THE ROLE OF NON-ARAB CONVERTS IN THE DEVELOPMENT OF EARLY ISLAMIC LAW*

HARALD MOTZKI
(Nijmegen)

Abstract
Western scholarship has attached considerable importance to the role played by scholars of non-Arab descent in the formative period of Islamic law and jurisprudence. This view can be challenged. In a sample taken from a biographical collection of important legal scholars compiled in the fifth/eleventh century, "true" Arabs constituted the majority; three quarters of the non-Arab scholars had an eastern background and came from the regions of the former Sassanian empire; and only a few scholars had clearly Christian or Jewish roots. This result lends no support to the assumption that jurists of non-Arab descent brought solutions from their natal legal systems—Roman, Roman provincial and Jewish law—to early Islamic law.

Introduction
ONE FINDS THE FOLLOWING TRADITION in Abü Ishāq al-Shirāzi’s *Tabaqaṭ al-fuqahā’,* a prosopography of Muslim jurists written in the fifth century of the Islamic era/eleventh century CE: “When the ‘Abādila had died—‘Abd Allāh b. ‘Abbās, ‘Abd Allāh b. al-Zubayr, ‘Abd Allāh b. ‘Umar and ‘Abd Allāh b. ‘Amr b. al-‘Aṣ—legal knowledge in all countries passed to the mawālī [i.e. clients of non-Arab origin]. The lawyer of Mecca was ‘Aţā’, that of Yemen Tāwūs, that of the Yamāma Yahyā b. Abī Kathir, that of Baṣra al-Hasan [al-Baṣrī], that of Kūfa Ibrāhīm al-Nakha‘ī, that of Syria Makhūl, that of Khurāsān ‘Aţā’ al-Khurāsānī. The only exception is Medina; God gave to this city a man from [the tribe of] Quraysh, an undisputed lawyer [named] Sa‘īd b. al-Musayyab.”

* I would like to thank John Nawas for making me think about the issue of non-Arab converts to Islam and inviting me to present the results of my thinking to the International Medieval Congress held at the University of Leeds in July 1997. I am grateful to the editors of *ILS* and the outside readers for their helpful comments on the first draft of the article.

1 Abū Ishāq al-Shirāzi, *Tabaqaṭ al-fuqahā’* (Beirut 1401/1981), 58, quoting ‘Abd al-Rahmān b. Zayd b. Aslām (d. 182/798-99), who was a mawālī. Shirāzi mentions this tradition in the lemma of Ibn al-Musayyab without further comment. It is unlikely that he agreed with ‘Abd al-Rahmān’s opinion regarding the role of

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This statement suggests that in the first generation after the Prophet Muhammad, legal knowledge (fiqh) was held mostly by Arabs, but that already in the second generation, that is to say, in the second half of the first Islamic/seventh century CE, legal knowledge had passed to converts of non-Arab origin in nearly all parts of the Islamic realm.

If this statement is true, it raises several questions. What were the reasons for this change? Was the dominance of mawâli in this branch of knowledge only a short interval or did this phenomenon continue? Where did the non-Arab clients come from? What culture did they bring with them? What impact did they have on Islamic fiqh?

Western scholarship has tackled these issues since the second half of the nineteenth century. Writing in 1866, Paul de Lagarde observed that there was no Semite among the Muslims who was brilliant in scholarship.2 Alfred von Kremer was a little more cautious: “Fast scheint es dass diese wissenschaftlichen Studien (Koranlesung, Exegese, Traditionskunde und Rechtswissenschaft) in den ersten zwei Jahrhunderten vorwiegend von Clienten betrieben werden”.3 This judgment was shared by Goldziher, who admitted that some Arabs engaged in scholarship, but thought that only a tiny minority were successful.4 Convinced of the numerical superiority of the non-Arabs in Muslim scholarship, Goldziher predicted that a statistical study of this issue would prove the point.5

A statistical study such as that proposed by Goldziher has not been undertaken until the present time. Perhaps the authority of the mawâli scholars since his collection of fuqâhâ' contradicts it. A similar statement purportedly was made by al-Zahrî in a dialogue between himself and the caliph 'Abî al-Malîk, but here two other names are added—Yazîd b. Abî Habîb (Egyîpt) and Maymûn b. Mîhrân (al-Jazîra); Sa‘îd b. al-Musayyab and Yahyâ b. Kâhir are missing; and al-Dâhîbâk b. al-Muzâhîm replaces ‘Âjâ’ as the leading scholar of Khurâsân. Cf. I. Goldziher, Muhammedanische Studien (Halle 1889), I, 114-15. Another version of this dialogue is found in Ibn Manzûr, Mukhtasar Târîkh Dimashq li-Îbn ‘Asâkîr (Damascus 1984-88), XVII, 70-71. Here Ibrâhîm al-Nakha’î is classified as an Arab.


3 A. von Kremer, Culturgeschichtliche Streifzüge auf dem Gebiete des Islams (Leipzig, 1873), 16 (emphasis mine). See also Goldziher, Studien, I, 109.


5 Ibid. 114: “Eine statistische Behandlung dieser Verhältnisse schloss für alle Fälle sehr zu Ungunsten der Araber”.

influential and highly respected Islamicist prevented it. In any case, similar opinions are current today. The general view of recent Western scholarship, as expressed by Patricia Crone, may be summarized as follows: Following the Arab-Muslim conquest of the Middle East, there began a process of integration of non-Arabs into Arab-Muslim society. Although non-Arabs initially were exposed to ethnic prejudices, "their education, skills and sheer number was such that they rapidly achieved positions of influence", "came to dominate the world of scholarship" and "played a crucial role in the formation of the Islamic faith". The underlying idea is that the former local élites of the conquered territories were rapidly assimilated into Muslim society, putting their superior skills and culture to the service of their new masters, the Arabs. The idea seems plausible and until recently I concurred with it. After reading extensively in the biographical literature, however, I have been persuaded that the number of Arab scholars was not as low as I thought. In an effort to substantiate this impression, I decided to undertake a statistical investigation of the issue.

The view that non-Arabs dominated Islamic scholarship is not intended simply as a statement of fact. It is often linked—sometimes implicitly—with the idea that the high level of Islamic culture cannot be the product of people living at the fringe of the advanced civilizations of the ancient world. Thus, non-Arab scholars, with their higher education and culture, must have been responsible for this achievement, as von Kremer and Goldziher believed.

Additionally, the "crucial role" of non-Arab scholars would explain the many instances of borrowing from Roman, Roman provincial, and, to a minor extent, Persian civilization, and from Christianity and Judaism, which Western scholars have detected in Islamic civilization during its formative period. Two advocates of this view were Goldziher and Joseph Schacht.

