions of the Prophet and the Relatives. Some said that the portion of the Prophet should pass to the Caliph after him. Others said that the portion of the Relatives should pass to the relatives of the Prophet, but some claimed that it should go to the relatives of the Caliphs after the Prophet. The controversy was solved by the agreement that those shares should be spent on horses and arms.¹

‘Aṭā’ b. al-Sā’ib: ‘Umar b. ‘Abd al-‘Azīz used to send the portions of the Prophet and the Relatives to the Banū Hāshim.

Abū Hanīfa and most of our scholars are of the opinion however, that these portions should be allotted to those who received them during the reign of the Caliphs Abū Bakr, ‘Umar, ‘Uthmān and ‘Alī.

This is how the movable booty was divided.

THE FIFTH FROM MINERALS AND OTHER SOURCES

A Fifth is taken from any excavated minerals, as gold, silver, copper, iron and lead, found in Arab or foreign lands as well as from any ornament or ambergris taken out of the sea. The Fifth from these sources is added to the income from the collection of the Ṣadaqāt in accordance with God’s words: “And know if you take anything as spoil—that to Allāh belongs a Fifth of it and to the Messenger, and to the Relatives, the Orphans, the Poor and the Follower of the Way” (Q.8 : 42). The Fifth is taken from any quantity of minerals, even if it is less in weight than the minimum 200 dirhams of silver or 20 mīthqāls of gold because these minimums apply to the zakāt levies whereas minerals found are considered as spoil. The Fifth is taken not from the ore but from the pure minerals, and therefore no consideration should be given to the expenses incurred in the process of obtaining the pure minerals, as such

¹ Tax. p. 54.

expenses may in some cases be very high and leave nothing for the Fifth. Similarly, if the finder of the said minerals is so much in debt that nothing will remain if his find is used to pay his debts, the Fifth will nevertheless be taken as in the case of spoils of war, from which the Fifth is taken notwithstanding the fact that the soldiers entitled to share the spoils are indebted. However, any precious stones excavated, as sapphire, turquoise, antimony, mercury, sulphur and red ochre, are free from the levy of the Fifth because they are considered as mud and earth. Rikāz, i.e. gold and silver, created by God with the Earth, are also liable to the Fifth. From treasure-troves of gold, silver, diamonds and garments which do not belong to anyone, the Fifth will also be taken and the remaining four fifths left to the finder, who is considered as a soldier who captures spoils. If a Ḥarbī, who entered the country by permission, finds such a treasure, it will be taken away from him and he will not be entitled to anything. However, a Dhimmī, a slave, a slave-mukātab, a slave-mother of Muslim children and a mudabbarslave are treated like Muslims when they find a treasure-trove. If a Muslim finds a treasure-trove in enemy territory which he entered without permission, then it belongs wholly to him and no Fifth is taken. It is considered as something upon which the Muslims "rushed neither horse nor camel" (Q.59 : 6). This applies whether he found the treasure in property owned by someone or otherwise. However, if he entered with permission, then it is also his if he found it in a property not owned by anyone, otherwise it belongs to the owner of the property.

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TRADITIONS

‘Abd Allāh b. Sa‘īd b. Abī Sa‘īd al-Maqburī—his grandfather: In pre-Islamic times if a man was killed by falling into an ancient well, the value of the well was considered his blood-money, or if a beast killed him the value of the beast was considered his blood-money, and likewise if a man was killed in a mine. However, when the Prophet was asked about it he said: Death caused by beasts, mines and wells is an act of God (so that no one can be made responsible to pay blood-money), but from Rikāz the Fifth should be taken. When the Prophet was asked what Rikāz meant he said: Gold and silver which God created when the Earth was created.¹

¹ Y. nos. 68-70.

PRIVATE INCOME OF THE PROPHET¹

The Prophet used to get a Ṣāfī, i.e. a free gift out of the spoils of war, e.g. a mare, a sword, or a female slave. From the Battle of Khaybar he got as a gift Ṣāfiyya, daughter of a Jewish leader, whom he freed and married. The incomes from his portion in the Fifth he shared with his wives. This portion was his apart from his share as an individual in the four fifths of the spoils which were distributed amongst the soldiers. He thus got a part of the 100 shares allotted to 'Āṣim b. 'Adī from the spoils of Khaybar. The income of the Prophet was therefore derived from three sources: (1) the Ṣāfī gifts; (2) His share of the four fifths of the spoils of war; (3) His Portion from the Fifth. The distributed spoils of Khaybar consisted of 18 lots of 100 shares each, for each person. His Ṣāfī from the Battle of Badr was a sword.

TRADITIONS

Ash'ath b. Sawwār—Muḥammad b. Sawwār—Muḥammad b. Sīrīn: The Prophet used to get a Ṣāfī from every lot of booty. From the Battle of Khaybar he got Ṣāfiyya bint Ḥuyay (b. Akḥṭab of the Jewish Banū al-Naḍīr tribe).

Ash'ath—Abū al-Zinād—The Ṣāfī from the Battle of Badr was the sword of 'Āṣim b. Munabbih.

RULES OF DISTRIBUTION

1. When the Muslims capture spoils of war, it is preferable that it should be distributed only after it is brought to Muslim territory. Otherwise it may partly vanish as long as it is not taken possession of in Muslim territory. The Prophet distributed the spoils of the Battle of Badr in al-Madīna and gave a share to 'Uthmān b. 'Affān, although he was absent from the battle because of the illness of his wife Ruqayya the daughter of the Prophet, and gave a share of the spoils to Ṭalḥa b. 'Ubayd Allāh, who was in Syria and could not participate in the battle. He also distributed the spoils of the Battle of Ḥunayn in al-Ji'rāna after leaving al-Ṭā'if. He distributed the spoils of Khaybar in Khaybar territory because he had expelled from it its conquered inhabitants so that it became Muslim territory; and so also were the spoils of the Banū al-Muṣṭaliq distributed in their place which became Muslim territory by conquest. 121 122

¹ Tax. p. 24.

TRADITIONS

Yazīd b. Abī Ziyād—Mujāhid—‘Abd Allāh b. ‘Abbās: The Prophet said: The spoils of war were granted to me and not to anyone before me.¹

Al-A‘mash—Abū Ṣāliḥ—Abū Hurayra: The Prophet said: Spoils of war were not distributed to any Arab tribe before you, as a fire used to come down from heaven and consume them. At the Battle of Badr, when the men rushed at the spoils, the following revelation descended: “Had it not been for a preceding decree from Allāh there would have come upon you a mighty punishment with regard to what ye have taken. So eat the spoil ye have taken, as permissible and good” (Q.8 : 69–70).²

2. Nobody is allowed to sell his share in the spoils before its Fifth is taken.³ However, the army is entitled to consume from provisions captured to feed the beasts fodder and barley included in the booty, and even to slaughter sheep and cattle, as no Fifth is due from such consumption for their own use. The Companions of the Prophet did so and it is permissible with regard for man and beast, but not otherwise. If someone sells something from the booty he must hand over the price to the authorities, because the use of the booty before the Fifth has been taken is a fraudulent act.

TRADITIONS

Al-A‘mash—Mujāhid—Ibn ‘Abbās: The Prophet has warned against the sale of booty before the Fifth is taken.

Yaḥyā b. Sa‘īd—Muḥammad b. Yaḥyā Ibn Ḥayyān—Abū ‘Amra—Zayd b. Khālīd al-Juhanī: When the Prophet was informed of the death of a certain person in Khaybar, he told the friends of the deceased to pray for his soul. After a search his friends found amongst his belongings some beads taken from the Jews of Khaybar as spoils before the Fifth was deducted from its value which amounted to two dirhams.

Hishām—al-Ḥasan: The Companions of the Prophet used to maintain themselves and their beasts out of the spoils but did not sell anything; however, if something was sold its price was handed over to the authorities.

¹ Tax. p. 51.

² Tax. p. 51.

³ Y. no. 8.

Mughīra—Ḥammād—Ibrāhīm: They used to feed themselves and their beasts out of the spoils while still in enemy territory before the Fifth was taken.

3. The authorities may grant something, in excess of their share, to individual soldiers or to a raiding patrol for special assigned objectives. This should be taken out of the spoils seized before the Fifth is taken.

TRADITIONS

Al-Ḥasan b. 'Umāra—Ḥabīb b. Nihār—His father: I was the first to put fire to the doors of Tustar city. After capturing it Mūsā al-Ash'arī put me in charge of ten men of my tribe and granted me something out of the spoils before its distribution, apart from my share and the share for my mare due to me.

4. The shares of the soldiers in the Four Fifths of the spoils are fixed in accordance with the position at the beginning of the battle. He who then had a horse got a share for it even if it was slain before the distribution, but after the seizure of the spoils in whole or in part. Similarly, an infantry man who caught a horse during the battle was not entitled to a share for it. A Dhimmī, a slave or a woman, who renders some assistance during battles by nursing the wounded, is entitled to some paltry gift but not to a share. However, if they did not render any assistance they will not be entitled to anything in spite of their presence at the battle, but hired carriers, carpenters and similar workers who were present will get a share, and so also will those appointed as guards.

TRADITIONS

Muḥammad b. Ishāq—al-Zuhrī—Yazīd b. Hurmuz, secretary to Ibn 'Abbās: Najdat al-Ḥarūrī wrote to 'Abd Allāh Ibn 'Abbās asking him if women used to accompany the Prophet in his battles and if they had a share in the spoils. Ibn 'Abbās replied that they used to be present at battles but got some paltry gifts and not a share in the spoils.¹

Al-Ḥasan—Muḥammad b. Yazīd—'Umayr, a client of Abū al-Laḥm: I was present at the Battle of Khaybar when I was still a slave, and the Prophet gave me a sword after the conquest, and

¹ Tax. p. 53.

ordered me to gird it on. He gave me also some remnants of goods but did not allot me a share.

Al-Ḥajjāj'—'Aṭā'—Ibn 'Abbās: A slave has no share in the spoils of war.

Al-Ash'ath—al-Ḥasan and Ibn Sīrīn: A slave and an employee get nothing from the spoils of war.

5. No soldier is allowed to raid or attack enemy soldiers without an order from his superiors.¹

TRADITIONS

Al-A'mash—Abū Ṣāliḥ—Abū Hurayra: The verse: "Obey Allāh and obey the Messenger and those of you who have the command" (Q.4 : 62) includes superiors in the army.

Al-Ash'ath—al-Ḥasan: Raiders without permission are not entitled to anything, but if permitted they are entitled to what was promised to them.

6. Muslims should not, in my view, accept ransom for returning the body of a slain enemy, but Abū Ḥanīfa saw no harm in it, arguing that as long as we are allowed to seize their properties by force there is nothing wrong in accepting property willingly offered by them. However, I dislike it and warn against it because it is forbidden to us in accordance with a tradition from 'Abd Allāh b. 'Abbas as the sale of wine, hogs, carrion or blood to an enemy or a non-enemy.

TRADITIONS

Ibn Abī Laylā—al-Ḥakam—Miqsam—Ibn 'Abbās: An offer came to pay for the return of the body of one of the enemy soldiers who was slain in the Battle of the Trench, but the Prophet forbade it.

7. There is a controversy over the problem of how to deal with beasts of Muslim soldiers which cannot be taken back from enemy territory for various reasons. Some of our scholars maintain that they should be left where they are but others advise that they should be slain and burned together with all which must be left behind. I prefer the slaying and burning because it prevents the enemy from deriving any advantage out of it.

¹ Tax. p. 52.

Some scholars object to acts of arson and the destruction of fruit-bearing trees and palms in enemy territory, but others allow it relying on the verses: "The fine palms which ye cut down or left standing on their roots—it was by the permission of Allāh and that He might humiliate and reprove" (Q.59 : 5), and: "They made their houses desolate with their own hands and the hands of the believers" (Q.59 : 2). They rely also on Jarīr's burning down of Dhu al-Khalasa without the Prophet blaming him or disapproving of it. This is the best that we heard about this question but *God knows best*, that the pagans must be fought with every weapon including the inundation and burning of their dwellings, cutting down trees and palms, and bombardment by ballista, without, however, aiming deliberately at children, women and old men. Those of the enemy who flee are to be pursued and their wounded given the last stroke, but the adult prisoners should be killed if it is dangerous to keep them alive. The ruler will decide in such cases whether to kill the prisoners or not, in accordance with what he may deem fit and best for the Muslims and Islām. The ruler may also decide to exchange enemy prisoners against Muslim prisoners, but he has no right to release enemy prisoners against payment of gold, silver or any other property.

TRADITIONS

Ismā'il. b. Abī Khālid—Qays b. Abī Ḥāzim—Jarīr b. 'Abd Allāh al-Bajalī: The Prophet asked me to relieve him from Dhu al-Khalasa, which was a place of worship belonging to the Khath'am tribe called in the pre-Islamic era the Yemenite Ka'ba. So I went with 150 cavalry men and burned it down until it looked like a scabbed camel. When the Prophet was informed about it he blessed the cavalry and the warriors.

Al-Ḥajjāj—al-Ḥakam b. 'Utayba—Miqsam: Ibn 'Abbās said: The Prophet prohibited the killing of women.

'Ubayd Allāh—Nāfi'—Ibn 'Umar: When a woman was found killed in one of the Prophet's raids he prohibited the killing of women and children.

Layth—Mujāhid: No woman, child or decrepit old man should be killed in a war.

Dā'ūd—'Ikrima—Ibn 'Abbās: The Prophet used to order his troops not to kill monks.

8. When Muslim slaves and beasts captured by the enemy are recaptured by the Muslims, their owners may recover them as long as there has been no distribution of booty. Afterwards the owner may recover them only after paying their value to the soldier who got them as his share in the spoils, or the price to the man who bought them from such soldier or from a Ḥarbī. If, however, they were given away by a Ḥarbī as a gift to some Muslim, then their owner can recover them against payment of their value.

TRADITIONS

‘Abd Allāh b. ‘Umar—Nāfi‘—Ibn ‘Abbās: Two of my slaves ran away with a horse to enemy territory. When Khālid b. al-Walīd seized that territory he brought back both of them, one during the life of the Prophet and the other after his demise.

Simāk b. Ḥarb—Tamīm b. Ṭarafa: A Ḥarbī got hold of a she-camel belonging to a Muslim and sold it to another Muslim. When the owner claimed his camel the case was brought before the Prophet, who, after the plaintiff's case was proved, gave judgment that the camel should be returned to its owner against payment of the purchase price paid to the Ḥarbī.

Al-Ḥajjāj—al-Ḥakam—Ibrāhīm: Any Muslim property captured by the enemy and then recaptured by the Muslims can be recovered by its owner before the distribution of the booty. Afterwards he is entitled to recover it by paying its price.

Layth—Mujāhid: The same.

Mughīra—Ibrāhīm: Free Muslims or Dhimmīs taken prisoners by the enemy and sold as slaves to a Muslim, are not considered as slaves and should, as free men, endeavour to repay to the purchaser the money he paid for them.

Said Abū Yūsuf: This is the best I have heard in this matter, but *God knows best*.

9. Female slaves, mothers of children by a Muslim, or mudabbar-slaves cannot legally be bought, but if bought and then freed, the money paid for them could be recovered from them. If, after a free man was taken prisoner his captors accepted Islām on condition that they could retain the prisoner as slave, such condition is void and he will be free and not enslaved. The same applies to a mother of a Muslim child, a mudabbar-slave and a mukātab-slave. They will revert to their former status. Anything which cannot be sold

cannot be acquired by enemies who capture it and make a condition that they could retain it after accepting Islām, but anything which is permitted to be sold, as slaves, male and female, or other property, can be acquired by accepting Islām.

TRADITIONS

Asha‘th or someone else—al-Ḥasan: Once al-Ḥajjāj brought a prisoner and asked ‘Abd Allāh b. ‘Umar to kill him. Ibn ‘Umar refused citing the verses: “So when ye meet those who have disbelieved . . . take prisoners, then liberate them either freely or by ransom” (Q.47 : 4-5).

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Al-Ash‘ath: Al-Ḥasan was against killing prisoners.

Ibn Khadij: ‘Aṭā’ was against killing prisoners.

Muḥammad—al-Zuhrī—Ḥumayd b. ‘Abd al-Raḥmān: ‘Umar b. al-Khaṭṭāb said: The release of one Muslim from the hands of the heretics is to me worth more than the whole Arab peninsula.

Layth—al-Ḥakam b. ‘Utayba and Mujāhid: Abū Bakr said: If you capture a pagan and two mudds of dīnārs are offered to you for his release, do not agree.

Abū Ḥanīfa—Ḥammād—Ibrāhīm: The ruler has the discretion to decide whether to permit the release of prisoners with or without ransom or to kill them.

Some scholar—‘Alī b. Zayd—Yūsuf b. Mihrān—Ibn ‘Abbās: ‘Umar b. al-Khaṭṭāb said: the ransom for any Muslim prisoners in the hands of pagans must be paid by the Treasury.

‘Aṭā’ b. al-Sā‘ib—al-Sha‘bī: ‘Abd Allāh b. ‘Umar said: In the Battle of Uḥud the women nursed the wounded.

Al-Ḥasan b. ‘Umāra—Munīr b. ‘Abd Allāh—His father: When I accepted Islām I asked the Prophet to let my tribe keep what we had agreed upon, and he gave his consent.

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Al-Ḥajjāj—‘Aṭā’: He who accepts Islām has a right to keep the properties which were the subject of his agreement when accepting Islām.

Ibn Jurayj: ‘Aṭā’ was asked by me about the legal position of some free women who were taken prisoners by the enemy and bought by someone as slaves. ‘Aṭā’ replied: The purchaser acquired no rights because they were not slaves and therefore has to release them against payment of what he paid for them. In any case he should not return them to the enemy.

10. If the Muslims besiege a fortress and the enemy agrees to capitulate on condition that an arbitrator named by the Muslims should decide about their future, his award is binding even if he decides that the males should be slain and the females and children considered captives. Such was the award of Sa'd b. Mu'adh concerning the tribe of Banū Qurayza.¹

TRADITIONS

Muḥammad b. Ishāq: The Prophet besieged the Banū Qurayza and they agreed to capitulate on condition that Sa'd b. Mu'adh should decide about their fate. Sa'd was at that time suffering from a wound caused by an arrow shot at him in the Battle of the Trench. His men carried him on a donkey from the tent of a woman named Rufayḍa who was nursing him, and informed him that he was appointed to decide the fate of the Banū Qurayza, who were his allies. Sa'd thereupon said: It is my opportunity to prove that in God's causes I fear no criticism. Those who heard him informed their tribe that the Banū Qurayza were doomed. When he met the Prophet, who informed him about his assignment, he asked: Do you undertake to accept and comply with my judgment? and the Prophet and the Muslims said: yes. Then he turned to the other side and when they also agreed he proclaimed: I decide that their male fighters should be slain and the women and children taken captives. The Prophet then said: You have judged them with God's judgment from above the Seven Skies. He then ordered their arrest in the house of a woman of the Banū al-Najjār named Bint al-Ḥārith and they were decapitated.

11. An arbitrator appointed in a cease-fire agreement is also entitled to decide that the enemies submitting to his judgment should be set free unharmed subject to the payment of jizya, or freed if they agree to accept Islām. The enemies may also agree to submit to the judgment of the ruler himself or his representative. If the arbitrator agreed upon dies before giving judgment, another should be proposed to them, and if they do not agree the fighting should be resumed after they return to their fortress, if they left it during the peace negotiations. If two arbitrators were agreed upon and one dies, the other one cannot proceed without the consent of all concerned, who may nominate a new second arbi-

¹ Y. no. 52

trator to replace the one who died. The judgment of two arbitrators must be unanimous, but they cannot decide that the besieged may retreat to other safe places in enemy territory, because such a judgment would be *ultra vires*. In such a case a new judgment must be given or the siege continued. If the besieged agree that they should be treated in accordance with God's judgment and the Holy Book, this is to be construed to mean that they agree that the ruler himself shall decide their fate. He may therefore act in the interests of religion and Islām and decide as S'ad b. Mu'ādh decided in the case of the Banū Qurayza, or leave them unharmed under protection and impose taxes on them to provide income for the Muslims, as God has prescribed: "Until they pay the jizya offhand being subdued" (Q.9 : 29). The Prophet used to invite the pagans to accept Islām or to pay jizya, and 'Umar b. al-Khaṭṭāb put the inhabitants of al-Sawād under protection after the conquest and let them save their lives by payment of jizya. However, those who accept Islām before the conquest are free Muslims and their lands are 'ushr land, but those who do not become Muslims but are allowed to live under protection remain on their lands but have to pay kharāj tax on it. If those whom the ruler has decided should be slain and their women and children taken captive accept Islām, they and their families are saved. Lands of those who do not accept Islām and are slain will be distributed after the Fifth is taken, or remain as property which has no owner and will be charged with taxes and administered as state-land.

A Dhimmī cannot be appointed as arbitrator because a non-believer cannot be a judge in matters between Muslims and their enemies and the judgment of such an arbitrator, if erroneously appointed, is not valid. Nor can a Muslim convicted of false accusations, who is therefore not accepted as a witness, serve as an arbitrator, nor a minor, a woman or a slave. No arbitrator can decide that males, females and children should be slain because females and children may only be taken captive but not slain. However, a decision may be given to take part of the males as captives, and to slay only those who may betray the Muslims or rebel against them if permitted to live. If an arbitration was agreed upon but no one appointed, then the ruler will decide at his discretion. Only a man whose evidence is accepted in a court and who is godfearing and not incapacitated in any legal way may serve as an arbitrator in peace

negotiations with besieged enemies. But not a Muslim prisoner of war, nor a merchant living in enemy territory. If besieged enemies leave their fortress with their families, properties and slaves, having with them also Muslim prisoners of war with properties and slaves, after having agreed on an arbitrator and then the arbitrator having died without delivering judgment, the besieged will be allowed to return to their fortress but without the Muslim prisoners and the Muslim slaves who will be sold and their price given to the besieged. Dhimmī prisoners, free or slaves, will also be prevented from returning to the fortress, and so also those who have accepted Islām, but the price of Dhimmī slaves will be given to them. 126

TRADITIONS

Al-A'mash—Abū Wā'il: We received 'Umar's instructions, while in Khāniqīn, saying: When besieged enemies in a fortress agree to surrender on condition that their fate be decided in accordance with God's judgment, do not agree to such conditions because you cannot know God's judgment, but agree that you yourselves will decide and then do what you may deem fit.

