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

Ismail K. Poonawala

Shi’i Ismaili law, codified by al-Qāḍī al-Nu‘mān (hereafter referred to as Nu‘mān) in his enduring work Da’ā‘īm 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. Ever since its promulgation, most probably in 349/960, as the official code of the Fatimid empire, the Da’ā‘īm has reigned supreme, particularly with the Musta‘īl-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 Dā’ūds, 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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I would like to thank Hamid Haji for resetting the entire chapter with elegant Arabic font. He very kindly and carefully read the first set of proofs.


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 Isma‘ili Jurisprudence’, in Farhad Daftary, ed., Mediaeval Isma‘ili History and Thought (Cambridge, 1996), p. 126.
cations in all Muslim countries except India. 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.

The structure of the Da’ā’îm 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’îm, 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. He had also written a number of refutations, including the three founding figures of the major Sunni schools of law, Abū Ḥanīfah, Mālik and Shāfi’i. The Da’ā’îm, 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.

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 usūl al-madhāhib (The Book of Disagreement about the Positive Laws in Various Schools of Jurisprudence; henceforth referred to as Ikhtilāf), which was compiled before the Da’ā’îm. It is the opinion of this author that the Ikhtilāf has not received sufficient

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


5 Nu’mān was first appointed as a qāḍī of Tripoli by the third Fatimid Imam-caliph al-Mansūr (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-Mansūriyya, he promoted Nu’mān as the supreme qāḍī of the Fatimid domain. Al-Qāḍī al-Nu’mān, Kitāb al-majālis wa’l-musā-yarat, ed. al-Ḥabīb al-Fiqī, et al. (Tunis, 1978), pp. 51, 57, 69, 80–81; Poonawala, ‘al-Qāḍī al-Nu’mān and Isma’i’li 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’îm, see Poonawala, ‘al-Qāḍī al-Nu’mān and Isma’i’li Jurisprudence’, p. 126.

7 It is referred to hereafter as the Ikhtilāf. The term usūl in the title does not imply usūl al-fiqḥ as it came to indicate later on. In his article ‘Was al-Shāfi’i the Master Architect of Islamic Jurisprudence?’, IJMES, 25 (1993), pp. 588 ff., Wael Hallaq has convincingly argued that the term usūl 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 usūl 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 usūl had emerged. For the meaning of madhāhib/s and the formation of legal schools see, Hallaq, Origins, pp. 150 ff., and his A History of Islamic Legal Theories: An Introduction to Sunni Usūl al-Fiqh (Cambridge, 1997), chap. 2.
attention from contemporary students of Ismaili law. 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-ʿĀmir around 524/1130, of modifying any aspect of the law, either minor or major, in the absence of the Imam. It should be noted that the Ismaili case is slightly different than the Twelver Imāmī. For the Mustaʿlī-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. 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. Therefore, I will only briefly review the chronology of Nu‘mān’s surviving legal works, published and unpublished. 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-īdāh. 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). 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 to be found in the da’wa collection. Kitāb al-īdāh

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8 It is edited by [Sham‘ūn] Ṭayyib ʿAli Lokhandwala (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 Ismailī community after the assassination of the Fatimid Imam-caliph al-ʿĀmir, see Farhad Daftary, The Ismāʿīlīs: Their History and Doctrines (2nd ed., Cambridge, 2007), pp. 238 ff.


12 I have dealt with the chronology of Nu‘mān’s legal works in my work ‘al-Qāḍī al-Nu‘mān and Isma‘īlī Jurisprudence’, pp. 120–130.

13 For his life and works, see Poonawala, Biobibliography of Ismāʿīlī Literature, pp. 204–206.

constituted a comprehensive collection of legal traditions that was classified and arranged into legal topics like other collections of hadith books. Referring to it in the introduction of his Kitāb al-iqtisār 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 ijāza17 or the sahīfa.18 The traditions ascribed to Ahl al-bayt varied from [being described as] mashhūr,19 to ma’rūf20 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 mulakhkhas or muṣannaf [according to the


15 Samā’ constitutes ‘hearing’, and ‘that which is heard’ directly from a teacher. As a term in Islamic eduction 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 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. Zamakhschari, Asās al-balāgha: Mu’jam fil-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, ‘Ijāza’, EI2, vol. 3, p. 1020.


19 Mashhūr (widespread, widely accepted, well known) is a tradition with more than two transmitters, some such being sahīh and others not. A large number of traditions belong to this category, and they are the foundations of jurisprudence. Siddiqi, Ḥadith Literature, pp. 193–194; James Robson, ‘Ḥadith’, 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, ‘Ḥadith’, 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‘īm. 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 usūl), asānid (the

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آتَت بعد، فَأَلَّفَ تَصَمَّمَتْ في الكَتَّاب المَروْيُةَ عَن أَهْل الْبِيْت صَلَواتُ الله عَلَيْهِمَمَا كَانَ كَلِمَةً مِن سِمْعٍ، أَوْ مَرْأَة، أَوْ آخِرُهَا إِجَاهَةً، أَوْ صَحِيحَةً مَعْنَا تَنَبِّيئُهَا إِلَيْهِمَمَا مِن الضَّمْرِ وَالْمَعْرُوف وَالْإِثْرُ وَالْأَحْكَام وَمَسَاءَلَ الْفُنُّا في الحَلَالِ وَالْحَرَامِ. فَأَرْأَيْتُ كَثِيرًا مِن هِمَا أَخْرَفَ الْرُّواَتُ فِيهِ وَمَا أَجْمَعُوْ عَلَيْهِ، وَأَكْثَرُهَا غَيْرُ مَلْحَظٍ وَلَا مَتْصِلٍ. فَكَتَبْتُ فِيهَا عَلَى أَكْثَرِ النَّاسِ الشَّمْشِ، وَأَنْوَلُ كَثِيرَ مِن هُمَا مَنْ لَمْ يُقِسِّمَ عَلَى أَمْرٍ فِي الْعَلَومِ فِي مَنَازِلِ الْمَهْدَى. فَأَرْأَيْتُ جَمِيعَاً وَتَصَمَّمَهَا وَبَسْتُهَا وَتَأْثِيبُهَا عَلَى مَا أَكْثَرُ الْرُّواَتُ فِي كَتَّابٍ سَمِهِّيْ كَابِعُ الإِنْهَابُ، أَوْ تَصَمَّمُتْ فِيهَا مَسَاءَلَهَا وَبَسْتُهَا أَبْوَاهُ وَذَكَرْتُ مَا أَجْمَعُوْ عَلَيْهِ وَلَا أَخْتَفَوْ فِيهِ عَلَى مَا أَدَأَ الْرُّواَتُ إِلَيْنا، لَمْ أُدِّعَ فِؤَلُهُم. وَبَيِّنَتْ النَّادِبُ مِن ذَلِكَ بِالْمَدَالِلِ الْبِرَاهِيْنِ. فَبَلَغَ زَهَاءُ ثَلَاثَةٌ أَلَفٌ وَرَقَةٌ.

وَأَنَا إِنْ مَدْلَلُ اللَّهِ فِي عُمُرِي أَوْمَلُ تَقْرِيْبَ أَصْولِهِ لِيُكُونُ مِنْهُ مُشَمَّلًا عَلَى جَمِيعِ مَا يُحَاجِجُ إِلَيْهِ مَيُّ نَزُولٍ، فَيُوجِدُ إِنْ شَاءَ اللَّهُ

23 Only the first volume of this work is extant. Poonawala, Biobibliography of Ismā‘īlī Literature, p. 53.
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. The Akhbār/Ikhbār 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.

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. 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-ṣaḥiḥ al-āthār ‘an al-a’imma al-āthār, or Mukhtaṣar (or Ikhtiṣār) al-āthār fimā ruwiyā ‘an al-a’imma al-āthār (The Compendium of Sound Tradition Trans-

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

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:

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

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-musāyarāt, 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 dinār or less for those who wanted to have a copy. Hence, I entitled it Kitāb al-dinār (Book for One Dinār) 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-ikhtisār 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-dinār [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

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28 The extant copies of al-Ikhtisār are in the recension of Nu’mān’s grandson Ḥusayn b. ‘Ali b. al-Nu’mān. In the first iqāza given by al-Nu’mān to his son ‘Ali 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-Ikhtisār was completed either in that year or a little earlier. The second iqāza written by Ḥusayn b. ‘Ali states that the permission for its transmission was given to him by the Imam-caliph al-Ḥakīm. For the texts of both iqāzas, see Appendix II.

29 Nu’mān, Kitāb al-majālis, pp. 359–360; he states:

وسأني بعضًّا القضاة والحكام والطلبة بسط كتاب محضر من قول أهل البيت (صلى الله عليه وسلم) لهم، وقرَّب معناه ويسهل حفظه، وتحفٍ مؤمنه. فانبدأت شيناً منه، وقذرت أن الكتاب إذا كمل قام على من يرصد انتسابه بديلاً فما دونه. وسّطه كتاب الديبان، وذكرت ذلك في بسط افتتاحه، ورفعت ما أبدأته به إلى المعرّ (صلى)، وطالعته فيه وسألته قرائته عليه، وسماعه منه ليكون مألوفاً عنه. وكسبت مع ما رفعته منه إليه رفعة ذكرت فيها ذلك له.

30 Ibid., pp. 359–360; it reads:

ٍفِوَقَّعَ إِلَىِّ صَلَوَاتِ اللَّهِ عَلَيْهِ خَلَقَهُ في ظهره: نِعْمَة لله الرحمن الرحيم، صل الله بهاء التحية، وقفته على الكتاب، وتصحفت، فرأيت ما أعجبني فيه من عصبة الرواية وجودة الاختصار، ولكن فيه كلمات تعناص على كثير من أولياءنا معرفته، فأشعرها بما يقرب من أفهمهما، فيستوي في
Al-Mu'izz permitted Nu'man to relate the entire book on his authority and that of his forefathers. Hence, compared to his earlier works, such as al-Idāh and some of it abridgements, in this work Nu'man gives the isnād of every tradition at the highest point of its transmission authority. For example, qāla rasāl Allāh (the Prophet said), 'an 'Alī (from 'Ali), or qāla Abū Ja'far Muḥammad (i.e., al-Baqir 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 Isma'ili law.

