Islamic Studies 59:4 (2020) pp. 423–450

Discourse on the Legality of Rebellion in the Manuals of Creed with Focus on the Ḥanafī and Shāfiʿī Jurists

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Abstract

The present paper digs out the manuals of creed written by eminent jurists of the Ḥanafī and Shāfiʿī schools of law so as to expound the position of Islamic law on the issue of resistance against unjust rulers and usurpers. The reason for this is that discussions on this issue are found in the works on creed (called al-fiqh al-akbar*), not in the books of law-proper (*fiqh*). These discussions revolve around the concepts of prohibition of mischief and disorder, the obligation of commanding good and forbidding evil, and choosing the lesser of the two evils. Abū Ḥanīfah, the founder of the Ḥanafī school of law, held that an unjust person or the one who committed major sins was not entitled to rule the Muslim community. However, he did not allow the attempt to forcibly remove such a ruler as that might lead to bloodshed and disorder, unless it could be proved that it was the lesser of the two evils. Moreover, he was of the view that all the lawful commands of such an unjust ruler must be obeyed until he remained in power. Thus, while denying legitimacy to an unjust ruler, Abū Ḥanīfah accepted the consequences of the* de facto *authority for such a ruler under the doctrine of necessity. The paper shows that the same approach was later adopted by the Shāfiʿī jurists Imām al-Ḥaramayn al-Juwaynī and his illustrious disciple Abū Ḥāmid al-Ghazālī. The paper also disproves the theory preached by some contemporary scholars that al-Juwaynī and al-Ghazālī accepted the validity of two caliphs at one time. It shows that they meant administrators (*umarāʾ*, sing.* amīr*), not caliphs and that they emphatically asserted the need of having one caliph for the whole Muslim* ummah*.*

Keywords

rebellion, creed, unjust ruler, caliph, *imām*, *amīr*.

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The author is indebted to Professor Imran Ahsan Khan Nyazee, Professor Muhammad Munir, and Dr Muhammad Mushtaq Ahmad, whose comments on an earlier draft helped in improving this paper.

Introduction

In his monumental work *Rebellion and Violence in Islamic Law*, Khaled Abou El Fadl (b. 1963) makes a valuable point by highlighting the significance of theological questions while analyzing issues of political and constitutional nature.

> In the field of rebellion, Muslim jurists also responded to theological demands, e.g. how does one declare rebellion to be a crime without suggesting that some of the most esteemed Companions of the Prophet were criminals? Significantly, however, they also worked within an inherited legal culture that imposed its own logic and language.[1]

The political divide among Muslims in their early history was expressed in religious language.[2] With the passage of time, various political groups converted into religious sects each having its own set of beliefs as well as its own concept of the legitimate political authority. In time, three major groups were to emerge among Muslims, the Ahl al-Sunnah wa 'l-Jamā'ah, the Shī'ah, and the Khawārij.

Constitutional Issues and Religious Language

The Shī'ah believed that Muslim community could not live in accordance with the norms of Islam unless it was led by a rightful successor of the Prophet (peace be on him). In their opinion, it was so important an issue that it could not be left for people to decide. Thus, they asserted that succession to the Prophet (peace be on him) was declared by him through an explicit text (*naṣṣ*).[3] While various Shī'ah sub-groups disagree on the question of the legitimate authority, they all agree on one point that the successor of the Prophet (peace be on him) was to be from among the descendants of 'Alī (d. 40/661). The Khawārij, on the other hand, were anarchists in essence[4] and some of them took the extreme

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[1] Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001), 21.

[2] Muḥammad Abū Zahrah, *Ta'rīkh al-Madhāhib al-Islāmiyyah fī 'l-Siyāsah wa 'l-'Aqā'id wa Ta'rīkh al-Madhāhib al-Fiqhiyyah* (Cairo: Dār al-Fikr al-'Arabī, n.d.), 21–24.

[3] This is known as the doctrine of *imāmah*. Muḥammad 'Abd al-Karīm al-Shahrastānī, *al-Milal wa 'l-Niḥal* (Beirut: Dār Maktabat al-Mutanabbī, 1992), 1:146. Among the Shī'ah, the Zaydiyyah hold that the Prophet (peace be on him) did not name his successor, but mentioned his characteristics. Ibid., 1:153. The Shī'ah Imāmiyyah, on the other hand, believe that the Prophet mentioned his successor by name and the same is done by each *imām* in his turn. Ibid., 1:162.

[4] The famous Shāfi'ī jurist Shihāb al-Dīn Aḥmad Ibn Ḥajar al-Haytamī (d. 973/1566) summarizes the arguments of the Khawārij in these words: "Establishing governmental setup brings harm as it makes the commands of the ruler binding on the subjects even

position of asserting that political setup (*imāmah*) was not at all necessary.[5] The Ahl al-Sunnah, or the Sunnīs, were of the opinion that a political setup was necessary for enforcing various provisions of Islamic law.[6] For this reason, they put several conditions for the eligibility of a person to become the ruler of the community. However, unlike the Shīʿah, they did not deem it necessary that the Prophet explicitly declared the name of his political successor. Rather, they were of the opinion that political leadership was dependent upon the support of the Muslim community. In other words, only that person was entitled to caliphate who would command the confidence of the community.[7]

These groups also disagreed on the legal status of a ruler who did not fulfil the requisite conditions or who later on lost a necessary feature of qualification by committing a violation of some fundamental conditions. The Khawārij took the position that a Muslim committing a major sin (*kabīrah*) became infidel.[8] Thus, in their opinion, a usurper (*ghāṣib*) was not a legitimate ruler who must be removed from his office by the use of force, if necessary.[9] Similarly, in their view, a legitimate ruler who would later become unjust (*ẓālim*) or sinner (*fāsiq*), was no longer eligible to rule and must be removed.[10] Rebellion (*khurūj*) against

though both are equal and as such it results in mischief (*fitnah*). Moreover, the ruler is not infallible (*maʿṣūm*) from infidelity and sins. If he is not removed, he inflicts harm on people and overthrowing him is not possible without bloodshed." Al-Haytamī, *al-Ṣawāʿiq al-Muḥriqah ʿalā Ahl al-Rafḍ wa 'l-Ḍalāl wa 'l-Zandaqah* (Cairo: al-Maṭbaʿah al-Maymaniyyah, 1312 AH.), 1:26.

[5] The Najdāt, the followers of Najdah b. ʿUwaymir (d. 72/691), were of the opinion that establishment of political setup was not a requirement of the *sharīʿah* but a dictate of the practical needs. Abū Zahrah, *Taʾrīkh al-Madhāhib al-Islāmiyyah*, 122.

[6] Al-Haytamī, *al-Ṣawāʿiq al-Muḥriqah*, 1:25.

[7] Notwithstanding this, the Ahl al-Sunnah generally asserted that the caliph should be from the tribe of the Quraysh. Ibid., 1:132–13. In fact, this has been explicitly mentioned in various traditions of the Prophet (peace be on him). See Muḥammad b. Ismāʿīl al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-aḥkām, Bāb al-umarā' min Quraysh; Aḥmad b. Ḥanbal al-Shaybānī, *al-Musnad*, Bāqī musnad al-mukthirīn, Musnad Anas b. Mālik. In the tenth/sixteenth century when the Ottomans established their caliphate, many Sunnī jurists felt compelled to re-examine their position. For instance, see Abū 'l-Kalām Āzād, *Mas'alah-i Khilāfat* (Lahore: Maktabah-i Jamāl, 2006). This issue bothered many Muslims thinkers in the fourteenth/twentieth century. For instance, see Sayyid Abū 'l-Aʿlā Maudūdī, *Tafhīmāt* (Lahore: Islamic Publications, 1978), 129–52; Amīn Aḥsan Iṣlāḥī, *Islāmī Riyāsat* (Lahore: Dār al-Tadhkīr, 2002).

[8] Al-Shahrastānī, *al-Milal wa 'l-Niḥal*, 1:113

[9] Ibid.

[10] Ibid.

unjust rulers and usurpers was, thus, obligatory according to the Khawārij.[11]

The Shīʿah also had strong reservations regarding the legitimacy of the usurpers and unjust rulers.[12] However, they disagreed on the legitimacy or obligation of *khurūj* against such rulers. While some of the leading figures among the various Shīʿah groups, such as Muḥammad b. al-Ḥanafiyyah, (d. 81/700) Zayd b. ʿAlī (d. 122/744), and Muḥammad Dhū 'l-Nafs al-Zakiyyah (d. 145/762), revolted against the Umayyads and the Abbasids, the *imām*s of the Twelver Shīʿah never revolted against any ruler.[13] This was either because they could not express their beliefs regarding rebellion,[14] or because they were of the opinion that rebellion would result in a greater evil than the evil of the continued existence of an unjust ruler.[15] If it was this latter consideration, their view was not different from that of the Sunnī jurist Abū Ḥanīfah al-Nuʿmān b. Thābit (d. 150/767).