12. A safe conduct guarantee—Amān—for an enemy cannot be accepted from a Dhimmī, even if he has helped the Muslims in war. However, a slave who is a soldier can grant Amān as is stated in a tradition, saying that the lowest in status amongst Muslims may accord Amān. As to non-combatant slaves, there is a controversy, some scholars according them such rights and some denying them. There is a tradition that 'Umar permitted a slave to grant Amān, but it is not specified whether he was a soldier or not. Women have such a right, and it is said on behalf of the Prophet that Zaynab granted Amān to her husband and 'Umm Hānī to two relatives. Minors, Muslim prisoners and merchants in enemy territory cannot grant Amān. Words like: "Don't fear", "Don't be afraid", constitute a valid Amān even if said in Persian because God understands all languages. It may be granted even by pointing a finger without saying a word, but some scholars do not agree to such a procedure. 'Umar used to agree to such form, but *God knows best*.¹

¹ Ibn Qutayba's 'Uyūn al-Akhbār contains three forms of Amān certificates, in pp. 225–226 of Vol. II, Cairo edition, 1925.

TRADITIONS

‘Aṣim—Fuḍayl b. Yazīd al-Raqāshī: ‘Umar wrote to us that a Muslim slave may grant Amān.

Al-A‘mash—Abū Ṣāliḥ—Abū Hurayra: The Prophet said that with regard to Amān all Muslims are equal so that even the lowest in status amongst them may grant it.

Some scholar—Abān b. Ṣāliḥ—Mujāhid: ‘Umar said that if a Muslim was threatening an enemy by pointing at him and the enemy mistook such gesture for an Amān, it would be considered a valid Amān.

Muḥammad b. Ishāq—Sa‘īd b. Abī Hind—Abū Hurayra, client of ‘Aqīl b. Abī Ṭālib—‘Umm Hānī bint Abī Ṭālib: When the Prophet captured Mecca two of my pagan relatives sought refuge in my house while fleeing from my brother who intended to kill them. After closing the door behind them I went to see the Prophet in Upper Mecca and told him what I had done. He agreed that as I gave them protection they were to be considered under Amān.

Al-A‘mash—Ibrāhīm—Al-Aswad—‘Ā’isha: Let the women take away some of the Muslim males’ rights.

Hishām—Al-Ḥasan: Amān granted by a woman or a slave is valid.

13. It is not allowed to have sexual intercourse with a captive female slave before the distribution of the spoils. If after the distribution a female slave is allotted to someone, he must wait one or two menses, or two or three months, to make sure that she is not pregnant. The Prophet has prohibited intercourse with pregnant captives before they give birth. A Majūs woman is forbidden to a Muslim in any case in accordance with the view of most scholars.

TRADITIONS

Abān b. ‘Ayyāsh—Anas: The Prophet said that it is not allowed for two men, who fear God and the Last Day, to cohabit with one female during the same period of intermenses.

Qays b. al-Rabī‘—Qays b. Muslim—Al-Ḥasan b. Muḥammad b. al-Ḥanafīya: The Prophet agreed to a peace treaty with the Majūs of Hajar on condition that they should pay jizya and that Muslims should not be allowed to marry their females or share their foods.

Simāk b. Ḥarb—Abū Salama b. ‘Abd al-Raḥmān: If a Muslim

captures or buys a Majūs female slave he cannot cohabit with her before she accepts Islām.

Sa'īd—Qatāda—Mu'āwiya b. Qurra: 'Abd Allāh was against allowing cohabitation with a pagan slave female.

Mughīra—Ḥammād—Ibrāhīm: Captured Majūs and pagan females are persuaded and forced to accept Islām before they can be taken as concubines and servants, but if they refuse they may be used as servants but not as concubines.

Mughīra—Ḥammād—Ibrāhīm: Captured Jewish and Christian females are invited to accept Islām, but even if they refuse it is permissible to take them as concubines and servants and then to force them to follow Muslim rules of purification.

This is what I have heard on these matters but *God knows best*.

14. It is not permissible to conclude a cease-fire agreement for a fixed number of years if the Muslims are able to force a final peace treaty; however, it is permitted if the intention is to give the enemy time to make up their minds whether they desire to be Dhimmīs or to become Muslims, as the Prophet did at Ḥudaybiya with the Quraysh tribe. It is also permissible in a case where the enemy besieges a Muslim fortress and there is no other alternative. In such a case they may pay ransom and also undertake to hand over to the enemy any of them who went over to the Muslims.

TRADITIONS

Muḥammad b. Ishāq—al-Zuhrī: At the Battle of the Trench the Prophet wanted to give to those who besieged the Muslims a third of the palm trees of al-Madīna as ransom, to gain time and to break the encirclement, but Sa'd b. Mu'ādh and Sa'd b. 'Ubāda convinced and persuaded him to change his mind. 128

CHAPTER THREE

GRANTING OF PENSIONS AND FIEFS

PENSIONS

'Umar's decision not to distribute the land amongst those who captured it was guided by God's book and was of benefit to all Muslims. The taxes collected from such lands enabled the payment of pensions and wages to the troops from this perpetuated income, thus making the wars of Jihād possible and providing security against the recapture of their lands and places by enemies. 15

TRADITIONS

Ibn Abī Najīh: When the Caliph Abū Bakr received some income from the spoils of war he invited everyone who was given a promise by the Prophet. Jābir b. 'Abd Allāh came and said: The Messenger of God promised me: If money arrives from al-Baḥrayn I will give you so much, pointing to his open palms. Thereupon Abū Bakr said to Jābir: Take! After counting what he could take with his palms Jābir found 500 dirhams to which Abū Bakr added another 1,000. Then he paid everyone whatever the Prophet had promised and divided the balance amongst all the people, minors and adults, freemen and slaves, males and females, in equal shares so that everyone received seven dirhams and one third of a dirham. Next year when more income arrived the share of everyone amounted to 20 dirhams. Some Muslims objected to this equal division which took no account of some people who should have had preference for virtue, precedence and priority. To these objectors Abū Bakr replied that virtues are rewarded by God, but that in matters of subsistence equality is better than preference. However, 'Umar b. al-Khaṭṭāb did not agree with this view, saying: I cannot treat one who once fought against the Prophet in the same way as one who always fought with him. So when income arrived he granted those Emigrants and Companions who had precedence by virtue of their participation in the Battle of Badr 5,000 each, and to those of them who did not fight in the Battle of Badr 4,000, and to those whose devotion to Islām was similar to that of the fighters at Badr, lesser amounts in accordance with precedence. 24

Abū Ma'shar—Client of 'Umra and others: When incomes reached 'Umar b. al-Khaṭṭāb from the spoils of war he said: I do not agree with the view of Abū Bakr because I cannot treat those who once fought against the Prophet in the same way as those who always fought with him. He therefore granted to each of those Emigrants and Companions who took part in the Battle of Badr 5,000, and to each of those of them who did not participate in that battle 4,000, and to each of the Prophet's wives 12,000, except for Ṣafiyya and Juwayriya who were granted 6,000 each. When they refused to accept it, he explained that the others had been Emigrants and therefore had preference. However, they did not accept this excuse and reiterated that the grant was for their standing as the wives of the Prophet, which position is equally shared by all wives. 'Umar conceded to their argument and granted them also 12,000 each. Then he granted to al-'Abbās, the Prophet's paternal uncle, 12,000, and to Usāma b. Zayd 4,000, but to his own son, 'Abd Allāh b. 'Umar, he gave 3,000 only. When 'Abd Allāh asked why Usāma was given 1,000 more, arguing: What preference has his father over my father and which virtues does he possess more than I? 'Umar replied: The Prophet liked the father of Usāma more than he liked me, your father, and he also liked Usāma more than he liked you. He also granted to al-Ḥasan and al-Ḥusayn 5,000 each as the children of 'Alī and in respect of their standing as grandchildren of the Prophet. He also granted to sons of the Emigrants and Companions 2,000 each, but to 'Umar b. Abī Salama he added another 1,000. When Muḥammad b. 'Abd Allāh b. Jahsh asked for the reason of this discrimination, 'Umar explained: I have granted him 2,000 for the sake of his father Abū Salama and I added another 1,000 for the sake of his mother 'Umm Salama. If you had a mother like 'Umm Salama I would have added another 1,000 for you also. He then granted to the people of Mecca and other dignitaries 800 each. When Ṭalḥa b. 'Ubayd Allāh presented to him his brother 'Uthmān, he granted him also 800, but to al-Naḍr b. Anas he granted 2,000. When Ṭalḥa asked for the reason of this discrimination, 'Umar said: Al-Naḍr's father met me at the Battle of Uḥud and asked me where the Prophet was. When I replied that I had not seen him and that he might have been killed, he drew his sword and broke its scabbard, saying: The Prophet is dead but God is alive and cannot die. He then continued to fight until he was killed,

while the father of your brother is still grazing his sheep in some places. 'Umar continued with this policy throughout his reign.

Muḥammad b. Ishāq—Abū Ja'far: When 'Umar decided to allow grants to the people, they told him to start with himself, but he refused and started with those nearest to the Prophet by granting allowances to al-'Abbās and then to 'Alī, and continued so to five tribes until he concluded with the Banū 'Adī b. Ka'b tribe.

Al-Mujālid b. Sa'īd—al-Sha'bī—One who lived during the reign of 'Umar b. al-Khaṭṭāb: After God helped him to conquer the Persians and Romans he consulted some of the Prophet's Companions concerning the payment of pensions and the yearly accumulation of funds for this beneficial purpose. When they agreed to this idea 'Abd al-Raḥmān b. 'Awf suggested that 'Umar should start the list of pensioners with himself, but he refused and said that he would begin with the Prophet's tribe, the Banū Hāshim. He listed all the members of Banū Hāshim, client or freeman, who participated in the Battle of Badr and granted to each of them 5,000 and to al-'Abbās b. 'Abd al-Muṭṭalib 12,000. He then granted to those of the Banū Umayya b. 'Abd Shams who participated at Badr and then to those closely related to the Banū Hāshim, 5,000 to each man, client or freeman, of those who fought at Badr and to the Companions, 4,000; the first of them to receive a pension was Muḥammad b. Maslama. He also granted to the Prophet's wives 10,000 each but to 'Ā'isha 12,000. To those who emigrated to Abyssinia he granted 4,000 each. To 'Umar b. Abī Salama he granted 4,000 for the sake of 'Umm Salama, and when asked by Muḥammad b. 'Abd. Allāh b. Jahsh about the reason for granting more to 'Umar b. Abī Salama than to the sons of other Emigrants, he explained that he deserved more on account of his standing with the Prophet and for the sake of his mother who could not be compared to other mothers. He granted to al-Ḥasan and al-Ḥusayn 5,000 each, as grandchildren of the Prophet. The pension for others was 300 or 400, to client or freeman, and to the wives of the Emigrants and Companions, 600, 400, 300 and 200 each. He also granted to some of the Emigrants and Companions 2,000 each. He granted 2,000 to al-Rufayl when he accepted Islām and was allowed to keep his lands after he undertook to pay the taxes on them.¹ Said al-Mujālid: I had an aunt who received 200 as a pension but when Sa'īd b.

¹ Y. nos. 183, 186. The name al-Rufayl is corrupted in Būlāq's and Salafiya's editions.

al-‘Āṣ was appointed on al-Kūfa he cancelled 100. However, when ‘Alī came for a visit I asked him about it and he confirmed her full rights to her pension.

Muḥammad b. ‘Amr b. ‘Alqama—Abū Salama b. ‘Abd al-Raḥmān b. ‘Awf—Abū Hurayra: When I came from al-Baḥrayn with 500,000 dirhams, I went to ‘Umar b. al-Khaṭṭāb in the evening with the money and told him that it amounted to five times 100,000. He ordered me to go to sleep and return next day. When I returned in the morning and asked him to relieve me of the custody of the money he asked if it was acquired in an honest way. When I assured him of this he addressed those present informing them about it and asked if they wished it to be distributed by measuring, counting or weighing the shares to be allotted. One of those present suggested that Dīwāns should be established for dealing with pensions. ‘Umar liked this idea and complied. He granted to each of the Emigrants 5,000 and to each of the Companions 3,000 and to each of the wives of the Prophet 12,000. When Zaynab bint Jahsh received her pension she told ‘Umar that there were amongst her friends some who were more in need of the money. But she was told that it was for her only. She then concealed it under a cloth and asked one of her maids to draw with her hand from it, naming with each draw the name of a family in need till the maid asked not to be forgotten. The maid was then allowed to take what was left, which was no more than 85 dirhams. Zaynab then lifted her hands and said: O God! Do not let me ever need ‘Umar b. al-Khaṭṭāb’s pension after this year. She was the first to die after the Prophet and the most devoted and generous woman. ‘Umar also granted the pension of a Companion to Zayd b. Thābit of the Banū Mālik b. al-Najjār tribe, who lived around the Mosque, after starting with the large families of the Banū ‘Abd al-Ashhal, then al-Aws whose dwellings were more remote, and then al-Khazraj.

‘Abd Allāh b. al-Walīd al-Muzanī—Mūsā b. Yazīd: When Abū Mūsā al-Ash‘arī brought from the spoils of war 1,000,000 dirhams, ‘Umar was so overwhelmed that he asked him to repeat the figure, which he did by saying, I am bringing with me ten times one hundred thousand. Thereupon ‘Umar said: If this is true even the shepherd in al-Yaman will receive his share without blushing by asking for it.

A Shaykh from the people of Al-Madīna—Ismā‘il b. Muḥammad

b. al-Sā'ib—Zayd b. Aslam—His father: I heard 'Umar b. al-Khaṭṭāb saying: By Allāh, there is no God but He! There is no one who has no right of disposition over this wealth and no one has more rights than another excluding "a servant enslaved" (Q.16 : 77).¹ I am only one of you and we all owe our positions and standing to God's book and our lot to the Prophet. Every one should therefore be considered in accordance with his relation to Islām, his origins, his past, his contribution to Islām and his value for the Islāmic creed. By God! If I stay alive, I will take care that a shepherd from the Ṣan'ā' mountains shall receive his share from the booty in his place without blushing by asking for it. The Dīwān of Ḥimyar was kept separately and the heads of the Army and villages used to receive from it their pensions, e.g. some 9,000, some 8,000 or 7,000 in accordance with their needs of subsistence and their positions. A new born infant was allotted 100 dirhams, then on growing 200, and then more when he became an adult. When 'Umar saw the inflow of booty he said: If I live another year, I wish to grant all men, from the first to the last, an equal pension. He died before this happened.

Alī b. 'Abd Allāh—al-Zuhrī—Sa'īd b. al-Musayyib—When booty from Persia reached 'Umar he exclaimed: By God! No roof except the sky shall cover it till I distribute it amongst the people. He then ordered it to be placed in the open corridors of the Mosque, appointing 'Abd al-Raḥmān b. 'Awf and 'Abd Allāh b. Arqam to guard it during the night. When 'Umar met the people in the morning and the cloth covering the booty was removed, he started to cry at the sight of the pearls and diamonds, gold and silver, no eye had seen before. To 'Abd al-Raḥmān b. 'Awf's remark that this was an occasion for being thankful and not for crying, he replied: No doubt! However, God does not bestow this on people without planting among them enmity and hatred! It was agreed that it should be distributed by handfuls and not measured by Ṣā'. This was before the Dīwāns were established.

Al-A'mash—Abū Ishāq—Ḥāritha b. Muḍarrib: 'Umar fixed the quantity of two jarībs of wheat, each of seven qafīz, as a monthly pension, by feeding with them one day 30 needy persons at lunch and dinner time, thus establishing a monthly quota of two jarībs per person.

¹ Y. nos. 105.

One old Shaykh—His masters: ‘Umar had 4,000 horses destined for fighting in God’s causes. From these he used to allot some to those with small pensions or insufficient means, saying: If you cause the horse sickness or death from lack of food or water you will be responsible, but if you ride him in a battle for God’s causes and he or you are hit you will not be responsible.

ON THE FIEFS (AL-QAṬĀI‘)

The fiefs in al-‘Irāq were granted from the lands of the Persian kings and those of their families which were not in the possession of anyone.¹ From such and similar ownerless or heirless properties a just ruler should grant fiefs to those who have achieved something valuable for Islām. Anyone taking back land granted and giving it to someone else is considered to be robbing someone and giving the usurped property away. This rule was followed by ‘Umar b. ‘Abd al-Azīz. ‘Ushr tax, i.e. ṣadaqa, or double ‘ushr, or kharāj tax, if the land is irrigated from rivers flowing in kharāj lands, can be charged for such fiefs at the discretion of the ruler, specially in the lands of al-‘Irāq. ‘Ushr only is charged on fiefs when the granted lands require investment for digging canals, erecting farm buildings and other heavy expenses for the farming of the granted fief. 32

It is up to you to impose on fiefs whatever you may deem better and more expedient. However, no changes can be introduced concerning fiefs in the lands of al-Ḥijāz, Mecca, al-Madīna, al-Yaman and the lands of the pagan Arabs conquered by the Prophet, which are ‘ushr lands, nor can the category of the land be changed or the taxes increased or reduced, because they were agreed upon by the Prophet and no ruler can change it. We were informed that the Prophet imposed ‘ushr on the lands conquered in Arabia but that no kharāj was imposed on any of them. This is the view of our followers, maintaining that all the lands in Arabia were treated as Mecca and al-Madīna, which were not charged with kharāj, and the lands of al-Baḥrayn and al-Ṭā’if were treated likewise. It can, however, be argued that the Arab pagans, from whom no jizya is accepted, as they are offered the alternatives of accepting Islām or being killed, are different from other Arabs and so are their lands. 33

The Prophet imposed on the people of al-Yaman, who were Ahl

¹ Tax, p. 25-26.

al-Kitāb the jizya on their necks in accordance with God's words in his book: "Whoever makes friends of them is one of them" (Q.5 : 56), and he imposed on each adult, male or female, one dīnār or its value in clothes.¹ However, on their lands he did not impose kharāj, but 'ushr on lands naturally irrigated and half 'ushr on lands artificially irrigated, because of the expense of artificial irrigation.

As to the name of "Qurā 'Arabiyya", the Khawārij were mistaken to interpret this name as including Persian villages. This is wrong because it refers to a district in Arabia. This name is mentioned in Traditions from the Prophet and his Companions and followed by 'Umar and 'Alī whose knowledge is superior to that of the Khawārij.²

As to the lands of Baṣra and Khurāsān, I consider them to be of the same category as the lands of al-Sawād. Those conquered by force ('Anwa) are kharāj lands, but those whose owners concluded peace treaties (Ṣulḥ) are taxed as agreed upon and nothing more is imposed. However, in such a case those who accept Islām their lands become 'ushr paying, as in al-Sawād, in accordance with the established Sunna of the reigns of many Caliphs, and should be left by you in the same state.

Generally, any cultivable land in al-'Irāq, al-Ḥijāz, al-Yaman, al-Ṭā'if, land of nomadic Arabs, and other land which does not belong to anyone or is not possessed by anyone or is not the property of anyone by right of inheritance and has no traces of a building on it, may be granted by the ruler as a fief to someone who develops and cultivates it and pays the kharāj tax if it is kharāj land and 'ushr tax for 'ushr land. All lands conquered by force ('Anwa) are kharāj land when granted as a fief, except if the ruler at his discretion grants it as 'ushr land or imposes a payment of one 'ushr and a half (15 per cent.) or Double-'Ushr (20 per cent.) or more, or kharāj tax, if he thinks that the grantee can afford to pay it. It is *up to you to decide* what you think is better for the Muslims and of more advantage to them in accordance with your religious conscience.

It is forbidden to grant fiefs out of properties in which Muslims or Confederates have any rights except in cases where such rights were legally forfeited. I consider the right of the ruler to grant fiefs to be similar to his right to spend Treasury funds on gratuities to those

¹ Y. nos. 47, 228-230.

² Y. nos. 619-622.

who have achieved something beneficial to Islām or something which will strengthen Islām against its enemies, or anything which the ruler will consider good and beneficial for the Muslims. The granting of fiefs for such purposes, from the categories of land mentioned before, which are not owned by anyone and are uncultivated, will cause the country to be developed and the income from taxes to increase. This is my view about the granting of fiefs. It was practised by the Prophet for inducing people to accept Islām, and was practised by his successors whenever they considered such granting of fiefs beneficial.

TRADITIONS

‘Abd Allāh b. al-Walīd al-Muzanī—A person from the Banū Asad tribe who had the best information about al-Sawād lands: The Sawāfī al-Astān¹ yielded in the times of ‘Umar 4,000,000, and these were the lands taken over by ‘Umar from the properties of the Persian Kings and their families, or the lands of those who were killed in war or had fled, or every water source or “Dayr Barīd” (post stations). Two more categories were mentioned to me which I cannot remember.²

‘Abd Allāh b. al-Walīd—‘Abd Allāh b. Abī Ḥurra: ‘Umar b. al-Khaṭṭāb converted ten categories of properties into State land = “Ṣawāfī”: (1) Land of those killed in war; (2) land of those who fled; (3) all lands which belonged to the Persian kings; (4) all lands which belonged to any one of the Persian King’s relatives; (5) every water source, and (6) every Post Station. I have forgotten four other categories which belonged to the Persian Kings. The income from all these lands was 7,000,000. During the “al-Jamājim” disturbances the Land Registry offices were burned down and the original registrations of the lands and their boundaries were lost and became unknown.³

Some of the elders of al-Madīna: In the Land Registry offices it was recorded that ‘Umar converted into State land the properties of the Persian kings and their families, and of those killed in battle or who fled, and every water source or swampy brushwood. From these lands ‘Umar used to grant fiefs.

¹ In the text “Ṣawāfī al-Athmār”? L. p. 91; Y. no. 199; Tax. p. 38.

² Tax. pp. 35-36; D. p. 26.

³ Y. no. 198.

Al-Mujālid b. Sa'īd—'Āmir al-Sha'bi: 'Umar b. al-Khaṭṭāb sent 34
'Utba b. Ghazawān to al-Baṣra, known as Arḍ al-Hind, and he took possession of it before Sa'd b. Abī Waqqāṣ settled in al-Kūfa. Later Ziyād b. Abīhi has built there a mosque and a palace which still exist today in the same place. Abū Mūsā al-Ash'arī conquered Tustar, Ispahān, Maharājān Qudhaq and Mā'-Dhubyān. Sa'd b. Abī-Waqqās conquered the surroundings of al-Madā'in.

Ibn Abī Najīh—'Amr b. Shu'ayb—His father: The Prophet granted a fief to the people of Muzayna, or Juhayna. When they neglected it and other people tried to cultivate it, they were opposed by the grantees. The dispute was brought before 'Umar b. al-Khaṭṭāb who said: If it were a grant from myself or Abū Bakr I would have abrogated it, but it is from the Prophet Himself. Then he added: If someone is granted land and neglects to cultivate it for three consecutive years, then other people who cultivate it have more right to it.¹

Hishām b. 'Urwa—His father: The Prophet granted to 'Urwa b. al-Zubayr land with palm trees from the properties of the Banū al-Naḍīr, known as al-Jurf. When 'Umar b. al-Khaṭṭāb granted the lands of al-'Aqīq as a whole to some people, it included the land granted by the Prophet to 'Urwa b. al-Zubayr, who asserted his right by challenging any of 'Umar's grantees and declaring that he was in possession of the land granted. One of the grantees, Khawāt b. Jubayr, asked 'Urwa to transfer to him his rights, and he did so.²

Sufyān b. 'Uyayna—'Amr b. Dīnār: When the Prophet took over al-Madīna he granted fiefs to Abū Bakr and 'Umar.

