



# Mālikī Authorities on the Imamate

*Shadee Elmasry*



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The imamate or caliphate is a prerequisite to the fulfillment of many direct and explicit commands found in the Qur'an and Sunna. The following excerpts represent the Mālikī school on the nature, obligation, and reasoning behind the imamate, the preconditions of the *Imām*, the obligation to obey the *Imām*, and the circumstances that obligate disobeying him. The authors of these excerpts, listed chronologically, are from among the most authoritative sources in the school: Ibn Yūnus, Ibn Rushd al-Jadd, Khalīl, Ibn Nājī, and al-Nafrāwī.

Abu Bakr 'Abd Allah ibn Yūnus al-Tamimī (d. 451/1059) studied in Qayrawān until he mastered Sahnūn's *al-Mudawwana wa al-Mukhtaliḡa*. Ibn Yūnus reorganized it and simplified its language. More importantly, he strengthened it with supports from textual (verses and *aḥādīth*) as well as transmitted sources, namely the statements of second and third generation Mālikī jurists. In differed upon matters within the school he gave his verdict as to which was more sound (*tarjīḥ*) but did not make *ijtihād* himself. As a result, it was highly received by the authorities of the *madhhab* until it was named the *Muṣḥaf al-Madhhab*. Khalīl ibn Ishāq al-Jundī (d. 767/1365) relies on Ibn Yūnus as one of the four main sources of his authoritative *Mukhtaṣar*. The selected passage from Ibn Yūnus's *al-Jāmi'* on the imamate is brief, covering the obligation of establishment and obedience and the prohibition of rebellion.

The second source is also an early authority relied upon by Khalīl. Ibn Rushd al-Jadd (d. 520/1126)—the jurist not the philosopher—authored *al-Bayān wa al-Taḥṣīl*, which has a concise passage on the obligation of establishing the imamate.

The third passage is from the *Tawdīḥ* of Khalīl. This work is a commentary on Ibn al-Ḥajīb's *Jāmi' al-Ummahāt*, which he authored based on sixty sources. Khalīl's statement covers the rational basis for the establishment of the imamate and the reasoning behind why it is a communal obligation.

The fourth extract is from Abu al-Faḍl Qāsim ibn 'Isā ibn Nājī al-Tanūkhī (d. 838/1435) in his commentary on the Risala of Ibn Abī Zayd (d. 386/996), known as Mālik al-Ṣaghīr, who also touched on the topic. He covers establishment, disobedience, prohibition from rebellion, and permissibility of abdication.

Lastly, we have the commentary of Shihāb al-Dīn al-Nafrāwī (d. 1126/1714) also on the Risāla of Ibn Abī Zayd in which he covers the types of *imāms* and their preconditions.

1. Ibn Yūnus al-Tamimī al-Siqillī<sup>1</sup>, *Kitāb al-Jāmi' li-Masā'il al-Mudawwana*

وَأَنَّ إِقَامَةَ الْإِمَامِ مَعَ الْقُدْرَةِ عَلَيْهِ وَالْإِمْكَانِ مِنْهُ فَرَضٌ عَلَى الْأُمَّةِ لَا يَسَعُ تَرْكُهُ وَلَا التَّخْلُفُ عَنْهُ، وَأَنَّهُ مُوَكَّلٌ إِلَى أَهْلِ الْحَلِّ وَالْعَقْدِ دُونَ النَّصِّ مِنَ الرَّسُولِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَّهُ مِنْ فُرُوضِ الْكِفَايَةِ، وَإِذَا قَامَ بِهِ الْبَعْضُ سَقَطَ عَنِ الْبَاقِينَ. وَأَنَّهُ وَاجِبٌ طَاعَةُ الْأُمَّةِ وَإِعْظَامُهُمْ وَتَوْقِيرُهُمْ، وَطَاعَةُ خُلَفَائِهِمْ وَالنَّائِبِينَ عَنْهُمْ، وَتَرْكُ الْمَسَابِقَةِ لَهُمْ، وَذَلِكَ مُتَّفَقٌ عَلَيْهِ لِلْمُسْتَقِيمِ مِنْهُمْ. وَأَمَّا الْعَادِلُ عَنْ ذَلِكَ مِنْهُمْ بِظُلْمٍ وَتَعْطِيلٍ حَدِّ فَإِنَّهُ يَجِبُ وَعَظْمُهُ وَتَرْكُ طَاعَتِهِ فِيمَا هُوَ عَاصٍ فِيهِ وَمَعُونَتِهِ عَلَى ذَلِكَ، وَيَلْزَمُ إِذْكَارَهُ بِاللَّهِ عِزَّ وَجَلَّ وَدَعَاؤُهُ إِلَى طَاعَتِهِ وَمَرَاجَعَتِهِ وَإِقَامَةَ الْعَدْلِ وَالْقِسْطِ. قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ وَلِيِّ الْمُسْلِمِينَ عَنْ رِضَى أَوْ عَنْ غَلْبَةٍ فَاشْتَدَّتْ وَطْأَتُهُ مِنْ بَرٍّ أَوْ فَاجِرٍ فَلَا يَخْرُجُ عَلَيْهِ جَائِزٌ أَوْ عَدْلٌ. وَيَغْزَى مَعَهُ الْعَدُوَّ، وَيُحِجُّ الْبَيْتَ، وَتُدْفَعُ الصَّدَقَاتُ إِلَيْهِمْ وَهِيَ مُجْزِيَةٌ إِذَا طَلَبُوهَا، وَتُصَلَّى خَلْفَهُمُ الْجُمُعَةُ وَالْعِيدَيْنِ.