I have elaborated elsewhere that the Ikhtisār was a major step forward in the direction of codification of Isma'ili law by Nu'man. 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'man, 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 Isma'ili 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'man 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 interpretations and elaborations.

Although Idris 'Imād al-Dīn has reproduced the above account from Nu'man's Kitāb al-majālis wa’t-musāyārat, without mentioning its title, he erroneously states that it was an abridgement of the Da‘ā‘im. In his Some Unknown Ismā'ili Authors and their Works, IRAS (1933), p. 369, Husayn al-Hamdāni was also misled by Idris' statement when he stated: 'Chronologically speaking, the Da‘ā‘im and Mukhtašar were among the last works of the Qāḍī.' Based on its contents, Sham‘ūn Lokhandwala (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 Idris 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.

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

31. Then, and after that, the disciples of the Messenger, one after another, recited (in the names of the Imams) the emulations of one another. And they imitated, asked questions, sought, and sought them, and they brought them to them, and asked them what they understand of them, and they brought them that which they understood of them, and they brought them what they understood of them. And so they were the ones who imitated one another, and they then imitated the Imams, whom they imitated, and they imitated the Imams.

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 Ikhtisār. 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 usūl al-madhāhib wal-radd ‘alā man khālafa ‘l-ḥaq 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 mazālim34 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-qudāt ‘Abd al-‘Azīz b. Muḥammad b. al-Nu‘mān said: ‘I have related this book, Ikhtilāf usūl al-madhāhib wal-radd ‘alā man khālafa ‘l-ḥaq 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. Maḥṣūr b. Ḥāmid 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’ 1, 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,’ EI2, 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-Ḥākim. For information on his life, see The Governors and Judges of Egypt (Kitāb al-umāra’ wa-kitāb al-qudāt) of al-Kindī, ed. Rhuwān 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-Nuʿmān was granted a second permission to relate it by our lord al-ʿAzīz biʾl-lāh, the Commander of the Faithful, may God bless him. Later on I presented it to our lord, the Imam al-Ḥākim biʾAmr 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 ʿAbd al-ʿAzīz b. Muhammad b. al-Nuʿmān to disseminate and dictate this book.’

The importance of this work is demonstrated by the fact that permission was granted for its transmission by three successive Imam-caliphs, viz., al-Muʾizz, al-ʿAzīz and al-Ḥākim. At the beginning, Nuʿmān 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 Qurʾan 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 furūʿ [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 (taʾwīl). 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); 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-

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37 Nuʿmān, Ikhtilāf, pp. alif-bāʾ. 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 Qurʾan cited in this chapter, unless stated otherwise, are by Alan Jones, The Qurʾan: 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-haqq) 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.

Nu'man 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. Nu'man then cites various traditions generally related by Shi'i sources to prove that 'Ali b. Abi Talib was the most learned of the Companions of the Prophet regarding the Qur'an and the occasions of its revelation (asbab al-nuzūl). Therefore, he was well versed in Qur'anic law and it is claimed that he said, 'Ask me before you lose me.' 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.' Having made his most important points with regards to 'Ali b. Abi Talib that he was the rightful successor of the Messenger...
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 ıjtihād

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⁴⁴ For the Arabic text, see Appendix VI.

⁴⁵ Monique Bernard, ‘Kiyās, EI2, 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), while others upheld the principles of *istihsān* (juristic preference), *nazār* (speculation, arbitrary reasoning), or *istiḍlāl* (inductive reasoning).

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 vicery 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.’

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‘ī ‘ulamā’ who, by the time of Nu‘mān’s writing, had fully elaborated the Shi‘ī doctrine of the imamate.

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47 Joseph Schacht, ‘Iṣṭiḥād’, *EI2*, 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.


49 R. Aranaldez, ‘Manṭīk (esp. Logic in the judicial science)’, *EI2*, vol. 6, pp. 4514–4552. *Istiḍlāl* means arguments based on the *dalīl*, and it covers various inferences that do not belong to the category of *qiyyās*. See Hallaq, *History*, pp. 112, 130, 131, 141; he states that arbitrary reasoning was often characterised as *ra’y* and *nazār*. He further adds that in certain cases, reasoning, appearing under the labels of *ra’y* and *nazār*, was nothing short of systematic *qiyyās*.

50 Nu‘mān, *Ikhṭilāf*, pp. 10–11, 16; it reads:

قَالَ رَسُولُ اللَّهِ صَلِّي اللَّهُ عَلَيْهِ وَآлَهُمُ سْلَمَ: إِنْ بَعَدُوا وَلَا تَبَعَدُوا، فَكُلُّ بْنَادِعُ ضَلَالَةٍ، وَكُلُّ ضَلَالَةٍ فِي الْحَيَاةِ الدُّنْيَا.

One of the fundamental elements of that doctrine is that the Imam is presumed to be the most learned person in the Muslim community.\footnote{For more details see Ismail Poonawala, ‘The Imâm’s Authority during the Pre-Ghaybah Period: Theoretical and Practical Considerations,’ in Clarke, ed., Shi’ite Heritage, pp. 103–122.} Nu’mân was a fierce proponent of the doctrine of the imamate. Of course, he was selective in his selection of Qur’ânic 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’ânic verses and traditions of the Prophet.

Let us return to Nu’mân 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: \textit{We have neglected nothing in the Book} (Q.6:38).\footnote{Alan Jones has translated \textit{al-kitâb} as ‘record’, while most of the translators, such as Bell, Yusuf Ali, Pickthall, Arberry and Abdel Haleem have rendered \textit{al-kitâb} as ‘Book’. I have preferred the latter.} Addressing His Messenger, God says: \textit{We have sent down to you the Scripture as an explanation (tibyân)} of everything and guidance and mercy and good news to those who submit (Q.16:89). Nu’mân 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 ‘bayân,’ Nu’mân explains is applied to what is obvious, clear, manifest and known.\footnote{Nu’mân, \textit{Ikhtilâf}, p. 17. He states: \begin{quote}وكذلك سمى الله تعالى حكماً ونبياناً وهدى وشفاً. وأخبر رسول الله صلى الله عليه وآله من آتٍ للهدى في غيره أصح الله. فكيف يرعم هؤلاء الجاهلون أن شياً يعبد الله بخلقه لم يزلوه في كتابه؟ \end{quote} The terms \textit{bayân} and \textit{tibyân} occur four times in the Qur’an: 3:138, 55:4, 75:19 and 16:89. It is worth noting that in his \textit{Risâla}, ed. Ahmad M. Shâkir (2nd ed., Cairo, 1979), p. 20; tr. Majid Khadduri, \textit{al-Shâfi‘i’s Risâla: Treatise on the Foundations of Islamic Jurisprudence} (2nd ed., Cambridge, 1987), p. 66, Shâfi‘i 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 ‘\textit{al-bayân}.’ Shâfi‘i discusses certain characteristics of the Qur’an as an introduction to a fuller treatment of the Qur’an from a juridical viewpoint. In his \textit{History}, pp. 21–29, Hallaq has succinctly summarised the contents of the \textit{Risâla}.} Hence, one does not need to resort to \textit{qiâyàs, ra’y, ‘ijtihâd, istihlâl, nazar} or \textit{istidlâl} for explanations. If those people who advocate the above theories would ask us: ‘Where is this explanation (bayân) [what you have stated] in the Qur’an?’ In his defence Nu’mân states: ‘We will respond with the following verses wherein God quite clearly says: 
\begin{quote}
\textit{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: \textit{Whatever the Messenger gives you, take it. Whatever he forbids you to have, leave it alone} (Q.59:7). God also says: \textit{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: \textit{Obey God and obey the Messenger and those of you who have
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 qiyāṣ, ra‘y, istidlāl, ītiḥād, istihsān, nor nazar. 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 Muhammad] 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 ḥukmān [‘Arabiyyān] (a criterion in Arabic) (Q.13:37), and tībiyānān [li-kulli shay‘ān] (an explanation of everything) (Q.16:89), and hudān (a guidance) (Q.16:89; 10:57; 41:44), and shifā‘ān (a remedy) (Q.10:57). How dare they say that

\(^{54}\) In his Usūl al-shari‘a (Beirut, 1983), p. 70, Muhammad 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 داخل في حكم الكتاب إذ كان الكتاب أجوب ذلك، ونطق به ودل عليه. فصار جميع الحلال والحرم والقضايا والأحكام والفرائض، وجميع ما عتب الله العبادة، بهذا القول متبنا في الكتاب بهذا المعنى واضحًا يليًا، غير مشكل ولا مُقفل. ولا يحتاج إلى الفياس عليه، ولا استدلال فيه، ولا الرأي، ولا الجهاد، ولا الاستحسان، ولا النظر، كما يعَتولاء المخالفون.
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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."

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 Muhammed], 'I follow what is revealed to me from my Lord.' (Q.7:203). God also says: And He has taught you [O Muhammed] 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 Tirmidhi and Dārimī. Wensinck, Concordance, s.v. d-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.
The Evolution of al-Qādī al-Nu’mān’s Theory

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. 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]. 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.4:42). 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) 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

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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 (idāfa) annexed to a word referring to a tribe, family, or a community, it means the most excellent of them. For example, فلان من يقترب الفوم 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-Jawdharī’s biography of al-Ustādhw 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'-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 (‘itrātī), 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.'

