POWER VS. AUTHORITY: AL-JUWAYNĪ'S INTERVENTION IN PRAGMATIC POLITICAL THOUGHT

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In her article, 'What is Authority?', Hannah Arendt draws a distinction between authority and power, arguing that scholars have either conflated the two terms, or worse, disregarded the importance of the former. According to her, authority gives 'the world permanence and durability which human beings need precisely because they are mortals—the most unstable and futile beings we know of'.[1] It exists apart from and beyond power because while power gives order and is intended to create obedience through coercion or persuasion in the present, authority extends into the past, rooting the present and endowing it with a sense of permanence, durability and continuity. To this extent she states, '[t]he authority of the living was always derivative, depending upon...the authority of the founders, who were no longer among the living. Authority, in contradistinction to power (*potestas*), had its roots in the past, but this past was no less present in the actual life of the city than the power and strength of the living'.[2] Because authority is rooted in the past, Arendt argues that it relies upon the preservation of tradition 'by handing down from one generation to the next the testimony of the ancestors, who first had witnessed and created the sacred founding and then augmented it by their authority through centuries. As long as this tradition was uninterrupted, authority was inviolate; and to act without authority and tradition....was inconceivable'.[3] Thus, tradition and authority become more important than brute power which she believes to be limited both in longevity and persuasive ability. The strength of authority, however, is also bound to religion, as traditions, to the extent that they are past-looking, return to a sacred moment or a sacred beginning. The archetypical case of this trinity of tradition, religion and

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[1] Hannah Arendt, 'What is Authority' in *Between Past and Future: Six Exercises in Political Thought* (New York: The Viking Press, 1961), 95.
[2] Ibid, 122.
[3] Ibid, 124.

authority for Arendt is the Roman Empire, whose sacred myth enables it to survive many transformations, the most important being from republic to Christian empire. The secularization of the empire, coupled with the loss of religion, destabilized this trinity and jeopardized tradition and authority, eventually bringing about what Arendt characterizes as the modern crisis of authority in which power and authority are conflated, and the importance of tradition, religion and authority is neglected. Luckily, however, 'the loss of worldly permanence and reliability—which politically is identical with the loss of authority— does not entail, at least not necessarily, the loss of the human capacity for building, preserving and caring for a world'[4] and societies can continue to progress and flourish despite the absence and crisis of authority.

Arendt's critique of the conflation of power and authority in Western political thought can similarly be extended to Islamic political thought, where a pragmatic strain focusing on physical power is present. And while political thought is far from uniform in Islamic intellectual history, most juridical treatises emphasize the necessity of a powerful Caliph to ensure order within the Empire. The sacred beginning in the Islamic context was the Prophet himself, whose legislative, judicial, political and religious actions made him the perfect prism though which all authoritative duties could be understood. His death, thus, ushered in a series of practical problems for the Muslim community as these duties could no longer be undertaken by any single individual.[5] Nevertheless, to ensure continuity of the Prophet's message, the locus of the community's efforts turned towards understanding, conveying and enacting his political precedence.

The question initially focused on who was the most fitting, or legitimate, to succeed the Prophet in his worldly-political affairs. Abū Bakr, the Prophet's closest companion, undertook this obligation with little resistance, particularly as he was regarded highly in the nascent Muslim community and possessed the requisite qualities and criteria to be accepted by the Madinan and Makkan polities. Abū Bakr understood his position as a successor to the Prophet and a maintainer of his legacy, an ideal also shared by Abū Bakr's successors. However, following the assassination of 'Uthmān, controversy surrounded the question of leadership leading to tribulations (*fitna*s) for the fledgling Muslim

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[4] Ibid, 95.

[5] This was the conclusion reached by the Sunni community whereas the Shi'i community eventually articulated the doctrine of the *imāmate* in which the *imām* was seen as an infallible spiritual and legal leader. For the development of this early doctrine see Heinz Halm, *Shi'ism* (New York: Columbia University Press, 2nd edn., 2004).

community.[6] At the heart of the disagreement between parties was the question of who was to be considered a Muslim,[7] and also a legitimate ruler over the Muslim community. The most prominent articulations regarding legitimate leadership were promulgated by the Khārijīs,[8] proto-Shiʿis, and the Umayyads. All three groups grappled with the question of authority and power and emphasized them to varying degrees. It is important to note that authority in these early conversations was most intimately tied to what Arendt has noted as tradition, namely that which connects one back to a sacred authority. However, the groups emphasized different elements of tradition; for the Umayyads and the proto-Shiʿis it was their familial ties which made them heirs to the Prophet's legacy, and for Khārijīs, strident emphasis was placed on the supremacy of the text and its injunctions. What connected all three

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[6] The overall issue of the Caliphate, referred to in *kalām* treatises as a discussion on the *Imāmate*, was first and foremost a theological issue which established the basic conceptualization and defence of the Sunni doctrine of the *Imāmate*. In the texts these discussions usually came last and focused on four primary issues: (1) the necessity of the Caliphate, (2) whether this necessity is established via reason or revelation, (3) the fallibility of the *imām* (which was in response to the Shīʿī doctrine of infallibility), and (4) the order of the *imāms* or Caliphs after the death of the Prophet (also in response to the Shīʿī belief that ʿAlī was the only true successor). Later juridical discussions built upon the foundations erected by the *kalām* texts.

[7] In the debate of who was considered to be a Muslim, in addition to the Khārijīs and proto-Shiʿis, the Murjiʾa also played a crucial role. Standing in contrast to the Khārijīs, the Murjiʾa understood faith (*īmān*)—to the exclusion of action—as the decisive criterion and deferred judgment on the faith of individual believers, arguing that only God could adequately pass judgment. Their doctrine of postponed judgment (*irjāʾ*) meant that to the extent that leaders proclaimed themselves to be Muslim, they were legitimate. Early polemics between the Khārijīs, Murjiʾa and proto-Shiʿis can be found in Wilfred Madelung, 'Early Sunnī Doctrine concerning Faith as reflected in the Kitāb al-īmān of Abū ʿUbayd al-Qāsim b. Sallām (d. 224/839)', in *Studia Islamica*, 32 (1970), 233–54; Joseph van Ess, *Das Kitāb al-Irǧāʾ des Ḥasan b. Muḥammad b. al-Ḥanafiyya*, in *Arabica*, 21 (1974): 20–52; and Patricia Crone and Fritz Zimmermann, *The Epistle of Sālim ibn Dhakwān* (Oxford: Oxford University Press, 2001).

[8] The Khārijīs espoused the most stringent criteria for legitimate leadership constructed upon their rejection of faith without works, which entailed the apostasy of a sinner. If the leader was a known sinner the Khārijīs averred that his immediate removal was obligatory, by force if necessary, and also their excommunication from the community. When the Khārijīs split later into the Najdis and Azraqis, the former would only excommunicate individuals if they committed a grave sin, though they maintained the overall puritanistic doctrine with regard to legitimate leadership.

was their recognition that physical power was essential to create and maintain a pious polity.

Eventually when hereditary succession became the norm under the Ummayad dynasty, and new areas, cultures, and peoples came under the purview of the Caliph in Damascus, the emphasis on Arendt's notion of authority as tradition waned and was replaced by discussion of physical power in order to address the complexities of governing a vast and diverse empire.[9] From the fifth/eleventh century onward, jurists and philosophers contributed to the growing theorization of the Caliphate, each writing with a unique set of influences and concerns.[10] Issues addressed within these treatises ranged from the selection of a legitimate leader, to usurpation, to the selection of judges, to the granting of land; and although all emphasized the importance of religion, pragmatic political concerns remained the driving force. Of these early treatises, *al-Aḥkām al-sulṭāniyya* by Abū al-Ḥasan al-Māwardī (d. 450/1058), emerged as the most lauded as it fused together the doctrinal concern of legitimate leadership, the practical concerns of governing, and the legal ramifications of both.[11]

[9] The difficulty of governing a vast empire can be noted in legal texts which quickly began to address the issue of non-Muslims under Muslim rule (*dhimmī* rules). Anver Emon argues that, as opposed to being seen as rules of exclusion or oppression, they should be seen as resulting from the challenge of governing a diverse polity. The rules, as such, cannot be read as being 'constitutive of an Islamic ethos', but they do point towards deeper questions with regards to governance and the rule of law. For more, see Anver Emon, *Religious Pluralism and Islamic Law: Dhimmis and Others in the Empire of Law* (Oxford: Oxford University Press, [2012] 2014).

[10] For the most recent account of the development of Islamic political thought see Ovamir Anjum, *Politics, Law and Community: The Taymiyyan Moment* (Cambridge: Cambridge University Press, [2012] 2014), chs. 2 and 3.

