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Twelver Shī'ī jurisprudence and its struggle with Sunnī consensus

Stewart, Devin J., Ph.D.

University of Pennsylvania, 1991

TWELVER SHĪʿĪ JURISPRUDENCE
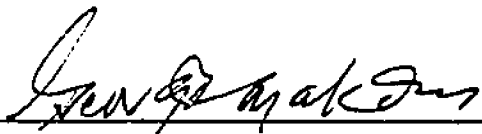# AND ITS STRUGGLE WITH SUNNĪ CONSENSUS

Devin J. Stewart

A DISSERTATION

in

Oriental Studies

Presented to the Faculties of the University of Pennsylvania in Partial
Fulfillment of the Requirements for the Degree of Doctor of Philosophy

1991

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Supervisor of Dissertation

_____

Graduate Group Chairperson

To two exceptional friends,

Emad and Farimah

رسید مژده که ایام غم نخواهد ماند

چنان نماند و چنین نیز هم نخواهد ماند

حافظ

Notes on abbreviations and transliteration

Abbreviations are used for the following standard works in the field:

GAL   Carl Brockelmann, Geschichte der arabischen Litteratur.

EI 1   Encyclopaedia of Islam, first edition.

EI2   Encyclopaedia of Islam, second edition.

I have not abbreviated the titles of journals or other works.

Arabic words, terms, and titles of works have been transliterated according ot the system of the Library of Congress. In connected prose, this system has been modified to show assimilation, elision, and declension fully. Persian words have been transliterated in the same manner as the Arabic, with the substitution of _v_ for the letter _wāw_. Arabic words and terms are underlined unless they are proper names, place names, or common terms such as Sunnī, Shīʿī, Imāmī, etc.

The term Shīʿī is sometimes used to designate the Twelver Shīʿīs specifically, and sometimes more generally to designate Twelver Shīʿīs, Zaydīs, and Ismāʿīlīs as well. The intended meaning should be clear from the context.

ABSTRACT

TWELVER SHĪʾĪ JURISPRUDENCE
AND ITS STRUGGLE WITH SUNNĪ CONSENSUS

DEVIN J. STEWART

GEORGE MAKDISI

This study attempts to explain how and why the Twelver Shīʿīs adopted the guild-based system of jurisprudence first developed by the Sunnīs. Drawing on Sunnī legal and theological works, it first outlines a theory of legal heresy in Sunnī Islam based on the concept of "violating the consensus" (mukhālafat al-ijmāʿ). The study contends that this definition of heresy threatened to exclude Twelver Shīʿīs from the system of legal education and scholarship, and that it provoked a number of reactions which are seen in Shīʿī legal scholarship. Using biographical dictionaries, ijāzah documents, and works on law and legal methodology, this study argues that Shīʿī reactions to Sunnī consensus may be seen as falling into three broad categories: rejection of consensus, conformance to consensus, and adoption of consensus. Scholarship on Shīʿism to date suggests that the first category would be the prevalent one, since Shīʿism is seen as a religion of protest inclined to reject the majority. While the rejection of the majority's legal system was a significant theme in Shīʿī legal literature, and characterized in

particular the Shīʿī Akhbārī movement, it has not been the historically the most important trend. Shīʿīs often adopted the Shāfiʿī _madhhab_ in order to participate in the system of Sunnī _madhhabs_, and have furthermore endeavored to establish Twelver Shīʿism as a _madhhab_ on a par with those of the Sunnīs. This last trend has been of enormous importance in the history of the development of Shīʿī jurisprudence, and began in the late fourth/tenth and early fifth/eleventh centuries with the Shīʿī adoption of the concept of consensus.

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Introduction

> Since, in matters of the religious law, you do not follow anything except the opinion of the Infallible Imam, then what need have you of legal methodology (uṣūl al-fiqh)? Your discussion of this discipline is mere folly, and serves no purpose.[1]

Thus, the sixth/twelfth-century Shīʿī jurisconsult Ibn Zuhrah al-Ḥalabī (d. 585/1189-90) reports the antagonistic question of an unnamed Sunnī interlocutor in the introduction to his work on Twelver Shīʿī law and legal methodology, Ghunyat al-nuzūʿ. The present study attempts to answer this ancient query by examining the development of Twelver Shīʿī jurisprudence within the framework of Islamic theories of orthodoxy and heresy. It strives to demonstrate how and why the Twelver Shīʿīs developed a legal system which seems to be in contradiction with the early Shīʿī system of authority and fundamental principles of Shīʿī doctrine, particularly the reliance on an Imam, a divinely inspired living leader of the community, for guidance in religious matters.

This study proposes the hypothesis that Twelver Shīʿīs developed a legal system very similar to that of the Sunnīs in an attempt to overcome their status as a stigmatized group threatened with exclusion from the community of Islamic orthodoxy. This strategy resulted from a desire on the part of the Shīʿīs to gain the acceptance of their fellow Muslims and participate fully in the educational and juridical sectors of Islamic society

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[1] Ghunyat al-nuzūʿ, included in al-Jawāmiʿ al-fiqhiyyah (Qum: Maktabat al-Marʿashī al-Najafī, 1984), 461.

without hiding their own identity. The Sunnī legal system threatened to exclude the Shīʿīs based on a specific definition of heterodoxy, and this criterion of discrimination determined how the Shīʿīs adopted the strategy of trying to fit into the Sunnī-dominated Muslim community. The proof of this hypothesis promises to reveal the reasoning behind the development of a number of key concepts within the Shīʿī legal system that are otherwise inexplicable and provide a clearer understanding of the position of Shīʿī Islam within the Sunnī majority.

While this study employs many theories and concepts native to Islamic intellectual tradition and examined in Orientalist scholarship, including madhhab (professional legal guild), takfīr (declaration of unbelief), and taqiyyah (dissimulation), and appeals to concepts familiar from Christian and general religious history, such as orthodoxy and heresy, it also draws on the theory of stigma, which has been developed in the field of sociology, especially as discussed by Erving Goffman in his work Stigma: Notes on the Management of Spoiled Identity, first published in 1963.[2] The major trends of Shīʿī jurisprudence may be seen profitably as types of reaction to the accusations of heresy directed against the Shīʿīs. In sociological terms, the Shīʿī scholars, as possessors of a tribal stigma—one which resides in a social group and may be passed on through family connections—, were subject to widespread prejudice in an academic and social environment where adherence to Sunnī Islam was the norm. The normative expectations which the Shīʿī scholars did not in general meet were determined by the definition of Sunnī orthodoxy supported in that environment. In this situation, there

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[2]The edition used here is Stigma: Notes on the Management of Spoiled Identity (New York: Simon and Schuster, 1986).

were a number of strategies open to the Shīʿīs in their attempts to live and interact in a society in which their true identities were discredited, deprecated, or unacceptable.

This study is divided into two parts, the first of which contains three chapters and the second, six. Part One aims to give an overview of Twelver Shīʿism and the development of Twelver Shīʿī jurisprudence as it has been treated in scholarship to date, and then to focus on the Twelver Shīʿī adoption of the Sunnī guild-based system of legal authority. Chapter One discusses definitions of Shīʿism in scholarship on Islam to date and focuses on their most salient points of inadequacy. Chapter Two treats Twelver Shīʿī jurisprudence and legal authority. It presents the basic problem, the contradiction between the classical Imam-based system of legal authority and the modern guild-based system of legal authority within Shīʿism. Chapter Three discusses the Akhbārī movement within Twelver Shīʿism and argues that the Shīʿīs adopted the guild-based system of authority from the Sunnīs.

After showing that the origin of the guild-based system lies with the Sunnīs, investigation then turns to the motives for its adoption in Part Two. Chapter Four focuses on Sunnī definitions of heresy, and suggests that the subsequent development of Twelver Shīʿī jurisprudence comprises three types of reaction to one particular definition of heresy espoused by members of the Sunnī juridical establishment, that of going against consensus (mukhālafat al-ijmāʿ). These reactions include rejection, discussed in Chapter Five; infiltration, discussed in Chapter Six and Chapter Seven; and participation as equals, discussed in Chapter Eight. Chapter Five treats Shīʿī rejection of the guild-based system of authority and shows that they were

based on the idea that the Sunni legal system violated fundamental Shīʿī principles. Chapter Six argues that Shīʿī jurists often claimed to belong to the Shāfiʿī madhhab in order to participate in the Sunni system of legal education. Chapter Seven shows some methods Shīʿī scholars used in order to participate successfully in the Sunni academic environment without being denounced as heretics. Chapter Eight treats Twelver Shīʿī attempts to participate in the Sunni system as equal partners, as a fifth orthodox madhhab. The final chapter, Chapter Nine, compares the Twelver Shīʿī and Sunni legal systems in order to assess the historical results of the attempt to create a fifth orthodox madhhab.

This is primarily a study of legal theory. It is based on the study of legal texts, both Shīʿī and Sunni, as well as material dealing with the lives and works of important Shīʿī jurists found in ijāzah documents, bio-bibliographical dictionaries, chronicles, and the works of these scholars themselves. It draws on the works produced in the foremost centers of Twelver Shīʿī learning, in the areas of Iraq, Iran, and Lebanon, between the fourth/tenth and twelfth/eighteenth centuries. Concern focuses on the realm of practice only at the level of education and educational institutions. The general socio-political dimensions of Islamic sects and relations between sects on the popular level will, for the most part, not be addressed. This is not to say that the socio-political level is not important or that the theoretical does not impinge on the practical. In fact, an understanding of the legal theory and authority is a fundamental pre-requisite to an adequate understanding of the popular aspect of the same problem.

This study does not treat the complex relationship between Shīʿī religious authority and the political power or legitimacy of Sunni or Shīʿī

governments. A key concept in the Shīʿī theoretical position concerning political authority is wilāyat al-faqīh or "government by the jurisconsult" as espoused by Khomeini and other modern Shīʿī jurists. This concept is based on the same line of reasoning and the same proof-texts which are used to support the religious authority of the guild of legal scholars discussed below. Nevertheless, it is itself a vast topic which deserves separate treatment.[3]

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[3]Abdulaziz Sachedina has treated part of this issue in his recent work, where he gives a history of the theoretical underpinnings of the concept of wilāyat al-faqīh. [Abdulaziz Abdulhussein Sachedina, The Just Ruler in Shīʿite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence (Oxford: Oxford University Press, 1988)] Arjomand has collected a number of texts and studies dealing with this topic. [Said Amir Arjomand, ed., Authority and Political Culture in Shiʿism (Albany: State University of New York Press, 1988)]. While these are important steps, a great deal of research concerning the attitudes and actions of Shīʿīs with regard to actual governments, both Sunnī and Shīʿī, has yet to be performed.

Part One

Twelver Shīʿism

and the Development of Twelver Shīʿī Jurisprudence

Chapter One

Definitions of Twelver Shī'ism

> Unlike the case for Christianity, there is no formal clergy in the
> Muslim world and no center of priests who can decide upon
> what is and is not orthodox. Hence it is misleading to speak of
> schisms in the Muslim community. There is no formal religious
> center from which judgments of orthodoxy and heterodoxy can
> be made. Even with this consideration in mind, Shī'a are set
> apart from Sunnī Muslims in terms both of how they interpret
> the elaborate meaning of Islam and in the practical sense of
> self-differentiation from other Muslims.[1]

This passage from a modern text-book demonstrates the confusion in
scholarship on Islam as to the defining characteristics of Shī'ism and its
status within Islam as a whole. Here, Professor Eickelmann states that for all
intents and purposes Shī'ism is a sect, while at the same time admitting that
it is not known what an Islamic sect is, how an Islamic sect is to be defined,
or what gives Shī'ism its identity as a sect. He even seems to hold the
opinion that there is no possible way for a Muslim to be declared a heretic
and that schismatic religious bodies as such do not exist in Islam. This is less
a reflection on Eickelmann's own research than a comment on the state of
scholarship on sects in Islam in general. In order to improve on this
description, one must answer the question whether, according to the Sunnī
majority, Shī'ism is schismatic and, if it is beyond the pale, which feature of
Shī'ism renders it heterodox. This is a difficult undertaking, given that

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[1]Dale F. Eickelman, The Middle East: An Anthropological Approach
(Englewood Cliffs, New Jersey: Prentice Hall, 1981), 213.

scholarship is just beginning to reveal the workings of religious authority, orthodoxy, and heresy in Islamic theory in general.

This study attempts to take into account two important features of Twelver Shīʿism often ignored in the descriptions available in scholarship to date. First, a model of Shīʿism should take into account developments within Shīʿism in both of its two main phases: the period during which communication with the Imam was still possible, including that of the physical presence of the Imams (11/632-260/874) as well as the Lesser Occultation of the Twelfth Imam (al-ghaybah al-sughrā: 260/874-329/941), and the period during which communication with the Imam has no longer been possible, termed the Greater Occultation (al-ghaybah al-kubrā: 329/941-present). Too often, descriptions of Shīʿism are valid only for the period of the presence of the Imams, and thus belie the data of over one thousand years of Shīʿī history. Secondly, the model should describe and account for the place of Shīʿism within the larger Islamic community. This seems to be a necessary requirement for any serious attempt to define Shīʿism, especially since Shīʿism has been a minority surrounded by a Sunnī majority for the greater part of its existence. The following remarks treat portrayals of Shīʿism in the Orientalist tradition to date, identify some of their shortcomings, and point out the phenomena for which an adequate model of Shīʿism should account.

Goldziher, in speaking of sects in Islam in his Vorlesungen über den Islam (1910), identifies three categories in which Shīʿīs differ from the Sunnī majority: political, theological, and legal.[2] It will be useful to examine

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[2]Ignaz Goldziher, Introduction to Islamic Theology and Law (Princeton, N.J.: Princeton University Press, 1981), 167-229.

these three categories in an attempt to determine what, if anything, makes Shīʿism schismatic, and in order to analyze earlier scholarship on this issue. Goldziher's term "political" refers essentially to the caliphate/imamate, the issue of leadership of the Muslim community.

A. The Imamate

Twelver Shīʿī doctrine of the early centuries of Islam, as it is now understood generally, held that God would provide their community with religious guidance in all ages. This guidance was seen as embodied in an Imam, or "leader," entrusted with upholding ritual obligations in the community and endowed with the authority to settle disputes over religious questions. Shīʿī doctrine claims that the believer must know the Imam of his time. The Imam is compared to Noah's ark in the flood; he is the gate to the city of knowledge of God. Only through him does one reach salvation. The Imam, according to the Shīʿīs, had to be a living descendant of the Prophet Muḥammad through Fāṭimah, Muḥammad's daughter, and ʿAlī, his cousin and son-in-law, and had to be chosen through designation (nass) by the previous Imam. He was considered to be impeccable and infallible (maʿsūm) and to possess divine knowledge, either by direct divine inspiration (ilhām or wahy), or by transmission from his predecessors (taʿlīm). He was thus, in effect, a living conduit of continued revelation.

A crucial aspect of the doctrine of the imamate is that the Shīʿīs viewed the Imam as standing in opposition to the leader of the Sunnī community, the Caliph (khalīfah), whose title means literally "successor (of the Prophet Muḥammad)."[3] Although the common view is that the Sunnī

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[3] On the caliphate in general, see Emile Tyan, Institutions du droit public musulman, 2 vols. (Beirut, 1954-56). On the Shīʿī conception of the imamate, see 2: 368-493.

Caliphs were primarily secular figures responsible for such activities as taxation, the maintenance of public order, and the defense of Muslim territory from foreign invasion, and were not endowed with spiritual authority or divine inspiration, the Shīʿīs nevertheless viewed them as usurpers of the office which rightfully belonged to the Imams, and on many occasions rebelled against the Caliphs' authority. Hence the "political" differences of which Goldziher speaks.

In a 1953 article, Bernard Lewis gave a brief overview of the early definitions of Shīʿism in Western scholarship.[4] Since the nineteenth century, attention within the Orientalist tradition had focused on the issue of the caliphate during the early centuries of Islam. Nineteenth-century scholars such as Gobineau, Renan, Dozy, and Darmesteter portrayed Shīʿism as an Aryan, Persian national movement against the Semitic, Arab invaders.[5] This view was also held by MacDonald: "Shīʿism, in great part, is the revolt of the Aryan against Semitic monotheism."[6] In the first quarter of the twentieth century, Goldziher, Barthold, and Wellhausen criticized this earlier view, and put forward the view that Shīʿism was the vehicle for the protests of an important social class, that of the mawālī, or "clients", converts to Islam who had not been born into an Arab tribe.[7] Thus, the common view up to the time of Goldziher was that it was the struggle over the caliphate, a political issue, which made the Shīʿīs sectarian. While at first it was held that the

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[4]"Some Observations on the Significance of Heresy in the History of Islam," Studia Islamica 1(1953): 43-63. On Shīʿism, see 44-50.
[5]"The Significance of Heresy," 44-45.
[6]Duncan B. MacDonald, Development of Muslim Theology, Jurisprudence and Constitutional Theory (New York: Charles Schribners Sons, 1903; reprinted 1926), 51.
[7]"The Significance of Heresy," 45-48.

political conflict was based on national or "racial" discontent, Wellhausen, for example, held that it was based on social discontent.

Goldziher states that it was the political differences, namely, the theory of the imamate which put Shīʿīs outside the pale of orthodoxy: "The Sunnī considers the Shīʿī a dissenter neither because of peculiarities in his legal practice, nor because of the orientation of his theology, but chiefly because of his deviation from the accepted constitutional law of the sunna."[8] By "constitutional law," a term which has since fallen into disuse in this context, he refers to the issue of the caliphate. Goldziher followed his predecessors in accepting the idea that this was the crucial feature of Shīʿism, and later scholars have for the most part followed his statements on the topic. This view is still current in our manuals on Islam; all modern introductory text-books, when treating Shīʿism, focus on the problem of succession after the death of the Prophet, the political conflicts which ensued, and the theory of the imamate as the embodiment of Shīʿī opposition to the caliphate. This is seen to characterize Shīʿism and define it as a sect for all time. Lammens writes, "The main line of demarcation between the two parties is drawn by the fundamental dogma of the Imām-Mahdī. From the orthodox point of view this doctrine, which is at once political and religious, makes of the Shīʿa a heresy and schism."[9] Hitti states, "Thus did the imām-mahdi dogma become an essential part of Shiʿite creed. Even today it forms the main line of demarcation between Shiʿite and

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[8]Introduction to Islamic Theology and Law, 205.

[9]H. Lammens, Islam: Beliefs and Institutions, trans. Sir E. Dennison Ross (London: Frank Cass and Co., 1968)[original French edition 1926], 151.

Sunnite Islam."[10] In a more recent work, Esposito repeats this idea: "The
fundamental difference between Sunni and Shii Muslims is the Shii doctrine
of the imamate as distinct from the Sunni caliphate."[11] This view is not
limited to elementary manuals, but is also found in specialized studies on
Shīʿism. Most discussions of Shīʿism as a sect, including Henri Laoust's well
known work on schisms in Islam, concentrate almost exclusively on the
theory of the imamate and the struggles over the caliphate.[12] It is not
surprising that Orientalists have adopted this view. A cursory reading of the
original sources gives the same picture. Medieval heresiographies, also to a
great extent concerned with historical origins, set the Shīʿis apart as heretics
primarily because of their theory of the imamate. This, for example, is true
of the famous works of al-Ashʿarī and al-Shahrastānī, which are discussed
in greater detail in Chapter Four.

In a 1979 essay with the promising title "Comment définir le
sunnisme et le chiisme,"[13] Henri Laoust attempted to answer some of the
questions which concern this study. He stresses the doctrine of the imamate
as defining Shīʿism,[14] stating, "La donnée de base de la doctrine imāmite
réside dans l'importance conférée à la notion d'_imām_ et d'imamat."[15] Laoust
undercuts this interpretation in a later passage, implying that a momentous
change had occurred within Shīʿism with the beginning of the occultation.

[10]Philip K. Hitti, History of the Arabs, 10th ed. (N.Y.: St. Marten's Press,
1970), 441.
[11]John L. Esposito, Islam: The Straight Path (New York: Oxford
University Press, 1988), 49.
[12]Henri Laoust, Les schismes dans l'islam: introduction à une étude de
la religion musulmane (Paris, 1965).
[13]Révue des études islamiques, 47 (1979): 3-17.
[14]"Comment définir," 14-17.
[15]"Comment définir," 14.

He reports that during the period of occultation, the Imam communicates with the believers through the doctors of the law,[16] adding that it is the task of these doctors to use their ijtihād to interpret the law.[17] Laoust endeavors to maintain continuity by claiming that the Imam during the Greater Occultation continues to "communicate" with his believers in this fashion, but his statements show that a different sort of legal authority has come into play. He does not recognize, however, that this type of legal authority was radically different from that in place prior to the Occultation.

Laoust's definition of Sunnism lacks focus. He states that the disciplines which went into the make-up of Sunnism are fiqh (positive law), hadīth (oral traditions of the Prophet), kalām (philosophical theology), and tasawwuf (mysticism).[18] He also states that Sunnism is based on four other principles: barā'ah, or the declaration, when faced with heretical beliefs, that one will have nothing to do with them; ithbāt, the affirmation that God has a plurality of attributes, without leading to anthropomorphism; ijmāᶜ, the consensus of the community; and siyāsah, which Laoust translates as "politique," and, as evident from the context, he takes to refer to the Sunnī caliphate.[19] Of the four disciplines, he holds that fiqh, including both the usūl ("racines") and the furūᶜ ("ramifications") is the most important, but does not explain why he makes this statement.[20]

The problems with this definition of Sunnism are numerous. Shīᶜism, like Sunnism, had its Sufis, so that one could not claim that tasawwuf

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[16]"Comment définir," 17.
[17]"Comment définir, 17.
[18]"Comment définir," 5-10.
[19]"Comment définir," 10-12.
[20]"Comment définir," 5.

somehow defined one as opposed to the other. Kalām was often declared reprehensible or illegal by Sunnī scholars themselves, such as Ibn Qudāmah (d. 620/1223) and Ibn Taymiyyah (d. 728/1328). Goldziher reports that a fourth/tenth-century scholar Abū Sulaymān al-Khaṭṭābī al-Bustī (d. 388/998) wrote a work entitled "The Dispensability of Kalām and Those Who Practice It" (al-Ghunyah ʿan al-kalām wa ahlih).[21] Goldziher also mentions the opposition of Shāfiʿī and Ibn Taymiyyah to kalām,[22] and Professor George Makdisi discusses al-Shāfiʿī's opposition to kalām and the mutakallimūn in some detail.[23] Kalām could therefore not be said to be one of the essential components of Sunnism without some qualification.

The most serious shortcoming of Laoust's definitions of Sunnism and Shīʿism, however, is that they are simply juxtaposed. No attempt is made to compare them on equal terms, or describe the relationship between the two. Only in the last paragraph of the essay does Laoust turn to the historical relationship between Sunnism and Shīʿism.[24] He focuses entirely on the issue of Shīʿī opposition to the Sunnī Caliphate during the periods of the khulafāʾ rāshidūn and the Umayyad and ʿAbbāsid Caliphates. He even speculates that Shīʿīs had something to do with the fall of Baghdad to the Mongols in 656/1258 and the concomitant demise of the Abbasid Caliphate there. Thus, it appears that in Laoust's view the political question of the Caliphate historically defined Shīʿism with respect to Sunnism.

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[21]Goldziher, Introduction to Islamic Theology and Law, 111 n. 77.
[22]Goldziher, Introduction to Islamic Theology and Law, 110-11.
[23]Makdisi, The Rise of Humanism in Classical Islam and the Christian West, with Special Reference to Scholasticism (Edinburgh: Edinburgh University Press, 1990), 2-5; "The Juridical Theology of Shāfiʿī: Origins and Significance of Uṣūl al-fiqh," Studia Islamica 59(1984): 5-47.
[24]"Comment définir," 17.

Most modern scholars agree that legal and theological differences between Sunnis and Shīʿīs arose later, as a result of the political doctrine, but they view these differences as derivative elements which do not constitute the essence of Shīʿism. Goldziher states:

> ... the basic doctrine of Shīʿī Islam entails, by its very nature, a way of thinking that essentially differs from Sunnī thinking on fundamental theological issues as well. The Shīʿī conception of the nature of the Imams had to have an effect on the formation of their ideas of God, law, and prophecy.[25]

The modern Iranian Shīʿī scholar Muḥammad Ḥusayn Ṭabāṭabāʾī also holds that the essential element of Shīʿism is the imamate and that legal and other differences are derivative.

> Shīʿah, which means literally partisan or follower, refers to those who consider the succession to the Prophet—may God's peace and benediction be upon him—to be the special right of the family of the Prophet and who in the field of the Islamic sciences and culture follow the school of the Household of the Prophet.[26]

Modarressi defines Shīʿism in a similar manner. He sees that the key feature of Shīʿism is its reliance on the Imams, and legal differences as being derivative. He states that the main difference between Sunnī and Shīʿī law is that of the historical origin of their traditions (hadīth) and legal opinions. Whereas the Shīʿīs received their traditions through the descendants of the Prophet, the Sunnīs received theirs through the Prophet's

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[25]Introduction to Islamic Theology and Law, 202-3.
[26]Muḥammad Ḥusayn Ṭabāṭabāʾī, Shiʿite Islam, trans. Seyyed Hossein Nasr (Albany: State University of New York Press, 1975), 33.

companions, and whereas the Shīʿīs follow the opinions of the Imams, the Sunnīs follow the opinions of some famous jurists of Madīnah and Iraq.[27] Although Modarressi focuses on tradition and law, he is again considering the imamate the feature which distinguishes Shīʿism both before and after the Occultation.

Remarks on the Importance of the Imamate

Heresy and orthodoxy are immediate issues, not historical ones. Too often in the literature, scholars have defined Shīʿism with purely teleological concerns and have gone no further. In other words, most discussions of Shīʿism begin with the historical origin of Shīʿism in the struggles over leadership of the Muslim community following the demise of the Prophet Muḥammad in 11/632. The approach based on historical origin is a useful mnemonic or pedagogical device, but fails to explain how the system of heterodoxy and orthodoxy worked at any specific time during the history of Islam other than the period very close to the origin of the schism, if it may be described as such. Most definitions of Shīʿism begin and end, in a logical sense, with the historical origin of the schism. The struggle over the leadership of the community, as embodied in the Shīʿī theory of the imamate, is seen to define Shīʿism and render it somehow separate from the Sunnī majority for all time. This could be true, prima facie, but would need to be demonstrated clearly rather than assumed for subsequent periods of Islamic history. There is, however, much evidence to indicate that this has not been the case for the greater part of Islamic history.

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[27]Hossein Modarressi Ṭabāṭabāʾī, An Introduction to Shīʿī Law: A Bibliographical Study (London: Ithaca Press, 1984), 2-3.

There are strong indications from both Shīʿī and Sunnī points of view that by the fourth/tenth or fifth/eleventh century the issue of the imamate ceased to be the most important method of defining Shīʿism, or at least of determining whether Shīʿism was heretical. The primacy of the imamate is called into question by the enormous fact of the Occultation: according to Shīʿī doctrine, direct contact between the Imam and his community has been cut off for over one thousand years. Standard Twelver Shīʿī doctrine holds that in 260/874, the Twelfth Imam, named Muḥammad, the son of the eleventh Imam, Hasan al-ʿAskarī, disappeared in the town of Samarraʾ in Iraq and went into hiding. For over sixty years following this date, during the Lesser Occultation, communication with the Imam was possible through a succession of four men from the Shīʿī community who served as intermediaries, termed variously bāb, safīr, or wakīl. They would take messages to the hidden Imam and return with his replies. In 329/941, the last safīr died without designating a successor. The doctrine became that all direct, intended communication with the Imam was cut off, and the Greater Occultation, or al-ghaybah al-kubrā, had begun. It is held that God has miraculously prolonged the Imam's life, just as He prolonged the lives of Adam and Noah, and that the Imam is circulating, in human form among the believers, although they cannot identify him. He will reveal himself before the end of time and inaugurate a one-thousand year reign of justice and peace. It is difficult to hold that the "political" issue of the imamte renders Shīʿism heretical when no one can identify the imam and he wields no de facto power.

In addition, on the Sunnī side, both the political and religious authority of the Caliph dwindled. After a certain period, many Sunnī

scholars did not recognize the religious importance of allegiance to the Caliph. Allegiance to the Shīʿī Imam was therefore not in opposition to any fundamental principle of Sunnī faith. The Sunnī scholar al-Nasafī (d. 537/1142-43) proclaimed in his well-known creed, despite the fact that he lived during the time of the Abbasid Caliphs, that the Caliphate "extended to thirty years [after the Prophet's death]; then, thereafter, came kings and princes."[28] Al-Nasafī clearly did not have assign much religious significance to the reigning Caliph to be able to claim that only the first four Caliphs were true Caliphs, and all subsequent Caliphs were merely political, administrative figures.

The well-known Sunnī jurist al-Ghazālī (d. 505/1111) clearly states that it is not the theory of the imamate which makes Shīʿīs heretics: "Know that no part of error concerning the imamate, its necessity, its stipulations, or related matters calls for a declaration of unbelief (takfīr)."[29] He adds, "Nor should one pay any attention to a group who consider the imamate extremely important and consider faith in the Imam tied to faith in God and His Prophet, or to their opponents who declare them unbelievers solely because of their opinion concerning the imamate."[30] Al-Ghazālī makes it clear that this holds not only for the period of presence of the Imams, but also for the period of occultation. He writes,

> An opinion the harm of which to the religion is not very great
> should be treated with lenience, even though this opinion might
> be heinous and clearly invalid, like the opinion of the "waiting"
> (muntazirah) Imāmīs, that the Imam is hidden in a sub-

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[28]trans. Duncan B. MacDonald, Development of Muslim Theology, 313.
[29]Muhammad al-Ghazālī, Faysal al-tafriqah bayn al-islām wa al-zandaqah (Cairo: Matbaʿat al-saʿadah, 1907), 15.
[30]Faysal al-tafriqah, 16.

terranean vault (sirdāb) and that his coming forth is awaited.
This [opinion] is erroneous, clearly false, and extremely heinous,
but it does not harm the religion at all. Rather, it merely harms
the fool who believes it, since he goes out from his village every
day in order to welcome the Imam upon his awaited
appearance, and returns to his house disappointed.[31]

Thus, at least in the view of al-Ghazālī, it is evident that it is not the issue of

the Imamate which makes Shīʿīs heretical.

B. Philosophical Theology (Kalām)

Kalām is the science of Muslim philosophical or speculative theology.

Its practitioners discuss such issues as the attributes of God, the nature of

good and evil, predestination, and other topics similar to those treated in

Christian theology. The general wisdom concerning Shīʿī theology is that it

has preserved much of Muʿtazilī theology.[32] Schacht holds that Muʿtazilī

influence on Shīʿī theology includes Shīʿism within Sunnī orthodoxy, rather

than excluding it. He states, "Thus the Imamites were in some sense in the

main stream of Islamic theology."[33]

Most scholarship on Islam claims that Ashʿarī theology became the

orthodoxy of Sunnī Islam in the fifth/eleventh century and has remained so

ever since. Ashʿarism is seen as the middle road, a compromise between the

extreme literalism of the Hanbalīs and the extreme rationalism of the

Muʿtazilīs.[34] Consequently, it is believed that Muʿtazilism came to be

considered heretical. Given the strong connection between Shīʿī and

[31]Faysal al-tafriqah, 19.

[32]Introduction to Islamic Theology and Law, 203-4.

[33]Joseph Schacht, The Origins of Muhammadan Jurisprudence (Oxford:
Clarendon Press, 1950), 99.

[34]Goldziher, Introduction to Islamic Theology and Law, 114; Fazlur
Rahman, Islam, 2nd ed. (Chicago: University of Chicago Press, 1979), 92, 109.

Muʿtazilī theology, this implies that Shīʿism would have been declared heretical by the same token. To the best of my knowledge, this issue has not been taken up in scholarship on Shīʿism, but it is the logical implication of the widely accepted view of Ashʿarism as defining orthodoxy.

Professor Makdisi has called this widely accepted view into question, and has shown that it cannot be said that Ashʿarism came to constitute orthodoxy.[35] This is also shown in al-Ghazālī's discussion of theology in his work Faysal al-tafriqah bayna al-islām wa al-zandaqah. He reports that Muʿtazilī, Ashʿarī, and Hanbalī scholars have been declaring each other heretics without justification for their opinions on certain theological issues, and states unequivocally that orthodoxy is not limited to the opinions of al-Ashʿarī. He states, "Ask your interlocutor what the definition of unbelief is, and if he claims that the definition of unbelief is that which goes against the Ashʿarī position, or the Muʿtazilī position, or the Hanbalī position, or that of others, then know that he is a naive dolt (ghirr balīd)."[36] Al-Ghazālī reports that the representatives of these schools of theological thought are quarreling over matters of interpretation (taʾwīl) of the attributes of God and other concepts. He holds that since there are five levels of existence, "essential" (dhātī), "perceptional" (hissī), "imaginational" (khayālī), "rational" (ʿaqlī), and "simulational" (shibhī), any interpretation which considers the concept in question as falling into one of these five categories is acceptable.[37] Therefore, a wide variety of theological opinions may all be considered orthodox.

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[35]George Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History," Studia Islamica 17 (1962): 37-80; 18(1963): 19-39.

[36]Faysal al-tafriqah, 2-3.

[37]Faysal al-tafriqah, 5, 9, 11.

Madelung has produced the most detailed analysis of the relationship between Shīʿī and Muʿtazilī theology to date.[38] He concludes that contrary to the generally accepted view, it is wrong to see Shīʿī and Muʿtazilī theology as one, for this ignores their historical development. He shows that in the early period—the second/eighth and third/ninth Islamic centuries—Muʿtazilī and Shīʿī theology were fundamentally different, and Muʿtazilī theologians attacked the Shīʿīs for their anthropomorphic conceptions of God, their restrictive interpretation of human free will, and other views. Subsequently, and especially during the Buwayhid period (ca. 334-447/945-1055), Shīʿī theologians drew closer to rationalist Muʿtazilī theology despite some logical incompatibilities, and, finally, incorporated large segments of Muʿtazilī doctrine, including, to a large extent, their anti-anthropomorphic interpretation of the Oneness of God (tawhīd) and Divine Justice (ʿadl). It is thus wrong to view Twelver Shīʿī theology as wholly Muʿtazilī.

The key point here is that theology does not play a major role in setting Shīʿism apart from the majority. As Madelung states, "For the Imāmiyya as a whole pure theology was of a minor concern."[39] Al-Ghazālī also holds that heresy is a legal, not a theological issue, that a declaration of heresy is a legal ruling, and that its basis is a legal opinion.[40] The Shīʿī jurist and theologian al-Sharīf al-Murtaḍā (d. 436/1044) argues that Shīʿīs are not to be excluded from the majority Sunnī community because of their theological opinions. He states that according to the Sunnī system, Shīʿīs are

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[38]"Imamism and Muʿtazilite Theology," Le shīʿisme imāmite (Paris: Presses Universitaires de France, 1970), 15-30.

[39]Madelung, "Imamism and Muʿtazilite Theology," 30.

[40]Faysal al-tafriqah, 4-5.

not unbelievers because of their opinions on dogmatic theology (uṣūl al-dīn),
but only sinners, and as such, believers and full members in the
community.[41] Thus, it appears that to understand the place of Shīʿism
within the community, it is the field of law which must be examined.

C. Positive Law (Fiqh)

In the Muslim view of religious history, the prophets came endowed
with three sorts of divine gifts. They brought miracles to prove that they
were not speaking of their own accord but were chosen as messengers by
God; they brought messages from God in the form of prophesies or
scriptures; and they brought rules which together constituted a way
according to which believers were supposed to live. This "way" was a Law or
sharīʿah, which regulated not only ritual devotions, but also all other aspects
of mundane life. The Prophet Muḥammad brought a Law as did Noah and
Moses before him. This last, the Islamic sharīʿah, is held to abrogate all
earlier versions and serve as the framework for God's government of human
existence for all time.

The study of this positive law is known as fiqh, literally
"understanding." It encompasses both ʿibādāt, or laws regulating ritual, and
muʿāmalāt, or laws regulating mundane affairs. The ʿibādāt include such
topics as ritual purity, prayer, fasting, and performance of the pilgrimage;
the muʿāmalāt consider most of the topics one would find in civil and
criminal law, including contract law, personal status law, and penal law.
Muslim scholars have produced an enormous body of legal scholarship, and
the study of law is clearly one of the most important features of Islamic
society. By the end of the fifth/eleventh century, four madhhabs or "schools

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[41]al-Intiṣār (Najaf: al-Maṭbaʿah al-ḥaydariyyah, 1971), 5.

of law"—the Ḥanafī, the Mālikī, the Shāfiʿī, and the Ḥanbalī—were

recognized as legitimate traditions of legal study in Sunnī Islam, and this

situation has continued until the present.[42] With the recognition among

Western scholars of the importance of Islamic law came attempts to define

Shīʿism in terms of its law, and attempts to answer the question whether

matters of law placed Shīʿism within or outside the pale.

Goldziher holds that the points of law do not render Shīʿism

schismatic: "Shīʿī ritual and legal practice does not vary more widely from

that of the rest of Islam than one ritual madhhab varies from another within

orthodoxy."[43] MacDonald had stated before him that Shīʿī law differs from

Sunnī law in details only.[44] In The Origins of Muhammadan Jurisprudence,

published in 1950, Schacht echoes this idea: "In its final form, from the third

century A.H. onwards, Shiite law is distinguished from that of the Sunni

schools by a limited number of differences . . ."[45] These differences

include, for example, the fact that the phrase "come to the best of works"

(hayya ʿalā khayri 'l-ʿamal) found in the Shīʿī call to prayer, is absent from

the Sunnī call to prayer, and that the Shīʿīs allow fixed-duration or

temporary marriage (zawāj al-mutʿah) and the Sunnīs do not.[46] The Shīʿīs

do not allow taʿsīb in inheritance law: that is, if the inheritance is divided up

among the automatic (fard) heirs according to the proportions set by law and

the inheritance is not exhausted, Sunnī law requires that the remainder be

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[42]The concept of madhhab is dicussed in greater detail in Chapter
Three.

[43]Introduction to Islamic Theology and Law, 205.

[44]Duncan B. MacDonald, Development of Muslim Theology, 116.

[45]Joseph Schacht, The Origins of Muhammadan Jurisprudence, 262.

[46]Muhammad al-Husayn Āl Kāshif al-Ghiṭāʾ, Asl al-shīʿah wa usūluhā,
9th ed. (Beirut: Dār al-biḥār, 1960), 133-39.

apportioned among the male relatives (ʿasabah) of the deceased, while the Shīʿīs hold that the remainder should be apportioned among the automatic heirs according to the share they have already received.[47]

It is recognized that differences of opinion on individual points of law do not usually cause one to be considered a heretic in Islam. The four Sunnī schools of law, which are all accepted as equally orthodox, allow for a great variety of opinion, not only between schools, but also within individual schools. Bernard Lewis describes this situation as an "almost parliamentary doctrine of limited disagreement and common basic assumptions."[48] Since it is known that limited disagreement is allowed, it might be more fruitful to look at the rules which regulated this disagreement instead, in the quest to define Shīʿism's place within the Islamic community.

Thus, examination of Goldziher's three categories of difference, the imamate, theology, and the points of law, shows that none of them adequately defines Shīʿism in relation to the Sunnī majority. Although our textbooks and manuals on Islam continue to maintain that it is the doctrine of the imamate which makes Shīʿism heretical, there is evidence that this is not the case. Al-Ghazālī states that heresy is above all a legal issue, but examination of fiqh, or the individual points of law, has not provided an answer. This suggests that a fourth category, which Goldziher in effect omits, that of the system of legal authority, should be examined. Before doing so, however, it will be informative to examine two other features which some

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[47]See David Santillana, Istituzioni di diritto musulmano malichito con riguardo anche al sistema sciafiita, vol. 2 (Rome: Istituto per l'oriente, 1938), 512-14; Muḥammad al-Ḥusayn Āl Kāshif al-Ghiṭaʾ, Aṣl al-shīʿah wa uṣūluhā, 163-65.

[48]"The Significance of Heresy," 54.

scholars have maintained distinguish Shīʿism: Islamic gnosis and revolutionary ideology. While the three categories described above have been delineated by Orientalist scholars of Sunnī Islam primarily concerned with Shīʿism as an interesting variety of Islam, the following definitions have been put forward by scholars who treat Shīʿism as an independent entity, and are primarily concerned with Shīʿism in Iran, Ismāʿīlī Shīʿism, and Shīʿī philosophical systems.

D. Sufism and Philosophy

Sufism is Islamic mysticism. The view of the adherents of this variegated trend in Islamic history, the Ṣūfīs, believe that true religious fulfillment can be reached through a personal mystical experience of God. Countless orders of mystics have been founded in Islamic history, each with their own rule or way (tarīqah) of ascending the spiritual ladder to divine experience. Their methods include meditation, chanting, and ascetic practices, and usually involve submission to the instruction of a Ṣūfī master (shaykh in Arabic, or pīr in Persian). The role of Ṣūfism in Shīʿī history is at present not understood in detail.[49]

A number of recent scholars, including primarily Henri Corbin and Seyyed Hossein Nasr, have held that, contrary to the case in Sunnism, Islamic gnosis and philosophy have played a fundamental role in defining the nature of Shīʿism. Corbin and Nasr have argued that Islamic gnosis permeates all aspects of Shīʿism, and that this feature somehow distinguishes Shīʿism from Sunnism, where the effects of Islamic gnosis are found only in certain

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[49]On this topic in general, see Kāmil al-Shaybī, Fikr al-shīʿah wa al-nazaʿat al-ṣūfiyyah (Bagdad: Maktabat al-nahḍah, 1966); idem., al-Silah bayn al-tasawwuf wa al-tashayyuʿ, revised ed. (Cairo: Dār al-maʿārif, 1969).

areas. Sunnism and Shīʿism, though, are considered equally orthodox in this model. Nasr claims,

> . . . en effet, la dimension ésoterique de l'Islam, qui, dans le milieu sunnite, s'identifie presque complètement avec le soufisme, se répercute sur tous les aspects du sīʿisme, non seulement sur l'aspect ésotérique, mais encore sur l'aspect exotérique.[50]

He continues, "On pourrait dire que l'ésoterisme ou la gnose islamique s'est cristallisé dans la forme du soufisme dans le monde sunnite; tandis qu'il a fécondé toute la structure du sīʿisme . . ."[51] More succinctly, he states, "C'est la gnose islamique qui est à l'origine à la fois du sīʿisme et du soufisme."[52] Corbin goes so far as to equate Shīʿism and Ṣūfism: "True Shīʿism is the same as tasawwuf, and similarly, genuine and real tasawwuf cannot be anything other than Shīʿism."[53]

In my opinion, the view that Shīʿism and Sufism or gnostic philosophy are inextricably or necessarily linked is false. Whereas both Sufism and gnostic philosophy have been important during certain periods of the history of Shīʿism, especially with the establishment of the Shīʿī Safavid Empire in Iran in 907/1501, it is probably incorrect to see either as characterizing Shīʿism as opposed to Sunnism. Sunnism had its Sufis and philosophers too. Alessandro Bausani counters,

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[50]"Le shīʿisme et le soufisme: leurs relations principielles et historiques," Le shīʿisme imāmite: 215-33, 216.

[51]"Le shīʿisme et le soufisme," 216.

[52]"Le shīʿisme et le soufisme," 233.

[53]Cited in Michel M. Mazzaoui, The Origins of the Safawids: Shīʿism, Ṣūfism and the Ġulāt (Wiesbaden: Franz Steiner Verlag, 1972), 83.

Some Iranian writers of recent years have leaned too far
towards the notion that, of the two forms of Islam, Shi'ism is
the more favourable environment for Sufism; whereas the fact
is that Sufism, in its earliest years, was more accepted by the
Sunnis and continues to the present to be more widespread
among them.[54]

Hodgson avers, ". . . Sūfism . . . came to dominate religious life not only
within the Jama'I-Sunnī fold, but to a lesser extent even among Shī'Is."[55]
Both Sufism and gnostic philosophy are an important part of Iranian cultural
heritage, but have been primarily Sunnī fields of endeavor, or are at least no
more common within Shī'ism than within Sunnism. The opinions of Corbin
and Nasr seem to result from too close an identification of Iranian and Shī'I
tradition.[56]

It seems that Corbin and Nasr have thus revived, albeit in a slightly
different form, the theory that Shī'ism is fundamentally an Iranian
phenomenon, or a vehicle for the expression of the Iranian national genius
within the larger Islamic community. After the advent of the Safavids, the
Sunnī Iranian traditions of Sufism and gnostic philosophy were incorporated
into some Shī'I circles, and the most interesting developments in Muslim
philosophy in the tenth/sixteenth and eleventh/seventeenth centuries
occurred in the Safavid Empire, notably in the work of Muhammad Bāqir-i

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[54]Foreward to Moojan Momen, An Introduction to Shi'i Islam: The
History and Doctrines of Twelver Shi'ism (New Haven: Yale University Press,
1985).

[55]Marshal G. S. Hodgson, The Venture of Islam, 3 vols. (Chicago:
University of Chicago Press, 1974), 2: 203.

[56]Hodgson has commented on Corbin's romantic notions of Iranian
nationalism which, in Hodgson's view, are unsupported by the sources. The
Venture of Islam, 3: 45 n. 7.

Dāmād (d. 1041/1631) and Muḥammad al-Shīrāzī, known as Mulla Ṣadrā (d. 1050/1640), and Muḥsin al-Fayḍ al-Kashānī (d. 1091/1680). Most of the figures revered by modern Iranians as constituting their mystical and philosophical tradition, however, such as Ibn Sīnā (d. 428/1037), Ibn ᶜArabī (d. 638/1240), Rūmī (d. 672/1273), and Ḥāfiẓ (d. 742/1340), were actually Sunnīs, as were, at least originally, most of the Sufi orders with large followings in Iran, including the original Safavī Sufi order, the leaders of which later established the Safavid Empire and made Shīᶜism its official religion. Momen reports that the Dhahabī and Niᶜmat Allāhī orders became Shīᶜī after the Safavid state was established.[57] William Royce states, "Despite the fact that Iranian culture, especially Persian literature, is closely associated with Sufism, or Islamic mysticism, the Iranian experience of Ṣūfīs has been a varied one."[58] In particular, it appears that after the advent of the Ṣafavids in the tenth/sixteenth century, the government endeavored to eradicate many Ṣūfī organizations such as that of the Naqshbandīs. As Royce recounts, Sufism grew in popularity in the mid-eleventh/seventeenth century, until the reign of Shah Sultan Ḥusayn (1694-1722), when both Sufi brotherhoods and individual mystics were subject to severe persecution, and Sufism was nearly eradicated in Iran. It was not until the late eighteenth-century revival during the reign of Karīm Khān Zand (1747-79) that Sufism again gained some popularity in Iran as a result of contacts with India.[59]

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[57]Moojan Momen, <u>An Introduction to Shīᶜī Islam</u>, 103.

[58]William Ronald Royce, "Mir Maᶜsum ᶜAli Shah and the Niᶜmat Allahi Revival 1776-77 to 1796-97: A Study of Sufism and its Opponents in Late Eighteenth Century Iran," Unpublished Ph. D. dissertation, Princeton, 1979.

[59]William Royce, "Mir Maᶜsum ᶜAli Shah."

Throughout Islamic history, there has been a strong trend of antipathy towards Sufism among Shīʿī scholars. Browne reports that some Shīʿī scholars of the Safavid period labeled Sufism "a foul and hellish growth."[60] Mīrzā Makhdūm (d. 995/1587) lists as one of the Shīʿīs' heinous sins their rejection of Sufism, and he attributes this opinion to al-Shahīd al-Awwal (d. 786/1384).[61] He holds that the Shīʿī scholars rigidly oppose the search for esoteric truths (tasfiyat al-bāṭin), and states that if one engages in Sufi practices such as chanting (dhikr) in the officially Shīʿī Safavid Empire, he will be accused of being a Naqshbandī and executed.[62] Writing in the tenth/sixteenth century, Mīrzā Makhdūm clearly sees this as a fundamental difference in the religious environment of Iran brought about by the advent of the Safavid Empire.

The Shīʿī scholar Muḥammad ibn al-Ḥasan al-Ḥurr al-ʿĀmilī (d. 1099/1688), a shaykh al-islām (chief jurisconsult) of Mashhad during the Safavid period, wrote a treatise attacking Sufism.[63] Niʿmat Allāh al-Jazāʾirī (d. 1112/1701) includes a tirade against Sufism in his work al-Anwār al-nuʿmāniyyah, in which he portrays it as a front for pederasty and swindling as well as a haven for heretical beliefs such as reincarnation (tanāsukh al-arwāh), divine infusion (hulūl), and existential monism (wahdat

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[60]Browne, A Literary History of Persia, 4 vols. (Cambridge: Cambridge University Press, 1924), 4: 404.

[61]Mīrzā Makhdūm al-Shīrāzī, al-Nawāqiḍ fī al-radd ʿalā al-rawāfiḍ, MS, Princeton University Library, Garrett Collection, fol. 103 b.

[62]al-Nawāqiḍ, fol. 103 b.

[63]Amal al-āmil fī ʿulamāʾ Jabal ʿĀmil, 2 vols. (Baghdad: Maktabat al-andalus, 1965-66), 1: 144. The treatise, entitled al-Risālah al-ithnā ʿashariyyah fī al-radd ʿalā al-ṣūfiyyah, is extant in manuscript. MS, British Museum, Or. 1197. Carl Brockelmann, GAL, GII: 412.

al-wujūd).[64] He expresses amazement that Shīʿīs could adopt the ways of the Ṣūfīs when they are in plain contradiction with the teachings of the Imams.[65] Yūsuf al-Baḥrānī writes of the well-known Sufi and philosopher of the later Safavid period Muḥsin al-Fayḍ al-Kāshānī, who wrote two commentaries on al-Ghazālī's famous work Iḥyāʾ al-ʿulūm:

> Some of his opinions, following the methods of the Sufis and philosophers, are nearly a cause of unbelief—I seek God's protection—such as those writings [of his] which indicate that he adopts wahdat al-wujūd. I have come across a heinous treatise [of his] which states this explicitly, and in which he adopted the beliefs of the heretic (zindīq) Ibn al-ʿArabī.[66]

Al-Baḥrānī reports that al-Kāshānī was the most respected scholar in his day because of the popularity of Sufism in Iran at that time, until Muḥammad Bāqir al-Majlisī (d. 1111/1699), one of the top jurisconsults, made great efforts to stamp out the Ṣūfīs' heretical beliefs.[67]

Philosophy, too, was strongly represented in Iranian Sunnī tradition before the advent of the Safavids. In the later Middle Ages, Iranian scholars as a group concentrated relatively more on what were termed the rational sciences (maʿqūl) or the Greek sciences (ʿulūm al-awāʾil)—including logic, physics, metaphysics, geometry, arithmetic, music, and astronomy—than on the traditional sciences (manqūl), and were known throughout the Islamic world for their expertise in these fields. Many of the most important scholars in the rational sciences during the period between the fall of

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[64]al-Anwār al-nuʿmāniyyah, 4 vols. (Tabriz, 1958-62), 2: 281-313.
[65]al-Anwār al-nuʿmāniyyah, 2: 281-82.
[66]Luʾluʾat al-bahrayn, ed. Muḥammad Ṣādiq Baḥr al-ʿUlūm (Najaf: Maṭbaʿat al-nuʿmān, 1966), 121.
[67]Luʾluʾat al-bahrayn, 121-22.

Baghdad to the Mongols and the advent of the Safavids were from the
Iranian region, including such important scholars as ᶜAḍud al-Dīn al-Ījī (d.
756/1355), Quṭb al-Dīn al-Rāzī (d. 766/1364), Saᶜd al-Dīn al-Taftazānī (d.
791/1390), and Jalāl al-Dīn al-Dawwānī (d. 907/1501).[68] Ibn Khaldun (d.
808/1406) makes the point that during his own period, the study of the
rational sciences was most highly developed in Iran and Transoxania, and he
mentions al-Taftazānī in particular.[69] Some of the more traditionalist
scholars in Arab regions, including Ibn Taymiyyah (d. 728/1328) and Jalāl
al-Dīn al-Suyūṭī (d. 909/1505), did not think highly of the science of logic,
holding that it was unnecessary for the legal scholar, and even went so far as
to state that it was forbidden.[70]

In pre-Safavid Shīᶜism, on the other hand, the rational sciences were
either under-developed or largely ignored. Shīᶜī scholars in areas such as
Jabal ᶜĀmil and Baḥrayn concentrated on the legal sciences and hadith, as is
evident from the lists of works they wrote. Mīrzā Makhdūm claims that
al-Shahīd al-Thānī (d. 965/1558), one of the foremost scholars of law and

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[68]Al-Dawwānī supposedly converted to Shīᶜism after the Safavids
took Shīrāz. GAL, SII: 206.

[69]Ibn Khaldūn, The Muqaddimah: An Introduction to History, 3 vols.,
trans. Franz Rosenthal (New York: Pantheon Books, 1958), 3: 117.

[70]See Ibn Taymiyyah's works Naqd al-mantiq ["Destruction of Logic"],
ed. Muḥammad ibn ᶜAbd al-Razzāq Ḥamzah, Sulaymān ibn ᶜAbd al-Raḥmān
al-Ṣanīᶜ, and Muḥammad Ḥāmid al-Fiqī (Cairo: Maṭbaᶜat al-sunnah
al-muḥammadiyyah, 1951) and al-Radd ᶜalā al-mantiqiyyin ["Refutation of
the Logicians"], ed. ᶜAbd al-Ṣamad Sharaf al-Dīn al-Kutubī (Bombay:
Maṭbaᶜat al-qayyimah, 1949). Al-Suyūṭī wrote a work entitled Sawn
al-mantiq wa al-kalām ᶜan fann al-mantiq wa al-kalām ["Defending Reason
and Speech from the Disciplines of Logic and Philosophical Theology"]. Jalāl
al-Dīn al-Suyūṭī, Kitāb al-tahadduth bi-niᶜmat Allāh ed. Elisabeth Sartain,
vol. 2 of Elisabeth Sartain, Jalāl al-Dīn al-Suyūṭī, 2 vols. (Cambridge:
Cambridge University Press, 1975), 2: 106.

hadīth in Shīʿī history, never came to Iran because he was afraid to debate Iranian scholars of the rational sciences (lam yaʾti 'l-ʿajama khawfan min mubāhathati ʿulamāʾihī 'l-maʿqūlīn).[71] While this is an unreliable explanation of al-Shahīd al-Thānī's motives for not emigrating to Iran, it shows that in Mīrzā Makhdūm's view, Iranian scholars concentrated on the rational sciences, and Shīʿī, non-Iranian scholars did not.

It was a historical accident, the adoption of Shīʿism as the official religion of the Safavid Empire, which brought the Iranian tradition of the rational sciences together with the Shīʿī juridical tradition. At first, communication between proponents of the two traditions was extremely difficult. Mīrzā Makhdūm recounts a debate concerning the qiblah, or the direction of Mecca towards which one must pray, which occurred in the early tenth/sixteenth century between ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī (d. 940/1534), a Shīʿī jurist from Karak Nūḥ near Baʿlabakk, and Ghiyāth al-Dīn Manṣūr ibn Muḥammad al-Dashtakī al-Shīrāzī (d. 949/1542), a native Shīrāzī scholar versed in the rational sciences. In the debate, Ghiyāth al-Dīn apparently relied on geometrical methods as a means to determine the qiblah, while al-Karakī saw no need to do so. As Mīrzā Makhdūm tells it, Ghiyāth al-Dīn attempted to embarrass al-Karakī by asking him to explain what a certain type of triangle was. Al-Karakī purportedly answered, "Perhaps you are a Sunnī, for you are asking me about the Ḥanafī doctrine, but according to the Imāmī doctrine, the triangle is unlawful, as are all intoxicating substances."[72] This story, while reported by a biased source and certainly exaggerated for dramatic effect, points to the traditional Shīʿī

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[71] al-Nawāqiḍ, fol. 122 b.
[72] al-Nawāqiḍ, fol. 113 a - b.

scholar's lack of training in the rational sciences during this period, to an extent quite alarming to the average Iranian scholar.

Later in the Safavid period, such scholars as Bahā' al-Dīn al-'Āmilī (d. 1030/1621), who became the most influential jurist during the reign of Shah 'Abbās but wrote important works on mathematics and astronomy as well as _fiqh_ and _hadīth_, and the Shī'ī philosophers Mīr Muhammad Bāqir-i Dāmād and Mullā Sadrā were able to combine the two traditions. In fact, the intellectual flowering of Safavid Iran was perhaps fostered to a great extent by the stimulation due to the confluence of these two great traditions. Thus, whereas Sufism and philosophy played important roles in certain periods of Shī'ī history, one cannot hold that either was an essential or distinguishing feature of Shī'ism as a whole.

Hodgson, like Corbin and Nasr, seems to have a predilection for philosophers and Sūfīs as opposed to legal scholars—the "Sharī'ah-minded" in his own terminology—, whom he often portrays as bigoted and myopic. Nevertheless, he does not see Shī'ism as being essentially concerned with the esoteric.

> Shī'ism as a whole, of course, even Ja'farī Shī'ism, was not necessarily very esoteric: the Sharī'ah-minded 'ulamā' scholars among the Shī'īs, even when they included the doctrine of taqiyyah dissimulation in their legal system, or acknowledged some hidden reference in the Qur'ān to the imāms, could be as prosaically exoteric as any Jamā'ī Sunnīs.[73]

Although Hodgson seems to find the law less interesting than Sufism or philosophy, he recognizes the centrality of the law in both Shī'ī and Sunnī

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[73]_The Venture of Islam_, 2: 198.

Islam: "SharT'ah-mindedness, whether in ShT'I or Jamā'I-Sunnī form, was generally recognized as the backbone of mass Islam."[74]

Muhammad Husayn Tabātabā'ī recognizes the importance of mysticism and philosophy in ShT'I heritage, but stresses that it is primarily the field of law which dictates the every-day practices of the faith, and one assumes that this includes matters concerning heresy and the questions of ShT'ism's relations with the Sunnī majority. In his work ShT'ite Islam, he describes three methods of religious thought which roughly correspond to jurisprudence, philosophy, and mysticism: (1) the formal aspect of religion, (2) intellection and intellectual reasoning, and (3) intellectual intuition or mystical unveiling. Of the first method, he states,

> The path of the external forms of religion leads to the
> understanding of the principles and the obligations of Islam and
> results in knowledge of the substance of the beliefs and
> practices in Islam, and of the principles of the Islamic sciences,
> ethics, and jurisprudence. This is in contrast to the other two
> paths.[75]

Drawing on the ideas of Corbin and Hodgson, Mangol Bayat links both philosophy and Sufism with a tradition of dissent in Iranian history. She realizes, however, that this was only one trend within Iranian ShT'ism, and holds that the group they often opposed was that of the jurists or mujtahids.[76] Similarly, Momen stresses the fact that the legal scholars

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[74]The Venture of Islam, 2: 446.

[75]ShT'ite Islam, 92.

[76]Mysticism and Dissent: Socioreligious Thought in Qajar Iran (Syracuse, New York: Syracuse University Press, 1982), 1-35.

define the core of Shīʿī religious devotion, and that Sufism does not have as prominent place as is sometimes supposed.

> In Sunni Islam, Sufism has, through the Sufi Shaykhs, a major hold on the religious devotion of the masses. But in Shīʿism it has become largely a side-issue, a minority interest. It is the orthodox ulama who hold the religious leadership of the Shīʿī community and few of them will have anything to do with Sufism.[77]

It therefore seems unlikely that Sufism is a defining characteristic of Shīʿism.

E. Protest or Revolution

The view that Shīʿism is essentially a religion of protest or dissent has become quite popular both in the media and in much scholarship on Islam and the Middle East since the events of the Iranian revolution in 1978-79, the ensuing Iran-Iraq War, and the actions of various political groups associated with Shīʿism in Lebanon since the Israeli invasion in 1982. The idea, however, is much older, going back to the Orientalist scholars of the nineteenth century who viewed Shīʿism as a vehicle for Aryan, Iranian protest against an Arab, Semitic religion. One of the most developed presentations of this view is that of Hodgson in his widely-used textbook, The Venture of Islam, and also in his 1955 article, "How Did the Early Shīʿa Become Sectarian?"[78]

While Hodgson, like many others, stresses that it is the Shīʿī theory of the imamate which makes it sectarian, he uses the idea that Shīʿism is essentially defined by dissent, social protest, and disapproval of the majority

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[77]An Introduction to Shiʿi Islam, 208.
[78]Journal of the American Oriental Society, 75 (1955): 1-13.

community to tie together logically the various periods of Shīʿī history. He stresses the Shīʿī imamate as the basis of this ideology:

> One point only seems to have been too far-reaching to allow compromise. Those Shīʿīs who insisted on allegiance to a special imâm apart from the community at large necessarily did form independent sects, even on the level of the populace.[79]

Hodgson holds that Shīʿism was not at first sectarian, but became so under the leadership of Jaʿfar al-Ṣâdiq, now recognized as the sixth Imam of the Twelver Shīʿīs. The key element which made the Shīʿīs sectarian at this point was the development of the theory of the nass, or designation, of each Imam by his predecessor. The chain of the Imams' designations was seen as a regular transferral of esoteric knowledge and charisma guided by divine providence. Thus, with the theory of nass, the Shīʿī Imam came to take on qualities not supposed to be found in the Sunnī Caliph. In Hodgson's view it is this which makes the Shīʿīs sectarian; not the fact that they supported an alternative candidate as leader of the community, but that they held a different view of the nature of that leader.

Hodgson portrays the Shīʿism of this early period as one of "ʿAlid loyalty" and either open confrontation with the Sunnī Caliphs or discontented withdrawal from the community. During the period of the Occultation, the triumph of the Shīʿīs has been postponed to a Utopia to be established with the return of the Hidden Imam, but protest is the constant theme of Shīʿism before and after the Occultation. Hodgson portrays the Shīʿism of the Buwayhid period in this fashion.

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[79]The Venture of Islam, 2: 38.

. . . the significant difference between Shī'ī and Jamā'ī [i.e., Sunnī, in Hodgson's terminology] did not lie in the fiqh. Rather, Shī'ism, however much individual Shī'ī writers or doctrines influenced Islam generally, remained the persistent custodian of the latent revolutionary challenge of Islam. . . . [Shī'ism] was a perennial source of chiliastic hopes.[80]

At a later period, between the Mongol capture of Baghdad and the establishment of the Safavid Empire, Shī'ism took on another form, which Hodgson terms "tarīqah Shī'ism." "Tarīqah Shī'ism" refers to the para-military Sūfī organizations, like the Safavid order, which multiplied in number during this period and whose teachings were based, in part, on reverence for 'Alī and other doctrines generally associated with Shī'ī Islam. Again, in Hodgson's view, although the external form of Shī'ism changed, the theme of social protest remained constant. Thus, Hodgson outlines what he sees as three forms of sectarian Shī'ism, in three different periods of Islamic history, held together by the themes of discontent, protest, and revolutionary aspirations.

While it is true that the trend towards revolutionary aspirations in Shī'ism is very strong, it is only one strand among several which constitute the totality of Shī'ī ideology. As mentioned above, Mangol Bayat recognizes that dissent was only one trend within later Shī'ism, although she follows Hodgson in holding that the Shī'ī theory of the imamate is characterized by protest.[81] For all the examples of Shī'ī revolts and rejection of the existing authority, there are also many examples of Shī'ī acceptance and support of both Sunnī and Shī'ī political authorities. In fact, there are even many

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[80]The Venture of Islam, 2: 39.
[81]Mysticism and Dissent, 2-7.

examples of serious attempts on the part of the Shīʿīs to gain acceptance for themselves in Sunnī-dominated ociety. Such attempts have not only been sincere gestures based on a willingness to accept the majority and a longing to participate in the majority community, but have also been an extremely important factor in Shīʿī history, and have contributed a great deal to making Shīʿism what it is.

This chapter has examined some of the most important definitions of Shīʿism put forward in scholarship on Islam to date, and has found that they do not adequately account for the data concerning Shīʿism itself or demonstrate how Shīʿism relates to the Sunnī majority. In particular, the common view that the imamate renders Shīʿism schismatic probably does not hold at any time after the early centuries of Islam, not only because of the Occultation of the Twelver Imam, but also because of developments within Sunnī Islam which limited the religious authority of the Caliph. It is clear that since the early Islamic centuries, the law has been of central importance in Islamic society and in questions of religious authority in general, but examination of the individual points of difference has not revealed any underlying principles which may be deemed to define Shīʿism or set it apart.

Chapter Two
Twelver Shiʿī Legal Authority

As recently as 1979, Joseph Eliash could write that the field of Twelver Shiʿī jurisprudence remained "all but unknown."[1] Since then, significant progress has been made in this field, but our understanding of Shiʿī jurisprudence and its development is still rudimentary. In recent years, Islamists have become aware that within the history of Twelver Shiʿism there exist two very different, even contradictory, systems of legal authority. For present purposes, legal authority denotes the right to settle disputes or answer questions concerning the religious law, in such a way that the believer will completely fulfill his religious obligation by acting in accordance with the resulting opinion, and such that no other party may accuse him of being remiss. The first system of legal authority discussed here is that based on recourse to the Imams, and has long been known in Western scholarship. Indeed, since scholars have in general held the view that it is the imamate which makes Shiʿism a sect, this system comes as no surprise. For convenience, it will be termed the "Imam-based system" in the following discussion.

In the first centuries of Islam, it appears that the legal system of the Shiʿīs was necessarily different from that of the Sunnis, primarily because of the different workings of authority in the two groups. For the Sunnis, revelation ended with the death of the Prophet Muḥammad in the year 11/632. For the Shiʿīs, however, revelation did not end until much later.

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[1]"Misconceptions Regarding the Juridical Status of Iranian ʿUlamaʾ," International Journal of Middle East Studies 10 (1979): 9-25.

After Muḥammad, they sought guidance from a series of descendants of the Prophet, whom they called Imams, and whom they believed to be chosen by God and divinely inspired. These Imams were, for them, receptacles of revelation. They related divine knowledge either through direct transferral through their ancestors (ta'līm) or through divine inspiration (ilhām). If Shī'ī believers had a problem, they could solve it by referring to the living Imam.

During this early period, the Imam assumed the role of the highest authority in the Shī'ī community, but he was not the only authority. There were many Shī'ī jurisconsults; anyone versed in the Qur'ān and Shī'ī oral tradition could give legal opinions. The entourage of the Imams usually included many scholars with whom they discussed problems or debated on occasion. One description has the relationship of the Imam to the jurisconsult as being like that of the general to the specific; that the Imams gave the general rules, but let the jurisconsults apply these rules in particular cases.[2] The Imams have also been pictured as merely guiding their followers to the use of correct legal reasoning.[3] Both the Imams and the early Shī'ī jurisconsults gave legal opinions (ajwibat masā'il) and wrote treatises (rasā'il) on legal questions.[4] The Imams often answered questions in the manner jurisconsults would, citing Qur'ānic verses or earlier hadīths rather than giving an unsupported opinion. Not all questions were referred

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[2]Hossein Modarressi, "Rationalism and Traditionalism in Shī'ī Jurisprudence: A Preliminary Survey," Studia Islamica 59 (1984): 141-58, 147; idem, An Introduction to Shī'ī Law, 24.

[3]Modarressi, An Introduction to Shī'ī Law, 25.

[4]For some of the extant works of the Imams and works attributed to them see Fuat Sezgin, Geschichte des arabischen Schrifttums, 9 vols. (Leiden: E. J. Brill, 1967-84), 1: 526-31, 536.

to the Imams, nor did the Imams expect them to be. The concepts of fiqh and faqih, muftī and iftā' were all accepted as normal in the early Shīʿī community and were referred to as such.

The main difference between the early Shīʿī system of jurisprudence and the Sunni system was not that Shīʿī jurisconsults did not exist, or that no one could profess a legal opinion except the Imam himself. Rather, the difference was in the method of determining the orthodoxy of an opinion. One was not always required to consult the Imam, but final recourse was to him and no other. The authority of the Imam over jurisconsults was expressed in two ways. Sometimes the Imams made statements for or against a particular opinion, as in the following tradition attributed to ʿAlī al-Riḍā (d. 203/818), the eighth Imam, about conflicting doctrines of Zurārah and Hishām (d. 179/795-96) on the nature of void (al-manfiyy).

> "Zurārah said that void is nothing and is not a created thing, but Hishām said that void is a created thing."
> [al-Riḍā replied] "On this matter profess the opinion of Hishām and do not profess the opinion of Zurārah."[5]

More often, however, the Imams simply stated "follow So-and-so's opinions" or "do not follow So-and-so's opinions," or otherwise indicated the reliability of the scholar in question. The following are examples of a verdict given by an Imam about specific scholars.

> "I asked Abū al-Ḥasan al-Riḍā about Hishām ibn al-Ḥakam."

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[5]al-Kashshī, Kitāb al-rijāl (Tehran: Chāp-khānah-yi muṣṭafavī, n. d.), 229.

> He said, "God bless him. He was a sincere believer, but he was mistreated by his contemporaries (ashāb) because of their envy of him."[6]

> "I asked Abū Ja'far about Yūnus [ibn 'Abd al-Raḥmān]." He said, "God bless him."[7]

Similar traditions attributed to the Imams are numerous. It was common to evaluate the man first before evaluating his individual opinions. This had also been true at an earlier period for Sunni hadīth, since the hadīth compilers such as al-Bukhārī based their analyses of the reliability of hadīths on the integrity of the transmitters, not on the texts of the hadīths. It was only necessary to ask the Imam's opinion of a particular hadīth transmitter or jurisconsult, either present or past, to establish his status, and thereby determine the reliability of his opinions. For this reason, the Shī'ī hadīth literature contains a great number of traditions from the Imams approving or disapproving of certain scholars. For the same reason, many hadīths of this nature were fabricated.[8]

During the period of the Lesser Occultation, the system of recourse to the Imam was maintained. In 260/873-74, when the eleventh Imam, Hasan al-'Askarī, died in Sāmarrā', his son Muhammad could not be found. It was said that the son, the twelfth Imam, had gone into occultation (ghaybah), and could only be reached through a messenger, known as wakīl, bāb or safīr. If someone had a question, he could entrust it to the safīr, who would relay it to the Imam and bring back an answer, called a tawqī', a "rescript" or signed

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[6]al-Kashshī, Kitāb al-rijāl, 230.

[7]al-Kashshī, Kitāb al-rijāl, 411.

[8]See al-Kashshī on fabrication of hadīth by Qummī scholars against the theologian Yūnus ibn 'Abd al-Rahmān in Kitāb al-rijāl, 415-19.

reply. The message in the tawqīʿ was the authoritative opinion of the Imam. Three men successively assumed the post of safīr and designated a successor upon their deaths. When the fourth safīr died, in 329/941, about eighty years after the disappearance of the twelfth Imām, he did not designate a successor. It was said that the Imām had gone into the Greater Occultation (al-ghaybah al-kubrā), and could no longer be reached through a safīr. This was the system of legal authority in Shīʿism in place, at least theoretically, until the beginning of the Greater Occultation in 329/941. After 329/941, this system could no longer function and something else had to take its place. Specifically how it changed will be discussed below.

Beginning earlier in this century, but accelerating greatly with the advent of the Iranian revolution, scholars have become aware of a system of legal authority at work within Twelver Shīʿism which is fundamentally different from that just discussed. The presence of Khomeini in the media as the leader of the Islamic Republic of Iran has made the world acutely aware of the power and importance of the present system of legal authority in Shīʿī Islam, which is based on a guild of legal scholars.[9] Works undertaken to make this system accessible to the educated Western reader include Fischer's Iran: From Religious Dispute to Revolution[10] and Mottahedeh's The Mantle of the Prophet: Religion and Politics in Iran.[11] The workings of this complex system remain poorly understood, and its history remains a blurred

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[9] The significance of the term "guild" is discussed in greater detail in the following chapter.

[10] Michael M. J. Fischer, Iran: From Religious Dispute to Revolution (Cambridge, Massachusetts: Harvard University Press, 1980).

[11] Roy Mottahedeh, The Mantle of the Prophet: Religion and Politics in Iran (New York: Simon and Schuster, 1985).

sketch. For convenience, this system will be termed the "guild-based system" in the following discussion.

Mastership in the guild of legal scholars is acquired through completion of a highly structured legal education at one of the main Shīʿī centers of learning, termed <u>hawzah ʿilmiyyah</u>, of which the most important, in our own time, are the centers at Najaf in Iraq and Qum in Iran. Muḥsin al-Amīn (d. 1371/1952), a Shīʿī scholar from Jabal ʿĀmil who studied in Najaf around the turn of the century, gives one of the most detailed descriptions of the course of study followed.[12] The curriculum, as it has developed over the centuries and been instituted in Najaf, has three main stages. The first stage is called the <u>muqaddamāt</u> or "propaedeutic sciences", and includes the study of Arabic syntax and morphology, rhetoric, and logic. The second stage, called <u>dars al-sutūh</u> or <u>al-dars al-sathī</u> ("study of legal texts"), consists of a graded course of standard <u>fiqh</u> and <u>usūl al-fiqh</u> text-books. According to Muḥsin al-Amīn, it takes about seven and a half years of continuous study to complete the first two stages of the curriculum . The third and final stage, termed <u>dars al-khārij</u> ("extra-textual study") or <u>al-dars al-istidlālī</u> ("study of the derivation of legal rules"), is the study of <u>usūl al-fiqh</u> and <u>fiqh</u> concentrating on the derivation of individual opinions. There are no texts at this level, only the lectures of the professor. According to Muḥsin al-Amīn, this stage takes about five years, so that the complete course of study is about twelve and a half years. He observes, however, that the time required to complete this education depends on the ability and application of the student.[13]

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[12]<u>Khiṭaṭ Jabal ʿĀmil</u> (Beirut: Maṭbaʿat al-inṣāf, 1961), 153-55.
[13]<u>Khiṭaṭ Jabal ʿĀmil</u>, 155.

As just mentioned, the first stage, that of the <u>muqaddamāt</u>, includes the sciences of syntax, morphology, rhetoric, and logic. After memorizing the Qur'ān and learning how to write, the student may begin the standard curriculum. It is organized as follows.

The Propaedeutic Sciences (al-Muqaddamāt)

A. Syntax and Morphology.

I. <u>al-Ajrūmiyyah</u>, a short text on syntax by Ibn Ajurrūm (d. 723/1323). The student must memorize the text of this work and memorize the explication of its examples.

II. <u>Qatr al-nadā wa-ball al-sadā</u> and its commentary, both by Ibn Hishām al-Anṣārī (d. 761/1360).

IIa. At the same time, the student begins to study Saʿd al-Dīn al-Taftazānī's commentary on <u>Kitāb al-tasrīf</u> (<u>The Book of Morphology</u>), by ʿIzz al-Dīn al-Zanjānī (fl. 625/1257).

III. The <u>Alfiyyah</u> of Ibn Mālik (d. 672/1274), with the commentary of his son Badr al-Dīn (d. 686/1287), is read for syntax only, and not morphology.

IIIa. For morphology, the student reads concurrently the commentary of al-Jāribirdī (d. 746/1345) or al-Niẓām al-Nīsābūrī (d. ca. 710/1310) on <u>al-Shāfiyah</u>, by Ibn al-Ḥajib (d. 646/1249).

IV. <u>Mughnī al-labīb</u> by Ibn Hishām al-Anṣārī. The student reads only the <u>mufradāt, i.e.</u>, the first section of the work, which treats the Arabic particles in alphabetical order.