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6 M.J. Kister concludes a recent article with the statement: "The transmission of hadiths, edifying stories, stories of the prophets and saints, was widely disseminated by the new generations of scholars [i.e. from the beginning of the second century onwards, H.M.], among whom the mawāli probably formed the majority." (emphasis mine). See M.J. Kister, "...La taqra'ú l-qur'ān 'ala l-muṣafayyin wa-l taqmila l-ilma'... Some Notes on the Transmission of Hadith", in Jerusalem Studies in Arabic and Islam 22 (1998), 127-62, esp. 162.

7 P. Crone, "Mawla", in EI², VI, 874-82, esp. 877.


9 See Goldziher, Studien, II, 75-76 ("Das Fikh ist ebensowenig Produkt des arabischen Geistes, wie es die Grammatik (nahū) und die dogmatische Dialektik (kalam) sind. Und die Muhammedaner älterer Zeiten hatten ein klares Bewusstsein..."
Hellenistic influences on Arab-Islamic civilization to the second half of the first century of Islam (c. 670-720) and he saw this process reaching its zenith in the second century. Its first fruits became recognizable in the field of law. How did the influence take place? According to Schacht, Islamic jurisprudence “started in Iraq about AH 100”, “at a time when the door of Islamic civilization became widely open to the potential transmitters who were educated non-Arab converts to Islam”. Christian converts to Islam, for example, were supposedly responsible for parallels between Islamic law and canon law of the Christian Eastern churches. To explain the influence of Roman law in a region such as Iraq, which never was a Roman or Byzantine province, Schacht refers to “persons with an [sic] Hellenistic education”. He does not assume that the first Muslim jurists consciously adopted principles of foreign laws by consulting lawbooks, but that the converts among them were inspired by their traditional education which contained elements of jurisprudence.

I propose to challenge the idea that Islamic jurisprudence is mainly the product of non-Arab scholars who were responsible for the alleged borrowings from, or influences on, pre-Islamic laws from outside the Arabian peninsula. I do not intend to replace this idea with a new one, but only to show that we cannot be sure about it and that the issue requires the further attention of Islamicists. My arguments are based on a statistical analysis of biographical data available about the most important jurists of the first and second centuries AH (excluding the generation of the Prophet’s companions). I shall concentrate on the following issues: What is the ratio of jurists of Arab to those of non-Arabs? Is there really a domination of non-Arabs? Is the ratio the same in the different centers of jurisprudence? What are the origins


12 Ibid. 17.

13 Ibid. 15.

of the non-Arabs scholars? What is their degree of integration into Arab-Muslim society?

To identify "important legal scholars", I have used al-Shirâzi's aforementioned Ṭabaqât al-fuqahā'. The book provides a selection of those fuqahā' whom al-Shirâzi (d. 476 AH/1083 CE) regarded as most important. His selection has two advantages. First, it is available—whereas it will be some time before we have a large and readily accessible database of Muslim fuqahā' who flourished during the first two centuries. Second, it is of a limited size, which makes it well suited for a pilot study such as the present one. Al-Shirâzi's sample appears to have certain shortcomings, but these shortcomings, in my view, are not fatal, as I shall explain: (1) Some may argue that the limited size of the sample affects the reliability of the results. This is true but it does not render the results insignificant. They are provisional, of course, and need to be checked on the basis of a larger sample.15 (2) Al-Shirâzi's selection may be biased in favor of Shâfi'i scholars. This objection is unwarranted, as there is no indication that al-Shirâzi had a preference for one or more early regional centers of jurisprudence at the expense of others. Even the most important scholars of the rival schools are represented.16 (3) Schacht has argued that Islamic jurisprudence did not exist in the first century AH; if this were true, Islamic traditions concerning the fuqahā' of the first century would not be trustworthy. But as I have shown elsewhere Islamic jurisprudence started already one-half or three quarters of a century earlier than Schacht posited.17

15 A step in this direction is the sample of 1,049 Muslim scholars of the first four centuries of Islam that has been compiled by Monique Bernards and John Nawas within the framework of the Netherlands Ulama Project (NUP). The project, which was initiated by the universities of Nijmegen, Utrecht and Leiden and is funded by the Netherlands Organization for Scientific Research (NWO), contains other databases as well. For a general description of the NUP see J. Nawas and M. Bernards, "A preliminary report of the Netherlands Ulama Project (NUP): The evolution of the class of 'ulama' in Islam with special emphasis on the non-Arab converts (mawāli) from the first through fourth century AH", in Law, Christianity and Modernism in Islamic Society. Proceedings of the Eighteenth Congress of the Union Européenne des Arabisans et Islamisants held at the Katholieke Universiteit Leuven (September 3 - September 9, 1996), ed. U. Vermeulen and J. M. F. van Reeth (Leuven 1998), 97-107.

16 As we shall see below, this is corroborated by a comparison of the results of the present study with the main database of the NUP.

I used al-Shirāzī’s selection of fiqahā’ only as basis to form a sample. I added a few scholars who are not mentioned by al-Shirāzī, but who I consider important, and a few others who are mentioned by al-Shirāzī in the framework of the classical schools of jurisprudence, but who belong to the second century. I left out a few individuals mentioned in his collection because they belong to the third century. The final sample consists of 115 individuals, 108 taken from al-Shirāzī and seven added by myself. Because al-Shirāzī’s information concerning the scholars is mostly very concise and limited, I generally took the information on them not from him but from Ibn Hajar’s (d. 852 AH/1449 CE) Tahdhib al-tahdhib. In addition, al-Shirāzī’s information has been used, and other biographical compilations have been consulted as well.\textsuperscript{18}

The easiest method to identify scholars of non-Arab descent is to determine whether an individual is explicitly referred to as a mawla in the sources. If there is no such qualification, the individual can be taken to be an Arab. This is the method followed in my investigation. It is in accordance with Crone’s opinion that the term mawla, “applied to the inferior party in an Islamic context, ...almost always means a client of the type recognized in early Islamic law...” and that this type of client “was a non-Arab freedman, convert or other newcomer in Muslim society”.\textsuperscript{19} This assumption is corroborated by my own experience using the late biographical literature, where the term mawla indicates non-Arab descent.

This clear-cut distinction conceals several problems, however. The concept of wala and the term mawla referred originally to a social status, not an ethnic origin. In pre-Islamic times there were several forms of wala, the most important being wala’ al-hilf (confederacy), wala’ al-jiwār (neighborhood) and wala’ al-‘itāqa (relationship between a patron and his former slave after the slave has been freed and become a client).\textsuperscript{20} All three types of mawli could be Arabs or non-


\textsuperscript{18} Ibn Hajar’s \textit{Tahdhib al-tahdhib} is especially well suited for my purpose because the author (based on a critical evaluation of earlier sources) consistently mentions whether a scholar must be considered as a mawla.

\textsuperscript{19} Crone, “Mawla”, 874.