[11] al-Māwardī's treatise represents the genre of political thought written by jurists, i.e., it was concerned with addressing the realities of political power through the legal reasoning of the jurist. Other genres of political thought existed such as the mirror for princes in which the overwhelming concern was to ensure the survival of the ruling elite. Representative of this genre is Ibn al-Muqaffaʻ's (d. 139/756) *Kalīla wa-Dimna*. Finally, there was political thought influenced by the Greek philosophical tradition which was predominantly eudaemonistic in nature: al-Fārābī's *al-Madīna al-fāḍila* most aptly captures this trend. In addition to noting these three genres, Ovamir Anjum argues that four dimensions must be analysed when looking at any political thought: the sociopolitical context in which it is penned, the location of the text within a larger discursive tradition, its stance towards elements of political life and its underlying moral vision. Thus the distinction between these three strands of political thought represents deeper fissures both in terms of theory and content. See Anjum, *Politics,* 19.

Ovamir Anjum's recent account of the history of Islamic political thought aptly highlights the developmental shift from authority to power, and in doing so demonstrates both the florescence and polarization of Islamic political thought. He argues that following the death of the Prophet until about a century and a half later there were two competing visions of political rule. The first, a community-centred vision,[12] emphasized the centrality of the *umma* in any conversation regarding authority; and the second, a rule-centred vision, emphasized the power of the Caliph.[13] While the former had the ideological edge, the latter was practically exigent and thus by the second/eighth and third/ninth century, Anjum argues, the rule-centred vision became dominant and the texts penned after this period captured this stance. Adopting the rule-centred vision had far-reaching consequences and, as Anjum explains, it eventually came to thwart the community's claim to any meaningful political involvement. This shift is noticeable in political treatises where a discussion of the community is largely absent and the focus is predominantly on matters of statecraft.[14] According to Anjum, the articulation of a rule-centred vision first appears in the works of Abū Bakr Muḥammad ibn al-Ṭayyib al-Bāqillānī (d. 403/1013)[15] and Abū Manṣūr ʿAbd al-Qāhir al-Baghdādī (d. 429/1037)[16] and is carried through by al-Māwardī, ʿAbd al-Mālik ibn Yūsuf al-Juwaynī (d. 478/1085), Abū Ḥāmid al-Ghazālī (d. 505/1111)[17] until a shift is finally advocated for by Taqī al-Dīn

[12] Anjum (*Politics,* 61–2) Polargues that the community-centred vision had five central elements: '(1) It places the *umma,* the community of all believers, as the recipient of the Prophet's mission to humankind....(2) It requires rendering qualified obedience to authorities from among themselves. (3) It requires *shūrā,* the practice of participation and consultation in collective affairs and, (4) by corollary, considers the Community's collective affairs in need of rational human management. Finally, ...(5) This vision considers the caliph answerable to those he rules, the Community'.

[13] In explicating the rule-centred vision, Anjum states (ibid, 71), 'In this new vision, we find subjects of the caliph as passive recipients of his guidance and discipline. Their obligation is to obey God and hence the caliph appointed by God, whose job it is to establish God's Shariʿa—obedience to the caliph is tantamount to obedience to God'.

[14] Anjum, *Politics,* 85–107.

[15] On al-Baqillānī's political thought see Yusuf Ibish, *The Political Doctrine of al-Baqillani* (Beirut: American University of Beirut, 1966).

[16] See Abū Manṣūr ʿAbd al-Qāhir b. Ṭāhir al-Baghdādī, *Kitāb Uṣūl al-dīn,* (Istanbul: Maṭbaʿat al-Dawla, 1928).

[17] There are a variety of places where al-Ghazālī discusses his political thought. The primary one is *Faḍāʾiḥ al-bāṭinyya* (ed. ʿAbd al-Rahmān Badawī;

Aḥmad Ibn Taymiyya (d. 728/1328).[18] Ibn Taymiyya, for Anjum, champions a return to the community-centred vision which is the only legitimate and authentic model when measured against Prophetic practice.[19] Placing Anjum's arguments within the framework of authority and power as argued by Arendt, the early community-centred vision would reflect a focus on authority, tradition and religion, while the later rule-centred vision would primarily be centred on power.

While I largely agree with the astute observations made by Anjum, in focusing on Ibn Taymiyya he does not fully evince the thought of other scholars he mentions. In this article, I will add another layer to the discussion by explaining the ideas of al-Juwaynī whose political thought has important ramifications on the way authority and power are constructed and understood in Islamic political thought. I will demonstrate that al-Juwaynī did not altogether abandon the community-centred vision in his political thought and while it is correct to say that in his primary text on political thought *Ghiyāth al-umam fī iltiyāth al-ẓulam* (the Saviour of the Nations Shrouded in Darkness)[20] al-Juwaynī

Cairo: al-Dār al-Qawmiyya li-l-Ṭibaʿa wa-l-Nashr, 1964). For a full discussion of the various texts in which he discusses his political thought see Carole Hillenbrand, 'Islamic Orthodoxy or Realpolitik? al-Ghazālī's Views on Government', *Journal of the British Institute of Persian Studies*, 26 (1988): 81–94; and Leonard Binder, 'al-Ghazālī's Theory of Islamic Government', *The Muslim World*, 45/3 (1955): 229–41.

[18] See Taqī al-Dīn Ibn Taymiyya, *Kitāb al-Siyāsa al-sharʿiyya fī iṣlāh al-rāʿī wa-l-rāʿiyya* (Beirut: Dār al-Afāq al-Jadīda, 1983).

[19] Anjum, (*Politics,* 168–9) argues that the shift away from a community-centred vision was not just about politics, but most fundamentally about law and theology, and more specifically epistemology: 'The foundations of the classical caliphate theory, namely a ritualistic understanding of the caliphate and depoliticization of the community, were underpinned by theological cynicism toward reason in post-revelational life on the one hand and elitism on the other, both of which deepened as the Sunni *kalām* doctrine matured in the classical period. Both elitism and cynicism toward reason militated against the other option, that of resurrecting and reimagining a community-centred vision of Islam. A politically vibrant society requires grounding political practice and theory in the normative apparatus of society, which the sociopolitical trends of the classical period had made difficult to attain and the intellectual commitments of the age had rendered impossible to imagine.' Therefore what Ibn Taymiyya advocates is not merely a political shift, but a paradigmatic one.

[20] Hereafter referred to as the *Ghiyāthī*. All translations and references to the text are based on the following critical edition: al-Juwaynī, *Ghiyāth al-umam* (ed ʿAbd al-ʿAẓīm al-Dīb; Beirut: Dār al-Minhāj, 2011).

devotes an extensive amount of time to issues of basic statecraft and power, his treatise is unique among his peers and predecessors because he moves beyond theorizing about the Caliphate to theorizing about its absence. This is crucially important as al-Juwaynī does not make the continuation of the Shari'a contingent on the presence of the Caliphate; instead, with the collapse of the Caliphate and the absence of a legitimate *imām,* al-Juwaynī argues that society will continue vis-à-vis a newfound reliance on *mujtahid*s coupled with the legal knowledge of Shari'a norms which have become imbricated in the practice of smaller believing communities. The ability of the Shari'a to obviate social crisis and ensure the continuity of law displaces the centrality and power of the *imām* (i.e., a rule-centred vision) and postulates that stability and continuity rest on the people's adherence to Shari'a norms and the legal scholars who safeguard them (i.e. a community-centred vision). Implicit within this argument is the notion that it is the Shari'a, and its practice by individuals, which provides a source of authority and governance in lieu of formal government.

By emphasizing the role of the community in the absence of the *imām* al-Juwaynī recognizes the distinction between authority and power, and the foundational nature of the former in relation to the continuity of society. Furthermore, he also recognizes that authority cannot be confined to a single individual or institution, nor can it be due to overwhelming or totalizing power. Rather, authority is placed in the Shari'a and in communal homage to it, so that, in the absence of formal power in the form of the Caliphate, the authority of Shari'a can facilitate order. On this basis I argue that al-Juwaynī differentiates between power proper, which is inextricably tied to the presence of government, and authority, which can eclipse governmental structures and provide social order. As such, al-Juwaynī grudgingly accepts the absence of the *imām* only, because he believes that the Shari'a will continue to provide stability and continuity, even if only to limited form. This dualism in al-Juwaynī's thought envisages a political system contingent on both power in the form of government, and authority, in the form of the Shari'a. It allows him to think beyond the institution of the Caliphate to construct a symbiotic system in which the power of the Caliphate is reliant upon the authority of the Shari'a, which is diffused in society and is both prior to, and exists well after, any formal manifestation of power. This distinction shows al-Juwaynī's 'awareness that the source of authority transcends power and those who are in power',[21] and enables a political philosophy better situated to transcend temporal situations and adapt to the contours of novel or changed historical situations.

