

MISCELLANEA

THE SOCIAL AND POLITICAL IMPLICATIONS OF THREE TRADITIONS IN THE KITAB AL-KHARĀDJ OF YAHYA B. ADAM

The comprehensive collections of *ḥadīth*'s or traditions dealing with taxation and land ownership by the Arabs, the *Mawālī*, and the *Dhimmi*s, are a major source not only for the pattern of economic organization but also for the social concepts which obtained during the first centuries of Islam. But the traditions are recondite. It is at times an apparently superfluous phrase which can give a lead to the understanding of the underlying concept, and at others a new interpretation of a word can place the concept in its true perspective. In the studies which follow the interpretations which are advanced may well provide a new vantage point from which to view certain fiscal and legal issues in a broader context.

Tradition 1.

Two traditions in the Kitāb al-Kharāj of Yahya, which are concerned with the principles underlying the levying of taxes from the *Dhimmi*s, call for closer examination.

In the translation of Ben-Shemesh tradition 233 runs as follows: "Ibrāhīm b. Sa'd asked Ibn 'Abbās about (dealing with) possessions of the Ahl ad-Dhimma and ibn 'Abbās replied: "(with) leniency" (*'afw*), which means "favour" (*faḍl*). '*Afw* and *faḍl* are also translated by "leniency" and "favour" in the following tradition, (234): "'Alī b. abī Ṭālib appointed me to supervise Buzurja Sābūr. He said: 'In collecting *dirhams* do not flog anyone nor sell his provisions, neither his winter nor his summer garments, nor the beasts he works with, and never let a man stand (in the sun) in order to collect *dirhams*'. So I said: 'O Commander of the Faithful! Then I shall return to you as I left you!' And he replied: 'Even if you return as you left—beware!—we were ordered to collect from them with "leniency", which means "favour".'"

According to this apparently correct translation the intention of tradition 234 is merely to recommend "leniency" in collecting taxes. This impression is strengthened by a variant given in abu 'Ubayd's *Kitāb al-Ammāl* (No. 116). 'Alī ibn abī Ṭālib sternly commands his *'Āmil* of 'Ukbarā in the presence of the people to collect every *dirham*. He then invites him to a private talk in which he advises him not to sell their winter or summer garments and not to sell a cow or an ass in collecting *kharāj*. He commands him to be lenient towards the people (*wa'rfuk bihim*).

This variant stresses exactness in assessment but calls for leniency in collection. It omits both the principle of *'afw* in the answer of 'Alī and the *'āmil*'s doubts.

A third variant is to be found in the *Kitāb al-kharāj* of Abu Yūsuf (Cairo 1346 H. — p. 18). The admonition of 'Alī is mentioned, the private talk of 'Alī with the *'Āmil* is quoted as are the doubts of the *'Āmil*. In his instruction not to sell the garments of the people and not to flog them while collecting the *kharāj*, 'Alī mentions the reason for his recommendation: "we were ordered to take from them '*'afw*". (Translated by Fagnan: "... de ne leur prendre que l'excédent (p. 24)".) The tradition in the *Kitāb al Kharāj* of Abū Yūsuf differs only in detail from the tradition of Yahyā; the meaning is the same. But the interpretation of '*'afw* by *faḍl* is missing.

It is, however, unlikely that the vague implications of this interpretation of 'afw and faḍl convey the original intent and we must examine their usage in a fiscal context. A key to understanding of the words is given by a quite similar tradition in the *Kanḍ al-'Ummāl* (V, No. 2564—ed. Hyderabad 1955, p. 462). The recommendation of 'Ali in the presence of the people is mentioned as is also his private talk with the 'Amīl forbidding the selling of a cow or a sheep and forbidding flogging in collecting taxes. This private talk ends with the remark of 'Ali: "We were ordered to take from them merely the 'afw. Do you know what 'afw is? It is ṭāka" The tradition in *Kanḍ al-'Ummāl* is quoted from the *Kitāb al-Amwāl* by ibn Zandjawayh. (The book itself is not extant, but it is mentioned in *Hadiyat al-'Arifin*, I, 339. The author, Ḥamid ibn Zandjawayh died 248 H.).