The establishment of the *Imām* is an obligation on the Umma when able to do so. It is not permissible to leave it off. The obligation is delegated to the leaders of the Umma; there is no explicit text from the Prophet ﷺ (on who should be the *Imām* after him).<sup>2</sup> It is a communal obligation, which if some people fulfill, it is lifted from the rest.<sup>3</sup> It is obligatory to obey the *imāms* and to exalt and honor them. Likewise, obeying their successors and deputies is an obligation, as is leaving off enmity and disagreement with them. This is agreed upon for the righteous amongst them. If the *Imām* parts from the guided path, by doing injustice or not applying the hudud, then it is obligatory to admonish them, as well as to abandon their obedience and assisting them in those matters in which they are sinful. It is also necessary to remind them of Allah and invite them to obey Him and to establish justice. Abu Muhammad<sup>4</sup> said: Every leader of the Muslims, [established] by consent [of the Muslims] or through force such that his dominance is established, whether righteous or profligate, no just or unjust person should rebel

<sup>1</sup> Abu Bakr Muhammad ibn 'Abd Allah ibn Yūnus (d. 451/1060) took from Abu 'Imrān al-Fāsī and Abu al-Ḥasan al-Qābisī and authored *al-Jāmi' li Masā'il al-Mudawwana wa al-Nawādir*, which became known as the "Mushaf of the Mālikīs" for its authority in the madhhab. Khalīl relied on it to author his final summary of the relied upon opinions in Mālikī law. Qāḍī 'Iyāḍ said about Ibn Yūnus that, "He was a jurist and a mathematician who excelled in inheritance law."

<sup>2</sup> He means here that there is no explicit instruction from the Prophet ﷺ as to who would be the *khalīfa* after him. Rather, the selection of who governs the Umma is left to the Umma to decide through her leaders, the *ahl al-ḥalli wa al-'aqd*. This is a point of distinction between *Ahl al-Sunna*, who adopt a "democratic", or better, ummatic, procedure of electing the ruler, and the *Shī'a*, who adopt a "dynastic" position, whereby Allah selects the rulers and the Prophet (saw) instructed that they be particular individuals from his descendants alone. As for "*ahl al-ḥalli wa al-'aqd*", see note 7 below.

<sup>3</sup> *Fard kifāya*: the command which, if acted upon by some, ceases to be obligatory on the remainder of those who are legally responsible. If none of the legally responsible fulfill it, they are all sinful. An example is the *adhān*.

<sup>4</sup> Abu Muhammad refers to Ibn Abī Zayd al-Qayrawānī. For more about him, see note 20 below.

against him. The enemy is to be fought with him, *Hajj* is to be performed to the *Ka'ba*, and *Zakāt* is to be paid to him—and it is valid (on part of the givers) if he asks for it—and the Friday prayer and the two *'Ids* are to be prayed behind him.<sup>5</sup>

## 2. Ibn Rushd al-Jadd<sup>6</sup>, *al-Bayān wa al-Taḥṣīl*

الإمامة تتعقد وتتمّ برجلٍ واحدٍ من أهل الحلّ والعقد إذا عَقَدَهَا الرجل على صفةٍ ما يَجِبُ أن يكون عليه الأئمة. ويجب أن يحضر العقد له نفرٌ من المسلمين، وقد قيل إن أقلّ ما يجب أن يحضره أربعة نفر سوى العاقد والمعقود له قياساً على فعل عمر في الشورى. وهذا لا يلزم لأنّ عمر لم يقصد بجعلها شورى في تحديد عدد الحاضرين للعقد، وإنما جعلها فيهم دون غيرهم لأنهم أفاضل الأئمة. وقد أخبر بذلك عمر عن نفسه: "أما إنه لو حضرني سالمٌ مولى أبي حذيفة لرأيت أني قد أصبت الرأي وما تداخلني فيه الشكوك" يريد في أخذ رأيه ومشورته.

