AL-JUWAYNĪ'S DOCTRINE OF THE IMĀMATE

BY

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To my wife, Aziah, for her understanding and patience, and to my daughters, Anis and Izzat, due to injustice in the provision of time for them, beside my acknowledgement of gratitude, I dedicate this thesis to them.
ABSTRACT

This thesis is devoted to the study of the doctrine of the imāmate according to Imām al-Ḥaramayn Abū al-Maṣāli ʿAbd al-Malik bin ʿAbdullah al-Juwaynī.

The thesis consists of eight chapters. It begins with a brief introduction to the life of al-Juwaynī and the historical background to his doctrine of the imāmate. The first chapter deals with al-Juwaynī's concept of the imāmate and its establishment. The second chapter deals with the qualifications required for the imām. The third chapter deals with the disqualification and dismissal of the imām. This comprises three separate sections i.e. the circumstances which require disqualification, the circumstances which require dismissal and the rules pertaining the dismissal. Chapter four deals with the duties of the imām. Chapter five deals with the assistants and equipment required by the imām. Chapter six and seven deal with the legitimacy of the imāmate of the four Guided Caliphs and the legitimacy of the de facto imāmate of Niẓām al-Mulk, respectively.

In analyzing al-Juwaynī's doctrine of the imāmate, an attempt is made in chapter eight to show the chain of thought among the traditional scholars prior to and after him, and to show the contribution made by al-Juwaynī in
the formulation of the doctrine of the imāmate in Islam.

The conclusion, presents the result of the analysis of his writing on the doctrine of the imāmate, its origin and influence.
LIST OF ABBREVIATIONS

al-°Aqidah
al-Nizamiyyah
al-Bidayah
al-Burhan
Cambridge History of Iran
EI(1)
EI(2)
EI(C)
EI(S)
Faqa'i'ih
Fiqh
al-Ghiyathi(1)
al-Ghiyathi(2)
al-Ibana
Imam al-Haramayn

al-Juwayni, al-Aqidah al-Nizamiyyah
Ibn Kathir, al-Bidayah wa al-Nihayah
al-Juwayni, al-Burhan fi Usul al-Fiqh
The Cambridge History of Iran, ed.
The Encyclopaedia of Islam,
The Encyclopaedia of Islam, New Edition
The Concise Encyclopaedia of Islam
The Shorter Encyclopaedia of Islam
al-Ghazali, Faqa'i'ih al-Batinaynah
°Abd al-°Azim al-Dib, Fiqh Imam al-Haramayn
al-Juwayni, Ghiyath al-Umam fi Iltiyath al-Zulam, ed. °Abd al-°Azim al-Dib
al-Juwayni, Ghiyath al-Umam fi Iltiyath al-Zulam, ed. Fu'ad °Abd al-Mun'im and Mustafa Hilmli
al-Ashari, al-Ibana an Usul al-Diyana
Muhammad b. °Ali b. °Uthman al-Harbi,
Imam al-Haramayn Abul Ma°Ali
al-Juwayni wa Atharuh fi °Ilm al-Kalam
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al-Tamhid : al-Bāqillānī, al-Tamhid fi al-Radd
al-Mulhidah al-Mu'attilah wa
al-Qarāmitah wa al-Khawārij wa
al-Mu'tazilah

Uṣūl al-Dīn : al-Baghdādi, Uṣūl al-Dīn

Wafayāt : Ibn Khallikān, Wafayāt al-Awān

al-Waraqāt : al-Juwaynī, al-Waraqāt fi Uṣūl al-Fīqh
NOTE ON TRANSLITERATION

The transliteration system used in this thesis is that used by the Encyclopaedia of Islam with some exceptions for the sake of convenience. The following are the exceptions:

(i) th is used for ث instead of th;
(ii) j is used for ج instead of dj;
(iii) kh is used for خ instead of kh;
(iv) dh is used for د instead of dh;
(v) sh is used for ش instead of sh;
(vi) gh is used for غ instead of gh;
(vii) q is used for ق instead of ئ;
(viii) h is added to transliterate تaurus ( ).

For example, مدينة is translated as "Madinah";

(iv) In the case of مطأطأ, t is used instead of h for تaurus. For example, تولية العهد is translated as "tawliyat al-ahd"; and

(v) Whenever the word ر ر is مطأطأ ilayh, the مطأطأ and مطأطأ ilayh are connected together. For example, عبد الله is transliterated as "Abdullâh".

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BIBLIOGRAPHY
INTRODUCTION

Much has been written on the life of al-Juwaynī, on his works and on the historical background to his thought.¹ However, for the purpose of shedding light on al-Juwaynī's doctrine of the imāmate, an account of al-Juwaynī's life, and some facts of the historical background which are related to the doctrine will be given in brief.

1. The Life of al-Juwaynī

The full name of al-Juwaynī is Abū al-Maʿāli ʿAbd al-Malik ibn al-Shaykh Abī Muḥammad ʿAbdullah b. Yusuf b. Abī Yaʿqūb Yūsuf b. ʿAbdullah b. Yusuf b. Muḥammad b. Ḥayyūyah al-Juwaynī.² Al-Juwaynī is known by many titles (kunyah). One of the titles is "Abū al-Maʿāli". The possible reason for being known by this title is that he dealt all his life

with theology, placing it on a higher and more honourable footing among the Muslims and the way in which, by his clear and persuasive logic, he raised and dignified Islam. He was also known by "Ḍiyāʾ al-Dīn". The reason for being known by this title is that he stood as a beacon to the defenders of the faith. Another title by which al-Juwaynī was known is "Ḥam al-Ḥaramayn". The reason is that he lived in Makkah and Madīnah for four years, during which time he was serving the Islamic faith by debating, giving decisions in Islamic law and trying to spread knowledge everywhere. Beside the above titles, "al-Juwaynī", the name which is used in this thesis is his relative name (nisbah) by which he was also known and is the one used by most of the biographers. Although it was a common tradition among the traditional Muslim scholars to be related to the place of their birth and death, the title of "al-Juwaynī" by which al-Juwaynī was known is not due to the same reason because Juwayn is not the place of the birth or the death of al-Juwaynī, as will be mentioned

3 The Origination, p. 7
4 Ibid., p. 8
5 Ibid., pp. 8 - 9
7 Juwayn is the arabized name of Kuyān as it was called by the people of Khurāsān. It is located between Bistām and Naysābūr, bounded by Bayhaq in the west (jitīt al-qiblah) and by Jājīram in the north. (See Mu'ījam al-Buldān, vol. 2, p. 223)
later. This title was the title of his father as his father was born in Juwayn. Al-Juwaynī inherited this title from his father after the death of his father when he replaced his father’s position in his twenties as a teacher in the school where his father was teaching. ⁸

The most probable place where al-Juwaynī was born is Bushtän’ in Khurāsān¹⁰ and the most probable date of his birth is 419 A.H./1028 C.E.¹¹ He was descended from an Arab tribe of Sinbis.¹² His mother was a righteous and gracious slave (jāriyah) who was bought by his father.¹³ His father was a leading scholar (imām) of his time in Naysābūr, a jurist (fāqīh) and pious.¹⁴

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⁸ The Origination, p. 8

⁹ See The Origination, p. 11. Some scholars such as Ann Lambton in her State and Government in Medieval Islam, Oxford, 1980, p. 104 citing El-Irshād par Imam al-Haramein V siecle (hegiere), ed. and trans. by J.D. Luciani, Paris, 1938, Arabic text, 23ff, and Fu‘ād Ābd al-Mun’im and Muṣṭafā Ḵiyāṭī in the introduction of their al-Ghīyāthī(2), p. 11 mim., Subki’s Tebāqāt, vol. 5, p. 169 suggest that al-Juwaynī was born in Juwayn. Bustingän is one of the pleasant little villages near Naysābūr. It is separated from Naysābūr by about 3 or 3 and half (English) miles. (See The Origination, p. 11).

¹⁰ It is a broad area (bilād wāsīṭah), located in the Central Asia. (Cf. Muṣjam, vol. 2, p. 401).

¹¹ See The Origination, p. 12, al-Bidāyah, vol. 12, p. 138, Wafayāt, vol. 3, p. 169. Some biographers say that al-Juwaynī was born in 417 A.H./1026 C.E., however, this date is contradictory to the agreement among themselves on the date of his death in 478 A.H./1085 C.E. and on his age when he died was 59 years old. (See Ibid.)

¹² Cf. Fīqḥ, pp. 44- 47


As his father was a learned man and a leading scholar of his time, the first education al-Juwaynī received was from his own father. Under his father al-Juwaynī studied Islamic law. Other than Islamic law (fiqh), he also studied the views of different schools of law (al-madhāhib), theology (usūl) and the Prophet's tradition (hadīth) from different teachers. It is said that al-Juwaynī also had learned knowledge which is condemned by the Muslims (ahl al-Islām). Some scholars suggest that the knowledge which is referred to here by al-Juwaynī is philosophy. However, no philosophy books have been found written by al-Juwaynī. Some others say that the knowledge which he referred to here is 'ilm al-kalām (theology) as he has written some theological books and later, at the end of his life he rejected the validity of 'ilm al-kalām. In rejecting the validity of 'ilm al-kalām, al-Juwaynī says:

"Do not learn 'ilm al-kalām. If I knew that 'ilm al-kalām could have brought me up to this stage, I would

15 Subkī's Tabaqāt, vol. 5, p. 169
16 Ibid., vol. 5, p. 171, p. 175, p. 179, p. 182
17 See list of al-Juwaynī's teachers in Appendix II.
18 Subkī's Tabaqāt, vol. 5, p. 185.
19 For example Ḥānimī al-Dīnāb. (See al-Ghiyāthī(1), pp. 38 mīm - 39 mīm. Idem, Fiqh, p. 64)
20 For example, Fu'amīt al-Mu'tāb and Muṣṭafā Ḥilmī. (See al-Ghiyāthī(2), p. 12 mīm, Fawkia Hussein Ma'ñmood (See Lam' al-Adillah, p. 56)
Al-Juwaynī also has a very good command of Arabic language."

As to his teachers, Muḥammad b. ʿAlī ʿUthmān Ḥarbī in his book Ḥumām al-Haramayn Abū al-Maʿālī al-Juwaynī wa Ṭhāruḥ fī ʿIlm al-Kalām, divides al-Juwaynī's teachers into two categories - the ones under whom al-Juwaynī studied directly and the ones from whom al-Juwaynī studied indirectly i.e. by reading the books written by the previous scholars." Among the teachers from whom al-Juwaynī benefitted most is Abū al-Qāsim al-Iskāfī24 of the school of al-Bayhaqī." From Abū al-Qāsim, al-Juwaynī studied theology (usūl) and Islamic Jurisprudence (usūl al-fiqh). The importance of this teacher is shown in al-Juwaynī's words:

"I used to take notes several chapters on theology

21 Subki's Tabaqāt, vol. 5, p. 186
22 Ibid., vol. 5, p. 179
23 See Appendix II
25 The owner of the school is Ahmad b. al-Ḥusayn b. ʿAlī b. ʿAbdullāh al-Bayhaqī al-Khasrūkhardī, a šāfīʿite jurist, d. 485 A.H/1066 C.E. (See Ḥumām al-Haramayn, p. 31)
(usūl) from him [Abū al-Qāsim] and I read myself a hundred of volumes [of his books].”

However, from his al-Ghīyāthī, it seems that his indirect teachers are more influential on him than his direct teachers. Most of the references in his writing in al-Ghīyāthī are made to his indirect teachers such as al-Ashʿarī and al-Bāqillānī. In the case of al-Bāqillānī, for example, although al-Bāqillānī died before al-Juwaynī was born, and al-Juwaynī did not study directly from him, many of the thoughts which al-Juwaynī composed in his academic works were taken from al-Bāqillānī through his books. In the field of ʿilm al-kalām, al-Juwaynī says:

"I would not speak on ʿilm al-kalām even a word until I have memorized 12,000 pages (waraqāt) of the kalām of al-Qāḍī Abū Bakr."

Kitāb al-Talkhis fi Usūl al-Dīn of al-Juwaynī is said to be the summary of al-Bāqillānī’s books.” This shows the closeness of the intellectual relationship between al-Juwaynī and al-Bāqillānī.

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26 Tabvīn, pp. 278 - 280

27 He is al-Qāḍī Abū Bakr Muḥammad b. al-Ṭayyib b. Muḥammad b. Jaʿfar b. al-Qāsim al-Bāqillānī, d. 404 A.H/1013 C.E., Note: al-Juwaynī was born in 419 A.H/1028 C.E.

28 Subkī's Tabagāt, vol. 5, p. 186

Due to a religious intrigue in Naysābūr against the Ash'arites i.e. fitnat al-Kundurī, which will be mentioned later, in about 443 A.H./1051 C.E - 447 A.H./1055 C.E., al-Juwaynī, as a defender of the Ash'arism, was forced to leave Naysābūr for Baghdād and from there he continued his travels to al-Hijāz and stayed in Makkah and Madīnah for about four years debating, giving decisions in Islamic law and trying to spread knowledge everywhere. 30 Due to his staying in Makkah and Madīnah, he was called "Imām al-Ḥaramayn" as mentioned earlier. 31 During his travels to these places, he also took opportunities to benefit from the scholars there to gain more knowledge. This is especially so in Baghdad as at that time Baghdad was the biggest centre for scholars ("ulamā') and knowledge. 32 Other than these places, al-Juwaynī also traveled to Isfahan to gain knowledge from the scholars there. 33

From Makkah, al-Juwaynī returned to Naysābūr when Alp Arslān 34 came to power in 455 A.H./1063 C.E and Nizām al-

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31 See p. 2 of this chapter.
32 Tabīn, p. 280
33 Ibid., p. 281
Mulk was appointed by him as his wazir (minister) in the same year. When the Saljūq state was under the rule of Alp Arslān and under the wizārah (ministership) of Niẓām al-Mulk, the Ash'arites who emigrated abroad due to the earlier mentioned religious intrigue were recalled to Naysābūr. Perhaps, this is one the reasons for al-Juwaynī's great regard for Niẓām al-Mulk, a subject will be discussed more fully later.

After his return to Naysābūr, al-Juwaynī was appointed as a teacher at al-Niẓāmiyyah madrasah (school) which was built by Niẓām al-Mulk for him in Naysābūr. He continued teaching at this school for thirty years until the end of his life. During this time, he also became the head of the Sunnite community and the preacher at al-Manīqī mosque, the biggest mosque in Naysābūr.

As to his character, al-Juwaynī was known for his humbleness, freedom in thinking, possession of strong

35 See details about Niẓām al-Mulk will be mentioned later in this introduction, See also full discussion on the de facto imamate of Niẓām al-Mulk in chapter VII of this thesis
37 Subki's Tabaqät, vol. 5, pp. 171, p. 176
38 Ibid., vol. 5, p. 177.
39 Ibid., vol. 5, p 181.
memory," patience in seeking knowledge," gentleness of heart," generosity," self-confidence," intelligence, perspicacity, appreciation of reason and knowledge, and respect for his adversaries in his argument with them."

Al-Juwayni is a mujtahid and hates taqlid (imitation). In many places in al-Ghyathî, al-Juwayni mentions that the rules which he formulates in it are of his own ijtihâd and have not been written by any of his predecessors. For example, when concluding his discussion on revenues (al-amwâl) of bayt al-mâl (national treasury), he says:

"So, the discussion (al-kalâm) on the possibility of the revenues (al-amwâl) of bayt al-mâl (national treasury) being exhausted is a new issue (wâqi'ah) which has not yet been preceded by any previous scholars (al-mâdiyyin)...."

On his attitude towards ijtihâd, al-Juwayni says:

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41 Tabyîn, p. 279, Subkî’s Tabâgât, p. 175, p. 180.
43 Subkî’s Tabâgât, p. 170, p. 179.
44 Wafavât, vol. 3, p. 168
45 Subkî’s Tabâgât, vol. 5, p. 170.
46 See al-Ghyathî(1), p. 34 mîm - 35 mîm, Figh, p. 60.
47 Tabyîn, p. 279, Subkî’s Tabâgât, pp. 134 - 135
"I do not fear to establish a rule which has not yet been established by any of the jurists or has not been exposed by any of the scholars as most of the contents of this book are not found (yulfā) in any (other) book or in any chapter [of another book]. If any rules have been composed by any scholars (agwām), [which I have approved of], I will refer the topics to their books."\(^4\)

His criticism of al-Māwardī\(^3\), his older contemporary, in his al-Ghiyāthī shows his hatred of taqlīd.\(^1\)

As a mujtahid and a learned man, al-Juwaynī wrote many books in various fields of Islam - laws (fiqh), jurisprudence (usūl al-fiqh), theology ("ilm al-kalām), difference between madhhabs (khilāf) and science of dispute (jadāl).\(^5\)

As to al-Juwaynī's position as a scholar, probably some comments from other scholars may be appropriate here.

\(^{49}\) Ibid., p. 266.


\(^{52}\) Many of al-Juwaynī's books are still in the form of manuscripts and have not yet been edited. A list of books which are written by al-Juwaynī is given in the Appendix (i) at the end of this thesis and for the benefit of those who are interested in the research on other al-Juwaynī's works, some useful information about the books are also provided. More details about al-Juwaynī's books can be found in The Origination, pp. 53 - 112 and in Imam al-Haramayn, pp. 67 - 76.
Regarding this, Abū Ishāq al-Shīrāzī⁵³ says:

"Benefit (tamatta'ū) from this scholar because he is an honour (nuzhah) of this era",⁵⁴

"Oh the one who benefits the people of the east and the people of the west, those who came earlier (al-awwalūn) and those who came later (al-ākhirūn) have benefitted from your knowledge"⁵⁵

and on another occasion, Abū Ishāq al-Shīrāzī describes him as the leader of the scholars (imām al-a'immaḥ).⁵⁶

Commenting on al-Juwaynī, Shaykh al-Islām Abū Ṭūthman Isma'īl b. Abd al-Rahmān al-Sābūnī⁵⁷ says:

"God has turned away the loathsome things (al-makārih) from this scholar and today he is the pleasure (qurrat ṣain) of Islam and its defender with the eloquence of speech".⁵⁸

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⁵³ One of the scholars (a'immaḥ) who is contemporary with al-Juwaynī, the head of al-Nizāmiyyah school in Baghdad.
⁵⁶ Ibid.
⁵⁷ He is Ismā'īl b. Ābd al-Rahmān b. Ahmad b. Ismā'īl b. Ibrāhīm b. Āmir b. Ā'id Shaykh al-Islām Abū Ṭūthman al-Sābūnī, a jurist, expert of hadith (muḥaddith), died in 449 A.H./1056 C.E. (The Origination, p. 114)
⁵⁸ Subki's Tabagāt, vol. 5, p. 173
Abū Muḥammad al-Jurjānī describes al-Juwaynī as follows:

"He is the scholar of his time, unique of his kind, incomparable in terms of his memorization (ḥafz), character (shaʿn) and eloquence of speech".

"and [people] from Khurāsān, ʿIrāq and Ḥijāz travelled to him".

Abū al-Qāsim Al-Qushayrī also comments on al-Juwaynī saying:

"If Imām al-Ḥaramayn claims that he is a prophet, his words would not require any miracle [to prove]."

Although some of the comments above are exaggeration, the position of al-Juwaynī as a respected, well-known and capable scholar in his time is clear.

Al-Juwaynī died in 478 A.H./1085 C.E. in Bushtingān at 59

59 He is Abū Muḥammad ʿAbdullāh b. Yūsuf al-Jurjānī, an expert of hadith, a jurist, d. 489 A.H./1096 C.E. (Subkī's Ṭabagāt, vol. 5, pp. 94 - 95)

60 Subkī's Ṭabagāt, vol. 5, p. 173

61 Ibid.


63 Subkī's Ṭabagāt, vol. 5, p. 174
the age of 59."

2. Historical Background to al-Juwaynī's Doctrine of the Imāmate

2.1. Political

Probably the best way to understand the political conditions during this period is by looking at two main elements i.e. the breaking up of the Islamic Empire and the main forces which played important roles and caused political conflicts at that time. These forces are the Abbasid Caliphate, the Fātimids, the Buyids and the Saljūqs.

2.1.1. The Breaking Up of the Islamic Empire

The fifth century represents the summit of the breaking up of the Islamic empire into small dynasties which were controlled by the amīrs (leaders of the Muslims in restricted areas) from different groups and sects."


65 See Burḥān, p. 21, Fiqh, p. 36, p. 53, al-Ghaythī (1), p. 25 mīm See also Imām al-Karamayn, p. 47
These amīrs normally gained their power by force. “During this period, the political conditions in the Islamic world were in chaos.”

The political conditions during this period were the result of the political development in the Islamic World since the early second century (A.H). The breaking up of the Islamic Empire had started with the establishment of the Umayyad Dynasty in Spain in 138 A.H./756 C.E. This dynasty survived until 422 A.H./1031 C.E. and was afterwards succeeded by various local amīrs and ethnic groups until 897 A.H./1492 C.E. 68

After the establishment of the Umayyad Dynasty in Spain, many more dynasties were established afterwards from time to time in every part of the Islamic Empire. In the western part of the empire, for example, there were the Idrisid dynasty in Morocco (172 A.H./788 C.E. - 314 A.H./926 C.E.) 69, the Aghlabid dynasty in Tūnis (184 A.H./800 C.E. - 296 A.H./909 C.E.) 70 and the Fāṭimid dynasty in North Africa, Egypt and Syria (297 A.H./909 C.E - 567 A.H./1171

66 See Imām al-Haramayn, p. 47  
67 The Origination, p. 22  
68 Cf. Islamic Dynasties, pp. 11 - 19, Cf. Imām al-Haramayn, p. 47  
69 Cf. Ibid., pp. 20 - 21  
70 Cf. Ibid., pp. 24 - 25

As to the sects, these different dynasties adhered to different sects. For examples, The Ummayyads in Spain, the Aghlabids, the Tāhīrids, the Sāmānīds, the Ghaznavids and the Saljūqs adhered to Sunnism, whereas the Idrisid, the Fatimids and the Buyids adhered to different sub-sects of Shi'ism.

Due to these different sects and sub-sects, there were always religious and political conflicts between these different dynasties. The religious and political conflict did not only occurred between the Sunnites dynasties and

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71 Cf. Ibid., pp. 46 - 48
72 Cf. Ibid., pp. 101 - 102
73 Cf. Ibid., pp. 181 - 183
74 Cf. Ibid., pp. 101 - 102
75 Cf. Ibid., pp. 94 - 97
76 Cf. Ibid., pp. 115 - 118
the Shi‘ite dynasties such as the conflict between the Saljūqs and the Buyids, and between the Saljūqs and the Fatimids but also between the Shi‘ite dynasties themselves. It is known that the Buyids in the east part of the Islamic empire was not on good terms with the Fātimids in the East.

2.1.2. The Contemporary Political Forces

2.1.2.1. The ʿAbbāsid Caliphate

As mentioned earlier, the most probable period of life of al-Juwaynī was between 419 A.H/1028 C.E. until 478 A.D/1085 C.E. This means that the life of al-Juwaynī coincided with the period of three ʿAbbāsid caliphs in Baghdad as when he was born, the ʿAbbāsid caliph was al-Qādir (381 A.H./991 C.E. - 422 A.H./1031 C.E) and when he died in 478 A.H./1085 C.E., the ʿAbbāsid caliph was al-Muqtadī (467 A.H./1075 C.E - 487 A.D./1094 C.E.). The caliph between the two caliphs was al-Qāʾīm who was caliph between 422 A.H./1031 and 467 A.H./1075 C.E."

At the time when al-Juwaynī was born in 419 A.H./1085 C.E., the ʿAbbāsid caliph, al-Qādir was already under the control of the Buyids who entered Baghdad since 334 A.H./945 C.E.. The Buyids controlled Baghdad until 447

77 See Ibid., p.7
A.H./1055 C.E. when they were overthrown by the Saljūqs who entered Baghdad then. Since the entrance of the Buyids, the 'Abbāsid caliphs had lost their temporal power. The only power they had was moral and spiritual influence. However, the 'Abbāsid caliphs were given religious power by the Saljūq after their entrance in 447 A.H./1055 C.E."

2.1.2.2. The Fāṭimids

As earlier mentioned, the Fāṭimids are a dynasty who reigned in North Africa and Egypt from 297 A.H./909 C.E. - 567 A.H./1171 C.E.. The Fāṭimids claimed to be descent of 'Alī. However, the enemies such as the Sunnites denied their claim and declared that they were impostors. Among the Sunnite scholars who denied the descent of the Fāṭimids from 'Alī was al-Juwaynī himself. The Buyids also denied this claim. Probably due to this reason, the Fāṭimids failed to reach to understanding with the Buyids.

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79 Ibid.

80 See *EI(2)*, vol. 3, p. 850, Cf. *Islamic Dynasties*, p. 46

81 See *al-Ghiyāthî(1)*, pp. 80 - 81

82 See *EI(2)*, vol. 2, p. 856

In the politico-religious field, the Fāṭimids adhered to Isma‘ilism and was anti Sunnism and Khārijism. In their propaganda, already in their African period, the Fāṭimids proclaimed aloud that universal sovereignty was given to them by divine decree and that they were called to displaced the Ummayyad of Spain as well as the ‘Abbāsids of Baghdad...” In the North Africa, the Fāṭimids fought against the Sunnites and the Khārijites and it was alway their intention to enter Baghdad, the capital of the ‘Abbāsīd caliphate at that time." In a statement to a Byzantine ambassador in Cairo, a Fāṭimid ruler, al-Mu‘īzz wrote that on the ambassador’s next visit, the ambassador would find him in Baghdad. "What he meant was, it was his intention and confidence that one day the Fāṭimids would win against the Sunnite ‘Abbāsīd caliph in Baghdad. In achieving their ambition to enter Baghdad, the Fāṭimids sent their emissaries throughout the ‘Abbāsīd domains propagating thier religious political views and seeking supporters.”

84 Ibid., pp. 855 - 856, Cf. W.M. Watt, Islamic Political Thought, Edinburgh, 1968, p. 113
85 See Ibid., p. 855
86 See Ibid.
87 See W.M. Watt, op. cit., 113
The "Buyid" comes from Buwayh or Buyeh, the father of the three brothers, 'Ali, al-Hasan and Ahmad who founded the dynasty. 'Ali, al-Hasan and Ahmad, each of the them ruled in different province(s) i.e. Fars, Jibal, and Kirman and Khuzistan respectively." They belonged to the population of Dylamites and adhered Twelvers Shi'aism when they converted to Islam."

In 334 A.H./945 C.E., The Buyids lead by Ahmad entered Baghdad and captured power from the Sunnite 'Abbasid Caliph." The Buyids controlled the 'Abbasid caliphate 110 years."

However, when the Buyids entered Baghdad, although they were Shi'ite, they did not overthrow the Sunnite 'Abbasid caliph. Although the fact that the Buyid did not respect the 'Abbasid caliph, they still kept the post of the caliphate in the hands of the 'Abbasid caliph due to some reasons for their own interests. Firstly, the Buyids realized that they, as Shi'ites, were minority in the

88 See EI(2), vol. 1, p. 1350, See also, Islamic Dynasties, p. 95
89 See EI(2), vol. 1, p. 1350, See also, Islamic Dynasties, p. 95
90 See Islamic Dynasties, p. 95
91 Ibid.
Islamic world. The Sunnites were the majority. The destruction of the Sunnite caliphate in Baghdad would lead the Sunnites in other parts of the Muslim world to appoint another Sunnite caliph. The establishment of the new Sunnite caliphate would create new enemy. Therefore, keeping the existing caliph without power was better for their interest to prevent the Sunnites from appointing a new caliph. Secondly, the 'Abbāsid caliph was, at that time, recognized by the whole Muslim world. The presence of the 'Abbāsid caliph could be utilized as a proof of the legitimacy of their authority in the Sunnite State. Thirdly, the presence of the 'Abbāsid caliph also would strengthen the Buyid diplomatic relations with the world outside by the weight of the respected moral authority which the Sunnite amīrs still enjoyed by right.

