

The Evolution of al-Qāḍī al-Nu‘mān’s Theory of Ismaili Jurisprudence as Reflected in the Chronology of his Works on Jurisprudence

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Shi‘i Ismaili law, codified by al-Qāḍī al-Nu‘mān (hereafter referred to as Nu‘mān) in his enduring work *Da‘ā’im al-Islām* (The Pillars of Islam) with the approval of the fourth Fatimid Imam-caliph al-Mu‘izz li-Dīn Allāh, is almost a millennium old.¹ Ever since its promulgation, most probably in 349/960,² as the official code of the Fatimid empire, the *Da‘ā’im* has reigned supreme, particularly with the Musta‘li-Ṭayyibī Ismailis of Yemen and the Indian subcontinent after the fall of the Fatimids in Egypt in 567/1171. However, this centuries-old law has not met the necessities of modern life for the Ismaili communities of the Dāūdīs, Sulaymānīs and ‘Alawīs who follow this school of Islamic jurisprudence. Those advocating the *status quo* (maintaining the traditional system), notably the conservative religious establishments of all the three above-mentioned communities, have had little to offer in terms of a constructive legal reform which might adapt Ismaili law as formulated by its founder, al-Qāḍī al-Nu‘mān, to the modern conditions of life. For example, the religious authorities have buried their heads in the sand regarding family law, once considered the most sacred aspect of Islamic law, and which has undergone modifi-

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¹ For Nu‘mān’s life and works, see Ismail K. Poonawala, *Bibliography of Ismā‘īlī Literature* (Malibu, CA, 1977), pp. 48–62; al-Qāḍī al-Nu‘mān, *Da‘ā’im al-Islām*, ed. Asaf A. A. Fyzee (Cairo, 1951–1961); tr. Asaf A. A. Fyzee, completely revised and annotated by Ismail K. Poonawala, *The Pillars of Islam*, vol. 1: *Acts of Devotion and Religious Observances*; vol. 2: *Laws Pertaining to Human Intercourse* (New Delhi, 2002–2004). All references to the *Da‘ā’im* are hereafter given to its translation because it is fully annotated. All English translations from Nu‘mān’s works, unless stated otherwise, are by me.

² There is no textual evidence to determine the exact date of its composition; however, I have argued my case on the basis of chronology of Nu‘mān’s works and other corroborative evidences. See Ismail K. Poonawala, ‘al-Qāḍī al-Nu‘mān and Ismā‘īlī Jurisprudence’, in Farhad Daftary, ed., *Mediaeval Ismā‘īlī History and Thought* (Cambridge, 1996), p. 126.

cations in all Muslim countries except India.³ In a previous work of mine, I have suggested that the entire structure of family law, including the law of Personal Status, needs to be reconsidered leaving aside the whole theory of law in itself.⁴

The structure of the *Da'ā'im* and Nu'mān's discussion of the fundamental principles of Ismaili law evolved for an extensive period of time, particularly after his profound scrutiny of a vast collection of legal traditions. Before he undertook the compilation of the *Da'ā'im*, Nu'mān already had several legal works to his credit. Moreover, he had acquired first-hand experience of interpreting textual evidence and its application, initially in the capacity of a provincial judge and then as the supreme *qāḍī* of the Fatimid empire.⁵ He had also written a number of refutations, including the three founding figures of the major Sunni schools of law, Abū Ḥanīfa, Mālik and Shāfi'ī. The *Da'ā'im*, compiled at the height of his career and with the blessing and supervision of the Imam al-Mu'izz li-Dīn Allāh, demonstrates the mature legal reasoning of Nu'mān.⁶

Therefore, the following pages are first devoted to the elucidation of Nu'mān's theory of Ismaili jurisprudence as reflected in the chronology of his legal works and then to the examination of his major polemical work entitled *Kitāb ikhtilāf uṣūl al-madhāhib* (The Book of Disagreement about the Positive Laws in Various Schools of Jurisprudence; henceforth referred to as *Ikhtilāf*),⁷ which was compiled before the *Da'ā'im*. It is the opinion of this author that the *Ikhtilāf* has not received sufficient

³ For example, see Norman Anderson, *Law Reform in the Muslim World* (London, 1976), pp. 34–85.

⁴ See Ismail K. Poonawala, 'The Reform Movement in the Context of Islam Globally'; keynote address delivered at the United Reformist Dawoodi Bohra Conference held in Daventry, England, 31 July–1 August 2004, *Conference Report*, pp. 17–19.

⁵ Nu'mān was first appointed as a *qāḍī* of Tripoli by the third Fatimid Imam-caliph al-Manṣūr (r. 334–341/946–953) soon after his accession to the caliphate in 334/946. In 337/948 when the caliph moved his capital to the new city of al-Manṣūriyya, he promoted Nu'mān as the supreme *qāḍī* of the Fatimid domain. Al-Qāḍī al-Nu'mān, *Kitāb al-majālis wa'l-musā-yarāt*, ed. al-Ḥabīb al-Fiḳī, et al. (Tunis, 1978), pp. 51, 57, 69, 80–81; Poonawala, 'al-Qāḍī al-Nu'mān and Isma'īli Jurisprudence', p. 120.

⁶ For the description of the circumstances under which the caliph al-Mu'izz li-Dīn Allāh asked Nu'mān to compile the *Da'ā'im*, see Poonawala, 'al-Qāḍī al-Nu'mān and Isma'īli Jurisprudence', p. 126.

⁷ It is referred to hereafter as the *Ikhtilāf*. The term *uṣūl* in the title does not imply *uṣūl al-fiqh* as it came to indicate later on. In his article 'Was al-Shāfi'ī the Master Architect of Islamic Jurisprudence?', *IJMES*, 25 (1993), pp. 588 ff., Wael Hallaq has convincingly argued that the term *uṣūl* had a wide range of application during the early centuries of Islam until the middle of the 4th/10th century. Referring to the above-mentioned work of Nu'mān, Hallaq states: 'And in his refutation of the *uṣūl* principles of Sunni juristic thought, al-Qāḍī al-Nu'mān, writing around the middle of the 10th century, confirms the data provided by the biobibliographical sources.' See also Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge, 2005), pp. 127–128; he states that by the middle of the 4th/10th century, an elaborate and comprehensive theory of *uṣūl* had emerged. For the meaning of *madhhab/s* and the formation of legal schools see, Hallaq, *Origins*, pp. 150 ff., and his *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge, 1997), chap. 2.

attention from contemporary students of Ismaili law.⁸ An analysis of the evolution of Nu'mān's legal thought and the encouragement he received from his patron al-Mu'izz is essential for an understanding of Ismaili law. At the same time, its scrutiny will reveal the challenging task faced by the later generations of Ismaili thinkers and jurists, especially after the disappearance of the 21st Imam al-Ṭayyib b. al-Āmir around 524/1130, of modifying any aspect of the law, either minor or major, in the absence of the Imam.⁹ It should be noted that the Ismaili case is slightly different than the Twelver Imāmī. For the Musta'li-Ṭayyibīs, their law fully developed before the disappearance of their Imam, while the situation was the opposite for the Imāmīs whose law developed and blossomed after the disappearance of the twelfth Imam in 260/874.

Before proceeding further, it is necessary to indicate that I have dealt with the question of the authenticity of Nu'mān's works and their sources elsewhere.¹⁰ I have also addressed the related issue of the chronology of his more than 40 works in a separate but yet to be published study.¹¹ Therefore, I will only briefly review the chronology of Nu'mān's surviving legal works, published and unpublished.¹² This will help us in not only understanding the evolution of Nu'mān's legal thinking but will also assist us in situating the *Ikhtilāf* within the chronology of his juridical works.

Let us begin with his first major work *Kitāb al-īḍāh*. It was a very large collection of legal traditions that Nu'mān undertook with the blessings of the first Fatimid Imam-caliph al-Mahdī and completed it during his reign. Although the whole book, or a major part of it, was still available during the 16th century in India, it was considered lost by the following century according to al-Majdū' (d. ca. 1183/1769).¹³ In his *Fihrist*, a bibliography of Ismaili works, al-Majdū' states that except for a small portion from the beginning of the chapter on ritual prayer, the book in its entirety could not be found in the *da'wa* collection.¹⁴ *Kitāb al-īḍāh*

⁸ It is edited by [Sham'ūn] Ṭayyib 'Alī Lokhandwalla (Simla, 1972) with a long introduction in English, which is a revised version of his dissertation written under the supervision of Joseph Schacht. Unfortunately, most Western scholars are unaware of this edition and still use the one edited by Muṣṭafā Ghālib (Beirut, 1973), which is unreliable.

⁹ For the split within the Ismaili community after the assassination of the Fatimid Imam-caliph al-Āmir, see Farhad Daftary, *The Ismā'īlīs: Their History and Doctrines* (2nd ed., Cambridge, 2007), pp. 238 ff.

¹⁰ Ismail K. Poonawala, 'Sources for al-Qāḍī al-Nu'mān's Works and their Authenticity', in Bruce Craig, ed., *Ismaili and Fatimid Studies in Honor of Paul E. Walker* (Chicago, 2010), pp. 87–99.

¹¹ Poonawala, 'The Chronology of al-Qāḍī al-Nu'mān's Works', unpublished study.

¹² I have dealt with the chronology of Nu'mān's legal works in my work 'al-Qāḍī al-Nu'mān and Ismā'īli Jurisprudence', pp. 120–130.

¹³ For his life and works, see Poonawala, *Biobibliography of Ismā'īli Literature*, pp. 204–206.

¹⁴ Ismā'īl b. 'Abd al-Rasūl al-Majdū', *Fahrasat al-kutub wa'l-rasā'il*, ed. 'Alī Naqī Munzavī (Tehran, 1966), p. 33. He states:

وهذا الكتاب الذي ذكره القاضي النعمان (رض) غير موجود في خزنة الدعوة إلا اليسير منه من أول كتاب الصلاة إلى

constituted a comprehensive collection of legal traditions that was classified and arranged into legal topics like other collections of *ḥadīth* books. Referring to it in the introduction of his *Kitāb al-iqtiṣār* Nu'mān states:

I scrutinised various books [of traditions] transmitted on the authority of *Ahl al-bayt* with regard to what is lawful and unlawful in the established practices, juridical decisions and formal legal opinions. These books included those works that were accessible to me by way of *samā'*,¹⁵ or *munāwala*,¹⁶ or what I was able to obtain either through the *ijāza*¹⁷ or the *ṣaḥīfa*.¹⁸ The traditions ascribed to *Ahl al-bayt* varied from [being described as] *mashhūr*,¹⁹ to *ma'rūf*²⁰ to *ma'thūr*.²¹ I further observed that the transmitters either agreed or disagreed about most of the traditions. Again [I found that] most of those traditions were [not arranged in a more manageable form of] either *mulakhkhaṣ* or *muṣannaf* [according to the

أكثره، أعني كتاب الصلاة.

The extant part is edited by Muḥammad Kāzīm Raḥmatī in *Mirāth-i Ḥadīth-i Shī'a*, ed. Mahdī Mihrīzī and 'Alī Ṣadrāyī Khūyī (Qumm, 1382 Sh.), vol. 10, pp. 35–218. W. Madelung's article, 'The Sources of Ismā'īlī Law', *JNES*, 35 (1976), is based on this extant section. However, Madelung's contention that Nu'mān probably was a Sunni and never received formal training in Shi'ī *ḥadīth* and *fiqh* is incorrect. See Poonawala, 'al-Qāḍī al-Nu'mān and Ismā'īlī Jurisprudence'; and Poonawala, 'al-Qāḍī al-Nu'mān and His Refutation of Ibn Qutayba', in Omar Alī-de-Unzaga, ed., *Fortresses of the Intellect: Ismaili and other Islamic Studies in Honour of Farhad Daftary* (London, 2011), p. 278.

¹⁵ *Samā'* constitutes 'hearing', and 'that which is heard' directly from a teacher. As a term in Islamic education it means a 'certificate of hearing, authorisation or licence' to transmit from a teacher. Rudolph Sellheim, 'Samā'', *EI2*, vol. 8, p. 1018.

¹⁶ *Munāwala* means that a transmitter of Prophetic traditions who has collected those traditions hands over his collection/book to his student with permission to transmit. The *munāwala* (i.e., handing over the book) is considered a superior method of transmission to that of *ijāza*. Zamakhsharī, *Asās al-balāgha: Mu'jam fi'l-lughā wa'l-balāgha* (Beirut, 1996), s.v. n-w-l.

¹⁷ *Ijāza* constitutes authorisation or licence. It means that an authorised guarantor of a text or of a whole book (whether it is his own work, or a work received through a chain of transmitters going back to the author) gives a person the authorisation to transmit it. George Vajda, 'Idjāza', *EI2*, vol. 3, p. 1020.

¹⁸ *Ṣaḥīfa* literally means a plaque or a leaf on which either fragments of the Qur'an or the *ḥadīth* are written. Ameer Ghédira, 'Ṣaḥīfa', *EI2*, vol. 8, p. 834; Muḥammad Zubayr Ṣiddīqī, *Ḥadīth Literature: Its Origins, Development, Special Features and Criticism* (Calcutta, 1961), p. 15; Mohammad Mustafa Azmi, *Studies in Early Ḥadīth Literature: With a Critical Edition of Some Early Texts* (Beirut, 1968), pp. 189–199.

¹⁹ *Mashhūr* (widespread, widely accepted, well known) is a tradition with more than two transmitters, some such being *ṣaḥīḥ* and others not. A large number of traditions belong to this category, and they are the foundations of jurisprudence. Ṣiddīqī, *Ḥadīth Literature*, pp. 193–194; James Robson, 'Ḥadīth', *EI2*, vol. 3, p. 25; Hallaq, *History*, p. 65.

²⁰ *Ma'rūf* (acknowledged) is applied to a weak tradition confirmed by another weak one, or it is a tradition superior in *matn* or *isnād* to one called *munkar* (ignored). James Robson, 'Ḥadīth', *EI2*, vol. 3, p. 26.

²¹ *Ma'thūr* means transmitted tradition.

topic], hence uncertainty [about their authenticity] multiplied among a great majority of people and many of them, who were not well versed in [religious] learning, considered those traditions unsound.

Hence, I thought it proper to collect those traditions, arrange them according to the topics [of law], and compile them into a book as handed down by the transmitters. I have entitled it *Kitāb al-īdāḥ* (Book of Elucidation), because in it I have elucidated the issues [dealt with in those traditions] and have expanded the chapters [on various topics]. In it I have also indicated [the subjects] on which the transmitters agreed and [other matters about] which they disagreed, without transgressing the bounds of their statements. And I have expounded what has been the firmly established [practices that I have discerned] in those traditions with decisive proofs and clear demonstrations. Thus, [the size of] the book reached roughly around 3,000 folios.²²

Subsequently, Nu'mān made a number of abridgements but only two have survived. The first is *Kitāb al-akhbār* (or *al-ikhbār*),²³ which was completed during the reign of al-Mahdī, and the second is *Kitāb al-iqtiṣār*, completed during the reign of the second Fatimid Imam-caliph al-Qā'im. The former has yet to be edited while the second has already been published as stated above (see n. 22). Referring to both abridgements, Nu'mān states in the introduction of *Kitāb al-iqtiṣār*:

Then I abridged from it [i.e., *Kitāb al-īdāḥ*] a book, which I entitled *Kitāb al-akhbār/ikhbār* [The Book of Traditions] wherein I related the traditions about which the transmitters agreed and disagreed with regard to the principles for [issuing] legal opinions. I approximated the meanings [of those traditions] by discarding, in general, the *furū'* (positive rules derived from the *uṣūl*), *asānīd* (the

²² Nu'mān, *Kitāb al-iqtiṣār*, ed. Muḥammad Waḥīd Mīrẓā (Damascus, 1957), pp. 9–10. Nu'mān states:

أما بعد، فأبّي تصفّحتُ في الكتب المروية عن أهل البيت صلوات الله عليهم ممّا كان لي من سماع، أو مناولة، أو أخذته بإجازة، أو صحيفة مع ما يُنسب منها إليهم من المشهور والمعروف والمأثور في السنن والأحكام ومسائل الفتيا في الحلال والحرام. فرأيتُ كثيراً منها قد اختلفت الرواة فيه ومنه ما أجمعوا عليه، وأكثره غير ملخّص ولا مصنّف. فكثرتُ فيها على أكثر الناس الشبهة، وأنزلتُ كثير منهم ممّن لم يتّسع في العلم في منازل التهمة. فرأيتُ جمعة وتصنيفه وبسطه وتأليفه على ما أدته الرواة في كتاب سمّيته **كتاب الإيضاح**، أوضحتُ فيه مسائله وبسطتُ أبوابه وذكّرتُ ما أجمعوا عليه وما اختلفوا فيه على ما أدّاه الرواة إلينا، لم أعد قولهم. وبيّنتُ الثابت من ذلك بالدلائل والبراهين. فبلغ زهاء ثلاثة آلاف ورقة. وأنا إن مدّ الله في عمري أوّملُ تفريع أصوله ليكون مشتملاً على جميع ما يحتاج إليه ممّا نزل، فيوجد إن شاء الله تعالى.

²³ Only the first volume of this work is extant. Poonawala, *Biobibliography of Ismā'ili Literature*, p. 53.

chains of authority), and *al-hujaj* (arguments in favour or against). Consequently, [the size of the book] came close to 300 folios.²⁴

Traditions collected by Nu'mān in this book contain conflicting doctrines on certain issues of law. However, in such cases Nu'mān puts forth his own preference for what he considered to be the correct and reliable tradition.²⁵ The *Akhbār/Ikhhār* was followed by *al-Iqtiṣār*. Nu'mān states:

Then I deemed appropriate, may God grant success [to my efforts], that I should confine myself to [collecting only those traditions] about which there is a firm agreement among the transmitters or about which they have strongly disagreed. [This book should be] precise to facilitate its understanding and to make it easier [to handle and remember]. Thus, I have collected [those traditions] in this book and entitled it *Kitāb al-iqtiṣār (The Digest)*. It is to be hoped, God willing, that those who would confine themselves to it [only] will find it sufficient [for their needs], when God, the High and Exalted, would guide them to its [proper] understanding.²⁶

Kitāb al-iqtiṣār was followed by *al-Muntakhaba*, also called *al-Urjūza al-muntakhaba*, a versified version of jurisprudence and easy to memorise. It was composed during the reign of the second Fatimid Imam-caliph al-Qā'im.²⁷ It appears that during the reign of the third Fatimid Imam-caliph al-Manṣūr (r. 334/946–341/953), Nu'mān was occupied with the administration of justice and wrote on other subjects, such as history and biographies. Thus, after a period of several years came *Kitāb al-ikhtiṣār* which was completed around 348/959–960. Its full title is *Kitāb al-ikhtiṣār li-ṣaḥīḥ al-āthār 'an al-a'imma al-aṭhār*, or *Mukhtaṣar (or Ikhtiṣār) al-āthār fīmā ruwiyā 'an al-a'imma al-aṭhār* (The Compendium of Sound Tradition Trans-

²⁴ Nu'mān, *Kitāb al-iqtiṣār*, p. 10; he states:

ثم جرّدتُ منه كتاباً سمّيته **كتاب الإختصار**، أخبرتُ فيه عمّا أجمع الرواةُ عليه واختلفوا فيه من أصول الفتيا، وقربتُ معانيه بطرح عامّة الفروع والأسانيد والحجج. فاجتمع في نحو ثلاث مائة ورقة.

²⁵ The first volume contains the following seven chapters: Purity, ablution, prayer, poor-tax, fasting, pilgrimage and *jihād*. The manuscripts I was able to examine are without the author's introduction. It is difficult to state whether the introduction was deliberately removed or that the manuscript copy, from which the later copies were transcribed, was defective.

²⁶ Nu'mān, *Kitāb al-iqtiṣār*, p. 10; he states:

ثم رأيتُ، وبالله توفيقِي، أن أقنصر على الثابت ممّا أجمعوا عليه واختلفوا فيه بمجمل من القول لتقريبه وتخفيفه وتسهيله. فجمعتُ ذلك في هذا الكتاب وسمّيته **كتاب الاقتصار**، وفيه إن شاء الله لمن اقتصر عليه كفاية إذا وفقه الله عزّ وجلّ لفهمه.

²⁷ Referring to it Nu'mān states in *Kitāb al-iqtiṣār*, p. 10:

وقد نظمتُه أيضاً موزوناً رجزاً مزدوجاً في قصيدة سمّيتها **المتنحية**، انتخبْتُها لمن أراد حفظها. والله يعين على العلم من هداهُ لطلبه ويوفّقه للعمل به إن شاء الله تعالى.

See Appendix I for its reference in *al-Muntakhaba*.

mitted from the Pure Imams).²⁸ Explaining the reason for its compilation in his *al-Majālis wa'l-musāyārāt*, Nu'mān states:

Some judges, governors and students asked me to compile a concise book, which contains the statements of the family of the Prophet [on the points of legal issues] approximating their teachings and is easy to handle and memorise. So, I began to work on it and anticipated that when it was completed [its size would be such that] it would be transcribed for a *dīnār* or less for those who wanted to have a copy. Hence, I entitled it *Kitāb al-dīnār* (Book for One *Dīnār*) and explained the [reason for its title] in the introduction. Whatever portion [of it] I had completed I presented it to al-Mu'izz and requested from him that I should read it to him so that it would be [identical to its direct] transmission from him.²⁹

Therefore, Nu'mān wrote a note to al-Mu'izz and sent it with the portion of the book that he had already completed. Al-Mu'izz, in turn, replied to Nu'mān's request with a note in his own hand, written on the back of Nu'mān's note, with the following message:

In the name of God, the Merciful and Compassionate. May God preserve you, O Nu'mān! I became interested in the book and leafed through it. What filled me with [pleasure and] admiration are the soundness of the traditions [you have related] and the brevity of its style. However, there are some [technical] terms in it which many of our friends would have difficulty in understanding, so explain those terms in a way that they can [easily] understand them ... and entitle it *Kitāb al-ikhtiṣār li-ṣaḥīḥ al-āthār 'an al-a'immat al-āthār*. The reason for [suggesting this title] is that it corresponds more [with its contents] than the [title] *Kitāb al-dīnār* [you had given]. Moreover, it contains the learning of God's Friends [i.e., the Imams], which all human beings ought to seek in earnest...³⁰

²⁸ The extant copies of *al-Ikhtiṣār* are in the recension of Nu'mān's grandson Ḥusayn b. 'Alī b. al-Nu'mān. In the first *ijāza* given by al-Nu'mān to his son 'Alī for transmission of the text, the latter states that he had read the book with his father in 348/959–960. Hence it implies that *al-Ikhtiṣār* was completed either in that year or a little earlier. The second *ijāza* written by Ḥusayn b. 'Alī states that the permission for its transmission was given to him by the Imam-caliph al-Ḥākim. For the texts of both *ijāzas*, see Appendix II.

²⁹ Nu'mān, *Kitāb al-majālis*, pp. 359–360; he states:
 وسألني بعض القضاة والحكّام والطلبة بسط كتاب مختصر من قول أهل البيت (صلع) لهم، يقرب معناه ويسهل حفظه، وتخف مؤنته. فابتدأت شيئاً منه، وقدّرت أنّ الكتاب إذا كمل قام علي من يريد انتساخه بدينار فما دونه. وسمّيته كتاب الدينار، وذكرت ذلك في بسط افتتاحه، ورفعت ما ابتدأته منه إلى المعزّ (صلع)، وطالعه فيه وسألته قراءته عليه، وسماعه منه ليكون مأثوراً عنه. وكتبته مع ما رفعت منه إليه رقعةً ذكرت فيها ذلك له.