The Sunnī jurists tolerated the rule of usurpers firstly because in their opinion a Muslim remained Muslim even after committing a major sin, and secondly because they concluded that rebellion would result in bloodshed and anarchy, which was a greater evil. Some of them went to the extreme of asserting that any attempt to remove an unjust ruler was *fitnah* (mischief). Thus, they preached passive obedience to tyrants.[16] As opposed to them, Abū Ḥanīfah strongly advocated the right of the community to remove an unjust ruler.[17]

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[11] Ibid.

[12] Ibid., 1:147-49.

[13] For the Sunnī perspective of the struggle of Ḥusayn b. ʿAlī against the Umayyad ruler Yazīd, see Āzād, *Mas'alah-i Khilāfat*, 99. Āzād is of the opinion that there were two stages in the struggle of Ḥusayn. When he went out of Medina, the caliphate of Yazīd had not been established and many important cities had not yet taken the oath of allegiance to him. However, when Ḥusayn reached near Kufa, it became apparent to him that the people thereof had bowed to the rule of Yazīd. At that point, he decided to return to Medina, but the government forces encircled him and forced him to fight until he was martyred.

[14] This is known as the Shīʿah doctrine of *taqiyyah*, a dispensation allowing believers to conceal their faith when under threat, persecution, or compulsion. Al-Shahrastānī, *al-Milal wa 'l-Niḥal*, 1:145.

[15] This is how the Sunnī scholars interpret the conduct of these *imām*s.

[16] The doctrine of passive obedience to tyrants led people to fatalism. For details of the doctrines of Jabriyyah (fatalists), see ibid., 1:84–90.

[17] The famous Ḥanafī jurist Aḥmad b. ʿAlī al-Jaṣṣāṣ (d. 370/980) has given details of the position of Abū Ḥanīfah on these issues and he severely criticized those who preached passive obedience to tyrants. Aḥmad b. ʿAlī al-Jaṣṣāṣ, *Aḥkām al-Qur'ān* (Karachi: Qadīmī Khutub Khānah, n.d.), 1:99–101 and 2:50–51. Also see Manāẓir Aḥsan Gīlānī, *Ḥaẓrat Imām Abū Ḥanīfah kī Siyāsī Zindagī* (Karachi: Nafees Academy, 1949). For the legal questions

In view of this variety of approaches of the Muslim jurists, it is surprising to see modern scholars generally denying the existence of "the right to rebellion" in the Islamic legal discourses.

Orientalists' Denial of the Right to Resist an Unjust Ruler in Islamic Law

Modern scholars have generally denied the existence of the right to rebellion in Islamic law.[18] Hamilton Gibb (d. 1971), the foremost proponent of this theory, interprets the development of the Muslim juridical discourse on rebellion in the light of the historical factors in the following manner: First, initially Muslim jurists laid down very strict conditions for the position of caliph and they envisaged a single *imām* (ruler) for the Muslim community who could be removed by the community if he became unjust.[19] Second, later, Muslim jurists were compelled by the Khawārij's anarchist revolts to deny the right to rebel against an unjust ruler.[20] Third, by the fifth/eleventh century, the Shāfi'ī jurists Abū 'l-Ḥasan al-Māwardī (d. 450/1058), in order to defend the Abbasid caliphate, recognized the legitimacy of the authority of the usurpers in the provinces on the condition that they pledged allegiance to the caliph.[21] Thus, he made obedience to usurpers a moral and legal obligation.[22] Fourth, by the time of the Shāfi'ī jurist Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī (d. 505/1111), the Saljūq power was established in Baghdad and al-Ghazālī had to reconcile the temporal powers of the Saljūq sultans to the religious authority of the caliph.[23]

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relating to these issues, see Sadia Tabassum, "Recognition of the Right to Rebellion in Islamic Law with Special Reference to the Ḥanafī Jurisprudence," *Hamdard Islamicus*, 34:4 (2011): 55–91.

[18] For instance, see H. A. R. Gibb, "Constitutional Organization," in *Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington DC: Middle East Institute, 1955), 1–15. Abou El Fadl summarizes "the most basic formulation" of the accepted thesis in the following words: "Muslim jurists moved from the absolute realm of political idealism to an absolute realm of political realism." Abou El Fadl, *Rebellion and Violence*, 8.

[19] Gibb, "Constitutional Organization," 6–14.

[20] Ibid., 15.

[21] Ibid., 18–19. Also see Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1973), 101–02.

[22] Gibb, "Constitutional Organization," 15.

[23] Ibid., 19. Ann Lambton argues that al-Ghazālī was more concerned with the threat of internal strife (*fitnah*) than the external invasion of the Crusaders. Ann K. S. Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory; The Jurists* (Oxford: Oxford University Press, 1981), 109.

Fifth, the Shāfiʿī jurist of the eighth/fourteenth century, Muḥammad Ibn Jamāʿah (d. 733/1333), equated power with legality.[24]

This thesis has generally been accepted by modern scholars,[25] although some of them have tried to modify it slightly. Thus, Hanna Mikhail asserts that while Muslim jurists felt compelled to accept the political reality, they persistently declared that the ruler must fulfil the requirements of justice and religion.[26] Mikhail agrees with Gibb on declaring that with the passage of time Muslim jurists started preaching quietism and prohibiting rebellion.[27] He, however, points out that Abū Ḥayyān al-Andalusī (d. 754/1353) in the eighth/fourteenth century argued in favour of use of force against unjust ruler, but Mikhail considers it an exception calling Abū Ḥayyān "a voice in the wilderness."[28]

The main flaw in this thesis is that it ignores the classical manuals of *fiqh*. Muslim jurists, particularly the Ḥanafīs, developed a detailed law of rebellion as early as the second/eighth century. Thus, *Kitāb al-Aṣl* of Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805), who compiled the six basic texts of the Ḥanafī school, contains a chapter on *siyar* or the law of war. This chapter contains detailed exposition of the law of rebellion in a separate section under the title of *Bāb al-Khawārij*.[29] The same is true of al-Shaybānī's other book *al-Siyar al-Ṣaghīr*, which contains a precise summary of the position of the Ḥanafī school on the issues relating to war.[30] Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820), the founder of the

[24] Gibb, "Constitutional Organization," 23. He assumes that Ibn Jamāʿah abandoned law in favour of secular absolutism. This assumption is, of course, wrong.

[25] Fazlur Rahman, "The Law of Rebellion in Islam" in *Islam in the Modern World: 1983 Pain Lectures in Religion*, ed. Jill Raitt (Columbia, MO: University of Missouri-Columbia, n.d.). Lambton further extends this theory by asserting that neither the Shīʿah nor the Sunnī jurists discussed rebellion in detail. This is a strange assertion because even in the second/eighth century Muslim jurists had developed a detailed law of rebellion. See Sadia Tabassum, "Discourse on the Legality of Rebellion in the Ḥanafī Jurisprudence," *Peshawar Islamicus* 8, no. 2 (2017): 15-30.

[26] Hanna Mikhail, *Politics and Revelation: Māwardī and After* (Edinburgh: Edinburgh University Press, 1985), 28.

[27] Ibid., 38.

[28] Ibid., 50.

[29] Majid Khadduri (d. 2007), the famous Iraqi-American scholar, edited and translated this chapter along with two other chapters on *kharāj* and *'ushr* from *Kitāb al-Aṣl* and published them under the title of *The Islamic Law of Nations: Shaybānī's Siyar* (Baltimore: John Hopkins University Press, 1966. For the issues of rebellion, see ibid., 230–53.

[30] Mahmood Ahmad Ghazi (d. 2010) edited and translated this book under the title of *The Shorter Book on Muslim International Law* (Islamabad: Islamic Research Institute, 1998). For the issues of rebellion, see ibid., 75–81. The same is true of other manuals of the Ḥanafī school.