By the capture of the power of the 'Abbāsid caliphate by the Buyids, not only all of 'Alī, al-Ḥasan and Ahmad were given each new titles (lāqāba) of ‘Imād al-Dawlah, Rukn al-Dawlah and Muʿizz al-Dawlah respectively' but, as early mentioned, the 'Abbāsid caliph also recognized them as legitimate amīrs ruling the provinces, including Baghdad,

92 See EI (2), vol. 1, p. 1350
93 See Ibid.
94 See Ibid.
95 EI (2), vol. 1, p. 1350
on his behalf. From then, as earlier mentioned, the 'Abbāsid caliph no longer had temporal powers except moral and spiritual influence. All temporal powers, including the powers over the army were transferred to the Buyid amīrs."

The functions of the caliph were now only confined to the administration of his goods and the organization of the palace, the representative duties which devolved upon the caliph, the control of the good works and religio-legal life of the Sunnites and a certain moral share in the administration of Baghdad." The caliph received small allowance which was taken from the public fund by the Buyid amīr. This practice is in contrast to the practice prior to the capture of the Buyids whereby the caliph administered his allowance by himself."

2.1.2.4. The Saljūqs

The Saljūqs were originally a family chiefs in Qinit clan of the Oghuz Turkish people whose name was in the steppes north of the Caspian and Aral Seas. They became Muslims towards the end of the tenth century (C.E) and entered the Islamic world in Khwarazm and Transoxania. Due

96 See p. 17 of this chapter, See also EI(2), vol. 1, p. 1353
97 EI(2), vol. 1, p. 1350
98 See Ibid., p. 1353
to their greatness, from Khwarazm and Transoxania, they managed to expand their rule to Iraq, Kirman, Syria and Asia Minor." The greatness of the Saljūqs is clearly shown in a description by Rawandi about the Saljūq:

"...In the lands of the Arabs, Persians, Byzantines, and the Russians, the swords is in the hands of the Turks, and fear of their swords is firmly implanted in all hearts!"\[^{100}\]

The first sultan of the Saljūqs was Toghril Beg. He proclaimed himself as the sultan of Naysābūr after he captured Naysabūr in 429 A.H./1038 C.E.\[^{101}\]

As the Saljūqs adhered Sunnism, for Islam, the rise of the saljūqs meant the victory of the Sunnite creed as far as their power stretched, over the Shi'ite tendency which had been gaining more and more ground under the Buyids and Fatimids.\[^{102}\] As the crusade against the Shi'ite Buyids, in 447 A.H./1055 C.E., the Saljūqs entered Baghdad and put an end to the Buyid rule there.\[^{103}\] In 449 A.H./1058 C.E., the Saljūq sultan who put an end to the Buyid rule in Baghdad

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99 See EI(1), vol. 4, p. 208
100 Cambridge History of Iran, vol. 5, p.15
101 See Islamic Dynasties, p. 116, See also Cambridge History of Iran, vol. 5, p.23
102 EI(1), vol. 4, p. 210
103 See Makdisi, George, op. cit. p. 155 and p. 163, see also Cambridge History of Iran, vol. 5, p. 45 and p. 47
was given the title "Rukn al-Dawlah" (the Pillar of the State) and "Malik al-Mashriq wa al-Maghrib" (the King of the east and the west) and recognized by the 'Abbāsid caliph as a legitimate sultan to rule on his behalf.¹⁰⁴

By the entrance of the saljūqs into Baghdad, the position of the 'Abbāsid caliph, to some extent, was improved compared to his position during the Buyids rule. Although the Saljūqs did not return back the temporal power to the 'Abbāsid caliph, they returned the religious power to him.¹⁰⁵ This division of powers created a separation of powers between the Saljūqs and the 'Abbāsid caliph. The sultan conducted temporal affairs and the caliph conducted religious affairs.¹⁰⁶ As two separate bodies, the caliph was allowed to have his own wazir and the sultan his own.¹⁰⁷ This is in contrast to the practice by the Buyids that the wazir in the 'Abbāsid caliphate should be responsible directly to the Buyid amīr.¹⁰⁸ The Saljūqs still recognized the 'Abbāsid caliph as the head of the orthodox Islam whom they were called upon to defend with

¹⁰⁴See Cambridge History of Iran, vol. 5, p. 4
¹⁰⁵See Ibid., p. 48
¹⁰⁷See Klausner, op. cit., p. 28
¹⁰⁸Klausner, Ibid., p. 27
sword. Due to this reason, the Saljūqs who were led by their great wazīr, Niẓām al-Mulk, took energetic steps against the dangerous activities of the Ismaʿīlites.\(^{109}\) As the head of the Muslim community, the coin in the state carried the caliph's name.\(^{110}\) Also under the Saljūqs, the caliphs were no longer arbitrarily deposed as they had been on occasion under the Buyids, and their election was rarely influence by the Saljūq sultāns.\(^{111}\) However, the position of the Saljūq sultān was still superior to the position of the ʿAbbāsid caliph.\(^{112}\) It was among the practice of some Saljūq sultāns that they controlled the caliph through marriage relationship\(^{113}\) and nomination of the wazīr of the caliph.

As to the internal organization of the Saljūq system of government, the sultān is considered as the head of the government. However, the sultān did not conduct all the affairs in the government by himself. Most of his duties were delegated to a wazīr. A wazīr under the Saljūq system of government had the powers in almost all fields including

\(^{109}\) See EI(1), vol. 1, p. 210  
\(^{110}\) See Klausner, op. cit., p. 29  
\(^{111}\) Ibid., p. 28  
\(^{112}\) See Klausner, op. cit., p. 6  
\(^{113}\) As an example, the ʿAbbāsid caliph al-Muqtadī was a son-in-law to Alp Arslān (See Cambridge History of Iran, p. 61)
financial, judicial, religious, ceremonial and military. The wazîr was the head of the financial administration, the head of justice and the head of religion. The wazîr was the representative of the sultân on ceremonial occasion. The wazîr was the one had the control over the army and was responsible for recruiting the troops. The wazîr was also often called by the sultân to dispatch the army or to undertake expeditions by himself. Besides, the wazîr also was given responsibility as a patron or atabeg to a sultân or amîr. Some Saljûq sultân such as Malik Shah, when they were appointed, they were still young. Malik Shah, for example, when he was appointed as the sultân of the saljûqs, he was only eighteen years old. In such a case, the wazîr as the patron to the sultân or amîr was also responsible to educate and upbring the sultân or amîr, to control him and to prevent rebellion in the area under the authority of the sultân or the amîr. The atabeg of Malik Shah was Nişām

114 See Klausner, op. cit. p. 39
115 See Ibid.
116 Ibid. pp. 40 - 41
117 Ibid. p. 41
118 Ibid. p. 42
119 op. cit. p. 40
120 See EI(2), vol. 6, p. 273
121 See Klausner, op. cit. p. 85
al-Mulk.\textsuperscript{122} With all these great powers given to the \textit{wazîr}, it was the \textit{wazîr} as chief deputy of the sultan who became crucial figures within the structure of the Saljüq government.\textsuperscript{123} As Harold Bowen says when describing the power of the Saljüq \textit{wazîr} to Alp Arslan and Malik Shah, Niżām al-Mulk:

"He (Niżām al-Mulk) was the real power of the Saljukid (Saljüq) empire\textsuperscript{124}"

As the strongest man in the Saljüq empire, it is appropriate that a brief description about Niżām al-Mulk to be mentioned in this introduction.

The real name of Niżām al-Mulk is al-Ḥasan b. ʿAlī b. Isḥāq b. al-ʿAbbās al-Ṭūsī. He was born in Radkan, a village near Tūs in 408 A.H./1017 C.E.\textsuperscript{126} His father was a Ghaznawid government officer.\textsuperscript{126} When most of Khurāsān fell into the Saljūqs, Niżām al-Mulk was a Ghaznawid government officer. However, after four years in service with the Ghaznawid government, he later joined the Saljūq government. First he joined Chaghri Beg in Balkh, then later joined Alp Arslān

\begin{itemize}
\item \textsuperscript{122} \textit{Ibid.} p. 84
\item \textsuperscript{123} \textit{Ibid.} p. 82
\item \textsuperscript{124} \textit{EI(2)}, vol. 3, p. 933
\item \textsuperscript{125} See \textit{Imām al-Haramayn}, p. 56
\item \textsuperscript{126} \textit{EI(2)}, vol. 3, p. 932
\end{itemize}

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in Eastern Khuränsän. When Ibn Shahdan, the wazîr of Alp Arslân died, Niżâm al-Mulk was appointed by Alp Arslân as his wazîr succeeding Ibn Shahdan.\textsuperscript{127} When Toghril Beg, the first Saljûq sultan died, he was succeeded by Alp Arslân in 455 A.D./1063 C.E.\textsuperscript{128} At the beginning, Alp Arslân still kept al-Kundurî,\textsuperscript{129} the wazîr of Alp Arslân as his wazîr. However, after a month of becoming the sultan of the Saljûqs, Alp Arslân dismissed al-Kundurî and appointed Nižâm al-Mulk as his new wazîr.\textsuperscript{130} Al-Kundurî was shortly afterwards bânished to Marw al-Rüd, where ten months later he was beheaded.\textsuperscript{131} In 465 A.H./1072 C.E., when Alp Arslân assassinated, he was succeeded by Malik Shâh\textsuperscript{132}. Malik Shah kept Nižâm al-Mulk as his wazîr, as well as his atabeg for twenty years until Nižâm al-Mulk's death in 485 A.H./1092 C.E.\textsuperscript{133} due to an assassination by a Daylamîte youth of the Isma'îlîtes.\textsuperscript{134}

\textsuperscript{127} Ibid.
\textsuperscript{128} See Cambridge History of Iran, vol. 5, p.54
\textsuperscript{129} Al-Kundurî is the wazîr of the first Saljûq sultan Tughrîl. His full name is Muḥammad b. Manṣûr b. Muḥammad Abû Naṣr, extremely against the Ash'arîtes, died in 456 A.H./1064 C.E. (al-Ghiyâthî(1), p. 42 mīm, Fīqh, p. 44)
\textsuperscript{130} See EI(1), vol. 3, p. 933, Cf. p. 8 of this chapter.
\textsuperscript{131} Ibid.
\textsuperscript{132} See EI(2), vol. 6, p. 273
\textsuperscript{133} See Cambridge History of Iran, vol. 5, p. 55 and p. 68
\textsuperscript{134} See Cambridge History of Iran, vol. 5, p. 102, Cf. EI(1), vol. 3, p. 935

27
As to his theological sect and school of law, Nižām al-Mulk is an Ashʿarite and a Shāfiʿite and he is a strong supporter of Ashʿarism and Shāfiʿite school of law. It was during his time that Ashʿarism became the pre-dominant theology of the Shāfiʿites throughout the Muslim world. In supporting Ashʿarism and the Shafiʿite school of law, during his ministership, he built al-Nižamiyyah madrasahs to teach Ashʿarite theology and Shāfiʿite fiqh.

2.2. Religious

From the religious aspect, the fifth century of Hijrah (11th century of C.E) was also known as the period of conflict between sects and schools of laws in Islam. A lot of religious dissensions (fitan) between these sects and schools of laws occurred during this period especially in Baghdad and Naysābūr, especially between the Shiʿites and the Sunnites (al-Sunniyyah), between the Ashʿarites and the Ḥanbalites, between the Shāfiʿites and the Ḥanbalites, and between the Shāfiʿites and the Ḥanafites. The following are some of the examples.

136 Madelung, op. cit., pp. 33–34
137 See Cambridge History of Iran, vol. 5, p. 72, Cf. Makdisi, op. cit., p. 159
138 Figh, p. 39
In Baghdad, at least there were two dissensions occurred between Sunnites and Shiites of al-Karkh. In 443 A.H./1051 C.E., a dissension occurred between these two factions due to an inscription written by ahl al-Karkh on the fishermen's gate (bāb al-sammākīn):

"Muḥammad and 'Alī are the best of mankind".

However, some Sunnites (al-Sunniyyah) rejected the statement and said that the inscription was:

"Muḥammad and 'Alī are the best of mankind. Whoever agrees with it, he is a thankful person (shakūr) and whoever does not agree with it, he is unbeliever."

The people of Karkh denied the additional claimed statement. In answering to the claim by the Sunnites, ahl al-Karkh said that they never made such additional statement in their inscription. The result of this dissension was a killing of a Ḥāshimite and chaos in the town.139 Another dissension between these two factions occurred in 445 A.H./1052 C.E. This dissension occurred due to a killing of a Shiite man (alawi) in Karkh by some Turkish officers (assumably Sunnites) who tried to solve a problem of dissension which had become worse between the Shiites and

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139 Cf. al-Kāmil, vol. 8, pp. 301 - 302, Cf. also The Origination, pp. 23 - 24
the Sunnites there. Due to this killing, ahl al-Karkh became angry and fought against the Turkish officers. The result of this dissension was a serious fighting (qitāl shadīd) between Shi'ites and others of the public of Karkh and the Turkish officers, and many bazaars were burnt. 140

In 447 A.H./1055 C.E., a dissension occurred between Shāfʿite scholars and Ḥanbalite scholars due to their disagreement on some legal rules. One of the rules was whether "Bismillāh al-Rahmān al-Rahīm" (In the name of God, the Merciful and the Compassionate) is allowed to be spoken out loud in prayers. The Ḥanbalite scholars hold the view that it was not allowed but the Shāfʿite scholars it was allowed. Due to their disagreement, the Ḥanbalites went to a mosque and prevented the Shāfiʿite imām from reciting the "Bismillāh" out loud. 141

In Nāysābūr, disorders spread between 443 A.H./1051 C.E. and 447 A.H./1055 C.E. The dissension which caused the disorders is known in Islamic history as fitnat al-Kundūrī. The reason for the occurrence of the dissension was the appointment of Abū Sahl al-Muwaffaq 142, who was a Shāfiʿite, at the age of seventeen as the chief of the

140 Cf. al-Kāmil, vol. 8, p. 312, Cf. also The Origination, pp. 24 - 25
141 Cf. al-Kāmil, p. 320, Cf. also, The Origination, p. 25
142 He is Muhammed b. Hibbatullah b. Muhammed b. al-Ḥusayn, died in 456 A.H./1064 C.E.
Shāfī‘ite school of law (madhhab). The appointment was opposed by al-Kundurī, the wazīr of Toghril Beg, who was a Ḥanafite. The crisis led to a more serious dissension. An order from the sultan, under the influence of al-Kundurī, went out for the arrest of Abū al-Qāsim al-Qushayrī, the ra‘īs (mayor) Abū al-Faḍl Aḥmad al-Furātī, al-Juwaynī and Abū Sahl al-Muwaffaq. The first two were captured and imprisoned in a citadel. Al-Juwaynī escaped and made his way to exile in Arabia by way of Kirman. Abū Sahl chose to stay and fight. He withdrew to the area of Bakharz southeast Naysābūr and gathered together an armed force of his personal retainers. Then he returned to the city and a battle was met. Abū Sahl succeeded in freeing the prisoners. After the success, Abū Sahl and the prisoners left for Ustuvā and from there, Abū Sahl left again for Rayy. From Rayy Abū Sahl tried again to appeal to the sultan to call off the persecution. His trial failed and Abū Sahl was arrested and imprisoned. However, he was released again later on and went to Arabia in exile with other Ash‘arites. There were some four hundred Ash‘arites found their way into exile due to the dissension. The state of things in Naysābūr became stable when Alp Arslān, the second Saljūq ruler sat on the throne and Niẓām al-Mulk became his wazīr. Al-Kundurī was executed. Those who left Naysābūr due to the dissension, including al-Juwaynī, were
called to return back to Naysābūr.\textsuperscript{143}

From the various incidents mentioned above, it shows that the religious life of the Muslims during this period was also in chaos. Although the greatest challenge to the Sunnites who were the majority of the Muslims during this period was Shi‘ism,\textsuperscript{144} the religious dissensions which occurred during this period were not only between the Shi‘ites and the Ash‘arites but also between the Sunnite schools of law (madhhabs) themselves such as the dissension between the Shāf‘ites and the Ḥanbalites and the Shāf‘ites ans the Ḥanafites.

These are the political conditions and the religious life of the Muslims during the fifth century of Hijrah (11th century C.E).

2.3. Intellectual

Nevertheless, the intellectual life of the Muslims during this period shows the contrast to the political conditions and their religious life. Despite the breaking-up of the Islamic Empire into small dynasties controlled by

\textsuperscript{143} See Bulliet, \textit{op. cit.}, pp. 122 - 123, Cf. Madelung, \textit{op. cit.}, pp. 33 - 34, Cf. also note no. 30

\textsuperscript{144} Khan, Kamaruddin, \textit{The Political Thought of Ibn Taymiyyah}, Delhi, 1988, p. 19
different groups and different sects of the Muslims and their chaotic religious life, knowledge had flourished and spread everywhere in the broken-up Islamic World, especially in Naysābūr and Baghdad. The period was the most productive one in terms of intellectual aspect of Islam since the beginning of the establishment of the Islamic state. The conflict between the different sects and school of laws provoked the development of knowledge. Every different small dynasty encouraged the establishment of its own madrasahs (schools), scholars, men of literatures and poets as a part of the pride of its ruler.

In the west part of the Islamic world, in Egypt, there had already existed Azhar Mosque of the Fātimid general Jauhar and the Caliph al-Muʿizz which was founded in 359 A.H./970 C.E. and Dār al-Hikmah of the Caliph al-Ḥākim, which was founded in 395 A.H./1005 C.E. as centers of Shiʿite propaganda.

In the east part of the Islamic empire, there were numerous madrasahs built by the Saljūq rulers, by their


146 See Burhān, p. 21, See also Fīqh, p. 38, See also al-Ghiyāthī(1), p. 25 mīm

147 Cambridge History of Iran, vol. 5, p. 71

148 Cambridge History of Iran, vol. 5, p. 71 and p. 215

33
ministers and others. There was a madrasah built by Toghril Beg in Naysābūr; Chaghri Beg Dāūd built a madrasah in Marv; Alp Arslān in Baghdad; Muḥammad b. Malik Shah in Isfahān, and Toghril b. Muḥammad in Hamadān.\(^{149}\)

However, the most famous madrasahs during this period was al-Nīzāmiyyah madrasahs which were built by Niẓām al-Mulk. These madrasahs were not only built in Naysābūr, but also in other places such as Baghdad, Amul, Mosul, Herat, Damascus, Jazīrat Ibn ʿUmar, Balkh, Ghazna, Marv and Basrah.\(^{150}\) Al-Nīzāmiyyah madrasahs were among the example of the madrasahs which were built for a particular sect and a particular school of law. As earlier mentioned al-Nīzāmiyyah madrasahs were built only to teach Ashʿarite theology and Shāfiʿite fiqh. In the al-Nīzāmiyyah madrasah in Baghdad, for instance, Niẓām al-Mulk, who was himself a Shāfiʿī, laid down that the mudarris (professor), waʿiz, and librarians of the madrasah should be Shāfiʿites. The teaching programme of the madrasah comprised the Qurʾān, hadīth, Islamic jurisprudence (usūl al-fiqh) according to Shāfiʿite school of law, kalām (theology) according to Ashʿarite doctrine, Arabic language and literature, adab (belles letter), mathematics and farāʾid (laws of

\(^{149}\) Ibid., pp. 215 - 216

\(^{150}\) Ibid., pp. 215 - 216
The purposes of the establishment of the madrasahs by Nizām al-Mulk were mainly political and religious and i.e. firstly is to provide government officials trained in the tenets of orthodoxy who would replace the former secretarial classes and implement his policies. Secondly is to control the masses and combat the spread of the Ismāʿīlīte sect, which had begun to threaten the existence of the state, by using the scholars who were educated in the madrasahs.

During this fifth century also, many learned scholars appeared from different sects and schools of laws in variety fields of knowledge, especially in Naysābūr.


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151 Cambridge History of Iran, p. 216, Cf. Klausner, op. cit. p. 64
152 Ibid., p. 214, Cf. Klausner, op. cit. p. 5 and pp. 63 - 64
Among the Mu'tazilite scholars, there were Ibn Yusuf al-Qazwini (died in 482 A.H./1089 C.E.), a mufassir (interpreter) of 700 volumes. Ibn Yusuf al-Qazwini had given Niẓām al-Mulk a book of ten volumes named "Gharīb al-Hadīth" and the book was kept in Niẓām al-Mulk's library.\(^{153}\)

In the field of philosophy, there was Abū al-Husayn b. 'Abdullāh b. Sīnā who is known until now as Ibn Sīnā. Ibn Sīnā wrote many philosophical books such as Kitāb al-Mufāragāt, Kitāb fī al-Aʿdād wa al-Uqūl, Fi al-Aflāk and Kitāb al-Mubdīyat. Many of his books also were kept in al-Niẓāmiyyah library. Ibn al-Khayyām (died in 515 A.H./1122 C.E.) is another scholar of philosophy as well as a poet. He wrote al-Ruṣūḥ, Mukhtasar fī al-Tabīʿiyāt, Risālah fī al-Wujūd and Risālah fī al-Kawn wa al-Taklīf.\(^{154}\)

In the field of sufism, there were, for instance, Abū ʿAlī al-Ḥasan b. ʿAlī al-Daqqāq (died in 415 A.H./1024 C.E.) and Abū al-Qāsim al-Quṣayrī.\(^{155}\)

153 See Imām al-Haramayn, p. 62, See also The Origination, p. 29
154 See Imām al-Haramayn, p. 63, See also The Origination, pp. 28 - 29
156 See The Origination, p. 31
In addition to the above reason, in some areas of the Islamic world, history also played role in the flourishing of knowledge. Khurasan, for example, was previously inherited by various civilizations and religions such as Persian, Hinduism and Grecism which survived behind the names of philosophy and so on. This fact attracted many scholars to come to the area especially Naysābūr, the most flourishing city of Khurāsān at that time.¹⁵⁷

Other than the reasons which are mentioned above there are more other reasons which supported the flourishing of knowledge during this period. As summarized by Muḥammad b. Ḥālī Ḥaḥbī, the other reasons are:

(i) the maturity of the Muslim intellectuality in research and writing after undergoing different stages since the beginning of Islam;

(ii) the translation of Greek, Persian and Indian books into Arabic;

(iii) the emigration of Muslim scholars to different places either due to the desire to seek knowledge or due to religious dissensions in their home country as from this emigration,

¹⁵⁷ See Burhān, pp. 21 - 22. See also, Fīqh, p. 53. See also al-Ghiyāthī(1), p. 26 min.
they took the opportunity to benefit from other great scholars wherever they met them;

(iv) the argument and discussion between different law schools; and

(vi) the religious fanaticism (al-ta'assub al-dinī) which led every sect to prove its view with evidences.\textsuperscript{128}

In this political, religious and intellectual backgrounds lived al-Juwaynī. There is no doubt that these political, religious and intellectual backgrounds had some effects on the thinking of al-Juwaynī. To see how this backgrounds affect his thought, the following chapters are the discussion on his doctrine of the imamate which will mainly be based on three works of al-Juwaynī i.e. Lam' al-Adillah (written between 438 A.H./1046 C.E. and 459 A.H./1066 C.E.)\textsuperscript{159}, al-Irshād (written after 459 A.H./1066 C.E.)\textsuperscript{160} and al-Ghaythī (between 465 C.E./1072 C.E. and 478 C.E./1085 C.E.).\textsuperscript{161}

\begin{itemize}
\item \textsuperscript{158} See Imām al-Haramayn, pp. 60 - 61
\item \textsuperscript{159} The Origination, p. 110
\item \textsuperscript{160} Ibid.
\item \textsuperscript{161} as will be discussed bellow
\end{itemize}

38
3. Notes on al-Ghiyāthī

Since al-Ghiyāthī is the major work referred in this thesis, it seems important that a note about this work should be made.

3.1. Definition

Al-Ghiyāthī is the name known for a compendium called Ghiyāth al-Umam fi Iltivāth al-Zulam. It is al-Juwaynī's comprehensive compendium on political or constitutional thought. The compendium contains three books. The first book deals with the imāmate. The second book deals with the rules which should be applicable to the Muslims during the period in which the post of the imāmate is vacant and the third book deals with the rules which should be applicable to the Muslims during the period in which mujtahidūn and the bearers of madhāhib do not exist.

3.2. The Date of the Writing of al-Ghiyāthī

It is neither stated in any part of the compendium nor in any bibliographical source that al-Ghiyāthī was written in a certain date. There is no fact available to indicate

162 There is no dispute among the researchers the al-Ghiyāthī is the work of al-Juwaynī (See C. Brockelmann, Geschishte Der Arabischen Litteratur, Leiden, 1937, p. 673, al-Ghiyāthī(1), pp. 47 mim - 50 mim, The Origination, p. 57, pp. 90 - 93)
that the compendium was written in an exact date. However, what is certain from the facts and indications which can be found from al-Ghiydthi and other al-Juwayni works is that the compendium must have been written between 465 A.H./1073 C.E. - 478 A.D./1085 C.E. This is based on the following grounds:

(1) As will be discussed later, al-Ghiydthi was written for Nişām al-Mulk. Nişām al-Mulk was appointed as a wazīr by Alp Arslān after Alp Arslān had become the sultān in 455 A.H./1063 C.E. Therefore, the compendium could not have been written before 455 A.H/1063 C.E.. It must be after the date.

(2) Al-Juwayni has mentioned in his al-Ghiydthi about the battle of Manzikert between the Saljūq and the Byzantine Emperor Romanus Diogenes. The battle occurred in 463 A.H./1071 C.E.. This fact indicates that it is definite that the compendium was written after 463 A.H./1071 C.E..

(3) Al-Juwayni's duā' (prayers) "May God protect his

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163 as has been mentioned earlier that al-Juwayni died in 478 C.E./1085 C.E. (See Introduction, p. 13)


165 EI(2), vol. 1, p. 420
soul with His grace" which is meant for Alp Arslän, in al-
Ghiyāthī indicates that Alp Arslän had already died when
al-Juwaynī wrote the compendium. Alp Arslän died in 465
A.H./1073 C.E. Therefore, al-Ghiyāthī could not have
been written before 465 A.H./1073 C.E..

3.3. Al-Ghiyāthī was Written for and Addressed to
Niẓām al-Mulk

Although al-Juwaynī does not mention explicitly in al-
Ghiyāthī that al-Ghiyāthī was written for and addressed to
Niẓām al-Mulk, some facts which can be found in al-Ghiyāthī
itself and other al-Juwaynī's works, indicate that the
compendium was written for and addressed to Niẓām al-Mulk.
Among the facts is the use of the title "Ghiyāth al-Dawlah"
and "Mawlānā" by al-Juwaynī in his writings for the one to
whom the compendium was addressed. Regarding this, al-
Juwaynī states in al-Ghiyāthī:

"Now is the stage to give the title to the
compendium.

It has been known to the world that Sadr al-Ayyām
and Maw'il al-Anām (the Supporter of the People) and
the one who is the real supporter of Islam is called
by names which his high qualities (ma'ānī) are greater
than and of which his eminence surpasses. He is
Ghiyāth al-Dawlah (the Saviour of the Country). When
Ghiyāth al-Umam fi Iltivāth al-Zulam is completed,


\[167\] EI(2), vol. 1, p. 421, EI(1), vol. 3, p. 933

41
let it be known as al-Ghiyāthī as the first one was known as al-Nizāmi".168

What al-Juwaynī means by "the first" here is that the book which he mentions earlier in al-Ghiyāthī" as he says:

"[Before this compendium], it has been preceded by the book al-Nizāmi...."

The book al-Nizāmi only survived in a part which is known as al-ʿAqidah al-Nizāmiyyah.170

In presenting al-ʿAqidah al-Nizāmiyyah to Niẓām al-Mulk,171 al-Juwaynī explicitly mentions Niẓām al-Mulk's name in it and associates the name with the titles "Ghiyāth al-Dawlah" and "Mawlānā". Regarding this al-Juwaynī writes in al-ʿAqidah al-Nizāmiyyah:

"God has given you your duties [oh Mawlānā (our Master), Niẓām al-Mulk, Sayyid al-Wuzara' (the Master of the ministers), Ghiyāth al-Dawlah (the Saviour of the Country), Muʿtamad Amir al-Muʾminin (support of the Commander of the Believers) - may God preserve your position"

168 al-Ghiyāthī(1), p. 18
169 Ibid., p. 7
171 See al-ʿAqidah al-Nizāmiyyah, pp. 7 - 8
172 It should be noted that the Arabic text is in bracket.
173 al-ʿAqidah al-Nizāmiyyah, p. 7
Throughout al-Ghiyāthī and al-ʿAqīdah al-Nizāmiyyah, al-Juwaynī uses the title "Mawlānā" when addressing his writings. The fact that in al-ʿAqīdah al-Nizāmiyyah, the person referred to is clearly Niẓām al-Mulk could suggest the same person is addressed in al-Ghiyāthī. This argument is further strengthened by the fact that Niẓām al-Mulk is identified in al-ʿAqīdah al-Nizāmiyyah as Ghiyāth al-Dawlah and that is the title of the addressee in al-Ghiyāthī.