³⁰ *Ibid.*, pp. 359–360; it reads:

فوّع إليّ صلوات الله عليه بخطه في ظهرها:
 باسم الله الرحمن الرحيم. صانك الله يا نعمان، وقفت على الكتاب وتصفّحته، فرأيت ما أعجبتني فيه من صحّة الرواية وجودة الاختصار، ولكنّ فيه كلمات تعناص على كثير من أوليانا معرفتها، فاشرحها بما يقرب من أفهامهم، فيستوي في

Al-Mu'izz permitted Nu'mān to relate the entire book on his authority and that of his forefathers.³¹ Hence, compared to his earlier works, such as *al-Īdāh* and some of its abridgements, in this work Nu'mān gives the *isnād* of every tradition at the highest point of its transmission authority. For example, *qāla rasūl Allāh* (the Prophet said), 'an 'Alī (from 'Alī), or *qāla Abū Ja'far Muḥammad* (i.e., al-Bāqir said), or *ruwīnā 'an ahl al-bayt* (it has been narrated to us from the family of the Prophet). Therefore, the *Ikhtisār* enjoys the same prestige as the *Da'ā'im* as an authoritative source for Ismaili law.

I have elaborated elsewhere that the *Ikhtisār* was a major step forward in the direction of codification of Ismaili law by Nu'mān.³² A major change in the latter work relates to the fact that all the previous legal works commence with a chapter on ritual purity, but the *Ikhtisār* begins with a chapter on knowledge (*'ilm*) and a discussion about the most authoritative and sound fountainhead to derive knowledge from. Nu'mān, in this way, made it clear that knowledge of law and theology should be obtained from the rightful Imam who is from the progeny of the Messenger of God. The Shi'i-Ismaili theory of the imamate is the key to unlocking all the Ismaili religious and legal formulations. Not surprisingly, we observe that the *Da'ā'im*, composed after the *Ikhtisār*, commences with a chapter on the *walāya* (devotion to the Imams). It is identified not only as the first pillar of Islam but also as the most excellent of all the pillars. Nu'mān further adds that it is through the *walāya* and through the *waliy* (Imam) that true knowledge of the rest of the pillars can be obtained. It is the longest chapter in the *Da'ā'im*. It also contains the most comprehensive discussion concerning the question of the imamate with its various

معرفة والإحاطة بعلم ألفاظه الشريف والمشروف، فإنه يجيء طريفاً قريب المأخذ. وسمه كتاب الاختصار لصحيح الآثار عن الأئمة الأطهار. فإن ذلك أشبه به من كتاب الدينار، لأن فيه من علم أولياء الله ما يحق على كافة الخلق طلبه بأرواحهم فضلاً عن أموالهم.

Although Idrīs 'Imād al-Dīn has reproduced the above account from Nu'mān's *Kitāb al-majālis wa'l-musāyarāt*, without mentioning its title, he erroneously states that it was an abridgement of the *Da'ā'im*. In his 'Some Unknown Ismā'īlī Authors and their Works', *JRAS* (1933), p. 369, Ḥusayn al-Hamdānī was also misled by Idrīs' statement when he stated: 'Chronologically speaking, the *Da'ā'im* and *Mukhtaṣar* were among the last works of the Qāḍī.' Based on its contents, Sham'ūn Lokhandwalla (see introduction to his edition of the *Ikhtilāf*, p. 22) has argued that it preceded the composition of the *Da'ā'im*, and the present writer fully concurs with that conclusion. It seems to me that Idrīs was probably misled by close resemblance between the two: the *Da'ā'im* and the *Ikhtisār*. However, on closer examination one finds doctrinal differences between them, though of minor nature. If it was an abridgement of the *Da'ā'im*, Nu'mān would have stated it in its introduction.

³¹ Referring to the comments and some changes suggested by al-Mu'izz, see Nu'mān, *Kitāb al-majālis*, p. 360; he states:

ثم وقع بعد ذلك بإثبات أشياء تصلح فيما رفعته منه، وحذف أشياء مما كتبت وأثبتته فيه، وذكرها وعلم عليها. قرأته بعد ذلك قراءة عليه، وأثبت فيه كل ما صححه وارتضاه، وأسقطت مما كنت كتبت فيه ما أمر بإسقاطه منه وحذفته لفظاً منه. وأذن لي أن أرويّه - لمن أخذ عني - عنه، عمن ذكره فيه من آبائه الطاهرين (صلح) بعد أن أثبت ذلك عنهم. فعضمت فائدتي فيه، وجلت نعمته علي به. ولم أكن تعرضتُ برفعي ذلك إليه [إلى] غير ذلك ليصح لي ما كنت آثرته عن آبائه وجمعتُه من كتب الرواة عنهم، وسمعتُه قبل ذلك منهم ...

³² Poonawala, 'al-Qāḍī al-Nu'mān and Ismā'īlī Jurisprudence', pp. 123-124.

aspects and implications. In fact, with succinct style, the chapter on the *walāya* summarises all the topics discussed in the *Ikhtilāf*.

Nu'mān compiled the *Ikhtilāf* prior to his composition of the *Ikhtišār*. In the opinion of the present writer, the *Ikhtilāf* fills a major void in the chain of Nu'mān's works that clearly reflects the development of his legal thought and therefore worthy of analysis. The full title given by Nu'mān is *Kitāb ikhtilāf uṣūl al-madhāhib wa'l-radd 'alā man khālafā 'l-ḥaqq fihā* ('The Book of Disagreement about the Positive Laws in Various Schools of Jurisprudence and the Refutation of those who Opposed the Truth Concerning those Laws'). It is believed to have been composed around 343/954, because at the beginning of the book Nu'mān has copied the decree issued by al-Mu'izz on the occasion of his confirmation to the highest judiciary office in the Fatimid realm.³³ The royal edict gave Nu'mān wide authority and his jurisdiction extended to every case when either the *mazālim*³⁴ matters were brought directly to him, or as an appeal from any corner of the Fatimid domain. He was granted sole jurisdiction over matters related to the royal entourage, the various classes of the caliph's bondsmen and the soldiery stationed in the capital. In all the above matters, Nu'mān was conferred with absolute judicial powers.

Besides Idrīs 'Imād al-Dīn (d. 872/1468), the *Ikhtilāf* is mentioned by Ibn Shahrāshūb (d. 588/1192) and Ibn Khallikān (681/1282). I have indicated elsewhere that the sources for the information concerning the books of Nu'mān, both by Ibn Khallikān and Idrīs date back to contemporaneous historians.³⁵ It is also worth noting that all the extant copies of the *Ikhtilāf* are the recension of Nu'mān's grandson, 'Abd al-'Azīz b. Muḥammad b. al-Nu'mān.³⁶ The front page, following the title, contains a brief foreword written by the grandson. It states as follows:

The *qāḍī al-quḍāt* 'Abd al-'Azīz b. Muḥammad b. al-Nu'mān said: 'I have related this book, *Ikhtilāf uṣūl al-madhāhib wa'l-radd 'alā man khālafā 'l-ḥaqq fihā*, from my father al-Qāḍī Muḥammad b. al-Nu'mān, may God be pleased with him and may He please him, and my father related it from his father al-Qāḍī al-Nu'mān b. Muḥammad b. Maṣṣūr b. Aḥmad b. Ḥayyūn al-Tamīmī, may God be pleased with him and may He please him and honour his return and abode in the hereafter, who composed this book after having presented it [for approval] to our lord, the Imam al-Mu'izz li-Dīn Allāh, the Commander of the Faithful, may the salutations of God be upon him and his pure forefathers and the noble Imams from his progeny. It was his [Nu'mān's] compilation and he related it. [Nu'mān has stipulated that] the rights of its transmission after him belong to his sons and

³³ The edict is dated 28 Rabī' I, 343/30 Sept. 954. For the full text of the edict see Appendix III. For its English translation see Lokhandwalla, op. cit., pp. 52–58.

³⁴ *Mazālim* (lit., unjust actions), at an early stage in its development as an institution of government, came to denote the structure through which the ruling authorities assumed the responsibility for dispensing justice. For details, see J. Nielsen, 'Mazālim', *El2*, vol. 6, pp. 933–935; Hallaq, *Origins*, pp. 99–101.

³⁵ Poonawala, 'Sources for al-Qāḍī al-Nu'mān's Works and their Authenticity.'

³⁶ He was appointed the chief *qāḍī* in 394/1004 by al-Ḥākīm. For information on his life, see *The Governors and Judges of Egypt (Kitāb al-umarā' wa-kitāb al-quḍāt)* of al-Kindī, ed. Rhuvon Guest (Leiden, 1912), pp. 599–603.

each one of them will present the book and obtain the permission from the reigning Imam of his time. Hence, my father Muḥammad b. al-Nu'mān was granted a second permission to relate it by our lord al-'Azīz bi'llāh, the Commander of the Faithful, may God bless him. Later on I presented it to our lord, the Imam al-Ḥākim bi-Amr Allāh, the Imam of the time, who granted me the permission to relate it on his behalf and gave me the exclusive permission to dictate it to his slaves and recorded the signature in his own exalted hand at the back of the book, which states, 'We have permitted our *qāḍī* 'Abd al-'Azīz b. Muḥammad b. al-Nu'mān to disseminate and dictate this book.'³⁷

The importance of this work is demonstrated by the fact that permission was granted for its transmission by three successive Imam-caliphs, viz., al-Mu'izz, al-'Azīz and al-Ḥākim. At the beginning, Nu'mān explains the reason for its compilation and states the following:

[After the *basmala* and the *ḥamdala*] ... Now, [I have to state] that I found the people of the *qibla* [Muslims], despite their agreement on the apparent text of the Qur'an and confirmation of [the prophethood of] the Messenger of God, they disagreed not only with regard to legal opinions [on a point of law] in most of the *furū'* [positive rules for the behaviour of men derived from the *uṣūl*], but also with regard to certain fundamental principles [the *uṣūl*] and various modes of [their] interpretations (*ta'wīl*). Thus, they pursued different paths and became divided into sectarian groups and parties even after they had heard and recited the words of God, the Mighty and the Exalted, saying: *Establish the true religion and do not be divided about it* (Q.42:13);³⁸ and *Those who were given the scripture diverged only after clear proof came to them* (Q.98:4); and *Religion with God is Submission. Those to whom the Scripture has been given differed only after knowledge came to them, through outrage amongst themselves* (Q.3:19); and *Will they not ponder on the Recitation, or are there locks on their hearts?* (Q.47:24); and *Do they not ponder on the Recitation? Had it been from any other than God, they would have found much contradiction in it* (Q.4:82). Thus, God, may His praise be high, found dissension and disagreement blameworthy and summoned them to unity and harmony. He has commanded that and urged them to [unite]. He made them desirous of performing the religious rites [correctly] and prohibited dissent from it.

Therefore, I will begin this book with the [discussion of the] reason of their disagreement, which they themselves invited and prompted, and in consequence of it put themselves into [predicament]. I will follow it up with the reports of all what they said and how they established the fundamental [principles of jurispru-

³⁷ Nu'mān, *Ikhtilāf*, pp. *alif-bā'*. See also Appendix IV for its text in Arabic.

³⁸ The full text of the verse reads: *He has instituted for you that religion which He ordained on Noah and what We have revealed to you and what We enjoined on Abraham and Moses and Jesus, saying, 'Establish the true religion and do not be divided about it.'* All English translations of the Qur'an cited in this chapter, unless stated otherwise, are by Alan Jones, *The Qur'an: Translated into English* (London, 2007).

dence] for themselves. I will expose the incorrectness of those principles and then interject the creed of the People of Truth (*ahl al-ḥaqq*)³⁹ concerning [the principles] about which they disagreed. I will elucidate and make those principles transparent with proofs. Subsequently, I will mention the doctrine of every sectarian group and their supporting arguments for what they alleged. Then, I will refute their stance for abandoning the truth in what they unduly assumed for themselves.⁴⁰

Nu'mān states that the reason for discord among the Muslim community following the Prophet's death was that they did not entrust their affairs to the care of the person who was rightfully authorised by the Qur'an and the Prophet to assume the helm of the nascent Islamic state.⁴¹ Nu'mān then cites various traditions generally related by Shi'i sources to prove that 'Alī b. Abī Ṭālib was the most learned of the Companions of the Prophet regarding the Qur'an and the occasions of its revelation (*asbāb al-nuzūl*). Therefore, he was well versed in Qur'anic law and it is claimed that he said, 'Ask me before you lose me.'⁴² It is also claimed that he said, 'Had a pillow been folded for me to sit [on] to dispense justice, I would have judged the People of the Qur'an with the Qur'an, the People of the Torah with the Torah, and the People of the Gospel with the Gospel, so no two people would have disagreed with regard to the edicts of [their respective] religion.'⁴³ Having made his most important points with regards to 'Alī b. Abī Ṭālib that he was the rightful successor of the Messenger

³⁹ Isma'ili *dā'īs* use this term for self reference. Abū Ya'qūb Ishāq al-Sijistānī, *Kitāb al-iftikhār*, ed. Ismail K. Poonawala (Beirut, 2000), *passim*.

⁴⁰ Nu'mān, *Ikhtilāf*, pp. 1–2. See also Appendix V for the Arabic text.

⁴¹ Recent studies on the issue of succession to the Prophet are by Wilferd Madelung, *The Succession to Muḥammad: A Study of the Early Caliphate* (Cambridge, 1997); and his 'Shi'ism in the Age of the Rightly-Guided Caliphs', in L. Clarke, ed., *Shi'ite Heritage* (Binghamton, NY, 2001), pp. 9–18; Khalid Blankinship, 'Imārah, Khilāfah, and Imāmah: The Origin of the Succession to the Prophet Muḥammad', in Clarke, ed., *Shi'ite Heritage*, pp. 19–43; Shaykh Muḥammad Mahdi Shams al-Din, 'The Authenticity of Shi'ism', in Clarke, ed., *Shi'ite Heritage*, pp. 45–54; Khalil Athamina, 'The Pre-Islamic Roots of the Early Muslim Caliphate: The Emergence of Abū Bakr', *Der Islam*, 76 (1999), pp. 1–32; Tarek Fatah, *Chasing a Mirage: The Tragic Illusion of an Islamic State* (Mississauga, Ontario, 2008).

⁴² The Arabic reads:

ومن ذلك الحديث المأثور عنه أنه كان كثيراً ما يقول: سلوني قبل أن تُفقدوني.

Nu'mān, *Ikhtilāf*, p. 4. In *Ghurur al-ḥikam* of al-Āmidī (as cited by Muḥammad Bāqir al-Majlisī, *Bihār al-anwār*, annotated by al-Sayyid Jawād al-'Alawī and al-Shaykh Muḥammad Ākhundī, Tehran, 1374 Sh./1995, vol. 40, p. 153), the full text of the tradition is reported as follows:

سلوني قبل أن تُفقدوني، فأني بطرق السماوات أخبر منكم بطرق الأرض.

⁴³ Nu'mān, *Ikhtilāf*, p. 3; it states:

الحديث المأثور عن علي صلوات الله عليه أنه قال، وقد رأى اختلاف الناس بعد رسول الله صلى الله عليه وآله: أما لو تُنبت لي وسادة وجلست للناس لقصيت بين أهل القرآن بالقرآن، وبين أهل التوراة بالتوراة، وبين أهل الإنجيل بالإنجيل. ولما اختلف اثنان في حكمٍ من أحكام الدين.

See also al-Majlisī, *Bihār al-anwār*, vol. 40, pp. 136–137.

of God for the leadership of the Muslim community and that he was the most knowledgeable about the interpretation and injunctions of the Qur'an, Nu'mān continues with a discussion about the fundamental principles of the law that had developed before him. He summarises them as follows:

Most of the jurists state that whatever legal ordinances and related matters concerning lawful and unlawful matters that are clearly mentioned in the text of the Qur'an, should be followed and acted upon. Whereas the matters that are not stated explicitly in the Qur'an should be sought in the *sunna* of the Messenger of God. If those matters are treated or referred to in the *sunna* of the Messenger of God, they should be adhered to and acted upon without overstepping them.

Now, whatever is not accounted for in either the Qur'an or the *sunna* of the Messenger of God, should be sought in the reports of the Companions. If those matters are dealt with in their assertions and have been agreed upon by the Companions, we should adopt them. However, if we discover certain things in their statements, but at the same time also find that they had disagreed among themselves on those very issues, in such cases we have a choice; either we choose the report of one Companion or the other with which we are satisfied.

Some jurists, on the other hand, have maintained that if they could track down a particular thing/issue that they were looking for in the statements of the Companions, they should accept it and not depart from it. However, if what they were looking for cannot be found in either the Qur'an, the *sunna* of the Messenger of God, or in the accounts of the Companions, they should consider another option, whether the legal scholars had agreed on that matter. If they had agreed upon it, they should adopt it and not depart from their consensus.

Yet, another group of jurists disagreed with the rest and declared certain things to be lawful or unlawful merely by justifying their own opinions and conclusions.⁴⁴

Nu'mān states that by such an action the latter faction of the jurists simply turned away from their opponents and followed other leaders. Nu'mān adds that this group did not stop there and accused their rivals of unbelief. Yet, other jurists asserted their belief in the doctrine of *qiyās* (judicial reasoning by analogy),⁴⁵ while others advocated the doctrine of *ra'y* (personal, or considered opinion)⁴⁶ and *ijtihād*

⁴⁴ For the Arabic text, see Appendix VI.

⁴⁵ Monique Bernard, 'Kiyās', *El2*, vol. 3, p. 1023. It is a collective name for a variety of legal arguments including, *inter alia*, analogy, *argumentum a fortiori*, *reductio ad absurdum*, or deductive arguments; see Hallaq, *Origins*, pp. 113–116, 140–144, and his *History*, pp. 83–107.

⁴⁶ It is a discretionary opinion or reasoning based on precedent or on subjective considerations, see Hallaq, *Origins*, pp. 113–114; Hallaq, *History*, pp. 15, 19.

(jurisprudential interpretation),⁴⁷ while others upheld the principles of *istiḥsān* (juristic preference),⁴⁸ *naẓar* (speculation, arbitrary reasoning), or *istidlāl* (inductive reasoning).⁴⁹

According to Nu'mān, all the aforementioned groups originated from a common intent, their belief that the Qur'an and the *sunna* of the Messenger of God do not provide them with all the information needed to decide all cases they encountered during their lives. Nu'mān, therefore, asserts that all these groups are united on an unsound principle, which constitutes nothing more than following their own fancies and whims.

To support his contention that God, the Mighty and High, has perfected his religion and warned the people against speculations in religious matters, Nu'mān cites numerous verses from the Qur'an. These include, God said: *And who is further astray than him who follows his whim without guidance from God?* (Q.28:50); *They only follow guesswork, and guesswork is of no avail against the truth* (Q.53:28). Additionally He said: *O David, We have made you a viceroy in the land. Judge between the people in truth. Do not follow caprice, lest it lead you away from the way of God* (Q.38:26). Addressing His Messenger, God said: *So [O Muḥammad] judge between them by what God has sent down; and do not follow their whims* (Q.5:48). After citing the above verses Nu'mān quotes a well-known tradition of the Messenger of God: 'Follow, and do not innovate, for every innovation is an error, and every error leads to hellfire.'⁵⁰

Following the above introductory remarks, Nu'mān first takes issue with his adversaries' claims that there are several things, lawful or unlawful, not mentioned in either the Qur'an or the *sunna* of the Messenger of God. The main objective of Nu'mān's argument in this case is to demonstrate that this claim is preposterous. In support of his argument he draws heavily on Qur'anic verses. It should be remarked here that Nu'mān was simply following in the footsteps of the Shi'i '*ulamā'*' who, by the time of Nu'mān's writing, had fully elaborated the Shi'i doctrine of the imamate.

⁴⁷ Joseph Schacht, 'Idjithād', *El2*, vol. 3, pp. 1026–1027. It is a process of legal reasoning through which the jurist derives or rationalises law on the basis of the Qur'an and the *sunna*; during the early centuries of Islam it meant the exercise of one's discretionary opinion based on '*ilm*'. See Hallaq, *Origins*, pp. 114–115, 146; Hallaq, *History*, pp. 117–121.

⁴⁸ Rudi Paret, 'Istiḥsān', *El2*, vol. 4, pp. 255–256. It is a juristic preference based, in the early period, upon practical considerations, and later, on a particularised textual *ratio legis*; see Hallaq, *Origins*, pp. 116–117, 144–145; Hallaq, *History*, pp. 107–113.

⁴⁹ R. Arnaldez, 'Manṭiḳ (esp. Logic in the judicial science)', *El2*, vol. 6, pp. 4514–4552. *Istidlāl* means arguments based on the *dalil*, and it covers various inferences that do not belong to the category of *qiyās*. See Hallaq, *History*, pp. 112, 130, 131, 141; he states that arbitrary reasoning was often characterised as *ra'y* and *naẓar*. He further adds that in certain cases, reasoning, appearing under the labels of *ra'y* and *naẓar*, was nothing short of systematic *qiyās*.

⁵⁰ Nu'mān, *Ikhtilāf*, pp. 10–11, 16; it reads:

قال رسول الله صلى الله عليه وآله: إيتبعوا ولا تبتدعوا، فكلّ بدعة ضلالة، وكلّ ضلالة في النار.

It is transmitted by Muslim, Abū Dāwūd, Nasā'i, Ibn Māja, Dārimī and Ibn Ḥanbal. A. J. Wensinck, *Concordance et indices de la tradition musulmane* (Leiden, 1992), s.v. ḍ-1-l. See also Nu'mān, *The Pillars of Islam*, vol. 1, p. 110.

One of the fundamental elements of that doctrine is that the Imam is presumed to be the most learned person in the Muslim community.⁵¹ Nu'mān was a fierce proponent of the doctrine of the imamate. Of course, he was selective in his selection of Qur'anic verses and took them out of context. However, to be fair, this was the norm of his day since there were a considerable number of sectarian groups and all of them tried to justify their claim by Qur'anic verses and traditions of the Prophet.

Let us return to Nu'mān and analyse how he developed his arguments that the Qur'an contains everything that the faithful might need to guide him during his life. It is a recurring argument. First, he quotes from the Qur'an to stress the point that it is a comprehensive Book. He uses the passage, God says: *We have neglected nothing in the Book* (Q.6:38).⁵² Addressing His Messenger, God says: *We have sent down to you the Scripture as an explanation (tibyān^{an}) of everything and guidance and mercy and good news to those who submit* (Q.16:89). Nu'mān argues that the above verses clearly demonstrate that God explained everything in His Book and He did not neglect any aspect pertaining to Islam. The term 'bayān,' Nu'mān explains is applied to what is obvious, clear, manifest and known.⁵³ Hence, one does not need to resort to *qiyās, ra'y, ijtihād, istihsān, nazar* or *istidlāl* for explanations. If those people who advocate the above theories would ask us: 'Where is this explanation (*bayān*) [what you have stated] in the Qur'an?' In his defence Nu'mān states: 'We will respond with the following verses wherein God quite clearly says: *And We have sent down to you [O Muḥammad] the reminder for you to make clear to men what has been sent down to them* (Q.16:44). He says: *Whatever the Messenger gives you, take it. Whatever he forbids you to have, leave it alone* (Q.59:7). God also says: *If they were to refer it to the Messenger and to those who have authority among them (uli'l-amr minhum), those among them able to investigate the matter would know [how to handle it]* (Q.4:83). Moreover, God states: *Obey God and obey the Messenger and those of you who have*

⁵¹ For more details see Ismail Poonawala, 'The Imām's Authority during the Pre-Ghaybah Period: Theoretical and Practical Considerations', in Clarke, ed., *Shi'ite Heritage*, pp. 103–122.