Asha'th b. Sawwār—Ḥabīb b. Abī Thābit—Ṣult al-Makkī—Abū 35
Rāfi': The Prophet granted some people land but they neglected to cultivate it and sold their rights during 'Umar's reign for 8,000 dīnārs or dirhams and deposited the money with 'Alī b. Abī Ṭālib. When they got the money back they found that the zakāt had been deducted by 'Alī who said: Do you think I could keep money without paying its due zakāt?

Some of our elders from al-Madīna: The Prophet granted Bilāl b. al-Ḥārith al-Muzanī lands between the sea and the desert. 'Umar in his time proposed to him that in view of his incapacity to develop

¹ Y. no. 287.

² Tax. p. 35.

it, it should be granted to others, excluding the mines found in it, and Bilāl consented.¹

Al-A'mash—Ibrāhīm b. al-Muhājir—Mūsā b. Ṭalḥa: 'Uthmān b. 'Affān granted to 'Abd Allāh b. Mas'ūd land in al-Nahrayn and to 'Ammār b. Yāsir land in Istiniya and to Khabbāb lands in San'ā' and to Sa'd b. Mālik the village of Hurmuzān and these grants still obtain. 'Abd Allāh b. Mas'ūd and Sa'd used to give their land to cultivators against a third and a fourth of the crops.

Abū Ḥanīfa from those who transmitted to him: 'Abd Allāh b. Mas'ūd, Khabbāb, Ḥusayn b. 'Alī, Shurayḥ and other Companions owned kharāj land for which they used to pay the kharāj tax.

Hishām b. 'Urwa—His father—Sa'īd b. Zayd: The Prophet said: He who takes possession of one span of land without right will endure the load of seven earths in his grave.²

All these Traditions establish the fact that the Prophet and his successors used to grant fiefs because the Prophet considered it of importance to Islām and to the development of the land, and so did his successors, by rewarding those who benefited Islām and harmed its enemies. Otherwise they would not have granted fiefs.

¹ Y. no. 294; Tax. p. 35.

² Y. no. 302.

CHAPTER FOUR

'USHR AND KHARĀJ LANDS

The Fay¹, O Commander of the Faithful, is according to us, the kharāj,² i.e. the taxes from the land. *But God knows best.* He said in His book: "What Allāh has allotted to His Messenger from the people of the towns is for Allāh and the Messenger and the Kinsmen, the Orphans, the Indigent and the Follower of the Way, in order that it may not be passed from hand to hand among those of you who are rich" (Q.59 : 7). Then after concluding with this category, it continues: "As for the poor, the Muhājirūn who were expelled from their dwellings and their properties, desiring bounty and goodwill from Allāh and helping Allāh and His Messenger—these are the truthful" (Q.59 : 8), and then: "And for those who occupied the dwelling and the faith, loving whosoever might emigrate to them, not cherishing in their breasts any feeling of need because of what is given to them, but preferring them over themselves even though there was want amongst them—such as are protected from niggardliness of soul are the ones who prosper" (Q.59 : 9), and then: "And those who have come after them saying: O our Lord, grant forgiveness to us and to our brethren who have preceded us in the faith, and set not any malice in our hearts towards those who have believed; O, our Lord, verily Thou art kindly and compassionate" (Q.59 : 10). This last verse, and *God knows best*, refers also to those believers who come after them till the Day of Resurrection. 13

TRADITIONS

One of our scholars told me in the name of Yazīd b. Abī Ḥabīb that 'Umar wrote to Sa'd when he conquered al-'Irāq thus: After Greetings. I received your letter mentioning that the men asked you to divide amongst them the spoils and what God has bestowed on them. When my present letter reaches you, find out what booty those men brought to the camp, such as horses or other moveable properties, and divide it amongst those Muslims who were present 14

¹ Tax. p. 23.

² Tax. p. 26; Y. no. 6.

at the battle. However, leave the lands and the watercourses for the peasants, so that they can work on them to provide for the pensions of the Muslims. For, if you apportion the lands amongst those present, nothing will be left for future generations. Whereas I have ordered you to invite everyone to accept Islām before starting to fight them, therefore anyone who accepts your offer before the battle is considered as one of the Muslims with all rights and responsibilities and will have a share in everything as a Muslim. However, he who accepts your offer after he is defeated in battle will also be a Muslim, but his property will belong to the Muslims who acquired it by conquest, before his conversion. This is my order and letter of appointment to you.¹

Some scholars of al-Madīna told me: When the armies which captured al-ʿIrāq approached ʿUmar b. al-Khaṭṭāb, through Saʿd b. Abī Waqqās, concerning their rights, ʿUmar consulted the Companions of the Prophet about the establishment of the Dīwān offices for the payment of pensions to soldiers. Previously, in the time of Abū Bakr, all soldiers received equal pensions, but after the conquest of al-ʿIrāq the question of priorities arose and the general consensus of opinion was that a priority system should be introduced. He also consulted them about the distribution of the lands of al-ʿIrāq and Syria, which God had bestowed on the Muslims. Some were of the opinion that the lands should be distributed. To them ʿUmar said: What about the future generations of Muslims who will find that all the lands with the tenants on them are already distributed, occupied and inherited? No, this is not good advice. When ʿAbd al-Raḥmān b. ʿAwf asked: Are not the lands with their tenants part of what God has bestowed on us? ʿUmar replied: Yes, but I do not see it from this angle. By God! It may be that after me there will be no more great conquests or perhaps such as will be only a burden. If I distribute now the lands of al-ʿIrāq and Syria with their tenants, who will sustain the frontier settlements? And who will care for the children and widows of al-ʿIrāq and Syria? Those in favour of distribution, however, insisted and asked: Do you want to create a trust of what God bestowed on us for fighting with our swords, in favour of people who did not participate in the war and were not present at the battles, and in favour of their children and grandchildren? When ʿUmar did not change his mind they asked

¹ Y. nos. 49, 121.

him to consult the early Emigrants. 'Abd al-Raḥmān b. 'Awf was of the opinion that the lands should be distributed but 'Uthmān, 'Alī, Ṭalḥa and Ibn 'Umar agreed with 'Umar. He then sent for ten of the Companions, five from the tribe of al-Aws and five from al-Khazraj, from among the oldest and noblest of them. When they came he said to them: I troubled you to come because I want you to share with me the responsibility of administering your affairs. I am one of you and you are here to declare justly what your opinion is, be it against me or with me, as I want you to be objective. You have God's book speaking the truth and by God I want only justice and truth. There are those people who accuse me that I want unjustly to deprive them of their rights. May God protect me from depriving someone of what belongs to him by giving it to another. This would make me very miserable. However, I think that there is nothing more to capture after the Persian lands and their tenants. I have distributed the movable spoils of war amongst those entitled to them after deducting the Fifth and allotting it where it belongs. I thought, however, that I should not distribute the lands with their tenants, but rather leave them as a trust and impose on the lands the *kharāj* tax and on the men the *jizya*-Poll-tax to constitute a permanent income for the Muslim soldiers, their children and future generations. Do you not think that the frontier settlements need soldiers in their garrisons, or that places like Syria, al-Jazīra, al-Kūfa, al-Baṣra and Egypt need not troops in their barracks? From where will all those troops get their pay if we distribute the lands with their tenants? Thereupon all the Emigrants said: You are right! If all the frontier settlements and those places are not provided with troops and their needs, the enemy will recapture them. 'Umar then asked them to propose someone of sound judgment and intelligence for the task of organizing a survey of the lands and their tenants. When they agreed on 'Uthmān b. Ḥunayf as a man of vision, brains and experience, he was sent to survey the lands of al-Sawād. The income from Sawād al-Kūfa amounted, one year before 'Umar's death, to 100,000,000 of dirhams, one dirham at that time having the value of one dirham and two and a half *danaqs* and the weight of a *mithqāl*.

Al-Layth b. Sa'd—Ḥabīb b. Abī Thābit: Companions of the Prophet and other Muslims wanted 'Umar b. al-Khaṭṭāb to distribute the lands of Syria as the Prophet had done with the lands of

Khaybar. When al-Zubayr b. al-'Awwām and Bilāl b. Rabāḥ pestered him about it he said: Do you want me to leave future generations without anything? O God! relieve me from Bilāl and his friends! The Muslims saw in these words of 'Umar the cause for the plague which befell them in Emmaus, near Jerusalem. 'Umar did not distribute Syria but left the lands in the hands of the tenants as Dhimmīs paying kharāj to the Muslims.

Muḥammad b. Ishāq—al-Zuhrī: 'Umar b. al-Khaṭṭāb consulted his associates about the future of al-Sawād after its conquest and found that most of them were for distributing the lands. Bilāl b. Rabāḥ was very resolute about it, while 'Umar was against it and cursing: God! Relieve me from Bilāl and his friends! After a few days of indecision, 'Umar said: I have found the authority for my view in the following verses of God's book: "What Allāh has allotted to His Messenger from them—ye rushed neither horse nor camel upon it, but Allāh giveth authority to His Messenger over whomsoever he willeth; Allāh over everything has power" (Q.59 : 6). This verse dealing with the Banū al-Naḍīr was applied also to all other Arabian lands. 'Umar then proceeded: "What Allāh has allotted to His Messenger from the people of the towns is for Allāh and the Messenger and the Kinsman, the Orphans, the Indigent and the Follower of the Way, in order that it be not passed from hand to hand among those of you who are rich; what the Messenger gives you take, and what he forbids you refrain from; show piety towards Allāh, verily Allāh is severe in punishment" (*ibid.*, 7), and then: "As for the poor, the Emigrants who were expelled from their dwellings and their properties, desiring bounty and good will from Allāh and helping Allāh and His Messenger—these are the truthful" (*ibid.*, 8). Then another category was added: "And for those who occupied the dwelling and the faith before them, loving whosoever might emigrate to them, not cherishing in their breasts any feeling of need because of what is given to them, but preferring them over themselves, even though there was want amongst them—such as are protected from niggardliness of soul are the ones who prosper" (*ibid.*, 9). As far as we know, but *God knows best*, all these verses refer to the Companions only, and therefore another verse adds: "And those who have come after them saying: Our Lord, grant forgiveness to us and to our brethren who have preceded us in the faith, and get no malice in our hearts towards those who have

believed; O our Lord, verily thou art kindly and compassionate" (*ibid.*, 10). This verse refers generally to future generations, and the lands therefore belong to all those mentioned in these verses. How, therefore, can we distribute them amongst you and leave future generations without a share?

Thereupon it was generally agreed to leave the lands undistributed and to collect their taxes.

THE DIFFERENCE BETWEEN 'USHR AND KHARĀJ LANDS

As to your question, O Commander of the Faithful, about the difference between the categories of 'ushr and kharāj lands, my answer is: Each land whose owner, Arab or non-Arab, became a Muslim is considered 'ushr land, as the lands of al-Madīna and al-Yaman whose owners became Muslims. So are the lands of the Arab pagans from whom only conversion is accepted. The Prophet conquered such lands and left them in the hands of the owners who became Muslims and they are 'ushr lands until today. However, lands taken over from non-Arabs and left in their possession are of the category of kharāj land. If such lands are distributed amongst the Muslims they become 'ushr land. In the kharāj category are all lands which 'Umar conquered from the non-Arabs and left in their possession or whose owners surrendered by peace treaties and became Dhimmīs while their land became of the kharāj category.

In reply to your query, O Commander of the Faithful, about the rights of enemies who agreed to accept Islām, I state: Their lives are safe and whatever was agreed with them remains theirs together with their lands which are considered 'ushr land, as were the lands of al-Madīna, al-Ṭā'if, al-Baḥrayn, whose people accepted Islām through the Prophet. The nomadic Arabs are treated likewise. If they made it a condition that their water sources and villages should remain theirs, then no one from any other tribes is allowed to build or to dig a well or to own anything on their lands. They are not to be prevented from using common grazing grounds nor their shepherds and cattle from using water sources. As their lands are considered 'ushr land, they are entitled to transfer their ownership rights by inheritance or sale. Similarly, everything in a village whose inhabitants accepted Islām belongs to its converted owners. However, if the ruler makes peace with pagans on condition that they should pay kharāj, then they are considered as Ahl-al-Dhimma and their

land is kharāj-land. In such cases only what was agreed upon can be collected from them in taxes. On the other hand land conquered by force (‘Anwa) if distributed amongst the Muslim conquerors, will become ‘ushr land. But if it is not distributed and is left in the possession of the previous owners, as ‘Umar b. al-Khaṭṭāb did in al-Sawād, then it becomes kharāj-land. It cannot be taken away from them and they have the right to transfer their rights of possession by inheritance or sale. As to the payment of the kharāj taxes, no more than they can bear should be charged on them. 36

No one has a right to convert kharāj land into ‘ushr land or vice versa. It is illegal for an owner of ‘ushr land who buys a tract of kharāj land adjoining his land to include it in his ‘ushr land by paying the ‘ushr tax for it or vice versa. 49

CHAPTER FIVE

THE JIZYA-POLL-TAX

1. The jizya-tax lies on all inhabitants, except women and children, of the Ahl al-Dhimma, in al-Sawād, al-Ḥīra and other places, i.e. on Jews, Christians, Majūs, Ṣābīs and Samaritans, but not on the Christians of Banū Taghlib and Najrān. The tax amounts to 48 dirhams on the wealthy, 24 on the middle class and 12 dirhams on the poor ploughman-peasant and manual worker. It is collected once a year and may be paid in kind, i.e. in beasts of burden, goods and similar property which is accepted according to its value. However, no carrion, pigs or wine can be accepted in payment of jizya. 'Umar b. al-Khaṭṭāb ordered that such things should not be accepted, but advised that they should be sold and the tax paid from the proceeds of such sale. 'Alī b. Abī Ṭālib used to accept needles, small and large, in payment of the jizya tax. 69 70

Jizya is not collected from the poor on whom ṣadaqa is spent, nor from a blind man without craft or occupation, nor from a cripple; however, from those of the blind, the paralysed and the crippled who are wealthy, the tax is collected. Similarly it is collected from wealthy monks but not from the poor ones supported by wealthy benefactors. It is also collected from wealthy people who have donated all their properties to a monastery, and the head of such a monastery is responsible for the payment of the jizya in such a case. However, if the head of such an institution denies on oath that the institution has received such donated properties, then the tax will not be collected.

A person converted to Islām a day or two or a month or two before the end of the year is exempt from the payment of jizya. After the completion of a year the tax is considered as due. However, the whole or part of unpaid jizya cannot be collected from the heirs or the estate of a deceased Dhimmī, as it is not considered a debt. Similarly, if a Dhimmī still owed a part of his jizya when converted, such a balance cannot be collected. Exempt from jizya are also old poor people who cannot work and the insane.

Jizya payers should not be beaten, nor exposed standing in the

sun, nor burdened with heavy weights or mistreated by similar acts, but should be treated with leniency. If they do not pay they should be kept in jail until the jizya is paid, and no governor is entitled to release from prison any Christian, Jew, Majūs, Ṣabī or Samaritan before collecting the jizya, nor to exempt one of them from part or the whole of it. Their lives and properties were secured in consideration of the payment of the jizya, which has thus become a general tax.

As to the collection of the jizya in the big cities as Baghdād, al-Kūfa, al-Baṣra and similar places, I would advise that a trustworthy administrator be appointed in each city, with assistants, who will get in touch with the heads of the Dhimmī communities and collect the tax through them in accordance with the three above mentioned categories: (1) Forty-eight dirhams from the wealthy, such as brokers, cloth merchants, estate owners, general merchants, surgeons and anyone having a profession or trade; (2) Twenty-four dirhams from those of the first category who earn less in those occupations, and (3) Twelve dirhams from those working with their hands, such as tailors, painters, cobblers and similar manual workers. The monies collected by such appointed administrators should be sent to the Treasury Office.

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The collection of the jizya in al-Sawād should be carried out by the collectors of the kharāj taxes, who should send reliable officials to the villages to collect the tax from all the Dhimmīs there, in accordance with the categories mentioned before, without discrimination or abuse by charging those who are not liable. They should refuse to accept from the heads of such villages one lump sum for the taxes due because such amount is usually half of the tax due.

It is appropriate, O Commander of the Faithful, that you should treat with leniency those under the protection of our Prophet Muḥammad, and not allow that more than what is due be taken from them or more than they are able to pay, and that nothing should be confiscated from their properties without legal justification. It was transmitted that the Prophet said: He who robs a Dhimmī or imposes on him more than he can bear will have me as his opponent. 'Umar b. al-Khaṭṭāb before his death said: I recommend to my successor to comply with the covenants made with those under the protection of the Prophet, protect them from those who persecute

them and abstain from charging them with more than they can bear.

TRADITIONS

Hishām b. 'Urwa—His father: When passing somewhere in Syria Sa'īd b. Zayd saw people standing in the sun. It was explained to him that they had not paid the *jizya*. Thereupon he went to those responsible and said: I have heard the Prophet say: He who tortures people will be tortured by God.

Some of our Elders—'Urwa: When Hishām b. Ḥukaym b. Ḥizām saw that 'Iyāḍ b. Ghanam made people stand in the sun for *jizya* debts he told him: The Prophet said: Those who torture people in This World will be tortured in the Other World.

Hishām b. 'Urwa—His father: On his way from Syria 'Umar d. al-Khaṭṭāb once saw some people standing in the sun with someone pouring hot oil on their heads. When it was explained to him that this was done to make the people pay the *jizya*, which they claimed they were unable to pay, he said: Do not charge them with more than they can bear. I have heard the Prophet saying that those who torture people in this world will be tortured by God in the other world. He then ordered them to be set free.

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Some of our old masters told me a tradition about the Prophet appointing 'Abd Allāh b. Arqam as collector of the *jizya* and warning him: He who robs a *Dhimmī* or charges him with more than he can bear or deprives him of his rights or takes away from him anything against his will, will find me as his opponent on the Day of Resurrection.¹

Ḥaṣīn b. 'Amr b. Maymūn: 'Umar b. al-Khaṭṭāb said: I recommend my successors to treat the *Ahl al-Dhimma* well, to comply with their covenants, protect them from those who persecute them and not burden them with more than they can bear.²

Waraqā' al-Asadī—Abū Zībyān: When we were with Salmān al-Fārisī in a raid, he scolded a man who plucked some fruits from a garden of a *Dhimmī* and shared them with his friends. The man, who did not know Salmān, first retorted but then apologised and asked him how to behave and treat the *Ahl al-Dhimma*. Salmān replied: Act on three principles: (1) That they are the cause for your passing from blindness to the right way; (2) from poverty to

¹ Y. no. 235.

² Y. no. 232.

riches, and (3) that if you have a friend amongst them you may share his food and ride with him, without following his leanings.

‘Umar b. Nāfi‘—Abū Bakr: ‘Umar b. al-Khaṭṭāb once met a blind old man begging and asked him how he came to this state. When he informed him that he was a Jew of the Ahl al-Dhimma, and that the demands of the authorities for the payment of his jizya coupled with his needs and old age had brought him to this state, he took him by his hand and ordered the Treasury officials to allow him something. He then ordered the Treasurer to look after such people incapacitated by old age, citing: “The ṣadaqāt are for the poor and the destitute” (Q.9 : 60). By “Poor”, Muslims are meant and by “Destitute”, those of the Ahl al-Kitāb. He ordered the jizya to be remitted for him and his likes. Said Abū Bakr: I was present when ‘Umar acted thus and saw the old man.

Isrā’īl b. Jūnus—Ibrāhīm b. ‘Abd al-A‘lā: I heard Suwayd b. Ghaffa saying: I have heard ‘Umar b. al-Khaṭṭāb warning his tax collectors not to accept jizya in carrion, pigs and wine. When Bilāl admitted doing it he advised him to let the tax payers sell it and pay the jizya-tax from its price.

‘Ubayd Allāh—Nāfi‘—Aslam, the client of ‘Umar: ‘Umar b. al-Khaṭṭāb gave written instructions to his tax collectors to fix sealable rings on the necks of the Dhimmīs. 73

Kāmil b. al-‘Alā’—Ḥabīb b. Abī Thābit: ‘Umar b. al-Khaṭṭāb sent ‘Uthmān b. Ḥunayf to survey the lands of al-Sawād. He taxed each jarīb of cultivated or uncultivated land at a fixed amount of dirhams or its equivalent in kind measured in qāfiz. He also introduced the use of rings on the necks of those liable to pay jizya, at that time 500,000 people from the three categories paying 48, 24, and 12 dirhams per head. When he completed the census and collection he removed the rings and delivered the lists of tax payers to their elders.

‘Ubayd Allāh—Nāfi‘—Aslam, the client of ‘Umar: ‘Umar b. al-Khaṭṭāb gave instructions concerning the non-Arab pagans that only their adult male fighters may be killed in battle, that four dīnārs or 40 dirhams may be taken as jizya from the inhabitants, together with two mudds of wheat, but nothing from women or minor boys. He also ordered that rings should be fixed around the necks of those liable to pay jizya.

Al-A‘mash—‘Umāra b. ‘Umayr or Muslim b. Ṣabīḥ Abī al-

Duḥḥā—Masrūq—Mu'ādh b. Jabal: The Prophet instructed me when he sent me to al-Yaman to collect one dīnār from each adult male as jizya.

2. Although jizya is taken from the Majūs it is not permitted to marry their females nor to share their food as is permitted with the Ahl al-Kitāb. There is no difference of opinion about this and the following traditions from the Prophet confirm it.

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TRADITIONS

Qays b. al-Rabī' al-Asadī—Qays b. Muslim al-Jadalī—al-Ḥasan b. Muḥammad: The Prophet made peace with the Majūs of Hajar on condition that the jizya should be paid by them but that their females cannot be married to Muslims, who are also not allowed to share their food.

Muḥammad b. al-Sā'ib al-Kalbī—Abū Ṣāliḥ—Ibn 'Abbās: The Prophet collected jizya from the Majūs of Hajar.

Some Elders—Jābir al-Jū'fī—'Āmir al-Sha'bi: The Prophet was the first to impose jizya. He imposed it on each adult male and female. 'Umar b. al-Khaṭṭāb then imposed it on the people of al-Sawād.

Al-Ḥajjāj b. Arṭa—'Amr b. Dīnār—Bajāla b. 'Abda al-Anbarī, who was secretary to Jaz b. Mu'āwiya, then governor of the Manādhir and Dast Maysān districts: 'Umar b. al-Khaṭṭāb wrote to the governor: Collect the jizya from the Majūs as the Prophet collected it from the Majūs of Hajar.

Sufyān b. 'Uyayna—Naṣr b. 'Āṣim al-Laythī—'Alī b. Abī Ṭālib: The Prophet, Abū Bakr and 'Umar used to collect the jizya from the Majūs of whom I knew the nobility who had a religious book and a doctrine which they studied but later abandoned.