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 qādī. 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 qādīs with the ability to exercise qiyās, naṣār, istiḥsān, 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

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62 This tradition, known as hadith 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’.
The Evolution of al-Qādī al-Nu‘mān’s Theory

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 *ašhāb al-taqālid* and at the end of the debate asserts that the same charge cannot be levelled against the Shi‘a.65 This is followed by a section covering the *ašhāb al-ijmā‘*. This is divided into three sections/chapters: the people who uphold *ijmā‘* and their refutation; disagreement with regard to its *hujiyya* (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 *naẓar*. *Ašhāb al-qiyās*68 comes next and is followed by those who assert the doctrines of *istiḥsān* and *istiḍāl*. 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 Ašhāb al-Taqālid and their Refutation**70

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

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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 *hujiyya* 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 aforecited 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 ḥadith 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 taqlid (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‘īda 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.
75 This report cannot be verified from historical sources. It probably refers to the incident of Buṭāh wherein Khālid b. Walid killed Mālik b. Nuwayra and married his wife. ‘Umar was angry at what Khālid 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 ‘Ali’s timely intervention and advice, ‘Umar revoked his judgements. Hence, the origin of the famous saying, ‘Had it not been for ‘Ali, ‘Umar would have perished.’\(^{77}\)

It is worth noting here that Nu’mân then goes on to expound the linguistic meaning and usage of the verb ṣahība and its noun formation ʾaḍḥāb 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 (innakumma ṣuwayhi-batuṭ Yūsuf).’\(^{78}\) Of course, the term ‘ṣuwayhibat Yūsuf’ was not a compliment, rather it had a negative connotation. Nu’mân 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’mân 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’mân states that his intention was not to disparage the Companions but to refute their argument supporting blind following. Nu’mân 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’mân adds, the most famous people to whom the word taqlīd is associated with are those who uphold the doctrine of the rāʿ, istihlās, qiyyās, nazar and ījtimāʿ, like Abū Ḥanīfa al-Nu’mân al-Kūfī, Mālik b. Anas al-Madani and Muḥammad b. Idrīs al-Shāfīʿī. A great majority of the people are the followers of those three figures. Nu’mân’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.\(^{80}\)

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\(^{76}\) In his al-Īlāhām fi ʿusūl al-ahkām (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 ‘Fihi bayān sabab al-ikhtilāf al-wāqī’ bayn al-a’īmma fi ṣadr ḥadīthī 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 hadīth.

\(^{77}\) For details and sources see Nu’mân, The Pillars of Islam, vol. 1, p. 106.


\(^{79}\) For details and older sources, see Nu’mân, 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.’\footnote{The Arabic reads: \(\text{قال أبو حنيفة: علمنا هذا رأي، وهو أحسن ما أحباه، فمن أنّا يتغير من هه رجعنا إليه فيه وفينا منه.}\) This saying of Abū Ḥanīfa is reported on the authority of his student al-Ḥasan b. Ziyād al-Lu‘lu‘ī (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’, \textit{EI2}, vol. 1, pp. 123–124; Nu’mān, \textit{The Pillars of Islam}, vol. 1, p. 108.}\footnote{This story is also reported by Nu’mān in \textit{The Pillars of Islam}, vol. 1, p. 110.}\footnote{Nu’mān reports the same story in \textit{The Pillars of Islam}, vol. 1, p. 108.} Abū Ḥanīfa believed in the doctrine of \textit{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 \textit{in toto}. At this the Khurāsānī beat his face in confusion and let out a cry. The people gathered around him and ascended 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 previous opinions. Later on, he went to Iraq and met with Muḥammad b. al-Shaybānī and gave his legal opinions accordingly. He then went to Egypt and settled there whereupon he reversed many of his earlier opinions that he had given while he was in the Hijāz.

Abū Ḥanīfa replied, ‘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!’

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 (\textit{talaq 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?’ Nu’mān asks rhetorically, ‘How, then, can these fickle minded people be followed?’

As for Shāfi‘ī, 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 Hijāz.
and Iraq.⁸⁴ Nu’mān notes that Shāfī‘ī strictly forbade his followers from the unequivocal adoption (taqlīd) of either his opinion or his fellow jurisconsults. He rebuked the jurists who adopted the opinions of their predecessors (ashāb 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 Shāfī‘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

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⁸⁵ Nu’mān, Ikhtilāf, p. 43: the Arabic reads:

وكان ينهي عن التقليد أشدًّا النهي، ويعيب أهله، ويدرَّ على من قال به. وأتبعه على ذلك بعض أصحابه، وقال بعضهم: تبعه في كل شئ، وقول بقوله إليه إلا في نهيه عن التقليد. فإذا نحن فله في تقادمه.

⁸⁶ It should be noted that Shāfī‘ī argued against istiḥsān, see al-Risāla, pp. 25, 503 ff.; tr. Al-Shāfī‘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 Shāfī‘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 (‘itrātī), 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.’

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.’

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.”’

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.’ 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

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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.
said, ‘But for ‘Ali, ‘Umar would surely have perished.’ This demonstrates the situation with their caliphs.

Nu’mán 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’mán states that ‘the people envied’ are the Imams because God has bestowed the imamate on them. 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). 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. 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. In sūrat al-mā’dīda 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 ‘Ali who was the foremost among the Imams. 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. 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. In sūrat al ‘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. In sūrat al-nāhī 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. Nu’mán concludes this chapter and reiterates that what he has illustrated above is a clear distinction between taqlīd and taṣdiq. 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.

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92 Ibid., vol. 1, p. 106.
93 Ibid., vol. 1, p. 28. Additional sources are indicated there.
94 Nu’mán 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. As noted above by Nu’mān, al-Muzanī (d. 264/878, Ṣafī’ī’s chief disciple and an outstanding jurist and dialectician) confirms that his master had prohibited taqlīd of either himself or other jurisconsults (muftīs). This statement of Ṣafī’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 Ṣafī’ī’s statement and for the sake of his argument only presents it as a warning against taqlīd. It should be noted that Ṣafī’ī’s distrust of taqlīd in juristic matters is reflected in the works of the Zāhirī 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. Ibn Qutayba, a staunch traditionist, is very cautious in his selection of words when he compares and contrasts the views of the aḥāb al-kālām wa-aḥāb al-ra’y (i.e., the rationalists, the Mu’tazila) and the aḥāb al-hadīth (traditionists). In describing how the latter group achieved consensus on the basic principles of faith through revelation and submission to the acknowledged authorities of the ‘ulama’ and the fuqāḥa’, Ibn Qutayba avoids use of the word taqīd. On the other hand, he accuses the Mu’tazila of labelling others as the followers of traditional authorities (yattahīmūna ghayrahum fi’l-naqīl), since it was against their rational principle of ‘aql. Also one should differentiate between taqlīd in juristic matters and taqīd in credal matters, but this matter is beyond the scope of this chapter.

An Account of Aḥāb al-ījmāʿ and their Refutation

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

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104 Ibn Ḥazm, al-Iḥkām fi uṣūl al-ālkām, vol. 6, al-Bāb al-sādis wa’l-thalālān fi Ḳibṭ al-taqlīd. In this long chapter entitled ‘On invalidating blind imitation’ (p. 123), Ibn Ḥazm states: 

وَيَكَفُّونَ مِن هَذَا أَن كَلِّ مَا ذَرَّاهُ مِن الْفَقِهَاءِ الَّذِينَ قَلَّوْا مَعْظُومًا لِلْتَقْلِيَّةِ، نَاهَوْنَ عَنْهُ، مَعْلُونَ مَنَّهُ، مَخِيَّرُونَ أَنْ قَاعِلُهُ عَلَى بَاطِلٍ. وَقَدْ حَدِّثَ الْحَمَامُ عَنْ الْبَاجِيِّ عِنْ أَسْلَمَ الْقَافِصِ عِنْ الْمَارِيِّ عِنْ الشَّافِعِيِّ عِنْ النَّافِيِّ عِنْ تَقْلِيَّةِ وَتَقْلِيَّةٍ غَيْرَهَا. وَحَدِّثَهَا عِبَادُ الرَّحْمَنِ بْنِ سُلَيْمَانَ بْنِ عَلِيِّ بَيْنِ بَنِي سُلَيْمَانَ. قَالَ: سَمَعَتْ مَالِكًا قَالَ لِهِ اِبْنِ الْقَافِسِ: لَيْسِ إِحْدَى بَعْدَ أَهْلِ الْمَدِينَةِ أَهْلُ الْبَيْوْعُ أَمْ نَفْسُهُ مِنْ أَهْلِ مُحْرَقٍ. قَالَ لِهِ مَالِكُ: مِنْ أَيْنَ أَعْلَمُ ضُرُّ ذَلِكَ؟ قَالَ: مَنْكُ، بَايَّ عِنْ الْحَمَامِّ. قَالَ مَالِكُ: مَا أَعْلَمُ تحْمِيلَهُ مِنْ أَنْ أَفْكَرُوهُ مَعْلُونَهُمْ؟ قَالَ أَبُو مُحَمَّدُ: كَيْفُ، وَقَدْ أَعْتَنَا اللَّهُ تَعَالَ مِنْ قَوْلِهِمْ فِي ذَلِكَ مَا نَحْصُ مِنْ كِتَابِهِ مِنْ نِسْبَةِ الْتَقْلِيَّةِ، فَمَنْ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: "مَلَكُ الْذِّنَٰبِ أَتَّخَذْنَاهُ مِنْ فَوْنَ اللَّهِ ۖ أَوَّلَ بَيْتٍۡ كَمَّلَ الْعُنْكَبُوتِ أَتَّخَذُتْ بَيْتًا ۗ إِنَّذَا أَوْفِيَ الْبَيْتِ لَبَيْتَيْنِ الْعُنْكَبُوتِ [سُرُّةُ العَنْكَبُوتِ: ۴۱۹]. ثُمَّ قَالَ اللَّهُ تَعَاля عَلَى أَنْ هَذِهِ الْآيَةُ: "ۚ۝وَلَكُنْ أَمْلَأْنَى ۡيَضُرُّهَا لِلْمَيْتَ وَمَا يُعِفُّنَّهُ إِلَّا الْعَلِيمُونَ" [سُرُّةُ العَنْكَبُوتِ: ۴۲۰].