Arabs; they could be integrated into an Arab tribe and thereby receive or claim this tribe’s genealogy. Besides, non-Arabs (and Arabs of course) could be adopted by Arabs and in this way receive an Arab genealogy. Consequently, an individual with an Arab genealogy was not necessarily always a “true” Arab, and a mawla was not always a non-Arab. This confusing situation and terminology changed gradually during the first Islamic century as a result of social and conceptual changes brought about by the development of the Islamic community as a new type of society in Arabia (e.g. the prohibition of adoption, hilf and the enslavement of Arabs) and by the expansion of the new community into areas inhabited by non-Arabs. These changes resulted in an enormous influx of non-Arabs, slaves and free people, so that the category of mawāli was filled nearly exclusively by non-Arabs and the term was restricted to them. In general, the terminology seems to have been inspired by the later concept, but there are a few instances in which the judgment of biographers and genealogists that an individual is an Arab is contradicted by other information. I call such individuals Arab mawāli.

The contradictory information concerning the Arab mawāli can be explained by several assumptions: (1) The individual in question had a non-Arab descent but tried to disguise it with a fabricated Arab genealogy. His deception was detected, however, by some people. (2) The ancestors of a scholar were non-Arabs who were integrated into an Arab tribe by hilf or other form of wala' already in pre-Islamic times, so that the descendants came to be considered as Arabs although their true origin was not forgotten completely. (3) The scholar in question was of Arab descent but one of his ancestors had been a slave or halif and, as such, was integrated into an Arab tribe to which he did not originally belong. (4) The contradiction results from a misunderstanding of reports concerning the scholar in question. With regard to assumptions (2) and (3), continuity of the earlier and broader concept of wala' in the period of transition from pre-Islamic times to the second century AH may have contributed to the confusion.

Numbers

According to al-Shirāzī there were nine centers of Islamic jurisprudence in the period of the “fuqahā' al-tabi'īn” (the Successor jurists):21 For a possible example see below note 36.

21 By this term he means the independent jurists who do not belong to the classical sunni schools of jurisprudence.
Medina, Mecca, Yemen, Syria and al-Jazīra (the northern part of Mesopotamia), Egypt, Kūfa, Bāṣra, Baghdad and Khurāsān. The scholars belonging to this class were active roughly between 50 AH/670 CE and 300 AH/912 CE. Since my study is limited to the first two centuries, I have disregarded all Baghdādi scholars mentioned by al-Shirāzī because they belong to the third century AH/ninth century CE. I will now go over the groups center by center in the order presented by al-Shirāzī:

*Fuqahāʾ of Medina*


Our sample contains twenty-eight names divided into three generations (tablāqāt). It begins with Saʿīd b. al-Musayyab (d. around 94 AH/714 CE) and closes with Mālik b. Anas (d. 179 AH/796 CE). The first generation includes twelve persons of whom only one is a

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23 The names of Arabs mentioned by Shirāzī have sometimes been shortened; the genealogies of non-Arab scholars, on the contrary, have been completed [in brackets] with elements taken from other sources.

24 (A) means “of Arab descent”; (n) “of non-Arab descent”.

25 Twenty-seven from Shirāzī and one (Nāfiʾ) added by myself.

26 Shirāzī, *Tabaqāt*, 57-68.
non-Arab mawla. The others were mostly members of Quraysh, the tribe of the Prophet. Many of them were sons or nephews of his Companions who played a leading role after his death. The second generation includes eleven scholars, of whom four were mawali, while the others were mostly grandsons of leading Companions. The third generation includes five persons, of whom two were from Quraysh, two were from Medinese tribes and one was of non-Arab origin. In total, then, there were twenty-two Arabs and only six scholars of non-Arab origin at Medina (ratio 8:2).

Fuqahā’ of Mecca

- Muslim b. Khālid [b. Farwa or Qarqara of Jarja] al-Zanji (n)
- Muḥammad b. ʿIdris [al-Shāfiʿi] (A)

For Mekka we have ten names.27 The first is ‘Atā’ b. Abi Rabāh (d. 114 AH/733 CE), the last is al-Shāfiʿi (d. 204 AH/820 CE). In the first generation we find five mawal and one Arab, in the second generation two scholars, both non-Arabs, in the third one mawla, and in the fourth generation one Arab scholar. Altogether there were two Arabs and eight non-Arabs (ratio 2:8), almost the opposite of the situation in Medina.

Fuqahā’ of Yemen

- Tāwūs b. Kaysān (n), ‘Atā’ b. Markabūdh (n), 28 Sharāḥil b. Shuraḥbil (n), Ḥanash b. ‘Abd Allāh (n), Wahb b. Munabbih (n)
- [Maʿmar b. Rāshid] (n)
- [ʿAbd al-Razzāq b. Hammām b. Nāfiʿ] (n)

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27 Nine given by Shirāzi, ʿTabaqāt, 73 and one (Abū l-Zubayr) added by myself.
Yemenite legal scholarship is represented by seven persons, all of non-Arab origin. The first is Tawüs b. Kaysän (d. 106 AH/725 CE), the last ‘Abd al-Razzāq (d. 211 AH/827 CE). Three of the Yemenite jurists (Tawüs, Ma‘mur and ‘Abd al-Razzāq) are mawālī, the other four are from the abnā‘ al-furs (or al-fāris), the descendants born in Yemen of members of the Persian colony which was established by the Sassanian kings in the last decades of the sixth century CE and who administered the country until the time of Muḥammad’s prophetic activity.

Fuqahā’ of Syria and the Jazira

- Abū Idris ‘Ā’īdh Allāh b. ‘Abd Allāh al-Khawlānī (A), Shahr b. Ḥawshab al-Ashtarī (A)

As the most important lawyers of Syria and the Jazira, Shirāzi gives fourteen names. The list is headed by Abū Idris al-Khawlānī (d. 80 AH/689 CE) and closes with Sā‘īd b. ‘Abd al-‘Azmī al-Tanūkī (d. 166 AH/783 CE). The first generation includes two scholars, both Arabs, but one of them a mawālī. The second generation comprises six persons, three Arabs and three non-Arabs, the third generation includes

29 Five from Shirāzi, Tabaqāt, 73-74 and two (Ma‘mur b. Rāshid, ‘Abd al-Razzāq) added by myself.
31 Shirāzi, Tabaqāt, 74-77. I have arranged individuals at the end of his list in the proper chronological order.
32 Sā‘īd b. Ḥawshab al-Ashtarī. According to Ibn Hajr al-‘Asqalānī, Tahdhib al-tahdhib (Hyderabad, 1325-27/1907-9), IV, 369 Sā‘īd b. Ḥawshab al-Ashtarī was a mawālī of Asmā‘ bint Yazīd b. al-Sakān, who belonged to the Aws. In W. Caskel, Qamhārat an-nasab. Das genealogische Werk des Hiṣām ibn Muḥammad al-Kalbī (Leiden, 1966), I, 273 a Sā‘īd b. Ḥawshab (sic) is mentioned among the Banū Ḥawshab. The difference in the father’s name seems to be due to a scribal error or misreading (both Ibn Sa‘d, Tabaqāt, VII, 449 and Shirāzi give the name of the father as Ḥawshab) and in both cases the same person seems to be meant. Here we have a case of an Arab mawālī.
six scholars of whom only one is a mawlā of non-Arab descent. Altogether, only four of the Syrians could be identified as non-Arabs by descent. One of the Arab scholars was probably descended from an Arab family which had been formerly Christian. In terms of proportion, 30 percent were non-Arab scholars while 70 percent were Arabs. In Syria as in Medina, the Arabs obviously outnumbered the non-Arab scholars.