Shāfiʻī school of law and a student of al-Shaybānī, devoted a separate chapter to the law of rebellion in his *magnum opus* titled *Kitāb al-Umm*.[31]

Ignoring these basic sources of Islamic law and relying heavily on secondary sources have led scholars to speculations and wrong conclusions. For instance, accusing al-Māwardī of legalizing the rule of usurpers in the fifth/eleventh century ignores not only the *legal* distinction between *de facto* and *de jure* authority, but also overlooks the historical fact that Muslim jurists have always accepted some legal consequences of the *de facto* authority of usurpers even when they simultaneously denied legitimacy of their rule. Moreover, al-Māwardī himself mentions the same conditions and prerequisites for the ruler, which the earlier jurists had laid down.[32] The same is true of al-Ghazālī.[33] Hence, the view of Bernard Lewis is more convincing as he asserts that the two approaches of passive obedience to rulers and rebellion against unjust rulers existed simultaneously throughout early Islamic history.[34]

Another serious flaw in this thesis is that it ignores the work of those jurists who advocated the right of rebellion against unjust rulers. For instance, Aḥmad b. ʻAlī al-Jaṣṣāṣ (d. 370/981), the famous Ḥanafī jurist, linked the right to rebellion against unjust ruler to the religious and legal obligations of enjoining right and forbidding wrong (*al-amr bi ʾl-maʻrūf wa ʾl-nahy ʻan al-munkar*) and severely criticized those who preached passive obedience to unjust rulers.[35] It is important to note that al-Jaṣṣāṣ does not call it his personal opinion. Rather, he cites it as the legal position of Abū Ḥanīfah, the founder of the Ḥanafī school.[36] The same is the opinion of ʻAlī b. Aḥmad al-Marghīnānī (d. 593/1197), author

[31] This encyclopedic work of Shāfiʻī contains several chapters relating to *siyar*, and one of these chapters is *Kitāb qitāl ahl al-baghy wa ahl al-riddah*. Muḥammad b. Idrīs al-Shāfiʻī, *Kitāb al-Umm*, ed. Aḥmad Badr al-Dīn Ḥassūn (Beirut: Dār Qutaybah, 2003), 5:179–242. The later Shāfiʻī jurists followed this practice. Thus, *al-Muhadhdhab* of Ibrāhīm b. ʻAlī al-Shīrāzī also contains a separate chapter on *baghy* titled *Kitāb qitāl ahl al-baghy*. Ibrāhīm b. ʻAlī al-Shīrāzī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfiʻī* (Beirut: Dār al-Maʻrifah, 2003), 3:400–23.

[32] ʻAlī b. Muḥammad al-Māwardī, *al-Aḥkām al-Sulṭāniyyah wa ʾl-Wilāyāt al-Dīniyyah* (Kuwait: Maktabat Dār Ibn Qutaybah, 1989), 5.

[33] See the last section of this article.

[34] Bernard Lewis, *The Political Language of Islam* (Karachi: Oxford University Press, 1987), 92. However, Lewis also declares that later Muslim jurists preached obedience to rulers, be just or unjust and finally accepted the doctrine of passive obedience. Ibid., 100; Lewis, *Islam in History: Ideas, People and Events in the Middle East* (Chicago: Open Court, 1993), 314.

[35] Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 1:99–101.

[36] Ibid.

of the famous Ḥanafī manual *al-Hidāyah*,[37] as well as the later Ḥanafī jurists.[38] Thus, to consider Abū Ḥayyān as "a voice in the wilderness" is not correct.[39]

More importantly, Gibb, Mikhail, and other scholars also did not use the "proper" legal sources. Ann Lambton (d. 2008), the famous British historian, divides the literature on Islamic polity into three categories: "the theory of the jurists, the theory of the philosophers, and the literary theory."[40] We may add here that among the books for the "theory of jurists," there are two strands: books of law-proper, or manuals of *fiqh*, and books of creed or *fiqh akbar*. Significantly, discourse of the right to rule the Muslim community and the right to resist an unjust ruler is found in greater details in the books of creed, as we shall show below.[41]

After contextualizing this debate, the present article will now examine the views of Abū Ḥanīfah as recorded in the manuals of creed ascribed to him or compiled by renowned Ḥanafī jurists. After this, it will analyze the views of two prominent jurists of the Shāfiʿī school—ʿAbd al-Malik b. ʿAbd Allāh al-Juwaynī (d. 478/1085) and his disciple the illustrious al-Ghazālī—because Orientalists generally rely on the views of the Shāfiʿī jurists to substantiate the view that Muslim jurists preached passive obedience to usurpers and unjust rulers.

Resisting the Unjust Ruler: An Analysis of the Two Major Works of the Ḥanafī Theology

Among the works on theology composed by jurists of the Ḥanafī school, foremost is the *matn* of *al-Fiqh al-Akbar*, which is ascribed to the founder

[37] ʿAlī b. Abī Bakr al-Marghīnānī, *al-Hidāyah Sharḥ Bidāyat al-Mubtadī* (Beirut: Dār al-Fikr, n.d.), 3:101.

[38] ʿAlāʾ al-Dīn b. Aḥmad al-Ḥaṣkafī (d. 1088/1677), a renowned Ḥanafī jurist, asserts that when a just government official becomes unjust his removal becomes obligatory. Muḥammad Amīn Ibn ʿĀbidīn al-Shāmī (d. 1252/1836) explicitly states that this has been the established opinion of the Ḥanafī school. Muḥammad Amīn b. ʿĀbidīn al-Shāmī, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 5:414. Al-Jaṣṣāṣ also asserts that the same is the rule for the caliph because the Ḥanafī school does not distinguish between the legal position of the caliph and that of the government officials. Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 1:99.

[39] It is also worth noting that this thesis ignores the rich variety of juristic opinions in Islamic law and primarily relies on the views of the jurists of only one school (i.e., al-Māwardī, al-Ghazālī, and Ibn Jamāʿah, all belonged to the Shāfiʿī school).

[40] Lambton, *State and Government in Medieval Islam*, xvi.

[41] For the details of the works of the Orientalists on the issue of rebellion and their major shortcomings, see Sadia Tabassum, "Modern Discourse on the Islamic Law of Rebellion," *Hazara Islamicus* 5:2 (2017): 1–23.

of the school Abū Ḥanīfah.[42] While some scholars doubt his authorship of this *matn*, it is agreed upon that the issues related to the institution of *imāmah* mentioned in this *matn* was undoubtedly the creed of Abū Ḥanīfah.[43] Another important *matn* composed by Aḥmad b. Muḥammad b. Salāmah al-Azdī al-Ṭaḥāwī (d. 321/933), a leading jurist and authority of the Ḥanafī school, is titled *al-ʻAqīdah al-Ṭaḥāwiyyah*.[44] Some of the significant passages from these two texts are briefly analyzed here.

Al-Fiqh al-Akbar *and the Political System of Islam*

Al-Fiqh al-akbar (greater law) is the title, which was initially given to the study of creed and theology. The definition of *fiqh* ascribed to Abū Ḥanīfah is "a person's knowledge of his rights and obligations (*maʻrifat al-nafs mā lahā wa mā ʻalayhā*)."[45] This definition included Islamic theology (*ʻilm al-kalām*). Later, however, as *fiqh* was confined to issues pertaining to "acts," the Ḥanafī jurists modified this definition as: "A person's knowledge of his rights and obligations relating to conduct (*ʻamalan*)."[46]

Establishing Political Order: A Religious Obligation

The first issue about political order framed in *al-Fiqh al-Akbar* is whether or not appointing a ruler and establishing political order is an obligation? If yes, whether this obligation arises from reason (*ʻaqlan*) or revelation (*samʻan*)? The position adopted by Abū Ḥanīfah is that revelation makes it obligatory for people to establish political order.[47]

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[42] Muḥammad ʻAbd al-Sattār al-Kardarī, *Manāqib al-Imām al-Aʻẓam* (Hyderabad: Dā'irat al-Maʻārif al-Nuʻmāniyyah, 1321 AH), 2:108. It is a historically established fact that Abū Ḥanīfah excelled in scholastics and theology before turning to study law.

[43] Muḥammad Abū Zahrah, *Abū Ḥanīfah: Ḥayātuhu wa ʻAṣruhu wa Ārā'uhu wa Fiqhuh* (Cairo: Dār al-Fikr al-ʻArabī, 1369/1947), 86–189. Also see Abū 'l-Aʻlā Maudūdī, *Khilāfat-o Mulūkiyyat* (Lahore: Idārah-i Tarjumān al-Qur'ān, 2003), 230.

[44] ʻAlī b. ʻAlī Ibn Abī 'l-ʻIzz, *Sharḥ al-ʻAqīdah al-Ṭaḥāwiyyah* (Beirut: Mu'assasat al-Risālah, 1411/1990).