[21] Arendt, *Between Past and Future,* 141.

THE STRUCTURE OF *GHIYĀTH AL-UMAM* AND ITS RECEPTION

The *Ghiyāthī,* while commingling practical and theoretical situations, is primarily a proleptic text best described as a philosophical thought experiment with various strata cohering to form a cogent political expression. It is neatly divided into three sections. The first focuses on the establishment of the *imām,* duties related to ideal government, and questions of legitimacy more broadly; the second focuses on the collapse of government in a manner that eliminates the possibility of returning to any form of ideal government; and the third marks the apogee of al-Juwaynī's philosophical enquiry, with a discussion of an acephalous society devoid of formal and informal structures of governance. While his investigations are broadly theoretical, they are also married to his own historical context, one in which the ʿAbbasids were suffering great political losses.[22] This allows him to both hypothesize situations which were largely unarticulated by his predecessors and to reach conclusions which challenge previously accepted positions on the *imāmate*.[23] To

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[22] Historically it is important to note that when al-Juwaynī was writing the *Ghiyāthī* power politics in the region were anything but straightforward. In Baghdad the ʿAbbasid caliphate retained the formal seat of power, but actual power had been transferred to dynastic rulers, the most important at the time being the Seljuks. Niẓām al-Mulk (d. 485/1092), albeit just a vizier by title, was at the zenith of his power. This power was expanded by the death of Alp Arslan in 465/1072. The throne passed to his adolescent son Malikshāh (d. 485/1092), necessitating the continuation of Niẓām al-Mulk's virtual control of power. Al-Juwaynī was astutely cognisant of these political realities: the second section of his book provides insight into al-Juwaynī's opinion of the political situation during the time of Alp Arslan (d. 465/1072) and Malikshāh. It is also important to note that the *Ghiyāthī* itself was written at the behest of Niẓām al-Mulk himself and, in the second section of the book, after discussing what is to be done in the absence of a qualified individual for the *imāmate,* al-Juwaynī digresses briefly to praise his patron directly: see *Ghiyāthī, 532–6*. In addition to providing political guidance, Niẓām al-Mulk introduced policies directed at the social and intellectual betterment of the Muslim Empire such as his creation of the Niẓāmiyya madrasas. For a complete biography of Niẓām al-Mulk see H. Bowen and C. E. Bosworth, art. 'Niẓām al-Mulk', *EI²*. http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/nizam-al-mulk-SIM_5942; last accessed 21 February 2014. For a more extensive biography See Sajid Rizvi's, *Nizam al-Mulk Tusi: His Contribution to Statecraft, Political Theory and the Art of Government* (Lahore: Sh. Muhammad Ashraf, 1978).

[23] Fuʾād ʿAbd al-Munʿim Aḥmad and Muṣṭafā Ḥilmī elaborate on the differences between al-Juwaynī and al-Māwardī in the introduction of their

intellectually defend this position in the introduction to his book he emphasizes his cardinal principle that matters pertaining to the *imāmate* are lacking in certainty (*masā'il maznūna*), naturally opening them up for contestation and reformulation.[24] Thus when al-Juwaynī veers from previous positions on the *imāmate*, he invokes this principle, reminding the reader that the majority of matters within Islamic political thought are uncertain due to the scant mention of them in the Qur'ān or Prophetic ḥadīth. Also, he does not demarcate political thought as an independent discipline apart, as wholly distinct from other disciplines. On the contrary, he examines the various disciplines, exploring religious, legal, theological, historical and philosophical enquiries as a means to augment his study. The result is that al-Juwaynī's political thought intertwines various disciplines within Islamic thought while also highlighting the concentric issues which serve as the centrifugal element in his interdisciplinary enquiry.

Despite al-Juwaynī's savant manner of writing and the novel enquiries he undertakes, he is virtually ignored or marginalized in scholarly studies of Islamic political thought. Erwin Rosenthal, in *Political Thought in Medieval Islam: An Introductory Outline* (Cambridge, 1958), describes the theories of al-Māwardī, al-Ghazālī, Ibn Jamā'a, Ibn Taymiyya, Ibn Khaldūn, as well as those of philosophers influenced by the Greek eudaemonistic tradition, but al-Juwaynī is overlooked despite his immense influence on al-Ghazālī and Ibn Khaldūn. In Ann Lambton's *State and Government in Medieval Islam* (1981), dedicates a chapter to al-Juwaynī and al-Ghazālī, but al-Juwaynī's thought is summarized in a few pages, utilizing his theological texts more than his *Ghiyāthī*, and the sparse pages then primarily as a transition to the thought of al-Ghazālī, rather than an evaluation and elaboration of his doctrine

edition of the *Ghiyāthī*. See al-Juwaynī, *Ghiyāth al-umam fī iltiyāth al-zulam* (eds. Fu'ād 'Abd al-Mun'im Aḥmad and Muṣṭafā Ḥilmī; Alexandria: Dār al-Da'wa, 1979).

[24] al-Juwaynī in his introduction argues that the only matter within the discussion of the *imāmate* which has been decisively established is its necessity. This necessity is established through consensus (*ijmā'*) which is absent in all other subsidiary matters concerning the *imāmate*. The absence of decisive proofs for other matters leaves them vulnerable to debate, allowing al-Juwaynī to later contest many of them. For the full discussion see al-Juwaynī, *Ghiyāthī* 210–39, for his conclusion see 239 and 244 and specifically paragraphs 62 and 72. There are a couple editions of al-Juwaynī's text, so to make it easier for those who want to find his specific arguments in the remainder of the article I will note the paragraph numbers as opposed to the page number.

independently.[25] However, perhaps most surprising is Anthony Black's *History of Islamic Political Thought: From the Prophet to the Present* (Edinburgh, 2001), which does not even include al-Juwaynī in the extensive timeline it provides in the opening pages. If one searches they will find that the most space dedicated to al-Juwaynī is five pages in Patricia Crone's *God's Rule—Government and Islam: Six Centuries of Medieval Islamic Political Thought*[26] and an article by Wael Hallaq titled, 'Caliphs, Jurists and the Saljūqs in the Political Thought of Juwaynī'.[27] However, both Crone and Hallaq focus more on the skeletal outline of the book and reflect on al-Juwaynī's views on the politics of his time as opposed to presenting his overall political thought. This lacuna in the study of al-Juwanyī should not be understated. A potential reason for the oversight of the *Ghiyāthī* can be attributed to a lack of awareness of the text itself, or its relatively late publication in 1979.[28] Paul E. Walker, in the preface to his translation of al-Juwaynī's *Kitāb al-Irshād*, laments that the scholarly literature on al-Juwaynī and his work is 'woefully thin', likely because the prominence of his student al-Ghazālī has detracted from the study of al-Juwaynī.[29] Scholars have also been deterred from undertaking a comprehensive study of his work by al-Juwaynī's allusive metaphorical style.[30] As for the *Ghiyāthī* itself, because al-Juwaynī is most revered for his theological and legal works,

[25] See Ann. K. S. Lambon, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists* (Oxford: Oxford University Press, 1981), ch. 7. Al-Juwaynī's thought is summarized at 103–6, with the rest of the chapter to p. 129 being devoted to al-Ghazālī.

[26] Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004), 234–7.

[27] Wael Hallaq, 'Caliphs, Jurists and Saljūqs in the Political Thought of Juwaynī', *The Muslim World*, 74 (1984): 26–41.

[28] See n. 23, above.

[29] Paul E. Walker (transl.), *A Guide to the Conclusive Proofs for the Principles of Belief: Kitāb al-Irshād ilā qawatiʿ al-adilla fī uṣūl al-iʿtiqād* (Reading: Garnet Publishing, 2000), Translator's Introduction, xvii.

[30] The most comprehensive study of al-Juwaynī in Western academia has been Tilman Nagel's, *Die Festung des Glaubens: Triumph und Scheitern des islamischen Rationalismus im 11. Jahrhundert* (Munich: C. H. Beck, 1988). In it, Nagel investigates the notion of decline and destiny of religious thought vis-à-vis the production of scholars, focusing on the ideas of al-Juwaynī. He examines all facets of al-Juwaynī's scholarship, but his most important contribution is illuminating the ostensible connection between al-Juwaynī's socio-political context and his religious scholarship. Nagel argues that al-Juwaynī in his *kalām* is primarily concerned with achieving certainty such that theological questions have definitive answers.

even scholars who undertake the study of al-Juwaynī himself often omit the *Ghiyāthī* from consideration.