Some of the Elders—Ja'far b. Muḥammad—His father: When 'Umar b. al-Khaṭṭāb was told about people worshipping fire, who were neither Jews nor Christians nor in possession of a religious book, he did not know how to deal with them. 'Abd al-Raḥmān b. 'Awf then informed him that the Prophet had ordered that they should be treated as Ahl al-Kitāb.

Fiṭr b. Khalifa: When Farwa b. Nawfal al-Ashja'ī said that it was a grave mistake to accept the jizya from the Majūs who are not Ahl al-Kitāb, he was challenged by al-Mustawrid b. al-Aḥnaf to recant or be killed for speaking thus against the Prophet, who did

accept jizya from the Majūs of Hajar. They then referred the dispute to 'Alī b. Abī Ṭālib who told them the following story about the Majūs:

The Majūs were a nation who possessed a religious book which they used to study. One of their kings one day got drunk and took his sister to a place outside the town. He was followed by four of his priests who witnessed his copulation with his sister. When he sobered down, he was told by his sister that the only way to save himself from being punished by death for what he had done in the presence of the four priests was to declare the act lawful and call it "Adam's law", because Eve was part of the body of Adam. He followed her advice and ordered accordingly, killing all who were against it. He then threatened to put to fire any objector and this brought them to submit to the new law. The Prophet accepted the jizya from them for their original religious book but did not allow inter-marriage and sharing of food with them.

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An Elder from al-Baṣra's scholars—'Awf b. Abī Jamīla: 'Umar b. 'Abd al-'Azīz sent a letter to 'Adī b. Arṭa, to be read from the pulpit of al-Baṣra, saying: Ask al-Ḥasan al-Baṣrī b. Abī al-Ḥasan what prevented our predecessors the Caliphs from permitting inter-marriage with the Majūs, which is not the case with women from other religious communities. Al-Ḥasan's answer to 'Adī b. Arṭa was that in spite of the fact that they were not Ahl al-Kitāb the Prophet accepted jizya from the Majūs of al-Baḥrayn and allowed them to retain their Majūs religion. At that time his representative was al-'Alā' b. al-Ḥaḍramī and later Abū Bakr, 'Umar and 'Uthmān acted accordingly.

'Abd al-Raḥmān b. 'Abd Allāh—Qatāda—Abū Mijlaz—Abū 'Ubayda: The Prophet wrote to al-Mundhir b. Sāwā, Governor of al-Baḥrayn: He who says our prayers turning his face where we turn ours and shares our food is considered a Muslim under God's and the Prophet's protection. Those of the Majūs who accept Islām are safe but those who refuse have to pay the jizya for their protection.

An old man from al-Madīna—'Amr b. Dīnār: The Prophet wrote to al-Mundhir b. Sāwā: After Greetings. He who turns his face when praying where we turn ours and shares our food is a Muslim with all our rights and obligations, but those who refuse have to pay as jizya one dīnār or its value in Ma'āfirī cloth.

Abān b. Abī 'Ayyāsh—al-Ḥasan al-Baṣrī—Abū Hurayra: The

Prophet said: He who says our prayers and shares our food is a Muslim under God's and the Prophet's protection with all the rights and obligations of a Muslim.

An old scholar from al-Kūfa: 'Umar b. 'Abd al-'Azīz wrote to 'Abd al-Ḥamīd b. Abd al-Raḥmān: You have asked me to allow you to collect the huge amounts of jizya owed by Jews, Christians and Majūs of al-Ḥīra before they accepted Islām. My reply is that God has sent the Prophet Muḥammad to invite people to Islām and not as a tax collector. He who accepts Islām has to pay only ṣadaqa from his property and not jizya, his inheritance rights will be as those of the Muslims, but if there is no legal heir the Treasury inherits his properties for the benefit of the Muslims as a whole. In such a case if something happened causing an obligation to pay blood-money, it should be paid by the Treasury, which inherits the properties of the heirless deceased who was the cause for such obligation.

Ismā'il b. Abī Khālid: Al-Sha'bī said that a Christian slave released by his Muslim master is not liable to pay jizya as he is considered under the protection of his Muslim master.

I have asked Abū Ḥanīfa about it and his opinion was that the released slave has to pay jizya, as no Dhimmī can be left in the territory of Islām without jizya on his head. I concur with Abū Ḥanīfa's view *but God knows best*.

'Abd al-Raḥmān b. Thābit b. Thūbān—His father: I asked 'Umar b. 'Abd al-'Azīz why prices are higher than in the time of his predecessors and he replied: My predecessors used to charge the Dhimmīs with more taxes than they could bear, forcing them thereby to sell their crops at low prices to pay the taxes. However I am not charging anyone with more than he can bear and no one is pressed to sell his crops at cheap prices. So I asked him to fix prices for the market and he said: We cannot do anything about it because prices are from God.

THE BANŪ TAGHLIB AND OTHER DHIMMĪS

You have asked, O Commander of the Faithful, why the Christians of the Banū Taghlib tribe were exempted from the payment of jizya, and why the ṣadaqa levy on their properties was doubled, and how should the Dhimmīs generally be treated in matters of taxation. My reply is:

If a Christian Taghlibī buys 'ushr land, then the 'ushr on such land will be doubled, and so are the customs duties doubled for them. A Christian Taghlibī has to pay levies twice as much as a Muslim does. However, if another Dhimmī buys 'ushr land, then the kharāj tax is imposed on it and its category is changed to kharāj-land, because a Dhimmī cannot pay 'ushr, which like zakāt is imposed on Muslims only. This is the view of Abū Ḥanīfa, but I think that the category of 'ushr land cannot be changed, and that in such a case a tax equal to double 'ushr should be imposed on a Dhimmī purchaser of 'ushr land, in lieu of the kharāj tax. If the land be later sold to a Muslim or if the Dhimmī becomes a Muslim then the tax will be reduced to one 'ushr due from the 'ushr land category. This was also the view of al-Ḥasan and 'Aṭā', which I prefer to the view of Abū Ḥanīfa. One can compare such a case with the case of customs duties paid by a Muslim on his goods at the rate of $2\frac{1}{2}$ per cent. When the same goods are bought by a Dhimmī, he will pay 5 per cent. customs duties on them when he passes the tax collector, i.e. twice as much as the Muslim, but when these goods are again sold to a Muslim only $2\frac{1}{2}$ per cent will lie on them. The property is the same, but the owner has changed, and the rule is that the tax is adjusted to the status of the owner. However, the category of some lands cannot be changed with the change of owners, e.g. lands in Arabia, in Mecca, al-Madīna, or similar lands or holy places which can never become kharāj lands, notwithstanding the status of their owners. By imposing a double-'ushr on a Dhimmī in lieu of kharāj we avoid confusing the original non-changeable category of 'ushr land.

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TRADITIONS

A scholar—Al-Saffāh—Dā'ūd b. Kardūs—'Ubāda b. Nu'mān al-Taghlibī: I have advised 'Umar b. al-Khaṭṭāb to grant some concessions to the Banū Taghlib tribe in view of their position and strength lest they join the enemy. 'Umar made peace with them on the following conditions: (1) that none of their children be brought up in the Christian faith. They did not comply with this condition; (2) that instead of jizya a double-ṣadaqa tax should be imposed on them at the rate of two ewes from any number of sheep exceeding 40 and not exceeding 120, and four ewes from more; (3) that they pay double the rate due to be paid by a Muslim on camels and cattle,

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and that it should be paid by males and females but not by minors; (4) that they pay for the lands which they owned when the agreement was made, twice as much as a Muslim pays. There is a difference of opinion amongst the scholars concerning boys and those legally incompetent. While the 'Irāqī scholars exempt them from any levy on cattle, the Hījāzī scholars maintain that their cattle should be taxed like their lands with a double tax in lieu of kharāj taxes and the jizya which they do not pay. Nothing more lies on other properties and slaves belonging to them.¹ 69

Abū Ḥanīfa—someone else: 'Umar b. al-Khaṭṭāb doubled the ṣadaqa on the Banū Taghlib Christians in lieu of the jizya tax.

HOW TO TREAT APOSTATES, PAGANS AND DHIMMĪS

38

From apostates, Arabs or non-Arabs, no jizya is collected, as only accepting Islām or death is offered to them and to the nomadic Arab pagans. If they fight the Muslims and their women and children are captured, they are forced to accept Islām as Abū Bakr did with the children of the renegades of the Banū Ḥunayfa tribe and others, and as 'Alī did with the Banū Nājiya² following Abū Bakr's example. No jizya is levied on them, but if they repent before the battle, or before they are vanquished, their lives and properties are spared and their children and women are not captured. However, if they repent after being vanquished their lives will be spared, their females and children will become slaves, and the males prisoners. The Prophet took ransoms for the prisoners at the Battle of Badr, but they were not enslaved and Abū Bakr freed al-Ash'ath b. Qays and 'Uyayna b. Ḥiṣn. They were not enslaved nor did they become clients of those who saved their lives. Male pagans or apostates who do not repent cannot be taken prisoner nor allowed to pay jizya. If they do not accept Islām they are killed, their children taken prisoner and their properties divided amongst the Muslims present at the battle after deducting the "Fifth". However, the ruler at his discretion may free prisoners and forgive them by not taking away their lands and properties. In such a case their lands are 'ushr and not kharāj land. The Prophet conquered many places from Arab pagans and did not interfere with their

¹ Y. nos. 200-222.

² Y. no. 51.

lands, as in al-Baḥrayn, al-Yamāma and other places of the Ghaṭafān and Tamīm tribes. However, the spoils of war gathered in the camps will be distributed: four-fifths amongst those who captured them and the Fifth "to whom God has prescribed in his book" (Q.59:7). The spoils of war gathered in camps are treated differently from the lands of the inhabitants bestowed by God on the conquerors. The spoils of war in camps captured from pagan Arabs or non-Arabs or Ahl al-Kitāb are treated similarly, i.e. the "Fifth" for those prescribed by God and four-fifths to those who captured them. The villages, the cities, the lands and all that is found on them are, however, at the disposal of the ruler, who may leave them in the hands of their owners and impose on them jizya and kharāj, except in the case of Arab pagans as aforementioned. 39

To facilitate the collection of the jizya it is advisable to fix sealable rings on the necks of those liable to pay it, as 'Uthmān b. Ḥunayf did. After the completion of the collection the rings may be removed on request. 72

The rules concerning the general external appearance of Dhimmīs should be strictly observed. They should not be allowed to resemble Muslims in clothes and anything they wear, and should don a special conspicuous waist-belt and other degrading garments to make them appear different from Muslims. Order your administrators to observe these rules strictly, as 'Umar b. al-Khaṭṭāb has ordered his administrators.¹ 73

TRADITIONS

'Abd al-Raḥmān b. Thābit b. Thūbān—His father: 'Umar b. 'Abd al-'Azīz wrote to one of his administrators: Do not allow crosses to be exhibited openly, without breaking and destroying them. Jews and Christians and their women should not be allowed to use a riding saddle, but only a pack-saddle. I have been informed that some administrators before you have neglected to enforce the rules concerning the clothing and general appearance of the Dhimmīs. I warn you against being negligent in complying strictly with these rules.

¹ See Tritton A. S., *The Caliphs and their Non-Muslim Subjects*, London 1930.

CHAPTER SIX

AL-SAWĀD LANDS

HOW THEY WERE TAXED

16

You have asked, O Commander of the Faithful, about the lands of al-Sawād, how the kharāj and jizya taxes were collected, how much 'Umar b. al-Khaṭṭāb imposed on the inhabitants, whether any part of it was subject to peace-treaties (Ṣulḥ), and what are the precepts regulating such areas and those regulating the areas forcibly ('Anwa) conquered. My reply is:

When al-Sawād was conquered, 'Umar b. al-Khaṭṭāb consulted his associates and found that most of them were for distributing the lands. Bilāl b. Rabāḥ and 'Abd al-Raḥmān b. 'Awf were keen on distribution, while 'Uthmān, 'Alī and Ṭalḥa agreed with 'Umar that the lands should be left undistributed. When 'Umar was harassed by those seeking distribution he exclaimed: O God! Relieve me from Bilāl and his followers! After days of indecision 'Umar told them: I have found the authority for leaving and not distributing the lands, in the following words of God: "As for the poor, the Muhājirūn, who were expelled from their dwellings and their properties, desiring bounty and goodwill from Allāh" (Q.59 : 8). He then recited the following verses till he concluded with the words: "and those who come after them" (Q.59 : 10), and said: How can I distribute the lands amongst you and leave those who come after you without a share? Thereupon it was unanimously decided to leave the lands undistributed in the hands of their previous occupiers and to collect revenues by charging jizya on their heads and kharāj on the lands. 20

TRADITIONS

Muḥammad b. Ishāq—al-Zuhrī: 'Umar b. al-Khaṭṭāb captured the whole of al-'Irāq, but not Khurāsān and al-Sind, and the whole of Syria and Egypt, but not North Africa which was captured, together with Khurāsān, during the reign of 'Uthmān b. 'Affān. When al-Sawād was seized together with the city of al-Ahwāz, 16

the Muslims asked 'Umar to distribute al-Sawād, al-Ahwāz and other captured cities. However, 'Umar replied: And what will remain for future generations? He left the inhabitants on their lands, imposing jizya on their heads and kharāj on their lands.¹

Mujālid: Al-Sha'bī was asked about the people of al-Sawād and he replied: They had no treaty, but when the kharāj tax was accepted from them it was construed as a *de facto* treaty. However, other scholars deny it, maintaining that only the following people had treaties: The people of al-Ḥīrā, 'Ayn al-Tamr, 'Ullays and Bāniqyā, who led Jarīr b. 'Abd Allāh to a ford, while the 'Ullays people entertained Abū 'Ubayda as a guest and pointed out to him something the enemy had overlooked. It was Khālid b. al-Walīd who concluded the peace treaties with the people of al-Ḥīrā, 'Ayn al-Tamr and 'Ullays.²

Ismā'il b. Abī Khālid—Qays b. Abū Ḥāzīm al-Bajalī: When 'Umar b. al-Khaṭṭāb was elected Caliph he sent Abū 'Ubayd b. Mas'ūd against the Persian general Mihrān, at the beginning of the year. After Abū 'Ubayd crossed the Euphrates, the Persians destroyed the bridge, killing him and defeating the Muslims. 'Umar b. al-Khaṭṭāb then sent Jarīr b. 'Abd Allāh, who vanquished the Persians, killing Mihrān and exposing his head on a spear. At the end of the year 'Umar b. al-Khaṭṭāb sent Sa'd b. Abī Waqqāṣ against the Persian General Rustum when they joined battle at al-Qādisiya.³

Mis'ar—Sa'd b. Ibrāhīm: At the Battle of al-Qādisiya we saw 17
a man who lost his arms and legs, crouching and reciting: "Those who obey Allāh and the Messenger are with the Prophets and the faithful and the martyrs and the upright upon whom Allāh has bestowed favour; good company are these" (Q.4 : 71). When someone asked him who he was, he answered: One of the Companions.

Ismā'il b. Abī Khālid—Qays b. Abī Ḥāzīm: The tribe of Bajila 18
formed one-fourth of the army which fought the Battle of al-Qādisiya. When a man of Thaḡif, who deserted to the Persians, informed them that the Bajila tribe are the most dangerous, the Persians confronted the Bajila fighters with 16 elephants, while against all

¹ Y. no. 128.

² Y. nos. 126-127, 139, 141.

³ Bal. pp. 252-253.

the rest only two were deployed. Abū Thawr, 'Amr b. Ma'dikārib, however, encouraged his men saying: O you associates of the Emigrants! Be like lions! The Persians are like a roe-buck against a spear and their cavalry cannot attack. I called out: Rely on God O Abū Thawr! And then I saw how a Persian threw his spear at him but hit his horse, and how 'Amr attacked and slaughtered the Persian like a lamb, taking away from him two golden bracelets, one embroidered coat and a golden belt. After the enemy was vanquished a quarter of al-Sawād was given to the Bajila tribe and they possessed it for three years. When Jarīr visited 'Umar b. al-Khaṭṭāb he said to him: O, Jarīr, I am responsible for the distribution of the lands, and I think that your land should go back to the Muslims as a whole. Thereupon Jarīr caused the lands to be vacated and 'Umar granted him a stipend of 80 dinars.¹

Ismā'il—Qays—Mudrik b. 'Awf al-Aḥmasī: While I was with 'Umar a courier arrived from al-N'umān b. Muqarrin's army. 'Umar first enquired about those who fell in the battle and the courier mentioned certain names, adding: and other unknown to us. Thereupon 'Umar said: They are, however, known to God! The courier then said: There was also one who sold himself through desire for the satisfaction of Allāh (Cf. Q.2 : 203), and his name is 'Awf b. Abī Ḥayya Abū Shibl al-Aḥmasī. Mudrik thereupon exclaimed: By God this is my maternal uncle of whom people say that he handed himself "over to destruction" (Cf. Q.2 : 191). Those who say so are liars—said 'Umar—because he is one who gave away This World for the Other World. When he was wounded he was fasting and refused to drink water and so he died.

Al-Sarīy b. Ismā'il—'Āmir al-Sha'bī: When 'Umar b. al-Khaṭṭāb surveyed the lands of al-Sawād he found them to measure 36,000,000 jarībs, and levied on each jarīb of cereal-growing land taxes per dirham or per qafiz of yield. Vineyards were charged at ten dirhams and vegetables at five. The jizya was fixed per capita, i.e. 12, 24 and 48 dirhams.²

Sa'id b. Abī 'Arūba—Qatāda—Abū Mijlaz: 'Umar b. al-Khaṭṭāb sent 'Ammār b. Yāsir to represent him in the mosques during prayer and in the conduct of the war, 'Abd Allāh b. Mas'ūd to represent him in the administration of justice and the Treasury, and 'Uthmān

¹ Y. nos. 110-112.

² Y. nos. 29, 391.

b. Ḥunayf to supervise the survey of the land. As their daily meat-ration he allotted them one sheep, the middle and inner parts to 'Ammār b. Yāsir, one-quarter to 'Abd Allāh b. Mas'ūd and the other quarter to 'Uthmān b. Ḥunayf, explaining: I consider myself and you in matters of public expenses as guardians of the property of an orphaned minor. God said: "Let him who is rich restrain himself and let him who is poor use it reputably" (Q.4 : 6). By God! I cannot imagine a place burdened with the expense of a sheep per day, without being rapidly destroyed. When 'Uthmān surveyed the lands he imposed on each jarīb of grapes ten dirhams, on each jarīb of dates eight dirhams, on each jarīb of sugar-cane six dirhams, on each jarīb of wheat four dirhams, on each jarīb of barley two dirhams. He also imposed jizya per capita, at 12, 24 and 48 dirhams, but excluded from it women and minors. Sa'id b. Abī 'Arūba added: 21 Some of my colleagues contradicted me saying that dates were charged at ten dirhams per jarīb and grapes at eight dirhams per jarīb.

Muḥammad b. Ishāq—Hāritha b. Muḍarrib: 'Umar b. al-Khaṭṭāb first wanted to distribute al-Sawād amongst the Muslims and ordered a census. It was found that each of them would receive two or three tenants with their lands. Thereupon he consulted the Prophet's Companions, and 'Alī's advice was: Let the peasants be a permanent source of revenue for the Muslims. So he sent 'Uthmān b. Ḥunayf who imposed on them a jizya of 48, 24 and 12 dirhams. We were informed that 'Alī b. Abī Ṭālib said to the Muslims: If some of you had not struck the faces of the others I would have apportioned al-Sawād amongst you. The inhabitants of al-Sawād had complained and he sent there 100 horsemen, amongst them Tha'laba b. Yazīd al-Ḥimmānī. When Tha'laba came back he said: I swear by God to return to al-Sawād. So bad was the evil he saw there.¹

Al-A'mash—Ibrāhīm b. al-Muhājir—'Amr b. Maymūn: 'Umar sent Ḥudhayfa b. al-Yamān to those lands situated beyond the Tigris and 'Uthmān b. Ḥunayf to the other lands. When they returned 'Umar asked them: How have you charged the land? Have you not imposed on the inhabitants more than they can bear? Ḥudhayfa replied: I have left a surplus, and 'Uthmān said: I have left twice as much as I could have taken if I had wanted. Thereupon 'Umar

¹ Y. nos. 113-117.

said: If I am spared for the widows of the people of al-'Irāq, I shall leave them so that they will not be in need to apply to a ruler after me!¹

Al-Sāriy—al-Sha'bī: 'Umar b. al-Khaṭṭāb imposed on vineyards ten dirhams per jarīb and on vegetables five dirhams. He also charged all lands which could be artificially irrigated, whether they were in fact cultivated or not, dirhams in cash, or a sealed measure of yield, called al-Ḥajjājī, containing according to 'Āmir al-Sha'bī, a certain number of Ṣā'. He taxed palm trees irrigated naturally with 'ushr but those artificially irrigated with half 'ushr. However, palm trees growing in land already otherwise cultivated were free from taxes.²

Huṣayn b. 'Abd al-Raḥmān—'Amr b. Maymūn al-Awdī: I saw 'Umar b. al-Khaṭṭāb three or four days before he was stabbed, when he asked Ḥudhayfa b. al-Yamān and 'Uthmān b. Ḥunayf: Have you not charged the land with what it could not bear? 'Uthmān was the supervisor of the lands on the shores of the Euphrates and Ḥudhayfa of those beyond the Tigris, irrigated by it, and called Jawkha. 'Uthmān said: I have charged the land with what it could bear but I could have doubled it. Ḥudhayfa said: I have charged what the land could bear and there remained great surplus. Thereupon 'Umar said: See to it not to charge more than the land can bear. If I will be spared for the widows of the inhabitants of al-'Irāq I will put them in such a position that they should not need anyone after me. Ḥudhayfa was in charge of the Jawkha district and 'Uthmān b. Ḥunayf of the districts of the lower Euphrates for the collection of the taxes from the inhabitants. 'Umar in his testament recommended that the treaties with the Dhimmī people should be complied with, that they should not be charged with more than what they could bear and that they should be defended against those who persecuted them.³

Al-Mujālid b. Sa'īd—'Āmir al-Sha'bī: When 'Umar b. al-Khaṭṭāb decided to survey al-Sawād he ordered Ḥudhayfa to send him a dihqān from the Jawkha district and ordered 'Uthmān b. Ḥunayf to send him a dihqān from al-'Irāq. Both sent those people with an interpreter from the inhabitants of al-Ḥīra. When they

¹ Y. nos. 240-241.

² Y. nos. 460-462.

³ Y. nos. 232, 236, 240-241.

appeared before 'Umar he asked them how much taxes they used to pay to the Persians. Their reply, "Twenty-seven dirhams", did not satisfy him and he told them that he would not accept the same amount. Thereupon he charged each jarīb of cultivated or uncultivated land which water could reach, per qafīz of wheat or barley or their value in dirhams. On this principle the survey was made by both of them but with different results. 'Uthmān, who was well-versed in matters of taxes, executed a precise survey like a piece of embroidery, but Ḥudhayfa was deceived by the Jawkha people who were disagreeable and corrupted his survey. Jawkha was then a prosperous district but because of the distorted survey the incomes from taxes were low. Later the district's prosperity diminished, its waters decreased and its wealth declined.