B. <u>Rhetoric and Logic.</u>

I. On rhetoric, the student reads <u>al-Mutawwal</u> by Saʿd al-Dīn al-Taftazānī. This is al-Taftazānī's longer commentary on the abridgement, <u>al-Talkhīs</u>, of al-Khaṭīb al-Qazwīnī (d. 739/1338) on <u>Miftāh al-ʿulūm</u>, by al-Sakkākī (d.

626/1229). Some students read <u>al-Mukhtasar</u>, al-Taftazānī's shorter commentary, rather than <u>al-Mutawwal</u>.

II. The student begins to study logic along with rhetoric. He reads the <u>hāshiyah</u>, gloss or marginal commentary, of Mullā ʿAbd Allāh al-Yazdī (d. 1015/1606) on <u>Tahdhīb al-mantiq</u> by Saʿd al-Dīn al-Taftazānī.

III. <u>Sharh al-shamsiyyah</u>, a commentary on the treatise of ʿAlī ibn ʿUmar al-Kātibī al-Qazwīnī (d. 693/1274) by Quṭb al-Dīn al-Rāzī (d. 766/1365) is also read on logic. Rarely, <u>Sharh al-matāliʿ</u>, a commentary on the work of ʿAḍud al-Dīn al-Ījī (d. 756/1355), is also read.

Dars al-Suṭūh

The student is now ready to begin the study of law. He studies <u>fiqh</u> and <u>usūl al-fiqh</u> simultaneously, both by gradations. The emphasis, judging from Muḥsin al-Amīn's presentation, seems to be on <u>usūl al-fiqh</u>, just as the emphasis in the study of grammar seems to be on syntax rather than morphology.

I. The student first reads <u>Maʿālim al-usūl</u> by Ḥasan ibn al-Shahīd al-Thānī (d. 1011/1602).

Ia. At the same time, the student reads some <u>fiqh</u> in <u>al-Sharāʾi</u> by al-Muḥaqqiq al-Ḥillī (d. 676/1276), but does not study its derivation,.

II. Next, the student reads <u>al-Qawānīn</u> on <u>usūl al-fiqh</u> by Mīrzā Abū al-Qāsim al-Qummī (d. 1231/1816).

During Muḥsin al-Amīn's lifetime, <u>Kifāyat al-usūl</u> by Mullā Kāẓim al-Khurāsānī (d. 1329/1911) began to replace <u>al-Qawānīn</u> in the curriculum.

IIa. Along with <u>al-Qawānīn</u>, the student reads <u>Sharh al-lumʿah</u> by al-Shahīd al-Thānī on <u>fiqh</u>.

III. The last usūl al-fiqh text read before continuing on to dars al-khārij is al-Rasāʾil, also known as Farāʾid al-usūl, by Murtadā al-Anṣārī (d. 1281/1864) on usūl al-fiqh.

IIIa. At the same time, Riyād al-masāʾil on fiqh or the books on tahārah and salāt by Murtadā al-Anṣārī are also read.

Dars al-Khārij

After completing the second level, the prospective scholar becomes what might be termed a graduate student of law, continuing to study fiqh and usūl al-fiqh. The student attends the lectures of one of the top scholars at the hawzah ʿilmiyyah. There are no text-books, hence the term khārij, meaning "outside" of books, or extra-textual.[14] The professor lectures from his notes and expounds his own legal opinions on fiqh and usūl al-fiqh, giving both the opinions and their derivation. It usually takes several years of lectures for a scholar to go through the standard order of legal topics. The purpose of this level of study is to teach the students to do legal research, i.e., to arrive at an independent legal ruling and establish the soundness of that ruling with adequate proofs.

While attending the lectures, the student compiles a work, termed a taqrīrah, on law. This corresponds roughly to the Western doctoral thesis, and is a commentary on the professor's legal opinions and method. If the taqrīrah is approved by the professor, the student is eligible for his degree in law. The successful student receives a degree which grants him the rank of a master in the guild of legal scholars, and as such, he is called mujtahid. The degree he receives is called the ijāzat al-ijtihād. The ijāzah may only be

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[14]See Muḥsin al-Amīn, Aʿyān al-Shīʿah, 10 vols. (Beirut: Dār al-taʿāruf li 'l-matbūʿat, 1983), 10: 352.

granted by a mujtahid, and certifies the student's ability to derive and issue legal opinions. An aspiring jurisconsult will try to obtain such ijāzahs from all the top scholars at his center of learning, not just one.[15] Muḥsin al-Amīn gives the following definition of the ijāzah.

> The other type [of ijāzah] is the ijāzat al-ijtihād. It certifies that the recipient has acquired the ability to derive the points of law from fundamental principles, and that he is a trustworthy and upright man whom it is appropriate to consult for legal rulings. One may know this through personal contact, especially if the recipient is a student of the issuer of the ijāzah (al-mujīz).[16]

This degree maintains the exclusivity of the guild of legal scholars. No one except a mujtahid may issue a legal opinion. There is no possible method of recourse to the Imam for a legal opinion, because direct communication with him has been cut off. The guild-based system seems, therefore, to operate with complete independence from the Imam.

Attempts to Relate the Two Systems

Scholars have recognized that the guild-based system of authority found in modern Shīʿism is radically different from that based on recourse to the Imam, and these two faces of Shīʿī legal authority have created a great deal of confusion in the literature. It is still a common view that the guild-based system described above is somehow a mere extention of the Imam-based system, despite the fact that the guild-based system seems to be based solely on the science of jurisprudence. Scholars attempt to maintain that this is mere window-dressing, for appearances only, and that, in fact, legal authority is still based on recourse to the Imam. MacDonald

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[15]Moojan Momen, An Introduction to Shīʿī Islam, 202.
[16]Muḥsin al-Amīn, Aʿyān al-shīʿah, 10: 352.

holds that the <u>mujtahids</u> ". . . seem to have in their hands the teaching power which strictly belongs only to the Hidden Imam. They thus represent the principle of authority which is the governing conception of the Shīʿah."[17] Goldziher states that whereas Sunnī Islam is based on the concept of consensus, Shīʿī Islam is based on authority: "Thus if we wish to characterize in brief the essential difference between Sunnī and Shīʿī Islam, we may say that the former is based on the ijmāʿ and the latter on the authoritarian principle."[18] He emphasizes the role of the Imam as the sole recognized interpreter of the law.

> Only the teaching and the will of the infallible Imām, or of his authorized deputy, carry a sure guarantee of truth and justice. Just as in any age the Imām alone is the legitimate political head of the Islamic community, so the Imām alone has the authority to decide questions that have not already been decided at the outset and for all time by received law, and the Imām alone has the authority to interpret and apply the law.[19]

As recently as 1989, Makdisi, following the widely accepted view, states that unlike Sunnism, Shīʿism refers back to the authority of an Imam, and contrasts Shīʿism as a "church of authority" to Sunnism as a "church of consensus."[20] Goldziher and Makdisi fail to qualify their statements with any limiting expression such as "before the Occultation" or "in the early

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[17]<u>Development of Muslim Theology</u>, 116.

[18]Goldziher, <u>Introduction to Islamic Theology and Law</u>, 191.

[19]Goldziher, <u>Introduction to Islamic Theology and Law</u>, 191.

[20]"Scholasticism and Humanism in Classical Islam and the Christian West," <u>Journal of the American Oriental Society</u>, 109 (1989): 175-82, 176; <u>The Rise of Humanism</u>, 29.

period," so that their portrayal is taken to refer to Shī'ism throughout history.[21]

Joseph Schacht recognizes only the second system of authority, and not the Imam-based system, as a legal system per se, though he does not term it a guild specifically. He holds that Shī'ism in the earlier centuries was, as far as the law is concerned, reasonably integrated into the Sunnī community, but broke off at about the time of the Occultation of the Imam to form its own legal system. Schacht gives a short description of the development of Shī'ī jurisprudence, and holds that Imamite Shī'ism only took definite shape at the end of the third/ninth century, and can only be said to have a legal system from that date on.[22]

In A History of Islamic Law, published in 1964, Coulson sees that in some aspects, the Shī'ī legal system differs essentially from the Sunnī schools of law. Shī'ī law "possesses certain distinctive characteristics which stand in sharp contrast to the principles recognized by the Sunnite system as a whole."[23] Coulson goes against Schacht's portrayal, holding that the Imam-based system is actually a legal system, one quite different from that of the Sunnīs, and consequently different enough to make Shī'ism be considered heretical. He criticizes Schacht and Goldziher for adopting the opinion that

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[21]In a private discussion, Professor Makdisi has objected that the article in question deals with the early period of the creation of the legal guilds (i.e., the second half of the third/ninth century), so that this statement is not incorrect as it stands in context. Notwithstanding, I hold that unless an expression such as "in the period under consideration" is added, the statement is taken by the reader to refer to Shī'ism in all periods. Several other statements in the article concerning Judaism and Christianity as well as Islam are understood by the reader not to be limited to this specific period.

[22]The Origins of Muslim Jurisprudence, 54, 99, 262.

[23]Noel J. Coulson, A History of Islamic Law (Edinburgh: University Press, 1964), 105.

the legal differences between Twelver Shīʿīs and Sunnīs are not greater than those found between the Sunnī schools of law.[24] The reason for this difference of opinion is that Goldziher and Schacht had in mind the individual points of law, whereas Coulson was thinking primarily of the system of legal authority.

Coulson describes the Imam-based system of Shīʿī authority, emphasizing its political aspect and the issue of the caliphate: "the Shīʿites represented a rigidly authoritarian concept of political power."[25] He then goes on to characterize the entire history of Shīʿī legal authority as following that system which could only work before the Occultation, ignoring the intellectual and legal developments of over one thousand years of history. He claims that the Shīʿīs reject reason as a source of the law.[26] He states that they "maintain that the further elaboration of the law is the sole prerogative of their divinely inspired Imam."[27] Again stressing the theory of the imamate, he writes:

> the doctrine of the Imamate dominates Shīʿite jurisprudence to
> the degree that it produces a concept of law, and the
> relationship of the political authority therewith, fundamentally
> different from that obtaining among the Sunnites.[28]

Coulson holds that Shīʿī doctrine, again referring to the imamate in particular, makes their law fundamentally different from that of the Sunnīs.

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[24]A History of Islamic Law, 105.
[25]A History of Islamic Law, 104.
[26]A History of Islamic Law, 105-6.
[27]A History of Islamic Law, 106.
[28]A History of Islamic Law, 106-7.

> . . . the sectarian legal systems are, in the ultimate analysis,
> quite distinct from each other and from those of Sunnī Islam;
> for they derive their authority exclusively from those
> individual politico-religious beliefs by virtue of which the
> several sects and the Sunnites mutually regard each other as
> heretical.[29]

He also argues that Twelver Shīʿī law

> . . . appears as a natural manifestation and product of their
> own version of the nature of Islam, inseparably connected with
> the whole body of dogma and beliefs which constitute their
> religious faith.[30]

Thus, Coulson seems to recognize only the Imam-based system of authority as belonging to Shīʿism. His statements about this system are presented as holding for all periods of Shīʿī history; they are unqualified by such restrictions as "in the early period" or "before the occultation." Yet, perhaps as an after-thought, he goes on to deflate his detailed description of Shīʿī legal authority by saying that it is only an ideal system reserved for times when the Imams are present which has been in abeyance ever since the occultation. Coulson devotes less than a page to the system which has functioned as a "temporary" replacement for the Imam-based system. He states:

> As far as the Ithnā-ʿasharites are concerned, it [the Imam-
> based system] has represented, since 874, an ultimate ideal
> which awaits the return of the hidden Imam for its
> implementation. During the protracted interregnum the

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[29]A History of Islamic Law, 119.
[30]A History of Islamic Law, 118.

exposition of law has been the task of qualified scholars (mujtahids), and however much they have been regarded as the agents of the Imam and working under his influence, their use of human reason (ʿaql) to determine the law has been accepted as necessary and legitimate.[31]

While he admits here that this system is fundamentally different from the Imam-based system, he hints at links to the first system in his statement that the mujtahids are agents of the Imam and under his influence.

In his 1969 article, "The Ithnāʿasharī-Shīʿī Juristic Theory of Political and Legal Authority,"[32] Joseph Eliash follows Coulson in criticizing Schacht for failing to recognize the Imam-based system as a legal system. He states,

> In studying Ithnāʿasharī-Shīʿī doctrines it is necessary to rid ourselves of the notions that an Ithnāʿasharī corpus of jurisprudence was to begin only after the Shīʿī Buyids had established themselves in Baghdad (334/945) . . .[33]

Eliash thus recognizes the existence of two different systems of legal authority in the history of Shīʿism.

> In assessing the Ithnāʿasharī theory of legal and political authority we should realize that we are dealing with two variant situations; namely one in relation to the historical Imamate when the Imam was both alive and accessible to the believers, and the other during the Imam's absence.[34]

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[31]A History of Islamic Law, 108.

[32]Studia Islamica 24 (1969): 17-30.

[33]"The Ithnāʿasharī-Shīʿī Juristic Theory," 12.

[34]"The Ithnāʿasharī-Shīʿī Juristic Theory," 27.

In this he is correct, but he fails to understand the structure of the guild-based system. He states that this system of legal authority is humanized and fallible, and implies that it has no recognized basis of authority. He states,

> Concerning the second situation, lasting from ca. 329/940, probably earlier, until the end of time, Ithnā'asharī-Shī'ism conceives of no authority exercised by a human being as being divine and no legislation as infallible.[35]

Like Coulson, he seems to view the guild-based system at work during this prolonged period of Shī'ī history as a temporary, make-do framework of legislation without any exclusive or authentic basis. He holds that Ithnā'asharī Shī'ism does not allow for the delegation of authority to the jurisconsults, and claims,

> . . . it would be contrary to the very essence of Ithnā'asharī Shī'ism to regard the mujtahid as more than an ordinary mukallaf [one upon whom religious duties are incumbent, i.e., any adult, competent Muslim] versed in the ordinances of the Sharī'ah and their application, and even more contrary to institute him as a performer of the function of the Imam during the Great Occultation by virtue of 'an ex ante appointment'.[36]

In this last comment Eliash is referring to a 1965 study of the mujtahids of modern Iran, in which Leonard Binder reports that the Shī'ī mujtahids claim authority by virtue of their having been entrusted with the "general agency" (niyābah 'ammah) of the Imam. Binder finds that they

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35"The Ithnā'asharī-Shī'ī Juristic Theory," 28.
36"The Ithnā'asharī-Shī'ī Juristic Theory," 26.

base this claim on a <u>hadīth</u> transmitted from the sixth Imam Ja'far al-Ṣādiq (d. 148/765).[37] Binder's findings are authentic, but Eliash refuses to grant them any weight because he feels that they go against the true spirit of Shī'ism. While it is not up to Eliash himself to decide which parts of modern Shī'ī doctrine are true to Shī'ism and which are not, his interpretation points to the fundamental discrepancies which exist between the two systems of legal authority.

In a 1979 article,[38] Eliash, though he had since found and translated the <u>hadīth</u> upon which the <u>mujtahids</u> base their claim to exclusive authority, known as the <u>hadīth</u> of 'Umar ibn Ḥanzalah,[39] continued to hold that such claims were invalid. The critical part of the tradition, as Eliash translates it following the version included in <u>al-Kāfī</u> by al-Kulaynī (d. 329/941), is the answer to a question put by 'Umar ibn Ḥanzalah to Ja'far al-Ṣādiq concerning whom Shī'ī believers should consult in order to settle legal disputes:

> They [should] look for him among you who has related our traditions, has examined what is lawful and what is unlawful according to us, and has known our decrees. They should accept him as a judge, for I appointed him a judge over you. If he would judge according to our ruling and his (judgment) would not be accepted, verily it is contempt for the ruling of God and rejection of us, and he who rejects us rejects God and is subject to the penalty for the attributing of partners to God.[40]

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[37]"The Proofs of Islam: Religion and Politics in Iran," in <u>Arabic and Islamic Studies in Honor of Hamilton A. R. Gibb</u>, ed. George Makdisi (Leiden, 1965), 122-23.

[38]"Misconceptions Regarding the Juridical Status of the Iranian 'Ulamā'," <u>International Journal of Middle East Studies</u>, 10 (1979): 9-25.

[39]"Misconceptions," 14-15.

[40]"Misconceptions," 14.

Eliash holds not only that the mujtahids' claims are historically invalid, i.e., that the Imams made no statement before the Occultation indicating that their functions would be entrusted exclusively to the mujtahids in their absence, but also that the mujtahids' claims are inconsistent with fundamental Shi'i doctrines concerning the nature of religious authority. He holds that this hadith, if read in context, does not support the exclusive authority of the mujtahids and proclaims, "Twelver Shi'i juridical principles do not vindicate an alleged designation of the 'ulama' by the Imams to wield the Imam's prerogatives."[41]

In Eliash's view, the Occultation is a time of suspended legal authority. According to him, Twelver Shi'ism "relegated the ideal theocracy to a Utopian Messianic age."[42] During this period, the mujtahids have provided some leadership to the community, but their entire legal system serves as a temporary measure, and the ruling of the mujtahid is "as fallible as any other human deed."[43] The best the mujtahids can hope to do is to institute rulings for the common good, to the best of their ability, while the Shi'i community awaits the return of the Hidden Imam. Like Hodgson, Eliash believes that in Shi'ism in general, justice is reserved for the awaited Utopia to come at the end of time. Meanwhile, all human efforts have no basis for authority.

In 1980, shortly after Eliash's second article was published, Norman Calder completed a doctoral thesis entitled "The Structure of Authority in Imami Shi'i Jurisprudence" which gave a fuller picture of the development

[41]"Misconceptions," 21.
[42]"Misconceptions," 23.
[43]"Misconceptions," 15.

of the guild-based system than hitherto available.[44] Although Calder does
not use this term, he traces the development of the guild-based system,
showing that its theoretical underpinnings developed gradually, following
the occultation of the Imam, and culminating, in a sense, with the theory of
"general agency" to which Binder's article calls attention. According to
Calder's research, the theory of general agency was first formulated in those
exact terms by al-Shahīd al-Thānī (d. 965/1558), though it was pre-figured
in the work of ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī (d. 940/1534).[45] According to
this theory, the mujtahid is the exclusively entrusted "general deputy"
(al-nāʾib al-ʿāmm) of the Imam. Calder shows, however, that the trend for
Shīʿī jurisconsults to claim the prerogatives of the Imam began much
earlier, as far back as the fifth/eleventh century.

Sachedina traces the development of te guild-based system of
authority in his recent book on the the concept of "the just ruler" (al-sultān
al-ʿādil) in Shīʿī Islam, which traces the theoretical underpinnings of the
concept of wilāyat al-faqīh, or "the comprehensive authority of the
jurisconsult" in Twelver Shīʿī legal texts throughout Shīʿī history.[46] This
concept as professed by Khomeini (d. 1409/1989) and other modern Shīʿī
jurists and as enshrined in the Constitution or "Fundamental Law" (qānūn-i
asāsī) of the Islamic Republic of Iran (1979-present), holds that one or more
jurisconsults—as the Constitution allows—recognized to be the most
accomplished and pious authorities of the age retain sole political as well as

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[44]Norman Calder, "The Structure of Authority in Imāmī Shīʿī
Jurisprudence," unpublished Ph.D. thesis, School of Oriental and African
Studies, University of London, 1980.
    [45]"The Structure of Authority in Imāmī Shīʿī Jurisprudence," 66-170.
    [46]Sachedina, The Just Ruler in Shiʿite Islam.

religious authority. According to recent Iranian interpretations, the only legitimate government may be one under the supervision of this leading jurist. Sachedina, following the views of modern Shīʿī jurists who endorse the concept of wilāyat al-faqīh, concludes that the concept of general agency is a post-Occultation development of the pre-Occultation practice of specific delegation of authority by the Imam. This concept was gradually developed into an exclusive claim on the part of the jurisconsults of comprehensive authority over the Shīʿī community in post-Occultation Shīʿī jurisprudence, which Sachedina considers as falling into four significant periods: the Buwayhid period, with the Shīʿī jurisconsults of Baghdad, the Seljuk-Ilkhānid period, with the jurisconsults of al-Ḥillah, and the Safavid and Qajar periods, with the major jurisconsults of Iraq and Iran.

Sunnī and Shīʿī Jurisprudence Juxtaposed

Discussions to date do not explain adequately what brought about the rise of the guild-based system within Twelver Shīʿism. It is the contention of the present author that explanations have been inadequate because scholars concerned with Shīʿī jurisprudence have too often viewed it in isolation. When they have addressed this issue, they have sought to explain the rise of the guild-based system in terms internal to Shīʿism, without reference to the history of Islamic jurisprudence as a whole. Eliash attributes the establishment of the guild-based system after the Greater Occultation of the Imam to practical necessity and the rational character of Twelver Shīʿī theology.[47] Madelung makes a similar statement:

> As a result of the loss of the absolute and infallible authority in
> religious and political matters vested in the Imams [after the

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[47]"Misconceptions," 15.

disappearance of the Twelfth Imam], other sources and forms of
authority and legitimacy were gradually accepted in theology,
the religious law and the political sphere.[48]

This statement fails to explain any specific post-Occultation developments
within Twelver Shiʿī jurisprudence.

A more convincing explanation is to be found in the developments of
Sunnī jurisprudence and in Sunnī theories of orthodoxy and heresy. Many
features of the Shiʿī guild-based system of jurisprudence resemble those
found in Sunnī jurisprudence very closely, and some were even adopted
after having been rejected initially by Shiʿīs as incompatible with their own
doctrine. Such evidence suggests the hypothesis that Sunnī influence had a
great deal to do with the development of the guild-based system of
authority. Brunschvig notes certain intervals between the compilation of
hadīth collections and the systematization of jurisprudence in Sunnism and
Shiʿism, and posits influence.[49] The interval to which he refers probably
includes some of the following developments.

The first books of Sunnī hadīth arranged according to the chapters of
law for easy legal reference appeared in the third century.[50] The six such
books accepted by Sunnīs as being the main works of reference are al-Sahīh
by al-Bukhārī (d. 256/870), al-Sahīh by Muslim (d. 261/815), al-Sunan by

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[48]Wilferd Madelung, "Authority in Twelver Shiism in the Absence of
the Imam," in La notion d'autorité au moyen age: Islam, Byzance, Occident,
Colloques internationaux de la Napoule, 1978 (Paris: Presses universitaires
de France, 1982): 163-73, 173.

[49]"Les uṣūl al-fiqh imamites à leur stade ancien (Xe et XIe siècles)," in
Le shi'isme imamite (Paris: Presses universitaires de France, 1970), 201-13.

[50]Sezgin points out that it has been a common error to assume that
al-Bukhārī's al-Sahīh was the first such book; others preceded it. Geschichte
des arabischen Schriftums, 1: 115.

Ibn Mājah (d. 273/886), al-Sunan by Abū Dāwūd (d. 275/889), al-Sahīh by al-Tirmidhī (d. 279/892), and al-Sunan by al-Nasā'ī (d. 303/915). They all date roughly from the last half of the third/ninth century. The four such books accepted as being the main works of reference by the Shī'īs are al-Kāfī by al-Kulaynī (d. 329/941), Man lā yahduruhu 'l-faqīh by Ibn Bābawayh al-Qummī (d. 381/991) and Tahdhīb al-ahkām and al-Istibsār by Muhammad Abū Ja'far al-Tūsī (d. 460/1067). They date from the fourth/tenth century to the first half of the fifth/eleventh century. The Shī'īs came to refer to these books of hadīth as al-usūl al-arba'ah or al-kutub al-arba'ah, a nomenclature perhaps designed to parallel the Sunnis' term as-sihāh as-sittah.

The first integral text of Sunnī usūl al-fiqh, methodology of law and jurisprudence, was written by al-Shāfi'ī (d. 204/820). The first books on Shī'ī usūl al-fiqh were al-Tadhkirah bi usūl al-fiqh by al-Shaykh al-Mufīd (d. 413/1022), 'Uddat al-usūl by al-Tūsī (d. 460/1067), written some time between 413/1022 and 436/1044, and al-Dharī'ah ilā usūl al-sharī'ah by al-Sharīf al-Murtadā (d. 436/1044). With these works came the acceptance of the legal concept of ijmā', which dated back at least to al-Shāfi'ī in Sunnī law.[51]

Shī'īs did not accept qiyās, analogy, widely accepted in Sunnī jurisprudence, as one of the usūl or sources of jurisprudence, but they did develop Shī'ī usūl al-fiqh so that there would be four sources, substituting dalīl al-'aql (reason) for qiyās. The first Twelver Shī'ī work on usūl al-fiqh

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[51]Muhammad ibn Idrīs al-Shāfi'ī, Islamic Jurisprudence: Shāfi'ī's Risāla, trans. Majid Khadduri (Baltimore, Maryland: The Johns Hopkins Press, 1961), 285-87. For the Twelver Shī'ī adoption of ijmā', see Chapter Eight below.

to present the four sources in the order Koran, hadith, ijmāᶜ, and dalīl al-ᶜaql, corresponding to the usual Sunni order, was al-Sarāᵓir al-ḥāwī li-taḥrīr al-fatāwī by Ibn Idrīs al-Ḥillī (d. 598/1202).[52]

The use of the term ijtihād to mean the ability to arrive at a personal opinion on the basis of individual legal research was at first rejected by Shīᶜī jurisconsults, but later incorporated into their legal system. Among Sunnī jurisconsults, the term was used with this meaning as far back as the time of al-Shāfiᶜī. Al-Muḥaqqiq Jaᶜfar ibn al-Ḥasan al-Ḥillī (d. 676/1277) was the first to admit that Shīᶜī jurisconsults practiced ijtihād and incorporate the term into his works on jurisprudence. The interval in this case was about four and a half centuries.

This short synopsis is enough to show that Schacht's portrayal of the historical development of Shīᶜī law is incorrect. Schacht holds that Shīᶜī law was closer to Sunnī law at a very early period, then diverged. He states that during the early period, from the formation of the Shīᶜah until the second/eighth and third/ninth centuries, the Shīᶜīs remained in fairly close contact with the Sunnīs. After this, he implies, Shīᶜī law became somehow isolated from Sunnī law, and the doctrinal similarities that exist date from the early period. The major developments just described indicate that Shīᶜī law started out quite different from Sunnī law, but gradually conformed more and more to the Sunnī system. Schacht was thinking primarily of the individual points of law and ignoring legal methodology when he propounded the diametrically opposed view.

Was There Sunnī Influence on Shīᶜī Jurisprudence?

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[52]Modarressi, An Introduction to Shīᶜī Law, 3 n. 2.

While there is a great deal of evidence of Sunnī influence on Twelver Shīʿī jurisprudence, this topic has yet to be studied comprehensively or in detail. Coulson recognizes that the sectarian legal systems borrowed from and interacted extensively with the Sunnī majority, at least in the early period:

> No geographical or intellectual barriers isolated the sects from the Sunnites during the eighth and ninth centuries, and the evolution of their legal systems coincided and merged with the general process of historical development described in Part I of this book. . . . In fact, the sectarian legal systems, far from being wholly independent growths, often directly borrowed rules developed in the Sunnite schools.[53]

Coulson notes that the developments of later Shīʿī jurisprudence have followed those in Sunnī jurisprudence quite closely, but attributes this to the conservative nature of Shīʿī legal scholarship.

> Furthermore the actual historical evolution of law in the various Shīʿite groups has closely followed that in Sunnite Islam; . . . Imams or their representative scholars have seldom seen fit to depart from the traditional laws as expressed in authoritative manuals belonging to the early medieval period.[54]

Other scholars have made more specific assertions of Sunnī influence on Shīʿī jurisprudence. Muḥammad Riḍā Muẓaffar states that Shīʿī scholars adopted the concept of ijmāʿ, or legal consensus, out of competition with Sunnī scholars, but does not elaborate.[55] Juan Cole observes, "One suspects

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[53]A History of Islamic Law, 104-5.
[54]A History of Islamic Law, 108.
[55]Uṣūl al-fiqh, 4 vols. (Najaf: Dār al-nuʿmān, 1966-67), 3: 97.

that it was in imitation of the Sunnis that the Imāmī Shīᶜīs also developed four sources of law."[56] In his recent work An Introduction to Shīᶜī Law, perhaps the best compendium on Shīᶜī jurisprudence available in a Western language to date, Hossein Modarressi Tabataba'i holds that through the prominent Shīᶜī scholar al-Shaykh al-Ṭūsī an important part of Sunnī legal scholarship passed into Shīᶜī law. He states that two of al-Ṭūsī's works, Kitāb al-mabsūt and Kitāb al-khilāf, are modeled on Sunnī works, but does not identify the specific Sunnī antecedents.[57] He adds that the Shīᶜī scholar Ibn al-Muṭahhar al-Ḥillī, known as al-ᶜAllāmah, also drew on Sunnī legal works.[58] Madelung mentions that al-ᶜAllāmah introduced into Shīᶜī law juridical principles adapted from Sunnī law.[59] Thus, not only is there strong evidence that an important connection exists, but several modern scholars have claimed that this is indeed the case, and even, in some instances, cited specific examples. It appears, however, that no substantial study has yet been undertaken on the connections between Sunnī and Shīᶜī jurisprudence, nor have the important questions how and why Shīᶜī scholars adapted Sunnī juridical concepts been adequately addressed. The following chapters of this study will endeavor to provide some answers to these questions.

[56]Juan R. Cole, "Imami Jurisprudence and the Role of the Ulama: Mortaza Ansari on Emulating the Supreme Exemplar," Religion and Politics in Iran: Shīᶜism from Quietism to Revolution, ed. Nikki R. Keddie (New Haven: Yale University Press, 1983): 33-46, 35.

[57]Modarressi, An Introduction to Shīᶜī Law, 44. It appears from context that Modarressi did not have any specific Sunnī works in mind when he made this statement, and that he based it on the fact that these works present Sunnī legal opinions in detail.

[58]An Introduction to Shīᶜī Law, 48.

[59]Madelung, "Authority in Twelver Shiism in the Absence of the Imam," 168.

First, it will be useful to reflect on the reasons for the lack of progress in this important area of Islamic studies.

Obstacles to an Understanding of Shīʿī Jurisprudence

The preceding discussion has examined a number of the definitions of Shīʿism or interpretations of Shīʿī history proposed in studies of Islam and the Middle East to date. It has been found that since Sunnism defines heresy as a legal matter, it might be fruitful to look at the differences between Sunnī and Shīʿī law in order to gain a more balanced view of Shīʿism's place in the Islamic community. However, since the difference does not seem to be embodied in the varying opinions on the points of law, it more probably lies in the system of legal authority, or jurisprudence (uṣūl al-fiqh). Examination of scholarship to date on Shīʿī legal authority has revealed that certain important and undeniable facts of Shīʿī history, such as the rise of the guild-based system of authority as found in Twelver Shīʿism today, are left unexplained. To my mind, the two main obstacles to progress in scholarship in this area have been the focus of Orientalists, especially in matters concerning Shīʿism, on the rise of Islam and the early Islamic centuries, as well as the general failure to study Sunnī and Shīʿī jurisprudence in combination.

It is hardly surprising that Orientalist scholars, coming from a philological tradition obsessed with origins and studying a religious tradition with an equal if not greater reverence for the past, should have focused their studies on the rise and early period of Islam rather than on more recent history. The idea, once widely accepted, that Islamic and especially Arab civilization went into an abysmal decline after the Mongol capture of Baghdad needs no introduction. Similarly, many scholars, seeing al-Ghazālī,

who died in 505/1111, as the architect of a great religious synthesis representing the culmination of Islamic religious and intellectual history, seem to think that he is one of the latest Muslim thinkers who merits serious consideration in our manuals on Islam. Similarly, has been a common view that ijtihād has not been exercised in the Sunnī community since the third/ninth century, and some have interpreted this as a virtual ban on original legal scholarship since that time. Even the works of Schacht and Coulson focus on the developments of the first three Islamic centuries and reveal little of the history of jurisprudence at later dates. An examination of any introductory text-book on Islam—as well as Middle Eastern history, or Arabic literature, for that matter—will show it to be significantly if not hopelessly skewed towards the early period. Hodgson's Venture of Islam is much more even handed than most texts, but even it includes a disproportionate amount of material on the Ummayyad and early Abbasid periods. Since the attention of Islamists has been focused on the early period, when the Shīʿī Imams were not yet in occultation, the need to examine the legal system which developed at a later date has not been felt with any urgency. Scholars of Shīʿism in particular have not suffered as much from this chronological bias because of their awareness of the tremendous cultural, intellectual, and religious achievements of the Safavid period, but they have faced other serious problems.

The fact that Shīʿism is a minority often at odds with the rest of the Muslim community has been a major obstacle to progress in scholarship, for serious study is hemmed in on both sides. From the Sunni point of view, Shīʿism is marginal and removed from the mainstream of Islamic thought, and hence does not merit serious consideration in general studies.

Examination of things Shīʿī is not seen to add anything of particular worth to the work at hand. Many Sunnīs see no reason to examine the books of the Shīʿīs. This is perhaps most true in areas where there are not significant Shīʿī populations. One indication of the lack of communication between the sects is the report of a twentieth-century Shīʿī scholar concerning the Palestinian refugees who came to southern Lebanon after the 1948 war. The Palestinians, including their religious leaders and scholars, thought that the Shīʿīs, called Mitawla in Lebanon, were not Muslims, did not believe in God, did not accept the Qurʾān, and furthermore, had stubby tails (ʿasāʿis).[60]

The Shīʿīs, on the other hand, have often been defensive and over-sensitive, seeing the Sunnīs as competitors, rivals, or outright enemies. Some Shīʿīs have tried to maintain that their legal scholarship has been completely original—not only that the two traditions of jurisprudence were distinct, but also that the Shīʿīs were the first to make the great advances which developed in Islamic legal science. A consummate example of this is the work Taʾsīs al-shīʿah li-funūn al-islām by the Shīʿī scholar Ḥasan al-Ṣadr (d. 1354/1935), the ostensible purpose of which is to prove that Shīʿīs originated almost all the fields of Islamic scholarship, including those concerned with jurisprudence and law.[61] This proposition does not withstand criticism. In his autobiography Ḥayātī, the twentieth-century Egyptian Islamicist Aḥmad Amīn (d. 1373/1954) relates an anecdote which demonstrates this two-fold predicament. Aḥmad Amīn visited Iraq in 1931-32, shortly after publishing his book Fajr al-islām on early Islamic

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[60]Aḥmad Maghniyah, Imām Jaʿfar al-Ṣādiq: ʿard wa dirāsah (Beirut: Maktabat al-andalus, 1958), 133.

[61]Ḥasan al-Ṣadr, Taʾsīs al-shīʿah li-funūn al-islām (al-Kāẓimiyyah: Sharikat al-nashr wa al-ṭibāʿah al-ʿirāqiyyah al-maḥdūdah, 1951).

history, and met Muḥammad Ḥusayn Āl Kāshif al-Ghiṭāʾ (d. 1373/1954), one

of the leading Shīʿī scholars in Najaf. Āl Kāshif al-Ghiṭāʾ criticized him for

not using Shīʿī sources in his book. Taking this criticism to heart, Aḥmad

Amīn made sure that he used Shīʿī sources while researching his next

volume, but when Duḥā al-islām appeared, the Shīʿīs were even more angry

with him, for what Aḥmad Amīn considered simple, obvious criticisms of

some Shīʿī sources.[62]

This problem is neither new nor limited to the Islamic world. It is a

curious aspect of Orientalism that Orientalists often inherit the prejudices of

the men they study. They see Islamic history either through the eyes of

Shīʿīs or through the eyes of Sunnis, depending on their area of scholarly

expertise, and only rarely remain objective, let alone study both traditions.

Most scholars of Shīʿism limit themselves too readily to the books of the

Shīʿīs, and those who are not interested in the Shīʿīs per se see little reason

to become acquainted with their literature. This shortcoming must be

recognized and rectified if significant progress is to be made in the study of

Shīʿism and other Islamic sects. "Islamic" jurisprudence cannot be too

readily restricted to Sunni jurisprudence, and Shīʿī jurisprudence cannot be

treated in isolation until one determines what its place is with respect to the

other varieties of Islamic jurisprudence.

R. Strothmann makes an admirable statement concerning the place of

the Shīʿism in Islam:

> Apart from epistemological antagonistic principles which
> philosophy, called in to its aid, introduced into the Shīʿa, the
> latter had also to settle well known disputed points within

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[62]Aḥmad Amīn, Ḥayātī (Beirut: Dār al-kutub, 1969), 229-30.

Islam on the fundamentals, the UsOl al-Dīn and the UsOl al-Fikh, . . . For the Shīʿa belongs to Islam and is therefore faced with all the problems that agitate Islam generally.[63]

It would be a good idea to accept Strothmann's statement as a challenge to study the two in combination in order to arrive at an adequate picture of Islamic jurisprudence. Evidence of substantial contact between Sunnī and Shīʿī juridical scholars and the considerable similarity between many points of Sunnī and Shīʿī jurisprudence suggest that an examination of Sunnī and Shīʿī jurisprudence in combination might be valuable in an attempt to define the relationship of Sunnism and Shīʿism and to reach a better understanding of Shīʿism itself.

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[63]"Shīʿa," s.v., EI 1.

Chapter Three
The Significance of the Shīʿī Akhbārī Movement
in the History of Islamic Jurisprudence

Many issues in the history of Twelver Shīʿī jurisprudence cannot be explained without comparison or reference to the development of Sunnī jurisprudence. In particular, the significance of the conflict between the Akhbārī and Uṣūlī movements in Twelver Shīʿī juridical and intellectual history remains unclear if viewed as a phenomenon completely internal to Shīʿism. The Akhbārīs, whose appelation derives from their reliance on the traditions (akhbār) attributed the Imams as the basis for elaboration of the law, have usually been styled traditionalists, while their Uṣūlī opponents, so called because of their use of the science of legal methodology (uṣūl al-fiqh), have been labeled rationalists. From a comparative perspective, however, an examination of the Akhbārī movement within Twelver Shīʿism leads to the conclusion that the Akhbārīs were not simply Shīʿī traditionalists opposed to the Uṣūlīs, Shīʿī rationalists. Rather, the central feature of the Akhbārī movement was that it rejected the juridical system of the Sunnīs and opposed the influence of this system on Shīʿī law.

A brief look at Sunnī juridical institutions is first necessary in order to provide a meaningful basis for comparison. Professor George Makdisi has

devoted many studies to the history and nature of the Sunnī madhhabs.[1] In a 1984 article, he first put forward the opinion that the Sunnī madhhabs, usually termed "schools of law", are in fact professional legal guilds.[2] He has argued that the legal guilds came into being in the third/ninth century and were subsequently consolidated in the fourth/tenth and fifth/eleventh centuries with the development and proliferation of the colleges of law (masjid-khāns and madrasahs).[3] He has also shown that the madhhab satisfies the fundamental criteria of a guild as discussed by Massignon and Cahen, and as outlined in Gabriel Baer's study on guilds in Middle Eastern history.[4] Makdisi's list of these criteria with the relevant information concerning the madhhabs follows in slightly modified form.

1) The guild includes all the people occupied in a branch of learning (i.e., Islamic legal studies)

2) It constitutes a unit (i.e., the madhhab)

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[1] Among the most important of these studies are "Ash'arī and the Ashārites in Islamic Religious History"; "L'Islam Hanbalisant," Revue des études islamiques 42(1974): 211-44, 43(1975): 45-76; "The Significance of the Sunni Schools of Law in Islamic Religious History," International Journal of Middle Eastern Studies 10(1979): 1-8; The Rise of Colleges: Institutions of Learning in Islam and the West (Edinburgh: Edinburgh University Press, 1981); "The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court," Zeitschrift für Geschichte der Arabisch-Islamischen Wissenschaften 1(1984): 233-52; "The Juridical Theology of Shāfi'ī"; "Scholasticism and Humanism in Classical Islam and the Christian West"; and The Rise of Humanism.

[2] "The Guilds of Law in Medieval Legal History," 233-52.

[3] See especially The Rise of Colleges, passim, and The Rise of Humanism, 2-45.

[4] "The Guilds of Law in Medieval Legal History," 234-41; The Rise of Humanism, 21. Baer's criteria are given in "Guilds in Middle Eastern History," in Studies in the Economic History of the Middle East, ed. Michael A. Cook (London: Oxford University Press, 1970), 12.

3) It is located within a definite area (i.e., an Islamic city, e.g., Baghdad).

4) a) It performs restrictive practices; for example, 1) legal studies are restricted to members of the madhhab and 2) the mastership is restricted to graduates of the eduational system who have fulfilled the requirements to the satisfaction of a master jurisconsult. The attainment of mastership is officially recognized through the granting of the ijāzah bi al-tadrīs wa al-iftā', or doctorate of law.

4) b) It fulfills social functions. Members of the madhhab 1) issue legal opinions to laymen soliciting them and 2) provide education in the religious sciences and ancillary subjects.

5) The madhhab includes a framework of officers chosen from among the members (e.g., the professor of law, the repetitor of law, and other positions in the traditional madrasah).

6) It is headed by a headman (i.e., ra'īs al-madhhab, the head of the madhhab in a given locality).

More recently, focusing on the restrictive practices just mentioned in 4), Makdisi has also suggested that the Sunni madhhabs satisfy the foremost criteria of a guild: namely, autonomy and monopoly.[5] That is, in classical Islam, no one outside the madhhabs, whether the Caliph or the ruler, had control over the opinions of the doctors of law, and furthermore, the madhhabs held a monopoly over legal education and the issuing of legal opinions. The ijāzah bi-t-tadrīs wa 'l-iftā' may therefore be seen as the key element in the legal guild, for this doctoral degree restricted the right to teach law and to issue legal responsa only to members of the guild who had

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[5]"Professionalized Higher Learning: Past and Present," paper presented at Symposium on "Occidentalism," University of Pennsylvania, Philadelphia, March 23-24, 1990.

completed the course of legal study necessary to attain mastership. The only individual capable of granting this degree was himself a master jurisconsult in the guild. No outside authorities or scholars in other fields had any say in who attained the rank of master jurisconsult.

An examination of the modern Twelver Shī'ī legal system, called the Ithnā-'asharī, Imāmī, or Ja'farī madhhab, shows that it satisfies all the above requirements of a guild. Accordingly, the basic structure of the Shī'ī madhhab is identical to that of the classical Sunnī guilds except for a few differences in terminology. The master in this guild acquires his rank through completion of a highly-structured legal education at one of the main Shī'ī centers of learning, termed hawzah 'ilmiyyah.[6] As explained in the previous chapter, the aspiring Imāmī jurisconsult, establishing his membership in the guild by beginning his legal education at one of these centers of learning, passes through three clearly defined levels of study: the muqaddamāt or propaedeutic sciences, dars al-suṭūh or the study of legal texts, and dars al-khārij or extra-textual study, during which he attends the lectures of one of the top professors of law at the center of learning. During this final stage, the student completes a taqrīrah on law, a commentary on the legal opinions his professor presents in his lectures, which corresponds exactly to he ta'līqah of classical Sunnī Islam, and roughly to the Western

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[6]The most important of these centers at present are in Najaf in Iraq and Qum in Iran. For an overview of the modern Shī'ī system of Islamic legal education, see Muḥsin al-Amīn, Khiṭaṭ Jabal 'Āmil, 153-55; idem., A'yān al-shī'ah, 10: 352; Muḥammad Sharīf Rāzī, Ganjīnah-yi dānishmandān, 7 vols. (Tehran, 1973), 1: 154-97; Michael M. J. Fischer, Iran: From Religious Dispute to Revolution (Cambridge, Massachusetts: Harvard University Press, 1980), 247-51; Roy Mottahedeh, The Mantle of the Prophet: Religion and Politics in Iran (New York: Simon and Schuster, 1985), passim.

doctoral dissertation.[7] If the professor approves of the taqrīrah, he grants the student his degree, termed ijāzat al-ijtihād. The degree allows the holder to teach law and issue legal opinions to laymen. With the acquisition of this degree, the holder becomes a mujtahid, or master in the legal guild.[8] The main differences between Sunnī and Shīʿī terminology related to the legal guild are that this degree has been termed ijāzat al-ijtihād in the Shīʿī system rather than ijāzat al-tadrīs wa 'l-iftāʾ, as in the Sunnī system; and the "head man" of the Shīʿī guild is termed "the reference for acceptance of legal opinions" (marjiʿ al-taqlīd)[9] in modern times, and "the seal of the

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[7]On the taʿlīqah, see Makdisi, The Rise of Colleges, 111-28.

[8]The term ijtihād has been the subject of much confusion in the literature because of its semantic complexity. Makdisi and Hallaq have shown that the once accepted view that "the gate of ijtihād" was closed in the third/ninth century is untenable. See Makdisi, The Rise of Colleges, 281-91; Wael B. Hallaq, "Was the Gate of Ijtihad Closed?," International Journal of Middle Eastern Studies 16(1984): 3-41. The idea that the gate of ijtihād was closed only makes sense if ijtihād is taken to mean the ability to form a new legal guild, and this meaning is not relevant to the discussion here. In classical Sunnī Islam, the rank of the master jurisconsult was designated by the term ijtihād. The jurisconsult who obtained the doctoral degree acquired the title mujtahid. If one focuses on this meaning of ijtihād, it becomes clear not only that Sunnī scholars have continued to attain the rank of ijtihād, in the sense that they gained recognition as authoritative muftīs or jurisconsults, until modern times, but also, contrary to the previously accepted view, that there is no essential difference between the Sunnīs and the modern Imāmī Shīʿīs on this point.

[9]The comparison here is my own. On the marjiʿ al-taqlīd in general, see Anne K. S. Lambton, "A Reconsideration of the Position of Marjaʿ al-Taqlīd and the Religious Institution," Studia Islamica 20(1964): 115-35; Juan R. Cole, "Imami Jurisprudence and the Role of the Ulama: Mortaza Ansarī on Emulating the Supreme Exemplar," in Religion and Politics in Iran: Shīʿism from Quietism to Revolution, ed. Nikki R. Keddie (New Haven: Yale University Press, 1983): 33-46; Ahmad Kazemi Moussavi, "The Establishment of Marjaʿiyyat-i Taqlid in the Twelver-Shīʿi Community," Iranian Studies 18(1985): 35-51.

mujtahids" (khatam al-mujtahidin)[10] in the Safavid period, for example, rather than ra²is al-madhhab. Though scholars of Shī°ism have not applied the exact term "guild" to the Twelver Shī°ī juridical organization, Professor Said Arjomand has taken the above-mentioned features into account by calling it an "autonomous hierocracy"[11] or a "professionalized hierocracy."[12]

It would seem likely that the Shī°īs developed this system in imitation of the Sunnīs. This is suggested by the fact, noted in Chapter Two, that the Shī°īs developed certain key features of their legal system, such as ijmā°, ijtihād, and so on, after the same features had been developed by the Sunnīs. It is unlikely, however, that the sources on either side would admit that the Shī°īs indeed formed the Imāmī legal guild in imitation of the Sunnī legal guilds. Sunnī scholars have, for the most part, seen the Shī°ī legal system as marginal or unimportant, and therefore have tended to ignore the development of Shī°ī legal theory. This is also true of many modern scholars who have written on the Sunnī legal system, including Makdisi and others. On the other hand, Shī°ī scholars do not wish to convey the idea that their legal system somehow derives from that of the Sunnīs, and they project its formation back to the time of the sixth Imam Ja°far al-Ṣādiq (d. 148/765) to avoid the implication of Sunnī precedence. Many modern scholars of Shī°ī jurisprudence too readily limit their research to Shī°ī sources, compounding this tendency to ignore the influence of the Sunnīs. While several contemporary writers have suggested imitation or

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[10]Again, the comparison is mine. On the term khatam al-mujtahidin in general, see Said Amir Arjomand, The Shadow of God and the Hidden Imam: Religion, Political Order, and Societal Change in Shi°ite Iran from the Beginning to 1890 (Chicago: University of Chicago Press, 1984), 133-35.

[11]The Shadow of God, 14.

[12]The Shadow of God, 187.

transfer as the source of a few important concepts in Shī'ī law, they have to date only indulged in occasional speculation as to the relationship between the Shī'ī and Sunnī legal systems.

While E. G. Browne was one of the first Orientalists to mention the Akhbārī movement, it was Gianroberto Scarcia, in a 1958 article, who made the first significant presentation of Akhbārī thought in Western scholarship.[13] A number of studies undertaken since then have given Akhbārism fairly high exposure in scholarship on Shī'ism.[14] Although, as Newman has shown, the Akhbārī movement was present and active from the fourth/tenth until the tenth/sixteenth centuries,[15] it is generally agreed that there was a resurgence of the movement in the eleventh/seventeenth century and that it remained very strong for the next one hundred and fifty

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[13]E. G. Browne, A Literary History of Persia, 4 vols. (Cambridge, 1929), 4: 374; Gianroberto Scaricia, "Intorno alle Controversie Tra Ahbārī e Uṣūlī Presso gli Imamiti di Persia," Rivista degli Studi Orientali 33(1958), 211-50.

[14]On the Akhbārīs in general, see Hossein Modarressi Tabātabā'i, "Rationalism and Traditionalism in Shī'ī Jurisprudence: A Preliminary Survey," Studia Islamica 59(1984): 148-58; idem., An Introduction to Shī'ī Law, 52-57; Arjomand, The Shadow of God, 13-14, 145-47, 152-53; Moojan Momen, An Introduction to Shī'ī Islam, 117-18, 222-25; Abdoljavad Falaturi, "Die Zwölfer-Schia aus der Sicht eines Schiiten: Probleme ihrer Untersuchung," Festschrift Werner Caskel (Leiden: E. J. Brill, 1968): 62-95; Wilferd Madelung, "al-Akhbāriyya," EI2 Supplement, 56-57; Etan Kohlberg, "Akbāriya," Encyclopaedia Iranica, 716-18; Juan Cole, "Shī'ī Clerics in Iraq and Iran, 1722-1780: The Akhbārī-Uṣūlī Controversy Reconsidered," Iranian Studies 18(1985): 3-34; idem., Roots of North Indian Shī'ism in Iran and Iraq: Religion and State in Awadh, 1722-1859 (Berkeley: University of California Press, 1988), 17-22, 31-39; Andrew Newman, "The Development and Political Significance of the Rationalist (Uṣūlī) and Traditionalist (Akhbārī) Schools in Imāmī Shī'ī History from the Third/Ninth to the Tenth/Sixteenth Century," unpublished Ph. D. dissertation, U.C.L.A., 1986..

[15]Newman, "The Development and Political Significance of the Rationalist (Uṣūlī) and Traditionalist (Akhbārī) Schools."

years or so. As Modarressi recounts, the Akhbārī movement claimed substantial support among Shīʿī scholars during this period, and dominated Najaf and other Shīʿī centers of learning until the second half of the twelfth/eighteenth century, when Muḥammad Bāqir ibn Muḥammad Akmal al-Bihbihānī (d. 1205/1791), known as "al-Waḥīd," successfully refuted the Akhbārīs and re-established the predominance of their opponents, the Uṣūlīs.[16] Akhbārism has since died out in Iran and Iraq, but a small community of Akhbārī scholars has remained in Baḥrayn until the present day.[17]

The work credited with serving as the manifesto of the Akhbārī revival is al-Fawāʾid al-madaniyyah, which the Shīʿī scholar Muḥammad Amīn al-Astarābādī completed in Mecca in 1031/1622.[18] Al-Astarābādī, as his nisbah indicates, was probably a native of Astarābād in northern Iran. During his youth he studied in Shiraz for four years and read hadīth and rijāl in Karbalāʾ with Muḥammad ibn ʿAlī ibn Abī al-Ḥasan al-ʿĀmilī (d. 1009/1600), receiving an ijāzah from him in 1007/1598-99.[19] From 1015/1606 to 1025/1616 he studied in Mecca with the Shīʿī hadīth scholar Mīrzā Muḥammad ibn ʿAlī al-Astarābādī, who died in 1028/1619.[20] Muḥammad Amīn wrote al-Fawāʾid al-madaniyyah in response to the

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[16]Modarressi, An Introduction to Shīʿī Law, 52-57.

[17]Modarressi, An Introduction to Shīʿī Law, 55.

[18]Aghā Buzurg al-Ṭihrānī, al-Dharīʿah ilā taṣānīf al-shīʿah, 23 vols. (Tehran: Chāp-khānah-yi dānishgāh-i tihrān, 1936-78), 16: 358.

[19]Muḥammad Amīn al-Astarābādī, al-Fawāʾid al-madaniyyah, lithograph edition (Tehran, 1904), 17, 133.

[20]al-Fawāʾid al-madaniyyah, 17-18.

request of a number of students in Mecca that he teach them usūl al-fiqh.[21]

He died in 1036/1626-27.[22]

Modern scholars have recognized the importance of al-Fawā³id al-madaniyyah, and have reached several important conclusions concerning it: 1) the work touched off a controversy which dominated Shī^cī intellectual life for over a century, in which the two opposing groups were called the Akhbārīs and the Uṣūlīs. The Akhbārīs espoused the opinions presented in al-Fawā³id al-madaniyyah and the Uṣūlīs rejected them;[23] 2) the two groups divided along the lines of traditionalists, i.e., the Akhbārīs, versus

[21] al-Fawā³id al-madaniyyah, 2.

[22] There are conflicting reports regarding the death date of Muḥammad Amīn al-Astarābādī. In Sulāfat al-^caṣr and Amal al-āmil, the date 1026/1617 is given. [Ibn Ma^cṣūm, ^cAlī ibn Aḥmad al-Madanī, Sulāfat al-^caṣr fī maḥāsin al-shu^carā³ bi-kull miṣr (Cairo, 1905), 499; Muḥammad ibn al-Ḥasan al-Ḥurr al-^cĀmilī, Amal al-āmil, 2: 246] Al-Khwānsārī gives the date 1033/1623-24 and states that the date 1026 given in Amal al-āmil is an error. [Rawḍat al-jannāt, 7 vols. (Tehran: al-Maktabah al-islamiyyah, 1970), 1: 138] Wilferd Madelung, ["al-Akhbāriyya," EI2 Supplement, 56-57] and Moojan Momen [An Introduction to Shī^ci Islam, 117] both give 1033 A.H. (1623-24) as the death date. The report of Mīrzā ^cAbd Allāh al-Iṣfahānī in Riyāḍ al-^culamā³ that Muḥammad Amīn wrote a treatise on the question of the ritual purity or impurity of alcoholic beverages (khamr) in 1034/1624-25 calls both these dates into question, and gives credence to the date he himself reports, 1036/1626-27. [Mīrzā ^cAbd Allāh Afandī al-Iṣfahānī, Riyāḍ al-^culamā³ wa-ḥiyāḍ al-fuḍalā³, 6 vols., ed. Aḥmad al-Ḥusaynī (Qum: Maṭba^cat al-khayyām, 1980), 5: 36] The date of 1026 reported in Amal al-āmil may be easily explained as a copyist's error: the numbers 2 and 3 are often confused.

[23] Arjomand, The Shadow of God, 146; Madelung, "al-Akhbāriyya," 56; Moojan Momen, An Introduction to Shī^ci Islam, 117, 186, 222, 302; Modarressi, "Rationalism and Traditionalism," 154, 156-57; idem., An Introduction to Shī^ci Law, 52, 54-55; Kohlberg, "Akbāriya," 716.

rationalists, i.e., the Uṣūlīs;[24] 3) this conflict was not completely new, but had existed earlier in Shīʿī history;[25] 4) the opinions espoused by the Akhbārīs tended to undermine the authority of the Shīʿī jurisconsults or mujtahids.[26]

Arjomand has voiced several additional interpretations of the Akhbārī movement from a socio-political perspective. He holds that this movement was an attack on the part of "the Persian clerical estate," local landed notables in Iran from whose ranks the Safavid and earlier Iranian governments traditionally drew members of the bureaucracy, directed against the authority of the predominantly Arab Shīʿī jurisconsults who had gained tremendous power in Iran during the early Safavid period.[27] He seems to base this idea primarily on the fact that the author of al-Fawāʾid al-madaniyyah was an Iranian. Since a large number of native Arab scholars from Jabal ʿĀmil and Baḥrayn were Akhbārīs, this interpretation is questionable.[28] Arjomand also claims that Akhbārī traditionalism was associated with gnostic philosophy.[29] This view derives some credence from the fact that Muḥsin al-Fayḍ al-Kāshānī, a well-known Akhbārī who lived two generations after al-Astarābādī, wrote a number of important

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[24]Arjomand, 145; Madelung, "al-Akhbāriyya," EI2 Supplement, 56; Moojan Momen, 117, 222; Modarressi, "Rationalism and Traditionalism," 156; Modarressi, Introduction, 52, 54; Kohlberg, "Akbārīya," 716.

[25]Arjomand, 13, 145; Madelung, "al-Akhbāriyya" EI2 Supplement, 56; Moojan Momen, 117, 222; Modarressi, "Rationalism and Traditionalism,"146-54; idem., Introduction, 32-35, 52, 54; Kohlberg, "Akbārīya," 717.

[26]Arjomand, 145-6; Madelung, "al-Akhbāriyya" EI2 Supplement, 56-7; Moojan Momen, 118, 222; Modarressi, Introduction, 55; Kohlberg, "Akbārīya," 718.

[27]The Shadow of God, 145.
[28]The Shadow of God, 146.
[29]The Shadow of God, 153.

philosophical works. Nevertheless, the fact that a chapter in al-Fawā'id al-madaniyyah rejects the methods of the philosophers calls this view as well into question.[30] A third claim of Arjomand is that the Akhbārī movement tended to enhance the prestige of sayyids, the living descendants of the Imams.[31] While these theories might point to some of the possible social implications of the Akhbārī movement, they are at present tentative and require additional documentation.

Modern scholars are correct in seeing al-Fawā'id al-madaniyyah as a traditionalist manifesto against rationalist elaborations of the law on the part of Shī'ī jurisconsults. Many individual passages show al-Astarābādī to be a strict traditionalist opposed to rationalist methods, similar in outlook to Sunnī Zāhirīs such as Ibn Ḥazm (d. 456/1064).[32] The twelve chapters of al-Fawā'id al-madaniyyah include a chapter arguing that the use of rational or speculative derivation (al-istinbāṭāt al-zanniyyah) in the interpretation of the Sacred Law is invalid (Chapter One; pp. 90-128); a chapter refuting specific rationalist methods used in the science of jurisprudence, including ijmā', istiḥsān, and istiṣḥāb (Chapter Six; pp. 133-50); a chapter on the errors of Mu'tazilī and Ash'arī philosophical theology (Chapter Eleven; pp. 200-42); a chapter on the errors of the philosophers and the inadequacy of logic (Chapter Twelve; pp. 242-66); a chapter arguing that the sole basis of Shī'ī

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[30]al-Fawā'id al-madaniyyah, 242-66.

[31]The Shadow of God, 13.

[32]See e.g., Ibn Ḥazm, Mulakhkhas ibṭāl al-qiyās wa al-ra'y wa al-istiḥsān wa al-taqlīd wa al-ta'līl, ed. Sa'īd al-Afghānī (Damascus: Maṭba'at jāmi'at dimashq, 1960); Ignaz Goldziher, Die Zāhiriten, ihr Lehrsystem und ihre Geschichte (Leipzig, 1884). See also Ibn Ḥazm, al-Iḥkām fī usūl al-aḥkām (Cairo: Maktabat 'Āṭif, 1978), 992-1036, 1206-1351, where he rejects the use of ra'y, istiḥsān, and qiyās in the religious law.

jurisprudence should be the traditions of the Imams (Chapter Two; pp. 128-32); and a chapter criticizing rationalist terminology (Chapter Ten; pp. 194-200).

A representative statement of the author's traditionalist position is the following:

> Because of the reliance of this group [of later Shi'i jurisconsults] on mere reason in many instances, they have gone against the wide-spread transmissions from the Chaste Descendants of the Prophet on many points of philosophical and juridical theology. From these contradictions in juridical methodology (al-usūl) resulted many further contradictions in the points of law (al-masā'il al-fiqhiyyah), yet [the Shi'i jurists] did not understand what the source of these contradictions was. Furthermore, their reliance on these [rationalist methods] and their lack of recourse to the Speech of the Imams were due either to a specious argument which succeeded in convincing them (dakhalat 'alayhim) or to carelessness (ghaflah). But God knows best.
>   If, upon writing in these sciences, they had consistently begun chapters, sections, and questions, for example, with the Speech of the Chaste Descendants, then explicated them and supported them with rational arguments (i'tibārāt 'aqliyyah), it would have been better for them.[33]

This brief overview is enough to give the impression that the author is an extreme traditionalist who wished to restrict severely the use of reason in legal methodology as well as other fields. The text does much more, however, than describe a conflict between rationalists and traditionalists. It is clear that al-Astarābādī was combatting, above all, the influence of Sunnī jurisprudence on Shi'ism. Modern scholars have only hinted at this aspect of the work: Madelung states in a footnote that al-Astarābādī accused

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[33]al-Fawā'id al-madaniyyah, 29-30.

al-ʿAllāmah al-Ḥillī (d. 726/1325) of adopting Sunnī principles, and
Arjomand mentions that the Akhbārīs criticized the mujtahids for applying
reason in jurisprudence like the Sunnīs.[34] Neither scholar identifies
opposition to Sunnī influence as a major feature of the Akhbārī school. The
text of al-Fawāʾid al-madaniyyah argues, however, that the Shīʿī jurists had
developed a legal guild modeled on the Sunnī guilds, and demonstrates that
al-Astarābādī's aim was to denounce this system, declaring it completely
invalid and fundamentally incompatible with the basic tenets of Shīʿism.
Scholars who have examined the history of Shīʿī jurisprudence have missed
or underestimated the importance of this point, i.e., that al-Astarābādī is
attacking the Sunnī system, because they are accustomed to viewing Shīʿī
jurisprudence as a closed, independent entity, rather than one facet of
Islamic jurisprudence in general. It is this type of view which has led
several modern scholars to reproduce long lists of the conflicting opinions of
the Akhbārīs and Uṣūlīs without sufficiently analyzing the import or bases
of these differences of opinion.[35]

The elements of jurisprudence and legal methodology al-Astarābādī
singled out for criticism were not only rationalist, but also Sunnī. He argues
that ijmāʿ, istiḥsān, istisḥāb, and qiyās are Sunnī legal concepts, which the
Sunnīs needed to develop only because they denied the necessity of an
Imam to serve as a guide in religious matters.[36] Several generations later,

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[34]Madelung, "Authority in Twelver Shiism in the Absence of the
Imam," 173 n. 25; Arjomand, The Shadow of God, 145.

[35]Scarcia, "Intorno alle controversie tra Ahbari e Uṣūlī," 225-46;
Abdoljavad Falaturi, "Die Zwölfer-Schia aus der Sicht eines Schiiten," 81 ff.;
Momen, An Introduction to Shīʿī Islam, 223-25; Newman, "The Development
and Political Significance of the Rationalist (Uṣūlī) and Traditionalist
(Akhbārī) Schools," 24-38.

[36]al-Fawāʾid al-madaniyyah, 45-47.

the Akhbārī scholar Muḥsin al-Fayḍ al-Kāshānī states clearly that ijmāʿ and ijtihād were originally Sunnī concepts.[37] Furthermore, the scholars al-Astarābādī attacks most in al-Fawāʾid al-madaniyyah were not only known as rationalists, but had also been influenced greatly by Sunnī scholars. Al-Astarābādī repeatedly states that he is supporting the views of early Shīʿī scholars (qudamāʿ ashābinā) against a group of later Shīʿī scholars (jamʿ min mutaʾakhkhirī ashābinā). This latter group includes al-ʿAllāmah al-Ḥillī, whom al-Astarābādī singles out for the most severe criticism, al-Shahīd al-Awwal (d. 786/1384), ʿAlī ibn ʿAbd al-ʿAlī al-Karakī (d. 940/1534), and al-Shahīd al-Thānī (d. 965/1558). Not only were these scholars towards the rationalist end of the spectrum among Shīʿī jurisconsults, but also all of them had studied the legal sciences extensively with Sunnī scholars.

A late eleventh/seventeenth-century Akhbārī scholar, Muḥammad ibn al-Ḥasan al-Ḥurr al-ʿĀmilī, clarifies the significance assigned to study under Sunnī teachers. Concerning the studies of al-ʿAllāmah al-Ḥillī, al-Shahīd al-Awwal, and al-Shahīd al-Thānī under Sunnī teachers, he states:

> There is no doubt that their intentions were sound.
> Nevertheless, the results of [their studies with Sunnis] are
> apparent to whoever has examined and closely followed
> (tatabbaʿ) the books of legal methodology, legal derivation, and
> hadīth.[38]

Al-Ḥurr al-ʿĀmilī means to imply that as a result of these scholars' studies under Sunnī teachers, a great deal of Sunnī material or methodology had

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[37]Muḥsin al-Fayḍ al-Kāshānī, Safīnat al-najāt, ed. Muḥammad Riḍā al-Naqūsānī (Tehran, 1960), 9-10.
    [38]Amal al-āmil, 1: 89.

crept into Shīʿī legal and <u>hadīth</u> scholarship. As an Akhbārī, he was opposed to this phenomenon and saw it as an unfortunate quirk of Shīʿī intellectual history.

Al-Astarābādī states that the science of <u>usūl al-fiqh</u> in its entirety was invented by the Sunnīs.[39] He cites a number of Sunnī works on <u>usūl al-fiqh</u> to show that the fundamental element of <u>usūl al-fiqh, ijtihād</u>, was also a Sunnī concept.[40] He then comments,

> Some of the rules of <u>usūl</u> which the Sunnī <u>usūlīs</u> have put forth only follow because of their denial that the Prophet left as a successor for every age an entrusted infallible [guide], an authority (<u>marjiʿ</u>) for all men, knowing all that which the Muslim community (<u>al-ummah</u>) would need until the Day of Resurrection, through divine inspiration (<u>wahy</u>), and not through personal opinion (<u>raʾy</u>), and because of their denial of the authority (<u>hujjiyyah</u>) of the <u>hadīth</u>s transmitted from the Chaste Descendants.[41]

Al-Astarābādī then argues that some later Shīʿī scholars adopted principles from Sunnī <u>usūl al-fiqh</u>, including <u>ijtihād</u>, despite the fact that these concepts contradict the <u>hadīth</u> of the Imams.[42] Muhsin al-Fayd al-Kāshānī also holds that Shīʿī jurisconsults took the concepts of <u>ijmāʿ</u> and <u>ijtihād</u> from the Sunnīs.[43]

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[39]<u>al-Fawāʾid al-madaniyyah</u>, 18-19.
[40]<u>al-Fawāʾid al-madaniyyah</u>, 18-29. The works he cites include <u>al-Ihkām</u> by al-Āmidī (d. 631/1233), <u>Sharh al-mukhtasar</u> by ʿAdud al-Dīn al-Ījī, and <u>al-Talwīh</u> by al-Taftazānī.
[41]<u>al-Fawāʾid al-madaniyyah</u>, 28-29.
[42]<u>al-Fawāʾid al-madaniyyah</u>, 29, 47.
[43]Muhsin al-Fayd al-Kāshānī, <u>Safīnat al-najāt</u>, 9-10.

Al-Astarābādī focuses blame on al-ʿAllāmah al-Ḥillī and attacks him for his innovations in Shīʿī jurisprudence, which, he maintains, resulted from Sunnī influence. He holds al-ʿAllāmah especially responsible because of the great influence he had over later Shīʿī jurisconsults. For example, al-Astarābādī reports that many later Shīʿī jurisconsults adopted al-ʿAllāmah's opinions "because he was the Sea of Knowledge" (liʾannahū kāna bahra 'l-ʿulūm), indicating his enormous prestige in Shīʿī scholarly tradition.[44] Although other Shīʿī scholars held views similar to those of al-ʿAllāmah al-Ḥillī, al-Astarābādī singles him out for the most severe criticism because he sees him as an innovator, responsible for introducing the most fundamental Sunnī concepts into Shīʿī jurisprudence and thereby doing it the greatest injustice. He claims that al-Ḥillī

> . . . admired many of the rules of juridical methodology (qawāʿid usūliyyah) and the derivations of the points of law (istinbāṭāt fiqhiyyah) recorded in the books of the Sunnīs, so he included them in his own works, not paying attention to the fact that they were based on rules which go against essential doctrinal tenets of the Rightful Sect (darūriyyāt aṭ-ṭāʾifah al-muhiqqah).[45]

Al-Astarābādī also claims that al-Ḥillī's Tahdhīb al-usūl, for several centuries a standard text-book of Shīʿī usūl al-fiqh, was actually based on Sunnī works. He reports,

> It has become well known among the scholars that the Tahdhīb of al-ʿAllāmah al-Ḥillī is an abridgement of the Mukhtasar of Ibn al-Ḥājib, which is an abridgement of the Muntahā of Ibn

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[44]al-Fawāʾid al-madaniyyah, 30.
[45]al-Fawāʾid al-madaniyyah, 278.

al-Ḥājib, which is an abridgement of the Iḥkām of al-Āmidī, which is an abridgement of the Maḥṣūl of Fakhr al-Dīn al-Rāzī (d. 606/1209), which is an abridgement of the Muʿtamad of Abū 'l-Ḥusayn al-Baṣrī (d. 436/1044).[46]

By this, al-Astarābādī means to imply that al-ʿAllāmah al-Ḥillī actually worked in the heart of Sunnī tradition, rather than his own Shīʿī tradition, to which he should have been paying more attention. This statement has some basis in fact, for al-Ḥillī indeed wrote a commentary on a Sunnī uṣūl al-fiqh text, the Mukhtaṣar of Ibn al-Ḥājib which al-Astarābādī claims served as the basis for Tahdhīb al-uṣūl.

Al-Astarābādī's main targets were two particular innovations he attributes to al-ʿAllāmah al-Ḥillī. One innovation has to do with the application of Sunnī methods of ḥadīth criticism to Shīʿī ḥadīth, a project which al-Astarābādī feels detracted from the authority of the collections of Shīʿī ḥadīth which had been accepted in the Shīʿī community for many centuries down to al-ʿAllāmah's day. The second innovation is, in effect, the adoption of the guild system of Sunnī jurisprudence. The key element of this system, in al-Astarābādī's view, is the formation of an exclusive group of legal scholars, termed "mujtahids," who claimed sole authority to elaborate and interpret the sacred law. The term al-Astarābādī uses to refer to the establishment of this system is the "division" (taqsīm) of the Muslim community into two groups: mujtahid and muqallid. He writes,

It has become wide-spread opinion, in the works of some recent learned and accomplished scholars such as al-ʿAllāmah al-Ḥillī and those who have agreed with him, that during the time of Occultation, the populace (al-raʿiyyah) is divided into mujtahid

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[46]al-Fawāʾid al-madaniyyah, 277-78.

and muqallid, that the muqallid must have recourse to the
conjecture (zann) of the mujtahid in those matters of the
religious law which are not fundamental aspects of the religion
or the sect (madhhab), and that the absolute mujtahid
(mujtahid mutlaq) is the (only) one who is able to deduce a
ruling for every disputed, subsidiary, speculative point of the
religious law. They have stated that this ability is achieved
when one knows the bases (madārik) for all rulings of the
religious law, and this knowledge is obtained through
knowledge of all six propaedeutic sciences (al-muqaddamāt
al-sitt)—philosophical theology (kalām), dogma (usūl), syntax,
morphology, lexicography, and the methods of proof (sharā'it
al-adillah)—as well as the four sources, namely the Qur'ān,
tradition (sunnah), consensus (ijmāᶜ), and reason (dalīl
al-ᶜaql).[47]

Al-Astarābādī attacks this system, claiming that the creation of an exclusive,

privileged group entrusted with legal authority for the Shīᶜī community

which this division entails goes against the basic tenets of Shīᶜism. Rather,

as he holds in the seventh chapter of al-Fawā'id al-madaniyyah, anyone

learned in the hadīth of the Imams may act as a muftī or qādī.[48] He argues

that there is no reason to restrict these functions to a specific class of people

trained in rational derivation, many of whom lack adequate background in

hadīth, or worse yet, who rule against the content of a hadīth on the basis of

rational argument.

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[47]al-Fawā'id al-madaniyyah, 4. In another passage, al-Astarābādī
uses the term hasr "limitation," "confinement," or "restriction" rather than
taqsīm to describe the monopoly over legal authority claimed by the
mujtahids. He mentions the "restriction of the populace to [membership in
one of the two groups] mujtahid and muqallid." (hasr al-raᶜiyyah fī
'l-mujtahid wa al-muqallid). al-Fawā'id al-madaniyyah, 3.

[48]al-Fawā'id al-madaniyyah, 150-53.

Al-Astarābādī's proposed system is interesting in itself and merits closer study, but his attacks highlight the existence of a juridical guild within Shīʿism during his time. To al-Astarābādī, the guild is based on the dichotomy between ijtihād and taqlīd. It makes little sense to describe Shīʿism or Sunnism, for that matter, in terms of ijtihād alone or taqlīd alone, for these are two aspects of the same system, and both aspects are necessary to create the legal guild. The mujtahid must have an exclusive right to interpret the sacred law and the layman must be obligated to refer to a recognized mujtahid in order for the legal guild to establish its monopoly over the issuing of legal opinions. Al-Astarābādī shows that the guild-based system was the one in favor in his own time and probably since the time of al-ʿAllāmah al-Ḥillī at the latest, i.e., since the beginning of the eighth/ fourteenth century. Most importantly, the origin of the system is to be found with the Sunnīs. He asserts,

> This division (taqsīm), that is, the division of the populace into mujtahid and muqallid, and [the application of] its related stipulations and rules have occurred in imitation of the Sunnī jurisprudents (waqaʿa ʿalā minwāli 'l-uṣūliyyīna min al-ʿāmmah), inasmuch as they divided the people after the Prophet into two groups, mujtahid and muqallid. . . .
> The truth is that these premises hold only for him who does not confess the necessity of adherence to the Chaste Descendants, and does not render them a means towards the understanding of the Book of God and the sunnah of His Prophet. For an Imāmī to hold this opinion is out of ignorance of this important point.[49]

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[49]al-Fawāʾid al-madaniyyah, 18.

Thus the Akhbārī project reveals a fundamental phenomenon in the history of Islamic jurisprudence, namely, that the Twelver Shīʿīs modeled their legal guild on those of the Sunnīs. The legal guilds originated in Sunnī Islam in the second half of the third/ninth century, and this system was subsequently and gradually adopted by the Twelver Shīʿīs, who, according to al-Astarābādī, fully established the Imāmī legal guild by the eighth/fourteenth century with the innovations of al-ʿAllāmah al-Ḥillī.

While it was with al-ʿAllāmah al-Ḥillī that the Shīʿī legal guild was firmly established according to al-Astarābādī, Sunnī influence had been important much earlier. Al-Astarābādī gives the following synopsis of the history of Sunnī influence on Shīʿī jurisprudence.[50] The first to rely on the Sunnī science of legal methodology, according to al-Astarābādī, was Muḥammad ibn Aḥmad ibn al-Junayd (d. 381/991), who adopted the concept of reasoning by analogy (qiyās). Al-Shaykh al-Mufīd, who died in 413/1022, approved of Ibn al-Junayd's writings, and his students al-Sharīf al-Murtaḍā and al-Shaykh al-Ṭūsī adopted some Sunnī methods in the fifth/eleventh century. Thereafter, the influence of Sunnī law was well established, but it was al-ʿAllāmah al-Ḥillī who adopted in his own works an even greater portion of Sunnī legal methodology. Al-ʿAllāmah was followed by al-Shahīd al-Awwal in the late eighth/fourteenth century, and ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī and al-Shahīd al-Thānī in the tenth/sixteenth century. These are the latest scholars al-Astarābādī criticizes as proponents of the guild, but his remarks show that the guild was current in his day and implicate contemporary Shīʿī jurisconsults. He was of course aware of this, and was sensitive to the danger to himself, for he states in the introduction

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[50]al-Fawāʾid al-madaniyyah, 30.

to al-Fawā'id al-madaniyyah, "It became necessary that I reveal this, and no one's censure has prevented me from fulfilling my obligation to God. So I have revealed it, and God will protect me from the jurisconsults."[51]

The crucial feature of the Akhbārī movement was its rejection of the professional legal guild as adopted by the Twelver Shīʿīs. Akhbārī sources show that Shīʿī scholars conceived of the Imāmī madhhab as a guild in the eleventh/seventeenth century and earlier, and are also the only sources to admit plainly and bluntly that the Shīʿīs adopted this system from the Sunnīs. Akhbārīs and Uṣūlīs are therefore not, as has been suggested, two madhhabs within Shīʿism parallel to, for example, the Shāfiʿī and Mālikī madhhabs in Sunnī Islam.[52] Rather, the Uṣūlīs are the proponents of the Imāmī professional legal guild, and Akhbārism is an anti-guild movement.