وفيه أن الإمامة فرضٌ. وقد قال بعض الناس إنها سنّة. واحتجّ من ذهب إلى ذلك بأنّ الأئمة بقيت بلا خليفة من وقت وفاة النبي صلى الله عليه وسلم إلى أن استُخلف أبو بكر، ومن وقت موت عثمان إلى أن بُيع لعليّ. قال: ولم يكن الله سبحانه ليجمع الأئمة على تضييع فريضة. واحتج من رآها فريضة بأن الفروض تقام بها وبأنه أمر لا يوجد السبيل إلى تركه، قال: وليس إن بقي الناس وقتاً من النهار بلا خليفة تعطلت الفروض، إذ لم يضع فيه فرض ولا حق لم يدرك في غيره.

The imamate is contracted by one man from the leaders of the Umma<sup>7</sup> when he contracts it while fulfilling the conditions of being an *imām*. The contracting of the imamate should be attended by a group of Muslims. It has been said that the minimum number of attendees is four, aside from the one contracting it and the one for whom it is contracted (i.e. the new *Imām*). This was

<sup>5</sup> Ibn Yūnus al-Siqillī, *al-Jāmi' li-Masā'il al-Mudawanna wa al-Mukhtalifa*, ed. Abu al-Faḍl al-Dimiyāfī, 10 vols. (Beirut: Kitāb Nāshirūn, 1433/2012), 9: 333-334.

<sup>6</sup> Abu al-Walīd Muhammad ibn Aḥmad ibn Rushd al-Qurṭubī (d. 520/1126), Ibn Rushd al-Jadd, "the grandfather" (to distinguish him from Ibn Rushd al-Ḥafīd (d. 595/1198), the grandson, the well-known philosopher, "Averroes"). He was the chief judge of Cordoba, and along with Ibn Yūnus, al-Mazirī, and al-Lakhmī, was relied upon by Khalīl in his *Mukhtaṣar*. Among his students was Qāḍī 'Iyāḍ. Along with being a judge, Ibn Rushd was known for his worship and was a teacher said to be very good at explaining difficult concepts. He was the *khaṭīb* of the great mosque of Cordoba and would be sent legal questions from the Amir of the lands himself, the king of the Murābiṭūn. He authored ten books, the most significant being *al-Bayan wa al-Taḥṣīl*. The two paragraphs cited here are from a section in which the author is deriving *fiqh* from a *khutba* given by Umar ibn al-Khattab ﷺ in the last year of his life.

<sup>7</sup> Literally, the people of untying and knotting, *ahl al-ḥalli wa al-'aqd* in this context refers to people of influence and leadership in the Umma, part of whose role is to elect the *Imām*. The definition as per later Mālikī jurists is "those in whom three conditions are gathered: knowledge of the conditions required for the *Imām*, probity (*'adāla*), and sound judgment (*ra'i*)." (al-Dusūqī, *Hāshiyat al-Dusūqī 'ala al-Sharḥ al-Kabīr*, Dār al-Fikr, 4: 298)

derived by analogy to what ‘Umar ؓ did by forming a council [of six] to select the new *Imām* after he passed away.<sup>8</sup> However, this is not necessary, since ‘Umar did not intend this council for a specific number of attendees. Rather, he chose them because they were the best of the Umma. ‘Umar ؓ himself said, “If Salim, the freed slave of Abu Ḥudhayfa, were here I would have deemed myself correct without doubt,” meaning in taking his opinion and advice.

Establishing the imamate is an obligation. However, some said it is only preferable,<sup>9</sup> using as evidence the fact that the Umma went without a *khalīfa* from the time of The Prophet’s ﷺ passing until Abu Bakr ؓ succeeded him, and from the time of the death of ‘Uthman ؓ until the oath of allegiance was given to ‘Alī ؓ, and Allah would not let the entire Umma be neglectful in performing an obligation.<sup>10</sup> Those who held it to be an obligation said that it is necessary for the fulfillment of other obligations,<sup>11</sup> and it is a matter that simply cannot be left off. Furthermore, even if the people spent a small period of time without a *khalīfa*, no other obligations become hindered, nor was there any obligation unfulfilled.<sup>12</sup>

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<sup>8</sup> After being stabbed, ‘Umar appointed the Companions who were qualified to serve as *khalīfa*, appointing his son as facilitator, ensuring that they agreed upon one from amongst themselves. The six were ‘Uthmān, ‘Alī, Sa‘d, Talha, Zubayr, and ‘Abd al-Rahman ibn ‘Awf ؓ. Talha immediately said, “Whatever right I have is for ‘Uthmān.” Zubayr submitted his right to ‘Alī, and Sa‘d submitted his right to ‘Abd al-Rahman ibn ‘Awf. ‘Alī and ‘Uthmān remained silent. ‘Abd al-Rahman then left the meeting to consult with the leaders of the Muslims and the Mothers of the Believers for three days, until he returned and asked each of ‘Uthmān and ‘Alī if they would submit to one another. Upon agreeing, he informed them that the leaders wanted ‘Uthmān, and hence they all gave him allegiance willingly.