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 (ummatan waṣatatun) 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 believe in God and His messengers – they are the loyal ones (ṣiddiqūn) and the witnesses (shuhadā’) with their Lord (Q.57:19). He further says: You are the best community (khayra ummatan) 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 Muhammad and made to bear witness (shuhadā’) to the entire Muslim community. They further allege that the word mu’minin (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 siddiqūn 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’minin, siddiqūn 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 Muhammad 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

197 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 ummatīn) 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 (ummatan qānītum) 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 repre-
sents 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 (ummatan
wāhidatun) (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] remem-
bered after a time (ba’da ummatum) (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 ummatan 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 charac-
terised in the Qur’an. For example, God says: Except those who believe [in God] and
do good works, and they are few (qalīfum 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 īa ya’lamūn) (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 īa ya’qīlūn) (Q.5:103, 29:63); and
But they are not aware (wa-mā yashūrūn) (Q.2:9, 3:69, 6:26, 123); and But most of
the people are not believers (wa-mā akthar al-nās bi-mu’mūnīn), even if you are eager
for that (Q.12:103); and And most of them do not believe in God (aktharahum
mushrikūn) unless they associate others with Him (Q.12:106).

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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'mân 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'mân adds that the word of God is the most vacuous 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'mân 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'mân 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'mân 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. This, according to Nu'mân, 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'mân 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 'Ali, Fāṭima, Hasan and Husayn, did not serve idols.

Nu'mân 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 'āmma*), but a 'specific meaning' (*ma'nā khāṣṣa*) is sometimes intended. Space and time do not permit me to go into more of the details elaborated by Nu'mân in the two additional chapters on *ijmā‘*. Briefly,

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109 See also Nu'mân, *The Pillars of Islam*, vol. 1, pp. 43 ff.
110 Nu'mân, *Ikhtilāf*, p. 79; he states:

> إذا كان اسم الجماعة يقع عليهم كلهم، ويقع على بعضهم كما تبنا ذلك في الأئمة والمؤمنين والناس في غير ذلك من العام الذي يراد به الخاص.

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

> بيان ما نزل من الكتاب عامًا الظاهر يراد به كل الخاص.


> العام على ثلاثة أقسام: الأول: الباقي على عمومه، لم يرد شموله لجميع الأُئلار، لا من جهة تناول اللفظ، ولا من جهة الحكم، بل هو ذو أفراد استعمل في فرد هما: والثاني: العام المارد به الشخص، أريد عمومه وشموله لجميع الأُئلار من جهة تناول اللفظ لها، لا من جهة الحكم. والثالث: العام المخصص.
a wide variety of opinions regarding the modes of its justification (ḥujiyya) 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‘ī’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 Ikhtilaf presents a variegated picture that had not yet clearly emerged. Therefore it is worthwhile to give a summary of what the Ikhtilaf depicts in those two chapters. Let me first state that the overwhelming view one gets from reading the Ikhtilaf 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‘ī’s Risāla in the development of the science of usūl 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 ḥujiyya, on which the ijma‘ should be established. Some jurists asserted that it should only be predicated on the textual evidence of the Qur’ān and the sunna, while others maintained that it should be based on the ijma‘ 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’ānic references with the traits of al-shuhadā‘, al-ṣiddiqin and ummatan wasatan refer to.

Other jurists debated the definition of ijma‘ – 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 ijma‘ 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

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\(^{111}\) Chaumont, ‘al-Shāfi‘ī; Hallaq, ‘Was al-Shāfi‘ī the Master Architect?’

\(^{112}\) ِبد الله على الجماعة. It is transmitted by Tirmidhi and Nasā‘ī. Wensinck, Concordance, s.v. j-m-‘. Ibn Qutayba, Ta‘wil mukhtalaf al-hadith, p. 5.

\(^{113}\) Nu‘mān, Ikhtilaf, p. 84; he states:

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

In the ahādith sources it reads:

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

This tradition is transmitted by Ibn Ḥanbal, Tirmidhī and Nasā‘ī. Wensinck, Concordance, s.v. j-m-‘; sh-t-n. See also Shāfi‘ī, al-Risāla, p. 474; tr. al-Shāfi‘ī’s Risāla, p. 286; Shāfi‘ī, Kitāb al-umma (Beirut, 2005), vol. 1, p. 109; he states:

... فإن الشيطان مع الفرد, وهو من الأئمة أبعد.
the Ḥashwiyya\textsuperscript{114} and the Nawāṣib.\textsuperscript{115} Then, Nu‘mān indicates that there are those who limit the application of the term unma 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 qiyyās. 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’ī. 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.\textsuperscript{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 ‘Ali


\textsuperscript{115} In his Kitāb al-zīna (MS collection of Asghar Ali Engineer’s father, Bombay, fols. 176–77), Abū Ḥātim al-Rāzi states that the Prophet appointed (naṣaba) ‘Ali 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 ‘Ali 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 ‘Ali. See also Nu‘mān, Da‘ā‘īm, The Pillars of Islam, vol. 1, pp. 190–191.

b. Abī Ṭālīb, ‘Abd Allāh b. ‘Abbās\(^{117}\) and ‘Abd Allāh b. Mas‘ūd\(^{118}\) lived among them. So they did not lack the knowledge (\(‘\textit{ilm}\)) 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 \(\textit{ijmā’}\) was the only valid one. Such was the case with the people of the Ḥijāz that comprised the inhabitants of the two \(\textit{hārâms}\), Mecca and Medina. The people of Iraq, namely the people of Kūfah 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 \(\textit{ijmā’}\) is the one that was agreed upon by Mālik, Abū Hanīfah, Shāfi‘ī, Awzā‘ī\(^{120}\) and their followers.

Nu‘mān concludes his discussion concerning \(\textit{ijmā’}\) 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 72 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, ‘\(\textit{Ahl al-sunna wa’l-jamā’}\)’a.’ Thereupon people further asked him, ‘What is the \(\textit{sunna}\) and what is the \(\textit{jamā’a}\)’? 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 \(\textit{ra’y}\), \(\textit{qiyyās}\), \(\textit{nazār}\), \(\textit{istihsāṣ}\), \(\textit{ijtihād}\) or \(\textit{istidlāl}\) with respect to \(\textit{din Allāh}\), that is, Islam, as long as the Messenger of God was alive. Nu‘mān further affirms that he and his group, namely, the Shī‘a-Isma’ilis, are the true representatives of \(\textit{Ahl al-sunna wa’l-jamā’}\)a because they have adhered both to the \(\textit{sunna}\) of the Messenger of God and his \(\textit{jamā’a}\), that is, the \(\textit{Ahl al-bayt}\) and the rightful Imams.\(^{123}\)

\(^{117}\) He is considered one of the greatest scholars of the first generation of Muslims. L. Veccia Vaglieri, “\(\textit{Abd Allāh b. al-‘Abbās}\), \textit{EI}2, vol. 1, pp. 40–41.

\(^{118}\) He was a Companion of the Prophet and reader of the Qur’an. J. Vadet, ‘\(\textit{Ibn Mas‘ūd}\), \textit{EI}2, vol. 3, pp. 873–875.

\(^{119}\) Nu‘mān, \textit{Ikhtilāf}, pp. 99–100; it states:

\(\text{فقال مالك، إن رسول الله صلى الله عليه وسلم قال: إن المدينة تُعَلِّمُ خِيَانَةَ كَمَا يُعَلِّمُ الْكِبْرَ خَيْبَةَ الْحَدِيدِ.}\)

It is transmitted by Bukhārī, Abū Dāwūd, Nasā‘ī, Ibn Māja, Mālik and Ibn Ḥanbal, see Wensinck, \textit{Concordance}, s.v. \(\text{kh-b-th}\). It states:

\(\text{المدينة تُعَلِّمُ النَّاسَ كَمَا يُعَلِّمُ الْكِبْرَ خَيْبَةَ الْحَدِيدِ.}\)

\(^{120}\) He was the main representative of the ancient Syrian school of Islamic law. Joseph Schacht, ‘\(\text{Awzā‘ī}\)’, \textit{EI}2, vol. 1, p. 772–773; Hallaq, \textit{Origins}, pp. 107, 154, 156, 166, 171.

\(^{121}\) See, for example, ‘\(\text{Abd al-Qāhir al-Baghdādi}\), \textit{al-Farq bayn al-firaq}, ed. Muhammad Muḥy al-Dīn (Cairo, n.d.), pp. 5–7; Muhammad ‘\(\text{Abd al-Karīm al-Shahrastānī}\), \textit{Kitāb al-mīlāl wa’l-nihāl}, ed. ‘\(\text{Abd al-‘Azīz Muhammad al-Wakīl}\) (Cairo, 1968), p. 11.

\(^{122}\) This tradition is transmitted with a slight variation of words by Abū Dāwūd, Tirmidhī, Ibn Māja, Ibn Ḥanbal, Wensinck, \textit{Concordance}, s.v. \(\text{j-m-}\); \(\text{f-r-q}\).

\(^{123}\) In his \textit{Kitāb al-zīna} (see ‘\(\text{Abd Allāh al-Samarrā‘ī}\), \textit{al-Ghuluw wa’l-firaq al-ghaliyya fil-hadāra al-islāmiyya}, Baghdad, 1972, pp. 252–256), Abū Ḥātim al-Rāzī also makes the claim that he and his group belong to the \(\text{ahl al-sunna wa’l-jamā’}\)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‘*. 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 (*hujiyya*) 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 *shar‘i‘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.’ Al-Baghdādī further states that the Khawārij and the Mu’tazilī theologian al-Nazzām rejected the very concept of *ijmā‘*.