From the preceding it is clear that Moojan Momen's assessment of the relation of the Akhbārī movement to Sunnism, according to which the Akhbārī tendency is actually closer to Sunnism than the Uṣūlī tendency, is completely untenable.

> In practice this meant a move towards the Sunnī principles of jurisprudence (with the Imams taking over the position of the founders of the Sunnī schools of law) and an almost-Ashʿarī (i.e. Sunnī) position in theology. In other words, had it succeeded, it would have brought Shiʿism very much closer to Sunnism and it is interesting to note that Nādir Shah's attempt

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[51]al-Fawāʿid al-madaniyyah, 3. The last clause reads, literally, "God will protect me from the people (al-nās)," but in technical writing, this word often refers to the group of experts engaged in the particular field of learning at hand. Since al-Astarābādī presents al-Fawā'id al-madaniyyah as a legal work, nās may be taken to indicate the jurisconsults.

[52]Scarcia, "Intorno alle controversie tra Ahbari e Uṣūlī," 218.

to make Shiʿism a fifth school of Sunni law coincides with the period when the Akhbārīs were at the peak of their influence.[53]

From a comparative perspective, an examination of the Akhbārī agenda, as espoused in al-Fawā'id al-madaniyyah and Safīnat al-najāt, provides the following conclusions. The Akhbārīs were attacking what they saw as a Sunnī system of jurisprudence. The conflict between Akhbārīs and Uṣūlīs was not simply one of traditionalism versus rationalism, but also, and perhaps more importantly, one of separatist Shīʿī doctrines versus Sunnī legal principles. The Shīʿī school of law espoused by the Uṣūlīs represented a legal guild like those of the Sunnīs. In the opinion of the Akhbārīs, the establishment of the Twelver Shīʿī legal guild was the direct result of Sunnī influence. It was created by a reprehensible urge or tendency on the part of Shīʿī scholars to imitate Sunnī jurisprudence, a strategy which did injustice to the basic tenets of Shiʿism and the traditional Shīʿī system of authority and derivation of the law. The Akhbārīs' agenda consisted in alerting their co-religionists to this historical development and calling for a return, as they saw it, to the fundamental principles of Shiʿism.

Given that the Shīʿīs adopted this juridical system from the Sunnīs, the question then arises as to their motives for doing so. What caused them to adopt a system which many Shīʿīs felt to be in contradiction to essential Shīʿī beliefs? Muḥsin al-Fayḍ al-Kashānī, who wrote his Akhbārī manifesto, Safīnat al-najāt, in 1058/1648,[54] stresses the Occultation itself, during which communication with the Imam was cut off, and the fact that Shīʿīs were

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[53]Moojan Momen, An Introduction to Shīʿī Islam, 222.
[54]Lu'lu'at al-bahrayn, 126.

surrounded by a Sunnī society, as factors which allowed the adoption of Sunnī methods on the part of Shīʿī scholars.

> A brief explanation of the cause of the innovation of ijtihād and ijmāʿ among the Imāmī jurisconsults and their specious arguments concerning the matter:
>
> When the epoch of the infallible Imams came to an end, the intermediaries (sufarāʾ) between them and their supporters (shīʿatihim) had been cut off, their absence became difficult to endure, and the reign of the usurpers had gone on for a long time, [at this time] the Shīʿīs mixed with their opponents [the Sunnīs] and became familiar with their books as youths, since these were the books commonly taught in the colleges, mosques, and elsewhere—for the kings and government officials (arbāb al-dawlah) were [Sunnīs] and the people always go along with their kings and government officials. [The Shīʿīs] associated with [the Sunnīs] in the learning (mudārasah) of the religious sciences and read the usūl al-fiqh works which the Sunnīs had written in their aim to facilitate the speculations (ijtihādāt) upon which their legal rulings were based. [The Shīʿīs] approved of some [of what the Sunnis had written on usūl al-fiqh] and disapproved of some. This led them to write books on this science corroborating it or detracting from it. They discussed matters which neither the Prophet nor the infallible Imams had brought forth, but which the Sunnīs (al-ʿāmmah) had discussed. They increased the number of questions concerning these topics and confounded the jurists with regard to the methods of legal proof (wa-labbasū ʿalā 'n-nāsi turuqa 'd-dalāʾil).[55]

Al-Kāshānī, unlike al-Astarābādī, refrains from singling out well-known Shīʿī scholars as culprits, and even avoids criticizing them harshly for adopting Sunnī methods. He emphasizes the extenuating circumstances, including the lack of communication with the Imam and the Sunnī control of governments and the institutions of learning. While Shīʿīs had indeed

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[55]Muḥsin al-Fayḍ al-Kāshānī, Safīnat al-najāt, 9-10.

controled governments earlier in Islamic history, al-Kāshānī ignores them or deems them relatively insignificant here. According to him, these extenuating circumstances allowed Shīʿī jurisprudence to look more and more like Sunnī jurisprudence, and caused some Shīʿī jurisconsults to lose sight of the fundamental principles of their sect and to adopt Sunnī principles which were inconsistent with true Shīʿī doctrine. Thus, he does not state that they were incompetent, or malicious, but only that they were unsure and influenced by the majority.

> When the works of our fellows on [ijmāʿ and ijtihād] increased in number, and they discussed usūl al-fiqh and its branches using the Sunnis' terminology, the juridical methodology and terminology of the two sects (tāʾifatān) came to resemble one another. This brought about the effect that some [Shīʿī jurisconsults] became thoroughly confused (iltabas ʿalayhim al-amr), to such an extent that they claimed it was permissible to perform ijtihād, give legal rulings on the basis of personal opinion, set down rules and stipulations for these matters, and interpret ambiguous passages [in the Sacred texts] through conjecture, estimation, and the adoption of an opinion because it is widely accepted (al-akhdh bi-'ttifāqi 'l-araʾ).[56]

These explanations are quite similar to those given by several modern scholars and mentioned in Chapter Two, in that they see the innovation of the Shīʿī legal guild as being caused by the lack of communication with the Imam and Sunnī predominance in society. They are, however, insufficient, and do not explain the Shīʿī scholars' motives for choosing the exact course they did. To hold that the fact that communication with the Imam was cut off forced the Shīʿīs to rely on a specific legal method is tantamount to

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[56]Safīnat al-najāt, 11.

stating, for example, that Islamic law developed simply because the Prophet Muḥammad died. Twelver Shīʿī law would certainly not have evolved as it did in the presence of the Imams, just as Sunnī jurisprudence would not have developed as it did in the presence of the Prophet. Some other framework had to replace the system of religious authority which had lapsed. The lapse of the old system, however, did not in itself determine what the new system would be, so one cannot claim that the Occultation of the Imam _caused_ Shīʿīs to develop the guild-based system of authority. The most one can say is that the Occultation facilitated or set the stage for the development of a particular legal system, and that other factors determined the characteristics of that system.

Sunnī dominance in society, while certainly a factor in Shīʿī religious and intellectual history, is not in itself a specific cause. Al-Kāshānī's claim that the Sunnīs controled education comes closer to explaining some of the Shīʿīs' motives. Shīʿīs studied subjects such as law and theology under Sunnī teachers because, in many cases, this was the only way, or at least the most convenient way, in which they could get an education. This was even more true if they aspired to excellence in certain fields. Shīʿī teachers were limited in number and had limited resources, and therefore, Shīʿī students would often study with Sunnī scholars in order to get the best education possible. Al-Astarābādī states that later Shīʿī scholars, i.e., al-ʿAllāmah al-Ḥillī (late thirteenth-early fourteenth c.) and those who came after him, "studied the books of the Sunnīs out of their desire to excel in all the sciences (li-irādatihim at-tabaḥḥura fī 'l-ʿulūm)."[57] Again, however, the fact that Shīʿīs studied Sunnī books in order to be excellent scholars does not

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[57]al-Fawāʾid al-madaniyyah, 56.

explain why exactly they adopted Sunnī methods in their own law. It merely reveals a probable conduit of Sunnī influence. It could be that Shīʿī jurists merely became confused, and therefore confounded Sunnī and Shīʿī principles as al-Kāshānī suggested in the passage above, but this explanation is too simplistic and portrays the Shīʿī scholars in too passive a light.

Al-Astarābādī argues that the Shīʿīs studied with the Sunnīs out of dissimulation or taqiyyah. In order to fit into Sunnī society, he claims, Shīʿīs kept company with Sunnīs, related hadīth from them, and pretended to be Sunnīs themselves. They did this out of fear of the Sunnīs' power (shawkah), for the rulers were all Sunnīs.[58] Again, this is an explanation of the general situation which faced Shīʿīs and does not explain their motives for adopting specific Sunnī principles. Al-Astarābādī comes closest to an accurate assessment of the Shīʿī scholars' motives for adopting Sunnī methods when he states that they did so in response to Sunnī academic challenges. His analysis of the phenomenon is as follows:

> I have heard from one of my teachers that when a group of Sunnī scholars criticized the Shīʿī scholars for not having recorded sciences of philosophical theology (kalām), legal methodology (usūl al-fiqh), or legal derivation (fiqh mustanbat), and for having only traditions transmitted from their Imams, a group of later Shīʿī scholars undertook to rectify this. They wrote these three sciences according to the well-known manner, and neglected the Imams' prohibition of their followers from learning that science of kalām which is based on rational ideas, and their commanding them to learn the science of kalām which is reported from the Imams. The same should be said of the rules of usūl and fiqh which were not reported from Imams, as well as the disputed points of law (al-masāʾil al-fiqhiyyah al-ijtihādiyyah). The Imams explicitly stated, "Teach your children our hadīths before their minds become familiar with

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[58] al-Fawāʾid al-madaniyyah, 69.

the contents of books which do not derive from us." They also explicitly stated, "The truth which men possess has come from the descendants of the Prophet (ahl al-bayt), and the falsehood which they possess has come from themselves."[59]

Here, al-Astarabadi makes it clear that Sunni scholars directed specific challenges at their Shīʿī colleagues, and criticized them for specific faults, in this case, the lack of authoritative works in specific genres of the religious sciences. It is my contention that challenges like these explain much of the development of Shīʿī jurisprudence, and especially the formation of the Shīʿī legal guild. In order to determine exactly what kind of pressure was brought to bear on Shīʿī scholars by the Sunnī institutions of learning, it is necessary to examine Islamic theories of orthodoxy and heresy.

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[59]al-Fawāʾid al-madaniyyah, 29.

Part Two

Islamic Orthodoxy

and Twelver Shīʿism's Struggle with Sunni Consensus

Chapter Four
Orthodoxy and Heresy in Islam

Any attempt to determine what makes Shīʿism sectarian or distinct from the majority necessarily depends on a definition of heresy within the majority community. In turn, a definition of heresy makes little sense without definitions of authority and orthodoxy. An examination of scholarship to date on heresy in Islam leaves many questions unanswered and gives a somewhat confused picture. Watt has indicated this difficulty: "The word 'orthodox' is out of place in an Islamic context . . . Indeed, Islam has had no machinery comparable to the Ecumenical Councils of the Christian Church which could say authoritatively what constitutes 'right doctrine.'"[1] The complexity and unfamiliarity of the workings of orthodoxy in Islam have led Watt and other scholars to claim that it is inappropriate, misleading, or even futile to attempt to describe Islamic religious history in these terms.[2] This is unfortunate, for in making these claims they are in a sense shying away from a problem of fundamental importance in Islamic history. As explained below, it is not inappropriate to describe orthodoxy in Islam. Although Islamic religious history is complex, and a facile analogy with Christianity does not provide an adequate understanding of the dynamics of Islamic religious authority, Islam has frameworks which allow for the discussion of correct and incorrect belief or inclusion in and exclusion from

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[1]W. Montgomery Watt, The Formative Period of Islamic Thought (Edinburgh: Edinburgh University Press, 1973), 5-6.

[2]See e.g., Dale Eickelmann, The Middle East: An Anthropological Approach, 213; Hamid Dabashi, Authority in Islam (New Brunswick, New Jersey: Transaction Publishers, 1989), 71-72.

the community. Rather than concealing the facts, as Dabashi surmises,[3] an understanding of Islamic orthodoxy reveals religious forces and pressures at work within society, and provides a better picture of inter-sectarian relations in Islamic history.

Bernard Lewis analyzes a number of terms used to denote religious deviation in Islām: hartaqah, bid'ah, zandaqah, ilhād, and kufr.[4] Of the terms kāfir, "unbeliever," and kufr, "unbelief", he states, "with those terrible and unequivocal words we perhaps come nearest an Islamic equivalent of heresy."[5] The theoretical consequence of the use of this term in particular is that the sectarian, a self-acclaimed Muslim, is considered either a believer, mu'min, or an unbeliever, kāfir. If he is labeled a believer, he has full rights in the Muslim community; but if he is labeled an unbeliever, he loses all rights: he is to be executed and his property is to be confiscated.[6] A man charged with kufr is in a perilous position. As Goldziher puts it,

> A real kāfir is cast out of the community; it is forbidden to
> associate with him in any manner; one may not eat with him;
> marriage concluded with him is invalid; he must be shunned
> and despised; one may not pray with him if he acts as a prayer
> leader; his testimony cannot be accepted in court; he cannot act
> as the guardian of a woman entering into marriage; when he
> dies, the prayer for the dead is not said over his body. If he is
> seized, one must first make three attempts to convert him, as
> one would an apostate; and if they fail, he is to be put to death.[7]

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[3]Authority in Islam, 71.

[4]"The Significance of Heresy."

[5]"The Significance of Heresy," 58.

[6]"The Significance of Heresy," 58-59.

[7]Goldziher, Introduction to Islamic Theology and Law, 163, citing his introduction to Kitāb Muhammad ibn Tūmart mahdī al-muwahhidīn [Le Livre de Mohammed ibn Toumert], ed. Goldziher (Algiers, 1903), 57.

There is, theoretically, at least, no middle ground between these two poles. The boundaries between these categories are not clear, as generally portrayed in modern Western scholarship, yet the difference in value assigned to each is immense. But how does one decide which self-acclaimed Muslims are true believers, and which are not?

Montgomery Watt's article "Conditions of Membership of the Islamic Community"[8] provides an understanding of some important terminology concerning Islamic orthodoxy and heresy. Watt realized that the term imān, usually translated as "faith," denotes primarily membership in the Muslim community.[9] Exclusion from the community is due either to shirk, polytheism, or kufr, unbelief. Shirk, the accusation leveled by the Prophet against the pagan Arabs, has been less important in the history of Islamic sects. Kufr, however, as Watt observes, is less easy to define, but "The ulema had the power to decide when a view was erroneous to the extent of constituting kufr."[10] Watt does not elaborate on the justification, methods, or criteria used in making such decisions, other than to state that al-Ghazālī reported the scholars' abuse of this privilege and the use of kufr to describe minor deviations.[11] It is clear that the imān/kufr dichotomy represents the Islamic equivalent of the orthodoxy/heresy dichotomy in Christianity. In this context, it might be more transparent or informative to interpret imān as "inclusion in the Muslim community" and kufr as "exclusion from the Muslim community," rather than "belief" and "unbelief."

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[8]Studia Islamica, 21 (1964): 5-12.
[9]"Conditions of Membership," 8-9.
[10]"Conditions of Membership," 11.
[11]"Conditions of Membership," 11.

Confusion over heresy and orthodoxy is based within Islamic tradition itself. As Goldziher points out, the hadīth contains contradictory messages on the nature of heresy in Islam.[12] One tradition attributed to the Prophet states, "The diversity of my community is a mercy" (inna fī 'khtilāfi ummatī rahmah), implying that difference of opinion on religious questions is not only permitted but condoned in Islam. In another tradition, the Prophet foretold that his community would divide into seventy-three "sects" (firaq)—or seventy-two in other versions—, and that only one of these, the "saved sect" (al-firqah al-nājiyah) would escape damnation. The message of the latter tradition seems to be the opposite of the former, for it indicates that differences of opinion on religious questions will lead to damnation for the vast majority of Muslims, and only a small group will enter paradise. This hermeneutic situation is complicated by the fact that another extant version of the latter tradition states that the Islamic community will divide into seventy-three groups, and that all of these except one will be saved. Goldziher claims that the tradition about seventy-three sects is a corruption of an older tradition which did not have to do with heresy at all; rather it was to indicate that Islam had seventy-three virtues, as opposed to Christianity's seventy-two, and Judaism's seventy-one.[13] This does not discount, however, the interpretation prevalent during the Islamic period. Goldziher points out correctly that the tradition of seventy-three sects had the effect of skewing heresiographical works, for their authors' obsession with reaching a total number of seventy-three sects limited their ability to

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[12]"Le dénombrement des sectes mohametanes," Gesammelte Schriften, II: 406-14.
[13]"Le dénombrement des sectes mohametanes."

provide an accurate picture of the religious history of Islam or the workings of Islamic orthodoxy and heterodoxy.

The greatest obstacle in the way of an understanding of heresy in Islam has been the attempt to find one all-encompassing definition of heresy, or to present one particular single definition as applying universally. Scholars have tried to describe as a single system what are, in effect, several distinct and competing systems of authority, each with its own definition of orthodoxy and its own concomitant definition of heresy. The results have been inevitably awkward and inadequate, and heresiographical works such as al-Milal wa al-nihal by al-Shahrastānī and Maqālāt al-islāmiyyyīn by al-Ashʿarī seem to lack focus, for they include as heretical groups theological schools of thought as well as the schisms based on the imamate.

It is even more difficult to analyze the message behind polemical works such as Ibn Taymiyyah's Minhāj al-sunnah al-nabawiyyah, where Shīʿism is treated in a very uneven manner. Along with carefully reasoned arguments concerning Shīʿī doctrine, Ibn Taymiyyah cites as proof that Shīʿīs are heretics the stories that Shīʿīs name their dogs after the Sunnī Caliphs and then curse them vehemently, or name a goat ʿĀʾishah to represent the Prophet's wife who dared take to the battlefield against ʿAlī, and then torture it and pull its hair out.[14] Similarly, Ibn Ḥazm claims that the Shīʿīs allow a man to marry nine women at the same time, and reports as one of their heresies that they consider cabbage a forbidden food on the grounds that it first grew up from the ground where Husayn's blood was

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[14]Taqiyy al-Dīn Aḥmad al-Taymiyyah, Kitāb minhāj al-sunnah al-nabawiyyah fī naqd kalām al-shīʿah wa al-qadariyyah, 4 vols. (Beirut: Dār al-kutub al-ʿilmiyyah, 1973), 1: 11.

spilled.[15] Ibn Taymiyyah also accuses the ShīꜤīs of cooperating with the enemies of Islam, the Mongols and the Crusaders,[16] and claims that Twelver ShīꜤism is merely a stepping-stone to even more heinous sects, such as the Qarāmiṭah.[17] He cites as proof that the ShīꜤīs are heretics the fact that they agree with Jews on a number of points.[18] This tact of dialectic is clearly flawed, for Islam in general concurs with Christianity and Judaism on a large number of issues. Thus it is difficult to wade through the morass of emotional slander found in many discussions of heresy and arrive at sound principles concerning it.

A more accurate picture of heresy and orthodoxy results if one acknowledges the existence of several competing systems of authority. The problem of reaching an understanding of heresy in Islam then becomes more manageable, though it now involves more steps. One must determine the nature of authority, orthodoxy, and heresy, for each system, and then attempt to describe the relationship between the systems in terms of relative hegemony. The evidence suggests three competing authorities within Islam: caliphal authority, theological authority, and legal authority, represented by the caliphs, the mutakallimūn or theologians, and the fuqahāꜣ or jurisconsults respectively. Sufis and philosophers as well had their own views of authority and orthodoxy, but they seldom claimed that their version of Islamic religious authority should apply to the entire community, and usually held that a different set of rules applied to any

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[15]Ibn Ḥazm, al-Faṣl fī al-milal wa al-ahwāꜣ wa al-niḥal, 5 vols. (Cairo: Maṭbaꜥat al-Khānjī, 1903), 4: 182.

[16]Minhāj al-sunnah, 1: 5.

[17]Minhāj al-sunnah, 1: 3.

[18]Minhāj al-sunnah, 1: 5-9.

Muslim outside their select group. MacDonald, Goldziher, and others, referring to the caliphal authority as "constitutional" or "political" authority, have found this tri-partite division a useful tool for analysis of Islam. Margoliouth extended this division to treat sects, holding that there are three types of sects: ritual, political, and theological.[19] In his discussion, the "political" sects refer to those distinguished by the imamate, the theological sects are those distinguished by differences in dogmatic creed, and the "ritual" sects refer to the Sunnī madhhabs or legal guilds. Margoliouth errs when he calls the four madhhabs sects, for they are considered equally orthodox within Sunnī Islam, but his use of this schema points out the idea that each of these divisions represents a different system of authority, orthodoxy, and heresy. Much evidence which seems at first inexplicable or contradictory makes more sense within this framework.

When discussing Islamic heresiography, Goldziher states that many of the groups presented as sects, such as the Muʿtazilah, are not in fact sects, but rather theological schools.[20] Goldziher holds that only the Shīʿīs and the Khārijīs, who oppose the Sunnīs on the issue of the imamate, are actual sects, and that theological differences are not of fundamental importance. This statement, however, does not give an accurate portrayal, for within the theological system of authority theological schools were indeed regarded as sects. While al-Ghazālī can criticize his contemporaries for claiming that Ashʿarī, Muʿtazilī, or Ḥanbalī theology represents orthodoxy, this very criticism shows that a theological system of authority was adopted by some scholars of his time, and that this system entailed its own definitions of

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[19]Mohammedanism, revised ed. (London: William and Norgate, 1926), 155.

[20]Introduction to Islamic Theology and Law, 167-68.

orthodoxy and heterodoxy. Similarly, al-Māwardī's description of caliphal authority makes no sense if taken at face-value, as an exposition of current religious and political authority, and is much more comprehensible if viewed as an attempt to re-establish the supremacy of a waning system of caliphal authority over that of the considerably more powerful legal system. The crucial question facing the researcher is not which system existed during a certain period, but which system had supremacy over the others or was applied with more success and regularity.

Muslim Heresiography and Dogmatic Theology

Before proceeding it will be valuable to put the Muslim heresiographical tradition in proper perspective. A large number of medieval works treat Islamic heresiography, yet they do not present a clear picture of heresy in Islam. These works are generally catalogues or lists of sects which give the name of each sect, some information about its historical origin, and some information on its distinctive beliefs, usually its adherents' positions on certain questions of dogma. These works are, for the most part, neither careful histories nor careful synchronic descriptions of the religious situation in a particular epoch or area. They set out to describe all the various sects which have arisen throughout Islamic history, whether or not adherents of the sect have survived into the time of the author. Actually, the bulk of sects discussed in the heresiographies died out long before they were written, and some modern scholars have indicated that many of these supposed sects are figments of the authors' imagination concocted to complete the required list of seventy-two sects. Medieval heresiographies are therefore historical inventories of religious groups rather than comprehensive religious histories or theoretical discussions of heresy.

Most authors of heresiographies, including al-ʿAshʿarī, al-Malaṭī, Ibn

Ṭāhir al-Baghdādī, al-Isfarāʾinī, and al-Shahrastānī, were primarily

philosophical theologians (mutakallimūn), and their works are based on the

mutakallim's view of orthodoxy and heresy. A group's positions (maqālāt)

on certain points of dogma determine whether it is heretical. Al-Jāḥiẓ (d.

255/869) claims that the theologians were obsessed with heresy; he states,

"the devotions of the mutakallimūn consist in sniffing out heresy."[21] A great

deal of additional evidence suggests that the medieval Muslim

heresiographies were primarily the product of philosophical theology, or

kalām. The classification of the sciences in al-Khwārizmī's Mafātīh al-ʿulūm,

written ca. 365/976, makes this clear. Al-Khwārizmī includes, as the

constituent sub-categories of kalām, (1) the terminology of the

mutakallimūn, (2) the sects of the Muslims, (3) the sects of the Christians

and their terminology, (4) the sects of the Jews and their terminology, (5),

other non-Muslim sects, (6) the religion of pagan Arabs, (7) and fundamental

questions of dogma.[22] The preponderance of al-Khwārizmī's concern with

sects here and the similarity of this classification to the structure of many

heresiographical works is striking. A similar example is found in Ibn

al-Nadīm's Fihrist, the famous bibliographical catalogue which he was

writing in 377/987. This work is not a heresiography, but its section on the

books of kalām and the mutakallimūn assumes the form of one. His

divisions in this section are as follows: (1) Muʿtazilah and Murjiʾah, (2)

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[21]Kitāb al-hayawān, 7 vols. (Cairo, 1905-7), 1: 80, cited in Goldziher,
Introduction to Islamic Theology and Law, 165.

[22]See Louis Gardet and M. M. Anawati, Introduction à la théologie
musulmane: essai de théologie comparée, 3rd ed. (Paris: Librairie
Philosophique J. Vrin, 1981), 109-12.

ShI'ah; (3) Mujabbirah and Hashwiyyah; (4) Khawārij; and (5) Ṣūfīs.[23]
Again, the similarity of this classification to the structure of many
heresiographical works is striking.

The very form in which several important heresiographies are
presented shows the close connection between the genre of heresiography
and that of kalām works. In Maqālāt al-islāmiyyīn, al-Ashʿarī divides each
section into two parts, one on the groups themselves, and one on their
maqālāt, or opinions on disputed issues of dogma.[24] After presenting the
heretical sects, al-Isfarāʾinī turns to the "saved sect" in his heresiography
and presents a detailed Sunnī theological creed.[25] ʿAḍud al-Dīn al-Ījī wrote
a short heresiography as the appendix to his famous compendium of kalām,
Kitāb al-mawāqif.[26] It is thus clear that the genre of heresiography itself
was intimately connected with the study of dogma.

An examination of the classifications used in a number of available
heresiographies provides an insight into the authors' methods and concerns.
All the heresiographies contain sections on the ShIʿīs, sometimes labeled
with the derogatory term Rawāfiḍ, and the Khārijīs, along with a number of
sects which are defined, not in terms of the imamate, but in terms of
theological positons on such questions as the attributes of God.

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[23]al-Fihrist (Cairo: al-Maṭbaʿah al-raḥmāniyyah, 1929), 245-64.

[24]Maqālāt al-islāmiyyīn wa ikhtilāf al-muṣallīn, ed. Helmut Ritter
(Wiesbaden: Franz Steiner Verlag, 1963), passim.

[25]al-Tabṣīr fī al-dīn wa tamyīz al-firqah al-nājiyah ʿan al-firaq
al-hālikīn, ed. Muhammad Zāhid ibn al-Ḥasan al-Kawtharī (Cairo: Maktabat
al-Khānjī, 1955), 135-66.

[26]al-Ilāhiyyāt wa al-samʿiyyāt min kitāb al-Mawāqif [Statio Quinta et
Sexta et Appendix Libri Mevakif], ed. Th. Soerensen (Leipzig, 1848), 332-64.

Abū al-Ḥasan ʿAlī al-Ashʿarī (d. 324/935-36) probably wrote his famous heresiography, Maqālāt al-islāmiyyīn wa ikhtilāf al-musallīn, while he was still a Muʿtazilī under the influence of his teacher al-Jubbāʾī, before 300/912-13.[27] It goes without saying that al-Ashʿarī was a mutakallim—he is perhaps the most famous mutakallim in Islamic religious history—and was thus primarily concerned with dogma. His classification of Islamic sects includes the following groups: (1) Shīʿah, (2) Khawārij, (3) Murjiʿah, (4) Muʿtazilah, (5) Jahmiyyah, (6) Dirāriyyah, (7) Najjāriyyah, (8) Bakriyyah, and (9) Kullābiyyah. The heresiographer al-Malaṭī (d. 377/987-88) includes (1) Rāfiḍah (pl. rawāfiḍ, a derogatory term for Shīʿīs); (2) Muʿtazilah; (3) Murjiʾah; (4) Khawārij; (5) Zanādiqah; and (6) Jahmiyyah in his heresiography, al-Tanbīh.[28] In this work al-Malaṭī seems most concerned to refute the positions of the theological school of the Jahmiyyah, for he presents them at length.[29] In the heresiographical work al-Farq bayn al-firaq, Ibn Ṭāhir al-Baghdādī (d. 429/1037) gives the following classification of Muslim schismatics: (1) Rawāfiḍ, (2) Khārijīs, (3) Muʿtazilah, (4) Murjiʾah, (5) Najjāriyyah, (6) Jahmiyyah, Bakriyyah, and Dirāriyyah, (7) Karrāmiyyah, (8) Mushabbihah.[30] Ibn Ḥazm (d. 456/1064) cites four groups, representing the least common denominator of the sects included in the

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[27]Maqālāt al-islāmiyyīn. Also see Henri Laoust, "La classification des sectes dans le Farq d'al-Baghdādī," Revue des études islamiques 29(1961): 19-59.

[28]al-Tanbīh wa al-radd ʿalā ahl al-ahwāʾ wa al-bidaʿ, ed. Sven Dedering (Istanbul: Maṭbaʿat al-dawlah, 1936).

[29]al-Tanbīh wa al-radd, 75-110.

[30]See Laoust, "La Classification des Sectes dans le Farq d'al-Baghdādī."

heresiographies: Shīʿīs, Khārijīs, Muʿtazilīs, and Murjīʾīs.[31] Ibn Ḥazm also labels the Ṣūfīs heretics, but describes them as not belonging to any specific sect (lā tuʿrafu firaquhum).[32]

Shāhpūr ibn Ṭāhir Abū al-Muẓaffar al-Isfarāʾinī (d. 471/1078-79) was an Ashʿarī mutakallim and scholar of usūl al-dīn and tafsīr. His heresiographical work, al-Tabṣīr fī al-dīn wa-tamyīz al-firqah al-nājiyah ʿan al-firaq al-hālikīn, includes the following groups: (1) Rawāfiḍ, (2) Khawārij , (3) Qadariyyah, who are called Muʿtazilah , (4) Murjiʾah , (5) Najjāriyyah, (6) Ḍirāriyyah, (7) Bakriyyah, (8) Jahmiyyah, (9) Karrāmiyyah, (10) Mushabbihah.[33] Muḥammad ʿAbd al-Karīm al-Shahrastānī gives the following classification in his famous heresiography, al-Milal wa al-niḥal: (1) Muʿtazilah, (2) Jabriyyah, including Jahmiyyah, Najjāriyyah, and Ḍirāriyyah, (3) Ṣifātiyyah, including Ashʿariyyah, Mushabbihah, and Karrāmiyyah, (4) Khawārij, (5) Murjiʿah, (6) Shīʿah.[34]

Fakhr al-Dīn al-Rāzī (d. 606/1210) gives the following classification in his Iʿtiqādāt firaq al-muslimīn wa al-mushrikīn: (1) Muʿtazilah, (2) Khawārij, (3) Rawāfiḍ, (4) Mushabbihah, (5) Karrāmiyyah, (6) Jabriyyah, (7) Murjiʾah, (8) Ṣūfiyyah.[35] He includes as non-Muslims, although they call themselves Muslims, a number of Ismāʿīlī groups, including the Bāṭiniyyah,

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[31] Ibn Ḥazm, al-Faṣl, 4: 178-226; I. Friedländer, "The Heterodoxies of the Shiites in the Presentation of Ibn Ḥazm," Journal of the American Oriental Society 28(1907):1-80, 29(1908): 1-183, 21.

[32] Ibn Ḥazm, al-Faṣl, 4: 226-27.

[33] al-Tabṣīr.

[34] al-Milal wa al-niḥal, 2 vols., ed. ʿAbd al-ʿAzīz Muḥammad al-Wakīl (Cairo: al-Ḥalabī wa shurakāh, 1968).

[35] Iʿtiqādāt firaq al-muslimīn wa al-mushrikīn, ed. ʿAlī Sāmī al-Nashshār (Cairo: Maktabat al-nahḍah al-miṣriyyah, 1938).

Sabbāhiyyah, Qarāmiṭah, and others. His is one of the few heresiographies to include Ṣūfīs as a separate sect.

Ibn Taymiyyah states that there are four main heretical groups (usūl al-bidaᶜ arbaᶜah): Shīᶜah, Khawārij, Qadriyyah, and Murjiᶜah.[36] ᶜAḍud al-Dīn al-Ijī, a Shāfiᶜī and Ashᶜarī from Shīrāz, gives the following classification of sects in the appendix to his Kitāb al-mawāqif: (1) Muᶜtazilah, (2) Shīᶜah, (3) Khawārij, (4) Murjiᵖah, (5) Najjāriyyah, (6) Jabriyyah, (7) Mushabbihah.[37] Al-Maqrīzī (d. 845/1442) includes an essay on heresiography as one of the chapters of his famous Khitat.[38] His classification of Muslim sectarians is as follows: (1) Muᶜtazilah, (2) Mushabbihah, (3) Qadariyyah, (4) Mujabbirah, (5) Murjiᵖah, (6) Ḥurūriyyah, (7) Najjāriyyah, (8) Jahmiyyah, (9) Rawāfiḍ, (10) Khawārij.[39]

This brief review shows that the mutakallimūn in general mixed two types of sects in their heresiographies: those based on differences in dogma, and those based on the issue of the imamate. They could not deny the importance of the issue of the imamate, and all the heresiographies examined included the Khārijīs and the Shīᶜīs, which clearly originated in the early controversies over the imamate, as major sects. The remaining sects in the heresiographies, with the exception of the Ṣūfīs, are all based on deviance on questions of dogma, and at the very least include the Muᶜtazilah and the Murjiᵖah, as is the case with Ibn Ḥazm. This conflation of two

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[36]Ibn Taymiyyah, Tafsīr sūrat al-ikhlāṣ (Cairo: Idārat al-ṭibāᶜah al-munīriyyah, 1352), 157.

[37]Kitāb al-mawāqif, 332-64.

[38] al-Mawāᶜiz wa al-iᶜtibār bi-dhikr al-khitat wa al-āthār, 2 vols. (Cairo: Būlāq, 1854), 2: 344-62.

[39]al-Khitat, 2: 345-56.

different kinds of sects can only make sense if one seeks to understand the strategies of the mutakallimūn in writing their heresiographies.

The mutakallimūn did not ignore the importance of the issues of the imamate and legal authority, but they strove to subordinate them to their own area of expertise. In al-Milal wa al-nihal, al-Shahrastānī criticizes earlier writers on heresy for lack of method and clear organization. After careful contemplation, al-Shahrastānī reports, he came up with four areas of dogma which he claims provide the basis for consideration of Islamic sects.[40] They are: (1) the attributes of God and His oneness; (2) fate and justice; 3) the promise and the threat, the names of God, and al-ahkām; (4) reason and revelation, prophecy, and the imamate. In al-Shahrastānī's work, therefore, both the ahkām, or legal rulings, and the question of the imamate are discussed within the general framework of philosophical theology. This is typical of the medieval heresiographies.

The mutakallimūn realized that the imamate was a key issue, but they did not in general see that it was a different type of issue from discussion of the attributes of God. Thus, al-Ashʿarī begins Maqālāt al-islāmiyyīn by stating that the first religious dispute to occur in the Muslim community was that over the imamate.[41] In treating heresy from the point of view of the imamate, the theologians were implicitly claiming that the issue of the imamate was just another theological issue. The mutakallimūn therefore concentrated on the conditions which an imam or caliph must satisfy, the method by which he must be chosen, and so on. This explains the widely

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[40]al-Milal wa al-nihal, 2 vols., ed. ʿAbd al-ʿAzīz Muhammad al-Wakīl (Cairo: Muʾassasat al-halabī wa shurakāh li al-nashr wa al-tawzīʿ, 1968), 12-13.

[41]Maqālāt al-islāmiyyīn, 2.

accepted idea that what distinguishes the Sunnīs from the Shīʿīs is not so much that they accept a different figure as the leader of the Muslim community, but rather that they held different views about the nature of that figure.

Philosophical theologians attempt to establish their supremacy over the legal sciences by claiming that matters of dogma are essentials, or uṣūl, while legal questions are non-essential, subsidiary matters, or furūʿ. Al-Isfarāʾinī, for example, writes at the beginning of al-Tabsīr that only differences in uṣūl al-dīn and not in furūʿ such as inheritance laws (al-farāʾid) are cause for a declaration of heresy.[42] Furūʿ here refers to fiqh, or the points of law, and uṣūl al-dīn refers to dogma. The famous mutakallim al-Ijī called philosophical theology al-fiqh al-akbar ("the greater [religious] science") while he termed law al-fiqh al-asghar ("the lesser [religious] science").[43] This choice of terminology was clearly designed to detract from the importance of the law and subordinate it to the expertise of the theologians.

A second obstacle to understanding heresy in Islam has been an inadequate understanding of the third system mentioned above, the legal system of authority. The first two systems have been easier to understand in the West by comparison with more familiar Christianity. The caliph, as the leader of the community, can be easily compared with the Catholic pope with the difference that the Caliph was, at least in early Islam, the political head of the entire community as well. The theological system of authority is also familiar from the Christological controversies of the early Church. The

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[42]al-Tabsīr, 26.

[43]Cited in Harald Löschner, Die dogmatischen Grundlagen des šiʿitischen Rechts (Cologne: Carl Heymanns Verlag, 1971), 27.

legal system of authority has no counterpart in Christianity, although it does in Judaism, and its treatment in scholarship on Islam until recent years has been woefully inadequate.

Legal Authority, Orthodoxy, and Heresy in Islam

In response to an attack directed at one of his earlier works, the renowned jurist al-Ghazālī wrote a treatise on the issue of heresy entitled The Criterion for Discernment between Islam and Heresy (Faysal al-tafriqah bayn al-islam wa al-zandaqah). This treatise aims to correct the philosophical theologians' conceptions of heresy in Islam, and helps provide a more reliable definition of the juridical version of heresy than currently available. Al-Ghazālī refutes several views of heresy which are quite common in popular opinion and in scholarly literature on the subject. One such view is the idea that the declaration of heresy is a reciprocal property. That is, if one group of Muslims declares another group of Muslims heretics, this necessarily causes the second group to declare the first group heretics as well. He states,

> Among the people are some who say, "I only declare heretics (kāfir) those groups who declare us heretics, and those who do not declare us heretics, we do not declare heretics."[44]

A tradition of the Prophet often adduced to support this opinion, states that if a Muslim accuses one of his companions of unbelief, then one of the two is an unbeliever.[45] Al-Ghazālī explains that this is only the case if the accuser makes the accusation knowing full well that the accused is innocent. He thus discounts one of the principal modes of thought of the theologians.

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[44]Faysal al-tafriqah, 26.
[45]Faysal al-tafriqah, 26.

Another common view which may be discarded is that expressed by Faruqi in a recent text-book on Islam:

> Every law court of Islam is bound to recognize as a Muslim in
> good standing, and hence entitled to all privileges and rights of
> a Muslim and bound by all the duties and obligations of Islamic
> law, every adult male and female who consciously and solemnly
> witnesses that "there is no God but God and Muhammad is the
> Prophet of God." Fulfillment of this simple definition of
> "Islamicity" is all that Islamic law requires for membership in
> the Muslim community. Once a person is put to the test and
> witnesses responsibly to the twin declarations of God being the
> only God and Muhammad being His Prophet, no more can be
> legally required as proof of faith and, consequently, that person
> enjoys all the rights and is obligated by all the duties under
> Islamic law.[46]

According to this view, there is no such thing as heresy or a declaration of heresy in Islam, for the single requirement of orthodoxy is the utterance of the creed. If this were indeed the case, there would never have been heresy trials in Islam and scholars like al-Ghazali would not have felt the need to write works on the subject. In the history of Islamic theology the view that one cannot declare a Muslim a heretic is associated with the theological school of the Murji'ah, which may be roughly translated as "the postponers." The Murji'ah held that one could not decide whether a Muslim was heretical, no matter what outward appearances seemed to imply, and that this decision should be left to God's judgment alone. This view was rejected by most Muslim theologians and jurists, and the Murji'ah are included in the heresiographies as a heterodox sect along with the Mu'tazilah. While this

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[46]Islam (Brentwood, Maryland: International Graphics, 1984), 4.

view of heresy may explain some manifestations of Islam on the popular level, it fails to reflect Islamic theories of heresy adequately.

Al-Ghazālī adds some important restrictions to the statement that the requirement to be a Muslim is to repeat the creed "There is no god but God; Muhammad is the Prophet of God." For the creed to have full effect, the one who makes it must sincerely believe in it (sādiq bihā), and not otherwise contradict it (ghayr munāqid lahā).[47] It is this last restriction which calls attention, for it indicates that someone who claims to be a Muslim through the utterance of the creed may be shown, presumably in a law court, not to be a Muslim by virtue of the fact that they contradict this statement in some other way. The question then becomes what constitutes a contradiction of the utterance of the creed.

Obvious contradictions of the creed include statements directly opposed to the content of either of its phrases: that is, to state either that God does not exist or that there are a plurality of gods, or to state that Muhammad was not a true prophet. But anyone making these statements would not be apt to consider themselves Muslims in the first place, and would therefore not fall in the category under discussion, that of Muslim heretics. Al-Ghazālī's next comment comes closer to presenting a working definition of heresy in Islam: "Heresy (al-kufr) is to give the lie to the Prophet (takdhīb ar-rasūl) in anything which he brought, and faith (al-īmān) is to believe him in all that which he brought."[48] Thus Islamic orthodoxy not only involves a certain attitude toward God and the Prophet Muhammad, but

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[47]Faysal al-tafriqah, 4.
[48]Faysal al-tafriqah, 4.

also a certain attitude towards the body of material which Muḥammad is seen as having conveyed.

Al-Ghazālī bases the determination of orthodoxy on a sophisticated theory of textual interpretation which he claims few scholars are able to grasp, and on which most should withhold judgment for fear of making a grave error which might lead to the shedding of innocent blood. As mentioned in Chapter One, he distinguishes five levels of meaning, any one of which is acceptable as an interpretation of the literal text of the Qur'ān. He also distinguishes between interpretations which are "close" to the text, and "far" from the text (ta'wīl qarīb and ta'wīl baʿīd). A "close" interpretation is acceptable prima facie, but a "far" interpretation is acceptable only if it is supported by a sound proof which meets the criteria of logical argument (sharā'it al-burhān). Thus only statements which produce an interpretation which is both "far" from the text and inadequately supported by logical argument, or statements which completely deny a statement in the Qur'ān without proof, such as someone denying the resurrection of the body or bodily punishment in the afterlife, have the potential to be termed heretical.

Al-Ghazālī even ridicules the jurisconsults who try to make decisions on such cases using only their knowledge of fiqh, for, as mentioned above, such decisions involve extensive knowledge of logic, philosophical categories, and rules of interpretation. However, this very statement shows that jurisconsults were indeed issuing accusations of heresy, and al-Ghazālī emphatically holds that heresy itself is a legal issue.

> Heresy is a matter of legal status like, for example, slavery or
> freedom, since its intent is the declaration that someone may be

legally executed (<u>ibāhat al-dam</u>) and that they will spend
eternity in hell. [In addition,] it is based on legal evidence
(<u>madrakuhū sharʿī</u>), for it must be based on a specific
scriptural text (<u>nass</u>) or on analogy to the content of a scriptural
text (<u>qiyās ʿalā mansūs</u>).[49]

As regards the theory of heresy, the results of scholarship to date
indicate that it was a legal issue concerning the determination of <u>kufr</u>, as
opposed to <u>imān</u>, and that it had something to do with <u>ijmāʿ</u>, or consensus.
Goldziher senses the importance of <u>ijmāʿ</u> in determining orthodoxy and
heterodoxy, although he does not explain how <u>ijmāʿ</u> functions.

> <u>Ijmāʿ</u> is the key to a grasp of the historical evolution of Islam in
> its political, theological, and legal aspects. Whatever is accepted
> by the entire Islamic community as true and correct must be
> regarded as true and correct. To turn one's back on the <u>ijmāʿ</u> is
> to leave the orthodox community.[50]

To Goldziher, however, <u>ijmāʿ</u> seems a diffuse and nebulous principle, which
he describes as "a nearly unconscious <u>vox populi</u>."[51] Bernard Lewis also
holds that heresy has something to do with consensus, and cites Goldziher to
the effect that Islam has no ecclesiastical hierarchy and no councils or
synods to decide problems like this, but only <u>ijmāʿ</u>, the workings of which
were "barely definable."[52] Watt also realizes that the definition of heresy
has to do with the principle of <u>ijmāʿ</u>, but, like Goldziher, sees <u>ijmāʿ</u> as an ill-
defined group feeling, despite the fact that he states that the <u>ʿulamāʾ</u> are the

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[49]<u>Faysal al-tafriqah</u>, 4-5.
[50]<u>Introduction to Islamic Theology and Law</u>, 50.
[51]<u>Introduction to Islamic Theology and Law</u>, 51.
[52]"The Significance of Heresy," 57-58.

ones empowered to decide specific cases. Watt states, "The conclusion of this investigation is that there is more communalistic thinking in Islam than is usually realized."[53] He sees the dynamic of inclusion and exclusion in Islamic heresy as reminiscent of a tribal system and also states that what determines whether someone is acceptable as a member of the group is merely the "feeling" of the group's members embodied in the principle of ijmāᶜ, or consensus. The obstacle before Watt and others is their lack of understanding of ijmāᶜ, which they take to be something like popular opinion. In actuality, the ijmāᶜ has been a well-defined legal principle of constant use within the community of legal scholars.

An examination of texts on juridical methodology provides one definition of "giving the lie to the Prophet" (takdhīb al-rasūl) in legal terms which goes back to al-Shāfiᶜī. Al-Shāfiᶜī, in discussing the consensus, meaning here the consensus of the legal scholars, in effect holds that consensus represents orthodoxy, and claims that going against the consensus (mukhālafat al-ijmāᶜ) is equivalent to going against the Prophet. The exact term he uses for this last concept is mushāqqat al-rasūl, a phrase derived from the Qurʾānic verse sūrat al-nisāʾ, 115:

> Whoever opposes the Messenger (man yushāqiq ir-rasūl) after (God's) guidance has been revealed to him, and follows a way other than that of the believers, We will appoint for him that to which he himself has turned, and will let him burn in Hell—a terrible end.

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[53]"Conditions of Membership," 12.

Al-Shāfiʿī used this verse to support his definition of consensus, interpreting it as equating the abandonment of the believers' communal ways to opposition to the Prophet Muḥammad.

In al-Tabsīr, al-Isfarāʾinī includes a statement on consensus which shows that it was seen to constitute orthodoxy. "The consensus is true. Whatever the community agrees upon is true, and its truth is irrefutable (mujmaʿ ʿalayh), whether it be word or deed."[54] It appears that the system of legal guilds which began to be established in the third/ninth century defined heresy as going against the consensus. This definition is made explicitly in a number of later works on usūl al-fiqh. Most Sunnī works of usūl al-fiqh mention the issue of mukhālafat al-ijmāʿ in the section on ijmāʿ, and it is clear from the discussions of this issue that declarations of unbelief were often based on the charge of going against the consensus. In his usūl al-fiqh text Jamʿ al-jawāmiʿ, Tāj al-Dīn al-Subkī (d. 771/1369-70) writes,

> Anyone who denies that upon which there is consensus and which is known to be a necessary part of the religion is irrefutably (qatʿan) an unbeliever, and the same holds, according to the more correct opinion, for that [upon which there is consensus and] which is well-known (mashhūr) and based on an explicit text (mansūs). Concerning that which is [well-known but] not based on an explicit text, there is a difference of opinion (taraddud). Anyone who denies that which is not well known (khafiyy), even if it is based on an explicit text, is not to be declared an unbeliever.[55]

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[54] al-Tabsīr, 159.
[55] Jamʿ al-jawāmiʿ, (Cairo, n.d.) 2: 201-2.

The fourth/tenth-century Isma°īlī scholar al-Qāḍī al-Nu°mān remarks on the importance of ijmā° in Sunnī jurisprudence, stating that ijmā° "is an authoritative argument (hujjah) according to [the Sunnī jurists]. They must refer to it (al-rujū° ilayh) and refrain from departing from it."[56] He adds that the Sunnīs consider going against ijmā° forbidden and tantamount to heresy. The Sunnīs hold the opinion that "Ijmā° is a fundamental principle of the religion (asl min usūl al-dīn). One must follow and obey it, and to go against it is unlawful (lā yahillu mukhālafatuhū)."[57] In somewhat stronger terms, he reports, "Some of them have declared anyone who goes against it an unbeliever (wa kaffara ba°duhum man kharaja °anhu)."[58] Al-Qāḍī al-Nu°mān was writing before 363/974, and al-Ghazālī reports assertions that it was forbidden to go against the consensus (tahrīm mukhālafat al-ijmā°) going back as far as the time of the well-known Mu°tazilī scholar al-Naẓẓām (d. 220-30/835-45).[59]

This corroborates the view Professor Makdisi espouses concerning orthodoxy in Islam. He states:

> The bounds of orthodoxy are determined on the basis of the
> consensus of doctors of the law. Since there is no body of
> determinate character which could be convened for the purpose
> of polling the consensus, this principle operates negatively and
> retroactively. For this reason, consensus, ijmā°, is determined,
> not by the yeas against the nays, for no clear count could
> actually be taken, but rather by whether voices of authoritative
> doctors of the law have been raised in the past against a

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[56]Ikhtilāf usūl al-madhāhib, ed. S. T. Lokhandwalla (Simla, India: Indian Institute of Advanced Study, 1972), 56.

[57]Ikhtilāf usūl al-madhāhib, 56.

[58]Ikhtilāf usūl al-madhāhib, 56.

[59]al-Mustasfā, 2 vols. (Cairo, 1906), 1: 173.

particular doctrine. If not, then the doctrine was considered to have been accepted as orthodox.[60]

In other words, consensus was determined by the absence of authoritative dissenting opinions (khilaf). The challenge which faced the potentially heretical scholar was how to get his dissenting opinions recognized as authoritative. In order to do so, he had to establish his status as an authoritative doctor of the law, and he could only become a doctor of the law through the professional legal guilds which controled the institutions of legal education.

Orthodoxy and Orthopraxy

It has become common in scholarship on Islam, as well as in comparative religion and anthropology, to use the term orthopraxy rather than orthodoxy to refer to religious conformity in Islam. Though orthopraxy is by no means a new term—the Oxford English Dictionary reports its use as early as 1852—there seems to be a general confusion concerning its meaning. A survey of modern scholarship shows that it is used in two related yet very different meanings. In one usage, orthopraxy refers to the fact that religious conformity in Islam—and Judaism as well—is based on legal rather than theological questions. I believe that this idea is correct when confronted with actual Islamic theory of heresy, although I do not feel that orthopraxy is the best term to use to express this idea. In the second usage, orthopraxy is supposed to indicate that whereas in Christianity, one is concerned with belief, in Islam, one is concerned with acts. Here two dichotomies are being erroneously conflated: theology/law and belief/practice. One expression of

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[60]Makdisi, The Rise of the Colleges, 106.

this idea is the following statement from Esposito's popular text-book on
Islam:

> For Christianity, the appropriate question is "What do Christians
> believe?" In contrast, for Islam (as for Judaism), the correct
> question is "What do Muslims *do*?" Whereas in Christianity,
> theology was the "queen of the sciences," in Islam, as in
> Judaism, law enjoyed pride of place, for "to accept or conform to
> the laws of God is *islam* which means to surrender to God's
> law."[61]

The first part of this statement is false. Muslims and Jews are just as

concerned with belief as with practice, and Christianity is concerned with

practice as well as belief.

Scholars who use the terms orthodoxy and orthopraxy to refer to a

claimed dichotomy between Christian belief and Islamic practice are being

influenced by the Christian usage of the term orthodoxy to refer to accepted

dogma. Thus, in popular usage, orthodoxy is seen as meaning "correct

theological belief", whereas etymologically, orthodoxy means simply "correct

opinion"; Greek doxa means opinion, and is roughly equivalent to the Arabic

qawl. Thus, there is nothing which restricts the literal meaning of orthodoxy

to discussions of theology in particular. Orthopraxy, however, means "correct

practice", and one cannot hold the opinion that it is practice which

determines religious conformity in Islam. Islam is not simply the group of

all those who pray towards Mecca (ahl al-qiblah). As al-Subki remonstrates,

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[61]Esposito, Islam: The Straight Path, 68.

"Do you not see that the hypocrites pray towards our <u>qiblah</u>, while they are unbelievers (<u>kuffār</u>) by consensus?"[62]

In Sunnī Islam in general, the commission of sin, which is incorrect practice, does not render one an unbeliever, although some Khārijī factions espoused this extreme view. Al-Ashʿarī states in one of his creeds that one cannot accuse a Muslim of unbelief because of a sin.[63] Najm al-Dīn al-Nasafī states in his creed that neither a lesser nor a greater sin (<u>saghīrah</u> or <u>kabīrah</u>) renders one an unbeliever.[64] One is not considered a heretic in Islam for drinking alcohol, and one is not excluded irrevocably from the community of believers for doing so. Drinking alcohol renders one a sinner, and for sins, one must atone or be punished in a specific way. One is considered a heretic, rather, for considering it permissible to drink alcohol. To hold the opinion that it is not sinful and illegal to drink alcohol is to go against the consensus and leave the community of believers. Al-Nasafī, for example, using a phrase common in Islamic religious literature, holds that <u>considering</u> lawful what is forbidden constitutes unbelief (<u>kufr</u>).[65]

The famous Qādirī creed promulgated by the Caliph al-Qādir demonstrates that it is an opinion, and not an act, which renders one an unbeliever:

> L'homme ne doit pas déclarer un autre homme infidèle pour l'omission d'aucune obligation, sauf la seule prière prescrite dans le Livre de Dieu. . . . Quant à toutes les autres oeuvres,

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[62]Tāj al-Dīn al-Subkī, <u>Tabaqāt al-shāfiʿiyyah al-kubrā</u>, 6 vols. (Cairo: al-Matbaʿah al-husayniyyah, 1914), 1: 48.

[63]Translated in MacDonald, <u>Development of Muslim Theology</u>, 296.

[64]Translated in MacDonald, <u>Development of Muslim Theology</u>, 311.

[65]MacDonald, <u>Development of Muslim Theology</u>, 311.

on ne le déclarera pas infidèle pour les avoir négligés, même s'il
commet le péché, à moins qu'il ne les nie.[66]

The creed states clearly that sinning does not make one an unbeliever, but
denying the necessity of specific religious obligations does, and denial is
clearly an expression of opinion or belief as opposed to practice. Of all acts
of devotion, only omission of prayer causes one to be considered an
unbeliever. A hadith attributed to the sixth Shīʿī Imam Jaʿfar al-Ṣādiq and
recorded by the fourth/tenth-century Shīʿī scholar Ibn Bābawayh
al-Qummī shows the significance of giving up prayer in particular. Someone
asked Jaʿfar al-Ṣādiq why one could call someone who had given up praying
(tārik al-salāt) an unbeliever (kāfir), but not call an adulterer or a drinker of
alcohol an unbeliever. Jaʿfar replied that the drinker of alcohol or the
adulterer could be driven to commit those sins out of lust or physical urges,
whereas the failure to pray could not be caused by the latter and necessarily
indicates that the man in question has neglected praying because he
considered it unnecessary (istikhfāfan bihā).[67] It is thus the belief that
praying is unnecessary which makes him an unbeliever.

Evidence of a heretical opinion may be produced in Islam, as in
Christianity, through word or deed. Al-Subkī states, "Whoever utters
unbelief (talaffaz bi 'l-kufr) or performs the acts of unbelief is a disbeliever
in God the Almighty (kāfir bi 'Llāh) and will spend eternity in Hell."[68] As

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[66]Translated in George Makdisi, Ibn ʿAqīl et la résurgence de l'islam
traditionaliste au XIe siècle (Ve siècle de l'Hégire) (Damascus: Institut
français de Damas, 1963), 307.

[67]Ibn Bābawayh al-Qummī, ʿIlal al-sharāʾiʿ, ed. Muḥammad Ṣādiq
Baḥr al-ʿUlūm (Najaf: al-Maṭbaʿah al-ḥaydariyyah, 1963), 339.

[68]al-Subkī, Tabaqāt al-shāfiʿiyyah, [Husniyyah edition], 1: 43.

just mentioned, the Muslim who has given up prayer completely (tarik al-salat) may be considered a heretic, for his repeated failure to repent indicates an opinion that prayer is not obligatory. A jurist who gives a legal opinion declaring alcohol permissible or makes a declaration to that effect in public is equally subject to a declaration of heresy. Thus, there is an Islamic literature on blasphemy, termed alfaz al-kufr, literally, "utterances of unbelief," which describes and codifies the statements the utterance of which renders one a heretic.[69]

Thus, orthodoxy may apply as aptly to Islam and Judaism as it does to Christianity, with the only difference that in Christianity it is defined as "correct opinion concerning theological issues," and in Islam it is defined as "correct opinion concerning legal issues." In my opinion, the term orthopraxy does not adequately support this definition. Issues of orthopraxy, meaning correct practice, and of praxis in general have to do not with the theory of heresy in Islam, but with how the theory has been enforced on the popular level and how and to what degree it has been supplanted by other local systems of authority and group-formation. While such studies for specific areas and periods would be invaluable for the historian, considering the huge area of the world covered by Muslim communities and the equally huge variety of cultures encompassed by Islam, to produce them for all areas is a staggering task which does not promise to reveal an underlying, unified theory of Islamic orthopraxy.

The Historical Relationship Between the Systems

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[69]A work entitled Kitab alfaz al-kufr was written by the Hanafi scholar Muhammad ibn Ismaʿil Badr al-Rashid (d. 786/1366). GAL, GII: 80, SII: 88. A commentary on this work was written by ʿAli ibn Sultan Muhammad al-Qariʾ al-Harawi (d. 1014/1605). GAL, GII: 395.

In early Islam, allegiance to the leader of the Muslim community was the primary method of defining orthodoxy and heresy. During the lifetime of the Prophet, membership in the community was expressed by the acceptance of the Prophet's authority. This may be seen from the way in which Muhammad received delegations (wufūd) from the various tribes of Arabia accepting their adoption of Islam. Their conversion was expressed not only in their acceptance of monotheism and of Muhammad's prophesy, but also in the payment of tribute, showing their allegiance to Muhammad, the leader of the community, in a traditional political manner. This function was taken over by the Caliphs after the Prophet's death, and may be seen clearly in the events of the Wars of Apostasy (hurūb al-riddah) during which a number of tribes who had accepted Islam during the Prophet's life withdrew their allegiance to the religion upon his death. Watt states, "It also appears that in the wars of the Ridda or Apostasy in the reign of Abū Bakr the act tantamount to a declaration of war was the refusal of a tribe to make the customary money payments to the caliph in Medina."[70] This payment of tribute as a sign of allegiance was parallel to the later Shī'ī practice of payment of khums and zakāt funds to the Imams. It appears that the refusal to pay taxes to Sunnī governors on the part of Shī'ī towns such as Qum, the site of numerous rebellions against the authority of the Caliphs Hārūn al-Rashīd (170-93/786-809), al-Ma'mūn (198-218/813-33), and al-Mu'tazz (252-55/866-69), were based on this system of allegiance.[71]

It is undeniable that the issue of the succession of the Prophet Muhammad initially defined the Shī'ah as a sect. The very name Shī'ah,

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[70]"Conditions of Membership," 5.

[71] J. Calmard, "Kum," s. v. EI2.

derived from the term Shīʿat ʿAlī, was probably a pejorative term for the supporters of ʿAlī, meaning ʿAlī's supporters or ʿAlī's gang. In the first centuries of Islam, allegiance to a Caliph or Imam determined membership in the Islamic community. Both the Kharijīs and the Shīʿīs were recognized as groups separate from the majority over this issue. Hodgson holds that the Shīʿīs did not become sectarian until the imamate of Jaʿfar al-Ṣādiq, when a theory concerning the nature of the Imam which was quite different from that of the Caliph developed, and which was expressed in the stipulation that the succession was based on a designation, or nass, developed.[72] The Shīʿīs were "sectarian," in the sense that they were generally seen to deserve being excluded from the community, at an earlier date, and this would have been so no matter what their theories of the nature of the Imam were. The crucial point was that they supported an alternate Caliph. Hodgson's interpretation, like those of Muslim theologians, places too great an emphasis on the difference between the nature of the Imam in Shīʿī theory and the nature of the Caliph in Sunī theory, and does not explain why the Zaydīs and Khārijīs were also sectarian.

Crone and Hinds argue, although they on occasion overstate their thesis, that the early Sunnī caliphate was more like the Shīʿī imamate than is usually allowed, and that the Shīʿī conception of the Imam is the archaic rather than the innovative view.[73] They state, "In short, we shall argue that the early caliphate was conceived along the lines familiar from Shīʿite Islam."[74] i.e., that the Caliph "was both head of state and ultimate authority

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[72]Hodgson, "How Did the Early Shīʿah Become Sectarian?," 1-13.
[73]Patricia Crone and Martin Hinds, God's Caliph: Authority in the First Centuries of Islam (Cambridge: Cambridge University Press, 1986), 1-3.
[74]God's Caliph, 1.

on questions of law and doctrine in Islam."[75] In the first two Islamic
centuries, they hold, the Sunnī Caliphs had claims to religious authority
which have been suppressed or de-emphasized in subsequent history. This
view of the early Sunnī caliphate is corroborated by the description of the
Fāṭimid scholar al-Qāḍī al-Nuʿmān. He holds that the Sunnī Caliphs held the
same position as the Shīʿī Imams and had the same powers and obligations,
but were negligent in the exercise of their religious authority.

It is undeniable that the Sunnī Caliphs lost much of their religious
authority in subsequent centuries. Crone and Hinds hold that this process of
transfer of authority from the Caliphs to the "scholars" (ʿulamāʾ)—they do
not specify which group or type of scholars—began in the Umayyad period
and was completed under the ʿAbbāsids.[76] The caliphal system of religious
authority, however, though eclipsed by other systems, was never completely
erased. Thus Crone and Hinds claim, "There is no point in Islamic history at
which the caliphate can be said to have been entirely devoid of religious
meaning."[77]

Allegiance to the Caliph continued to be important as a method of
determining orthodoxy for at least the first two centuries of Islamic history,
among both Sunnīs and Shīʿīs. The numerous revolts led by descendants of
the Prophet during the Umayyad Caliphate (40-132/661-750) and the early
Abbasid period, to which al-Ashʿarī devotes one section of his Maqālāt
al-islāmiyyīn, not only expressed political and military aspirations but also
involved claims to religious leadership of the community.[78] The Shīʿī role in

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[75]God's Caliph, 2.
[76]God's Caliph, 19, 57.
[77]God's Caliph, 97.
[78]Maqālāt al-islāmiyyīn, 75-85.

the establishment of the ʿAbbāsid Caliphate (132/750) and the Caliph
al-Maʾmūn's (d. 218/833) nomination in 201/816 of ʿAlī al-Riḍā (d.
203/818), the eighth Imam of the Twelver Shīʿīs, as his successor to the
Caliphate also support the idea that sectarian dynamics revolved around the
issue of the Caliphate as late as the beginning of the third/ninth century. So
too does the proliferation of sub-sects among the Shīʿīs, most of which were
defined by allegiance to a specific line of Imams. The best known are the
Zaydī, Ismāʿīlī and Twelver branches, but others, as well as many sub-
divisions of these three, also existed.

Another indication of the Caliph's role in determining orthodoxy in the
early Islamic centuries is the Muʿtazilī mihnah or "inquisition," which took
place between the years 218/833 and 234/848 in which four ʿAbbāsid
Caliphs, al-Maʾmūn (198-218/813-33), al-Muʿtaṣim (218-27/833-42),
al-Wāthiq (227-32/842-47), and al-Mutawakkil (232-47/847-61),
endeavored to impose Muʿtazilī theology on the Muslim community as the
exclusive version of orthodoxy. That they were ultimately unsuccessful is an
indication that the system of authority in Islam was already changing, but
their attempt and temporary success proved that the Caliph played an
important role in the determination of orthodoxy up to that period.

With the Muʿtazilah, the theological system of authority, orthodoxy,
and heresy was introduced into Islam. As Bernard Lewis reports, "The
Muʿtazilīs were innovators . . . in trying to formulate Islam in the form of
a system of dogmas, . . ."[79] The Muʿtazilah arose during the second/eighth
Islamic century and were heavily influenced by Greek philosophy and

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[79]notes to Goldziher, Introduction to Islamic Theology and Law, 101 n.
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possibly Christian ideas.[80] They established a new science in Islam, that of kalām or philosophical theology, and along with the new science emerged a new breed of scholars, the mutakallimūn. The Muʿtazilah rapidly gained in power and prestige, and attempted to enforce their dogmatic positions as orthodox during the Inquisition. With the end of the Inquisition, both the mutakallimūn and the Caliph were eclipsed by the traditionalist legal scholars.

The Sunnī Caliphs lost their primary role in determining orthodoxy. Al-Qaḍī al-Nuʿmān (d. 363/973-74), chief judge and propagandist for the Fāṭimid Caliphs, describes this change from the Shīʿī point of view. He states that during the time of the Prophet, everyone was in agreement,

> But afterward, the people's affairs were entrusted to the Umayyads and the ʿAbbāsids, who had no ambition or desire to uphold the [faith] and who had no knowledge of the lawful and unlawful things according to God. Rather, their only desire and ambition was the pursuit of worldly goods. When they had attained [power], they devoted themselves to [worldly pleasures], and turned away from everything else. They handed over matters of religion [amr al-dīn] to those of the common people who had studied law [li 'l-mutafaqqihīn min al-ʿawāmm], in accordance with the latter group's claims. This was one way in which the Caliphs gained the acceptance of the [supposed] scholars, and which allowed the scholars to pursue their desire to do that which the Caliphs did not know they would. The [scholars] assumed independence [khalaw bi-anfusihim], and vied among themselves for authority [tanāfasū fī riʾāsatihim].[81]

According to al-Qaḍī al-Nuʿmān, while both the Umayyads and the Abbasids neglected their religious duties as Caliphs, it was during the Abbasid

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[80]Fazlur Raḥman, Islam, 2nd ed., 87-90.

[81]al-Qaḍī al-Nuʿmān, Ikhtilāf usūl al-madhāhib, 5.

Caliphate that the legal scholars succeeded in wresting religious authority from their erstwhile masters and flaunting the Caliphs' authority.

> Then came the turn of the ʿAbbāsid Caliphs. They followed the path of the Umayyads before them in neglecting those who conflicted over matters of religion and in devoting themselves entirely to worldly pleasures. . . . God entrusted the upholding of the faith to whoever sat in their place, but these usurpers [mutaghallibūn] became solely engrossed in their worldly possessions, and left matters of religion up to those who pledged allegiance to them. The latter [at first] acknowledged the [Caliphs], then turned their backs on them [tawallāhum], while calling themselves the Caliphs' scholars and jurisconsults. They vied for degrees of recognition [marātib], increased in number, and claimed to have authority over the people [tarāʾasū fi 'n-nās].[82]

In this Shīʿī view, not only did the Sunnī Caliphs delegate their religious authority to Sunnī jurists, but also, through negligence, allowed the jurists to claim the authority that the Caliphs should have been exercising themselves. The key terms in these passages are riʾasah and its derivatives, which here refer to the Sunnī jurists' claims of exclusive religious authority. They established autonomy from the Caliph [khalaw bi-anfusihim, tawallāhum] and claimed to have a monopoly over legal authority [tarāʾasū fi 'n-nās]. Al-Qāḍī al-Nuʿmān does not state exactly when this fundamental change occurred. His account places it during the ʿAbbāsid Caliphate, that is, after 132/750. It must have occurred before he wrote the book, which dates to between 343/954, which year he mentions in the work, and his death in 363/974.

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[82]al-Qāḍī al-Nuʿmān, Ikhtilāf usūl al-madhāhib, 6.

This picture corroborates the theory of Professor Makdisi, who holds that as a result of developments beginning in the third/ninth century and culminating in the fifth/eleventh century, legal methodology and the system of legal guilds became the primary determinant of orthodoxy in Sunnī Islam.[83] The juridical theologians won the power to determine orthodoxy by establishing the system of madhhabs or legal guilds. Orthodoxy was increasingly defined by adherence to one of these madhhabs, and was expressed through the law and above all legal methodology.

Reaction to the Sunnī Challenge

The Twelver Shīʿīs have been subject to and therefore acutely aware of the pressure of the majority Sunnī community throughout their existence, and this is just as true in their law as in any other field of endeavor. The constant presence of the Sunnīs' restrictions on the Shīʿī community is evident in the terms the Shīʿīs use to refer to the Sunnīs in legal and other texts. Shīʿīs often term the Sunnīs mukhālifūnā, "our opponents" or "those who disagree with us," emphasizing the historical confrontation between the two groups. They also term the Sunnīs al-ʿāmmah, "the majority" or "the generality," as opposed to the Shīʿīs themselves, referred to as al-khāssah, "the minority" or "the elite." Thus the Twelver Shīʿīs seem to be constantly aware that they are surrounded by the Sunnīs, who, by virtue of number and political power determine the norms of society, and often confront the Shīʿīs or show them open hostility.

Although the Twelver Shīʿī reaction to the challenge of the Sunnī juridical definition of heresy has been a long and complex process, it appears that one of the first and most important areas where the Shīʿīs felt the

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[83]The Rise of Colleges, 281-90.

pressure to do so was Baghdad, during the Abbasid Caliphate the cultural
and intellectual capital of the Islamic world. The Shīʿīs formed an
important community in Baghdad concentrated in the quarter of Karkh in
the western section of the city. The community included an important
merchant class, the wealth of which is described and parodied by
al-Hamadhānī in al-Maqāmah al-madīriyyah. By the period of Buwayhid
hegemony over the area (334-447/945-1055), Baghdad had became the
foremost center of Twelver Shīʿī learning, eclipsing Qum, an important
traditional center of Twelver Shīʿī scholarship.

The Shīʿīs of Baghdad were in a strange situation. On the one hand,
Baghdad was the center of both Caliphal power and the center of the Sunnī
system of legal guilds. On the other hand, the Caliph had been losing
effective political control and, since the Buwayhids had taken Baghdad in
334/945, did not even rule over the capital. With the rule of the Ḥamdānids
in Syria, the Buwayhids in Iraq and Iran, the Fāṭimids in Egypt and Syria,
and the Qarāmiṭah in Arabia, Shīʿīs were in political control of the greater
part of the Islamic world. The success of these Shīʿī dynasties prompted
Hodgson to term this period "the Shīʿī century." Any inherent hostility
towards the Shīʿīs of Baghdad or will to dominate them that the Caliph and
the Sunnī jurisconsults may have had was exacerbated during the period
following the Muʿtazilī Inquisition by the political threat of the Qarāmiṭah
and later the Fāṭimid anti-Caliphs, for the local Shīʿīs were seen as potential
agents or allies of these Ismāʿīlī causes. The Buwayhids, however, were
staunch supporters and protectors of the Shīʿī community in Baghdad.
Through their patronage, Shīʿīs were assigned important governmental
posts, acquired an important library in Baghdad, and were encouraged to

profess and defend their opinions openly. The Buwayhids were strong enough in comparison with the Caliph to ensure that Shī'īs were protected, and the Shī'īs were able to produce a great deal of scholarship in many fields in this relatively short period.

Nevertheless, the fourth/tenth and fifth/eleventh centuries witnessed numerous attacks on the Shī'īs of the Karkh quarter. At the same time, they were fervently criticized by the Sunnī jurists. Furthermore, these two types of attack were related, and probably represented the most important stimulus to adjust their legal theories to deal with the Sunnī juridical definition of heresy. The key figures in many of the physical raids and attacks were Ḥanbalī activists, with whom the Shī'īs were continually feuding. As Makdisi states, "Ce sont les ḥanbalites qui représentèrent les sunnites à Bagdad dans la lutte entre les deux sectes."[84] In 313/925 the Caliph al-Muqtadir had the Barāthā mosque, one of the six principle mosques of Baghdad and the one known to be frequented by Shī'īs, raided and razed, and the worshippers there imprisoned.[85] This was in response to a declaration by the jurisconsults that it harbored apostates and renegade Qarāmiṭah. The historian Ibn Miskawayh records a decree the Caliph al-Rāḍī bi'Llāh (322-29/934-40) issued in the year 323/935, threatening the Ḥanbalīs with military suppression for causing unrest in Baghdad.[86] The Ḥanbalī jurist Abū Muḥammad al-Barbahārī (d. 329/941) and his followers had attacked the Shī'īs and accused them of unbelief (kufr) and error

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[84]Ibn 'Aqīl, 325.

[85]See Jacob Lassner, The Topography of Baghdad in the Early Middle Ages (Detroit: Wayne State University Press, 1970), 97, 99, 181-82, 275.

[86]Ibn Miskawayh, Tajārib al-umam, 6 vols. (Cairo: Maṭba'at al-kurdī, 1914), 5: 322-23.

(dalāl). The Caliph imprisoned a number of the Ḥanbalīs and ordered that no two of them should assemble in public, and al-Barbahārī had to go into hiding. Perhaps convinced that accusations of heresy are exceedingly rare in Islam, or that Shīʿism is not heretical, Mottahedeh, in considering this incident, deems it unlikely that Ḥanbalī thinkers would have declared Shīʿīs unbelievers.[87] Ḥanbalī scholars, however, were not as hesitant or understanding as Mottahedeh suggests, and Ibn Miskawayh's verbatim text of the decree seems reliable. There were similar attacks on the Shīʿīs in 338/948, 340/951, 346/957, 348/959 and 349/960.[88] Riots also broke out between Sunnīs and Shīʿīs in 392/1003, 398/1009, and 409/1018, and on the latter two occasions, al-Shaykh al-Mufīd was made to leave the city temporarily.[89] In 431/1040, attacks on the Shīʿīs were so frequent and violent that only three people attended the feast-day prayers at the end of the month of Ramaḍān at the rebuilt Barāthā mosque.[90]

Makdisi has commented on the prolonged confrontation between the Shīʿīs and the Ḥanbalīs in Baghdad and the extent to which this conflict influenced the thought and actions of each group.

> On ne peut pas douter de la correspondance entre les deux mouvements, šīʿite et ḥanbalite. Ayant à lutter l'un contre l'autre, ils étaient obligés de se développer dans le même sens, c'est-à-dire de veiller sur le maintien d'un équilibre dans leur

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[87]Roy Mottahedeh, Loyalty and Leadership in an Early Islamic Society (Princeton: Princeton University Press, 1980), 25. Mottahedeh's text includes an error, presumably typographical, giving the date 322/934 rather than Ibn Miskawayh's 323/935.

[88]Makdisi, Ibn ʿAqīl, 314 n. 5.

[89]Martin J. McDermott, The Theology of al-Shaikh al-Mufīd (d. 413/1022) (Beirut: Dār al-mashriq, 1978), 18-21.