Eliminating the tradition of abu 'Ubayd's *Kitāb al-Amwāl*, where the word 'afw does not occur, we find two interpretations of the word 'afw viz. faḍl and ṭāka. Ṭāka—"ability, capacity, potential" can by no means be glossed either by "favour" or "leniency". Further evidence that the explanation of 'afw—faḍl as leniency is not accurate is to be found in a repeat of this ḥadīth in the book of abu Yūsuf already mentioned (p. 147). The isnād is identical: Sufyān—b. Ṭāwūs—b. 'Abbās. The difference is in formulation. The tradition in the book of abu Yūsuf runs as follows: "'Abd Allah b. 'Abbās said: There is nothing in the (taxation of) amwāl of the Ahl al-Dhimma except 'afw". In this tradition 'afw can hardly be translated by leniency. (Fagnan's translation here is "il n'y a autre chose que l'indulgence" (p. 189).)

We are fortunately further helped by a remarkable passage in abu 'Ubayd's *Kitāb al-Amwāl* (No. 253). Abu 'Ubayd, quoting a discussion of the *fukahā* on whether a *Dhimmi* is obliged to pay ṣadaqa, quotes the view that *Dhimmi*'s are freed from ṣadaqa except in merchandise. Abu 'Ubayd remarks: "It is in my opinion an explanatory interpretation (*ta'wīl*) of the tradition told on the authority of . . . ibn Sa'd, who asked ibn 'Abbās: "What about the amwāl of the *ahl al-Dhimma*?" and he replied *al-'afw*. Abu Ubayd explains: "He wanted to say: they were freed from ṣadaqa. This recalls the saying of the Prophet: "We freed you (*'afawnā*) from the ṣadaqa of horses and slaves". (About the tradition concerning horses and slaves, compare N. P. Aghnides: *Mohammedan Theories* p. 257).

Here, in the tradition of Abu 'Ubayd, 'afw has to be translated "exemption". This also applies to the citation about the *Ahl-al-Dhimma* where the reference is to the camels, cows or sheep. (Abū Yūsuf continues: "There is no *zakāt* in the cattle of the *Ahl al-Dhimma*, in the camels or cows or sheeps.") The rule applies equally to men and women¹).

But the intention of the two traditions in the collection of Yahyā is neither "leniency" nor "exemption". The two traditions are closely connected with the tradition of ṭāka of Ibn Zandjawayh.

If, then, 'afw, is to be glossed by ṭāka, how will the traditions now read? The explanatory faḍl is a legal technical term. The answer of 'Ali in tradition No. 234 should be translated: "Woe to thee. We were ordered to take from them (i.e. from the *Ahl al-Dhimma*) the surplus, which means 'redundancy'".

In this chapter, dealing with *djizya* and *kharādj* the two traditions are complementary to tradition 232, where 'Umar b. al-Khaṭṭāb said: "I commend to the *khalīfa*

1) Compare al-Ṭabarī: *Iḥtīlāf*, ed. Schacht p. 218 ṣadaqa. l. 9. *wa laysa 'ala ahl ad dhimma siwā Banī Taghlib fi mawāsh'ibim ṣadaqa*.

succeeding me that he afford good treatment to the *Ahl al-Dhimma*, keep the covenant with them, fight for them and not take from them above their capacity". The application of the idea of *ṭāka* is shown in tradition 241, where 'Umar asks his representatives in 'Irak: "How have you charged the peasants?" They replied: "We charged every man 4 *dirhams* per month". 'Umar replied "I rather think you have made the charge excessive. Who can cope with it (*yutīku*)?" They said: "They have surpluses and belongings (*ashyā*)".