This article will attempt to address this lacuna but in assaying the text the narrow focus will be on excavating his bifurcation between authority and power, leaving future avenues for fruitful research open. To this extent this article will be divided into two parts: the first will concentrate on al-Juwaynī's notion of power vis-à-vis his opinions on the selection of the most legitimate candidate to lead the Muslim community, and the second will concentrate on the location of authority in the absence of a Caliphate.

The Foundation: Electors, the Imām and Power

Al-Juwaynī commences the *Ghiyāthī* with a discussion on the various methods of appointing the *imām*. The four methods are: appointment by textual designation (*naṣṣ*), appointment by 'those who loosen and bind' (*ahl al-ḥall wa-l-ʿaqd*),[31] appointment by the existing *imām* (*tawliyāt al-ʿahd*) and appointment through usurpation. The first he rejects as illegitimate,[32] and the last he only accepts in dire circumstances, so his

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[31] In all Islamic political texts written from the perspective of Sunni jurists, *ahl al-ḥall wa-l-ʿaqd* are mentioned as the body of individuals who appoint the *imām*. The method of appointing them, and the various functions which they can undertake, is not always addressed uniformly. For more see Muhammad Qasim Zaman, 'Ahl al-ḥall wa-l-ʿaqd', *EI³*: http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/ahl-al-h-all-wa-l-aqd-COM_0027); last accessed 30 November 2014.

[32] His rejection of textual designation for appointment is most likely an attack on the Shiʿi notion of designation of the *imām*, which was of particular concern to him after the establishment of the Fāṭimid caliphate in Northern Africa. The Fāṭimids began their reign in North Africa and subsequently spread to Africa where they ruled from 297/909 until 567/1171. The dynasty's claim to legitimacy was founded on Ismāʿīlism which, in addition to being a theological articulation, was also highly political. Without going into details about this dynasty, which is beyond the scope of this article, the Fāṭimids were particularly important to Alp Arslan and al-Juwaynī for two reasons. First, they established a counter-caliphate to the ʿAbbasids, resulting in the presence of two caliphates during the same time period, and although this was also the case during the Umayyads with the presence of the caliphate in Cordoba, the Fāṭimid caliphate was particularly troublesome because of their Shiʿi beliefs. The strong presence of Ismāʿīlism was the second concern of Alp Arslan and others, and the desire to establish orthodox belief, in contrast to what was deemed as the heretical beliefs of the Fāṭimids, grew increasingly important. For a more detailed history of the rise of the Fāṭimids, their doctrinal beliefs and their institutions, see the in text citations and bibliography of Canard's article in the Encyclopedia of Islam. 'Fāṭimids', *EI²*:

two preferred methods are either electoral appointment or succession. Because succession simply involves the designation of the new *imām* by the previous one, his most illuminating contribution is the discussion on the appointment through those who loosen and bind. These individuals are charged with appointing the *imām* through a process of selection and contracting (*al-ikhtiyār wa-l-ʿaqd*), and hereon I will refer to them as the electors.

A qualified elector according to al-Juwaynī must be: male, free, Muslim, knowledgeable (*ʿālim*), pious, and powerful. The requirement to be male and free is to ensure that the electors are independent in their decision making, precluding slaves and women who are perceived to be reliant on their masters and menfolk respectively. As for being Muslim, pious and knowledgeable, the gravity of the electors' duty necessitates that they be upright Muslims who are familiar with the duties of the *imām* and are able to discern those individuals who can best discharge them. The last, and most important quality, is that the electors possess power (*shawka*). *Shawka* for al-Juwaynī refers to the social and political power of influence which the electors should possess such that their selection of the *imām* would naturally lead to general acceptance by the masses. To illustrate this point he uses the example of ʿUmar b. al-Khaṭṭāb who was at first the sole individual to pledge allegiance to Abū Bakr, after which, the rest of the community followed. For al-Juwaynī this occurred because of ʿUmar's *shawka* which naturally influenced the actions of others.[33] The emphasis on *shawka* indicates that the overall objective of the electors is to secure the obedience of the masses and to this extent he states, 'For the objective [of the *imāmate*] is the attainment of obedience (*al-ṭāʿa*)'.[34] The electors, capitalizing on their public influence, are able to attain the allegiance of the masses and facilitate the creation of an obedient community. The obedience achieved by the electors leads to stability[35] and thus the two are interwoven; electors

http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/fatimids-COM_0218; last accessed: 30 November 2014. Also see, Marshall Hodgson, 'The Ismāʿīlī State' in *The Cambridge History of Iran* (Cambridge: Cambridge University Press, 1968), v. 422–82.

[33] *Ghiyāthī*, 82–96.

[34] Ibid, 90.

[35] al-Juwaynī utilizes numerous terms in the *Ghiyāthī* to invoke the notion of stability. The most frequently used are *al-istiqrār, al-ittisāq* and *al-intiẓām*. And though more than one term is utilized, all terms conceptually refer to the idea of stable government which for al-Juwaynī entails no external threats, in the form of foreign invaders, and no internal threats, in the form of rebels. Based on this, security and orderliness are both inextricably connected to stability, which explains why he uses different but related terms.

select a suitable *imām* and by virtue of their selection, *shawka*, and behaving in accordance with a delineated method of selection, obedience and stability are guaranteed.

After concluding his discussion on the qualifications of the electors, al-Juwaynī turns to the opinions of his predecessors on the minimum number of electors required to legitimately choose the *imām*. In both discussions he argues that his predecessors constructed parochial systems of election which were fixated simply upon the fulfillment of certain conditions. As an example, al-Juwaynī argues that al-Qaḍī al-Bāqillānī[36] required that the electors be independent jurists (*mujtahid*s), which he considers to be a superfluous condition as it alone cannot fulfill the intended objective for selection—obedience; rather, it is only *shawka* which can ensure the obedience of the masses.[37] This means that the religious stature of the electors, or their knowledge, is not as essential as the influence they can command over the masses. Building upon this conceptualization of the functionality of the electors, al-Juwaynī again disagrees with his predecessors regarding the number of electors required for appointment of the *imām*. After mentioning the various opinions present, ranging from those who require complete consensus *(ijmāʿ)* to those who stipulate the minimum as two, four or even forty,[38] al-Juwaynī rejects them all, seeing the number as having no direct bearing upon the results, and he remains fixed on the result of selection as opposed to its conditions. In his opinion, even one elector can contract the *imām* as long as that elector possesses *shawka*. Taking this further, he accepts the appointment of the *imām* in secrecy as long as it is announced post facto and accepted by the people. Resorting once again to the precedent of ʿUmar he argues that it establishes the permissibility of a single elector. That being said, if a single individual does not possess enough influence or power, then additional electors will be required until the ultimate objective of obedience is achieved. As a principle then, al-Juwaynī's minimum is continuously subject to revision as it is contingent upon creating the desired outcome.

The fluid conditions surrounding the selection of the *imām* demonstrate that the electors do not serve as the sole mechanism to legitimate the *imām*; they are merely facilitating and ensuring the obedience of the people which is the true marker of legitimacy and the only way to maintain a stable and cohesive polity. And while their position in society

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[36] al-Bāqillānī discusses his political thought in *Kitāb al-Tamhīd* (ed. and comm. Ritshard Yūsuf Makārthī; Beirut: al-Maktaba al-Sharqiyya, 1957). Al-Juwaynī responds to this condition in *Ghiyāthī*, 73–81.

[37] Ibid, 89.

[38] Ibid, 73–81.

prevents discomfiture, if obedience can be obtained without election, their role is redundant. We thus see in the second section of the *Ghiyāthī* that al-Juwaynī legitimizes the rule of *imām* vis-à-vis the usurpation of the seat of the *imām* without any electoral input.[39] Despite the stringent parameters imposed upon this scenario, it evinces al-Juwaynī's belief that the legitimacy of the *imām* is not solely restricted to appointment by electors but the power he is able to manifest in front of the masses.