Niẓām al-Mulk is also addressed as al-Majlis al-Sāmī in al-ʿAqīdah al-Nizāmiyyah. The addressee of al-Ghiyāthī is also called al-Majlis al-Sāmī. In al-ʿAqīdah al-Nizāmiyyah, al-Juwaynī promised al-Majlis al-Sāmī for whom it was written, that he was going to write a separate book on the imāmate instead of writing it as a part of al-Nizāmī and there is no other separate book of al-Juwaynī on the imāmate except al-Ghiyāthī. Regarding this al-Juwaynī states in al-ʿAqīdah al-Nizāmiyyah:

"I used to promise that I was going to write some sections (fusūl) on the imāmate, but then I decided to write a separate book on the imāmate for al-Majlis al-Sāmī."
It has already been noted that Niẓām al-Mulk is described as "Mawlānā" in al-ʾAqidah al-Nizāmiyyah. This is also a term used for the addressee in al-Ghayathi.

All of these would seem to establish, beyond doubt, that al-Ghayathi was written and addressed to Niẓām al-Mulk. Also, possibly due to this reason, many parts of al-Ghayathi were written in beautiful poetic Arabic.
CHAPTER ONE

THE IMÄMATE AND ITS ESTABLISHMENT

1. Definition of the Imämate

In al-Ghiväthī(1), al-Juwaynī defines the imämate as

"a comprehensive and public leadership related to private and public matters in religious and worldly affairs. Its duty is to protect the country, to take care of the subjects, to perform da'wah (call to Islam) by argument and sword, to prevent deviation and injustice, to adjudicate between the oppressors and oppressed and to restore the rights from those who abstain (mumtani'in) from fulfilling them to the rightful owners".

The imām is the person who holds the post of the imāmate - a comprehensive and public leader related to private and public matters in religious and worldly affairs with certain duties as above mentioned.

Although al-Juwaynī includes in his early writings sections on the imāmate in his books of 'ilm al-kalām (i.e. al-Irshād and Lam' al-Adillah), he states clearly in al-Irshād from the beginning when he writes on the imāmate that the topic of the imāmate is not of usūl al-ī'tiqād.

1 al-Ghiväthī(1), p. 22
2 See al-Irshād, p. 411
or 'ilm al-kalām. In al-Ghiyāthī he states that

"the imāmate is not one of the principles of belief (gawā'id al-ṣ-ğā'd) but it does constitute a comprehensive system of authority (wilāyah tāmmah)."³

He also states in his work Mughīth al-Khalq fī Bayān al-Aḥaqq,⁴ that

"the issue of the imāmate is among the issues of the branches or derived laws (al-furū')."³

This underlines his view that the imāmate is not an asl principle of Islam.

Al-Ghiyāthī is not a book on 'ilm al-kalām as classified by some researchers' but it is a book of fīqh.⁵

Al-Ghiyāthī does not contain any main topic of 'ilm al-kalām. The possible reason for the inclusion of the topic of the imāmate in the books of 'ilm al-kalām in the early writings of al-Juwaynī, is probably similar to the reason used by the scholars who lived within the same period when

³ al-Ghiyāthī(2), p. 61
⁴ a MS no. 458 (usūl al-fīqh) at Dār al-Kutub al-Miṣriyyah, Cairo.
⁵ Ibid., f. 6
⁶ For example Dr. Fawkia Hussein Maḥmūd, The Origination, p. 59, See Lam al-Adillah, ed. idem, p. 46, al-Κāfiyāh, ed. idem, p.22
the conflict between madhhabs of Islam was at its height. Most of the writings by the Sunnite scholars such as al-
Ash'arî,° al-Bâqillânî° and al-Ghazâli° on 'ilm al-kalâm
are composed to refute the views of other Muslim groups
such as the Shi'îtes and the Mu'tazilites. These groups
consider the topic of the imâmate as a part of 'ilm al-
kalâm. Based on this doctrine, they discuss this topic in
the books of 'ilm al-kalâm. Therefore, these writers argued
against them by including sections on the imâmâte in their
works of kalâm without actually saying whether this topic
did or did not belong to 'ilm al-kalâm.

As to the terminology used in his writings on the
imamate, al-Juwaynî is almost consistent in using the term
"al-imâm" to denote the person who holds the post of the
leadership of all Muslims and the term "al-imâmah"
(imâmâte) as the name for the post.

However, in some places in his writings, al-Juwaynî
uses other terms to denote the same person who holds the post of the leadership of the Muslims. The terms are "al-sulṭān" and "al-wāli". The following sentences are the best evidences to substantiate that the terms "al-imām", "al-sulṭān" and "al-wāli" are all meant for the holder of the post of the leadership of the Muslims:

(i) "He (Imām Mālik) allows al-wāli to impose capital punishment as a ta'zīr (preventive) punishment." 13

(ii) "He (Imām Mālik) said: " al-imām has the right to kill one third of the ummah for the sake of giving benefit (istīslāh) to the other two third of them." 14

(iii) "I (al-Juwaynī) do not hold the opinion that al-sulṭān has the right to exceed hadd (fixed) punishment." 15

In the above three quotations, it is clear that al-Juwaynī uses the three terms "al-imām", "al-sulṭān" and "al-wāli" interchangably as he uses these three terms within a discussion on the same subject.

12 See Ibid., p. 219, p. 238, p. 268, p. 269
13 Ibid., p. 219
14 Ibid.
15 Ibid., p. 226
The fact that the term "al-sultān" is to mean "al-imām" is supported by another al-Juwaynī's statement:

"al-sultān is the guardian (wālī) for those who do not have a guardian."\(^{16}\)

It is understood that al-sultān in this statement could also mean the imām of the Muslims.

The similarity of the meaning of "al-wālī" to "al-imām" is also supported by another al-Juwaynī's phrase:

"when the Muslims are governed (sāsa) by a wālī."\(^{17}\)

Nevertheless, in some places in al-Juwaynī's writings, the term "sultān" could also have a more general meaning as the one who possesses power or authority in the Muslim Community. This may include an amīr, a leader of the Muslims in a restricted territory (during the absence of the imām) who is not considered by al-Juwaynī as having the same status as the imām, whose jurisdiction should cover all Islamic territories.\(^{18}\) The confusion also happens to the term "al-wālī". As mentioned earlier, sometimes, al-Juwaynī uses "al-wālī" to denote the imām, but in some

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16 Ibid., p. 232  
17 Ibid., p. 268  
18 Ibid., p. 177
other places, the term clearly does not denote the *imām*. For example, when al-Juwaynī says:

"When there is a period in which the *imām* or a *sultan* who possesses power and capacity is absent, all the affairs [of the Muslims] should be entrusted to the scholars. Then, It is the duty of every individual to refer to their scholars and the scholars should conduct all the affairs which are related to government (*gdāvā al-wilāvāt*). If they do so, they have fulfilled the same duties. Therefore, they are considered as the "wulāh" of the people"\[19\]

In this quotation, the term "sultan" seems to have a different meaning from the *imām*. Otherwise, al-Juwaynī does not have to use two terms in a sentence with the *imām* with "alīf and lām" (*al-imām*) as an indication for definiteness or familiarity and the "sultan" without "alīf and lām" which indicates indefiniteness. As to the term "wulāh" (plural of *wālī*) in this quotation, it is definite that it does not denote the *imām* as according to al-Juwaynī, it is prohibited to have more than one *imām* at the same time, as will be discussed later. The possible meaning here is the persons who hold religious authority.

There is no indication in al-Juwaynī's writing that he uses the term "sultan" to mean the real title for any ruler. For Alp Arsalān, the second Saljūq ruler, al-Juwaynī calls him "malik" (King) and "malik al-Islām" (the king of

\[19\] Ibid., p. 391
Islam).²⁰

In some places, al-Juwaynī uses the same terms "a'immah" (plural of imām) and "wulāh" (plural of wāli) for different meanings. However, from the context of his writings, there is no confusion arises. The meanings required by al-Juwaynī are clear. For example, the term "a'immah" is used to mean scholars²¹ and the term "wulāh" is used to mean governors²².

The term "Khulafā'" (plural of khalīfah) and "Khilāfah" are used by al-Juwaynī in a few places in his writings on the imāmate, but he does not use the terms to denote "al-imām" and "al-imāmah" as a concept. The terms are only used to denote the real title of a ruler which are used by the four Guided Caliphs, the Umayyad and the Abbasid.²³

2. The Rule (Huukm) Regarding the Establishment of the Imāmate

Whenever possible, the establishment of the imāmate or

²⁰ Ibid., p. 347, p. 348.
²¹ Ibid., p. 326
²² Ibid., p. 178, p. 253, p. 303
²³ Ibid., p. 99, p. 172, p.247, p. 251
the appointment of the imām is compulsory." Al-Juwaynī supports his opinion by three bases. The first two, the imām of all 'ulamā' and the tradition of the Companions during the appointment of the first caliph after the death of the Prophet Muḥammad may be regarded as based on religious law (sharīʿa) while the third is based on reason. What was done by the Companions is that they delayed the burial of the body of the Prophet and gave their concentration to the appointment of his successor. The reason for their concentration to the appointment was to avoid fighting between Muslims due to the absence of a leader. By rational basis, al-Juwaynī says that it is logical to say that defending the country is a necessity (maḥtūm). If people are left in chaos with different opinions and desires without a leader to unite them to the true way and to prohibit them from evil, it is certain that order will be disrupted, people will go astray, disputes will arise and evil people will conquer religious people.

Al-Juwaynī criticizes 'Abd al-Rahmān bin Kaysān," who holds the view that the appointment of the imām is not compulsory and that it is permissible to leave people with different opinions without any leader to unite them, by saying that 'Abd al-Rahmān bin Kaysān intends to create

24 al-Ghyāthī(1), p. 22
25 He is known as al-Aṣamm (See al-Ghyāthī(1), p. 22)
chaos, promote disobedience and he is famous for his deviation from ijmāʿ and the traditions of the Muslims.

As to the basis for the obligation to appoint the imām, his writing indicates that he agrees with the majority of scholars that it is based on a transmitted provision (al-shar' al-mangūl).²⁶

Al-Juwaynī rejects the opinion of a group of the Rāfiqītes (al-Rawāfiḍ) who hold the view that the basis of the obligation is reason. According to this group, it is an obligation on God to give benefit (istislah) to His servants (ibād) and among the benefits which should be given is the appointment of the imām. In rebutting the above view, al-Juwaynī labels them as ignorant about the nature of God. Al-Juwaynī continues his argument saying that if God is burdened by obligations, He is subject to receiving rewards (mathāb) and punishment (iqāb). This is clearly contradictory to the nature of God who neither benefits nor is harmed. Therefore, to believe that He has obligations is wrong.

Al-Juwaynī also argues that if prophets who are proven by miracles could be absent in certain periods of time, why could not the imām? Whereas prophets are more needed than

²⁶ al-Ghiyāthī(1), p. 24
the **imām** to protect the religion of the **ummah**.

Another argument which is used by al-Juwaynī is that if reason is accepted as the basis, it is also possible for God to destroy the creatures (al-khalā'iq) and to make them in wrong path. However by His virtue and grace, good people enjoy His guidance and evil people suffer from His punishment. Certainly, God is not questioned about what He does but people are questioned by Him.

4. The Methods of the Appointment of the **Imām**

Although al-Juwaynī does not compose a special chapter on the method of the appointment of the **imām** under a single topic, it can be concluded from the materials available in different places in his works that according to him, there are four ways to appoint the **imām** - the appointment by **nass** (designation), the appointment by **ahl al-ba'll wa al-`aqd**, the appointment by the existing **imām** (tawliyat al-`ahd) and self-appointment by usurpation. However, al-Juwaynī rejects the appointment by **nass** as a legitimate method and accuses those who hold the view of being deviationists.  

27 op. cit., p. 37
3.1. The Appointment by Nass

Before rejecting the appointment by nass, al-Juwaynī forwards four claims of the appointment by nass (assignment) by different group of Muslims:

(1) The Imāmites of the Rāfidites claim that the Prophet Muḥammad has appointed ʿAlī as his successor or the imām for the Muslims after his death. However, later, the ummah hid the appointment from the people. They also claim that the appointment was witnessed by the people. Therefore, to them the appointment is certain (gat') and there is no place for ijtihād in this matter. 28

(ii) A group of the Zaydites hold the view that there is no appointment of the imām by the Prophet Muḥammad but the ummah has chosen an unqualified person i.e. Abū Bakr. According to al-Zaydites, the only qualified person for the imāmate after the death of the Prophet Muḥammad is

28 The Imāmites is a branch of the Shiʿites who believe in twelve imāms beginning with ʿAlī and ending with Muḥammad al-Mahdi. (See EI(2), III, pp. 1166 -1167 and pp. 277 - 279)
29 The Rāfidites is a branch of the Shiʿites who reject the imāmate of Abū Bakr and ʿUmar. (See EI(S), p. 466.
30 See al-Ghiyāthī(1), pp. 28 -29, al-Irshād, p. 419. See also al-Ibānah, p. 72
31 The Zaydites is a branch of the Shiʿites, distinguished from the Twelvers and Seveners by the recognition of Zayd bin ʿAlī. (See EI(2), IV, pp. 1196 -1198)
(iii) A group who belongs to the Sunnites (al-Sunnah) claim that the Prophet Muḥammad has appointed Abū Bakr as the imām after him."

(iv) A group known as the Abbāsids (al-ʿAbbāsiyyah) holds the view that the Prophet Muḥammad has appointed his uncle al-ʿAbbās as his successor and to them there can be no doubt about the appointment."

In refuting ashāb al-nass (those who claim that the establishment of the imāmate is based on the appointment by the Prophet Muḥammad), al-Juwaynī bases his argument on reason and the sunnah of the Prophet Muḥammad. Al-Juwaynī challenges them by questioning that how is it that only a certain group which is small in number able to know about the appointment without their adversaries who are the majority of the Muslims, and for those who claim that ʿAlī was appointed, how do they reject those who claim the appointment of Abū Bakr or al-ʿAbbās? If they claim that the appointment is reported by a few individuals (ahād), al-

32 See al-Ghāthī (1), pp. 29 - 30
33 See Ibid., p. 30
34 This group is probably the same group who is called by al-ʿAsh’arī as al-Rawandiyyah (See al-Ibānah, p. 72)
35 See op. cit., p. 30
Juwaynī says, their report is not free from mistake (zalal). Therefore, their claim about the appointment is not acceptable. At another place in his work, al-Juwaynī states that the Imāmites (al-Imāmiyyah) rejects any tradition which is reported by a few individuals (khabar ahād) to be used as proof. This is a clear contradiction within their own doctrine. Al-Juwaynī also reasons logically that if the appointment of wulāh (governors), su'āh (messengers) and jubāh (tax collectors) such as the appointment of Mu'ādh bin Jabal18, 'Attāb b. Asīd19 and 'Alī as the fourth caliph can be known, how can the appointment of 'Alī by the Prophet Muḥammad as his successor not be known as well,20 as this would have been much more important than the other matters. He also mentions the story of the conflict among the Muslims in Madīnah after the death of the Prophet Muḥammad. There was a discord between the Muslims on the appointment of the successor of the Prophet Muḥammad until Sa'd b. 'Ubādah was mentioned for the succession.21 However, he was rejected by the people on

36 See Ibid., p. 32
37 See al-Irshād, p. 419 and p. 421
38 Mu'ādh bin Jabal was appointed by the Prophet Muḥammad as a judge to Yemen. (See EI(2), vol. 5, p. 241)
39 He is 'Attāb b. Asīd b. Abī al-Ās, was appointed governor to Mecca (See EI(2), vol. 1, p. 75)
40 See al-Ghiyāthī(1), p. 34
41 See Ibid., p. 35
the grounds that he was not from Quraysh as this
contradicts the sayings of the Prophet Muḥammad:

"Give preference to Quraysh and do not precede
over them"\textsuperscript{42}

and

"The imāms should be from Quraysh"\textsuperscript{43}

After that the Muslims agreed to appoint Abū Bakr and all
of them gave baʿīṣah (allegiance) to him. There was no one
among the supporters of Saʿd b. ʿUbādah who opposed the
appointment of Abū Bakr.\textsuperscript{44} Al-Juwaynī also says that if
there had been such an appointment for ʿAlī by the Prophet
Muḥammad, when Abū Bakr was appointed, surely someone among
the people would have said:

"What happened to you, confused in the darkness,
entangled in trouble, hesitating in rejecting and
nominating, separating and uniting and you ignore the
nass by the Sāhib al-sharʿ (the law maker)?"\textsuperscript{45}

In another argument, when rejecting the appointment by

\textsuperscript{42} al-Ṭabarānī (See al-Irshād, p. 427)

\textsuperscript{43} Ahmad, al-Ṭabarānī (al-Ghiyāthī(2), p. 36)

\textsuperscript{44} See al-Ghiyāthī(1), pp. 35 - 36

\textsuperscript{45} Ibid. p. 36

58
nass, al-Juwaynī also questions how the Companions of the Prophet Muhammad, who are pious, leaders of the people, never being under any subjugation of anyone except God and were present at the time of the Prophet Muhammad could not understand the clear nass by their genius." These are clear proofs that the concealing of the appointment is impossible.

Against those who base their argument on the following hadīths:

"One whose mawla is myself, "Alī is his mawla""

and

"You are to me like the position of Hārūn to Mūsā", 48

al-Juwaynī proves clearly that these two hadīths cannot be accepted as proof in saying that 'Alī is the one who should succeed the Prophet Muhammad.

As to the first hadīth, first, he rejects it because

46 See Ibid., pp. 42 - 43


48 Bukhārī, Ibn Mājah (See al-Irshād, p. 422, al-Ghiyāthi(2), p. 20)
the **hadith** is ǟhād** and therefore, is open to mistake. Due to this possibility, the appointment cannot be certain. Second, the word **mawlā** is a word which has more than one meaning (**lafz mushtarakah**). The word may mean a cousin, a slave liberator, a liberated slave or a helper.**

As to the second **hadith**, al-Juwaynī says that it is absolutely unacceptable if the "position" in the **hadith** is to mean succession of authority because Hārūn died before Mūsā and therefore, he never succeeded Mūsā. In fact, the similarity between the two cases is that Hārūn was a helper to Mūsā during Mūsā's life time and 'Alī was the Prophet Muḥammad's assistant in replacing him in Madīnah during the Battle of Tābūk while the Prophet Muḥammad was still alive." However, in view of al-Juwaynī's interpretation of the second **hadith**, it would seem likely that the word mawlā in the first **hadith** to mean for helper.

3.2. The appointment by **ahl al-ball wa al-ṣaqd**.

At the time when there is no **imām** existing in power,
the normal way to appoint the imām is by the choice of ahl al-hall wa al-ṣaqd. On this method of appointment, al-Juwaynī states:

"the choice (al-ikhtiyār) by ahl al-hall wa al-ṣaqd is the basis which should be believed (al-mustanad al-mu'taqad) and the reference which should be relied on (al-mu'awwal al-mu'taqad)"

The appointment of Abū Bakr, the first caliph after the death of the Prophet Muḥammad is the strongest evidence for the appointment by ahl al-hall wa al-ṣaqd. The appointment is established by the ijmā' of the Companions.

According to al-Juwaynī,

"ijmā' (consensus) is a definite proof (huṣjah gāti'ah)".

In other separate statements, he says:

"It has been set up that ijmā' is a definite and manifest proof (dalil gāti' wa burhān sāti') in the sharī'a."

"The definite legal proofs are three: text from the book of God which is not open to ta'wil (argument)

53 Al-Ghiyāthī(1), p. 43, al-Irshād, p. 423
55 al-Burhān, p. 436, See. also al-Waraqāt, p. 24
56 Ibid., p. 438
61
about its validity, khabar mutawātir (continuously transmitted tradition) from the Messenger in which mistake in report and transmission is impossible and ijmā' which has been established."

and

"We never found any definite basis (ta'wīl) for the the issues regarding the imāmate except ijmā'".

Al-Juwaynī also supports the appointment of Abū Bakr by the following traditions of the Prophet Muḥammad:

(i) "It is not proper for a qawm (a group of people) in which there is Abū Bakr, to give priority over him to anyone else"

(ii) "God and Muslims refuse anyone except Abū Bakr"

(iii) "Follow the two after me - Abū Bakr and 'Umar"

(iv) The Prophet Muḥammad asked Abū Bakr to replace him as the imām of prayer when the Prophet

57 al-Ghiyāthī(1), pp. 60 - 61
58 Ibid., p. 54
59 See al-Ghiyāthī(1), pp. 41 - 42, In al-Irshād, p.423, al-Juwaynī mentions only two of the traditions i.e:
   (i) "God and Muslims refuse anybody except Abū Bakr"
   (ii) "Follow the two after me - Abū Bakr and 'Umar"
60 al-Tirmidhī (al-Ghiyāthī(1), p. 41), al-Ghiyāthī(2), p.32
61 Muslim (al-Irshād, p. 423, al-Ghiyāthī(1), p. 42)
62 Abūmad, Tirmidhī, Ibn Mājah (Irshād, p. 423)
Muhammad was in sickness which led him to his death.⁶³

3.2.1. The qualification of ahl al-hall wa al-'aqd

As to the definition of ahl al-ball wa al-'aqd, al-Juwaynī reserves a chapter in al-Ghiväthi to discuss the qualification of ahl al-ball wa al-'aqd and their valid number for the contract of the imamate.

Before discussing the required qualification of ahl al-ball wa al-'aqd, al-Juwaynī mentions the groups which are not qualified to be a member of ahl al-ball wa al-'aqd. Those groups are woman, slave even though he may be a very knowledgable person, ordinary person who does not reach the status of an 'ālim (singular of 'ulamā') and ahl al-dhimmah (non-Muslims within the Islamic State).⁶⁴ Al-Juwaynī continues by saying that the exclusion of these groups from the qualification of ahl al-ball wa al-'aqd is definite (gatrī) and well-known (laya bih khifā').

From the exclusion, it can be understood that the person qualified to be a member of ahl al-ball wa al-'aqd should be male, free status, knowledgable (‘ālim) and Muslim. Beside these qualifications, al-Juwaynī adds two

⁶³ See al-Ṭabarī, Tārikh al-Ṭabarī, vol. 3, pp. 196 - 197
⁶⁴ See al-Ghiväthi(1), pp. 62 - 63
other requirements - possession of power and piety (wara').

3.2.1.1 Male

A member of ahl al-ball wa al-°aqd must be male. From his writing, it can be understood that, according to al-Juwaynī, there are five reasons why a woman is not qualified to be a member of ahl al-ball wa al-°aqd.

The first reason is based on ijmā' of 'ulamā' that women have not ever been referred to or consulted in the past regarding the election and appointment of the imām. If they should be consulted, the most appropriate and qualified women to be consulted are Fātimah, the daughter of the Prophet Muhammad and his wives. However, that has never happened. 65

The second reason is based on his opinion that women are not created for managing other's affairs. The grounds for his opinion is that even the management of women's affairs is delegated to men. 66

The third reason is that women are not suitable for the duty because they should not expose themselves to the

65 al-Ghiyāthī(1), p. 62
66 Ibid., p. 64
public like men do. The duty to elect and appoint the imām would require women to expose themselves in public."

The fourth reason is that women have little capability in the matter related to decision-making and reasoning."

The fifth reason is that women are not independent. Al-Juwaynī supports his opinion by saying that if a woman is not independent in giving herself in marriage, how could she be allowed to be independent in making decision in a greater and more important matter?

3.2.1.2. Free Status

A member of ahl al-ball wa al-ʿaqd must be a person who possesses free status. A slave, even though he may be a very knowledgable person, is not qualified to be a member of ahl al-ball wa al-ʿaqd because a slave is not independent as he is under the control of his master. Therefore, a slave is not free to investigate and ascertain the qualities of the person to be appointed as the imām."

Regarding the slave, al-Juwaynī states:

67 Ibid.
68 Ibid.
69 Ibid.
...it is as if they do not have any way of expressing their will.70

3.2.1.3. Knowledge

A member of ahl al-ball wa al-°agd must be a knowledgable or learned person (fādil). An ordinary person who does not reach the status of an "ālim is not qualified to be a member of ahl al-ball wa al-°agd.

The reason for excluding an ordinary person is that if the person does not have knowledge about the qualities required for the imām, he may choose the wrong person for the post of the imāmate and this would cause harm to the Muslims.

However, al-Juwaynī does not require that the knowledgable or learned person must reach the status of a mujtahid.71 It is sufficient that the person knows about the relevant knowledge which is neccessary (tamussu al-ähājah) for the duty, for instance, an evaluer (mugawwim) should know about the prices and the nature of the goods, a distributor (qassām) should know about calculation (bisāb and masābah) and the method of settling shares, a date collector (Khāris) should know about whatever necessary for

70 Ibid.
71 Ibid., p. 72
his duty and the hakamayn (two arbitrators) for reconciling spouses in marriage conflict should know about the rights and responsibilities of marriage, the custom of living together and their details. They are not required to be muitahid."

3.2.1.4. Age of Majority

An member of ahl al-ball wa al-‘aqd must be a person who has reached the age of majority (dhawi al-ablām)."

3.2.1.5. Islam

A member of ahl al-ball wa al-‘aqd must be a Muslim. This is understood from his exclusion of ahl al-dhimmah as he says:

"there is no place for ahl al-dhimmah in the appointment of the imām"."

However, al-Juwaynī does not give any reason for the exclusion of this group. Probably, al-Juwaynī purposely ignores the reason from being discussed as it could be understood by common sense that non-Muslims may act against

72 Ibid., pp. 64 - 65
73 Ibid., p. 62
74 Ibid.
the religion of Islam if they become \textit{ahl al-ball wa al-`aqd}.

3.2.1.6. Possession of Power

A member of \textit{ahl al-ball wa al-`aqd} must be a person who possesses power and able to provide strength and power (\textit{shawkah}) with his followers for the \textit{imām}, by which any opposition or rebellion can be deterred. If the person is weak and is not able to provide strength and power which can deter opposition, he is not qualified to be a member of \textit{ahl al-ball wa al-`aqd}.

Al-Juwaynī provides two grounds for the requirement of this quality.

The first ground is the case of the \textit{bai`ah} which is given by \textquote{Umar to Abū Bakr when the latter was appointed as the first caliph. Although Abū Bakr was given \textit{bai`ah} at the beginning only by \textquote{Umar, he had a number of supporters with him which gave Abū Bakr power and stability. There was no one who opposed the appointment of Abū Bakr.}"

The second ground is the \textit{i`mā`} of all \textit{`ulamā'} on the principle that if only one member of \textit{ahl al-ball wa al-`aqd

\footnote{Ibid., pp. 70 -71}
\footnote{Ibid.}
and the imām-to-be make the contract of the imāmate, the contract is not valid. What al-Juwaynī means by the "only one member" is a person who is alone without any supporters to provide power to the imām.

On this principle, al-Juwaynī says:

"Power should be required (lä budda min ri'āyatihā)" and

"...I require that the one who gives bai'ah (allegiance) must be from one whose mubahah (allegiance) is able to provide (yufid) strength (munnah) and power (igtihār)."

3.2.1.7. Piety (Wara')

A member of ahl al-ball wa al-'aqd must have the quality of piety (wara'). The purpose of the requirement of this quality is that the person must be trustworthy as he says:

"One who can not be trusted with a bundle of sprouts, how can he be trusted to choose the imām?".

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77 Ibid., p. 71
78 Ibid., p. 71
79 Ibid., p. 72
80 al-Ghīthāthī(1), p. 66
81 Ibid.
"One who does not fear God is not free from his calamities (ghawā'iluh) and one who does not protect his chastity, his virtue is useless." 82

Also, on this quality, al-Juwaynī remarks that the requirement of this quality for a member of ahl al-hall wa al-'aqd is more important than the saying that the imāmate is established by nass (designation). 83

3.2.2. The Number of Ahl al-Mall wa al-'Āqd

Before giving his opinion on the number of ahl al-hall wa al-'ágd, al-Juwaynī precedes with four opinions of different groups of scholars and their basis on this regard.