<sup>9</sup> The author does not mention who held it to be preferable (*sunna*).

<sup>10</sup> The way out of such conflicting evidences, as developed by the Mālikīs, is the category of “obligatory when one remembers and is able” (*ma‘a al-dhikri wa al-qudra*). This was how Mālikīs deemed purity from *najāsa* an obligatory condition of prayer while also affirming that blood and intestines were thrown on the Prophet ﷺ during *ṣalāt* and yet he continued his prayer. This was reconciled by recognizing purity as obligatory only if one can remove it. The same can be said of the gap in *khilāfa* between the Prophet ﷺ and Abu Bakr ؓ, or between ‘Uthman and ‘Alī ؓ. The obligation occurs after the appropriate people were able to gather and make their selection. Even after ‘Umar’s passing, a few days elapsed before ‘Abd al-Rahmān ibn ‘Awf cast his vote.

<sup>11</sup> And what is required to complete an obligation is itself an obligation, as per the agreed upon *uṣūlī* principle.

<sup>12</sup> Ibn Rushd al-Qurṭubī, *al-Bayān wa al-Taḥṣīl wa al-Sharḥ wa al-Tawjīh wa al-Ta‘līl fī Masā‘il al-Mustakhraja* (Beirut: Dār al-Gharb al-Islāmī, 1988), Kitāb al-Jāmi‘ al-Thālith, 18: 217-218.

3. Khalīl ibn Ishāq al-Jundī<sup>13</sup>, *al-Tawdīh Sharḥ Mukhtaṣar Ibn al-Ḥājj*<sup>14</sup>

لَمَّا كَانَ الْإِنْسَانُ لَا يَسْتَقِيلُ بِأُمُورِ دُنْيَاهُ، إِذْ لَا يُمْكِنُ أَنْ يَكُونَ حَرَّائًا طَحَانًا خَبَازًا إِلَى غَيْرِ ذَلِكَ مِنَ الصَّنَائِعِ الْمَفْتَقِرِ إِلَيْهَا، احْتِاجَ إِلَى غَيْرِهِ، ثُمَّ بِالضَّرُورَةِ قَدْ يَحْصُلُ بَيْنَهُمَا التَّشَاجُرُ وَالْحِصَامُ لِاخْتِلَافِ الْأَغْرَاضِ؛ فَاحْتِيجَ إِلَى مَنْ يَفْصِلُ تِلْكَ الْخِصُومَاتِ، وَيَمْنَعُ بَعْضَهُمْ مِنْ غَرَضِهِ، فَلِهَذَا وَجَبَ إِقَامَةُ الْخَلِيفَةِ، لَكِنْ نَظَرَ الْخَلِيفَةُ أَعْمَمًا إِذَا جَدَّ مَا يَنْظُرُ فِيهِ الْقَاضِي، وَلَمَّا كَانَ هَذَا الْغَرَضُ يَحْصُلُ بِوَاحِدٍ وَجَمَاعَةٍ كَانَ فَرَضُ كِفَايَةٍ؛ لِأَنَّ ذَلِكَ شَأْنُ فُرُوضِ الْكِفَايَةِ.

Since the human being cannot be independent in all his affairs—he cannot be a farmer, and a grinder, and a baker, etc., among all the other things he needs<sup>15</sup>—he is thus dependent on others. Further, by necessity, disputes will emerge amongst people (when they fulfill each other’s needs), and they will need someone to judge between them, and restrain each other from oppression. Due to this, the establishment of the *khalīfa* is necessary, for the expanse of the *khalīfa* is broader than that of a judge. Since this end can be reached by one individual<sup>16</sup> and a group,<sup>17</sup> it is a communal obligation, because that is the nature of communal obligations.<sup>18</sup>

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<sup>13</sup> Diyā’ al-Dīn Khalīl ibn Ishāq ibn Mūsā al-Jundī (d. 776/1374), of Kurdish origins, lived in Egypt, was in the military and used to always wear his military uniform, hence the *laqab* or nickname al-Jundī, the soldier. His father was a Ḥanafī, but became a follower of Ibn al-Ḥājj, the Mālikī scholar of Fez and author of the *Madkhal*. Due to this relationship, Khalīl became a Mālikī and studied with Ibn al-Ḥājj as well as ‘Abd Allah al-Munīfī. It is with al-Munīfī that he did most of his studies until he attained the position of *mufti*. His biggest contributions are *al-Tawdīh*, a six-volume commentary on Ibn al-Ḥājj’s *Mukhtaṣar*, as well as his own *Mukhtaṣar*, which is now simply called *Khalīl*. This latter work was elevated to the highest source of *fatwa* of the Mālikī school.