22

Al-Ḥasan b. 'Alī b. 'Umāra—al-Ḥakam b. 'Uṭayba—'Amr b. Maymūn and Ḥāritha b. Muḍarrib: 'Umar appointed 'Uthmān b. Ḥunayf over al-Sawād. He ordered a survey and taxed each jarīb of cultivated or neglected cultivable land certain dirhams in cash or a certain quantity of yield measured in qafīz and abolished the special taxes on vineyards, palm trees and vegetables. He fixed 48 dirhams per head as jizya with the additional duty of accommodating each passing Muslim soldier for three days. 'Uthmān collected these taxes for three years and then reported to 'Umar that the inhabitants could pay more.¹

Al-Ḥajjāj b. Arṭa—Ibn 'Awf: 'Umar b. al-Khaṭṭāb surveyed all al-Sawād lands, except the area of Jabl-Ḥulwān, and imposed taxes on each jarīb of cultivated or uncultivated land which could be artificially irrigated, dirhams or qafīz. He also imposed on each wealthy man a jizya of 48 dirhams, on the middle class 24 and on the poor 12 dirhams. He introduced a sealed lead ring to be carried on the neck by the payers of the jizya. However, he abolished the tax on palm trees growing on land otherwise cultivated, but taxed each jarīb of vineyard ten dirhams and each jarīb of sesame five dirhams. From each jarīb of summer crops of vegetables he took three dirhams and from cotton five dirhams.

'Abd-Allāh b. Sa'īd b. Abī Sa'īd—his grandfather: When 'Umar concluded peace treaties with people the conditions were that they should pay the agreed amount of kharāj, accommodate Muslims for three days, lead the Muslims to the right roads, and desist from

¹ Y. nos. 23-24, 29.

helping our enemies or religious innovators. Those complying were protected by God and his Prophet as *Dhimmīs*, excluding illegal acts perpetrated by armed soldiers.

HOW THEY SHOULD BE TAXED
AL-MUQĀSAMA SYSTEM OF TAXATION¹

27

I have investigated the taxation systems used in al-Sawād and the ways and means for the collection of taxes and have obtained the opinions of the experts and others who pointed out the impossibility of continuing with the systems laid down during the reign of 'Umar b. al-Khaṭṭāb. Even he was in doubt when he asked Ḥudhayfa and 'Uthmān b. Ḥunayf if they had not charged the land with more than it could bear. 'Uthmān b. Ḥunayf was then his administrator for the lands on the banks of the Euphrates, and Ḥudhayfa for the lands beyond the Tigris and those irrigated by it and the Jawkha district. 'Uthmān replied that he charged what the land could pay because he could have charged twice as much, and Ḥudhayfa said that he also charged what the land could pay because he left a surplus. According to these assertions of the two Companions of the Prophet, the land could pay the taxes imposed, and we have nothing contradicting these statements. However, we are told that in those times the greater part of the land was cultivated and only a minor part was not, and that the cultivated areas together with the small uncultivated parts were classified as one category. The tax thus levied on cultivated and uncultivated lands equally was intended to force the owners of the uncultivated parts to develop and cultivate them. Nevertheless, there are lands which were not cultivated for a period of 100 years, more or less, and could not be developed and irrigated without expense and investment beyond the means of the peasants, and for this reason had to be left uncultivated. I therefore find that a rate of tax composed of a fixed measure of crops or a fixed amount of dirhams, at the discretion of the tax-collector, has its defects for the Treasury as for the taxpayers. As to the fixed measure of crops, it may happen that the price of the crops is exceedingly low in a certain year and the authorities will therefore not be ready to accept it, preferring to collect the alterna-

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¹ Tax. pp. 40-41.

tive cash payment. Decreased tax incomes from cheap crops may weaken the army by not providing the frontier posts with sufficient supplies. On the other hand if the price of crops rises the authorities will not be justified in accepting cash payments and forfeiting the surplus to be gained by opting for the fixed measure of crops. Prices, high or low, are in the hand of God, and not always at the same standard. On the other hand, the system of imposing only a fixed cash payment as tax is also not without its difficulties, which are too numerous to be explained here. The fluctuation of prices, low or high, has no known rules which can be relied on, but is a matter from Heaven and not controlled by us. Low prices are not caused by a surplus of crops nor high prices by the scarcity of them, but are from God. Sometimes there may be a surplus of crops and the price is high, and sometimes there may be a scarcity and the price low.

The two alternating modes of fixed taxes, in kind or in cash, are also detrimental to the taxpayers because of the opportunities they provide for unjust distribution of the taxes and the oppression of the weak by the strong, and other bad effects which are too numerous to be mentioned here.

I find therefore that the best system of taxation for the Treasury and the most adequate one to prevent injustice to the taxpayer and his ill treatment by the supervisors and tax collectors, is a just proportional share-tax system of taxation known as al-Muqāsama, which will benefit the Treasury and alleviate injustice to the taxpayers.

In accordance with this proposed system I suggest that a proportional share of two-fifths, 40 per cent., from the crops should be collected as the due share-tax from fields producing wheat and barley which are naturally irrigated, but only one and a half fifths, 30 per cent., from those artificially irrigated. The tax on palm-trees, vineyards, vegetables and orchards should be one-third of the yield, however from summer crops only one-quarter should be taken. Nothing should be taken on the basis of a guess or on a valuation based on market prices. The valuation should be based on a just appraisal, not overcharging the taxpayer nor damaging the authorities. What is due should be taken in kind, but if convenient for both sides the yield may be sold and its price divided proportionally between taxpayer and authorities.

TRADITIONS

Muḥammad b. ‘Abd al-Raḥmān b. Abī Laylā—al-Ḥakam b. 28
 ‘Utayba—A certain person: Prices rose in the time of the Prophet, and the people came to him asking that a price-limit be fixed which the people could afford, but he said: Low and high prices are from God and we are not allowed to go beyond His judgment.

Thābit—Abū Ḥamza al-Yamānī—Sālim b. Abī al-J‘ad: The people asked the Prophet to fix a price-limit when prices went high, but he replied: Prices are from God before whom I want to appear without anyone having a complaint against me.

Sufyān b. ‘Uyayna—Ayyūb—al-Ḥasan: Prices went up during the lifetime of the Prophet and he was asked to limit them. He said: God is the fixer of prices! He lowers them and He raises them. By God, I myself do not give you nor refrain from giving you anything. I am a housekeeper doing things as ordered and wish to appear before God with nobody accusing me of doing some wrong to his life, family or property.

Muslim al-Ḥizāmī—Anas b. Mālik: The Prophet used to hand 29
 over to the Jews their lands in Khaybar on a Musāqā agreement, for half of its crops. He used to send to them ‘Abd Allāh b. Rawāḥa to estimate the two halves of the yield and give them the option of taking whichever half they wanted, or he would ask them to estimate the two halves and give him the option. They used to say: On such treatment Heaven and Earth are based.¹

Al-Ḥajjāj b. Arṭa—Nāfi’—‘Abd Allāh b. ‘Umar: The Prophet gave the lands of Khaybar to its owners on condition that they give him half of its crops. It remained in their possession during his lifetime and that of Abū Bakr and during most of the reign of ‘Umar who later evicted them.

Muḥammad b. al-Sā‘ib al-Kalbī—Abū Ṣāliḥ—‘Abd Allāh b. al-‘Abbās: When the Prophet conquered Khaybar its owners asked him to leave the lands in their possession. As they had more experience in cultivation than the Muslims the Prophet agreed to it against their undertaking to give half of its yield and to be ready for eviction any time it was so decided. When the people of Fadak heard about this agreement they agreed on the same conditions. The Prophet’s representative Muḥayṣa b. Mas‘ūd then granted them

¹ Y. nos. 18, 89-97.

protection. The lands of Fadak were allotted to the Prophet privately, because the Muslims "rushed neither horse nor camel upon it" (Q.59 : 6).

Muḥammad b. 'Abd al-Raḥmān b. Abī Laylā—al-Ḥakam b. Utayba—Miqsam—'Abd Allāh b. al-'Abbās: When the Prophet captured Khaybar, its owners asked him to leave their lands in their hands because they were more experienced in its cultivation. He agreed on condition that they give him half of its crops. When he sent 'Abd Allāh b. Rawāha to collect it they presented him with gifts which he refused, saying that the Prophet did not send him to take away all the crops but only to divide them between them and the Prophet. He proposed that he should deal with all the crops and then weigh for them their half or that they should do it and give him the share of the Prophet. Thereupon they said: On such just treatment Heaven and Earth are based.

Muḥammad b. Ishāq—Nāfi'—'Abd Allāh b. 'Umar: 'Umar when preaching to the people said: The Prophet said that when we made peace with the people of Khaybar we stipulated that we can evict them whenever we like. When they were hostile to 'Abd Allāh b. 'Umar and before that to one of the Companions we had to consider them our only enemies in that territory. Therefore let anyone who has some interest there look after it, before I evict them.

THE RIGHT TO REDUCE OR INCREASE TAXES

48

'Umar b. al-Khaṭṭāb imposed a fixed amount of money or a fixed quantity of produce as *kharāj* tax and did not introduce the proportional share-tax system, not because he had no right to reduce the taxes, but because he was satisfied from the report of his representatives, Ḥhudhayfa and 'Uthmān, that the land was able to pay those fixed taxes. Had they reported that the land could not bear such taxes he would have reduced them, as this was the reason for his inquiries.

He imposed on each *jarīb* of grain producing land, cultivated or not cultivated, taxes per *qafīz* in kind or dirhams in money, and on each *jarīb* of palm trees eight dirhams, but later cancelled the tax on the palm trees growing in areas otherwise cultivated, to make it easier for the tax payers. It is said also that he imposed the 'ushr

tax on naturally irrigated and half 'ushr on artificially irrigated lands, and that he imposed taxes on vineyards, vegetables and other products as aforementioned. He sent Ya'lā b. 'Umayya to Najrān and instructed him to hand over the lands on a proportional share-tax system at a rate of a third or two-thirds of the yield as tax. From the yield of dates of naturally irrigated palm trees, the Najrān people had to deliver two-thirds to the Muslims as tax, but one-third only from those artificially irrigated. These examples from al-Sawād and Najrān prove that the authorities have the right to impose on each land the tax it can pay. The Prophet when conquering Khaybar did not impose a fixed monetary tax on its lands, but gave it to the Jews on a Musāqā-agreement for half of its yield. 'Umar ordered a general survey of all al-Sawād lands because he thought that an exact survey would benefit the tax payers, and increase the income of the Treasury without charging the tax-payers more than they could bear. Therefore the right to reduce or increase the taxes, subject to the ability of the land and the tax-payers to pay, as exercised by 'Umar, is a prerogative of the authorities.

49

No kharāj administrator is entitled to release someone from paying part of his kharāj without having general authority to do so if it is for the benefit of the whole community, and no one is allowed to accept such release without the approval of the authorities to whom the kharāj belongs as representing the Muslim creed. However, if a kharāj-administrator has undertaken to deliver to the authorities a fixed amount for the whole kharāj of his district, then he is free to make gifts and the taxpayer may accept them.

TRADITIONS

'Abd al-Raḥmān b. Thābit b. Thūbān—his father: 'Umar b. 'Abd al-'Azīz instructed his representative 'Abd al-Ḥamīd b. 'Abd al-Raḥmān thus: Do not charge cultivable land with the same taxes as uncultivable land. Take from uncultivable land what it can afford and make efforts to make it more productive but do not impose kharāj on uncultivated land which yields nothing. Use barren land for farm shacks and dwellings for the peasants. Do not accept kharāj except in coins of seven weights not including deficient coins.

ON TAX-FARMING AND APPOINTMENTS

61

(Continued from Volume II, pp. 74-76)

It has come to my knowledge that amongst the rabble there are people who are protected by, or have connections with, tax collectors and administrators, and are used by them to discharge some of their own duties. These people, being neither just nor honest, do not follow their instructions and do not carry them out in a fair, impartial way, because their aim is only to get something for themselves out of the taxes and the property of the subjects. They do it, I am informed, by violence, by maltreatment and by encroaching upon the rights of the taxpayers. When the administrator sends one of these persons to collect the taxes due from a certain taxpayers, he usually asks for more than is due. If the taxpayer refuses to pay, he is violently beaten and his livestock taken away, together with the helpless farm hands, until the amount requested is thus unjustly extorted. Another injustice occurs when the administrator and his assistants stay in a village for a prolonged visit at the cost of the villagers, thus overburdening them with expenses which it is not their duty to bear.

These practices, apart from being criminal, cause harm and damage to the taxpayers and reduce the income of the state. Such and similar malpractices must be forbidden, so that the taxes may be properly collected without undue interference from persons such as above-mentioned. It follows also that the staff from the local garrison, assisting the administrator, should be composed of the elite of the soldiers possessing intelligence and good nature.

The seizure of cereal crops soon after harvesting should be discouraged since this delays threshing. Harvested crops should be released by the tax collector gradually as soon as they are gathered in heaps and can be thrashed, otherwise beasts, birds, and passing farm hands will help themselves, thus decreasing the share-tax. The owner of the crops, I am informed, usually consumes a small part of them for his own use before the harvest. Similarly, the crops reaching the threshing floor should not be kept unthreshed for months as this also causes damage to the state and the taxpayers, and retards the development of agriculture. Nor should the quantities of grain on the threshing floor be fixed by guesswork and conjecture, and no taxpayer should be held responsible for any deficiency

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found in the quantity of his grain as assessed by the tax collector, who may only collect the share-tax from what is found on the threshing floor.

The grain should be measured by qafiz and the share-tax taken without delay. The tax collector should not have two kinds of measures, a large one for the authorities and a small one for the tax payer, but should use the same measure for both of them. The straw on the threshing floor should be divided in the same proportion as the share-tax from wheat or barley, and if sold its price should be divided in the same proportion.¹ I repeat the warning against beating the taxpayers, forcing them to stand in the sun burdened with heavy jars and chaining them, thus preventing them from praying. This is a great sin before God and a very hideous act in Islām.

If the attention of a tax administrator is drawn to uncultivated tracts of land where unused ancient watercourses are found, which if cleared and repaired could irrigate the uncultivated areas and increase the cultivator's as well as the Government's incomes, then a reliable and honest person should be sent to investigate and inquire into this matter with the aid of experts and efficient objective people from the areas in question. If they agree that the opening up of such areas and watercourses is to be recommended then it will be acted upon with all expenses paid by the Treasury without charging anything to the taxpayers. Similarly any improvement and repair asked for by the cultivators, should be carried out as long as it does not interfere with the rights of adjacent lands and villages.

If the main canals and watercourses, from the Tigris and Euphrates, need clearing and cleaning the expenses should be borne by the Treasury and by those directly benefiting from such watercourses. However, the expense of cleaning special canals which supply water to individual fields, orchards, vineyards, vegetable or fruit gardens, must be borne by the owners without any subsidy by the Treasury. On the other hand, the expense of the upkeep of the walls on the river banks, to prevent flooding, of the dams and of the waterlocks on the Tigris and Euphrates and similar great rivers, must be borne by the Treasury alone, because it is in the public interest that they should be kept in order as any malfunction will cause damage to agriculture and decrease the income from taxation. The super-

¹ Tax. p. 40.

vision, the upkeep and the repairs should be entrusted to reliable and honest persons to prevent mismanagement and all dangerous consequences of dishonest handling of such vital public services.¹

In conclusion, I propose that you should send a commission, consisting of reliable and honest men, to enquire into the behaviour of the tax collectors and the ways by which they collect the taxes. Any wrongful act perpetrated by your administrators will be attributed to you, and it is therefore in your own interest to punish the wrongdoers and to prevent oppression by severely castigating any misdeed or injustice. Prompt punishment will serve as a warning against any repetition, will safeguard the rights of your citizens, and will protect them from oppression and illegalities. Beware of the complaints of the oppressed! Such appeals have a response. Just and honest dealings and the prevention of oppression have, apart from their rewards in Heaven, a beneficial influence on the growth of the state, while oppression destroys states. Because of his just treatment of the taxpayers, 'Umar b. al-Khaṭṭāb collected yearly 100,000,000 of dirhams, when the weight of a dirham was that of a mithqāl.

If you seek the favour of God, O Commander of the Faithful, make it a rule to preside, once in a month or in two months, over the Mazālim tribunal, to hear the complaints of the oppressed and to denounce the wrongdoers, so that you should not be one of those who are uninterested in the needs of your subjects. After one or two such hearings everyone in the realm will know about them. The wrongdoers will be frightened to continue their misdeeds while the oppressed will be encouraged to come forward with their complaints. If you cannot hear all the complaints in one day's sitting, hear part of them and postpone the hearing of others to the next sitting. No one should be preferred over another, and he who was first in presenting his complaint should be heard first. If the administrators and tax collectors hear that you listen to complaints, even once a year, not once in a month, they will be warned thereby to behave justly and honestly. I beseech you to do it because he who dispels an anxiety of a believer in This World will be relieved from grief in the Other World.

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¹ Tax, p. 62.

TRADITIONS

Mis'ar—'Amr b. Murra—'Abd Allāh b. Salama: Mu'ādh told me: Pray and do not agitate, feed the poor and collect good deeds. In so acting you cannot sin and you will die as a perfect Muslim. Beware of the complaints of the oppressed! 63

Manṣūr—Abū Wā'il: Abū al-Dardā' used to say to his assistants: Sometimes I cannot perform a good act myself, so I order you to do it. I hate most to do injustice to a man who relies only on God against me.

Al-A'mash—Abū Ṣāliḥ—Abū Hurayra: The Prophet said: He who dispels a believer's anxiety will be relieved by God from the griefs of the Day of Resurrection, and he who forgives a Muslim in this world, his sins will be forgiven by God on the Day of Resurrection. 64

Layth—Ibn 'Ajlān—'Awn: It was said that a man upon whom God bestowed good appearance and high position, and who humbles himself before God is considered as one who has wholly surrendered to God.

Ismā'il b. Abī Khālid—Qays b. Abī Ḥāzim: I heard 'Adī b. 'Adī saying that he heard the Prophet saying: He whom we send as collector must declare openly whatever he has collected, be it plenty or scanty; and he who conceals something even of the value of a thread will appear in manacles on the Day of Resurrection.

Hishām—al-Qāsim—Abū 'Abd al-Wāḥid—'Abd Allāh b. Muḥammad b. 'Aqīl—Jābir b. 'Abd Allāh—'Abd Allāh b. 'Unays: I heard the Prophet saying: On the Day of Resurrection all creatures will be assembled naked, uncircumcised as they were born and without any mark or colour. A voice to be heard, by the far and the near, will then call: I am the Angel! I am the judge! Nobody who has wronged someone can enter Paradise or Hell before I punish him.

Al-Mujālid b. Sa'id—'Āmir al-Sha'bi: 'Umar b. al-Khaṭṭāb asked the people of al-Kūfa, al-Baṣra and al-Shām to send to him the best amongst them. From al-Kūfa came 'Uthmān b. Furqad, from al-Baṣra al-Ḥajjāj b. 'Ilāṭ, and from al-Shām Ma'n b. Yazīd, all three from the tribe of Banū Sulaym. 'Umar then appointed each one of them to be tax administrator in the lands of his native place.

Muḥammad b. Abī Ḥāmid: Our Elders told us that Abū 'Ubayda b. al-Jarrāḥ remarked to 'Umar b. al-Khaṭṭāb that he degraded the Companions of the Prophet by appointing them as tax collectors. When 'Umar replied that he could not dispense with the services

of such reliable men, Abū 'Ubayda proposed that sufficient fixed stipends should be paid to them.

Muḥammad b. 'Abd al-Raḥmān b. Abī Laylā: Someone told me that 'Abd Allāh b. 'Abbās said: When b. al-Khaṭṭāb invited me to accept the position of tax administrator of the Ḥimṣ district, in northern Syria, to replace the administrator who had died, he remarked: I would like to appoint you but I have some hesitation because your standing as one of the closest Relatives of the Prophet will not make the task easier for you. I think that the Prophet did not appoint any of you, his Relatives, to such positions to avoid mutual accusations and recriminations which cannot be prevented between such close relations. Thereupon I told 'Umar that I could not accept the post and advised him to find someone else in whom he would have full confidence without any such hesitations.

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Al-Mujālid b. Sa'īd—'Āmir—al-Muḥarrir b. Abī Hurayra—his father Abū Hurayra: 'Umar b. al-Khaṭṭāb asked the Companions of the Prophet to help him in collecting the taxes and he sent me to al-Baḥrayn and Hajar. I returned at the end of the year with two sacks containing 500,000 dirhams. When 'Umar exclaimed that he had not seen such an amount of money collected which did not include money wrongly appropriated and property robbed from orphans and widows, I replied: By God, no! I would be the lowest, most foolish man to hand over to you the benefits of wrong acts while the blame and responsibility for it would remain mine.

Some of our scholars: 'Umar b. 'Abd al-'Azīz wrote to one of the original inhabitants, devoted to the welfare of al-Shām, asking him to assist in improving the position resulting from lack of interest in Muslim standards and for any help in this good cause. The man replied: We have a worn out population with erased roadmarks to guide them; the wise are afraid to talk and the ignorant do not ask questions. As to my assistance, my reply is: "O God! for the good Thou hast bestowed upon me, I will not be a supporter of the sinners" (Q.28 : 16).

One of our scholars: I heard Maymūn b. Mihrān saying that 'Umar b. al-Khaṭṭāb used to collect in al-'Irāq 100,000,000 yearly and that ten men from al-Kūfa together with ten from al-Baḥra had to take four oaths that it was not collected by coercion and that no Muslim or Dhimmī was oppressed.

Maymūn b. Mihrān, who served in al-Jazīra as a tax collector

and judge, complained to 'Umar b. 'Abd al-'Azīz about his difficulties in discharging both duties at the same time. 'Umar replied: I did not burden you with an impossible task. Protect goodness and give judgments in favour of what seems to you just, but refer to me anything you find complicated. If people abandon difficult jobs neither religion nor mankind could exist.

Abū Ḥaṣīn: 'Umar b. al-Khaṭṭāb said: The back of a Muslim is protected against unjustified flogging.

Tāriq b. 'Abd al-Raḥmān—Ḥakīm b. Jābir: 'Umar once beat a man for some misdeed. The man then said to him: Two kinds of persons must be warned, those who do not know that they are acting wrongly and those who act wrongly by mistake. In such cases a person is pardoned. Thereupon 'Umar said: You are right! Beware, now you are warned; and he pardoned him.