The word *fadl*, as a legal term, makes of this tradition an important ruling in fiscal theory. The word '*afw*' being ambiguous (for further confusing meanings of '*afw*' compare Løkkegaard: *Islamic taxation* p. 80 line 32) must be replaced by an explicit and concrete term, stating the idea of the *fakāh*. The corresponding tradition in abu Yūsuf's *kharāj* was rightly translated by Fagnan: "car l'ordre qui nous a été donné est de ne leur prendre que l'excédent" (p. 24). Thus tradition 233 should be translated: "Ibrāhīm b. Sa'd asked ibn 'Abbās "What (is the principle to be applied) in (taxation of) the possessions of the *Ahl ad-Dhimma*?" And he answered: "Surplus' which means 'redundancy". "To take the surplus" (*akbadha al-fadl*) is an explicit legal term, often used in the *kharāj* literature: e.g. abu Yūsuf; *Kitāb al-Kharāj* p. 16 "... to take from them merely the surplus (*al-fadl*)". The '*afw-fadl*' idea is that the *Dhimmi* has to pay the surplus of his income. Means of production and capital had to be left intact. It was in this way that '*afw-fadl*' became closely associated with the idea of bearable taxes: *ṭāka*. In this lies the major significance of the tradition of ibn Zandjawayh which is in essence identical with the traditions of Yaḥyā.

The part of the tradition under discussion should then be translated as follows: "... "We were ordered to take from them merely the surplus. Do you know what the surplus is? (*al-afw*). It is collection according to their capacity (*ṭāka*)".

There are many explicit expressions of this kind: e.g. abu Yūsuf p. 126 ... "Allah ordered us to take from them only the surplus (*al-afw*) and we are not allowed to impose on them (taxes) beyond their capacity". The two traditions in Yaḥyā's *kharāj* are closely bound up with the traditions of *ṭāka* (232, 235, 236)¹.

The '*afw-fadl-ṭāka*' idea which is mentioned in Løkkegaard's *Islamic taxation* (p. 79) is given an incorrect connotation. It is not "according to the utmost ability, which probably means that the '*afw* or *fadl*' (surplus) that is calculated to be held by the taxpayers is estimated as high as possible". On the contrary: the '*afw-fadl-ṭāka*' conception took into consideration changes in the economic situation of the taxpayer, and limited the tax gatherer's demand to what was bearable. This principle of modifying taxes in the light of changing conditions, i.e. a proportional tax—is opposed to the principle of a fixed tax which 'Umar is alleged by later jurists to have instituted.

A clear illustration of the application of the two principles of taxation is to be found in the story about the people of Ruhā (Abū Yūsuf: *Kitāb al-Kharāj* p. 47). The account of this incident was misinterpreted by D. C. Dennett (*Conversion and Poll Tax in Early Islam*, Harvard 1950) and incorrectly translated by Fagnan. The conclusion of Løkkegaard in this case that '*ala kadri ṭ-ṭāka*' is originally connected with a forcible conquest" is without a basis in the text. (p. 80 sup.).

The besieged people of Ruha offered to pay 'Iyād b. Ghanm a fixed sum (*arsalū ilā 'Iyād b. Ghanm yas'aluna-ṣ-ṣulḥa* '*ala shay' sammawhu*') i.e. they sent to 'Iyād b.

1) Compare: Nahdj al Balāgha—Ibn Abi Ḥadīd I, 135 about the policy of taxation.

Ghanm asking for peace on the basis of a fixed sum which they named". (The translation of Dennett reads . . . "they offered to surrender, but only on terms which they themselves might propose" is incorrect). 'Iyād asked Abu 'Ubayd about this. Abū 'Ubayd consulted Mu'ādh b. Djabal who replied: "If you make peace with them on a basis of a fixed sum ('*alā shay' min musamm*') and they are unable to pay it (in the course of time) you could not kill them and you will necessarily abolish the fixed sum, imposed according to the conditions (of the treaty). And if they prosper they would pay the sum, not being humiliated, as was ordered for them by Allah" (Fagnan's translation (p. 63) of the phrase '*alā ṣaghār minhum*' is startling. It reads "exception faite des impubères au sujet de qui il existe une prescription divine speciale". Of course there was nothing in the treaty about "impubères". It refers to verse 29 in al-Tauba in the Kurān and compare al-Ṭabari: *Ikhtilāf*, ed. Schacht p. 231, para 143).

Mu'ādh's recommendation, then, was that the tax to be imposed should be scaled according to what they could bear. Any change in their condition was to be reflected in the scale of assessment. In this way the conditions of the treaty would be fulfilled. The opinion of Mu'ādh had been transmitted to 'Iyād who told the people of Ruhā what was in the letter. Muslim scholars held different views about the treaty: some said that the people signed the treaty on the basis of a tax according to the capacity of the tax-payers; others maintained that the people of Ruhā rejected the terms they were offered knowing that they had a surplus of money which they would have lost if they were taxed on the basis of *tāka*, so they demanded a fixed sum tax. 'Iyād seeing the strength of their defences and having no hope to take Ruhā by force, agreed to grant them peace accepting what they asked for.