Upon completing the discussion on the method of electing the *imām* and the purpose of selection, al-Juwaynī provides a detailed account of the ideal characteristics that the *imām* should possess. In this investigation he divides the qualities into four: sensory qualities, bodily qualities, inherent qualities and acquired qualities.[40] The qualities related to the senses are the ability to hear, see and speak and for the bodily qualifications he simply states that the loss of any limb which can jeopardize sound governing renders the *imām* illegitimate. Turning to inherent qualifications, they are Qurayshī descent,[41] maleness, free

[39] The discussion of usurpation in the *Ghiyāthī* focuses on three unique cases of usurpation, each one successively more problematic than the previous. The first is by someone who fulfills the requisite conditions of the *imām*; the second is by one who only fulfills the condition of competence (*kifāya*); and the final is by one who does not fulfill either condition. In the first scenario al-Juwaynī assumes that the person seeking the *imāmate* is the *only* qualified candidate at the time. At the end of the section on usurpation, he provides two important statements which summarize his guiding logic in permitting usurpation. In the first he states, 'The completion of this discussion necessitates the establishment of a principle, which is: If there is one candidate [suitable for the position of the *imām*], there is no need for selection or contracting. However, it is necessary that he demonstrate power and vigour and call people to obedience. If he does that, then he is the *imām* of both those who consent and follow [his rule], and those who rebel and reject [his rule];' and in the second he argues, '...it is not permitted to give allegiance [to the one who has usurped power]. [However], if one [ascends to the office of the *imām*] due to a reason, and the people coalesce to support him, if one desires to dispose of him, it will not be possible [due to public support of him], and will cause intolerable discord (*fitna*) and a dispute with far reaching consequences. For [the sake of] stability, regularity and comfort for Muslims, it is necessary to appoint him [as *imām*], as previously stated': ibid, 457, 471. As a basic principle, then, al-Juwaynī opposes the usurpation of political power; however, if the *imām* in power is no longer the recipient of popular allegiance, or is not competent to lead, then he permits usurpation by an individual who is.
[40] He lays out this division at the beginning of the chapter on the required qualifications of the *imām*. Ibid, 97.
[41] On the requirement that the *imām* be from the tribe of Quraysh, al-Juwaynī has a more extensive discussion. He argues that the ḥadīth most commonly cited in support of this position, namely 'the *imāms* must be from Quraysh', is not a

status, soundness of mind, maturity and Islam. As for acquired qualities they are knowledge at the level of a *mujtahid*, piety, and the possession of support and competence (*dhū al-najda wa-l-kifāya*).[42] Contrary to other theorists, al-Juwaynī states that the intended objective for specifying these characteristics is the attainment of independent leadership and, although he acknowledges that the *imām* will be supported by other individuals or bodies functioning within the broader governing structures of the caliphate, the *imām* must have the political power and competency to lead independently. This opinion is grounded in the trepidation al-Juwaynī harbours concerning a weak *imām*—if the *imām* is reliant on others, he cannot command the obedience of the people, nor will he be able to discharge his duties sufficiently. As a result, al-Juwaynī becomes fixated upon the quality of competency (*kifāya*),[43] a preoccupation which can be most vividly seen in his discussion on the appointment of an inferior candidate (*al-mafḍūl*).

The appointment of an inferior candidate for the *imāmate* is permitted by al-Juwaynī only in extenuating circumstances, when either the appointment of an ideal candidate is impossible or unfeasible as it would

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mutawātir ḥadīth and therefore cannot afford enough knowledge to establish this as a definitive requirement. Instead, he argues that the continuous acceptance of scholars throughout the generations stands as the strongest proof of its requirement as their continuous acceptance is the equivalent of consensus (*ijmā'*). In fact, he notes that only one individual, Ḍirār b. 'Amr argued against this position. See Ibid, 106–8.

[42] Ibid, 90–1. These characteristics differ from those set out by his predecessors, especially from al-Māwardī. Al-Māwardī states that there are seven requirements for the *imām*: justice (*'adl*), knowledge (*'ilm*), sound senses (*salāmat al-ḥawāss*), sound body (*salāmat al-a'ḍā'*), prudence (*rā'y*), courage (*shajā'a*) and Qurayshī lineage (*al-nasb*). When juxtaposing al-Juwaynī's requirements with al-Māwardī's, aside from al-Juwaynī's additional emphasis on piety (*al-wara'*), the most important difference is that while al-Juwaynī is willing to renege on almost all of his qualifications, al-Māwardī is not amenable to compromise.

[43] Although al-Juwaynī isolates *kifāya* as the most important requirement for the *imāmate* he does not define it clearly in the *Ghiyāthī* or his smaller texts. However, his student al-Ghazālī does, and it is likely based on how al-Juwaynī employs the term in the *Ghiyāthī* that his student later uses it. Al-Ghazālī states, 'it is the capacity to seek the correct way in difficult matters (*mu'addalāt al-umūr*) and capacity to acquire information and make a correct decision when various harmful outcomes are possible'. See al-Ghazālī, *Faḍā'iḥ al-bāṭiniyya*, 185. Carole Hillenbrand understands *kifāya* to be a type of political competency, or more specifically 'competence to govern'. See Hillenbrand, 'Islamic Orthodoxy or Realpolitik?', 84.

undoubtedly lead to chaos.[44] In this scenario he is willing to forgo all required qualities except competency. To this extent he states:

It was mentioned at the beginning of the chapter that the most qualified is the most fit [for the *imāmate*]. If we are assigned to gather the prominent conditions, on one side is utmost piety, and on the other, competence. We put the second, competence, before it [piety], because it guides to the path of politics and statesmanship, and piety cannot lead to this end. Therefore, competence is highest in priority.…… Knowledge comes after competence and after good character, since knowledge is the best equipment and the strongest bond. With it, the leader can handle matters by applying the rules of Islam. Lineage, though considered when possible, does not fulfill an intelligible goal, but previous consensus is the basis of its consideration.[45]

While al-Juwaynī continues to uphold the ideal qualifications of an *imām*, if circumstances do not permit that they are realized collectively, he acquiesces and ranks the characteristics in order of importance. In the above schematization, al-Juwaynī is most concerned with political practicality and stability and therefore lineage emerges as of secondary importance whereas the competency to lead independently is given primacy. Elsewhere he acknowledges that coupling competency with piety and knowledge is necessary to inhibit the rise of corruption.[46] As for the remaining characteristics after competency, despite being arranged in a specific order above, further on it is evident that the emphasis on any one characteristic is contingent upon the political situation of the time. To illustrate this idea he juxtaposes two candidates, one who is more apt in legal affairs and one who is astute in matters of war. He argues that if the Islamic territories are secure from internal and external enemies, but religious calamities are present leading to the spread of heretical opinions, then a candidate more adept in religious affairs is necessary. If on the other hand the internal affairs of the country are well ordered but external threats are detected or present, then a candidate versed in the art of warfare and statecraft is more suitable for appointment.[47] Evident from this is that all conditions with the

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[44] Here al-Juwaynī argues that if the appointment of an ideal candidate (*al-fāḍil*) will lead to chaos (*ikhtibāṭ*) and unruliness (*faṣād*) but the appointment of the inferior candidate (*al-mafḍūl*) will lead to unity (*irtibāṭ*) and order (*sadād*) then the appointment of the inferior is preferred: *Ghiyāthī*, 246.

[45] Ibid, 170–1.

[46] To see his complete discussion on when an *imām* becomes characterized by corruptness (*fisq*), see 141–50. For his discussion on piety as a defence against blameworthy characteristics, see 225.

[47] Ibid, 170–1.

exception of competence are evaluated in accordance with what is most congenial to the social and political needs of the polity at the time of appointment.

Apparent from both al-Juwaynī's exposition on the electors and the qualifications of the *imām* is his overwhelming political pragmatism. In the case of the electors, while they initially seem to play an essential role in ensuring the obedience of the masses, al-Juwaynī's acceptance of the powerful usurper demonstrates that the electors are indeed dispensable and are primarily utilized to bolster the legitimacy of the *imām* and the stability of the appointment. As for the required qualifications of the *imām*, al-Juwaynī presents a similar goal-based logic; he puts forth a list of ideal qualifications but recognizes that the overall objective in delineating the exact requirements is to ensure that the *imām* is able to lead independently, which in turn fosters obedience from the populace. Thus, when there is no ideal candidate al-Juwaynī accepts the appointment of an inferior (*al-mafḍūl*) *imām* as long as he is competent to lead independently (*kifāya*). This recurrent emphasis on power, the obedience of the people and the competency to lead independently, becomes ubiquitous as al-Juwaynī navigates through various political situations, and is best exemplified in his discussion on the deposition of the *imām*.

In the section on deposing the *imām* al-Juwaynī discusses those matters which necessitate it and the method of doing so. Al-Juwaynī states:

[As for things which permit the deposing of the *imām*, they are:] The inability to provide sound judgment whose end is unlikely, the loss of allegiance, or illness that affects judgment. [If the aforementioned] leads to clear disturbance and unsettlement amongst us (i.e. the people), in the opinion of the electors, then his deposition is necessary.[48]

Transitioning to the method of deposition itself, in all cases deposition is executed by the electors who sever the contract with the *imām*. If the *imām* resists, then it is permitted for the electors to treat him as a rebel and undertake more drastic measures to ensure his complete removal.[49]

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[48] al-Juwaynī's discussion on the deposition of the *imām* is on pp. 138–64 with his primary summary statement at 163.