[90]Jacob Lassner, The Topography of Baghdad, 97, 99, 181-82, 275.

nature et dans leur structure. S'opposant l'un à l'autre au point
de vue idéologique, ils avaient besoin d'une organisation
capable de faire triompher leurs idées et de les faire parvenir à
leurs buts.[91]

In the early fifth/eleventh century, the Ḥanbalīs and other Sunnī

traditionalists won over the Sunnī Caliph to their cause. This marked an

increase in hostilities toward the Shīʿīs. The Caliph al-Qadir (381-422/991-

1031) proclaimed a campaign against Shīʿī and Muʿtazilī heresies in

408/1017, 409/1018, and 420/1029, promulgating a creed directed against

Shīʿīs and Muʿtazilīs in particular in 409/1018.[92] Showing his support for

al-Qādir's religious policies, the Ghaznavid ruler Maḥmūd held extensive

heresy trials at Isfahan when he conquered it from the Buwayhids in

420/1029.[93]

One element in the attacks directed against the Shīʿīs was the

accusation of violating the consensus of the legal scholars. Al-Ghazālī shows

that statements that it was unlawful to go against the consensus (taḥrīm

mukhālafat al-ijmāʿ) go back at least as far as the time of the Muʿtazilī

scholar al-Naẓẓam (d. 220-30/835-45).[94] Sunnī works on uṣūl al-fiqh hold

that ijmāʿ is a "proof" (ḥujjah). This term implies that ijmāʿ, although it may

not necessarily be based on an explicit text, is a winning or irrefutable

argument, one that must be accepted. Sunnī jurists hold that one cannot

argue against it, and that to do so is not only incorrect but unallowed or

illegal. Hence the ruling that to violate ijmāʿ is tantamount to unbelief. The

[91]Makdisi, Ibn ʿAqil, 322.
[92]Makdisi, Ibn ʿAqil, 300.
[93]MacDonald, Development of Muslim Theology, 193-95.
[94]al-Mustasfā, 1: 173.

implication, in the Sunnī view, is that since ijmā‘ is a hujjah, the Shī‘īs must retract their opinions or else be excluded from the community of opinion which constitutes Islamic orthodoxy.

The Baghdādī Shī‘ī jurist al-Sharīf al-Murtaḍā makes it clear in the introduction to his legal work al-Intisār that Sunnīs had been accusing the Shī‘īs of going against ijmā‘.[95] He describes these accusations as "vituperous attacks."[96] In fact, the declared purpose of al-Intisār is to refute the charge of going against the consensus. According to al-Murtaḍā's presentation, the Sunnīs claimed that a prior consensus had been reached which excluded Shī‘ī opinions.[97] More importantly, the Sunnī jurists were using the accusation of going against the consensus to exclude the Shī‘īs from the process of disputation itself in al-Murtaḍā's day. Al-Murtaḍā reports that on these grounds, the Sunnīs were refusing to hold disputations with the Shī‘īs or consider their legal opinions.[98] This is clear evidence that exclusion from the majority community, in other words, heresy, had come to be determined by mukhālafat al-ijmā‘.

Twelver Shī‘ī scholars like al-Shaykh al-Mufīd and al-Sharīf al-Murtaḍā were not being executed as heretics in Baghdad at the time; as Bernard Lewis notes, the practice of Islam in matters of heresy has generally been less severe than its theory. Al-Sharīf al-Murtaḍā, thanks to the backing of the Buwayhid amīrs, was a rich, respected, and powerful man in Baghdad, and held a number of important posts there. The Shī‘ī community not only survived but flourished during this period, and even survived

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[95] al-Intisār, 1.
[96] al-Intisār, 2.
[97] al-Intisār, 3.
[98] al-Intisār, 4.

subsequent centuries of uninterrupted Sunnī rule without the benefit of Buwayhid support. However, the Shīʿīs were less prosperous and less outspoken under Sunnī rule, when they were in danger of persecution and subject to systematic discrimination. When the Sunnī Seljuks won Baghdad from the Buwayhids in 447/1055, for instance, Sunnī mobs ransacked the top Shīʿī scholar al-Shaykh al-Ṭūsī's house and burned his books and his professorial chair. He had to flee to the Shīʿī community of Najaf for safety. Even during the Buwayhid period, the Shīʿī community was subject to frequent attacks by Sunnī, usually Ḥanbalī mobs. The jurists could not cause a heretic to be executed without political backing, but their theories and legal rulings had considerable influence on the political and public treatment of sectarians, and often served to justify acts of persecution against the Shīʿīs. So although the threat of execution seemed remote, there was a considerable amount of social pressure associated with accusations of heresy. Just as important, however, was what might be termed the academic pressure. Al-Murtaḍā's statements show that what was immediately at stake was for the Shīʿīs to be excluded from the process of scholarly disputation on legal issues which determined orthodoxy.

As part of the Islamic community, especially one which was under rather regular scrutiny and attack, it was inevitable that the Shīʿīs, Twelvers included, react to this challenge. Makdisi discusses one possible course of reaction open to groups excluded from the madhhab system, such as the Muʿtazilīs and the Ashʿarīs, which he terms "infiltration." The adherents of suspect groups would adopt one of the established legal guilds in order to participate in the system of legal education through which the jurists maintained their monopoly over religious authority. Makdisi has

shown that the Muʿtazilīs infiltrated the Ḥanafī guild, while the Ashʿarīs infiltrated the Shāfiʿī guild. Once having passed through this system, the Muʿtazilī scholar could profess his opinions, not as a Muʿtazilī, but as a Ḥanafī, and the Ashʿarī scholar could profess his opinions as a Shāfiʿī, and they would have to be taken into account.

The definition of orthodoxy espoused by the Sunnī juridical establishment was, in sociological terms, an "identity norm" which defined the Muslim believer and placed the Shīʿī community in a dilemma or "normative predicament."[99] On the one hand, Shīʿīs considered themselves to be believers and perfectly good Muslims, but on the other hand, society was threatening to exclude them as heretics for failing to conform to the consensus of the legal scholars. In order to conform, however, the Shīʿīs would have had to give up what they felt was an inalienable part of their identity. The evidence suggests that the historical Twelver Shīʿī reactions to the Sunnī legal definition of heresy may be divided into three main categories, each of which had an immense effect on the subsequent history of Shīʿī jurisprudence.

One type of reaction was rejection, that is, for the Twelver Shīʿīs to remain apart and denounce the new system of orthodoxy based on legal guilds. In rejecting this system, they were refusing to uphold the norm espoused by society at large, and were opting for deviancy. Goffman describes this strategy as one of the possible solutions to the normative predicament:

> . . . for the individual who cannot maintain an identity norm
> to alienate himself from the community which upholds the

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[99]Goffman, Stigma, 127.

norm, or refrain from developing an attachment to the community in the first place.[100]

According to adherents of this tendency, ijmāᶜ had no legitimate basis for authority, because authority was limited to the teachings of the Imams. The Shīᶜīs had their own law, derived from the teachings of the Imams and preserved in the hadīth, and that was good enough. The view of Shīᶜīs who chose this alternative was that it did not matter what opinions the Sunnīs held, since they were heretics who denied the true source of religious authority in the first place. This was the view taken by the Akhbārīs, the Shīᶜī traditionalists discussed above in Chapter Three. A similar reaction was found in medieval Ismāᶜīlī Shīᶜism and exists to this day in Ismāᶜīlism's modern branches, the Khojas, who recognize a living Imam as the source of authority, and the Bohras, who recognize a representative of the Imam (dāᶜī mutlaq) as the conduit of authority from their hidden (mastūr) Imam. This rejection is discussed in the following chapter.

A second method was to acknowledge ijmāᶜ publicly, practicing dissimulation, but to adhere inwardly and privately to Shīᶜī doctrine. This was done by "infiltrating" or adhering to one of the four Sunnī madhhabs outwardly. Goffman terms this type of strategy "passing."[101] Its application ensures that the norm is upheld throughout society despite the fact that the stigmatized group may not accept it internally. Chapter Six argues that many Twelver Shīᶜī scholars participated in the Sunnī-dominated legal system by "infiltrating" the Shāfiᶜī madhhab.

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[100]Goffman, Stigma, 127.
[101]Goffman, Stigma, 73-91.

A third method was to accept ijmāᶜ, but, while doing so, to interpret it in such a way that Twelver Shīᶜī opinions did not have to be retracted. They were thus accepting the norm in principle, but maintaining that it needed to be changed or adjusted in order to take their own participation into account. Goffman does not discuss a comparable strategy, but it may be likened to an equal or civil rights movement. The acceptance of ijmāᶜ was the key step in an endeavor to establish Twelver Shīᶜism as a legitimate alternative to the Sunnī guilds or the fifth madhhab on the model of the Sunnī madhhabs, and to participate fully in the Islamic community as orthodox members. This phenomenon is treated below in Chapter Eight.

What has generally been seen as a break in the system of authority in Twelver Shīᶜism caused by the Occultation of the Imam should rather be seen primarily as a sustained reaction to the system of legal orthodoxy which developed in Sunnī Islam between the third/ninth and fifth/eleventh centuries. The conflicting attitudes of Shīᶜīs towards the majority remained the same before and after the rise of the new Sunnī system. On the one hand, many Shīᶜīs felt wronged by the majority and held that Sunnī islam should be rejected, either in a quietist or openly hostile, revolutionary fashion. On the other hand, there was a strong tendency to support the concept of Muslim unity, accept the Sunnī majority, and to strive to be accepted within the circle of Islamic orthodoxy. With the rise of the new Sunnī madhhab system, these attitudes remained the same but had to be expressed in different ways. Opposition to the Sunnī Caliph was no longer the crucial issue facing the Shīᶜīs; reacting to the system of legal guilds was. The following chapters examine these three types of reaction to the charge of going against the consensus.

Chapter Five

Rejection of Consensus:
The Shīʿī Rejection of Sunnī Juridical Norms

Of the possible reactions to Sunnī consensus, the trend within Shīʿism to reject it needs, perhaps, the least explanation. This is what the bulk of the Orientalist literature on Islam would lead us to believe. If indeed the Shīʿis are guided in religious matters by an Imam, and this is the crucial feature of their belief, they have no need for the Sunnī legal system or the principles on which it is based. If the Sunnīs exclude the Shīʿis from the pale of orthodoxy, this has no effect on them in the religious sense, for the truth lies with the Imam and the Shīʿis' rewards in the afterlife are not harmed by giving up anything except their allegiance to the Imam. According to this view, the Sunnīs, by excluding the Shīʿis from their purported Islamic orthodoxy, merely reinforce their own error in refusing to follow the rightful Imam and thus ensure their own doom in the afterlife.

It appears only logical that the Shīʿis would reject the Sunnī guild system and the principle of consensus on which it is based. This is the implication of current textbooks on Islam, which stress the imamate as the feature of Shīʿism which renders it schismatic. This is the reaction expected from the Shīʿis by those scholars such as Hodgson, who view Shīʿism as a perennial vehicle of protest and dissent. This is also the reaction which seems to be implied in the many Shīʿī treatises on the imamate and the passion plays commemorating the martyrdom of Husayn, which focus on the historical injustice the Shīʿis have suffered at the hands of the majority community, stress allegiance to the Imams as the sole means of salvation,

and condemn all those who deny or oppose the Imam to damnation. While rejection of the Sunnī majority has not been the only possible attitude of Shī'ism in Islamic history, as will be seen clearly in later chapters, its attraction has been strong.

Rejection has been the typical response of the branches of Ismā'īlī Shī'ism, in which either direct or indirect contact with the Imam has been maintained. The Nizārī branch of Ismā'īlīs, the followers of the Agha Khān known as Khojas in India, vest all legal authority in their Imam, who is termed "Mawlānā Hazar [from Arabic hādir, i.e., "present"] Imam."[1] The Bohras, also found primarily in India, including the Dā'ūdī and Sulaymānī subdivisions, maintain contact with the Imam, who is concealed (mastūr), through a representative similar to the Twelver Shī'ī safīrs of the Lesser Occultation called dā'ī mutlaq ("supreme caller") and addressed as Sayyidna ("Our Master").[2] While Ismā'īlī communities have maintained contact with the Imam and preserved something like the system of authority found in pre-Occultation Twelver Shī'ism, this has not been without responding to the Sunnī challenge.

A document of the Ismā'īlī rejection of Sunnī jurisprudence has come down to us from the fourth/tenth century. The Ismā'īlī scholar al-Qāḍī al-Nu'mān ibn Muḥammad wrote a work entitled Ikhtilāf usūl al-madhāhib

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[1]On the Nizārī Ismā'īlīs, see Azim Nanji, The Nizārī Ismā'īlī Tradition in the Indo-Pakistan Subcontinent (Delmar, New York: Caravan Books, 1978); Marshall G. S. Hodgson, The Order of Assassins: The Struggle of the Early Nizārī Ismā'īlīs against the Islamic World (The Hague: Mouton, 1955).

[2]On the Bohras, see Asghar Ali Engineer, The Bohras (New Delhi: Vikas Publishing House, 1980).

wa al-radd ʿalā man khālaf al-haqq fīhā in the mid-fourth/tenth century.[3]

Probably written between 343/954 and 361/971, this work may be

recognized as one of the first extant Shīʿī reactions to the science of usūl

al-fiqh. Ikhtilāf usūl al-madhāhib provides an early Shīʿī view of the Sunnī

system of jurisprudence as developed from the time of al-Shāfiʿī. The

insight this perspective provides concerning the development of Sunnī law

may be more valuable to modern scholars than the information the work

contains on Fāṭimid jurisprudence itself.

Al-Qāḍī al-Nuʿmān maintains that the Fāṭimid Caliph is the ultimate

source of legal authority, and rejects Sunnī methods of jurisprudence,

including taqlīd, ijmāʿ, nazar, qiyās, istihsān, and ijtihād. In a letter of

appointment granted to al-Qāḍī al-Nuʿmān in 343/954, the Caliph al-Muʿizz

li-Dīn Allāh explains the Ismāʿīlī system of legal authority, at least in

theory, quite clearly. He instructs al-Qāḍī al-Nuʿmān that when confronted

with a problem, he should first consult the Qurʾān, then the sunnah of the

Prophet, then the opinions of earlier Imams. If the problem still remains

unsolved at this point, he should refer directly to al-Muʿizz himself, and the

Caliph will provide him with the correct answer.[4] This shows that it is the

Caliph who has ultimate authority on religious matters. Jurists like al-Qāḍī

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[3]The work may be dated to between 28 Rabīʿ I, 343/30 September, 954, the date of the letter of appointment which the Fāṭimid Caliph al-Muʿizz li-Dīn Allah (341-65/953-75) granted to al-Qāḍī al-Nuʿmān and which the latter includes in the work, [Ikhtilāf, 24] and the death of al-Qāḍī al-Nuʿmān on 29 Jumādā II, 363/27 March, 974. Furthermore, it is likely that the work was written before 361/971, when the Fāṭimid capital was transfered from al-Mahdiyyah in Tunisia to Cairo and al-Nuʿmān accompanied the Caliph there, because al-Nuʿmān does not mention this momentous event in the work.

[4]Ikhtilāf, 21.

al-Nuʿmān are entitled to give legal opinions and decisions, but only through the permission of the Caliph. Heresy and orthodoxy, or conformity and non-conformity, are easily defined in such a system. The crucial matter is allegiance to the Caliph. The followers of the Fāṭimids, whom al-Qāḍī al-Nuʿmān terms ahl al-ḥaqq, are true believers because they are guided by the Caliph in their religious duties. They are the one true ummah, or Muslim community. Those who do not follow the Caliph, whom al-Qāḍī al-Nuʿmān terms al-ʿāmmah, are heretics.

This type of rejection is not limited to the Ismāʿīlī Shīʿīs, but is also to be found within Twelver Shīʿism, and probably in some currents within Zaydī Shīʿism as well. As seen in Chapter Two above, a number of modern scholars, including Coulson and Eliash, see rejection as the most authentic stance Shīʿism could take in response to Sunnī jurisprudence. Chapter Three demonstrated that the central feature of the Shīʿī Akhbārī revival, as espoused by such scholars as al-Astarābādī and al-Kāshānī, was its rejection of Sunnī jurisprudence. The idea that Shīʿīs have no use for the system of jurisprudence invented by the Sunnīs because of their reliance on the Imam as a guide in religious matters has been present, though not always accepted, throughout the history of Shīʿī jurisprudence.

As mentioned in Chapter Three, the author of al-Fawāʾid al-madaniyyah presented his thesis not as a new discovery, but as a revival of a traditional stance within Shīʿism. He identifies Muḥammad ibn Yaʿqūb al-Kulaynī (d. 329/940) and the "two Ṣadūqs," Ibn Bābawayh al-Qummī (d. 381/991) and his father, as Akhbārī scholars, and cites al-Kulaynī's compilation of Shīʿī ḥadīth, al-Kāfī, as rejecting ijtihād and taqlīd.[5] He

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[5] al-Fawāʾid al-madaniyyah, 43-44. 40?

shows that the use of the term Akhbārī to describe one faction within Twelver Shīʿism goes back at least to al-Shahrastānī's famous heresiography al-Milal wa al-nihal, which was completed in 521/1127.[6] In Kitāb al-naqd, written ca. 565/1170, ʿAbd al-Jalīl al-Qazwīnī refers frequently to the Uṣūlī faction among the Twelver Shīʿīs, and opposes it to the Akhbāriyyah, Ḥashwiyyah, and the Ghulāt.[7] His usage makes it clear that these were well established factions in the Shīʿī community even at this early date. He states of the Akhbārīs, for whom he apparently has little respect, that they call themselves Shīʿīs, that not many of them remain in his own time, and that they hide some of their heterodox views from the Uṣūlīs, whom he implies are the only true Shīʿīs.[8] It is clear from his use of the terms that the Uṣūlīs are the proponents of a science of legal methodology similar to that of the Sunnīs, and that the Akhbārīs are altogether opposed to this science. Already in the sixth/twelfth century, this conflict seems to be an old one, to judge from al-Qazwīnī's statement that there are not many Akhbārīs left.

The idea of rejection of the majority Sunnī community in scholarly and legal matters is well documented in Twelver Shīʿism of the early period. Such hadith reports as "Teach your children our hadiths before their minds

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[6]al-Fawāʾid al-madaniyyah, 43-44.

[7]Kitāb al-Naqd, ed. Mīr Jalāl al-Dīn Muḥaddith (Tehran, 1980). References to the Akhbārīs are found on pp. 3, 282, 458, 529, 568-69. It appears that the editor did not recognize the importance of the term Uṣūlī, for the index includes only five references to them, when they are actually mentioned on pp. 3, 27, 29, 59, 99, 114, 109, 119, 272, 278, 281-82, 286, 295, 318, 322, 394, 407-8, 415-16, 459, 481, 501, 506, 514, 528-30, 561, 568-69, 613. Al-Qazwīnī was an Uṣūlī himself, and frequently holds that the accusations of his Sunnī opponent are only accurate with regard to the Akhbārīs or Ghulāt.

[8]Kitāb al-naqd, 568.

become familiar with that which is in books which do not derive from us." stress the insularity of the ShīʿI community and the need to protect it from outside influence.[9] Ibn Bābawayh al-Qummī (d. 381/991) presents a short section containing hadiths intended to show that rejection of Sunnī law was a natural extension of the Shīʿī theory of the Imamate in his work ʿIlal al-sharāʾiʿ. He explains that the Shīʿīs are obligated to espouse opinions which oppose those of the Sunnīs (yajibu 'l-akhdhu bi-khilāfi mā taqūluhū 'l-ʿammah).[10] He presents four hadiths based on this idea, three attributed to the sixth Imam, Jaʿfar al-Sādiq, and one attributed to the eighth Imam, ʿAlī al-Ridā. In the first one, Jaʿfar al-Sādiq reports that the Shīʿīs were commanded to espouse the opinions opposite those of the Sunnīs because the Sunnīs had gone against ʿAlī's opinions out of their desire to undermine his authority (irādatan li-ibtāli amrih). They used to ask ʿAlī about certain matters in which they needed guidance, and when he gave them his opinion (aftāhum), they would create an opposite opinion (didd) in order to confuse the people.[11] The fourth hadith, attributed to al-Ridā, the eighth Imam, states that if the Shīʿī believer does not have access to a Shīʿī scholar for advice on the religious law, he should consult the local Sunnī qādī for an opinion, then do the opposite, for that is surely the correct opinion.[12]

The titles of a number of inextant works show that some Shīʿī scholars of the early period were engaged in refuting the discipline of usūl al-fiqh. Abū Sahl Ismāʿīl al-Nawbakhtī (d. 311/923), a Shīʿī mutakallim with strong Muʿtazilī connections who died in the early third/ninth century,

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[9] al-Fawāʾid al-madaniyyah, 29.
[10] ʿIlal al-sharāʾiʿ, 531.
[11] ʿIlal al-sharāʾiʿ, 531.
[12] ʿIlal al-sharāʾiʿ, 531.

wrote a work refuting al-Shāfiʿī's book on <u>usūl al-fiqh</u> entitled <u>Kitāb naqd</u> <u>Risālat al-Shāfiʿī</u>.[13] The <u>Fihrist</u> of Muntajib al-Dīn al-Rāzī (d. ca. 600/1203) mentions a work which seems to be directed against Akhbārī Shīʿīs who reject the legal methods of the Sunnīs. Nāṣir al-Dīn Abū Ismāʿīl Muḥammad ibn Ḥamdān al-Ḥamdānī, a sixth/twelfth-century scholar who was the <u>raʾīs</u> of the Shīʿīs in Qazvīn, wrote a work entitled <u>al-Fusūl fī dhamm aʿdāʾ</u> <u>al-usūl</u> ["The Chapters on Censure of the Enemies of <u>Usūl al-Fiqh</u>"].[14]

A key idea current in this trend within Shīʿism is that <u>khilāf</u>, the disagreements or differences of opinion which characterize the Sunnī legal system, are a defect or an evil. The fact that there is not unanimous agreement among the believers, ensured through the efforts of a single Imam designated to guide them in religious matters, indicates to many Shīʿīs that God's government in this world has gone awry. They see that there is only one truth, and only one possible answer to religious questions, and that the Sunnīs' methods depended on probability rather than certainty when certainty was required. Duncan MacDonald holds that the Shīʿīs

> utterly reject the idea of co-ordinate schools of law; to the doctrine of the varying (<u>ikhtilāf</u>) as it is called, and the liberty of diversity which lies in it, they oppose the authority of the Imam. There can be only one truth and there can be no trifling with it even in details.[15]

Similarly, Coulson stresses that the Shīʿī system of authority necessarily rejects the principles found in Sunnī jurisprudence.

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[13]Ibn al-Nadīm, <u>al-Fihrist</u>, 251.

[14]Muntajib al-Dīn ʿAlī ibn ʿUbayd Allāh Ibn Bābawayh al-Rāzī, <u>Fihrist</u> <u>asmāʾ ʿulamāʾ al-shīʿah wa musanniflhim</u>, ed. ʿAbd al-ʿAzīz al-Ṭabāṭabāʾī (Beirut: Dār al-aḍwāʾ, 1986), 161.

[15]<u>Development of Muslim Theology</u>, 116.

It follows that consensus (ijmāᶜ), whether as a spontaneous source of law or as a criterion regulating the authority of human reasoning, has no place in such a scheme of jurisprudence, where the authority of the Imam supersedes that of agreed practice and his infallibility is diametrically opposed to the concept of probable rules of law (zann) and equally authoritative variants (khilāf).[16]

The Ismāᶜīlī jurist al-Qāḍī al-Nuᶜmān stresses the arbitrary, personal nature of the Sunnī scholars' opinions which constituted khilāf. He states, "They increased in number and their various fancies led them to hold conflicting opinions, going against the fundamental nature of the Sacred Law."[17] He holds that the Sunnī jurists neglected to refer religious questions to the Imams out of stubbornness and concern for their own status.

When they were incapable of understanding the Book or the Sunnah, they conflicted, and derived rulings for the Muslim Community out of their own fancy, to such a degree that they were reluctant to refer the matters which they disputed to those to whom God had commanded them to refer, out of covetousness for their position [riʾāsah] and so that those over whom they claimed to have authority [man taraʾasū ᶜalayh] might not view them as incapable and subsequently cease to follow them.[18]

Muḥammad al-Amīn al-Astarābādī states, "every path, except holding to the speech of the Imams, leads to differences between legal opinions (ikhtilāf al-fatāwā) and lying against God (al-kidhb ᶜalā 'Llāh)."[19] Here al-Astarābādī

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[16]A History of Islamic Law, 107.
[17]al-Qāḍī al-Nuᶜmān, Ikhtilāf usūl al-madhāhib, 5.
[18]al-Qāḍī al-Nuᶜmān, Ikhtilāf usūl al-madhāhib, 6.
[19]al-Fawāʾid al-madaniyyah, 128.

is in effect equating difference of legal opinion with the spreading of falsehood in religious matters. In another passage, he argues, "Every path which leads to differences of legal opinions (ikhtilāf al-fatāwā) without the necessity of dissimulation (taqiyyah) is rejected and unacceptable to God inasmuch as it leads to disagreement (ikhtilāf)."[20]

Al-Astarābādī and many other Shīʿī scholars, including al-Qāḍī al-Nuʿmān, felt that the fundamental purpose of religion itself was to avoid conflict and difference of opinion.

> Reason and revelation both demonstrate that the benefit of sending prophets and revealing scripture is to remove disagreement (ikhtilāf) and conflicts (khusūmāt) among the believers so that their lives in this world and the next might be in order. But if speculation is considered a permissible method of inquiry (qāʿidah usūliyyah) with regard to God's rules of law, then this benefit is lost because of the occurrence of disagreement and conflicts, as is plainly observable.[21]

There are no authoritative variant opinions in the system based on the Imams; unanimity is guaranteed by a single hierarchical organization of legal authority. Al-Astarābādī asks how two jurisconsults faced with the exact same case can give contradictory opinions without questioning the validity of the juridical system, when they have one God, one Prophet, and one Book.[22]

The natural consequence of this position was that the concept of consensus was viewed as inherently invalid, for it allowed for difference of opinion. Al-Astarābādī states unequivocally, "The consensus of the Muslim community is not incontestable; rather, it is known to be invalid." (ijmāʿu

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[20] al-Fawāʾid al-madaniyyah, 94.
[21] al-Fawāʾid al-madaniyyah, 129.
[22] al-Fawāʾid al-madaniyyah, 94.

'l-ummati ghayru musallamin bal maᶜlūmu 'l-butlān).[23] He insists that it is a groundless, Sunnī invention: "The authority of consensus is one of the contrivances and inventions of the Sunnīs." (inna hujjiyyata 'l-ijmāᶜi min tadābīri 'l-ᶜāmmati wa 'khtirāᶜātihim).[24] By adopting this position with respect to Sunnī consensus, Shīᶜīs were accepting or admitting that they violated it. In fact, they were making a point of going against the consensus, on the grounds that it had no authoritative basis. They were thus accepting deviant status, separating themselves from the remainder of the Muslim community. They might, in order to survive in a hostile society, pretend to accept Sunnī norms out of taqiyyah, or religious dissimulation, but this was an outward phenomenon unmatched by any inner acceptance of the Sunnī legal system or the principles upon which it was based.

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[23]al-Fawā'id al-madaniyyah, 13.
[24]al-Fawā'id al-madaniyyah, 112.

Chapter Six

Conformance to Consensus:

Shīʿī Participation in the Shāfiʿī Legal Guild

Faced with exclusion from the Sunnī juridical system and from the process of disputation which determined orthodoxy, one option open to Shīʿī scholars was to adopt one of the Sunnī madhhabs while inwardly still holding to their Shīʿī beliefs. In this way, they could complete their education, contribute to legal scholarship and disputation, and serve as legal authorities within the Sunnī majority. Makdisi has argued that the Muʿtazilīs and Ashʿarīs, at first excluded from orthodoxy by the guild system, infiltrated the Sunnī guilds: "Legitimacy was sought by various movements through association with one of the schools of law; as, for instance, the Muʿtazilīs who infiltrated the Ḥanafī school, and the Ashʿarīs, the Shāfiʿī."[1]

In the sociological theory of stigma, this strategy is termed "passing."[2] Shīʿī scholars possessed a specific stigma, that of heresy on grounds of going against the consensus. They were, however, "discreditable" or only potentially stigmatized, in the sense that their stigma was not visible or externally apparent, like blindness or a physical handicap, which would render them "discredited."[3] They could choose to hide this stigma by manipulating information about their identity, thus "passing" or blending in with the "normals," the Sunnī scholars. Claiming adherence to one of the

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[1]George Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History,"; idem., The Rise of Colleges, 8.

[2]Goffman, Stigma, 73-91, 130.

[3]Goffman, Stigma, 4-5, 41-42.

Sunnī guilds was one way to do this and avoid the prejudice caused by the

failure to uphold the norm of Sunnī orthodoxy.

It has been often stated that Shāfiʿī _fiqh_ is that which is closest to the

fiqh of the Twelver Shīʿīs. Goldziher states, "It has been observed that

Shīʿī ritual shows the closest kinship to Shāfiʿite ritual."[4] One might

suppose that this is merely coincidence, but it may also point to a more

profound relationship between the Shāfiʿī legal guild and Twelver Shīʿism.

One indication of a more significant connection is the numerous attested

instances of Shīʿīs' claiming to be Shāfiʿīs when on trial for heresy.

Muḥammad ibn Makkī al-Jizzīnī, who was tried and executed in Damascus

in 786/1384, claimed to be a Shāfiʿī at his trial.[5] The Iranian scholar Shihāb

al-Dīn ʿAbd Allāh ibn Maḥmūd al-Tustarī (d. 997/1588-89), captured by the

Uzbeks after an attack on the Safavid province of Khurasan, also claimed to

be a Shāfiʿī at his trial in Bukhara.[6] Al-Qāḍī Nūr Allāh al-Shushtarī,

executed on 18 Jumādā II, 1019/September 7, 1610 at the court of the

Moghul ruler Jahāngīr in India, claimed to be a Shāfiʿī when accused of

heresy.[7] Again, one may explain this as simply an expedient used when in

danger of losing one's life and due, primarily, to the agreement of many

[4]Goldziher, Introduction to Islamic Theology and Law, 205.

[5]Taqiyy al-Dīn Abū Bakr ibn Aḥmad Ibn Qāḍī Shuhbah al-Asadī al-Dimashqī, Tārīkh Ibn Qāḍī Shuhbah, vol. 1, ed. ʿAdnān Darwīsh (Damascus: al-Maʿhad al-ʿilmī al-faransī li 'l-dirāsāt al-ʿarabiyyah, 1977), 134-35.

[6]Iskandar Beg Munshī, Tārīkh-i ʿālam-ārā-yi ʿabbāsī, 2 vols., ed. Īraj Afshār (Tehran: Chāp-khānah-yi mūsavī, 1334 a.h.), 1: 154-55. See also Rawḍāt al-jannāt, 4: 230-34.

[7]Saiyid Athar Abbas Rizvi, A Socio-Intellectual History of the Isnā ʿAsharī Shīʿīs in India, 2 vols. (Canberra, Australia: Maʿrifat Publishing House, 1986), 1: 377-8

Shāfiʿī positions on the points of law with those of the Twelver Shīʿīs. There are, however, further indications of a more profound connection.

The Legal Curriculum of the Guilds

A brief look at the traditional curriculum is necessary before examining the tradition of Shīʿī learning under Sunnī teachers. With the establishment of the legal guilds came the systematic organization of a curriculum based primarily on the principles of legal interpretation put forward by al-Shāfiʿī in his Risālah. The sciences were divided into two main groups: the foreign sciences and the Islamic sciences. The Islamic sciences were divided into four areas: the study of the Qurʾān, the study of hadīth, the study of law, and the study of the literary arts, considered ancillary to the first three fields. The foreign sciences, so-called because of the acknowledged accomplishments of the Greeks in these fields, included mathematics, geometry, philosophy, medicine, and so on. For the most part, they were not taught in the madrasah, the main function of which was to produce scholars of the law, and were not part of the standard curriculum. The only science for which one could get a recognized degree was that of law; study of the foreign sciences was therefore optional. The one exception was logic, which though a foreign science was often considered the foundation of legal argumentation and the science of dialectic (jadal). Logic was therefore often, though not always, part of the legal curriculum. The ancillary literary arts included Arabic morphology, syntax, rhetoric, lexicography, and other sciences which enabled one to understand the legal source material, the Qurʾān and the hadīth. The ancillary sciences were not doctrinally marked, nor was logic. Sunnīs and Shīʿīs, Hanafīs and Shāfiʿīs could study the same books without there being any tension.

The source material, however, could be doctrinally marked. The Qur'ān, for the most part, was not. Although some Shī'īs accused the Caliph 'Uthmān of altering the text of the Qur'ān or omitting key passages from it, Shī'ī legal scholars have by and large accepted the text of the Qur'ān as it is. The Shī'īs have a relatively independent tradition of tafsīr, or exegesis of the Qur'ān, and the science of variant readings of the Qur'ān was fairly underdeveloped among the Shī'īs as opposed to the Sunnīs. Shī'ī hadīth, however, is recognized as constituting a separate body from Sunnī hadīth, the main difference being that the Shī'īs include in their hadīth traditions which go back to one of the Imams as well as those which go back to the Prophet himself. While Sunnīs and Shī'īs derive their legal interpretations from the Qur'ān and the hadīth in much the same way, they do not share the same source material for hadīth. Moreover, the science of hadīth criticism remained relatively underdeveloped among the Shī'īs until the tenth/sixteenth century.

In brief, tafsīr and hadīth were doctrinally marked to a great extent, and the sciences of qirā'āt and hadīth criticism were not well represented within Shī'ī tradition. As mentioned in Chapter Two, number of Sunnī hadīth works, called Sahīhs, were compiled to serve primarily as references for legal scholars, and were therefore divided up into the standard divisions of law. Six Sihāh became standard reference manuals for Sunnī scholars, while the Twelver Shī'īs had their own standard reference manuals, four in number. The study of hadīth was often ignored as part of the legal curriculum itself, as was tafsīr. In legal texts listing the requirements for ijtihād, it is often stated that one need not have memorized the hadīth or the Qur'ānic verses that one requires as reference material as long as one knows

where to find them in the standard manuals.[8] In addition to the hadīth manuals, manuals of commentary on the five hundred verses of the Qur'ān related to legal topics, called āyāt al-ahkām, were also compiled. The twentieth-century Shīʿī scholar Muḥsin al-Amīn voices a standard complaint when he states that contemporary jurists neglected the study of hadīth and hadīth criticism, and merely relied on the standard compilations.[9]

The study of legal topics per se was not only doctrinally marked, either Shīʿī or Sunnī, but was also segregated, to a large extent, by individual guild. Hanafīs read Hanafī manuals of fiqh, Hanafī text-books of usūl al-fiqh, and even khilāf works from the Hanafī point of view, and the same could be said for the Shāfiʿīs, Hanbalīs, and Mālikīs. The main centers for the teaching of fiqh and usūl al-fiqh were the madrasahs or colleges of law, and by attending a certain college and following its specific curriculum, each student made his choice of madhhab.

The Shīʿī Tradition of Legal Study under Sunnī Teachers

Many Twelver Shīʿī scholars are known to have studied under Sunnī teachers, and the following are some representative examples. The aim here is to demonstrate not only that extensive study under Sunnī teachers has been a regular phenomenon in Shīʿī intellectual history which merits recognition as an established tradition, but also that these scholars made considerable efforts to study doctrinally marked topics such as hadīth and law. While many of them studied a wide range of topics, including grammar, rhetoric, recitation of the Qur'ān, and logic, it appears that when they

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[8]Ibn al-Muṭahhar al-Hillī, Tahdhīb al-wuṣūl, MS British Museum, Or. 4213, fol. 103a.

[9]Muḥsin al-Amīn, Aʿyān al-shīʿah, 10: 352.

studied the legal sciences per se, they tended to study within the Shāfiʿī guild.

Muḥammad ibn Ibrāhīm ibn Yūsuf al-Kātib (fl. late third/ninth-early fourth/tenth century)

In his famous bibliographical catalogue, al-Fihrist, Ibn al-Nadīm (d. early fifth/eleventh c.) mentions a scholar who was both a Shāfiʿī and a Shīʿī, named Muḥammad ibn Ibrāhīm ibn Yūsuf al-Kātib. He was born in 281/894-95 in al-Ḥasaniyyah.[10] This scholar studied law as a Shāfiʿī and professed Shāfiʿī opinions outwardly, but held Shīʿī opinions secretly (kāna yatafaqqahu ʿalā madhabi 'sh-Shāfiʿiyyi fī 'z-zāhir, wa yarā raʾya sh-shīʿati 'l-imāmiyyati fī 'l-bātin). He was a jurisconsult in both traditions, and wrote legal works in both traditions (wa-kāna faqīhan ʿalā 'l-madhhabayni wa-lahu ʿalā 'l-madhhabayni kutub). Ibn al-Nadīm mentions his works in two separate sections, one on Shāfiʿī legal works and the other on Shīʿī legal works.[11] The famous Shīʿī scholar al-Shaykh al-Ṭūsī, drawing on Ibn al-Nadīm, also mentions this scholar in his bibliographical catalogue of Shīʿī books, Fihrist kutub al-shīʿah, recording that he studied both Shīʿī and Shāfiʿī law, but only giving the titles of his Shīʿī works.[12] This shows that

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[10]Ibn al-Nadīm, al-Fihrist, 278, 301. Unfortunately, I have not been able to locate al-Ḥasaniyyah.

[11]The titles Ibn al-Nadīm lists as Shāfiʿī works are the following: Kitāb al-basāʾir, Kitāb al-ablā, Kitāb al-radd ʿalā al-Karkhī, and Kitāb al-mufīd fī al-ḥadīth. [al-Fihrist, 301] The titles he lists as Shīʿī works are the following Kitāb kashf al-qināʿ, Kitāb al-istiʿdād, Kitāb al-ʿuddah, Kitāb al-istibsār, Kitāb naqd al-ʿAbbāsiyyah, Kitāb al-maqtal, Kitāb al-mufīd fī al-ḥadīth, and Kitāb al-tarīq. [al-Fihrist, 278] It is interesting to note that one work, Kitāb al-mufīd fī al-ḥadīth, appears in both lists.

[12]Muḥammad ibn al-Ḥasan al-Ṭūsī, Fihrist kutub al-shīʿah, ed. Muḥammad Ṣādiq Baḥr al-ʿUlūm (Najaf: al-Maṭbaʿah al-ḥaydariyyah, 1961), 159-60. Al-Ṭūsī reports that Ibn al-Nadīm mentioned this scholar.

the legal traditions were generally conceived as separate entities, and that at least one scholar participated in both. Given that Ibn al-Kātib was born in 281/894-95, this must have occurred in the early to mid-fourth/tenth century. Ibn al-Nadīm was writing the Fihrist in 377/987-88, as he himself mentions, but does not give the death date of Ibn al-Kātib.[13]

al-Shaykh al-Ṭūsī (d. 460/1067)[14]

Al-Subkī includes al-Shaykh al-Ṭūsī (d. 460/1067), the well known Shīʿī scholar of the Buwayhid period, in his Ṭabaqāt al-shāfiʿiyyah al-kubrā, and explicitly claims that al-Ṭūsī was a Shāfiʿī.[15] In the biographical notice he devotes to al-Ṭūsī, al-Subkī makes it clear that he knew al-Ṭūsī was an important Shīʿī scholar. He states that al-Ṭūsī was the jurisconsult and author of the Shīʿīs (faqīh ash-shīʿah wa-musannifuhum), but this does not deter him from claiming that he was also a Shāfiʿī in the following statement: "He claimed adherence to the madhhab of al-Shāfiʿī" (kāna yantamī ilā madhhabi 'sh-Shāfiʿī). Al-Subkī also states, "He came to Baghdad and studied law following the madhhab of al-Shāfiʿī" (qadima baghdāda wa-tafaqqaha ʿalā madhhabi sh-Shāfiʿī), implying that al-Ṭūsī first claimed membership in the Shāfiʿī madhhab after or upon coming to Baghdad.

Al-Subkī also states that al-Ṭūsī transmitted hadīth from Hilāl al-Haffār, who was apparently a Sunni.[16] It could be that al-Subkī based the

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[13]al-Fihrist, 307.

[14]For a general biography of al-Ṭūsī, see Brockelmann, GAL, SI: 706-7; Muhsin al-Amīn, Aʿyān al-shīʿah, 9: 159-67;

[15]Tāj al-Dīn al-Subkī, Ṭabaqāt al-shāfiʿiyyah al-kubrā, 10 vols., ed. ʿAbd al-Fattāh al-Hilw and Mahmūd Muhammad al-Tanāhī (Cairo: ʿIsā al-Bābī al-Halabī, 1964), 4: 126-7.

[16]Ṭabaqāt al-shāfiʿiyyah al-kubrā, 4: 127.

conclusion that al-Ṭūsī studied Shāfiʿī law on this fact alone. While al-Subkī's information is not known to be corroborated by any earlier sources, it is clear that it did not bother al-Subkī to include a famous Shīʿī scholar in his history of the Shāfiʿī guild.

Ibn Mullā al-Baʿlabakkī (d. 699/1300)[17]

Najm al-Dīn Aḥmad ibn Muḥassin, known as Ibn Mullā al-Baʿlabakkī, was born in 617/1220-21 in the town of Baʿlabakk in what is now Lebanon. The title Mullā of his grandfather probably indicates that they were of Iranian origin. He studied primarily in Damascus, spent some time in Baghdad, and traveled to Egypt several times. Both Tāj al-Dīn al-Subkī and al-Isnawī include him in their biographical dictionaries of Shāfiʿī scholars, and al-Subkī praises him highly, adding that he excelled in the skills of debate, had an incredible memory, and served as a mufti. While in Baghdad, he was a repetitor (muʿīd) at the Niẓāmiyyah madrasah. Al-Isnawī adds that he was accused of Shīʿī heresy (rafd), and that his native region of Baʿlabakk was populated by Shīʿīs (wa ahluhū rāfidah). The fact that al-Baʿlabakkī spent time in Upper Egypt may also indicate that he was a Shīʿī, for, as al-Isnawī reports, during this period, there remained Shīʿī communities, presumably left over from the Fāṭimid period, in and around his native village of Isnā in Upper Egypt (wa kānat baqāyā r-rāfidatī wa 'sh-shīʿati mawjūdatan fī isnā wa ghayrihā mimmā yuqāribuhā).[18] The modern Shīʿī scholar Ḥasan al-Ṣadr adds that Ibn Mullā concealed his true

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[17]al-Subkī, Ṭabaqāt al-shāfiʿiyyah, (Ḥusayniyyah ed.), 5: 13-14; al-Isnawī, Ṭabaqāt al-Shāfiʿiyyah, 2 vols., ed. ʿAbd Allāh al-Jubūrī (Baghdad: Maṭbaʿat al-irshād, 1971), 4: 462-63; ʿAbd al-Ḥayy Ibn al-ʿImād al-Ḥanbalī, Shadharāt al-dhahab fī tārīkh man dhahab, 8 vols. (Cairo: Maktabat al-Qudsī, 1351), 5: 444-45.

[18]al-Isnawī, Ṭabaqāt al-shāfiʿiyyah, 2: 331-32.

allegiance by joining the Shāfiʿīs (tasattara bihā).[19] He died in the village of Najʿūn in Jibāl Ṭinnīn in Jumādā I, 699/February, 1300.

Ibn al-Muṭahhar al-Ḥillī (d. 726/1325)[20]

Ibn al-Muṭahhar, known as al-ʿAllāmah al-Ḥillī, was a prolific Twelver Shīʿī scholar who spent a number of years in Iran and most of his life in his native Ḥillah in southern Iraq. He was born on 19 Ramaḍān, 648/December 15, 1250,[21] and was the nephew of the renowned Twelver Shīʿī scholar Najm al-Dīn Jaʿfar, known as al-Muḥaqqiq al-Ḥillī (d. 676/1276). Later in his career, he had contact with Sunnī scholars at the court of the Ilkhānid ruler Muḥammad Khudābandah Uljaytū, who reigned from 703/1304 until his death in 716/1316. Sulṭāniyyah, in northwest Persia, was Uljaytū's capital, and an ijāzah that al-ʿAllāmah al-Ḥillī issued to Tāj al-Dīn Maḥmūd ibn Zayn al-Dīn Muḥammad ibn al-Qāḍī Sadīd al-Dīn ʿAbd al-Wāḥid al-Rāzī places him there at the end of Rabīʿ II, 709/October, 1309.[22] Al-ʿAllāmah dedicated three of his works to Uljaytū, who was at first a Christian, then a Sunnī, then a Shīʿī, and Shīʿī scholars have attributed his conversion to

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[19]Hasan al-Ṣadr, Takmilat amal al-āmil, ed. Aḥmad al-Ḥusaynī (Beirut: Dār al-aḍwāʾ, 1986), 99.

[20]For a general biography of al-Ḥillī, see GAL, GII: 164, SII: 206-9; Amal al-āmil, 2: 81-85; Luʾluʾat al-Baḥrayn, 210-27; Aʿyān al-shīʿah, 5: 396-407; Mīrzā ʿAbd Allāh al-Iṣfahānī, Riyāḍ al-ʿulamāʾ, 1: 358-90; al-Khwānsārī, Rawḍāt al-jannāt, 2: 269-86; Ibn Ḥajar al-ʿAsqalānī, al-Durar al-kāminah fī aʿyān al-miʾah al-thāminah, 4 vols. (Ḥaydarābād: Maṭbaʿat majlis al-maʿārif al-ʿuthmāniyyah, 1930), 2: 71; Ibn al-Muṭahhar al-Ḥillī, Rijāl al-ʿAllāmah al-Ḥillī [originally entitled Khulāsat al-aqwāl fī ʿilm al-rijāl] (Najaf: al-Maṭbaʿah al-ḥaydariyyah, 1961), 45-49; "al-Ḥillī," EI2 S. H. M. Jafri; Michel M. Mazzauoi, The Origins of the Safawids, 27-34.

[21]Rijāl al-ʿAllāmah al-Ḥillī, 48.

[22]Biḥār al-anwār al-jāmiʿah li-durar akhbār al-aʾimmah al-aṭhār, 110 vols. (Tehran: al-Maktabah al-islāmiyyah, 1956-72), 107: 142.

Shīʿism to the influence of al-ʿAllāmah himself.[23] Uljaytū issued coins engraved with the names of the twelve Imams and the statement "Alī is the chosen one of God" (ʿAliyyun waliyyu 'Llāh), and suppressed the mention of the first three Sunnī Caliphs in the Friday sermon.[24]

Ibn Kathīr reports that al-Ḥillī studied in Baghdad.[25] Ibn Rajab relates that al-Ḥillī held discussions with ʿAbd Allāh ibn Muḥammad al-Zarīratī (d. 729/1329), the top Ḥanbalī scholar in Baghdad during this period and a professor of law at the Mustanṣiriyyah. He states that al-Zarīratī

> was recognized as the top scholar in Baghdad by both friend and foe. Jurisconsults from all sects would meet with him, and learn from him concerning their own legal traditions. They would treat him with great respect and consult his opinions and citations of their own legal traditions (naqluhu li-madhāhibihim). He would turn them away from the legal opinions they had given, and they would concede to him, adopt his opinion, and admit to him the benefit to their schools of what he had imparted to them. Even Ibn al-Muṭahhar, the leading Shīʿī scholar (shaykh al-shīʿah) did so. Master Taqiyy al-Dīn used to point out to him mistakes he had made in citing earlier Shīʿī legal sources (naqluhū li-madhhab al-shīʿah), and [Ibn al-Muṭahhar] would concede to him.[26]

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[23]For a brief description of al-Ḥillī's connection with the Ilkhānids, see Mazzaoui, The Origins of the Safawids, 27-34. The three works are entitled Istiqsāʾ al-bahth wa al-nazar fī masāʾil al-qadāʾ wa al-qadar, Kashf al-haqq wa nahj al-sidq, and Minhāj al-karāmah fī maʿrifat al-imāmah.

[24]"al-Ḥillī," s. v. EI2 (S. H. M. Jafri).

[25]The text reads: kāna 'shtighāluhū bi-baghdāda wa-ghayrihā min al-bilād. ʿImād al-Dīn Ismāʿīl ibn ʿUmar Ibn Kathīr, al-Bidāyah wa al-nihāyah fī al-tārīkh, 14 vols. (Cairo: Maṭbaʿat al-saʿādah, 1939), 14: 125.

[26]Ibn Rajab ʿAbd al-Raḥmān al-Baghdādī, Kitāb al-dhayl ʿalā tabaqāt al-hanābilah, 2 vols., ed. Muhammad Hāmid al-Fiqī (Cairo: Maṭbaʿat al-sunnah al-muhammadiyyah, 1953), 2: 411.

On 15 Sha'bān, 723/August 19, 1323, al-'Allāmah wrote a very long ijāzah for members of the Banū Zuhrah family from Aleppo who had come to Iraq.[27] This ijāzah contains valuable information on al-Ḥillī's studies with Sunnī scholars. Though it is likely that al-Ḥillī performed the pilgrimage during his lifetime, there is no documentation of his traveling to Damascus or Cairo, and it appears that his movements were by and large limited to Iraq and Iran. He mentions five Sunnī teachers, one from Kūfah and the four others apparently residents of Baghdād. His statements imply that he studied for a considerable period of time in Baghdad itself.

(1) Of Jamāl al-Dīn Ḥusayn ibn Ayāz al-Baghdādī al-Naḥwī,[28] al-Ḥillī reports, "This Master was the most learned of his age in syntax and morphology, and has good works on adab."[29] Al-Ḥillī transmits the Mukhtasar of Ibn al-Ḥājib, a Sunnī text-book of usūl al-fiqh, from him.[30] This scholar was the professor of grammar (shaykh al-nahw) at the Mustanṣiriyyah madrasah and died in 681/1282-83.

(2) Of Shams al-Dīn Muḥammad ibn Muḥammad ibn Aḥmad al-Kīshī, al-Ḥillī states,

> This Master was one of the most learned scholars of the
> Shāfi'īs, and was one of the fairest jurists in debate. I used to
> study under him and occasionally raise objections to him. He
> would reflect, then answer sometimes, and sometimes say, "So
> that I might contemplate this matter, ask me this question again
> later ('āwidnī hādhā 's-su'āl)." I would ask him again one, two,
> or three days later, and sometimes he would answer and

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[27]Bihār al-anwār, 107: 60-137.
[28]GAL, GI: 303, SI: 531.
[29]Bihār al-anwār, 107: 65.
[30]Bihār al-anwār, 107: 104.

sometimes he would admit, "I am unable to answer this question."[31]

This scholar was the professor of Shāfi'ī law at the Niẓāmiyyah Madrasah and died in Shīrāz in 695/1295-96.

(3) Najm al-Dīn 'Alī ibn 'Umar al-Kātibī al-Qazwīnī, known as Dabīrān,[32] was a student of Naṣīr al-Dīn al-Ṭūsī (d. 672/1274) and an expert in logic and philosophy. His most famous work was his treatise on logic, al-Risālah al-shamsiyyah fī qawā'id al-mantiqiyyah, which is still used in the traditional Shī'ī curriculum. Of this scholar al-Ḥillī writes,

> He was one of the learned men of the age, and the most accomplished in logic. He had many works. I read all of Sharh al-Kashf with him except for a small part. He had a pleasant disposition (khulq hasan) and excelled in disputation. He was one of the most learned Shāfi'ī scholars and an expert in theosophy (hikmah).[33]

He died in 675/1276-77 or 693/1274.

(4) Concerning Burhān al-Dīn al-Nasafī,[34] al-Ḥillī relates,

> The Master was extremely respected ('aẓīm al-shā'n) and an ascetic. He wrote on dialectic (jadal), and dealt with the most

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[31]Bihār al-anwār, 107: 66.

[32]GAL, GI: 466, SI: 845.

[33]Bihār al-anwār, 107: 66.

[34]See GAL, SI: 754. I have not been able to identify this teacher exactly. One scholar named al-Nasafī completed a commentary on al-Ghazālī's al-Mustasfā in 665/1266 and wrote another work on uṣūl al-fiqh entitled Tahdhīb al-uṣūl. This could be the scholar to whom al-Ḥillī refers.

difficult questions (istakhraja masâ'il mushkilah). I studied
some of his works on disputation. He has many works.[35]

(5) Of Taqiyy al-Dīn ʿAbd Allāh ibn Jaʿfar ibn ʿAlī ibn al-Ṣabbāgh al-Kūfī,
al-Ḥillī writes, "This master was an upright man, a Ḥanafī jurisconsult in
al-Kūfah."[36] Al-Ḥillī transmits al-Kashshāf, the famous tafsīr of
al-Zamakhsharī (d. 538/1134), from this teacher.[37]

From the information al-Ḥillī gives, it appears that he studied in
Baghdād during his earlier years. Given that al-Kīshī died in 695/1295-96,
Ibn Ayāz al-Naḥwī died in 681/1282-83, and Dabīrān died in 675/1276-77
or 693/1274, this must have been when al-Ḥillī was fairly young. It seems
that the four scholars who taught al-Ḥillī in Baghdād were all Shāfiʿīs.
Al-Kīshī in particular, with whom al-Ḥillī probably studied legal sciences,
was the professor of Shāfiʿī law at al-Niẓāmiyyah. Thus it seems clear that
among the subjects which al-Ḥillī studied in Baghdad was Shāfiʿī law.

Quṭb al-Dīn Muḥammad ibn Maḥmūd al-Razī (d. 766/1365)

Quṭb al-Dīn al-Rāzī[38] was a native of Rayy and the author of several
important works on logic and dogma, including especially a commentary on
Dabīrān's compendium of logic, al-Risālah al-shamsiyyah, which became a
standard text-book. The town of Rayy was divided between Sunnis and

[35]Bihār al-anwār, 107: 66-67.
[36]Bihār al-anwar, 107: 67.
[37]Bihār al-anwār, 107: 103.
[38]For a general biography, see GAL, GI: 290, 454, 466-67, GII: 209; SII:
293; Muḥsin al-Amīn, Aʿyān al-shīʿah, 9: 413; Luʾluʾat al-Baḥrayn, 194-99;
Amal al-āmil, 2: 300-1; Riyād al-ʿulamāʾ, 5: 168-72; al-Subkī, Ṭabaqāt
al-shāfiʿiyyah, (Ḥusayniyyah), 6: 31; al-Suyūṭī, Bughyat al-wuʿāt fī tabaqāt
al-lughawiyyīn wa al-nuḥāt, 2 vols., ed. Muḥammad Abū al-Faḍl Ibrāhīm
(Cairo: Maṭbaʿat al-Bābī al-Ḥalabī, 1964), 2: 281; Rawdāt al-jannāt, 7: 5;
Riyād al-ʿulamāʾ, 5: 169.

Shiʿīs, yet al-Rāzī was generally known as a Shāfiʿī Sunnī scholar, and al-Subkī includes him in his biographical dictionary of the Shāfiʿīs, Tabaqāt al-shāfiʿiyyah al-kubrā.[39] However, the qualified nisbah given to al-Rāzī by al-Subkī, al-Rāzī al-Taḥtānī, probably indicates that he was from the Shiʿī section of the town. An ijāzah preserved in Bihār al-anwār shows that al-Rāzī studied with al-ʿAllāmah al-Ḥillī in Warāmīn in 713/1313 and read Qawāʿid al-ahkām, one of al-ʿAllāmah's works on Shiʿī fiqh.[40] After al-Rāzī moved to Damascus in 763/1362, al-Shahīd al-Awwal was able to obtain an ijāzah from him at the end of Shaʿbān, 766/May, 1365. Al-Shahīd al-Awwal records that he met al-Rāzī in Damascus and found that al-Rāzī was indeed a Shiʿī. He states, "He was an Imāmī without any doubt. He stated so explicitly and I heard him say this."[41] Al-Shahīd al-Awwal reports that he died on 12 Dhū al-Qaʿdah, 766/August 1, 1365,[42] while al-Subkī reports that he died on the sixteenth of the same month (August 5, 1365).[43] Yūsuf al-Bahrānī reports that a Syrian Shiʿī scholar in Damascus later copied Qutb al-Dīn al-Rāzī's marginal notes on al-Ḥillī's Qawāʿid al-ahkām, and the resulting work became known as al-Hawāshī al-qutbiyyah.[44]

Muḥammad ibn Makkī al-Jizzīnī (d. 786/1384)[45]

399: 274-75.

[40]Bihār al-anwār, 107: 138-40.

[41]Bihār al-anwār, 107: 141.

[42]Bihār al-anwār, 107: 140-41.

[43]GAL, SII: 293; al-Subkī, Tabaqāt al-shāfiʿiyyah, 6: 31.

[44]Luʾluʾat al-Bahrayn, 199.

[45]For a general biography, see Muḥammad Riḍā Shams al-Dīn, Hayāt al-imām al-Shahīd al-Awwal (Najaf: Maṭbaʿat al-ghariyy al-hadīthah, 1957); Aʿyān al-shiʿah, 10: 59-64; Amal al-āmil, 1: 181-83; Luʾluʾat al-bahrayn, 143-48; Riyād al-ʿulamāʾ, 5: 185-91; Rawdāt al-jannāt, 7: 3-22.

Shams al-Dīn Muḥammad Abū ʿAbd Allāh ibn Makkī al-Jizzīnī

al-ʿĀmilī, known as al-Shahīd al-Awwal (the "First Martyr") because he was

executed as a heretic in Damascus, was born in Jizzīn, in what is now

southern Lebanon, in 734/1333-34. He grew up there, and studied with his

father. He went to Iraq at a young age primarily to study with Shīʿī

teachers in al-Ḥillah. Ijāzahs mentioned in al-Shahīd al-Awwal's Arbaʿūn

hadīth, which he completed on 18 Dhū 'l-Ḥijjah, 782/March 15, 1381,[46] show

that he studied in Iraq between 751/1350, when he was only seventeen

years old, and 756/1355.[47] Al-ʿAllāmah al-Ḥillī had died before al-Shahīd

al-Awwal was born, but he was able to study with al-ʿAllāmah's son

Muḥammad, known as Fakhr al-Muḥaqqiqīn (d. 771/1370), as well as with a

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[46]Arbaʿūn hadīth (Tehran, 1318), 213.

[47]He received an ijāzah from Abū Ṭālib Muḥammad known as Fakhr
al-Muḥaqqiqīn, the son of al-ʿAllāmah al-Ḥillī in his house in Ḥillah on 20
Shaʿbān 751/October 23, 1350. [Arbaʿūn hadīth, 184] He received an ijāzah
from al-Murtaḍā ʿAmīd al-Dīn ʿAbd al-Muṭallib ibn Muḥammad ibn ʿAlī
al-Aʿrajī al-Ḥusaynī, the well known author of al-Sharh al-ʿAmīdī, in
Karbalāʾ on 19 Ramaḍān, 751/November 20, 1350. [Arbaʿūn hadīth, 183,
207] He received an ijāzah in Ḥillah from Abū Muḥammad al-Ḥasan ibn
Aḥmad ibn Najīb al-Dīn Muḥammad al-Ḥillī in Rabīʿ II, 752/June, 1351.
[Arbaʿūn hadīth, 185] He received an ijāzah from Tāj al-Dīn Abū Jaʿfar ibn
al-Qāsim ibn al-Ḥusayn ibn Maʿiyyah al-Dībājī in Ḥillah on 15 Shawwāl,
753/December 24, 1352. [Arbaʿūn hadīth, 186-87] He received an ijāzah
from Zayn al-Dīn Abū al-Ḥasan ʿAlī ibn Aḥmad ibn Ṭirād al-Maṭārābādī in
Ḥillah on 6 Rabīʿ II, 754/May 11, 1353. [Arbaʿūn hadīth, 186, 205] He
received another ijāzah from Tāj al-Dīn Ibn Maʿiyyah al-Dībājī in Ḥillah on
16 Shaʿbān, 754/September 16, 1353. [Arbaʿūn hadīth, 190] He received
another ijāzah, partly preserved in Biḥār al-anwār, from Ibn Maʿiyyah on
Saturday, 11 Shawwāl 754/November 9, 1355. [Biḥār al-anwār, 107: 182]
He received two other ijāzahs from Fakhr al-Dīn Muḥammad the son of
al-ʿAllāmah at his house in Ḥillah, one on Friday, 3 Jumādā I, 756/May 16,
1355, and one on 6 Shawwāl, 756/October 14, 1355. [Arbaʿūn hadīth, 194,
208] He received another ijāzah from the same professor in his house in
Ḥillah on 6 Shawwāl, 756/October 14, 1355, and it is preserved in Biḥār
al-anwār. [Biḥār al-anwār, 107: 177-78]

number of al-ʿAllāmah's former students. Fakhr al-Muḥaqqiqīn taught him in his house, from the _majlis_ where al-ʿAllāmah himself used to teach. [48]

In several _ijāzahs_, al-Shahīd al-Awwal reports that he studied with a large number of Sunnī scholars. On 13 Ramaḍān, 784/September 20, 1382 in Damascus, he issued a long _ijāzah_ to Zayn al-Dīn ʿAlī ibn al-Ḥasan, known as Ibn al-Khāzin since his father was the keeper of the shrine of Ḥusayn at Karbalāʾ.[49] In this _ijāzah_ he records that he studied with about forty Sunnī teachers from Mecca, Medinah, Baghdad, Cairo, Damascus, Jerusalem, and Khalīl.[50] He probably studied in almost all of these cities, and it is documented that he traveled to Baghdad, Damascus, and the Ḥijāz. He probably visited Jerusalem and Khalīl on the way to or from the Ḥijāz. It is not documented, however, that he ever traveled to Egypt, and it is probable that he studied with Egyptian scholars only in the Ḥijāz. This is corroborated by another long _ijāzah_ which he issued to Muḥammad ibn Tāj al-Dīn ʿAbd ʿAlī, known as Ibn Najdah, on 10 Ramaḍān 770/April 18, 1369,[51] and which states that he studied with many scholars in Damascus, Iraq, and the Ḥijāz.[52]

Al-Shahīd al-Awwal made the pilgrimage of 754/1353-54, and he seems to have taken the opportunity to benefit from the presence of important Sunnī teachers. In Medina on 22 Dhū al-Ḥijjah 754/January 18, 1354 he received an _ijāzah_ from ʿIzz al-Dīn ʿAbd al-ʿAzīz ibn Muḥammad ibn Ibrāhīm Ibn Jamāʿah al-Kinānī al-Shāfiʿī (d. 767/1366), the chief judge

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[48]_Arbaʿūn hadīth_, 184, 194, 208; _Biḥār al-anwār_, 107: 177-78.
[49]_Biḥār al-anwār_, 107: 186-92.
[50]_Biḥār al-anwār_, 107: 190.
[51]_Biḥār al-anwār_, 107: 193-201.
[52]_Biḥār al-anwār_, 107: 195.

(qadi al-qudat) of the Shafi'is in Egypt.[53] Also in Medina in Dhū al-Hijjah, 754/January, 1354, he received an ijazah from 'Afif al-Din 'Abd Allah ibn Muhammad al-Khazrajī al-Madanī al-Maṭarī, another Egyptian scholar.[54] He received an ijazah from a third Egyptian scholar, Sirāj al-Din al-Damanhūrī, for Sahīh al-Bukhārī in the Hijāz, at the Ka'bah itself, but does not mention the date.[55]

Al-Shahīd al-Awwal appears to have spent most of his time in Iraq in predominantly Shī'ī areas, including al-Ḥillah and Karbalā', but some documents indicate that he also studied with Sunnīs in Baghdad, as al-'Allāmah had done before him. He received an ijazah from Jamāl al-Din 'Abd al-Ṣamad ibn Ibrāhīm al-Baghdādī al-Ḥanbali, the hadīth professor of the Dār al-hadīth in Baghdad.[56] He received an ijazah from a Shafi'ī Sunni scholar, Shams al-Din Muhammad ibn Yūsuf ibn 'Alī al-Kirmānī al-Baghdādī al-Qurashī,[57] in Baghdad in first days of Jumādā I, 758/April, 1357. This ijazah is preserved in its entirety in Bihār al-anwār.[58] The teacher states that he gave the ijazah in his house on the Darb al-Mas'ūd. The works mentioned in the ijazah are al-Mawāqif al-sultāniyyah, al-Fawā'id al-ghiyāthiyyah, and Sharh mukhtasar al-muntahā, along with their three commentaries, all by 'Aḍud al-Din 'Abd al-Rahmān ibn Zayn al-Din Ahmad al-Ijī. The Sharh mukhtasar al-muntahā, a commentary on Ibn al-Ḥājib's

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[53]Bihār al-anwār, 109: 70. A member of the well-known Ibn Jamā'ah family, he held the position of chief judge in Cairo from 738/1337 until 749/1348. GAL, GII: 72, SII: 78.

[54]Bihār al-anwār, 109: 71.

[55]Bihār al-anwār, 107: 200.

[56]Bihār al-anwār, 109: 73-73.

[57]See GAL, SII: 211-12.

[58]Bihār al-anwār, 107: 183-84.

Mukhtasar, was a standard Shāfiʿī text-book of usūl al-fiqh. Al-Kirmānī had studied with al-Ijī himself, and died in 786/1384.[59]

In the ijāzah to Ibn Najdah, al-Shahīd al-Awwal reports that he studied the Alfiyyah of Ibn Mālik with Shihāb al-Dīn Abū 'l-ʿAbbās Aḥmad ibn al-Ḥasan al-Ḥanafī in Jerusalem, whom he describes as "jurisconsult of the dome of the rock" (faqīh al-sakhrah al-sharīfah).[60] He also studied this work with Burhān al-Dīn Ibrāhīm ibn al-Jaʿbarī in Khalīl,[61] and received an ijāzah for it from a Sunnī scholar in Khalīl (Hebron), Ibrāhīm ibn ʿUmar Burhān al-Dīn al-Jaʿfarī. He relates al-Jāmiʿ al-Saḥīh of al-Bukhārī not only through his Shīʿī teacher Fakhr al-Dīn, but also through Sharaf al-Dīn Muḥammad ibn Biktāsh al-Tustarī, a Shāfiʿī, he reports, who settled in Baghdād and held the post of professor of Shāfiʿī law at the Niẓāmiyyah. He also transmits this work from Shams al-Dīn Muḥammad ibn ʿAbd Allāh al-Baghdādī al-Ḥanbalī, Fakhr al-Dīn Muḥammad ibn al-Aʿazz al-Ḥanafī, and Shams al-Dīn Abū ʿAbd al-Raḥmān Muḥammad ibn ʿAbd al-Raḥmān, a professor of Mālikī law at the Mustanṣiriyyah.[62] He relates the Saḥīh of Muslim from Sharaf al-Dīn al-Shāfiʿī.[63]

In the ijāzah to Ibn al-Khāzin, he mentions that under Sunnī teachers he studied many works on hadīth, including the Saḥīh of al-Bukhārī, the Saḥīh of Muslim, the Musnad of Abū Dāʾūd, al-Jāmiʿ by al-Tirmidhī, the Musnad of Aḥmad Ibn Ḥanbal, al-Muwaṭṭaʾ by Mālik, the Musnad of Ibn Mājah, al-Mustadrak ʿalā al-Saḥīhayn by al-Ḥākim al-Nīsābūrī, and others.[64]

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[59]GAL, SII: 211-12; Shadharat al-dhahab, 6: 294.
[60]Bihār al-anwār, 107: 199.
[61]Bihār al-anwār, 107: 199.
[62]Bihār al-anwār, 107: 200.
[63]Bihār al-anwār, 107: 200.
[64]Bihār al-anwār, 107: 191.

He studied al-Shatibiyyah, a famous work on Qur'anic recitation, with many

scholars, including a Baghdadi scholar, Shams al-Din Muhammad ibn ʿAbd

Allah al-Baghdadi,[65] a chief Qadi of Cairo, Burhan al-Din Ibrahim Ibn

Jamaʿah, with whom he read the work in Jerusalem, and a professional

Qur'an reciter in Jerusalem, Gharas al-Din Khalil al-Naqusi.[66] He studied

al-Zamakhshari's tafsir, al-Kashshaf, with another chief Qadi from Cairo, ʿIzz

al-Din ʿAbd al-ʿAziz Ibn Jamaʿah.[67]

Al-Shahid al-Awwal probably spent most of his later years in

Damascus and his native town Jizzin.[68] In Damascus in Shaʿban, 766/May,

1365, he received an ijazah from the famous scholar al-Shaykh Qutb al-Din

Muhammad ibn Muhammad al-Razi, as mentioned above.[69] The

contemporary Sunni scholar al-Jazari (d. 833/1429) reports that al-Shahid

al-Awwal studied Qur'anic recitation with the students of Ibn al-Mu'min,

and that he studied for many years under Ibn al-Labban, a Sunni teacher in

Damascus. A statement Ibn al-Labban makes concerning him shows that he

was known even among Sunnis as an expert on law, for he reports that

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[65]Bihar al-anwar, 107: 191.

[66]Bihar al-anwar, 109: 55-56.

[67]Bihar al-anwar, 107: 191.

[68]Ibn Qadi Shuhbah reports that prior to his arrest and subsequent execution, al-Shahid al-Awwal was residing in Jizzin. Ibn Qadi Shuhbah, Tarikh Ibn Qadi Shuhbah, 1: 134-35.

[69]The ijazah section of Bihar al-anwar mentions two ijazahs which al-Shahid al-Awwal received, but they include contradictory information. In one passage, al-Shahid al-Awwal reports that he received an ijazah from al-Razi in Shaʿban, 766/1365, and that al-Razi died later that same year, on 12 Dhu al-Qaʿdah, 766/August 1, 1365. [Bihar al-anwar, 107: 140-41] In another passage, he reports that he received an ijazah in Damascus in 768/1366-67. [Bihar al-anwar, 107: 188] Clearly, both accounts cannot be true, and either the death of al-Razi did not occur in 766/1365 or the date of the second ijazah is wrong.

al-Shahīd al-Awwal was "an accomplished scholar in law, syntax, and recitation of the Qurʾān" (imām fī 'l-fiqh wa 'n-nahw wa 'l-qirāʾah).[70] The specific terms Ibn al-Labbān uses to describe his relationship with al-Shahīd al-Awwal indicate that he was an advanced student and well integrated into the Sunnī scholarly community. "He was my fellow for a lengthy period, and I never heard from him anything contrary to the [beliefs of the] Sunnīs" (sahibanī muddatan madīdah, fa-lam asmaʿ minhu mā yukhālifu 's-sunnah).[71] The verb sahiba (to be the fellow of someone) is of particular importance here, because it is a technical term which designates the relationship between a teacher and his most advanced students, termed ashāb (sing. sāhib) or fellows.[72]

Several accounts show that al-Shahīd al-Awwal claimed to belong to the Shāfiʿī legal guild. Shams al-Dīn ibn al-Jazarī, the author of Tabaqāt al-qurrāʾ, writes that al-Shahīd al-Awwal claimed to be a Shāfiʿī jurisconsult. Specifically he states that al-Shahīd al-Awwal himself attached the nisbah al-Shāfiʿī to his name in a summons (istadʿāʾ) he wrote to the author.[73]

Accounts of al-Shahīd al-Awwal's trial and execution also make it clear that he claimed to be a Shāfiʿī. There are two detailed contemporary accounts of al-Shahīd al-Awwal's heresy trial and execution, one by a Sunnī Damascene scholar, Ibn Qādī Shuhbah,[74] and the other by a Shīʿī student of al-Shahīd al-Awwal, al-Fādil al-Miqdād ibn ʿAbd Allāh al-Suyūrī al-Hillī (d.

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[70]Muhammad ibn Muhammad al-Jazarī, Ghāyat al-nihāyah fī tabaqāt al-qurrāʾ, ed. G. Bergstrasser (Cairo: Matbaʿat al-saʿādah, 1933), 265.

[71]al-Jazarī, Ghāyat al-nihāyah fī tabaqāt al-qurrāʾ, 265.

[72]See George Makdisi, The Rise of Colleges, 128-29.

[73]Tārīkh Qādī Ibn Shuhbah, 1: 151.

[74]Tārīkh Qādī Ibn Shuhbah, 1: 134-35.

826/1423).[75] He was tried at Dār al-saʿādah after being imprisoned for a year in the citadel of Damascus. An affidavit filed with the Qāḍī of Beirut and signed by a large number of men from Jabal ʿĀmil and the adjacent coastal region accused him of holding heretical beliefs and opinions and issuing legal responsa according to these opinions.[76] It appears that al-Shahīd al-Awwal was tricked in the trial, for both accounts state that he was led to confess thinking that he would merely have to recant afterwards. Instead, the Shāfiʿī chief judge, ʿAbbād ibn Jamāʿah, rather than giving his own verdict, required the Mālikī chief judge, Burhān al-Dīn, to give the verdict according to Mālikī law. Burhān al-Dīn seems to have had no choice but to rule that the defendant be executed, since the Mālikīs do not accept the repentance of a proven heretic. Al-Shahīd al-Awwal was put to death by sword immediately, in the open area below the citadel, and his body was subsequently crucified, stoned, and burned by the mob. Ibn Qāḍī Shuhbah gives the date of the execution as 10 Jumādā I, 786/June 30, 1384.[77] The concern here is not with the details of the trial, but rather with the fact that during the trial, al-Shahīd al-Awwal claimed to belong to the Shāfiʿī legal guild. He is reported to have told the Shāfiʿī chief judge, "I am of the Shāfiʿī guild, and you are the foremost jurisconsult (imām) and judge of the Shāfiʿī guild. Give your verdict concerning me according to your guild."[78]

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[75]Biḥār al-anwār, 107: 184-86; Luʾluʾat al-bahrayn, 146-48.

[76]Biḥār al-anwār, 107: 185.

[77]Tārīkh Ibn Qāḍī Shuhbah, 134-35. A short account written by one of al-Shahīd al-Awwal's sons states that he was executed and then burned below the citadel of Damascus on Thursday, 9 Jumādā I, 786/June 29, 1384. Biḥār al-anwār, 107: 186.

[78]Biḥār al-anwār, 107: 185.

ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī (d. 940/1534)[79]

ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī, known in Shīʿī scholarly tradition as al-Muḥaqqiq al-Thānī ("the Second Verifier") was one of the most influential Shīʿī scholars in the history of the early Safavid Empire and associated closely with Shah Ismāʿīl I (907/1501-930/1524) and his successor Shah Ṭahmāsb (930/1524-984/1576). He was a native of Karak Nūḥ, which is situated in the Biqāʿ valley at the foot of Mount Lebanon.[80] He studied under the leading scholar in Najaf at the time, ʿAlī ibn Hilāl al-Jazāʾirī, and became the top authority in Najaf upon al-Jazāʾirī's death ca. 909-915. Before that, however, he had studied in Damascus, Jerusalem, and Cairo. In Damascus, on 16 Ramaḍān, 903/May 8, 1498, he issued an ijāzah to Ḥusayn ibn Muḥammad al-Ḥurr al-ʿĀmilī.[81] He issued an ijāzah to Ḥusayn ibn Muḥammad al-Astarābādī, who read Qawāʿid al-aḥkām with him, on 11 Shawwāl, 907/April 19, 1502.[82]

Al-Karakī traveled to Iraq, which was then under the Aqqoyunlus, in 909/1503-4.[83] He received an ijāzah from ʿAlī ibn Hilāl al-Jazāʾirī, on 15

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[79]On this scholar in general, see Luʾluʾat al-Baḥrayn, 151-54; Muḥsin al-Amīn, Aʿyān al-shīʿah, 8: 208-13; Amal al-āmil, 1: 121-23; Rawḍāt al-jannāt, 4: 360-75; Riyāḍ al-ʿulamāʾ, 3: 441-60; Wilferd Madelung, "al-Karakī," EI2; Erika Glassen, Schah Ismāʿīl I. und die Theologen seine Zeit," Der Islam 48(1972): 262-68; E. Eberhard, Osmanische Polemik gegen die Safawiden im 16. Jahrhundert nach arabischen Handschriften (Freiburg: Klaus Schwarz Verlag, 1970); Caroline J. Beeson, "The Origins of Conflict in the Ṣafawī Religious Institution," unpublished Ph. D. dissertation, Princeton University, 1982; Newman, "The Development and Political Significance of the Rationalist (Uṣūlī) and Traditionalist (Akhbārī) Schools," 748-57.