**Fuqahā' of Egypt**

- 'Abd al-Rahmān b. 'Usayla al-Ṣunābī (A), 'Abd Allāh b. Mālik al-Jishānī (A), Marthad b. 'Abd Allāh al-Yazānī (A)
- [Yazid b. Abī Ḥabīb] (n), Bukayr b. 'Abd Allāh b. al-Asḥajj (n), Abū Umayya 'Amr b. al-Ḥārīth b. Ya'qūb (n)
- al-Layth b. Sa'd b. 'Abd al-Rahmān (n), [‘Abd Allāh b. Lahi'a] (A)

For Egypt, our sample contains only eight scholars. The first is Ibn ‘Usayla al-Ṣunābī (d. between 70 and 80 AH/690-700 CE), the last ‘Abd Allāh b. Lāhī'a (d. 174 AH/791 CE). The first generation consists of three Arabs, the second generation of three mawāli. The third generation consists of one Arab and one non-Arab scholar. For Egypt, the number of Arab jurists (4) and the number of mawāli (4) is equal.

**Fuqahā’ of Kūfa**


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33 Yahyā b. Yahyā al-Ghassānī, a conclusion based on his and his father’s name and his descent from the Ghassān, a tribal group which accepted Christianity before the advent of Islam. Cf. I. Shahid, “Ghassān,” in *EI²*, II, 1020-21.
34 Added to Shirāzī’s list (see Tarḥāqār, 77-78) by myself. In addition, I added Yazīd b. Abī Ḥabīb in the second generation. Shirāzī mentions him as pupil of Marthad b. ‘Abd Allāh al-Yazānī but not among the important *fuqahā‘*.
With twenty-six names, Kūfā is second only to Medina in terms of the number of scholars. The first is ‘Ālqama b. Qays (d. 62 AH/682 CE), the last  Muḥammad al-Shaybānī (d. 189 AH/805 CE). The first generation consists of six persons, collectively designated as “the students of ‘Ābd Allāh b. Mas‘ūd”. All of them are of Arab origin.

In the second generation, we find two Arabs and one mawla. In the

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35 Shirāzī, Tabaqāt, 79-86 lists among the “successors” only twenty-three scholars. Since his list of important Kūfā scholars stops at the middle of the second century, I added two scholars of the second half of the century (Abū Yūsuf and al-Shaybānī) who are not included in his list of tābi‘ūn scholars because he classified them as members of the Hanafi school.

36 Shurayḥ b. al-Hārith, the famous judge of Kūfā, is generally regarded as an Arab of the tribe of Kinda (see Ibn Hajar, Tahdhib, IV, 326, Ibn Sa‘d, Tabaqāt, VI, 151, and Caskel, Gamharat, I, 233, II, 533), but according to some he was min awlād al-furs, i.e. a descendant of the Persians who remained in Yemen after the Sassanian occupation (cf. Ibn Hajar, Tahdhib, IV, 326 and Ibn Manzūr, Mukhtasar, X, 294-302). In some traditions he says of himself that he is a Yemenite registered in the diwān of Kinda (‘idādī fi Kinda, diwānī fi Kinda); in one instance this is taken to mean that he was a mawla in the sense of being of non-Arab descent (cf. Ibn Sa‘d, Tabaqāt, VI, 132), but this interpretation is not necessarily correct. The tradition seems to have the hidden objective of playing down the difference between Arabs and mawla. Possibly, the opinion that he was min awlād al-furs derives from the failure to grasp the bias of such traditions.

37 Ibrāhīm al-Nakha‘ī is considered by most authors as an Arab (cf. Ibn Sa‘d, Tabaqāt, VI, 270; Caskel, Gamharat, I, 264, II, 352; Ibn Hibbān, al-Thiqāt (Hydarabad 1398/1978), IV, 8; Shirāzī, Tabaqāt, 82, Dhaḥabī, Tadhkira, I, 73; Ibn Hajar, Tahdhib, I, 177). A few traditions indicate that he was a mawla: ‘Abd al-Rahmān b. Zayd b. Aslam took him for one in the tradition quoted at the beginning of this article (see also note 1), and in Balādhuri, Anṣāb al-ashrāf (Beirut 1398/1978), III, 95 it is reported that he was registered as mawla in the diwān (al-jund) of al-Nakha‘ (on this and other cases of mawla registered in the diwān cf. Jūda, Mawālī, 120-31, esp. 127). These traditions are contradicted, however, by the information that his mother was an Arab woman (Mulaṣyka bint Qays b. ‘Ābd Allāh b. Mālik b. ‘Alqama b. al-Nakha‘; cf. Caskel, Gamharat, I, 264, II, 352), the sister of ‘Alqama b. Qays al-Nakha‘ī (cf. Ibn Hibbān, al-Thiqāt, IV, 8); the marriage between a non-Arab mawla and an Arab woman was disapproved in the first Islamic century and such marriages were rare (cf. Jūda, Mawālī, 178-81). This is another case of an Arab mawla.

38 According Ibn Hajar, Tahdhib, IV, 11 and Shirāzī, Tabaqāt, 82, Sa‘id b. Jūbayr was a mawla of the Wāliba b. al-Hārith, a division of Bānū Asad, and
third generation the ratio between Arabs and non-Arabs becomes more balanced, nine Arabs versus six non-Arabs. In the fourth generation we have one Arab and one mawla. Altogether the Arab scholars of Küfa (18) outnumber the mawalī (8) in a ratio of 7:3.

Fuqahā’ of Baṣra


40 I removed one individual (Suwār b. ‘Abd Allāh) mentioned in Shirāzi, Tabaqāt, 87-91, because he belongs mostly to the third/ninth century.
against three Arabs. In the second generation, only two of ten persons are Arabs, the others being mawāli of non-Arab descent. In the third generation we find one Arab and one mawla. Altogether, at Basra, thirteen of the nineteen scholars were of non-Arab descent (ratio: 7:3).

Fuqaha’ of Khurāsān


With regard to Khurāsān, Shīrāzī mentions only three scholars, of whom two are mawāli.\(^{41}\)

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Altogether, the Arab scholars in our sample clearly outnumber the non-Arabs: sixty-three Arabs against fifty-two mawāli whose non-Arab origin is either certain or very likely (ratio 55:45). The conventional wisdom in Islamic scholarship that the non-Arab mawāli by “sheer number came to dominate the world of scholarship” cannot, therefore, be substantiated, at least as far as the elite of Islamic jurisprudence before the establishment of the classical schools of jurisprudence is concerned.\(^{42}\)

It is striking that some places or regions had high percentages of non-Arab fuqahā’ (Yemen 100 percent, Mekka 80 percent, Basra 70 percent), while other centers display the opposite pattern (Medina 20

\(^{41}\) Shīrāzī, Ṭabaqāt, 93-94. I left out Ibn Rāhwāyḥ who flourished in the third century AH.