The first opinion is two persons. The basis for this opinion is that two is the least number for plural. 84 The second opinion is four persons. The basis for this opinion is that the imāmate is the most important matter, therefore, the number of witnesses of four should be taken into consideration. 85 The third opinion is forty persons.

82 Ibid.
83 Ibid.
84 Ibid., p. 68
85 Ibid.
The basis for this opinion is that the imām of the Muslims is considered similar to the imām in a jum'ah prayer. The fourth opinion is one person. This opinion, as al-Juwaynī says, belongs to al-Qādī Abū Bakr (al-Baqillānī) who transmits it from Abū Ḥasan (al-Ash'arī).

However al-Juwaynī rejects all the first three opinions saying that the method of reasoning used by those groups is the weakest method of analogy in the sharia and all these opinions are not based on any evidence (asl) from the source (ma'khadh) of the imāmate. Al-Juwaynī agrees with the fourth opinion and its reasons. The reasons for the fourth opinion is that unanimity (ijmā) is not a condition for the validity of the contract of the imāmate, there is no revealed provision (tawgīf) proven requiring certain number of members and contracts in the sharia can be contracted by one person.

Al-Juwaynī, however, differs from al-Baṣqillānī and al-Ash'arī as he does not consider that the requirement of one

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86 Ibid., pp. 68 - 69
87 See al-Tashīd, p. 178
88 This opinion of al-Ash'arī is mentioned by al-Baṣqillānī (Abū Mansūr ʿAbd al-Qāhir b. Ṭahir al-Tamīmī, d. 429 A.H/1027 C.E, See EI(2), vol. 1, p. 909) in his book Usūl al-Dīn, p. 46. This may be taken from al-Ash'arī's Maqālāt, p. 149
89 Ibid., p. 68
90 Ibid., p. 69
person as absolute. According to al-Juwaynī, the contract by one person can be valid only if the person with his supporters is able to provide power to the *imām* by which any opposition or rebellion against the *imām* can be deterred. If the *bai'ah* is given by a single person who is weak and unable to deter opposition or rebellion against the *imām*, the *bai'ah* is not valid."

Regarding this requirement, al-Juwaynī says:

"It is not the number ("adad) which counts but the equipment ("udad) i.e. the power which he wields"."

After agreeing with the opinion that unanimity is not a condition for the validity of the contract of the *imāmate*," al-Juwaynī strengthens the opinion with two arguments.

The first argument is based on an *ijmā'"* that the appointment of Abū Bakr was valid although not all people had given *bai'ah* to him when he was appointed as a caliph. The proof is that he did not wait until the news of his appointment had spread throughout the country and until

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91 *al-Ghiyāthī(1)*, p. 60  
92 *Ibid.* ,p. 69  
93 *al-Ghiyāthī(1)*, p. 67, *al-Īrshād*, p. 424  
94 *al-Ghiyāthī(1)*, p. 70
every body outside Madīnah (balad al-hijrah) had given bajah to him, to exercise his duty to judge, to prepare armies, to appoint generals, to dispatch soldiers to those who refuse to pay zakāt and to collect taxes and divide them. It is so practised by other Guided Caliphs."

The second argument is based on reason. Al-Juwaynī says that the purpose of the appointment of the imām is to protect the country and to take care of the important matters of Islām. Some of the matters involving danger cannot be delayed; otherwise, they would cause disorder. Therefore, it is impossible to obtain unanimity in the contract of the imāmate."

To al-Juwaynī, this principle is definite (maqτūbih):

- 3.3. The Appointment by A Predecessor: Tawliyat al-′Ahd

The second method of appointing the imām is the appointment by the existing imām or tawliyat al-′ahd.

3.3.1. Evidence

To support the legitimacy of this method, al-Juwaynī

95 al-Ghiväthī(1), p. 67
96 Ibid., pp. 67 - 68

73
bases his opinion on two grounds.

The first ground is the *ijmāʿ* of the bearers of the *shari'ah* (hamalat al-*shari'ah*). 97 When Abū Bakr appointed Umar to succeed him after his death, there was no one who opposed the appointment. 98 All `ulamāʾ agree that tawliyat al-ʿaḥd is a legitimate method to appoint an imām and it is the right of the existing imām to appoint his predecessor. According to al-Juwaynī, this rule is definite. However, al-Juwaynī refuses to accept the method of the appointment which was practised by the Umayyad and the Abbāsid caliphs as a legal evidence for this rule. 99

The second ground is rational. Al-Juwaynī says that if any single person who is able to provide power to the imām is permitted to make the contract of the imāmate, it is more appropriate that the existing imām who has been the head and example of the people, and experienced in ruling them and handling their affairs, should be executed. 100 This principle is also definite (*qat'an*).

97 Ibid., p. 134 and p. 135
98 Ibid.
99 See al-Chīyāthī(1), p. 139
100 Ibid., pp. 135 - 136
3.3.2. Requirement for a Walī al-ʿAhd

It is required that a walī al-ʿahd must possess all the qualities required for the imām. The reason for that is that the walī al-ʿahd will be de facto imām after the death of the appointing imām (muwallī). This principle is definite.

3.3.3. The Acceptance of the Appointment by the Walī al-ʿAhd

For an appointment of a walī al-ʿahd to be valid, it must be accepted by the walī al-ʿahd. The reason is that although a walī al-ʿahd is considered as a deputy (mustanāb) to the appointing imām, the appointment (tawliyah) from the appointing imām is a contract of the imāmate. Therefore, the contract is not valid until it is accepted by the appointee (al-muʿāyyan). The difference between the imām who is appointed by ahl al-ball wa al-ʿaqd and the walī al-ʿahd is that the walī al-ʿahd does not have the authority as an imām before the death of his predecessor.

101 Ibid., p. 136
102 Ibid.
103 Ibid.
104 Ibid.
105 Ibid.
principle is definite.\textsuperscript{106}

3.3.4. The Time of the Commencement of the Acceptance of the Appointment by \textit{Walī al-`Ahd}

Before giving his opinion, regarding the time of the commencement of the acceptance of the appointment by \textit{walī al-`ahd}, al-Juwaynī presents two different opinions of \textit{`ulamā'}. The first opinion is that the time of the acceptance begins at the time of the death of the appointer (\textit{al-muwallī}). This opinion is based on the rule that the time of the execution of a will (\textit{wasīyyah}) which begins at the death of the person who makes the will (\textit{al-mūsi}). Therefore, the \textit{walī al-`ahd} does not have the authority of the imāmate and is not independent with the governmental jurisdiction as long as the appointing imām is still alive.\textsuperscript{107}

The second opinion is that the time of acceptance begins during the life time of the appointing imām (\textit{al-`āhid}). The reason for this opinion is that the appointment (\textit{tawliyat al-`ahd}) is among the great matters. When the imām

\textsuperscript{106} Ibid.
\textsuperscript{107} Ibid., p. 142
appoints a \textit{wali\textordmasculine{a}l-\textordmasculine{a}hd}, he appoints one who possesses the qualities for the \textit{imam} for the interest of the Muslims and to seek strength for the religion and safety in preparing a successor. This purpose cannot be obtained except by making the validity of the appointment during the life time of the appointer and then the contract of the \textit{imam}ate begins at the time of the death of the latter.\footnote{Ibid., pp. 142 - 143}

Between the two opinions, it is understood that al-Juwayn\textordmasculine{I} favours the second one.\footnote{Ibid., p. 144} However, to him, this principle is not definite.\footnote{Ibid., p. 142}

3.3.5. The consent of \textit{Ahl al-Ikhtiy\textordmasculine{A}r}\footnote{\textit{Ahl al-Ikhtiy\textordmasculine{A}r} meant here is \textit{ahl al-ball wa al-\textordmasculine{a}qd}.} to the Appointment of \textit{Wali\textordmasculine{a}l-\textordmasculine{a}hd}

The consent of the \textit{ahl al-Ikhtiy\textordmasculine{A}r} or \textit{ahl al-ball wa al-\textordmasculine{a}qd} is not required for the appointment of a \textit{wali\textordmasculine{a}l-\textordmasculine{a}hd} to be valid.\footnote{Ibid., p. 139} His reason is that he claims that when Ab\textordmasculine{U} Bakr appointed \textit{‘Umar} as his \textit{wali\textordmasculine{a}l-\textordmasculine{a}hd}, Ab\textordmasculine{U} Bakr did not consult any one of \textit{ahl al-ball wa al-\textordmasculine{a}qd} in spite of the presence of the Emigrants (\textit{Muh\textordmasculine{a}jir\textordmasculine{I}n}) and Helpers

\begin{itemize}
\item \footnote{Ibid., pp. 142 - 143}
\item \footnote{Ibid., p. 144}
\item \footnote{Ibid., p. 142}
\item \footnote{\textit{Ahl al-Ikhtiy\textordmasculine{A}r} meant here is \textit{ahl al-ball wa al-\textordmasculine{a}qd}.}
\item \footnote{Ibid., p. 139}
\end{itemize}
It is reported that Ta'labah said to Abū Bakr:

"You have appointed a crude person as the successor for us"

then, Abū Bakr said:

"They appointed me (alasūni), and now, he, God bless him, is appointed"

and he continued saying:

"If God asked me about the delegation (tafwīd) of the Muslims' affairs to 'Umar, I would say that I have appointed a successor, for your people, the best of them".

To al-Juwaynī, this principle is definite.

3.3.6. The Appointment of a son by a father

Regarding the appointment of a son by a father who is the existing imām as his wali al-ahd, al-Juwaynī precedes with two different opinions of Muslim scholars.

The first opinion is that a father does not have the

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113 Ibid.
114 Ibid., p. 140
115 Ibid., p. 139
right to appoint his son as his successor. The reason is that the appointment by a father involves the attestation (tazkiyah) of the appointer on whether the appointee possesses all the qualities for the imamate. Those who hold this view say that if a father's testimony for his child and vice-versa is not accepted even in a small matter, as far as the Shari`ah is concerned, it is more appropriate (awlā) that a father's testimony for his son on the highest post should not be accepted.116

The second opinion is that a father has the right to appoint his son as his successor. The reason is that the required qualities for the imam are well-known. The contract of the imamate should not be made except for one who possesses the required qualities. The possession of the best qualities by a person does not require any attestation by a witness. Therefore, if a son possesses integrity (adālah) and his integrity is witnessed by his father, the witness is accepted because the integrity of the the person witnessed (al-asl) does not depend on the testimony of the the person who witnesses (al-far). Also, those who hold this view say that if a Muslim father converts his unbeliever son to Islām, his conversion is accepted because the contract of the conversion does not depend on the father's investigation about the details of the qualities

116 Ibid., p. 137
of his son.\textsuperscript{117}

Between these two opinions, al-Juwaynī agrees with the opinion that a father has the right to appoint his son as a \textit{wali al-`ahd}. However, he says, his opinion is not definite due to the lack of any definite evidence (\textit{mustanad maqtū'}).\textsuperscript{118}

3.3.7. Conditional Appointment of a \textit{Wali al-`Ahd}

If a \textit{wali al-`ahd} is appointed from a person who does not possess the required qualities for the \textit{imāmate}, but his appointment is conditional on the fulfilment of the qualities, the appointment is void.\textsuperscript{119} The reason is that, first, the appointing \textit{imām} has chosen an unqualified person. Second, the purpose of the appointment (\textit{`ahd}) is to create supervision (\textit{nazár}) and capacity (\textit{kifāyah}) as the deterrence to the danger which may appear at the time of the death of the appointing \textit{imām}). The appointment of the above-mentioned person is clearly contradictory to this purpose. However, this principle, according to al-Juwaynī is not definite (\textit{laisa dhālik maqtū bih}) due to the lack of

\begin{itemize}
\item \textsuperscript{117} Ibid., pp. 137 - 138
\item \textsuperscript{118} Ibid., pp. 138 - 139
\item \textsuperscript{119} Ibid.
\end{itemize}
If one who is qualified for the imāmāte says:

"If the caliphate ended at me, I would appoint so and so as my wali al-"ahd",

and later he becomes the caliph. The appointment of his wali al-"ahd before he becomes the caliph is void. This principle is agreed upon (muttafaq) and definite. The reason is that when the caliph made his appointment, he did not have jurisdiction to do so.¹²¹

If the existing imām makes a condition that his successor should be among a limited number of people who possess the required qualities for the imāmāte and should be chosen by shūrā (consultation) among themselves, the condition must be executed. This principle is definite based on the condition imposed by 'Umar that his successor should be appointed by shūrā among the well-known six persons whom he himself chose. If the existing imām specifies a specific person among those chosen to make the appointment, the specification should be executed. If there is no one specified to make the appointment, ahl al-ball wa al-"aqd is the one who should make the appointment and the

¹²⁰ Ibid.
¹²¹ Ibid.
best among the nominated should be appointed as the imâm.\textsuperscript{122}

If the existing imâm set up his appointment of some of those who are qualified for the imâmate to be his awliyā' ʿuhūd (plural of wāli al-ṣaḥd), in order, during his life time, his appointment should be executed. This is agreed upon by the scholars (aʾimmah) without exception. The evidence for this principle is that the appointment of the commanders (umarāʾ) of the army in the Battle of Muʿtah by the Prophet Muḥammad as he says:

"The holder of the flag (ṣāhib al-rāyah) is Zayd b. Ḥārithah. If he is killed (usiba), then, Jaʿfar b. Abi Tālib, if he is killed, then ʿAbdullah ibn Rawdah, if he is also killed, then the Muslims should appoint a man among themselves."\textsuperscript{123}

In the case, if the existing imâm sets up his appointment of his successors (awliyā' ʿuhūd) for the period after his death, al-Juwaynī presents two opinions of scholars before presenting his own.

The first opinion is that only the appointment of the first wāli al-ṣaḥd should be executed. Then, it depends on that first wāli al-ṣaḥd when he becomes the imâm to appoint

\textsuperscript{122} Ibid., p. 145
\textsuperscript{123} Ibid., pp. 145 - 146
his son \textit{wali al-ahd} to succeed him. The reason is that the appointment of the commanders of army in the Battle of Mu’tah was during the life time of the Prophet Muhammad.

The second opinion is that the arrangement by the appointer should be executed.

Between these two opinions, al-Juwaynî chooses the first opinion. He says that the appointment (‘ahd) of the first appointed \textit{wali al-ahd} when he becomes the \textit{imām}, should prevail over the appointment of his predecessor. Al-Juwaynî continues that when the first \textit{wali al-ahd} becomes the \textit{imām}, he is independent with the duties of the imāmate. Therefore, his right to appoint his own \textit{wali al-ahd} should prevail over the appointment by his predecessor.\textsuperscript{124}

3.4. The Appointment by Usurpation

Another legitimate method of the appointment of the \textit{imām} is by usurpation i.e. the \textit{imām} comes to power by himself without being appointed by \textit{ahl-al-ball wa al-‘aqd} or the existing \textit{imām} and asks the people to give \textit{bai‘ah} to him. It is understood that this method can be applied when there is no legitimate \textit{imām} in power.

\textsuperscript{124} Ibid., p. 147
Regarding the appointment of the imām through this method, al-Juwaynī discusses their rules according to different types of usurper.

3.4.1. Usurpation by One Who Possesses Full Qualification for the Imāmate

If the usurpation is by one who possesses full qualification for the imāmate with power (quwwah) and he is the best among the qualified people available, he is considered as the legitimate imām whether or not his self-appointment is approved by ahl al-ball wa al-‘aqd. At a time when no people possess qualifications as ahl al-ball wa al-‘aqd, he himself functions both as the contractor (al-‘āgid) and one for whom the contract is made (al-ma‘gūd ‘alayh. The reason for its legitimacy is due to the clear need by the Muslims for an imām. It is not permissible to leave Muslims at any period without a leader (wālī) to protect the Islamic territory (baidah al-Islam). This principle is definite. 125

If there are people qualified as ahl al-ball wa al-‘aqd, but they refuse to approve his appointment, their refusal is considered as in similar position to their

125 Ibid., p. 317
absence because if their refusal is without permissible excuse, they become unqualified to be ahl al-ball wa al-‘agd. The reason for this is that delaying the public matter (al-amr al-kulli) in protecting the land of Islām is considered as a continuation of sin which constitutes fisq. In this case, the usurper should call the people to obey him. His call must be responded to and people should obey him. 126

If ahl al-ball wa al-‘agd do not refuse, the researchers (al-khā‘idūn) differ. One opinion says that the usurper must obtain the contract from ahl al-ball wa ‘agd due to its possibility and the fact that the contract (‘agd) is the cause (sabab) of the establishment of the imāmate. 127

However, according to al-Juwaynī, in the case of usurpation, the contract from ahl al-ball wa al-‘agd is not required. The reason for this rule is that the purpose of the contract by ahl al-ball wa al-‘agd is to avoid conflict if there are many qualified persons. If there is only one such person, the contract by ahl al-ball wa al-‘agd is meaningless because even if ahl al-ball wa al-‘agd refuse to

126 Ibid., p. 318
127 Ibid., p. 319
make the contract, the imāmate still continues.\textsuperscript{128} 

If the usurper does not possess equipment and power, and there is no 	extit{ahl al-hall wa al-‘aqd}, people should support him and appoint him as the imām. If they refuse and do not obey him, they are sinful due to the necessity of having the imām to conduct the religion and worldly affairs. If they or some of them obey and make him a strong imām against the hypocrites (munāfigīn) and deviationists (al-māriqīn), his imāmate is legitimate.\textsuperscript{129} If he is not obeyed or obeyed by weak people who are unable to provide power; in this case, al-Juwaynī is quite hesitant between two possibilities (ihtimālāt) of opinion.

The first possibility is to say that his imāmate is not legitimate on the grounds that the usurper is not contracted by 	extit{ahl al-hall wa al-‘aqd} and that the obedience does not constitute a means (‘uddah) which is able to replace ikhtiyār (choice by 	extit{ahl al-hall wa al-‘aqd}).\textsuperscript{130} The absence of obedience to the imām is in similar position to imprisonment in war from which his release is hopeless.\textsuperscript{131} In this case, all Muslims would be sinful due to the lack

\textsuperscript{128} Ibid., pp. 319 - 320

\textsuperscript{129} Ibid., p. 321

\textsuperscript{130} Ibid., p. 322

\textsuperscript{131} Ibid.
of support to the only one who is qualified for the imāmate and their abstention from appointing the imām to solve conflicts and dissension, to conduct affairs and to organize wars and fortresses.\textsuperscript{132} 

The second possibility is to say that his imāmate is legitimate and therefore, all his commands (abkām) which are in conformity with sharī' should be executed. The reason is that such an abstention by people from obedience is not considered as nullifying the imāmate as there is no other person to whom the people are inclined to be appointed as the imām.\textsuperscript{133} 

Between these two possibilities of opinion, al-Juwaynī is more inclined to the second possibility although he does not reject totally the first possibility as he says:

"the first (possibility) is also not improbable (ba'īd) because the foundation (gā'idah) of the imāmate is obtaining help (istizhār) with strength (munnah) and increasing (istikthār) with equipment and power"\textsuperscript{134}

It is also among the principles of the imāmate, that it is obligatory on the only one (tafarrada) qualified for the imāmate to strive to be the imām and call people to

\textsuperscript{132} Ibid. 
\textsuperscript{133} Ibid., pp. 323 - 324 
\textsuperscript{134} Ibid., p. 323
obey him. If there are people who are willing to obey him but he chooses to abstain (al-tagā'ud) from the duty and isolate himself (istikhlā') to worship God, while he knows that no other person is able to replace him, according to al-Juwaynī, that person has committed the greatest sin (akbar al-kabā'ir wa a'zam al-ıarā'ır). In such a case where he is the only one who is qualified for the imāmate, the obligation is a personal one (fard 'ayn). If there are other persons who are also qualified for the imāmate, the obligation becomes a public one (fard kifāyah) on him, i.e. he or another person qualified must accept the imāmate.135

It is also agreed upon by the 'ulamā' that when that qualified person refuses to strive to be the imām, he becomes unqualified for the imāmate on the grounds that he has committed sin.

If there are many persons who are qualified and one of them usurps with power (uddah) and is approved by ahl al-ball wa al-ıaqd, his imāmate is legitimate. If ahl al-ball wa al-ıaqd are negligent by delaying the appointment of one of them as the imām and the situation leads to the accumulation of the causes of corruption (dawā'ı al-khalal); his usurpation does not lead to fisq, transgression ('usyān) or deviation (al-murūq); and rejecting him and appointing

135 Ibid., pp. 323 - 324
another will lead to dissension and a situation which ought to be guarded against, people should give the bai‘ah to him. However, the appointment of the usurper in such a case as this, according to al-Juwaynī, cannot be legitimate without the approval from ahl al-ball wa al-‘aqd because he is not the only one who is qualified for the imāmate. Hence, it is the duty of ahl al-ball wa al-‘aqd to appoint him to avoid any dissension (fitan). He supports his opinion with the bai‘ah by al-Hasan and al-Ḥusayn to Mu‘āwiyah. On this principle, al-Juwaynī says:

"the validity of the imāmate without tawliyat al-‘ahd, the bai‘ah from ahl al-ball wa al-‘aqd or entitlement (istibqāq) by the only qualified person (al-tawabhud wa al-tafarrud) is improbable (ba‘id)."

Al-Juwaynī rejects the opinion of the scholars, whom he describes as "our scholars" (a‘immatinā), that if the one who usurps power continues in power and it is difficult to remove him, his continuation in power is considered as the fulfilment of the requirements (bugūq) for the imāmate, hence, his imāmate should be approved. They had argued that in such a case, ikhtiyār becomes meaningless as ikhtiyār is required if there is competition between two or more equal persons. Usurpation (istizhār) which is unchallengable

136 Ibid., pp. 325 - 326
137 Ibid., p. 325
3.4.2. Usurpation by One Who Does Not Possess Full Qualification for the Imāmate but Possesses Capacity

At a time when there is no one qualified for the imāmate, if there is only one person who possesses capacity (kāfī), whose bravery and determination are unchallengeable and he usurps power, he should be appointed as the imām. The details on the conditions (except regarding qualities) and procedures of his appointment are completely similar to that of the one who is qualified for the imāmate by usurpation as above-mentioned.\(^{139}\)

3.4.3. Usurpation by a Fāsīq (Sinful Person)

Among the principles of the imāmate is that the appointment of a fāsīq as the imām is not permissible even though his rise to power (thawratih) is initially due to a certain need (bājah) and afterwards the need disappears, with him still holding power. If he asks ahl al-hall wa al-‘aqd to give bai‘ah to him, the bai‘ah should not be

\(^{138}\) Ibid., p. 326

\(^{139}\) Ibid., p. 329
If his rising is initially due to a certain need, and his removal from the leadership will lead to dissension and tribulation (mihan) while his continuation in the position will lead to stability and prosperity for the Muslims, then his appointment as the imām should be approved. To al-Juwaynī, this principle is definite.141

However, his appointment shall not be valid until the ba`īrah is given. This later principle, however, according to al-Juwaynī is not definite (maznūnah).142

4. The Nature of the Appointment

When the imām is appointed whether by ahl al-hall wa al-ṣaqd, a predecessoring imām or by usurpation, the appointment is binding permanently on the imām, ahl al-hall wa al-ṣaqd and all the Muslims as long as the imām fulfills the required qualities and is free from any of the circumstances which requires disqualification (inkhila') or dismissal (khalṣ).143 In principle, it is understood that,

140 Ibid., p. 327
141 Ibid.
142 Ibid.
143 al-Ghivāthī(1), p. 128, al-Irshād, p. 425
according to al-Juwaynī in al-Ghiyāthī, the imām does not have the right to resign from his post except in certain circumstances which will be mentioned later. Although al-Juwaynī used to say that the resignation is permissible (muḥtamal) in al-Irshād, he changed his opinion in al-Ghiyāthī later. Ahl al-ball wa al-ʿaqd or the Muslims, in the absence of ahb al-ball wa al-ʿaqd, do not have the right to dismiss the imām on their own will without any legal reason. In supporting this rule, al-Juwaynī argues that if the dismissal of the imām by ahb al-ball wa al-ʿaqd is permitted as they like, the establishment of the imāmate would not be stable, the purpose of the imāmate could not be achieved, the obedience to the imām could not be firmly established, the power of the imām could not continue and above all, the imāmate would be meaningless.

5. Procedure of the Appointment: the Attendance of the Witnesses during the Contract of the Imāmate

Regarding this issue, before giving his view, al-Juwaynī presents two different opinions of the scholars.

144 al-Ghiyāthī(1), pp. 129 - 130
145 al-Irshād, p. 426
146 Ibid., p. 128
147 Ibid.
The first opinion is that the attendance of witnesses during the bai'ah to the imām is not required. Al-Juwaynī does not give any reason for this opinion.\(^{148}\)

The second opinion is that the attendance of witnesses during the bai'ah to the imām is required. This opinion is adopted by al-Bāqillānī. To al-Bāqillānī, this principle is absolute. The evidence given by al-Bāqillānī for the principle is the bai'ah of 'Umar to Abū Bakr during the appointment of the latter. He argues that if 'Umar gave the bai'ah to Abū Bakr in isolation, the imāmate would not be stable. Also, if it is permissible to establish the imāmate by the bai'ah in isolation, certainly 'Umar and Abū Bakr would not have come to al-Sağīfah and would have given the bai'ah before the attendance of witnesses. According to al-Bāqillānī, the witnesses should be groups of people (awām) by whose attendance, publicity about the appointment can be accomplished.\(^{149}\)

Between these two opinions, al-Juwaynī chooses an intermediate way, saying that perhaps (rubbamā) witnesses are needed to avoid denial or conflict. That is the reason for the delay of the bai'ah of Abū Bakr until the publicity

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\(^{148}\) Ibid., p. 73

\(^{149}\) Ibid., pp. 73 - 74, See also, *al-İrshād*, p. 424
(i‘lān) is made. Also, by mentioning the recommendation of witnesses during the contract of sale, perhaps what al-Juwayni wants to say is that in normal situation, witnesses for the contract of the imāmate is also recommended, not compulsory.

However, if the bai‘ah which is made in secret is given by a person who possesses great power and high position, and by his bai‘ah, the imāmate becomes powerful, according to al-Juwayni, witnesses are not required. To him, this rule is definite.

6. The Prohibition of the Appointment of Two Imāms

Concurrently

If the situation permits the appointment of a single imām over the whole Islamic territory (khuttat al-Islam), the appointment of a single imām is compulsory and the appointment of two imāms concurrently is prohibited. This rule is also applicable even though the territorial jurisdiction of the two imāms is different. The bases

150 al-Ghivāthī(1), p. 74
151 Ibid.
152 Ibid., pp. 74 - 75
153 Ibid., p. 172, cf. also, al-Irshād, p. 425
154 al-Ghivāthī(1), p. 174
for this rule are *i*jmāʿ* and the fact that the purpose of the imāmate is to unite conflicting views and desires of the subjects, so that the country will be stable. This purpose cannot be accomplished except by having one single imām." The appointment of two imāms concurrently to rule the whole country is a cause to destruction (*muddaʿāt al-fasād*). Conflict and fighting will occur if each of them wants to execute each command."

However, if the imām is unable to provide his protection over all Islamic territory due to its expansion or its separation by non-Islamic territory, the scholars differ.

Some of the scholars such as Abū Hasan [al-Ashʿarī] and Abū Isḥāq al-Isfarāyīnī who al-Juwaynī describes as "our master (shaykhīnā)" and "professor (al-ustādī)" respectively, hold the view that it is permissible to appoint two imāms concurrently if the situation makes the appointment of a single imām who is able to provide his

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155 Ibid., p. 172
156 Ibid., p. 173
157 Ibid., p. 174
158 He is Ibrāhīm bin Muḥammad bin Ibrāhīm bin Mahrān Rukn al-Dīn, d. 418 A.H./1027 C.E., One of the Shāfī‘ite scholars of *fiqh* and *usūl*. (al-Ghaythī(1), p. 175)
protection over the whole Islamic territory difficult.\textsuperscript{159} The reason for their view is that leaving the people without any imām to protect, to unite and to prohibit them from evil will lead them to destruction.\textsuperscript{160}

However, al-Juwaynī differs from his shaykh and ustādh. According to him, if there is a barrier preventing the protection of the imām of reaching a certain portion of the Islamic territory after the imām has been appointed, the people in the portion to which the protection of the imām cannot reach, should only appoint an amīr as the person to refer and to obey. This amīr is not considered as an imām. The reason for this principle is that it is not permissible to leave people without being protected.\textsuperscript{161} If the barrier disappears, the amīr and the people of the separated area should give their obedience to the imām. If the imām approved the appointment of the amīr, he remains the amīr for the area. If the imām decides otherwise, the decision of the imām should be obeyed.\textsuperscript{162}

If there is no imām who is already appointed, two

\textsuperscript{159} al-Ghivāthī(1), p. 175

\textsuperscript{160} Ibid., pp. 175 - 176, this opinion of al-Ash̄ārī cannot be found in any of al-Lumaṣ, al-İbānah or Maqālāt. Possibly, al-Juwaynī refers to another book of al-Ash̄ārī.