Nothing in this story suggests that the people of Ruha "split sharply into two camps" (!) —as Dennett says. There is no mention of a "group composed of the wealthy, who possessed concealed (sic) goods and sources of income, which would be taxed. . .". It is perhaps fair to assume that the wealthy people of Ruhā entertained such fears—but the factors quoted by Dennett are not given in Abu Yūsuf's *Kitāb al kharāj*. Dennett's remark that "the latter group prevailed" (page 44) is a logical inference from a false premise.

Dennett did not understand the Arabic passage *fa' khtulifa 'alayhi fī hādha 'l-mawḍi': faḳalā kā'ilun: kabilu ṣ-ṣulḥa 'ala ḳadri t-tāka*. This passage should be translated "differences of opinion arose (between the scholars—): some said that they (the people of Ruha) accepted the terms of the treaty on the basis of the *tāka* principle; others said that they disapproved of it, knowing their possessions and surpluses (of money) would be lost if the assessment were made on the basis of *tāka*". The dispute is not between the people of Ruha as wrongly expounded by Dennett, but between the Muslim scholars.

For the Muslim scholars exact knowledge of the terms of the treaty was essential, since this treaty served as a precedent for the system of taxation. No-where in the story is there a hint that 'Iyād "received permission on his own judgement". On the contrary: the tendency of the tradition is to show that the principle of *tāka* is the right one, accepted and recommended by Mu'ādh b. Djabal, the Companion of the Prophet. 'Iyād had to act according to his advice and accept the principle of tax according to *tāka*.

Løkkegaard's conclusion "that '*alā ḳadr t-tāka*' is originally connected with a conquest by arms without a treaty" (p. 80) is not acceptable. The opposite could

be true, since people making a treaty would prefer to have a *tāka* tax than a '*alā shay'*¹ⁿ *musamm'*^{an} tax. Other reasons why Ruha might prefer '*alā shay'*ⁱⁿ *musamm'*^{an} can only be putative; the uncertainty of continued Muslim rule for instance, in which case a fixed sum is preferable¹⁾.

The two variant traditions about the terms of the treaty are reflected in two equally varying traditions about the contents of the treaty (*Futūḥ* p. 182 ed. 1319 H.). One suggests a proportional tax, the second states that a fixed sum was levied. Løkkegaard writes with a deep insight: "Strictly speaking it should be possible to imagine a peace treaty (*ṣulḥ*) in which the conditions for the yield of tribute are not exactly defined, while the circumstances of possession are left in their earlier form" (p. 79). The form of such a treaty is provided in the case of the *tāka*-treaty mentioned. "... I have granted them security for their lives, possessions, offspring, women, city and mills, so long as they give what they rightly owe. They are bound to repair our bridges and guide those of us who go astray. Thereunto, Allah and his angels and the Moslems are witnesses". (Hitti's translation I, 273). The conditions are exactly those assumed by Løkkegaard. The *tāka* conception was accepted by a group of leading Muslim *fukabā* who were opposed to the idea of fixed²⁾ taxes which though it went back to the time of 'Umar was, in their view, unjust. A striking evidence for the struggle of a group of *fukabā* in favour of the *tāka* idea is found in a remarkable story about the famous scholar 'Aṭā b. abi Rabāḥ (see about him: Tandhīb at-Tandhīb, VII, 199-203) who demanded courageously from Hishām b. 'Abd al Malik to treat justly the Ahl al Dhimma and not to charge them beyond their capacity. He was promised by the Caliph, that taxes would be imposed on them only in the limits of their capacity (Ibn 'Arabi: *Muhādarat al Abrār*, I, 265). Abū 'Ubayd belonged to this group as we see in his *Al Amwāl* (P. 40): "that is in our opinion the system of *djizya* and *kharādj*: they are merely within the limits of capacity". Abū Yūsuf is in general agreement (*Kitāb al kharādj* pages 44 and 100). This opinion was fortified by traditions like numbers 240 and 241 in the *Kitāb al kharādj* of Yahyā and again by No. 106 in the *Kitāb al Amwāl* of Abū 'Ubayd. *Tāka* is not "according to the utmost ability", which means that the surplus that is calculated to be held by the taxpayers is estimated as high as possible—as Løkkegaard interprets it; *tāka* is a sum imposed on the taxpayer according to his financial capacity, paying due regard to his requirements to continue in business. The *tāka* principle was, of course, equally in the long term interest of the ruling Muslim class. It was Abū Yūsuf, who demanded a fiscal policy of *tāka* and called for gentleness in the treatment of the *Dhimīs*. (Aghnides: *Mohammedan Theories of Finance* p. 407).