[80]See Dominique Sourdel, "Karak Nūḥ," EI2.

[81]Biḥār al-anwār, 108: 57.

[82]Biḥār al-anwār, 108: 53.

[83]Biḥār al-anwār, 108: 69.

Ramaḍān, 909/March 2, 1504.[84] He seems to have spent the subsequent
years in Iraq until it was captured by the Safavids in 914/1508, and was
supposedly imprisoned by the Aqqoyunlu ruler in Baghdad during the
hostilities and freed by Shah Ismāʿīl I. During the years 916-17/1511, he
was in Khurasan with the Safavid royal entourage.[85] Ijāzahs place him back
in Najaf in 928/1522 and 929/1528.[86] He made a second trip to Iran in
931-32/1525-26,[87] and was in Baghdad in 934/1528,[88] and in Najaf in
933/1527 and 935/1528, when the region was under Ottoman control.[89] He
traveled to Khurāsān in 936/1529-30 and returned to Kāshān.[90] He then
proceeded to Isfahan, where he gave an ijāzah in Isfahan on 9 Ramaḍān,
937/April 26, 1531.[91] He issued an ijāzah to al-Sayyid Shams al-Dīn
al-Mashhadī in Qum on 11 Dhū 'l-Ḥijjah, 937/July 26, 1531.[92] Apparently
still in Iran, he gave an ijāzah to Kamāl al-Dīn Darwīsh Muḥammad

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[84]Biḥār al-anwār, 108: 34.

[85]Newman, 749.

[86]He issued an ijāzah to Pīr Ḥabīb Allāh ibn Muḥammad al-Jawzadānī
on 11 Ṣafar, 928/January 10, 1522 in Najaf. [Biḥār al-anwār, 108: 59] In
Jumādā II, 928/May, 1522, also in Najaf, he issued an ijāzah to Aḥmad ibn
Abī Jāmiʿ al-ʿĀmilī after having taught him al-Alfiyyah by al-Shahīd
al-Awwal on law concerning ritual prayer along with the Ḥawāshī of
al-Karakī himself. [Biḥar al-anwār, 108: 60-1] Also in Najaf, he issued an
ijāzah to ʿAbd al-ʿAlī ibn Aḥmad ibn Saʿd al-Dīn Muḥammad al-ʿĀmilī on
16 Ramaḍān, 929/July 29, 1523. [Biḥār al-anwār, 108: 68]

[87]Newman, "The Development and Political Significance of the
Rationalist (Uṣūlī) and Traditionalist (Akhbārī) Schools," 749.

[88]Al-Karakī taught in Iraq for a number of years. He issued an ijāzah
to ʿAlī ibn ʿAbd al-ʿĀlī al-Maysī and his son Ibrāhīm in Baghdad on 9
Jumādā II, 934/March 1, 1528. [Biḥār al-anwār, 108: 49]

[89]Newman, 753.

[90]Biḥār al-anwār, 108: 81.

[91]Biḥār al-anwār, 108: 80.

[92]Biḥār al-anwār, 108: 83.

al-Iṣfahānī, an ancestor of al-Majlisī, in 939/1532-33.[93] Shah Tahmasb
issued a decree granting al-Karakī land and tax immunities in Iraq, as well
as revenue from the mint at al-Ḥillah, in 939/1533.[94] Al-Karakī died on 13
Dhū 'l-Hijjah, 940/June 25, 1534 in Najaf.

In an ijāzah dated 9 Ramaḍān, 937/April 26, 1531 and issued in
Isfahan, al-Karakī reports that he had studied a number of Sunnī works. He
transmitted Kashshāf haqāʾiq al-tanzīl by al-Zamakhsharī, al-Siḥāḥ by
Ismāʿīl ibn Ḥammād al-Jawharī , Jamharat al-lughah by al-Ḥasan ibn Durayd
al-Azdī, Hirz al-amānī wa wajh al-tahānī, a poem on the seven qirāʾāt of the
Qurʿān known as al-Shāṭibiyyah by Abū al-Qāsim ibn Qurrah ibn Khalaf
al-Shāṭibī, and al-Nashr and al-Nūniyyah on the ten qirāʾāt by al-Jazarī.[95]

Al-Karakī reports that he expended great efforts in the study of Sunnī
works, especially in the fields of fiqh, hadīth, tafsīr, lexicography, and the
literary arts.[96] He received ijāzahs to transmit these works both from Shīʿī
and Sunnī scholars,[97] having studied with Sunnī scholars for considerable
periods of time in Damascus, Jerusalem, Mekka, and Cairo.[98] His Sunnī
teachers in Cairo included Kamāl al-Dīn Abū ʿAbd Allāh Muḥammad ibn Abī
Sharīf al-Maqdisī (d. 906/1500) and Abū Yaḥyā Zakariyyā al-Anṣārī (d.
926/1520).[99] Al-Karakī reports that he copied the mashyakhah of al-Anṣārī

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[93]Bihār al-anwār, 108: 84.

[94]Said Amir Arjomand, trans. and ed., "Two Decrees of Shah Ṭahmāsp
Concerning Statecraft and the Authority of Shaykh ʿAlī Al-Karakī," in Said
Amir Arjomand, ed., Authority and Political Culture in Shiʿism, 250-62.

[95]Bihār al-anwār, 108: 76.

[96]Bihār al-anwār, 108: 79-80.

[97]Bihār al-anwār, 108: 80.

[98]Bihār al-anwār, 108: 80.

[99]Bihār al-anwār, 108: 80.

while he was in Egypt. Al-KarakI collected his SunnI ijāzahs and recorded his SunnI paths of transmission in several places.[100]

Kamāl al-Dīn Muḥammad ibn Muḥammad ibn AbI al-SharIf al-KawrānI al-MaqdisI was a ShāfiʿI jurist whose extant works include a commentary on the ShāfiʿI usūl al-fiqh text, Tāj al-Dīn al-SubkI's Jamʿ al-jawāmiʿ, entitled al-Durar al-lawāmiʿ.[101] Zakariyyā al-AnṣārI was the leading scholar in Cairo and the raʾīs of the ShāfiʿIs in Egypt during his day.[102] He was very long-lived, and ʿAbd al-Wahhāb al-ShaʿrānI reports that by the time of his death all the scholars in Egypt were either his students or his students' students.[103] Al-AnṣārI taught one of his works on ShāfiʿI law, Sharh al-bahjah, fifty-seven times.[104] His funeral was the biggest al-ShaʿrānI had ever seen.[105]

al-Shahīd al-ThānI, Zayn al-Dīn al-ʿĀmilI (d. 965/1558)[106]

A native of Jabal ʿĀmil in what is now southern Lebanon, Zayn al-Dīn al-ʿĀmilI was born on Tuesday, 13 Shawwāl 911/ February 7, 1506.[107] His native village was Jubāʿ in the region of Ṣaydā.[108] The Ottomans wrested his native region from the Mamlūks during his youth, and he came to be known

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[100]Bihār al-anwār, 108: 80.

[101]GAL, GII: 89, 118; SII: 105.

[102]ʿAbd al-Wahhāb al-ShaʿrānI, al-Tabaqāt al-sughrā (Cairo: Maktabat al-qāhirah, 1970), 37.

[103]al-Tabaqāt al-sughrā, 37.

[104]al-Tabaqāt al-sughrā, 37.

[105]al-Tabaqāt al-sughrā, 45.

[106]The most detailed biographical source is that in al-Durr al-manthūr, 2: 149-99. For other biographies, see also Muḥsin al-AmIn, Aʿyān al-shīʿah, 7: 143-58; Amal al-āmil, 1: 85-91; Riyād al-ʿulamāʾ, 2: 365-86; Luʾluʾat al-bahrayn, 28-36; Rawdāt al-jannāt, 3: 352-87.

[107]al-Durr al-manthūr, 2: 158, 189.

[108]al-Durr al-manthūr, 2: 159.

as al-Shahīd al-Thānī in the Shīʿī tradition because he was executed by the Ottomans many years later, in 965/1558. Like ʿAbd al-ʿĀlī al-Karakī, al-Shahīd al-Thānī studied with Sunnīs in Jerusalem, Damascus and Cairo.

In 948/1541-42, al-Shahīd al-Thānī made a short trip to Jerusalem. There he met the Shāfiʿī scholar Shams al-Dīn Ibn Abī al-Luṭf al-Maqdisī, read some of the Sahīh of al-Bukhārī and the Sahīh of Muslim, and got an ijāzah.[109] It appears that he did not stay in Jerusalem long, and that his most serious studies under Sunnī teachers had taken place in Damascus and especially Cairo.

In 937/1530-31, al-Shahīd al-Thānī went from Jabal ʿĀmil to Damascus to study. Under Shams al-Dīn Muḥammad ibn Makkī, whom he terms a philosopher (faylasūf), he studied several works on medicine, including a commentary on al-Mūjaz al-Nafīsī and a work by Muḥammad ibn Makkī himself, Ghāyat al-qasd fī maʿrifat al-fasd, as well as Fusūl al-Farʿānī on astronomy, and some of al-Suhrawardī's Hikmat al-ishrāq.[110] This teacher died in Jumādā I, 938/December-January, 1532.[111] Najm al-Dīn al-Ghazzī refers to this teacher as the head of the doctors (shaykh al-atibbāʾ), and identifies him as a Shāfiʿī. He also states that Muḥammad ibn Makkī was suspected of being a Shīʿī (wa-kāna yunsabu ila 'r-rafd). He was knowledgeable in astronomy and geometry as well as medicine. The death date al-Ghazzī gives is 9 Jumādā II, 938/January 18, 1532, at an age of over eighty.[112]

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[109]al-Durr al-manthūr, 2: 169-70.

[110]al-Durr al-manthūr, 2: 159.

[111]al-Durr al-manthūr, 2: 159. (cf. below)

[112]Najm al-Dīn al-Ghazzī, al-Kawākib al-sāʾirah, 2: 59-60.

Also during his first stay in Damascus, al-Shahīd al-Thānī studied Qur'ānic recitation with a scholar named Aḥmad ibn Jābir. He read al-Shāṭibiyyah on Qur'ānic recitation, and he read the Qur'ān according to the readings of Nāfiʿ, Ibn Kathīr, Abū ʿAmr, and ʿĀṣim.[113] He returned from Damascus to Jubaʿ in 938/1531-32, and stayed there from 938/1531-32 until the beginning of 942/1535, when he went to Damascus for a second time.[114]

During his second stay in Damascus, al-Shahīd al-Thānī studied the two Sahīhs with the well-known historian and hadīth scholar, the Hanafī Shams al-Dīn Ibn Ṭūlūn (d. 953/1546) in the Salīmiyyah madrasah in the Ṣāliḥiyyah quarter.[115] He received an ijāzah for these two works from Ibn Ṭūlūn in Rabīʿ I, 942/August 30-September 28, 1535.[116] At that time Ibn al-ʿAwdī, a younger Shīʿī scholar and also a native of Jabal ʿĀmil, was al-Shahīd al-Thānī's student-servitor (khādim). He attended these lessons along with al-Shahīd al-Thānī, and also received an ijāzah from Ibn Ṭūlūn.[117] Ibn Ṭūlūn seems to have had some Shīʿī sympathies, for he wrote a work on the Imams, entitled al-Shadharāt al-dhahabiyyah fī tarājim al-a'immah al-ithnā ʿashar ʿind al-imāmiyyah.[118]

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[113]al-Durr al-manthūr, 2: 159.

[114]al-Durr al-manthūr, 2: 159. The text has miṣr instead of Damascus. The context, including the teachers mentioned, shows that Damascus is intended.

[115]al-Durr al-manthūr, 2: 159. On Ibn Ṭūlūn, see EI2 "Ibn Ṭūlūn" (3: 957-8) by W. M. Brinner, and Ibn Ṭūlūn's autobiography, al-Fulk al-mashhūn fī ahwāl Muhammad ibn Ṭūlūn.

[116]al-Durr al-manthūr, 2: 159. It must have been before Sept. 13, when he left for Egypt.

[117]al-Durr al-manthūr, 2: 160.

[118]This work has been published under the title al-A'immah al-ithnā ʿashar, ed. Salāḥ al-Dīn al-Munajjid (Beirut, 1958).

While in Damascus, al-Shahīd al-Thānī decided to travel to Cairo to continue his studies. There is no evidence that he had studied _fiqh_ according to the Sunnī _madhhabs_ in Damascus, and it is possible that he went to Egypt primarily for this purpose. Several of his students, including Ḥusayn ibn ʿAbd al-Ṣamad, accompanied him to Egypt, but Ibn al-ʿAwdī was left behind at the request of his mother.[119] A Shīʿī named al-Ḥajj Shams al-Dīn ibn Hilāl, perhaps a wealthy merchant, paid the expenses the trip involved.[120] They left Damascus heading for Egypt on Sunday, 15 Rabīʿ I, 942/September 13, 1535.[121] On the way to Egypt they passed through Ramlah, then proceeded to Gaza, where al-Shahīd al-Thānī met a scholar named Muḥyī al-Dīn ʿAbd al-Qādir ibn Abī al-Khayr al-Ghazzī. They had discussions and debates, and al-Ghazzī gave him an _ijāzah_. Before al-Shahīd al-Thānī left, al-Ghazzī invited him to choose a book to take from his library. Al-Shahīd al-Thānī chose without looking, and picked a book by al-ʿAllāmah al-Ḥillī. He considered it a good omen to have chosen a Shīʿī book from the Sunnī scholar's library.[122] They arrived in Egypt on Friday, 15 Rabīʿ II, 942/October 13, 1535.[123]

In going to study in Cairo, al-Shahīd al-Thānī was following in the footsteps of al-Karakī, who had studied in Cairo some years before. During the short period of a year and a half, al-Shahīd al-Thānī accomplished a great deal, as is attested by the list of his teachers and the works he read while in Cairo. This may be due to the fact that he had studied many of the

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[119]_al-Durr al-manthūr_, 2: 160.
[120]_al-Durr al-manthūr_, 2: 160.
[121]_al-Durr al-manthūr_, 2: 161.
[122]_al-Durr al-manthūr_, 2: 161.
[123]_al-Durr al-manthūr_, 2: 162.

works on his own in Jabal ʿĀmil or with Shīʿī teachers and was simply reviewing the work or presenting what he had already learned in an oral exam in order to get a certificate of study from authoritative transmitters of the works. He mentions in his work on education, Munyat al-murīd fī ādāb al-mufīd wa al-mustafīd, that one of his teachers in Cairo directed him to study with other teachers, rather than discouraging him from looking elsewhere out of jealousy, a fault which al-Shahīd al-Thānī criticized as being common in teachers of his day.[124] All together, al-Shahīd al-Thānī reports the names of sixteen Sunnī teachers with whom he studied in Cairo, though he adds that this list is incomplete.[125] Among the subjects he studied were the ancillary sciences, including syntax, morphology, rhetoric, and logic, as well as Qurʾānic recitation, hadīth, tafsīr, mathematics, and astronomy, and in most cases gives the titles of the works he studied with each teacher.

Al-Shahīd al-Thānī also studied a great deal of Sunnī legal material, primarily that of the Shāfiʿī guild in Cairo. With Shihāb al-Dīn Aḥmad al-Ramlī al-Anṣārī al-Shāfiʿī, he studied al-Minhāj, a standard text-book of Shāfiʿī fiqh by al-Nawawī (d. 676/1278), and a number of text-books of usūl al-fiqh. The latter included Mukhtasar al-usūl by Ibn al-Ḥājib together with its commentary al-Sharh al-ʿAdudī by ʿAdud al-Dīn al-Ījī and the super-commentaries of Saʿd al-Dīn al-Taftazānī and al-Sharīf al-Jurjānī (d. 816/1413), al-Ramlī's own commentary on al-Waraqāt by Imām al-Haramayn al-Juwaynī (d. 478/1085), and Jamʿ al-jawāmiʿ by Tāj al-Dīn

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[124]Munyat al-murīd fī ādāb al-mufīd wa al-mustafīd (Najaf: Matbaʿat al-ghariyy, 1370), 73.

[125]al-Durr al-manthūr, 2: 162-68.

al-Subkī (d. 771/1370) with the commentary of al-Maḥallī (d. 864/1459).

He received an ijāzah for these and other works in 943/1536-37.[126]

Al-Ramlī came from a small village in the area of al-Manūfiyyah in Egypt, and had studied in Cairo under Zakariyyā al-Anṣārī. He was one of al-Anṣārī's favorite students, and was put in charge of editing al-Anṣārī's works both during his lifetime and afterwards. According to the sixteenth-century biographer al-Shaʿrānī, al-Ramlī became the leading Shāfiʿī scholar not only for Egypt, but for Syria and the Ḥijāz as well. Al-Ramlī died on Friday, 1 Jumāda II 957/May 18, 1550, and al-Shaʿrānī reports that his funeral was so large that those attending the funeral prayer could not fit in the mosque of al-Azhar, and some of them had to pray elsewhere.[127]

With Abū al-Ḥasan al-Bakrī, al-Shahīd al-Thānī studied fiqh and tafsīr. Al-Bakrī was the hereditary leader of the Bakrī Sufi order, and a very important man in Cairo. He died there in 953/1546-47,[128] and was buried near the tomb of al-Shāfiʿī. Al-Shahīd al-Thānī read some of al-Bakrī's commentary on al-Minhāj by al-Nawawī.[129] It appears that al-Shahīd al-Thānī knew this teacher quite well, for he later performed the pilgrimage with him.

Al-Shahīd al-Thānī also studied in Cairo with the Shāfiʿī legal scholar Shihāb al-Dīn Aḥmad ibn ʿAbd al-Ḥaqq al-Sinbāṭī al-Miṣrī. This scholar was a popular preacher (wāʿiz) at the mosque of al-Azhar. He was an expert in

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[126]al-Durr al-manthūr, 2: 162.

[127]See al-Shaʿrānī, al-Ṭabaqāt al-sughrā, 67-69.

[128]al-Durr al-manthūr, 2: 165; al-Shaʿrānī, al-Ṭabaqāt al-sughrā, 78-80.

[129]al-Durr al-manthūr, 2: 165.

khilāf and the opinions held in the various madhhabs. He became the professor of law at the Khashshābiyyah Madrasah, a post supposed to be given to the most learned of the Shāfiʿī scholars. He was known for declaring coffee forbidden and for ordering the destruction of several churches. A statement made by al-Shaʿrānī implies that al-Sinbāṭī was accused of heresy, and perhaps even Shīʿī heresy. He states, "He was one of the most important Sunnī scholars (kāna min ruʾūsi ahli 's-sunnati wa 'l-jamāʿah), and whoever considers him the contrary of this has concocted a heinous lie." He died in Ṣafar, 950/June, 1543.[130]

Al-Shahīd al-Thānī left Cairo with the pilgrimage caravan on 17 Shawwāl, 943/March 29, 1537, in the company of his teacher Abū al-Ḥasan al-Bakrī.[131] After performing the pilgrimage, he returned to his native village Jubāʿ, arriving on 24 Ṣafar, 944/August 2, 1537.[132]

Al-Shahīd al-Thānī's studies in Cairo represent a crucial stage in his intellectual formation and his exposure to Sunnī tradition. His second stay in Damascus lasted only about two and a half months.[133] It is not clear how long his first stay there was, but it could not have been more than a year.[134] Sources do not indicate that he studied law during either of these stays, although he studied hadīth with Ibn Ṭūlūn in the Salīmiyyah madrasah.[135] In Cairo, however, al-Shahīd al-Thānī was able to study law with at least three teachers: Shihāb al-Dīn Aḥmad al-Ramlī al-Anṣārī, Abū al-Ḥasan al-Bakrī, and Shihāb al-Dīn Aḥmad ibn ʿAbd al-Ḥaqq al-Sinbāṭī al-Miṣrī. All

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[130]al-Shaʿrānī, al-Ṭabaqāt al-sughrā, 77-78.
[131]al-Durr al-manthūr, 2: 167.
[132]al-Durr al-manthūr, 2: 168.
[133]al-Durr al-manthūr, 2: 159.
[134]al-Durr al-manthūr, 2: 159.
[135]al-Durr al-manthūr, 2: 159.

three of these scholars were Shāfiʿīs, as were the works they taught al-Shahīd al-Thānī, including al-Minhāj by al-Nawawī, al-Waraqāt by Imam al-Ḥaramayn al-Juwaynī, and Sharh Jamʿ al-jawāmiʿ by al-Maḥallī. Ibn al-Ḥājib was a Mālikī, but his Mukhtasar had become a part of the standard Shāfiʿī curriculum. Ibn al-Ḥājib's work was not new to the Shīʿī tradition either; as mentioned above, al-ʿAllāmah al-Ḥillī had written a commentary on this work over two hundred years earlier.

Perhaps the most convincing indication of the importance of al-Shahīd al-Thānī's studies in Cairo is the fact that he reports he became a mujtahid in the year 944/1537-38.[136] Al-Shahīd al-Thānī later told his student Ibn al-ʿAwdī that he had become a mujtahid in 944/1537-38, although he had not published his ijtihād until four years later.[137] This was the year he returned to Jabal ʿĀmil from Egypt, after performing the pilgrimage. Al-Shahīd al-Thānī did not go to Cairo alone; he was accompanied by at least two other Shīʿī scholars from Jabal ʿĀmil, Ḥusayn ibn ʿAbd al-Ṣamad and ʿAlī ibn Zuhrah al-Jubāʿī, a cousin of Ḥusayn who died during their stay in Egypt.[138]

While on a pilgrimage to the Shīʿī shrines of southern Iraq, al-Shahīd al-Thānī revealed his claim of the rank of ijtihād to a prominent Shīʿī scholar. He left Jubāʿ to visit the Shīʿī shrines of Iraq on 27 Rabīʿ II 946/September 11, 1539, and returned on 15 Shaʿbān 946/December 26, 1539.[139] Ibn al-ʿAwdī was with him, as well as a group of his fellows and natives of Jubāʿ (ahl al-bilād). They did not stay long in Iraq, but met

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[136]al-Durr al-manthūr, 2: 183.
[137]al-Durr al-manthūr, 2: 183.
[138]al-Durr al-manthūr, 2: 191.
[139]al-Durr al-manthūr, 2: 169.

Sharaf al-Dīn al-Sammākī al-ʿAjamī.[140] This scholar had a certain prestige because he was a student of the famous scholar ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī, mentioned above, who had died in Kūfah in 940/1534.[141] Al-Shahīd al-Thānī announced his ijtihād to al-Sammākī and swore to him at the shrine of ʿAlī ibn Abī Ṭālib that he was only doing so for God's sake.[142] When al-Shahīd al-Thānī had returned to Jabal ʿĀmil, al-Sammākī sent him legal questions to answer, a sign that he accepted al-Shahīd al-Thānī's claim.[143] In 948/1541-42, al-Shahīd al-Thānī published his ijtihād.[144] Al-Ḥurr al-ʿĀmilī, whose daughter al-Shahīd al-Thānī had married, was one of the first to recognize his ijtihād. At the request of his son-in-law, al-Sayyid Ḥusayn ibn Abī al-Hasan, he wrote a treatise on ijtihād in one day, on 5 Shawwāl, 949/January 12, 1543. The treatise expounded the opinion that one must follow the opinions of a living mujtahid, and cannot follow the opinions of a dead one.[145]

Bahāʾ al-Dīn al-ʿĀmilī (d. 1030/1621)

Bahāʾ al-Dīn al-ʿĀmilī, the son of Ḥusayn ibn ʿAbd al-Ṣamad, was raised in Iran after his father emigrated there, but returned to Ottoman territory to follow the example of his father and al-Shahīd al-Thānī, meeting and studying with scholars in Aleppo, Damascus, Cairo, and other cities. While Bahāʾ al-Dīn's travels and studies in the Ottoman Empire will be

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[140]al-Durr al-manthūr, 2: 169.

[141]al-Durr al-manthūr, 2: 160. There is an error in the text. It gives the year of death as 945, but it should be 940/1534.

[142]al-Durr al-manthūr, 2: 169.

[143]The answers to these questions are extant in manuscript. Modarressi, An Introduction to Shīʿī Law, 105.

[144]al-Durr al-manthūr, 2: 183.

[145]al-Durr al-manthūr, 2: 188.

treated in greater detail in the following chapter, they show that he was particularly interested in Sunnī hadīth and tafsīr. While in Ottoman territory, he also claimed descent from the famous Shāfiʿī jurisconsult al-Ghazālī. Muḥammad Bāqir al-Khwānsārī reports that Bahāʾ al-Dīn al-ʿĀmilī pretended to be a Shāfiʿī to a Sunnī scholar in Damascus.[146]

The preceding discussion provides a few examples of important Shīʿī scholars who participated in the tradition of study under Sunnī teachers. This list is by no means exhaustive, and further research will undoubtedly reveal other participants in the tradition from various regions of the Islamic world and various historical periods. The next section analyzes some of the data presented above, focusing on the madrasah, or college of Islamic law.

Shīʿīs in Sunnī Madrasahs

In this tradition there is evidence that Shīʿī scholars participated in legal studies in Sunnī madrasahs, both as students and teachers. The fact that Shīʿīs were to be found in Sunnī madrasahs, in addition to more private settings, such as a teacher's home, indicates that they probably were pretending to be Sunnīs while doing so, and that they claimed to have adopted one of the Sunnī madhhabs. This is so because the madrasah was an exclusive institution. As Makdisi states, "the institutions of learning [i.e., the madrasahs] were exclusive, admitting students who belonged to one or the other juridical madhhab, to the exclusion of all others."[147] The evidence presented above shows that it is most likely that the Shīʿīs outwardly adopted the Shāfiʿī madhhab while studying in these Sunnī institutions.

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[146]Rawdāt al-jannāt, 7: 71.

[147]"The Guilds of Law in Medieval Legal History: An Inquiry into the Origin of the Inns of Court," Zeitschrift für Geschichte der arabisch-islamischen Wissenschaften 1 (1984): 233-52, 242.

Ibn Mullā al-Baʿlabakkī was a repetitor at the Niẓāmiyyah madrasah, a Shāfiʿī institution in Baghdad. Al-Shahīd al-Thānī studied under Ibn Ṭūlūn in the Salīmiyyah madrasah in al-Ṣāliḥiyyah in Damascus. He was accompanied by his student-servitor Bahāʾ al-Dīn Muḥammad al-ʿAwdī, and perhaps other Shīʿī companions as well. One of the best documented examples is that of al-Shahīd al-Thānī, who obtained an appointment as a professor of law at a Sunnī madrasah from the Ottoman government.

At the end of 951/early 1545, al-Shahīd al-Thānī decided to make a journey to Istanbul with his companion Ḥusayn ibn ʿAbd al-Ṣamad al-ʿĀmilī. He did this, he said, in response to signs sent to him by God, although it went against his own common sense. The Ottoman Empire had engaged in several wars against the Shīʿī Safavids. They saw Shīʿism as a serious threat to their security, and Shīʿī scholars had no place in the Ottoman system. The main objective of the trip, however, would be to get an appointment to a madrasah.

Al-Shahīd al-Thānī left Jubāʿ on 12 Dhū al-Ḥijjah, 951/February 24, 1545, arriving in Istanbul on Monday, 17 Rabīʿ 1, 952/May 29, 1545.[148] For eighteen days, he did not meet with anyone, and wrote a treatise on ten difficult problems in various sciences, including the legal and rational sciences and tafsīr, which he then sent to the Qāḍī al-ʿAskar, Muḥammad ibn Quṭb al-Dīn ibn Muḥammad ibn Muḥammad ibn Qāḍī-zādah al-Rūmī.[149] This treatise was to serve as his credentials. It is perhaps identical to a treatise mentioned by the author of al-Durr al-manthūr as al-Risālah

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[148]al-Durr al-manthūr, 2: 170-74.
[149]al-Durr al-manthūr, 2: 174.

al-istanbūliyyah fī 'l-wājibāt al-ʿayniyyah, which is extant in manuscript.[150]
Normally, applicants were supposed to present a document called ʿard
al-qādī from the judge of their local region to serve as their credentials.[151]
Al-Shahīd al-Thānī chose not to do so after taking an omen from the Qurʾān.
It appears that he did this because of a certain enmity which existed
between him and the judge of Saydā, who had jurisdiction over the Jabal
ʿĀmil region. This same judge, it seems, was involved in the dispute which
led to al-Shahīd al-Thānī's death thirteen years later. Twelve days after
presenting his treatise, he received a catalogue of the available posts. The
Qādī al-ʿAskar assured him that he could get a post in Damascus (Shām) or
Aleppo. Al-Shahīd al-Thānī chose a post at the Nūriyyah Madrasah in
Baʿlabakk for reasons he hints at but does not explain. One assumes this
decision was influenced by the fact that there was a considerable Shīʿī
population in the area. This choice was presented to Sultān Sulaymān, who
wrote a document of authorization (barāʾah) assigning the post to al-Shahīd
al-Thānī.[152]

Al-Shahīd al-Thānī's companion Husayn ibn ʿAbd al-Samad was also
able to obtain an appointment to a madrasah in Baghdad, but he heard that
its endowment funds were not considerable. Therefore, when al-Shahīd
al-Thānī left Istanbul, Husayn stayed behind for twenty-one days trying to
get a better post.[153] Their stay in Istanbul had lasted about three and a half

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[150]al-Durr al-manthūr, 2: 189; Modarressi, Introduction, 122, gives the
title al-Istanbūliyyah fī 'l-wājibāt al-ʿayniyyah. Modarressi 122, also
mentions another manuscript under the title al-Rūmiyyah which may be
identical with al-Risālah al-istanbūliyyah.

[151]al-Durr al-manthūr, 2: 174-5.

[152]al-Durr al-manthūr, 2: 175.

[153]al-Durr al-manthūr, 2: 177-8.

months.[154] Al-Shahīd al-Thānī left Istanbul on Saturday, 11 Rajab 952/September 7, 1545, and crossed the straights to Uskudār. He stayed there waiting for his student Ḥusayn ibn ʿAbd al-Ṣamad.[155] When Ḥusayn caught up with him, they left Uskudār heading for Iraq on Saturday, 2 Shaʿbān, 952/9 October, 1545. Before returning to Jabal ʿĀmil, they visited the Shīʿī shrines and other sites in southern Iraq, including Samarrāʾ, al-Kāẓimayn, Karbalāʾ, Ḥillah, Kūfah, and Najaf.[156] They left Iraq on 17 Dhū al-Ḥijjah 952/February 19, 1546,[157] and arrived in Jubāʿ on 15 Ṣafar 953/April 17, 1546.[158] Then al-Shahīd al-Thānī went to Baʿlabakk to assume his post at the Nūriyyah Madrasah. An __ijāzah__ al-Shahīd al-Thānī issued to an Iranian scholar named Maḥmūd ibn Muḥammad al-Gīlānī places him in Baʿlabakk on the first of Rajab 953/August 28, 1546.[159] Although it is not possible to determine exactly how long he retained his post as professor of law in the __madrasah,__ he describes the time he spent there in glowing terms.

> Then I took up residence in Baʿlabakk and there I taught law according to the five __madhhabs (darrasnā . . . fī 'l-madhāhib al-khamsah)__ and many other sciences for a time. The people [of Baʿlabakk], for all their differences of opinion (__ʿalā 'khtilāfi arāʾihim__), accompanied me and associated with me in the best possible manner. Those were blessed days and delightful times, the likes of which our fellows [i.e., Shīʿī scholars] have never seen throughout the ages.[160]

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[154]al-Durr al-manthūr, 2: 176.

[155]al-Durr al-manthūr, 2: 177.

[156]al-Durr al-manthūr, 2: 179-81.

[157]al-Durr al-manthūr, 2: 181.

[158]al-Durr al-manthūr, 2: 182.

[159]Biḥār al-anwār, 108: 172.

[160]al-Durr al-manthūr, 2: 182.

This is the explicit evidence available of a Shīʿī presence in Sunnī madrasahs. There is also more circumstantial evidence that Shīʿī scholars studied in Sunnī madrasahs. Al-ʿAllāmah al-Ḥillī, when speaking of his Sunnī teachers, does not mention any madrasahs. However, his teacher Jamāl al-Dīn Ḥusayn ibn Ayāz al-Naḥwī was the professor of grammar at the Mustanṣiriyyah Madrasah, and his teacher Shams al-Dīn Muḥammad ibn Muḥammad ibn Aḥmad al-Kīshī was the professor of Shāfiʿī law at the Niẓāmiyyah Madrasah.

Al-Shahīd al-Awwal does not state explicitly that he studied at a madrasah, but does mention the Niẓāmiyyah and the Mustanṣiriyyah in Baghdad. He relates al-Jāmiʿ al-Ṣaḥīḥ of al-Bukhārī through Sharaf al-Dīn Muḥammad ibn Biktāsh al-Tustarī, who, he reports, was a Shāfiʿī who had settled in Baghdad and become a professor of Shāfiʿī law at the Niẓāmiyyah, and Shams al-Dīn Abū ʿAbd al-Raḥmān Muḥammad ibn ʿAbd al-Raḥmān, a Mālikī professor of law at the Mustanṣiriyyah.[161] It is important to note that al-Shahīd al-Awwal mentions the Mustanṣiriyyah twice, and both times writes the phrase "May God be pleased with its founder" (ridwānu 'Llāhi ʿalā munshiʾihā) following the name of the College.[162] This shows that he had some respect for the ʿAbbāsid Caliph al-Mustanṣir, something which one might suppose unlikely given the typical Shīʿī attitude towards the Sunnī Caliphs. It may also be an indication that al-Shahīd al-Awwal had studied there, perhaps as the recipient of a student stipend, and consequently felt a debt of gratitude toward the College.

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[161]Biḥār al-anwār, 107: 200.
[162]Biḥār al-anwār, 107: 200.

While in Cairo, ʿAlī al-Karakī studied with the ra'īs of the Shāfiʿīs,

Zakariyyā al-Anṣārī. During his stay in Cairo, al-Shahīd al-Thānī studied

many works, including many on uṣūl al-fiqh, with the ra'īs of the Shāfiʿīs,

Shihāb al-Dīn Aḥmad al-Ramlī. While it is not absolutely clear, it is possible

that they did so as students at al-Azhar, the great mosque-madrasah of

Cairo.

Shāfiʿī-Shīʿī Legal Text-Books

It is perhaps surprising that the Shīʿī curriculum of study included

Sunnī works, not only in the preparatory sciences, that is on syntax,

morphology, rhetoric, and logic, but also on uṣūl al-fiqh. Two Sunnī works

were particularly important, and, judging from the evidence, were a

standard part of the curriculum from the time of al-Shahīd al-Awwal, or the

late eighth/fourteenth century, until as late as the thirteenth/nineteenth

century. They were the Mukhtasar of the seventh/thirteenth-century

scholar Ibn al-Ḥājib and the commentary on this work known as al-Sharh

al-ʿAdudī, by the eighth/fourteenth-century Shāfiʿī scholar ʿAḍud al-Dīn

ʿAbd al-Rahmān al-Ījī. Muḥsin al-Amīn notes that during a long period of

Shīʿī history the works on uṣūl al-fiqh studied in the standard curriculum

were al-ʿAllāmah al-Ḥillī's Tahdhīb al-wusūl, followed by al-Mukhtasar

al-Ḥājibī and al-Sharh al-ʿAdudī. He adds that the Tahdhīb al-wusūl has

since been replaced in the curriculum by Ḥasan ibn Zayn al-Dīn al-ʿĀmilī's

work Maʿālim al-Dīn[163] and the two Sunnī works first with al-Qawānin by

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[163]This scholar was the son of al-Shahīd al-Thānī, not al-Shahīd al-Thānī himself, as A. A. Fyzee states in "Shīʿite Legal Theories." Abdulaziz Abdulhussein Sachedina also attributes al-Maʿālim to al-Shahīd al-Thānī in the bibliography of Islamic Messianism: The Idea of the Mahdi in Twelver Shīʿism (Albany: State University of New York Press, 1981).

Mīrzā Abū 'l-Qāsim al-Qummī, then, in turn, during Muḥsin al-Amīn's own life-time, with al-Kifāyah of Mullā Kāzim al-Khurāsānī.[164]

Ibn Ḥājib was a Mālikī scholar, but his Mukhtasar, an abridgement of one of his own works entitled Muntahā al-su'āl wa al-amal fī 'ilmayy il-usūl wa al-jadal, was used by scholars of all madhhabs, including the Shāfi'ī. Al-'Allāmah, for instance, transmits the Mukhtasar through his Shāfi'ī teacher, Ibn Ayāz al-Naḥwī, as mentioned above. Another indication of the Mukhtasar's importance within the Shāfi'ī madhhab is the fact that al-Ījī's commentary on the work became a standard Shāfi'ī text-book of usūl al-fiqh. Muḥammad Amīn al-Astarābādī, the author of al-Fawā'id al-madaniyyah discussed above, refers to al-Sharh al-'Adudī as a Shāfi'ī text and identifies it as the best Sunnī work on usūl al-fiqh.[165] The use of these works as text-books in Shī'ī circles is attested by the large number of commentaries and super-commentaries, the normal by-products of teaching and studying works repeatedly, which Shī'ī scholars wrote.

It is evident from al-'Allāmah al-Ḥillī's works that he was well versed in Sunnī law. Modarressi holds that he made significant contributions to the law of transactions through the application of Sunnī legal principles.[166] Most indicative of his extensive involvement with Sunnī law is the fact that he wrote a commentary on the Mukhtasar of Ibn al-Ḥājib, entitled Ghāyat al-wusūl wa īdāh al-subul fī sharh Mukhtasar Muntahā al-su'āl wa al-amal, which he completed in Rajab, 967/April, 1560.[167] The Damascene Sunnī

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[164]Khitat Jabal 'Āmil, 154.
[165]al-Fawā'id al-madaniyyah, 18-19.
[166]Introduction to Shī'ī Law, 48-49.
[167]Agha Buzurg al-Tihrānī, al-Dharī'ah ilā tasānīf al-shī'ah, 16: 13, 24-25.

scholar Ibn Kathīr (d. 774/1373-74) states that this commentary was the most famous of al-Hillī's works among law students (bayn al-talabah), indicating that the work was known and used in Sunnī circles, but adds that it was not as good as it was generally reputed to be.[168] Ibn Hajar al-ʿAsqalānī reports that the commentary conveyed the meaning of the original work excellently and made it easily accessible to the student.[169]

As mentioned in Chapter Three, al-ʿAllāmah's work Tahdhīb al-wusūl, which became a standard text-book of usūl al-fiqh in the Shīʿī curriculum, was considered by Muhammad Amīn al-Astarābādī to be the product of the Sunnī tradition of usūl al-fiqh works.[170] Although he does not give the exact title, Ibn Kathīr mentions that he examined one of al-Hillī's works on usūl al-fiqh—besides the commentary just mentioned—and this may have been Tahdhīb al-wusūl.

> I have seen two volumes by him on usūl al-fiqh, written
> according to the method of al-Mahsūl and al-Ihkām. It was
> quite good (fa-la ba's bihā), for it contained extensive citations
> (naql kathīr) and excellent explanations (tawjīh jayyid).[171]

This comparison with the works of Fakhr al-Dīn al-Rāzī and Sayf al-Dīn al-Āmidī is high praise from a Sunnī scholar, given that the work in question was not al-Hillī's commentary on Ibn al-Hajib's text, and must have been one of his works on Twelver Shīʿī usūl al-fiqh.

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[168]ʿImād al-Dīn Ismāʿīl ibn ʿUmar Ibn Kathīr, al-Bidāyah wa al-nihāyah fī al-tārīkh, 14 vols. (Cairo: Matbaʿat al-saʿadah, 1939), 14: 125.

[169]al-Durar al-kāminah fī aʿyān al-miʾah al-thāminah, 4 vols. (Haydarābād: Matbaʿat majlis al-maʿārif al-ʿuthmāniyyah, 1930), 2: 71.

[170]Muhammad Amīn al-Astarābādī, al-Fawāʾid al-madaniyyah, 277-78.

[171]Ibn Kathīr, al-Bidāyah wa al-nihāyah, 14: 125.

Al-Sharīf al-Jurjānī wrote a commentary on the Mukhtasar, and a

Shī'ī scholar, Tāj al-Dīn Ḥusayn ibn Shams al-Dīn al-Ṣā'idī wrote a

hāshiyah, or super-commentary of this work in 977/1569-70. He had

studied the commentary of al-Jurjānī with the teacher al-Shaykh Manṣūr

Rāst-gū ibn al-Mawlā 'Abd Allāh al-Shīrāzī in 969/1561-62.[172] The

teacher, Manṣūr Rāst-gū, also wrote a hāshiyah on al-Jurjānī's

commentary.[173] In one of his legal textbooks, al-Shahīd al-Thānī reports

that the legal scholar does not have to expend a great deal of effort studying

the methods of proof (sharā'iṭ al-dalīl) as a separate subject, for most of the

relevant information is contained in the abridged works on uṣūl al-fiqh, such

as al-Tahdhīb by al-Ḥillī and Mukhtasar al-uṣūl by Ibn al-Ḥajib.[174]

As seen above, al-Shahīd al-Awwal studied al-Sharḥ al-'Aḍudī with a

Sunnī scholar in Baghdād. Al-Shahīd al-Thānī studied this work with a top

Shāfi'ī scholar in Cairo. Ḥasan ibn Zayn al-Dīn al-'Āmilī and his companion

Muḥammad ibn Abī al-Ḥasan al-'Āmilī studied al-Sharḥ al-'Aḍudī with

Aḥmad al-Ardabīlī (d. 993/1585) in Iraq in the late tenth/sixteenth

century.[175] The author of al-Durr al-manthūr reports that a large number of

students were studying this work with al-Ardabīlī, and adds that they were

jealous of the two 'Āmilī students since they were able to read the work

much faster because of their superior command of Arabic.[176] Bahā' al-Dīn

al-'Āmilī (d. 1030/1621) wrote a hāshiyah on this work. Muḥammad Amīn

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[172]al-Dharī'ah, 6: 128.

[173]al-Dharī'ah, 6: 129.

[174]al-Rawḍah al-bahiyyah fī sharḥ al-lum'ah al-dimashqiyyah, 10
vols. (Najaf: Maṭba'at al-ādāb, 1967), 3: 65.

[175]al-Durr al-manthūr, 2: 201.

[176]al-Durr al-manthūr, 2: 201.

al-Astarābādī (d. 1036/1627) studied this work in Shīrāz circa the beginning of the seventeenth century.[177]

Hāshiyahs on al-Sharh al-ʿAdudī are known to have been written by the following Shīʿī scholars:

(1) al-Mawlā Kamāl al-Dīn Husayn ibn ʿAbd al-Haqq al-Ālihī, who also wrote a taʿlīqah on the same (d. 950/1543-44)[178]

(2) Mīrzā Jān Habīb Allāh al-Bāghawī al-Shīrāzī (fl. tenth/sixteenth c.),[179]

(3) Ahmad ibn Muhammad al-Muqaddas al-Ardabīlī (d. 993/1585),[180]

(4) al-Mawlā ʿAbd al-Wāhid ibn ʿAlī al-Tustarī (d. ?, teacher of Nūr Allāh al-Tustarī, who died in 1019/1610)[181]

(5) al-Mawlā ʿAbd Allāh ibn al-Husayn al-Tustarī (d. 1021/1612)[182]

(6) Bahāʾ al-Dīn al-ʿĀmilī (d. 1030/1621)[183]

(7) Mīr Muhammad Bāqir ibn Muhammad al-Dāmād (d. 1041/1631)[184]

(8) Sultān al-ʿUlamāʾ al-Amīr ʿAlāʾ al-Dīn Husayn ibn Rafīʿ al-Dīn al-Husaynī al-Āmulī al-Isfahānī (d. 1064/1653-54)[185]

(9) Mawlā Muhammad Sālih ibn Ahmad al-Māzandarānī (d. 1081/1670-71)[186]

(10) Muhammad ibn al-Hasan al-Shīrwānī (d. 1098/1687-88)[187]

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[177]al-Fawāʾid al-madaniyyah, 133.
[178]al-Dharīʿah, 6: 131.
[179]al-Dharīʿah, 6: 129-30.
[180]al-Dharīʿah, 6: 129.
[181]al-Dharīʿah, 6: 131.
[182]al-Dharīʿah, 6: 131.
[183]al-Dharīʿah, 6: 132; Amal al-āmil, 1: 155.
[184]al-Dharīʿah, 6: 129.
[185]al-Dharīʿah, 6: 130-31.
[186]al-Dharīʿah, 6: 131.
[187]al-Dharīʿah, 6: 132.

(11) Mīrzā Rafīʿ al-Dīn Muḥammad ibn Ḥaydar al-Ḥusaynī al-Ṭabāṭabāʾī
   al-Nāʾīnī (d. 1099/1688)[188]

(12) al-Āghā Jamāl al-Dīn ibn Ḥusayn al-Khwānsārī (d. 1125/1712-13)[189]

(13) Mīrzā ʿAbd Allāh al-Iṣfahānī, the author of Riyād al-ʿulamāʾ (d. ca.
1130/1717-18)[190]

(14) Āghā Muḥammad Mahdī ibn Muḥammad Hādī ibn Ṣāliḥ
   al-Māzandarānī (d. 1134/1722)[191]

(15) Mīrzā Abū al-Qāsim al-Qummī (d. 1231/1816)[192]

The well known refuter of the Akhbārīs, al-Waḥīd al-Bihbihānī, who died in
1205/1791, also wrote a hāshiyah on the above-mentioned hāshiyah of
al-Shīrwānī. [193]

The fact that Shīʿīs studied this work from the time of al-Shahīd
al-Awwal, and wrote a large number of commentaries on it from the
tenth/sixteenth until the early thirteenth/eighteenth century demonstrates
the extent of the Sunnī guild system's influence on the Shīʿī system of legal
education and indicates a more than coincidental or random link between
Shīʿī jurisprudence and the Shāfiʿī madhhab in particular.

Attraction to the Shāfiʿī Guild

In the case of al-Karakī and al-Shahīd al-Thānī, and also al-Shahīd
al-Awwal before them, the choice was perhaps clear, for the Shāfiʿī
madhhab was the strongest madhhab in both Egypt and Syria, but for earlier
periods this was not so clear. There was probably not so much pressure on

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[188]al-Dharīʿah, 6: 132.

[189]al-Dharīʿah, 6: 130.

[190]al-Dharīʿah, 6: 131.

[191]al-Dharīʿah, 6: 132.

[192]al-Dharīʿah, 6: 129.

[193]al-Dharīʿah, 6: 76.

al-Ḥillī to choose the Shāfiʿī madhhab, and certainly not for Ibn al-Kātib, who studied Shāfiʿī law in the early fourth/tenth century in Baghdad, since there was greater diversity of madhhabs at the time.

In Baghdad itself, Hanbalīs were the great enemies of the Shīʿīs and a constant thorn in their sides. The intolerance of the Hanbalīs precluded Shīʿī participation in their guild. The Mālikīs began waning in numbers in the East quite early, and also had perhaps the toughest stance on apostasy: they held that the repentance of the apostate would not be accepted unless it was offered of his own free will. This rule was seen to be the downfall of al-Shahīd al-Awwal at his heresy trial. The Ẓāhirī guild was dwindling and became extinct in the East in the fifth/eleventh century. The real choice seems to have been between the Shāfiʿīs and the Hanafīs, the two largest guilds in the region. It appears that whereas the Zaydīs sided with the Hanafīs, the Twelvers sided with the Shāfiʿīs.

The main reason for the Twelver Shīʿīs' decision to follow the Shāfiʿī rather than the Hanafī guild seems to be their predilection for the more traditionalist methods of the Shāfiʿīs. The Hanafī guild was characterized by the extensive use of raʾy, literally "opinion", and hence its adherents were often labeled ashāb al-raʾy, as opposed to ashāb al-hadīth. For the Twelvers, the use of raʾy with regard to Islamic legal issues was reprehensible and invalid. For this reason, the Twelver jurisconsults of the Buwayhid period such as al-Sharīf al-Murtadā and al-Shaykh al-Ṭūsī rejected not only the use of the term raʾy, but also those of ijtihād and qiyās, as being based on arbitrary personal opinion. Abū ʿAlī Muḥammad ibn Aḥmad ibn al-Junayd, a fourth/tenth century Shīʿī jurisconsult, wrote a work on Shīʿī law entitled Tahdhīb al-shīʿah li-ahkām al-sharīʿah, which was twenty volumes,

arranged according to the method of the jurisconsults (ʿalā ṭarīqat al-fuqahāʾ).[194] It must have been the most advanced work on Shīʿī law at the time. Al-Ṭūsī reports, however, that this and the other works of Ibn al-Junayd were rejected because he used the principle of analogy (qiyās). This shows the importance which the Shīʿī jurisconsults assigned to avoiding qiyās during the critical Buwayhid period, and perhaps indicates why they chose not to follow the Ḥanafī guild. Al-Kulaynī's collection of hadīth, al-Kāfī, compiled in the early fourth/tenth century, includes a section which rejects the use of raʾy and qiyās.[195] Al-Shaykh al-Mufīd wrote a work entitled al-Shaykh al-dāll ("The Erring Master"), in which he recounted the disgraces (faḍāʾiḥ) of Abū Ḥanīfah.[196] Al-Sharīf al-Murtaḍā criticized Abū Ḥanīfah for arriving at opinions through raʾy, without any textual evidence of precedents.[197] Shīʿī accounts, perhaps apocryphal, depicted Jaʿfar al-Ṣādiq, the sixth Imam, debating with Abū Ḥanīfah and criticizing him for the use of analogy in religious matters.[198] The Shāfiʿī guild, the traditionalist methods of which were more compatible with their own, was therefore the logical choice.

Moreover, it was felt that al-Shāfiʿī had been sympathetic to the Shīʿīs, and many short sections of poems have been reported to support this idea. The most famous of these is the following verse using the pejorative term rāfiḍī, which may be translated roughly as "Shīʿī heretic."

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[194]al-Ṭūsī, Fihrist kutub al-shīʿah, 160.

[195]al-Kāfī, 10 vols. (Tehran: Maktabat al-Ṣadūq, 1961), 1: 54-59

[196]Ibn Shahrāshūb, Maʿālim al-ʿulamāʾ (Tehran, 1934), 101.

[197]al-Sharīf al-Murtaḍā, Kitāb al-intiṣār (Najaf: al-Maṭbaʿah al-ḥaydariyyah, 1971), 3.

[198]See for example, the exchange Goldziher reports in Die Zāhiriten, 15.

in kāna rafdan hubbu āli Muhammadī
fa-l-yashhad ith-thaqalāni annī rāfidī

"If love for Muhammad's family is Shī'ī heresy, then may jinn
and men both bear witness that I am a Shī'ī heretic."[199]

While it seems clear that Shī'ī scholars of many periods participated
in the Shāfi'ī legal guild, it is not completely satisfactory to say that they did
so simply because they had to. Certainly, for Shī'īs in many areas, the only
way to receive an education in the legal sciences or to gain a post as a
repetitor (mu'īd), professor of law (mudarris), or judge was through
membership in one of the Sunnī guilds. Thus, economic motives may have
been behind the choice to claim membership in a Sunnī guild. Al-Shahīd
al-Thānī and Husayn ibn 'Abd al-Samad al-'Āmilī could not have gained
posts as teachers of law from the Ottoman government without claiming
membership in a Sunnī guild, and this was the only way for them to gain a
steady income while pursuing their chosen profession within the Ottoman
Empire. Al-Hurr al-'Āmilī reports that in Jabal 'Āmil, al-Shahīd al-Thānī
used to tend his own fields, and al-Shahīd al-Thānī told his student that
when he traveled to Egypt, he took a load of goods to sell, both indication
that he could not support himself by teaching alone. Mīrzā Makhdūm claims
that al-Shahīd al-Thānī obtained an Ottoman teaching position only because
he was envious of the Shī'ī scholars of the Safavid Empire who had grown
rich through the patronage of the Shī'ī Safavid Shahs.[200]

[199]al-Subkī, Tabaqāt al-shāfi'iyyah (Husayniyyah), 1: 158. For this an
other similar selections of poetry, see al-Khwānsārī, Rawdāt al-jannāt, 7:
261-63.
[200]al-Nawāqid, fol. 122 b.

Another motivation expressed by Shīʿīs, in response, one assumes, to their co-religionists' accusation that studying with Sunnīs is reprehensible in and of itself, is that it is necessary to study Sunnī works in order to refute them. The tenth/sixteenth-century Shīʿī scholar ʿAbd al-ʿĀlī al-Karakī, who himself studied under Sunnī teachers in Damascus, Mecca, and Cairo, states in an ijāzah dated 9 Ramaḍān, 937/April 26, 1531:

> With regard to the books of the Sunnīs (al-ʿāmmah), the
> Twelver Shīʿīs (ashābunā) have continued to relate and
> transmit them, expending their efforts and valuable time in
> doing so, for a sound religious purpose. For these works contain
> proofs of the truth and the means to discover the many cases of
> [the Sunnīs'] concoction of false statements. For when your
> opponent in disputation provides your proof, it has a
> tremendous effect on the hearts of men, and is more persuasive
> in silencing and refuting the arguments of the opponents who
> deny the truth. Moreover, there are other important benefits
> gained from knowledge of [these texts].[201]

Yusūf al-Baḥrānī, a twelfth/eighteenth-century Shīʿī scholar, makes a similar comment in his ijāzah to his sons.

> It is necessary that we mention the paths of transmission which
> are known to us of the books of Sunnī akhbār and tafsīr, so that
> one may cite them as needed in order to refute the Sunnīs.[202]

These two statements show one of the possible stances of the Shīʿīs towards Sunnī legal scholarship, which one might characterize as a defensive attitude. While they do not shun Sunnī learning altogether, they state that

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[201]Bihār al-anwār, 108: 79.
[202]Luʾluʾat al-bahrayn, 430.

the main purpose of study with Sunnīs is to use Sunnī evidence to support
the Shīʿī cause against the Sunnīs. This might include, for example, the use
of Sunnī hadīth to show the superiority of ʿAlī to the first three Sunnī
Caliphs. In general, it appears that these scholars felt it necessary to justify
their own concern with Sunnī learning to a Shīʿī audience which might be
inimical to Sunnīs. They seem to have considered this the most appropriate
argument for their Shīʿī interlocutors. But while the Shīʿīs felt the need to
defend themselves against the Sunnīs, this was not their only possible
motivation, and al-Karakī alludes to this fact when he states that there are
other benefits to be derived from studying Sunnī works.

Many scholars considered study under Sunnī teachers a reprehensible
act. They felt that it was wrong to trust the statements or views of the
Shīʿīs' doctrinal enemies on any topic, but especially on the law and the
sacred texts. Furthermore, they felt that studying with Sunnīs threatened to
allow the entrance of corrupt ideas into Shīʿī scholarship, something which
could only be avoided by rigid separation. The eleventh/seventeenth-
century Shīʿī biographer al-Ḥurr al-ʿĀmilī reports, concerning the studies of
al-ʿAllāmah al-Ḥillī, al-Shahīd al-Awwal, and al-Shahīd al-Thānī under
Sunnī teachers:

> There is no doubt that their intentions were sound; however,
> there resulted from this (tarattaba ʿalā dhālik) that which is
> apparent to whoever has examined and closely followed
> (tatabbaʿ) the books of legal methodology, legal derivation, and
> hadīth. It is clear that al-Shaykh Hasan [son of al-Shahīd
> al-Thānī] disapproved of what they had done.[203]

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[203]Amal al-āmil, 1: 89.

Although al-Ḥurr al-ʿĀmilī refrains from denouncing these scholars, he does blame them for corrupting Shīʿī scholarship concerning law and hadīth by studying with Sunnīs. Scholars like al-Shahīd al-Thānī were thus caught between two critical groups. On the one hand, many Sunnī scholars were apt to consider them heretical or unacceptable legal scholars, and on the other hand, many Shīʿīs felt that they were consorting with an enemy and using methods incompatible with Shīʿī beliefs.

The question arises as to whether the Shīʿīs wished to subvert the Shāfiʿī guild, to turn it to their own purposes once having established their own participation in it. Makdisi has shown how the Ashʿarīs infiltrated the Shāfiʿī guild and introduced rationalism and their own agenda into the guild. Did Shīʿīs endeavor to do the same? Scholarship to date has not provided any concrete evidence of such goals, yet to answer this question with any certitude would require a careful analysis of the history of Shāfiʿī law, a task which no one is likely to undertake in the near future. It is possible that the apparent similarities of Twelver Shīʿī and Shāfiʿī law are in part the result of disguised Shīʿī contributions to Shāfiʿī legal tradition, and it seems even more likely that Shīʿīs had something to do with the various reports that Shāfiʿī had Shīʿī sympathies. Given the level of contact between the two systems, it is probably the case that influence occurred in both directions.

An examination of the general development of Shīʿī law shows that there was a high correlation between legal study under Sunnī teachers and the advancement of Shīʿī legal scholarship along Sunnī lines. Al-ʿAllāmah al-Ḥillī, al-Shahīd al-Awwal, al-Karakī, and al-Shahīd al-Thānī all made innovative contributions to Shīʿī legal scholarship based on their

adaptations of Sunnī legal concepts. These contributions have yet to be studied in detail, and the present study merely outlines a few of the major developments in this regard, but it is undeniable that they have had enormous impact on the history of Twelver Shīʿī jurisprudence. It thus becomes clear that participation in the Shāfiʿī legal guild was an important means towards the development of the Imāmī legal guild itself. The legal expertise gained through familiarity with the Shāfiʿī guild helped the Shīʿīs in their endeavors to establish and refine a legal guild of their own, on a par with the Sunnī legal guilds. This "fifth guild" (al-madhhab al-khāmis) is treated in Chapter Eight below.

Chapter Seven

Taqiyyah and the Studies of Shīʿī Scholars with Sunnis:

the Case of Bahāʾ al-Dīn al-ʿĀmilī

While other sections of the present study treat the causes and
motivations behind the Shīʿī tradition of learning under Sunni teachers, this
chapter attempts to explain, albeit in a cursory manner, how they were able
to do so. Evidence that Shīʿīs studied in predominantly Sunni environments
automatically raises the question whether this was frequent to the point of
being ordinary, and whether, by emphasizing the fact that these Shīʿī
students were studying with their doctrinal enemies and assuming that they
were subjecting themselves to danger, this methodology has created a
problem which did not exist on the practical level. It therefore becomes
necessary to evaluate the danger involved in such study and the importance
of keeping one's Shīʿism a secret in a Sunni environment. In other words,
one needs to ask whether Shīʿism was in fact a serious stigma in the
academic environment. Within the framework of this study, an attempt to
answer this ancillary question is an important step towards reaching an
understanding of the relationship between Shīʿī and Sunni jurisprudence on
the level of the educational establishment, and not simply on the level of
legal theory.

As explained in Chapter Four, Islamic sects occupy a precarious legal
position. The intermediate status afforded to Christians and Jews is, at least
in theory, unavailable to Muslim sectarians. A Muslim sectarian is either
accepted as a believer (muʾmin), in which case he is accorded full rights in
the community, or an unbeliever (kāfir), in which case all his rights are

forfeited. His property is to be confiscated, and he is to be executed. Some jurists allow that he should be asked to repent before being executed; others do not allow him that opportunity. Islamic law does not recognize any middle ground, because heresy within Islam is tantamount to apostasy, and apostasy is a capital offense. As Bernard Lewis notes, the practice of Islam concerning the punishment of heretics was less severe than its theory,[1] and such scholars as al-Ghazāli advised their colleagues to refrain from accusing fellow Muslims of heresy whenever possible.[2] Nevertheless, the trial and execution of Muslim sectarians has not been a rare phenomenon in the history of Islam. For example, a number of Shī'īs were executed in Mamlūk Damascus, including al-Shahīd al-Awwal, who was tried and executed as a

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[1]Bernard Lewis, "The Significance of Heresy," 59.
[2]Faysal al-tafriqah, 15.

heretic in 786/1384. In the square just below the citadel, he was put to death by sword, and his body crucified, stoned, and, finally, burned.[3]

Given the danger involved in an accusation of heresy, it is not surprising that Islamic sects developed a variety of methods to protect themselves by concealing from the majority doctrinal differences or allegiance to a heterodox group. One such method was the establishment of a hierarchy in which only those initiated into higher levels could gain access to the esoteric teachings of the faith, as found in Ismāʿīlism and its historical off-shoots, the ʿAlawīs or Nuṣayrīs and the Druze. For example, adherents

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[3]Muḥsin al-Amīn, Aʿyān al-Shīʿah, 10: 60-61; Ibn Qāḍī Shuhbah, Tārīkh Ibn Qāḍī Shuhbah, 134-35. The execution of al-Shahīd al-Awwal seems to have been the result of a continuous concern of the Mamluks to control Shīʿī groups around Damascus and especially near the Mediterranean coast in the area which is now Lebanon. Mamlūk military expeditions were sent against the Shīʿīs and Druzes of Kisrāwān in 691/1292, 699/1300, and 704/1305. Ḥasan ibn Muḥammad al-Sakākīnī, a Shīʿī and the son of a Damascene scholar of considerable merit, was sentenced to death as a heretic and beheaded in the Sūq al-Khayl on 11 Jumādā I, 744/October 1, 1343. [Ibn Ḥajar al-ʿAsqalānī, al-Durar al-kāminah, 2: 34] In 756/1355, an Iraqi Shīʿī was arrested at the Umayyad mosque in Damascus and executed. In 768/1367, another Shīʿī, named Maḥmūd ibn Ibrāhīm al-Shīrāzī, was executed. On 25 Jumādā II, 764/April 12, 1363, the Mamlūk viceroy Sayf al-Dīn Qushtamūr issued a decree against the Shīʿīs of Beirut, Ṣaydā, and the surrounding district. See Urbain Vermeulen, "The Rescript Against the Shīʿites and Rāfiḍites of Beirut, Saida and District (764 A.H./1363 A.D.)," Orientalia Lovanensia Periodica 4(1973): 169-75; Henri Laoust, Les schismes dans l'islam, 259; idem., Essai sur les doctrines sociales et politiques de Takī-d-Dīn Ahmad b. Taimiya, 60. It seems that the Mamlūks were worried that the Shīʿīs would ally or cooperate with Mongol or Christian powers. In fact, Ibn Taymiyyah accuses the Shīʿīs of doing just that, and cites this as additional proof that the Shīʿīs are inimical to Islam and the Muslim community. While it is clear that political motives and fears for security entered into many of these executions and other actions, there is no doubt that these individuals were executed as heretics, and were charged and tried within a framework provided at least in part and justified by the religious establishment.

of the Druze religion are divided into two distinct categories, juhhāl, or

"ignorant ones," and ʿuqqāl, or "sages." Only the ʿuqqāl are allowed to read

the sacred texts of the religion and attend the khalwah, or secret ceremony

of worship. Another such method is taqiyyah (literally, "caution"), the

principle of precautionary dissimulation, whereby Muslim sectarians are

allowed to deny their beliefs when to do otherwise would put them in

danger. The sect most widely recognized for use of taqiyyah is that of the

Twelver Shīʿīs.

Taqiyyah is an accepted principle in Sunnī Islam.[4] Its use is based on

the interpretation of several Qurʾānic verses, including verse 16: 106 in

particular: "Whoever expresses disbelief in God after having accepted belief

[will suffer greatly]—except him who is forced while his heart is still at peace

in belief . . ." This verse is taken to refer to ʿAmmār ibn Yāsir, a Companion

of the Prophet who outwardly denied Muḥammad's prophesy and

worshipped pagan idols in order to protect himself while in Mecca. The

verse is interpreted to mean that a Muslim may deny his faith or violate

Islamic law if his life is threatened.[5] For Twelver Shīʿīs, taqiyyah has more

extensive applications, and some have taken this principle to be a crucial

doctrine and fundamental characteristic of Shīʿism.[6]

Von Grunebaum gives an extremely unsympathetic portrayal of

taqiyyah as practiced by the Twelver Shīʿīs:

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[4]Ignaz Goldziher, "Das Prinzip der takiyya im Islam," Gesammelte Schriften, 5 vols., ed. Joseph Desomogyi (Hildesheim: Georg Olms Verlagsbuchhandlung, 1970), 5: 59.

[5]Goldziher, "Das Prinzip der takijja im Islam," 59-60.

[6]Goldziher, Introduction to Islamic Theology and Law, 180-81; Etan Kohlberg, "Some Imāmī-Shīʿī Views on Taqiyya," Journal of the American Oriental Society 95(1975), 396-97.

Intransigence and intolerance are made particularly unpleasant by the doctrine of taqiyya. . . . The Shī'ī is bidden to act like a Sunnī when dominated by a Sunnī government. The injunction met with sufficient response to imbue medieval Shiism with a most unattractive flavor of moral ambiguity. The Shī'ī in non-Shī'ī territory lives the life of a conspirator. He curses in private whom he joins in public. The laws of morality are valid only within the conventicle. . . . A blend of self-pity and self-righteousness, unmeasured hatred and unmeasured devotion, made up the atmosphere surrounding the Friends of the Household.[7]

Von Grunebaum has little sympathy for this persecuted minority, and fails to

see that taqiyyah embodies a very natural response to socio-political

oppression and the legal consequences of heresy in Islam. Taqiyyah.

furthermore, is not unique to Shī'ism; it is in fact a pattern of behavior

employed by nearly any stigmatized group in society, whether it be

homosexuals, prostitutes, religious or ethnic minorities, etc.

While Twelver Shī'ī taqiyyah has been discussed in modern

scholarship,[8] research has concentrated on a limited number of issues

treated in hadith and legal texts. Kohlberg, for example, has consulted an

impressive number of Shī'ī original sources for his study on taqiyyah,

including the hadith works al-Kulaynī's al-Kāfī, Ibn Bābawayh al-Qummī's

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[7]Gustave E. von Grunebaum, Medieval Islam: A Study in Cultural Orientation, 2nd ed. (Chicago: University of Chicago Press, 1954), 190-91.

[8]Ignaz Goldziher, "Das Prinzip der takijja im Islam," Gesammelte Schriften, 5 vols., ed. Joseph Desomogyi (Hildesheim: Georg Olms Verlagsbuchhandlung, 1970), 5: 59-72; R. Strothmann, art. "Takiyya" EI 1, 4: 628-29; Egbert Meyer, "Anlass und Anwendungsbereich der taqiyya," Der Islam 57 (1980): 246-80; Muhammad Husayn Tabātabā'ī, Shi'ite Islam, 223-25; Etan Kohlberg, "Some Imāmī-Shī'ī Views on Taqiyya," Journal of the American Oriental Society 95(1975): 395-402.

Man la yahduruhū 'l-faqīh and ʿUyūn akhbār al-Ridā, al-Majlisī's Bihār
al-anwār and Mir'āt al-ʿuqūl, legal works such as al-Muhaqqiq al-Hillī's
al-Mukhtasar al-nāfiʿ, and other Shīʿī texts including al-Shaykh al-Mufīd's
Awā'il al-maqālāt and al-Shaykh al-Tūsī's al-Tibyān fī tafsīr al-Qur'ān. The
ideas expressed in such sources derive, for the most part, from the section
devoted to the topic of taqiyyah in al-Kulaynī's famous compilation of Shīʿī
hadīth, al-Kāfī.[9]

Many of the twenty-three hadīth reports which make up the section
on taqiyyah in al-Kāfī stress the importance of taqiyyah and its central
position in the Shīʿī faith. They include such statements as "Taqiyyah is
part of God's religion" (at-taqiyyatu min dīni 'Llāh);[10] "Taqiyyah is part of
my religion and that of my ancestors" (at-taqiyyatu min dīnī wa-dīni
abā'ī);[11] "In taqiyyah lies nine tenths of the religion." (inna tisʿata aʿshāri
'd-dīni fi 't-taqiyyah);[12] and "He who has no taqiyyah has no faith." (lā
imāna li-man lā taqiyyata lah).[13] The Imams are depicted as exhorting the
believers to practice taqiyyah. Jaʿfar al-Sādiq is reported as asking the
rhetorical question, "What is there which pleases me more than taqiyyah?"
(wa-ayyu shay'in aqarru li-ʿaynī min at-taqiyyah?)[14] and stating "By God,
there is nothing on the face of the earth more pleasing to me than taqiyyah"
(wa 'Llāhi mā ʿalā wajhi 'l-ardi shay'un ahabbu ilayya min at-taqiyyah).[15]

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[9]Muhammad ibn Yaʿqūb al-Kulaynī, al-Kāfī, 10 vols. (Tehran: Chāp-
khānah-yi haydarī, 1961), 2: 217-21.

[10]al-Kāfī, 2: 217.

[11]al-Kāfī, 2: 219.

[12]al-Kāfī, 2: 217.

[13]al-Kāfī, 2: 217-19, 221. This statement appears in several of the
hadīths, and some of the versions give dīn in place of imān.

[14]al-Kāfī, 2: 220.

[15]al-Kāfī, 2: 217.

and "Whoever has taqiyyah will be raised up by God, and whoever does not have any taqiyyah will be put down by God."[16] Taqiyyah is thus portrayed as a crucial obligation of the believer and a necessary part of the religion.

The hadiths show that taqiyyah is employed to avert danger not only from oneself, but also from the sectarian community and its leader, the Imam. One hadith, emphasizing the importance of taqiyyah for an individual's safety, states, "Taqiyyah is the shield of the believer and his fortress."[17] Ja'far al-Sādiq is reported as addressing the following warning to the Shī'īs:

> You among the generality of the people are like bees among
> birds. If the birds only knew what lies hidden inside the bees,
> they would not leave any of them uneaten, and if the people
> only knew what lies hidden inside you, that is, that you love the
> descendants of the Prophet, they would eat you with their
> tongues and heap invective upon you, both in secret and in the
> open.[18]

Many hadiths in the section on taqiyyah as well as a following section on kitmān, or "secrecy," stress the importance of concealing the identity of the Imam from outsiders. Ja'far al-Sādiq is reported as saying, "He who broadcasts our situation is like he who denies us."[19] One hadith portrays 'Alī addressing his followers from the minbar at the mosque of Kūfah and telling them that they should insult him and renounce him if forced to do

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[16]al-Kāfī, 2: 217.
[17]al-Kāfī, 2: 221.
[18]al-Kāfī, 2: 218.
[19]al-Kāfī, 2: 224.

so.[20] In another hadith, Ja'far al-Ṣādiq praises a believer for pretending not to recognize him in public.[21]

A key idea in the use of taqiyyah is that the actions of any member of the community reflect on other members of the community, so that one must be careful to avoid acts that will put other members of the community, or the Imam himself, in a compromising position. One hadith attributed to Ja'far al-Ṣādiq states this explicitly, drawing a comparison between the Shī'ī community and a family:

> Take heed not to do anything for which they will reproach us,
> for the bad son brings blame upon his father through his
> actions. Be an adornment for him to whom you have sworn
> allegiance, and not a mark of shame.[22]

In sociological terms, this hadith emphasizes the fact that Shī'ism is a tribal stigma. The Shī'ī believer therefore performs taqiyyah not only for his own safety, but also for the welfare of the stigmatized community in society at large.

Related to this topic is the question as to whether taqiyyah is allowed or required. One hadith depicts two Shī'ī believers from Kūfah who are given the choice between renouncing 'Alī and death. One renounces 'Alī and is spared, while the other refuses and is killed. The hadith comments that the first man, who performed taqiyyah, did nothing wrong according to the religion, while the second man, as a martyr, will ascend immediately to

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[20]al-Kāfī, 2: 219.
[21]al-Kāfī, 2: 219.
[22]al-Kāfī, 2: 219.

heaven.[23] A typical Shīʿī view holds that taqiyyah is obligatory if there exists a definite threat of useless death and permissible if there is not.[24] The Shīʿīs' main justification for the obligatory use of dissimulation is that it not only prevents useless loss of the life or property of the individual performing dissimulation, but also reduces the risk to his co-religionists, the sectarian community at large.[25]

Hadīth and legal sources address circumstances which limit or prevent the use of taqiyyah. Taqiyyah is sometimes forbidden because of other over-riding principles. Hadīths state that one may not drink wine out of taqiyyah,[26] and that one can not kill anyone out of taqiyyah, for taqiyyah's purpose is to protect lives.[27] Later scholars have added that one must not use taqiyyah if it results in the spreading of falsehood and injustice.[28]

Concerning the circumstances which require taqiyyah, a modern Shīʿī scholar holds that Shīʿīs are enjoined to conceal their sectarian allegiance when to reveal it would put their own lives, the lives of the members of their family, their wives' or other female relatives' honor, their property, or their co-religionists in definite danger.[29] It is recognized that in terms of actual practice, taqiyyah was most often used in territory dominated by a Sunnī government.[30] One hadīth attributed to Muḥammad al-Bāqir, the fifth

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[23]al-Kāfī, 2: 221.

[24]Kohlberg, "Some Imāmī-Shīʿī Views on Taqiyya," 401.

[25]Goldziher, "Das Prinzip der takijja im Islam," 65-66.

[26]al-Kāfī, 2: 217.

[27]al-Kāfī, 2: 220.

[28]Kohlberg, "Some Imāmī-Shīʿī Views on Taqiyya," 399, 401; Egbert Meyer, "Anlass und Anwendugsbereich der taqiyya," 254-56, 261, 270-71.

[29]Muḥammad Ḥusayn Ṭabāṭabāʾī, Shiʿite Islam, 225.

[30]Kohlberg, "Some Imāmī-Shīʿī Views on Taqiyya," 397; Von Grunebaum, Medieval Islam, 190-91.

Imam, states this explicitly: "Go along with them outwardly but oppose them inwardly when power is in the hands of fools." (khālitūhum bi 'l-barrāniyyah, wa khālifūhum bi 'l-juwwāniyyah, idhā kānat il-imratu sibyāniyyah).[31] The term dār al-taqiyyah ("The Abode of Taqiyyah"), modeled on similar terms such as dār al-islām, dār al-īmān, and dār al-kufr, has been used in Shī'ī legal texts to denote such a region.[32] A specific term, al-muttaqā minhū, is used to refer to the interlocutor in whose presence one performs taqiyyah. This may include unbelievers, Sunnīs, rulers, jurists, judges, and the common people.[33] There are few detailed discussions of the exact circumstances which require performance of taqiyyah in legal sources, but a hadīth attributed to Muḥammad al-Bāqir gives the principle that the individual believer must use his own judgment in deciding when to do so: "He who is compelled [to use taqiyyah] knows best when [the need to use] it befalls him" (ṣāhibuhā a'lamu bihā hīna tanzilu bih).[34]

The actual substance of taqiyyah, i.e., the specific information which is being concealed or falsified, is designated in some legal sources by the term al-muttaqā fīhi.[35] Concerning the substance of taqiyyah, a number of hadīths, including some of those mentioned above, show that one secret which the Shī'ī believers are urged to keep is their allegiance to the descendants of the Prophet and especially to the Imam of their time. In other words, they may deny that they are Shī'īs. The modern scholars who have treated taqiyyah agree that the principle of taqiyyah allows one to do

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[31]al-Kāfī, 2: 220.

[32]Kohlberg, "Some Imāmī-Shī'ī Views on Taqiyya," 397.

[33]Meyer, "Anlass und Anwendungsbereich der taqiyya," 252.

[34]al-Kāfī, 2: 219.