\textsuperscript{161} Ibid., p. 176

\textsuperscript{162} Ibid.
parts of the Islamic territories are separated and the appointment of a single imām becomes difficult, people of each part of the territory should appoint an amīr for each area. None of them is considered as imām. The permission to appoint two amīrs in such a case is due to necessity (darūrah). 163 When the imām is appointed, the two amīrs should submit (yastaslimā) to the imām. Then, the imām will decide what he thinks appropriate. 164

If two imāms are appointed at the same time by two different groups of contractors (āgidūn) in two different regions (gatravn), with one not knowing about the appointment of the other group, and with both imāms possessing qualification for the imāmate, both appointments are void. The reason is that the imām must be independent in his duty. The existence of two imāms makes the independence impossible. 165

If times of the two appointments are different, the earlier appointment is valid and the second is void. If times of both appointments are unclear and it is difficult to prove them, both appointments are void. The reason is that it is not permissible to delay the appointment of the

163 Ibid., pp. 176 - 177
164 Ibid., 177 - 178
165 Ibid., p. 178

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imām and to leave the country in uncertainty due to the difficulty in proving the times of the two appointments."

If one of them claims to be appointed earlier than the other and demands the other to take oath, his demand should not be responded to. The post of the imāmate should not be proven by taking oath from the person appointed because he is only a representative of the people. The purpose of the post of the imām is not for the representative but for the people."

In discussing the issue of the appointment of two imāms concurrently, it is noticed from the two different works of al-Juwaynī, al-Ghiyāthī and al-Irshād, that al-Juwaynī has two different attitudes toward the issue. In his early work, al-Irshād, it can be observed that there is uncertainty of his opinion in deciding the rule (ḥukm) regarding the appointment of two imāms concurrently in the case if the Islamic territory is vast as he says:

"the appointment of two imāms in one small area (fī sag̱ wāḥid mutadā'yīg al-khitat wa al-makhālīf) is not permissible; there was an imām on this; but if the area is vast and the distance between the two imāms is great, there is a possibility [for it to be permissible]. [However] it is not based on any of the

166 Ibid., p. 179
167 Ibid.
definite evidences (al-qawāti")\(^{168}\)

Perhaps, it is correct to say that the quotation indicates that al-Juwaynī is inclined to permit the existence of two imāms concurrently if the Islamic territory is vast. If this assumption is correct, then, his opinion in al-Ghaythī contradicts his opinion in al-Irshād as in al-Ghaythī he absolutely rejects the existence of two imāms even if the Islamic territories are separated by non-Islamic territory.

\(^{168}\) al-Irshād, p. 425
CHAPTER TWO

THE QUALIFICATIONS REQUIRED FOR THE IMĀM

Al-Juwaynī divides the qualities required for the imām into four categories¹:

(i) Qualities which are related to the senses
(ii) Qualities which are related to the limbs and organs
(iii) Inherent qualities
(iv) Acquired qualities

1. Qualities which are Related to the Senses

1.1. Ability to See

The imām must be able to see. According to al-Juwaynī, there is no dispute among the scholars on the requirement of this quality. Therefore, it is understood that an ījmāʾ has been established as the basis for this requirement.

A blind person is not qualified for the post of the imāmate because blindness makes the person incapable and

¹ al-Ghīṭāthī(1), p. 77
dependent on others in performing the duties of the imāmate. However, one who is dim-sighted is qualified.¹

1.2. Ability to Hear

The imām must be able to hear. A deaf person is not qualified for the imāmate. The reason is similar to that for the blind person. However, one who has weak hearing (al-wigr wa al-tarsh) is qualified.³

1.3. Ability to Speak

The imām must be able to speak. A dumb person is not qualified for the imāmate.⁴

The absence of the sense of smell and taste does not disqualify a person from the imāmate as it does not affect the performance of the duties of the imāmate.⁵

2. Qualities which are Related to the Limbs and Organs

Regarding the qualities which are related to the

² Ibid.
³ Ibid.
⁴ Ibid.
⁵ Ibid.
The same rule is applicable to the case if the loss is
one eye or one foot which does not reach the level of disability and palsy."

The loss of any limb or organ which makes the appearance unpleasant (yasū’ al-manzar) such as loss of an eye or a nose, does not disqualify a person from the imāmate. This rule is definite.¹⁰ On this rule, al-Juwaynī argues against the scholars who hold the view that the amputation of a nose or loss of an eye constitutes disqualification. Al-Juwaynī says that if it is so, the ugliness should also be included as a requirement for disqualification, and beauty and perfection (i’tidāl) should be included as a requirement for qualification whereas it is agreed upon by various groups of scholars that the latter is not a requirement for the imāmate.¹¹

3. Inherent Qualities

3.1. Descent from Quraysh

The imām must be descended from Quraysh. Any one who is not descended from Quraysh is not qualified for the imāmate. The basis for this requirement is the consensus of

⁹ Ibid.
¹⁰ Ibid., p. 79
¹¹ Ibid.
the 'ulamā'. There is no one who opposed this requirement except Dirār bin 'Amr. However, according to al-Juwaynī, Dirār bin 'Amr is one whose agreement or disagreement is not taken into account.

Al-Juwaynī rejects the hadīth "the imāms must be from Quraysh" as used by some scholars as the basis for the requirement of this quality. The reason, according to him, is that the hadīth does not reach the status of tawātur.

Regarding this requirement, it is noticed from his three works Lamʿ al-Adillah, al-Irshād and al-Ghiyāthī that his opinion on this requirement passes through three stages of development.

In Lamʿ al-Adillah, there is no indication that al-Juwaynī rejects the above hadīth as the basis for this requirement as he says:

"No one is qualified for the imāmate except one who fulfils all requirements. One of them, is that he must be a Qurashi as the Messenger of God says that the imāms must be from Quraysh."

12 Dirār bin 'Amr is the Qāqī Abū 'Amr. He used to be a student of Wāsil bin 'Ifā but later established al-Dirāriyyah. He still lived in 180 A.H. (al-Ghiyāthī(2), p. 62.
13 al-Ghiyāthī(1), pp. 79 - 80
14 al-Ghiyāthī(1), p. 80
15 Lamʿ al-Adillah, p. 116

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It is understood from this that he absolutely agrees that the hadîth is the basis for the requirement of this quality. There is no mention about the consensus at all in Lam' al-Adillah.

In al-Irshâd, al-Juwaynî develops his opinion stating that the opinion which requires the quality for the imâmât belongs to the ones who he describes as "our masters" (ashâbinâ) and he continues saying that, however, there are people (nâs) who disagree with this requirement. Al-Juwaynî does not give certainty of opinion between these two different views. He only says:

"To me, there is possibility [for either]"

From this statement, it can be understood that what al-Juwaynî wants to say is that there is a possibility that descent from Quraysh may not be required.

In al-Ghivâthî, although al-Juwaynî rejects the hadîth as afore-mentioned as the basis for this requirement, he still requires the quality for the imâmât by referring to ijmâ' of the previous 'ulamâ' as he says:

"the previous 'ulamâ' (al-mâdiyyîn) are still known (bâyîhin) for specifying the post for Quraysh. It has

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16 al-Irshâd, pp. 426 - 427
never occurred in the past that anyone who is not Quraysh intends (tashawwafa) to hold the post or to claim it. If it is permissible, certainly, there would have been people who possessed power whether they are entitled or not, struggling for the post."  

Al-Juwaynī also argues that even the heretic Fāṭimids (al-Fātimiyin), when they emerged in Egypt to strive for the post of the imāmate, did not immediately claim the imāmate but before they made their claim, they firstly made a forged claim that they are from the descent of the prophet to qualify them as Quraysh.  

Al-Juwaynī admits in al-Ghivāthī that he does not see any justification as far as the purpose of the imāmate is concerned for specifying the post for the Quraysh but he says that it is the right of God to decide whatever He wishes." In another place al-Juwaynī says that the reason for specifying the post for the Quraysh is as a respect (tashrif) for the descent (shajarah) of the Prophet Muḥammad.  

17 al-Ghivāthī(1), p. 80, See also Ibid., p. 313
18 Ibid., pp. 80 - 81
19 Ibid., pp. 80 - 81, See also p. 308
20 Ibid., p. 308
3.2. Maleness

The imām must be a male.\(^{21}\) According to al-Juwaynī, the 'ulamā' agree that a woman is not qualified to be the imām.\(^{22}\) The reason for the disqualification is that women are commanded [by shari'ā] to cover themselves (talzīm khadraḥā) whereas most of the duties of the imām require the imām to be in public (al-zuhūr wa al-burūz).\(^{23}\) In other words, it can be understood that these two rules are contradictory.

In another place in al-Ghiyāthī, al-Juwaynī states regarding this requirement that there is no need for elaboration for this quality. Probably because he has explained the similar reasons when discussing the requirements for ahl al-ball wa al-ṣaqd as aforementioned.\(^{24}\)

3.3. Free Status.

The imām must be a person who possesses free status.\(^{25}\)

\(^{21}\) Ibid., p. 82

\(^{22}\) al-Irshād, p. 427

\(^{23}\) al-Ghiyāthī(1), p. 91

\(^{24}\) See Chapter 1, pp. 43 - 44

Therefore, a slave is not qualified for the imāmate. For this requirement also, al-Juwaynī does not see any need to explain the reasons. Probably it is due to the same reason for the above requirement. Al-Juwaynī has also explained the reason for disqualification of a slave for ahl al-ball wa al-āqd before. 26

3.4. Islām

The imām must be a Muslim. 27 Therefore, it is understood that any non-Muslim whether he is a harbī, musta'man or dhimmī is not qualified to be the imām. Al-Juwaynī does not mention this requirement in his al-Ghvāthī when discussing the qualities required for the imām. However, it can be understood that he requires Islām as a quality for the imām when he discusses the circumstances which require the disqualification and dismissal of the imām as he says:

"Islām is the foundation (al-asl wa al-islām). If the imām diverts from his religion [Islām], his disqualification, his removal and discontinuation from his position is well-known." 28

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26 See Chapter 1, p. 44
27 al-Irshād, p. 427
28 al-Ghvāthī(1), pp. 98 - 99
3.5. Sound mind (nahīzat al-‘aql)

The imām must be a person of sound mind. Therefore, it is understood that an insane person is not qualified to be the imām. Any person of sound mind is able to understand the reason for the disqualification of this group. Perhaps, that is the reason why al-Juwaynī does not see any need to elaborate on this quality.

3.6. Age of Majority

The imām must be a person who has reached the age of majority (bulūgh). In the same way as with some previous qualities, al-Juwaynī does not see any need to give elaboration on this quality.

3.7. Bravery

The imām must be a brave person. Al-Juwaynī describes bravery as a supreme quality. A cowardly person is not qualified to be the imām. According to al-Juwaynī bravery
is inherent and cannot be acquired [by effort].” However, as a required quality, bravery without being associated with the perfection of mind (kamāl al-‘aql) is not accepted.” Therefore, an irrational attacker (muqtahim hujām) is not qualified for the post of the imāmate as he says:

"The post needs rational thinking (al-ra‘y) more than the firmness of heart. Rational thinking should be given priority before bravery. Rational thinking comes first, bravery comes second."

4. Acquired Qualities

4.1. Knowledge

The imām must be one who possesses vast knowledge of al-sharī‘ah and reaches the level of a muitahid37 qualified to be a muftī,36 so that he is able to be independent in making decisions without making reference to others. The imām is to be followed (al-matbü‘) and not a follower (al-tābi‘). If the imām has to refer to ‘ulamā’ or muftī (singular of muftīn), he is a follower, not a leader and an

34 Ibid.
35 Ibid.
36 Ibid., pp. 83 - 84.
38 al-Ghiyāthī(1), p. 84, pp. 153 - 154, al-Irshād, p. 426
independent person. This is a contradiction to the requirement that the imām must be independent." According to al-Juwaynī, this requirement is agreed upon.\textsuperscript{40}

Being a mujtahid with vastness of knowledge does not mean that the imām must make decisions alone. It is recommended by God that the imām should consult others especially in difficult matters (muḍdalāt) to make decisions as the Qur'ān says:

"Consult them in the affair"\textsuperscript{41}

Consultation does not contradict the possession of vast knowledge and independence of a mujtahid. Moreover, one of the crucial point (sirr) of the imāmate is to collect various opinions of the people and unite them by making decisions himself. The result of his thinking from the mixture of his vast knowledge and opinions of the people which he obtains through consultation will be more fruitful (jāliban) and will be more able to avoid any calamity from the conflict of diversity than if he makes the decisions without consultation. Regarding this al-Juwaynī says:

\textsuperscript{39} al-Ghivāthī(1), p. 84, al-Irshād, p. 426
\textsuperscript{40} Ibid.
\textsuperscript{41} al-Qur'ān, Sūrah Āli Īmārān (3):159
"A man who makes a decision without consultation (ṣāhib al-istibdād) may always divert from the path of the righteous people."  

4.2. Piety (al-taqwā wa al-wara')

The ʿimām must a pious person."  To support his opinion on this requirement, al-Juwaynī only uses his reason as he says:

"If a fāṣiq cannot be trusted with one fīls, how could he be trusted to conduct the affairs of the Muslims?"  

and

"A fāṣiq father cannot be trusted with the wealth of his child despite his great passion toward his child. How could a fāṣiq who does not fear God be trusted in the great imāmate (al-imāmah al-ʿuzmā). How could one who cannot [even] fight his own evil will (ʿagluh hawāh wa nafs al-ammārah bi al-sū') be trusted to run the country of Islām"  

4.3. Possession of Power and Capacity (Dhū Najdah wa Kifāyah)

The ʿimām must be a person who possesses power and capacity. However, al-Juwaynī does not explain clearly what

42 al-Ghiyāthī(1), p. 87
44 al-Ghiyāthī(1), p. 88
45 Ibid.
he means by al-najdah wa al-kifāyah." In al-Juwaynī's writings the meaning of al-najdah wa al-kifāyah is unclear." However, it can be understood that what he means

46 Lamc al-Adillah, p. 116, al-Irshād, p. 426, al-Ghiyāthī(1), pp. 90. Probably the explanation for these two terms by al-Juwaynī's student, al-Ghazālī, in his Fadā'īh, is clearer than the explanation by al-Juwaynī himself. According to al-Ghazālī, "what is meant by al-najdah is possession of power (zuhūr al-shawkah wa mawfūr al-'uddah), assistance by soldiers (istizhār bi al-junūd), organization of the army (taqd al-alwiyyah wa al-bunūd) and capability in preventing the rebels, fighting the unbelievers and evil-doers, eliminating religious dissension before its harms become wide-spread, with the assistance of the followers" (Fadā'īh, p. 182)

and al-kifāyah:

"is possession of capacity to seek the right way in difficult matters (al-tahaddī li hagg al-masālih fi mu'addalāt al-umūr) and possession of capacity to gain information to make a correct decision at the time when various harmful effects are possible (al-ittilā' alā al-maslak al-muqtasad ʿind ta'ārud al-shurūr)" (Fadā'īh, p. 185)

Carole Hillenbrand interprets al-Ghazālī's meaning of al-kifāyah as "competence to govern" (Hillenbrand, Carole, "Islamic Orthodoxy or Realpolitik? Al-Ghazālī's views on Government" Iran, vol. 26, 1988, p. 81)

47 In Lamc al-Adillah, possession of al-najdah and al-kifāyah are made a separate qualities from ijtihād, acuteness of opinion in the matters relating to government and piety. (Lamc al-Adillah, p. 116) In al-Irshād, al-Juwaynī defines al-kifāyah as a combination of various qualities i.e. capacity in conducting affairs, possession of al-najdah in preparing armies and fortresses, sound judgement and bravery. (al-Irshād, p. 426). Here, possession of al-najdah is considered as a part of al-kifāyah. In al-Ghiyāthī, in explaining the meaning of al-najdah wa al-kifāyah, al-Juwaynī states:

"the greatest objective of the imāmate cannot be achieved except by a person who possesses al-kifāyah, understanding, capacity in conducting the affairs, independence in performing the duties and despatching armies, bravery, not being controlled by fear to hit the necks and led by crudeness to abandon gentleness and mercy when the time comes. It is not sufficient to call a capable person (kāfi) if one is independent with regard to a simple matter (amr ṣarīb) but not with regard to a great one. Therefore, the objective of the imāmate must be taken into cosideration."
by al-najdah wa al-kifayah is physical and mental capacity to fulfil the objectives of the imamate with power and understanding. As to mental capacity, al-Juwayni says that the imam must be acute in making decisions in great matters and capable of forecasting the consequences of events."

Al-Juwayni supports the requirement of this quality by saying that the greatest objective of having the imam is to gather (jam'i) different views from different groups of people and unite them. The difficulty (al-khabal wa al-ikhṭilāl) in a country normally comes from chaos (iḍṭirāb) in views. If people are not united under one view, the administration (tadbīr) will not be in order; the government (ivālat al-malik) will not be stable; and the country (al-bayḍah) will be uprooted." Also, a country will be in chaos if there is no leader to whom the people can refer whenever difficulties arise and who can adjudicate between people in conflict." This objective cannot be achieved except if the country is led by a leader who possesses capacity, understanding (dirāyah), guidance

Independence of the imam in achieving them is required. This is the meaning of al-najdah wa al-kifayah". (al-Ghiyāthī(2), p. 90).

In this statement, al-Juwayni combines al-najdah wa al-kifayah in one definition.

48 op. cit., p. 88
49 Ibid.
50 Ibid., pp. 89 - 90
5. Al-Juwaynī's Conclusion on the qualification for the imām

After discussing all qualities which are required for the imām, al-Juwaynī makes the following conclusion:

"The person who is qualified (sālih) for the imāmate is a male, free in status, Qurashi, mujtahid, pious, one who possesses power and capacity. These qualities can be summarized to two - independence (istiqlāl) and descent (nasab). Independence is comprised of possession of power, knowledge, piety, freedom and maleness."

Although the list of the qualities required which al-Juwaynī mentions in the above quotation are not complete as he left out Islam, sound mind and age of majority, it can be understood that what he wants to say is that all the qualities other than descent from Quraysh, constitutes independence. In other words, other that the imām must be a Qurashī, he must be an independent person.

Regarding this conclusion, it seems that the conclusion made by al-Juwaynī is not complete on two grounds. The first is that although the requirement of a

51 Ibid., p. 90
52 Ibid., pp. 90 - 91
sound mind can be understood as a part of *ijtihād* as an insane person is unable to exercise *ijtihād*, al-Juwaynī still fails to mention Islam as a part of his conclusion. It would seem necessary for al-Juwaynī to mention Islam as a separate quality like descent. Therefore, the summary of all qualities should be Islam, descent from Quraysh and independence.

6. Observation on the Development of al-Juwaynī's Thought on the Qualifications of the Imam

From the study of his three works which contains his main writings on the *imāmate* - *Lam` al-Adillah*, *al-Irshād* and *al-Ghivāthī*, it can be observed that his thought on the *imāmate* took a period of time to be developed. His most developed thought is in *al-Ghivāthī*. From the accumulated fourteen qualities which he requires for the *imām* when taken together, he only mentions seven in *Lam` al-Adillah* - descent from Quraysh, free status, bravery, status of *ijtihād*, piety, acuteness of opinion in matters relating to government and possession of capacity.

In *al-Irshād*, al-Juwaynī mentions nine qualities. Other than the seven qualities which he has mentioned in *Lam` al-Adillah*, he adds two more qualities - maleness and

53 *Lam` al-Adillah*, p. 116

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Islam."

In al-Ghiyāthī, the most complete work of al-Juwaynī on his political thought and especially on the imāmate, al-Juwaynī mentions thirteen qualities under the topic of the qualities required for the imām. In addition to what he has mentioned in Lam al-Adillah and al-Irshād, he adds five more qualities - ability to see, ability to hear, ability to speak, the absence of the defect of limb and organ which jeopardise the objective of the imāmate and the age of majority.

As already noted, al-Juwaynī does not mention Islam as a requirement for the imāmate in al-Ghiyāthī when he enumerates the required qualities for the imām. However, it is understood that Islam is a requirement for the imāmate when he discusses the circumstances which require disqualification and dismissal of the imām in another chapter of al-Ghiyāthī." Al-Juwaynī mentions Islam as a requirement in al-Irshād as afore-mentioned.

54 al-Irshād, pp. 426 - 427
55 al-Ghiyāthī(1), pp. 98 - 99
7. Discussion on the requirement of infallibility
(al-‘ismah)

Infallibility from any sin (al-zalal wa al-khatal) is not required for the imām. ¹⁴

A chapter of al-Ghiyathī is devoted to discussing the requirement of this quality. In this chapter, al-Juwaynī refutes the opinion of the Imāmites (al-Imāmiyyah) which hold the view that infallibility is required for the imām. The Imāmites (al-Imāmiyyah) believe that all twelve imāms who were designated by the Prophet are infallible⁵⁷ from any sin, be it great or small.⁵⁸ Al-Juwaynī also mentions that a fanatic group of the Imāmites, not only require the imām to be infallible but also any body who are involved with the duties of the imām such as governors, judges, tax collectors (jubāh al-akhrijah wa al-sadagāt) and others. They also require the infallibility of the reporters of the traditions (al-akhbār), witnesses in court, muftīs, animal tenders (sāsat al-dābbah), workers and slaves in despicable places.⁵⁹

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⁵⁶ al-Ghiyathī(1), p. 92, al-Irshād, p. 433
⁵⁷ al-Ghiyathī(1), p. 92
⁵⁸ al-Ghiyathī(1), p. 91 and p. 94, al-Irshād, p. 434,
⁵⁹ al-Ghiyathī(1), p. 95
Al-Juwaynī describes the claim of the Imāmites as an intentional lie⁶⁰ and making mockery and fun of the religion.⁶¹

In refuting the views of the Imāmites and in supporting his own opinion, al-Juwaynī provides five following reasons:

(1) Since the basis for the appointment of the imām is ikhtivār as al-Juwaynī has proved, to his satisfaction, it is impossible for the electors to investigate and find out whether the elected person is or is not infallible from any sin.⁶²

(2) ʿAlī and his two sons Ḥasan and Husayn never claimed that they were infallible. In contrast, they admitted secretly and openly that they were fallible. Due to that reason, they sought forgiveness from God.⁶³

(3) According to al-Juwaynī, even the prophets are not free from small sins (ṣaghāʾir al-dhunūb). A lot of Qur'anic verses are available regarding the sinfulness of

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⁶⁰ Ibid., p. 93
⁶¹ Ibid., p. 95
⁶² Ibid., pp. 92 - 93
⁶³ Ibid., p. 93
the prophets. For that reason, the prophets were seeking forgiveness from God throughout their lives."

(4) The imām does not perform alone all the duties relating to government. The imām appoints assistants—governors, judges, tax collectors and others to help him in performing his duties. The imām only performs by himself the minimum of his duties. From this fact, al-Juwaynī argues that if the infallibility of the imām is required, certainly all his assistants—governors, judges, tax collectors and others should also be required to have the same quality as they perform the duties on behalf of the imām whereas infallibility is not required for them according to the prominent opinion of the Imāmites."

(5) Although it is true that the fanatic group of the Imāmites which was mentioned above maintained that all people who are involved with the performance of the duties of the imām are required to be infallible, this group still contradict themselves with their concept of tagiyyah (dissimulation) in which they require their imāms to practise a lie. Al-Juwaynī argues that if they require their imāms to lie, how could this group trust in the words

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64 Ibid., pp. 93 - 94
65 Ibid., pp. 94 - 95

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and the actions of their imāms? 66

8. Discussion on imāmat al-mafdūl (the Imāmate of a Less Qualified)

8.1. The meaning of al-fādil, al-afdal and al-mafdūl

It is understood from the terminology used by al-Juwaynī in his works relating to imāmat al-mafdūl that al-fādil and al-afdal are synonyms which connote the best person among those who possess all qualities required for the imām and al-mafdūl means one who is qualified for the imāmate but is not the best among those qualified. His qualification is less than al-fādil or al-afdal. The meaning of the virtue (al-fadl) in relation to this political aspect, as used by al-Juwaynī, is not in terms of the closeness (tagarrub) to God indicated by one's words or deeds but in terms of one's fulfilment of the qualities required for the imāmate to conduct the affairs of the Muslims. 67

8.2. The rules regarding imāmat al-mafdūl

As usual, before presenting his opinion on imāmat al-

66 Ibid., p. 96
67 Ibid., p. 165
mafḍūl, in al-İrshād and al-Ghiyāthī, al-Juwaynī quotes various opinions from different groups. In Lam′ al-Adillah, al-Juwaynī only states the practice of the Muslims in the past. However, although he does not state clearly what his opinion is, it can be understood that he approves of what he states.

From these various works, if the chronology which is made by Dr. Fawkia Hussein as afore-mentioned is correct, it is found that al-Juwaynī was not settled in his opinion regarding this issue.

In his first work in which he includes the topic of the imāmate, Lam′ al-Adillah, al-Juwaynī seems to agree that imāmat al-mafdūl is not permissible based on his statement that the previous Muslims chose the best person for the imāmate."

In al-İrshād, the work which he wrote later than Lam′ al-Adillah, before he presents his own opinion, he quotes the opinion of most of the Sunnites (Ahl al-Sunnah wa al-jam′āh) that imāmat al-mafdūl is prohibited except if his non-appointment would lead to chaos (haraj) and fighting.

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68 See Chapter 1, p. 23
69 Lam′ al-Adillah, pp. 115 - 116
However, in *al-Irshād*, al-Juwaynī does not see the opinion of the Sunnites as definite. This can be understood that there is a possibility of saying that *imāmat al-mafdūl* may be permitted. Al-Juwaynī gives three grounds to support his argument:

(1) Those who prohibit the appointment of *al-mafdūl* do not base their argument on any valid revealed evidence. The *hadīth*

"You should be led by the most knowledgable (agra') among yourselves" which is the basis of the argument by those who hold this view does not reach the level of *tawātur*. It is a *khabar āhād* (singular of *akhbār āhād*). Therefore, the opinion cannot be definite.

(2) If the *imāmate* of a prayer by *al-mafdūl* is valid, why cannot the *imāmate* of the *ummah* be the same?

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70 *al-Irshād*, p. 430
72 Ahmad, Muslim (*al-Irshād*, p. 431)
73 *al-Irshād*, p. 431
Al-Juwaynī says that the imāmate of al-afdal is only a matter of preference, not obligation.\(^7^4\)

(3) There is no definite proof (dalīl qātī') indicating that a companion of the Prophet Muḥammad is better than the others although from the general presumption (ghālib ʿalā al-zann), Abū Bakr is the best person among the Companions after the Prophet. The reports (al-akhbār) which are available on their virtues contradict one another and cannot be relied as definite.\(^7^5\)

In al-Ghyāthī, al-Juwaynī quotes two different opinions from different groups of scholars.

Some groups of the Zaydites (al-Zaydiyyah) hold the view that imāmat al-mafdūl or the appointment of a less qualified person is absolutely valid.\(^7^6\)

A similar opinion is held by some groups who al-Juwaynī describes as "our scholars or our intellectual leaders" (a'immatina) although the appointment of the best person (al-afdal al-aslah) is possible. The reason given by

\(^{7^4}\) Ibid.

\(^{7^5}\) Ibid.

\(^{7^6}\) al-Ghyāthī(1), p. 96
these groups is that al-mafdūl also possesses all qualities for the imāmate and by those qualities, the objectives of the imāmate can also be achieved. The extensive virtues which are possessed by al-afdal are not neccessary (la ghinā 'anhā lā mandūbah) for the imāmate. There is no difference in term of objective of the imāmate whether or not the imām possesses extensive virtues (al-fadā'il).”