<sup>14</sup> Abu ‘Amr Jamāl al-Dīn ‘Uthmān ibn ‘Umar, known as Ibn al-Ḥājj (d. 646/1249). Like Khalīl, he was of Kurdish origins, but born in Isnā in Upper Egypt, and grew up in Cairo. He lived for some period in Damascus and died in Alexandria. His father was a gatekeeper and so he became known as the son of the gatekeeper. He was a linguist as well as a jurist. He authored *al-Kāfiya* in grammar and *al-Shāfiya* in syntax. His greatest work in *fiqh* is *Jāmi’ al-Ummahāt*, which he authored based on sixty works of Mālikī *fiqh*. It is also known as *Mukhtaṣar al-Fiqh*, and this is what Khalīl commented on in his *Tawdīh*.

<sup>15</sup> This is the opening statement of the chapter on court judgements (*aqḍiya*). Khalīl provides the rational basis for the obligation of *qaḍā’* and appointing a *khalīfa*, since the former’s authority relies on the latter.

<sup>16</sup> The one appointed to be the *khalīfa*.

<sup>17</sup> The leaders that appoint him.

<sup>18</sup> Khalīl ibn Ishāq, *al-Tawdīh Sharḥ Mukhtaṣar Ibn al-Ḥājj*, ed. Abu al-Faḍl al-Dimyātī, 7 vols. (Casablanca: Dār Ibn Hazm, 2012), 5: 707.

#### 4. Ibn Nājī al-Tanūkhī<sup>19</sup>, *Sharḥ ‘alā Matn al-Risāla*<sup>20</sup>

الإمام هو القائم بأمر المسلمين، والولي هو النائب، والإمامة أعم من الخلافة إذ كل إمام خليفةٌ ولا يعكس. قال الغزالي: وشرائط الإمام بعد الإسلام والتكليف خمسة: الذكورية، والورع، والعلم، والكفاية، ونسبة قريش، وكونه واحداً وغير مُتغلبٍ. واختُلف إذا انعقدت الإمامة لاثنتين في وقتٍ واحدٍ في بلدَيْن، فقبل إنها للذي عقدت له في بلد الإمام الميِّت، وقيل يُقرع بينهما، وقيل إن كان العقد لكل واحدٍ منهما دَفَعَهَا عن نفسه للآخر. وقيل إن كان العقد لهما في وقت واحد فَسَدَ كزوجين عُقد لهما على امرأة واحدة. وزاد صاحب العروة: وأن يكون من أفضل القوم في عصره عند الأشعري والقاضي، والصحيح أنه لا يشترط.

وتنعقد الإمامة ببيعة أهل الحلّ والعقد، وقيل تنعقد بواحدٍ إذا كان أهلاً لما ذُكر، وقيل لا بدّ من اثنين، وقيل لا بدّ من أربعة، وقيل خمسة وقيل لا بدّ من بيعة جميع العلماء وحضورهم عند البيعة واتّفاقهم على واحد. وشَرَطَ أصحابنا اشتهار العقد كالنكاح، والأصل فيما ذكر الشيخ قوله تعالى {يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ} (النساء ٥٩)، وعنه صلى الله عليه وسلم: "من أطاع أميرِي فقد أطاعَنِي ومن عصاه فقد عصاني"، فطاعتهم واجبةٌ إذ بهم تُقام الأحكام وتُصلح الأحوال وتُحفظ الفروج والأموال.

واعلم أنه لا طاعةَ لمخلوقٍ في معصية الخالق. قيل كان الخليفة يقول "أطيعوني ما عدلتُ فإن خالفتُ فلا طاعةَ لي عليكم". وعن أبي حازمٍ عن مسَلَمَةَ بن عبد المَلِكِ أنه قال لهم: أَلَسْتُمْ أُمَرَاءَ بَطَاعَتِي فِي قَوْلِهِ تَعَالَى {يَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ}؟ فَقَالُوا لَهُ أَوْ لَيْسَ يَرِغَبُ عَنْكُمْ إِذَا خَالَفْتُمْ لِقَوْلِهِ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ}.

The *Imām* is the one who is responsible for the affairs of the Muslims; the governor is his deputy. Further, the imamate is more general than the caliphate, for every *imām* is a *khalīfa*, but not every *khalīfa* is an *imām*.<sup>21</sup> Al-Ghazali said: the conditions of the *Imām* after Islam and

<sup>19</sup> Abū al-Qāsim ibn ‘Īsā ibn Nājī, known as Ibn Nājī al-Tanūkhī (d. 837/1433) was a scholar and judge of Qayrawān, Tunisia. He authored a commentary on the *Mudawwana* of Sahnūn, which is the second source of the Mālikī school after the *Muwatta’*, as well as a commentary on the *Mudawwana*’s summation by al-Baradhu’ī.