[49] In the case of deposition, the ideal for al-Juwaynī would be the removal of the *imām* by the electors and the simultaneous appointment of a qualified candidate. If, however, the electors are unable to remove the *imām* and his continued presence leads to overall harm for the Muslim community, then he allows for the people to rebel against the *imām* in order to appoint a more suitable leader. For more on al-Juwaynī's position on rebellion see *Ghiyāthī*, 153–60; for an overview of the development of the Sunnii doctrine of rebellion

Extrapolating from the discussion on the appointment and deposition of the *imām*, it is clear that competency (*kifāya*), obedience (*ṭāʾa*), and power are inextricably interrelated. Minimally, the *imām* must be competent because only a competent leader can guarantee the obedience of individuals and establish stability. However, even though al-Juwaynī primarily emphasizes the competency of the *imām*, competency is a manifestation of his political power, without which the obedience of the people would be impossible. This focus is also seen in the section on the electors where al-Juwaynī notes that their main qualifying trait is power (*shawka*), and the only time the electors are superfluous is when the seat of the *imām* is usurped by another individual, who is arguably more powerful than the *imām* and therefore can secure obedience from the masses without the intermediary of the electors. Thus, in both the case of the qualifications of the *imām* and the electors, while al-Juwaynī begins by establishing a list of requirements, he eventually withdraws to the emphasis of power in both scenarios as the only trait which is resistant to any form of compromise. This continuous emphasis on power, however, is not without consequence. With the heightened emphasis on power, and the acceptance of an *imām* who is powerful and competent, yet lacking in other characteristics and qualifications, a difficulty emerges when the *imām* loses the one trait that truly legitimizes his rule.

THE LACUNA: THE ABSENCE OF GOVERNMENT AND THE EMERGENCE OF JURISTIC AUTHORITY

The discussion on the absence of a competent *imām* for the *imāmate* and the subsequent dissolution of government marks a distinct transition in al-Juwaynī's political thought. In his earlier discussion of the *imām* al-Juwaynī divides the duties of the *imām* between those pertaining to worldly affairs (*dunyā*), and those pertaining to religious affairs (*dīn*).[50] With the loss of the *imām*, a lacuna forms within the realm of worldly affairs and al-Juwaynī is forced to confront the shortcomings of relying solely on political power. Whereas previously al-Juwaynī was overwhelmingly concerned with power and obedience, once political

see Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, [2001] 2002).

[50] A discussion of the various duties of the *imām* pertaining to worldly and religious affairs is the focus for the first of the three sections of the *Ghiyāthī*. For those related to *dīn* see 269–92 and for those related to *dunyā* see 293–413.

leadership deteriorates, he turns to thinking about continuity and authority in a more nuanced way. In fact, Arendt in her article 'What is Authority?' argues similarly and states that power is essential for stability, but for permanence, durability and continuity, authority is essential. In the absence of the *imāmate* al-Juwaynī turns to *mujtahids*, muftis and the Shariʿa, which together become the central mechanism to ensure the continuity and durability of society and can thus emerge as a source of authority with the demise of political power.

In the absence of the *imāmate* the larger political community is broken into smaller indigenous communities with traditional solidarities tying them to independent jurists (*mujtahids*) and muftis,[51] or their preserved and transmitted rulings in the form of texts. Implicit within this new order is al-Juwaynī's belief that a large community must be governed by a formal political apparatus in order to facilitate stability and order. In the absence of such a governing body, stability and continuity are brought about by allegiance to certain legal individuals and norms which unite smaller communities, but are inadequate for larger ones. For al-

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[51] In al-Juwaynī's *Burhān* he does not distinguish between the *mujtahid* and the mufti due to his understanding that every mufti must be capable of *ijithād*. However, here al-Juwaynī seems to be arguing that the *mujtahid* and the mufti are two separate legal titles due to a difference in juristic capabilities. Thus, whereas the *mujtahid* is capable of *ijithād* and answering the novel legal queries of individuals, the primary task of the mufti is the transmission of the *mujtahids*' ideas, i.e., the mufti cannot independently exercise *ijtihād*. For this discussion see al-Juwaynī, *Burhān fī uṣūl al-fiqh* (ed. ʿAbd al-Aẓīm al-Dīb; Cairo: Dār al-Anṣār, 2nd edn., 2 vols., 1979), ii. 1333–7. There he argues that the main qualifications of the *mujtahid* are mastery of the Arabic language, being well versed in the legal verses of the Qurʾān, being familiar with the Sunna, and especially the rules of ḥadīth criticism, familiarity with orthodox theological tenets, and juridical sagacity (*fiqh al-nafs*). Part of the reason al-Juwaynī may be using the terms *mujtahid* and mufti in different ways is that he was living in a time when the definitions of these terms were undergoing significant change. While early on, as al-Juwaynī notes, a mufti must be a *mujtahid*, later on a vocational difference is noted. For this historical development see Wael Hallaq, *'Iftaʾ and Ijtihad in Sunni Legal Theory: A Developmental Account'* in Muhammad Khalid Masud *et al.* (eds.), *Islamic Legal Interpretation: Muftis and their Fatwas* (Cambridge, MA: Harvard University Press, 1996), 33–43, 336–7; id., *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 117–18. To note the development in the primary sources see Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī ʿilm uṣūl ul-fiqh* (ed. Ṭāha Jābir Fayyād al-ʿAlwānī; Riyadh: Jāmiʿat al-Imām Muḥammad b. Saʿūd al-Islāmiyya, 6 parts in 2 vols., 1979–81), iii. 30–36 and Badr al-Dīn al-Zarkashī, *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh* (ed. ʿAbd al-Qādir al-ʿĀnī; Kuwait: Wizārāt al-Awqāf wa-l-Shuʾūn al-Islāmiyya, 6 vols, ?1992), vi. 199–204.

Juwaynī these norms are found within the Sharīʿa itself and the universal
principles which it provides.[52] In this sense, while al-Juwaynī concedes
the loss of political power, he sees that society is able to continue because
of the authority of the jurists, and more broadly the Sharīʿa. Maintaining
a sense of continuity is therefore in the purview of the *mujtahid*s and they
do so by promulgating and preserving universal norms of the Sharīʿa.
A complete examination of this law-centred community is undertaken in
the third section of the *Ghiyāthī* which commences with the relationship
between individuals and *mujtahid*s. Simply put, if *mujtahid*s are present,

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[52] While the primary aim here is to focus on al-Juwaynī's political thought, in
this section of the *Ghiyāthī* he is engaging in a larger legal-theological debate
regarding the fatigue of the Sharīʿa (*futūr al-sharīʿa*). This debate emerged in the
late third/ninth early fourth/tenth century and asked the fundamental question of
whether the world can be completely devoid of God's guidance. There were two
primary answers to this question. The first, the Ashʿarī answer, was yes, a world
without any guidance and Sharīʿa is possible, as that is what happened to past
Prophets. In the context of the Sharīʿa, they equated the fatigue of the Sharīʿa
most often with the absence of *mujtahid*s—once there were no longer any
individuals left to carry out *ijtihād*, the death of the Sharīʿa in their opinion could
be pronounced. The second, the Ḥanbalī and Muʿtazilī argument was that the
world can never be devoid of God's guidance. The Muʿtazila based this on their
notion of divine justice, arguing that it would be unjust for God to abandon
humanity, and therefore it is impossible for it to occur, whereas the Ḥanābila
argued that *ijtihād* becomes a collective duty which safeguards the existence of
the Sharīʿa. One of the main reasons for their argument was the ḥadīth of the
Prophet which noted that the scholars were 'the heirs of the prophets', meaning
that while Prophetic access to the divine may cease to exist, scholarly access to
Prophetic knowledge would always continue. Against the Muʿtazilī and Ḥanbalī
notion of continuity, al-Juwaynī and other Shāfiʿis argued that not only is the
fatigue of the Sharīʿa a possibility, but the loss of *mujtahid*s was already
underway. Al-Juwaynī's assertion in this manner was accepted by his student al-
Ghazālī and also adopted by later Shāfiʿis such as Fakhr al-Dīn al-Rāzī (d. 606/
1209) and Sayf al-Dīn al-Āmidī (d. 631/1233). Other late scholars such as Tāj al-
Dīn al-Subkī (d. 771/1370) and Jalāl al-Dīn al-Maḥallī (d. 864/1459) argued that
it is theoretically possible but it has not actually occurred in reality. For an
exhaustive overview of this discussion see Ahmad Atif Ahmad, *Fatigue of the
Sharīʿa* (New York: Palgrave MacMillan, 2012). For more concise overviews see
Wael Hallaq, 'On the Origins of the Controversy about the Existence of
Mujtahids and the Gate of Ijtihad', *Studia Islamica*, 63 (1986): 129–41 and
Intisaar Rabb, 'Islamic Legal Minimalism: Legal Maxims and Lawmaking when
Jurists Disappear' in Michael Cook *et al.* (eds.), *Law and Tradition in Classical
Islamic Thought: Studies in Honor of Professor Hossein Modarressi* (New York:
Palgrave MacMillan, 2013), 145–66. For an overview of the various Shāfiʿi
arguments see al-Zarkashī, *al-Baḥr al-muḥīṭ,* vi. 205–10.