\(^{42}\) The data contained in the NUP database (see notes 15 and 16) corroborate—the whole—the results of the present study, even if the difference between both categories of scholars is smaller than in my sample. For the period between 81 and 240 AH the percentage of Arab fuqahā’ is 49 (count: 58), that of scholars of non-Arab descent is 51 (count: 60). Even if the sample is enlarged by including scholars who are not fuqahā’ (count 314), the ratio between Arabs and mawāli remains almost the same (deviation 0.45 percent). Source: J. Nawas, “The evolution of fiqh and the ethnicity of its practitioners over the first four centuries of Islam”, paper presented at the International Medieval Congress, University of Leeds, 19-17 July 1997. A more elaborate version of this essay will be published as “The emergence of fiqh as a distinct discipline and the ethnic identity of the fuqahā’ in early and classical Islam”, in Proceedings of the 19th Congress (1998) of the Union Européenne des Arabisants et Islamisants (UEAI), ed. H. Kilpatrick, S. Leder, and B. Martel-Thoumian (Halle, in press).
percent, Syria 30 percent, Kufa 30 percent). And contrary to what one might have expected, the number of important non-Arab scholars is as a rule not higher in the centers of jurisprudence situated outside the Arabian peninsula. Non-Arab scholars formed merely a minority in certain centers outside Arabia, while dominating certain centers inside Arabia.

If one calculates the proportion of Arab and non-Arab scholars per generation of scholars, in the first generation there were 63 percent Arabs versus 37 percent non-Arabs. In the second generation we find 40 percent Arabs and 60 percent non-Arabs, almost the opposite. In the third generation the proportion again reverses itself and the Arabs enjoy a numerical superiority, with 63 percent. In the fourth generation, which includes only a few scholars, the ratio is equal but too small to be significant. These results contradict the opinion expressed in the Muslim tradition quoted at the beginning of this article, namely, that after the generation of the Companions legal knowledge passed to the mawali in nearly all regions of the Islamic kingdom.

How can we explain the difference between the impression of Muslim and Western scholars on the role of non-Arab scholars and the results of the statistical investigation? As far as the Muslim view is concerned, it seems likely that opinions such as that of 'Abd al-Rahmān b. Zayd b. Aslam or of traditions such as those about al-Zuhri and the caliph 'Abd al-Malik have their origin in the conflict between the Arabs and the mawāli which was a major issue from the end of the first until the beginning of the third Islamic century. The Arabs, who considered themselves the superior race, feared and opposed the growing influence of non-Arabs in the kingdom. Such Arab anxiety is articulated in the traditions reporting the dialogue between al-Zuhri and 'Abd al-Malik. The mawāli, on the other hand, gave expression to their growing self-assurance by pointing to their achievements and to the services they were supplying to Islam. This seems to be reflected in the statement of 'Abd al-Rahmān b. Zayd, himself a mawāli.

Western scholarship seems to have been impressed by Muslim traditions which highlight the leading role played by mawāli scholars and by the fact that some outstanding jurists and scholars, e.g. al-Ḥasan al-Baṣri, Abū Ḥanifa and Muḥammad al-Shaybāni, were.

44 Goldziher's chapter "'Arab und 'Ağan" remains a useful summary of the conflict between Arabs and mawāli. Cf. his Studien, I, 101-46.
mawāli. The error is a result of generalization. But why were the many important Arab scholars overlooked? One reason may be that Western scholars tended to think very little of Arab civilization and of the cultural capacities of Arabs at the time of the rise of Islam, and could not imagine that the flowering of Islamic culture could be the work of Arabs. It had to have been the members of the pre-Islamic advanced civilizations, above all the Hellenistic, i.e. “Western”, one, who were responsible for the achievements of Islamic culture and civilization.45

The Cultural Background of the Legal Scholars of Non-Arab Descent

We come now to the second set of questions posed in the introduction: Where did the non-Arab scholars come from? To what extent were they integrated into Arab-Muslim society? Information on the cultural background of non-Arab legal scholars is scarce. Only on occasion do the sources explicitly state where a person of non-Arab descent or his ancestors came from. Mostly, the sources indicate merely that someone was the mawla of a tribe, clan or individual. In such cases, his name, or the names of his ancestors, can provide a clue as to the probable region of origin. Names of early Muslim scholars have only seldom been studied for such a purpose.46 The following conclusions should therefore be taken as provisional; they need to be verified on the basis of a larger database.

When comparing the names belonging to scholars of Arab and non-Arab descent living in the first two centuries AH, several peculiarities are noticeable: (1) names of the non-Arabs are mostly shorter, i.e. they lack the extensive genealogy borne by many Arabs mentioned in the sources. Sometimes even a father’s name is lacking. (2) The use of the kunya in the genealogy is more characteristic for the names of mawāli than of Arabs. The kunya contained in the genealogy of a mawla often replaces a foreign name, and we can assume that the ancestor who bore the kunya had converted to Islam. (3) In the genealogies of mawāli scholars certain names occur which are not used by Arabs; if the origin of these names could be identified, the cultural origin of the scholar in question would be determined. (4) Some names, although seemingly Arabic, are typical for mawāli and are rarely used by “true Arabs”. These observations can be helpful in cases in which it is uncertain

45 Several examples of disparaging remarks on the abilities of the Arabs are found in Goldziher, Studien, I, 108, 109, 112.
whether an individual should be classified as being of Arab or non-Arab descent. In the following, I present some examples of mawāli names taken from my sample.

Names which can be identified as Iranian: Farrūk, Humruz, Mihrān, Markabūd, Žūtā, Māh, Arṭābān, 'Udhāfir, Tayrawyah,47 Kayssān, Suhrāb, Sirin, Sanbar,48 Jamīz,49 or al-Majashūn (or Maji-shūn), which is a nickname.50 Names like Jurayj and Tadrus are obviously of Greek origin (Georgos, Theodoro); a name like Yaḥmad may be Indian;51 Ṭārkān is Turkish.52 The name Qarqara or Jarja (two different spellings of the same name) is not Arabic;53 I could not determine, however, to which language it belongs.

Many mawāli, however, had Arabic or seemingly Arabic names which they adopted or received either when they were integrated into an Arab family or upon conversion. This makes it difficult to determine their origin. But even in such cases names can be informative. As mentioned, among the mawāli certain names occur with a higher frequency than among Arabs and seem to be typical, even if these names are Arabic and were also used by Arabs, e.g. Yasār, Maysara, Maymūn, Dinār, Nāfiʿ and Muslim. Yasār (happiness, prosperity)

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49 Probably a misreading of Humruz or Humrūzd, also given as an alternative in the sources, cf. Ibn Ḥajar, Tahdhib, VII, 153-54; al-Bukhārī, al-Taʾrikh al-kabīr (Beirut, n.d.), III/2, 244 (no. 2287).