Isrā'īl—Simāk b. Ḥarb—Abū Salama: 'Umar b. al-Khaṭṭāb once dispersed men and women who crowded over a watering-trough by beating them. When he later remarked to 'Alī that he was afraid that he had committed a mortal sin, 'Alī comforted him, saying: If you had beaten them out of spite or enmity, then you would have committed a mortal sin; however, you have beaten them from good motives, as a shepherd deals with his flock, so there is nothing in it, because you are their shepherd and educator.

Mis'ar b. Kidām—al-Qāsim: When appointing tax administrators 'Umar used to admonish them: I am not appointing you to behave like tyrants but like leaders. You should not beat the Muslims and debase them, nor flatter them to encourage revolts, nor deprive them of their rights or oppress them, but to preserve the flowing income of the Muslims.

Some of the scholars—'Amr b. Maymūn: 'Umar b. al-Khaṭṭāb addressed the people, saying: By God, I am not sending my administrators to you to beat you and to take your property away, but only to teach you your religion and the Sunna of your Prophet. He who is treated otherwise should inform me and by God I will retaliate against his oppressor. 'Amr b. al-'Āṣ then stood up and asked: Do you mean, O Commander of the Faithful, that if a Muslim is appointed as administrator and he chastises someone, you will retaliate against him? By God—replied 'Umar—I will retaliate as I have seen the Prophet himself do. Therefore do not beat Muslims to degrade them, do not deprive them of their rights so

that they lose their faith, and do not cause them to be in want which would result in their perdition.

‘Abd al-Mālik b. Abī Sulaymān—‘Aṭā’: ‘Umar asked his administrators to appear before him after the harvest season. When they came he addressed the people saying: O you people! I have sent these my administrators to deal with your affairs justly and not to do harm to your bodies, your lives or your property. Now, if anyone of you has any complaint against them, let him speak up. Only one person stood up and said that the administrator of his place had flogged him 100 lashes. Thereupon ‘Umar ordered that he should be allowed to retaliate by administering 100 lashes to his administrator. ‘Amr b. al-‘Āṣ intervened, saying that this could turn out to be setting a precedent which would be too much for administrators in future. However, ‘Umar did not change his mind and said: The retaliation must proceed as I have seen the Prophet himself retaliate. ‘Amr then asked permission to compensate the man and they agreed on a payment of 200 dīnārs, i.e. two dīnārs per lash.

‘Abd Allāh b. al-Walīd—‘Āṣim b. Abī al-Najūd—‘Umāra b. Khuzayma b. Thābit: When ‘Umar was appointing someone he used to ask for a recommendation from some of the Companions and some other people. He laid down the following conditions on the person to be appointed: (1) not to ride in a hackney-carriage; (2) not to don fine soft clothes; (3) not to eat selected foods; (4) not to employ a porter to close his doors against applicants. When ‘Umar was once walking in one of al-Madīna’s streets someone called out to him: O ‘Umar, do you believe that the mere laying down of conditions will save you from God’s punishment while your administrator ‘Iyāḍ b. Ghanam dons soft fine clothes and has a porter at his doors? Thereupon ‘Umar asked Muḥammad b. Maslama, his liaison officer with the administrators, to bring ‘Iyāḍ to him. When the officer found a porter at ‘Iyāḍ’s door and ‘Iyāḍ himself wearing a fine shirt, he asked him to appear before ‘Umar with his shirt on, not allowing him to cover it with a coat. ‘Umar then ordered ‘Iyāḍ to remove his shirt and gave him a long raw woollen garment, a flock of sheep and shepherd’s stick, saying: Don this cloth and take this stick and graze the sheep, use public water for your own and your flock’s drinking needs and then allow others who pass by to drink and keep the surplus for us. When

'Iyāḍ replied that he preferred death to such a life, 'Umar asked: Why, wasn't your father called "Ghanam" (Sheep) because he was a shepherd? Do you think you will be able to change your habits? When 'Iyāḍ promised to do so he was sent back and became an exemplary administrator.

Al-A'mash—Ibrāhīm: Whenever 'Umar b. al-Khaṭṭāb was informed that any one of his administrators did not pay visits to the sick or did not listen to the complaints of the weak, he used to dismiss him.

'Ubayd Allāh b. Abī Ḥamīd—Abū al-Malīḥ: 'Umar b. al-Khaṭṭāb wrote to the judge Abū Mūsā al-Ash'arī: Treat in your court all people equally, so that the weak should not despair of your justice and the strong not be emboldened by a partial treatment.

An old scholar from al-Shām—'Urwa b. Ruwaym: 'Umar b. al-Khaṭṭāb instructed Abū 'Ubayda, in al-Shām, thus: Apply the five following rules when sitting as a judge in court: (1) both contestants must produce decisive legal evidence and accept the oath to prove their cases; (2) encourage the weak to state his case without fear; (3) a case in which one of the parties is from another city should be heard first to prevent such a party from neglecting his case because of delay; (4) additional claims, not pleaded when the case was first heard, should be disregarded; (5) urge a compromise when a judicial decision is not easy.

Muḥammad b. Ishāq—One who heard it from Ṭalḥa b. Ma'dān al-Ya'marī: 'Umar b. al-Khaṭṭāb addressed us, his administrators, thus: O, You People! Nobody can obtain his rights if he disobeys God. Taxes are justified only if dealt with in accordance with these principles: (1) that they are collected in a just, legal way; (2) that they are spent justly and legally; (3) that nothing unjust or illegal should be associated with them. I consider myself, with regard to the taxes collected, as a guardian of an orphan's property, who, if he can afford it, will dispense with any remuneration, but if not will accept it as a favour. I do not ask anyone to do wrong or oppress anyone, and will put the cheek of such an oppressor on the ground and my foot on his other cheek until he acknowledges justice. The people have the right to demand of me that I should collect the kharāj and other taxes, from whatever God bestows on them which is taxable, in a straight and open manner; that I should spend the taxes collected in a legal way; that I should if possible

increase their pensions; that I should fortify the frontier-settlements; and that I should not involve them in danger and detain them too long in the frontier-settlements. We live in times in which trustworthy men are scarce and vain preachers are many, when the real religious scholars are few and there are plenty of those who promise the Other World and behave in such a manner that faith is consumed as fire consumes wood. Every one of you grasping this should rely on God and wait for better times. God's truth is stronger than that of his creatures, as is said: "He does not command you to take the angels and the Prophets as Lords; will He command you to show unbelief after ye are Muslims?" (Q.3 : 74). I am appointing you administrators to be leaders to guide the Muslims in the ways of righteousness and not as rulers and tyrants. Preserve the rights of the Muslims by not beating and degrading them or by flattering them to incite them to rebellion, and do not ignore their complaints, thus enabling the strong to destroy the weak. Do not appropriate public amenities exclusively to yourselves to the detriment of the subjects. Do not ignore them but employ them in battles against enemies in accordance with their abilities. If they are not fit to fight leave them alone, which course is more advantageous for winning a war. I call all people to be witnesses that I am appointing the administrators as leaders to teach the people their religion, to collect the taxes due and to serve as judges in disputes, provided that any complicated issue be referred to me. The success of an administrator depends on firmness without tyranny and on leniency without weakness.

Some of the al-Kūfa scholars: 'Alī b. Abī Ṭālib wrote to his administrator Ka'b b. Mālik saying: Appoint someone to relieve you from your daily affairs and start, accompanied by your assistants, on an inspection tour in al-Sawād, district after district, to enquire into the behaviour of the tax collectors until you cover the whole area between the Tigris and the Euphrates and then return to your districts and resume your administration. Know that This World is passing away and that the Other World is coming nearer and that the acts of human beings are remembered; a reward comes for something done in the past and the future brings only what you have prepared in advance in good deeds, for good acts produce goodness.

Dā'ūd b. Abī Hind—Riyāḥ b. 'Ubayda: I asked 'Umar b. 'Abd

al-'Azīz to allow me to visit al-'Irāq, where I had an estate and a son. After giving his permission he asked me to enquire into the behaviour of the administrators there and to ask the inhabitants' opinion about them. I found that everything was in order and that the inhabitants had only praise for them. When I reported this on my return 'Umar said: Praised be God for this! Had you found them otherwise I would have dismissed them without ever employing them again. The shepherd-ruler is responsible for the welfare of the subjects and must do everything that he thinks good for them in the eyes of God. He who is burdened with the care of subjects is burdened with a grave matter.

'Abd al-Raḥmān b. Thābit b. Thūbān—His father: 'Adī b. Arṭa, one of 'Umar b. 'Abd al-'Azīz's administrators, asked him what to do with taxpayers who are not ready to pay their taxes without harsh treatment. 'Umar replied: I am greatly astonished that you seem to ask my permission to maltreat people as if my permission will save you from God's wrath and punishment. From those who pay you readily accept what they offer, but let those who try to pay less take the oath. For I prefer that the people who take a false oath should meet God as sinners than that I should meet Him as their oppressor. Said the narrator: When a man of al-Shām once complained to 'Umar that the passing troops had damaged his fields, 'Umar compensated him with ten thousand.

ON LETTING FIELDS AND PALM ORCHARDS

You have asked, O Commander of the Faithful, about the precepts governing the lease of fields and orchards on condition that the lessor gets as rent half or a third of the yield. The view of our colleagues from al-Ḥijāz and al-Madīna is that it should not be allowed, but they make an exception in the case of palm orchards. However, the scholars of al-Kūfa do not treat fields and trees. Some of them are against such transactions, whether in fields or in orchards, while others allow both. The most reliable view, *and God knows best*, is that all such leases are allowed and valid. I consider them to be similar to partnership contracts under which one person hands over to another a sum of money to use for a business deal from which he will get half or a third of the expected profits.

There is no difference of opinion amongst scholars as to the validity of such partnership contracts and the same should in my opinion apply to a contract whereby land is let on similar conditions. However, Abū Ḥanīfa was against the lease of fields or orchards for a third, fourth or more or less of the yield, while Ibn Abī Laylā saw no harm in it. Abū Ḥanīfa and those who were against it rely on a Tradition transmitted by Abū Ḥaṣīn from Rāfi' b. Khadij whose father told him that the Prophet, when passing near a garden which Rāfi' b. Khadij had taken on lease, said to him: Do not take on lease anything of it! On the authority of this Tradition and another one from Jābir saying that the Prophet was against letting fields for a third or a fourth of the yield, Abū Ḥanīfa and those who are against such leases consider them void on account of uncertainty. The scholars of al-Ḥijāz however who allow it, rely as I have mentioned, on the precedent of the fields and palm trees of Khaybar which were let by the Prophet to the inhabitants of Khaybar. Only a small number of al-Kūfa scholars differentiate between trees and fields. I consider the traditions about Khaybar more important than others and therefore consider such leases as valid, *but God knows best.*

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Agricultural contracts may have the following forms:

1. Loan of land by one person to another without specifying a rent or other conditions. The borrower cultivates it at his own expense and with his own grain on condition that the crops belong to him. If it is kharāj land the owner of the land is responsible for the kharāj tax, but if it is 'ushr land the borrower pays the 'ushr. This is Abū Ḥanīfa's view.

2. Loan of land on condition that the expenses, the grain and the crops are shared. 'Ushr tax is paid from the crops if it is 'ushr land and kharāj tax by the owner of the land if it is kharāj land.

3. Lease of a field for a year or two at a fixed amount of money as rent. This is valid according to Abū Ḥanīfa, who says that if it is kharāj land the owner pays the kharāj tax, but if it is 'ushr land he pays 'ushr tax. However, I think that if it is 'ushr land the owner of the crops has to pay the 'ushr tax.

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4. Muzāra'a agreement whereby the owner gets a third or a fourth of the yield. Abū Ḥanīfa considers such a condition to be void and that the lessee has to pay an assessed rent. The taxes are on the land owner. However, I consider such agreements valid. The kharāj tax is paid in such a case by the owner of the kharāj land, but the

'ushr tax is paid from the crops proportionately by both lessor and lessee.

5. A landowner hires a peasant to cultivate some land and bears all the expense, promising the peasant a sixth or a seventh of the crops as wages. This is void according to Abū Ḥanīfa and those of the same view. The crop belongs to the owner of the land and the peasant has a right to assessed wages for his labours. However, I am of the opinion that the agreement and its conditions are valid, in view of the known sources of the authorities. I agree with Abū Ḥanīfa that an agreement whereby an owner of millstones or water-mills allows a person to let them to people for milling, against a fixed payment, and whereby both agree to share equally the income, such an agreement is void. And so is a contract whereby one undertakes to let to other people houses, beasts of burden, or a boat, aiming thereby to share equally in the future income. In such void contracts the owner has the right to the whole income derived from the letting of his property and the other party has a right to claim from him assessed wages. But this is different from the case of the hired peasant for the cultivation of land.

TRADITIONS

Nāfi'—'Abd Allāh b. 'Umar—'Umar: The Prophet let fields and palm trees to the inhabitants of Khaybar against payment of half of the yield. He used to give 80 wasqs of barley and 20 of dates to his wives out of his share in the yield of every year. When 'Umar expelled the Jewish tenants and distributed the lands of Khaybar he gave the Prophet's wives the option of receiving part of the lands or of continuing to get their 100 wasqs of the yield each year. Some accepted land but others preferred the annual income of produce. Amongst those who preferred the yield in kind were 'A'isha and Ḥafṣa.¹

'Umar b. Dīnār: Abū Ja'far was asked about the tax-farming of land and trees and he replied: The Prophet used to farm the lands of Khaybar to its owners who took care of the palm trees by irrigation and fertilization. When harvest time was near he used to send 'Abd Allāh b. Rawāḥa who supervised the valuation of his share, i.e. half of the yield, which was sent to the Prophet. During one of the years the Jews complained to the Prophet that 'Abd Allāh b.

¹ Y. no. 97.

Rawāḥa was unjust to them during the valuation. When the Prophet proposed that 'Abd Allān should deal with the whole yield and send them their share in money, they ceased to complain.

Al-Ḥajjāj—Abū Ja'far: The Prophet gave the lands of Khaybar for half of the yield and Abū Bakr, 'Umar and 'Uthmān used to give their lands for a third of the yield.

Al-Am'ash—Ibrāhīm b. al-Muhājir—Mūsā b. Ṭalḥa: I saw Sa'd b. Abī Waqqāṣ and 'Abd Allāh b. Mas'ūd giving their lands for a third and a fourth of the yield.

Al-Ḥajjāj b. Arṭa—Abū Ja'far: The Prophet let Khaybar for half of its yield. The Prophet, Abū Bakr, 'Umar and 'Uthmān used to give lands for a third.

This is the best that we heard but *God knows best*.

CHAPTER SEVEN

PUBLIC LANDS AND WATER SOURCES

DEAD LAND (MAWĀT)

You have asked, O Commander of the Faithful, how to deal with lands conquered by force ('Anwa), or taken over by a peace treaty (Ṣulḥ), where no sign of cultivation or building belonging to someone can be found. My reply is: 36

If such lands are not village common lands or grazing grounds, meadows, cemeteries, or forests or public squares for cattle and sheep and do not belong to anyone and are not in anyone's possession, then they are considered as of the Mawāt category, i.e. Dead Land. Anyone who revives such land becomes its owner. From such lands you are entitled to grant fiefs to whom you may wish or to let it or do anything beneficial with it. Abū Ḥanīfa maintained that he who revives such land with the permission of the authorities becomes its owner, but not if he does so without a permit.¹ Abū Ḥanīfa's view that permission must be obtained is based on the following reasons: If two persons intend to revive the same plot of land and there is no need to obtain a permit, who will decide which of them should revive it? Or, if anyone wants to revive a plot of land on the boundary of another man's land, who objects to the revival on the ground that it will cause damage to his land, what is going to happen? Such disputes can be avoided only by the need to obtain a permit in advance. Abū Ḥanīfa's view does not contradict the Prophet's general ruling that he who revives land becomes its owner because permits are only intended to regulate and legalize the reviver's rights.

However, I am of the opinion that if no damage will be caused to anyone by the proposed revival and there is no dispute about it, then the Prophet's ruling must be construed as containing a general permit which is valid for ever. In cases of possible damages to anyone the ruling in the following Traditions that a trespasser does not acquire any right, will be applied.

¹ Abū Hanīfa's view is codified in Article no. 103 of the Ottoman Land Code.

The Traditions concerning this category of land refer to the revival of lands in which no one has ownership rights or any other rights. He who revives them acquires ownership rights in them and may continue to cultivate or let them for cultivation, dig canals in them or otherwise develop them for his benefit. In the case of 'ushr land he will pay 'ushr tax and for kharāj land he will pay the kharāj tax. If the land is of an unknown category it becomes 'ushr land if the reviver has dug a well or opened canals on it. Dead Land includes also land abandoned by enemies without any trace, which is not cultivated and is not known to belong to anyone or claimed by anyone.

"Enclosing land" means that someone rushes to erect a fence around some Dead Land to establish a claim to it, but later does not revive it by cultivation or otherwise. Such a claimant loses any right to the enclosed area after three years from its enclosure, and he then has no more rights in it than any other man. 58

All lands conquered by force and distributed amongst the soldiers after the Fifth has been deducted, are considered 'ushr land and 'ushr tax is paid by a reviver or the soldiers amongst whom it was distributed. However, if the conquered lands are left in the hands of the previous owner, as 'Umar did with al-Sawād lands, then such lands are considered kharāj land and the reviver, or those who remained in possession, pay kharāj tax for it. Land revived in al-Ḥijāz or from the lands of the Arab nomads who became Muslims is 'ushr land. Lands taken from idol worshippers if revived with waters which were their property is considered kharāj land, but if revived with waters from a well dug on it by the reviver or by a spring which he opened in it, then it is 'ushr land. However, if the land could be revived with waters which were owned by the previous owners then it is considered kharāj land whether he uses these water sources or not.

The difference between the lands of Arab nomads and other enemy lands lies in the different treatment of their owners. War is waged against the nomad Arabs to force them to accept Islām. No jizya is accepted from them and therefore lands left to them after accepting Islām are 'ushr land. Even if the ruler does not leave them in possession and distributes their lands they remain 'ushr land.

If dead land is granted to someone it cannot be taken away from the grantee except by legal process.

TRADITIONS¹

Hishām b. 'Urwa—His father—'Ā'isha: The Prophet said: He who revives Dead Land acquires it and no trespasser has any right. 36

Al-Ḥajjāj b. Arṭa—'Amr b. Shu'ayb—His father—His grandfather: The Prophet said: He who revives Dead Land acquires it.

Muḥammad b. Ishāq—Yaḥyā b. 'Urwa—His father: The Prophet said: He who revives Dead Land acquires it and no trespasser has any right. Said 'Urwa: Someone who saw it told me how a palm tree planted by a trespasser, was uprooted with a pick-axe.

Layth—Ṭā'ūs: The Prophet said: The original rights to the land belong to God and His Prophet and then, through him, to you. He who revives Dead Land acquires it; however, one who only erects a fence around land has no rights after three years. 37

Muḥammad b. Ishāq—al-Zuhrī—Sālim b. 'Abd Allāh: 'Umar b. al-Khaṭṭāb said from the pulpit: He who revives Dead Land acquires it, but he who only fences it loses his right after three years.

The reason for this warning lies in the fact that people used only to fence land without cultivating it.

Al-Ḥasan b. 'Umāra—al-Zuhrī—Sa'id b. al-Musayyib: 'Umar b. al-Khaṭṭāb said: He who revives Dead Land acquires it but a mere encloser of land has no rights after three years.

Sa'id b. Abī 'Arūba—Qatāda—al-Ḥasan—Samra b. Jundab: He who builds a wall around Dead Land acquires a right to revive it.

PASTURES AND MEADOWS

Meadows owned privately by the inhabitants of a village and used for pasture and woodcutting are similar to other private property as regards sale, inheritance, building or similar rights. However, they have no right to prevent free use of water and grass for drinking and grazing, except the taking of water for irrigation purposes which must be by consent. But if the villagers have no common grazing land, common brushwood or forests for their own use, as every village in the plains and the hills has for the common use of the inhabitants, then wood cutting and grazing by strangers in the privately owned meadows may be prohibited if detrimental to the villagers. 58

¹ Y. nos. 266-298; Tax. pp. 31-33.

Nobody is allowed to use other people's property for pasture, nor to dig a canal or well in it without the owner's consent.

Nobody is allowed to hew wood in a privately owned forest without the owner's permission; however, hunting and fishing are allowed because the fish and birds are not the property of the owner of the forest. It is also forbidden to graze cattle in a private forest and the owner of the cattle will be liable to pay for any damage done. Although 'Alī b. Abī Ṭālib sold the right to cut rushes in the brushwood of Burs, it is not permitted that grass be sold under any pretext.¹ 59

Fruits growing on mountains and meadows, valleys and hills, or trees not planted by anyone, are free and so is honey found on hills and in thickets. As long as no one has acquired rights to it through a beehive, it is free as eggs and broods of wild birds.

If a landlord burns some dry grass or crops and the fire spreads from his place and causes damage to others, he cannot be made responsible because he was entitled to start a fire on his own property. The same applies to an owner of a forest who burns some rushes, causing thereby damage to others, because his act is similar to the act of a person irrigating his own property and causing thereby the inundation of his neighbours' property. However, it is not permitted to do any such thing with the malicious intent of causing damage to a neighbour by inundation or fire.

TRADITIONS

Abū Ishāq al-Shaybānī—Bishr b. 'Amr al-Sakūnī—Abū Mas'ūd al-Anṣārī or Sahl b. Ḥunayf: I heard the Prophet saying that the area of al-Madīna is reserved and protected. He repeated it three times.

Mālik b. Anas: The Prophet has declared an area of 12 miles around al-Madīna as reserved for the protection of shrubs growing there and an area of four miles prohibiting hunting in it.

Some scholars explain these restrictions as intended for the prevention of the hewing of the shrubs for wood, thus destroying it as a grazing area for milk-producing livestock which is more important to the inhabitants than wood.