[45] ʻUbayd Allāh b. Masʻūd al-Bukhārī, *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ* (Beirut: Dār al-Kutub al-ʻIlmiyyah, n.d.), 1:10. Saʻd al-Dīn Masʻūd b. ʻUmar al-Taftāzānī, *al-Talwīḥ fī Kashf Ḥaqā'iq al-Tanqīḥ* (Beirut: Dār al-Kutub al-ʻIlmiyyah, n.d.), 1:20.

[46] Al-Bukhārī, *al-Tawḍīḥ*, 1:10. The Shāfiʻī jurists define *fiqh* as "knowledge of the legal rules pertaining to conduct that have been derived from their specific evidences (*al-adillah al-tafṣīliyyah*)." Muḥammad b. ʻAbd Allāh al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh* (Kuwait: Dār al-Ṣafwah, 1992), 21. For a discussion on the meaning of *dalīl tafṣīlī* and how this definition of *fiqh* is problematic from the perspective of the Ḥanafī legal theory, see Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 2000), 26–32.

[47] Al-Mullā ʻAlī b. Suṭlān Muḥammad al-Qārī, *Minaḥ al-Rawḍ al-Azhar fī Sharḥ al-Fiqh al-Akbar* (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 1419/1998), 410. The commentator of the

The second issue is how to appoint a ruler? *Al-Fiqh al-Akbar* mentions two modes for this purpose: election by *ahl al-ḥall wa 'l-'aqd* (literally: those who can untie and tie) or nomination by an existing ruler.[48] The appointment of Abū Bakr and 'Umar are cited as examples of election and nomination respectively.[49] Significantly, *al-Fiqh al-Akbar* does not mention power (*shawkah*) as a lawful mode for acquiring political power.[50]

Prohibition of Having Two Rulers at One Time

After this, the most important issue for the purpose of the present article comes, namely, having two rulers at one time. Abū Ḥanīfah explicitly disallows this and the commentator of *al-Fiqh al-Akbar*, Mullā 'Alī al-Qārī (d. 1014/1606) explains the principle on which this prohibition is based in the following words: "Because it leads to disputes and conflicts which cause disagreement in religious and worldly affairs, as observed in our time."[51] He, then, mentions the opinion of some of the scholars who allow this "for distant territories which are not linked to each other." He, however, refutes this as opposed to the Prophetic commandments:

> This *prima facie* opposes the saying of the Prophet (peace be on him): "When oath of allegiance is given to two caliphs, kill the later," narrated by Muslim through Abū Sa'īd al-Khudrī. The command for killing means, as asserted by scholars, "When he is not subdued except by killing." This because when he insists on disagreement, he is transgressor (*bāghī*); so when he cannot be subdued except by killing, he is killed.[52]

The later jurists further build upon this fundamental principle and examine the various possibilities: what if there are two claimants of caliphate each of one of whom fulfils the requisite qualification whether

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text adds the following explanatory note to this ruling: "They have a consensus on the obligation of appointing a ruler. The disagreement relates only to if it is obligatory for God or people, due to an argument based on revelation (*dalīl sam'ī*) or reason (*dalīl 'aqlī*). Thus, the position of the Ahl al-Sunnah as well as most of the Mu'tazilah is that it is obligatory for people due to revelation." He also points out that the Khawārij had a dissenting opinion on this issue, but their dissent is of no legal value here. Ibid.

[48] Ibid.

[49] Ibid.

[50] The later jurists mentioned it. However, this did not mean that they deemed it a lawful mode. Rather, they were concerned with the legal consequences of the *de facto* authority of the usurpers.

[51] Al-Qārī, *Minaḥ al-Rawḍ al-Azhar*, 411.

[52] Ibid.

the first in time shall be deemed the caliph or the one who commands the confidence of the majority? Al-Qārī narrates two opinions on this issue: one from al-Ghazālī and the other from Kamāl al-Dīn Ibn al-Humām al-Iskandarī (d. 861/1457), a Ḥanafī jurist.

> Al-Ghazālī says, "When many people have the requisite characteristics, ruler is the one to whom most people give allegiance; and the one who opposes him is *bāghī* who must be compelled to submit to justice." Ibn al-Humām asserts, "The position of other authorities of Ahl al-Sunnah is that the first in time must be considered and the second one must be compelled to submit to him."[53]

Interestingly, al-Qārī suggests that the opinions are not conflicting and that they can be reconciled, "It is obvious that the statement of al-Ḥujjah [i.e., al-Ghazālī] can be interpreted in a way that it becomes compatible with the position of the other Ahl al-Sunnah. Think about it!"[54] This debate is very important for understanding the approach of the jurists to the issue of rebellion and civil war, but this needs a separate detailed analysis.[55]

Fulfilment of Religious Criteria before a Person Acquires the Right to Rule the Muslim Community

For qualification of the ruler, Abū Ḥanīfah prescribes two essential conditions: 1) he must be a Qurayshī[56] and 2) he must have the capacity for absolute and complete legal authority (*al-wilāyah al-muṭlaqah al-kāmilah*).[57] As explained by al-Qārī, this means that he must be Muslim, free, male, sane, and major.[58]

It is important to note that according to Abū Ḥanīfah, a ruler does not lose authority (*lā yan'azil*) due to sin or tyranny.[59] Al-Qārī explains this by asserting,

> These two features were manifest in the rulers after the [rightly guided] caliphs but despite this the patriarchs (*al-salaf*) submitted to their rule,

[53] Ibid.
[54] Ibid.
[55] For a detailed elaboration of this issue, see Tabassum, "Discourse on the Legality of Rebellion in the Ḥanafī Jurisprudence," 15–30.
[56] Al-Qārī, *Minaḥ al-Rawḍ al-Azhar*, 412-13. As opposed to the Shī'ah theologians, Abū Ḥanīfah does not deem it essential that he must be a Hāshimī or 'Alawī or that he must be *ma'ṣūm*. Ibid., 413.
[57] Ibid.
[58] Ibid., 413–14.
[59] Ibid., 414.

> established the Friday and *ʿĪd* prayers with their permission and did not consider rebellion against them permissible. Hence, this was a consensus of them on considering the rule of those becoming sinners and tyrants valid; rather, they deemed it valid *ab initio*.[60]

As to why many of the Companions and their Followers did not rebel against the usurpers, al-Qārī has the following explanation:

> Undoubtedly, they feared the likes of Yazīd, al-Ḥajjāj, and Ziyād and it was not possible to rise up against the tyrant adversaries, as it would result in various forms of *fasād*. It is for this reason that Ibn ʿUmar (God be pleased with him) used to prohibit Ibn al-Zubayr (God be pleased with him) from claiming caliphate although none disagrees that he was more deserving and more capable than the tyrant rulers.[61]

The later jurists have generally adopted this line of argument and disapproved armed resistance against usurpers, as they believed this would result in *fasād* and bloodshed.

De facto Authority of a Usurper

An interesting point, however, may be discussed here. This relates to the legal authority (*wilāyah*)[62] of a sinner. Al-Shāfiʿī is reported to have declared that the ruler loses authority when he commits sin or injustice and that the same is the rule for every judge and governor.[63] The fundamental principle for al-Shāfiʿī is that the one who does not care for himself, cannot care for others.[64] As opposed to this, Abū Ḥanīfah holds

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[60] Ibid.
[61] Ibid.
[62] *Wilāyah* means the authority granted by Islamic law to a person to make decisions on behalf of another person. If such an authority is granted by the owner of the right himself, it is called *wakālah* (agency). As opposed to *wakālah*, which is "delegated authority," *wilāyah* is granted by the law, such as the authority that is granted to the guardian of a minor to buy or sell property for him/her or to conclude marriage contract for him/her. For details of the doctrine of *wilāyah* for the purpose of the marriage contract, see Abū Bakr b. Masʿūd al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Ṭartīb al-Sharāʾiʿ*, ed. ʿAlī al-Muʿawwaḍ and ʿĀdil ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 3:338–89. Also see Imran Ahsan Khan Nyazee, *Outlines of Muslim Personal Law* (Islamabad: Shariah Academy, 2019), 287–292.
[63] Al-Qārī, *Minaḥ al-Rawḍ al-Azhar*, 414.
[64] Muḥammad b. al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāẓ al-Minhāj* (Beirut: Dār al-Maʿrifah, 1418/1997), 3:209. Al-Qārī notes, "What is written in the manuals of the Shāfiʿī jurists is that the judge loses authority due to committing a sin while the ruler does not lose it. This distinction is based on the fact that if he loses authority and it becomes obligatory to appoint someone else in place of him, it

that a sinner does not lose *wilāyah* because otherwise even a dissolute father would lose the authority to conclude marriage contract for his minor daughter.[65]

The jurists, then, go into further details if the ruler (or the judge) was pious at the time of his appointment but later became sinner, or if a just ruler turns into unjust, whether he would lose authority or not and whether his judgements and decisions would be valid and enforced or not? A detailed analysis of these issues is beyond the scope of the present paper. It may be noted here, however, that all of them agree that even if such a ruler (or judge) does not lose authority (*lā yan'azil*), he deserves removal (*'azl*).[66]

A question may be raised here: If he deserves removal, how is it done? A possible answer is: He may be removed by *ahl al-ḥall wa 'l-'aqd*. What if even that is not possible? Can he be removed by the use of force? As noted above, the jurists would not allow this as it would lead to *fasād*. However, if the continued rule of the usurper is deemed greater evil, can he be removed through the lesser evil of rebellion? *Al-Fiqh al-Akbar* is silent on these issues. Therefore, we now turn to *al-'Aqīdah al-Ṭaḥāwiyyah* to find answers to these questions.