50 According to Ibn Mardawayh in his Taʾrikh Isbāhān, the first bearer of this nickname, Abū Šaʿlāma Dinār or Maymūn al-Majashūn, the grandfather of ’Abd al-ʿAzīz b. ʿAbd Allāh, originated from Isbāhān. See al-Samʿānī, al-Ansāb (Hyderabad, 1962ff.), V, 107; Ibn Manzūr, Mukhṭasar, XXVIII, 43-44; and al-Mizzī, Tahdhib al-kawsāl fi ḥisnāʾ al-rijāl (Beirut, 1992), XVIII, 155.

51 The name of the grandfather of al-Awzāʾī. According to some traditions he was descended from captives of Sind. Cf. Ibn Ḥajar, Tahdhib, VI, 239; Ibn Manzūr, Mukhṭasar, XIV, 313 ff.


53 This is the name of the grandfather of the Meccan scholar Muslim b. Khālid, whose epithet, "al-Zanjī", indicates that he may have been of African origin; the sources differ, however, as to why he had this laqab. Cf. Mizzi, Tahdhib, XVII, 508-09, 512.
seems to be—at least in some cases—the Arabic translation of the Persian name Pêrôz (happy, successful). This may also be the case with Maysara and Maymûn, which have a similar meaning. Other names, like Farrûkh, have a meaning in Arabic, but were not names used by Arabs and were homonyms of foreign names. Dinâr (from the Roman denarius) and Näfi' (useful) seem to have been popular as names for slaves even if they were borne also by some Arabs. Patrons may also have given the name Muslim to a converted slave, and newly converted fathers obviously favored this name for one of their male children.

My investigation into the origin of the scholars of non-Arab descent, based on their genealogies and on explicit information in the sources concerning their origin, has produced the following results: All of the six mawâli active in Medina had a Persian background. Among the eight Meccan mawâli there was one of Nubian or Ethiopian origin (‘Aṭâ’ṣ) and one Berber (‘Ikrima). The other six are more difficult to identify: two of them had an ancestor with a Greek-Christian name and could have come from Syria or Egypt (Abû Zubayr, Ibn Jurayj), one may have had a Persian father (Ibn Abî Najîh), another an Ethiopian background (Mujâhid), a third came from the Yemen and could have had Persian, Ethiopian or other roots (‘Amr b. Dinâr), and the origin of the last (Muslim b. Khâlid) may be African. Of the seven Yemenite

54 See the case of al-Hasan al-بغرى’s father (H. Ritter, “Hasan al-Bagiri”, in EI², III, 247) and the father of Sulaymân (Ibn Manzûr, Mukhtasar, X, 193).
55 The meaning is: “Ears of wheat of which the final condition had become apparent and of which the grain has become organized and compact”. E.W. Lane, Arabic-English Lexicon (London, 1877), II, 2563. The Arabic word may be of Persian origin.
56 In our sample the name Farrûkh is borne by individuals who seem to have had a Persian background (see Ibn Qutayba, Mu‘arif, 274). On the Persian name “Farrûkh” see note 47. The use of homonym names was noted already by Goldziher, Studien, I, 133.
57 This does not mean that the bearers of these names had always been non-Arabs, non-Muslims or slaves by descent.
58 According to Abû Dâwûd al-Sijistâni in Ibn Hajar, Tahâthib, VII, 200 he was a nâbi; according to Ibn Manzûr, Mukhtasar, XXII, 219 he was a habashi. For a detailed biography of ‘Aṭâ’ with a discussion of the reliability of the information on him, see Motzki, Anfänge, 219-33.
59 His father’s name, Jabr, is common among Arabs, but it may be a homonym of the Ethiopian name Gäbr (servant). My colleagues, Dr. Veronika Six (Hamburg) and Prof. Dr. Manfred Kropp (Mainz), confirmed my assumption that the name could be Ethiopian. There is also an old Jewish name Geber (cf. L. Köhler/W. Baumgartner, Lexicon in veteris testamenti libros (Leiden, 1958), 168; 1 Kings 4: 13, 19), but I could not determine whether the name continued to be used. See also below note 75.
60 See note 55.
scholars, four or five are regarded as abnāʾ al-furs, descendents of the Sassanian occupation forces who stayed in Yemen during the last decades of the sixth and the first decades of the seventh century CE; the others were mawāli (Tāwūs, Maʿmar, ʿAbd al-Razzāq) of probably Persian origin. Among the four non-Arab scholars of Syria we find one with a Persian ancestry (Maymūn), another whose grandfather originated from the Indus valley (al-Awzāʾī), a third with a Persian or Indian background (Makhūl), while the last came perhaps from a Jewish family of uncertain geographical origin (Sulaymān b. Mūsā). Of the four Egyptians one can be identified as Persian (al-Layth), another as Nubian (Yazid b. ʿAbī Ḥabīb). I could not determine the descent of the other two. It is striking that among the important Muslim jurists of Syria and Egypt during the first two centuries none were obviously of Syrian, Greek or Coptic Christian origin. The ethnic background of the eight mawāli of Kufa is difficult to determine. Two of them were of Persian descent, and one was black. The origin of the other five remains obscure, although I imagine that most of them came from Mesopotamia and the eastern regions of the former Sassanid empire which had been conquered by tribes who had settled at Kufa. Amongst the thirteen mawāli scholars of Bašra, nine clearly had Persian roots, and three others may have had the same back-

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61 Tāwūs b. Kaysān was a mawālī of the abnāʾ al-furs or of the Banū Hamdān (see Ibn Hajar, Tahdhib, V, 8; Ibn Qutayba, Maʾārif, 258). Goldziher’s statement that he originated from the abnāʾ themselves [Studien, I, 113, note 3] is not substantiated by the sources which I have consulted. Maʿmar b. Rāshid, mawālī of the Azd, probably had Persian roots because he originated from Bašra. ʿAbd al-Razzāq is considered by most sources as a mawālī of the Banū Himyar, but in Ibn Manẓūr, Mukhṭasār, XV, 98 he is identified as a descendant of the abnāʾ. Both can be true. There are other cases of abnāʾ who had been mawālī, e.g. Mūsā b. Bādhān, the son of the governor of the Sassanids in Yemen, is said to have been a mawālī of the Banū Jumāh or Makhzūm or Madhīḥ (see Mizzi, Tahdhib, XXII, 5; Ibn Hajar, Tahdhib, III, 216-18).

62 According to al-Shirāzī, Ṭabaqāt, 77 and Ibn Manẓūr, Mukhṭasār, XXVI, 60-68 his father was among the captives of Istakhr.