Hishām b. Sa'd—Zayd b. Aslam—his father: I have seen 'Umar b. al-Khaṭṭāb appointing one of his clients as supervisor on the

¹ Y. no. 75.

reserved areas and instructing him thus: Be careful! O Hunay! Withdraw your hands from the people! Fear the complaints of the oppressed which will be heard by God. Restrict the grazing of rich owners of camel herds and flocks of sheep and turn away the livestock of men like 'Uthmān b. 'Affān and 'Abd al-Raḥmān b. 'Awf, who, if their cattle perish, when you forbid them to graze in reserved areas, will return to their palm trees and fields in al-Madīna, but if you do so to poor people and their flocks perish they will come crying to me. It is easier for me to provide them with water and grass than to spend gold or silver on them. By God! The water and grass is part of their country for which they fought before the advent of Islām and for which they accepted Islām. Without the livestock's part in the wars for God's causes no person could have been protected in their country. 60

ON THE REVIVAL OF ISLANDS IN THE TIGRIS AND EUPHRATES

You asked, O Commander of the Faithful, about the revival of islands in the Tigris and the Euphrates. If a person erects a fence against the waters around an island of land emerging from the Tigris or the Euphrates rivers and revives it, or a peninsula appears and the owner of the land adjacent to it revives it after fencing it, the same rule as in other Dead Land applies to it, if his action does not cause damage to others. If it does he is prevented from doing anything in it without the permission of the authorities. Similarly, if it is an island like the island near Bustān Mūsā or the island on the east side in the Tigris river which, if fenced and cultivated, will certainly cause damages to the nearby owners of houses, then even the authorities have not right to grant it as a fief or to allow it to be developed. However, if someone drains a piece of swampy ownerless land which is situated outside the city, and builds a fence around it and cuts its rushes, then it is considered a revival of Dead Land. Similarly, lands reclaimed from brushwood, from the sea or from the desert belong to the reviver if no one previously had any right in them. However, if someone proves prior rights they will be restored. If the reviver has already sown such land he has a right to his harvest, but is responsible for any loss to the land and for the rushes and other growth destroyed; however, he is not liable to pay rent. 52

If someone enters into a partnership agreement to reclaim a piece of swampy land which he has already drained and fenced, then such an agreement is void; but if nothing has yet been done, then the agreement is valid. Similarly, if someone agrees to accept a partner for the revival of a piece of desert land after he has already dug a well in it, or a pond or a canal, such a partnership is void, but if he has not yet done anything the partnership is valid. 53

The owner of land which is adjacent to an island which has appeared has a prior right to revive it over a stranger.

If the revival of an island is liable to cause damage to passing boats in the river, then such an island is taken back from the reviver and left as it was. In such a case it is considered like a public road on which no one is allowed to do anything which may cause damage to the public. As the authorities have no right to give away parts of a public road, so they have no right to grant any islands for revival if this may cause damage to the public.

ON RESERVED SPACES (ḤARĪM)

The answer to your question, O Commander of the Faithful, concerning the reserved protected areas around watercourses is as follows: A person opening a well in an uninhabited area, not owned by a Muslim or Dhimmī, has a right to a protected area of 40 cubits on each side if it is for his cattle, but if it is for irrigation then the protected area is 60 cubits on each side of it. However, if it is a spring, then the protected area is 500 cubits. A well used for watering fields with the aid of a camel is called *Bi'r al-Nāḍiḥ* and one used for drinking by cattle is called *Bi'r al-ʿAṭn*. 57

I would allow underground canals the same protected area as is reserved for wells. Nobody is allowed to enter a protected area nor to dig a new well in it, cultivate it or build on it. Trespassers will be responsible for any damage done through such operations in an area not owned by them, but not for loss caused to the waters of the well. If waters of an underground canal appear on the surface, their protected area will be similar to the protected area of a surface canal. However, if someone has dug a well outside a protected area but so near to it that the water of the other well disappears, he will not be responsible for the digging in his own property.

TRADITIONS¹

Al-Ḥasan b. 'Umāra—al-Zuhrī: The Prophet said: The protected area of a spring is 500 cubits, that of Bi'r al-Nāḍiḥ 60 cubits and that of Bi'r 'Aṭn 40 cubits, as a rest place for cattle.

Ismā'il b. Muslim—al-Ḥasan: The Prophet said: He who digs a well is entitled to 40 cubits around it as a place of rest for his cattle.

Asha'th b. Sawwār—al-Sha'bī: The protected area for a well dug by a person is 40 cubits on each side, where nobody is allowed to enter or interfere with his water.

Muḥammad b. Ishāq—Abū Bakr b. Muḥammad—'Amr b. Ḥazm: I asked al-Zuhrī about reserved areas for resting cattle and he said that in pre-Islamic times the protected area was 50 cubits but with the advent of Islām it was reduced to 25, i.e. 50 cubits between two wells. 58

Muḥammad b. 'Abd Allāh b. 'Amr b. Shu'ayb—his father—his grandfather: He who digs a well has a right to enclose an area of 50 cubits on each side around it, where nobody has a right to enter.

Qays b. al-Rabī'—Bilāl b. Yaḥyā al-'Absī: The Prophet said: There is no Ḥimā-protection except in three spaces: the area around a well, the range of a horse's tether, and the area occupied by a circle of seated men.

Muḥammad b. Ishāq: The Prophet said: When the water of a valley reaches the height of two ankles, the upper water-sharers have no right to withhold it from the lands of the water-sharers below them.

Abū 'Umays—al-Qāsim b. 'Abd al-Raḥmān—'Abd Allāh b. Mas'ūd: The lower water-sharers command the upper until their needs are satisfied.

Abū Ma'shar—his teachers: The Prophet gave a decision concerning the sharing of water accumulated in crevices, that if the waters reach a height of two ankles one is not allowed to withhold the water from one's neighbour.

ON CANALS, WELLS, RIVERS AND WATER RIGHTS

You asked, O Commander of the Faithful, if the authorities are entitled to demolish old established canals, or to remove sand or

¹ Y. nos. 309-337.

other alluvium from the shores of the rivers. My answer is that old established canals must be left in their positions. However, if they are newly dug, by a governor or someone else, and cause damage to adjacent buildings and rights of entry, they should be demolished or filled in and the ground levelled. But if they do not cause damage to anyone or if the damage caused is outweighed by the benefit, they should be left. The authorities must cancel any canal whose damage is greater than its benefit, except those used for drinking. If some people claim that a certain canal causes them damage and they themselves close it up without permission from the Authorities, it must be reopened and those responsible for the closing punished. Drinking rights are different from watering rights and the owners of the former can prevent anyone from using the waters for irrigation purposes if they find such use detrimental to their drinking rights.

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The owners of a private canal from the Tigris or Euphrates must participate proportionately in the expenses of digging and dredging the canal. They usually start from the highest part of the canal. Whenever they finish this part they move down to the next and release the owners of the first from participating further, and so they continue until they reach the lowest part. However, some scholars maintain that the whole canal is cleared first and then the expenses divided by the owners in proportion to their shares in the canal.¹

It is up to you to decide which of these two ways suits you best.

If some of the owners of a canal want to fortify it to prevent the breaking up of its walls, the other partners can be forced to share the expenses if general damage may be caused by not repairing the walls. However if no general damage may be caused, then each partner can be ordered to repair a damaged portion on his shore. No partner is entitled to prevent the public from using the waters of such a privately owned canal for drinking purposes, but the use of it for irrigation can be prevented.

No owner of a spring, well or watercourse has the right to prevent a "Follower of the Way" from using the water for drinking for himself, his beast of burden, his camels or his sheep. Nor has he the right to sell water for drinking purposes for man and beast. He may prevent or allow the use of the water for irrigation but may not sell it. The sale of water gathered in a reservoir from rivulets is not

¹ Tax. p. 60.

permissible because the object of the sale is not of a fixed quantity and is unknown even if a number of measures or days is mentioned. However, the sale of water kept in containers is legal because it is in the custody of the owner of the container, but if he has accumulated some water in a reservoir with a vessel, he is entitled to sell it by the vessel because he has already taken possession of it. It is not similar to water accumulated from rivulets, springs or watercourses because the quantities of the incoming waters in such reservoirs are unknown and anyone is allowed to use it. However, no one should use the waters of his neighbour without his permission except in a case of emergency, or for drinking purposes, otherwise damage may be caused to the owner of the watercourse or spring by preventing him from irrigating his lands.

TRADITIONS

Muḥammad b. 'Abd al-Raḥmān b. Abī Laylā—'Amr b. Shu'ayb 55
—his father—his grandfather: A slave of 'Abd Allāh b. 'Umar wrote to him: I was offered 30,000 dirhams for the surplus of our water after satisfying the needs of our fields, palm trees and the usual necessities. Do you agree to sell this surplus and use the price for the purchase of more slaves to help in the farm? 'Abd Allāh b. 'Umar replied to him: I have heard the Prophet saying: He who prevents others from using the surplus of his waters and thereby prevents the growing of more herbage will be prevented by God on the Day of Resurrection from any advantage. After using the water for your needs, allow it to flow to your neighbours, starting from the nearest one.¹

Jarīr b. 'Uthmān al-Ḥimṣī—Zayd b. Ḥabbān al-Shar'ī: One of our people who was stationed in the land conquered from the Byzantine saw a tribe grazing their flocks near his tent and chased them away. One of the Muḥājirūn who saw it reprimanded him saying: I was with the Prophet in three battles and heard him saying: The Muslims are partners in three things: Water, grass and fire.² When that person heard the name of the Prophet mentioned, he was ashamed and, embracing the Muḥājir, he asked to be pardoned.

Al-'Alā' b. Kuthayr—Makḥūl: The Prophet said: Do not prevent

¹ Y. nos. 338–340.

² Y. no. 315.

the free use of grass, water and fire. They are a commodity for invigoration, and provide strength for the weak.

Muḥammad b. Ishāq—‘Abd Allāh b. Abī Bakr—‘Amra—‘Ā’isha: The Prophet prohibited the sale of water.

Our interpretation of this tradition is that it prohibits the sale of water before it comes into someone’s possession in private containers, but public wells and troughs are not private containers.

Al-Ḥasan b. ‘Umāra—‘Adī b. Thābit—Abū Ḥazm—Abū Hurayra: The Prophet said: You should not withhold water lest it prevent the growing of grass.¹

Our colleagues are of the opinion that it is permissible to take water by force of arms in a case of emergency, e.g. if an owner of a canal, spring or well refuses to allow a “Follower of the Way” a drink for himself or his beasts to save their lives. This does not apply to food. The special ruling concerning water is based on a Tradition about ‘Umar b. al-Khaṭṭāb who, when told about a certain tribe’s refusal to allow people passing by to drink, said: Why didn’t you raise your arms and take the water by force?²

ON PUBLIC RIVERS

The Muslims are partners in the Tigris, Euphrates and similar large rivers or torrents and may freely take their waters for themselves and their beasts for drinking and for irrigating their fields and orchards, without restriction. However, if someone wants to open a new canal on his own land to bring water to it from a large river, he will be allowed to do it only if no damage will be caused to the river by this new canal; otherwise he will be prevented. The authorities are responsible for clearing and cleaning the great public rivers and for repairing the embankments whenever it appears necessary. Rights in the great public rivers differ from those in privately owned canals, in which no one has a right to interfere. Privately owned watercourses are subject to the laws of pre-emption if owned by several landowners in cases of sale of the land of one of the partners. Such owners of canals are entitled to prevent anyone from taking water from their canal for irrigation purposes, which is not the case with the public rivers, whose use for irrigation is allowed and where no pre-emption rights exist for partners in irrigation.

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¹ Y. nos. 316–317, 345.

² Y. no. 355.

Ships are also free to navigate on the public rivers. As for the water mills fixed in the Tigris and in the watercourses leading the ships into the Tigris, they may be either beneficial or damaging. If they obstruct the passage of ships they should not be allowed to remain and must be removed, but if they cause no damage they may be left in their places. However, if a ship collides with one of them, the owner of the watermill will be responsible for the damage caused. It is the duty of the authorities to demolish and remove such an obstruction from the Tigris and the Euphrates, because these rivers are considered as public highways where no one has a right to erect anything and will be responsible for any damage caused if he does so. I therefore propose that a special official should be appointed to supervise or to prevent the erection of any such mills in the Tigris and Euphrates in places where ships may be damaged. This official will warn everyone against erecting such dangerous obstructions and prevent their construction. Such an appointment will be very beneficial to the public.

No one owning land on the banks of the Tigris or Euphrates is allowed to charge those who approach the river with rent for using his land as a thoroughfare, because he does not sell them anything nor does he let them the land. However, it is permissible to let the land to people for use as a gathering place for camels and other beasts for a fixed monthly consideration, as this is a lease of land for an indicated purpose, even if it is made by the day. This applies only to the owner of the land or to one who has been given permission by the authorities; otherwise he has no right to do anything on the shore or to let it to those approaching the river, as they are entitled to use it freely. A landowner may refuse to allow anyone to pass over his land on his way to the river if there is another way leading to the water, but if there is no alternative way he cannot prevent his passing through his land for drinking purposes. Any innovation on the shores of the public rivers which is not for public use is prohibited. The inhabitants of a locality are entitled to arrange a thoroughfare for their own use, and may prevent strangers from using it for drinking purposes if the strangers' camels and beasts cause damage. Otherwise they cannot.

An owner of a canal is not responsible for damage caused to his neighbour by the overflowing of water from his canal into his neighbour's land, because the canal is within the boundaries of his

private property. The neighbour has to protect his land against such a danger or against the water making his land swampy. However, it is forbidden to allow such things with the deliberate intention of damaging lands of a Muslim or a Dhimmī. The Prophet has warned against causing damage by saying: He who causes damage to a Muslim or non-Muslim is to be cursed! 'Umar b. al-Khaṭṭāb instructed Abū 'Ubayda to take care that no Muslim should do any wrong to anyone of the Ahl al-Dhimma. The authorities must prevent anyone from allowing his canal to overflow if he intends thereby to cause damage to his neighbour's crops.

A landowner cannot prevent his neighbour's canal from running through his land if this was the position when he became owner of the land. Otherwise the neighbour has to prove his claim to the ownership of the canal, or in the absence of such proof, to establish his right to bring water to his land through that canal. If this is proved he will also be entitled to use the banks of the canal for clearing and digging purposes, without interference from the landowner. The same will apply if the landlord of the lower part of the canal objects to the use of the canal by the claimant.

Anyone digging a well or a canal in land owned by another without his permission will be liable for all expenses necessary to reinstate the land as it was before the digging, and will also be liable to pay for the damage caused through his unlawful digging.

An owner of a canal can prevent a new canal being opened above or below his canal. Even if he has given permission he can later withdraw it. However, if he has given permission for the building of a new canal to be used for a certain fixed period, and then withdraws his permission before that period has elapsed, he will be liable for the cost of construction incurred by the builder of the new canal.

CHAPTER EIGHT

GENERAL LEVIES AND CUSTOMS-DUTIES

'USHR TAX

The 'ushr tax is imposed on lands thus: The full 'ushr for yields 29
from naturally irrigated lands and half 'ushr from artificially
irrigated lands. The tax applies to privately-owned 'ushr lands and
to fiefs. It is imposed on yields which are preservable and not on
perishable crops, as melons, cucumbers, pumpkins, eggplants,
carrots, herbs, aromatic plants and similar yield, and not on fodder
or wood either. Preservable crops are those which are measured by
the qafiz and weighed by the ruṭl, as wheat, barley, maize, rice, 30
sesame, hemp, almonds, hazel-nuts, walnuts, peanuts, saffron,
olives, safflower, coriander, caraway, cumin, onion, garlic, and simi-
lar crops. On all of these, if they grow on naturally irrigated lands,
'ushr is imposed on a quantity of not less than five wasqs, but if
they grow on artificially irrigated lands, then half 'ushr is charged
and nothing lies on less than five wasqs of yield. However, 'ushr
lies on a yield composed of two and a half wasqs of wheat added to
two and a half wasqs of barley, or on five wasqs composed of one
wasq of wheat, one of barley, one of rice, one of dates and one of
raisins. On less than five wasqs nothing lies except in the case of
saffron, which is liable to 'ushr and half 'ushr even for less than
five wasqs if their value equals the value of five wasqs of cereals
sown on 'ushr land. If sown on kharāj land the kharāj tax will be
calculated on the same basis. However, Abū Ḥanifa is of the opinion
that nothing growing on 'ushr or kharāj lands is exempt from tax,
not even the smallest quantity. He based his view on a Tradition
from Ḥammād-Ibrāhīm. However, the opinions of those who
maintain that nothing lies on less than five wasqs are also based on
traditions, and the consensus of opinion is against Abū Ḥanifa's
view.

From everything which is taxable with 'ushr or half 'ushr nothing
is deducted for the wages of the collectors and the crops consumed
by their cattle if the crops are from land naturally irrigated.

A wasq contains 60 ṣā', known as the Prophet's ṣā'. Five wasqs

contain, therefore, 300 ṣā', and each ṣā' five and a third ruṭl. Similar measures are known as "qāfīz al-Ḥajjāj", "al-rub' al-Hāshimī" and "al-makhtūm al-Hāshimī", the first named containing 32 ruṭls. 31

If a yield is found to contain 300 ṣā', it is taxable even if it is known that the owner has consumed part of the produce or fed his family, neighbour or friend from it, decreasing thereby its quantity. The tax will be calculated from what is left without what was consumed or stolen.

These are the principles to be followed in imposing 'ushr on the yields of the land, and it is up to you to follow any of the opinions best suited to the subjects and more profitable to the Treasury.

TRADITIONS¹

Ḥammād—Ibrāhīm al-Nakha'ī: Any yield, small or large, is taxable, even a bundle of herbs. 30

Abān b. Abī 'Ayyāsh—al-Ḥasan al-Baṣrī—Anas b. Mālik: The Prophet said: There is no ṣadaqa on what is less than five wasqs of wheat, barley, maize, dates and raisins or on what amounts to less than five oqia or on less than five camels.

Yaḥyā b. Abī Unaysa—Abū al-Zubayr—Jābir b. 'Abd Allāh: The Prophet said that no ṣadaqa lies on what is less than five wasqs.

Muḥammad b. 'Abd al-Raḥmān b. Abī Laylā—'Amr b. Shu'ayb: 'Ushr lies on wheat, barley, dates and raisins from land that is naturally irrigated, and half 'ushr if it is irrigated artificially. 31

Sufyān b. 'Uyayna—'Amr b. Dīnār: The Prophet said: On what is naturally irrigated lies 'ushr and on what is irrigated artificially, half 'ushr.

Al-Ḥasan b. 'Umāra—Abū Ishāq—'Āṣim b. Ḍamra: 'Alī b. Abī Ṭālib said: On what is naturally irrigated lies 'ushr and on what is artificially irrigated half 'ushr.

Isrā'īl b. Yūnus—Abū Ishāq—'Āṣim b. Ḍamra: 'Alī b. Abī Ṭālib said: From what is naturally irrigated one out of ten and from what is artificially irrigated one out of 20 is due.

Muḥammad b. Sālim—'Āmir al-Sha'bi: The Prophet said: From what is naturally irrigated 'ushr is taken and from what is watered artificially half 'ushr.

¹ Y. nos. 356-598.

'Amr b. 'Uthmān: Mūsā b. Ṭalḥa said that there is no ṣadaqa except on wheat, barley, dates, grapes and raisins and that he had in his possession a letter, or he said "a copy of a letter" or "I found a copy of a letter", written by the Prophet to Mu'adh b. Jabal to this effect.

Abān b. Abī 'Ayyāsh—Anas b. Mālik: The Prophet said: 'Ushr lies on what is naturally irrigated and half 'ushr on what is artificially irrigated.

'Amr b. Yaḥyā b. 'Umāra b. Abī al-Ḥasan—His father—Abī Sa'id al-Khudrī: The Prophet said: No ṣadaqa is due on what is less than five Dhud or what is less than five Okia or what is less than five wasqs. Said 'Amr: The wasq is 60 ṣā'.

'Abd al-Raḥmān b. Ma'mar—Yaḥyā b. 'Umāra b. Abī al-Ḥasan al-Māzinī—Abū Sa'id al-Khudrī: The same tradition from the Prophet adding to it: Five wasqs at that time are today only two wasqs.

'Abd Allāh b. 'Alī—Ishāq b. 'Abd Allāh b. Abī Bakr—'Abbād b. Tamīm—Abū Ayyūb and other Companions of the Prophet: The Prophet said: The ṣadaqa lies on a minimum of five wasqs of wheat, dates and raisins.

Layth b. Abī Sulaym—Mujāhid: 'Ibn 'Umar said: No zakāt is due from vegetables.

Al-Walīd b. 'Īsā said that he heard Mūsā b. Ṭalḥa saying: No ṣadaqa is due from green vegetables, melons and any kind of cucumbers, but only from dates, wheat, barley and raisins. By ṣadaqa here he means the 'ushr levy.

Qays b. al-Rabī' al-Asadī—Abū Ishāq—'Āṣim b. Ḍamra: 32
'Alī b. Abī Ṭālib said: There is no zakāt on vegetables such as herbs, cucumbers, melons or anything without a stem.

Abān: Anas b. Mālik said that there is no zakāt on vegetables.

Ash'ath b. Sawwār—'Aṭā' b. Abī Rabāḥ and al-Ḥakam b. 'Utayba—Ibrāhīm al-Nakha'i: Ṣadaqa lies on everything the land yields.

Muḥammad b. 'Abd Allāh—al-Ḥakam b. 'Utayba—Mūsā b. Ṭalḥa—'Umar b. al-Khaṭṭāb: The Prophet said: No zakāt except on four yields: dates, raisins, wheat and barley.

Al-Ḥajjāj b. Arṭa—Al-Ḥakam b. 'Utayba—Miqsam—'Abd Allāh b. 'Abbās: The verse: "And give the due portion of it on the day of its harvesting" (Q.6 : 142), refers to the 'ushr and half 'ushr.

Asha‘th b. Sawwār—Muḥammad b. Sīrīn—‘Abd Allāh b. ‘Umar: The verse: “And give the due portion of it on the day of its harvesting” (Q.6 : 142), refers to something in addition to the ṣadaqa.

Al-Mughīra—Simāk—Ibrāhīm: The verse: “And give the due portion of it on the day of its harvesting” (Q.6 : 142), was acted upon before the introduction of the levy of ‘ushr and half ‘ushr and was abrogated by it.

Some scholars—Abū Rijā’—al-Ḥasan explained that the verse: “And give the due portion of it on the day of its harvesting” (Q.6 : 142), refers to the ṣadaqa from cereals and fruits.

Qays b. al-Rabī’—Sālīm al-Afṭas—Sa‘īd b. Jubayr: The verse: “And give the due portion of it on the day of its harvesting” (Q.6 : 142), means that you may first feed your guest and his beast and give to the needy who ask for it and then ‘ushr or half ‘ushr will be charged.

TAX ON HONEY, NUTS AND ALMONDS

40

‘Ushr lies on honey if it comes from ‘ushr land, but nothing lies on it if it is gathered from kharāj land, in deserts and hills, from trees or caves, as in such cases it is considered similar to fruits growing on wild trees on hills and in valleys.¹

‘Ushr lies on almonds, nuts, walnuts, peanuts, and similar yields if they grow on ‘ushr land and kharāj if they grow on kharāj land because they can be measured by weight.

Nothing lies on cane, wood, grass, straw, nor on palm-boughs; neither ‘ushr nor the “Fifth” nor kharāj are charged except for sweet rush on which ‘ushr lies from ‘ushr land and kharāj from kharāj land, because it is a useful plant although not edible. The same applies to sugar canes which are edible.

Nothing as far as we know lies on petroleum, tar, quick-silver, and asphalt, whether found in ‘ushr or kharāj lands.²

TRADITIONS

Some of our elders—‘Amr b. Shu‘ayb: The governor of al-Ṭā’if wrote to ‘Umar b. al-Khaṭṭāb informing him that the owners of the beehives had stopped paying what they used to pay to the

¹ Y. no. 73.

² Y. no. 77.