Al-'Aqīdah al-Ṭaḥāwiyyah *and the Prohibition of Rebellion*

Al-Ṭaḥāwī was a leading jurist of the Ḥanafī school and deemed an authority on the position of the school as well as that of Abū Ḥanīfah and his disciples. At the beginning of this text called *al-'Aqīdah al-Ṭaḥāwiyyah*, he explicitly asserts,

> This is the creed of the Ahl al-Sunnah wa 'l-Jamā'ah according to the doctrine of the jurists of the community Abū Ḥanīfah al-Nu'mān b. Thābit al-Kūfī, Abū Yūsuf Ya'qūb b. Ibrāhīm al-Anṣārī, and Abū 'Abd Allāh Muḥammad b. al-Ḥasan al-Shaybānī (God be pleased with them all), as they believed in the fundamentals of the religion and as they worshipped the Lord of the worlds.[67]

This creed has some very significant points about the way Abū Ḥanīfah and his disciples interpreted the history and conduct of their

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provokes serious conflict, because the ruler, as opposed to the judge, has great power (*al-shawkah*)." Al-Qārī, *Minaḥ al-Rawḍ al-Azhar*, 414. This exposition of the official view of the Shāfi'ī school is correct. For instance, see al-Shirbīnī, *Mughnī 'l-Muḥtāj*, 4:509.

[65] Al-Qārī, *Minaḥ al-Rawḍ al-Azhar*, 414. For a detailed discussion, see al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:349–52.

[66] Al-Qārī, *Minaḥ al-Rawḍ al-Azhar*, 415.

[67] Ibn Abī 'l-'Izz, *Sharḥ al-'Aqīdah al-Ṭaḥāwiyyah*, 13.

predecessors, including Companions and Followers, and how they looked at the various rulers after the Prophet (peace be on him) and the rightly guided caliphs. It also shows how they looked at the various doctrinal differences of the various groups such as Khawārij and Shīʿah. However, this article will examine only the passages directly relevant to rebellion against unjust rulers.

Al-Ṭaḥāwī reports the creed of Abū Ḥanīfah and his disciples regarding apostasy and abandoning of faith by a Muslim: "A person does not leave faith except by disavowing what brought him into it."[68] Thus, a sinner remains Muslim according to this creed, as opposed to the creed of the Khawārij and Muʿtazilah.[69] This had important implications for rebellion against an unjust ruler. Even if he does injustice, he remains Muslim and, thus, retains *wilāyah* for other Muslims.[70]

This is further substantiated by another element of this creed, "We accept the performance of prayer behind any of the people of the *qiblah*[71] whether righteous or sinful, and we perform the funeral prayer over any of them when they die."[72] As a necessary corollary of this, it is also stated that taking up arms against any of these Muslims is prohibited, except where the law makes it obligatory, "We do not accept raising the sword against anyone from the people of Muḥammad, peace and blessings be upon him, except for those for whom it is obligatory to fight."[73]

This creed essentially prohibits not only the use of force against an unjust ruler but also against those who resist such a ruler as the prohibition is imposed on both factions of Muslims. However, the exception: "except for those for whom it is obligatory to fight" is very important. Who are they? Unjust rulers? Or rebels? Or both? The text of

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[68] Ibid., 458.

[69] For a detailed discussion on this and related issues and the views of various schools, see ibid., 432–59.

[70] Ibid., 524–29.

[71] *Ahl al-qiblah*, which literally means "people of the same direction of prayer," is the term used for all those who profess faith in the basic tenets of Islam and do not profess faith in contradictory beliefs. In other words, this term is used as equivalent of "Muslims." In the early period of Islamic history, the direction of prayer was a distinguishing factor between Muslims and non-Muslims. Initially, Muslims used to offer prayer towards *Bayt al-Maqdis* in Jerusalem, which distinguished them from the Arab pagans. Later, when they were ordered to offer prayers towards *Kaʿbah* in Medina, they got distinguished from the Jews as Christians. Thus, the Prophet is reported to have mentioned it among the characteristic features of Muslims that they offer prayers towards the *Kaʿbah*. Al-Bukhārī, Kitāb al-ṣalāh, Bāb istiqbāl al-qiblah.

[72] Ibn Abī 'l-'Izz, *Sharḥ al-ʿAqīdah al-Ṭaḥāwiyyah*, 529.

[73] Ibid., 539.

the creed does not give any explicit answer to these questions, but the next point in the creed is very significant which says,

> We do not allow rebellion against our rulers or those in charge of our affairs even if they are unjust, nor do we wish evil for them, nor do we refuse to follow them. We hold that obedience to them is part of obedience to Allah the Exalted and therefore obligatory as long as they do not command us to commit sins. We pray for their right guidance and pardon.[74]

The exception: "as long as they do not command us to commit sins" obviously qualifies the apparently absolute obligation of obedience to the rulers. What is the legal opinion if they do command us to commit sins? The next point in the creed may shed some light on the nature and true purport of this prohibition: "We follow the *sunnah* and the *jamā'ah* and we abandon deviation, differences, and division."[75] As noted above, the emphasis is on keeping order and peace and avoiding bloodshed and mischief. However, again a question may arise: What is the legal opinion if the continued existence of an unjust ruler leads to greater mischief and a group of Muslims can come up with an alternative and better leadership using force? Can it be permitted as a lesser evil then?

These questions are important because the next point in the creed makes it obligatory for Muslims to love just people and hate the unjust people: "We love the people of justice and honesty and we hate the people of injustice and treachery."[76] What are, then, the practical implications of this love for justice and hate for injustice? Answers to these questions are unfortunately not found in the text of this creed, not at least in explicit form. The Ḥanafī jurists answered them in detail in their manuals of *fiqh*. However, analyzing those passages is beyond the scope of the present paper, which focuses on manuals of creed only.[77] It will suffice to quote Abū 'l-A'lā Maudūdī (d. 1979), the famous twentieth-century scholar, who explains the consequences of the theological position taken by Abū Ḥanīfah in the following words:

> This creed meant that the community had full trust in the early Muslim society established by the Prophet (peace be on him). The community accepts all the decisions made by that society through consensus or

[74] Ibid., 540.
[75] Ibid., 544.
[76] Ibid., 546.
[77] For an analysis of the relevant passages of the Ḥanafī *fiqh* manuals, see Tabassum, "Discourse on the Legality of Rebellion in the Ḥanafī Jurisprudence," 15-30.

> majority. It accepts the legal and the constitutional status of the caliphs elected successively by that society as well as of the decisions of those caliphs. Furthermore, it accepts the whole knowledge of the *sharīʿah* transmitted from the members of that society (Companions) to the Muslim community through generations.[78]

Islamic Political Order: Views of al-Juwaynī and al-Ghazālī

Al-Juwaynī was undoubtedly one of the most influential Shāfiʿī jurists whose work shaped in many ways the discourse on Islamic legal theory as well as law. His masterpiece on the questions related to *imāmah* is titled *Ghiyāth al-Umam fī Iltiyāth al-Ẓulam*. Some contemporary scholars believe that, as opposed to the jurists who preceded him and always advocated one central caliphate for the whole of the Muslim world, al-Juwaynī justified and argued for the validity of multiplicity of Muslim rulers. A detailed and careful examination of this work, however, reveals that this claim is not correct and that al-Juwaynī did not deviate from the position, which the Muslim jurists generally adopted about the necessity of a single caliphate. He emphatically asserted this. He, however, acknowledged the consequences of the *de facto* authority of the persons who effectively controlled various parts of the Muslim world and, for this purpose, he primarily relied on the doctrine of necessity. His position in this regard is not different from that of Abū Ḥanīfah.