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.’ Henceforth, 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.

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125 ‘Abd al-Qāhir al-Baghdādī, *Kitāb uṣūl al-dīn* (Istanbul, 1928), p. 18; he states: 'وَأَنَّ الْإِمَامَةَ الْمَعْتَبِرَ فِي الْحُكْمِ الْشَّرْعِيَّ فَمَقْصُوْرُ عَلَى إِجْمَاعٍ أَهْلَ عُسْرٍ مِّن أَعْصَارِ هَذِهِ الْأَنْثَمَةِ عَلَى حُكْمٍ شَرْعِيٍّ، فَإِنَّهَا لا تَجْمَعُ عَلَى ضَلَالَةَ.'

The tradition transmitted by Ibn Māja (Wensinck, *Concordance*, s.v. j-m-e) states: ‘إِنَّ أَمْثِلَ لا تَجْمَعُ عَلَى ضَلَالَةِ.

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 *ijma* as a juridical source and other technical issues related to it, such as the *hujiyya* 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 Shafi'i and al-Qadi al-Nu'man's *Ikhtilaf usul al-madhahib*, 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'man’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 *ijma* was no more than an ethical theory left to the individual believer and his personal convictions. In his *al-Mughni fi abwab al-tawhid*, al-Qadi 'Abd al-Jabbar takes over the objection raised by al-Nazzam, without mentioning his name, and states:

As for the demonstration of the legal validity of *ijma* 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 *ijma* 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 *ijma*] 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 Hazm, a representative of the Zahiri school, *ijma* was only limited to the Companions.\(^{129}\) His system of jurisprudence rejects the use of *qiyas* and insists on proof texts, that is, the Qur'an and the *sunna*. He, therefore, can permit *ijma* 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 *ijma* is more or less reabsorbed by the Qur'an and the *sunna*. The expression *ulu'lam* that is often used by Ibn Hazm, 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

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\(^{128}\) Al-Qadi 'Abd al-Jabbar, *al-Mughnī fi abwāb al-tawḥīd: 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:

\(^{129}\) Ibn Hazm, *al-Ikhām fi usūl al-aḥkām*, vol. 4, pp. 128 ff. It is the 22nd chapter with over 100 pages and is entitled: *in the community, and an opinion, is a consensus, and a consensus of the community*.
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 Ḥanafis denounced the Zāhirī position. Both Bazdawi\textsuperscript{130} and al-Sarakhsi\textsuperscript{131} 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 ahwāʾ (pernicious doctrines) and bidaʾ (innovations).\textsuperscript{132} Once the question of what constitutes ijmāʿ 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 ijmāʿ 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 ijmāʿ is formed.

This conditioning process raises another important and vexing question as to whether the formulation of a new ijmāʿ 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 Mālikis and the Zāhirīs it is not a problem, but the situation varies with other schools. According to Āmidī and his master Shāfiʿī, Abū Ḥanīfa, the Ashāʿira and the Muʿtazila, extinction of a generation was not a necessary condition for the formulation of a new ijmāʿ.\textsuperscript{133} But, for Ibn Ḥanbal, the formulation of a new ijmāʿ is subject to the total disappearance of the past generation.\textsuperscript{134} For al-Sarakhsi 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.\textsuperscript{135} Ghazālī, on the other hand, suggests that the existence of ijmāʿ occurs when an agreement has taken place, even if only for an instant.\textsuperscript{136} In short, ijmāʿ was a powerful and useful source to introduce change into the prevailing status quo.

\textsuperscript{130} He is ‘Ali b. Muhammad b. al-ハウスاین al-Pazdawi. His Uṣūl is printed with ‘Ala’ al-Din al-Bukhārī’s Kashf al-asrār (reprint, Beirut, 1394/1974).

\textsuperscript{131} Muhammad b. ʿAbd al-Sarakhsi was a Ḥanafī jurist of the 5th/11th century. N. Calder, ‘al-Sarakhsi’, EI2, vol. 9, pp. 35–36.

\textsuperscript{132} Al-ʿAsḥāʾi, Maqālāt al-islāmiyyīn, p. 478, states that people differed as to whether the discard of āḥl al-ahwāʾ concerning the āḥkām counts or not.

\textsuperscript{133} Al-ʿĀmidī (d. 631/1233), a theologian, was a Ḥanbalī and later became a Shāfiʿī. D. Sourdel, ‘al-ʿĀmidī’, EI2, vol. 1, p. 434.

\textsuperscript{134} Al-ʿĀmidī, al-īḥkām fī ʿūsūl al-āḥkām (Beirut, 1983), vol. 1, p. 367 ff.


\textsuperscript{136} Al-Ghazālī, al-Muṣafī min ʿilm al-uṣūl (Beirut, 1994), vol. 1, p. 121.
Those who maintain this doctrine state that they resort to *nażar* and rational argument only for those things that have not been explicitly specified either in the Qur’ān 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 *nażar* they would not accept it. Nu’mān refutes their claim by asserting that rational arguments are not permitted in religious matters. The Qur’ān addresses all things and neglects nothing that is an essential part of religion and human life. The Messenger of God also said: ‘Follow [me] and do not innovate.’

Their main argument for the justification of the use of *nażar* is based on two Qur’ānic verses that state: *And in yourselves, do you not see?* (Q.5:1-23) and *Reflect, those of you who have eyes* (Q.59:2). Thus, they argue that God has commanded His servants to reflect and exercise their *nażar*. 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 *nażar* 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 *nażar* 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 Khiḍr narrated in the *sūrat al-kāfīf* (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 Khiḍr. Furthermore, without going into details, Nu’mān states that al-Walīd b. al-Mughīra and Abū

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


ٍجمعَ َما َمِ ٍحَيْ َجَ َنَبَ َمُ َلا َوَ َكَمْبَأَ ٍوَ َرَمَآَ َغَ ٍوَ َنِبَتَُهَأَ ٍوَ َذِبَاَ ُهَسَبَأَ. Wensinck, *Concordance*, s.v. t-b-.

139 A tradition transmitted by Dārimī states: Ṣٍبَأَحَ َوَ َرَمَآَ َغَ ٍوَ َنِبَتَُهَأَ. Wensinck, *Concordance*, s.v. t-b-.

140 The Arabic reads: اِذَا َنَصَبُوْنَ. This verse is considered to have the greatest bearing upon the authoritiveness of *qiyyās*; see Hallaq, *History*, pp. 106, 130. He states that *qiyyās* was considered as nothing more than the various forms of arbitrary reasoning characterised as *ra’y* or *nażar*. 
The Evolution of al-Qāḍī al-Nu‘mān’s Theory

Tālib, 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.\footnote{\(\text{\textsuperscript{142}}\) Nu’\mān, \textit{Ikhtilāf uṣūl al-madhāhib}, pp. 126–127.}

If debate was allowed in religious matters, Nu’\mān argues, people would have declared themselves what is \textit{ḥalāl} (lawful) and what is \textit{ḥarām} (unlawful). But God rejected such a position and states: \textit{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: \textit{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 \textit{uṣūl} (basic principles, fundamentals) in the Qur’an, but entrusted them with the \textit{furū’} (secondary, derived matters) to exercise their \textit{ijtihād}.

Another justification they present is that what is validated through \textit{qiyās} is validated through \textit{naẓar}. Nu’\mān states that he has already demonstrated the incorrectness of \textit{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: \textit{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 \textit{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 \textit{Say [O Muḥammad], ... I only follow what is revealed to me} (Q.46:9); and \textit{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 \textit{Aṣḥāb al-qiyās} and their Refutation\footnote{\(\text{\textsuperscript{143}}\) For the meaning of \textit{qiyās} see n. 45 above. Shāfi’i (\textit{al-Risāla}, p. 477) states that \textit{qiyās} and \textit{ijtihād} are two terms with the same meaning.}

The main argument of this group, like others, for the promotion of \textit{qiyās} as a new judicial source is that the first two material sources, viz., the Qur’an and the \textit{sumna} 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 \textit{qiyās} is therefore to determine rules of procedure which respect the spirit of rules dealt with by the material sources. Consequently, they claim that \textit{qiyās} appeals to the principles of analogical deduction. The use of \textit{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 \textit{ijmā’}.\footnote{\(\text{\textsuperscript{144}}\) M. Bernard, ‘\textit{Kiyās}, EI2, vol. 5, pp. 238–242; Hallaq, \textit{History}, pp. 82 ff.} 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 \textit{qiyās} and will refute their claims.