[35]Meyer, "Anlass und Anwendungsbereich der taqiyya," Der Islam 57 (1980), 252.

two things: deny one's faith, or violate individual points of law to follow majority practice, as in performing prayer or ritual ablutions. Thus, the substance of taqiyyah is generally seen as being limited to expressions of belief and ritual practices.[36]

Several hadiths contained in al-Kafi point to a more extended view of taqiyyah. As mentioned above, it is an accepted principle that the decision to use taqiyyah is based on personal judgment. Two hadiths attributed to Muhammad al-Baqir indicate that taqiyyah is to be applied to anything in which coercion or necessity is involved. They read, "Taqiyyah is to be used in every necessity."[37] and "Taqiyyah is to be applied to everything to which man is compelled."[38] In one hadith, Jaʿfar al-Ṣādiq urges the Shīʿīs to pray in the gatherings of the Sunnīs, visit their sick, and attend their funerals, in short, to participate in their social life.[39] Thus, Shīʿīs are urged to blend as completely as possible into the Sunnī community, and even to be exemplary members of it. He adds, "Do not let them do any good before you, for you are more worthy of it than they."[40] Another hadith warns, "Beware the consequences of slip-ups."[41] This statement is particularly interesting in that it implies that taqiyyah is not a single statement or action during a time of duress, but rather a careful and sustained performance which might involve many different actions. In line with these hadiths, Goldziher states

[36]Goldziher, "Das Prinzip der takijja im Islam," 59-60, 63; Kohlberg, "some Imāmī-Shīʿī Views on Taqiyya," 399; Tabātabāʾī, Shīʿite Islam, 223.
[37]al-Kafi, 2: 219. The text reads, "at-taqiyyatu fī kulli darūrah."
[38]al-Kafi, 2: 220. The text reads, "at-taqiyyatu fī kulli shayʾin yudtarru ilayh ibnu ādam."
[39]al-Kafi, 2: 219.
[40]al-Kafi, 2: 219.
[41]al-Kafi, 2: 221. The text reads, "ihdharū ʿawāqib al-ʿatharāt."

of the Shīʿī believer, "In a region ruled by his enemies he must speak and act as though he were of their number in order not to draw down peril and persecution on his comrades."[42]

Taqiyyah is not merely an abstract principle buried in legal texts. It is an important part of daily life for many Muslim sectarians, a method which must be performed not only in a legally correct manner, to avoid sinful acts, but also in a convincing manner, to avoid bodily harm and promote the economic success and social welfare of the sectarian community. While it is important to understand the theory behind the principle, it is clear that the theoretical texts leave a great deal unsaid. A moment's reflection on the problems minorities in general face will suffice to demonstrate that a different approach is necessary. For a Shīʿī to pretend to be a Sunnī takes more than a simple statement to that effect. It requires a sustained act which might require hundreds of individual statements and actions of different types, many of which might have little to do with expressions of belief or ritual practice per se. A Shīʿī may have to give a different name or place of origin if to reveal his actual name or place of origin would make him suspect. He might have to disguise his accent or adjust his speech patterns to avoid giving away his membership in the minority community. He might even have to give an altered version of his life-history, or invent narratives to explain away any inconsistencies in his performance of taqiyyah. The juridical texts say little about the exact circumstances under which taqiyyah should be performed; they say even less about how one is to do this in a convincing manner, should the need arise. To gain a more complete

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[42]Goldziher, Introduction to Islamic Theology and Law, 181.

understanding of the principle of taqiyyah, it is important to examine specific examples of its use.

The only research to date which has attempted to examine taqiyyah as practice is that of Aharon Layish in his recent article, "Taqiyya among the Druzes."[43] Layish stresses the fact that taqiyyah is a complex behavioral pattern and involves a sustained and careful act. A Druze tradition attributed to al-Ḥākim states, "Keep me in your hearts but wear what is proper to wear and represent yourselves (tazāharū), to the best of your ability, as wholly belonging to that religion [Christianity or Islam]."[44] A manual of the Druze faith requires Druze fathers to teach their sons how to adapt to the environment.[45] Layish's main focus is the application of family law in modern Israel, and he finds that the Druze have long paid lip-service to the Ḥanafī school as regards family and inheritance law, while nevertheless following, in many cases, contradictory or distinctly Druze practices.[46] For example, they claim to follow Ḥanafī law in matters of inheritance, but this only applies to cases where a will is not used. Wills are not only permissible but unrestricted in Druze practice, as opposed to Sunnī law, and it rarely happens that the Ḥanafī rules are actually enforced, since a will is usually produced.[47] This superficial adherence to the Ḥanafī legal system is a tradition remaining from the Ottoman period, when the Ḥanafī school of law held a privileged position in the state. In modern Israel, the need to adhere to Ḥanafī law has since passed, and the Druze have

[43]Aharon Layish, "Taqiyya among the Druzes," Asian and African Studies 19 (1985), 245-81.

[44]Layish, "Taqiyya among the Druzes," 251.

[45]Layish, "Taqiyya among the Druzes," 252.

[46]Layish, "Taqiyya among the Druzes," 257-71.

[47]Layish, "Taqiyya among the Druzes," 260-61, 270-71.

introduced measures which reduce its influence on their law. Layish concludes, "Taqiyya is a dynamic, not a static, doctrine; adaptation and assimilation to the environment are not one-time acts but continuous processes determined by changing circumstances of place and time."[48]

Taqiyyah is identical to the sociological term "passing," the strategy that a stigmatized individual adopts in trying to hide his stigma and blend in with "normals." The dynamics of taqiyyah in practice show remarkable similarity to the phenomena Erving Goffman describes in one chapter of his work on stigma, entitled "Information Control and Personal Identity."[49] The question which faces the performer of taqiyyah is that which faces the stigmatized individual trying to hide his stigma: in Goffman's words, "To display or not to display; to tell or not to tell; to let on or not to let on; to lie or not to lie; and in each case, to whom, how, when, and where."[50] The case study below shows some of the strategies one historical figure used in this situation.

Educational Taqiyyah

The following discussion will examine one type of taqiyyah, which I have chosen to term "educational taqiyyah," as actually applied within

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[48]Layish, "Taqiyya among the Druzes," 261. Layish also mentions other types of taqiyyah practiced by the Druze without exploring them in detail. He states that the Druze most often pretend to be Muslims, and are often considered a Muslim sect, though in his view they adhere to a quite distinct religion; that some Druze converted to Christianity in the Levant in the 1830s to avoid conscription into the Egyptian army; that some became Muslims to avoid conscription into the Israeli army but re-adopted the Druze religion when they were conscripted nevertheless. [p. 274] Some Druze in Israel pretend to adopt Judaism and take Hebrew names for economic reasons, and later change their name back to the original. [p. 274]

[49]Stigma, 41-104.

[50]Stigma, 42.

Twelver Shīʿism. It is my contention that taqiyyah played a particularly important role in the Shīʿī tradition of study under Sunnī teachers discussed in the previous chapter, especially since such Shīʿī scholars studied doctrinally marked subjects, such as hadīth, fiqh, and usūl al-fiqh, and studied in exclusive institutions, the Sunnī madrasahs of major Islamic cities. One indication of the extensive use of taqiyyah on the part of Shīʿī scholars in such situations is the statement made by Ibn al-Labbān, one of the Sunnī teachers of al-Shahīd al-Awwal, mentioned in the previous chapter:

> He was an accomplished scholar in law, syntax, and recitation of the Qurʾān. He was my fellow for a lengthy period, and I never heard from him anything contrary to the Sunnīs.[31]

This statement shows that al-Shahīd al-Awwal dissimulated his Shīʿism while studying under Ibn al-Labbān in Damascus. It points out that even though their relationship lasted for a long time (muddah madīdah), perhaps a considerable number of years, Ibn al-Labbān saw no evidence whatsoever that his student was a Shīʿī. This was clearly a sustained performance of taqiyyah on al-Shahīd al-Awwal's part.

A well-known example of educational taqiyyah is that of the nineteenth-century reformer, Jamāl al-Dīn al-Afghānī (1254-1314/1838-97), who claimed to be from Afghanistan while teaching Sunnī students in Cairo and elsewhere in order to conceal the fact that he was actually an Iranian Shīʿī. Nikki Keddie has written a detailed study of al-Afghānī's career and noted his use of taqiyyah, saying that it "would come most

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[31]Muḥammad al-Jazarī, Ghāyat al-nihāyah, 265.

naturally to a Persian, whose religious education taught the need to hide one's beliefs before outsiders."[52]   The Shī'ī scholar Muḥsin al-Amīn gives the following assessment of al-Afghānī's concealment of the fact that he was Iranian:

> If it were not for this, he would not have been named "the Sage of Islam" or "the Philosopher of the East," nor would he have attained such great fame, nor would the Grand Vizier 'Alī Pashā have received him in Istanbul with such respect or honored him in such an unprecedented manner, nor would ministers and princes have honored him so, nor would he have been appointed a member of the Academy of Sciences (majlis al-ma'ārif), nor would the Egyptian government have paid him a monthly stipend of one thousand Egyptian piasters, nor would al-Shaykh Muḥammad 'Abduh have been able to associate with him, study under him, or adopt him as a spiritual mentor and close friend, and so on."[53]

Thus, in Muḥsin al-Amīn's view, al-Afghānī's use of taqiyyah was a natural response to systematic discrimination against Shī'īs.

For all al-Afghānī's political schemes and idiosyncrasies, his use of educational taqiyyah was not an isolated example in Shī'ī intellectual history. Awareness of the workings of educational taqiyyah is crucial for an understanding of the development of Shī'ī scholarship in many fields, as well as an understanding of the socio-political dynamics of Muslim sectarian communities in both the medieval and modern Islamic world. The use of educational taqiyyah is sometimes glossed over by the Shī'īs themselves, perhaps because it is damaging to their sense of pride, or because they feel

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[52]Sayyid Jamāl al-Dīn al-Afghānī: A Political Biography (Berkeley: University of California Press, 1972), 10, 18, 431.
[53]Muḥsin al-Amīn, A'yān al-shī'ah, 4: 207.

that it ought not to be public information. While the doctrine of taqiyyah allows the ShīʿI believer to conceal his sectarian allegiance, it is nevertheless disturbing to many ShīʿI scholars to think that some of their greatest luminaries denied their faith or lied in order to study with their doctrinal enemies. Such scholars would rather not admit that the great ShīʿI jurists derived many of their ideas from Sunni sources or that ShīʿI scholars humbled themselves and employed deception or other forms of subterfuge in order to gain that knowledge, particularly when some Sunnis consider the ShīʿI abuse of dissimulation itself as one of their great heresies.

The Case of Bahāʾ al-Dīn al-ʿĀmilī

It is my aim to look at taqiyyah in practice, using as an example the ShīʿI scholar Bahāʾ al-Dīn al-ʿĀmilī (d. 1030/1621). Also known as al-Bahāʾī or al-Shaykh al-Bahāʾī, he had the curious fortune to be recognized by many Sunnis as a Sunni while at the same time serving as one of the foremost juridical authorities in the officially ShīʿI Safavid empire. Many of his actions reveal remarkable similarities to those of al-Afghānī. An examination of his studies with Sunni teachers in Ottoman territories will be undertaken to show that he used taqiyyah primarily for purposes of teaching and study, and to throw some light on the particular methods he used in doing so. An analysis of taqiyyah as applied by al-Bahāʾī should reveal methods which are not particular to him but which have been used by other ShīʿI scholars throughout history.

Al-Bahāʾī was the son of Ḥusayn ibn ʿAbd al-Ṣamad al-ʿĀmilī (d. 984/1576), a native of the town of Jubāʿ in Jabal ʿĀmil and the student and companion of al-Shahīd al-Thānī. Al-Bahāʾī was born in Baʿlabakk on 27 Dhū ʾl-Ḥijjah, 953/February 16, 1547. When he was still a youth, his father

emigrated to Iran with the entire family. They spent several years in Isfahān, where al-Bahā'ī was betrothed to the daughter of ʿAlī Minshār ibn Hilāl al-Karakī,[54] the shaykh al-islām (chief jurisconsult) of the city. Shah Ṭahmāsb (930-84/1524-76) then summoned Husayn to the capital, Qazvīn, and appointed him shaykh al-islam there. After having served as shaykh al-islām in Qazvīn, Mashhad, and Herat for about twenty years, Husayn left Iran to perform the pilgrimage, leaving his son behind. He died on 8 Rabīʿ I, 984/June 5, 1576, in Baḥrayn, several months after completing the pilgrimage.[55] Al-Bahā'ī's father-in-law ʿAlī Minshār died just five days later, on 13 Rabīʿ I, 984/June 10, 1576, and al-Bahā'ī replaced him in the post of shaykh al-islām of Isfahan.[56] The importance of his post was greatly enhanced when Shah ʿAbbās (996-1038/1587-1629) made Isfahan the capital of the empire in 1005/1597, and al-Bahā'ī became the foremost

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[54]Riyāḍ al-ʿulamāʾ, 4: 283-85, 5: 94.

[55]Riyāḍ al-ʿulamāʾ, 2: 109-10.

[56]Riyāḍ al-ʿulamāʾ, 4: 284; Iskandar Beg Munshī, Tārīkh-i ʿālam-ārā-yi ʿAbbāsī, 2 vols. (Tehran: Chāpkhānah-yi gulshan, 1971), 1: 156.

religious authority in the empire for most of Shah ʿAbbās' reign. Al-Bahāʾī died in Iṣfahān in 1030/1621.[57]

The extended journey in Ottoman territory which al-Bahāʾī undertook ca. 991-93/1583-85, at a time of sectarian strife, demonstrates his willingness to undergo great personal danger in the pursuit of learning. As will be seen below, the accounts of al-Bahāʾī's travels focus on his concern for secrecy, and some make it seem that he was unnecessarily secretive and overly cautious. Literally traveling through a war zone, he had good reason to practice taqiyyah. The death of Shah Tahmasb in 984/1576 and the murder of his son and successor, Shah Ismāʿīl II (984-85/1576-77) in Ramaḍān 985/November 1577 had left the Safavid empire prey to factional rivalry, and the Ottomans were quick to take advantage of the weak Safavid central authority to make advances into the western border provinces. The Ottomans first launched their campaign in Muḥarram 986/March 1578. That year, they subdued most of Georgia and northern Azerbaijan, taking Tiflis, Shirvān, and Erivān. In 987/1579, they rebuilt the fortress at Qārṣ on the

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[57]For a general biography, see the following works: Yūsuf al-Baḥrānī, Luʾluʾat al-Baḥrayn, pp. 16-23; Muḥammad ibn al-Ḥasan al-Ḥurr al-ʿĀmilī, Amal al-amil, 1: 155-60; Mīrzā ʿAbd Allāh Afandī al-Iṣfahānī, Riyāḍ al-ʿulamāʾ, 5: 88-97; al-Khwānsārī, Rawḍāt al-jannāt, 7: 56-84; Muḥammad al-Muḥibbī, Khulāṣat al-athar fī aʿyān al-qarn al-hādī ʿashar, 4 vols. (Beirut: Dār ṣādir, 1970), 3: 440-55; Iskandar Beg Munshī, Tārīkh-i ʿalam-ara-yi ʿAbbāsī, 1: 155-7, 2: 967-8; Andrew Newman, "Towards a Reconsideration of the 'Isfahan School of Philosophy': Shaykh Bahāʾī and the Role of the Safawid ʿUlamāʾ," Studia Iranica, 15 (1986), 165-198; C. E. Bosworth, Bahāʾ al-Dīn al-ʿĀmilī and His Literary Anthologies (Manchester, England: University of Manchester, 1989); Etan Kohlberg, art. "Bahāʾ al-Dīn ʿĀmelī," Encyclopaedia Iranica (1989); Muḥammad al-Tūnjī, Bahāʾ al-Dīn al-ʿĀmilī: adīban–shāʿiran–ʿāliman (Damascus: Manshūrāt al-mustashāriyyah al-thaqāfiyyah li 'l-jumhūriyyah al-islāmiyyah al-Īrāniyyah, 1985). See also my forthocoming study, "A Biographical Notice on Bahāʾ al-Dīn al-ʿĀmilī," Journal of the American Oriental Society, 111(1991).

frontier to serve as a base, and in the following years they fortified the other citadels under their control. Although Safavid forces gained some temporary victories, they lost a major battle in Rabīʿ 991/May 1583, allowing the Ottomans to maintain their hold on the region. In 993/1585, the Ottomans advanced once more, capturing Tabriz, the provincial capital, in Ramaḍān 993/September 1585 and occupying all of Azerbaijan. The occupation would last until Shah ʿAbbās reconquered the province over twenty years later. When al-Bahāʾī set out on his trip into Ottoman territory, the Ottomans had already been in Azerbaijan for several years, although they did not capture Tabriz until after his return.

Sectarian tension within the Safavid empire had reached new heights during the short and bloody reign of Shah Ismāʿīl II, who unsuccessfully attempted to implement many pro-Sunnī policies, outlawing the cursing of Abū Bakr and ʿUmar, and removing references to ʿAlī from the coinage, just a few years before al-Bahāʾī's journey. This tension was aggravated by the ensuing Ottoman campaigns in Azerbaijan. Given that Ḥusayn ibn Ḥasan al-Karakī (d. 1001/1593), shaykh al-islām, or chief jurisconsult, of the capital Qazvin and top religious authority of the empire, declared all non-Twelvers unbelievers,[58] it is difficult to imagine that study under Sunnī teachers was encouraged during this period. Writing in Jumādā II, 989/July, 1581,[59] just two years before al-Bahāʾī's journey, Mīrzā Makhdūm (d.

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[58]Mīrzā Makhdūm al-Shīrāzī, al-Nawāqiḍ, fol. 102a. Though Mīrzā Makhdūm's report may be somewhat biased, it is indicative of the intensity of the conflict between Sunnis and Shīʿīs during this period. Nevertheless, it is perfectly likely that Ḥusayn ibn Ḥasan al-Karakī, who was strongly supported by the Qizilbash because of his extremism, actually espoused this opinion.

[59]al-Nawāqiḍ, fol. 131 b.

995/1587), a former sadr, or minister, of Shah Isma'il II who had escaped
to the Ottoman empire after the latter's murder, predicted on astrological
considerations that either 990 A.H. or 991 A.H. would be a propitious year to
rid the world of Shi'ism, obviously, in this context, coterminous with the
Safavid state.[60] While Mirza Makhdūm's prediction was as much an effort
on his part to curry favor with the Ottoman Sultan Murād III (982-
1003/1574-95) and so promote his own career as an expression of popular
opinion, it must have been calculated to harp on sentiments current at that
time. Because Shi'ism had come to be associated with the Safavid political
threat to the Ottoman empire, communication between Sunni and Shi'i
scholars had become increasingly difficult.

Al-Bahā'i knew of this tradition through his father and his father's
teacher, al-Shahid al-Thāni, who had traveled to Damascus, Cairo, and other
cities in Ottoman territory to study with Sunni scholars, but he had not been
able fully to take part in the tradition himself. He had grown up in the
officially Shi'i Safavid empire, where Sunnis were persecuted, and where it
was difficult for Sunni learning to survive, except in fields unmarked by
doctrinal considerations, such as grammar, astronomy, and mathematics.
Mirza Makhdūm considered one of the Shi'is' great heresies the fact that
they rejected outright the six well known compilations of Sunni hadith,
including the Sahihs of al-Bukhāri and Muslim.[61] He states that it has been
impossible to study "real"—i.e., Sunni—fiqh, hadith, or tafsir in Iran ever
since the establishment of Safavid rule in 907/1501, and that if a Sunni

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[60]al-Nawāqiḍ, fols. 131 b-132a.
[61]al-Nawāqiḍ, fols. 98 a-b.

work on one of these subjects were found in someone's house, the entire

house would be burned down along with the book.[62]

Although al-Bahā'ī was aware or even over-sensitive to the dangers,

he showed great persistence in engaging in exchanges with Sunnī scholars,

as adversaries in debate, as colleagues, as teachers and students, following,

almost literally, the footsteps of his father and al-Shahīd al-Thānī. When the

latter two had traveled to Cairo in 942-43/1535-37, they had studied tafsīr

and fiqh with the leader of the Bakrī Ṣūfī order, Abū 'l-Ḥasan al-Bakrī (d.

953/1546-47).[63] When al-Bahā'ī was in Cairo, he met with Abū 'l-Ḥasan's

son, Muḥammad al-Bakrī (d. 993/1585),[64] and wrote a long panegyric poem

in his honor. In 948/1542, al-Shahīd al-Thānī had made a short trip from

Jabal ʿĀmil to Jerusalem and received an ijāzah from Shams al-Dīn Ibn Abī

'l-Luṭf al-Maqdisī.[65] Al-Bahā'ī received an ijāzah for the Saḥīḥs of

al-Bukhārī and Muslim as well as two works of tafsīr from al-Maqdisī's son

Muḥammad in 992/1584, over forty years later.[66] Thus, in at least two

cases, al-Bahā'ī specifically sought out the descendants of the scholars his

father and al-Shahīd al-Thānī had met in their own travels over forty years

before. The fields he studied and discussed during his travels included not

only those which were doctrinally neutral, such as poetry and mathematics,

but also fields which were doctrinally marked, such as ḥadīth. That Sunnī

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[62]al-Nawāqiḍ, fol. 99 a.

[63]ʿAlī ibn Muḥammad al-ʿĀmilī, al-Durr al-manthūr, 2: 163-5.

[64]For a biography of both Muḥammad and his father Abū al-Ḥasan, see Muḥyī al-Dīn ʿAbd al-Qādir ibn ʿAbd Allāh al-ʿAydarūsī, al-Nūr al-sāfir ʿan akhbār al-qarn al-ʿāshir, ed. Muḥammad Rashīd al-Ṣaffār (Baghdad: al-Maktabah al-ʿarabiyyah, 1934), 414-32.

[65]al-Durr al-manthūr, 1: 169-70.

[66]This ijāzah will be discussed in greater detail below.

learning had a considerable effect on al-Bahā'ī's thinking is indicated by
many passages in his later works, including a statement in his work on
hadīth criticism, al-Wajīzah ["The Succinct Treatise"], in which he made it
clear that he was familiar with Sunnī as well as Shīʿī hadīth.

> The hadīths transmitted from them [the Imams] contained in
> the books of the Shīʿīs are many more than those in the six
> Sihāh of the Sunnīs, as is clear to anyone who has examined the
> hadīths of both groups.[67]

It remains to be seen how al-Bahā'ī was able to undertake these studies in a
polarized environment.

Al-Bahā'ī's Travels in Ottoman Territory

Piecing together information from ijāzah documents and al-Bahā'ī's
own writings, as well as accounts from chronicles, biographical works, and
several unpublished manuscripts, it is possible to provide a rough sketch of
al-Bahā'ī's journey. Although several anecdotes concerning al-Bahā'ī's
journey are well known, a great deal of confusion has surrounded previous
analyses of the trip, specifically with respect to the order and dating of
events.[68] Therefore, a composite account is presented below in an attempt
to provide the most comprehensive and detailed picture of the trip available
to date, with the result that some of the information included is not
immediately relevant to al-Bahā'ī's performance of taqiyyah, but is included
for the sake of completeness or establishing an accurate chronology. The

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[67]Bahā' al-Dīn al-ʿĀmilī, al-Wajīzah, Ed. Muhammad al-Mishkāt
(Tehran: Matbaʿat al-majlis al-shūrī, 1937), 8.

[68]Other accounts are found in Newman, "Towards a Reconsideration,"
172-75; Bosworth, Bahā' al-Dīn al-ʿĀmilī and His Literary Anthologies, 29-
41.

analysis of al-Bahā'ī's performance of taqiyyah will follow the composite account.

Sometime circa 991/1583, al-Bahā'ī decided to make an extended trip into Ottoman territory. At this time he was an established scholar in his late thirties and held the post of shaykh al-islām of Isfahan, then an important provincial capital. He enjoyed the prestige, in the newly established Shīʿī Empire, of descent from a long line of Shīʿī scholars, a prestige enhanced by the fact that he had inherited, as it were, the learning of al-Shahīd al-Thānī through his father, Husayn, who had been one of the foremost religious authorities in the Safavid empire for roughly twenty years (ca. 963-83/1555-75). Al-Bahā'ī began his trip by giving up his post as shaykh al-islām of Isfahan expressly in order to perform the pilgrimage.[69] This probably involved obtaining permission from the reigning Shah, Muhammad Khudābandah (985-95/1578-87).

> Then the longing for gaining the happiness of pilgrimage to the House of God and the yearning for travel prevented him from performing such duties [as shaykh al-islām of Isfahan]. He set out upon a journey blessed by the steps of his predecessors. After having enjoyed the greatest prosperity,[70] the longing for abstinence and the life of a dervish became preponderant in his noble temperament. He chose to travel in the garb of dervishes. He traveled through Iraq of the Arabs, Syria, Egypt, the Hijāz, and Jerusalem for a long time, and during the days of his travel, he benefited from the company of many scholars, wise men, great Sūfī leaders, traveling dervishes, the people of God and

[69]Tārīkh-i ʿālam-ārā-yi ʿabbāsī, 1: 156-57.

[70]Savory translates this phrase, baʿd az istisʿād-i ʿuzmā, as "on his return" (from the pilgrimage to Iran understood). Tārīkh-i ʿĀlam-ārā-yi ʿabbāsī, 2 vols., trans R. M. Savory (Boulder, Colorado: Westview Press, 1978), 1: 248. This would imply that he returned to Iran before traveling in these other lands, which was not the case, and probably not the intended meaning of Iskandar Beg.

asceticism—the chosen ones of God. From accompanying them, he came to share in their abundant blessings, and obtained both worldly and spiritual perfections.[71]

Al-Baha'i left Iran in 991/1583 at the latest in order to perform the pilgrimage at the end of that year.[72] He traveled in the garb of a dervish. This choice of humble attire shows that he did not want to draw attention to himself, and also indicates that he did not bring his family, for it would hardly seem plausible for a wandering ascetic to travel with a wife and dependents.

It was usual, in this period, for pilgrims from Iran and Transoxania to follow the trade route Tabriz-Āmid-Aleppo-Damascus, passing through an Ottoman checkpoint at Āmid. Al-Baha'i mentions that in Āmid he wrote a poem in Persian for his book Sawānih safar al-Hijāz ["Thoughts on the Way to the Hijāz"], and then describes his unpleasant stay there in somewhat exaggerated terms.

> These verses were brought forth by my slow, unresponsive
> mind during my stay in the town of Āmid. I was in a
> tormented mood, with my heart grieving and my tears flowing,
> because fate had disappointed me and destiny had taken away
> my loved ones, and the stay of the caravan had drawn on to the
> point of boredom and misery. This was due to the prevention
> of the officials, who wanted, out of their greed, to take some of
> our goods. I remained there for twelve days without eating or

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[71]Tārīkh-i ʿālam-ārā-yi ʿabbāsī, 1: 156-7.

[72]It is possible that he left Iran in an earlier year, since it is not documented that al-Baha'i was in Iran during the years immediately preceding 991 A.H. However, given that he was in Egypt in 992 A.H., that he probably went to Egypt after performing the pilgrimage, and that the accounts of al-Baha'i in Ottoman lands state or imply that he was traveling quickly, it appears most likely that he left Iran in 991 A.H. and not before.

sleeping at all, until, when we had just about given up our souls, God made it possible for us to leave.[73]

After the delay, al-Bahā'ī continued on to Aleppo, where he had an altercation with a local Sunnī scholar. Abū al-Wafā' al-ʿUrḍī (d. 1071/1660) reports that al-Bahā'ī arrived in Aleppo during the reign of the Ottoman Sultan Murād III (982-1003/1574-95) and relates the following incident, which occurred when al-Bahā'ī appeared at the lesson of al-ʿUrḍī's father, ʿUmar ibn Ibrāhīm (d. 1024/1615).

> He came to Aleppo in secret during the reign of the late Sulṭān Murād, seeking to join the noble pilgrimage caravan and changing his appearance to that of a dervish. He attended the lesson of my father, the Master, without showing that he was a scholar until my father had finished the lesson. Then [al-Bahā'ī] asked about the proofs that al-Ṣiddīq [Abū Bakr] was superior to al-Murtaḍā [ʿAlī]. [My father] mentioned the hadīth. "The sun has neither risen nor set on anyone after the prophets better than Abū Bakr." and many other similar hadīths. Then al-Bahā'ī answered my father the Master and began to cite many things which required admission of the superiority of al-Murtaḍā. My father insulted him, called him a

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[73]Bahā' al-Dīn al-ʿĀmilī, al-Kashkūl, 2 vols., ed. Muḥammad Ṣādiq Nāṣirī (Qum: Dār al-ʿilm, 1958-59), 1: 355.

"Rafidi[74] Shi'I," and cursed him. Al-Baha'I remained silent.
Later, al-Baha'I ordered one of the Persian merchants to hold a
banquet and invite both my father and himself. Al-Khojah
Fathi held a banquet and invited them both. He told [my
father], "This is al-Munla Baha' al-Din, the scholar of the Land
of Persia."

[Al-Baha'I] said to my father, "You insulted us."

[My father] replied, "I did not know that you were
al-Munla Baha' al-Din, but mentioning these things in front of
the common people is not proper."

Then [al-Baha'I] said to my father, "I am a Sunni and I
love the Companions, but what can I do? Our Sultan is a Shi'I
and kills Sunni scholars."

He had written a piece on tafsir in the name of Shah
'Abbas, but when he entered Sunni territory, he tore out the
introduction, replacing it [with a new one] stating that he had
written it in the name of Sultan Murad. He told my father, "I
fear that the government officials (umara' al-dawlah) will find
out about me. I wrote the introduction in the name of Murad so
that if they question me, I will say that I have fled from the
Shah to the Sultan. If they do not ask me, I will go on the
pilgrimage and then return to Persia."

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[74]See Edward Lane, Arabic English Lexicon, 2 vols. (Cambridge: Islamic
Texts Society, 1984), 1: 1120-1. The term rafidI (pl. rawafid, collective pl.
rafidah) originally meaning a warrior who deserted his commander, was
first applied to a Shi'I sect who pledged allegiance to Zayd, the son of the
fourth Shi'I Imam, then renounced him upon his refusal to curse AbU Bakr
and 'Umar. The meaning later shifted. As Lane states "Afterwards, this
appellation became applied to *All persons transgressing in this way [i.e. all
apostates or schismatics] speaking against the Companions of the Prophet*"
In the Safavid period, as well as much earlier, the term RafidI was used as a
blanket insult for Shi'Is. A rendition in English might be "Companion-
hater!" or simply "Shi'I heretic!" The corresponding term which Shi'Is used
as an insult towards Sunnis was Nasibi, meaning, roughly, "Hater of the
Prophet's descendants."

When the people of Jabal Banī ʿĀmilah [i.e. Jabal ʿĀmil]
heard of his arrival, they came to see him in droves. He feared
that he would be discovered, and left Aleppo.[75]

Much additional evidence supports al-ʿUrḍī's story of the changed

introduction to the treatise on tafsīr. Al-Bahāʾī seems to have taken a

particular interest in tafsīr during this period. As will be seen below, he

lectured on tafsīr to a private audience in Damascus, and in Jerusalem, he

received an ijāzah for two famous Sunnī tafsīr works, al-Kashshāf by

al-Zamakhsharī and Anwār al-tanzīl by al-Baydāwī. This seems to have

been a field in which communication across sectarian boundaries was

relatively easy, and in which al-Bahāʾī could impress his peers without

inciting them against him, as happened when he began the above-mentioned

debate on ḥadīth with al-ʿUrḍī's father in Aleppo. Al-Bahāʾī wrote several

works in this field, including al-ʿUrwah al-wuthqā fī tafsīr al-qurʾān and

ʿAyn al-ḥayāt.[76] His anthology al-Kashkūl contains many short

commentaries on numerous Sunnī exegeses of Qurʾānic verses. Al-Kashkūl

includes a short biography of al-Qāḍī al-Baydāwī, in which al-Bahāʾī wrote,

"... and the most famous of his works in our time is his Qurʾānic exegesis

entitled Anwār al-tanzīl."[77] Al-Bahāʾī wrote a ḥāshiyah (gloss or marginal

commentary) on this work,[78] and his student Ḥusayn ibn Ḥaydar al-Karakī

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[75]Maʿādin al-dhahab fī 'l-aʿyān al-musharrafah bihim Ḥalab, MS,
London, British Museum Library, Or. 3618, fol. 68 a. An incomplete version
is cited by al-Muḥibbī in Khulāṣat al-athar, 3: 443-44.

[76]GAL, SII: 597.

[77]Al-Kashkūl, 1: 56.

[78]Printed on margins of Anwār al-tanzīl, (Iran, 1855).

stated that it was the best available commentary on al-Baydāwī's exegesis.[79]

Al-Bahā²ī's interest in al-Baydāwī should be contrasted, however, with Mīrzā Makhdūm's report that one of the heinous crimes of the Shīʿīs was the destruction of al-Baydāwī's tomb in Tabriz, along with the tombs of other great Sunnī scholars.[80] Al-Bahā²ī also wrote glosses on al-Kashshāf, but they are not known to be extant.[81]

A short treatise on tafsīr based primarily on a section of al-Kashshāf and included in al-Kashkūl may be the treatise to which al-ʿUrdī referred in the passage cited above, and may have served as credentials for al-Bahā²ī during his travels. The treatise appears on pages 480-90 of volume one of the Qum edition, and deals with the interpretation of verse 23 of sūrat al-baqarah: "And if you are in doubt as to what We have revealed to Our servant, then produce a sūrah like unto it." (wa-²in kuntum fī raybin mimmā nazzalnā ʿalā ʿabdinā fa-²tū bi-sūratin mithlih). He wrote the treatise while in Mecca, as indicated by a statement in the introduction, "I am composing this discourse in the courtyard of the Sacred House of God, asking Him not to let me slip from the true path."[82] He states later on in the treatise that he was inspired with a particular interpretation at the Kaʿbah, "I was inspired with the correct analysis of this passage in the courtyard of the Sacred House of God."[83] In the treatise al-Bahā²ī avoids any indication of his being a Shīʿī. The works he cites include al-Zamakhsharī's Kashshāf,

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[79]An ijāzah written by Ḥusayn ibn Ḥaydar al-Karakī cited in Rawdāt al-jannāt, 7: 59.

[80]al-Nawāqid, fol. 127a.

[81]Khulāsat al-athar, 3: 441; Luʾluʾat al-bahrayn, 21. Brockelmann does not mention this work.

[82]al-Kashkūl, 1: 481.

[83]al-Kashkūl, 1: 488.

al-Taftazānī's commentary on al-Kashshāf, al-Taftazānī's shorter commentary on Talkhīs al-miftāh by al-Khatīb al-Qazwīnī, Futūh al-ghayb by al-Hasan ibn Muhammad al-Tībī (d. 743/1342), Hawāshī al-Kashshāf by Qutb al-Dīn al-Shīrāzī (d. 710/1311), Mafātīh al-ghayb by Fakhr al-Dīn al-Rāzī (d. 606/1210), all works by Sunnī authors.

The treatise begins with a flowery introduction, quite long considering the total length of the treatise, and appears to be dedicated to the Ottoman Sultan, although the Sultan's name seems to have been removed. Many of the honorific titles given might conceivably be applied to the Safavid Shah as well as the Ottoman Sultan, such as "The Recipient of Kisses of the Mouths of Kings and Sultans" (muqabbalu afwāhi 'l-akāsirati wa 's-salātīn), "The Greatest Sultan" (as-sultānu 'l-a'zam), "Master of the Necks of the Sultans of the Nations" (māliku riqābi salātīni 'l-umam), etc. but one in particular, "Protector of the Stronghold of the Splendid Faith" (hāmī hawzati 'l-millati 'z-zahrā'),[84] which refers to the Ottoman Sultan's role as the protector of Mecca, makes it unlikely that the dedication could be directed to anyone else, especially in conjunction with al-Bahā'ī's indication that he was writing in Mecca itself. If written to the Shah, this epithet would be an embarrassing reminder that the Safavids did not control the Shī'ī shrines of Iraq, let alone the Hijāz. It appears that the name of the Sultan (which must have been Sultān Murad III) has been edited out, because the long list of honorifics leads into an equally flowery and drawn out benediction, "khallada 'Llāhu saltanatah . . ." without any intervening name.[85] Al-'Urdī's report about a treatise which was originally dedicated to Shah

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[84]al-Kashkūl, 1: 481.
[85]al-Kashkūl, 1: 481-82.

ʿAbbās is impossible, since al-Bahāʾī was traveling in 991-3/1583-5 and Shah ʿAbbās did not assume the throne until 996/1587, but the treatise preserved in al-Kashkūl shows that there was probably some basis to al-ʿUrdī's account. It appears that al-Bahāʾī wrote this work on tafsīr and dedicated it to the Ottoman Sultan to protect himself by announcing his respect and submission to the authority of the Sultan. It could also serve as an indication of his scholarly merit which Sunnī scholars could appreciate. The dedication had to be altered when back in Safavid territory, and al-Bahāʾī presumably edited out the Sultan's name for fear of offending the Shah.

From Aleppo al-Bahāʾī went on to Karak Nūḥ, near Baʿlabakk, Lebanon, where it is reported that he met al-Ḥasan (d. 1011/1602), the son of al-Shahīd al-Thānī, who had apparently heard of his arrival from Iran and come north from Jabal ʿĀmil to meet him before he reached Damascus.[86] After this meeting, al-Bahāʾī continued on to Damascus, where he joined the caravan to make the pilgrimage of 991/1583-84. In the period after the Ottoman conquest of Syria and Egypt in 922-3/1516-17, the pilgrimage route from Baghdad was closed, and pilgrims from Iran and Transoxania

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[86]al-Durr al-manthūr, 2: 202. The author of al-Durr believes that they met in Karak Nūḥ in 983 A.H., citing as evidence a short document, referred to as a ṣaḥīfah, which was written by al-Bahāʾī for al-Ḥasan in 983 A.H. Al-Bahāʾī may have written this document to send to al-Ḥasan with his father, who performed the pilgrimage in that year, for other evidence indicates that al-Bahāʾī remained in Iran. [Riyāḍ al-ʿulamāʾ, 2; 120] This does not preclude al-Bahāʾī's meeting al-Ḥasan in Karak Nūḥ in 991: the author of al-Durr al-manthūr may have mistakenly joined two unrelated pieces of information.

regularly joined the Damascus pilgrimage caravan.[87] The caravan usually

left Damascus between the fifteenth and the twentieth of the month of

Shawwāl,[88] which would place al-Bahā'ī there in Shawwāl 991/November,

1583.

After performing the pilgrimage, al-Bahā'ī did not return to

Damascus, but traveled with the Egyptian caravan to Cairo instead. In his

anthology, al-Kashkūl, he mentions that while in Cairo in 992/1584 he copied

a poem from Muḥammad al-Bakrī al-Ṣiddīqī (d. 993/1585), the leader of

the Bakrī Ṣūfī order, and visited the tomb of al-Shāfiʿī.[89] The contemporary

Damascene scholar Muḥammad Darwīsh al-Ṭālawī (d. 1014/1605) reports

that al-Bahā'ī met often with al-Bakrī during his stay in Cairo and composed

a forty line qaṣīdah in his praise.[90]

From Cairo, al-Bahā'ī headed back to Damascus, stopping at Jerusalem

on the way. He reports that in Jerusalem in 992/1584 he read Mujallī

[87]On the Syrian pilgrimage caravan in this period, see Muhammad Adnan Bakhit, The Ottoman Province of Damascus in the Sixteenth Century (Beirut: Librairie du Liban, 1982), 107-115; Akram Ḥasan al-ʿUlabī, Dimashq bayn ʿasr al-mamālik wa 'l-ʿuthmāniyyīn (Damascus: al-Sharikah al-muttaḥidah li't-tawzīʿ, 1982), 145-55.

[88]al-ʿUlabī, Dimashq bayn ʿasr al-mamālik wa 'l-ʿuthmāniyyīn, 151. This appears to be slightly later than the departure date in earlier centuries. Ibn Kathīr reports that the pilgrimage caravan of 726 A. H., for example, departed Damascus on the tenth of Shawwāl. al-Bidāyah wa al-nihāyah (Cairo, n. d.), 14: 124.

[89]al-Kashkūl 1: 34, 38-39. Bosworth mistakenly states that al-Shāfiʿī's shrine is at Gaza. Bahā' al-Dīn al-ʿĀmilī and His Literary Anthologies, 29-30.

[90]Darwīsh Muḥammad al-Ṭālawī, Sāniḥāt dumā al-qaṣr fī muṭārabāt banī al-ʿasr, MS, Princeton, Princeton University Library, Garrett Collection, 4250 (1), fols. 123 a, 124 b-125 b. Al-Ṭālawī got this information from an Egyptian scholar, whom he does not name, during his own stay in Egypt, six years later, in 998/1599-90.

al-afrāh, a commentary by Badr al-Dīn al-Zarkashī (d. 794/1392) on Talkhīs
al-miftāh, the famous manual of rhetoric by al-Khatīb al-Qazwīnī (d.
739/1338), itself an abridgement of Miftāh al-ʿulūm by al-Sakkākī (d.
626/1229).[91] He also met ʿUmar Ibn Abī 'l-Lutf al-Maqdisī, the Hanafī
muftī of Jerusalem, to whom he sent a poem.[92] Al-Bahāʾī's poem, meant as
an amiable display of philological erudition and scholarly trivia, presented a
riddle, the answer to which was the word al-Quds ("Jerusalem"). ʿUmar
reciprocated by sending al-Bahāʾī a similar poem.[93] Al-Talawī's Sānihāt
duma al-qasr includes the following account of al-Bahāʾī's arrival and stay in
Jerusalem, which he heard from Muhammad Radiyy al-Dīn ibn Yūsuf Ibn
Abī 'l-Lutf al-Maqdisī (d. Jumādā II, 1028/May16-June 13, 1619), a young
relative of ʿUmar.[94]

> A man venerable in appearance arrived here from Egypt, and
> stayed in Jerusalem in the open area surrounding the sanctuary.

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[91]al-Kashkūl, 1: 17.

[92]al-Kashkūl, 1: 63-65. Al-Bahāʾī does not give his full name in the
text, but refers to him as "Shaykh al-Islām al-Shaykh ʿUmar, wa-huwa
'l-muftī bi 'l-quds." (1: 63) Bosworth (Bahāʾ al-Dīn al-ʿĀmilī and His Literary
Anthologies, 30) states, "This scholar (the title Shaykh al-Islām was
commonly applied to scholars of eminence in the Ottoman lands and beyond)
must have been the Shaykh al-Islām Sirāj al-Dīn ʿUmar al-Hānūtī al-Hanafī
al-Misrī, died in 1010/1601-2, treated briefly by al-Khafājī." It seems that
the title shaykh al-islām here indicates that this scholar was the muftī of the
city, as the title was used in the Safavid context, and that he was ʿUmar ibn
Muhammad Ibn Abī 'l-Lutf al-Maqdisī (940-1003/1533-15-95), who was
Hanafī muftī of Jerusalem while his brother Muhammad was Shāfiʿī muftī.
See al-Muhibbī, Khulāsat al-athar, 3: 220-21.

[93]al-Kashkūl, 1: 65-66.

[94]"Sānihāt dumā al-qasr," fols. 80 b, 122 b-123 a. Al-Talawī heard
this account when he passed through Jerusalem on his way to Egypt in 998.
This was the first al-Talawī had heard of al-Bahāʾī. Radiyy al-Dīn was the
grandson of ʿUmar's paternal uncle, Abū 'l-Lutf Ibn Abī 'l-Lutf al-Maqdisī.
See Khulāsat al-athar, 4: 272-73.

In him were the signs of piety, and he had adopted the garb of traveling mystics. He avoided people and preferred to be alone, without company. He would go frequently from the sanctuary to the courtyard of the mosque of al-Aqṣā. All the while he stayed there, no one could attribute any fault to him. It occurred to me that he was one of the greatest scholars, one of the most brilliant Persian masters. I kept trying to please him and avoid that which he did not like, until he grew accustomed to me and trusted me. Then his situation became apparent to me. He was one to whom students journey that they might study under him and transmit ḥadīth from him. He was named Bahāʾ al-Dīn Muḥammad al-Hamdānī al-Ḥārithī al-Qazwīnī. Thereupon, I asked him if I could study some sciences with him, and he said "On the condition that this be kept secret (maktūm)." I agreed to this, and read some astronomy and mathematical sciences, including geometry, with him. Then he proceeded to Damascus, heading towards the land of the Persians, and I heard nothing more of him."[95]

A Puzzling Ijāzah

In Jumādā I, 992/May 11-June 9, 1584, in Jerusalem, al-Bahāʾī received an ijāzah from the Shāfiʿī muftī of Jerusalem, Muḥammad Ibn Abī 'l-Luṭf al-Maqdisī, the brother of ʿUmar, the Ḥanafī muftī of Jerusalem mentioned above. It is clear from the ijāzah that al-Bahāʾī had claimed to be a Sunnī and assumed a false identity. In fact, it is not clear, at first glance, that the recipient actually was al-Bahāʾī. One modern scholar states that an ijāzah issued by Muḥammad Ibn Abī 'l-Luṭf al-Maqdisī to al-Bahāʾī and dated 992 A. H. is included in the ijāzah section of al-Majlisī's Biḥār al-anwār, but does not mention the problematic nature of the ijāzah, explain its significance, or indicate what led him to this conclusion.[96]

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[95]Sānihāt dumā al-qaṣr, fols. 122 b-123 a.

[96]Muḥammad al-Amīnī al-Najafī, al-Ghadīr fī al-kitāb wa al-sunnah wa al-adab, 11 vols. (Beirut, 1967), 11: 250-51.

The ijāzah is indeed preserved in Muḥammad Bāqir al-Majlisī's (d.
1111/1699) monumental work Bihār al-anwār al-jāmiʿah li-durar akhbār
al-aʾimmah al-athār.[97] Among a large collection of ijāzah documents given
or received by Shīʿī scholars of the four previous centuries, this ijāzah
stands out in particular, since a caption above it, probably written by Mīrzā
ʿAbd Allāh al-Afandī al-Iṣfahānī (d. ca. 1130/1719), a student of al-Majlisī
and compiler of part of Bihār al-anwār, states that it was granted by one
Sunnī scholar to two other Sunnī scholars.

> By al-Shaykh Muḥammad al-Shāfiʿī to al-Shaykh Bahāʾ al-Dīn
> Muḥammad and al-Shaykh Burhān al-Dīn, the two sons of
> al-Shaykh ʿIzz al-Dīn Abū al-Maḥāmid. All of these are Sunnī
> scholars, and the latter two were descendants of Abū Ḥāmid
> al-Ghazālī.[98]

Their names are given in the text of the ijāzah as follows: ". . . Mawlānā
Abū al-Faḍāʾil Bahāʾ al-Dīn Muḥammad and Mawlānā Abū al-Ḥaqq Burhān
al-Dīn, the two sons of the virtuous, learned Master, ʿIzz al-Millah wa ʾl-Dīn
Abū al-Maḥāmid, who traces his ancestry to Ḥujjat al-Islām Abū Ḥāmid."[99]
The date given in the colophon of the ijāzah is Jumādā I, 992/May 11-June 9,
1584, and a passage earlier in the ijāzah confirms that it was written in
Jerusalem. Muḥammad Ibn Abī ʾl-Luṭf states,

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[97]Bihār al-anwār. The kitāb al-ijāzāt is contained in vols. 105-10.

[98]The ijāzah is printed on Bihār al-anwār, 109: 97-101, and the
caption appears on p. 97. A facsimile of the handwritten copy is included in
the back half of the same volume, pp. 112-15.

[99]Bihār al-anwār, 109: 97. "Ḥujjat al-Islām" is the well known
sobriquet of the famous scholar Abū Ḥāmid Muḥammad ibn Muḥammad
al-Ghazālī (d. 505/1111). See W. Montgomery Watt, "al-Ghazālī," s.v., EI 2.

When they came to visit Jerusalem and arrived at the springs of this most sanctified place, and the humble servant had the opportunity to meet them and to benefit from the beacons of their blessings . . .[100]

At the outset, it seems odd that an ijāzah involving only Sunnī scholars should be included in this Shīʿī work. However, it is possible to show that this ijāzah was actually given by a Sunnī scholar to two Shīʿī scholars, one of whom was al-Bahāʾī.

Muḥammad ibn Muḥammad ibn Muḥammad ibn Abī 'l-Luṭf al-Maqdisī, the scholar who granted this ijāzah, was born in Jerusalem in 940 or 941/1533-35. The Ibn Abī 'l-Luṭf family produced a number of prominent scholars who held the posts of both Shāfiʿī and Ḥanafī muftī in Jerusalem for most of the sixteenth and seventeenth centuries. Muḥammad studied in Cairo and Damascus and took over the post of Shāfiʿī muftī upon his father's death in Rajab, 971/February-March, 1564. He held this post until his own death in late Ṣafar, 993/February, 1585.[101] The ijāzah was given in Jerusalem in 992/1584, less than a year before his death.

Though there is no question as to the identity of the scholar who issued the ijāzah, it is not immediately clear who the recipients were. These exact names are not found in the standard biographical works of the period: al-Ghazzī's (d. 1061/1651) al-Kawākib al-sāʾirah, al-Muḥibbī's (d. 1111/1699) Khulāṣat al-athar, or Ibn al-ʿImād's (d. 1089/1679) Shadharāt

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[100]Biḥār al-anwār, 109: 98.

[101]Najm al-Dīn al-Ghazzī, al-Kawākib al-sāʾirah bi-aʿyān al-miʾah al-ʿāshirah, 3 vols. (Beirut: al-Maṭbaʿah al-amīrkāniyyah, 1945-58), 3: 11-12; ʿAbd al-Ḥayy Ibn al-ʿImād al-Ḥanbalī, Shadharāt al-dhahab fī akhbār man dhahab, 8 vols. (Cairo: Maktabat al-qudsī, 1351), 8: 466. On his father, see Shadharāt al-dhahab, 8: 431.

al-dhahab. On the surface level, the Bahā' al-Dīn al-Muḥammad of the ijāzah matches the name Bahā' al-Dīn Muḥammad al-ʿĀmilī. The ijāzah gives the patronymic (kunyah) Abū al-Faḍā'il, which also matches that of al-ʿĀmilī.[102] However, convincing evidence that the Shaykh Bahā' al-Dīn Muḥammad mentioned in the ijāzah is in fact Bahā' al-Dīn al-ʿĀmilī is provided by a Shīʿī scholar writing in 1182/1768, almost two hundred years later. In his biographical work Lu'lu'at al-baḥrayn, Yūsuf ibn Aḥmad al-Baḥrānī (d. 1186/1772-73) includes a lengthy ijāzah to his two sons in which he mentions his chains of transmission (isnāds) going back to the authors of certain famous books. The ijāzah included in Biḥār al-anwār was issued for four works: al-Bukhārī's Ṣaḥīḥ, Muslim's Ṣaḥīḥ, al-Bayḍāwī's (d. 685/1286) tafsīr, Anwār al-tanzīl, and al-Zamakhsharī's al-Kashshāf. Al-Baḥrānī's ijāzah happens to include these four works, and for each of them, his isnād goes back through Bahā' al-Dīn al-ʿĀmilī to Muḥammad ibn Muḥammad ibn Muḥammad Ibn Abī 'l-Luṭf, without any other scholars intervening.[103] This shows that al-Bahā'ī not only received the ijāzah in question, but also transmitted its contents to Shīʿī students in Iran. The isnād goes back in the following order:

Yūsuf ibn Aḥmad al-Baḥrānī (d. 1186/1772-73)

from Muḥammad ibn Yūsuf ibn Kunbār al-Baḥrānī (d. ?),

from Muḥammad ibn Mājid al-Baḥrānī (d. ?),

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[102]Riyāḍ al-ʿulamā', 2: 110.

[103]Lu'lu'at al-baḥrayn, 434-37. Al-Baḥrānī's ijāzah also mentions that he transmits authority for al-Fīrūzābādī's (d. 476/1083) Qāmūs, through al-Bahā'ī, through Muḥammad Ibn Abī 'l-Luṭf al-Maqdisī. [Lu'lu'at al-baḥrayn, 428] This would imply that al-Bahā'ī received a second ijāzah from the same scholar, though it is not included in Biḥār al-anwār.

from Muḥammad Bāqir al-Majlisī (d. 1111/1699),

from Muḥammad Taqī al-Majlisī (d. 1070/1659-60),

from al-Shaykh al-Bahāʾī (d. 1030/1621),

from Muḥammad Ibn Abī 'l-Luṭf al-Maqdisī (d. 993/1585).

According to al-Baḥrānī's statement, Muḥammad Bāqir al-Majlisī transmitted the authority for these books from his father, Muḥammad Taqī, who was a student of al-Bahāʾī. This would explain how al-Majlisī gained possession of a copy of the ijāzah, and how it ended up in Biḥār al-anwār.

Other information shows that al-Bahāʾī was in the right place at the right time to receive the ijāzah. As mentioned above, the ijāzah was given in Jerusalem in Jumādā I, 992/May 11–June 9, 1584, and al-Bahāʾī's statement that he read al-Zarkashī's Mujallī al-afrāḥ in Jerusalem in 992/1584 proves that he was in Jerusalem that very year. The exchange of poems between al-Bahāʾī and ʿUmar Ibn Abī 'l-Luṭf al-Maqdisī and the account of Raḍiyy al-Dīn Ibn Abī 'l-Luṭf al-Maqdisī show that al-Bahāʾī spent a considerable amount of time in Jerusalem and was acquainted with members of the Ibn Abī 'l-Luṭf family.[104] This evidence, coupled with al-Baḥrānī's statement,

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[104]al-Kashkūl. 1: 63-66.

strongly supports the view that al-Bahā'ī was indeed the recipient of the ijāzah.[105]

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[105]It is possible to guess who the other recipient of the ijāzah, posing as al-Bahā'ī's brother, could have been. One candidate is al-Bahā'ī's actual brother, ʿAbd al-Ṣamad. The facts that Bahā' al-Dīn is mentioned first in the ijāzah and that he read while his partner in disguise listened seem to indicate that Bahā' al-Dīn was the senior of the two. ʿAbd al-Ṣamad was born on 3 Ṣafar, 966/15 Nov., 1558 [Riyāḍ al-ʿulamā', 2: 230], and lived until 1020 [Lu'lu'at al-baḥrayn, 21], so that he could have been present to receive the ijāzah. He was about thirteen years younger than al-Bahā'ī and would have been about twenty five years old in 992/1584. However, the name in the ijāzah, Abū al-Ḥaqq Burhān al-Dīn, bears no resemblance to ʿAbd al-Ṣamad Abū Turāb, although the name of the father mentioned in the ijāzah, ʿIzz al-Dīn Abū al-Maḥāmid, half matches that of al-Bahā'ī's father, ʿIzz al-Dīn Ḥusayn.

Another scholar who may have been al-Bahā'ī's companion is one of his students, Ḥusayn ibn Ḥaydar al-Karakī (d. ?). Ḥusayn accompanied al-Bahā'ī on many of his journeys, as is clear from an ijāzah which al-Bahā'ī issued to him on 7 Jumādā II, 1003/ 17 February, 1595 in Baghdad. (Biḥār al-anwār, 110: 6, 12) Ḥusayn also states "I, the humble servant of God, also have transmissions and ijāzāt other than those mentioned from the masters of Mecca, al-Madīnah, Jerusalem, Syria, Egypt, Iraq, and other places which it would take a long time to mention." (Biḥār al-anwār, 110: 12) Thus, Ḥusayn went to Jerusalem some time during his lifetime, and since it appears that he accompanied al-Bahā'ī most of the time, it is likely that they went to Jerusalem together. However, the earliest independent evidence which places Ḥusayn ibn Ḥaydar with al-Bahā'ī is the ijāzah of 1003/1595 mentioned above, and Ḥusayn might not yet have become al-Bahā'ī's student by 992/1584, the date of the ijāzah in question. Ḥusayn ibn Ḥaydar states elsewhere that he accompanied al-Bahā'ī for forty years, both when he was travelling and when he was not: kuntu fī khidmatihi mundhu arbaʿīna sanatan fī 'l-ḥaḍari wa 's-safar. [al-Khwānsārī, Rawḍāt al-jannāt, 7: 58. Al-Khwānsārī is citing an ijāzah written by Ḥusayn, but does not give the source. This statement, if literal, would indicate that he was with Bahā'ī from 990 until his death in 1030, in which case he may well have accompanied al-Bahā'ī on this trip in Ottoman territories and might possibly be the "brother" mentioned in the ijāzah.

From Jerusalem, al-Bahā'ī proceeded to Damascus. Al-Ṭālawī reports that al-Bahā'ī passed through Damascus in 992/1584, after performing the pilgrimage and passing through Cairo and Jerusalem.[106] He recounts,

> When I returned to Damascus, I asked someone who knew of such things about [al-Bahā'ī], and he informed me that [al-Bahā'ī] had stayed in Damascus fewer than three nights. He had met with [al-Bahā'ī] on one of these nights and held valuable discussions with him. This was in the company of Mawlānā al-Ḥāfiẓ al-Ḥusayn al-Karbalā'ī of Qazvin or Tabriz, who had settled in Damascus, and was the author of al-Rawḍāt, on the shrines of Tabriz, because of the brotherly friendship which had existed between them in those lands [Iran]. [The informant] asked [al-Bahā'ī] to recite some of his short poems [maqāṭiʿ] and other poetry. He inquired about [al-Bahā'ī's] name and patronym, and about his experiences in his travels. Al-Bahā'ī mentioned to him that his nisbah [al-Ḥārithī] referred to Ḥārith of the Hamdān tribe, and that this ancestor of his was the man whom [ʿAlī ibn Abī Ṭālib], the Commander of the Faithful, used to address as "yā Ḥāri Hamdān." He then related some anecdotes about [Ḥārith].[107]

Another account of al-Bahā'ī's stay in Damascus is given by the Damascene scholar al-Muḥibbī (d. 1111/1699) in the biographical dictionary Khulāṣat al-athar.

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[106]al-Ṭālawī, "Sāniḥāt dumā 'l-qaṣr," fols. 123 a-b.
[107]al-Ṭālawī, "Sāniḥāt dumā 'l-qaṣr," fols. 123 a-b.

When he arrived in Damascus, he stayed in the quarter of al-Kharāb[108] with an important merchant. Al-Ḥāfiẓ al-Ḥusayn al-Karbalāʾī al-Qazwīnī al-Tabrīzī, the author of al-Rawdāt[109] on the holy places of Tabriz, who was staying in Damascus, met with him and asked him to recite a great deal of poetry.

I have often heard that he asked to meet with al-Ḥasan al-Būrīnī. The merchant with whom he was staying brought al-Būrīnī for him by inviting al-Būrīnī to his house and entertaining him most elegantly. The merchant invited most of the important men of his quarter. When al-Būrīnī came to the gathering, he saw al-Bahāʾī there in the garb of a wandering dervish (bi-hayʾati 's-suyyāh) at the head of the gathering, with all the others staring at him, all extremely polite. Al-Būrīnī was amazed at this, for he neither knew this person nor had ever heard of him. So he paid no attention to him, pushed him out of his place, and sat without turning to him.

He started, as was his custom, to display the intricacies of his knowledge, [and continued] until they prayed the evening prayer. Then they sat down, and al-Bahāʾī began to relate some anecdotes and hold some scholarly discourses. He brought forth a recondite discussion on tafsīr. He [at first] spoke on this topic with simple expressions which everyone present understood, then used more and more complex expressions,

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[108]Andrew Newman misleadingly translates this as "a 'ruined' quarter of the city." ["Towards a Reconsideration," 173] The Kharāb quarter was small section of Damascus inhabited by Shīʿīs and situated to the west of the Tūmā Gate, between a larger Christian section and a Sunnī section of the city. [See al-ʿUlabī, Dimashq bayn ʿasr al-mamālik wa al-ʿuthmāniyyīn, 78] The word kharāb literally means "ruins" or "uncultivated or barren land," and it and related words such as khirbah have been used to designate actual ruins. [See, e.g. EI 2 s. v. "Khirbat al-Baydāʾ" (H. Gaube), "Khirbat al-Mafjar" (E. Baer), and "Khirbat al-Minya" (E. Baer)] However, these terms are also found as names of intact, inhabited city quarters which had formerly been destroyed by fire, flood, etc., but had since been reconstructed. There were several such quarters in medieval Baghdad, among them one named Kharābāt Zafar. See George Makdisi, "The Topography of Eleventh Century Bagdād: Materials and Notes," Arabica 6 (1959): 288, 288 n. 6.

[109]An edition of the work, the full title of which is Rawdāt al-jinān wa jannāt al-janān, has been published (Tehran: Bungāh-i tarjumah va nashr-i kitāb, 1970).

until al-Būrīnī was the only one remaining who could
understand what he was saying. Then he used even more
obscure expressions, and all those present, including al-Būrīnī,
remained silent, not moving, and not knowing what he was
saying other than that they were listening to statements,
objections, and replies which boggled the mind. Thereupon,
al-Būrīnī jumped to his feet and said "If this is the case, then
you must be al-Bahāʾ al-Ḥārithī, for there is no one today equal
to this but he!" They embraced, and after that began reciting
the most precious [poetry] they knew by heart. Al-Bahāʾī
asked al-Būrīnī to keep his presence a secret (kitmān amrih).
They parted that night, but al-Bahāʾī did not linger, and left for
Aleppo.[110]

This story, though perhaps exaggerated for dramatic effect, is not so

farfetched. Al-Būrīnī (d. 1024/1615) himself writes that al-Ḥusayn

al-Karbalāʾī al-Tabrīzī—commonly known as Ibn al-Karbalāʾī—moved from

Tabriz to Damascus shortly after making the pilgrimage in 988/1580-81, and

stayed there until his death in Shaʿbān, 997/June 1589,[111] so that it is quite

possible that al-Bahāʾī met him there in 992/1584.

These last accounts show that al-Bahāʾī left Damascus for Aleppo after

a brief stay, heading back to Iran. Al-Bahāʾī mentions that he wrote a poem

in Persian about his homesickness for Iran on the road from Aleppo to

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[110]al-Muḥibbī, Khulāṣat al-athar, 3: 443.

[111]Ḥasan al-Būrīnī, Tarājim al-aʿyān min abnāʾ al-zamān, 2 vols., ed.
Ṣalāḥ al-Dīn al-Munajjid (Damascus: Maṭbūʿāt al-majmaʿ al-ʿilmī al-ʿarabī,
1963), 1: 165-69. Al-Būrīnī reports that he and Ibn al-Karbalāʾī became
very close friends and would often stay together continuously for three days
and nights. Ibn al-Karbalāʾī taught al-Būrīnī Persian and calligraphy, as
well as a great deal about the history and legends of the kings of Persia.
That al-Būrīnī was interested in Iran and things Persian is clear. He himself
wrote poetry in Persian and Turkish in addition to Arabic. It is likely that
he would have known who al-Bahāʾī was, not only because of his stature as
a religious authority, but also because of his fame as a scholar and poet.

Āmid.[112] He was in Tabrīz, in Safavid territory, on Friday, 20 Ṣafar, 993/21 February, 1585.[113] Although few exact dates are given in the sources, it is possible to state that al-Bahā'ī had taken at most eight months to travel from Jerusalem to Tabriz since the ijāzah is dated Jumādā I, 992/May 11 - June 9, 1584. At this rate, the entire journey would have taken about two years.

Elements of Taqiyyah in Practice

The accounts of al-Bahā'ī's travels reveal a great deal about the actual process of taqiyyah. Some of the salient features of al-Bahā'ī's personal use of taqiyyah suggest a framework for looking at other examples of taqiyyah within the Twelver Shī'ī tradition of learning in Sunnī environments

I. Taqiyyah and Sunnī Government

As noted above, it is generally recognized that one must practice taqiyyah in dār al-taqiyyah, or areas under Sunnī rule. In al-Bahā'ī's case, not only was he in an area under Sunnī rule, but rule of a Sunnī power at war with a Shī'ī power. The two dangers which faced al-Bahā'ī, that he be accused of heresy or of spying for the Safavids, were in fact closely related. While Sunnī scholars could accuse him of heresy, they could only have him executed by recourse to the government. As Bernard Lewis notes, Muslim sectarians were most often repressed if they were perceived to threaten the state.[114] Therefore, it was important for al-Bahā'ī to hide the fact that he was a Shī'ī from government officials in particular. The example of the martyrdom of his father's teacher, al-Shahīd al-Thānī, at the hands of the Ottoman authorities less than thirty years earlier would alone have

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[112]al-Kashkūl, 1: 25.

[113]al-Kashkūl, 1: 93.

[114]Bernard Lewis, "The Significance of Heresy," 61.

convinced a Shiʿī scholar to keep a low profile. The Ottomans would probably have considered al-Bahāʾī, the former shaykh al-islām of Isfahan, a Safavid government agent, in which case he would not have been allowed to wander around as he pleased, and his presence would be interpreted as a threat to security, especially if, as al-ʿUrḍī mentions, the Shiʿīs of Jabal ʿĀmil flocked to him in droves. Al-Bahāʾī was obviously worried about this.

Thus al-Bahāʾī's first concern was avoiding direct contact with government officials, as shown by his extreme disturbance at being stopped at the border at Āmid for so long, and his avoidance of having others report him to the officials, as shown by his repeated requests for "kitmān," or concealment. Al-ʿUrḍī's report of the changed dedication of a treatise on tafsīr points to al-Bahāʾī's need to hide his connections with the Safavid government and his worries about being stopped by government officials (umarāʾ al-dawlah). It also shows, however, that al-Bahāʾī had a contingency plan in the event he was actually apprehended. He would claim that he had fled from the Safavid Shah and intended to petition the Ottoman Sultan. His treatise on tafsīr, dedicated to the Ottoman Sultan Murād III, would serve as evidence that this was so, for it was common practice for scholars to write a work dedicated to a ruler when seeking refuge at his court or employment in his administration. This treatise, was, in effect, al-Bahāʾī's Sunnī passport. Similarly, the ijāzah al-Bahāʾī received in Jerusalem may have been intended to serve less as an indication of his scholarly credentials in a general sense than as additional proof that he was a Sunnī in the event he was stopped. It is known that ijāzahs occasionally served similar purposes. The self-proclaimed Sunnī Mīrzā Makhdūm al-Shīrāzī relates that during the reign of Shah Ṭahmāsb he requested an

ijāzah from the Shīʿī scholar ʿAbd al-ʿĀlī ibn ʿAlī al-Karakī, who happened to be his father-in-law, in order to protect himself from his anti-Sunnī enemies in Iran.[115]

The image of al-Bahāʾī as a cunning hero who always managed to stay just out of the reach of inimical Ottoman officials lives on in the folklore of Shīʿī southern Lebanon. According to a modern ʿĀmilī folk-tale ascribing super-natural powers to al-Bahāʾī, Ottoman soldiers tried to arrest al-Bahāʾī many times without success. Whenever they had him cornered, he would disappear, for he was endowed with the ability to become invisible at will. Finally, the Ottoman soldiers tricked him into contracting a temporary mutʿah marriage, for they knew that al-Bahāʾī would not be able to become invisible when in a state of ritual impurity. Al-Bahāʾī fell for the trap, and was successfully captured after consummating the marriage. However, while the soldiers were carrying him down the street, al-Bahāʾī noticed that a woman was about to pour out some water from a window above. Quickly performing the preparatory declaration of intention (niyyah) for a major ablution (ghusl), he became ritually pure when the water landed on him, became invisible, and escaped once again.[116]

II. Taqiyyah and Dress

Frequent mention of al-Bahāʾī's clothing begs attention. In the account presented above, the Safavid chronicler Iskandar Beg Munshī states that al-Bahāʾī left his post, donned the clothes of a Ṣūfī, and set out on his journey. Iskandar Beg tries to impress upon the reader that al-Bahāʾī gave

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[115]al-Nawāqiḍ, fol. 102 b.

[116]I am indebted to Dr. Mahmoud Ayoub, Professor of Islamic Studies at Temple University and a native of Jubāʿ in southern Lebanon, for telling me this story.

up his respected position and worldly goods out of piety and humility, but when taken all together, the references indicate that al-Bahāʾī's garb was as much a disguise as a sign of piety. That al-Bahāʾī's clothes served as a disguise is especially clear in al-ʿUrḍī's passage, which states that al-Bahāʾī had come in secret, disguised as a dervish (qadima mustakhfiyan . . . mughayyiran sūratahu bi-sūrati rajulin darwīsh).[117] Al-Bahāʾī could not travel through the Ottoman Empire wearing a large turban and magnificent robe, for this would indicate his status as an important Safavid scholar. Adopting the dress of an itinerant dervish was one way to travel incognito.

In a similar fashion, Jamāl al-Dīn al-Afghānī also used mode of dress to adjust to his surroundings. Muḥsin al-Amīn interprets al-Afghānī's adoption of a variety of types of dress as indicative of his personality or psychological make-up.[118] Al-Amīn notes that al-Afghānī is pictured wearing a large black Iranian turban with an ʿabāʾah or large cloak; a kufiyyah (head-scarf) with a wrap-around ʿiqāl (head-band); a white turban with a tarbūsh (fez) and jubbah (robe); or a fez without a turban.[119] It should be noted that the outfit of the large black turban and large cloak is the typical dress of traditional Iranian Shīʿī scholars, the color black indicating that the wearer of the turban is a sayyid, or descendant of the Prophet, and that the outfit with the white turban and fez is the typical garb of Sunnī scholars at al-Azhar in Cairo.

III. Taqiyyah and the Arabic Name: Nisbah and Nasab

1988 Nobel prize winner Naguib Mahfouz has found that a name can be troublesome. In his younger years, he was often the victim of

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[117]Muḥsin al-Amīn, Aʿyān al-shīʿah, 9: 241.

[118]Muḥsin al-Amīn, Aʿyān al-shīʿah, 4: 208.

[119]Muḥsin al-Amīn, Aʿyān al-shīʿah, 4: 208.

discrimination in his native Egypt because of anti-Christian sentiment. This
at first seems strange, since Naguib Mahfouz is actually a Muslim. The
reason for his problems was that his name looked like a Christian name,
since it did not include a name which was exclusively Muslim in Egyptian
usage, such as Aḥmad, Muḥammad, Ḥusayn, etc. The same phenomenon is
found in Shīʿī-Sunnī relations: certain names are marked. ʿUmar, ʿUthmān,
and Abū Bakr, the names of the Caliphs the Shīʿīs curse for usurping ʿAlī's
right to lead the early Muslim community, are almost exclusively Sunnī in
medieval and modern usage, as is ʿĀʾishah, the name of the Prophet's wife
who dared take the battlefield against ʿAlī in the struggles over the
Caliphate. Shīʿīs most often name their sons after one of the Imams: ʿAlī,
Ḥasan, Ḥusayn, Riḍā, etc. Fāṭimah is a favorite name for girls. But most of
these are not so clearly marked as Abū Bakr, ʿUmar, and ʿUthmān, since
ʿAlī, Ḥasan, Ḥusayn, and Muḥammad are all very common Sunnī names as
well.

Another part of the Arabic name, the nisbah, is often a clearer
indication of sectarian allegiance. The nisbah is a denominal adjective
ending in -i, which may be formed from the name of one's tribe or clan (e.g.,
Qurashī, "of the Quraysh tribe"); the school of law one follows (e.g., Ḥanafī),
or a profession, but is most often derived from the village, city, or region of a
person's origin, birth, or residence.[120] The nisbah derived from a place-
name often reveals one's sectarian background, because many areas of the
Middle East are to a large degree segregated by sect. Jabal ʿĀmil has been
known as a Shīʿī region since the eighth/fourteenth century at the latest
until the present day, and many Shīʿī scholars from that region were known

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[120]See EI 2, s. v. "Ism."

by the nisbah derived from that place name, al-ʿĀmilī. An insulting poem written by an Egyptian scholar, Yūsuf ibn Zakariyyā al-Maghribī (d. 1019/1612),[121] cursing al-Bahāʾī, and punning on the word al-ʿāmil, shows what bad connotations this nisbah had in Sunnī circles.

> inna ʾl-yahūdiyya ghadā ʿāmilan / fī ʾn-nāsi bi ʾl-jawri wa ʾl-bāṭilī
> yaʿmalu fī ʾd-dīni kamā yashtahī / fa-laʿnatu ʾllāhi ʿala ʾl-ʿamilī

> Now the Jew treats people with injustice and falsehood!
> In matters of religion, he acts as he pleases, so God damn
> al-ʿĀmilī![122]

It was therefore necessary for the ʿĀmilī scholar to omit the nisbah al-ʿĀmilī and replace it with some other plausible nisbah if he wanted to hide his sectarian allegiance.

The accounts of al-Bahāʾī's journey show that al-Bahāʾī omitted parts of his name in order to hide his connections with Jabal ʿĀmil and the Safavid government. The ijāzah gives his name as Abū al-Faḍāʾil Bahāʾ al-Dīn Muḥammad; al-Ṭālawī's citation of Raḍiyy al-Dīn Ibn Abī ʾl-Luṭf al-Maqdisī gives Bahāʾ al-Dīn Muḥammad al-Hamdānī al-Ḥārithī al-Qazwīnī; al-Muḥibbī's account gives al-Bahāʾ al-Ḥārithī; and al-ʿUrḍī's account gives al-Munlā Bahāʾ al-Dīn. Although these versions do not falsify any part of al-Bahāʾī's name, they conspicuously omit the name of al-Bahāʾī's father,

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[121]For a biography of this scholar, see Shihāb al-Dīn Aḥmad al-Khafājī, Rayḥānat al-alibbā wa-zahrat al-ḥayāt al-dunyā, 2 vols., ed. ʿAbd al-Fattāḥ Muḥammad al-Ḥilw (Cairo: ʿĪṣā al-Bābī al-Ḥalabī, 1967), 2: 32-7; al-Muḥibbī, Khulāṣat al-athar, 4: 501-3.

[122]al-Khafājī, Rayḥānat al-alibbā, 2: 33. This poem puns on the nisbah al-ʿĀmilī and the active participle ʿāmil, or one who acts, or performs something, especially religious duties. The fourth hemistich may also be construed as "God damn the one who does this!"

ʿIzz al-Dīn Ḥusayn ibn ʿAbd al-Ṣamad—except the ijāzah, which presents al-Bahāʾī's father's name only as ʿIzz al-Dīn—and the nisbah al-ʿĀmilī. Al-Bahāʾī's father had lived and taught in Ottoman lands until about 960/1553, just over thirty years earlier, and had traveled to Cairo, Damascus, Aleppo, and Istanbul. The fact that he was an important religious authority in the Safavid Empire was probably well known. His name could have brought al-Bahāʾī under suspicion not only of Shīʿism but also of ties to the Safavid government.

Al-Bahāʾī deliberately concealed his nisbah al-ʿĀmilī, but, in most cases, did not replace it with another nisbah derived from a locality. He most often gave the nisbahs al-Hamdānī and al-Ḥārithī which refer to his ancestor, al-Ḥārith ibn Aʿwar of the Yemeni Arab tribe of Hamdān, who was a companion of ʿAlī ibn Abī Ṭālib. One account, that of Raḍiyy al-Dīn as reported by al-Ṭālawī, adds the nisbah al-Qazwīnī, indicating that al-Bahāʾī resided in Qazvin. Al-Ṭālawī may have inserted this nisbah into Raḍiyy al-Dīn's account simply because Qazvin was then the Safavid capital, and al-Ṭālawī assumed al-Bahāʾī lived there. Judging from the ijāzah al-Bahāʾī received in Jerusalem, it seems that he may have used the nisbah al-Ṭūsī as well, since he was claiming that he was descendant of al-Ghazālī, and as such probably a native of Ṭūs.