⁵² Alan Jones has translated *al-kitāb* as 'record', while most of the translators, such as Bell, Yusuf 'Alī, Pickthall, Arberry and Abdel Haleem have rendered *al-kitāb* as 'Book'. I have preferred the latter.

⁵³ Nu'mān, *Ikhtilāf*, p. 17. He states:

وكذلك سمّاه الله تعالى حكماً وتبيناً وهدى وشفاءً. وأخبر رسول الله صلى الله عليه وآله أنه من أتبع الهدى في غيره أضله الله. فكيف يزعم هؤلاء الجاهلون أن شيئاً تعبد الله به خلقه لم يُنزله في كتابه؟

The terms *bayān* and *tibyān* occur four times in the Qur'an: 3:138, 55:4, 75:19 and 16:89. It is worth noting that in his *Risāla*, ed. Aḥmad M. Shākir (2nd ed., Cairo, 1979), p. 20; tr. Majid Khadduri, *al-Shāfi'ī's Risāla: Treatise on the Foundations of Islamic Jurisprudence* (2nd ed., Cambridge, 1987), p. 66, Shāfi'ī states: 'No misfortune will ever descend upon any of the followers of God's religion for which there is no guidance in the Book of God to indicate the right way.' Soon thereafter he cites the following verses of the Qur'an: 14:1, 16:46, 16:91 and 42:52. It is followed by several sections elucidating the term '*al-bayān*.' Shāfi'ī discusses certain characteristics of the Qur'an as an introduction to a fuller treatment of the Qur'an from a juridical viewpoint. In his *History*, pp. 21–29, Hallaq has succinctly summarised the contents of the *Risāla*.

authority (*uli'l-amr minkum*) (Q.4:59). God also says: *Today I have perfected your religion for you and completed My blessing for you and have approved Submission (al-islām) as a religion for you* (Q.5:3).⁵⁴

Nu'mān adds that the *bayān* of the Messenger of God and the *uli'l-amr* are included in the ordinance of the Qur'an. This, therefore, is clear evidence that the *uli'l-amr* comprehends the lawful and unlawful, and all related matters that a person would need to know during the course of his life. He adds that the *uli'l-amr* need neither *qiyās*, *ra'y*, *istidlāl*, *ijtihād*, *istihsān*, nor *naẓar*. Addressing His Prophet, God said: *We have sent down to you the Scripture with the truth, for you to judge between the people by that which God has shown you* (Q.4:105). Ridiculing the above-stated theories, Nu'mān adds rhetorically, 'God said to the Messenger of God *'that which God has shown you.'* He did not say to His Messenger, 'that which [O Muḥammad] you considered as your personal opinion,' or 'that which is reached through your juristic preference,' or 'that which you arrived at by analogical reasoning,' or 'that which you reached by speculation,' or 'that which you reached by inductive reasoning,' or 'that which you concluded from your personal reasoning.'⁵⁵

Nu'mān continues and states that people queried the Messenger of God with many issues in different situations, but he did not respond by exercising his personal opinion or analogical deduction. Rather he waited until the revelation came. There are several verses of the Qur'an that point in that direction: for example, *They ask you about menstruation. Say, 'It is a vexation. Withdraw from women during menstruation'* (Q.2:222); and *They will ask you about the Spirit. Say, 'The Spirit is part of the affair of my Lord, and you have been given only little knowledge'* (Q.17:85); and *They ask you about what they should spend. Say, 'The surplus'* (Q.2:219); and *They ask you about orphans. Say, 'Setting their affairs right is good'* (Q.2:220); and *They ask you about the sacred month and fighting in it. Say, 'Fighting in it is grievous, but turning [people] from God's way and unbelief in Him ... is more grievous with God'* (Q.2:217).

Nu'mān sarcastically adds: 'How preposterous it is then to allege that God did not perfect His religion and left it to the people to perfect it! Even the Jinn, when they heard the Qur'an recited to them exclaimed: *We have heard a marvellous recitation, which guides to righteousness. We believed in it* (Q.72:1-2). God has called the Qur'an *ḥukm^{an}* [*'Arabiyy^{an}*] (a criterion in Arabic) (Q.13:37), and *tibyān^{an}* [*li-kulli shay'^{im}*] (an explanation of everything) (Q.16:89), and *hud^{an}* (a guidance) (Q.16:89; 10:57; 41:44), and *shifā'^{an}* (a remedy) (Q.10:57). How dare they say that

⁵⁴ In his *Uṣūl al-sharī'a* (Beirut, 1983), p. 70, Muḥammad Sa'īd 'Ashmāwī states that the verse was revealed when the Prophet was making a pilgrimage and the thrust of the meaning refers to the ritual practices required for the perfection of Islam as a religion. See also Hallaq, *History*, p. 233.

⁵⁵ Nu'mān, *Ikhtilāf*, p. 13; it reads:
 وكان بيان الرسول وبيان أولي الأمر داخلان في حكم الكتاب إذ كان الكتاب أوجب ذلك، ونطق به ودلّ عليه. فصار جميع الحلال والحرام والقضايا والأحكام والفرائض، وجميع ما تعبد الله العباد به، بهذا القول مثبتاً في الكتاب بهذا المعنى واضحاً بيّناً، غير مشكّل ولا مقفّل. ولا يحتاج إلى القياس عليه، ولا استدلال فيه، ولا الرأي، ولا الاجتهاد، ولا الاستحسان، ولا النظر، كما زعم هؤلاء المختلفون.

the Qur'an is lacking in guidance! The Messenger of God said, "One who follows guidance from a source other than the Qur'an, God will make him lose his way."⁵⁶ Thus, how dare those ignorant people claim that the very matters with which mankind worship God, He did not reveal in His Book? Who taught them such knowledge? Did it not come through the Messenger of God? God says: *Say [O Muḥammad], 'I follow what is revealed to me from my Lord.'* (Q.7:203). God also says: *And He has taught you [O Muḥammad] what you did not know. God's bounty to you is great* (Q.4:113). Even the angels, addressing God, proclaimed: *Glory be to You. The only knowledge we have is what You have taught us. You truly are the Knowing and the Wise* (Q.2:32). How then those uninformed people allege that they derive legal rulings pertaining to what is lawful and unlawful that are not mentioned in the Qur'an and the *sunna*? Did they not contradict the Qur'an and claim for themselves a position higher than that of the prophets and the angels?⁵⁷

Let me add another reason Nu'mān has given at the end of the book for the compilation of the *Ikhtilāf*. It is not altogether different from what he had given at the beginning of the book, but it recalls his personal encounter with someone who held a different view on this matter. He states:

The reason for my compilation of this book in such a way is that I was a neighbour of someone who held the doctrine of *ijtihād*. I explained to him that it was an unsound assertion and I protested against it with the same arguments that I have presented in this book until he ceased from [asserting] it. I thought that he had confessed the truth and returned [to the right path]. But, subsequently he wound up with the composition of a booklet in which he elaborated the views of those who uphold the doctrine of *ijtihād* and persisted in his arguments that he had held before.

I have related in this book all that he had compiled in his booklet of the arguments of the proponents of that theory. I have added additional affirmations and arguments that have reached me, but were not mentioned by him. And I have demonstrated unsoundness [of such belief] and refuted their arguments. I did not intend to invalidate only the theory of *ijtihād*, so that the one to whom this book reaches might think that I was satisfied with other principles advocated by the schools that are antagonistic to the truth which I have discussed in this book. Hence, I saw it fit to mention all their statements and refute them [one by one] seeking success and recompense from the Almighty.⁵⁸

⁵⁶ This tradition of the Prophet is transmitted by Tirmidhī and Dārimī. Wensinck, *Concordance*, s.v. ḍ-l-l.

⁵⁷ I have summarised the Arabic text in translation. Nu'mān, *Ikhtilāf*, pp. 16–18.

⁵⁸ For the Arabic text see Appendix VII.

It is at this stage in the book that Nu'mān introduces the *madhhab* of the People of Truth, the Ismaili legal doctrine and outlines the principles of its legal thought.⁵⁹ First, he copies the royal decree of the Fatimid Imam-caliph al-Mu'izz, which was issued on the occasion of his investiture with the highest judicial office in the Fatimid realm and was read publicly. It was transcribed on Monday 28 Rabī' I, 343/ [30 September 954].⁶⁰ What interests us the most are the instructions given by al-Mu'izz to Nu'mān. They basically cover the fundamental principles of Ismaili law as elaborated by Nu'mān. What follows is the summary of the directives issued by al-Mu'izz.

Firstly, in all his legal decisions and judgements, Nu'mān should follow the Book of God, which is described in His words as: *Falsehood cannot come to it from before it or from behind it, a Revelation sent down from One [who is] Wise and Praiseworthy* (Q.41:42). Al-Mu'izz states: 'Verily, God has clarified in His Book all matters that are either lawful or unlawful in His eyes. He has also expounded His commands and illuminated His signposts.'

Secondly, if Nu'mān cannot find any reference [concerning a particular issue] either in the Qur'anic text or in the *sunna* of the Messenger of God or his precepts, he seeks it in the acts and decisions (*madhāhib*) of the virtuous, pious and Rightly Guided Imams who are from the progeny of the Messenger of God, the forefathers of the Commander of the Faithful. They are the treasures of God's knowledge and the hidden secrets of His revelation. They are designated by God as guides for mankind and the luminaries in the darkness who are supposed to rescue them from the bewilderment of blindness and the gloom of destruction. They are the exemplary models who should be followed in religious and mundane matters.

Thirdly, if something appears to him as ambiguous and difficult [to resolve], or dubious and problematic, he should refer it to the Commander of the Faithful, so that he might be able to guide him in the appropriate direction. Indeed, the Commander of the Faithful is the best (*baqiyya*)⁶¹ of the Rightly Guided deputies of God and from the progeny of the Rightly Guiding Imams. The Almighty has commanded people to turn to the Imams for guidance, to direct their questions to them and to acquire knowledge from them. God has also enjoined His servants to refer to the

⁵⁹ For the development of the concept of *madhhab* as a group of jurists and legists who are strictly loyal to a distinct, collective legal doctrine attributed to an eponym, after whom the school is known to acquire distinctive characteristics, see Hallaq, *Origins*, pp. 150 ff.

⁶⁰ For its Arabic text, see Appendix III.

⁶¹ The word *baqiyya*, lit. means remainder, remnant, relic; however, when used in a genitive construction (*iḍāfa*) annexed to a word referring to a tribe, family, or a community, it means *the most excellent of them*. For example, *من بقيّة القوم فلاّن* means *such a one is the most excellent, or the best of the people*. Edward Lane, *Arabic-English Lexicon*, Reprint (Cambridge: The Islamic Society, 1984), s.v. b-q-y; older sources are indicated therein. The word was used by al-Mu'izz in his sermon announcing the death of his father al-Manṣūr, see *Inside the Immaculate Portal: A History from Early Fatimid Archives*. A new edition and English translation of Manṣūr al-'Azīzī al-Jawdhārī's biography of al-Ustādh Jawdhar, edited & translated by Hamid Haji (London: I.B.Tauris, 2012), p. 70 (Arabic text). Lokhandwalla's translation "remnant" is incorrect. I am thankful to Hamid Haji for drawing my attention to the above reference.

Imams, as God has said: *If they were to refer it [any matter] to the Messenger and to those who have authority (uli'l-amr) among them, those among them able to investigate the matter would know [how to handle] it (Q.4:83)*. The Almighty has also said: *Ask the people [who have] the reminder (ahl al-dhikr) if you do not know (Q.16:43)*. Moreover, the Messenger of God has declared, 'I am leaving among you two things of great weight (*al-thaqalayn*), the Book of God and my kindred ('*itratī*), the People of My House (*ahl baytī*). As long as you will adhere to them, you will never be led astray, because these two shall never be separated until they return to me at the Pool.'⁶²

As previously mentioned, Nu'mān had already elaborated these principles at the beginning of the book. Now, they are reinforced by al-Mu'izz's royal decree. Another significant point Nu'mān makes with regard to the edict and the instructions contained in it, is that it was the norm for all previous Imams beginning with the first Imam-caliph al-Mahdī to issue similar edicts whenever they appointed a *qāḍī*. Nu'mān states that al-Manṣūr had also issued similar directives to him on the occasion of his appointment to that office. Nu'mān asserts that the Imams did not enjoin their *qāḍīs* with the ability to exercise *qiyās*, *nazar*, *istihsān*, *ra'y* or *ijtihād* as was the case with the rest of the Sunni caliphs. Nu'mān adds that the overall Muslim community is united in their view that if a person does not know something related to religion and someone else has that knowledge, he ought to seek the latter's advice. Hence, Nu'mān poses a rhetorical question and states:

How is it then permissible for anyone to exercise his own individual opinion, or employ a different means of deduction? God has said: [*They*] *will reckon that they have something to stand on. Truly, they are the ones who lie (Q.58:18)*. If that would have been the case, everyone would have exercised his opinion and all people would be equal in knowledge. As a result there would not have been any distinction between the learned and the ignorant. But, the Almighty has stated: *But only those with knowledge will understand them (Q.29:43)*. He also stated: *Ask the people [who have] the reminder if you do not know (Q.16:43)*. But people differed as to the identity of *ahl al-dhikr*. Some people said that they were the *fuqahā'* (jurists). Had that been the case, it would have been said to them, 'But, those jurists disagree among themselves. Some of them consider certain things lawful, while the others regard those very things unlawful. How would it be permissible for God to command people to ask them such matters of great significance? Similarly, some people asserted that the *uli'l-amr*, whose obedience is commanded by God, were the commanders of the *sarāyā* (military detachment sent by the

⁶² This tradition, known as *ḥadīth al-thaqalayn* (two weighty things) is transmitted by Ibn Ḥanbal, Muslim, Tirmidhī and Dārimī; Wensinck, *Concordance*, s.v. th-q-l. See also Nu'mān, *The Pillars of Islam*, vol. 1, p. 37. Muslim's version contains 'God's Book' and 'My Family'.

Prophet).⁶³ Such an interpretation is incorrect, because the command to obey God, His Messenger, and *uli'l-amr* is addressed to all Muslims alike and is not limited to only those who only participated in some military expeditions sent by the Prophet.⁶⁴

Thus far I have merely discussed and analysed the introduction of the book, consisting of about 28 printed pages of the text. The rest of the book contains over 200 pages which is devoted to the presentation of the views of the rival schools of jurisprudence and their refutations. Nu'mān organises the book into several sections. First, he addresses the *aṣḥāb al-taqlīd* and at the end of the debate asserts that the same charge cannot be levelled against the Shī'a.⁶⁵ This is followed by a section covering the *aṣḥāb al-ijmā'*. This is divided into three sections/chapters: the people who uphold *ijmā'* and their refutation; disagreement with regard to its *ḥujjiyya* (authoritativeness of methodological principles);⁶⁶ and an account of *ijmā'* with regards to place and time.⁶⁷ It is preceded by those who maintain the doctrine of *nazar*. *Aṣḥāb al-qiyās*⁶⁸ comes next and is followed by those who assert the doctrines of *istiḥsān* and *istidlāl*. The last topic pertains to those who uphold the doctrine of *ra'y* and *ijtihād*.⁶⁹ Ultimately, it concludes with a recapitulation of Nu'mān's representations of those groups and the main arguments.

An Account of *Aṣḥāb al-Taqlīd* and their Refutation⁷⁰

Nu'mān commences this chapter and states that God did not command the faithful to follow anyone after His Messenger except the *uli'l-amr* whom the Prophet had designated as the vanguards of the community. However, the community disregarded this particular instruction of the Messenger of God and followed inappropriate individuals. After alluding to the historical events that followed the death of the Prophet, Nu'mān narrates the story of 'Adī b. Ḥātim al-Ṭā'ī who came to the Messenger of God to accept Islam while he was still wearing a cross made of gold around his neck. The Messenger of God, therefore, asked him to remove it and he recited to him the *sūrat barā'a* (also known as *sūrat al-tawba*, chapter nine of the Qur'an) until the end of the verse where God states: *They have taken their rabbis and monks as lords apart from God* (Q:9:31). Thus, Nu'mān criticises that the Muslim

⁶³ For the meaning of the *sariyya*, pl. *sarāyā*, see *The History of al-Ṭabarī*, vol. 9: *The Last Years of the Prophet, The Formation of the State*, A. D. 630–632/A. H. 8–11; tr. and annotated by Ismail K. Poonawala (Albany, NY, 1990), p. 62. See Nu'mān's refutation in *The Pillars of Islam*, vol. 1, p. 32.

⁶⁴ I have summarised the Arabic text of the *Ikhtilāf*, pp. 25–28.

⁶⁵ It consists of 26 pages and is the fourth longest chapter.

⁶⁶ For *ḥujjiyya* see Hallaq, *History*, pp. 75–77, 126, 133, 166.

⁶⁷ It is the longest chapter and is comprised of 59 pages.

⁶⁸ It is comprised of 49 pages and is the second longest chapter.

⁶⁹ It consists of 33 pages and is the third longest chapter.

⁷⁰ For the meaning of *taqlīd*, see Hallaq, *Origins*, p. 147; Hallaq, *History*, pp. 121–123.

community has become almost identical with the former communities of the Jews and the Christians whose story God has told us in the aforementioned verse.

Nu'mān narrates a tradition on the authority of the Imam Ja'far al-Ṣādiq stating that the Imam had rightly interpreted this verse as referring to the Muslim community of his days and said that they (i.e., the misguided of the community) did not, indeed, fast for, nor pray to their leaders; but these leaders permitted the community to do things that were ultimately unlawful, and so the people considered those things to be lawful; and [similarly] when their leaders forbade things that were lawful, the people considered those things to be forbidden.⁷¹ The Prophet had foreseen the situation that would prevail in his community. This was the reason that he said: 'You will surely follow the paths of the communities before you as a horse-shoe upon a horseshoe and an arrow feather on an arrow feather, to the extent that if they had entered a lizard's hole, then you too would surely have done the same.'⁷² The correct version of another popular tradition, known as the *ḥadīth al-thaqalayn*, identifies the two weighty things as 'the Book of God' and 'my kindred' (i.e., the People of the Messenger of God's House). It is not what the majority of the Muslims claim: 'the Book of God' and 'my *sunna*.' Nu'mān states that the latter version is nothing more than tampering with the original text of the tradition.

Nu'mān states that the main argument they present for their justification of *taqlīd* (blind following, submission) is a tradition ascribed to the Prophet which states, 'My Companions are like the stars; whichever one of them you choose to follow, you will be rightly guided.'⁷³ Nu'mān then points out the fact which is well known to students of Islamic history: the Companions not only disagreed among themselves, they also fought among themselves and killed each other. The first thing a great majority of the *Muhājirīn* and *Anṣār* disagreed on was the injunction of the Messenger of God concerning the leadership of the community after him. Without going into the detail Nu'mān alludes to the gathering at the *Saqīfat Banī Sā'ida* where a heated debate ensued between the *Anṣār* and the *Muhājirīn* that supposedly led to Abū Bakr being selected as the successor of the Prophet.⁷⁴

Having made this significant point, Nu'mān moves on to demonstrate that the Companions hardly agreed on anything. Nu'mān reports that when Abū Bakr intended to fight the people of the Yamāma on the pretext of their not paying the *zakāt*, 'Umar advised the caliph against such a move.⁷⁵ Nu'mān then calls the

⁷¹ See also Nu'mān, *The Pillars of Islam*, vol. 1, p. 2.

⁷² *Ibid.*, vol. 1, p. 1; older sources are indicated there.

⁷³ *Ibid.*, vol. 1, p. 107. Walīy al-Dīn Muḥammad al-Tabrizī, *Mishkāt al-maṣābiḥ*, ed. Muḥammad Nāsir al-Dīn al-Albānī (Damascus, 1961), vol. 3, p. 219; tr. James Robson, *Mishkat al-masabih* (Lahore, 1975), vol. 2, p. 1320; various versions are cited.

⁷⁴ For details as to what happened in the *Saqīfat Banī Sā'ida*, see Poonawala, *The History of al-Ṭabarī*, vol. 9, p. 189 ff., where other parallel sources are cited; Fred Donner, *The History of al-Ṭabarī*, vol. 10: *The Conquest of Arabia* (Albany, NY, 1993), pp. 1 ff.

⁷⁵ This report cannot be verified from historical sources. It probably refers to the incident of Buṭāḥ wherein Khālīd b. Walīd killed Mālīk b. Nuwayra and married his wife. 'Umar was angry at what Khālīd did and pressed Abū Bakr to dismiss him, saying: 'In his sword there really is forbidden behaviour.' Whereupon Abū Bakr replied: 'O 'Umar I will not sheathe a

reader's attention to 'Umar's ignorance of the Qur'an, especially with regard to its injunctions.⁷⁶ In many cases the second caliph 'Umar b. al-Khaṭṭāb had given wrong legal decisions, but thanks to 'Alī's timely intervention and advice, 'Umar revoked his judgements. Hence, the origin of the famous saying, 'Had it not been for 'Alī, 'Umar would have perished.'⁷⁷

It is worth noting here that Nu'mān then goes on to expound the linguistic meaning and usage of the verb *ṣaḥiba* and its noun formation *aṣḥāb* in the Qur'anic usage and in the Prophet's utterance during his final illness. When the Messenger of God got irritated with some of his wives for not carrying out his recommendations he said to them, 'You are like Joseph's little female companions (*innakunna ṣuwayḥibātu Yūsuf*).'⁷⁸ Of course, the term '*ṣuwayḥibātu Yūsuf*' was not a compliment, rather it had a negative connotation. Nu'mān then states that the word *nujūm* was used metaphorically in the tradition they alleged that the Messenger of God had said: 'My Companions are like the stars; whichever of them you choose to follow, you will be rightly guided.' If it is authentic, Nu'mān appropriates it and states that it refers to the Imams from his progeny and not to the Companions as the literal meaning of the tradition suggests.⁷⁹

Clarifying his position that he is not bent on belittling the Companions, Nu'mān states that his intention was not to disparage the Companions but to refute their argument supporting blind following. Nu'mān adds that the same argument against *taqlīd* applies to those who blindly follow the *tābi'ūn* (the Followers), and those who follow the generation who came after them, that is, the *lāḥiqūn*. However, Nu'mān adds, the most famous people to whom the word *taqlīd* is associated with are those who uphold the doctrine of the *ra'y*, *istiḥsān*, *qiyās*, *nazar* and *ijtihād*, like Abū Ḥanīfa al-Nu'mān al-Kūfī, Mālik b. Anas al-Madanī and Muḥammad b. Idrīs al-Shāfi'ī. A great majority of the people are the followers of those three figures. Nu'mān's statement implies that the three major Sunni schools of jurisprudence had already crystallised by the middle of the 4th/10th century. It should be noted that Ibn Ḥanbal does not come into the picture at all, which clearly implies that he was not considered a major jurist or the founder of the Ḥanbalī *madhhab* at that time.⁸⁰

sword that God has drawn against the unbelievers.' Donner, *The History of al-Ṭabarī*, vol. 10, pp. 98–104; al-Ya'qūbī, *Ta'riḫ al-Ya'qūbī*, ed. Muḥammad Ṣādiq Baḥr al-'Ulūm (Najaf, 1964), vol. 2, p. 122; Ibn al-Athīr, *al-Kāmil fī'l-ta'riḫ*, ed. C. J. Tornberg (repr., Beirut, 1979), vol. 2, pp. 357–360.