63 According to Shīrāzī, Ṭabaqāt, 76 he belonged to the captives of the Yemenites and according to Abū Zarʾa al-Dimashqī he belonged to the captives of Sind (Ibn Hajar, Tahdhib, VI, 239).

64 The information on Makhūl is contradictory: Sind (cf. al-Shirāzī, Ṭabaqāt, 75; Ibn Qutayba, Maʾārif, 257), Persia (Ibn Hajar, Tahdhib, X, 291).

65 This conclusion is based solely on the names Sulaymān and Mūsā.

66 “Nahnu min al-furs min Isbaḥān”, Ibn Hajar, Tahdhib, VIII, 459.


70 Al-Ḥasan al-Basrī, Muḥammad b. Sirīn, Abū l-ʿAliya Rufayr, Ayyūb b. Abī Tamīma, ʿAbd Allāh b. ʿAwn, Hishām b. ʿAbd Allāh, Dāwūd b. Abī Hind,
The origin of the remaining one (Muslim b. Yasâr) is obscure. Of the two mawâlî scholars of Khurâsân, one is of Persian, the other of Turkish descent.72

Most of the scholars of non-Arab descent have an Iranian background. This is certain for 50 percent (26 individuals) and probable for 21 percent (eleven individuals). This gives a total of 71 percent. If we add the scholars of Indian and Turkish origin, the proportion rises to nearly 77 percent. Just under 10 percent came from Ethiopia, Nubia and Northern Africa to the west of Egypt (five individuals). Less than 10 percent (five individuals) had, or can be presumed to have had, a Syrian or Egyptian Christian (two scholars) or a Jewish background (three individuals). The ethnic, cultural or religious origin of 12 percent of the non-Arab scholars remains completely obscure.73

How close were these scholars to their origins? Answering this question may give us an impression as to the degree of their integration into Arab-Muslim society. The question can be answered without hesitation in cases in which concrete information on an individual, his ancestors and the circumstances of their entrance into Muslim society is available. This is, however, often not the case. In the absence of such information, conclusions can be drawn from the genealogy, if it contains names that are foreign or typical of slaves and mawâlî, and from the dates of a scholar’s life. Here, however, a problem arises: Did an individual give up his name upon conversion and adopt an Islamic name instead, as usually happens in modern times, or did he keep his original name and give Islamic names only to his children born after conversion?

The fact that in several genealogies of mawâlî the Islamic names end with a kunya, the bearer of which has a foreign or typical mawâlî name, speaks in favor of the assumption that in principal there was no change of names upon conversion. The new convert adopted only an Islamic or Arabic kunya and often (not always) his descendants used

71 Yûnûs b. 'Ubayd, Ash'ath b. 'Abd al-Malik, Ismâ'il b. Muslim. Their descent is not mentioned in the biographical literature, and also their genealogies give no clue as to their origin. We can, however, assume that they originated from the Eastern provinces, because they were mawâlî of Arab tribes garrisoned in Mesopotamia and active in the conquests of the East.

72 Of Persian descent: 'Atâ' b. Abî Muslim originated from Balkh; the name of his father was (according to some) Maysara, cf. Ibn Hajar, Tahdhib, VII, 212. Of Turkish origin: 'Abd Allah b. al-Mubârak (his father was turkî, his mother khwarizmîyya), Ibn Hajar, Tahdhib, V, 384.

73 This is more than 100 percent because the Christian and Jewish scholars are included in the categories of geographical origin.
only this kunya. Examples are: Rabî‘a b. Ābi ‘Abd al-Raḥmān [Far-rūkh], ‘Abd al-‘Azīz b. ‘Abd Allāh b. Ābi Sa‘lāma [Dīnār/ Maymūn], ‘Aṭā‘ b. Ābi Rabāḥ [Aslām], ‘Abd Allāh b. Ābi Naǧīḥ [Yasmūr], al-Ḥasan b. Ābi l-Ḥasan [Yasār] al-Baṣrī, Ayyūb b. Ābi Tānimā [Kaysān], Hīshām b. Ābi ‘Abd Allāh [Sanbar], Dāwūd b. Ābi Hind [Dīnār], Ḥumayd b. Ābi Ḥumayd [Ṭayrawāyḥ/ Ṭarkhān].

In cases in which no kunya is used, we can adopt the rule that the individual who comes after the last bearer of an Arab name converted to Islam. For example, the genealogy of the famous jurist Ābu Ḥanīfa is as follows: Ābu Ḥanīfa al-Nū‘mān b. Thābit b. Zūtā b. Māḥ. He and his father Thābit have Arabic names, whereas his grandfather and great-grandfather have Persian names. According to my rule, his grandfather entered Arab-Islamic society and gave his son an Arabic name. This is corroborated by reports in the sources that his grandfather originated from Kābul, became a slave of the Arabian tribe Tāym-Allāh b. Tha‘lāba, converted to Islam and was set free.74

As for names used by Arabs but more typical of mawālī, like Yasār, Maysara, Maymūn, Nāfī‘, Dīnār and an Islamic name like Muslim, we can assume that the bearer of the name entered Arab society as a slave and received his Arabic or Islamic name from his owner in place of his original foreign name; or, alternatively, that one of his descendants changed the foreign name into an Arabic one.75

The following examples illustrate three cases of scholars who represent different types of integration into Arab-Islamic society: converts of the first, second and third generation.

Nāfī‘, the mawālī of Ibn ‘Umar. His father’s name is unknown. According to the earliest and probably most reliable information, Nāfī‘ became a slave of Ibn ‘Umar during the conquest of the Iranian town of Ṣayyābūr and the surrounding regions in the year 30 AH/651 CE, a

74 Al-Khaṭṭāb al-Baghdādī, Ta’rīkh Bāghdād (Beirut n.d.), XIII, 324-25 (according to a grandson of Ābu Ḥanīfa). Cf. also Schacht, “Ābu Ḥanīfa”, 123. For the rule, see also Bulliet, Conversion, 19.

75 For an example of a descendant who changed a foreign name into an Arabic one, cf. Goldziher, Studien, I, 133, note 2. The name Yasār may—in some cases at least—also be a homonym of a foreign name; possibly there was an Aramaic equivalent of the Hebrew yasḥar (just, upright, pious, cf. Koehler/Baumgartner, Lexicon, 414). That this name (and e.g. the name Ḥabr, too, see above note 59) was considered as foreign when the bearer of it was a slave or mawālī is illustrated by the traditions on the Jewish and Christian “informants” of Muḥammad. On these traditions cf. Gillot, “Les ‘informateurs’ juifs et chrétiens de Muḥammad. Reprise d’un problème traité par Aloys Sprenger et Theodor Nöldeke”, in Jerusalem Studies in Arabic and Islam 22 (1998), 84-126. A slave could, of course, also receive a typical Arabic name.
campaign in which Ibn 'Umar participated. Since Nāfi' died in 117 AH/735 CE he must have been a small child, perhaps an infant, at the time he became the property of Ibn 'Umar.76 He surely got his Arabic name from his patron, in whose home at Medina he must have grown up. Consequently, he could not have brought with him much knowledge of his culture of origin. This is one of the few examples of a scholar who entered Muslim society himself.