<sup>20</sup> The *Risāla* of Abu Muhammad Ibn Abī Zayd al-Qayrawānī (d. 386/997) of Tunisia, known as the junior Mālik due to his knowledge of Mālik’s statements and his devotion to the advancement of the madhhab. He was a beloved leader of the scholars and laymen of Qayrawān and is deemed the last of the *mutaqaddimīn* or early scholars in the Mālikī school. While he is known most for the *Risāla*, which was written for young learners, he also reorganized and summarized the *Mudawwana* and wrote extensively on heresiology and *‘aqīda*.

<sup>21</sup> He refers to the linguistic definition of a *khalīfa*, one who succeeds another in a specific role that may not be related to leadership. For example, the successor of a teacher would be termed his *khalīfa*. Hence, not every *khalīfa* is an *imām*. In contrast, every *imām* is a *khalīfa* because there would have been an *imām* before him.

juristic accountability are five<sup>22</sup>: maleness, scrupulousness, knowledge, competence, Qurashī descent, and that he be one (i.e. not multiple claimants) and not a usurper of power (against the will of the Muslims).<sup>23</sup>

There is a difference of opinion (on the ruling of the situation where) the imamate is contracted to two individuals at the same time in two cities. One opinion is that it is the right of the one contracted in the city of the *Imām* who died. Another opinion is that lots are cast to pick between them. Yet another opinion states that each of them should reject the imamate for himself in favor of the other. A fourth opinion is that if the imamate was contracted to both at the same time, both are null and void, as is the case when two men marry the same woman simultaneously. The author of al-‘Urwā<sup>24</sup> stated that al-Ash‘ari and al-Qādī (‘Iyād) additionally stipulate that the caliph be the best of his people in his era, but the correct opinion is that this is not the case.

The imamate is established by the oath of allegiance of the people of leadership and influence, with some stating that it can be established by just one person if he himself would have been fit for it. Others said at least two are needed, while others said four, five, and some held that all the scholars must willingly give their oath of allegiance in person. The scholars of our madhhab have additionally stipulated that the succession of the imamate to the new *Imām* must be publicized in the same way that a marriage is. As to the author’s [Ibn Abī Zayd] statement regarding the obligation of obedience to the rulers and scholars, the origin of this is the Qur’anic verse, “O believers! Obey Allah and obey the Messenger and those in authority among you.”<sup>25</sup> And the ḥadīth from the Prophet, “Whosoever obeys the ruler I appoint obeys me, and whosoever disobeys him disobeys me.”<sup>26</sup> This is because only by them is the Shaṛī‘a established, the affairs of the Muslims are attended to, and their chastity and wealth protected.

Furthermore, one should know that there is no obedience to the creation in the disobedience of the creator. It has been said that the *Imām* would say, “Obey me so long as I am upright and just with you, but if I do otherwise, then there is no obedience to me from you.” It has also been narrated from Abu Hāzim that Maslama Ibn ‘Abd al-Malik<sup>27</sup> said to his people, “Did not Allah command you to obey me in His saying, ‘Obey Allah and obey the Messenger and those in authority among you.’” They responded, “And shall we not disobey you if you disobey Allah and Messenger ﷺ due to His saying, ‘Should you disagree on anything, then refer it to Allah and His Messenger.’”<sup>28</sup>

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<sup>22</sup> Five conditions in the person of the *Imām*, followed by another two related to his authority and legitimacy.

<sup>23</sup> For a Mālikī rendition: “The conditions of the *Imām* are freedom, probity, intelligence (*faṭāna*), *Qurashī* descent, strength and competence in difficult situations, and the oath of allegiance of the people of influence in person.” (al-Dusūqī, *Hāshiyat al-Dusūqī ‘ala al-Sharḥ al-Kabīr*, Dār al-Fikr, 4: 298)

<sup>24</sup> I was unable to find any information on this book or its author.

<sup>25</sup> Qur’an, *al-Nisā’*: 59.

<sup>26</sup> Bukhārī, #7137; Muslim, #1835.

<sup>27</sup> Abu Sa‘īd Maslama ibn ‘Abd al-Malik ibn Marwān (d. 121/738) was an Umayyad general and governor.

<sup>28</sup> Qāsim ibn ‘Isā ibn Nājī al-Tanūkhī. *Sharḥ Ibn Nājī ‘alā Matn al-Risāla*, ed. Aḥmad Farīd al-Mazīdī, 2 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2007), 1: 64.