⁷⁶ In his *al-Iḥkām fī uṣūl al-aḥkām* (Cairo, 1345/1926–1927), vol. 2, p. 125, Ibn Ḥazm gives specific examples where 'Umar lacked adequate knowledge of the Qur'an. Moreover, in the section entitled '*Fihī bayān sabab al-ikhtilāf al-wāqī' bayn al-a'imma fī ṣadr ḥādhihi al-umma*' (vol. 2, pp. 124 ff.), Ibn Ḥazm gives a vivid picture of differences among the nascent Muslim community concerning their knowledge of the Qur'an and *ḥadīth*.

⁷⁷ For details and sources see Nu'mān, *The Pillars of Islam*, vol. 1, p. 106.

⁷⁸ For details see Poonawala, *The History of al-Ṭabarī*, vol. 9, p. 180.

⁷⁹ For details and older sources, see Nu'mān, *The Pillars of Islam*, vol. 1, p. 107.

⁸⁰ Hallaq, *Origins*, pp. 159 ff. He states that the beginning of legal Ḥanbalism, which had already established itself as a theological school, is to be located in the juristic activities of the generations that followed him.

Nu'mān then proceeds to criticise the founders of the three schools of jurisprudence.

Nu'mān points out that Abū Ḥanīfa frequently changed his opinions and he is the one who is credited with saying: 'This knowledge of ours rests on opinion (*ra'y*) only, and in our opinion it is the best that can be attained. However, if someone comes to us with a better opinion, we shall reverse our opinion and adopt his view.'⁸¹ Abū Ḥanīfa believed in the doctrine of *qiyās* and claimed that it is the most useful one. Nu'mān then relates a story of a man from Khurāsān who performed the pilgrimage whereupon he met Abū Ḥanīfa and wrote down on his authority his legal opinions concerning certain issues. The following year the man returned to Mecca for pilgrimage, met Abū Ḥanīfa and asked him about the same issues. But Abū Ḥanīfa contradicted what he had previously said *in toto*. At this the Khurāsānī beat his face in confusion and let out a cry. The people gathered around him and asked him the reason. He said, 'O people! This man [Abū Ḥanīfa] gave me his legal opinion on certain issues last year. I then returned home and on the basis of his opinions I made certain things lawful and unlawful for my people. When I came to him this year he revoked his earlier opinions altogether.' Whereupon Abū Ḥanīfa exclaimed, 'But that was only the considered opinion I held at that time; and now I believe otherwise, so I revoked it.' The Khurāsānī rejoined, 'Woe to you! Perhaps if I were to depend on what you say this year, contrary to what you said last year, then you would certainly again reverse your opinion the next year!' Abū Ḥanīfa responded, 'I do not know; perhaps I might.' The Khurāsānī thereupon exclaimed, 'But, I know that upon you lies the curse of God!'⁸²

Likewise, Nu'mān criticises Mālik. Ashhab b. 'Abd al-'Azīz, the foremost of Mālik's followers who reported that one day he was in the company of his master when he was asked about the irrevocable divorce (*ṭalāq al-batta*). Mālik said, 'It is pronounced thrice [at one time and considered thrice valid.]' Thereupon Ashhab seized his tablet to write it down on his authority. Mālik asked, 'What are you doing?' Ashhab replied that he was inscribing what he had just said. Mālik said, 'How do you know that by the evening I might change my opinion and say that it is only one valid pronouncement?'⁸³ Nu'mān asks rhetorically, 'How, then, can these fickle minded people be followed?'

As for Shāfi'i, Nu'mān states that he first followed Mālik and others from the people of Mecca and Medina and gave his legal opinions accordingly. He then went to Iraq and met with Muḥammad b. al-Ḥasan al-Shaybānī and revoked many of his previous opinions. Later on, he went to Egypt and settled there whereupon he reversed many of his earlier opinions that he had given while he was in the Ḥijāz

⁸¹ The Arabic reads:

قال أبو حنيفة: علمنا هذا رأي، وهو أحسن ما رأيناه، فمن أتانا بخير منه رجعنا إليه فيه وقبلنا منه.

This saying of Abū Ḥanīfa is reported on the authority of his student al-Ḥasan b. Ziyād al-Lu'lu'i (d. 204/819–820). Abū Ḥanīfa himself did not write any book, but his juridical opinions were recorded by his disciples. See also Joseph Schacht, 'Abū Ḥanīfa', *EI2*, vol. 1, pp. 123–124; Nu'mān, *The Pillars of Islam*, vol. 1, p. 108.

⁸² This story is also reported by Nu'mān in *The Pillars of Islam*, vol. 1, p. 110.

⁸³ Nu'mān reports the same story in *The Pillars of Islam*, vol. 1, p. 108.

and Iraq.⁸⁴ Nu'mān notes that Shāfi'ī strictly forbade his followers from the unequivocal adoption (*taqlīd*) of either his opinion or his fellow jurists. He rebuked the jurists who adopted the opinions of their predecessors (*aṣḥāb al-taqlīd*) without inquiring into the reasons behind their decisions.⁸⁵ Despite his warning, some of his disciples followed him and adopted his authority. Nu'mān then adds that even Shāfi'ī used to give legal opinions by exercising his *ra'y* and *istiḥsān*.⁸⁶ What should be noted is that Nu'mān does not give any credit to these major figures for their efforts in developing certain principles for resolving new issues and only ridicules them.⁸⁷

Having criticised his opponents, Nu'mān expected that the same accusation of *taqlīd* could be levelled against him and the Shi'a. Hence, he sets out to distinguish between the forms of *taqlīd*. He states that the followers of the various schools of Sunni jurisprudence adhered to the legal decisions of their leaders even though they were deduced through personal opinion without any textual evidence from the Qur'an or the *sunna* of the Messenger of God. Some of these legal opinions concern serious matters related to religion, namely whether they are lawful or unlawful. The Qur'an strictly forbids speculation in regards to religious matters and what is lawful and unlawful. God says: *And do not say, because of what your tongues falsely describe, 'this is lawful, and this is forbidden,' so that you may invent falsehood against God. Those who invent falsehood against God will not prosper. A brief enjoyment – and then they will have a painful punishment* (Q.16:116–117). Nu'mān states that issuing legal opinions based on analogy or logical deduction amounts to introducing innovation (*bid'a*) in religion and it contravenes what the Qur'an has just stated in the above verse. God also says: *Follow what has been sent down to you from your Lord and do not follow friends to His exclusion. Little you are reminded* (Q.7:3). Addressing his adversaries Nu'mān asks, 'What will you say to God on the Day of Judgement when your own leaders will disown you for following them?' Nu'mān reminds them that they will face a similar scenario, referred to in the Qur'an when the Almighty says: *When those who were followed disown those who follow them, and they see the doom and their cords are severed with them, and those who followed say, 'If only we might have another turn so that we might disown them, and they have disowned us!'* (Q.2:166–167)

Nu'mān then asserts that the Shi'a follow their Imams as models to be emulated and to seek their guidance with regards to matters they do not possess knowledge of. In doing so, they simply obey the commands of God when He says: *Ask the*

⁸⁴ For the life and doctrine of Shāfi'ī, see E. Chaumont, 'al-Shāfi'ī', *EI*, vol. 9, pp. 181–185.

⁸⁵ Nu'mān, *Ikhṭilāf*, p. 43; the Arabic reads:

وكان ينهى عن التقليد أشد النهي، ويُعيب أهله، ويردّ على من قال به. وأتبعه على ذلك بعض أصحابه، وقال بعضهم: نتبعه في كل شيء، ونقول بقوله فيه إلا في نهيه عن التقليد. فإنا نخالفه فيه ونقلده.

⁸⁶ It should be noted that Shāfi'ī argued against *istiḥsān*, see *al-Risāla*, pp. 25, 503 ff.; tr. *Al-Shāfi'ī's Risāla*, pp. 70, 304 ff.

⁸⁷ Nu'mān repeated these reports in *The Pillars of Islam*, vol. 1, pp. 107–122, wherein he states: 'Subsequently, the question of giving formal legal opinions was restricted among the commonalty to Abū Ḥanīfa, Mālik, and Shāfi'ī.'

people [who have] the reminder (*ahl al-dhikr*) if you do not know (Q.16:43), and Obey God and obey the Messenger and those of you who have authority (*uli'l-amr*) (Q.4:59). The Messenger of God also said, 'I am leaving among you two things; the Book of God and my kindred (*'itratī*), the People of my House (*ahl baytī*). As long as you will adhere to them, you will never be led astray, because these two shall never be separated until they return to me at the Pool.'⁸⁸ Nu'mān reiterates, 'The Imams are the custodians of the secret knowledge of revelation. This knowledge they pass on from one generation to the next and they do not resort to *ra'y*, *ijtihād*, *qiyās* or *istihsān*.'

Nu'mān further clarifies the Ismaili belief about the Imams by distancing himself from the extreme Shi'a. He identifies a tradition from Ja'far al-Ṣādiq who was asked about what the Shi'a say with regards to the Imams. The Imam asked him about it and the inquisitor said, 'Some of them say, "The Imam receives revelation"; others say, "[Divine words] resonate in the Imam's ear"; others say, "The Imam sees [the angels] in dreams"; and others say, "The Imam is inspired when he gives his legal decision"; yet others say, "The Imam is visited by Gabriel." Which, therefore, of their assertions should I then take to be the truth, may I be thy ransomed?' Ja'far al-Ṣādiq said, 'Praise the Lord, the Exalted, from such statements of the liars and the ignorant! Do not take anything of what they say as the truth. Rather the things permitted by us are taken from the Book of God, and likewise are the things prohibited by us.'⁸⁹

Nu'mān reiterates that the *uli'l-amr* and *ahl al-dhikr* are not the *fuqahā'* as they allege. Nu'mān then calls the reader's attention to the Sunni caliphs and remarks, 'Look at their caliphs, how ignorant they were! Abū Bakr, the first caliph, in his first public address said, "I have been given authority over you, although I am not the best among you. If I err, then correct me."⁹⁰ Nu'mān asks rhetorically, 'Is it considered an admirable trait of one who assumes the leadership of the community?' This quote infers that Nu'mān certainly did not believe so. Nu'mān reports that addressing a crowd of people 'Umar b. al-Khaṭṭāb, the second caliph, once said from the pulpit, 'O people, do not overdo what is given to your wives as dowries, for if this were something to be desired in society or a pious act in the eyes of God, the Messenger of God would have been the first to act in this way. But he never gave a dowry in excess of 500 dirhams.' Thereupon a woman standing among the last rows of the assembly rose and said, 'O Commander of the Believers, why do you deny the rights God granted us? He says: *And [if] you have given one of them [your wives] a large sum, take nothing from it.*' (Q.4:20) Whereupon 'Umar lapsed into silence and could not reply. Then he turned to those present and said, 'You heard me making an error and you did not contest it, while a woman has refuted me.'⁹¹ Nu'mān states that he does not want to elaborate further on 'Umar's ignorance about the Qur'an and its injunctions. He simply refers to the quote that he himself acknowledged and

⁸⁸ See n. 62 above.

⁸⁹ See also *The Pillars of Islam*, vol. 1, pp. 66–67; the inquisitor is identified as Sadīr al-Ṣayrafī.

⁹⁰ *Ibid.*, vol. 1, p. 105; older sources are indicated there.

⁹¹ *Ibid.*, vol. 1, pp. 104–105.

said, 'But for 'Alī, 'Umar would surely have perished.'⁹² This demonstrates the situation with their caliphs.

Nu'mān then cites numerous verses of the Qur'an that are generally interpreted by the Shi'a as referring to the Imams. Let me present some examples. In *sūrat al-nisā'* He says: *Or do they envy the people for what God has given them of His bounty?* (Q.4:54). Nu'mān states that 'the people envied' are the Imams because God has bestowed the imamate on them.⁹³ In the same *sūra* He says: *God commands you to pay back to their owners things entrusted to you and to judge fairly if you judge between the people* (Q.4:58).⁹⁴ The fragment 'to pay back the things entrusted,' is in reference to the Imams who return the knowledge, the books and the weapons entrusted to them and their successors.⁹⁵ Again in the same *sūra* He says: *O you who believe, obey God and obey the Messenger and those of you who have authority* (Q.4:59). The phrase, 'those of you in authority' refers to the Imams.⁹⁶ In *sūrat al-mā'ida* He says: *Your protector is God and His Messenger, and those who believe: those who perform prayer and pay the zakāt and bow down* (Q.5:55). This verse was revealed with regard to 'Alī who was the foremost among the Imams.⁹⁷ In *sūrat al-ankabūt* the Almighty says: *No. It is clear signs in the breasts of those who have been given knowledge* (Q.29:49). The phrase, 'those who have been given knowledge' is also in reference to the Imams.⁹⁸ In *sūrat al-ra'd* God says: *You are simply a warner; and for every people there is a guide* (Q.13:7). The phrase, 'You are simply a warner' refers to the Messenger of God; and in every age there is an Imam from the progeny of the Prophet to guide the community towards the message brought by him.⁹⁹ In *sūrat āl 'Imrān* He says: *Only God knows its interpretation and those who are well grounded in knowledge* (Q.3:5). Once again, 'those who are well grounded in knowledge' is in reference to the Imams.¹⁰⁰ In *sūrat al-naḥl* He says: *Ask the people [who have] the reminder* (Q.16:43). The expression, 'the people of the reminder' is in reference to the Imams.¹⁰¹ Nu'mān concludes this chapter and reiterates that what he has illustrated above is a clear distinction between *taqlīd* and *taṣḍīq*. The former consists of blindly following their 'leaders' and 'jurists' who were not supposed to [mis]lead them, while the latter consists of giving credence to what is stated in the Qur'an and submitting to the appropriate designated authorities for guidance.

At this juncture, I would like add a few comments. The word *taqlīd* generally carries the negative connotation of blind following. It plays an important role in the religious sciences of Islam during the classical period and is a part of any debate

⁹² Ibid., vol. 1, p. 106.

⁹³ Ibid., vol. 1, p. 28. Additional sources are indicated there.

⁹⁴ Nu'mān clarifies this further in *The Pillars of Islam*, vol. 1, p. 28. He states that the verse refers to the imamate/caliphate; hence it means when the Imams gain political power, they should rule the domain equitably.

⁹⁵ For details, see *ibid.*

⁹⁶ Ibid., p. 29.

⁹⁷ Ibid.

⁹⁸ Ibid, p. 30. Older sources are indicated there.

⁹⁹ Ibid.

¹⁰⁰ Ibid., p. 31.

¹⁰¹ Ibid., pp. 30, 37, 98.

concerning authority and epistemology from the earliest of times to modern Islamic discourse.¹⁰² As noted above by Nu'mān, al-Muzanī (d. 264/878, Shāfi'ī's chief disciple and an outstanding jurist and dialectician) confirms that his master had prohibited *taqlīd* of either himself or other jurisconsults (*muftīs*).¹⁰³ This statement of Shāfi'ī implies that a learned *faqīh* should not simply follow his opinions but should understand his arguments and the basis for expressing such a view. However, Nu'mān glosses over the implications of Shāfi'ī's statement and for the sake of his argument only presents it as a warning against *taqlīd*. It should be noted that Shāfi'ī's distrust of *taqlīd* in juristic matters is reflected in the works of the Zāhiri school's jurist, Ibn Ḥazm. In *al-Iḥkām*, Ibn Ḥazm states that one should return to the evident meaning of the tradition and should not follow the traditional authorities, which he refers to as *taqlīd*.¹⁰⁴ Ibn Qutayba, a staunch traditionalist, is very cautious in his selection of words when he compares and contrasts the views of the *aṣḥāb al-kalām wa-aṣḥāb al-ra'y* (i.e., the rationalists, the Mu'tazila) and the *aṣḥāb al-ḥadīth* (traditionalists). In describing how the latter group achieved consensus on the basic principles of faith through revelation and submission to the acknowledged authorities of the 'ulamā' and the *fuqahā'*, Ibn Qutayba avoids use of the word *taqlīd*. On the other hand, he accuses the Mu'tazila of labelling others as the followers of traditional authorities (*yattahimūna ghayrahum fi'l-naql*), since it was against their rational principle of 'aql.¹⁰⁵ Also one should differentiate between *taqlīd* in juristic matters and *taqlīd* in credal matters, but this matter is beyond the scope of this chapter.

An Account of *Aṣḥāb al-ijmā'* and their Refutation¹⁰⁶

The Sunni schools of jurisprudence maintain that the doctrine of *ijmā'* is one of the fundamental principles of Islamic law and therefore must be followed and obeyed.

¹⁰² N. Calder, *El2*, 'Taqlīd', vol. 10, pp. 137-138.

¹⁰³ Ibid; see also Hallaq, 'Was al-Shāfi'ī the Master Architect of Islamic Jurisprudence?' pp. 590-591, 594, 598; Hallaq, *History*, p. 33.

¹⁰⁴ Ibn Ḥazm, *al-Iḥkām fī uṣūl al-aḥkām*, vol. 6, *al-Bāb al-sādis wa'l-thalālūn fī ibtāl al-taqlīd*. In this long chapter entitled 'On invalidating blind imitation' (p. 123), Ibn Ḥazm states: ويكفي من هذا أن كل ما ذكرنا من الفقهاء الذين قلدوا مبطلون للتقليد، ناهون عنه، مانعون منه، مخبرون أن فاعله على باطل. وقد حدثنا حمام عن الباجي عن أسلم القاضي عن المازني عن الشافعي أنه نهى الناس عن تقليده وتقليد غيره. وحدثنا عبد الرحمن بن سلمة ... قال: سمعت مالكاً وقال له ابن القاسم: ليس أحد بعد أهل المدينة أعلم بالبيوع من أهل مصر. قال له مالك: من أين علموا ذلك؟ قال: منك، يا أبا عبد الله. قال مالك: ما أعلمها أنا، فكيف يعلمونها هم؟ قال أبو محمد: كيف، وقد أغنانا الله تعالى عن قولهم في ذلك بما نص في كتابه من إبطال التقليد؟ فمن ذلك قول الله عز وجل: ﴿مَثَلُ الَّذِينَ اتَّخَذُوا مِنْ دُونِ اللَّهِ أَوْلِيَاءَ كَمَثَلِ الْعَنْكَبُوتِ اتَّخَذَتْ بَيْتًا وَإِنَّ أَوْهَنَ الْبُيُوتِ لَبَيْتُ الْعَنْكَبُوتِ﴾ [سورة العنكبوت ٢٩:٤١]. ثم قال الله تعالى على أثر هذه الآية: ﴿وَتِلْكَ الْأَمْثَلُ نَضْرِبُهَا لِلنَّاسِ وَمَا يَعْقِلُهَا إِلَّا الْعَالِمُونَ﴾ [سورة العنكبوت ٢٩:٤٣].

¹⁰⁵ Ibn Qutayba, *Ta'wil mukhtalaf al-ḥadīth* (Beirut, 2004), pp. 12-14.

¹⁰⁶ For the concept of *ijmā'* see M. Bernard, 'Idjmā', *El2*, vol. 3, pp. 1023-1026; Hallaq, *History*, *passim*; Hallaq, *Origins*, *passim*.

They consider it unlawful to oppose *ijmā'*. Thus, some jurists who assert this position, Nu'mān states, consider those who dissent from their view as infidels. Their argument for the justification of the doctrine of *ijmā'* is chiefly based on their interpretation of the term *umma*, which occurs in the Qur'an on several occasions. The verses generally cited to legitimise *ijmā'* are as follows. God says: *Thus We have made you a moderate community (ummat^{an} wasaṭ^{an}) for you to be witnesses (shuhadā')* to the people and for the Messenger to be a witness to you (Q.2:143). In another passage He says: *He has chosen you and has not laid upon you any difficulty in your religion, the faith of your forefather Abraham. He has named you 'those who surrender' (al-muslimīn) both previously and in this [Recitation], that the Messenger may be a witness (shahīd^{an}) against you and that you may be witnesses (shuhadā')* against the rest of mankind (Q.22:78).¹⁰⁷ He also states: *Those who believe in God and His messengers – they are the loyal ones (ṣiddīqūn) and the witnesses (shuhadā')* with their Lord (Q.57:19). He further says: *You are the best community (khayra ummatⁱⁿ) brought forth for the people. You enjoin what is reputable and you forbid what is disreputable and you believe in God (Q.3:110).*

Consequently, the Sunnis allege that the word *umma*, mentioned by God in His Book refers to the community of Muḥammad and made to bear witness (*shuhadā'*) to the entire Muslim community. They further allege that the word *mu'minīn* (i.e., the active participle of those who believe in God and His messengers), mentioned in the above verse and further characterised by two additional traits of being *ṣiddīqīn* and *shuhadā'*, also applies to the entire Muslim community. Nu'mān unequivocally disagrees with these sweeping generalisations and argues that it is ridiculous, irrational and unbelievable that the whole Muslim community can be characterised as *mu'minīn*, *ṣiddīqīn* and *shuhadā'*, for the simple reason that any community is comprised of a variety of people, good and evil, learned and ignorant, guided and misguided, gracious and barbaric, and obedient and rebellious. According to Nu'mān, all those categories of people cannot be identified as honest and righteous, or with the traits mentioned in the Qur'an.

Nu'mān adds that when God characterised the community of Muḥammad as 'a moderate community,' certainly He meant that it possesses the characteristics of justice, fairness and honesty. If that is the case, Nu'mān asks, 'How can certain jurists assert that all Muslims are qualified to be included in the community of Muḥammad?' Nu'mān continues that the aforementioned verse further characterises the community of Muḥammad as one, which invites people to goodness – enjoins what is approved and forbids the opposite (*ta'murūna bi'l-ma'rūf wa-tanhawna 'an al-munkar*). Thus, how can one who is deficient in those characteristics be counted as representing the community, which the Almighty has described, when in fact he represents quite the contrary of what God has stipulated for that community? Nu'mān states that if the jurists believe that the above verse pertained to all the Muslims then it carries serious implications for God's justice. For example, when the

¹⁰⁷ I have preferred George Sale's translation, *The Koran: Translated into English from the Original Arabic*, with an introduction by Sir Edward Denison Ross (London, n.d.), p. 335. Alan Jones translation of this verse is incorrect. Richard Bell, Yusuf Ali and A. J. Arberry have also rendered it correctly.

testimony of some Muslims is unacceptable even in the matter of a small measure of dates, how could they act as a witness for mankind on the Day of Judgement? Nu'mān asserts that it will be a mockery of God's justice and certainly it cannot happen.

Elsewhere in the Qur'an concerning the issue of the community, there is the verse about which Abraham had prayed, God says: *You are the best community (khayra ummatⁱⁿ) brought forth for the people* (Q.3:110). If God had meant by this verse that all Muslims were 'the best community', then it would not have been clear about which people the Muslims had been brought forth. God never intended for those who are considered to be riff-raff and rabble to be counted among the community of Muḥammad.