It is well known that Jamāl al-Dīn al-Afghānī also modified his nisbah, changing it from al-Asadābādī to al-Afghānī, because the former would have indicated his Iranian origin and subjected him to the suspicion that he was a Shīʿī. Another example of nisbah modification is provided by al-Shahīd al-Awwal, the Shīʿī scholar martyred in Damascus. He was born in the village of Jizzīn in Jabal ʿĀmil, and was thus known by the nisbahs al-Jizzīnī

and al-ʿĀmilī. However, in an ijāzah he received in Baghdad in 758/1356 from the Sunnī scholar Muḥammad ibn Yūsuf al-Qurashī al-Shāfiʿī al-Kirmānī, his name is given as Shams al-Dīn Muḥammad ibn Jamāl al-Dīn Makkī ibn Shams al-Dīn Muḥammad al-Dimashqī.[123] The nisbah al-ʿĀmilī is conspicuously absent, and the nisbah al-Dimashqī indicates that he was a native of Damascus, which was not known for its Shīʿī population.

The nasab, pedigree or genealogy, is another important part of the Arabic name.[124] The importance assigned to the nasab goes back to pre-Islamic Arabia, and the respect paid to sayyids or descendants of the Prophet is only one example of the importance of the genealogy in the Islamic period. Entire works (kutub al-ansāb) were devoted to recording the genealogies of the descendants of the Prophet and the Imams, and the professional genealogist (nassābah) was highly respected. The "Marshall of the Nobility" (naqīb al-ashrāf), entrusted with keeping records of the genealogies of sayyids, was an official found in many governments in Islamic history.[125] The nasab was the closest thing in the pre-modern Middle East to the modern identity card or Social Security number; to know someone's genealogy was to know exactly who he was. One indication of this function of the genealogy is found, oddly enough, in certain points of the Twelver Shīʿī doctrine of the Imāmate. According to the early Shīʿī jurist al-Shaykh al-Ṭūsī (d. 460/1067), the way to determine whether someone might be the Hidden Imam is to inquire about his genealogy. If his genealogy is known he cannot be the Imam, because one may not determine the identity of the

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[123]al-Majlisī, Biḥār al-anwār, 107: 183-84.

[124]See EI 2, s. v. "Ism."

[125]See, for example, Louis Massignon, "Cadis et Naqībs bagdadiens," Wiener Zeitschrift für die Kunde des Morgenlandes, 51 (1948): 106-15.

Imām during the period of occultation, but if his genealogy cannot be determined, then he might be the Imām.[126]

In the ijāzah discussed above, al-Bahā'ī went a step beyond nisbah modification, falsifying his genealogy to claim descent from the famous Sunnī scholar, al-Ghazālī (d. 505/1111). Claiming descent from a prominent Sunnī scholar would not only gain respect from a Sunnī interlocutor but also serve as a strong indication that one was actually a Sunnī. Similarly, Jamāl al-Dīn al-Afghānī claimed to be a descendant of the famous Sunnī scholar al-Tirmidhī (d. 279/892-93), the author of one of the six hadīth compilations used as standard references by Sunnīs.[127]

The motives for singling out al-Ghazālī as an ancestor seem to have been primarily geographical. It was known that al-Ghazālī originally came from Ṭūs, near Mashhad in Iran. He died and was buried there, and his tomb was well known. It is clear that al-Bahā'ī and his companion would not have been able to hide the fact that they had come from Iran, especially if they were traveling with Persian merchants, and it would seem plausible to scholars outside Iran that descendants of al-Ghazālī still remained in that area. Having spent time in Mashhad itself, al-Bahā'ī would have been familiar with local lore about al-Ghazālī, besides knowing of his scholarly achievements. The image of al-Ghazālī was strong in Iran. Several of the Ṣūfī orders which were important in Iran before and during al-Bahā'ī's time, including the Ni'mat Allāhī order, the Dhahabī order, and the Nūrbakhshī order, traced their succession of spiritual teachers back through

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[126]Muḥammad ibn al-Ḥasan al-Ṭūsī, 'Uddat al-uṣūl, 246.

[127]Muḥsin al-Amīn, A'yān al-shī'ah, 4: 207. On al-Tirmidhī, see EI1, s. v. "al-Tirmidhī" (A. J. Wensinck).

al-Ghazālī.[128] Thus al-Bahā'ī's choice seems to have been dictated not only by the sort of interlocutors he faced, but also by his residence in Persia and his personal experience.

Similarly, Jamāl al-Dīn al-Afghānī could not have hidden his Persian accent and pretended that he was a native Arab. Claiming to be an Afghānī would seem more plausible. He drew on his past experiences in creating his Sunnī image, for he had spent several years in Afghanistan and knew something about the region. Muḥammad ʿAbduh's statement that al-Afghānī belonged to the Ḥanafī school of law provoked the remark by Muḥsin al-Amīn: "Of course, because the Ḥanafī school is that most widespread among the Afghanis."[129] The claim of descent from al-Tirmidhī seems also to be due to geographical considerations, for al-Tirmidhī's native village, Tirmidh, lay near Balkh in Transoxania, and it would seem plausible that he had descendants in the region of Afghanistan.

The picture which emerges is that Shīʿī scholars often modified their names or assumed false identities when studying with Sunnī scholars. The exact modification or false identity had to be adjusted, depending, primarily, on the place of origin of the performer of taqiyyah and the place where he needed to perform it. This adjustment may have had a great deal to do with accent or other sorts of mundane behavior. Studying in Baghdad, al-Shahīd al-Awwal adopted the nisbah al-Dimashqī. This claim would be easy to support in Baghdad; to an Iraqi, al-Shahīd al-Awwal's dialect of Arabic would have sounded very much like Damascene. However, it would hardly have worked in Damascus itself. The nisbah one chose as an alternative

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[128]Moojan Momen, An Introduction to Shi'i Islam, 210.
[129]Aʿyān al-shīʿah, 4: 207.

therefore depended on the location where it was to be used. It is well known that Jamāl al-Dīn al-Afghānī adopted the nisbah al-Afghānī for use in Egypt; it is less well known that he had earlier adopted the nisbahs Rūmī and Istanbūlī for use in Afghanistan during the period 1863-68.[130] Since it was easier for a Shī'ī to conceal the specific region of his origin in a distant place, it was probably easier for Shī'ī scholars to study at distant centers of Sunnī learning than at others nearby.

IV. Taqiyyah and the Claim of Reverse Taqiyyah

Al-Bahā'ī claimed to be a Sunnī victim of persecution in the Safavid empire, who pretended to be a Shī'ī while in Iran, out of a Sunnī version of taqiyyah. This is shown by al-Bahā'ī's statement as reported by al-ʿUrḍī: "I am a Sunnī who loves the Companions, but what can I do? Our Sultan is a Shī'ī who kills the Sunnī scholars." This reported confession to being secretly a Sunnī is offensive to Shī'ī scholars, including Muḥsin al-Amīn, who omits this sentence when citing al-ʿUrḍī's text.[131] Shī'ī scholars either cannot imagine that a scholar of al-Bahā'ī's stature could be so hypocritical in endeavoring to present himself as a Sunnī, or else feel that this information should be withheld from the public. Muḥsin al-Amīn's choice to omit this phrase is one indication that, in the eyes of some Shī'ī scholars, al-Bahā'ī's use of taqiyyah had exceeded proper bounds. The advantages of such a claim were clear. If confronted with any evidence that he was actually a Shī'ī concerning his past in Iran, al-Bahā'ī would have an automatic excuse. The disadvantage, however, was that it would make him suspect in the eyes of Shī'īs, and Muḥsin al-Amīn seems to resent this

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[130]Homa Pakdaman, Djamal-ed-Din Assad Abadi dit Afghani (Paris: G. P. Maisonneuve et Larose, 1969), 36-44.

[131]Muḥsin al-Amīn, A'yān al-shī'ah, 9: 241

statement because it provides Sunnīs with strong evidence that al-Bahāʾī was actually one of their own.

Several scholars in Ottoman lands were so convinced al-Bahāʾī was a Sunnī that they went out of their way to prove he was not a Shīʿī. Al-ʿUrḍī seems to have had great respect for al-Bahāʾī, and was concerned to present him in a positive light. He gives three possible interpretations of al-Bahāʾī's behavior: (1) that he had always been a Sunnī, but pretended to be a Shīʿī out of taqiyyah, which, al-ʿUrḍī stresses, was an accepted Sunnī practice, as indicated by the Qurʾānic verse 16: 106; (2) that he had been a Shīʿī in his younger years, but later repented and adopted Sunnism; and (3) that, despite the fact that he meant well and was even an inspiration to Sunnī scholars, he was actually a Shīʿī, and therefore damned.[132] With regard to this last interpretation, al-ʿUrḍī states, "God forbid that he be like a candle which lights the path but is itself consumed in the lantern."[133] Several other scholars present al-Bahāʾī as a Sunnī who pretended to adopt Shīʿism while in Iran. The Damascene scholar al-Muḥibbī states,

> News of him reached the Sultan of Isfahan, Shah ʿAbbās, who
> sent for him to be the leader of the scholars. Al-Bahāʾī
> assumed this post and became famous and respected. However,
> he did not share the heretical beliefs of the Shah, as is clear
> from his wide reputation for having sound faith, but was
> zealous in his love for the descendants of the Prophet (āl
> al-bayt).[134]

Influenced by these accounts, Buṭrus al-Bustānī (d. 1301/1883) was convinced that al-Bahāʾī was a Sunnī. "He was a Sunnī, but was extreme in

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[132]al-ʿUrḍī, Maʿādin al-dhahab, fol. 67 b.
[133]al-ʿUrḍī, Maʿādin al-dhahab, fol. 67 b.
[134]al-Muḥibbī, Khulāṣat al-athar, 3: 441.

his love, respect, and reverence for the descendants of the Prophet. It appears that he feigned Shīʿism while residing in Persia."[135] Niʿmat Allāh al-Jazāʾirī (d. 1112/1701), a seventeenth-century Safavid scholar, relates that a certain Shaykh ʿUmar, a contemporary Sunnī scholar from Baṣrah, held that al-Bahāʾī was a Sunnī but hid his belief from the Shīʿī Shah (illā annahu kāna yattaqī min sulṭāni 'r-rāfidah).[136] Similarly, al-Bahrānī mentions that he met a Sunnī scholar who claimed that al-Bahāʾī was a Sunnī and related a number of accounts, probably some of those presented above, to prove this.[137] These Sunnī scholars interpreted al-Bahāʾī's behavior as being the reverse of the Shīʿī taqiyyah. They concluded that he was dissimulating while in Iran, pretending to be a Shīʿī, and that he could only profess his true belief while safe in Ottoman territory. Al-ʿUrḍī accepted al-Bahāʾī's taqiyyah as legitimate from a Sunnī scholar, and the above-mentioned Shaykh ʿUmar saw nothing strange in using the verb yattaqī ("to dissimulate") to describe the behavior of a man he believed to be Sunnī. These Sunnī scholars accepted Sunnī taqiyyah modeled on the Shīʿī version as a normal reaction to sectarian pressure in Iran. In fact, the crypto-Sunnīs of Iran, to use Dickson's term,[138] developed the practice of dissimulation in order to survive. Well into the sixteenth century, numbers of important families who produced both scholars and government officials were secretly Sunnīs, as the events of Shah Ismāʿīl II's reign make clear. Throughout Islamic history, taqiyyah had been used primarily by Shīʿīs, but

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[135]Dāʾirat al-maʿārif, 11 vols. (Beirut, 1876-1900), 11: 463.

[136]al-Khwānsārī, Rawḍāt al-jannāt, 7: 66.

[137]al-Bahrānī, Luʾluʾat al-baḥrayn, 19.

[138]Martin B. Dickson, "Shah Tahmasp and the Uzbeks" (Ph. D. dissertation, Princeton University, 1958), 192-3.

in the tenth/sixteenth century, a novel situation arose when the Safavid government took steps to enforce adherence to Shīʿism within the Empire. When Sunnīs became a persecuted minority, it was natural for them to adopt taqiyyah.

There is no question that al-Bahāʾī was a Shīʿī by background, practice, and conviction. The time he spent in Ottoman territory was only a small fraction of his career. Those scholars who claimed al-Bahāʾī was a Sunnī could only do so because they were not familiar with his accomplishments in Iran and his legal and other works, many of which showed his Shīʿī heritage and beliefs. Al-Bahāʾī's most popular works in Ottoman territories were his poetry and works on mathematics and astronomy, which did not reveal a Shīʿī bias.[139] As seen above, al-Bahāʾī also relied on tafsīr as a field in which he could demonstrate his accomplishments without incriminating himself or provoking controversy. Al-Baḥrānī's response to the Sunnī scholar who claimed that al-Bahāʾī was a Sunnī was to show him al-Bahāʾī's work Miftāḥ al-falāḥ, which is a guide to daily religious devotions for the Shīʿī believer.[140] The Sunnī scholar was shocked upon reading it.[141] To judge by the results, al-Bahāʾī was a master of practical taqiyyah: he gained the accepted of everyone. It is a tribute to his ability to get along with scholars of different backgrounds as well as to his scholarly and literary merit that he was able to gain such wide acceptance in Sunnī circles. Al-Bahāʾī adopted the philosophy explained in one of the lines of his poem Wasīlat al-fawz,

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[139]See e.g., "Sāniḥāt dumā al-qaṣr," fol. 124 a, where al-Ṭālawī reports that "He has excellent works . . . especially in the mathematical sciences."
[140]Miftāḥ al-falāḥ (Beirut: Muʾassasat al-aʿlamī liʾl-maṭbūʿāt, 1970).
[141]al-Baḥrānī, Luʾluʾat al-bahrayn, 19.

ukhāliṭu abnāʾa 'z-zamāni bi-muqtaḍā
/ ʿuqūlihim kay lā yafūhū bi-inkāri

I associate with my contemporaries according to
their understanding, lest they reject me.[142]

Conclusions

While taqiyyah is a doctrine and a legal concept, it is also a complex pattern of behavior which allows Twelver Shīʿīs and other sectarian groups to reduce the risks entailed by participation in a society dominated by the Sunnī majority. Despite the paucity of material available, the sketch of al-Bahāʾī's behavior provided by the texts concerning his journey in Ottoman territory gives a much more detailed understanding of taqiyyah than that evident in legal analyses. His performance of taqiyyah involved a complex modification of his identity and included not only the verbal denial of his sectarian allegiance, and, presumably, though the texts do not mention this, performance of ablutions and prayer in the Sunnī manner, but also the adoption of a disguise, the suppression of parts of his name and other personal information, and the adoption of a false genealogy. Two documents, al-Bahāʾī's treatise on tafsīr dedicated to the Ottoman Sultan Murad III and the ijāzah he received from a scholar in Jerusalem, served as important additional supports for his modified identity. Moreover, his claim to be a victim of anti-Sunnī persecution in Iran and therefore obligated to pretend to adopt Shīʿism through taqiyyah would serve to counter-act any evidence which might incriminate him as a Shīʿī.

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[142]Line 11 of the qaṣīdah. Al-Kashkūl (Cairo, 1872), 404.

Although it is unlikely that other Shīʿī scholars will ever outdo al-Bahāʾī's folkloric fame as the Invisible Man, as more information becomes available it will doubtless become evident that many of them used these or similar methods in order to protect themselves while studying and teaching in Sunnī environments. That taqiyyah played an extremely important role in the lives of al-Bahāʾī and the other participants in the Shīʿī tradition of learning under Sunnī teachers is clear. Their careers demonstrate an "application of the arts of impression management, the arts, basic in social life, through which the individual exerts strategic control over the image of himself and his products that others glean from him."[143] Although the analysis of taqiyyah as actually applied does not explain why some Shīʿī scholars expended such great efforts in order to study under Sunnī teachers—one of the fundamental problems addressed in the other chapters of the present study—it goes a long way towards demonstrating how they succeeded in doing so.

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[143]Goffman, Stigma, 128.

Chapter Eight
The Adoption of Consensus:
Twelver Shiʿism as the Fifth Madhhab

The previous chapters have discussed two types of reaction to the normative predicament which faced the Shiʿis because of the charge that they were violating the consensus. The Ismaʿilis and the Twelver Akhbaris rejected the consensus, in effect accepting the stigma of heresy and deviant status within the larger Islamic community. Those scholars involved in the tradition of legal study under Sunni teachers conformed to consensus, at least outwardly, by adopting the Shafiʿi legal guild. The present chapter discusses a third type of reaction, perhaps the most challenging and potentially frustrating of the three, that of adoption of consensus. Scholars who followed this course were trying to remove the stigma itself, so that they could profess their true beliefs openly and reveal their identity without fearing mistreatment, discrimination, persecution, or rejection. The strategy they adopted was to establish a Twelver Shiʿi legal guild on a par with the Sunni guilds. The key step in doing so was to accept the principle of consensus, and necessarily, along with it, the principle of exclusion from consensus, for to be accepted as equals in society, they had to accept the general norms of that society. They had to adjust those very norms, however, in order to be accepted without giving up some of their religious identity. That is, they accepted ijmaʿ in such a way that it took them into consideration.

The strategy of adoption of consensus is readily seen in the Shiʿis' attempt to be recognized as a fifth madhhab. The idea that Twelver Shiʿism

is a fifth madhhab implies that it can be treated as an equal partner in the Sunnī madhhab system. It not only holds that Twelver Shīʿism has a structure of legal authority which conforms to that of the Sunnī madhhabs, but also that it can be accepted as an alternative within the circle of Islamic orthodoxy. Two events have made the concept of Twelver Shīʿism as a fifth madhhab well known in Western scholarship on Islam: the acceptance of Shīʿī law in 1959 at al-Azhar and the attempts of Nādir Shāh, who ruled Iran in the eighteenth century, to gain official recognition of Twelver Shīʿism as orthodox both within his own realm and in treaties with the Ottoman Empire.

F. R. G. Bagley has discussed the acceptance of Shīʿī law at al-Azhar.[1] An organization called Dār al-taqrīb bayn al-madhāhib al-islāmiyyah or Jamāʿat al-taqrīb worked for a number of years in Egypt towards a reconciliation between Shīʿism and Sunnism. Led by the Iranian scholar Muḥammad Taqiyy Qummī, this organization began its activities shortly after the second world war and published a journal entitled Risālat al-islām between the years 1949 and 1960. The native Egyptian scholar Maḥmūd Shaltūt, who was born in 1893 and became rector of al-Azhar in November, 1957, introduced Zaydī and Twelver Shīʿī fiqh into al-Azhar, on a par with the four Sunnī madhhabs, in 1959.[2] In the July 1959 issue of Risālat al-islām, the usual editorial page was omitted and replaced with the "historic fatwā" of Shaykh Maḥmūd Shaltūt, announcing that Twelver and Zaydī

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[1]For an overview, see F. R. G. Bagley, "The Azhar and Shīʿism," Muslim World 50 (1960): 122-29; Muḥammad Taqiyy Qummī, "Qiṣṣat al-taqrīb," Risālat al-islām, 11(1959): 348-59.

[2]Bagley, "The Azhar and Shīʿism," 122.

Shīʿism were orthodox and that their *fiqh* would now be included in the curriculum at al-Azhar.

> 1. Islam does not oblige any of its adherents to adopt a specific *madhhab*. Rather, we hold that each Muslim has the right to adopt, at the outset, any of the *madhhabs* which have been properly transmitted (*al-manqūlah naqlan ṣaḥīḥan*) and which have their rulings recorded in their own books. Anyone who has already adopted one of these *madhhabs* has the right to change to another *madhhab*—no matter which—and no harm or embarrassment whatsoever comes to him from doing so.
> 2. The Jaʿfarī *madhhab*, known as the Ithnāʿasharī Imāmī *madhhab*, is a *madhhab* in accordance with which it is permissible, by religious law, to worship, like the rest of the *madhhabs* of the Sunnīs.
>
> Muslims must know this, and rid themselves of unjustified partisanship (*ʿaṣabiyyah*) for specific *madhhabs*, since the religion and sacred law of God are not dependent on or restricted to any one *madhhab*. All of them are *mujtahids* acceptable to God—He is exalted—and it is permissible for him who does not have the ability of rigorous examination (*nazar*) and *ijtihād* to follow their opinions and practice according to what they decide in their positive law. There is no difference in this between ritual observances (*ʿibādāt*) and mundane transactions (*muʿāmalāt*).[3]

As a result of the efforts of Maḥmūd Shaltūt and *Dār al-taqrīb*, Twelver Shīʿī law was accepted as a legitimate *madhhab* to be taught at one of the largest and most prestigious institutions of Sunnī learning in the Muslim world. This was a momentous accomplishment in the history of Shīʿism.

Nādir Shah Afshār ruled Iran from 1148/1736 until 1159/1747. It is well known that he attempted to have Shīʿism accepted as the Jaʿfarī *madhhab*. Upon ascending the throne in 1148/1736, Nādir Shah stipulated that his Shīʿī subjects give up the overtly anti-Sunnī policies instituted by

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[3]Shaykh Shaltūt, *Risālat al-islām*, 11(1959): 227-28.

the Safavids. He forbade the cursing of the Sunnī Caliphs. He tried several times to get the Ottoman Sultan to agree to a treaty which included recognition of Shīʿism as a fifth madhhab and permission for an additional Persian amīr al-hajj to lead pilgrims to Mecca. Nādir Shah's policy regarding this matter is generally interpreted as a ploy designed to quell dissidence among the Sunnī Afghānīs and others in his army and to defuse Ottoman hostility towards Iran. It is not recognized that the concept had any prior recognition within Shīʿism, or that it had any sound basis in Shīʿī theory or scholarship. In fact, it is often portrayed as being completely inconsistent with Shīʿī views. The following discussion will attempt to show not only that the concept of the fifth madhhab is considerably older within Shīʿī tradition than generally recognized, but also that it has considerable support in Shīʿī scholarship and theory.

Nādir Shah was supported by Shīʿī scholars, including the Mullā Bāshī ʿAlī Akbar al-Ṭāliqānī (d. 1160/1748),[4] but it is unclear to what extent these scholars complied with his wishes out of political expediency or coercion. When he conquered Iraq in 1156/1743, Nādir Shah arranged a debate in Najaf between Sunnī and Shīʿī scholars of his realm, from Iran, Afghanistan, and Transoxania. A Sunnī scholar from Baghdad appointed by the Ottoman governor there refereed the debate. The events of the debate, which took place on Shawwāl 25, 1156/December 12, 1743 are recorded by that Sunnī arbitrator, al-Sayyid ʿAbd Allāh ibn al-Ḥusayn al-Suwaydī

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[4] On this scholar, see Muḥsin al-Amīn, Aʿyān al-shīʿah, 8: 171-75.

al-ʿAbbāsī (d. 1173/1759-60).[5] The reasoning behind Nādir Shah's asking the Ottoman governor of Baghdad to provide a Sunnī scholar to serve as arbitrator in the debate seems clear. This man would also serve as a witness to the Ottoman government that the Shīʿīs had given up their anti-Sunnī positions, and therefore did not pose a threat and could be accepted as orthodox Muslims, as Nādir Shah had tried to get the Ottoman Sultan to do in several treaty proposals.

Al-Suwaydī reports that at the debate there were about seventy Iranian scholars, including only one Sunnī, a certain Sayyid Aḥmad who was the Shāfiʿī mufti of Ardalān in Kurdistan, seven Transoxanian scholars, all Ḥanafīs from Bukhārā, and seven Afghānī scholars, also all Ḥanafīs.[6] Al-Suwaydī gives a short summary of the debate between ʿAlī Akbar, the Mullā Bāshī, and Hādī Khōjah, known as Baḥr al-ʿIlm, the leader of the Transoxanian delegation. The Mullā Bāshī asked the Sunnī scholars on what grounds they declared Shīʿīs unbelievers and then recanted or denied the objectionable positions. A number of his statements, including those to the effect that temporary marriage is forbidden and that the Shīʿīs follow Ashʿarī dogma seem to be misrepresentations of standard Shīʿī doctrine.[7] This lends credence to the hypothesis that Nādir Shah had instructed him to reach a reconciliation at all costs.

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[5]The section of al-Suwaydī's work which treats the events surrounding the debate as well as the debate itself has been printed as Muʾtamar al-Najaf, 3rd printing (Cairo: al-Maṭbaʿah al-salafiyyah, 1973). It was first printed under the title al-Hujaj al-qāṭiʿah l'ittifāq al-firaq al-islāmiyyah (Cairo: Maṭbaʿat al-saʿādah, 1905).

[6]Muʾtamar al-Najaf, 39-40.

[7]Muʾtamar al-najaf, 42.

The concept of the fifth madhhab, however, was not concocted by Nādir Shāh. Over a century earlier the Shī'ī scholar al-Qāḍī Nūr Allāh al-Shushtarī referred to Twelver Shī'ism as constituting the Ja'farī madhhab, and made a detailed statement holding that the Shī'ī madhhab was equivalent to those of the Sunnīs.[8] Al-Shahīd al-Thānī reports that when he held his teaching position at the Nūriyyah madrasah in Ba'albakk ca. 953-54/1546-47, he taught according to the "five madhhabs" (fī 'l-madhāhibi 'l-khamsah), meaning the four Sunni madhhabs and the Twelver Shī'ī madhhab.[9] This was about two centuries before the time of Nādir Shah.

There is evidence that the concept of a Twelver Shī'ī guild parallel to the Sunnī guilds dates back still further, to the Buwayhid period in Baghdad. Although he does not cite specific sources, Claude Cahen writes of the Twelver Shī'ī scholars of the Buwayhid period,

> It is said that at this moment when the four schools remianing to the Sunnis were beginning to be defined by them as exclusively orthodox, they would have wished that their of Shī'ism might be recognized in the heart of the umma as a sort of fifth authorized school.[10]

While Cahen's use of the term "fifth authorized school" here is anachronistic, because the Ẓāhirī madhhab, for example, did not die out in Baghdad until ca. 475/1082,[11] the conception of Twelver Shī'ī law as forming a madhhab

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[8]Saiyid Athar Abbas Rizvi, A Socio-Intellectual History of the Isnā 'Asharī Shī'īs in India, 1: 365-67.
[9]al-Durr al-manthūr, 2: 182.
[10]Claude Cahen, "Buwayhids," s.v., EI2.
[11]Makdisi, Rise of Colleges, 4.

similar in form and function to the Sunnī madhhabs is evident in the works of al-Sharīf al-Murtaḍā and al-Shaykh al-Ṭūsī in the early fifth/eleventh century in Baghdad. The exact term "the fifth madhhab" or "the five madhhabs" was not used for the simple reason that the idea that there were only four Sunnī madhhabs, indicating the limits of Sunnī orthodoxy, had not yet become firmly established. The dust had not yet settled on the last of the other madhhabs which were found within Sunnism, such as the Jarīrī and Ẓāhirī guilds. The Sunnī madhhab system was still in the process of consolidation, so Twelver Shīʿī scholars did not refer to their own law as a fifth madhhab.

The First Shīʿī Texts of Uṣūl al-fiqh

It was during the Buwayhid period that the first Shīʿī works in the genre of uṣūl al-fiqh were produced. Two centuries had passed since the appearance of al-Shāfiʿī's al-Risālah before the Twelver Shīʿīs wrote their first works on uṣūl al-fiqh. There is evidence, however, that the formation of a madhhab began even before the Greater Occultation. Al-Kulaynī, who died in 329/941, the year the Greater Occultation began, wrote his work al-Kāfī, the first major compilation of Shīʿī ḥadīth to be arranged according to the chapters of legal works, before the Occultation. As mentioned in Chapter Six of this study, the Fihrist of Ibn al-Nadīm reports that the scholar Muḥammad ibn Ibrāhīm ibn Yūsuf al-Kātib, who was born in 281/894-95, studied both Shīʿī and Shāfiʿī law. Given that he would have been forty-eight years old at the time the Greater Occultation began, it is most probable that his studies took place before then.

The development of the Shīʿī legal guild may be seen, in part, as an effort on the part of Shīʿī scholars to dissociate themselves from the

influence of philosophical theology, and particularly Mu'tazilī theology, and to establish their independence from the safīrs and their coterie. The third safīr of the hidden Imam (305-26/917-38), Hasan ibn Rūh al-Nawbakhtī, was a relative of two well-known Shī'ī theologians influenced considerably by Mu'tazilism, Ismā'īl Abū Sahl al-Nawbakhtī (d. 311/923) and his nephew Hasan ibn Mūsā al-Nawbakhtī (fl. 300/912). Abū Sahl's concern with his relative's position as safīr is shown by the report that he denounced the Shī'ī mystic Husayn ibn Mansūr al-Hallāj (d. 309/922) to the Caliph al-Muqtadir (295-320/908-32) when al-Hallāj claimed to be the safīr of the hidden Imam. Abū Sahl's relative happened to the the safīr at that time. The post of safīr may have come to be associated with the influence of pro-Mu'tazilī theologians, and efforts to establish the authority of Shī'ī jurisconsults may have been intended to undermine the influence of both the safīr and the theologians.

Economic factors cannot be ignored. The safīr, as the agent of the Imam, was able to collect khums funds, the religious taxes which had traditionally been the prerogative of the Imams. By establishing their own authority, the Shī'ī jurists were claiming the right to collect and administer these funds, and attempting to wrest control of them from the safīr and his entourage. This hypothesis is corroborated by the report of al-Najāshī (d. 450/1058-59) that Muhammad ibn Ahmad ibn al-Junayd, an important fourth/tenth-century Shī'ī jurist in Rayy, held funds, as well as a sword, which belonged to the Hidden Imam.[12] The crucial factor in the establishment of the Twelver Shī'ī legal guild, however, was the need to

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[12]Ahmad ibn 'Alī al-Najāshī, Kitāb al-rijāl (Tehran: Chāp-khānah-yi mustafavī, n.d.), 299.

face their contemporary Sunnī legal scholars, and this is seen clearly in the Shīʿī development of the genre of usūl al-fiqh.

With the work of al-Shaykh al-Mufīd, al-Sharīf al-Murtaḍā, and al-Shaykh al-Ṭūsī, an important change is introduced into the system of legal authority. Al-Ṭūsī makes it clear that Shīʿī jurists were exclusively responsible for performing legal functions in the absence of the Imam. He states,

> As for giving judgment among people and judging between litigants, it is not permissible except for him to whom the True Sovereign [i.e., the Imam] has given permission in that regard. And they [the Imams] have entrusted this [function] to the jurists of their sect [shīʿah] during such time as they are not able to exercise it in person.[13]

Furthermore, the expertise of the jurisconsult is based not primarily on his knowledge of hadīth but on his study of jurisprudence. In the introduction to ʿUddat al-usūl, his text-book of usūl al-fiqh, al-Ṭūsī reports that the work was written in response to a request by a student or colleague, who stated that usūl al-fiqh was the exclusive basis of the sharīʿah, "liʾanna 'sh-sharīʿata kullahā mabniyyatun ʿalayh."[14] The context shows that al-Ṭūsī agrees with this statement.

Al-Shaykh al-Mufīd, who died in 413/1022, wrote the first Twelver Shīʿī work on usūl al-fiqh which has come down to us, although only in abridged form. He wrote a work entitled al-Tadhkirah bi-usūl al-fiqh, of which a short summary is included in Kanz al-fawāʾid by one of al-Mufīd's

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[13]al-Nihāyah fī mujarrad al-fiqh wa 'l-fatāwā (Tehran, 1963), 304. Translated in Arjomand, The Shadow of God and the Hidden Imam, 51.
[14]ʿUddat al-usūl, 2.

students, al-Karājakī (d. 449/1057).[15] How long the original work was is not known. It is clear, however, from the outline of al-Mufīd's Tadhkirah, that it was intended to be a complete work on usūl al-fiqh, following the Sunni model.

A Shīʿī work on usūl al-fiqh may have been written a generation before al-Shaykh al-Mufīd. Muḥammad ibn Aḥmad ibn al-Junayd, also known as al-Kātib al-Iskāfī, was a Twelver Shīʿī scholar who died in Rayy in 381/991. His title indicates that he was a secretary, and he is also reported to have written fatwās for the Ghaznavid ruler Abū Manṣūr Sabuktagin (367-87/977-97) and the Buwayhid amīr Muʿizz al-Dawlah (d. 356/967).[16] As mentioned above, he is reputed to have held funds which belonged to the Hidden Imam. He was a prolific writer on Shīʿī law, and his works may have brought Shīʿī jurisprudence closer in line with Sunni jurisprudence than other Shīʿī scholars were willing to allow. He accepted the concepts of qiyās and ijtihād, and wrote works entitled "The Removal of Distortion and Deception for Gullible Shīʿis Concerning Qiyās" and "Disclosing Traditions from the Imāms Concerning Ijtihād Which Our Stubborn Opponents (ahl al-ʿinād) Have Suppressed."[17] Ibn al-Junayd wrote a work in twenty volumes on Shīʿī fiqh entitled Tahdhīb al-shīʿah li-ahkām al-sharīʿah, and al-Najāshī records the titles of the chapters included in the work, showing it

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[15]Abū al-Fatḥ Muḥammad ibn ʿAlī al-Karājakī, Kanz al-fawāʾid (Tabriz, 1322), 186-94; Brunschvig erroneously implies that the piece in Kanz al-fawāʾid is the complete work, and gives the title incorrectly as Usūl al-fiqh. Robert Brunschvig, "Les Usūl al-fiqh Imāmites a leur stade ancien (Xᵉ et XIᵉ siècles)," Études d'Islamologie, ed. Abdel Magid Turki (Paris: G.P. Maisonneuve et Larose, 1976), 326.

[16]al-Najāshī, Kitāb al-rijāl, 301.

[17]al-Najāshī, Kitāb al-rijāl, 301.

to cover all of the standard categories of fiqh.[18] The title of one of Ibn al-Junayd's works, Kitāb al-ifhām li-uṣūl al-ahkām, appears to indicate that it was a work on uṣūl al-fiqh.[19] According to al-Ṭūsī, Shī'ī scholars rejected his works and did not preserve them because they rejected his use of qiyās.[20] None of them have come down to us.

The next two major works on Twelver Shī'ī uṣūl al-fiqh were al-Ṭūsī's 'Uddat al-uṣūl or 'Umdat al-uṣūl and al-Murtaḍā's al-Dharī'ah ilā uṣūl al-sharī'ah. 'Uddat al-uṣūl has been subject to several misconceptions. Brockelmann states that the work consists of two parts, the first of which discusses uṣūl al-dīn and the second uṣūl al-fiqh.[21] This is not the case, although al-Ṭūsī wrote several works on uṣūl al-dīn, and begins 'Uddat al-uṣūl with a short introductory section on some points of logic and philosophical theology. Also, contrary to common belief, al-Ṭusī wrote 'Uddat al-uṣūl before al-Murtaḍā wrote his al-Dharī'ah ilā uṣūl al-sharī'ah. Scholars have assumed that the elder al-Murtaḍā's work was the first of the two, but the introductions to the two works make it clear that this was not the case. In the introduction to 'Uddat al-uṣūl, al-Ṭūsī mentions al-Shaykh al-Mufīd's work, which he refers to as an abridgement (mukhtasar), adding that al-Mufīd did not treat the topic completely (lam yastaqsih). He then

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[18]al-Najāshī, Kitāb al-rijāl, 299-301.

[19]al-Ṭūsī, Fihrist kutub al-shī'ah, 160. The text adds yajrī majrā masā'il al-Tabarī, or in other versions, yajrī majrā rasā'il al-Tabarī li-kutubī. [See Ma'ālim al-'ulamā', 87 n. 9.] This is perhaps a reference to the work Ikhtilāf al-fuqahā' by the well-known historian and jurisconsult Muḥammad ibn Jarīr al-Ṭabarī (d. 310/933). [GAL, GI: 142-43, SI: 218] The fact that al-Iskāfī wrote on ijtihād and qiyās makes it even more probable that he wrote a work on uṣūl al-fiqh.

[20]al-Ṭūsī, Fihrist kutub al-shī'ah, 160.

[21]GAL, II: 706.

states that al-Murtaḍā—he refers to him as <u>sayyiduna 'l-ajall</u>—has not yet written a work on the subject, although he has taught <u>uṣūl al-fiqh</u> a great deal. Al-Ṭūsī writes: "Although [<u>uṣūl al-fiqh</u>] is discussed extensively in his dictations and the works which are studied under him, he has not written a work on the topic to serve as a reference and a support."[22] Thus, al-Murtaḍā's <u>uṣūl al-fiqh</u> work <u>al-Dharīʿah ilā uṣūl al-sharīʿah</u> did not exist when al-Ṭūsī started to write <u>ʿUddat al-uṣūl</u>.

Al-Murtaḍā's introduction to <u>al-Dharīʿah</u> mentions al-Ṭūsī's wor, and praises it, but maintains his own superiority over the much younger scholar. Although he does not mention al-Ṭūsī's name, it is certainly he of whom al-Murtaḍā writes:

> I have found that one [scholar] who has devoted an independent work to <u>uṣūl al-fiqh</u>, although he correctly presented many of its concepts, topics, and forms, strayed from the definition and method of the genre of <u>uṣūl al-fiqh</u> and went beyond it.[23]

Al-Murtaḍā criticized al-Ṭūsī for mixing subjects meant to be dealt with in works on <u>kalām</u> or <u>uṣūl al-dīn</u> with his <u>uṣūl al-fiqh</u>. He refers to the following subjects: the definitions of certainty and speculation (<u>ḥadd al-ʿilm wa al-ẓann</u>), how speculation can produce certainty (<u>kayfa yuwallidu 'n-naẓaru l-ʿilm</u>), etc. The topics al-Murtaḍā mentions are to be found on pages 4-25 of al-Ṭūsī's work. Al-Ṭūsī included these subjects in the first section of <u>al-ʿUddah</u> because he felt these principles were necessary to support at the results of <u>uṣūl al-fiqh</u>. Al-Murtaḍā states that if one takes this stand, one must include all of <u>uṣūl al-dīn</u> in <u>uṣūl al-fiqh</u>, and that does not

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[22]<u>ʿUddat al-uṣūl</u>, 2.
[23]<u>al-Dharīʿah</u>, 1: 2.

suit the definition of the genre. It is clear, therefore, that al-Murtaḍā had a specific notion of the existing—i.e., non-Shīʿī—genre of uṣūl al-fiqh.

While it is difficult to pinpoint the dates of al-ʿUddah and al-Dharīʿah, it is possible to say that both were written between 413/1022, when al-Shaykh al-Mufīd died, and 436/1044, when al-Sharīf al-Murtaḍā died. For the most part, the organization of the two works is closely parallel.

Chapters of al-Dharīʿah:

Introduction
1. al-kālam fī 'l-khiṭāb
2. al-amr
3. al-nahy
4. al-ʿumūm wa 'l-khuṣūṣ
4A. anwāʿ al-takhṣīṣ
5. al-mujmal wa'l-bayān
6. al-naskh
7. al-akhbār
7A. ṣifat al-mutaḥammil bi'l-khabar
8. al-afʿāl
9. ijmāʿ
10. al-qiyās
11. al-ijtihād
12. al-ḥaẓr wa'l-ibāḥah
13. al-nāfī wa'l-mustaṣḥab li'l-ḥāl

Chapters of al-ʿUddah:

Introduction
Section on logic
1. al-akhbār
2. al-awāmir
3. al-nahy
4. al-ʿumūm wa'l-khuṣūṣ
5. al-bayān wa'l-mujmal
6. al-nāsikh wa'l-mansūkh
7. al-afʿāl
8. al-ijmāʿ
9. al-qiyās
10. al-ḥaẓr wa'l-ibāḥah

Al-Murtaḍā places the section on oral tradition (akhbār) between the sections on abrogation (naskh) and acts (afʿāl), whereas al-Ṭūsī places it at the beginning of his book; al-Murtaḍā starts with a section on scripture (al-khiṭāb), which al-Ṭūsī does not have. Al-Murtaḍā has two chapters which merely expand on preceding chapters: anwāʿ al-takhṣīṣ after al-ʿumūm wa'l-khuṣūṣ, and ṣifat al-mutaḥammil li'l-akhbār after al-akhbār. Al-Ṭūsī treats qiyās and ijtihād both under the rubric of qiyās, whereas

al-Murtaḍā treats them in separate chapters. Al-Murtaḍā's last chapter treats al-nāfī and al-mustashab li'l-ḥāl, which al-Ṭūsī does not.

The organization of al-Sharīf al-Murtaḍā's work in particular closely matches that of the usūl al-fiqh work by the Sunnī scholar Abū al-Ḥusayn al-Baṣrī (d. 436/1044). The two were contemporaries, and even died in the same year. Al-Muʿtamad fī usūl al-fiqh,[24] one of the earliest integral Sunnī works of usūl al-fiqh which is extant and published, includes the following chapters.

1. al-awāmir
2. al-nawāhī
3. al-ʿumūm wa al-khuṣūṣ
4. al-mujmal wa al-mubayyan
5. al-afʿāl
6. al-nāsikh wa al-mansūkh
7. al-ijmāʿ
8. al-akhbār
9. al-qiyās wa al-ijtihād
10. al-ḥaẓr wa al-ibāḥah
11. al-muftī wa al-mustaftī

The many similarities between the two works, particularly in comparison with the work of al-Shaykh al-Mufīd, indicates the extent of Shīʿī borrowing from this originally Sunnī genre.

The Adoption of Ijmāʿ

The crucial step which the first Twelver Shīʿī usūl al-fiqh works accomplished was to adopt the theory of ijmāʿ from Sunnī jurisprudence. The adoption of ijmāʿ was part of the Shīʿīs' struggle to establish

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[24]al-Muʿtamad fī usūl al-fiqh, 2 vols., ed. Khalīl al-Mays (Beirut: Dār al-kutub al-ʿilmiyyah, 1983).

themselves as serious scholars of Islamic law, equal in status to Sunnī scholars and free to take part in all facets of intellectual and religious life in Baghdad. Shī'ī jurisprudents clearly felt an urgent need to adapt the theory of ijmāʿ to their own needs. The main Shī'ī scholars who had accomplished this were al-Shaykh al-Mufīd, al-Sharīf al-Murtaḍā, and al-Shaykh al-Ṭūsī. It is also possible that the lost work of Ibn al-Junayd on usūl al-fiqh played a major role in this development, for if he adopted ijtihād and qiyās, it is likely that he adopted ijmāʿ as well. Unfortunately, as mentioned above, later Twelver Shī'ī scholars suppressed his works, and it may never be possible to assess the effect of his work in this regard.

Sunnī works on usūl al-fiqh hold that ijmāʿ was something termed hujjah, or "proof." This term implies that a ruling held by ijmāʿ, although it may not necessarily be based on an explicit text, is a winning or irrefutable argument, one that must be accepted. This claim implies that one cannot contradict consensus, and that to do so is not only incorrect but unallowed or illegal. Hence the ruling that to go against ijmāʿ is tantamount to unbelief, as discussed in Chapter Four of this study. The implication was, in the Sunnī view, that since ijmāʿ was a hujjah, the Shī'īs either had to retract their opinions or be excluded from the community of opinion which constituted Islamic orthodoxy.

A key to understanding the adoption of the concept of ijmāʿ by the Shī'īs lies in the legal theory of Ibrāhīm al-Naẓẓām (d. 220-30/835-45), the great Muʿtazilī theologian. Many works on usūl al-fiqh state that al-Naẓẓām rejected ijmāʿ, and claimed that it was not a convincing proof, or hujjah.[25] In his usūl al-fiqh work al-Mustasfā, al-Ghazālī states that this was not

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[25]Abū al-Ḥusayn al-Baṣrī, al-Muʿtamad fī usūl al-fiqh, 1: 459.

exactly the case. Al-Naẓẓām at first did not accept ijmāᶜ, but when reports reached him that to go against ijmāᶜ was declared unlawful (taḥrīm mukhālafat al-ijmāᶜ), he then accepted ijmāᶜ out of necessity. He defined it, however, in such a way that it could fit into his already established legal theory. The result was what seemed to be a circular, or non-definition; he defined ijmāᶜ as "any opinion which has been irrefutably proven" (kullu qawlin qāmat ḥujjatuhū). That is, when confronted with the charge that it was unlawful to go against ijmāᶜ, he adopted ijmāᶜ in such a way that he could agree with his opponents that ijmāᶜ was an irrefutable proof (ḥujjah) but not be forced to retract his earlier opinions. While Shīᶜī definitions of ijmāᶜ are not obviously circular, their genesis follows the same pattern. Al-Naẓẓām's story indicates that this issue had become a pressing one already in the early to mid-third/ninth century, since he died between 220/835 and 230/845, during the Muᶜtazilī miḥnah.

As late-comers to the madhhab system, the Shīᶜīs were in a difficult position. If they wished to be accepted in the majority system, they had to ensure that they were counted or considered in the consensus. However, they were being excluded from the consensus on the very grounds that they had gone against the consensus in the past. They therefore had not only to accept the consensus of the Muslim community as a valid concept, but also to prove, retroactively, that they had not gone against the consensus. On the other hand, they felt that they had been singled out among the Muslims for divine guidance, and had a privileged position with respect to religious truth. Their theory of ijmāᶜ reflects this tension in their thought; when they did accept ijmāᶜ, they modified it into a two-tier system. A comparison with the Zaydī system is informative here. By the late fourth/tenth century, Zaydīs

also developed a two-tier theory of ijmāᶜ. The Zaydīs accepted ijmāᶜ al-ummah the consensus of the Muslim community, as a valid concept, but also held that another privileged ijmāᶜ existed, the consensus of the descendants of the Prophet (ijmāᶜ ahl al-bayt). In Nusrat madhāhib al-zaydiyyah on Zaydī doctrines by al-Ṣāhib Ibn ᶜAbbād (d. 385/995), ijmāᶜ ahl al-bayt is held to be a hujjah.[26] Similarly, the Twelvers accepted ijmāᶜ al-ummah along with a more restricted ijmāᶜ al-firqah, the consensus of the Twelver Shīᶜīs.

The works on usūl al-fiqh reveal little about the reasons for the Shīᶜīs' adoption of certain points. They only present the Shīᶜī version of these concepts. In order to get a better understanding of why they adopted Sunnī methods it is be useful to examine al-Intisār, a work on fiqh by al-Sharīf al-Murtaḍā. Al-Intisār is a book on the dissenting opinions (khilāf) of the Shīᶜīs with respect to Sunnī law. It is possible to date the work to between 420/1029, the year when al-Murtaḍā wrote Jawāb masāʾil ahl Mawsil al-fiqhiyyah, mentioned in the introduction, and 433/1042, the year Muḥammad ibn Aḥmad al-ᶜĀmidī, to whom the work is dedicated, died. Al-Murtaḍā's purpose in writing al-Intisār is to remove obstacles between the Shīᶜī jurisconsults and the majority Sunnī-controlled legal system, and to gain the acceptance of Twelver Shīᶜī jurisprudence on the part of the majority, not as the exclusive, absolute truth, but as a legitimate alternative, on a par with the various Sunnī madhhabs.

Al-Murtaḍā states that the Shīᶜīs have been attacked for going against the consensus: for holding opinions on certain points of law which are

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[26]al-Ṣāhib ibn ᶜAbbād, Nusrat madhāhib al-zaydiyyah, ed. Nājī Ḥasan (Beirut: al-Dār al-muttaḥidah li 'l-nashr, 1981), 175-79.

contrary to all of those held by the Sunnīs, and are therefore seen as invalid by some Sunnī scholars. He states,

> I am obeying the command of His Exalted Presence the Vizir al-ʿAmīd,[27] may God make his authority last and raise up his position and stature for all time, that I set forth the questions of law for which the Imāmī Shīʿīs have been attacked, and on account of which it has been claimed that they have gone against the consensus.[28]

Apparently, the Sunnis argued that Shīʿīs were beyond the pale of orthodoxy since they had gone against the consensus. They also used this charge as an excuse to bar Shīʿīs from debate on legal topics, and consequently, from the entire system of legal education and scholarship. Al-Murtaḍā states specifically that they refused to debate Shīʿī jurisconsults and refused to take their opinions into account.[29] Al-Murtaḍā makes the plea for the Shīʿīs to be considered in the present consensus thus:

> Then it should be said to those who oppose us, "If the consensus, according to you, is of two types: the consensus of the scholars concerning that with which the common people have nothing to do, and the consensus of the Islamic community (ummah), including both scholars and common people, then why have you not considered the consensus of the scholars of the Shīʿah in the consensus of the scholars, and the consensus of their common people in the consensus of the Islamic community? For they are included as stipulated by the literal expression of the texts on which you rely in proving the soundness of consensus.[30]

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[27]Probably the famous vizir Muḥammad ibn Aḥmad al-ʿAmīdī (d. 433/1042). See Makdisi, The Rise of Humanism, 135, 370.

[28]al-Intiṣār, 1.

[29]al-Intiṣār, 4. See below also.

[30]al-Intiṣār, 4-5.

Al-Murtaḍā aims to counter the Sunnī argument, and prove that, as far as the law is concerned, Shīʿī opinions are just as acceptable and legitimate as those of the Sunnis, and therefore should be included in the consensus.

Al-Murtaḍā's first counter argument is that the legal opinions of the Shīʿīs are not as outlandish as they have been made out to be. That is, many opinions the Shīʿīs hold were also held, or had been held in the past, by Sunni jurists. He argues, "But in most of these [questions], the Shīʿīs are in agreement with other scholars and jurists, whether ancient or modern;"[31] In al-Intiṣār, he mentions, when possible, for each Shīʿī opinion that the Sunnis have claimed is outside orthodoxy, the Sunni jurists who have held the same opinion.

Next al-Murtaḍā points out that the Shīʿīs, when they are in complete disagreement with the Sunnis on a certain matter, have proof or evidence to support their view. This proof includes the text of the Qurʾān or ḥadīths and reports attributing these opinions to earlier authorities, especially the Imams. Because Shīʿī opinions are supported, he argues, they are as legitimate as the Sunni opinions, and the Sunnis should accept them as such.

> . . . and for those questions in which they are not in
> agreement with any of the Sunni jurists, there is clear evidence
> and appropriate proofs which relieve the Shīʿīs of the need to
> have a concurring opinion, and which are not impugned by the
> disagreement of an opponent.[32]

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[31]al-Intiṣār, 1.
[32]al-Intiṣār, 1-2.

Al-Murtaḍā intends that because the Shīʿī scholars have a sound methodology the Sunnīs should accept Shīʿī opinions as legitimate, and should not reject their opinions on the points of law merely on the basis of whether they coincide with those of the Sunnīs.

> The vituperous attack is called for in the case of the opinion which has no evidence to support it and no proof for its professor, for the invalid opinion is that which is devoid of proofs or demonstrations, and stripped of evidence. However, that (opinion) which has evidence to support it, and proof to hold it up, is the certain truth, and is not harmed by disagreement about it, or the small number of those who profess it. Likewise, as far as concerns the former [i.e., the opinion without support], it is not benefited by agreement upon it, or by the large number of those who profess it. The professor of an opinion should be questioned about his proofs of its soundness, and the evidence which leads to it, but should not be asked who agrees or disagrees with him on this matter. Moreover, there is not one jurisconsult in the cities [of the Islamic community] who has not been the only one to profess certain opinions, such that his opponents are all in disagreement with him [on these opinions]. Then how have vituperous attacks against the Shīʿīs for the opinions which they hold uniquely been allowed, while every other [non-Shīʿī] jurisconsult who professed opinions uniquely, such that all the jurisconsults were in disagreement with him, such as Abū Ḥanīfah, al-Shāfiʿī, Mālik, and those who came after them, was not attacked? What is the difference between the opinions which the Shīʿīs hold uniquely and for which they do not have any concurrer, and those of Abū Ḥanīfah or al-Shāfiʿī for which they do not have any concurrer?[33]

In this section of his argument, al-Murtaḍā implies that there is no essential difference between Shīʿī and Sunnī jurisconsults, and that any Muslim

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[33]al-Intiṣār, 2.

jurisconsult is entitled to hold an opinion which goes against those of his colleagues as long as he bases it on acceptable evidence.

The Sunnis claim, however, that the opinions the Shīʿīs hold uniquely are innovations, and hold that it is not permissible for them to come up with a new opinion when there has been a consensus. The Sunnis hold that whenever al-Shāfiʿī or Abū Ḥanīfah holds a unique opinion, that opinion was also held by men of the early generations of Islam, the salaf, or predecessors. Many of Abū Ḥanīfah's opinion are attributed to the salaf who lived in Kūfah and many of al-Shāfiʿī's opinions are attributed to the salaf who lived in the Ḥijāz, but, the Sunnis claim, this is not the case with the Shīʿīs. Al-Murtaḍā first answers this argument by stating that the Shīʿīs' opinions are not innovations, but have been handed down from the Imams, so that the Sunnis' accusation is invalid. He then questions the premise, claiming that it is not certain that all the opinions of al-Shāfiʿī and Abū Ḥanīfah are not innovations. He goes on to claim that Abū Ḥanīfah arrived at some unprecedented opinions through the application of analogy (qiyās), which the Shīʿīs did not accept as a valid method of legal reasoning.

> If they should say, "The difference between the two matters is that every opinion which Abū Ḥanīfah has held uniquely has a precedent among the jurisconsults of the people of al-Kūfah, or from the predecessors (al-salaf), and similarly, that which al-Shāfiʿī holds uniquely has a precedent among the people of the Ḥijāz or the predecessors, and not so for the Shīʿah."
> We should answer, "It is not known that every opinion which Abū Ḥanīfah or al-Shāfiʿī held uniquely was professed before them by the people of al-Kūfah, or the Ḥijāz, or the forefathers. If this is accepted as being below the level of certain, accepted, and undisputed, then the Shīʿah also claim and transmit that the opinions which they hold uniquely are the

opinions of [3] Ja'far ibn Muḥammad al-Ṣādiq [the sixth Imām],
Muḥammad ibn 'Alī al-Bāqir [the fifth Imām], and 'Alī ibn
al-Ḥusayn Zayn al-'Ābidīn [the fourth Imām]. They even
transmit these opinions from the Commander of the Faithful
'Alī ibn Abī Ṭālib, and trace them back to him. Then grant [the
Shī'ah] what you have granted Abū Ḥanīfah and al-Shāfi'ī and
So-and-so and So-and-so, or at the very least put them down to
the status of Ibn Ḥanbal and Muḥammad ibn Jarīr al-Ṭabarī in
that which they profess uniquely. For you allow [Ibn Ḥanbal
and Ibn Jarīr] differing opinions in that which they profess
uniquely, but do not allow the Shī'ah to differ in that which
they profess uniquely. This is an injustice to them and a wrong
against the Shī'īs. Moreover, among the opinions of Abū
Ḥanīfah which he reached by analogical reasoning, there are
some for which it may not be claimed that he has any
precursors who professed them among the Companions or the
Followers [the generation following that of the Companions]. If
we so desired, we could point to many points of law [furū'] of
Abū Ḥanīfah which fit this description. Then how have you not
attacked him for having adopted that which no one before him
had adopted, when you have attacked the Shī'ah for the same
thing?"[34]

Islam is fundamentally concerned with history. The Islamic sciences
in general accord a revered place to opinions or actions associated with the
early Muslim community, since this was very close to the time of the
Prophet, when the community was continually guided by revelation.
Currents of thought within Islam seek to establish the legitimacy of their
opinions by projecting them back into early Islamic history. This does not
mean that questions of the religious law were determined by the seemingly
arbitrary criterion of historical precedent. The formal attraction of
precedence was strong, and was instituted in legal matters in the
requirement that one could not introduce a conflicting opinion on a matter

[34]al-Intiṣār, 2-3.

upon which a consensus had already been reached. In practice, it was possible to innovate opinions, because a conflicting opinion could be introduced if based on new evidence or new interpretations, which might include such things as a new interpretation of a Qur'ānic verse, etc. Against charges of going against a previous consensus, al-Sharīf al-Murtaḍā maintains that the opinions of the Shī'ī scholars may be traced back to the Imams Zayn al-'Ābidīn, Muḥammad al-Bāqir, and Ja'far al-Ṣādiq. At the same time, he admits that it is possible to innovate opinions, but his projection of Shī'ī doctrine back to the time of these early Imams is important in establishing the historical authority of Shī'ī opinions. Thus the Shī'ī Imams, especially Ja'far al-Ṣādiq, are transformed from leaders of the community and conduits of revelation into patrons of the Imāmī guild of law.

On historical grounds, al-Murtaḍā maintains that the Sunnīs' claim of an earlier consensus is invalid because the Shī'īs' contribution to the consensus was not taken into account.

> If they say that the difference between the two matters
> is that although Abū Ḥanīfah professed uniquely opinions to
> which analogical reasoning led him and which no one before
> him is known to have adopted, these questions were never
> mentioned among the predecessors, no ruling on them was ever
> reached, and the scholars never scrutinized them so that
> consensus or disagreement might come into effect, but the
> Shī'ah uniquely professed opinions which go against that which
> we know was a consensus of all the predecessors against their
> opinions on these points.
> We should reply, "It has already been maintained that
> your claim of a preceding consensus against that which the
> Shī'ah profess is unfounded, and (our) scholars trace their
> opinions back to a group among the predecessors. The existence
> of their opinions and the fact that they were not in agreement

with other scholars make it impossible for there to have been a consensus to the exclusion of their opinions."[35]

Thus, al-Murtaḍā maintains here, Sunnī claims that the Shīʿīs violated a prior consensus are false because the evaluation of the consensus was incomplete. The opinions of the Shīʿīs were not taken into consideration. In al-Murtaḍā's view, the Shīʿīs did not violate consensus, and are therefore not unbelievers. Consequently, their opinions should be considered in the formation of any present consensus. The Sunnīs should stop refusing to debate with them and begin to honor their opinions.

> And then, if this argument is acceptable to you as it is, you should allow the Shīʿah conflicting opinions on that which they profess uniquely, in that which goes against the opinions of Abū Ḥanīfah which he reached by analogical reasoning, and for which he had no precursor, and concerning which no consensus preceded him. But we do not see you allowing them conflicting opinions on anything which they profess uniquely, and you do not permit this, although the present discussion on this matter has shown necessary. You even honor the conflicting opinions of Dāʾūd, Muḥammad ibn Jarīr, and Aḥmad ibn Ḥanbal for those questions on which they hold opinions uniquely and despite the fact that you dispute with them over these questions, though you hold that a preceding consensus had gone into effect against their opinions. Should you not either cease to honor them in their conflicting opinions and refuse to debate with them on these issues as you have done with the Shīʿah, or treat the Shīʿah as you have treated them with respect to honoring and debating?[36]

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[35]al-Intiṣār, 3.
[36]al-Intiṣār, 3-4.

Analysis of this passage by al-Murtaḍā shows that Shīʿī scholars wished to be included in the process of debate, and that they felt they should be included because they had a legitimate methodology. Inclusion in the system involved an almost simultaneous acceptance of the consensus and refutation of the accusation of violating consensus. Against this background, the Shīʿī theory of ijmāʿ as adopted in the works of the Shīʿī jurisconsults of the Buwayhid period becomes more comprehensible.

Al-Murtaḍā addresses another Sunnī objection having to do with theology rather than law.

> And if they say, "But they are not to be considered in the consensus because they follow innovations and errors which make it impossible for the opinions of those who believe them to be considered in discussion of a disputed issue."
> We should say, "Do not leave the topic of discussion, the applied points of law, and mix it with other topics which require a discussion of dogma (uṣūl al-diyānāt), from which you always request to be exempted, for most of you and the greater part of you are not scholars of this field (laysa min rijālihā) . . . For you know that the Imāmī Shīʿīs believe, concerning those who go against them in dogma (uṣūl) that which prevents their opinions from being considered in the consensus or disagreement of the Muslims. And that they carry this to a very great extent, which you do not concerning them. For if you reach your furthermost extent, you would believe about them that they are perpetrators of innovations (mubtadiʿ) which would make them sinners (fāsiq), but you would not reach unbelief (kufr). And the sinner, according to most of those who accept the (concept of) consensus, is not caused by his sinning to have his opinion ceased to be considered as a conflicting opinion in the religious Law.[37]

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[37] al-Intiṣār, 5.

The points of law do not represent the only area in which Shiʿīs differ from Sunnis. Many differences belong to the field of dogma. Al-Murtaḍā implies that some Sunnīs tried to use this as an excuse to exclude the Shiʿīs from the legal system, arguing that since they hold heretical beliefs on matter of theology, their legal opinions cannot be considered. Al-Murtaḍā's reply to this is that although some Shiʿī beliefs differ from those of the Sunnis, the differences are not so great as to make them heretics, but only render them sinners, and the legal opinions of sinners are still valid according to Sunnī legal theory. Here al-Murtaḍā is supported by most Sunnī theory on the issue. The term mubtadiʿ al-Murtaḍā uses refers to someone who holds an innovative opinion (bidʿah), that is, an opinion which is unattested for the early Islamic period. While the term bidʿah has a negative connotation, it ceased to denote strictly a heretical opinion, and one could support a "commendable innovation" (bidʿah hasanah). In general, the term bidʿah might perhaps be better understood if translated as "an unusual opinion" as opposed to "a heretical opinion." As mentioned in the first chapter of this study, al-Ghazālī held that the Shiʿīs' view of the imamate does not make them heretics (kuffār), but only "innovators" (mubtadiʿūn), and in most Sunnī discussions concerning the opinions which are to be considered in the consensus, it is held that the opinion of the jurisconsult who is an innovator, like that of a sinning jurisconsult, should be considered. Al-Murtaḍā accuses his opponents of straying from the topic at hand, implying that questions of theology do not impinge directly on jurisprudence, and adds that the jurisconsults with whom he is arguing know little about theology because that is not their field of study.

That al-Murtaḍā considered Shīʿī law to form a guild parallel to the Sunnī guilds is shown by his repeated comparison of Twelver Shīʿī jurisprudence with that of the Sunnī guilds. It is clear that although he used different terminology, al-Murtaḍā's strategy was exactly that of later proponents of the fifth or Jaʿfarī madhhab. The Shīʿī jurists constituted a madhhab in the same way that the followers of al-Shāfiʿī or Abū Ḥanīfah did. The patrons of the madhhab were the Imams, so to speak, who corresponded to al-Shāfiʿī and Abū Ḥanīfah. Al-Murtaḍā did not use the term "the Jaʿfarī madhhab," which seems to have developed at a later date, nor would he have considered this term appropriate. The patronage of the Shīʿī guild was, according to him, not limited to the figure of Jaʿfar al-Ṣādiq, but rather invested in all of the Imams. Al-Murtaḍā specifically mentions ʿAlī ibn Abī Ṭālib, Zayn al-ʿĀbidīn, and Muḥammad al-Bāqir in addition to Jaʿfar al-Ṣādiq in this regard.

He does not use the term "the fifth madhhab" because he does not see that the Sunnī madhhabs are limited to four in number. Rather, he sees them as being six: the Ḥanafī, Shāfiʿī, Mālikī, Ḥanbalī, Ẓāhirī, and Jarīrī. The guild of the Twelver Shīʿīs would be one of seven, not one of five. Furthermore, al-Murtaḍā holds that the Twelver Shīʿī guild should not be the assigned to the last position. For reasons of chronological precedence, al-Murtaḍā obviously sees the Shīʿīs as having higher status than the Ḥanbalīs, the Jarīrīs, and the Ẓāhirīs. He argues that Dāʾūd, the founder of the Ẓāhirī guild, Ibn Ḥanbal, and Muḥammad ibn Jarīr al-Ṭabarī, living much later than Abū Ḥanīfah and al-Shāfiʿī, are not equal to the latter two in status, and are innovators of opinions, having produced new opinions after a so-called consensus. As a secondary argument, he suggests that the Sunnis

should at least grant the Shīʿīs the status of the Ẓāhirīs, Ḥanbalīs, and Jarīrīs if they are not willing to grant them the same status as the Shāfiʿīs and the Ḥanafīs. In al-Murtaḍā's works and other sources of this period, the Shīʿī guild is termed the Imāmī madhhab, the Shīʿī madhhab, or the Imāmī Shīʿī madhhab.

Al-Murtaḍā recognizes the fact that Shīʿī opinions differ from Sunni opinions, but maintains that these differences are not so many or so wide as is claimed by opponents of the Shīʿīs. What is more, the Shīʿīs reach and support their opinions in the same way that the Sunnis do, and their madhhab functions in the same way as the Sunni madhhabs do. Sunnis should therefore recognize their opinions as valid, allowing them to enter the madhhab system. This would allow them the privilege to debate freely with Sunni scholars on legal topics, and presumably, to study in madrasahs, receive stipends, and in short, participate fully in the system of legal study and scholarship.

The earliest statement known to me which uses the specific term Jaʿfarī madhhab is one by the tenth/sixteenth-century Shīʿī scholar al-Qāḍī Nūr Allāh al-Shushtarī. He gives the following answers to questions concerning Twelver Shīʿism's status as a madhhab on the model of the Sunnī madhhabs.

> Question: What is the justification for calling the Isnā ʿAsharī Shiʾi mazhab (school of law) the mazhab of Imām Jaʿfar as-Sādiq?
> Answer: The basis is the same as with the Shāfiʾī and Hanafī mazāhib (pl. of mazhab). Those ʿulamaʾ who followed Abū Hanifa and Shāfiʾī transmitted their master's traditions and their mazhab (school of law) was consequently known respectively as Hanafī and Shāfiʿī. Similarly the traditions transmitted by Imām Jaʿfar's companions and the mujtahids

and ʿulamāʾ associated with him form the basis of Imām
Jaʿfar's mazhab. The Shīʿīs do not care if the Sunnīs have no
knowledge of Imām Jaʿfar's mazhab and are ignorant of the fact
that the Isnā ʿAsharī Shīʿī faith belongs to his mazhab.
Similarly the Hanafīs are not worried if the Shāfiʿīs are
unaware of their mazhab. In connection with the discussion on
the differences between the Sahāba, Mullā Saʿdu 'd-Dīn
Taftazānī, an eminent Sunnī ʿālim, has admitted in his
Hāshiyah Mukhtasar ʾUsūl ʿAzudī that the Shīʿī faith
originated from ʿAlī as it advances firm arguments concerning
his right to be the Prophet's immediate successor. It was only
out of stubbornness and hostility to ʿAlī that the Sunnīs denied
the fact the the Isnā ʿAsharī faith originated from ʿAlī.[38]

The First Tier of Ijmāʿ: Ijmāʿ al-Ummah

The summary of al-Mufīd's work on usūl al-fiqh includes only a short

statement on ijmāʿ. No earlier statement on ijmāʿ in Twelver Shīʿī sources

is known. It is possible that al-Mufīd's original treatment of ijmāʿ was much

longer and more detailed; it is not clear how abridged al-Karājakī's

abridgment is. Al-Mufīd's statement, however, was to form the basis of all

later Shīʿī discussion of ijmāʿ.

> The consensus of the Muslim community (ijmāʿ al-ummah) has
> no authoritative value inasmuch as it is a consensus, but only
> inasmuch as it includes the opinion of the Imam.[39]

Thus it is clear that al-Mufīd accepted the consensus of the Muslim

community as a legitimate concept. He and later Shīʿī scholars held that

consensus was an authoritative argument (hujjah). The difference lay in the

reason given for the authority of ijmāʿ. The Sunnis held that the consensus

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[38]Saiyid Athat Abbas Rizvi, A Socio-Intellectual History of the Isnā
ʿAsharī Shīʿis in India, 1: 365-67.

[39]Kanz al-fawāʾid, 193.

of the Muslims was infallible because, as reported in a statement attributed to the Prophet, the Muslim community would never agree upon error. The Shīʿīs, however, held that consensus was an authoritative argument only because it included the opinion of the Imam. The logical consequence was that if everyone were in agreement except the Imam, then everyone would be wrong, and the Imam right. This did not appear to assign any value to consensus, but the net result was that consensus was accepted as a hujjah, and Sunnis and Shīʿīs could agree on this fundamental point.

The Shīʿī understanding of ijmāʿ, as presented by al-Mufīd, was not exactly parallel to the Sunnī concept. Al-Mufīd was merely pointing out that the Sunnī concept could be valid in certain cases. He implied that it usually was invalid because the Sunnī claims of a consensus were false. One reads between the lines that usually, when the Sunnis claimed there was a consensus, they did not take into account the opinion of the Imam, or those of the Shīʿīs themselves.

> When it is demonstrated that the entire community holds one
> opinion, then there is no doubt that this opinion includes the
> opinion of the Infallible Imam, for if this were not the case,
> then the statement about the community that it was in
> unanimous agreement would be false. Only in this fashion may
> consensus be correctly accepted as an authoritative argument.[40]

Brunschvig makes a serious error when analyzing this statement by al-Mufīd. His concern was to show that the Shīʿī interpretation of ijmāʿ was unabashedly different from that of the the Sunnis, whereas the truth is that they wanted it to resemble that of the Sunnis while remaining logically tied to their accepted beliefs. Brunschvig states,

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[40]Kanz al-fawāʾid, 193.

Que l'attitude adoptée à l'égard de l'ijmāᶜ ou "consensus" soit typiquement, exclusivement ŝīᶜite, notre auteur [al-Mufīd] ne le cache pas; elle est liée à la conception de l'imamat. . . . Entendons, bien sûr par communauté, la communauté ŝīᶜite, plus spécifiquement, l'imamienne.[41]

Brunschvig is mistaken in claiming that the word al-ummah "community" in al-Mufīd's statement refers to Twelver Shīᶜīs. Al-Mufīd is using the term al-ummah with exactly the same meaning as any Sunni scholar using the term. Twelver Shīᶜī jurisconsults during al-Mufīd's period did not refer to their own sect as al-ummah; rather, they called themselves al-tā'ifah, al-tā'ifah al-muhiqqah, al-firqah, al-firqah al-muhiqqah, al-khāssah, and other terms. Brunschvig apparently assumed that since al-Mufīd's work was treating Shīᶜī usūl al-fiqh, this passage must be about the consensus of the Shīᶜīs exclusively, when it is actually a Shīᶜī view of Muslim consensus. A passage from al-Ṭūsī's legal work al-Khilāf makes this clear. In proving his answer to a legal question, al-Ṭūsī states, "Our evidence is the consensus of the Shīᶜīs, and even the consensus of the Muslim community, because this conflicting opinion has ceased be held." (dalīluna ijmāᶜu 'l-firqati bal ijmāᶜu 'l-ummati li'anna hādha 'l-khilāfa 'nqarad)."[42] Since al-Ṭūsī here juxtaposes ijmāᶜ al-firqah and ijmāᶜ al-ummah using the adversative particle bal, it is clear that they are two different entities. Thus it is clear that the Shīᶜīs accepted Sunnīs as part of the Muslim community, to a certain extent. This is in marked contrast to the use of the term ummah in the work of the

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[41]Brunschvig, 327.

[42]al-Khilāf, 3 vols (Tehran: Dār al-maᶜārif al-islāmī, no date), 1: 158. See 1: 242, 302-3 for similar statements.

Ismāʿīlī jurist al-Qāḍī al-Nuʿmān, who equates it with ahl al-haqq, referring

to Ismāʿīlīs exclusively.[43]

Al-Ṭūsī, like al-Mufīd, accepts the idea that the ijmāʿ of the Muslim

community is an authoritative proof, also stating that the reason for this is

that a consensus of the entire community would include the opinion of the

Imam, who is infallible.

> The opinion which I hold is that it is not permissible for the
> community to agree on error. That upon which the community
> agrees can only be the correct opinion and an authoritative
> argument. This is because, according to the Twelver Shiʿīs, no
> age is free of an infallible Imam who upholds the religious law,
> and whose opinion is an authoritative argument which must be
> consulted just as the opinion of the Prophet must be consulted.
> . . . Whenever the community has agreed on one opinion, it
> must be an authoritative argument because the Imam is
> included in the whole of the community.[44]

The inevitable theoretical consequence of this is that the consensus does not

depend theoretically on the consensus of the scholars, but only on the

opinion of the Imam. If everyone is agreed except the Imam, then the Imam

is right and everyone else is wrong.

> And when it is said that they have made it permissible for the
> Imam to be separate from their consensus, we answer that
> when we suppose that the Imam is separate from the
> consensus, then that is not a consensus. According to our
> opponents (the Sunnis), if only one scholar is separate from the
> consensus, then that voids their consensus.[45]

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[43]Ikhtilāf usūl al-madhāhib, 78.

[44]ʿUddat al-usūl, 232.

[45]ʿUddat al-usūl, 232.

It is the view of a number of modern scholars that the Shīʿī theory of ijmāʿ is simply window-dressing, and that it has little practical purpose other than to imitate the Sunnīs in form. Scarcia refers to Shīʿism as an "Islam without ijmāʿ."[46] Gardet denies that the Shīʿis accept ijmāʿ as one of the fundamental principles of jurisprudence.

> Le shīʿisme duodécimain, religion officielle de l'Iran, reconnaît les deux premières «sources», Coran et Sunna, mais remplace l'ijmāʿ par la décision de l'Imam infaillible. . . . L'idée d'ijmāʿ, consensus des docteurs, n'est pas écartée; mais ne saurait être valide sans l'accord de l'Imam.[47]

Goldziher summarizes, "Thus if we wish to characterize in brief the essential difference between Sunnī and Shīʿī Islam, we may say that the former is based on ijmāʿ, and the latter on the authoritarian principle."[48] Concerning the Shīʿī theory of ijmāʿ he adds,

> The ijmāʿ itself is reduced to a mere formality. In theory, it is true, the influence of ijmāʿ on the resolution of religious questions is acknowledged. But Shīʿī theology sees the significance of consensus only in the fact that it cannot come into existence without the contribution of the Imāms. Only this integrating element can give meaning to the principle of ijmāʿ.[49]

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[46]Gianroberto Scarcia, "Intorno alle controversie tra Uṣūlī e Akhbārī presso gli imamiti," Rivista degli studi orientali 33 (1958): 232-34.

[47]Louis Gardet, L'islam: religion et communauté (Paris: Desclée De Brouwer, 1967), 197-98.

[48]Introduction to Islamic Theology and Law, 191.

[49]Introduction to Islamic Theology and Law, 191.

Arjomand states of the Shi'i theory of ijmāᶜ in general, "This nugatory interpretation disposes of the principle of ijmāᶜ in reality despite its formal retention."[50] Arjomand also refers to al-Murtaḍā's theory of ijmāᶜ as the virtual negation of consensus as an independent principle.[51] The twentieth-century Shi'i scholar al-Muẓaffar states of ijmāᶜ, "[The Shi'i jurisconsults] made it one of the sources . . . in a formal and nominal sense only, in order to follow the scholarly method of the Sunnīs in [the science of] usūl al-fiqh."[52] Madelung holds that the Shi'īs "had no use for the Sunnite principle of consensus since it could not be valid without the inclusion of the imam whose opinion alone counted."[53] He adds that "a consensus of the Shiite ulama, in contrast to the Sunnite situation, is of no legal consequence."[54] In his work on legal theory and methodology, Tamhīd al-qawāᶜid, al-Shahīd al-Thānī reported that some Sunnī scholars had accused the Shi'īs of rejecting the authority of ijmāᶜ because of their views on the basis of its authority, but that these Sunnī claims were not true.[55]

With their own adoption of consensus, the Shi'īs accepted many of the formal properties of Sunni consensus. Since it was considered infallible, it was therefore an authoritative argument and could be used by itself for proof. No further evidence was necessary. The ijmāᶜ of all ages was an authoritative argument. It was not limited to any particular time or place.

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[50]Said Amir Arjomand, The Shadow of God and the Hidden Imam: Religion, Political Order, and Societal Change in Shi'ite Iran from the Beginning to 1890 (Chicago: University of Chicago Press, 1984), 286 n. 121.

[51]Said Amir Arjomand, The Shadow of God and the Hidden Imam, 55.

[52]al-Muẓaffar, Usūl al-fiqh, 3: 97.

[53]"Authority in Twelver Shiism," 164.

[54]"Authority in Twelver Shiism," 169.