At the outset he points out that the \textit{aṣḥāb al-qiyās} are divided into three distinct groups concerning the use of \textit{qiyās} and the range of its application. The first group maintains that it is obligatory to exercise \textit{qiyās} in matters related to the concept of
divine unicity (tawḥīd) and formulating judicial decisions (ahkām) 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 tawḥīd or ahkām. 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 (maʿānī) 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 shari'ā. 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

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\[145\] He refers to the Qur’an and hadith al-thaqalayn. See n. 62 above.

\[146\] Nu’mān, Ikhtilāf, p. 138; it reads:

فَكَفَّرَهُمُ الْحَكَمُ بِالْحَكَمِ، فَيَقُولُونَ: إِنَّ هَذَا الْحَكَمُ الَّذِي أَشْهَمَهُ الْحَكَمُ وَالْحَكَمُ الَّذِي مَتَّبِعُونَ فِيهِ مِنْ أَشْهَمَهُ اَلْحَكَمِ، هُوَ أَنْ يُسَيَّرَ الْشَّيْءُ غَيْرَ مِنْ كُلِّ جَهَانِيَةٍ وَجِمْعِ مَعَانِيَهُ وَأَسْبَابِهِ. فَلاَ تَحْكُمُونَ مَعَهُ. فَلاَ تُقِيْسُونَ عَلَىْهُ، حَتَّى يَكُونَ كَذَلِكَ، أَمْ يَكُونُ فِي عِبَادَةٍ غَيْرَ مِنْ أَشْهَمَهُ اَلْحَكَمِ، وَإِنَّ خَالِفَتُهُ فِي غَيْرِهَا. فَإِنَّ قَالَواْ: لَا تَقْيِسُ شَيْئًا عَلَىْشَيْئٍ، حَتَّىْيَكُونَ مَوْافَقًةً لَهُ فِي التَّشَابِهِ، وَالْحَكَمِ مِنْ جَمِيعِ جَهَانِيَةٍ. فَإِنْ أَطْلَبُواْ الْحَكَمَ، وَزُرِّكَ القُوَّلُ بِهِ، لَنْ يَشْهَبُ شَيْئًا مِنْ كُلِّ جَهَانِيَةٍ مَوْجَوْدًا فِي الْعَالَمِ أَبْدًا مِنْ مِثْلِهِ، وَفَاقَواْ عَلَيْهِ مِنْ الأَحْكَامِ وَالحَالَاتِ وَالحَرَامِ.

\[147\] Nu’mān, Ikhtilāf, p. 154; he states:

لَمْ نُرِأَ اللَّهُ عَزَّ وَجَلَّ فَلَمْ يُحْكَمَ فِي أَشْهَامِ مَقْتَاتٍ بِحَكَامِ مَقْتَاتٍ، وَفِي أَشْهَامِ مَقْتَاتٍ بِحَكَامِ مَقْتَاتٍ، وَفِي أَشْهَامِ مَقْتَاتٍ مَفْتَقَاتٍ، وَلَا تَقْعُدُ اللَّهَ عَلَىْلُكُمْ لِتَنْتَرِكَا بِخَلاَطِ الآمِنِينَ، وَلَا تَقْعُدُ اللَّهَ عَلَىْهُمْ بِالْفَتْقَةِ بِالْبَيْنِ، وَالْمَخْتِبِ.

feet cut off on alternate sides. 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. 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.

Next, Nu‘mān criticises Imam Abū Ḥanīfa, the main proponent of the theory of qiyāṣ. The conversation between the latter and Imam Ja‘far al-Ṣādiq ridiculing Abū Ḥanīfa’s use of qiyāṣ is quite striking. It is reported that once Abū Ḥanīfa al-Nu‘mān b. Thābit al-Kūfī visited Imam Ja‘far al-Ṣādiq 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-Ṣādiq 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.

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

\[149\] Ibid., vol. 2, p. 479.
\[150\] Ibid., vol. 1, pp. 383–388.
\[152\] 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.
sequently, the ruling of the *asl* is applied to that of the derived case (*far*).\textsuperscript{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 *hadith* 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)\textsuperscript{154} of wheat (*burr*) for two *kurs*. Subsequently, based on *qiyaṣ* al-‘illa the *asbāb al-qiyaṣ* prohibited the sale of one *kurr* of rice for two *kurs* of rice.\textsuperscript{155} Nu’mān states that those who advocate the use of *qiyaṣ* 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 *hukm* (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 asks for more engages in usury.’\textsuperscript{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.’\textsuperscript{157} Nu’mān reiterates that the *ahlkām* 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 *qiyaṣ*, 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

\textsuperscript{153} Nu’mān, *Ikhtilāf*, p. 143; it reads:

القياس في نفسه هو تشبه الشيء بغيره والحكم به، هو الحكم للフリー بحكم أصله إذا استوب علّتهما فيما وقع الحكم من أجله.


\textsuperscript{155} This example also appears in the later sources; see Hallaq, *History*, pp. 91–92.

\textsuperscript{156} Nu’mān, *Ikhtilāf*, p. 145; Arabic reads:

فأقول إن الحديث عن الرسول عند العامة في الطعام أنه نهى عن البر بالبر، والشعير بالشعير، والسمير بالسمير والملح بالملح إلا سواء ب سواء، فمن رأى واستفاد ففد أربي.

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

\textsuperscript{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)\textsuperscript{158}

Nu'mān gives another example by which \textit{ahl al-qiyās} try to justify their use of \textit{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 \textit{hadith} quite eloquently expresses the permission to exercise \textit{qiyās}.\textsuperscript{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, \textit{I only follow what is revealed to me} (Q.6:50); and \textit{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: \textit{Whatever the Messenger gives you, take it} (Q.59:7). God did not tell that it was a \textit{qiyās} on the Prophet’s part. Turning the tables around, Nu’mān states, ‘If they allege that it was a \textit{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 \textit{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 \textit{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 \textit{āsl} and, according to their own theory of analogy, the ruling of the \textit{āsl} cannot be deduced from another ruling of the \textit{āsl}. This is an obvious violation of the rule.

Nu’mān then states that Dawūd b. ‘Ali (d. 270/883), the Imam of the school of the Zāhiriyya, and his son Muḥammad criticised the use of \textit{qiyās} and rejected it categorically.\textsuperscript{160} He also harshly criticises Shāfī‘i for admitting to the use of \textit{qiyās} and his attempts to regulate its operation.\textsuperscript{161} Moreover, Nu’mān cites two examples,
namely the punishment for adultery and atonement for forgetfulness during prayer, given by the proponents of *qiyyās* to justify their use of *qiyyās* in identical cases. Their inverted argument, a case of perverted logic, runs as follows. If the exercise of *qiyyās* 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‘īz. However, the advocates of deduction by analogy contend that if the use of *qiyyās* 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 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 *qiyyās*, 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 *Istihsān* and their Refutation

Nu‘mān opens this chapter by stating that all groups that advocate various theories under the guise of *ra‘y*, *qiyyās*, *ijtihād*, *nazar*, *istihsān* or *istiidlāl* 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. This group justifies the theory of *istihsān* (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).

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162 The name of Mā‘īz occurs in the later sources but in a different context of abrogation. Ibid., p. 70.
163 For *istihsān*, see n. 48 above.
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 āhsanahu) 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 (āhsan al-ḥadīth), a consistent Scripture, mathāni ... 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? It could also be argued that when istihsān is permissible with regard to furū’ (positive rules derived from the sources, usūl) it should also be permissible for the usūl. Once it becomes permissible to exercise istihsān in matters dealing with the usūl it becomes obligatory to accept that the Jews, Christians, Zoroastrians and idol-worshippers are right in what they consider commendable about their religion.

An Account of those who Uphold the Theory of Istidlāl and their Refutation

This group maintains that the Book of God in itself is a legal indicant (dalīl), hence every argument or all evidence (hujiya) 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

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

فِي قَالَ لَهُمْ: مَا حَكَمْتُمْ عَلَى مِن حَالَافُكُمْ إِذَا أَسْتَحْسِسْنَهُمْ. فَقَالَ بَخْلَاءً مَا قَسْمُوْهُمْ وَهَلْ تَدْعُونَ أَنْفَسَكُمْ فِي ذَلِكَ حَالَةٌ إِلَّا جَازَ لَحَصُصُمُكُمْ دَعُوا مَثْلًا لَنَفْسَهُ؟ إِنَّ دَعْعُمُوْهُ فيمَا نَراْعُكُمْ فِي بَلا حَجَةً وَلَا بَرْحَانَ لَكُمْ عَلَى كَابِرَتِهِمْ. وَإِنْ سَلَّمْنَهُ لَمْ أَوْجَمْنِوْهُ لَأَنْفَسَكُمْ أَوْجَمْنِ في الْبَشِّرِ الْوَاحِدِ أَنْهَ حَارَامٌ... 

166 Ibid., p. 181; he states:

إِنْ حَوْرَتُ الْإِسْتِحْسَانَ فِي فَرْوُغِ الْدِّينِ لَوْ كُنْتُمْ أَنْ تَحْيَى الَّذِينَ فِي أَصْلَهُ، إِلَّا فَيُعَنِّي أَنْ يَحْمَرْ لَكُمْ أَنْ تَحْكَمُوا فِي الفَرْوُغِ بِغَيْرِ حَكَمِ الأَوْسُولِ؟ إِنَّ أَنْتُمْ حَكَمْتُمْ بِذَلِكَ فَقَدْ أَوْجَمْنِي لِلْمِثْلَةِ وَالنِّصَارَىِّ وَالْمَجِسِّ وَعَبْدَةَ الْأَوْثَانِ أَنْهُمْ مُقْسِمُونَ فِيما أَسْتَحْسِسُوْهُ مِنْ دِينَاهُمْ.

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 dalil, or legal inference). Similarly in the sunna of the Messenger of God, certain things are obvious and have no need for dalil (argument or inference), while others are stated in general terms in need of interpretation (ta’wil). Hence, what is not explicitly stated we infer (istadlālānā) 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 dalil 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 dalil 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). Had the Qur’an been the guide (dalil) 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 Truth

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‘ādh 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’yi).’ Thereupon the Messenger of God struck his chest and said, ‘Thank God for guiding the Messenger of God’s messenger.’ 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 commonality who reject the principle of ijtihād indicate that the tradition is maqṭū’ – the isnād is said to be broken. Although the tradition is transmitted by several

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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-Mughîrah b. Shu'bâ'\textsuperscript{172} who stated that he related it on the authority of men from Bânî Ḥîmṣ\textsuperscript{173} who stated that it was on the authority of Mu'âdh b. Jabal. Therefore, Nu'mân says it is a weak tradition and its transmitters are unknown individuals. Even if it is presumed that the tradition is established, Nu'mân argues, most probably the words of Mu'âdh ‘I will exert effort to form my own judgement’ meant that he would seek the evidence from the Book and the sunna. Nu'mân adds that when ‘Umar b. al-Khaṭṭâb persisted in his question to the Prophet about the meaning of al-kalâla,\textsuperscript{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 ijîthâd was permitted and two persons exercising their rights of ijîthâd 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. Dâwûd and his father, the founder of the Zâhiri school, for their opposition to the principle of ijîthâd. Nu'mân also objects to this group’s assumption that the exercise of ijîthâd 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: [\textit{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? [\textit{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, ‘ijîthâdû, He commanded: Ask the people [who have] the reminder if you do not know (Q.16:43).