It remains for us to examine the semantic changes of '*afw*' as a fiscal term. There can be little doubt that the tradition of ibn 'Abbās is closely connected with the sentence of the Qurān: *khudb' l'afw* (Al-A'rāf 199). The meaning of the expression was fervently disputed already in early times since '*afw*' is a homonym. It was only

1) The last sentence in the story is distorted by Dennett, apparently under the influence of the translation of Fagnan. *Allāh' a'lam' ayyu dbālika kāna* is not "God knows if these details are true" (Dennett). The correct translation is: "God knows what of this (story) happened (i.e. whether they accepted *tāka* or a fixed sum tax); but (it is fact), that a treaty was concluded, according to which the city was taken; there are no doubts about it".

2) Comp. about fixed taxes in Yemen abolished by 'Umar b. 'Abd al 'Azīz: I. 'Abd al Ḥakam: *Sīrat 'Umar b. 'Abd al 'Azīz* p. 126.

natural that the different ideological groups interpreted the word to suit their own ends. Ibn ʿKutayba (*al-ʿKurṭayn* p. 186/7 Cairo 1355 H. and *Taʿwīl Mushkil al ʿQurān* —p. 3—Cairo 1954) looked on the phrase as an epitome of all the virtues, like forgiveness, generosity and altruistic friendship. The phrase was later accepted as a cliché for magnanimity of character, especially in *Zuhd* and *Ṣūfī* literature (compare Bishr Fāris: *Mabāḥith ʿArabiyya* p. 40 rem. 3).

A similar meaning was attributed to the expression by scholars discussing the *Asbāb an-Nuṣūl*. The expression was explained as “use indulgence”. Some scholars, however, restricted this command given to the Prophet by Allah to the period of his sojourn in Mecca. Though he was ordered to use indulgence towards the unbelievers in Mecca, the command was amended by a later verse in the ʿQurān ordering the Prophet to start waging war against the unbelievers (at-Tauba, 123). The conflicting injunctions were to be an important topic in *Nāsikh—Mansūkh* literature. We have a concise exposition of the different views of Muslim scholars in the book of Abu Djaʿfar an Naḥḥās, *Kitāb ab—Nāsikhwa lʿmansūkh* (Cairo 1357 H. p. 149-50). Apart from the view that the verse is an exhortative command, there is the view that *khudbʿ lʿafw* refers specifically to alms and taxes. The word *ʿafw* is explained in three ways. First, some maintain that *ʿafw* is identical with *Zakāt*. In this case the command is to be applied to believers and the verse abrogates nothing since *ʿafw* is the payment of surplus as alms laid down by law. Second, another group was of the opinion that *ʿafw* was an additional payment to *Zakāt*, being a payment to be made in times of prosperity. The explanation given is: *hu faḍl māl^{an} ʿan ḡabrʿ lʿghinā*. Thirdly, there is the view that *ʿafw* referred to voluntary alms, in which case the verse was abrogated by the law of *Zakāt*. (Compare *an-Nāsikh wa lʿMansūkh* by Abu lʿKāsim Hibatallah Abu Naṣr a marginal commentary on *Asbāb an-Nuṣūl* by al-Wāḥidī page 170).