Prophet but insisted, nevertheless, that their valleys should be protected. 'Umar replied: If they hand over to you what they used to give the Prophet then protect their valleys, if not, do not protect them. They used to give the Prophet one out of every ten skins of honey.

Yaḥyā b. Sa'īd—'Amr b. Shu'ayb: 'Umar gave written orders that one skin of honey should be taken as tax out of ten skins.

Al-Aḥwaṣ b. Ḥukaym—His father: From each ten ruṭl of honey one ruṭl should be taken as tax.

'Abd Allāh b. al-Muḥarrir—al-Zuhrī: The Prophet said 'ushr lies on honey.

ON ṢADAQĀT¹

43

Instruct, O Commander of the Faithful, those appointed to collect the ṣadaqāt from herds of camels, cattle, sheep and horses to act justly and distribute the collected ṣadaqāt amongst those entitled to receive them in accordance with the traditions from the Prophet and his successors. He who introduces a meritorious rule has the same reward as the person who acts upon it and he who introduces a wrong rule is punished in the same way as the person who acts wrongly. The reward or punishment are complete for each of them and are not shared between them. This we are taught by a tradition from our Prophet and I pray to God that he may let you become one whose deeds are followed and whose acts are favoured and that He may magnify your reward and assist you in the position He appointed you and safeguard for you the flock entrusted to you.

1. The ṣadaqa to be imposed on each category is generally agreed upon and followed. The best tradition we heard about it is from al-Zuhrī—Sālim—Ibn 'Umar: The Prophet wrote a letter about ṣadaqa, which he attached to his sword—or his will—and he did not remove it until his death.² Then Abū Bakr acted accordingly till his death and then 'Umar. It contained the precepts as to how to collect ṣadaqāt, as follows: One ewe should be taken as ṣadaqa from each herd of 40 to 120 ewes. From 120 to 200, two ewes, from 200 to 300, three ewes, and so forth for any addition of 100 ewes one ewe more, but nothing for a fraction of a 100. From five

¹ Tax. pp. 45–50.

² Goldz. Muh. St. II. p. 15; A.U. nos. 938–940.

camels, one ewe; from ten, two ewes; from 15, three ewes; from 20, four ewes; from 25 to 35, one Bint Makhād;¹ from 36 to 45, one Bint labūn; from 46 to 60, one Ḥiqqa; from 61 to 75, one Jadha'; from 76 to 90, one Bint Labūn; from 91 to 120, two and from more than 120, for each addition of 40 camels one additional Bint Labūn and for each addition of 50, one additional Ḥiqqa. No joining together or separating for the purpose of counting is allowed and the levy for herds held in joint ownership is adjusted between the partners. *But God knows best.*

TRADITIONS

'Alī b. Abī Ṭālib said: If the number of camels exceeds 120 then the levy will be proportionate. This is also the view of Ibrāhīm al-Nakha'ī and Abū Ḥanīfa, i.e. that from each additional 50 camels one additional Ḥiqqa is due. In the case of sheep, for each additional 100 ewes, one ewe is added. Nothing is due from a herd of less than 30 pasturing cattle, but from 30 to 39, one young jadha' is due, and from 40 an older animal is due, and from 40, one for each addition of 30, one tabī' and from each addition of 40, one older animal is due. 43

Al-A'mash—Ibrāhīm—Masrūq: When the Prophet sent Mu'ādh to al-Yaman he ordered him to collect from each herd of 30 cattle one tabī' or tabī'a and from each herd of 40 an older animal. We are informed that 'Alī b. Abī Ṭālib acted similarly. 44

About the levy on horses there is a difference of opinion amongst our scholars as follows:

Abū Ḥanīfa—Ḥammād—Ibrāhīm: The ṣadaqa from pasturing horses is one dīnār for each mare.

'Alī was of the same opinion, but in another Tradition from him he indicates the contrary by citing the Prophet saying: I have exempted my nation from paying ṣadaqa for horses and slaves.

Other reliable persons repeated to us the same and similar Traditions.

Sufyān b. 'Uyayna—Abū Ishāq—al-Ḥārith—'Alī: The Prophet said: I have exempted you from paying ṣadaqa for horses and slaves.

There is no ṣadaqa on working camels and cattle. Mu'ādh did not collect anything from them and this is also the view of 'Alī.

¹ See 'Tax. pp. 47-49 for the meaning of the terms.

2. Ṣadaqa is collected once a year from camels, cattle and sheep, and young and old are counted together, even what the shepherd carried in his arms if born within the year. 44

Buffalo and pure long necked camels (Bakht)¹ are treated like camels and cattle, but goats like ewes and sheep.

The ṣadaqa from sheep lies on those older than two years and nothing is taken for an old, blind or a deformed one, nor for a breeding ram, a Mākhad or one with a kid, nor for a Rubba', i.e. a ewe still having its lamb with her to grow and not for an Akīla—one being fattened for meat by her owner, or one below the age of a Jadha'. The ṣadaqa collector has no right to choose the best of the herd, nor can he be forced to take the worst, but has to take proportionally, and has no right to move the herd from one place to another.

3. A Muslim believing in God and the Last Day should not refrain from giving ṣadaqa by hiding part of his camels, cattle or sheep in another place to bring their number below the taxable minimum, nor by any other trick whatsoever. We are informed that 'Abd Allāh b. Mas'ūd said: Nothing should prevent a Muslim from giving his ṣadaqa and the sin of not giving it cannot be atoned by prayer. And Abū Bakr said: Had anyone kept from me even a trifle of the ṣadaqa, they used to give to the Prophet, I would have fought him. He said it when some tried to evade this levy because he was convinced that he was allowed to fight for it. Jarīr reported that the Prophet said: Let the collector of ṣadaqa be satisfied when he leaves you. 45

4. You should appoint a trustworthy and honest man loyal to you and to the subjects, to supervise the collection of the ṣadaqāt in the country, and instruct him to choose reliable assistants, after investigating their conduct and honesty, for the collection of the ṣadaqāt. The monies collected should not be mixed with those of the kharāj tax, nor be handled by those collecting kharāj taxes, as I have heard that such collectors also try to collect ṣadaqāt, wrongly extorting money and harming the subjects. The supervisor appointed by you should be paid a fair salary, but not such that will consist of the greater part of the ṣadaqāt collected. The income from the kharāj tax is to be spent on the whole community, but that of the ṣadaqāt is reserved only for those categories prescribed by God: 46

¹Perhaps: "Bactrian" = two humped camels.

“The ṣadaqāt are for (1) the poor, for (2) the destitute, for (3) the agents employed therein, for (4) those whose hearts are to be won over, for (5) the ransom of slaves, for (6) the relief of debtors, for (7) expenditure in the way of Allāh, and for (8) the follower of the way” (Q.9 : 60).¹ The category of “those whose hearts are to be won over” does not exist today any more,² and that of “the agents employed therein” should be paid by the authorities, fairly but not lavishly, without regard to the share due to this category, i.e. one-eighth of the whole income of the ṣadaqāt. The rest of the ṣadaqāt income will be spent thus: One share on the poor and the destitute, one share for the relief of debtors who are unable to pay their debts, one share for the “followers of the way” to help them to reach their destination, and one share for the ransom of slaves, i.e. to help those who intend to free their own slaves or those who have enslaved fathers, mothers, brothers, sisters, daughters, wives, grandfathers, grandmothers, uncles, aunts and similar relatives. Mukātab slaves will also be helped to obtain their own release. The share of “expenditures in the way of Allāh” is used for the improvement of the public roads. All these will be distributed after the payment of the salaries of those employed in the collection and distribution of the ṣadaqāt. The shares of the poor and destitute must be distributed to those entitled to receive them from the city where the ṣadaqāt were collected, and should not be spent on those of another city or district. However, with regard to the other categories, the authorities are free to distribute the incomes at their discretion and even to allot all the income to one category from those eight prescribed by God.

TRADITIONS

Al-Ḥasan b. ‘Umāra—Ḥakīm b. Jubayr—Abū Wā’il: ‘Umar b. al-Khaṭṭāb once gave to one family all the ṣadaqa which was brought to him on a certain occasion.

Al-Ḥasan b. ‘Umāra—al-Ḥakam b. ‘Uṭayba—Mujāhid: Ibn ‘Abbās said: There is no objection to allot all the income from the ṣadaqāt to one category.

¹ Tax. pp. 65–68.

² Ibn Qutaybn cites 15 names of tribal chieftains who were given gifts to induce them to accept Islām (Ma‘ārif p. 174).

Al-Ḥasan b. 'Umāra—al-Minhāl b. 'Amr—Zirr b. Ḥubaysh: Ḥudhayfa said that there is no objection to the allocation of the whole ṣadaqāt to one category.

Muḥammad b. Ishāq—'Āṣim b. 'Umar—Qatāda—Maḥmūd b. Ladīd—Rāfi' b. Khadij: The Prophet said: He who deals honestly with ṣadaqāt monies is comparable to the fighter for God's cause.

Some elders—Ṭā'ūs: The Prophet sent 'Ubāda b. al-Ṣāmit to collect ṣadaqāt and admonished him thus: Fear God, O Abū al-Walīd, and do not act so that on the Day of Resurrection you appear carrying on your neck a grumbling camel, a bellowing cow or a bleating ewe.¹ By God! replied 'Ubāda, I shall never accept an appointment even over two persons.

Hishām b. 'Urwa—his father—Abū Ḥamīd al-Sā'idī: The Prophet appointed a person by the name of Ibn al-Lutbiyya to collect the ṣadaqāt from the tribe of Banū Sulaym. When he came with what he had collected he said: This is for you and this was given to me as a present. Thereupon the Prophet rose to the pulpit and after praising God said: What do you think of a collector saying: This is yours and this was given as a gift to me? Was he waiting in his father's or mother's home to see if someone would bring him a gift? By God, he will get nothing out of it, but if he has taken something unjustly he will appear on the Day of Resurrection carrying on his neck either a grumbling camel, a bellowing cow or a bleating ewe. Then he raised his hands until his armpits were seen and said: O God! Has Thy Message reached these people?

Muḥammad b. 'Abd al-Raḥmān b. Abī Laylā—'Ikrima b. Abī Khālīd—Bishr b. 'Āṣim—'Abd Allāh b. Sufyān—his father—his grandfather: After 'Umar b. al-Khaṭṭāb appointed me as a collector we met once in a part of al-Madīna and 'Umar asked me: Are you not happy to have an appointment which is valued as the duty of Jihād? When I replied that the people complained that I wronged them by taking ṣadaqāt from young sheep, 'Umar said: Continue to collect even from a lamb carried on the shoulders of the shepherd, but tell them that I have exempted the Rubba', the Akīla, the Mākhad and the breeding ram from the levy of ṣadaqa.

'Aṭā' b. 'Ajlān—al-Ḥasan: 'Umar b. al-Khaṭṭāb sent Sufyān b. Mālik as collector to al-Baṣra. When he asked, after some time,

¹ Cf. Q. 3: 176.

to be sent to fight and was told that his occupation was valued as Jihād, he said that the people complained that he took into account the young sheep for the ṣadaqāt collection. 'Umar thereupon told him to continue and count even the lamb carried on the shepherd's shoulders, but to exempt the Rubba', the Akīla, the Mākḥad and the breeding ram.

Yaḥyā b. Sa'īd—Muḥammad b. Yaḥyā b. Ḥabbān—two men of the Banū Ashja' to whom 'Umar b. al-Khaṭṭāb had sent Muḥammad b. Maslama as collector: He used to sit among us and take anything due from ewes.

Yaḥyā b. Sa'īd—Muḥammad b. Yaḥyā—al-Qāsīm b. Muḥammad: 'Umar b. al-Khaṭṭāb once observed amongst sheep collected as ṣadaqa one ewe with big udders and said: This ewe was not taken with the owner's consent. Do not force the people to give away the best of their herds.

Hishām b. 'Urwa—his father: When the Prophet first sent someone to collect ṣadaqa, as ordered by God, he told him: Do not take away the best part of a man's herd, but take from the older animals, the young ones or those with some defect. The Prophet did not want to scare the people before they were taught the rules and had accepted the precept of the ṣadaqa. The collector acted as ordered until he met a man from the desert. When he explained to him that God had ordered the Prophet to collect the ṣadaqa from Muslims for their purification, and that he was to collect from those categories as ordered by the Prophet, the man said: Nobody ever came in the name of God to collect something from my camels, please choose any one you like. When the collector told this to the Prophet he prayed for God's blessing on that man.

Sufyān b. 'Uyayna—'Abd al-Karīm al-Jazarī—Ziyād b. Abī Maryam: One of the Prophet's collectors once brought only mature camels. When the Prophet said that by taking only the mature camels he caused damage to both sides, the collector explained that he exchanged the young camels he had collected at a rate of two young for one mature camel. The Prophet then agreed.

Dā'ūd b. Abī Hind—'Āmir al-Sha'bī: The collection of more ṣadaqa than is due is as condemnable as its evasion.

'Ubayda b. Abī Rā'īṭa—Abū Ḥamīd—Wahīl b. 'Awf al-Mujāshī'ī: When I complained to Abū Hurayra that the ṣadaqa collectors had wronged us by taking more than was due, he said: Don't obstruct

or insult them, but rely on God to protect you from their wrongdoing.

Some of our Elders—Ibrāhīm b. Maysara: A collector asked Abū Hurayra how to levy the ṣadaqa and was told: Take the average specimen from all categories. If the owner does not agree, persuade him with suitable words to give you from two categories, those aged two years and those aged more. If he still refuses, leave him with kind words.

Al-Ḥasan b. 'Umāra—Abū Ishāq—'Āṣim b. Ḍamra: 'Alī said: From less than 40 ewes there is no ṣadaqa.

ON CUSTOMS DUTIES

The collection of Customs duties should be entrusted to honest and godfearing officials with clear orders forbidding them to wrong the subjects by collecting from them more than they owe. You should also investigate and control their doings, dismiss and punish wrongdoers, and return to wronged subjects anything unjustly taken from them; but reward those who execute their duties honestly and justly. The punishment of the dishonest and the rewarding of the just collectors helps to discourage injustice and increases honesty. 76

The collectors should be instructed not to add small quantities of goods together for valuation purposes and that the customs duty rates are: From goods of a Muslim merchant a quarter of the 'ushr, $2\frac{1}{2}$ per cent., from goods of the Ahl al-Dhimma half 'ushr, 5 per cent., and from those of the Ahl al-Ḥarb a full 'ushr, 10 per cent., of all goods, whose value is not less than 200 dirhams or 20 mithqāls. Nothing lies on goods worth less even if the merchant passes the collector several times with goods which if added together, would amount to 1,000 dirhams, because it is not permissible to add together small quantities. The same applies to money or gold coins of the same values as goods.

Customs duties are calculated per annum on goods bought for sale. However, in the case of a Ḥarbī merchant, if he returns to his country and comes again after one month, the 'ushr is collected again from him, because by leaving Muslim territory the rule concerning the per annum taxation does not apply to him as the period was interrupted by his absence from Muslim territory. 77

Nothing is paid for property which is not for trade. From wine and hogs for trade belonging to Dhimmīs and Ḥarbīs the tax is collected after proper valuation. If a Muslim or Dhimmī claims that his sheep, cattle or camels are exempt because they are not pasturing animals for sale, he is given the oath and relieved from paying duties. Cereals are treated similarly if the owner claims that they are intended for sowing and not for sale, and so are dates claimed to be from his own trees and not for sale. However, the oath of a Ḥarbī is not accepted in such cases.

The Dhimmīs of the Banū Taghlib, those of Najrān, the Majūs and the pagans are treated equally as other Dhimmīs. If a Muslim merchant claims that he has already paid zakāt for his goods, his oath is accepted, but not the oath of a Dhimmī or a Ḥarbī, because they are not liable to zakāt. No tax is imposed on partnership investments in money or goods if an oath is taken, nor does a slave pay tax for the goods of his master or his own goods, nor does a Mukātab-slave. Vegetables, grapes, or other fruits bought as merchantable goods are taxable as other goods, and the rule against several small quantities to form a taxable quantity applies also.

‘Umar b. al-Khaṭṭāb introduced customs duties, and they are legal as long as no more is taken than is due. The duty collected from Muslims is considered as ṣadaqa, but what is collected from dhimmīs and harbīs is considered as kharāj and is treated like the income from jizya and from the Banū Taghlib. *But God knows best.*

78

TRADITIONS¹

Ismā‘īl b. Ibrāhīm b. Muhājir: My father told me that he heard Ziyād b. Ḥudayr saying: I was the first to be sent by ‘Umar b. al-Khaṭṭāb to collect the customs dues and was ordered not to search any one but to collect one dirham out of 40 from Muslim merchants, one out of 20 from Dhimmīs and ‘ushr, 10 per cent., from those who were not Dhimmīs. He also ordered me to treat harshly the Christians of the Banū Taghlib who were Arabs and should have become Muslims. ‘Umar agreed with them that they should not baptize their children.

Abū Ḥanīfa—al-Qāsim—Anas b. Sīrīn—Anas b. Mālik: ‘Umar b. al-Khaṭṭāb appointed me as collector of customs duties and in-

¹ Tax. pp. 56-57; Y. nos. 211-222.

structed me in writing to collect from Muslims $2\frac{1}{2}$ per cent from the value of their merchandise, from Dhimmīs 5 per cent., and from Ḥarbīs 10 per cent.

‘Aṣim b. Sulaymān—al-Ḥasan: Abū Mūsā al-Ash‘arī reported to ‘Umar b. al-Khaṭṭāb that Muslim merchants were charged 10 per cent. customs duties when entering Ḥarbī countries. Thereupon ‘Umar instructed him to collect the same duty from Ḥarbī merchants and 5 per cent. from Dhimmīs, but only $2\frac{1}{2}$ per cent. from Muslims from each quantity of goods valued at 200 dirhams.

‘Abd al-Mālik b. Jurayj—‘Amr b. Shu‘ayb: The people of Manbij—a Ḥarbī country beyond the sea—wrote to ‘Umar b. al-Khaṭṭāb asking to be allowed to enter and trade in Muslim territory, promising to pay taxes. ‘Umar consulted the Prophet’s Companions who advised him to grant the application. Those were the first Ḥarbī traders who paid taxes.

Al-Sariy b. Ismā‘il—‘Āmir al-Sha‘bī: Ziyād b. Khudayr al-Asadī was appointed by ‘Umar b. al-Khaṭṭāb as collector of customs in al-‘Irāq and Syria with instructions to collect $2\frac{1}{2}$ per cent. from Muslims, 5 per cent. from dhimmīs, and 10 per cent. from Ḥarbī merchants. When a Christian Arab of the Banū Taghlib came with a mare Ziyād valued it at 20,000 dirhams, and offered him the choice of either handing over the mare and getting the balance of 19,000 dirhams or paying 1,000 dirhams as duty. The man paid the 1,000 dirhams. When he returned Ziyād claimed another 1,000 dirhams, and the man complained to ‘Umar, who gave instructions to Ziyād that customs duties on the same valued property, are to be paid only once in a year. The man was so impressed by this just rule that he became a Muslim.

‘Abd al-Raḥmān b. ‘Abd Allāh al-Mas‘udī—Jāmi‘ b. Shaddād: Ziyād b. Ḥudayr used to draw a rope over the Euphrates and collect the customs from those arriving by ships. Once he collected the duty from a Christian merchant, and wanted to collect it again as the merchant returned. However, the merchant refused to pay and went to Mecca to complain to ‘Umar b. al-Khaṭṭāb. He found him preaching to the people about the verse: “When we appointed the house to be a place of resort and a security for the people” (Q.2 : 119), and saying: I do not know anyone who lost anything by treating his own house in the same way. The merchant then told ‘Umar his story and thereupon ‘Umar ordered Ziyād that customs are to be

collected only once in a year for the same property. When the man came to thank 'Umar, saying: I am the Christian shaykh who complained about Ziyād, 'Umar replied: I am the "Ḥanīf" shaykh who has settled your grievances.

Yaḥyā b. Sa'īd: Ruzayq b. Ḥayyān, who was appointed over the Maks duties of Egypt, mentioned that 'Umar b. 'Abd al-'Azīz instructed him thus: Collect from the Muslims for properties and goods from each 40 dīnār, one dīnār. The minimum taxable value is 20 dīnārs, but less than 20 is not taxable. From the Ahl al-Dhimma collect for such goods valued at 20 dīnārs one dīnār with the minimum taxable value of ten dīnārs. For taxes collected you have to issue receipts valid for a year from their date.

'Amr b. Maymūn b. Mihrān—His father—His grandmother: A woman approached the barrier erected by Masrūq the tax-collector. She was a mukātab-slave and carried a great quantity of goods. Being a Persian she explained her status through the interpreter and Masrūq said: There is no tax on property found with a slave.

Abū Ḥanīfa—Ḥammād: Ibrāhīm said that half 'ushr is collected from the value of wine found with a Dhimmī merchant. His objection to the valuation is not accepted unless supported by two Dhimmīs.

Qays b. al-Rabī'—Abū Fazāra—Yazīd b. al-Aṣamm: Abū al-Zubayr said that the checkpoints on the vaulted passages are detestable and illegal and ordered his collectors in al-Yaman not to use them. However, when the amounts collected decreased he reintroduced them.

Muḥammad b. 'Abd Allāh: Anas b. Sīrīn said that he refused to accept an appointment as customs collector of the district of al-'Ubla. He explained his refusal to Anas b. Mālik by calling tax collection the most vicious occupation for a man. Anas b. Mālik told him that he was wrong and that 'Umar had introduced it, collecting from Muslims $2\frac{1}{2}$ per cent., from Dhimmīs 5 per cent., and from the pagan traders who have no Dhimma, 10 per cent.

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LEGAL PRINCIPLES AND MAXIMS

(In addition to those cited in Volumes I & II)

1. The Head of State has the prerogative to increase or reduce taxes. p. 103
2. The maxim: "They will enjoy the same rights and bear the same duties", applies only to conquered people who become Muslims. pp. 79, 89
3. Conquered Arab pagans are offered the alternative of becoming Muslims or be killed and their women and children sold as slaves. p. 92
4. Conquered "People of the Book", mainly Christians and Jews, are offered a second-class citizenship against payment of a special Poll-Tax (Jizya). p. 84
5. Such second-class citizens (Ahl al-Dhimma) must don special garments and labels to make it easier to recognize their status. p. 93
6. Taxes are fixed in accordance with status. p. 91
7. Ahl al-Dhimma and Ahl al-Ḥarb (Foreigners) pay more taxes and customs duties than Muslims. pp. 91, 140-142
8. Immovable and movable properties of conquered people belong to the Muslims as spoils of war. pp. 51, 78
9. He who wishes to revive Dead Land must obtain a permission. p. 118
10. Land reclaimed from seas or rivers is in the category of Dead Land. p. 122
11. The category of land cannot be changed. p. 91
12. Riparians must share the expenses for maintaining their private canals and watercourses. p. 125
13. The State authorities must maintain public canals and main watercourses. p. 127

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