The Religious Obligation of Establishing Political Order

Al-Juwaynī first mentions the opinion of the jurists that appointing the ruler is obligatory. [79] After this, he severely criticizes the opinion of Abū Bakr al-Aṣamm (d. ca. 200/815) who does not consider it obligatory. Al-Juwaynī asserts that his opinion has no value because all scholars and schools before him had reached a consensus on the obligation of appointing the ruler.[80]

However, al-Juwaynī admits that there is a little disagreement on the source of this obligation. The overwhelming majority of the scholars hold that it is the revealed law which makes it obligatory, while a few Shīʿah scholars consider that it is obligatory because of the dictates of reason.[81] Al-Juwaynī points out that this disagreement is based on two

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[78] Maudūdī, *Khilāfat-o Mulūkiyyat*, 236.
[79] Al-Juwaynī, *Ghiyāth al-Umam fī Iltiyāth al-Ẓulam*, ed. ʿAbd al-ʿAẓīm al-Dīb (Cairo: Maktabat Imām al-Ḥaramayn, 1401/1981), 22.
[80] Ibid., 22–24.
[81] Ibid., 24–25.

different views about whether or not it is obligatory for God to do what is best for the people.[82]

Removal of a Ruler

Al-Juwaynī says that if the ruler loses some of the essential conditions, he automatically loses authority (*inkhala'a*) and even if he regains that quality he does not become the ruler unless he is reappointed.[83] For instance, if he apostatizes, he no more remains the ruler even if he re-embraces Islam unless he is reappointed.[84] The same is true if he becomes insane.[85]

What is the legal opinion if he becomes *fāsiq* or unjust? Al-Juwaynī reports that some of the jurists apply on him the same rule as that is applicable on the ruler becoming apostate or insane,[86] while other jurists hold that he does not automatically lose authority but it becomes obligatory for the *ahl al-ḥall wa 'l-'aqd* to remove him.[87] Al-Juwaynī says that this does not relate to minor or rare instances of sins because the ruler need not be *ma'ṣūm* (immune from sins) and such a person is prone to committing sins. Therefore, holding that he does not remain ruler and that he needs to be reappointed after he repents, practically leads to demolishing the political order altogether.[88] However, if the mischief is greater, it needs to be controlled,

> In cases where his sins continue, his aggression is widespread, the mischief is obvious, the possibility of reform does not exist, the rights and the *ḥudūd* are suspended, security vanishes, misappropriation is established, the tyrants get power, the oppressed does not find a way to have justice enforced on the oppressors, the disorder leads to serious problems, and threat of external aggression, this grave situation must be controlled.[89]

As for the way to remove such a ruler, al-Juwaynī is of the view that this shall be done by those having the authority for concluding the contract of *imāmah*, i.e., the *ahl al-ḥall wa 'l-'aqd*.[90] They shall remove the existing ruler and shall appoint the new ruler "who shall then deal with the

[82] Ibid., 25–26.
[83] Ibid., 98.
[84] Ibid., 98–99.
[85] Ibid.
[86] Ibid., 100.
[87] Ibid., 100–01.
[88] Ibid., 101–05.
[89] Ibid., 106.
[90] Ibid., 126.

former as he should deal with the rebels."[91] This, of course, necessitates "power" (*shawkah*).[92]

It is also worth noting that the *ahl al-ḥall wa 'l-'aqd* cannot remove a ruler without his losing an essential condition because the contract of *imāmah* is *lāzim*, i.e., it cannot be unilaterally terminated.[93] Whether the ruler can abandon *imāmah* is a contentious issue. Al-Juwaynī reports that some jurists do not allow this because they deem this contract *lāzim* for him as well,[94] while others allow this on the basis of the precedent of al-Ḥasan b. 'Alī (d. 50/670) who abandoned the caliphate and none of the Companions objected to this.[95] Al-Juwaynī is of the opinion that he cannot do this unless he knows that this is beneficial for Muslims.[96]

Prohibition of Appointing Two Rulers at One Time

Al-Juwaynī first mentions the basic rule that if one ruler can control the whole of the Muslim territory, it is not permitted to have two rulers.[97] He reports the consensus of all schools on this issue.[98] He also notes that the very purpose of *imāmah* is lost if more rulers than one are appointed.[99]

After this, al-Juwaynī talks about situations where one ruler may not be able to take care of all Muslims and control the whole of the Muslim territory.[100] In such a situation, as al-Juwaynī reports, some of the Shāfi'ī jurists permitted appointment of another ruler in the territory separated from the main Muslim territory.[101] The basis for this opinion, as explained by al-Juwaynī, is protection of the interests of Muslims.

Al-Juwaynī personally does not accept this opinion in its generality. Rather, he mentions many details, which further restrict this permissibility.[102] Thus, he asserts that if the contract of *imāmah* has

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[91] Ibid.
[92] Ibid.
[93] Ibid., 128.
[94] Ibid.
[95] Ibid., 129.
[96] Ibid., 129–30.
[97] Ibid., 172.
[98] Ibid.
[99] Ibid., 172–74.
[100] The causes he mentions for this are as follows: (a) large territory; (b) the spread of Islam to the lands which are not connected to each other or to the islands which are far away from each other; (c) some people embracing Islam in a territory beyond the reach of the ruler; (d) a territory of non-Muslims becoming an obstacle between two parts of the Muslim territory because of which the ruler is not able to take care of the Muslims beyond the non-Muslim territory. Ibid., 174–75.
[101] Ibid., 175.
[102] Ibid., 175–79.

already been concluded for a person on the presumption that he will control the whole of the territory and later a cause comes into existence, which prevents him from doing so, those people whose affairs cannot be regulated by this *imām* must not be left in chaos and anarchy; rather, they should appoint an *amīr* (administrator) for themselves who would regulate their affairs and would enforce Islamic law on them.[103]

Importantly, al-Juwaynī does not consider this administrator the *imām* for those people and asserts that when the normal situation is restored, he along with his people must submit to the "*imām*."

> This appointed administrator does not become *imām*. When the obstacles disappear and it becomes possible for the *imām* to take care of these people, this administrator and his people must accept the rule of the *imām* and must submit to him. The *imām* should accept their excuse and should control their affairs. Thus, he may retain the one appointed by them on that position if he deems it proper. If, however, he wants to remove him, the decision lies with him and all must accept it.[104]

The second possibility mentioned by al-Juwaynī is that the contract of *imāmah* has not been concluded for any person and people of one territory appoint one administrator and those of another territory appoint another administrator none of whom controls the whole of the Muslim population and territory. In this case, none of these administrators is *imām* "because *imām* is the one who regulates the affairs of all Muslims."[105] Here again, al-Juwaynī denies the permissibility of two *imām*s even when he accepts the rule that Muslims of different territories have their administrators. He identifies *ḍarūrah* (necessity) as the basis for the validity of the rule of these administrators: "I do not deny the permissibility of the appointment of two administrators and the enforceability of their rule in accordance with Islamic law as it is based on necessity. However, this is a period when no *imām* exists."[106] He further asserts that if somehow the *imām* is appointed, both the administrators must surrender to him who would then take appropriate decision about them.[107]

He further explains the rules about the various possible situations of the appointment of two *imām*s at one time. Thus, he mentions the general rule that if two *imām*s are elected in two different parts of the

[103] Ibid., 176.
[104] Ibid.
[105] Ibid., 177.
[106] Ibid.
[107] Ibid., 177–78.

world and those appointing them did not know about each other, the rule is that none of them is legally entitled as *imām*.[108] He argues that the jurists do not allow appointment of two judges with general authority in one territory although if they disagree the dispute can be settled by reference to the *imām* who has superior authority over both of them. Hence, *a fortiori* two *imām*s with general authority cannot be permitted.[109]

Now, if it happens that two *imām*s are appointed and the contract of *imāmah* was concluded for them at one time, none of them becomes *imām*. If, however, one of them was appointed earlier, he becomes the *imām* and the other's appointment is invalid. If the time is not known, or cannot be proved by evidence, it will be presumed that both were concluded at one time and hence both will be deemed invalid.[110]

A World without the Imām

For al-Juwaynī, one of the most important purposes of writing this treatise was to explain the principles of Islamic law about situations when no person could be deemed *imām* of the Muslim world.