Scholars interpreting *khudbʿ lʿafw* as “use indulgence” were divided in their opinions whether the command is restricted to the believers or has to be extended to the unbelievers. But those scholars who interpreted *ʿafw* as alms, restricted the reference to the faithful. These different views are of course reflected in the *tafsīr* on the ʿQurān (e.g. Al-Ṭabari r IX, 97) and in the *Tafsīr* of Baydāwī on the verse under discussion. The *ṣūfī* interpreters stressed the exhortative idea of the sentence (as Samarkandī, *Bustān al-ʿĀrifīn* p. 91 on the margin of the *Tanbīh al Ghafilīn*, as Sulamī, *Tafsīr al-Haḳāik* p. 81b—ms or. 9433—Br. Mus.). In one of the oldest *ṣūfī* commentaries the *tafsīr* of Sahl at-Tustarī (d. 283 H.) we have the surprising interpretation of *khudbʿ lʿafw*: “take the surplus of their possessions” (p. 39—Cairo 1329 H.).

Concluding we may sum up: the meaning of *ʿafw* as leniency inherent in the word gave special colour to the traditions about behaviour toward the *Dhimmi*s. It has sometimes been interpreted as exemption. The concrete measuring of alms of the believers was transplanted into the social sphere of the *Dhimmi*s and acquired the meaning of taxation of the surplus. Hence the word was identified with *faḍl*, a current term denoting taxation by assessment of surplus. The tradition in which *ʿafw* is identified with *ṭāka* is a closing link in the chain, showing that the *ʿafw-faḍl* identity implies the principle of just and proportional taxation, a principle which was supported by a number of muslim jurists.

Tradition 2

Tradition number 80 in Yahyā's *Kitāb al-kharāj* is not restricted to problems of taxation and administration, it touches on the attitude of the Muslim toward his spiritual and secular leaders. Ben Shemesh translates it as follows: "The Prophet invited the "Helpers" in order to assign them something, in writing, in Baḥrayn. They said: 'No, not before you allot something similar to our brethren, the "Emigrants".' The Prophet then said: 'You will have other choices (therefore) be patient till you meet me'."

This translation is misleading. The reader is inclined to assume that the Prophet promised the "Helpers" "other choices" and asked them to be patient till they meet Him. If we check the Arabic text which follows *Innakum satarawna ba'dī atharāt* "fa'ṣbirū ḥattā talkawnī" the error is patent. This passage means "After me (i.e. after my death) you will see appropriation; so be patient till you meet me".

Ben-Shemesh omitted the word *ba'dī* and wrongly translated the word *atharāt* which means "appropriation" as "choices". But even in my version the implication of the tradition is not clear. One must consult other sources in order to establish the point of the tradition. This tradition told on the authority of Anas is also found in al-Buḥārī II, 45 (1286 A. H. Cairo) in the *Bab al-Ḳaṭā'*. Buḥārī is explicit, he says *yukṭī'*, i.e. "to allot a *ḳaṭī'a*", not the vague expression *yaktubu* i.e. "to write", in Yahyā.

Our tradition is concerned with a sensitive issue, viz.: Who was the first to assign landed property? Was it the Prophet in whose steps the *Rāshidīn* followed? Or was it 'Uthmān, whose allotments were violently criticized and condemned as *bid'a* by the Muslim radical circles and the *shī'a* opposition? The traditions are contradictory. Some ascribe allotment of land to 'Umar, others to Abū Bakr. There are traditions which relate how 'Umar annulled the allotment of Abū Bakr, and even the allotment of the Prophet. It is no wonder that such a mass of traditions was invented about the allotment of land since it was one of the vital social problems. Tradition No. 80 of Yahyā bears witness to the fact that the Prophet did in fact assign land, which constituted a legal precedent. Yahyā quotes contradictory traditions stating that 'Uthmān was the first to assign land, not the Prophet, not Abū Bakr nor 'Umar and not 'Alī (Yahyā: *Kitāb al-kharāj* numbers 250, 251 and compare Løkkegaard: *Islamic Taxation* pp. 18, 35).

An important motif included in the tradition is the feeling of brotherhood between the Helpers and Emigrants. It is evidence that in the ideal community of the Prophet bonds of altruistic friendship tied different groups of the people together. It is an ideal picture in contrast to the tension and animosity which prevailed between the rival factions after the death of the Prophet.