Nu'mān then proceeds by explaining the linguistic meaning and the Qur'anic usage of the term *umma*. He argues that in addition to being a collective noun, the word *umma* is also applied to a single person. A good example of such a usage in the Qur'an is when God states: *Abraham was a nation obedient (ummat^{an} qānit^{an}) to God* (Q.16:120).¹⁰⁸ Nu'mān further demonstrates from its Qur'anic usage that the word *umma* has multiple nuances and is used with different meanings and in different contexts. In addition to denoting a community of humans, it also represents a community of beasts and birds. For example God states: *There is no beast in the earth nor bird that flies with its wings but they are communities (umam) like you* (Q.6:38). In another *sūra* He says: *The people were one community (ummat^{an} wāhidat^{an})* (Q.2:213). In the chapter on Joseph, it is used to indicate a period of unspecified time. God states: *The one of the two who had been saved [now] remembered after a time (ba'da ummatⁱⁿ)* (Q.12:45). Nu'mān also points out that some people without naming them, on the other hand, argue that the word *umma* means a group of the 'ulamā' and not the whole community. To support their contention, they cite the Qur'anic verse, which states: *Let there be a community from you, summoning [people] to good (wa'l-takun minkum ummat^{um} yad'ūna ila'l-khayr)* (Q.3:104).

Marshalling his evidence from the Qur'an, Nu'mān argues further that the above positive description of the *umma* cannot be extended to include a great majority of the Muslim community. The plurality of the people is generally negatively characterised in the Qur'an. For example, God says: *Except those who believe [in God] and do good works, and they are few (qalil^{um} mā hum)* (Q.38:24); *But most of them are ignorant (aktharahum yajhalūn)* (Q.6:11); and *But most of them do not know (aktharahum lā ya'lāmūn)* (Q.6:37, 7:131, 8:34, 10:55, 28:13, 39:49, 44:39, 52:47); and *Most of them do not understand (aktharahum lā ya'qilūn)* (Q.5:103, 29:63); and *But they are not aware (wa-mā yash'urūn)* (Q.2:9, 3:69, 6:26, 123); and *But most of the people are not believers (wa-mā akthar al-nās bi-mu'minīn), even if you are eager for that* (Q.12:103); and *And most of them do not believe in God (aktharuhum mushrikūn) unless they associate others with Him* (Q.12:106).

¹⁰⁸ I have preferred Marmaduke Pickthall's translation in *The Meaning of The Glorious Koran: An Explanatory Translation* (London, 1969) to retain the word *umma*. Jones has translated the *umma* as 'an example'. See also Nu'mān, *The Pillars of Islam*, vol. 1. pp. 43 ff.

Finally, Nu'mān argues that the word *umma*, used to indicate the community of Muḥammad in the above verses with positive traits, is the community that solely constitutes the members of the Prophet's family and the Imams from their progeny. Nu'mān adds that the word of God is the most veracious of those that speak in this matter. He then connects the emergence of the Muslim community (that is, submissive to God's commands), in its strict and narrow sense, to the prayer of Abraham and Ishmael. Nu'mān knows very well how Abraham is portrayed in the Qur'an. It says: *Abraham was neither a Jew nor a Christian. He was a man of pure faith, one who surrendered. He was not one of those who associate others with God* (Q.3:67). Nu'mān thereafter elaborates on the prayers of Abraham and God's response in the following verses when God says: *When Abraham was tested by his Lord with certain words, and he fulfilled them. God said, 'I am making you a leader for the people.' Abraham said, 'And of my seed?' God replied, 'My covenant does not extend to those who do wrong' ... And when Abraham and Ishmael were raising the foundations of the house, [Abraham said], 'Our Lord, accept [this] from us ... and make from our seed a community that will surrender to You'* (Q.2:124–128).

Nu'mān adds that God responded to the supplication of Abraham and Ishmael by establishing from their seed a community submissive to God, and to send them a messenger from among them, that is, from that submissive community, a messenger who would recite His signs to them, and purify them and instruct them in the Book and wisdom.¹⁰⁹ This, according to Nu'mān, constitutes irrefutable evidence, which demonstrates that the Imams and the Muslim community to which Muḥammad was sent can only be from the progeny of Abraham and Ishmael. To further support his contention, Nu'mān cites additional verses from *sūrat al-Baqara* to demonstrate that the *Ahl al-bayt* are the intended people of the joint prayer of Abraham and Ishmael (Q.2:128–143), because in addition to the Messenger of God, his *Ahl al-bayt*, that is 'Alī, Fāṭima, Ḥasan and Ḥusayn, did not serve idols.

Nu'mān concludes this chapter by drawing the reader's attention to another dimension of the Qur'anic studies, namely that certain words such as *umma*, are often used in a 'general sense' (*ma'nā 'amma*), but a 'specific meaning' (*ma'nā khāṣṣa*) is sometimes intended.¹¹⁰ Space and time do not permit me to go into more of the details elaborated by Nu'mān in the two additional chapters on *ijmā'*. Briefly,

¹⁰⁹ See also Nu'mān, *The Pillars of Islam*, vol. 1, pp. 43 ff.

¹¹⁰ Nu'mān, *Ikhtilāf*, p. 79; he states:

إذا كان اسم الجماعة يقع عليهم كلهم، ويقع على بعضهم كما بيّننا ذلك في الأمة والمؤمنين والناس في غير ذلك من العامّ الذي يراد به الخاصّ.

According to Shāfi'ī it is: the explicit general declaration of the Book intended to be all particular.

بيان ما نزل من الكتاب عامّ الظاهر يُراد به كلّهُ الخاصّ.

See Shāfi'ī, *al-Risāla*, pp. 58–62; tr. *Al-Shāfi'ī's Risāla*, pp. 99–101. See also al-Suyūṭī, *al-Itqān fī 'ulūm al-Qur'ān*, ed. Muḥammad Abu'l-Faḍl (Beirut, 1988), vol. 3, pp. 44–49; he states:

العامّ على ثلاثة أقسام: الأول: الباقي على عمومهِ، لم يرد شموله لجميع الأفراد، لا من جهة تناول اللفظ، ولا من جهة الحكم، بل هو ذو أفراد استعمل في فرد منها. والثاني: العامّ المراد به الخصوص، أُريد عمومهِ وشمولهِ لجميع الأفراد من جهة تناول اللفظ لها، لا من جهة الحكم. والثالث: العامّ المخصوص.

a wide variety of opinions regarding the modes of its justification (*hujjiyya*) which existed at that time are enumerated and refuted by Nu'mān. Unfortunately, most of the early sources on this subject did not survive. Between Shāfi'i's *Risāla* and Nu'mān's work there is a gap of more than a century. In the opinion of this writer, the importance of Nu'mān's work, therefore, lies in the fact that it fills a major lacuna in our knowledge about that period. The *Ikhtilāf* presents a variegated picture that had not yet clearly emerged. Therefore it is worthwhile to give a summary of what the *Ikhtilāf* depicts in those two chapters. Let me first state that the overwhelming view one gets from reading the *Ikhtilāf* is that the facts on the ground were quite different from what one is made to believe by the later sources. In several ways the situation was fluid and a wide variety of opinions circulated as depicted by Hallaq first in his *History* and later in his *Origins*. The importance traditionally given to Shāfi'i's *Risāla* in the development of the science of *uṣūl al-fiqh* seems to be overstated. The *Risāla*, in the words of Chaumont, remained a dead letter for more than a century.¹¹¹

There was a lot of discord among the jurists concerning the evidence, generally known in Arabic sources as the *hujjiyya*, on which the *ijmā'* should be established. Some jurists asserted that it should only be predicated on the textual evidence of the Qur'an and the *sunna*, while others maintained that it should be based on the *ijmā'* of the Companions only because of their precedence in accepting Islam and their pre-eminence over the later generations of Muslims. Jurists further argued that it was this group that the Qur'anic references with the traits of *al-shuhadā'*, *al-ṣiddīqīn* and *ummat^{an} wasaṭ^{an}* refer to.

Other jurists debated the definition of *ijmā'* – should it be defined as a consensus of all the Muslims, or only of one group rather than another? Yet others argued that it should be restricted to the agreement/consensus of a few, rather than extending it to include the majority, because the majority of the people are ignorant. Those who argued that *ijmā'* was inclusive cited a tradition of the Prophet that states, 'God's hand is with the majority.'¹¹² They also report another tradition which states, 'Indeed, Satan is in the [company of] one [person], but he is far removed from [the company of] two or more people.'¹¹³ Nu'mān adds that this is precisely the belief of

¹¹¹ Chaumont, 'al-Shāfi'i'; Hallaq, 'Was al-Shāfi'i the Master Architect?'

¹¹² يد الله على الجماعة. It is transmitted by Tirmidhī and Nasā'i. Wensinck, *Concordance*, s.v. j-m-'. Ibn Qutayba, *Ta'wīl mukhtalaf al-hadīth*, p. 5.

¹¹³ Nu'mān, *Ikhtilāf*, p. 84; he states:

وعليكم بالجماعة فإن الشيطان مع الواحد، وهو من الاثنين أبعد.

In the *aḥādīth* sources it reads:

الشيطان مع من فارق الجماعة، أو إن الشيطان مع الواحد.

This tradition is transmitted by Ibn Ḥanbal, Tirmidhī and Nasā'i. Wensinck, *Concordance*, s.v. j-m-'; sh-ṭ-n. See also Shāfi'i, *al-Risāla*, p. 474; tr. *al-Shāfi'i's Risāla*, p. 286; Shāfi'i, *Kitāb al-umm* (Beirut, 2005), vol. 1, p. 109; he states:

... فليزيم الجماعة، فإن الشيطان مع الفرد، وهو من الاثنين أبعد.

the Ḥashwiyya¹¹⁴ and the Nawāṣib.¹¹⁵ Then, Nu'mān indicates that there are those who limit the application of the term *umma* to a smaller group within the community. To vindicate their contention they cite verses from the Qur'an that equate the majority of the people with negative attributes.

Without giving specific names, Nu'mān states that some people from Baghdad argue that *ijmā'* should be established by *naql*, that is, based on sound reports transmitted by uninterrupted authorities dating back to the Prophet. This group asserts that *ijmā'* cannot be based on *ra'y*, *ijtihād* or *qiyās*. Yet, others from Baghdad assert that *ijmā'* can be established only when all the Muslims (*ahl al-qibla*) agree on a particular matter/issue. If just one person dissents from their view, that *ijmā'* is nullified. Some others argue against such a rigid position and maintained that a consensus arrived at by a majority is valid despite disagreement from one person or a small group of people.

Another disagreement among Muslims that Nu'mān identifies concerned the time when *ijmā'* had been achieved. Was it at the end of each century, or by each generation? Does a living jurist's agreement or disagreement count, or does the jurist's opinion only count after his death? The rationale behind such reasoning, Nu'mān adds, is the probability that a living jurist might change his mind and revoke his agreement at any time as we have previously noted in the cases of both Abū Ḥanīfa and Shāfi'i. Others claimed that *ijmā'* was successfully achieved by every generation or during each era even if it diverged from that of the previous generation or era.

Another disagreement ensued concerning *ijmā'* and its relation to a location or region. Mālik b. Anas and his followers alleged that the Muslims should follow the people of Medina because it was the Messenger of God's abode (*dār al-hijra*) following his emigration to Medina. Consequently, the people of Medina were more knowledgeable than any other group about the *sunna* of the Messenger of God.¹¹⁶ Nu'mān flatly rejects this justification and cites several Qur'anic verses to illustrate that Medina was inhabited and surrounded by all sorts of people (i.e., Bedouins, hypocrites and the Jews). It is reported that Mālik once visited Iraq, and in some of his remarks he belittled the inhabitants of Iraq for their lack of religious knowledge (*'ilm*, i.e., knowledge of the textual sources of Islam). Some of those who heard Mālik's criticism retorted by saying that a number of the Companions, such as 'Alī

¹¹⁴ Ḥashwiyya is a contemptuous term with the meaning of 'scholars' of little worth, particularly ultra-traditionists (*aṣḥāb al-ḥadīth/ahl al-ḥadīth*) who interpret the Qur'an and *ḥadīth* literally in anthropomorphic language. Editor/s, 'Ḥashwiyya', *EI2*, vol. 3, p. 269; A. S. Halkin, 'The Ḥashwiyya', *JAOS*, 54 (1934), pp. 1–28.

¹¹⁵ In his *Kitāb al-zīna* (MS collection of Asghar Ali Engineer's father, Bombay, fols. 176–77), Abū Ḥatīm al-Rāzī states that the Prophet appointed (*naṣaba*) 'Alī as his successor at Ghadir al-Khumm, but the Muslims displayed enmity towards him (*nāṣaba*) after the death of the Prophet and appointed someone other than 'Alī to succeed the Prophet. The term is therefore applied to those who bear hatred towards the family of the Prophet. However, according to Sunni sources the above appellation applies to the Khawārij who made it a matter of religious obligation to bear hatred towards 'Alī. See also Nu'mān, *Da'ā'im*, *The Pillars of Islam*, vol. 1, pp. 190–191.

¹¹⁶ See Shāfi'i, *Kitāb al-umma*, chapter on *ikhtilāf Mālik wa'l-Shāfi'i*, vol. 2, pp. 2775 ff.

b. Abī Ṭālib, 'Abd Allāh b. 'Abbās¹¹⁷ and 'Abd Allāh b. Mas'ūd¹¹⁸ lived among them. So they did not lack the knowledge (*ilm*) that Mālik claimed. In his rejoinder Mālik reported a concocted tradition which states: 'Indeed, Medina exiles/ejects her wicked people as a blacksmith's bellows blow away the impurities of iron ore.'¹¹⁹ Nu'mān adds that Mālik not only lied but also fabricated the above tradition and ascribed it to the Messenger of God. Similarly, others made the same claims asserting that their definition of *ijmā'* was the only valid one. Such was the case with the people of the Ḥijāz that comprised the inhabitants of the two *ḥarams*, Mecca and Medina. The people of Iraq, namely the people of Kūfa and Baṣra, made similar claims. All those people based their claims on the fact that many of the Companions lived in those cities. Some people, on the other hand, maintained that the valid *ijmā'* is the one that was agreed upon by Mālik, Abū Ḥanīfa, Shāfi'i, Awzā'i¹²⁰ and their followers.

Nu'mān concludes his discussion concerning *ijmā'* with a popular tradition of the Messenger of God, which is cited by almost all the heresiographers.¹²¹ It states: 'The Israelites were divided into 72 sects and my community will be divided into 73 sects, only one group will be redeemed while the rest will perish.' People asked the Prophet, 'Which is the group that will be saved?' And he replied, '*Ahl al-sunna wa'l-jamā'a*.' Thereupon people further asked him, 'What is the *sunna* and what is the *jamā'a*?' He responded, 'That is what I myself and my Companions follow and practise today.'¹²² Nu'mān asserts that not a single Companion exercised either *ra'y*, *qiyās*, *nazar*, *istihsān*, *ijtihād* or *istidlāl* with respect to *dīn Allāh*, that is, Islam, as long as the Messenger of God was alive. Nu'mān further affirms that he and his group, namely, the Shi'a-Isma'ilis, are the true representatives of *Ahl al-sunna wa'l-jamā'a* because they have adhered both to the *sunna* of the Messenger of God and his *jamā'a*, that is, the *Ahl al-bayt* and the rightful Imams.¹²³

¹¹⁷ He is considered one of the greatest scholars of the first generation of Muslims. L. Veccia Vaglieri, 'Abd Allāh b. al-'Abbās', *EL2*, vol. 1, pp. 40–41.

¹¹⁸ He was a Companion of the Prophet and reader of the Qur'an. J. Vadet, 'Ibn Mas'ūd', *EL2*, vol. 3, pp. 873–875.

¹¹⁹ Nu'mān, *Ikhtilāf*, pp. 99–100; it states:

فقال مالك، إن رسول الله صلى الله عليه وعلى آله قال: إن المدينة تنفي خبيثها كما تنفي الكير خبث الحديد.
It is transmitted by Bukhārī, Abū Dāwūd, Nasā'i, Ibn Māja, Mālik and Ibn Ḥanbal, see Wensinck, *Concordance*, s.v. kh-b-th. It states:

المدينة تنفي الناس كما ينفي الكير خبث الحديد.

¹²⁰ He was the main representative of the ancient Syrian school of Islamic law. Joseph Schacht, 'Awzā'i', *EL2*, vol. 1, p. 772–773; Hallaq, *Origins*, pp. 107, 154, 156, 166, 171.

¹²¹ See, for example, 'Abd al-Qāhir al-Baghdādī, *al-Farq bayn al-firaq*, ed. Muḥammad Muhy al-Dīn (Cairo, n.d.), pp. 5–7; Muḥammad 'Abd al-Karīm al-Shahrastāni, *Kitāb al-milal wa'l-nihal*, ed. 'Abd al-'Azīz Muḥammad al-Wakīl (Cairo, 1968), p. 11.

¹²² This tradition is transmitted with a slight variation of words by Abū Dāwūd, Tirmidhī, Ibn Māja, Ibn Ḥanbal, Wensinck, *Concordance*, s.v. j-m-'; f-r-q.

¹²³ In his *Kitāb al-zīna* (see 'Abd Allāh al-Sāmarrā'i, *al-Ghuluww wa'l-firaq al-ghāliya fi'l-ḥaḍāra al-Islāmiyya*, Baghdad, 1972, pp. 252–256), Abū Ḥātim al-Rāzī also makes the claim that he and his group belong to the *ahl al-sunna wa'l-jamā'a*.

Let me add a few comments on the concept of *ijmā'*, ranked as the third principle, but in practice is the most important underpinning in Islamic law according to the classical theory of *uṣūl al-fiqh*. In fact the two scriptural sources – the text of Qur'an and *sunna* – in the final analysis were authenticated through *ijmā'*.¹²⁴ Thus, *ijmā'* takes precedence over both the Qur'an and the *sunna*. In theory *ijmā'* is defined as the unanimous agreement/consensus of the Muslim community on a particular *ḥukm* (legal ruling) imposed by God. Technically, however, it is the consensus of the recognised jurists at a given time in history. Historically, the concept of *ijmā'* as a source of law and a tool validating a *ḥukm* in light of the truth given by the Qur'an and the *sunna* of the Prophet arose out of the growing need of the community, especially after the conquests and the increasing pressures brought on the community by the sectarian dissensions within Islam. The need for such a principle was necessary following the Prophet's death because the point of reference in legislative matters, that is, the Messenger of God, the source of revelation, was no longer alive for the community to resort to for a resolution of their problems.

The idea was most probably given its theoretical formulations during the 2nd/8th century. The definition of *ijmā'* as a source of law, therefore, raised the question of the probative validity (*ḥujjiyya*) of its very existence. In his *Kitāb uṣūl al-dīn*, 'Abd al-Qāhir al-Baghdādī acknowledges that *ijmā'* for the purposes of *al-ḥukm al-shar'i* (a legal ruling based on the *sharī'a*) is limited to the *ijmā'* of the community during a specified period of time. The basis of it, he adds is the tradition of the Prophet that states, 'My community will never agree on error.'¹²⁵ Al-Baghdādī further states that the Khawārij and the Mu'tazilī theologian al-Nazzām rejected the very concept of *ijmā'*.¹²⁶

Credit for the development of the concept of *ijmā'* is generally attributed to Shāfi'i when he questioned the idea of the Medinan consensus by indicating the imprecise nature of their concept of 'the usage of Medina'. Thenceforth, Shāfi'i replaced the Mālikī *ijmā'*, which was merely an affirmation of an existing practice and reality that prevailed in Medina, with his assertion of a basic truth of the infallibility of the unanimous pronouncements of the Muslim community.¹²⁷

¹²⁴ Fazlur Rahman, *Islam* (London, 1966), p. 74; Hallaq, *Origins*, pp. 128 ff.; Hallaq, *History*, pp. 75 ff.

¹²⁵ 'Abd al-Qāhir al-Baghdādī, *Kitāb uṣūl al-dīn* (Istanbul, 1928), p. 18; he states:

وأما الإجماع المعتبر في الحكم الشرعي فمقصودٌ على إجماع أهل عصرٍ من أعصار هذه الأمة على حكم شرعي، فإنها لا تجتمع على ضلالةٍ.

The tradition transmitted by Ibn Māja (Wensinck, *Concordance*, s.v. j-m-) states:

إن أمتي لا تجتمع على ضلالةٍ.

¹²⁶ Al-Baghdādī, *Kitāb uṣūl al-dīn*, p. 19. According to Abu'l-Ḥusayn 'Alī al-Ash'arī, *Maqālāt al-Islāmiyyīn*, ed. H. Ritter (2nd ed., Wiesbaden, 1963), p. 478, the majority of people agreed that *ijmā'* is possible while 'Abbād (b. Sulaymān) maintained that the community can never come to terms on a matter over which they disagreed. W. Montgomery Watt, 'Abbād b. Sulaymān, *EI2*, vol. 1, pp. 4–5; Josef van Ess, 'al-Nazzām, *EI2*, vol. 7, pp. 1057–1058.

¹²⁷ Shāfi'i, *Kitāb al-umm*, vol. 2, pp. 275 ff.; the chapter is entitled *Kitāb ikhtilāf Mālik wa'l-Shāfi'i*.

Unfortunately, we do not have the sources at our disposal to trace the history of the development of *ijmā'* as a juridical source and other technical issues related to it, such as the *hujjiyya* and the method by which an agreement is reached, especially during the intervening period of roughly a century and a half after the death of Shāfi'i and al-Qādi al-Nu'mān's *Ikhtilāf uṣūl al-madhāhib*, composed around the middle of the 4th/10th century. Another issue of debate was related to the question, 'Can an agreement be reached by word, or deed, or can it be explicitly stated, or simply indicated by one's silence.' Herein lies the importance of Nu'mān's work, which provides us with a vivid picture of the prevailing currents and counter currents at the time of its composition in the Islamic world.

For the Mu'tazila, who uphold the primacy of reason and with their predisposition towards ethics rather than logic, the principle of *ijmā'* was no more than an ethical theory left to the individual believer and his personal convictions. In his *al-Mughnī fī abwāb al-tawhīd*, al-Qādi 'Abd al-Jabbār takes over the objection raised by al-Nazzām, without mentioning his name, and states:

As for the demonstration of the legal validity of *ijmā'* by reason, it is impossible. Because no evidence can demonstrate that a certain group of people is immune to error in their words or deeds, just as nothing can prove it for each matter of religious obligation. Moreover, there is a distinction between the person who imposes the validity of *ijmā'* by means of reason and the person who decides the probative value of disagreement, or ascribes the probative value to the statement of each individual. And this [validity of *ijmā'*] is greater in corruption [of public and private life] than the unquestioning acceptance of a doctrine whose validity we have demonstrated before.¹²⁸

For Ibn Ḥazm, a representative of the Zāhirī school, *ijmā'* was only limited to the Companions.¹²⁹ His system of jurisprudence rejects the use of *qiyās* and insists on proof texts, that is, the Qur'an and the *sunna*. He, therefore, can permit *ijmā'* that is derived either from a revealed text or the *sunna* of the Prophet. One can state that the technical issues do not carry much weight in his system because *ijmā'* is more or less reabsorbed by the Qur'an and the *sunna*. The expression *ulu'l-amr* that is often used by Ibn Ḥazm, indicates that the commanders and scholars, at any given time, ought to guide the community by imposing those things which God and His Messenger have commanded. Therefore the problem of the successive generations is

¹²⁸ Al-Qādi 'Abd al-Jabbār, *al-Mughnī fī abwāb al-tawhīd: al-shar'īyyāt*, vol. 17 (being a pirated ed., the name of the editor, publisher and year of publication are unavailable), p. 199. The Arabic reads as follows:

فأما الاستدلال على صحة الإجماع من جهة العقل، فبعيدٌ، لأنه لا دليل يدلّ في جماعة مخصوصة على أنهم لا يخطئون فيما يعملون ويقولون، كما لا دليل يدلّ على ذلك في كلّ واحد من المكلفين. فلا فرق بين من أوجب كون الإجماع حجة عقلاً وبين من أوجب كون الخلاف حجة، أو جعل قول كلّ مكلف حجة. وهذا أعظم فساداً من التقليد الذي دللنا من قبل على بطلانه.