Most of the outstanding scholars of usūl (theology) hold the view that the appointment of al-mafdūl is not valid if the appointment of the best person (al-fādīl) is possible." A group of this scholars believe that this principle is definite" and another group believe that this principle is among the uncertain matters (al-maznūnāt) as it is not based on any revealed evidence."

Among these various opinions, al-Juwaynī is inclined to the view held by the scholars of usūl that the appointment of al-mafdūl is not valid if the appointment of al-fādīl is possible. However, this principle is not definite due to the lack of any valid revealed evidence.

77 Ibid., p. 167
78 Ibid., p. 167
79 Ibid.
80 Ibid., pp. 166 - 167

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Hence, according to al-Juwaynī, in al-Ghīṭāthī, the appointment of the best among the qualified person (al-afdal al-aslah) for the imāmate is compulsory whenever possible and with no obstacle preventing it. This principle is definite. In another separate statement, al-Juwaynī says that in such a situation, the appointment of al-mafdūl is prohibited.

Al-Juwaynī bases this opinion on the grounds that the best person is the most beneficial one for the interests of the Muslims and to find one who possesses extensive (mazîd) capacity, guidance (hidāyāh) and knowledge is not easy. Therefore, it is understood that, since the one with such extensive qualities is available, the opportunity must be used by the Muslims to achieve the utmost benefit.

However, it is important to mention that the appointment of al-afdal is not valid except if it is contracted by the people who are able to create power and strength (man'ah wa shawkah) for the imām.

81 Ibid., pp. 167 - 168
82 Ibid., p. 169
83 Ibid., p. 168
84 Ibid.
85 Ibid.

126
In *al-Irshād*, it is noticed that al-Juwaynī is more inclined to say that *imāmat al-mafdūl* is possible but reverses his opinion in *al-Ghiyāthī* by saying that the prohibition of *imāmat al-mafdūl* is definite (*vajibu al-gat*) whenever possible and with no obstacle for the appointment.

However, there are two circumstances in which *imāmat al-mafdūl* is permitted. According to al-Juwaynī, there is no dispute among the scholars regarding the permission in these circumstances:

(1) If the appointment of *al-fādil* is difficult and the appointment of *al-mafdūl* is required for the interests of the Muslims due to the inclination of the people (*al-nās*) and those who possess power in the community. 

This circumstance is similar to the case when the appointment of the *imām* is made, the existing *imām* was the best among the qualified but later there emerges a better qualified person than him but the appointment of the latter cannot be made without facing obstacles. In this circumstance, the existing *imām*, who becomes *al-mafdūl* due

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to the emergence of the latter, should remain in the post."

(2) If the appointment of al-fādil would lead to chaos (ikhtibāt) and evil (fāsād) and in contrast, the appointment of al-mafḍūl would lead to unity (irtibāt) and righteousness."

The reason for the permission in these two circumstancnes is to achieve the objectives of the appointment of the imām - to give benefit (istislāh) to the ummah. Since through the appointment of al-mafḍūl, the objectives can be achieved and the opposite is the case, if the al-afdal is appointed. Therefore, al-mafḍūl should be appointed."

8.3. Priority of quality

8.3.1. When all the Required Qualities are Fulfilled

Regarding the priority among the various required qualities, according to al-Juwaynī, possession of capacity should be given priority over piety. Therefore, if there

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88 Ibid.
89 Ibid.
90 Ibid.
are two persons who both possess all the required qualities for the imāmate but one is extensive in piety and another is extensive in the possession of capacity, the latter should be appointed as the imām. 91

In the case of there being two persons who possess all the required qualities but one is more knowledgable in the religion of Islām (afgah) and another is more knowledgable in warfare, the priority for the appointment of the imām should be given according to the current needs of the country. If the country is in order, free from elements of violence but facing problems of innovation (bid’ah) and deviation, the one who is more knowledgable in the religion of Islam should be appointed as the imām. If the situation is the reverse of the above and bravery and power are required to overcome the problems in the country, the one who is more knowledgable in warfare should be appointed as the imām. 92

8.3.2. When Some Required Qualities are Absent

If there is no one who fulfils all the required qualities for the imāmate as afore-mentioned, it does not mean that the obligation to establish the imāmate is

91 Ibid., p. 170
92 Ibid., pp. 170 - 171
dropped. If such a situation occurs, the obligation to appoint an imām is still an obligation on the Muslims by appointing the best person among themselves. Leaving the Muslims in chaos without a leader to unite them is not permitted."

To determine who is the best among those who do not fulfill all the required qualities, al-Juwaynī provides a chapter in his al-Ghiyāthī discussing some qualities for which priority should be given. The qualities are descent from Quraysh, knowledge, possession of capacity and piety. According to al-Juwaynī, among these four qualities, descent from Quraysh is the requirement which should be given the lowest priority, then followed by knowledge, possession of power and piety.

As to the requirement of descent from Quraysh, al-Juwaynī does not see any logical need as far as the objective of the imāmate is concerned, as mentioned earlier. Probably due to this reason, al-Juwaynī classifies the requirement of the descent from Quraysh as the lowest position in term of priority among the four requirements discussed. Therefore, if there is no one of

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93 Ibid., p. 309
94 See Ibid., pp. 308 - 315
95 Ibid., p. 313
the descent from Quraysh who fulfils all the required qualities, one who possesses knowledge, capacity and piety should be appointed. When such a person is appointed, his position is similar to the imām who fulfils all the required qualities. Therefore, all his commands must be executed." Al-Juwaynī justifies this rule by saying that knowledge is a great equipment (al-`uddah al-kubrā wa al-`urwah al-wuthgā) by which the imām would be independent in applying the law of Islam."

If a Qurashi who fulfils all the rest of the required qualities emerges after the above-mentioned person has been appointed, the Qurashi should be appointed as the imām replacing the latter if the situation permits because the Qurashi is the original person who is entitled to the post of the imām and the latter is only a replacement." If the appointment of the Qurashi is difficult, the latter should remain in the post."

At the time when no one who is descended from Quraysh exist, if there is no one among the capable and pious

96 Ibid., p. 308
97 Ibid.
98 Ibid., p. 313
99 Ibid., pp. 309 - 310
100 Ibid., p. 309
Muslims who possess knowledge reaching the status of a mujtahid, a person who possesses power, capacity and independence (istiqlāl) in the great matters should be appointed as the imām. When he is appointed as the imām, his position is similar to the imām who possesses all the required qualities. All his commands must be executed. As such a person does not have sufficient knowledge to be independent in his duties, he should refer to religious scholars (a'immat al-dīn) when facing difficulties in making legal decisions (ahkām al-shar'ī). 

Al-Juwaynī justifies this rule by saying that although knowledge is a requirement for the imāmate but if there is no one who is knowledgable (alīm), uniting people under a capacity person who is able to ask for a fatwā from the scholars is more appropriate than leaving them without any control (tarakahum sudā) and in chaos.

Piety is the required quality which is placed in the highest position in terms of priority among the required qualities. If there is no one who is a Qurashi and knowledgable but there is only a capable person who is a fāsiq, such capable person should not be appointed as the

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101 Ibid., p. 310
102 Ibid.
103 Ibid., pp. 310 - 311
imām if his transgression of prohibited things (muḥarramāt) and his daring attitude in committing them would be harmful to the Muslims. The reason is that if he becomes powerful with such fisq, the disadvantages would be more than any advantages for the Muslims and religion. He would use the power for evil instead of defending the land of Islām. This is contradictory to the purpose of the imāmate.¹⁰⁴

However, if his presence in the post is needed due to certain reasons such as if a portion of the territory of Islām has been conquered by unbelievers (kuffār) and there is no one who would be obeyed by people to dispatch the armies of Islām except him, he should be appointed as the imām due to such need.¹⁰⁵

If the capable person is a fāsiq but he is committed to protecting the territory of Islām and prepared to carry out any duties which bring benefit to Islām, according to al-Juwaynī, he should be appointed as the imām due to necessity and at the same time, the maximum afford should be made to correct him. The reason for this rule is that leaving the territories (mamālik) without a protector (rāwā) would lead to a dangerous result such as the deterioration of the affairs and the neglect of the frontiers. In

¹⁰⁴ Ibid., p. 311
¹⁰⁵ Ibid., pp. 311 - 312

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contrast, the appointment of such a person can protect the territory from evil people (dhawī al-`arāmah) and rebels (thawwār). That is more beneficial for the people than leaving them without a protector because the absence of protection would lead to a destructive result.\(^{106}\) Al-Juwaynī also justifies this rule by saying that the purpose of requiring all the afore-mentioned qualities is to gain capacity and independence in conducting affairs. Capacity is the primary requirement.

Based on the above order of priority, if there are two persons - one who is from Quraysh but he is neither knowledgable nor capable and another one is knowledgable, capable and pious, the latter should be given priority for the imāmate as one who has no capacity has no place as the imām in the first place.\(^{107}\)

In the case if one of the two knowledgable persons is not from Quraysh but his knowledge does not reach the status of independence for conducting the affairs, while the other one is a non-Quraysh but his knowledge reaches the status of independence for conducting the affairs, the former should be given priority for the imāmate if he does not suffer from mental disorder. In this case, he should

\(^{106}\) Ibid., p. 312

\(^{107}\) Ibid., p. 314
refer to wise people (al-bukamä' wa al-‘ugalä’) in making decisions. If the former suffers from mental disorder and is a mugallid, the latter should be given priority.\textsuperscript{108}

As a conclusion, al-Juwaynî says that power without knowledge is more appropriate than knowledge without power.\textsuperscript{109}

\textsuperscript{108} Ibid., pp. 314 - 315
\textsuperscript{109} Ibid., p. 315
CHAPTER THREE

THE DISQUALIFICATION AND DISMISSAL OF THE IMĀM

1. The Meaning of Disqualification (inkhilā́) and Dismissal (khalī́)

The imām may be deposed from his position of the imāmate by two methods - disqualification and dismissal. Disqualification means that the imām is deposed by law from the post of the imāmate without undergoing any procedures when certain circumstance occurs. In other words it may be called automatic deposal. Dismissal means that the imām is not deposed by law but the imām should be deposed by the person who appoints him when certain circumstance occurs.

There are two bases of differences between disqualification and dismissal. Regarding these differences, explanation by Muhammad Shākir al-Sharīf in his book al-Tarīq ilā al-Khilāfah, shows clearly what is meant by al-Juwaynī. The following is his explanation:

1. The circumstances which require disqualification are manifest (zāhir) whereby there is no need of serious observation or investigation to find out the negative effect from the circumstances on the Muslims. Whereas the circumstances which require dismissal need serious observation and investigation to find out negative effect from
the circumstances on the Muslims.¹

2. Dismissal requires establishment (inshā'). This means that the imām is not automatically deposed by the occurrence of the circumstance but he should be deposed by ahl al-ball wa al-'agd. If ahl al-ball wa al-'agd decide to depose him, he ceases to be the imām from the time of the deposition. From then, ahl al-ball wa al-'agd should appoint a new imām. If the deposed imām refuses to step down but retains his position with power in his hands, other steps should be taken.² In contrast, disqualification does not require establishment (inshā'). This means that the imām is deposed by law (bukm sharī'). His imāmate ceases by the occurrence of the circumstance or the cause. Therefore, from then, the duty of people to obey him ceases. It is also not permissible for ahlal-ball wa al-'agd to reappoint such a person. If they appoint such a person, their qualification as ahl al-ball wa al-'agd becomes void on the grounds that they have betrayed the trust given to them and the person appointed is not considered as a legitimate imām.³

Basically, the circumstances which require disqualification or dismissal are those which contradict the required qualifications or contradict the objective of the imāmate. The following are the circumstances which require disqualification and dismissal:

2 Ibid.
3 Ibid., p. 39
2. Circumstances which Require the Disqualification of the Imam

2.1. Deviation from Islam

The imam should be disqualified (inkhuli'a) from the post of the imamate if he deviates from Islam or commits apostasy. He is not permitted to retain his position as the imam even though he renews his Islam. He may retain his position only if his appointment to the post is renewed by a new election.4

Islam is the basic requirement for the imamate as al-Juwayni says:

"Islam is the foundation (al-asl wa al-'isam) [for the imamate]."5

2.2. Madness or Mental Disorder

The imam should be disqualified if he suffers from complete madness (junun mutbig). The rule is similar if the imam suffers from mental disorder, idiocy or defect in reasoning about which the obviousness of its existence does not need any serious observation to find out and it

4 al-Ghaythi(1), pp. 98 - 99
5 Ibid., p. 98
existence makes the imām difficult to be independent and capable."

The reason for this principle is that with these conditions, the imām is incapable of fulfilling the objectives of the imāmate - carrying out the important matters, protecting the country and uniting different types of people. Regarding this reason al-Juwaynī says that with these conditions, the presence of the imām is meaningless.

2.3. Blindness

The imām should be disqualified from the post of the imāmate if he loses his sight.

However, defect in sight by which the imām is still able to identify things (al-tawassul ilā al-ıdrāk) should not disqualify the imām from the post of the imāmate. This rule is also applicable whether before the contract of the imāmate or after the imām has been appointed as the imām.

The reason for this rule has been mentioned during the

6 Ibid., p. 99
7 Ibid.
8 Ibid., pp. 118 - 119
9 Ibid., p. 119

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discussion on the qualities required for the imām.  

2.4. Deafness

The imām should be disqualified from the post of the imāmate if he suffers from serious deafness (al-samam al-bālich). If the imām has ability to hear although very weak, he should not be disqualified from his post of the imāmate.

The reason for this rule has also been mentioned when discussing the qualities required for the imāmate.

2.5. Dumbness

The imām should be disqualified from the post of the imāmate if he suffers from dumbness. Although al-Juwaynī does not mention specifically the disqualification which is due to this circumstance, it can be understood from his statement that this circumstance requires the imām's disqualification from his post. The following is his

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10 See Ibid., p. 77
11 Ibid., p. 119
12 Ibid.
13 Ibid., p. 77
...the defect of any sense or the loss of any organ or limb is considered as in the same category [i.e. the application is the same whether before the contract is made or after the contract has been made (al-dawām bi al-ibtidā')]".14

It can also be understood from the discussion on the required qualities which are related to the senses.15 Al-Juwaynī does not discuss this circumstance probably because he avoids discussion on similar point. Due to this reason, al-Juwaynī only includes the rest of the circumstances which he has mentioned during the discussion on the required qualities which are related to the senses, in a general statement as above-mentioned.

2.6. Defect of Organ or Limb

The imām should be disqualified from the post of the imāmate if he suffers from any defect of organ or limb which jeopardises the performance of the duties of the imāmate or contradicts the objective of the imāmate.

Al-Juwaynī does not discuss the circumstance separately or in details but it can be understood from the

14 Ibid., p. 120
15 Ibid., p. 77
discussion on the required qualities related to the organs and limbs" and from another statement of his:

"Whatever defect of any organ or limb which has an effect at the beginning [or before the imām is appointed], should also have an effect after the imām has been appointed to the post of the imāmate.""17

3. Circumstances which Require the Dismissal of the Imām

3.1. Fisq (sinfulness)

In relation to the dismissal of the imām, it can be understood that according to al-Juwaynī, there are two types of fisq. Fisq which neither requires disqualification (inkhilā°) nor dismissal and fisq which requires dismissal.

Fisq which neither requires disqualification nor dismissal is the fisq which is caused by minor sins or a discontinued great sin and does not cause disorder in his reasoning (khabt wa khabl fī al-nazr)."18

Fisq which requires dismissal is the fisq which is persistent, causing disorder in reasoning and causing a

16 Ibid., p. 78
17 Ibid., p. 119
18 Ibid., p. 120

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negative effect on the religion and the Muslims.  

This division of fisq is according to his writing in al-Ghiväthi. In al-Irshäd, al-Juwaynī divides fisq into three categories - fisq which neither requires disqualification nor dismissal, fisq which requires disqualification and fisq which requires dismissal. In al-Ghiväthi, as will be explained later, al-Juwaynī rejects the opinion that fisq requires disqualification. However, in al-Irshäd, al-Juwaynī admits that this matter is a matter of ijtihäd (mujtahadät). 

In al-Ghiväthi, before giving the details of his opinion on fisq as a requirement for the disqualification and the dismissal of the imâm, al-Juwaynī mentions two opinions of different groups of scholars:

Some groups of theologians (usülyvün) and jurists (fuqahä') hold the view that fisq requires disqualification. These groups consider the occurrence of fisq during the presence of the imâm in the post of the imämate is similar to that before the contract of the imämate is made (ya'tabirün al-dawäm bi al-ibtidä'). They argue that if fisq disqualifies a person from the contract

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20 *al-Irshäd*, p. 425
of the imāmate before the contract is made, it should also
disqualify him even after the contract of the imāmate has
been made as the reason for the disqualification from the
contract of the imāmate is the loss of trust to him and his
leadership would lead to a result which contradict the
objectives of the imāmate. 21

Some other groups of scholars hold the view that fisq
does not require disqualification of the imām but the imām
must be dismissed by ahl al-ball wa al-°agd. 22 It is
understood from his expression in another separate place
that what al-Juwaynī means here is dismissal regardless of
the different types of fisq. 23

After mentioning these opinions, al-Juwaynī, then,
rejects the opinion that fisq requires disqualification on
the grounds that the imām is not an infallible person. It
is a common phenomena (zāhir al-kawn) that one who is not
infallible is exposed to the matters which may cause fisq.
Whereas the quality of continuous piety and obedience,
avoiding evil desires, abstaining from prohibition and
competing for rewards is an extraordinary quality (al-

21 Ibid., p. 100
22 Ibid., pp. 100 - 101
23 See Ibid., p 103
Al-Juwayni continues saying that if it is a matter of fact that one would not be pious unless one is supported by God's approval; human nature always invites one to follow lust and evil whereas duties always constitute burdening and suffering; the seduction of the satans and evil desires always lead to love of worldly life (al-"ājil) and quick gain; it is normal that a human being is sometimes swung by desires; the worldly life is seducing and blocking the door of reward. With these natural attributes of human being, mistake and sin may always be committed. Only infallible persons, those protected by the grace of God are safe from committing mistakes and sins. Again, among the duties of the imām is to organize armies ("aqd al-alwiyah wa al-bunūd) and to dispatch them. These duties cannot be fulfilled except by one who is brave, powerful, strongheaded and vindictive. How could such a person be safe from possessing the uncouth attitude of a soldier and how could such a person remain in continuous piety? Also among the duties of the imām is to distribute wealth to all the people after collecting it. Due to this fact, al-Juwaynī says, the requirement of the continuous of piety would lead to difficulty in performing the governing

24 Ibid., p. 101
Therefore, it is always possible for the imām to commit a mistake or sin whether related to his personal matters or in the matters related to the Muslim affairs such as in contributing wealth, collecting taxes, making laws through his ijtihād, making judgement in court and so on. 

Al-Juwaynī says that if fisq requires disqualification, it would involve all his words and actions in all situations: investigation into his fisq would be continuously done; people would be always in conflict in proving and denying his fisq; and therefore, the obedience to the imām would not be stable. If fisq is made a requirement for the disqualification or the dismissal of the imām as an absolute rule (ʿalā al-itlāq), the continuation of the objectives of the imāmat would be impossible.

As a conclusion of his reasoning, al-Juwaynī says that making fisq a requirement for the disqualification or the dismissal of the imām from the post of the imāmate as an absolute rule means rejecting the imāmat itself,

25 Ibid., pp. 101 - 102
26 Ibid., p. 103
27 Ibid., pp. 102 -103
28 Ibid., p. 103
belittling its importance, uprooting its benefits, disbelieving in it and inciting people to disobey the imām." 30 Disqualifying the imām after stability has been established vitiates against the foundation of authority. 30

Therefore, according to al-Juwaynī, fisg which occurs when the imām is in the post of the imāmate does not disqualify or does not necessarily require the dismissal of the imām as he says that it is definite that such fisg does not cut off the authority of the imām. 31

To support the above principle, al-Juwaynī argues that there is no dispute among the scholars that if any new circumstance (‘ārd) or illness which prevents the imām from exercising his sound reasoning, occurs to the imām but it is expected to disappear, the imām is not disqualified from the post of the imāmate. Based on this rule, al-Juwaynī says that if illness, which effects his reasoning, does not disqualify the imām from the post of the imāmate, it is more appropriate to say that fisg which does not effect his reasoning should not disqualify him as its disappearance is more likely and possible. 32

29 Ibid.
30 Ibid., p. 105
31 Ibid., pp. 103 - 104
32 Ibid., p. 104
Al-Juwaynī also says that there are many reports (akhbār) transmitted from the Prophet Muhammad which support this principle. Among others, al-Juwaynī mentions:

"Are you leaving my amīrs to me? You only enjoy happiness and leave grief to them."\(^{33}\)

3.2. Imprisonment in War

If the imām is imprisoned in war and his release is expected to be impossible for the Muslims, his deposal from his post of the imāmate must be through dismissal.\(^{34}\)

Al-Juwaynī says that it is not permissible (lā sabīl) to leave the country without the imām and the presence of the imām who is imprisoned in war is meaningless as he is unable to fulfil the duties of the imām.\(^{35}\) His authority over the country is cut off.\(^{36}\) In this case, another imām should be appointed.\(^{37}\)

\(^{33}\) Muslim (al-Ghväthl(1), p. 105)

\(^{34}\) al-Ghiväthi(1), p.116, p.117 and p. 119

\(^{35}\) Ibid., p. 119

\(^{36}\) Ibid.

\(^{37}\) Ibid., Regarding the dismissal of the imām by imprisonment in a war, ġAbd al-Ąṣım al-Dib suggests that it is a possible hint by al-Juwaynī for Nizâm al-Mulk to depose the Abbasid Caliph in Baghdād. (See al-Ghväthi(2), pp. 103 mim - 107 mim)
Imprisonment in war does not require disqualification (in'izāl) of the imām during his tenancy of the post of the imāmate because his release, although it is expected to be impossible for the Muslims, it is still possible for those who imprisoned him to have choice of releasing him. Therefore, the imām remains as the imām until he is dismissed by ahl al-hall wa al-'aqd. On this rule, al-Juwaynī says that what requires disqualification is an obvious cause (sabab zāhir), whose removal is expected to be impossible and whose removal does not depend on the choice of any one (ikhtiyār mukhtār wa ithār mu'thir). In the case of the imprisonment of the imām in a war, even though the first two conditions are fulfilled, the imām should not be disqualified.

3.3. Loss of Obedience (Suqūt al-Tā‘ah)

If the obedience from the people to the imām is lost and as a result, his power becomes weak, the imām should be dismissed.

38 Ibid., p. 123
39 Ibid.
40 Ibid., p. 124
41 Ibid., pp. 116 - 117, p. 119, p. 123 and p. 124, The imposition of loss of obedience from the people to the imām as a reason for the dismissal of the imām is another possible hint by al-Juwaynī for Nizām al-Mulk to depose the powerless Abbasid Caliph in Baghdad, as suggested by ʿAbd al-ʿAzīm al-Dīb. See footnote no. 37 of the same chapter.
Loss of obedience by the people to the imām may occur due to many factors. Among others, natural dislike or boredom by the people which is caused by the length of the period of the imām's tenancy in the post of the imāmate. It may occur although there is no defect in the soundness of mind, character, behaviour or nobility of the imām.\textsuperscript{42}

When the loss of obedience occurs, the relationship between the people and the imām broken down. Therefore, he should be dismissed and another imām whom the people would obey should be appointed.\textsuperscript{43}

According to al-Juwaynī, loss of obedience from the people to the imām does not require disqualification.\textsuperscript{44} It is understood that the reason for this rule is similar to that for the imprisonment in war. The disappearance of the loss of obedience from people depends on the choice of the people. Therefore, the third condition for disqualification from the post of the imāmate is not fulfilled.

Regarding the loss of obedience to the imām by the people and probably due to that reason that he writes the

\begin{itemize}
\item[(42)] Ibid., pp. 116 - 117
\item[(43)] Ibid., p. 117
\item[(44)] Ibid.
\end{itemize}
book to refute the opinion of the adversaries of the Sunnites, in al-Ghivāthī, al-Juwaynī defends the fact that the obedience by the people to the Caliph "Uthmān was not lost when he was confined (hūṣīra) in a house before he was murdered. Al-Juwaynī argues that the confinement of the Caliph "Uthmān was not similar to imprisonment in war as he was confined only by a small group of people. Therefore, his release was expected to be possible. "Uthmān chose to be confined because he was reluctant to be involved in bloodshed. One of the grounds which supports this fact is his saying to his slaves (ghulmānīh) when he was in confinement:

"Whoever throws away his weapon, is freed [from his slavery]." 

3.4. Chronic Illness (mardah muzminah)

If the imām suffers from a chronic illness which causes obvious defect in reasoning (ikhtilāl bāyīn wādih wa kharm fī ra'y lā'īh), he should be dismissed."

Al-Juwaynī does not explain the reason for this requirement for dismissal but it can be understood that recovery from a chronic illness is always possible.

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45 Ibid., pp. 124 - 125
46 Ibid., p. 120

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However, uncertainty of the time when he would recover needs a decision as to whether to allow him to stay in the post of the imāmate or to depose him from it. Therefore, his dismissal can be established.

4. Dismissal of the Imām

4.1. Time of the Dismissal of the Imām

If the dismissal or resignation of the imām should occur, the dismissal or the resignation must be made prior to the appointment of the new imām or his successor. 47

Although al-Juwaynī does not give any reason for this rule, it can be understood that if the appointment of the new imām is made prior to any dismissal or resignation, it would certainly contradict the prohibition of appointing two imāms concurrently as there would be a period between the appointment of the new imām and the dismissal or resignation of the existing imām when two imāms exist in the post.

47 Ibid., p. 126
4.2. Methods of the Dismissal of the Imām

There are two methods of how the imām can be dismissed. The dismissal by ahl al-ball wa al-ṣaqd and self-dismissal by the imām or resignation.

4.2.1. Dismissal by Ahl al-Hall wa al-ṣAgd

As afore-mentioned, when the imām is appointed, neither ahl al-ball wa al-ṣaqd or any Muslim has the right to dismiss the imām without any legal reason as long as the imām fulfils his duties according to the law of Islām, nor has the imām himself the right to resign from the post of the imāmate except in certain circumstances.

If any circumstance which requires dismissal occurs, the one who has the right to dismiss him is the one who appoints the imām i.e. in the ordinary case it is ahl al-ball wa al-ṣaqd."

In the case of the imām being dismissed by ahl al-ball wa al-ṣaqd, unanimity (ijmāl) is not required. The reason is that if the agreement of the scholars is required, disorder in the country would expand while waiting for the

48 Ibid., p. 126

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agreement."

It is also a principle that as in the appointment of the imām, the condition of the possession of power by ahl al-hall wa al-ʿaqd must be taken into account."

It is understood that, according to al-Juwaynī, the same principle is applicable in the case of the appointment by preceding imām. If any circumstance which requires dismissal occurs to the wali al-ʿahd, the appointing imām is the one who has the right to dismiss his wali al-ʿahd."

4.2.2. Abdication

Regarding self-dismissal by the imām or abdication from the post of the imāamate, al-Juwaynī has developed his thought. In al-Irshād, he says that abdication by the imām is possible (mubtamil)." It is understood that this rule is absolute because he does not mention the various circumstances which he mentions in al-Ghvāthī. In al-Ghvāthī, before he gives his own opinion, al-Juwaynī presents two different opinions of scholars.

49 Ibid., pp. 126 -127
50 Ibid., p. 127
51 Ibid., p. 143
52 al-Irshād, p. 426
Some scholars hold the view that abdication by the imām from the post of the imāmate is prohibited on the grounds that the contract of the imāmate is binding on both parties of the contract.  

Some other scholars hold the view that abdication is permissible based on a continuously transmitted report that al-Ḥasan b. ʿAlī abdicated from his wilāyat al-ʿahd and no one appeared to oppose the abdication.  

Between these two opinions, al-Juwaynī builds his own opinion. His opinion is not definite on either of the two opinions. According to al-Juwaynī the prohibition or the permissibility depends on the situation or the effect of the abdication.  

If the imām knows that his abdication would lead to chaos in the country, his abdication is prohibited. He based his opinion on the rule of the sharīʿah that if a soldier (al-wāqif) in a battle against polytheists (mushrikīn) knows that his withdrawal from the battle would cause defect to the defence of the Muslims side, he must stay in the battle although his involvement in the battle is not a personal duty due to the involvement of other

53 Ibid., p. 128
54 al-Ghiyāth(1), p. 129, al-Irshād, p. 426

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capable persons (al-kuffāh).