But how is the first part of the tradition connected with the second part, viz. the Prophet's answer about appropriation? There is a lead to the answer in the same compendium of al-Buḥārī (IV, 181 and II, 252, 226). In vol. IV the *ḥadīth* is quoted in *Bāb al fītan*, but is referred to a different occasion. The Prophet was asked by a man, why He did not appoint him as '*Amīl*' but gave the appointment to another man; the Prophet replied: "You will see after me appropriation . . .". The statement is also cited as a detached *ḥadīth*. The tradition from Vol. IV is quoted in vol. II, 252 with an important addition: "till you meet me on the *ḥaud*, i.e. after resurrection ¹⁾

1) For *ḥaud* traditions generally see: ibn Māḡa II, 579—ed. Cairo 1349 H.: at-Tirmidī

An extension of the *ḥadīth* is found in Buḥārī IV 181. "The Prophet said: 'After me (i.e. after my death) you will see appropriation and things you will disapprove of'. They said: 'What do you command us, O Prophet?' He said: 'Perform the duties imposed on you towards them and ask God for your rights'." Almost identical traditions are found in Muslim VI, 17 (ed. Cairo—1334 H.), and at-Tirmidhi IX, 39.

This, then, is the last link in the chain of exposition. The tradition is a prediction of the Prophet about unjust rulers, appropriating the property and land of the people (compare the explanation of *atharat* in *Riyāḍ as Ṣāliḥīn* of Nawawī p. 43, and *Nihāya* of Ibn al-Athīr s. v. *athr*). The Prophet commends the faithful to obey their rulers even if they oppress them, and to bear their unjust rule patiently. (Compare: Muslim VI, 19: *Bāb al-amr bi'ṣ-ṣabr 'inda ḡulm' l'wulāt wa'sti'thāribim*). The Prophet promises that he will meet them on the day of resurrection on his *ḥaud*.

This often repeated tradition is variously ascribed to the Prophet as having said it in the following circumstances: 1) when granting land to the "Helpers". 2) when listening to the complaint of one of the "Helpers", who was not appointed as 'Amīl by the Prophet (so also in Abu Daūd at-Ṭayālīsī, *Musnad* No. 1969) 3) when accused of unjust division of spoils (al-Fath al-Kabīr I, 451). It is a tradition of *murdjī'a* character, included in the orthodox collections and adopted by the 'Abbāsīd *fukahā*. It is no wonder that we find a group of such traditions in Abu Yūsuf's *Kitāb al-ḡharādj* (p. 10-12).¹ These are *ḥadīths* of the kind thoroughly analysed by Goldziher in his *Muhammedanische Studien* (II, 93). These traditions gave religious support to the attitude of passivity towards oppression by unjust rulers.

From the foregoing it is clear how two *ḥadīths* were knitted together. The tradition about the Prophet's rulings in the halcyon days of Islam was attached to the tradition about unjust rulers.

Tradition 3.

A tradition, to the best of my knowledge, unique, is the object of the next study. It is number 437 in the book of Yaḥyā and is translated by Ben Shemesh as follows: "The Prophet brought *ba'l* dates and dates grown by watering and began eating from the *ba'l* dates. It was said, that these were purer and better. But He said: 'A belly will not suffer hunger by eating it, nor will the body be afflicted by it.'" This translation is misleading. *Uṭiya n'nabiyy' bi* (as correctly vocalised in A. M. Shākir's edition) cannot be translated "The Prophet brought". *Lam* with the jussive is past tense and cannot be translated by "a belly will not". Finally the expression "by eating it" is not given in the Arabic text. The *ḥadīth* should be translated as follows: "The Prophet was offered (*uṭiya bi*—somebody brought) *ba'l* dates and dates grown by watering. He began eating from the *ba'l* dates. People then said (to Him): (But) these are purer and better! (referring to the watered dates). The Prophet replied: 'A belly did not suffer hunger for it, nor was a body naked for it'."

What is the point of the story? The tradition appears in a chapter entitled "What should not be given as *ṣadaqa*". In the discussion on the kinds of dates which are not to be given as *ṣadaqa* there is no indication whether *ba'l* dates or dates grown by watering are preferable as *ṣadaqa*.