then legal rulings and all religious affairs should be delegated and
entrusted to them. The *mujtahid*s in turn can exercise independent legal
judgment to ensure the continuous expansion and preservation of the
Shariʿa. The authority which the *mujtahid*s are endowed with rests on
their conveying religious tradition which, according to Arendt would be
achieved 'by handing down from one generation to the next the
testimony of the ancestors, who first had witnessed and created the
sacred founding and then augmented it by their authority throughout
centuries. As long as this tradition was uninterrupted, authority was
inviolate; and to act without authority and tradition….was inconceiv-
able'.[53] The *mujtahid*s are thus not merely legal guides, but serve to
continuously connect society to a religiously sacred past. And it is
precisely this connection with the past and continuous transmission of it
which leads to the creation of authority according to Arendt. To this
extent she states, '[a]uthority, in contradistinction to power [*potestas*],
had its roots in the past, but this past was no less present in the actual life
of the city than the power and strength of the living'[54] and it is because of
this distinction between power and authority that she notes 'the most
conspicuous characteristic of those in authority is that they do not have
power'.[55] Later on she underscores this point by arguing that the
durability of the Roman Empire was not due to power, but due to the
trinity of religion, authority and tradition—arguably it is these three
same elements which allow for the continuity of society after the absence
of the *imām* for al-Juwaynī.

   However, al-Juwaynī does not assume that *mujtahid*s will always be
present, or that their knowledge will be sufficiently transmitted such that
a new generation of *mujtahid*s can be created. To the contrary, he
postulates that legal knowledge will decrease leading to the absence of
*mujtahid*s and the rise of muftis. The legal milieu during this time will
necessarily change as a result of the limited legal acumen of the muftis to
derive legal rulings. Elaborating on the absence of *mujtahid*s al-Juwaynī
states:

That which summarizes the objective is that if we are devoid of independent
jurists (*mujtahid*s), and we find jurists who are trained in analogical reasoning
(*qiyās*), and we arrive at probable knowledge in matters for which there is no text
in the school which has been transmitted through texts, then referring to the
jurists on those [matters] is better than removing that matter from [the realm of]
obligation. And the concession is to those seeking [the answers] based on

   [53] Arendt, *Between Past and Future*, 124.
   [54] Ibid, 121–2.
   [55] Ibid, 122.

generalities and universal principles (*umūr kulliyya*),[56] the depiction of which will come in the following section, God willing.[57]

In this passage al-Juwayni makes clear that the primary reason for his concern with legal continuity is the desire for continued legal responsibility (*taklīf*) regardless of the presence or absence of *mujtahid*s. Therefore, although muftis are not intellectually or legally the equivalent of *mujtahid*s, they are sufficiently familiar with analogical reasoning (*qiyās*) and are conversant with the universal principles of the Sharīʿa (*umūr kulliyya*) such that they can ensure legal knowledge and continuity. Authority for the mufti is thus on the same basis as the *mujtahid*—their knowledge of religion, and the legal tradition—despite their not having the same legal acumen as *mujtahid*s. The ability for authority to pass from the *mujtahid*s to muftis exemplifies that the true locus of authority is not the person of the *mujtahid*, but the knowledge that he/she possesses, which is in this case, knowledge of the Sharīʿa. Thus, to the extent that universal principles of the Sharīʿa are preserved in juristic discourse and conveyed to society the continuity of society is possible. As a corollary, if there is a time in which there is a complete absence of knowledge of the Sharīʿa, and thus any locus of authority, al-Juwaynī would necessarily have to reconsider his position. It is for this reason that the absence of universal principles is something he is highly reticent to accept and in this vein he argues, 'In order fully to ascertain the matter, one must understand that such a time will not be devoid of universal principles [*al-marāsim al-kulliiyya*], or legal maxims of the Sharīʿa [*qawāʿid al-sharīʿa*]. Rather, the fundamental problem will be the arduous nature of the exposition and derivation of legal matters, which will be overcast by the inability of a jurist to rule in a matter with complete precision'.[58] The challenge faced in this scenario is the vocational skill of the jurists and their ability to reach verdicts with certainty; authority in the form of the Sharīʿa therefore remains, but access to it is obfuscated due to the decline in legal knowledge. What this also means is that up until the point that knowledge of the Sharīʿa is completely inaccessible, there is always the presence of some form of authority, even if truncated, and laws continue.

After asserting these foundational matters, al-Juwaynī expands upon the universal principles of the Sharīʿa in the chapters on law (*fiqh*)[59]

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[56] al-Juwaynī uses a variety of terms throughout the third section to refer to broad principles of the Sharīʿa such as *ʿumūr kulliyya, al-marāsim al-kulliyya , al-qawāʿid al-sharīʿiyya*.

[57] al-Juwaynī, *Ghiyāthī,* 632.

[58] Ibid, 637.

pertaining to the daily affairs of believers. Interestingly, in this section al-Juwaynī only undertakes those matters related to worship (*fiqh al-ʿibādāt*) and does not expand upon transactional matters (*fiqh al-muʿāmalāt*), which occur between individuals, with the exception of marriage. This absence may be due in part to al-Juwaynī's belief that cumbersome financial laws will quickly dissipate with the absence of formalized political institutions overseeing them. Individual concerns will therefore be directed inward and personal matters will be of primary importance. And while the collective ethos generated by communal adherence to universal norms of the Shariʿa will sustain some connection between individuals, social interaction will be strangulated as individuals find less benefit in voluntary association.

After elaborating upon the universal norms of the Shariʿa, and arguing for their longevity despite persistent calamities, al-Juwaynī accepts that they too will fade from individual memory. To this extent he sombrely states,

...if the derived and principle matters of the Shariʿa (*furūʿ al-sharīʿa wa-uṣūl*) are effaced, and there is nobody who preserved them to return to, or rely upon, legal responsibility (*taklīf*) upon the worshippers is suspended and their state has reached the state of those who did not receive the invitation [to faith] and the Shariʿa is not commissioned upon them'.[60]

As the continuity of the Shariʿa is predicated on the transmission and preservation of legal knowledge, its disappearance from the lives of individuals removes the yoke of legal obligation and no form of authority remains within society. This does not mean that individuals will cease to act in ways which are beneficial for their existence; rather, their actions will have no religious ramifications in the negative or positive, and there will be no authoritative force around which they can coalesce.[61]

[59] The matters which al-Juwaynī discusses are divided into: the book of purity (*kitāb al-ṭahāra*), the book of prayer (*kitāb al-ṣalāh*), the book of alms (*kitāb al-zakāh*), the book of fasting (*kitāb al-ṣawm*) and investigations regarding marriage (*al-qawl fī al-munākaḥāt*). See Ibid, 653–837.

[60] Ibid, 844.

[61] Ibid, 838–44. Although al-Juwaynī does not explicitly invoke the Muʿtazalī doctrine of *taḥsīn wa-taqbīh* (the doctrine of distinguishing between good and evil), al-Juwaynī's understanding of the lack of religious consequences can be understood to be set against the doctrine of the Muʿtazalīs, which states that actions remain within the arena of reward and censure even in the absence of divine law. For more see Richard C. Martin, Mark R. Woodward and Dwi S. Atmaja, *Defenders of Reason in Islam: Muʿtazilism from Medieval School to Modern Symbol* (Oxford: Oneworld Publications, [1997] 2003). More broadly, al-Juwaynī's arguments can be seen as drawing upon a larger discussion of those individuals living in a time between two Prophets known as *ahl al-fatra* (people of