If he knows that his abdication gives benefit to the Muslims, for instance, that his abdication can extinguish enmity, can eliminate fighting, can avoid bloodshed or can release the Muslims from hardship, his abdication is permissible.

To support this principle, al-Juwaynī says that the abdication of al-Ḥasan b. ʿAlī was due to this reason. In al-ʿIrshād, al-Juwaynī says that al-Ḥasan abdicated because he felt that he is incapable (ʿajiz) of continuing with his wilāyat al-ʿaḥd.

The saying of the Prophet Muḥammad about al-Ḥasan:

"This son of mine is a master (sawīd) and with him, God, the Most Exalted, will reconcile between the groups" indicates that the abdication of al-Ḥasan was for the benefit of the Muslims. Therefore, it is permissible.

55 Ibid., p. 129
56 al-ʿIrshād, p. 426. However, some writers reported that Ḥasan's abdication was due to the condition of receiving a certain amount of money from Muʿāwiya (See Jafri, S.H.M., Origins and Early Development of Shiʿa Islam, London, 1978, p. 140, citing Ṭabarī, ii, pp. 1, 5 ff.
57 Bukhārī (al-Chiyāthī(1), p. 130)
However, the abdication can not be made without any acceptable reason as the imām wishes." The conversation between Abū Bakr and the people supports this principle as Abū Bakr says:

"Dismiss me [from the post of the imāmate] because I am not the best person among you."

and the people responded:

"In the name of God, we would neither dismiss you nor would we ask you to be dismissed."

If the imām knows that his abdication neither harms nor benefits the Muslims and the post of the imāmate can be replaced by another imām without any difficulty, al-Juwaynī has no definite opinion between prohibition and permissibility. The matter, as he says, is not definite and is open to ijtihād. However, he says that what is clear to him is that in such a situation, if he intends to seclude himself to worship God, his abdication should not be prohibited.

58 al-Irshād, p. 426
59 Ibid., Bukhārī (al-Ghaythī(1), p. 130)
60 Ibid., p. 131
61 Ibid.
5. Remedies for the Refusal of the Disqualified or Dismissed Imam to Step Down

If the disqualified or dismissed imam refuses to step down from the post of the imamate and still holds the post with power and equipment, al-Juwayni says that steps to overcome this situation must be taken. The continuation of such an imam in power would lead to a result which is contradictory to the objectives of the imamate. On the dismissal of the imam which is due to fisq, al-Juwayni says:

"Leaving people in chaos without a leader is better than to be led by a leader who supports evil, transgression and heresy."\(^2\)

It is understood that this principle also applies to the imam who is disqualified or dismissed due to other reasons.

If the appointment of a new imam who is qualified for the imamate is possible (tavassara), the new imam must be appointed. When the contract of the imamate is made and the obedience has been established, the new imam replaces the disqualified or the dismissed imam.\(^3\)

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\(^2\) Ibid., p. 106
\(^3\) Ibid., p. 109

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When the new imām is appointed, the first duty of the imām is to prevent the disqualified or the dismissed imām from continuing in carrying out the duties of the imāmate. If he disobey, he should be treated as a rebel (bāghi singular of bughāh). In this case, all rules (ahkām) relating to rebels in the law of Islām should be followed.

If the Muslims know that the appointment of the new imām would cause disaster, bloodshed and destruction of properties, the principle is to measure between the advantages and disadvantages for the Muslims. If the advantages are more than the disadvantages, the new imām should be appointed. If otherwise, the appointment of the new imām is not obligatory until the situation changes. In this case, based on other rules of the shari'ah such as enjoining good and forbidding evil (al-amr bi al-ma'rūf wa al-nahy 'an al-munkar), it is understood that every individual Muslim who is a legally capable (mukallaf) is responsible for giving effort to change the situation until the appointment of the new imām becomes possible.

Al-Juwaynī bases this argument on the permission of the Muslims to have an agreement of peace with unbelievers (muhādanat al-kuffār) for ten years if the Muslims feel

64 Ibid., pp. 106 - 110
that they are weak to fight the unbelievers." Al-Juwaynī also bases his argument on the following legal principles:

1. Seek for the interest (talab al-maslahah)"
2. Seek for the better benefit (irtiyād al-anfā')"'
3. Choose the lesser of two evils (i'timād khayr al-sharrā'īn)"

Al-Juwaynī supports this principle by referring to the case of arbitration in the conflict between 'Alī and Mu'āwiyah. He says that when 'Alī accepted the arbitration (tabkīm) with Mu'āwiyah for his dismissal from the post of the imāmate, it was due to the fact that 'Alī realized that the negative effect from their conflict to the Muslims had become worse." It is understood that what al-Juwaynī means is that 'Alī did so to avoid worse future negative effect to the Muslims. In other words, he implemented the aforementioned legal principles.

If there is no person qualified for the imāmate, but there is a person who has followers and he is obeyed by the

65 Ibid., p. 111
66 Ibid.
67 Ibid.
68 Ibid.
69 Ibid., pp. 114 - 115
people, and he rises, he should be appointed as the imām to fulfil the needs of the Muslims and his appointment should be approved by the Muslims."

In the case if the Muslims do not have any legitimate imām, at any period, all their affairs should be entrusted to the scholars."
CHAPTER FOUR

THE DUTIES OF THE IMĀM

Before elaborating the duties of the imām, al-Juwaynī precedes with a rather long introduction explaining the responsibilities and the nature of human beings, the problems arising from their nature, the justification for God imposing His laws, the justification for the necessity of having an imām with power.

Al-Juwaynī explains that all human beings are required by the law of Islām (sharīʿa) to uphold the religion, to be pious, to observe what may make one close to God, to occupy oneself with seeking the pleasure of God, to glorify Him, to be pleased in this world with the duty to convey the message of God and to refrain oneself from evil desires.¹

Beside these responsibilities, God also creates desires and lust in human beings. In achieving what they desire, they are given rules making things permissible and prohibited which should be observed, and providing methods to apply the rules (tahdhib masālik al-ahkām) to the people. With these rules, worldly affairs would be in

¹ al-Ghiyāthī(1), p. 180
These created desires may lead human beings to competition and disputes among themselves. Although God has made the rules that transgressing what has been forbidden would lead to punishment and observing the command would lead to reward, not all human beings conform to the rules.

To solve the transgression which may be committed by those who do not conform to the Laws of God, God makes the establishment of an imāmate compulsory in order to conduct the religious and worldly affairs by preventing such a transgression, fulfilling the rights of the people, eliminating (yakuffu) the extremists, supporting the moderates (muqtaşidin), setting up the foundation of righteousness (mabānī al-rashād) and stopping the means of misleading and corruption.

Due to this reason, when God sent Messengers to this world, He supports them with power (sultān). Among these Messengers are Dāūd, Mūsā and Sulaymān. Muḥammad was supported by manifest evidences and was strengthened with

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2 Ibid., pp. 180 - 181
3 Ibid., pp. 181 - 182
4 Ibid., pp. 182 - 183
After this introduction, al-Juwaynī continues with the elaboration of the duties of the imām.

1. Types of the Duties of the Imām

Al-Juwaynī divides the duties of the imām into two categories - duties which are related to religious affairs and duties which are related to worldly affairs. It is worth mentioning here that the duties which are related to worldly affairs are subordinate to the duties which are related to religious affairs.⁵

1.1. Duties Which are Related to Religious Affairs

Al-Juwaynī divides the duties which are related to religious affairs into two categories - duties which are related to the foundation of the religion or faith (asāl al-dīn) and duties which are related to the branches (furūʿ) of the religion or laws.

⁵ Ibid., p. 182
⁶ Ibid., p. 187
1.1.1. Duties Which are Related to the Foundation of the Religion or Faith

The duties which are related to the foundation of the religion or faith are divided into two categories - protecting the religion and calling non-Muslims to Islam.

1.1.1.1. Protecting the Religion

As to the duty to protect the religion, from al-Juwaynī's writing in al-Ghiyāthī, it could be summarized that the protection of the religion should be carried out by the imām by fighting against bid'ah (innovation) and heresy, by preparing missionaries (du`āh) to call people to the true path, by abstaining from interfering in the conflicts of opinions which occur among Muslim jurists (fugahā') and by educating the people to follow the tradition of the early pious scholars (salaf al-sālihīn) and to avoid difficult matters.

1.1.1.1.1. Fighting against Bid'ah and Heresy

It is the duty of the imām to keep the religion pure and safe from any corruption through bid'ah and heretic opinions. The imām should protect the religion extensively by himself and his assistants. Regarding this duty, al-Juwaynī says that preventing before happening is easier
than eliminating it after it has happened.  

The following are the methods for keeping the religion pure and safe from bid'ah and heresy:

(a) In the Case of the Problem Being within Control of the Imam

If the deviationist (zā'īqah) commits apostasy, the imām should ask the person to repent. If he refuses to repent, the imām should execute him by cutting off his head.  

If the heretic group who are called to the true path by the imām give a guarantee to the imām not to spread (yazharū) their bid'ah but the imām knows that they would spread their heretic opinions secretly, the imām should take steps to overcome the problem. The first step is that the imām should warn them. If they ignore the warning and carry on with their call, the imām should take the second step - asking them to appear and imposing ta'zīr punishment on them. If they still refuse to stop their activities and gather (tajammā'ū) to withdraw their obedience from the imām, the third step should be taken by the imām - fighting

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7 Ibid., p. 184
8 Ibid., pp. 184 - 185
against them.\textsuperscript{9}

If the innovation created does not constitute apostasy, the imām must give maximum effort to prevent the person who creates the bid'ah from his innovation on the grounds that if such a person is left with his bid'ah and his missionary activity (da'wah), it would damage the faith of other people and would cause hardship and dissension. If the bid'ah has become deep-rooted in the hearts of the people, it would lead to danger and later would uproot the foundation of Islām.\textsuperscript{10}

If the deviating views and false claims have accumulated, continued and become extensive (ishtadda) but still can be prevented, the imām should prevent them. Besides, the imām should consider the duty to prevent such deviating views and false claims as his highest priority among his duties.\textsuperscript{11} The reason for this principle is that although the imām has both duties - to protect the faith of Islām and to protect the worldly interests of the Muslims, the protection of the worldly interests of the Muslims is subordinate (tābi'ī) to the protection of the faith. The protection of the faith is the purpose of having the imām.

\textsuperscript{9} Ibid., p. 215
\textsuperscript{10} Ibid., p. 185 and p. 215
\textsuperscript{11} Ibid., p. 186
Therefore, between these two duties, the duty to protect the faith should be given preference to the duty to protect the worldly interests of the Muslims.  

(b) In the Case of the Problem Being beyond the Control of the Imam

In the case when the problem of bid'ah and heresy have become extensive and difficult for the imām to fight against ahl al-bidā' (innovators) and heretics, and the imām thinks that having peace with them and leaving them with their opinions and claims is better for the interests of the Muslims than taking open action against them, he may do so. The reason for this principle is that open action would provoke them to fight against and disobey the imām, and to ignore the security of the country. This would lead to the suspension of security supervision at the frontiers and would seduce non-Muslims to attack the Islamic territory. If the imām decides to have peace with ahl al-bidā' and the heretics, while having peace with them, the imām should also take other steps to subdue them - by observing their activities, arguing with them incisively, uprooting their leaders, reducing their numbers, scattering them into different areas and cutting off assistance to them as much as possible. When the group are weak, the imām should

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12 Ibid., pp. 186 - 187 and p. 152
attack them. This strategy can be followed if they still obey the imam. 13

If their bid`ah and heresy reaches the level of withdrawal from their obedience to the imam, the imam should treat them as rebels. 14 This principle, according to al-Juwaynī, is agreed upon by all groups of Muslims. 13

Regarding the duty of the imam to fight against the innovation, al-Juwaynī says that it is among the most important duties of the imam. 15

Other than the duty to fight against ahl al-bida' the imam should also be responsible to ascertain that the laws of the country are complied with by all the people. If there is a group of Muslims who refuse to comply with any rule even that which is made through the ijtihād of the imam, the imam should fight against them. Al-Juwaynī bases this principle on the practice of Abū Bakr fighting against those who refused to pay zakāt during his time. 17

13 Ibid., pp. 187 - 188
14 Ibid., p. 189 and p. 215
15 Ibid., p. 215
16 Ibid., p. 195
17 Ibid., p. 216

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1.1.1.1.2 Abstaining from Interfering in the Conflict of Opinion among the Muslim Jurists

It is also the duty of the imām not to interfere in the conflict of opinions regarding the matters of ijtihād among the jurists who are contemporary with him. However, the imām should not prevent the jurists from exercising their ijtihād. The imām should acknowledge (yaqirru) every single scholar (imām), his followers and their views.

It is understood from al-Juwaynī's writing that disagreement among the Muslim jurists regarding the matters of ijtihād is a grace and blessing from God, not a negative matter. To support his view, al-Juwaynī says that such a disagreement of opinion had also occurred during the time of the early pious scholars (salaf al-sālihīn) and the Companions of the Prophet and the reason for the disagreement was due to their research for the evidence (adillah) of the shari`ah.

Al-Juwaynī supports his view by providing a hadīth:

"The conflict [of opinion] between [the members]
of my ummah (people) is a blessing.”

Probably, the reason for saying that the disagreement of opinions is a grace and blessing from God is that people are given freedom of researching, thinking and expressing.

1.1.1.1.3. Guiding the Public to Follow the Tradition of the Early Pious Scholars and to Avoid Difficult Matters

Another way to protect the religion which should be carried out by the imām is to guide the public to follow the opinions of the early pious scholars before deviation in their opinion occurs. He should guide the people to avoid being involved in difficult matters and creating answers for presumed questions about cases which have not yet happened. This duty is based on the practice of the Companions of the Prophet preventing the people from doing so during their time. Instead they devoted their attention to seeking goodness and piety, preventing harm (kaff al-adhā) and paying obedience to God as much as possible.”

They not only abstained themselves from being involved in such activities but were also firmly against any one who

21 Ibid., p. 189, Ahmad (al-Irshād, p. 427)
22 Ibid., pp. 190 - 191
tried to be involved in them. Although they were the most intelligent individuals, they believed that involving themselves in such activities would cause disaster and errors (al-dalālāt) plural for al-dalāl).

Besides, it is reported from the Prophet, when the Prophet said:

"My ummah will break up into seventy three groups and only one of them will be safe",

the audience asked about which group would be the safe one. The Prophet answered:

"Those who follow the way which is followed by myself and my Companions".

Regarding this duty, al-Juwaynī says that the imām should consider this duty his most important one as the imām is the final reference for any argument and a caller (muddā'ī, singular of muddā'āh) to righteousness.

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23 Ibid., p. 191 and p. 192
24 Ibid., p. 191
26 al-Ghvāthī(1), p 192

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1.1.1.1.4. Sending Missionaries to the People to Explain the truth

If the disaster of the bid'ah has filled up the hearts of the people and the callers to bid'ah have spread throughout the country, it is the duty of the imām to send missionaries to them to remove the confusion which is caused by them with proof and evidence, to destroy the opinion of the heretics and to explain the truth to the people. 27

Regarding this duty, al-Juwaynī says that the circumstance which he mentions here is the one which has been happening during his time. 28

1.1.1.2. Calling Non-Muslims to Islām

Another duty of the imām which is related to faith is to call non-Muslims to Islām. In performing this duty, there are two methods which should be followed by the imām:

1.1.1.2.1. By Discussion

The first method is by having discussion (jidāl) with

27 Ibid., pp. 192 - 193
28 Ibid., p. 193
the non-Muslims in the best manner and by using evidences and reasons in explaining the true path."

To carry out the duty by this method, the imām should choose Muslim scholars who are competent in debating to conduct the discussion (jīdāl) on his behalf. The person, then, should be intelligent, learned, possess a high standard of language and personality, and be kind, friendly, compassionate, sympathetic, merciful and gracious because the reason for having discussions is to eliminate confusion and to call the non-Muslims to the true path with the clearest evidences.

1.1.1.2.2. By Jihād

If the first method is not effective, then the imām should use force and weapons to invite them to Islām. However, the second method should come after the first one. In other words, the imām should carry out the first method first, then if he fails, he should use the second method.

According to al-Juwaynī, jihād is entrusted to the

29 Ibid., pp. 195 - 196 and p. 207
30 Ibid., p. 196
31 Ibid., p. 207
32 Ibid., pp. 195 - 196 and p. 207
imām. It is a personal duty (fard ʿayn) of the imām like the duty to perform prayer (salāh). The reason for this rule is that the imām is the one who conducts all the affairs of the Muslims. In term of responsibility, the imām alone is equal to all Muslims. He is the representative (nā'ib) of all Muslims in arranging armies and dispatching them. Therefore, he should give his maximum effort in performing his duties.33

As the duty to perform jihād is entrusted to the imām and it is also his personal duty, no individuals or people who possess power (dhawī al-baʾs wa al-najdah) among the Muslims should go to jihād by themselves without obtaining any command or permission from the imām or the authority (sāhib al-amr).34

Jihād should be carried out at any time whenever possible and whenever the opportunity (fursah) is available. If the imām feels that the Muslims are weak, it is permissible for him to have a peace agreement (yuhādin) with the unbelievers for ten years.35

Al-Juwaynī rejects the opinion of some groups of

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33 Ibid., p. 210
34 Ibid., p. 209
35 Ibid., p. 208
jurists that jihād is among the public duties (fard kifāyah) of every Muslim, including the imām. According to these jurists, if any one of the Muslims has performed it, the duty is dropped from the others. If no one performs it, every single Muslim would be sinful. " He rejects this opinion because as mentioned earlier, according to him, the duty of jihād is not a public duty of the imām.

Al-Juwaynī also rejects the opinion of these groups of jurists that jihād must be performed at least once a year. " The reason for his rejection is clear as aforementioned as al-Juwaynī says that jihād should be carried out at any time and whenever the opportunity comes.

1.1.2. Duties which are Related to the Branches of the Religion

What is meant by the duties which are related to the branches of the religion here is the duties which are related to the acts of worship (al-ibādāt al-badaniyyah)."

As regard to the acts of worship, al-Juwaynī says that the validity of them does not have any relation to the

36 Ibid., p. 207
37 Ibid., p. 208
38 Ibid., p. 197
jurisdiction (nazr) of the imām. Therefore, the worship is valid as long as all conditions and essential elements (arkān) are fulfilled and is performed within the specified period. Al-Juwaynī also says that those who hold the view that the validity of a Friday prayer (salāt al-jum'ah) depends on the permission of the imām are wrong."

However, the imām is still responsible for looking after the security of the people who perform the acts of worship and to implement the rules relating to the acts of worship in case of there being any transgression by the people. 40

The nature of the duties of the imām, however is different depending on the nature of the types of the acts of worship.

Al-Juwaynī divides the acts of worship into two categories - the acts of worship which constitute public ceremony (shi'ār zāhir) and the acts of worship which do not constitute public ceremony.

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39 Ibid., p. 198
40 Ibid., p. 199

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1.1.2.1. The Acts of Worship which Constitute Public Ceremony

The Acts of worship which constitute public ceremony again are divided into two categories - the acts of worship which involve gathering of a great number of people such as Friday prayers, festivals ('a'yād) and pilgrimage and the acts of worship which do not involve a great number of people such as calling to prayers (ādān and igāmah).41

1.1.2.1.1. Supervising the Acts of Worship which Constitute Public Ceremony and Involve A Great Number of People

As far as the acts of worship which constitute public ceremony and involves a great number of people are concerned, the imām is responsible to supervise the people to prevent them from committing prohibited things and to protect them from any disturbance by evil people who possess power. This principle is based on the tradition of the Prophet who commanded Abū Bakr to supervise those who go on the pilgrimage after the conquest of Makkah. This tradition was practised every year later on. Since then, the pilgrimage has never been performed without the supervision of the imām or his assistant (mustanāb). Based

41 Ibid., pp. 198 - 199

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on this tradition, the caliph Abū Bakr appointed (saddara) group leaders (mavāsār al-ʿumārāʾ wa dhawī al-alwīyah) to organize gatherings. Through these leaders, at least, people would be united and protected from dissension and disorder.¹²

1.1.2.1.2. Supervising the Acts of Worship Which Constitute Public Ceremony and Do not Involve A Great Number of People

As for the acts of worship which constitute public ceremony but do not involve a great number of people such as calling to prayers (ādhān and iqāmah), the imām should interfere if the ceremony is not performed, for example, by a certain group in a certain region. The interference should be carried out by commanding (baml) them to perform it. In the case if they refuse to obey his command, al-Juwaynī provides two opinions of scholars. Some scholars permit the imām to force them to perform it by weapons and another group of scholars do not permit that. Al-Juwaynī himself does not show any inclination towards any of the two opinions. He only says that the issue is an issue of ijtihād.¹³

²² Ibid., p. 199
²³ Ibid., p. 200

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1.1.2.2. Supervising the Acts of Worship which Do Not Constitute Public Ceremony

Regarding the acts of worship which do not constitute public ceremony, the imām does not have any active duty towards them. The imām has only passive duty. The imām should not interfere in this type of worship except if a transgression which is related to the obligation is reported to him. For example, if it is reported to him that somebody intentionally does not perform regular prayers without any valid excuse and refuses to make them up (qadā'), the imām should interfere by imposing punishment on the person. In this case, al-Juwaynī says that according to the opinion of al-Shāfi‘ī, the punishment for such an offence should be execution and according to other scholars, the punishment should be a torture (ta‘zīb) and confinement (habs).”

1.2. Duties Which are Related to Worldly Affairs

Al-Juwaynī divides the duties which are related to worldly affairs (abkām al-dunyā) into two types - seeking what has not yet been obtained and protecting what has been obtained.”

44 Ibid., p. 200
45 Ibid., p. 201
1.2.1. Seeking What Has Not Yet Been Obtained

Al-Juwaynī does not elaborate what he means by seeking what has not yet been obtained. Probably what he means is that to struggle to gain more territories and expand Islām to non-Islamic territory. The reason for saying that is that al-Juwaynī mentions the method of how to carry out this duty i.e. by jihād and fighting against the unbelievers (ahl al-kufr).  

1.2.2. Protecting What Has Been Obtained

Al-Juwaynī divides again the duty of the imām to protect what has been obtained into two types - protecting from external enemy i.e. the unbelievers and protecting from internal evil people (ahl al-tawāthub wa al-taghālub wa al-taqātū wa al-tadābur wa al-tawāsul). Al-Juwaynī does not define the meaning of "what has been obtained". Probably what he means is private property.

1.2.2.1. Protecting From External Enemy

The method which should be followed by the imām in protecting what has been obtained from the external enemy

46 Ibid.
47 Ibid.

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i.e. unbelievers is by preparing frontier posts (al-thughūr) and locating adequate soldiers in observation posts (al-marāsid) to observe the enemy outside the territory. Besides, they also should be provided with sufficient food, water, weapon, ammunition (al-ṣīṭād) and other necessary equipments for defence."

1.2.2.2. Protecting From Internal Evil People

As to the protection of what has been obtained from the internal evil people, al-Juwaynī divides this duty into two types - the duty which is related to general interests (marātib al-kulliyvāt) and the duty which is related to individual matters (iuz'iyvāt).

1.2.2.2.1. Duty of Protection from Internal Evil People which is Related to General Interests

As to the duty of protection from internal evil people which is related to general interests, al-Juwaynī says that it is the duty of the imām to ascertain that people enjoy security in the Islamic territory. Therefore, steps should be taken to keep the Islamic territory safe from any threat and disturbance from any evil people such as highway

48 Ibid., p. 201 and pp. 211 - 212

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robbers. In performing this duty, the imām should appoint assistants from people who possess capacity (vastāqill bi kifāyah) and send them to different regions."

1.2.2.2.2. Duty of Protection from Internal Evil People which is Related to Individual Matters

As to the duty to protect what has been obtained from Internal evil people which is related to individual matters, al-Juwaynī divides it into three types - adjudication between people in conflict, implementing policies on the people and punishment of hudūd and ta’zīr on the offenders, and supervising person who are exposed to destruction and fulfilling the needs of those in need.

1.2.2.2.2.1. Adjudicating between People in Conflict

One of the duties in protecting what has been obtained which are related to individual matters is to adjudicate between individuals in conflict (khusūmah, munāza‘ah, singular for khusūmāt, munāza‘āt). This duty should be carried out by the judges whose power is delegated by the imām. The judges are the assistants of the imām to carry out this duty."

49 Ibid., p. 203, See also pp. 212-213
50 Ibid., p. 202, See also p. 213
Conflict between individuals is considered as an individual matter because it comes from individuals (al-āhād wa al-afrād). He excludes highway robbery and the like from individual matters because it usually involve a number of people and come under the heading of general interest.  

1.2.2.2.2. Implementing Policies (Siyyāsāt) and Punishment

The second duty in protecting what has been obtained which is related to private matters is to implement policies on the people and to impose punishment on the offenders to prevent people from committing abominations (al-fawāsid) and great sins (al-mūbiqāt).

Al-Juwaynī divides the method of preventing people from committing abominations and great sins into three types - by fighting (qitāl), by imposing punishment and by giving warning (nakāl).

The prevention by fighting is applicable to rebels (ahl al-baghī), highway robbers (gattā' al-tarīq), those who have taken up position to commit highway robbery (al-rāsidīn li al-tarīqīn) and those who carry weapons [to commit robbery]

51 Ibid.
52 Ibid., p. 203
(al-mujähidin bi haml al-silāh). As for the rebels, if their rebellion justified, the imām should investigate their claim and should overcome the suffering they are undergoing and then forgive them. If they deviate from the true path, the imām should correct them. If they refuse to obey, the imām should fight against them.53

As to the highway robbers, al-Juwaynī says that those who refuse to obey the laws (ahkām) but do not use force (man'ah wa shawkah), should be forced to obey them. If they use force, they should also be called to obey the laws. If they refuse to obey the call, the imām should fight against them with force to break up their opposition.54

As to the punishment of which the implementation is entrusted to the imām on individuals, it is divided into two categories - hadd (fixed) punishment)and ta'zīr (preventive) punishment. Qisās punishment (punishment for the offences against the body) is entrusted to the kin of the victim. Although qisās punishment is a pure right of human being (ādamī), it should not be implemented without the supervision of the authority (sultān).55

53 Ibid., pp. 214 - 215
54 Ibid., p. 215
55 Ibid., p. 217
As to ta'zīr punishment, which is different from hadd punishment, some of these punishments are only pure right of man (ādami) because such punishments may be dropped by one who has the right to execute them and others are only the pure right of God.⁵⁶

The ta'zīr punishment is not required (lā vatabattam) to be imposed like the hadd punishment. The hadd punishment must be imposed whenever its crime is proven. Whereas the imposition of the ta'zīr punishment depends on the discretion of the imām. If the imām thinks that giving forgiveness is appropriate, he may do so. If he decides to impose the ta'zīr punishment by taking disciplinary action (ta'dīb wa tahdhib), his decision is binding. The principle is that the imām may use his discretion and decide whatever is appropriate to prevent the offences from being repeated. Perhaps, for a noble person (karīm), forgiveness is more preventive to him than other types of ta'zīr punishment.⁵⁷

In outlining these rules, al-Juwaynī seems to agree with the opinion of al-Shāfīī as he mentions that these rules are in agreement with al-Shāfīī although he does not explicitly mentioning his agreement or otherwise.

A ta'zīr punishment should not exceed any hadd

⁵⁶ Ibid., p. 218
⁵⁷ Ibid.
punishment except detention before a decision is made by the judge because the period of detention (habs) is not limited in a hadd punishment. In other types of ta'zīr punishment, whoever exceeds the hadd punishment according to al-Juwaynī, he has committed a sin."

Al-Juwaynī rejects the argument by the people whom he describes as the people of his generation (abnā' al-zamān) who hold the view that the opinion of Mālik is the only opinion which should be implemented in his period. According to Mālik, it is permissible for the Imam to exceed any hadd punishment in implementing a ta'zīr punishment. The Imam may consider capital punishment as one of the ta'zīr punishments."