5. Al-Nafrāwī<sup>29</sup>, *al-Fawākih al-Dawānī*

(و) يَجِبُ عَلَى كُلِّ مَكَلَّفٍ (الطاعة) أي الامتثال والانقياد (لأئمة المسلمين) بالظاهر والباطن في جميع ما أمروا به سِوَى المعصية على ما يدل عليه حذف المتعلق، فأما في المعصية فتَحْرُمُ طاعتُهُمْ لخبر: «لا طاعةَ لمخلوقٍ في معصية الخالق» وغيرُ المعصية يشمَلُ المكروه، وفي وجوب إطاعتهم فيه خلافُ الوجوبِ عند ابن عَرَفَةَ حيث لم تكن الكراهة مُجمَعاً عليها، وعدمه عند القرطبيِّ فَإِنَّ أطاعَهُمْ بظاهره دون باطنه فهو عاصٍ.

والأئمة جمع إمام، مأخوذ من الإمامة وهي لغةً التقدُّم، واصطلاحاً صفةٌ حكيميةٌ تُوجِبُ لموصوفها تقديمه على غيره معنًى ومتابعةً غيره له حسّاً. وتَنقسم أربعة أقسام: إمامةٌ وحيٌّ وهي النبوة، وإمامةٌ وراثيةٌ كالعلم، وإمامةٌ عبادةٌ وهي الصلاة، وإمامةٌ مصلحةٌ وهي الخلافة العظمى لمصلحة جميع الأمة، وكلّها تحققت له ﷺ. وحيث أُطلقت في لسان أهل الكلام انصرفت إلى المعنى الأخير عرفاً وهي بهذا المعنى رئاسةٌ عامّةٌ في أمور الدين والدنيا نيابةً عن النبي ﷺ، لكن لا تجب طاعةُ الإمام إلا بشروط: الإسلام والتكليف والذكورة والحرية والعدالة والعلم والكفاية وكونه قُرَشِيًّا واحداً على خلافٍ فيهما، فإن اجتمع عدوٌّ بهذه الصفة فالإمام من انعقدت له البيعة بأهل العقد والحلِّ، فإن انعقدت لاثنتين ببلدَيْن في وقتٍ واحدٍ فليل هي للذي عُقدت له ببلد الإمام الميِّت، وقيل يُقرع بينهما، ولا يجوز العدد في العصر الواحد والبلد إجماعاً إلا أن تتباعد الأماكن بحيث لا يصل حكمُ الإمام إلى محلٍّ آخر كالأندلس وخراسان، فيجوز التعدد لثلاث تتعطل حقوقُ الناس وأحكامُهُم.

ثم بيّن الأئمة بقوله: (من ولاة) أي حكام (أموهم، و) من (علمائهم) والضمير للمسلمين، والمراد العلماء العاملون بأمر الله وأمر السنة الآمرون بالمعروف والناهون عن المنكر، والأصل في هذا كَلِّه قوله تعالى: {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ} إذ هم أمراء الحقِّ العالمون العاملون الآمرون بالمعروف والناهون عن المنكر. وفي الحديث: "من أطاعَ أميرِي فقد أطاعني ومن عصى أميرِي فقد عصاني". والمؤلف ﷺ جمع بين القولين في تفسير قوله تعالى {وَأُولِي الْأَمْرِ مِنْكُمْ}، فإنه قيل المراد بهم أمراء الحقِّ على الوجه الذي بيّنا، وقيل العلماء العاملون بعلمهم، فالمجتهد منهم يجب عليه العمل بما غلب على ظنّه ولا يُقلد، والمقلد يجب عليه تقليدُ أهل العلم لقوله تعالى {فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ} [النحل: 43] إلا عقائدَ الإيمان فيحرمُ التقليد فيها من القادر على النظر المُوصل للمعرفة مع صحّة إيمانه وإن كان عاصياً كما تقدّم.

<sup>29</sup> Aḥmad ibn Ghānim (or Ghunaym) ibn Sālim al-Nafrāwī (d. 1126/1714) was an Azharī scholar from the village of Nafrā in Egypt. He has a three-volume commentary on the *Risāla* of Ibn Abī Zayd, *al-Fawākih al-Dawānī 'alā Ibn Abī Zayd al-Qayrawānī*, from which this extract is taken. Text in brackets (Arabic) or double quotations marks (English) is from the *matn* of Ibn Abī Zayd.

“Obedience,” meaning compliance and submission, to the *imāms* of the Muslims is mandatory for every juristically accountable person, both externally and internally,<sup>30</sup> in all that they command, as indicated by the omission of any prepositional phrase,<sup>31</sup> except in sin. In the case of sin, it is haram to obey them due to the report, ‘There is no obedience to the creation in disobedience of the creator.’<sup>32</sup> Doing actions which are disliked (as opposed to prohibited) is not considered disobedience.<sup>33</sup> There is a difference of opinion, however, on whether it is obligatory to obey them in matters which are disliked. For Ibn ‘Arafa, obedience is obligatory unless the discouragement is agreed upon, while al-Qurṭubī holds that obedience is not obligatory in disliked matters even if it is not agreed upon. If one were to obey externally, but not internally, then he is sinful.<sup>34</sup>

*A’imma* is the plural of *imām*, which is derived from *imāma*. Linguistically, *imāma* means to go forward or to precede. Technically in *Sharī‘a*, it is a quality that obligates priority over others to the one attributed with it, entailing their followership of him and his leadership of them. It is of four types: imamate of revelation, which is prophethood; imamate of inheritance, such as knowledge; imamate of worship, which is prayer; and imamate of benefit, which is the greatest succession (i.e. succession to the Prophet ﷺ) for the benefit of the Umma. These four types were all present in the Prophet ﷺ. When the scholars of *kalām* use this term, they refer to the fourth type. In this meaning, it indicates general leadership in both matters of this world and the religion in deputyship of the Prophet ﷺ.