In following al-Juwaynī's political thought from its nascent investigations regarding ideal government to the emergence of an acephalous society it is evident that al-Juwaynī is not merely interested in matters of statecraft or governance. His project in the *Ghiyāthī* is much more expansive and invokes deeper theoretical questions regarding the difference between power and authority which he continuously interlaces within his discussion of non-ideal realities. This leads him to articulate an ideal for the *imāmate* which he is willing to abandon due to the

the interval). The question regarding their moral responsibility was one undertaken by theologians and involved a great deal of disagreement. A recent monograph by Kevin Reinhart demonstrates the centrality of this discussion and the ramifications it had upon notions of rationality, ethics and morality. The basic question evaluated by Reinhart is the status of human actions before the arrival of divine legislation. Should these acts be deemed permissible, prohibited, or should all judgment upon them be reserved until God reveals His law? As a corollary to this basic question, questions related to the nature of the human intellect and its ability to reason independently of legislation naturally arose. Reinhart notes that in answer to this basic question there were three distinct positions—the Proscribed, the Permitted and No Assessment. For the first, namely the proscribers, most acts were considered blameworthy until there was explicit permission granted by revelation. For this narrow approach Reinhart could only identify a single Ḥanbalī source. As for the Permitters, the stark opponents of the Proscribers, they held that all actions were deemed permitted until the arrival of revelation. The last position, namely that of No Assessment, argued that before revelation there can be no assessment whatsoever of an act because revelation is the sole means of assessment. Reinhart states that this was the view that eventually prevailed within theological circles and became the official position of both the Ashʿarīs and the majority of the Ḥanbalīs. Despite the seemingly neat division between these three different positions, Reinhart notes that there was a great deal of fluidity and it is not possible to state that one theological school only held one position over the course of its history. As for al-Juwaynī, he holds, like other Ashʿarīs, the position of no assessment, so individuals are allowed to act freely according to their desire without any otherworldly consequence. See Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany, NY: State University of New York Press, 1995). There have been numerous reviews of this book, both favourable and unfavourable. As for the latter see Eric Ormsby's in *Islamic Law and Society*, 5/1 (1998): 118–23 and Wilfred Madelung's in *Bulletin of the School of Oriental and African Studies*, 60/1 (1997): 127–8. For a more favourable review see that of Bernard Weiss in *Journal of the American Oriental Society*, 119/2 (1999): 317–18. It is possible that the starkly different assessments are due to the fact that both Ormsby and Madelung are specialists in *kalām* whereas Weiss specializes in *uṣūl al-fiqh*, therefore the latter is focusing on theoretical questions which have not been raised in Western academic discussions regarding law, while the former are focusing on the more nuanced and technical matters that Reinhart does not fully present.

turbulent reality of politics. When juxtaposing the matters which he leaves open for compromise with those he remains fixed upon, the underlying principles governing his political thought emerge, revealing not only the rationale behind the text, but also al-Juwaynī's unique approach to politics and social reality.

AL-JUWAYNĪ'S BIFURCATION OF POWER AND AUTHORITY

Early critiques of Islamic political thought often base their assertions on the fact that Muslim theorists did not posit any ideal derived from the Prophetic model and instead any normative articulation was merely a pragmatic acceptance of political reality in the face of difficult historical moments. Al-Juwaynī's political thought, however, demonstrates that if and when political situations change, ideal notions of power, in the form of a formidable *imām,* can be compromised, as a complex notion of authority, stemming from religious traditions in the form of laws continues to provide stability and continuity for the Muslim community. If al-Juwaynī's political thought is contextualized within his historical moment it is clear that he is deeply concerned with the dilapidated state of the ʿAbbāsid caliphate and his sanguine early articulations of the *imāmate* can be read as a mirror to the political situations of his own time. But the *Ghiyāthī* can be read for his prediction for the future as much as for his understanding of the past. What connects his various investigations is his belief that political power presents a congenial way of directing the various factors of social and political life so that they support order and mitigate potential conflict. At the same time, his arguments for political power are coloured by his belief that changing situations will inevitably change political power—power is dynamic, power is unstable, and for that reason, there must be something *beyond* power that functions in society. This search for what is *beyond* political power leads him to reflect on the *objectives of power* and for that reason he is continuously willing to depart from his ideal, as we saw in the case of election, usurpation, and the appointment of the non-ideal candidate, to achieve the main objective of power, obedience and stability. However, despite power achieving stability and obedience, it cannot always ensure continuity, as continuity is highly dependent on authority and functions outside of the confines of political power. As a result, al-Juwaynī posits that the community is not merely held together by a powerful leader, but is unified around Shariʿa norms which enable the continuity of community without formalized government. By arguing for stability in

the form of political power, and authority in the form of the Shariʿa, al-Juwaynī recognizes the importance of political power, the Shariʿa and the community in creating stability and ensuring the continuity of society. This means that without the presence of all elements, the continuity and durability of the entire polity is threatened.

In this vein the *Ghiyāthī* can be seen as al-Juwaynī's struggle with the lived reality of politics, historical precedent, and his belief that power alone is not enough to ensure continuity. As a corollary, while a powerful *imām* may be legitimate, a position he shares with the majority of Sunni theorists before him, power alone simply falls short in the long term. His acceptance of the absence of the *imām* and formalized political structures is therefore not a vulgarization of politics because he maintains that authority continues, in the form of the Shariʿa, and its embodied form in *mujtahids,* muftis, and individual practice. His acceptance of the loss of formalized and institutionalized politics can therefore be characterized as accepting the loss of political power, but not authority, as human beings remain bound to the social authority of the Shariʿa which facilitates the transition from one saeculum to the next.

This bifurcation between power and authority, coupled with al-Juwaynī's socio-historic analysis highlights a series of underlying arguments regarding political power which are important to note. First, while the primary legitimizing characteristic of the *imām* is power and the competency to lead, that is not the ideal. In fact, the other characteristics that al-Juwaynī states are important but not essential, such as being a *mujtahid* and pious, are precisely those characteristics which would give the *imām* authority *in addition* to power. This means that if a candidate fulfills *all* of the qualifications that al-Juwaynī lays out, the *imām* would possess both power and authority. It is only when an *ideal* candidate is not found that the focus turns to finding a politically competent candidate who possesses power, but not authority. Second, political power is not the exclusive remit of the *imām,* but is also emphasized by al-Juwaynī when he speaks about the power (*shawka*) of the electors. This means that even though the *imām* is the primary source of political power, he is not the *only* source, and the acceptance of his rule is contingent upon his recognition by other powerful individuals within society. It is also the power of the electors which enable them to dispose of the *imām* if he becomes unfit for rule. The presence of multiple poles of power means that the political power which the *imām* has is not a totalizing power; rather is it a political power that is sanctioned by others, and can also be removed. The result of this is that al-Juwaynī understands both power and authority to be porous. Power is possessed by the ideal and non-ideal *imām,* the usurper and the electors, while authority is possessed by the ideal *imām* to some extent, but is

primarily located within the Shariʿa, its conveyors, and those who act according to it.

It is this understanding that makes classifying al-Juwaynī's project as a community-centred or rule-centred one difficult. On the basis of his tripartite division in the book between the ideal caliphate, the weak caliphate and the absent caliphate, he seems to emphasize different types of authority and power in different contexts. In the case of the ideal caliphate, al-Juwaynī adheres to the rule-centred model, with power and authority being primarily with the *imām*, though neither are exclusive to him. This, however, changes with the transition to the weak *imām* and al-Juwaynī begins to move toward a joint community-centred and rule-centered approach, with the authority of the Shariʿa, jurists and community becoming more important. Finally when the *imāmate* completely collapses, al-Juwaynī's model shifts completely to a law-centred/community-centred mode of governance where power is absent, but authority continues. Here it is important to emphasize that the dominance of one type of power and/or authority in a certain period does not preclude the presence of the others, meaning that even when the ideal caliphate is realized, the community and law remain important, as they are still secondary loci of authority. Articulating these points concurrently allows one to see that authority and power for al-Juwaynī will take different forms depending on the political context and the qualifications of the *imām*.

The multifaceted ways in which al-Juwaynī envisions politics makes him a practical political thinker who is able to envision a certain political and institutional ideal, but is also willing to depart from that ideal when necessary. It is precisely this acceptance of the transient nature of perfection that causes him to reject an overly prescriptive and power driven approach to the caliphate. And while he describes in detail certain functional aspects of the caliphate, his willingness to forgo them is testament to al-Juwaynī's preoccupation with the porous nature of both power and authority. This marks a distinct shift away from the methodology adopted by his predecessors such as al-Māwardī and al-Bāqillānī who set forth in meticulous detail a rule-centred and power driven model of the caliphate without much compromise. By abandoning the model of his predecessors he is able to probe into speculative future political situations, exemplifying both his desire to create a holistic political philosophy and his recognition that political power is not sufficient to ensure the continuity and durability of society. Fortified by a belief in both reason and revelation as the foundation and inspiration for his text, al-Juwaynī explores the shortcomings and limitations of political power, which allows him to recognize the importance of alternate forms of authority embedded within religion and society. The

expansive nature of this dichotomy between power and authority releases scholars from reducing Islamic political thought to an enquiry into political power and opens up the space to investigate, in a more nuanced way, the ways in which power and authority often commingle in both theory and practice.