The first point he makes is that although the condition of being a Qurayshite has been prescribed by the Prophet (peace be on him), yet if a Qurayshite fulfilling other essential conditions is not available and there is a non-Qurayshite who fulfils the other essential conditions, the latter deserves appointment as *imām*, "because the purposes of *imāmah* are not dependent on belonging to a particular clan."[111] If a Qurayshite who fulfils the other essentials is appointed and later a non-Qurayshite is found who is better than the Qurayshite, the *imām* shall not be deposed because the *imāmah* of the *mafḍūl* (person fulfilling minimum qualification) in the presence of the *afḍal* (the best of all those who fulfil the requisite qualification) is permitted.[112] If, on the other hand, a non-Qurayshite is appointed and later on an *afḍal* Qurayshite is found, *imāmah* may be handed over to the Qurayshite provided it does not amount to *fasād*.[113]

As for the condition of knowledge and the skill and power of exercising *ijtihād*, al-Juwaynī asserts that this is an essential condition but if no person fulfils it, people cannot be left in anarchy. Hence, a person who is otherwise qualified for *imāmah* except that he is not a

[108] Ibid., 178.
[109] Ibid., 178–79.
[110] Ibid., 179.
[111] Ibid., 308.
[112] Ibid., 309.
[113] Ibid., 309–10.

mujtahid may be appointed as *imām* and he will take guidance from scholars of Islamic law.[114]

After this, al-Juwaynī reaches the most important issue for the purpose of the present article, namely, what is the rule when the aspirant of *imāmah* lacks the condition of *taqwā* (piety) or the *imām* later becomes *fāsiq* (sinner)? Appointing an unjust ruler or the ruler becoming unjust are examples of this larger issue.

Al-Juwaynī says that in the absence of a pious and just person if a person is found who can run the affairs of *imāmah*, but he openly indulges in sins and he cannot be trusted, his appointment is not permitted at all because it goes against the very purpose of appointing the *imām*.[115] After explaining this fundamental rule, however, al-Juwaynī talks about a situation of extreme necessity (*iḍṭirār*) when the Muslim territory faces foreign invasion and no pious leader could be found.[116] In such a situation of duress and necessity, Muslims are compelled to appoint a sinner for mobilizing the forces to defend the community.[117] Thus, if he consumes wine or commits some other major sins, but still remains anxious to defend Muslims and has the capability to do so, he will be appointed if a better person could not be found.[118]

This discussion paves the way for analyzing the validity of the rule of usurper.

The Rule of the Usurper

Usurper is the one who comes into power without being appointed by those having authority for this purpose.[119] Al-Juwaynī visualizes three possibilities in this context: First, when a person has *shawkah* (power) and he fulfils the requisite conditions for *imāmah*; second, when a person having *shawkah* does not fulfil the requisite conditions but he has the capability (*kifāyah*) of running the affairs of *imāmah*; and third, when no person fulfils the requisite conditions or has the *kifāyah*.[120]

Power along with Fulfilment of Conditions

For the first situation, al-Juwaynī mentions two possibilities. First, the *ahl al-ḥall wa al-ʻaqd* do not exist in which case such a person will be

[114] Ibid., 310–11.
[115] Ibid., 311.
[116] Ibid.
[117] Ibid., 311–32.
[118] Ibid., 312.
[119] Ibid., 316.
[120] Ibid., 316–17.

deemed the rightful *imām*.[121] Second, the *ahl al-ḥall wa al-ʻaqd* exist. In such a situation, if many persons fulfil the requisite conditions, none of them becomes *imām* unless the *ahl al-ḥall wa al-ʻaqd* conclude the contract of *imāmah* for him.[122] If, however, only one person fulfils the requisite conditions, he does not need appointment by the *ahl al-ḥall wa al-ʻaqd* provided he dominates the territory and people obey him.[123]

In other words, in this last situation, validity of *imāmah* depends, after fulfilling the requisite conditions, on power (*shawkah*) and obedience (*ṭāʻah*).[124] Thus, if he does not have *shawkah*, he should invite people to obey him. If they do so, his *imāmah* is established.[125] However, if they do not obey him, or those obeying him do not constitute *shawkah*, some of the jurists do not consider him the *imām* although they hold that people commit sin by not providing him enough support.[126] Other jurists hold that he is the *imām* even if people do not obey him and thereby commit sin.[127] Al-Juwaynī prefers this view although he admits that the first opinion also carries weight.[128]

A corollary of this is that if such a person keeps aloof from people and do not invite them to accept his *imāmah*, he commits one of the most serious sins.[129] Moreover, the jurists hold by a consensus that he does not become the *imām* if he does not invite people to obey him.[130]

If many people fulfil the requisite conditions and one of them dominates the land without being appointed by the *ahl al-ḥall wa al-ʻaqd*, he cannot be considered *fāsiq* if he did so for the purpose of establishing order and peace.[131] Some of the jurists consider him the *imām* even if the *ahl al-ḥall wa al-ʻaqd* do not conclude the contract of *imāmah* for him.[132] However, al-Juwaynī says that this rule is applicable when only one person fulfils the requisite conditions, while in this situation many persons are qualified for the purpose and as such the contract of *imāmah* must be concluded to validate the *imāmah* of one of them.[133]

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[121] Ibid., 317.
[122] Ibid.
[123] Ibid., 317–19.
[124] Ibid., 319–20.
[125] Ibid., 321.
[126] Ibid., 322.
[127] Ibid., 322–23.
[128] Ibid., 323.
[129] Ibid., 324.
[130] Ibid.
[131] Ibid., 324–25.
[132] Ibid., 326.
[133] Ibid. Al-Juwaynī cites in support of this view the oath of allegiance sworn by al-

It can be safely concluded that *shawkah* validates *imāmah* with two conditions. First, the person having *shawkah* fulfils the requisite conditions of *imāmah*. Second, he alone fulfils these conditions.

Power and the Lack of a Requisite Condition

A person having *shawkah* may be the one who does not fulfil the requisite conditions but he has the *kifāyah* (skill) for *imāmah*. Al-Juwaynī visualizes two situations for such a person's coming into power. First, no person fulfilling the requisite conditions exists. Second, such a person exists.[134] In the first situation, if the person having *shawkah* is appointed by *ahl al-ḥall wa al-'aqd*, he is considered *imām* and his orders are deemed valid and enforced.[135] If, on the other hand, he captures power on the basis of his *shawkah*, his legal position is similar to the first kind of usurpers who have *shawkah* (power) and fulfil the requisite conditions for *imāmah*.[136]

Al-Juwaynī goes into great details for explaining the basis of this rule (of equating this person with the first kind of usurper) with the help of the doctrine of *al-amr bi 'l ma'rūf wa 'l-nahy 'an al-munkar* (enjoining right and forbidding wrong).[137] Following are some of the details, which show that al-Juwaynī followed the line of argument of Abū Ḥanīfah about preferring the lesser evil.

Skill in the Absence of Power

Al-Juwaynī is of the opinion that it is almost impossible to visualize a situation when no person has the *kifāyah* for running the affairs of the government but he accepts the possibility that persons having *kifāyah* may lack *shawkah*.[138] He asserts that such a person cannot become the *imām* as he lacks the power to enforce his writ.[139]

What are people supposed to do in such a situation? Al-Juwaynī says that some of the rules of Islamic law can be enforced by individuals and they should take up this responsibility as a necessary corollary of the duty of "enjoining right and forbidding wrong."[140] On this basis, he says

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Ḥasan and al-Ḥusayn to Mu'āwiyah.

[134] This situation is explained in the following section: Skill in the Absence of Power.

[135] Al-Juwaynī, *Ghiyāth al-Umam*, 328.

[136] Ibid.

[137] Ibid., 328–54.

[138] Ibid., 385–86.

[139] Ibid., 386.

[140] Ibid., 486. Al-Juwaynī gives the examples of establishing Friday prayer, sending troops for *jihād*, and enforcing the *qiṣāṣ* punishments. It may be noted that the Ḥanafī jurists deem them the duties of the ruler.

that one of the most important aspects of this duty is that people having power must try to suppress the miscreants.[141]

However, al-Juwaynī asserts that certain rules require *wilāyah* (legal authority) for their enforcement, such as concluding the contract of marriage for minors and virgin girls and administering the property of the orphans.[142] He points out that people cannot be asked not to conclude contract of marriage. Therefore, he explains in detail that in such a situation scholars of Islamic law get the authority for this purpose.[143]

He further builds upon this foundation and says that if people belonging to different lands cannot agree on one scholar, they must have recourse to the scholar of their land.[144] If one land has many scholars, the best of them should be the leader and in case of dispute, it should be settled through casting lot.[145]

From all this, al-Juwaynī finally concludes that if a person has *shawkah* and he can enforce his writ, but he is not expert of Islamic law, he is deemed the governor (*wālī*) and he has all the necessary authorities (*wilāyāt*), but he should take guidance from the experts of Islamic law.[146]

Al-Ghazālī's Concise Summary of the Views of al-Juwaynī

Al-Ghazālī, a great disciple of al-Juwaynī, summarized, refined, and built upon the ideas of al-Juwaynī not only in legal theory and law but also in theology.[147] On the question of political order and related issues, al-Ghazālī gives his conclusions in a precise and accurate manner in a booklet titled *al-Iqtiṣād fī 'l-I'tiqād*.[148]

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[141] Ibid.