IX, 276—ed. Cairo 1353 H.; al-Buḥārī IV, 180; and compare an interesting story about the *ḥaud* in Ibn-ʿAsākir IV, 49 ed. Damascus 1349 H., see also: Ibn al-Athīr: *An-Nihāya* s.v. *djālā*.

The obscurity of this tradition gives way to analysis. The Prophet was given two kinds of dates; on the one hand cultivated which are purer and more fleshy and on the other hand dates of *ba'ī* lands, which are smaller than dates grown on irrigated land. The Prophet began to eat some *ba'ī* dates, and was asked by the believers with him: "Why do you eat *ba'ī* dates—these (i.e. the dates grown on irrigated land) are purer and taste better?" The Prophet replied: "A belly did not suffer hunger for it nor was a body naked for it". His answer explains his action. In contrast to cultivated dates nobody suffered hunger or was compelled to work naked in order to grow the *ba'ī* dates.

Why was this tradition quoted by Yahyā? How is it connected with *ṣadaqa*? The answer is that there was no *ḥadīth* dealing with the qualities of *ṣadaqa* products based on Muḥammad's own experience. It is well attested in *ḥadīth* literature that the Prophet never ate from the products of *ṣadaqa* (compare Ibn 'Abd al Barr, *Al Inbāh ala Kabā'il al ruwāh* p. 69) though of course He ate from gifts given to Him by the believers. The dates discussed in this *ḥadīth* were a *ḥadiyya*, a gift as we can infer from the expression *utiya bi* = he was given, i.e. somebody brought. It is left to the reader to deduce the fact that since the Prophet preferred *ba'ī* dates they could be used for *ṣadaqa*. Furthermore, this *ḥadīth* reflects the growth of big estates¹), the irrigation of land, and the tasks performed by slaves and prisoners of war often living in unspeakable conditions. These changes took place in the first two centuries of the Muslim era which S. D. Goitein has described in his article: "The rise of the Bourgeoisie in the middle East"²). It was a period of transition from tribal life in the desert to an urban and agricultural society.

Occasional reference is made to the organisation of such estates. Abd al-Malik sent Byzantine slaves to work on his estates in Yamāma (al-Balādhurī, *Ansāb al Ashraf* p. 1015 b — MS.). They rebelled and were killed by the banu Qays b. Ḥanzalah. Negro slaves were employed by Abd Allāh b. 'Āmir b. Kurayz in his possessions in the vicinity of Qubā; when they died Abd Allah b. 'Āmir abandoned this estate (Ibn Qutayba, *Kitāb al-Ma'ārif* 139). Negro slaves were employed as well by 'Abdallah b. az-Zubayr in his estates (at-Tanūkhī: *al Mustadjād*, ed. Kurd 'Alī p. 34). That date palms were cultivated on these estates is attested by Ibn Qutayba (op. cit.) who says that 'Abd Allah b. 'Āmir dug wells and grew palm trees on his estates in the vicinity of Nibāḡ, in 'Arafāt and in Baṣra.

The Prophet's concern with human misery in general and hunger and nakedness in particular, is also reflected in the following tradition "If a man brings to God (after his life on earth) any one of four things which follow, he will enter Paradise: giving drink to the thirsty, feeding the hungry (*kaḥid dajā'a*), clothing a naked person (*kasa djiildatan 'ariyat'*), freeing a slave. [al-Ya'kūbī I, 75 ed. Nadjaf].

A similar turn of phrase occurs in a tradition ascribed both to Jesus and Muḥammad "Make hungry your bellies (*adjī'ū akbādakum*) make bare your bodies (*a'rū adjsādakum*), so that your hearts may see God (*Kūt al Kulub* IV, 473 and *Ihyā 'Ulūm al-Dīn* III, 70). Al-'Irāqī, however could not find the tradition in the collections of traditions of the Prophet.

Analysis of tradition 437 shows that a school of liberal minded Muslim jurists emphasized the Prophet's refusal to condone the harsh exploitation of prisoners and slaves as a behest to Muslims to accept their obligations of social responsibility and to recognise human rights.

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1) Comp. Solch A. El-Ali: *Muslim Estates in Hijaz in the First Century A.H.*—J.E.S. H.O. II 13 — p. 247-54.

2) *Journal of World History*, 1956.