Nu'mân rejects Shâfî‘î’s argument in defence of ijîthâd concerning the command to face the Sacred Mosque in prayer very weak because it is known to every Muslim.

\textsuperscript{172} He was a Companion and considered as one of the chief dâhiyâs of his time. Dâhiya 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-Mughîrah that if he were shut behind seven doors, his cunning would find a way to burst open all the locks. See Henry Lammens, ‘al-Mughîrah b. Shu'bâ’, \textit{EL2}, vol. 7, p. 347.

\textsuperscript{173} Bânî Ḥîmṣ cannot be identified but Muhammad Murtaḍâ al-Zabîdî in his Tâj al-‘arâs (Kuwait, 1977), vol. 17, p. 533, states that the city of Ḥîmṣ in Syria was named after Ḥîmṣ b. Šahr from Bânî Imlîq.

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*].’ 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.’ 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?

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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.

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. 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 ‘Ali b. Abi 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-Ṭayyibi 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.\footnote{Ibid., p. 132.}

\footnote{Ibid., p. 127.}

\footnote{Poonawala, ‘al-Qāḍī al-Nu‘mān and Isma‘ili Jurisprudence’, p. 127.}
Appendix I

Relevant verses from Nu’mān’s *al-Uṣūra al-muntakhaba* (الأرجوزة المتخبة, قصيدة مدوّجة) (نظمها في أبواي الفقه).180

لا بعث ولا الطول ولا النعمة  
فأتم نبأ وذهب مودعه

،  
واجد في آخرها اختلافاً  
وكأنه كان فله سبيل

وشرح ما علمته من علمه  
فجاء فيهما علل اختلافهم

حكيت فيها علل اختلافهم  
وجنون بالشهاب والبرهان

لكتاب الفول مع الصبيان  
من بعد ذكري عند كل مسألة

ما جاء فيها بالاختلاف النقيل  
بذكر نقلها من الكتاب

نضغاً وبالإسناد والأنساب  
بغير ما رأي ولا قياس

لا على المذهب في الأساس  
فكتم في مالي كتاب

ثم اختصرت لنظرة في مختصر

لم اختصرت بعد مبا كيبا  
أرجح عنها طرق الإسناد

وكل منحول من الأضداد  
وجنون بالساب في مهذب

180 MS in the collection of my father Mullâ Qurbân Husayn Poonawala. The word *risâla* added to the title given in the edited versions of Idris, *‘Uyûn al-akhbâr*, p. 565: الرسالة الأرجوزة المتخبة, and *‘Uyûn al-akhbâr* (ed. Ghalib), vol. 6, p. 46: الرسالة الأرجوزة المختارة المنتخبة are incorrect.
The Evolution of al-Qādī al-Nu’mān’s Theory

It was composed after Mukhtaṣar al-īdāh as Nu’mān states:

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. Al-Majdū’ gives its title as al-Qaṣīda al-muntakhaba.

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 آلهه حمدًا يقضي المرد في فضله وجمبته، وصلى الله على محمدٍ خاتم نبياته وعلى الأئمة من ذريته، أوليائه. قال القاضي الحسين بن علي بن القاضي النعمان: رويتُ هذا الكتاب وغيره من الكتب المروية عن موالِينا الأئمة الصادقين من أهل بيت رسول الله، صلى الله عليه وسلم أجمعين، التي صنفها جدّي القاضي النعمان بن محمد رضوان الله عليه، عن أبي القاضي علي بن النعمان، رضي الله عنه وأرضاه، مما عبّر عنه وشرحه، إجازة بإسناده الذي أذكره قبل صدر هذا الكتاب. ثمّ ذكرت ذلك لمولانا الإمام الحاكم بأمر الله أمير المؤمنين

181 Al-Qādī al-Nu’mān, al-Urjūza al-muntakhaba, MS 2v–3r.
182 Variant reading in another MS (in the collection of Mullā Qurbān Husayn): والفهم:
183 Ibn Khallikān, p. 416; he states: ولِه الفصيحة الفقهية لجفها بالعصبية فصيحة مرودجة نظمها في أواب ابوا الفقه.
الحمد لله ﷺ نعم مسيرته وسماها وتعظيمه وسعده ونوره ورزقه وؤمنه وجميع نعمه وخيراته.

[الدراسة النقدي التعلم من المعنى]

[محاسبة الرحمن الرحمن]

الحمد لله ﷺ لك من جعلناك شاهداً على أنك جمعت على ذلك. فأنت أيها العالم وبدأت بالصدار الذي أرويه عن أبي رضي الله عنه. وهو:

[المقال النقدي على ابن القاضي التعلم من المعنى]
قال الفاضلي النعمان بن محمد: كنت قد جمعت من قول مواليني الأئمة الطاهرين من أهل بيت رسول الله صلى الله عليه وسلم أجمعين كتبًا في علم الفتاية، وصفيتها وبوئيتها وجزائها وألقاها. وحكيت الروايات على اختلاف الرواة عنهم فيها، وأثبتت النثبت عنهم منها، وجمعت بالدليل على ذلك والبيان والشواهد والبرهان. كثبت عدد أجزائها وعظمت المؤنث فيها على ذوي ابتعاثها. واحتسبت منها مزونًا ودليلاً في مختلفات لم تكن كثيرًا من الطاهرين إلى الغابة، فأعجيتهم تلك لتكارها، واستقللوا الفائدة في هذه الاختصارها، وسألي الله غير واحد من القضاء والحكّام والأولى الطاهرين علم الجمل والحوار إن أجمع لهم كتبًا متونًا في ذلك يقرب معناه، ويكفينا من كتبه وقراءته (عندنا مسحرون، وفي كتبنا السخّدار: القرآن وفره). ويوحده الحدث الصغير، ويفيد من الشيخ الكبير، ويسع له المشغول والخليجي، وابنائه القرير والغني. فلاست لهذه الكتب متونًا بين التط北路 والاختصار، ومستوىً مختصر الآثار. ولما اعتبرت مقدار هذا الكتاب، فرأيت أنه يقصص عن إدخال الأساسي فيه، ورأيت أن ذلك ما لا يصح به عنه، رأيت أن أدخله بأقرب الأساسي وأحاوله وأصحِّبه وأثبته وأساساه. ففرعت ما أردت إثباته فيه شياًء إلى ولي الامر وإمام الزمان وصاحب العصر مولاي أمير المؤمنين الإمام المعمر لدين الله صلات الله عليه وعلى أبياته الأميرة الطاهرين. فأسخطت من ذلك ما أمر، فأدي الله علوي أمره بискافته، وأثبت في هذا الكتاب ما ترطب وأمر بإثباته، وقرأت عليه قراءة. فكلّ ما مبتب فيه فمته. وأنا أروح لمن أخذ ينظري [وتنعنه وعلى أبنائه الطاهرين فقد استضاء نوراً، [و]من أفتحر من نور أمير المؤمنين وقد استعذب مأء من يشرب من رأس العين.

Appendix III

مختارات من كتاب عهد القضاء للفاضلي النعمان من المعرّ

بسم الله الرحمن الرحيم

هذا كتابٌ من عبد الله ووليّه بعد أي تذكير معرّ لدنا الله أمير المؤمنين لنعمان بن محمد الفاضلي، أن أمير المؤمنين للمحلل الذي اسطف الله به من الخلافة السني قدرها والإمامة العلي خطرها، وإن جهله سراجاً منيراً في أرضه، يهذب به ويستضاه ببوره، ونصبه علماً لخلقه، وقائماً بحقه، وموضوعاً دعاءً الله وإمامه ومنكداً وثائق الإسلام، ومنهجاً شراط جده محمد رسول الله صلى الله عليه وسلم، رأى أن يرفع من قدر القضاء حسب ما رفعه الله عزّ وجل، و كيف كان أمير المؤمنين الذي وقف على من وعى، ودياك، وأماكن، وموادك، وطريقك استكفاء القضاء بالنصر أو أعماله، وأطلق لك النظر فس تظَّلم إلى من أهل المدن التي فيها القضاء

والحكام وغيرها بجميع الكور، وإنفاذ الحق على من وجب عليه، وإعطائه مستحقة. ثم رأى
عندما وقف عليه من صدق مؤلّف، وتوجّه الحق في أحكامك، وما كشف عنك الامتنان،
ومخصّضه به الاختبار، وحساس مك فيه الآثار، توكيد ذلك لك، وأذاعته وتشديدك ... ولكن
أمرك جارياً، وحكمك نافذاً في كلّ من تظلم إليك أو تظلّى...-health he من عددك من كافة أهل
مدان أمير المؤمنين، وعامة كورة الدانة منه والشامسة منه، وأن تطالو أحد من قضاة المهدية
والقيران إلى رفع أحد من أهل البوادي التي حولهما، إلى أنفسهم، إذ كان أمير المؤمنين إنما
أطلق لكل قاضٍ فيه النظر في المدينة التي هو فيها، وما أحيان به قطراً، وليس له أن ينفرد
إلى النظر فيما خرج عنها، وأطلق لهبرهم من القضاة النظر في بوادي مدنهم، وأن لا يقيم أحد
همها حاكمًا ولا أميناً بجميع الكور التي لا قضاء فيها، ولا ينظر من أحد من أولاء أمير
المؤمنين، وطياته عليهم، وسائر جنده المقيمين بحضيرة، وأن يكون النظر في جميع ذلك كله
لك، مطلقًا فيه ومجتمع، لا يُراعك فيه أحد من القضاة والحكام ... مقدمًا في أحكامك وأفضلك
بدك الله ... وما لم تجد فيه نصًا ولا في سنة جد أمير المؤمنين محمد رسول الله صلى الله
عليه وآله ورب العالمين حكمة فلسفة في مذاهب الأئمة من ذريّته الطاهرين ... الذين
استحفظهم الله أمر دينه، وأدمعهم خروج علمه، ومكنون وجيء، وجعلهم هداة العباد ... الطريقة
المثل والمقتدى بهم في أمر الدين والدنيا. وما الفهم علىك فشكل، واُذاع فاعض، أنثيته إلى
أمير المؤمنين لفرقه على وجه الحكم فيه ... وقال جل ذكره وتابك اسمه: "ولو ردو إلى
الرسول وإلي أولى الأمر منهم لعمل الله فيهم بستر سلطون متهم" (سورة الندم، 63). وقال عزر
اسمه: "فاستعندون أهل الذكرِ إن كنت لا تعلمون" (سورة النحل، 104). وقال النبي والناظر الصادق
محمد صلى الله عليه وآله: إنه تبارك فيهم الفضل، كتاب الله وعذري أبي، فإن تضلاً ما
إسكتهم بهما، فإنهم لا يفتقدوا حتى يردوا على الحوض ... كتب يوم الآثرين للبيبين بقيتًا من
شهر ربيع الأول سنة ثلاث وأربعين وثلاثمائة ... .