¹²⁹ Ibn Ḥazm, *al-Iḥkām fī uṣūl al-aḥkām*, vol. 4, pp. 128 ff. It is the 22nd chapter with over 100 pages and is entitled: في الإجماع، وعن أيّ شيء يكون الإجماع، وكيف ينقل الإجماع

resolved and the need to verify the opinions of the whole community in every generation also does not arise with the approach of Ibn Ḥazm.

The Ḥanafīs denounced the Zāhirī position. Both Bazdawī¹³⁰ and al-Sarakhsī¹³¹ criticise the weakness of the arguments presented by the Zāhirīs. Al-Bazdawī, clarifying the import of *umma*, states that the *umma* is understood as only those who have not adopted *ahwā'* (pernicious doctrines) and *bida'* (innovations).¹³² Once the question of what constitutes *ijmā'* is resolved, the issue of the method by which it has arrived at may be tackled. There also is a difference in opinion among the jurists of this school. The differing views state that an agreement on a particular issue can be arrived at by either word (or pronouncement) or deed (or act), and it can be either explicit or indicated by simply observing silence. Since *ijmā'* is a judicial source that allows for the formulation of solutions to new problems that might arise, it is conditioned by the passing of time during which a fresh *ijmā'* is formed.

This conditioning process raises another important and vexing question as to whether the formulation of a new *ijmā'* requires the disappearance of the past generation or not. Opinions of the major schools are at odds with each other on this issue. For the Mālikīs and the Zāhirīs it is not a problem, but the situation varies with other schools. According to Āmidī and his master Shāfi'ī, Abū Ḥanīfa, the Ashā'ira and the Mu'tazila, extinction of a generation was not a necessary condition for the formulation of a new *ijmā'*.¹³³ But, for Ibn Ḥanbal, the formulation of a new *ijmā'* is subject to the total disappearance of the past generation.¹³⁴ For al-Sarakhsī the disappearance of the generation is not critical because he states that generations overlap and it is not possible to distinguish the end of one from the beginning of the next.¹³⁵ Ghazālī, on the other hand, suggests that the existence of *ijmā'* occurs when an agreement has taken place, even if only for an instant.¹³⁶ In short, *ijmā'* was a powerful and useful source to introduce change into the prevailing *status quo*.

¹³⁰ He is 'Alī b. Muḥammad b. al-Ḥusayn al-Pazdawī. His *Uṣūl* is printed with 'Alā' al-Dīn al-Bukhārī's *Kashf al-asrār* (reprint, Beirut, 1394/1974).

¹³¹ Muḥammad b. Aḥmad al-Sarakhsī was a Ḥanafī jurist of the 5th/11th century. N. Calder, 'al-Sarakhsī', *EL2*, vol. 9, pp. 35–36.

¹³² Al-Ash'arī, *Maqālāt al-Islāmiyyīn*, p. 478, states that people differed as to whether the discord of *ahl al-ahwā'* concerning the *aḥkām* counts or not.

¹³³ Al-Āmidī (d. 631/1233), a theologian, was a Ḥanbalī and later became a Shāfi'ī. D. Sourdel, 'al-Āmidī', *EL2*, vol. 1, p. 434.

¹³⁴ Al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām* (Beirut, 1983), vol. 1, p. 367 ff.

¹³⁵ Al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abu'l-Wafā' al-Afghānī (Hyderabad, 1953–1954), vol. 1, p. 315.

¹³⁶ Al-Ghazālī, *al-Mustaṣfā min 'ilm al-uṣūl* (Beirut, 1994), vol. 1, p. 121.

An Account of those who Maintain the Doctrine of *Nazar* and their Refutation¹³⁷

Those who maintain this doctrine state that they resort to *nazar* and rational argument only for those things that have not been explicitly specified either in the Qur'an or the *sunna* of the Messenger of God. On the other hand, they affirm that whatever is specified in the Book they accept it as commanded by Allāh: *Whatever the Messenger gives you, take it. Whatever he forbids you to have, leave it alone* (Q.59:7). Moreover, they state that if a particular issue could not be validated through the use of *nazar* they would not accept it. Nu'mān refutes their claim by asserting that rational arguments are not permitted in religious matters. The Qur'an addresses all things and neglects nothing that is an essential part of religion and human life.¹³⁸ The Messenger of God also said: 'Follow [me] and do not innovate.'¹³⁹

Their main argument for the justification of the use of *nazar* is based on two Qur'anic verses that state: *And in yourselves, do you not see?* (Q.51:23)¹⁴⁰ and *Reflect, those of you who have eyes* (Q.59:2).¹⁴¹ Thus, they argue that God has commanded His servants to reflect and exercise their *nazar*. Nu'mān flatly rejects their argument by asserting that those verses do not imply what they allege. If they really reflect back upon themselves they will realise their shortcoming. God did not leave any imperfection in his religion, as they imply, for them to perfect it with their perceptions and rational arguments. God unequivocally states: *Today I have perfected your religion for you and completed My blessing for you and have approved al-Islām as a religion for you* (Q.5:3). Messengers of God did not use their *nazar* in what they preached and what they commanded and forbade. Nu'mān affirms that the Book and the *sunna* of the Messenger of God categorically rebut their claim, hence he does not see any reason to present additional rational arguments to refute their contention. Since human reasoning based on one's own *nazar* or *ra'y* has no place in religion, Nu'mān accuses them of going beyond the pale of Islam. Nu'mān then cites the story of Moses and Khidr narrated in the *sūrat al-kaḥf* (Q.18:60–82) to support his contention. Moses's impatience in matters beyond his comprehension proved to be incorrect and he had to part with the company of Khidr. Furthermore, without going into details, Nu'mān states that al-Walīd b. al-Mughīra and Abū

¹³⁷ For the meaning of *nazar* see n. 49 above.

¹³⁸ He restates the Qur'anic verses 6:38, 16:89, 5:3, 16:43 and 4:83. In his *al-Uṣūl min al-kāfi*, ed. 'Alī Akbar al-Ghaffārī (3rd ed., Tehran, 1388/1968–1969), vol. 1, pp. 59–62, 69–71, Kulaynī maintains the same position and states:

جميع ما يحتاج الناس إليه إلا وقد جاء فيه كتاب أو سنة، أو ما من شيء إلا وفيه كتاب وسنة.

¹³⁹ A tradition transmitted by Dārimī states: [وَقُرئ تَبَدَّعٌ وَاتَّبَعٌ وَلَا تَبَدَّعٌ]. Wensinck, *Concordance*, s.v. t-b-ʿ.

¹⁴⁰ The Arabic reads: أَفَلَا تُبْصِرُونَ.

¹⁴¹ The Arabic reads: فَاعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ. This verse is considered to have the greatest bearing upon the authoritativeness of *qiyās*; see Hallaq, *History*, pp. 106, 130. He states that *qiyās* was considered as nothing more than the various forms of arbitrary reasoning characterised as *ra'y* or *nazar*.

Ṭālib, who were known for their prudence during the pre-Islamic days, failed to comprehend the Qur'anic message at the beginning of the Prophet's mission.¹⁴²

If debate was allowed in religious matters, Nu'mān argues, people would have declared themselves what is *ḥalāl* (lawful) and what is *ḥarām* (unlawful). But God rejected such a position and states: *And do not say, because of what your tongues falsely describe, 'This is lawful, and this is forbidden', so that you may invent falsehood against God* (Q.16:116). He further states: *O people, ... do not follow the footsteps of Satan ... He [i.e., Satan] commands you ... to say about God what you do not know* (Q.2:169). Nu'mān then refutes their claim that God revealed only the *uṣūl* (basic principles, fundamentals) in the Qur'an, but entrusted them with the *furū'* (secondary, derived matters) to exercise their *ijtihād*.

Another justification they present is that what is validated through *qiyās* is validated through *naẓar*. Nu'mān states that he has already demonstrated the incorrectness of *qiyās*, hence there is no need to elaborate it here. Finally, he concludes this section by citing the following verses from the Qur'an. Addressing his Messenger God states: *Do not move your tongue about it to hasten it. Upon Us is its [the Qur'an] putting together and its recitation. When We recite it, follow its recitation. Upon Us is its explanation* (Q.75:16–19); *and We have sent down to you the reminder (dhikr) for you to make clear to men what has been sent down to them* (Q.16:44); *and Say [O Muḥammad], ... I only follow what is revealed to me* (Q.46:9); *and Nor does he [the Prophet] speak out of caprice. This is simply a revelation that is being revealed* (Q.53:3–4).

An Account of *Aṣḥāb al-qiyās* and their Refutation¹⁴³

The main argument of this group, like others, for the promotion of *qiyās* as a new judicial source is that the first two material sources, viz., the Qur'an and the *sunna* of the Messenger of God, do not respond to the need for resolving issues not foreseen in those texts and do not define rules applicable to new situations. The task of *qiyās* is therefore to determine rules of procedure which respect the spirit of rules dealt with by the material sources. Consequently, they claim that *qiyās* appeals to the principles of analogical deduction. The use of *qiyās* is therefore only valid in so far as it leads to the discovery of legal ruling for a new case on the basis of the revealed text/s and *ijmā'*.¹⁴⁴ Nu'mān reiterates that he has already refuted such a claim by other groups that the Qur'an does not provide guidelines relevant to new situations; however, in this section he will elaborate specific arguments raised by this group to justify the exercise of *qiyās* and will refute their claims.

At the outset he points out that the *aṣḥāb al-qiyās* are divided into three distinct groups concerning the use of *qiyās* and the range of its application. The first group maintains that it is obligatory to exercise *qiyās* in matters related to the concept of

¹⁴² Nu'mān, *Ikhtilāf uṣūl al-madhāhib*, pp. 126–127.

¹⁴³ For the meaning of *qiyās* see n. 45 above. Shāfi'ī (*al-Risāla*, p. 477) states that *qiyās* and *ijtihād* are two terms with the same meaning.

¹⁴⁴ M. Bernard, 'Qiyās', *El2*, vol. 5, pp. 238–242; Hallaq, *History*, pp. 82 ff.

divine unicity (*tawhīd*) and formulating judicial decisions (*aḥkām*) applicable to new situations. The second group upholds its use only for formulating judicial decisions, while forbidding its use in matters related to the divine unicity. The third group, on the other hand, maintains a position contrary to the second group. Nu'mān refutes their claim by asserting that the majority of the commonalty (i.e., the Sunni schools of jurisprudence) rejects *qiyās* in matters pertaining either to *tawhīd* or *aḥkām*. Moreover, he had already refuted a similar claim by other groups that the Qur'an had not foreseen new situations to outline rules of procedure; hence there is no need to replicate.¹⁴⁵

Next, Nu'mān grapples with the theory of *qiyās shabah* (analogy of resemblance or similitude) as defined by this group. According to this proposition a case is compared to another case in its similarity, comparing an ordinance to another ordinance, and a judicial decision to another judicial decision. The purpose of the comparison is that an issue should resemble another issue in all aspects, including its meaning (*ma'ānī*) and motives (or reasons, *asbāb*). Nu'mān then poses a question: What happens if a case resembles another case in only some aspects? Do you still exercise analogy or abandon it? If the answer is 'no,' it implies that *qiyās* is invalid, because no two cases in this world resemble each other in every respect.¹⁴⁶ Consequently, he asserts that the same dictum is true of all judicial decisions and God's commands concerning what is lawful and unlawful. Nu'mān states that after being cornered they might change their position and restate their case that two issues do not have to resemble in each other in all aspects, only in certain aspects. Nu'mān's response to this shift in their position is that it cannot be permitted. Therefore, he concludes that the theory of *qiyās* is invalid and absurd.

Nu'mān then moves on to demonstrate that human reason, or speculation regulated to the form of *qiyās shabah*, is also of no avail concerning the rules of *sharī'a*. The first category of examples he cites consists of similar situations but the rules applicable to them are quite different.¹⁴⁷ For the expiation of oaths, different types of penance are prescribed and one is given several options: one can either feed ten poor people, give them clothing or emancipate a slave.¹⁴⁸ Whereas the punishment for a bandit is that he could be either killed, crucified or have his hands and

¹⁴⁵ He refers to the Qur'an and *ḥadīth al-thaqalayn*. See n. 62 above.

¹⁴⁶ Nu'mān, *Ikhtilāf*, p. 138; it reads:

ثم سألنا أهل القياس عن معنى القياس عندهم، ما هو؟ فوجدناهم يذهبون فيه إلى تشبيه الشيء بالشيء، وتمثيل الأمر بالأمر، والحكم بالحكم. فيقال لهم: هذا التشبيه الذي شبهتموه والتمثيل الذي مثلتموه في الأشياء من بعضها لبعض، هو أن يشبه الشيء غيره من كل جهاته وجميع معانيه وأسبابه. فلا تحكمون له بحكمه تقيسونه عليه حتى يكون كذلك، أم بأن يكون يشبه من بعض الجهات، وإن خالفها في غيرها؟ فإن قالوا: لا نقيس شيئاً على شيء حتى يكون موافقاً له في التشبيه به، والتمثيل من جميع جهاته، فقد أبطلوا القياس، وتركوا القول به، لأن شيئاً لا يكون يشبه شيئاً من كل جهاته موجوداً في العالم أبداً من مثل ما مثلوه، وقاسوا عليه من الأحكام والحلال والحرام.

¹⁴⁷ Nu'mān, *Ikhtilāf*, p. 154; he states:

لَمَّا رَأَيْتَ اللَّهُ عَزَّ وَجَلَّ قَدْ حَكَمَ فِي أَشْيَاءَ مَتَّفَقَاتٍ بِأَحْكَامٍ مَتَّفَقَاتٍ، وَفِي أَشْيَاءَ مَتَّفَقَاتٍ بِأَحْكَامٍ مُفْتَرَقَاتٍ، وَفِي أَشْيَاءَ مُفْتَرَقَاتٍ بِأَحْكَامٍ مَتَّفَقَاتٍ، عَلِمْتَ أَنَّ الْأَحْكَامَ لَمْ تَقَعْ مِنَ اللَّهِ تَعَالَى لِعَلِّ لِي تُدْرِكَ بِخَوَاطِرِ الْأَدَمِيِّينَ، وَلَا تَوَقَّفَ عَلَى حَقَائِقِهَا بِالنَّظِيرِ وَالتَّخْيِيرِ.

¹⁴⁸ See Nu'mān, *The Pillars of Islam*, vol. 2, pp. 82–83.

feet cut off on alternate sides.¹⁴⁹ The fine for a *muḥrim* (a pilgrim assuming the state of ritual consecration) who hunts game is that he shall forfeit the equivalent of that which he had hunted/killed, in terms of domestic animals, or charity or fasting.¹⁵⁰ The second category of examples, on the other hand, deals with dissimilar situations yet the judicial rulings stipulated in all such cases are identical. *Tayammum* (rubbing the face, hands and forearms with clean sand or dust) is obligatory for those who cannot find water after breaking the state of purity by either relieving oneself, dozing off, having a wet dream or polluting oneself after sex.¹⁵¹

Next, Nu'mān criticises Imam Abū Ḥanīfa, the main proponent of the theory of *qiyās*. The conversation between the latter and Imam Ja'far al-Šādiq ridiculing Abū Ḥanīfa's use of *qiyās* is quite striking. It is reported that once Abū Ḥanīfa al-Nu'mān b. Thābit al-Kūfī visited Imam Ja'far al-Šādiq who said to him, 'O Nu'mān, on what basis do you give a legal ruling?' He responded, 'Based on the Book of Allāh, and what I do not find in it I seek it in the *sunna* of the Messenger of God. Whatever I find neither in the Book of Allāh nor in the *sunna* of the Messenger of God I use deductive reasoning (*qistuhu*) to relate it to what I have found in these sources.' Imam Abū 'Abd Allāh Ja'far al-Šādiq said, 'Woe unto you! Surely, the first to rely on deductive reasoning was Satan and fell into error, for when God commanded him to prostrate himself before Adam, he declared, *I am better than him. You created me from fire and him from mud* (Q.7:12). He used deductive reasoning and assumed that fire (as an element) was nobler than earth. He further presumed that who is created from a nobler element is better than the one who is created from an inferior element'. Then the Imam asked him, 'O Nu'mān, which of the two is nearer to cleanliness, semen or urine?' Abū Ḥanīfa replied, 'Semen, but I don't say that they are alike.' The Imam said, 'Why then did God decree ablution after [the flow of] urine, and a ritual bath after [the extrusion of] semen? Don't you think that according to your reasoning the ruling should have been quite contrary, or the same ruling?' Abū Ḥanīfa remained silent. The Imam said, 'Which of the two is the greater offence, murder or unlawful sexual intercourse?' Abū Ḥanīfa said, 'Murder'. The Imam said, 'Why then did God decree that two witnesses are necessary in the case of murder so that the murderer could be executed with their testimonies and four witnesses were necessary in that of unlawful intercourse and that the adulterer cannot be punished without the testimonies of less than four?' Abū Ḥanīfa could not reply. The Imam said, 'Fear God, O Nu'mān, and don't say: *What your tongues falsely describe, 'This is lawful, and this is forbidden'* (Q.16:116)'. Thereupon Abū Ḥanīfa was dumbfounded and could not utter a word.¹⁵²

Nu'mān takes up another form of *qiyās*, viz., *qiyās al-'illa* (causative inference), which bases analogy on an explanatory principle. This mode of *qiyās* considers a new thing according to its original meaning (*aṣl*) as expressed in the text/s. Conse-

¹⁴⁹ Ibid., vol. 2, p. 479.

¹⁵⁰ Ibid., vol. 1, pp. 383–388.

¹⁵¹ Ibid., vol. 1, pp. 148–151.

¹⁵² Nu'mān, *Ikhtilāf*, pp. 141–142. See also Nu'mān, *The Pillars of Islam*, vol. 1, pp. 112–113; it is restated here with slight variation in wording.

quently, the ruling of the *aṣl* is applied to that of the derived case (*far'*).¹⁵³ In this type of cases the ruling of the latter is deduced from the former, given either by the text of the Qur'an or *ḥadīth* which is infallible. Hence, the derived ruling is equated with certainty. It is reported that the Messenger of God prohibited the sale of one *kurr* (a measure of weight)¹⁵⁴ of wheat (*burr*) for two *kurrs*. Subsequently, based on *qiyās al-'illa* the *aṣḥāb al-qiyās* prohibited the sale of one *kurr* of rice for two *kurrs* of rice.¹⁵⁵ Nu'mān states that those who advocate the use of *qiyās* give various reasons for the justification of their deduction why such a sale was forbidden by the Messenger of God. Without going into the details, Nu'mān rejects their speculation for the justification by asserting that one does not know the rationale behind such a prohibition in the original case. God simply commands his servants to do certain things or forbids them to avoid other things. He does not state the rationale as to why such a thing is lawful or unlawful. What this group does is simply to opine that such and such was the rationale. Hence, Nu'mān asserts that one cannot discover the exact rationale behind such a ruling. Nu'mān then raises various hypothetical questions even when one presumes that the *'illa* was specified in each and every case. What would happen if the circumstances change? Does the *'illa* remain constant? What would happen if the *'illa* ceases to operate in some cases, or the situation changes in other cases? Does that *ḥukm* (rule) remain valid, or does it become invalid? Nu'mān then adds that the precise version of the above tradition reads: 'Verily, the Messenger of God forbade the sale of wheat by wheat, barley by barley, dates by dates and salt by salt except in equal quantity. Whoever increases or demands more than the equal amount is indeed practicing usury.'¹⁵⁶ In all those cases the Messenger of God prohibited disparity in transactions. Similarly the Messenger of God said: '[To exchange] silver for silver, or gold for gold, in equal amounts, on the spot [is lawful]; and he who increases or asks for more engages in usury.'¹⁵⁷ Nu'mān reiterates that the *aḥkām* are not based on any particular *'illa* that could either be specified or comprehended by human reason. Referring to all those groups who advocate the use of *qiyās*, he cites the Qur'anic verse which categorically rejects human speculation in religious matters and states: *These are nothing but names you have invented yourselves, you and your forefathers. God has sent no*

¹⁵³ Nu'mān, *Ikhtilāf*, p. 143; it reads:

القياس في نفسه هو تشبيه الشيء بغيره والحكم به، هو الحكم للفرع بحكم أصله إذا استوت عليهما فيما وقع الحكم من أجله.

¹⁵⁴ Walther Hinz, *Islamische Masse und Gewichte: Umgerechnet ins Metrische System* (Leiden, 1970), pp. 42-43.

¹⁵⁵ This example also appears in the later sources; see Hallaq, *History*, pp. 91-92.

¹⁵⁶ Nu'mān, *Ikhtilāf*, p. 145; Arabic reads:

فأقول إن الحديث عن الرسول عند العامة في الطعام أنه نهى عن البرّ بالبرّ، والشعير بالشعير، والتمر بالتمر، والملح بالملح إلا سواء بسواء، فمن زاد واستراد فقد أربى.

It is transmitted by Muslim and others. Wensinck, *Concordance*, s.v. b-r-r.

¹⁵⁷ See also Nu'mān, *The Pillars of Islam*, vol. 2, p. 24.

authority for them. Even though their Lord has already brought them guidance, such people merely follow guesswork and the whims of their souls. (Q.53:23)¹⁵⁸

Nu'mān gives another example by which *ahl al-qiyās* try to justify their use of *qiyās*. It is reported that a woman named al-Khath'amiyya asked the Messenger of God whether or not she could perform pilgrimage on behalf of her father who was too old to undertake such a journey. The Messenger of God said yes and asked her: 'Do you think that if your father had incurred a monetary debt would you have paid it back?' Upon hearing the woman's response in the affirmative, the Messenger of God said: 'The debt owed to God is therefore more deserving [to be discharged.]' Hence, they claimed that the Prophet compared the obligation to fulfil the pilgrimage, which is man's obligation towards God, to a monetary debt, which is man's obligation towards another human being. Thus, they claim that the above *ḥadīth* quite eloquently expresses the permission to exercise *qiyās*.¹⁵⁹ Nu'mān refutes their claim by stating they have fabricated a lie and ascribed it to the Messenger of God. Their attribution of falsehood to the Prophet, he adds, is rebutted by God when He addresses the Messenger of God: *Say, I only follow what is revealed to me* (Q.6:50); and *By the star when it sets, your comrade [Muḥammad] has not gone astray, nor has he erred, nor does he speak out of caprice. This [recitation] is simply a revelation that is being revealed* (Q.53:1–4). Nu'mān reiterates that they ought to take the Messenger of God's words as expressed by God: *Whatever the Messenger gives you, take it* (Q.59:7). God did not tell that it was a *qiyās* on the Prophet's part. Turning the tables around, Nu'mān states, 'If they allege that it was a *qiyās* on the part of the Messenger of God then why do they not approve of performing the pilgrimage on behalf of an able bodied person as a financial debt could be discharged on behalf of another person? However, they agree that the obligation to perform the pilgrimage could only be discharged in the case of a dead or for an aged person who is physically unable to undertake such a journey. If they still maintain that the Messenger of God's ruling was based on *qiyās*, they should make it lawful for someone else to fast or pray on behalf of others. But the fact is that they do not allow such an undertaking.' Hence, Nu'mān asks, 'How is it permissible for them to argue that it was based on *qiyās*?' Finally, Nu'mān points out contradiction in their argument and states that both the pilgrimage and a monetary debt belong to the category of *aṣl* and, according to their own theory of analogy, the ruling of the *aṣl* cannot be deduced from another ruling of the *aṣl*. This is an obvious violation of the rule.