[55]al-Shahīd al-Thānī, Tamhīd al-qawāᶜid,

Ijmāᶜ was determined, in practical terms, by the absence of khilāf. The opinions of the scholars, not the common people, were the ones taken into consideration.[56] Originating a new opinion, that is, raising new khilāf after ijmāᶜ had been established, was not permissible.[57] Going against consensus (mukhālafat al-ijmāᶜ) was therefore not permissible. It must have been very gratifying for the Shīᶜīs to be able to state this, since they were accused of the very same error. They were thus able to support the very norm which threatened to exclude them from the legal system. This is made poignantly clear by Shīᶜī statements on violating the consensus which recall the terrible implications of similar Sunnī statements. Al-Muḥaqqiq al-Ḥillī writes, "He who denies the ruling upon which there is consensus is an unbeliever (kāfir), because he is denying something which is known truly to be a part of the sacred law."[58]

The Second Tier of Ijmāᶜ: Ijmāᶜ al-firqah

Al-Mufīd did not develop the concept of consensus of the Shīᶜīs, nor did he consider ijmāᶜ one of the usūl or fundamental principles of jurisprudence. Judging from al-Karājakī's abridgment, it is not clear that he even mentioned the consensus of the Shīᶜīs in particular, although it might be taken to follow from the premise he sets forth as the basis of authority of the consensus of the Muslims. Al-Mufīd states that there are three usūl or adillah: the Koran, the sunnah of the Prophet, and the sayings (aqwāl) of the Imams.[59] Three paths (turuq) lead to knowledge of the usūl: reason (ᶜaql), lexicography (lisān), and hadīths which provide certainty (al-akhbār

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[56]ᶜUddat al-usūl, 248.
[57]al-Murtaḍā, al-Dharīᶜah, 2: 659.
[58]al-Muḥaqqiq al-Ḥillī, Maᶜārij al-wusūl, 129.
[59]Arjomand, The Shadow of God and the Hidden Imam, 55, 186.

al-mūsilah li'l-ʿilm). Neither ijmāʿ nor ʿaql, which were both later added as dalīls to the standard usūl al-fiqh of the Shīʿīs, appeared as usūl themselves.

The major step which al-Tūsī and al-Murtadā made beyond the work of al-Mufīd was that they not only accepted ijmāʿ as an authoritative argument (hujjah), but also accepted it as a dalīl, one of the bases of jurisprudence. Like al-Mufīd, they were concerned to show that consensus of the Muslim community was valid, but for al-Tūsī and al-Murtadā, there were two kinds of valid ijmāʿ. One was ijmāʿ al-ummah, mentioned above, and the other they termed ijmāʿ al-firqah, the consensus of the Shīʿīs. This was a major innovation in Shīʿī jurisprudence. It is not clear from al-Karājakī's abridgement whether al-Mufīd ever used the concept, but it is likely that he did. Al-Tūsī mentions ijmāʿ al-muslimīn and ijmāʿ al-firqah al-muhiqqah in the introduction to Tahdhīb al-ahkām.[60] This was one of his earliest works, begun during the lifetime of his teacher al-Shaykh al-Mufīd. The introduction also mentions al-Mufīd, and the blessing which occurs after his name, "May God the Exalted support him," indicates that the teacher was alive at the time of writing.[61] One major reason for the development of ijmāʿ al-firqah, was, it appears, the need to use it as supporting proof in arguments against Sunni opponents. In his work al-Khilāf, which Modarressi describes as the first important Shīʿī work on comparative law,[62] al-Tūsī often evokes ijmāʿ al-firqah, and also, occasionally, ijmāʿ al-ummah, as support for Shīʿī positions, as in the example mentioned above.

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[60]Tahdhīb al-ahkām, 8 vols. (Tehran: Dār al-kutub al-islāmiyyah, 1970), 1: 2.

[61]Tahdhīb al-ahkām, 1: 2.

[62]Modarressi, An Introduction to Shīʿī Law, 44.

Al-Ṭūsī treats the obvious question as to why the Shīʿīs should adopt the concept of ijmāʿ if the principle behind it is not consensus itself, but rather the opinion of the Imam. Sunnīs objected that the Shīʿīs could have ignored consensus and spoken of the opinion of the Imam as a dalīl. Al-Ṭūsī's answer is to the effect that in many circumstances, it is not possible to ascertain the opinion of the Imam. In such cases, it is possible to examine consensus as a means to arrive at knowledge whether the Imam agreed with a certain opinion. As the modern Shīʿī scholar al-Muẓaffar explains it, ijmāʿ in this case is like a hadīth expressing the opinion of the Imam, except that the ijmāʿ does not give the exact words which the Imam spoke; it is merely an indication of the content of the Imam's opinion.[63] For this reason, some modern Shīʿī jurists have called ijmāʿ a dalīl lubbī "essential source", rather than a dalīl lafẓī "explicit textual source", which would be a hadīth.[64]

> If it is objected: If the point to be taken into consideration as far as the authority of consensus is concerned is the opinion of the infallible Imam, then there is no use in your statement that ijmāʿ is an authoritative argument or even considering ijmāʿ. Rather, you should say that the authoritative argument is the opinion of the Imam, and not even mention ijmāʿ.
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> One should answer: Although the matter is as the objection sets it forth, there is a well known benefit to our taking consensus into consideration. On many occasions, the opinion of the Imam might not be apparent to us, so that we must consider ijmāʿ in order to know, through the ijmāʿ of the jurisconsults, whether the opinion of the Imam is included. If the opinion of the Infallible Imam, which is an authoritative

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[63]Muẓaffar, Uṣūl al-fiqh, 3: 105.
[64]Muẓaffar, Uṣūl al-fiqh, 3: 105.

argument, were to be apparent to us, we would aver that his opinion itself was the authoritative argument.[65]

Two major points have been overlooked by scholars who claim that the Shīʿī theory of ijmāʿ empties it of all value. One is the crucial factor that the Shīʿī theory of ijmāʿ accepts the consensus of the entire Muslim community. Not only is this consensus valid, but it is also a hujjah, or irrefutable proof. The other point has to do with the ability of the Shīʿīs to determine the opinion of the Imam. When modern scholars state that the fact that an ijmāʿ based on the opinion of the Imam is a nugatory principle, they are forgetting that it there is no direct method through which to determine the opinion of Imam during the occultation, as al-Ṭūsī's statements imply. Thus, one might go so far as to restate the Shīʿī interpretation of ijmāʿ in the following manner: the consensus represents the truth, since it is known by virtue of its being a consensus that it coincides with the opinion of the Imam. In other words, the consensus of the Shīʿī jurisconsults determines what the opinion of the Imam is. Al-Muḥaqqiq al-Ḥillī makes it clear that the consensus of the Shīʿī scholar in effect determines where the opinion of the Imam lies. He holds that one may know the opinion of the Imam in three ways. One may know it through hearing it from the Imam himself with the knowledge that it is he in person, or through widespread transmissions. He then adds,

> In the absence of these two methods, if the Imāmīs agree
> unanimously on a matter in such a way that all Imāmī [Shīʿī]
> scholars without exception hold this opinion, then one may be
> certain of the inclusion of the Infallible Imam in the consensus,

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[65]ʿUddat al-uṣūl, 232-33.

because it has been proved irrefutably that their opinions are true and that the Infallible Imam cannot commit an injustice.[66]

In standard Shīʿī jurisprudence, this principle has come to be expressed in the statement that consensus "discovers" or "reveals" the opinion of the Imam (al-ijmāʿu kāshifun ʿan qawli 'l-imām).[67]

The ijmāʿ of the Shīʿī scholars, termed ijmāʿ al-firqah by al-Ṭūsī, embodies the idea that the Shīʿīs have privileged access to the truth. It is as if the Shīʿī community formed a small circle enclosed in a larger circle representing the Muslim community as a whole. Their acceptance of ijmāʿ al-ummah is equivalent to stating that the truth must lie within the large circle. Ijmāʿ al-firqah requires, theoretically, that the truth must not only lie within the larger circle, but that it is even restricted to the smaller circle. Thus, it cannot be stated that the Sunnīs are always wrong and the Shīʿīs always right, for the two circle are not disjunctive. Rather, according to ijmāʿ al-firqah, it may be stated that the Sunnīs are sometimes right—when they happen to agree with the Shīʿīs—and that the Shīʿīs are always right. Thus, the theory of ijmāʿ al-firqah indicates, in a fashion, the attitude of the Shīʿī jurists to the Sunnīs: that despite the fact that the Sunnīs are often misled, they are not in complete error. The exact theory of ijmāʿ al-firqah has been expressed in many different ways, and it is extremely difficult to tell how it functioned in practice. It appears that the Shīʿīs obtained what they wanted: an ijmāʿ that looked like Sunnī ijmāʿ outwardly, but fit in with the basic tenets of their sect.

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[66]al-Muḥaqqiq al-Ḥillī, Maʿārij al-wuṣūl, 132.

[67]al-Muḥaqqiq al-Ḥillī, Maʿārij al-wuṣūl, 126; Ḥasan ibn Zayn al-Dīn al-ʿĀmilī, Maʿālim al-dīn, 192.

Ijmāᶜ al-firqah and the Privileged Position of the Shīᶜis

The Shīᶜis' confidence that they were the "chosen" sect in Islam and that absolute truth rested with them did not always outweigh their strong desire to be accepted by the Sunni community. Their two-tier theory of consensus embodies this tension within Shīᶜi thought. On the one hand, they felt that they had been historically persecuted and deprived of their rights by the majority. On the other hand, they often desired to participate in the greater Islamic community. While the Shīᶜis' adoption of the first tier of ijmāᶜ, ijmāᶜ al-ummah, implied their acceptance of the Sunnī methodology of jurisprudence and expressed their own desire to be included in that system, their development of the second tier of ijmāᶜ, ijmāᶜ al-firqah, expressed their unwillingness to relinquish their privileged position as a sect blessed, through the Imams, with a divine guidance the Sunnīs did not enjoy.

The theory of ijmāᶜ al-firqah holds that the consensus of the Shīᶜis, which potentially excludes the Sunnīs, is a hujjah. Since ijmāᶜ al-firqah always includes the opinion of the Imam, it amounts to a guarantee that the Shīᶜi community can never be wrong. This places the Shīᶜi guild in sharp contrast to Sunnī Islam, for none of the individual Sunnī guilds make this claim. If al-Murtaḍā had hoped the Sunnis would accept the Shīᶜi jurisconsult on equal terms, it seems logical, or at least just, that he would also have accepted them on equal terms. It was possible, however, according to Sunnī theories of heresy, for the Shīᶜis to hope to be accepted by the Sunnīs without necessarily having to accept the Sunnīs, since declaration of heresy was not a reciprocal property. As mentioned in Chapter Four,

al-Ghazālī makes the point that one cannot hold the opinion that anyone who declares someone an unbeliever is therefore an unbeliever.

In several passages, al-Murtaḍā implies that Shī'ī law is inherently superior to that of the Sunnis. His arguments indicate that the Shī'īs would like to participate with the Sunnīs on equal terms, but must debase themselves to do so. It is only as a favor to the Sunnīs that the Shī'īs concede to debate with them, for the Shī'īs know that they are the sole possessors of the truth. This attitude is particularly evident in two points. One of these is the role of theology (uṣūl al-diyānāt) in the relationship between Shī'ī and Sunnī law, mentioned above. Al-Murtaḍā states that Shī'ī beliefs do not require them to be considered heretics by the Sunnīs, but only sinners. This is plausible enough, and one might imagine that he would continue, by saying the converse, i.e., that according to Shī'īs, Sunnīs are also only sinners, and therefore, it should be acceptable that they debate each other, but he does not. Rather, he states that whereas the Shī'īs, according to the Sunnī system system, are sinners, the Sunnīs, according to the Shī'ī system, are somewhat worse off. He does not say it explicitly, but one assumes he is referring to the idea that the Shī'īs necessarily regard the Sunnīs as unbelievers because they deny the Imamate. If this is so, it becomes difficult for the Shī'īs to justify their intent to debate with the Sunnīs, other than as a perverse desire to participate in the activities of a corrupt majority, or as an attempt to convert the enemy which was bound to antagonize the fellow Muslims and create problems for the Shī'ī community.

The other point has to do with Shī'ī consensus. According to the theory of Shī'ī consensus, as represented in the theory of al-Murtaḍā, al-Shaykh al-Ṭūsī, and perhaps that of al-Shaykh al-Mufīd before them, the

Shīʿīs are always right. Their view of Shīʿī ijmāʿ thus prevents further rapprochement. General ijmāʿ is valid because it includes the opinion of the Imam. Shīʿī ijmāʿ is also valid because it includes the opinion of the Imam. The Shīʿīs can never be wrong on a point, because their opinions are always safeguarded by the theoretical presence of the opinion of the Imam. In practice, however, Shīʿī ijmāʿ seems to be used often merely as a catchall support for their opinions: the Shīʿīs can always claim that their opinion is necessarily true because of Shīʿī ijmāʿ. Al-Murtaḍā makes this clear in his introduction. He states that Shīʿī ijmāʿ, in itself, is enough to prove all the points he will make in the body of the book, and then adds, it seems in a somewhat condescending manner, that he will also present other concrete evidence, but that it is unnecessary, or superfluous. This implies that he thinks all outcome of debate with the Sunnis a foregone conclusion. If the Shīʿīs can never be wrong, why debate?

Relinquishing the Monopoly on Truth

Al-Shahīd al-Thānī, a Twelver Shīʿī legal scholar of the tenth/sixteenth century, had a more equal view of the relationship between Shīʿī and Sunni law than did al-Murtaḍā, and this is reflected, too, in his theory of ijmāʿ. Al-Shahīd al-Thānī criticizes boldly the theories of previous Shīʿī scholars on ijmāʿ, theories which are for the most part built on the foundations established by al-Sharīf al-Murtaḍā and al-Shaykh al-Ṭūsī. He wrote a treatise on the instances where al-Shaykh al-Ṭūsī incorrectly

claimed consensus on certain points of law.[68] The most innovative position of al-Shahīd al-Thānī was his criticism of ijmāᶜ al-firqah. He relinquished this theory of privileged access to the truth, bringing Shīᶜī jurisprudence even closer to that of the Sunnī madhhabs.[69]

Shīᶜī ijmāᶜ is supposed to be a necessary proof because it includes the opinion of the Imam. Earlier scholars claimed that it was possible to determine the presence of the Imam's opinion within the mass of opinions, although it was not possible to determine the exact identity of the Imam himself. The theoretical method for doing this was established by al-Ṭūsī and al-Murtaḍā. If, within the mass of available opinions on a certain issue, opinions are attributable to certain scholars whose genealogies are known (maᶜrūf al-nasab), then their opinions are not to be considered, and do not invalidate the ijmāᶜ. If the scholars' genealogies are not known, then their opinions invalidate the ijmāᶜ. The reason for this is that the scholars whose genealogies are known cannot represent the Imam. It is a fundamental tenet of the Shīᶜīs that during the time of occultation it is impossible to find the Imam in person. Those whose genealogies are not known might possibly be the Imam, for they have not been identified, and therefore it is possible that their opinions might represent the necessary and indisputable truth.

Al-Shahīd al-Thānī, going against the mainstream of Shīᶜī scholarship for the previous five hundred years, rejects this explanation outright. Interestingly enough, he uses the same argument one would expect the

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[68]Published as "Risālah hawl ijmāᶜāt al-Shaykh al-Ṭūsī," in al-Dhikrā al-alfiyyah li 'l-Shaykh al-Ṭūsī, 2 vols. (Mashhad, 1971), 2: 790-98. Al-Shahīd al-Thānī states here that many Shīᶜī jurists have made incorrect claims of ijmāᶜ, but directs the most severe criticism at al-Sharīf al-Murtaḍā and al-Shaykh al-Ṭūsī.
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Sunnis to use, an argument which al-Murtaḍā claimed to have refuted. In al-Intiṣār, al-Murtaḍā states that he has provided elsewhere the answer to the opponent who asks how one can know someone's opinions without knowing him in person. In his treatise on Friday prayer, al-Shahīd al-Thānī roundly criticizes earlier Shīʿī scholars for claiming the ability to determine where the opinion of the Imam lies. He asks, "From where do they get this knowledge on such questions while they have not come upon any news of [the Imam's] person, let alone his opinion."[70] He continues,

> From where do they arrive at this decisive certainty that [the Imam's] opinion coincides with the opinions of the Shīʿī scholars, despite the complete break and total separation between them, and their utter ignorance of his opinions for a period exceeding six hundred years?[71]

This objection is strikingly similar to one made by the Sunni scholar Ibn Taymiyyah.

> [The Twelver Shīʿīs] claim that the Imam is the absent, awaited Muḥammad, son of al-Ḥasan, who entered the underground vault at Sāmarrā in the year two hundred and sixty or close thereto, and did not return. His age [at that time] was either two, three, or five years, or close to that. Thus, according to their claim, he is now over four hundred years old. Neither his person nor a trace of him has been seen, and neither a sound nor a report has been heard from him, and no one among them knows him either in person or even in description.[72]

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[70]Risālah fī ṣalāt al-jumʿah, 88.
[71]Risālah fī ṣalāt al-jumʿah, 88-89.
[72]Ibn Taymiyyah, Minhāj al-sunnah, 1: 27.

Al-Shahīd al-Thānī's objections undermine the theory of ijmāʿ al-firqah
which al-Murtaḍā, for one, was so keen to establish, and which threatened to
render debate with the Sunnīs futile or inane. In Tamhīd al-qawāʿid, he
also questions the value of ijmāʿ al-firqah. After explaining the Shīʿī view
of the authority of consensus of the Muslim community, he states,

> On their arguments concerning the authority of consensus, our
> fellows [the Shīʿī jurists] based [the idea that] the consensus of
> them in particular is also an authoritative argument, when the
> Infallible Imam may not be distinguished among them.
> According to this, even if one supposed one or one thousand
> dissenting opinions of those whose genealogies are known, no
> attention should be paid to them. If their genealogies are not
> known, then [their dissenting opinions] invalidate the
> consensus.
>   I have strong reservations about all of this (fī dhālika
> kullihī ʿindī naẓar), which I have set down precisely in an
> independent discussion. The disputed questions contained in
> the law which are based on this—and their number is
> incalculable—are well known. More than that, this [Shīʿī
> consensus] is one of the most important principles of the law,
> upon which subsidiary rulings are based, yet their discussions
> of it have not been carefully examined, and their opinions
> concerning it vary very widely, as one who has read them
> carefully may attest.[73]

In al-Shahīd al-Thānī's view, the Shīʿīs cannot rely on Shīʿī ijmāʿ in the
period of the Imam's occultation, for it is not possible to determine where his
opinion lies. They must rely more heavily on other evidence.

> Yes, certainty is reached upon knowing the opinion of the
> Infallible Imam or its inclusion among the opinions of his
> Shīʿah, while he is manifest. This was the case with his
> forefathers concerning many questions in which the opinions of

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[73]Tamhīd al-qawāʿid, 34.

the Shi'i scholars concurred with the reports transmitted from
them, such as the opinion that it is obligatory to wipe the feet in
performing ablutions, the prohibition of wiping the shoes (in
performing ablutions), the prohibition of reduction of obligatory
shares (ʿawl) and agnatic distribution of excess (taʿsib) in
inheritance law, and other similar matters. However, in the
cases of law (furūʿ) which occurred for the first time
(tajaddadat) during the time of occultation, and in which there
has been dissent, one must refer to what is indicated by the
evidence from the Qurʾān, the sunnah and other evidence
allowable according to the law, and not to completely
unfounded claims such as these.[74]

It was not possible, al-Shahīd al-Thānī held, to determine the opinion of the

Imam in the time of the occultation, and therefore, one could not look to

ijmāʿ to provide answers to all problems. According to this model, the

situations of the Shi'i and Sunnī scholars were for all practical purposes

identical. The Shi'i scholar could not be certain that truth lay among the

opinions given by only Shi'i scholars, and not among Sunni opinions. No

theoretical construct prevented Shi'i scholars from falling into error. It is

this common ground which allowed al-Shahīd al-Thānī to make a more

convincing appeal than al-Murtaḍā for Sunnis to examine Shi'i opinions, and

vice-versa. He did not, like al-Murtaḍā, adopt a defensive or superior

attitude; he believed that cooperation and exchange of ideas between Sunnī

and Shi'i scholars would help overcome the problems which they all faced,

as Muslim jurists, and further the fundamental goal of legal scholarship, the

search for truth.

These ideas are expressed eloquently in a discussion which took place

between al-Shahīd al-Thānī and one of his Sunni teachers, Abū al-Ḥasan

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[74]Risālah fī salāt al-jumʿah, 89.

al-Bakrī, while they were on the pilgrimage to Mecca in 943/1537. This discussion was recorded in a biography of al-Shahīd al-Thānī by his student-servitor, Ibn al-ʿAwdī, and is preserved in al-Durr al-manthūr. The discussion shows al-Shahīd al-Thānī's concern for the status of Muslim scholarship, which he saw as plagued by the increasing insularity of study in each of the madhhabs and the lack of inquiry into the bases of previous scholarship.

"What do you say of the matter of those common people and rabble who know nothing of the signs which save us from grave sins? What is their stance before God the Exalted? Does He approve of them despite this ignorance? Let us turn the discussion, rather, to the learned and noble legal scholars, each group of which has hardened in adopting one of the four madhhabs, and knows nothing of what has been said in any madhhab other than the one they have chosen, despite having the ability to peruse, examine, and understand legal questions. They have resigned themselves to cloaking the opinions of their predecessors with authority, and have stated categorically that their predecessors have provided them with the necessary basis for that decision. It is well known that Truth is on one side; if one group has said that the Truth is with it, citing So-and-so and So-and-so, then the other group says the same, citing their own great scholars and well-known masters, because there is no group which does not have their authorities to whom they refer and on whom they depend. For example, the Shāfiʿīs say "The Imam al-Shāfiʿī and So-and-so and So-and-so have spared us the effort of doing this." Similarly, the Ḥanafīs rely upon the Imam Abu Ḥanīfah and other great scholars of the madhhab, and the Ḥanbalīs rely upon their great Masters and scholars. The Shīʿah also say al-Sayyid al-Murtaḍā, al-Shaykh al-Ṭūsī, al-Khwājah Naṣīr al-Dīn al-Ṭūsī, al-Shaykh Jamāl al-Dīn [i.e., al-Muḥaqqiq al-Ḥillī], and others have expended great efforts, and have enabled us to spare with close examination; we are certain and confident of our position. How, therefore, can such scholars make do with restricting themselves to one of these madhhabs and not examine the truth of the other madhhabs,

nay, not even look at the works of their writers, nor even know their names? The Truth may not lie with all of these groups, and if we say that it is with one of them, we are preferring one group without proof."

Master Abū al-Ḥasan [al-Bakrī] answered him, "As for the question of the common people, we beg the forgiveness of God that He not hold their shortcomings against them. As for the scholars, it is enough that they outwardly adhere to the truth."

Our Master [al-Shahīd al-Thānī] asked him, "How can that be enough for them, given what has been said of their neglect of examination and rigorous proof?"

He answered, "Oh Shaykh, the answer to your question is simple. An example of this is someone who is born circumcised naturally, for this circumcision spares him from having to undergo the circumcision required by religious law."

Our Master said, "This naturally circumcised man does not lose the obligation until he knows that his circumcision is itself the circumcision required by law, so that he might be asked and interrogated by men of experience and those who deal with this matter as to whether this naturally present state is sufficient to fulfill the obligation legally or not. But if he, on his own, makes do with what he has found, that is not legally sufficient to relieve him of the obligation."

[Al-Bakrī] answered him, "Oh Shaykh, this is not the first bottle to be broken in Islam."[75]

Like al-Murtaḍā, al-Shahīd al-Thānī also sees the Shīʿīs as participating in the madhhab system, yet his tone and position are less defensive. He describes the Shīʿī madhhab as functioning exactly as the Sunni madhhabs do. This is not surprising from a man who obtained a teaching position from the Ottoman government, as seen in Chapter Six. Al-Shahīd al-Thānī seems to have put his ideas on this topic into practice. His statements above were not idle words describing an ideal, unattainable situation.

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[75]al-Durr al-manthūr, 2: 164-65.

Al-Shahīd al-Thānī complains that legal scholars do not examine the works of other madhhabs. This is similar to al-Murtaḍā's complaint that Sunni scholars do not accept Shīʿī opinions and do not debate with them, but there is an important difference; al-Shahīd al-Thānī's complaint is not one-sided. Rather than accuse the Sunnīs of discriminating against the Shīʿīs, he states that Sunnis and Shīʿīs alike are guilty of the same short-comings. Shāfiʿīs read only Shāfiʿī books, Ḥanafīs read only Ḥanafī books, and Shīʿīs read only Shīʿī books. This insularity is a problem common to Sunnis and Shīʿīs; they would both benefit by overcoming it. Al-Shahīd al-Thānī does not a priori grant his own madhhab moral superiority over their Sunni counterparts, but holds its members equally accountable.

Insularity in legal scholarship, according to al-Shahīd al-Thānī, was linked to a deeper academic problem, the lack of critical examination of previous scholarship. Al-Shahīd al-Thānī implies that complacency, lack of intellectual acumen, and an exaggerated reverence for earlier scholars had petrified legal scholarship and even caused gross errors to be accepted. Again, he portrays Shīʿīs and Sunnis as being equal in this regard. The Shīʿīs look to al-Sharīf al-Murtaḍā, al-Shaykh al-Ṭūsī, Naṣīr al-Dīn al-Ṭūsī, and Ibn al-Muṭahhar al-ʿAllāmah al-Ḥillī as authorities. Later scholars accept their work without further examination, and assume that they have solved certain problems definitively, so that there is no need to reconsider them. The Shāfiʿīs look to al-Shāfiʿī in a similar manner, and the Ḥanafīs look to Abū Ḥanīfah in the same way. In his treatise on Friday prayer, al-Shahīd al-Thānī states, "Do not be one of those who know the truth by the man, and so fall into the abyss of error!" (wa-lā takun mimman yaʿrifu

'l-haqqa bi'r-rijāl * fa-taqa'a fī mahāwī 'd-dalāl *).[76] This blind acceptance of earlier scholarship was reinforced, or made possible, by the fact that jurists felt it unnecessary to examine the works and opinions of other madhhabs. These would inevitably call their accepted beliefs and opinions into question and force them to re-examine the bases of their assumptions. Limiting oneself to a single madhhab rendered serious scholarship nearly impossible, because too many ideas were accepted as final and unquestionable.

Al-Shahīd al-Thānī called Sunni scholars to examine the opinions of the Shī'īs just as al-Murtaḍā had. He did not feel, as al-Murtaḍā did, that the Shī'īs had a monopoly on legal truth, and his theory of Shī'ī ijmā', substantially different from that of al-Murtaḍā, reflects this. Al-Shahīd al-Thānī states that the Truth may lie with any one of the madhhabs, implying that the Shī'ī madhhab is merely equal to the other madhhabs and is not necessarily privileged with being any better or closer to the Truth than they are. This is a far cry from the ideas of al-Murtaḍā, who saw the Shī'ī madhhab as being preserved from nearly all error by the concept of Shī'ī ijmā'. Al-Shahīd al-Thānī states that one cannot assume the Truth lies with one of the madhhabs in particular without examination, for that would be preferring one possibility without a specific reason (tarjīh min ghayr murajjih). Al-Shahīd al-Thānī's argument stood a much better chance than al-Murtaḍā of success in eliciting a positive response from his Sunnī colleagues because he accepted the Sunnis on equal terms while inviting them to treat the Shī'īs the same way.

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[76]Risālah fī ṣalāt al-jum'ah, 89.

The Shiʿis' attempt to establish their own guild and thereby fit into the Sunnī guild system has been the guiding force behind much of the development of Shiʿī jurisprudence over the last milennium. Perhaps the most fundamental step adopted in the pursuit of this strategy of rapprochment was the development of a theory of consensus, which took place by the early fifth/eleventh century. By accepting the concept of consensus, Shiʿī jurists opted for inclusion within the Sunnī community of orthodoxy.

This strategy may be compared, in rough terms, to a struggle for equal rights. The United States' "Declaration of Independence" states that all men are created equal, implying that all men are entitled to the same fundamental rights. Yet before the civil war, many Americans argued that slavery was not in conflict with the fundamental principles on which the government was based because negroes were not actually men in the same way that white men were. Emancipation involved changing this legal norm which defined the negro as something less than a complete man, so that the principle that all men were equal would apply to them as well, and they could claim equal rights. Similar arguments apply to subsequent civil rights movements, the women's suffrage movement, and the more recent campaign for an equal rights amendment. In all of these cases, the stigmatized or under-privileged groups are accepting the legal principles of the United States' government, but are arguing that the principles have been applied incorrectly and should therefore be adjusted or interpreted in more detail so as to include them expressly, thus insuring their due rights and privileges.

The portrayal of Shiʿism in scholarship to date leads one to believe that the Twelver Shiʿis necessarily reject consensus and the Sunnī guild

system, for Shīʿism is generally seen as a religion of protest and rejection of the majority. While the rejection of consensus, as seen in Chapter Five, has played a significant role in the history of Twelver Shīʿī jurisprudence, it has been offset and surpassed by the desire to gain the acceptance of the Sunnīs and to participate in the Sunnī-dominated majority on equal terms. There has always been a significant tension within Shīʿism concerning its position vis-à-vis that of the majority, and this is reflected in Shīʿī discussions of legal consensus, but the strength of the desire to be included and to accept the majority is demonstrated by the success of the Twelver Shīʿī legal guild.

Chapter Nine
A Comparison of the Sunnī and Shīʿī Guilds

Although the degree of acceptance the Shīʿī legal guild has encountered has varied, it cannot be denied that the Shīʿī legal system has produced one of the most lively intellectual traditions within Islam, in a form largely compatible with the legal system of the majority. Modern scholarship, however, has not brought out the similarity between the Sunnī and Shīʿī guilds, and rather tends to emphasize purported differences between them or the unique qualities of the Shīʿī legal system. Looking beyond the differences in terminology, the following remarks attempt to show the fundamental structural similarities between the Sunnī and Shīʿī legal guilds.

It has long been common to view ijtihād as a point of differentiation between the Shīʿī and Sunnī systems of jurisprudence. Shīʿī jurists, it is held, are still allowed to practice ijtihād, while for Sunnīs, the gate of ijtihād has been closed since the third/ninth century. For example, Strothmann claims, "Shīʿīs are also to be differentiated from Sunnīs in that the gate of ijtihād is not closed."[1] Gardet holds,

> En Islam sunnite, seuls donc les tout premiers juristes et les
> fondateurs d'école meritent pleinement le titre de mujtahid,
> celui qui pratique l'ijtihad. L'Islam shīʿite au contraire entendit
> maintenir ouvert l'effort personnel, et continua d'appeler
> mujtahid tout docteur de la loi.[2]

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[1] EI 2 "Shīʿa," 7: 355. R. Strothmann.
[2] L'islam: religion et communauté (Paris: Desclée De Brouwer, 1967), 187.

MacDonald writes concerning the Shīʿī jurists,

> True legal authority lies, rather, with the learned doctors of
> religion and law. As a consequence of this, the Shiʿites still
> have Mujtahids, divines and legists who have a right to form
> opinions of their own, can expound the original sources at first
> hand, and can claim the unquestioning assent of their disciples.
> Such men have not existed among the Sunnites since the middle
> of the third century of the Hijra; from that time on all Sunnites
> have been compelled to swear to the words of some master or
> other, long dead.[3]

The twentieth-century Shīʿī scholar Muḥammad al-Ḥusayn Āl Kāshif
al-Ghiṭāʾ writes that the question of ijtihād is one of the lines of demarcation
between Sunnīs and Shīʿīs, though he adds that he does not understand
why the Sunnīs claim that the gate of ijtihād is closed.

> Among [the points of difference between Sunnīs and Shīʿīs] is
> that the gate of ijtihād, as you have seen, is still open according
> to the Imāmiyyah, as opposed to the majority of Muslims. For,
> according to the latter, this gate has been closed and locked to
> the intelligent scholars. I do not know at what time, by what
> evidence, or in what manner this closure occurred, nor have I
> found any Muslim scholar who has treated this subject
> adequately, nor do I know any of the answers to the preceding
> questions. The burden of explaining this lies with [the Sunnīs].[4]

Madelung gives the following comparison of Shīʿī and Sunnī concepts of
ijtihād.

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[3] Development of Muslim Theology and Law, 38-39.
[4] Asl al-shīʿah wa uṣūluhā, 120-21.

The reasons for this different development of ijtihād in Imāmī Shiism and Sunnism are apparently two. On the one hand, a consensus of the Shiite ulama, in contrast to the Sunnite situation, is of no legal consequence. No question open to ijtihād can thus ever be settled conclusively through a consensus of the Shiite ulama; nor can it ever be claimed that the door of ijtihād itself has been closed by a consensus. On the other hand, the traditional preoccupation of Imami thought with the notion of certitude in the law led the Imami scholars to view ijtihād not simply as a meritorious endeavor to discover the intent of the divine Lawgiver that may either succeed or fail, but rather as an effort to reach the highest degree of probability or the closest approximation to the objective truth possible in the absence of the imām. This effort must constantly be renewed in the hope of coming still closer to objective truth and certainty. Ijtihād thus must remain an open process until the return of the imam who alone can offer perfect truth and certainty. It is evident that this doctrine gives the mujtahids a most powerful position among the faithful who see themselves bound to follow their legal opinions. Thus the admission of the Shiite scholars of their inability to maintain the principle of certitude in the law during the ghayba has ultimately led to a great increase of their authority in the practical affairs of the community.[5]

First, it has been argued in the preceding chapter that consensus in Shīʿī jurisprudence is certainly of legal consequence, so that the first part of the argument does not hold. In the second part of the argument, Madelung gives an excellent description of ijtihād which holds every bit as much for Sunnī jurisprudence as it does for Shīʿī jurisprudence. His description of the approximation of truth and his use of the term probability are particularly apt, for probability is a useful tool for gaining an understanding of ijmāʿ, ijtihād, hadīth criticism, and a number of other topics in the Islamic legal sciences, and even more for gaining an intuitive feel for the way in which

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[5]Madelung, "Authority," 169.

they function. Makdisi and Hallaq have shown that the idea that the gate of ijtihād was closed in the third/ninth century is untenable, and that ijtihād was exercised in the Sunnī system until a much later date.

The first step in making a useful comparison of the Sunnī and Shī'ī systems is the realization that ijtihād is a term with many different meanings and a long and complex semantic history within both Sunnī and Shī'ī circles. For example, when scholars, both Muslim and Orientalist, state that the gate of ijtihād has been closed or that absolute ijtihād is no longer possible, they are defining ijtihād as the ability to form a new madhhab, and this is only one of many possible meanings of ijtihād. Ijtihād may denote (1) a methodological principle of legal research, (2) the ability required to undertake scholarly inquiry on legal questions, (3) the recognized rank of mastership within the legal guild, or (4) the establishment of a new madhhab. With the proliferation of sub-categories of ijtihād beginning as early as the time of al-Ghazālī, the semantic situation becomes even more complicated. The development of sub-categories raises a number of questions, and seems to indicate not only that a certain hierarchy developed within the legal guild already during the later Middle Ages, but also that the freedom of interpretation was restricted in some classes of jurisconsults. These two problems are crucial issues which have yet to be addressed adequately in scholarship. It has been observed that the Shī'ī system is more hierarchical that the Sunnī system, but this is in part due to the fact that the Sunnī legal hierarchy, of which there is substantial evidence, has not been investigated. These issues deserve independent treatment and will not be developed fully here. Suffice it to say for present purposes that given

the semantic complexity of the term ijtihād, it is easy to fall into the trap of comparing apples and oranges.

Concentration on the meaning of ijtihād as the rank held by the master jurisconsult shows that the Sunnī and Shīʿī systems are not poles apart. The question is not whether the Sunnīs or the Shīʿīs term their jurisconsults mujtahids or even whether they use the specific terms ijtihād or taqlīd; the question is whether their legal systems function in the same way or have similar structures. As seen in Chapter Three, the Akhbārīs show that ijtihād and taqlīd are two sides of the same coin, and the essential feature of the legal system is the dichotomy established between the master jurisconsult, who is the only one authorized to issue opinions, and the layman, who must have recourse to the master jurisconsult to fulfill his religious obligations. On a fundamental structural level, the Sunnī and Shīʿī systems are identical, despite differences in terminology. In both the Sunnī system and the modern Shīʿī system, membership in the legal guild is exclusive. It may only be established by completing a set course of legal study and receiving a degree. In modern Shīʿī usage, this degree is termed ijāzat al-ijtihād, and the holder of the degree, i.e., a master in the guild, is termed a mujtahid. In Sunnī usage, the degree given was termed ijāzat al-iftāʾ or ijāzat al-iftāʾ wa 't-tadrīs, and the recipient a muftī. This degree was conferred regularly at least as late as the tenth/sixteenth century, as is evident from ʿAbd al-Wahhāb al-Shaʿrānī's (d. 972/1565) biographical dictionary, al-Tabaqāt al-sughrā. The main point to be gleaned from this discussion is that in terms of establishing exclusive membership, the Sunnī and Shīʿī systems are completely parallel. The only difference is one of

terminology and not of basic structure. Both systems are legal guilds, and both guilds base membership on the receipt of a recognized legal degree.

A prevalent misconception concerning the Shi'i legal system in particuar is that the exclusive authority of the mujtahids was not established within Twelver Shi'ism until the late eighteenth or the nineteenth century. Denis MacEoin writes,

> The new Uṣūlī synthesis that emerged at the Iraqi shrine centers in the late eighteenth century under Āqā Muḥammad Bāqir Bihbihānī and his students represented the first stirrings of an impetus towards the location of charismatic authority within the body of the senior 'ulamā'—the mujtahids and, as the nineteenth century progressed, the marāji' al-taqlid.[6]

Similarly, Arjomand claims,

> the Shi'ite norms of the juristic authority of the specialist in religious learning . . . emerges with the rise of the Shi'ite science of jurisprudence (Uṣūl al-fiqh) in the eleventh century and assumes its final form in the division of the Shi'ite community into mujtahid (jurist) and muqallid (follower) in the nineteenth century.[7]

While it is perhaps true that the institution of marji' al-taqlid did not take recognizable shape until the nineteenth century, the "impetus towards the location of charismatic authority within the body of senior 'ulamā'" started

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[6]Denis MacEoin, "Orthodoxy and Heterodoxy in Nineteenth-Century Shi'ism: The Cases of Shaykhism and Babism," Journal of the American Oriental Society, 110 (1990): 323-29, 326; see also idem., "Changes in Charismatic Authority in Qajar Shi'ism," in Qajar Iran: Political, Social, and Cultural Change 1800-1925, ed. E. Bosworth and C. Hillenbrand (Edinburgh, 1983), 148-76.

[7]Arjomand, The Shadow of God, 14.

in the sixteenth century at the very latest. Al-Astarābādī's al-Fawāʾid al-madaniyyah shows that the division of the Shīʿī community into mujtahid and muqallid was well-established by his own time, the early eleventh/seventeenth century, and his claim that the division was instituted by al-ʿAllāmah al-Ḥillī would place it in existence since the seventh/fourteenth century. The Uṣūlīs were the proponents of the exclusive legal guild, and the fact that the authority of the mujtahids was later challenged by the scholars of the Akhbārī revival does not indicate that their authority was not established at an earlier date.

The question then arises as to the date the Uṣūlī movement appeared. In Nihāyat al-wuṣūl, al-ʿAllāmah al-Ḥillī referred to al-Shaykh al-Ṭūsī, who died in 460/1067 and wrote one of the earliest Twelver Shīʿī uṣūl al-fiqh works, as an Uṣūlī. This demonstrates that the term was established by al-ʿAllāmah al-Ḥillī's time at the latest, or by the early eighth/fourteenth century, though it is not clear that the term Uṣūlī was used in the time of al-Ṭūsī himself. As mentioned in Chapter Five, ʿAbd al-Jalīl al-Qazwīnī, who wrote Kitāb al-naqd ca. 565/1170 uses the term Uṣūlī with great frequency. His comments show not only that he was an Uṣūlī but also that the terms Uṣūlī and Akhbārī were well established in his day. The Akhbārīs, he reports, had decreased in number and few remained at the date he wrote.[8] Thus it would appear that the conflict within Twelver Shīʿism over the establishment of a legal guild had begun before the sixth/twelfth century and had been won, to a large extent, by the date of Kitāb al-naqd.

The Basis of Exclusive Authority

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[8]al-Qazwīnī, Kitāb al-naqd, 568.

Since the time of al-Ṭūsī, it was accepted by many jurists that if someone had to take over the essential functions of the Imam in occultation, it was the jurisconsults (fuqahā²). This later became enshrined in doctrine, according to which the prerogative to decide legal issues was given to a "general representative" (nā²ib ʿāmm) of the Imam. As the theory developed, this "general representative" had to be a mujtahid. According to Calder's thesis, "The Structure of Authority in Imāmī Shīʿī Jurisprudence," the first scholar to use this specific term was al-Shahīd al-Thānī, although it was pre-figured in the work of ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī (d. 940/1534).[9] They based this theory on a hadīth termed the maqbūlah, or "acceptable tradition," of ʿUmar ibn Ḥanẓalah, recorded in the al-Kulaynī's al-Kāfī and elsewhere, which states on the authority of Jaʿfar al-Ṣādiq, "Look to a man from among you who has transmitted our traditions and studied our rulings, and make him a judge (qāḍī), for I have appointed him a judge. So appeal to him for legal decisions (fa-taḥākamū ilayh)." Other versions have, "So accept him as a judge (ḥākim), for I have appointed him a judge over you."[10] This hadīth has been interpreted as granting legal authority to the mujtahid alone, making him the general representative of the Imam during the time of occultation. This requirement gives the jurisconsults a monopoly over legal authority and the determination of orthodoxy.

The exclusive authority of Sunnī jurists was based on similar claims. One of these derived from the interpretation of the Qur²ānic verse atīʿū 'Llāha wa atīʿū 'r-rasūla wa ūlī 'l-amri minkum "Obey God, and obey the

[9]Norman Calder, "The Structure of Authority in Imāmī Shīʿī Jurisprudence." See especially Chapter IV, "The Judicial Delegation." pp. 66-107.

[10]al-Fawā²id al-madaniyyah, 6.

Prophet and those of you who have authority." (Qur'ān, 4: 59). Al-Khaṭīb al-Baghdādī (d. 463/1071) argued that the ūlū al-amr "those who have authority" in the verse designated the fuqahā' in particular.[11] Another common argument is that the term 'ulamā' "scholars" in the well-known ḥadīth "The scholars are the inheritors of the prophets" (al-'ulamā'u warathatu 'l-anbiyā') refers to jurists (fuqahā') in particular.[12] Ibn al-Ḥājib uses the Qur'ānic verse "Then ask the people of knowledge, if you do not know." fa-s'alū ahla dh-dhikri in kuntum lā ta'lamūn (Qur'ān 16: 43 and 21: 7) to support the legal authority of the mujtahids, and interprets ahl al-dhikr, "the people of knowledge" as referring exclusively to the mujtahids.[13]

The Doctorate of Law

Al-Astarābādī does not explain clearly how membership in the mujtahid class is established, and this may be due to his biased presentation. It is clear, from the sources that he cites, that membership in the mujtahid class was accorded to those scholars who had developed the ability to derive independent legal rulings, and that this ability was gained through study, but al-Astarābādī does not mention the ijāzat al-ijtihād or the ijāzat al-iftā'. On the contrary, he states that it is impossible to determine such an elusive, internal ability in an objective way, and that there are constant disputes among the scholars, both Sunnī and Shī'ī, as to who exactly is a mujtahid, and what the requirements are.[14]

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[11]al-Khaṭīb al-Baghdādī, Kitāb al-faqīh wa al-mutafaqqih, 2 vols., ed. Ismā'īl al-Anṣārī (Beirut: Dār iḥyā' al-sunnah al-nabawiyyah, 1975), 1: 27-28.

[12]al-Khaṭīb al-Baghdādī, Kitāb al-faqīh wa al-mutafaqqih, 1: 17.

[13]Ibn al-Ḥājib, Mukhtaṣar muntahā al-su'āl, 2: 306.

[14]al-Fawā'id al-madaniyyah, 45.

In the twentieth century, the ijāzat al-ijtihād is part of standard practice in the centers of Shī'ī learning in Najaf and Qum. It is not known, however, how far back this practice goes. The ijāzah is granted, only by mujtahids, to students who have gone through all three levels of their legal studies, and it certifies the student's ability to derive and issue legal opinions. An aspiring student will try to obtain such ijāzahs from all the top scholars at his center of learning, not just one.[15] However, the ijāzah itself does not guarantee that one will be recognized as a mujtahid. One must be recognized as such by the public, that is gain a reputation and serve as an authority for laymen in order to be fully recognized as a mujtahid. A student who obtains an ijāzah but does not gain a following is referred to as a mujtahid muhtāt.[16] Muḥsin al-Amīn gives the following definition of the ijāzah.

> One type of ijāzah is the ijāzat al-riwāyah. It is not stipulated that its recipient (al-mujāz) not be a mujtahid. The other type is the ijāzat al-ijtihād. It certifies that the recipient has acquired the ability to derive the points of law from fundamental principles, that he is a trustworthy and upright man whom it is appropriate to consult for legal rulings. One may know this through personal contact, especially if the recipient is a student of the issuer of the ijāzah (al-mujiz).[17]

It is not clear when this practice developed. It is older than this century, for it is mentioned by Muḥsin al-Amīn, who studied in Najaf at the turn of the century, as part of the traditional system. On the one hand, it may have developed in reaction to Akhbārī attacks on the guild system, as

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[15]Moojan Momen, 202.
[16]Moojan Momen, 203.
[17]Muḥsin al-Amīn, A'yān al-shī'ah, 10: 352.

the result of an effort to regularize the system. It may, on the other hand, have developed much earlier. The former interpretation is made to seem more plausible by the statements of a number of modern scholars. Modarressi states of Muḥammad Bāqir "al-Waḥīd" al-Bihbihānī (d. 1205/1791), the man who is held responsible for the ultimate defeat of the Akhbārī movement and the triumph of the Uṣūlīs, that "The legal system of his school was the first to be constructed entirely in accord with the rules and principles of uṣūl al-fiqh."[18] Yet if this is true, it leaves many questions unanswered: if he instituted the practice of granting the ijāzat al-ijtihād, where did he learn of it? Through his own historical research? Did he re-invent it?

The more general usage of the term ijtihād in Shīʿī circles in the modern period is probably a result of the Akhbārī-Uṣūlī controversy. By the eleventh/eighteenth century, the mujtahids came to be a general term for the Uṣūlīs, the adversaries of the Akhbārīs. It seems that the Akhbārī challenge caused the Uṣūlīs to reassert forcefully their right to use the method of ijtihād.

The practice of granting the degree of law or the ijāzat al-iftāʾ wa al-tadrīs was not limited to the classical Islamic period. ʿAbd al-Wahhāb tells of thirty-seven contemporary scholars in sixteenth-century Cairo who received the ijāzat al-iftāʾ wa al-tadrīs.[19] For instance, of Shihāb al-Dīn al-Bulqīnī (d. 960/1553), al-Shaʿrānī states,

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[18]Modarressi, Introduction, 56.

[19]al-Ṭabaqāt al-ṣughrā, 50, 82-84, 86, 88, 94, 96-100, 102, 104-6, 108-9, 112-13, 115, 118-20, 126, 128-9, 131-32, 135-40.

He studied the legal sciences (al-ʿilm) under a number of the accomplished scholars, among the greatest of whom was the Ultimate Master, Shihāb al-Dīn al-Ramlī al-Anṣārī—may God be pleased with him—. [Al-Bulqīnī] studied assiduously under [al-Ramlī] as one of his fellows [wa-lāzamahū mulāzamatan shadīdah] until he granted him the license to give legal opinions and teach law [ajāzahū bi'l-iftāʾ wa al-tadrīs]. [Al-Bulqīnī] gave opinions and taught law during [his teacher's] lifetime, and many students benefited from him, to such an extent that his lesson was even larger than that of his Master.[20]

The degree granting mastership in the legal guild is thus a standard feature of both the Sunnī and the Shīʿī system, and there is no essential difference between the two systems in this regard.

Hierarchy Within the Guild: the Office of Marjiʿ al-Taqlīd

It is supposed by a number of scholars that the position of marjiʿ al-taqlīd, the top legal authority for the layman, is unique to Shīʿism, and that it developed only in the thirteenth/nineteenth century.[21] An examination of both Sunni and Shīʿī intellectual history shows that the position, if not the exact title or terminology, existed much earlier in Shīʿism, and that the Sunni raʾīs, or top legal scholar in a specific locality, was essentially equivalent to a marjiʿ al-taqlīd.

While it appears that use of the term marjiʿ al-taqlīd itself dates from the nineteenth century, it is also clear that accomplished Shīʿī legal scholars often served as chief legal figures with authority over other scholars long before the nineteenth century. In the Safavid period, for example, the

[20]al-Ṭabaqāt al-sughrā, 88.

[21]Denis MacEoin, "Orthodoxy and Heterodoxy in Nineteenth-Century Shīʿism: The Cases of Shaykhism and Babism," 326; Ahmad Kazemi Moussavi, "The Establishment of the Position of Marjaʿiyyat-i Taqlid in the Twelver-Shi'i Community," 35-51.

shaykh al-islāms of the capital city were often recognized as the the chief authorities, and the creation of the office of Mullā-Bāshī in the later Safavid period seems to have institutionalized this phenomenon. In the reign of Shah Ṭahmāsb I, the jurist ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī was officially recognized by the Shah as having authority over the other legal scholars. In several ijāzahs which he issued, al-Karakī granted other legal scholars permission to transmit his legal opinions. He gives such permission in an ijāzah issued on 9 Jumādā II, 934/March 1, 1528 to ʿAlī ibn ʿAbd al-ʿĀlī al-Maysī and his son Ibrāhīm, both Shīʿī scholars from the village of Mays in Jabal ʿĀmil.

> I have granted them permission to practice according to those legal opinions upon which my judgment has come to rest (mā istaqarra ʿalayhi raʾyī fī 'l-fatwā) and the evidence of which has been shown to be correct according to me, and to transmit (naql) this to whomever they choose.[22]

This phenomenon shows not only that he considered these scholars to be beneath him in rank, but also that they were acting as intermediaries between him and the laymen who wished to refer to his opinions. The shaykh al-islām of Qazvīn during the final years of Shah Ṭahmāsb's reign, Ḥusayn ibn Ḥasan al-Karakī, apparently wrested the post from Ḥusayn ibn ʿAbd al-Ṣamad al-ʿĀmilī through popular support and a claim to ijtihād which most scholars had to recognize out of political expedience.[23] The term khātam al-mujtahidīn commonly used to refer to the top legal authority during this period indicates that something like the office of marjaʿ al-taqlīd

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[22]Bihār al-anwār, 108: 42.

[23]See The History of Shah ʿAbbās the Great, 2 vols., trans. Roger M. Savory (Boulder, Colorado: Westview Press, 1978), 1: 205, 233.

existed. The only difference was that with reference to legal theory, the titles khātam al-mujtahidīn and mullā-bāshī were profane or informal in that they were not discussed in works on the theory of jurisprudence, whereas the term marjiʿ al-taqlīd found its way into legal texts in the nineteenth century, and became a more rigidly defined institution.

It has been suggested in scholarship on Shīʿism that one of the main theoretical underpinnings of the Shīʿī position of marjaʿ al-taqlīd is aʿlamiyyah, i.e., the doctrine that the layman (muqallid) must follow the opinions of not just any qualified mujtahid, but of the one mujtahid generally recognized to be the most learned.[24] Moussavi claims that the term aʿlam was first used in Shīʿī legal scholarship by the sixteenth-century scholar Ḥasan ibn Zayn al-Dīn al-ʿĀmilī in his Maʿālim al-dīn on usūl al-fiqh, but that it only became incorporated into the juridical system in the nineteenth century.[25] The concept of aʿlamiyyah, however, developed much earlier than the nineteenth century in Shīʿism, and moreover is not limited to Shīʿism at all. Al-Muḥaqqiq al-Ḥillī, who died in 676/1276, holds in his Maʿārij al-usūl that one may chose between mujtahids if they are equal in probity (ʿadālah) and knowledge, but that one is obligated to follow the opinion of the most learned (aʿlam) mujtahid if they are not equal. One is even obligated to follow the opinion of the most learned mujtahid rather than the most just (aʿdal).[26] Al-Muḥaqqiq al-Ḥillī also states that if a mujtahid has difficulty with answering a particular question, he may adopt

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24Ahmad Kazemi Moussavi, "The Establishment of the Position of Marjaʿiyyat-i Taqlīd," 35, 39.

25Ahmad Kazemi Moussavi, "The Establishment of the Position of Marjaʿiyyat-i Taqlīd," 39.

26Maʿārij al-usūl, ed. Muḥammad Ḥusayn al-Riḍawī (Qum: Maṭbaʿat Sayyid al-Shuhadāʾ, 1403 A.H.), 201.

the opinion of a more learned jurisconsult, because concerning that question he is like a layman with respect to the more learned scholar.[27] Al-ʿAllāmah al-Ḥillī also states that the muqallid should refer to the most learned (aʿlam) and most ascetic (azhad) jurisconsult.[28] Al-Sharīf al-Murtaḍā holds in al-Dharīʿah ilā usūl al-sharīʿah, one of the first Shīʿī texts of usūl al-fiqh, that, according to the more reliable opinion, the layman must consult the jurisconsult who is most learned (aʿlam) and most pious (awraʿ wa-adyan).[29]

The condition of aʿlamiyyah is found not only in Twelver Shīʿī jurisprudence, but is also a common feature in Sunnī jurisprudence. In al-Muʿtamad fī usūl al-fiqh, the first extant integral work of usūl al-fiqh after the Risālah of al-Shāfiʿī, Abū al-Ḥusayn Muḥammad ibn ʿAlī al-Baṣrī (d. 436/1044) states that if the opinions given by two jurisconsults are different, the layman must follow that of the most learned (aʿlam) and most pious (adyan).[30] The Egyptian Shāfiʿī jurisconsult al-Isnawī (d. 772/1370-71) holds that the layman must follow the opinion of the most learned (aʿlam) and most pious (awraʿ) jurisconsult; if two jurisconsults are equal in learning, he must take the opinion of the most pious (adyan); if one has greater learning but the other is more pious, then he must follow the opinion of the most pious.[31]

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[27]Maʿārij al-usūl, 202.

[28]Tahdhīb al-wuṣūl, fol. 107b.

[29]al-Dharīʿah ilā usūl al-sharīʿah, 2 vols., ed. Abū al-Qāsim Gurjī (Tehran: Dānishgāh-i tihrān, 1348 sh.), 2: 317.

[30]al-Muʿtamad fī usūl al-fiqh, 2 vols. (Beirut: Dār al-kutub al-ʿilmiyyah, 1983), 2: 364.

[31]Jalāl al-Dīn ʿAbd al-Raḥmān al-Asnawī, Nihāyat al-sūl fī sharh Minhāj al-wuṣūl ilā ʿilm al-usūl, 3 vols. (Cairo: Matbaʿat Muḥammad ʿAlī Ṣubayḥ, 1969), 3: 217.

In most centers of Sunni legal learning, it was usually the case that one scholar within each madhhab was recognized as the most accomplished legal authority, and this scholar was granted the title of ra'īs, literally "chief". In addition, Sunnī legal texts starting with al-Ghazālī list various sub-categories of ijtihād, and these would seem to indicate increased hierarchization within the legal guild. ʿAbd al-Wahhāb al-Shaʿrānī's al-Tabaqāt al-sughrā, his biographical dictionary of contemporary Cairene scholars in the first half of the tenth/sixteenth century, provides a valuable look at the workings of the legal and scholarly establishment in his day. Several comments al-Shaʿrānī makes demonstrate that, in his view, there was a readily observable hierarchy of scholars, particularly in the legal establishment, and that the rank of a scholar could be determined in a more or less effective and objective manner. At the end of the section on scholars with whom he studied, upon completing the biography of Shihāb al-Dīn al-Ramlī, al-Shaʿrānī states, "I closed this chapter with [al-Ramlī] because he died later than the others who were mentioned before him. He was, however, in my opinion more learned (aʿlam) than all of his peers."[32] This remark responds to an expectation on the part of the reader that the biographer should arrange the subjects in order of their rank in learning. This implies that the rank of a scholar was fairly well known, or could be determined fairly easily. Al-Shaʿrānī states that in the chapter on his contemporaries who are still living, he will present them by madhhab, "without presenting them in the order of the most learned (afdal) within each madhhab, because of my ignorance of what their actual ranks will be when they die (li-jahlinā bi-haqīqati maqāmihim alladhī yamūtūna

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[32]al-Tabaqāt al-sughrā, 69.

ʿalayh)."³³ This statement demonstrates even more clearly that individual
scholars had specific ranks with the legal establishment.

The term used to refer to the top scholar in a given field was raʾīs,
and the noun refering to his rank, riʾāsah.³⁴ Al-Shaʿrānī often refers to a
scholar as the raʾīs in fiqh, tafsīr, or other fields. He once refers to Nāṣir
al-Dīn al-Liqānī as the shaykh al-madhhab of the Mālikīs.³⁵ Riʾāsah,
however, did not only refer to a position with respect to other scholars. It
also reflected his position with respect to the general populace, at least in the
case of the jurisconsult, or muftī. Al-Shaʿrānī states of Shihāb al-Dīn
al-Samnūdī (d. 921/1515-16), "The position of leadership in granting legal
opinions devolved upon him for a long time (intahat ilayhi 'r-riʾāsatu fī
'l-fatwā muddatan ṭawīlah)."³⁶ It seems also that some of the top scholars
farmed out legal questions to scholars lower in rank. Al-Shaʿrānī states of
Nūr al-Dīn al-Ṭandatāwī, a student of Nāṣir al-Dīn al-Liqānī and Shihāb
al-Dīn al-Ramlī,

> They granted him permission to give legal opinions and teach
> law, and he taught law and gave legal opinions in the Azhar
> Mosque during the lives of his Masters. They used to send him
> questions, and he would answer them in the best possible
> manner.³⁷

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³³al-Ṭabaqāt al-sughrā, 91.

³⁴On this term in general, see Roy Mottahedeh, Loyalty and
Leadership, 129-57. On riʾāsah among the scholars in particular, see pp.
135-50. Mottahedeh concentrates on the field of hadīth rather than law per
se.

³⁵al-Ṭabaqāt al-sughrā, 85.

³⁶al-Ṭabaqāt al-sughrā, 57.

³⁷al-Ṭabaqāt al-sughrā, 115.

Thus, there is significant evidence that in the Sunnī legal system, at least as it worked in Cairo in the tenth/sixteenth century, jurisconsults were assigned specific ranks within a hierarchy not unlike the hierarchy of modern Shīʿī jurisconsults. Al-Shaʿrānī even uses, in one instance, the term marjiʿ, "reference" or "authority", to refer to the top jurisconsult. Of Muḥammad ibn Shihāb al-Dīn al-Ramlī, al-Shaʿrānī states, "He is now the authority for the people of Egypt in the issuing of legal opinions (faʾinnahū 'l-āna marjiʿu ahli Miṣra fī taḥrīri 'l-fatāwā)."[38] This term is of course familiar from the Shīʿī term marjiʿ al-taqlīd, and seems to be used here to describe a similar if not identical function.

The Imāmī Sanctification of the Rank of Ijtihād

Some Shīʿī scholars argued for the sanctification of the rank of ijtihād. In particular, the use of the technical term quwwah qudsiyyah ("holy power") to refer to the ability with which the mujtahid, by virtue of his expertise in deriving authoritative interpretations of the sacred law, was endowed, is evidence of a claim of charismatic authority. A decree of Shah Tahmasb dated 16 Dhū al-Ḥijjah, 939/July 9, 1533[39] states that ʿAlī ibn ʿAbd al-ʿĀlī al-Karakī "with a holy power (bi-quvvat-i qudsiyyat) has clarified the difficult problems of the rules of the true Sacred Law."[40]   One use of this term is found in the well known usūl al-fiqh text Maʿālim al-Dīn wa malādh al-mujtahidīn by Ḥasan ibn Zayn al-Dīn al-ʿĀmilī (d. 1011/1602), the son of al-Shahīd al-Thānī, which was one of the most popular textbooks in the eleventh/seventeenth and twelfth/eighteenth centuries. In speaking of the requirements for ijtihād, Ḥasan al-ʿĀmilī

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[38]al-Ṭabaqāt al-ṣughrā, 122.
[39]The decree is cited in Riyāḍ al-ʿulamāʾ, 3: 455-60.
[40]Riyāḍ al-ʿulamāʾ, 3: 456.

states that the <u>mujtahid</u> must know dialectic or the methods of logical argument (<u>sharā'it al-adillah</u>)—in addition to syntax, morphology, lexicography, legal terminology, the verses of the Qur'ān and the <u>hadīth</u> transmissions related to the law, <u>hadīth</u> criticism, and <u>usūl al-fiqh</u>—unless he has a "holy power" (<u>quwwah qudsiyyah</u>) which renders this unnecessary.[41] It is difficult to determine the author's motive for including this statement, but it appears that he means to imply that the science of logic was in some cases dispendable, and thus reduce the importance attached to this Greek science which many traditionalist scholars, both Sunnī and Shī'ī, had attacked or deemed extrinsic to the Islamic sciences. Al-'Āmilī's statement seems to be an embellishment on earlier statements in <u>usūl al-fiqh</u> works. Al-'Allāmah al-Hillī seems to hold that a jurisconsult must not only know all the required subjects, such as grammar, rhetoric, etc. but also have legal talent or the ability to use this knowledge to arrive at legal rules. It is required, he states, that the jurisconsult also "have the ability (<u>quwwah</u>) to derive subsidiary rulings (<u>al-ahkām al-furū'iyyah</u>) from the fundamental considerations of the law (<u>al-masā'il al-usūliyyah</u>)."[42]

Al-Shahīd al-Thānī states in the section on qadā' in <u>al-Rawdah al-bahiyyah</u>, his commentary on the legal text <u>al-Lum'ah al-dimashqiyyah</u> by al-Shahīd al-Awwal,

> . . . Along with all this [the requirements for <u>ijtihād</u>], it is required that [the jurisconsult] have an ability (<u>quwwah</u>) through which he can trace subsidiary cases to their principles (<u>radd al-furū' ilā usūlihā</u>) and derive their rulings from these principles (<u>istinbātihā minhā</u>). This is the most important requirement in this regard. Anyway, the acquisition of these

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[41]<u>Ma'ālim al-dīn wa malādh al-mujtahidīn</u> (Tehran: n.d.), 256-57.
[42]Tahdhīb al-wusūl, fol. 103b.

preparatory sciences has become easy in our times because of the accomplishments of the scholars and jurisconsults in these subjects and in their usage [in the law]. This ability is in the hand of God. He grants it to whomever of his worshippers He pleases according to His wisdom and His will. But expending great effort and associating with those who have it play a great part in the acquisition of this ability. "And those who strive in Our (cause), —We will certainly guide them to Our paths; for verily God is with those who do right." [Qur'ān, 29: 69][43]

Nevertheless, the term was given a more extensive application by later scholars.

Subsequent scholars described a type of charismatic power or ability as a necessary quality of the mujtahid. In al-Shawāhid al-makkiyyah fī madāhid hujaj al-khayālāt al-madaniyyah, a refutation of al-Fawā'id al-madaniyyah dedicated to the Shī'ī ruler of the Qutb-Shāhī kingdom in the Deccan in India, 'Abd Allāh Qutb-Shāh (1035-88/1626-77),[44] Nūr al-Dīn al-'Āmilī argued that the greatest requirement (shart) for attainment of the rank of ijtihād was the acquisition of "divine power" (al-quwwah al-ilāhiyyah). He explains that the power in question was equivalent to divine guidance to the truth (al-hidāyah ilā al-haqq), and that God has promised this to his believers if they expend great effort.[45] Muhammad Bāqir al-Bihbihānī makes a similar claim in his Risālat al-akhbār wa al-ijtihād, a refutation of Akhbārī methods which he completed on 13 Rajab, 1155/September 13, 1742.[46] In the course of a diatribe against the

[43]al-Rawdah al-bahiyyah fī sharh al-lum'ah al-dimashqiyyah, 10 vols. (Najaf: Matba'at al-ādāb, 1967), 3: 65.

[44]al-Shawāhid al-makkiyyah, on the margin of the lithograph edition of al-Fawā'id al-madaniyyah (Tehran, 1902), 4.

[45]al-Shawāhid al-makkiyyah, 10.

[46]Risālat al-akhbār wa al-ijtihād (Tehran, n.d.), 94.

Akhbārīs, he states that iitihād is only effective when exercised through
extreme effort by someone with great natural ability (malakah qawiyyah)
and "divine power" (quwwah qudsiyyah).[47] It appears that these two
authors chose to emphasize this charismatic power bestowed by God upon
the mujtahid in order to grant even more credence to the exclusive authority
of the mujtahids.

Modern Shī'ī legal scholars have not emphasized this charismatic
power. The term was probably used most during the period when the Uṣūlīs
felt threatened by Akhbārī attacks and were using as many available
arguments as possible to justify their views. They thus made some extreme
claims which did not become part of the standard views of later
jurisconsults. Another striking example of this phenomenon is al-Bihbihānī's
claim, also voiced in Risālat al-akhbār wa al-iitihād, that the jurisconsults are
actually the Prophet's successors, or Caliphs (khulafāʾ al-rasūl al-mukhtār),
on earth.[48] Nevertheless, it must be emphasized that these concepts did not
imply a different structure of authority or a different conception of the
workings of the legal system. They merely served to sanctify a system
based on legal education, iitihād, and the guild, and though no parallel
concepts have been emphasized within Sunnī jurisprudence, they do not
represent a major structural difference.

4. Source of Income: khums vs. waqf

Perhaps the key to an understanding of the difference between the
Shī'ī and Sunni legal guilds is an examination of their sources of income. As
Makdisi has shown, the Sunni madrasah and therefore Sunni legal education

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[47]Risālat al-akhbār wa al-iitihād, 88.
[48]Risālat al-akhbār wa al-iitihād, 9.

was based on the endowment (waqf). Though Shi'i waqfs certainly existed,
Shi'i legal education in most areas has tended to be less structured and
based more on the khums or "fifth", a religious tax incumbent on Shi'i
believers and paid to the top legal authorities, now primarily in Najaf or
Qum, their local representatives, or independent, local legal authorities. This
source of income has given the Shi'i jurists a much greater source of power
than their Sunni counterparts. Not only is the khums paid and collected
without any interference from government authorities, its use is not as
strictly regulated as endowment income and therefore gives them greater
ability to adjust to new economic circumstances. The mis-management of
waqf property and funds has been an endemic problem throughout both
Shi'i and Sunni regions in the Middle East. Just as detrimental to the Sunni
system of legal education, however, has been the tendency of Islamic
governments to confiscate or otherwise establish control over the
endowments, thus putting an end to the independence of the legal guilds.
The Shi'is have been able, for the most part, to avoid this fate because they
have not relied so heavily on endowment funds and depended rather on
khums taxes. In recent times, the top religious authorities have gained in
power because improved communication and transportation has centralized
the administration of khums funds to a greater degree. This has not only
given the scholars of the legal guild more intellectual freedom than their
Sunni counterparts, but also more political clout, allowing them, in the case
of Iran, to implement the concept of wilāyat al-faqīh, the idea that the sole
legitimate government is that controled by the top jurisconsult.

Both Sunni and Shi'i guilds have claimed a monopoly over legal
authority. They both, theoretically, have the right to control legal education

and the issuing of legal opinions, as jurisconsults, and the issuing of sentences, as judges. The difference between the Sunnī and Shīʿī guilds lies in the fact that the Shīʿī jurisconsults claimed some of the political prerogatives of the Imam, whereas, in Sunnī Islam, these prerogatives, both in practice and in theory, devolved upon the political ruler. These rights, refered to under the rubric of wilāyat al-faqīh or al-wilāyah al-ʿāmmah, include the right to collect and dispose of alms and khums taxes, the right to hold Friday prayer, and even, according to some jurists, the right to declare jihād and to govern. The same arguments that are used to establish the Shīʿī jurisconsults' exclusive legal authority are also used to establish their authority in these other areas. Calder has discussed this in some detail in the chapter of his thesis entitled "The General Delegation,"[49] as has Sachedina in The Just Ruler in Shīʿite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence.[50]

Until recently, the claims to these political prerogatives in Twelver Shīʿī law has assumed relatively little importance. Even the Imams, while present, could not exercise most of their political prerogatives. The khums funds, however, have clearly been of far greater importance throughout the history of the Occultation.[51] Unfortunately, little is known about how these

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[49]Norman Calder, "The Structure of Authority in Imāmī Shīʿī Jurisprudence," 147-70.

[50](Oxford: Oxford University Press, 1988).

[51]On the khums, see the chapter of Calder's thesis entitled "Community Finances," (pp. 108-46); idem., "Zakāt in Imāmī Shīʿī Jurisprudence, fom the Tenth to the Sixteenth Century A. D.," Bulletin of the School of Oriental and African Studies, 44(1981): 468-80; idem., "Khums in Imāmī Shīʿī Jurisprudence, fom the Tenth to the Sixteenth Century A. D.," Bulletin of the School of Oriental and African Studies, 45(1982): 39-47; Sachedina, The Just Ruler in Shīʿite Islam, 237-45; Sachedina, "Al-khums: the Fifth in the Imāmī Shīʿī Legal System," Journal of Near Eastern Studies, 39(1980): 275-89.

funds were collected and administered until recent times. This is a topic of extreme importance in the history of the Shi'i legal system, but information concerning <u>khums</u> in the pre-modern period is scarce.

Conclusion

Until recently, ijmāᶜ or consensus has appeared an ill-defined,
nebulous principle in scholarship on Islam. While many Orientalist scholars
have indicated its importance, few have shown how it effects Islamic legal
theory, legal practice, or history. This study has explored one aspect of
ijmāᶜ, its use as a principle of exclusion from orthodoxy, and examined its
effects on the legal theory of one group within Islam, that of the Twelver
Shiᶜis. The result is an understanding of the role ijmāᶜ has played in
defining orthodoxy and heterodoxy, and the enormous influence it has had
on the development of the legal system of the Twelver Shiᶜis. Though
discussion here has been limited, for the most part, to the Twelver Shiᶜis,
similar phenomena are found in the history of Zaydi Shiᶜi and Khāriji
jurisprudence, and I hope to treat these more sparsely documented juridical
traditions in subsequent studies.

Using Twelver Shiᶜism as an example, this study has identified a
specific stigma thrust upon heterodox Islamic groups by the Sunni juridical
establishment and explored some of the strategies they used in order to
react to this pressure. With the establishment of the system of legal guilds
in the third/ninth, fourth/tenth, and fifth/eleventh centuries, orthodoxy
came to be defined, in Sunni theory, primarily by the consensus of the Sunni
jurists (ijmāᶜ), and this has been the predominant, although not the only,
system of orthodoxy in Islamic society until the present day. To go against
or violate consensus (mukhālafat al-ijmāᶜ) was to become an unbeliever
(kāfir) and earn expulsion the pale of orthodoxy. By the fourth/tenth
century, Shiᶜi jurists, along with other groups such as the Muᶜtazliah, felt

the need to react to this new definition of heresy or else risk being excluded from the Islamic community. Thus began a complex negotiation within Shī'ī and Sunnī legal theory, still going on today between Shī'ī and Sunnī jurists over the status of Shī'ism within Islam. The Shī'ī science of juridical methodology, inspired by the need to communicate with Sunnī jurists on common ground and often based closely on Sunnī usūl al-fiqh texts, was born and shaped largely by these negotiations.

While in the early period, Shī'īs expressed their attitudes towards the majority community through their theory of the imāmate, by the fourth/tenth century they felt the need to do so through the science of usūl al-fiqh. This study has outlined the three main types of Shī'ī reaction to the Sunnī legal system of orthodoxy. It is suggested that these reactions were normal reactions to the Shī'īs' stigmatized status within the Sunnī community. The Akhbārīs rejected Sunnī consensus and opted to be separate or deviant. In an effort to participate or even simply survive in Sunnī society, many Shī'īs outwardly adopted the Shāfi'ī legal guild. The internal attitude of Shī'ī scholars who did so varied widely, and ranged from scorn to acceptance of the Sunnī majority. For some it was a necessary evil to defend the faith against the enemy. For others it was a chance to contribute to a sophisticated system of legal education and scholarship. Some influential Shī'ī scholars, including a number of those who participated in the Shāfi'ī guild, strove to establish a Shī'ī legal guild parallel to those of the Sunnīs. It was this last strategy which guided the development of Twelver Shī'ī usūl al-fiqh. The development of Shī'ī usūl al-fiqh was not a blind adoption or servile imitation of Sunnī concepts and methods. Concepts needed to be adopted to Shī'ī tradition and doctrine, and

there always remained a tension between the goal of being accepted within the majority and the idea that Shīʿīs were actually a chosen community, favored with special access to God's guidance. The point to be gleaned here is not that any one of the attitudes towards the majority community expressed in these types of reaction was new, but that existing attitudes had to be expressed in new ways, in terms of the consensus, because of a profound change in the nature of religious authority which had taken place within the Sunnī community.

Although it is not the intention of this study to determine categorically whether Shīʿīs are orthodox are not, it does provide an understanding of orthodoxy as it worked in legal theory. In theory, Shīʿīs of the Akhbārī tendency would necessarily be termed heretical because they refused to recognize the legitimacy of ijmāʿ, and even proposed that Shīʿīs, when in doubt, should adopt opinions which are opposed to those prevalent among the Sunnis. Likewise, the Akhbārīs would also hold that the Sunnis are unequivocally unbelievers. Those Shīʿīs who infiltrated the Shāfiʿī legal guild are no more heretics, as Shāfiʿīs, than the Muʿtazilīs and Ashʿarīs who infiltrated the Sunnī guilds. Some of these infiltrators held that the Sunnīs were unbelievers, and that one should study with them only in order to be able to refute their arguments, whereas others had a more ecumenical view. The proponents of the fifth madhhab represent those scholars who espoused the integration of Shīʿism into the majority community. The extent of this integration proposed in the theories of these individual Shīʿī scholars varied, as did the extent of the willingness on the part of Sunnī jurists to accept their proposals. There was always a tension between the Shīʿīs' desire to participate in the majority community and their belief that they

were the chosen sect of Islam, al-firqah al-nājiyah, alone blessed with divine guidance to true faith.

The guild-based system of authority is today firmly established in Twelver Shīʿism, and has persevered through the centuries with remarkable intellectual vigor. One suspects that the strength of the present guild-system derives, in large part, from the radicalism of the anti-Akhbārī reaction in the eleventh/seventeenth and twelfth/eighteenth centuries. It is clear that the guild based system was first developed by the Sunnis. The Shīʿis, with their profound loyalty and ready access to their Imam, did not at first feel the need for such a system. However, when the new guild system threatened to exclude them from the pale of orthodoxy, they began to form their own guild, the Imāmī madhhab. In fact, the greater part of the history of Twelver Shīʿī jurisprudence must be seen with the process of forming this guild in its background.

Arnold Toynbee has claimed that all history is a response to a challenge. The threat which faced the Shīʿis, that of exclusion from the community by the Sunnī guild system, presented one of the most formidable challenges within the intellectual history of Islam. This study does not argue that the work of Shīʿī jurists is unoriginal, unimaginative, or merely derivative. Shīʿī scholars from the fourth/tenth century through the present have demonstrated repeatedly their genius in their efforts to answer the accusations which faced them, and in particular in their attempts to establish the fifth madhhab. The acceptance of Twelver and Zaydī Shīʿī law as legitimate by Maḥmūd Shaltūt, the Rector of al-Azhar, in 1959 is but one recent tribute to the intellectual vigor Shīʿī jurists have demonstrated in their struggle to participate in Islamic orthodoxy.

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