Appendix IV

إجازة لكتاب اختلاف أصول المذاهب

بسم الله الرحمن الرحيم

الحمد لله على ما أسى من عطائه جدّ عبد شاكي لآلاه، مستعد للمزيد من نعماته، وصلى
الله على محمد خاتم الأنبياء، المستحق لأمه يوم لقاته، وعلى وصيّة والأمة من الله أصحابه. قال
قاضي القضاة عبد الحسن بن محمد بن النعمان: رويت هذا الكتاب وهو اختلاف أصول
المذاهب ورد على من خالف الحق فيها من أبي القاضي محمد بن النعمان رضي الله عنه
وراءو آبي عن أبي الفاضل العمان بن محمد بن منصور بن أحمد بن حيّون النصيري، رضي الله عنه ورآته وأركم منقبة ونهاه، مصنّف هذا الكتاب بعد عرضه إنه على مولانا وسيدنا الإمام المعرّفِ لِدِينِ الله أمير المؤمنين صلوات الله عليه وعلى آياته الظاهرتين والآمنة من ولده الأكبر، وإجازته له وكان تصحيح ورواه له وزلده من بعد يعد عرض كلّ رأي منهم له على إمام زمانة واستفالتة إياه في روايته عنه، وإجازة مولانا العزيز بأمر المؤمنين صلوات الله عليه ولودي محمد بن الفاضل الله عنه قاضيه إجازة ثانية. فعرضت ذلك على مولانا الإمام الحاكم بأمر الله الإمام العزيز. فأجاز لي روايته عنه وأطلق لي إملائه على عيديه، ووقع على ظره ترقمًا معلومًا بخط به المالي: "أجروا سماع هذا الكتاب وإملاءه لفاضلي عبد العزيز بن محمد بن النعمان، والحمد لله ربّ العالمين".

Appendix V

بداية من كتاب اختلاف اصول المذاهب

بسم الله الرحمن الرحيم

الحمد لله الذي أنزل الكتاب على عدو محمد البشير الضيّر...

أما بعد، فإنّي رأيت أوّل القرية بعد ابنفاصه على ظاهر نصّ القرآن، وتصديق الرسول، قد اختلطوا في الفتاوى، في كثير من الفروع وفي بعض الأصول، وفي وجود كثرة من التأويل، وذهوا في ذلك مذاهب، وتفقّروا فقراً، وتحريروا أحزاناً، بعد أن سمعوا قول الله عزّ وجلّ وثورة: "أنّ أليمى للدينين ولا تنظّروا فيه" (سورة الشعرى: 123); و"وَمَا تَفَرَّقُ الْذِّينَ أُوتُوا الْكِتَابَ إِلَّا مِن بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَعْضُهُمْ بَعْضًا" (سورة البقرة: 188). وقوله عرّ وجلل: "إِنّ الْذَّينَ عِدَّتُوا لِلْحَقِّ الإِسْلَامَ وَمَا أَخْلَفَ الْذِّينَ أُوتُوا الْكِتَابَ إِلَّا مِن بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَعْضُهُمْ بَعْضًا" (سورة البقرة: 193). وقوله: "أَفَلا يَتَكَبَّرُونَ أَتْرَقُوا أَمْ عَلَى قَلُوبِ أَفْقَاهُمْ" (سورة البقرة: 24:17)، و"وَلَوْ كَانَ مِنِ الْعَذَابِ غَيْرُ الْلَّهِ لَوَجَّدُوا فِيهِ أُحْلِفُنَا بِكُلِّ شَيْءٍ كَبِيرٍ" (سورة النسل: 31:28). فقّد جلّ تناولت التفريع والاختلاف، ودعنا إلى الاجتماع والإتفاق، وأمّر بذلك، وحُصِّن عليه، ورغّب في إقامة الدين، ونفى عن التفريع فيه. وقد رأيت، وأبالله استعين عليه أنكّ، وعلى تأديته وليه وإرشاده ومواكينه، وإيّاه للفاجع استرشد وأستعد، ومن زواج بحور أنفنت وأستمدّ، بأن سبّ هذه الكتابة ياً وتبادلي فيه بعثه اختلافهم والذي دعاهم إليه، وحملتهم عليه، وسبّتهم فيه، وأذنوا ذلك يذكر جملة قولهم، وما أصلّوّ لأنفسهم، وهي فضاءة عليهم، وأشفقَهُ بذكر مذهب أهل الحق فيما اختلافوا فيه، وإيضاحه وبيناته، والشواهد له والدلائل.

186 Nu’mān, Ikhtilaf, pp. a–b.
187 Nu’mān, Ikhtilaf, pp. 1–2.
عليه. ثم أذكر بعد ذلك قول كل فرقة واحتجاجها بما قائله، ورد على فيما فارقت فيه الحق، بما انت挟له، وقولك أهل الحق في ذلك بحسب ما أحدثنا عن أئمة عليهم السلام، رجاء ثواب الخدمية في ذلك، والعملية بأنسابه. فأما البرهان فالأولى للله المفيدين له والفائزين لأبوابه.

Appendix VI

ذكر جملة قول المختلفين في أحكام الدين:

أجمع المنسوبون إلى الفقه من العلماء أن ما كان من الأحكام وعلم الحلال والحلام ظاهرا في نص القرآن وجرب الحكم والعمل به، وأن ما لم يوجد برفعه من ذلك في القرآن أنمس في سنة رسول صلى الله عليه وعلى آله. فإن وجد في السنة أخذ به ولم يتعبد إلى غيره. وقال كثير منهم: "وأما لم يكن من ذلك في كتاب الله جل ذكره ولا في سنة رسول صلى الله عليه وعلى آله نظرنا في قول أحد من الصحابة، فإن أحسناه قد قالوه وأجمعوا عليه أخذنا به، وإن أحسناه اختلنا فيه تخرينا قول من شتات منهم، فقلنا به.

وكان بعضهم: "ومن أحسناه قال به منهم لم نخرج عن قوله، وما لم نجده في كتاب الله ولا في سنة رسول صلى الله عليه وعلى آله ولا في قول أحد من الصحابة نظرنا. فإن كان مما اجتمع العلماء عليه قلنا به، ولم نخرج عن إجماعهم فيه.

... واختلفوا فيم قلدوه، فذهب كل فريق منهم إلى قول قائل ممن تقدمهم. فقالوا بقوله، وأحلوا ما أحله لهم، وحجروا ما حرجه عليهم، وأقاموا قوله حجحا عندهم، وأعترضا عن قول من خالفه ... وخطأ بعضهم بعضا، وذكر قولهم ممن خالفهم، وفرقهم ممن خالفهم. فقالوا: "لنا أن نستبطن كما استبطننا ولا نقوله". فقال بعضهم بالقياس، وقال آخرون بالرأي والاجتهاد. وقال آخرون بالاستحسان، وقال الآخرون بالنظر، وقال آخرون بالاستدلال. وهذه ألقاب لفظها بها مذاهبهم ليسووها إلى الحق ببراعهم. وكليها يرجع إلى أصل واحد، ويجمعها معنى فاسد; وهو اتباع الهوى والظن. ...

Appendix VII

وكان سبب جمعي هذا الكتاب في مثل هذا وذلك التي جاريت بعض من يذهب إلى القول بالاجتهاد. فأثبت له فساد القول به، واحتضنت عليه بمثل ما ذكرت من الجهة في هذا الكتاب.

188 Nu’mán, Ikhtilāf, pp. 8–10.
حتى اقتصوع. وقد رأيت أنه اعترف بالحق ورجع. ثم انتهى إلى بعد ذلك أنه جمع كرساسة ذكر فيها قول الفائنين بالاجتهاد، وحجتهم فيه إصراراً منه بعد الحجة على ما كان عليه. وقد حكيت في هذا الكتاب جميع ما صنفه في كرساسه من قول أصحابه، وغير ذلك مما انتهى إلى من قولهم وحجتهم مما لم يذكره، وأثبت نساده والحجة عليهم فيه. ولم أن أقصد إلى إبطال الاجتهاد خاصه. فهذا من انتهى ذلك عتبة إليه ذي ارتباط ما سواء مما صنفه في هذا الكتاب من أصول مذاهب المخالفين للحق. فأنا، وبالله التوفيق، ذكر جميع أقوالهم والحجوة فيما أصلوه عليهم، رجاً ثواب الله تعالى في ذلك جل ذكره، وإيام أسال وأرجو أن يجعل ذلك خالصاً لوجهه وصلى الله على محمد رضاه ورسوله وعلى الأئمة الأبرار من أهل يبه وسلّم