Al-Hasan al-Baṣrī. The father of this famous scholar was taken prisoner during the conquest of Iraq. He was brought to Medina, received an Arabic name in place of his Persian one, and was later liberated by his owner, an Arab-Muslim woman, surely only after his conversion to Islam. Al-Hasan was born of his father’s marriage at Medina to a slave woman who was later liberated, and he grew up in Wādi al-Qurā, north of Medina. In this and most other cases in which the father of a scholar became a member of Arab-Muslim society, the scholar himself received his education in an Arab-Muslim environment, which makes it highly unlikely that he retained much of the culture of his ancestors.

‘Abd al-Malik b. ‘Abd al-‘Aziz b. Jurayj. His grandfather’s name was Greek, Jurayj, i.e. Georg(os). The fact that he gave his son a Muslim name—‘Abd al-‘Azīz—suggests that the grandfather himself had joined Arab-Muslim society and become a Muslim. This conclusion, based on ‘Abd al-Malik’s genealogy, is corroborated by the information of the sources that his grandfather had been a Byzantine slave owned by Umm Habib bint Jubayr, the wife of ‘Abd al-‘Aziz b. ‘Abd Allāh b. Khālid b. Asīd who belonged to the Banū Umayya.77 Since the descendants of Jurayj are known as mawāli of the clan of Khālid b. Asīd, we can assume that Jurayj was freed after he had converted to Islam. Thus, this Meccan scholar represents an individual whose integration into Muslim society began already with his grandfather. ‘Abd al-Malik’s father, ‘Abd al-‘Azīz, was already regarded as a Muslim scholar and traditionist.78

If one classifies the scholars according to their date of entrance into Arab-Muslim society, it appears that only a few were first generation converts. Our sample includes no more than five such individuals.79 Most scholars belong to the second generation, which means that entry

76 See Motzki, “Quo vadis”, 55-57.
77 See for his biography Motzki, Anfänge, 239-54.
78 See Ibn Hajar, Tahdhib, VI, 333.
into Arab-Muslim society had already been made by their fathers. This is certain in the case of twenty scholars. Thirteen others, finally, belong to the third generation of mawāli. For the rest the information is too scant to allow a classification. I could not find any indication that an important early legal scholar received his education, not to mention a legal education, in his culture of origin and afterwards became a Muslim jurist. This may be due to the scarcity of information provided by the sources. I imagine that in towns in which the Arabs and their clients lived in close proximity to a non-Muslim majority, as in Fustāt, converts continued to have contacts with their former co-religionists, and there are indeed some examples of this; on the other hand I also imagine that converts were expelled from their former religious communities, that contact with them was avoided, and that converts tried to demonstrate the sincerity of their conversions by breaking their relations with their former co-religionists and avoiding anything that could be interpreted as sympathy for their former belief. In any case, among the scholars included in my sample, there are only a few who may have grown up in a mainly non-Muslim milieu.

**Conclusion**

Western scholars have attached great importance to the role played, quantitatively and qualitatively, by scholars of non-Arab descent in the formative period of Islamic scholarship in general and jurisprudence in particular. A statistical investigation based on a sample of important Muslim jurists of the first two Islamic centuries, however, lends no support to this assumption. “True Arabs” constitute the majority among the selected group. Equally unfounded is the tacit assumption that the number of scholars of non-Arab descent was higher in the centers situated in the regions of ancient high cultures outside the Arabian peninsula—regarded as crucial in the formative period of Islamic jurisprudence—than it was in Arabia. Although my sample is small, I predict that the result will not be substantially different if a much larger

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80 For example, ‘Abd Allāh b. Wahb, who is considered a Māliki scholar by Shirāzi (Tabaqāt, 150) and is not contained in my sample. According to a tradition only rarely encountered in the sources, he learned writing and reading from a Christian (cf. Miklos Muranyi, ‘Abd Allāh b. Wahb (1257/843-197/812) Leben und Werk. Al-Muwattā’, Kitāeb al-muhārabah herausgegeben und kommentiert (Wiesbaden 1992), 18). I wonder, however, whether the learning of reading and writing—or even attendance at a Christian primary school—is likely to have imparted the legal knowledge which Islamic jurisprudence is assumed to have borrowed from Christianity, Roman or Roman provincial law.
database is analyzed (even if the *hadith* scholars are included). This has to be checked by further investigations. It is desirable to study the question of the number and impact of *mawāli* scholars in other fields of Islamic scholarship, such as *tafsīr*, *hadith* and grammar.

According to several Islamicists, Islamic law inherited many solutions from Roman, Roman provincial, Christian or Jewish law. Some of these scholars considered the early Muslim jurists of non-Arab origin as responsible for the purported borrowings. The investigation of the ethnic origin of the non-Arab scholars contained in my sample shows, however, that three quarters of them had an eastern background and came from the regions of the former Sassanian empire. They can hardly have been responsible for Islamic borrowings from Roman and Roman provincial law. Scholars with clearly Christian or Jewish roots are very few in number. Additionally, most of these scholars are Muslims of the second and third generation, whereas most first-generation scholars entered Arab-Muslim society as children and thus grew up in an Arab-Muslim environment cut off from their ethnic roots. These findings lend no support to the assumption that scholars of non-Arab origins brought the purported borrowings with them from their native legal systems.

On the basis of the quantitative analysis presented here I cannot claim that there was no case of borrowing by a non-Arab scholar from the law in which he or his ancestors grew up. The results of this study suggest only that we can no longer take for granted the idea that scholars of non-Arab descent were the most natural vehicles of borrowings from pre-Islamic non-Arab legal systems. It is certainly possible that there were scholars who received their education in their culture of origin, then converted and introduced legal solutions of their former law systems into Islamic jurisprudence. Such cases must, however, be demonstrated. I do not know of such a case from the first two centuries AH.

In principle, the results of this study do not affect the theory that Islamic law borrowed resources from other legal systems. The results do suggest that we should give greater attention to the exact manner in which a proposed borrowing took place. If it is claimed, for example,
that the maxim “al-walad li-l-firāsh” was borrowed from the Roman legal maxim “pater est quem iustae nuptiae demonstrant”, it should be shown that the first Muslim jurists who circulated the maxim were non-Arabs who originated from the former Byzantine territory.

84 The Roman origin of the Islamic maxim has been proposed by Goldziher (Studien, I, 188) and Schacht (Origins, 181-82). Crone (Roman, 10-11, 105-06) rejected it, but her argument that there is also a Jewish parallel does not necessarily exclude a Roman origin. On this maxim see also Motzki, Anfänge, 76, 83, esp. 115-20 and U. Rubin, “"Al-walad li-l-firāsh". On the Islamic Campaign against "zīnā"”, in Studia Islamica 78 (1993), 5-26.