However, obedience of the *Imām* is not obligatory unless certain conditions are present in him: Islam, juristic accountability, maleness, freedom, probity, knowledge, competence, Qurashī descent, oneness (not multiple claimants). The last two conditions have a difference of opinion regarding them. If there are multiple people who fulfill these conditions, then the *Imām* is the one to whom the leaders of the Umma give their pledge of allegiance. If the imamate becomes established for two people in two cities at the same time, then one opinion says that it goes to the one to whom the pledge was given in the same city as the deceased *Imām*. Another opinion says that lots are cast to choose between them. There is consensus amongst the scholars that

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<sup>30</sup> “Internally” here means that the heart must be loyal to the valid and upright *imām*.

<sup>31</sup> He means that Ibn Abī Zayd’s phrase “Obedience to the *imāms* of the Muslims” is unqualified by something like “in such-and-such matters” indicating that obedience is due in all matters. The qualification of “except in sin,” in turn, comes from textual sources, as the commentator proceeds to explain.

<sup>32</sup> This is more accurately described as a principle based on various *aḥādīth*, such as, “There is no obedience (to people) in disobedience (to Allah). Obedience is only in what is good” (Bukhārī, #7257); “Upon the Muslim is to hear and obey in what he likes and dislikes except if commanded to commit a sin; if he is commanded to sin there is no listening and no obeying” (Bukhārī, #2955 Muslim, #1839); and “Whoever of you is commanded to a sin, he shall not obey it” (Ibn Māja, #2863)

<sup>33</sup> That is, obeying them in a matter that is disliked is not considered disobedience to Allah.

<sup>34</sup> This is a further confirmation that loyalty and belief in what the *Imām* commands is an obligation. This is because the discordance of the heart from the *Imām* will eventually lead the body to disobey him.

multiplicity of *imāms* at the same time and place is not permissible unless the distance becomes too great such that the rulings of the *Imām* do not reach to some place, such as (the distance between) al-Andalus and Khurasān. In this case, the multiplicity of *imāms* is permissible in order that the rights and rulings of the people are not voided.

He (Ibn Abī Zayd) then clarified who the *imāms* are by stating: “Those in charge of their affairs,” meaning the rulers, and “their scholars”; the pronoun ‘their’ refers to the Muslims. The intended meaning is the scholars who are knowledgeable in the matter of Allah and the Sunna, who command the right and forbid the wrong. The basis of all this is Allah’s saying, “O believers! Obey Allah and obey the Messenger and those in authority among you.”<sup>35</sup> This is because they are the leaders of truth, possessors of knowledge, pious in action, who command the good and forbid the wrong. Likewise, in the ḥadīth, “Whosoever obeys the ruler I appoint obeys me, and whosoever disobeys him disobeys me.”<sup>36</sup>

The author—Allah have mercy on him—combined between the two opinions regarding the saying of Allah, “and those in authority among you”. It has been said that this refers to the rulers of truth as we have clarified earlier. It has also been said that it refers to the scholars who act by their knowledge. For it is obligatory upon the *mujtahid* from them to act on what is preponderantly correct according to him and not merely follow the opinion of others. As for the *muqallid*, he must follow the people of knowledge, based on Allah’s saying, “Ask those who know if you do not know.”<sup>37</sup> The exception to this is creedal beliefs related to faith, in which case it is forbidden to follow someone for the one who has the ability to use their rational faculties to arrive at this knowledge himself. The *imān* of one who does imitate in these matters is still sound, however, even if they are sinful as we have clarified.<sup>38</sup>

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<sup>35</sup> Qur’an, *al-Nisā’*: 59.

<sup>36</sup> Bukhārī, #7137; Muslim, #1835.

<sup>37</sup> Qur’an, *al-Nahl*: 43

<sup>38</sup> Aḥmad ibn Ghunaym al-Nafrāwī, *al-Fawākih al-Dawānī ‘alā Ibn Abī Zayd al-Qayrawānī*, ed. ‘Abd al-Wārith Muḥammad ‘Alī, 2 vols. (Beirut: Dar al-Kutub al-‘Ilmiyya), 1: 167.