Nu'mān then states that Dāwūd b. 'Alī (d. 270/883), the Imam of the school of the Zāhiriyya, and his son Muḥammad criticised the use of *qiyās* and rejected it categorically.¹⁶⁰ He also harshly criticises Shāfi'ī for admitting to the use of *qiyās* and his attempts to regulate its operation.¹⁶¹ Moreover, Nu'mān cites two examples,

¹⁵⁸ This translation is by M. A. S. Abdel Haleem, *The Qur'an: A New Translation* (Oxford, 2004), pp. 347–348.

¹⁵⁹ The same case is discussed in later sources also to justify *qiyās*; see Hallaq, *History*, p. 93.

¹⁶⁰ Joseph Schacht, 'Dāwūd b. 'Alī b. Khalaf', *El2*, vol. 2, pp. 182–183; Hallaq, *History*, p. 32.

¹⁶¹ Hallaq, *History*, p. 32.

namely the punishment for adultery and atonement for forgetfulness during prayer, given by the proponents of *qiyās* to justify their use of *qiyās* in identical cases. Their inverted argument, a case of perverted logic, runs as follows. If the exercise of *qiyās* is invalidated then it is possible for someone to argue that the punishment for adultery by stoning and penance of offering a prostration for forgetfulness during prayer can also be invalidated because both cases are based on specific incidents. It is reported that the Messenger of God stoned a certain person called Mā'iz.¹⁶² However, the advocates of deduction by analogy contend that if the use of *qiyās* is rejected then someone can refuse to stone another person called Sa'd, contending that he does not want to transgress his limits by stoning the latter (another person) whom the Prophet did not stone. Similarly another person could challenge that he is not bound to offer a prostration as expiation for his forgetfulness during any prayer except the noon (*zuhr*) prayer because the Messenger of God did it during the *zuhr* prayer only. They further contend that their validation of stoning punishment for adultery is based on whether the guilty person is married and free while the colour of his skin, ethnicity or name do not matter. Nu'mān wholeheartedly agrees with their argument. His only disagreement is about the route they have taken to reach such a judgement. Nu'mān states that he does not establish the validity of the stoning punishment and the prostration for forgetfulness during the prayer through the mechanism of *qiyās*, rather on the authority of the Imams who have uninterruptedly transmitted the traditions from the Messenger of God. Space does not permit me to go into further details. Finally, Nu'mān concludes the chapter by stating that *aḥkām al-dīn*, especially concerning the rulings as to what is lawful and unlawful, cannot be established by analogical deduction, or on the rationale of probability, or by recourse to human fancy. *Aḥkām al-dīn* are based on the Qur'an and the *sunna* as transmitted by the Imams.

An Account of those who Uphold the Theory of *Istiḥsān* and their Refutation¹⁶³

Nu'mān opens this chapter by stating that all groups that advocate various theories under the guise of *ra'y*, *qiyās*, *ijtihād*, *nazar*, *istiḥsān* or *istidlāl* ultimately resort to human reason in religious matters. Hence, whatever he has stated so far about other groups equally applies to this group as well. To drive home his point that the Qur'an contains everything and that it warns people against following their own fancies and assumptions in religious matters, Nu'mān restates various verses from the Qur'an.¹⁶⁴

This group justifies the theory of *istiḥsān* (juristic preference) by citing the Qur'anic verse which states: *So give good tidings to My servants, who listen to the declaration and follow the best of it (aḥsanahu). Those are the ones whom God has guided. Those are the [ones] possessed of understanding (ulu'l-albāb)* (Q.39:17–18).

¹⁶² The name of Mā'iz occurs in the later sources but in a different context of abrogation. *Ibid.*, p. 70.

¹⁶³ For *istiḥsān*, see n. 48 above.

¹⁶⁴ Such as Qur'an 7:3, 6:155, 16:116, 38:26 and 53:28.

Thus, Nu'mān states, they assumed that those who give legal ruling based on juristic preference are commended by God. Nu'mān debunks their incorrect interpretation through linguistic and contextual analysis of the above verse. He states that the antecedent to which the pronoun (in *aḥsanahu*) refers are the people *who avoid serving idols and turn penitent*. Good tidings are given to *those who listen to the declaration (qawl) and follow the best of it*. Declaration refers to the Qur'an as God states in the same *sūra*: *God has sent down the fairest discourse (aḥsan al-ḥadīth), a consistent Scripture, mathānī ... That is God's guidance, by which He guides those whom He wishes; and those whom God leads astray have no guide (Q.39:23)*. The *fairest discourse* refers to His Book and not to what they allege. Equating juristic preference to what is commendable according to their fancies, Nu'mān states that it is forbidden by God when He states: *And do not say, because of what your tongues falsely describe, 'This is lawful, and this is forbidden,' so that you may invent a falsehood against God (Q.16:116)*.

Another argument against this group is: what would they say if their opponents reject what they consider commendable/preferable and proclaim a different ruling that is commendable to them? Would it not lead to chaos concerning what is lawful and unlawful?¹⁶⁵ It could also be argued that when *istiḥsān* is permissible with regard to *furū'* (positive rules derived from the sources, *uṣūl*) it should also be permissible for the *uṣūl*. Once it becomes permissible to exercise *istiḥsān* in matters dealing with the *uṣūl* it becomes obligatory to accept that the Jews, Christians, Zoroastrians and idol-worshippers are right in what they consider commendable about their religion.¹⁶⁶

An Account of those who Uphold the Theory of *Istidlāl* and their Refutation¹⁶⁷

This group maintains that the Book of God in itself is a legal indicant (*dalīl*), hence every argument or all evidence (*ḥujja*) is derived from it. Indeed, the *sunna* has become evidence because the Qur'an commanded followers to obey the Messenger of God (who established the *sunna*). They further assert that whatever is specified and explained in the Qur'an removes doubt from the listener as God states: *Obey God and obey the Messenger (Q.4:59)*; and *Forbidden to you are: carrion, blood, the flesh of the pig (Q.7:3)*; and *Forbidden to you are: your mothers, your daughters, your*

¹⁶⁵ Nu'mān, *Ikhtilāf*, p. 180; he states:

فيقال لهم: ما حجّتكم على من خالفكم إذا استحسن ضدّ ما استحسنتموه، فقال بخلاف ما قلتموه؟ وهل تدعون لأنفسكم في ذلك حالة إلا جاز لخصمكم دعوى مثلها لنفسه؟ فإن دفعتموه فيما نازعكم فيه بلا حجّة ولا برهان لكم عليه كابرتموه. وإن سلّمتم له ما أوجبتموه لأنفسكم أوجبتكم في الشيء الواحد أنه حلال حرام ...

¹⁶⁶ *Ibid.*, p. 181; he states:

فإن جوّزتم الاستحسان في فروع الدين لزمكم أن تجيزوا ذلك في أصله، وإلا فمن أين يجوز لكم أن تحكموا في الفروع بغير حكم الأصول؟ وإن أنتم حكمتم بذلك فقد أوجبتكم لليهود والنصارى والمجوس وعبدة الأوثان أنهم مصيبون فيما استحسنتوه من دياناتهم.

¹⁶⁷ For the meaning of *istidlāl* see n. 49 above.

sisters... (Q.4:23) However, what is unspecified or alluded to or expressed by parables, their true import could be discovered through *istidlāl* (arguments based on the *dalīl*, or legal inference). Similarly in the *sunna* of the Messenger of God, certain things are obvious and have no need for *dalīl* (argument or inference), while others are stated in general terms in need of interpretation (*ta'wīl*). Hence, what is not explicitly stated we infer (*istadlalnā*) from what is obvious. For example God says: *Perform prayer* (Q.2:43). And the Messenger of God explained the details, timing, and so forth. Nu'mān rebuts their claim and states that their assertion that the Book of God itself is a *dalīl* which needs explanation. The Book by itself does not speak and was in need of the Messenger of God to explain its rules, regulations and uphold its teachings. Yes, the Qur'an is the proof for the veracity of the Messenger of God and he was the *dalīl* during his lifetime while his successors, the Imams, are the guides for the succeeding generations. This is the very reason why the Qur'an states: *O you who believe, obey God and obey the Messenger and those of you who have authority* (Q.4:59).¹⁶⁸ Had the Qur'an been the guide (*dalīl*) by itself to truth as they claim, Nu'mān states that there would not have been a need for the Messenger of God or those who have authority. It only demonstrates their arrogance.

An Account of those who Uphold the Theories of *Ijtihād* and *Ra'y* and their Refutation for Abandoning the Truth¹⁶⁹

They assert that the exercise of *ijtihād* is obligatory (*al-fard* 'alayhim) in order to resolve cases not explicitly stated either in the Book of God or the *sunna* of the Messenger of God. After exercising his *ijtihād* if the jurist finds the matter discernible he can issue a ruling whether it is lawful or unlawful. Justification for the use of *ijtihād* is based on an alleged tradition reported on the authority of the Prophet. It is related that the Prophet sent Mu'adh b. Jabal to Yemen on a mission. The Prophet asked him, 'How will you decide on matters that come up?' He replied, 'I will decide according to the Book of God.' The Prophet asked, 'What if you do not find it there?' He replied, 'Then according to the *sunna* of the Messenger of God.' The Prophet asked, 'What if you do not find in the *sunna* of the Messenger of God?' He answered, 'Then I will exert effort to form my own judgement (*ajtahid ra'yī*).'¹⁷⁰ Thereupon the Messenger of God struck his chest and said, 'Thank God for guiding the Messenger of God's messenger.'¹⁷⁰

Nu'mān tries to show that the above tradition is not authentic and presents his supporting evidence from the Qur'an and the *sunna*. He states that those from the commonalty who reject the principle of *ijtihād* indicate that the tradition is *maqṭū'* – the *isnād* is said to be broken.¹⁷¹ Although the tradition is transmitted by several

¹⁶⁸ Nu'mān has argued above that *who have authority* refers to the Imams.

¹⁶⁹ For the meanings of *ijtihād* and *ra'y*, see n. 47 and 49 above.

¹⁷⁰ It is a widely related tradition to imply that reasoning by inference is approved by the Prophet. Hallaq, *History*, pp. 86, 106.

¹⁷¹ *Maqṭū'* is a tradition that goes back to a Successor regarding words or deeds of his. Shāfi'i used it in the sense of *Munqaṭi'*, which has been used of an *isnād* including unspecified

transmitters, the chain of authority stops with the nephew of al-Mughīra b. Shu'ba¹⁷² who stated that he related it on the authority of men from Banī Ḥimṣ¹⁷³ who stated that it was on the authority of Mu'ādh b. Jabal. Therefore, Nu'mān says it is a weak tradition and its transmitters are unknown individuals. Even if it is presumed that the tradition is established, Nu'mān argues, most probably the words of Mu'ādh 'I will exert effort to form my own judgement' meant that he would seek the evidence from the Book and the *sunna*. Nu'mān adds that when 'Umar b. al-Khaṭṭāb persisted in his question to the Prophet about the meaning of *al-kalāla*,¹⁷⁴ he told him to refer to the verses that were revealed to him rather than telling him to exert his effort and form his own opinion. He further adds: What would happen if *ijtihād* was permitted and two persons exercising their rights of *ijtihād* reach contradictory conclusions about the same legal case? According to their argument both are correct in their judgements, but the fact is that the truth resides with only one party. This was the position taken by Muḥammad b. Dāwūd and his father, the founder of the Zāhirī school, for their opposition to the principle of *ijtihād*. Nu'mān also objects to this group's assumption that the exercise of *ijtihād* is obligatory without providing any evidence. Moreover, their assumption that they are not obliged to find the correct solution is quite strange. If this is the case one surmises what the obligation is, because God categorically states: [It is improper] to say about God what you do not know (Q.2:169). In another verse He states: After the truth what is there except error? [So] how are you turned about? (Q.10:32), and Do not follow the whims of a people who strayed previously and led many astray and strayed from the level path (Q.5:77). God did not say, 'ijtihadū', He commanded: Ask the people [who have] the reminder if you do not know (Q.16:43).

Nu'mān rejects Shāfi'ī's argument in defence of *ijtihād* concerning the command to face the Sacred Mosque in prayer very weak because it is known to every Muslim.

people, or one later than a Successor who claims to have heard someone he did not hear. It is also used of one later than a Successor quoting directly from a Companion. However, it is commonly applied when there is a break in the *isnād* at any stage later than the Successor. James Robson, 'Ḥadīth', *EI2*, vol. 3, pp. 25–26. See also John Burton, *An Introduction to the Hadīth* (Edinburgh, 1994), p. 112; he states that this type of *ḥadīth* was the source of a great quantity of badly needed material. The degree to which it was relied on was dictated by necessity and governed by due regard to the transmitter's reputation. Jonathan Brown, *Hadīth: Muḥammad's Legacy in the Medieval and Modern World* (Oxford, 2009), p. 279.

¹⁷² He was a Companion and considered as one of the chief *dāhiyas* of his time. *Dāhiya* literally means 'smart fellow' or 'old fox', also holding negative connotations such as a man of dubious morals, or one who could get himself out of even the most hopeless situation. It was said about al-Mughīra that if he were shut behind seven doors, his cunning would find a way to burst open all the locks. See Henry Lammens, 'al-Mughīra b. Shu'ba', *EI2*, vol. 7, p. 347.

¹⁷³ Banū Ḥimṣ cannot be identified but Muḥammad Murtaḍā al-Zabīdī in his *Tāj al-'arūs* (Kuwait, 1977), vol. 17, p. 533, states that the city of Ḥimṣ in Syria was named after Ḥimṣ b. Ṣahr from Banī 'Imliq.

¹⁷⁴ See Qur'an 4:12, 176. For its meaning and more details see Nu'mān, *The Pillars of Islam*, vol. 2, pp. 367, 369; Cilaro Agostino, *The Qur'anic Term Kalāla: Studies in Arabic Language and Poetry, Ḥadīth, Tafīr and Fiqh, Notes on the Origins of Islamic Law* (Edinburgh, 2005).

If a person is ignorant about it, he should seek it from knowledgeable people and it is not permitted for him to use his *ijtihād*. Another tradition states, 'When a governor/judge formulates an independent judgement in a legal case and gets it right he gets a double reward, while the one who formulates his judgement but errs, gets one reward [for fulfilling the obligation of *ijtihād*].'¹⁷⁵ Nu'mān rejects this tradition because it contradicts other traditions. He states that the correctly transmitted tradition reads, 'Judges are of three types: two are [condemned to] fire and one is [destined for] paradise. One who decides unjustly while knowing full well that he is not just [in his ruling] is destined for fire. One who rules unjustly but is not aware [that his ruling is unjust] is destined for fire because he has stripped the people of their rights. One who rules with justice is destined for paradise.'¹⁷⁶ Nu'mān also criticises Abū Ḥanīfa, Shāfi'ī and Abū 'Ubayd al-Qāsim b. Sallām (d. 224/838),¹⁷⁷ but space does not permit me to elaborate.

As stated above it is the third longest chapter and Nu'mān expands on an additional four justifications presented by this group and refutes them meticulously. In what follows I will summarise those justifications and Nu'mān's main arguments against them. The second justification is based on a long verse which states: *Or like the one who passed by a settlement collapsed on its supports: he said, 'How will God give life to this [settlement] now that it is dead?' God caused him to die for a hundred years, and then brought him back to life. He said, 'How long have you tarried?' He said, 'A day or part of a day.' He said, 'No, you have lingered a hundred years ...'* [to the end of the verse] (Q.2:259). They allege that *ijtihād* is permitted because God did not reject the speculation of the man who said, 'A day or part of a day.' Nu'mān states that their argument does not hold much water because the thrust of the verse is to show that man's speculation is wrong. Nu'mān reinforces his argument with linguistic and contextual analysis of the verse.

The third justification is based on the verse that states: *God will not take you to task for making inadvertent errors in your oaths, but He will take you to task for agreements you have made through oaths. Expiation [for broken oaths] is the feeding of ten destitute people with the average of the food with which you feed your families or clothing of them or freeing of a slave. Whoever does not find [the means for that] should fast for three days* (Q.5:89). They argue that since God permitted selection/choice, why should a similar choice not be permitted with regard to *ijtihād*? Different rulings reached by different *mujtahids* are thus similar to the choices given by God. Nu'mān argues that choices are given by God and not left with the *mujtahids* to deduce. What would happen if the choices are not provided by God? One *mujtahid* might rule that the one who breaks an oath should be killed and the second might rule that [his hand] should be cut off, and the third might rule that he should be flogged while the fourth might rule that he should be imprisoned. Don't they think that they are transgressing the punishments prescribed by God?

¹⁷⁵ It is transmitted by Bukhārī, Muslim, Abū Dāwūd, Tirmidhī, Nasā'ī, Ibn Māja and Ibn Ḥanbal. Wensinck, *Concordance*, s.v., a-j-r.

¹⁷⁶ It is transmitted by Abū Dāwūd and Ibn Māja, Wensinck, *Concordance*, s.v., q-d-y.

¹⁷⁷ He was a grammarian, Qur'an scholar and a jurist. H. L. Gottschalk, 'Abū 'Ubayd al-Kāsim b. Sallām', *EL2*, vol. 1, p. 157.

The fourth justification is also based on the above verse and they argue as follows. There is no difference between the three choices specified and leaving the selection or entrusting the exercise of *ijtihād* to them concerning an incident that might happen or a mishap should descend upon them. Nu'mān refutes their argument by stating that their reasoning is far-fetched and God did not permit it. The last justification is derived from the verse about the maintenance of divorced women which states: *The well-to-do according to his means and the needy according to his* (Q.2:236). Nu'mān rebuffs their reasoning by pointing out the verse which states: *Let a man of ample means spend some of those means; and those whose provision is measured, let them spend some of what God has given them* (Q.65:7). Nu'mān asserts that the latter verse clearly indicates that the maintenance of divorced women is not left to their inference (*ijtihād*) as they falsely claim, but was left to the Messenger of God and the Imams to further clarify the matter as God states: *And We have sent down to you [O Prophet] the reminder for you to make clear to men what has been sent down to them* (Q.16:44).

Finally, let me return to Nu'mān for some concluding remarks. In sharp contrast to other schools of jurisprudence, it should be noted that Ismaili law developed and flourished under the patronage of the Fatimid dynasty. Nu'mān, therefore, put the theory of the imamate, fully articulated by him, to its appropriate use in *The Pillars of Islam*, which was his crowning achievement and blessed by the Imam-caliph al-Mu'izz. As soon as the *The Pillars of Islam* was completed it was proclaimed by al-Mu'izz to be the official code of the Fatimid state. The law, thus promulgated through the *Da'ā'im* was for the simultaneous use of the state and the Ismaili community. The *Da'ā'im*, which I have elaborated elsewhere, was thus the first juristic text to give a legalistic place to the doctrine of the imamate/*walāya*.¹⁷⁸ Nu'mān has correctly stated that of the seven pillars of Islam, it is the first pillar of *walāya* which is the most excellent and through it and through the *waliy* (the Imam), around whom the *walāya* revolves, the true knowledge of the rest of the pillars of Islam can be obtained. For the Fatimids, *walāya* was not merely a religious belief, it was the very foundation of their claim to political leadership of the Muslim world. The chapter on *walāya* along with that on the *jihād*, containing the '*ahd*' ascribed to 'Alī b. Abī Ṭālib dealing with the ruler's conduct towards his subjects and the excellent qualities and practices that he should observe, represents the Ismaili theory of the state as well as its civil constitution.

In the absence of the Imam and the subsequent precarious existence of the Musta'li-Ṭayyibī communities, first in the Yemen and then in the Indian subcontinent, it was not easy to consider any modification of this law, especially anything concerned with family law. However, the situation dramatically changed during the second half of the last century throughout Muslim countries. Hence, it is time that the religious authorities take into consideration the present situation and growing complaints by various segments of the community to render justice to the weaker segments of the society.¹⁷⁹

¹⁷⁸ Poonawala, 'al-Qāḍī al-Nu'mān and Isma'ili Jurisprudence', p. 127.

¹⁷⁹ Ibid., p. 132.

Appendix I

الأرجوزة المنتخبة، قصيدة مردوجة) (Nu'mān's *al-Urjūza al-muntakhaba*)¹⁸⁰. (نظمها في أبواب الفقه

ذي المن والآلاء والإحسان
بأفضل الصلاة والإكرام
وخير من خلقه من بعده
محمد القائم بالإله
وأفضل الملوك والأنمة
في الفقه ما أوعيت في استقصائه
فكان فيه كل ما أردت
منتظم التلخيص والتصنيف
مختلط الوجوه في الحكاية
لم تأت بالإشباع والإيعاب
بين الرواة إذ هم أخفاف
عليه من شاهده دليل
وشرح ما علمته من علمه
مشبعة موعوبة طريفة
وكل باب ألفت أسبابه
حكاية المحتج لانتلافهم
لثابت القول مع التبيان
ما جاء فيها باختلاف النقلة
نصاً وبالإسناد والأنساب
إلا على المثبت في الأساس
تزيد عشرين على الحساب
أجملت فيه جملاً من الخبر

جامعة جمعت فيها عجباً
وكل منحول من الأضداد
من بعد أن مخضت عنها مخضاً

الحمد لله العليّ الداني
وخصّ ذو الطول وذو الأنعام
قائمهم من بينهم بوعدوه
ذاك **أبو القاسم عبد الله**
مهدينا خير هداة الأمة
وكنت قد جمعت عن آبائه
ثم تدبرت الذي جمعته
لو كان مسوطاً على التأليف
لكنته جاء على الرواية
فمنه ما ألفت في أبواب
وجاء في خلالها اختلاف
وكل هذا فله سبيل
وكنت قد بسطته بنظمه
في كتب جامعة شريفة
كل كتاب جمعت أبوابه
حكيت فيها علل اختلافهم
وجئت بالشاهد والبرهان
من بعد ذكري عند كل مسألة
بذكر نقلها من الكتاب
بغير ما رأي ولا قياس
فكملت في مائتي كتاب
ثم اختصرت لفظها في مختصر

ثم اختصرت بعد منها كتباً
أزحت عنها طرق الإسناد
وجئت بالثابت فيها محضاً

¹⁸⁰ MS in the collection of my father Mullā Qurbān Ḥusayn Poonawala. The word *risāla* added to the title given in the edited versions of Idrīs, *Uyūn al-akhbār*, p. 565: رسالة الأرجوزة: *Uyūn al-akhbār* (ed. Ghālib), vol. 6, p. 46: الرسالة الأرجوزة المختارة المنتخبة: *Uyūn al-akhbār* and the word *risāla* are incorrect.