[142] Ibid., 387. It is well known that according to the Shāfi'ī jurists an adult virgin girl cannot conclude her contract of marriage and it is her *walī* who concludes it for her.

[143] Ibid., 388–91.

[144] Ibid., 891.

[145] Ibid.

[146] Ibid., 392.

[147] Imran Ahsan Khan Nyazee has shown that the revival of the Shāfi'ī legal theory was made possible because of the works of al-Juwaynī and al-Ghazālī. Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad* (Islamabad: Islamic Research Institute, 1994), 214–59. Nyazee has also given details of how these two jurists were influenced by the works of the Ḥanafī jurist Abū Zayd al-Dabūsī (d. 430/1039). For details of how the works of al-Dabūsī form the basis for the theory of *maqāṣid al-sharī'ah* (objectives of Islamic law), see Nyazee, *Islamic Legal Maxims* (Islamabad: Shariah Academy, 2019), 70–75.

[148] Abū Ḥāmid Muḥammad al-Ghazālī, *al-Iqtiṣād fī 'l-I'tiqād*, ed. Muṣṭafā 'Imrān (Cairo: Dār al-Baṣā'ir, 2009).

Legal Obligation of Establishing Political Order

Al-Ghazālī establishes the legal obligation of establishing political order in the following manner using his skills as a logician:

Major premise: Establishing religious order is required by the Lawgiver, the Prophet (peace be on him).

Minor premise: The religious order cannot be established without a ruler who is habitually obeyed.

Conclusion: Therefore, the Lawgiver requires appointing a ruler who is habitually obeyed.[149]

As far as the major premise of this argument is concerned, al-Ghazālī proves it in the following manner:

Major premise: Religious order is not established without temporal order;

Minor premise: Temporal order is not established without a ruler who is habitually obeyed.

Conclusion: Therefore, religious order is not established without a ruler who is habitually obeyed.[150]

At this point, al-Ghazālī answers an objection: Religious and temporal affairs are contradictory and establishing one destroys the other. The answer is as follows: "All temporal affairs do not contradict religion; rather, some of the temporal affairs are necessary for religion."[151] He establishes this with the following argument:

Major premise: Religious order, which necessitates recognition of God and His worship, is not possible without bodily health and security.

Minor premise: Bodily health and security, including life and property, is not possible without a ruler who is habitually obeyed.

Conclusion: Therefore, religious order necessitates a ruler who is habitually obeyed.[152]

From these various syllogisms, al-Ghazālī draws the following conclusion:

> Hence, temporal order is a prerequisite of religious order; ruler is necessary for temporal order; and religious order is necessary for achieving success in the Hereafter, which is definitely the purpose for

[149] Ibid., 504.
[150] Ibid. 505.
[151] Ibid., 505–06.
[152] Ibid., 506.

which the Prophets were sent. Resultantly, appointing the ruler is a religious obligation, which can never be abandoned.[153]

Qualification and Conditions for the Ruler

After this, al-Ghazālī turns to the qualification and conditions for the ruler and first makes the statement, which distinguishes the Ahl al-Sunnah wa 'l-Jamā'ah from the Shī'ah Imāmiyyah: "Specifying through a text (*naṣṣ*) a person just because of personal liking is not possible and he must have some distinctive characteristics."[154] He, then, enumerates these distinctive features and divides them into two categories: personal qualities and appointment by a person or institution having authority.[155] Personal qualities are meant for ensuring the required capability and knowledge for the task and these essentially mean the conditions prescribed by the law for persons exercising judicial authority.[156] However, points out al-Ghazālī, the ruler has one additional condition, namely, his being a Qurayshite.[157]

As there may be more Qurayshites than one who fulfil these conditions, it becomes essential that there must be a person or institution, which has the authority of appointing someone as the ruler.[158] For this purpose, al-Ghazālī imagines three possibilities: First, specification by the Prophet (peace be on him) through a text; second, nomination by an existing ruler of a person from among his offspring or any other clan of the Quraysh; and third, delegation by a person or persons having power over people.[159]

Validity of the Rule of Usurper

From this point, al-Ghazālī turns to the rule of the usurper who, while fulfilling other conditions, captures the institution of *imāmah* through power without being appointed by any particular institution. Al-Ghazālī comes up with the same argument as explained by al-Juwaynī and other jurists: resisting such a person results in bloodshed and mischief, which must be avoided.[160]

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[153] Ibid.
[154] Ibid., 506–07.
[155] Ibid., 507.
[156] Ibid.
[157] Ibid.
[158] Ibid.
[159] Ibid.
[160] Ibid., 507–08.

Then, he turns to a proposition, which is very important for the purpose of the present paper: If the purpose of the institution of *imāmah* is to establish peace and order and this can be done by a usurper who does not fulfil the condition of knowledge required for judicial authority but can seek guidance from jurists, whether it is obligatory to resist and remove him or the law requires obedience to him. Al-Ghazālī's answer to this question strikes at the heart of the issue:

> Our opinion is that we definitely believe in the obligation of his removal, if it is possible to replace him with a person who fulfils all the conditions and this is done without causing war and bloodshed. However, if this is not possible without war and bloodshed, it becomes obligatory to obey him and his rule will be deemed established.[161]

Situation of Necessity and Choosing the Lesser Evil

Then, al-Ghazālī raises another question: Can the condition of *'adālah* be waived in the same way as the condition of knowledge is waived? He answers that "The condition of knowledge has not been waived; rather, its absence is tolerated as necessity renders permissible what is ordinarily prohibited."[162] This situation of necessity is explained by al-Ghazālī by envisaging the consequences of not declaring the establishment of *imāmah*: "Judges would lose their authority; all legal authorities [and appointments] (*wilāyāt*) would be deemed invalid; marriages [concluded by such authorities] would be deemed void; all the decisions of the executive authorities in all the territories would be unenforced; rather, all people would be committing sin."[163]

In such a situation, the jurists had to choose one of the three possible options: First, people are prohibited from contracting marriages and making transactions the validity or enforcement of which depends on judicial authority. This is impossible and leads to worst kind of chaos and anarchy. Second, they are allowed to contract marriages and make other transactions provided that they hold that they are committing a sin by doing this, though they would not be deemed lawbreakers (*lā yuḥkam bi fisqihim*), due to necessity. Third, it is held that *imāmah* is established on the basis of necessity even if some of its conditions are not fulfilled.[164]

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[161] Ibid., 508.
[162] Ibid., 508–09.
[163] Ibid., 509.
[164] Ibid.

Al-Ghazālī holds that this last option, even if not ideal, is the lesser evil "as compared to the farther (*ab'ad*), the far (*ba'īd*) is deemed nearer; and the lesser of the evils is good—relatively—and it is obligatory for a prudent person to choose it."[165]

These passages from al-Ghazālī clearly proves that the later jurists did not "waive" the conditions for the ruler, as imagined by Gibb and other Western scholars; rather, they "tolerated" the absence of some of the conditions on the basis of the doctrine of necessity. It is well-established that necessity only temporarily allows a prohibited act and that too within the parameters of the necessity. The original rule remains in the field and it remains obligatory on the subjects to try to get out of the situation of necessity and restore the application of the original rule.[166]

Conclusion

According to the creed of Abū Ḥanīfah, establishing political order is a religious obligation and probity is an essential condition for a Muslim ruler. Hence, an unjust person is not entitled to rule the Muslim community. Muslims are under an obligation to establish justice and order in the society and this obligation necessitates rising up against an unjust ruler. However, the attempt to forcibly remove such a ruler should not be made if it is supposed to cause greater mischief, although Muslims remain under an obligation to raise voice against the injustices of the ruler. Until the unjust ruler is removed or he abandons injustice, the community should obey his lawful commands, particularly in matters affecting the collective life of the community.

This shows that Abū Ḥanīfah, while denying legitimacy to an unjust ruler, accepted the consequences of *de facto* authority for him under the doctrine of necessity using the principle of choosing the lesser of the two evils. The Shāfi'ī jurists al-Juwaynī and al-Ghazālī shared this view on the same bases.

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[165] Ibid.

[166] For details about the concept of necessity in Islamic law, see Nyazee, *Maxims*, 179–89.