It was composed after *Mukhtaṣar al-īdāh* as Nu'mān states:¹⁸¹

<p>أجملتُ فيه جملاً من الخبر قصيدةً قومتُ فيها العوجا يقربُ معناها من النظائر إذا رأوها ذو الحجى والنهيم¹⁸² تجمع ما في الجزء منها ورقة عن الثقة بعد أن صنتفتُهُ لأنني انتخبْتُها للطلبة</p>	<p>ثمَّ اختصرتُ لفظها في مختصر ثمَّ رأيتُ جمعه مردوجاً مشبَّعة الأبواب في اختصار ويسهل الحفظُ بها للعلم حصرتُ فيها الأوجه المفترقة من قول أهل البيت إذ جمعتهُ سميتها إذ تمَّت المنتخبة</p>
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This *Urjūza* by Nu'mān was probably the first versified version of jurisprudence and it may have been regarded as a model for the later Sunni compositions. It is in two parts/volumes: the first deals with the *ibādāt* and the second with the *mu'āmalāt* and covers all topics of law covered in the *Da'ā'im*. It was composed, as the author states in the introduction to facilitate its memorisation by the students. It is not edited and is mentioned by Ibn Khallikān.¹⁸³ Al-Majdū' gives its title as *al-Qaṣīda al-muntakhaba*.¹⁸⁴

Appendix II

إجازات لمختصر الآثار

[إجازة القاضي الحسين بن علي بن القاضي النعمان من الحاكم]

بسم الله الرحمن الرحيم وبه نستعين

الحمد لله على ما أولى به من آلائه حمداً يقتضي المزيد من فضله ونعمائه، وصلى الله على محمد خاتم أنبيائه وعلى الأئمة من ذريته، أوليائه. قال القاضي الحسين بن علي بن القاضي النعمان: رويتُ هذا الكتاب وغيره من الكتب المروية عن موالينا الأئمة الصادقين من أهل بيت رسول الله، صلى الله عليه وسلم أجمعين، التي صنتفها جدِّي القاضي النعمان بن محمد رضوان الله عليه، عن أبي القاضي علي بن النعمان، رضي الله عنه وأرضاه، سماعاً وإجازةً بإسناده الذي أذكره قبل صدر هذا الكتاب. ثم ذكرتُ ذلك لمولانا الإمام الحاكم بأمر الله أمير المؤمنين

¹⁸¹ Al-Qāḍī al-Nu'mān, *al-Urjūza al-muntakhaba*, MS 2v-3r.

¹⁸² Variant reading in another MS (in the collection of Mullā Qurbān Ḥusayn): والفهم

¹⁸³ Ibn Khallikān, p. 416; he states: في أبواب منتخبة قصيدة مزدوجة نظمها في أبواب الفقه.

¹⁸⁴ Al-Majdū', *Fahrassa*, pp. 34-35.

صلوات الله عليه واستأذنته في رواية ما في هذه الكتب عنه صلوات الله عليه، و[عن] (في نسختين): إن إملأ هذا الكتاب على من يرغب في روايته بعد أن أحضرته إياه وقرأت عليه بعضه. فأذن لي في ذلك. فامتثلت أمره العالي وبدأت بالصدر الذي أرويه عن أبي رضي الله عنه. وهو:

[إجازة القاضي علي بن القاضي النعمان من العزيز]

بسم الله الرحمن الرحيم

الحمد لله حقّ حمده والشكر له كنه شكره، وصلى الله على محمدٍ نبيّه، وعلى الأئمة أولي أمره وأهل ذكروه. قال القاضي علي بن النعمان: قرأت هذا الكتاب على أبي القاضي النعمان بن محمد بن منصور بن أحمد بن حيّون، رضي الله عنه وأرضاه سنة ثمان وأربعين وثلاثمائة، وأذن لي في روايته عنه بإسناده. فلما توفي، رضي الله عنه، وتديني مولانا الإمام المعز لدين الله أمير المؤمنين، قدس الله روحه وصلى عليه وعلى الأئمة من آبائه والصفوة من أبنائه، إلى ما كان ندب أبي إليه، واقتصر به عليه من الاستفادة منه والرواية عنه، أحضرته صلوات الله عليه هذا الكتاب مع غيره من الكتب المروية عنه عليه السلام، وذكرت له قراءتي إيّاه على أبي، وإذنه لي في روايتها عنه. فأذن لي في رواية صدر هذا الكتاب، وصدور غيره من الكتب التي قرأتها على أبي رضي الله عنه، وأجاز لي في رواية ما فيها عنه صلوات الله عليه. فامتثلت أمره العالي إلى حين وفاته قدس الله روحه. ولما أفضيت خلافة الله إلى مولانا، وليّ الله، الإمام العزيز بالله أمير المؤمنين، صاحب العصر والزمان، ووليّ أهل الإسلام والإيمان، ذكرت ذلك له ورفعته إليه، فاستأذنته فيه صلوات الله عليه. فأجاز لي وأذن لي في روايته عنه حسب ما تقدّم لي من ذلك من المعز لدين الله قدس الله روحه وصلى عليه. فامتثلت أمره العالي وبدأت بالصدر الذي أرويه من هذا الكتاب عن أبي رضي الله عنه، وهو:

[إجازة القاضي النعمان من المعز]

بسم الله الرحمن الرحيم

الحمد لله شكراً على آلائه وإحسانه ونعمته وامترأ للمزيد من فضله وامتنانه وابتغاء رضوانه ورحمته، وصلى الله على محمدٍ خاتم أنبيائه المصطفين ورسله، وعلى عليّ بن أبي طالب خليفته في أمته، ووصيّه في أهله، وعلى الأئمة من ذريته الطيبين الطاهرين الخلفاء المهديين الذين أقام بهم أركان الدين وأنهج بهم سبل الهدى للمهتدين، وأنار بهم شهب الإسلام للمسلمين، وأورثهم الإمامة إلى يوم الدين. فهم القدوة والعماد، وهم أئمة الأنام، وأئمة العباد لكل قوم في كل عصرٍ منهم إمامٌ هادٍ صلوات الله عليهم أجمعين، ورحم الله أوليائهم وأتباعهم من المؤمنين الأولين منهم والآخريين.

قال القاضي النعمان بن محمد: كنتُ قد جمعتُ من قول موالينا الأئمة الطاهرين من أهل بيت رسول الله صَلَّى اللهُ عَلَيْهِ وَعَلَيْهِمْ أَجْمَعِينَ كِتَابًا فِي عِلْمِ الْفُتْيَا، وَصَنَّفْتُهَا وَبَوَّيْتُهَا وَجَزَّأْتُهَا وَأَلْفَتُهَا. وَحَكَيْتُ الرِّوَايَاتِ عَلَى اخْتِلَافِ الرِّوَاةِ عَنْهُمْ فِيهَا، وَأَثَبْتُ الثَّابِتَ عَنْهُمْ مِنْهَا، وَجِئْتُ بِالِدَلَالِ عَلَى ذَلِكَ وَالْبَيَانَ وَالشُّوَاهِدَ وَالْبِرْهَانَ. فَكَثُرَ عَدَدُ أَجْرَائِهَا وَعَظُمَتِ الْمُؤَنَةُ فِيهَا عَلَى ذَوِي ابْتِغَائِهَا. وَاخْتَصَرْتُ مِنْهَا مَوْزُونًا وَمَنْثُورًا فِي مَخْتَصِرَاتٍ لَمْ تَوْدُ كَثِيرًا مِنَ الطَّالِبِينَ إِلَى الْغَايَاتِ. فَأَعْجَزْتُهُمْ تِلْكَ لِنِكَثَارِهَا، وَاسْتَقَلُّوا الْفَائِدَةَ فِي هَذِهِ لِاخْتِصَارِهَا. وَسَأَلَنِي غَيْرُ وَاحِدٍ مِنَ الْقَضَاةِ وَالْحُكَّامِ وَالْأَوْلِيَاءِ الطَّالِبِينَ عِلْمَ الْحَلَالِ وَالْحَرَامِ أَنْ أَجْمَعَ لَهُمْ كِتَابًا مَتَوَسِّطًا فِي ذَلِكَ يَقْرَبُ مَعْنَاهُ، وَيَكْتَفِي بِهِ مِنْ كِتَابِهِ وَقِرَاةِهِ [كَمَا صَحَّحَاهُ، وَفِي كِتَابِي النَّسَخِينَ: وَقِرَاةً، وَقِرَاءَةً] وَيَحْفَظُهُ الْحَدِيثُ الصَّغِيرُ، وَيَفِيدُ مِنْهُ الشَّيْخُ الْكَبِيرُ، وَيَتَسَّعُ لَهُ الْمَشْغُولُ وَالْخَلِيٌّ، وَيُنَالُهُ الْفَقِيرُ وَالْغَنِيُّ. فَأَلْفَتُ لَهُمْ هَذَا الْكِتَابَ مَتَوَسِّطًا بَيْنَ التَّطْوِيلِ وَالِاخْتِصَارِ، وَسَمَّيْتُهُ مَخْتَصِرَ الْآثَارِ. وَلَمَّا اعْتَبَرْتُ مِقْدَارَ هَذَا الْكِتَابِ، فَرَأَيْتُهُ يَقْصُرُ عَنِ إِدْخَالِ الْأَسَانِيدِ فِيهِ، وَرَأَيْتُهُ أَنَّ ذَلِكَ مَا لَا غِنَاءَ بِهِ عَنْهُ، رَأَيْتُ أَنْ أُخْصِّصَهُ بِأَقْرَبِ الْأَسَانِيدِ وَأَعْلَاهَا وَأَصَحِّحَهَا وَأَثَبْتُهَا وَأَسَانَاهَا. فَفَرَعْتُ مَا أَرَدْتُ إِثْبَاتَهُ فِيهِ شَيْئًا بَعْدَ شَيْءٍ إِلَى وَلِيِّ الْأَمْرِ وَإِمَامِ الزَّمَانِ وَصَاحِبِ الْعَصْرِ مَوْلَايَ أَمِيرِ الْمُؤْمِنِينَ الْإِمَامِ الْمُعَزَّزِ لَدَيْنَ اللَّهِ صَلَوَاتُ اللَّهِ عَلَيْهِ وَعَلَى آبَائِهِ الْأَئِمَّةِ الطَّاهِرِينَ. فَاسْقَطْتُ مِنْ ذَلِكَ مَا أَمَرَ، أَدَامَ اللَّهُ عُلُوقَ أَمْرِهِ، بِإِسْقَاطِهِ، وَأَثَبْتُ فِي هَذَا الْكِتَابِ مَا ارْتَضَاهُ وَأَمَرَ بِإِثْبَاتِهِ، وَقَرَأْتُهُ عَلَيْهِ قِرَاءَةً. فَكُلُّ مَثَبٍ فِيهِ فَمَنْهُ. وَأَنَا أَرُويهِ لِمَنْ أَخَذَهُ عَنِّي [و]عَنْ آبَائِهِ الطَّاهِرِينَ فَقَدْ اسْتَضَاءَ نَوْرًا، [و]مَنْ اقْتَبَسَ مِنْ نَوْرِ أَمِيرِ الْمُؤْمِنِينَ وَقَدْ اسْتَعَذَبَ مَاءً مَنْ يَشْرَبُ مِنْ رَأْسِ الْعَيْنِ.

Appendix III

مختارات من كتاب عهد القضاء للقاضي النعمان من المعز¹⁸⁵

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

هذا كتابٌ من عبد الله ووليِّه معد أبي تميم المعزّ لدين الله أمير المؤمنين لنعمان بن محمد القاضي، أن أمير المؤمنين للمحلّ الذي اصطفاه الله به من الخلافة السنيّ قدرها والإمامة العليّ خطرها، وأن جعله سراجاً منيراً في أرضه، يُهتدى به ويُستضاء بنوره، ونصبه علماً لخلقهِ، وقائماً بحقِّهِ، وموطداً دعائم الإيمان، ومؤكداً وثائق الإسلام، ومنهجاً شرائع جدّه محمد رسول الله صلى الله عليه وآله، رأى أن يرفع من قدر القضاء حسب ما رفعه الله عزّ وجلّ... **وقد كان أمير المؤمنين الذي وقف عليه من ورعك، وديانتك، وأمانتك، ونواصيتك، وحميد طريقتك استكفاك القضاء بالمنصورية وأعمالها، وأطلق لك النظر فيمن تظلم إليك من أهل المدن التي فيها القضاة**

¹⁸⁵ Nu'mān, *Ikhtilāf*, pp. 19–24.

والحكّام وغيرها بجميع الكور، وإنفاذ الحقّ على من وجب عليه، وإعطائه مستحقّه. ثم رأى عندما وقف عليه من صدق مواليتك، وتوخيّك الحقّ في أحكامك، وما كشفه عنك الامتحان، ومخضك به الاختبار، وحسنت منك فيه الآثار، تؤكد ذلك لك، وأدعاهم وتشديده ... وليكن أمرُك جارياً، وحكمك نافذاً في كلّ من تظلم إليك أو تظلم [م]ـه من عندك من كافّة أهل مدائن أمير المؤمنين، وعمامة كورة الدانية منه والشاسعة منه، وأن يتناول أحدٌ من قضاة المهديّة والقيروان إلى رفع أحدٍ من أهل البوادي التي حولهما، إلى أنفسهم، إذ كان أمير المؤمنين إنما أطلق لكلّ قاضيٍ فيهما النظر في المدينة التي هو فيها، وما أحاط به قطرها، وليس له أن يتعدى إلى النظر فيما خرج عنها، وأطلق لغيرهم من القضاة النظر في بوادي مدنهم، وأن لا يقيم أحدٌ منهم حاكماً ولا أميناً بجميع الكور التي لا قضاة فيها، ولا ينظر بين أحدٍ من أولياء أمير المؤمنين، وطبقات عبيده، وسائر جنّده المقيمين بحضرته، وأن يكون النظرُ في جميع ذلك كلّ لك، مطلقة فيه يدك، لا يُتازعك فيه أحدٌ من القضاة والحكّام ... مقتدياً في أحكامك وأقضيتك بكتاب الله ... وما لم تجد فيه نصّه ولا في سنة جدّ أمير المؤمنين محمد رسول الله صلى الله عليه وآله ربّ العالمين حكمه التمسّه في مذاهب الأئمة من ذريته الطاهرين ... الذين استحفظهم الله أمر دينه، وأودعهم خزائن علمه، ومكنون وحيه، وجعلهم هداة العباد ... الطريقة المثلى والمقتدى بهم في أمر الدين والدنيا. وما العيس عليك فأشكل، واشتبه فأعضل، انهيتّه إلى أمير المؤمنين ليؤقّفك على وجه الحكم فيه ... وقال جلّ ذكره وتبارك اسمه: ﴿وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولَى الْأَمْرِ مِنْهُمْ لَعَمِلَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ﴾ [سورة النساء ٥٤:٨٣]. وقال عزّ اسمه: ﴿فَسْئَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾ [سورة النحل ١٦:٤٣]. وقال النبيّ الناطق الصادق محمد صلى الله عليه وآله: إني تارك فيكم الثقلين، كتاب الله وعترتي أهل بيتي، فلن تضلّوا ما إن تمسكتم بهما، فإنهما لن يفترقا حتّى يردا على الحوض ... كتبت يوم الاثنين ليلتين بقيتا من شهر ربيع الأول سنة ثلاث وأربعين وثلاثمائة ...

Appendix IV

إجازة لكتاب اختلاف أصول المذاهب

بسم الله الرحمن الرحيم

الحمد لله على ما أسعج من عطائه حمدَ عبدٍ شاكرٍ لآلانه، مستدع للمزيد من نعمائه، وصلى الله على محمد خاتم أنبيائه، المشفّع لأمتّه يوم لقائه، وعلى وصيّهِ والأئمة من آله أصفياؤه. قال قاضي القضاة عبد العزيز بن محمد بن النعمان: رويتُ هذا الكتاب وهو اختلاف أصول المذاهب والرّدّ على من خالف الحقّ فيها عن أبي القاسمي محمد بن النعمان رضي الله عنه

وأرضاه، ورواه أبي عن أبيه القاضي النعمان بن محمد بن منصور بن أحمد بن حيّون التميمي، رضي الله عنه وأرضاه وأكرم منقلبه ومثواه، مصنف هذا الكتاب بعد عرضه إياه على مولانا وسيدنا الإمام المعزّ لدين الله أمير المؤمنين صلوات الله عليه وعلى آبائه الطاهرين والأئمة من ولده الأكرمين، وإجازته له وكان تصنيفه وروايته له ولولده من بعده بعد عرض كلِّ رايٍ منهم له على إمام زمانه واستيذانه إياه في روايته عنه، وإجازة مولانا العزيز بالله أمير المؤمنين صلوات الله عليه لوالدي محمد بن النعمان رضي الله عنه قاضيه إجازة ثانية. فعرضتُ ذلك على مولانا الإمام الحاكم بأمر الله إمام العصر. فأجاز لي روايته عنه وأطلق لي إملأه على عبيده، ووقع على ظهره توقيعاً معظماً بخطّ يده العالمة: 'أجزنا سماع هذا الكتاب وإملأه لقاضينا عبد العزيز بن محمد بن النعمان'. والحمد لله رب العالمين.¹⁸⁶

Appendix V

بداية من كتاب اختلاف اصول المذاهب¹⁸⁷

بسم الله الرحمن الرحيم

الحمد لله الذي أنزل الكتاب على عبده محمدٍ البشير النذير ...

أما بعد، فإني رأيتُ أهلَ القبله بعد اتّفاقهم على ظاهر نصّ القرآن، وتصديق الرسول، قد اختلفوا في الفتيا، في كثيرٍ من الفروع وفي بعض الأصول، وفي وجوه كثيرةٍ من التأويل، وذهبوا في ذلك مذاهب، وتفرّقوا فرقا، وتحزّبوا أحزابا، بعد أن سمعوا قولَ الله عزّ وجلّ وتلوّه: ﴿أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ﴾ [سورة الشورى ١٣:٤٢]؛ ﴿وَمَا تَفَرَّقَ الَّذِينَ أُوتُوا الْكِتَابَ إِلَّا مِنْ بَعْدِ مَا جَاءَتْهُمْ الْبَيِّنَةُ﴾ [سورة البينة ٤:٩٨]. وقوله عزّ وجلّ: ﴿إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ وَمَا اخْتَلَفَ الَّذِينَ أُوتُوا الْكِتَابَ إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَعِيًّا بَيْنَهُمْ﴾ [سورة آل عمران ١٩:٣]. وقوله: ﴿أَفَلَا يَتَذَكَّرُونَ أَلْقُرْآنَ أَمْ عَلَى قُلُوبٍ أَقْفَالُهَا﴾ [سورة محمد ٤٧:٢٤]، ﴿وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلَافًا كَثِيرًا﴾ [سورة النساء ٨٢:٤]. فذمّ جلّ ثناؤه التفريق والاختلاف، ودعا إلى الاجتماع والاتلاف، وأمر بذلك، وحضّ عليه، ورغب في إقامة الدين، ونهى عن التفريق فيه. وقد رأيتُ، وبالله أستعين وعليه أتوكّل، وعلى تائيد وليّه وإرشاده ومواده أعولُ، وإيأه لفاقتي أسترشدُ وأستعدُّ، ومن زواجرٍ بحره أعترفُ وأستمدُّ، بأن أبسط هذا الكتاب وابتدئ في بعلة اختلافهم والذي دعاهم إليه، وحملهم عليه، وسببهم فيه، وأتلوا ذلك بذكر جملة قولهم، وما أصّلوه لأنفسهم، وبيان فساده عليهم، وأشفعه بذكر مذهب أهل الحقّ فيما اختلفوا فيه، وإيضاحه وبيانه، والشواهد له والدلائل

¹⁸⁶ Nu'mān, *Ikhtilāf*, pp. a-b.

¹⁸⁷ Nu'mān, *Ikhtilāf*, pp. 1-2.

عليه. ثم أذكرُ بعد ذلك قولَ كلِّ فرقةٍ واحتجاجها بما قالتُهُ، والرّدُّ عليها فيما فارقتُ فيه الحقَّ بما انتحلتهُ، وقولُ أهلِ الحقِّ في ذلك بحسبِ ما أخذناه عن أئمّتنا عليهم السلام، رجاءَ ثوابِ الخدمة في ذلك، والعناية بأسبابه. فأما البرهانُ فلاولياءَ الله المفيدين له والفاتحين لأبوابه.

Appendix VI

ذكر جملة قول المختلفين في أحكام الدين:¹⁸⁸

أجمع المنسوبون إلى الفقه من العامّة أنّ ما كان من الأحكام وعلم الحلال والحرام ظاهراً في نصّ القرآن وجب الحكم والعمل به، وأنّ ما لم يوجد بزعمهم من ذلك في القرآن أُلتمس في سنّة الرسول صلّى الله عليه وعلى آله. فإنّ وُجد في السنّة أخذ به ولم يتعدّ إلى غيره. وقال كثيرٌ منهم: 'وما لم يكن من ذلك في كتاب الله جلّ ذكره ولا في سنّة رسول الله صلّى الله عليه وعلى آله نظرناه في قول الصحابة. فإن أصبناهم قد قالوه وأجمعوا عليه أخذنا به، وإن أصبناهم اختلفوا فيه تخيّرنا قول من شئنا منهم، فقلنا به'.

وقال بعضهم: 'ومن أصبناهم قال به منهم لم نخرج عن قوله، وما لم نجده في كتاب الله ولا في سنّة رسول الله صلّى الله عليه وعلى آله ولا في قول أحدٍ من الصحابة نظرنا، فإن كان مما اجتمع العلماء عليه قلنا به، ولم نخرج عن إجماعهم فيه'.

... واختلفوا فيمن قلّده، فذهب كلُّ فريقٍ منهم إلى قول قائلٍ ممن تقدّمهم. فقالوا بقوله، وأحلّوا ما أحلّه لهم، وحرّموا ما حرّمه عليهم، وأقاموا قوله حجّةً عندهم، وأعرضوا عن قول من خالفه ... وخطأ بعضهم بعضاً، وكفّر قومٌ منهم قوماً ممّن خالفهم، وفارقهم آخرون ... وقالوا: 'لنا أن نستنبط كما استنبطوه ولا نقلّدهم'، فقال بعضهم بالقياس، وقال آخرون بالرأي والاجتهاد. وقال آخرون بالاستحسان، وقال الآخرون بالنظر، وقال آخرون بالاستدلال. وهذه ألقاب لقّبوا بها مذاهبهم لينسبوا إلى الحقّ بزعمهم. وكلّها يرجع إلى أصلٍ واحدٍ، ويجمعها معنى فاسدٍ وهو اتّباع الهوى والظنّ

Appendix VII

وكان سبب جمعي هذا الكتاب في مثل هذا وذلك إنني جاريتهُ بعض من يذهب إلى القول بالاجتهاد. فأبنتُ له فساد القول به، واحتججتُ عليه بمثل ما ذكرتُ من الحجّة في هذا الكتاب

¹⁸⁸ Nu'mān, *Ikhtilāf*, pp. 8-10.

حتى انقطع. وقد رأيتُ أنه اعترف بالحقّ ورجع. ثمّ انتهى إلى بعد ذلك أنه جمع كراسةً ذكر فيها قول القائلين بالاجتهاد، وحجّتهم فيه إصراراً منه بعد الحجّة على ما كان عليه. وقد حكيتُ في هذا الكتاب جميع ما صنّفه في كراسته من قول أصحابه، وغير ذلك ممّا انتهى إلى من قولهم وحجّهم ممّا لم يذكره، وأبنتُ فساده والحجّة عليهم فيه. ولم أر أن أقصد إلى إبطال الاجتهاد خاصّة. فيرى من انتهى ذلك عني إليه إنني ارتضيتُ ما سواه ممّا صنّفه في هذا الكتاب من أصول مذاهب المخالفين للحقّ. فرأيتُ، وبالله التوفيق، ذكر جميع أقاويلهم والحجّة فيما أصلوه عليهم، رجاءً ثواب الله تعالى في ذلك جلّ ذكره، وإياه أسألُ وأرجو أن يجعل ذلك خالصاً لوجهه وسلّى الله على محمدٍ عبده ورسوله وعلى الأئمّة الأبرار من أهل بيته وسلّم تسليمًا.¹⁸⁹

¹⁸⁹ Nu'mān, *Ikhtilāf*, pp. 232–233.