Regarding the above opinion, al-Juwaynī says that possibly, in supporting the view of Mālik, some ignorant people (al-jahalah) argued that the flexibility in lightening (takhfīf, singular for takhfīfāt) the ta'zīr punishment in the early period of Islām was due to the closeness of their time to the time when Islām was pure and at its peak. According to them, due to that reason, warning or advice was sufficient to deter the offenders from committing the same offence again. However, due to the

58 Ibid., p. 219, p. 222 and pp. 226 - 227
59 Ibid.
change of the circumstances in the period when al-Juwaynī lived - when the heart of the people had become harsh and merciless, when the period of purity of Islām was far, when the faith of the people had become weak, and when desire and fear were been adhered to (mutashabbath) by the common people, the policy (Siyaṣāh) of being flexible in lightening the tazīr punishment would not be respected and effective. [Therefore, such a policy was not suitable for that period].

In rejecting this view, al-Juwaynī says that holding this view means rejecting the shariʿah itself. He also says that if this opinion is permitted to be implemented, it would lead to the implication that it should also be permissible to impose punishment of stoning (rajm) on non-muhṣan (unprotected or unmarried person), to impose capital punishment on the accused persons for committing great offences (al-umūr al-khatīrah) [before proving them], to kill (ihldk) those whose harm (ghā'īlah) to the land of Islām is feared and to add the amount of zakāt (obligatory alms) whenever necessary. Whereas these rules are not accepted in the Sharīʿah.

In supporting his argument in rejecting the above

60 Ibid., pp. 219 - 220
61 Ibid., pp. 220 - 221

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view, al-Juwaynī quotes a story (hikāyah) about a scholar changing a rule of the Shari`ah for the purpose of preventing a ruler from committing sexual intercourse during the day of Ramaḍān. In the story, al-Juwaynī says that a scholar (ahlâlim) was asked a fatwa (opinion) by a ruler about the kaffārah (atonement) for committing sexual intercourse during the day of Ramaḍān. The scholar answered that the kaffārah for committing sexual intercourse during the day of Ramaḍān is daily fasting for two months continuously. When the scholar came out from the palace, he was asked by the people whether freeing a slave should be the first imposed as the kaffārah on one who commits sexual intercourse during the day of Ramaḍān if one is capable before imposing daily fasting for two months continuously. The scholar responded by saying that if he told the ruler that the first choice among the kaffārāt (atonements) for committing sexual intercourse during the day of Ramaḍān is freeing a slave, the ruler would easily commit the offence and pay the kaffārah but by saying that the kaffārah is daily fasting for two months continuously, it would prevent the ruler from committing the offence. In commenting on this fatwā, al-Juwaynī says that the fatwa is a lie against the religion of God. He also says that if the scholar wants

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63 al-Ghīyūthī(1), pp. 222 - 223
to prevent the ruler from committing such an offence, he should warn the ruler with the severe punishment (‘igāb) of God in the hereafter, not by changing (al-tasrīf wa al-tahrīf) the law of God."^4^

Al-Juwaynī also rejects the argument that ‘Umar changed the punishment for drinking khamr (wine) from forty lashes to eighty lashes on the grounds that the circumstances had changed i.e. people continuously (tatābu) drink during his time. In rejecting this argument, al-Juwaynī says that the punishment for drinking khamr was not fixed by the Prophet in terms of the number of lashes. During the Prophet time, the Prophet only asked the people to beat the offender of drinking khamr with sandals (nu’āl) and the edge of cloth (atrāf al-thivāb). The punishment of whipping (jaldah) with forty lashes is the ittihād of Abū Bakr and similarly, the punishment of whipping with eighty lashes is the ittihād of ‘Umar. The fact that the punishment of whipping was the ittihād of the above two Caliphs is supported by the saying of ‘Alī, the fourth Caliph:

"There is no man who dies that I do not have any share of truth except one who drinks khamr as the punishment [for the offence] is decided by us after the Messenger."^65^

^4^ Ibid., pp. 223 - 224

As far as those who mislead people from the true path (dā'ī fī al-dalālah) are concerned, the first step which should be taken by the imām is to prevent them from their activity. If they disobey the command from the imām, the imām should threaten (yatawa'ad) them with punishment. If they ignore the threat, the imām should impose severe ta'zīr punishment. However, the imām should not exceed any hadd punishment. After the ta'zīr punishment has been imposed, the imām should put them under extensive observation. What is meant by extensive observation is that the imām should employ informers observe them. If they appear to repeat their activities of misleading people, the informers should inform the imām. When the imām obtains the information, he should warn and take disciplinary action (ta'dīb) against them. If they persist in their misleading activities, the imām should warn and impose the punishment again. It is permissible that due to the repetition of the punishments, a ta'zīr punishment may exceed the hadd punishment. However, a principle should be observed that in the case of repetition of the ta'zīr punishment, the maximum punishment which is permitted is up to the extent that the punishment deters the offender from his offence. If a light punishment is able to deter the offender from committing the offence, an extensive punishment becomes prohibited."

66 al-Chiyāthī(1), pp. 227 - 229
If the imām feels that despite extensive observation (murāqabah), these misleading people or innovators (al-mubtadiʿūn, plural for mubtadiʿ) are still harmful to the people, the imām may detain them for a long period. 67

As to the issue of the repentance of a heretic (zindiq), according to al-Juwaynī, his repentance should be accepted. To support his opinion, al-Juwaynī draws an analogy from another legal rule. Al-Juwaynī says that as far as he knows, all the scholars agree that the unbelievers who pronounce the shahādatan under the force of the sword when the Muslims conquer their country are accepted as Muslims although they are not yet given guidance by God to accept Islām. 68

Al-Juwaynī also supports his opinion by referring to the practice of the Prophet Muḥammad. Although the Prophet Muḥammad knew who were the hypocrites (munāfiqūn) during his time, he had accepted them as the members of the Muslim Community. 69

In this issue, al-Juwaynī rejects the opinion of some of the early pious scholars that the repentance of a

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67 Ibid., p. 229
68 Ibid., pp. 230 - 231
69 Ibid., pp. 231
heretic cannot be accepted.  

1.2.2.2.2.3. Supervising Persons Who are Exposed to Destruction (Mushrafin 'alā al-Dayā') and Fulfilling the Needs of those in Need (al-Mahāwīj)

The third type of the duties in protecting what has been obtained which are related to private matters is to supervise the persons who are exposed to destruction due to the lack of protection (al-sawn wa al-hifz) and rescue (ingādh). This duty is comprised of two elements - acting as the guardian (wālī) in giving marriage and in managing wealth for the minors and mad persons (al-majānīn), all of whom do not have a guardian, and fulfilling the needs of those in need.  

As to the duty of fulfilling the needs of those in need, al-Juwaynī says that it is one of the important duties of the imām especially when the country or any part of the population suffer from disaster ('āfah), crisis ('āzm), famine (gaht) and poverty (jadh).

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70 Ibid., p. 230
71 Ibid., p. 203 and p. 233
72 Ibid., p. 233
If such circumstances occur, but the needs can still be covered by zakât, the imâm should urge the people in a proper manner (maw'izah hasanah) to fulfil their duty to pay the zakât. If the amount of the zakât collected is not sufficient to cover the needs of those in need, the imâm should pay attention to the problem and he should consider solving the problem as his greatest duty.

If the supervision of the imâm on such problem does not reach those people who suffer [in certain areas], it becomes the responsibility of the rich people (dhawi al-yasâr wa al-igtidâr) [of that area] to fulfil their needs. If any one of those in need dies while the rich people remain in confort, all the rich people are sinful." Al-Juwaynî supports this principle by referring to a hadîth of the Prophet:

"Any one who believes in God and the Hereafter should not sleep at the night of the month of Sha'bân (laylat Sha'bân), if there is any of his neighbours starving."

Al-Juwaynî also supports this principle by drawing an

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73 Ibid.
74 Ibid., p. 234
75 Ibid., p. 234, in Bukhârî, al-Tabrânî, al-Ŷâkim and al-Bayhaqî it is reported in different text: "One is not a believer if he is full while his neighbour is starved" (al-Ghiyâthî(1), p. 234).
analogy with another legal rule. He says that if a funeral of the dead is one of the public duties, preserving the life of a living person should be more important (shamm wa atamm)." 

However, if a population of a region (ahl al-balad) suffer from a serious famine and those who have sufficient supplies (balagh) of food know that if they contribute all their supplies to those in need, they would also fall into the same disaster, it is not obligatory on those who have the sufficient supplies to contribute to those in need." 

If the serious disaster (al-durr) occurs and becomes extensive, it is permissible for the rich people (al-muwassirin) to save their supplies of food but not more than the amount which can be sufficient for one year and the rest should be contributed to those in need." 

Al-Juwayni also refers to the practice of the Prophet Muhammad. He says that the Prophet used to save supplies of food for his wives which were sufficient for one year." 

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76 al-Ghivathī (1), p. 234
77 Ibid., pp. 234 - 235
78 Ibid., pp. 236 - 237
79 Ibid., p. 237

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It is also a fact which can be accepted, according to al-Juwaynī, that normally circumstances (ahwāl) change within one year as the different seasons (fuṣūl) do. One year is also a period for harvesting agricultural produce.\textsuperscript{80}

However, al-Juwaynī says that, this rule is not an obligatory rule (amr mażūm, bukm mahtūm).\textsuperscript{81}

### 3. Al-Juwaynī's Conclusion on the Duties of the Imām

Al-Juwaynī concludes his discussion on the duties of the imām by saying that all the duties of the imām are within the general duty of enjoining good and forbidding evil which is required of every Muslim. The difference between the duty of the imām and the duty of the individuals is in the method of carrying out the duty. In fulfilling the duty of forbidding evil, the imām may use force but this is not permitted if the duty is carried out by individuals. The duty of forbidding evil by individuals should be carried out without crudeness (fādādah). Similarly, in fulfilling the duty of enjoining good, the individuals should perform it without flattery (malīq).\textsuperscript{82}

\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid., pp. 237 - 238
If any pious people among the subjects (ra'iyah) find any evil doers (mustakbirin), the pious people should advise the evil doers to cease from their evil deeds. If the evil doers do not cease from their evil deeds, the pious people are not permitted to fight (mukawmah) against them by using weapons."

The imâm is only responsible for conducting the affairs which are related to the general policies (siväsät, plural for siväsah). The imâm is not responsible for conducting every small matter such as correcting weights (mawāzin) and measures (makāvil) in the markets. However, the imâm should take action if the problem from the small matters is raised to him."°

83 Ibid., p. 238
84 Ibid., p. 239
CHAPTER FIVE

ASSISTANTS AND EQUIPMENT REQUIRED BY THE IMĀM

For the imām to be capable and independent in performing his duties, he requires assistants to whom he may delegate all or parts of his duties to be carried out, an army to defend the country and the religion, and finances to provide all the necessities required by his assistants and soldiers.¹

1. Assistants Required by the Imām

1.1. Types of Assistants

Al-Juwaynī divides the assistants who are required by the imām into two groups according to the nature of their jurisdiction and the nature of the duty delegated to them by the imām - the assistants who are delegated full jurisdiction and the assistants who are delegated partial jurisdiction.²

¹ al-Ghīṭī(1), p. 159 and pp. 204 - 205, See also p. 291
² Ibid., p. 133

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1.1.1. Assistants Who are Delegated Full Jurisdiction

- **wazīrs**

The assistants who are delegated full jurisdiction by the **imām** are called **wazīrs**. The post the **wazīr** is called **wizārah** (ministry). Although the **wazīrs** are delegated full jurisdiction i.e. **wazīrs** may execute all types of the duties of the **imām**, the execution of the duties by the **wazīrs** should be under the supervision of the **imām**. They are not independent of the **imām**.

In delegating the duties to his assistants, it is not permitted for the **imām** to delegate all his duties to his assistants without supervising the execution of their duties even if the purpose of his delegation of his duties to his assistants is to spend all his time to worship God. It is the duty of the **imām** to carry out general supervision over the Muslim affairs personally. According to Al-Juwaynī, the case of the delegation of all the duties by the **imām** without any supervision on the execution of the duties by his assistants is similar to the case of the appointment of two **imāms** concurrently, which is prohibited. Al-Juwaynī also says that the delegation of all the duties to his assistants without any supervision means that the

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3 Ibid., p. 133
4 Ibid., pp. 148 - 149

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imām has committed sin which constitutes fisq and he is considered as withdrawing from his post of the imāmāte. This principle is definite. The execution of the duties of the imām by the imām himself is the original rule (al-asl) whereas the delegation to assistants is secondary.

When the wazīrs are appointed by the imām to assist him in carrying out his duties, the wazīrs have all the jurisdiction of the imām - to execute, to judge, to make and to invalidate [contracts and agreements], and to appoint and to dismiss. It is also understood that the jurisdiction does not only include matters pertaining subjects but also territories. Therefore, the territorial jurisdiction of the wazīrs is also similar to that of the imām i.e. covering all the territories of Islām.

1.1.1.1. Types of Wazīrs

As to the post of wazīrs, al-Juwaynī divides it into two types according to the nature of duties delegated - the wazīrs who are delegated duties with the power of making decisions by themselves and executing their decisions on

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5 Ibid., pp. 148 - 149 and pp. 159 - 160, See also pp. 291 - 292
6 Ibid., p. 293
7 Ibid., p. 148 and p. 153
8 See Ibid., p. 153
behalf of the imām, and the wazīrs who are delegated duties without being given the power of making decisions by themselves. The wazīrs of the later type only carry out the duties which have been decided by the imām. Al-Juwaynī calls the wazīrs of this type conveyors (mustashār muballīgh) which is similar to the position of mediators (sufarā', plural of safīr).

1.1.1.2. Qualities Required for Wazīrs

For both types of wazīrs al-Juwaynī does not require that they should be of the descent from Quraysh. Non-Qurashīs are also permitted to be wazīrs.

As to the qualities which are required for the assistants including the wazīrs, according to al-Juwaynī, their qualities are different according to the nature of the delegation given by the imām to them.

As to the delegation, al-Juwaynī divides it into two categories - general delegation ('amr ʾāmm) and specific delegation ('amr khāṣṣ). General delegation is the delegation of which its purpose and characteristics are not described by the imām. The assistants who are delegated by

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9 Ibid., pp. 154 - 155
10 Ibid., pp. 149 - 150
this method, as afore-mentioned, are given the power to make decisions by themselves on behalf of the imām such as judges and governors. Specific delegation is the delegation of which its purpose and characteristics are described by the imām. The assistants who are delegated duties by this method do not have the power to make decisions by themselves. They only execute the orders from the imām.\footnote{Ibid., p. 293}

For the wazīr who are delegated duties with the power of making decisions, al-Juwaynī requires six qualities - bravery (shahm), possession of power and capacity, possession of knowledge (dhā dirāvah), possession of acuteness of opinion (dhā nifādh al-ra'v), intelligence (itgād qarībah wa zakā' fitnah) and piety (mutalaffi'an min jalābib al-divānah, wara').

These qualities are required because these ministers carry out important duties.

Among these qualities, al-Juwaynī stresses the qualities of the possession of power and capacity and piety.

As for piety, al-Juwaynī says that the quality is a must. The reason for the rule is that piety is the foundation of good deeds (khayrāt) and virtues (manāgib).
Al-Juwaynī says that one who does not possess this quality would lead to evil and it is accepted by people who have sound mind that an impudent intelligent person is more harmful to the imām than a stupid person. There is also no doubt that reason (ṣālī) is the origin (ʿasl) of the virtues (al-fadāʾil) but if reason is not associated with piety, it would become a means to evil.¹²

As for the quality of possessing knowledge, al-Juwaynī requires that the wāriz̄̄ of this type must reach the status of a muitahid or a scholar in religious knowledge. Al-Juwaynī says that this opinion is also held by al-Shāfīʿī. The reason given by al-Shāfīʿī for this rule is that, as it will be discussed later, it is required that a judge must be a muitahid. The wāriz̄̄ of this type also have the power to appoint and to dismiss the judges and governors on behalf of the imām. Therefore, To require the appointer to possess the quality of a muitahid is more appropriate than to require the appointees i.e. judges and governors to possess the same quality.¹³

However, according to al-Juwaynī, the requirement of the wāriz̄̄ of this type to reach the status of a muitahid does not reach the status of definiteness (al-qat') because

¹² Ibid., pp. 150 - 151
¹³ Ibid., p. 151
they are not independent like the imām.\textsuperscript{14} What is more acceptable (al-zāhir) to al-Juwaynī is that the wazīrs of this type must be at least a scholar in religious knowledge (imām fī al-dīn). The reason for this view is that the duties which are carried out by the wazīrs are important and it is difficult for them to refer to the imām in every single case. They may only refer to the imām in general matters (al-usūl wa al-maṣāmī'). Al-Juwaynī also says that if the wazīrs are not scholars in religious knowledge, they would not be free from error (zalal) in conducting the affairs of the Muslims.\textsuperscript{15}

For the wazīrs who are not given the power of making decisions by the imām, but only to carry out the orders which have been decided by the imām, al-Juwaynī only requires two qualities:

(i) The first requirement is trustworthiness by which their report would be reliable. Therefore, they must possess the quality of piety. The reason for this requirement is that the main duty of the wazīrs of this type is to convey the reports from the imām to the armies and the people

\textsuperscript{14} Ibid., pp. 153 - 154
\textsuperscript{15} Ibid., p. 154
(ii) The second requirement is perspicacity (al-fitnah wa al-kivāsah). The reason for this requirement is that great matters cannot be understood except by perspicacious persons. Those who are not perspicacious (fitan) are not safe from committing mistakes in what they convey or perform. Their understanding is also not reliable.  

By restricting to only the two requirements above, it is understood that the status of a mujtahid or a scholar in the religious knowledge is not required for the wazīrs of this type.

Al-Juwaynī does not require free status as a quality to be wazīrs of this type. Slaves are also qualified for this post. The reason for this rule is that the duty which is carried out by the wazīrs of this type does not involve power or authority (wilāyah). It is only to convey news and reports (anbā' wa akhbār). Those who are possessed by others are also qualified to convey reports (ahl wilāvāt

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16 Ibid., p. 155
17 Ibid.
As to the qualities required for the wazīrs, al-Juwaynī disagrees with al-Māwardī who holds the view that a dhimmi is qualified to be a wazīr. Al-Juwaynī says that this view does not have any basis (mugīl) and the view is a result of the lack of research (tahsīl) by al-Māwardī. The reason for this disagreement is that, according to al-Juwaynī, trustworthiness is an obligatory requirement for the ministers. Al-Juwaynī says that a dhimmi cannot be trusted. The actions, words and reports of a dhimmi are not reliable. Similarly, the witness of a dhimmi against the Muslims cannot be accepted.\(^1\)

Al-Juwaynī also says that there are also sufficient texts of the Qur'ān and the tradition (Sunnah) of the Prophet which prohibits the Muslims from trusting unbelievers. The following are the texts of the Qur'ān and the tradition of the Prophet Muḥammad which are provided by al-Juwaynī:

"Take not into your intimacy those outside your ranks: They will not fail to corrupt you", \(^2\)

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18 Ibid.
19 Ibid., p. 156
20 Ibid., p. 156, al-Qur'ān, Āli Īmrān (3):118
"Take not the Jews and the Christians for your friends and protectors", 21

"I am not responsible for any Muslim [who associates] with polytheist (mushrik) as their hells (nār) are not united" 22

Beside the texts of the Qur'ān and the Sunnah of the Prophet Muḥammad, al-Juwaynī also bases his view on the refusal of ʿUmar to accept the appointment of a Christian clerk (kātib) by Abū Mūsā al-Asḥārī 23 and on a shari'ah legal rule which is formulated by al-Shāfī'ī that a translator in a court should be a Muslim who possesses satisfactory integrity (ʿadl radī). Al-Juwaynī also says that as far as he knows there is no disagreement on this rule among the scholars of Islām. 24 From the argument above, it can be understood that according to al-Juwaynī, a wazīr must be a Muslim.

24 al-Ghiyāthī(1), p. 157
1.1.2. Assistants Who Are Delegated Partial Jurisdiction

Partial jurisdiction can refer to duties (ā‘māl) or territory. It is understood that, in terms of duties, partial jurisdiction means that the assistants have the power in certain duties which are delegated to them. In this case, the territorial jurisdiction of the assistants may cover all the territories of Islām or some parts of the territories depending on the delegation by the imām. In terms of territory, partial jurisdiction means that the assistants have the power to carry out the duties only within an area restricted by the imām. In this case, the assistants may cover all types of duties. Among the assistant posts to which the imām delegates partial jurisdiction are judges, governors, zakāt collectors, Officials (muwazzafāt) in charge of coins (al-ma‘ādin al-mugatta‘āt) and the like, army commanders, and leaders of army units (asbāb al-alwiyah wa al-marātib).

1.1.2.1. Qualities which are Required for the Assistants who are Delegated Partial Jurisdiction

As to the qualities which are required for the assistants who are delegated partial jurisdiction, it is

25 Ibid., p. 158
26 See Ibid. pp. 161 - 162 and pp. 293 -294
understood that the qualities for each of them are different depending on the nature of the duties which are delegated by the imām to each of them.

However, although the detailed qualities required for each of the assistants of this type are different, there are also some common qualities which are required for each of them. For all of them, al-Juwaynī requires that they must be Muslim, pious and competent in the related duties delegated to each of them. 27

As to the quality of the status of a mujtahid, it depends on the nature of the duties which are delegated to each of the assistants.

If the delegated duty is a clear matter (amr khālis), so that it can be written in text (dabatah bi al-tansīs 'alayh) and can be specified by designation, the assistants are not required to possess either the status of a mujtahid or the status of a scholar in religious knowledge. 28

If the duty cannot be written in a text (lam yakun mimmā yaqbituhū al-nass) but does not require the assistants to investigate (al-ittila') the principles of the

27 Ibid., p. 160
28 Ibid., p. 161
shari'ah (qawā'id al-shari'ah), the assistants are not required to possess the status of a mujtahid as they only carry out their duty as it is described or ordered by the imām. They are not given the power to make decisions by themselves. However, the assistants should possess basic understanding (al-basīrah) about the duties delegated to them in order to fulfil the objectives of the delegation. Among the assistants who are delegated such duties are zakāt collectors (alladhīn yantasibūn li jibāyat al-sadāqāt), officials in charge of coins and the like, army commanders (umārā' al-ajnād), and leaders of other army units. Zakāt collectors should possess basic understanding about the wealth from which zakāt should be collected (al-amwāl al-zakā'iyah), its minimum amount (nisāb, singular of nusub), time and whatever rules related to it. Similarly, army commanders, leaders of other army units, officials in charge of coins and the like, should possess basic understanding about their own duties and the rules related to them."

If the duty cannot be written in a text or can not be specified by the one who delegates the duty (al-muwallī) and knowledge in a specific field is not sufficient to make the assistants, such as judges, competent in carrying out their duties, the assistants are required to possess the

29 Ibid., p. 161 and p. 293
status of a mujtahid.\textsuperscript{30}

In this issue, al-Juwaynī agrees with the opinion of al-Shāfi‘ī and disagrees with the opinion of Abū Ḥanīfah who holds the view that a mugallid is also qualified to be a judge.

Regarding the disagreement between al-Shāfi‘ī and Abū Ḥanīfah on whether a mugallid is qualified to be a judge, it is noticeable in his writing in al-Ghiväthī that al-Juwaynī is hesitant in holding either of the two views. At the beginning, al-Juwaynī chooses an impartial stance as he says:

"To us, this issue is an uncertain matter (maznūn); either one is not definite".\textsuperscript{31}

However, al-Juwaynī changes his stance as he later says that the requirement of the status of a mujtahid for the judges is definite.\textsuperscript{32} He totally rejects the opinion of Abū Ḥanīfah. Al-Juwaynī says that if a judge is a mugallid, it would lead to a contradiction to the nature of his duty. The reason for this argument is that judges are delegated duties with power or authority to make decisions.

\textsuperscript{30} Ibid., p. 162
\textsuperscript{31} Ibid., p. 72
\textsuperscript{32} Ibid., p. 295
Therefore, they should be followed and not follow others."

This principle also applies to governors as the nature of the duties delegated to them, in terms of power or authority, is also similar to that of the judges."

As to the quality of the competence of the assistants of this type in the duties which are delegated to them, its nature is different from one another according to the different nature of their duties.

To fulfil the quality of competence in the duties delegated to the assistants of this type, al-Juwáyní requires that army commanders and the leaders of other army units should possess the following characteristics:

(i) severity (al-sarámah)
(ii) bravery (al-sháhámah)
(iii) experience
(iv) strongheadedness
(v) activeness
(vi) quickness in action
(vii) skillfulness in handling dangers
(viii) ability to attack at the appropriate time

33 Ibid., pp. 298 - 299
34 Ibid., p. 163, p. 194 and p. 303

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(ix) possessing knowledge about the risks and dangers in fighting
(x) patience during the turmoil of terror
(xi) popularity in army
(xii) possessing high dignity

For the competence of the judges in their duties, al-Juwaynī requires the following characteristics:

(i) possessing systematic reasoning capacity
   \text{(al-`aql al-al-rājib al-thābit)}
(ii) possessing correct judgement \text{(al-ra'y al-mustadd wa al-sā'ib)}
(iii) free status \text{(al-burriyyah)}
(iv) ability to hear \text{(al-sam')} 
(v) ability to see \text{(al-bāsr)}

The same characteristics apply to governors. \text{\textsuperscript{3}3}

As for the assistants who are delegated duties by the imām without the power to make decisions or authority such as zakāt collectors, officials in charge of coins, al-Juwaynī does not require that the assistants must possess

\textsuperscript{35} Ibid., pp. 293 - 294
\textsuperscript{36} Ibid., p. 295
\textsuperscript{37} Ibid., p. 163, p. 294 and p. 303
1.2. Number of the Assistants Required

As to the quantity of the assistants required by the īmām, al-Juwaynī does not mention it by number but he has mentioned, during the discussion on the qualities required by the assistants, the names of the posts of the assistants. The names of the posts are as follows:

(i) Wazirs
(ii) Governors
(iii) Judges
(iv) Zakāt collectors
(v) Officials in charge of coins
(vi) Army commanders
(vii) Leaders of army units
(viii) Other officials who are in the same position as the officials in charge of coins

(wamā dāhāhā)

Probably the last post is meant for other government officials in administration. It is also understood that the number of persons in each post depends on the needs of the country. For example, the īmām would need a greater number

38 Ibid., p. 293
of the assistants in each of the posts when the territory of Islam extended over larger areas.

1.3. Dismissal of the Assistants

All the rules regarding the requirement of the qualities of the assistants of the imam for the purpose of the appointment, disqualification and dismissal are similar to those applying to the imam with the exception of the rules relating to fisq. It is not permitted for the imam to appoint any of his assistants if he does not fulfil all the qualities required. Similarly, if any of the circumstances which require the dismissal of the assistants occurs, the imam is the one who has the right to dismiss him."

As to fisq, the rule applied to the assistants is different from that applied to the imam. If any of the assistants commits a sin or sins which constitute fisq, the imam should dismiss him."

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39 Ibid., p. 163
40 Ibid.
2. Equipment Required by the Imam

2.1. Army

For the imam to fulfill his duties which are great and important such as to protect the country, to protect women folk (al-harīm) and to expand Islām to non-Islamic territory, it is an accepted fact that the imām requires power or strength (nайдah wa 'uddah) i.e. the army and the soldiers must be professional ones (ma'gūd) as he says:

"No country can be established except by [having] trained and devoted soldiers".41

It is not permitted for the imām to rely only on volunteer soldiers. These soldiers which are employed by the imām are called murtazigah i.e. the soldiers who are paid and to whom foods and necessities are supplied by the imām, so that these soldiers would be able to concentrate on their military duties and would not be occupied with other works such as involving in trade and seeking wealth and other comforts of life.42

In the history of Islām, during the time of the Prophet of Muḥammad and Abū Bakr, there was no government

41 Ibid., pp. 240 - 241
42 Ibid.
office (diwān) established to specialize in jiḥād (holy war) because during these periods, all the Ansār (Helpers) and the Muhājirīn (Emigrants) were prepared to execute any command from the Prophet Muḥammad and Abū Bakr. At the time of 'Umar, he began to train soldiers and had established a special government office specializing in military duties. His practice was later followed by the rulers who came after him."

2.2. Finance

To fulfil his duties, it is also inevitable that the imām should have adequate finance (al-amwāl), for instance, for paying salaries to all his assistants. "

2.2.1. Sources of Finance

Al-Juwaynī divides the sources of finance which can be obtained by the imām into two categories according to the sectors to which the expenditures should be distributed - the sources of finance of which the sectors of expenditures are specified and the sources of finance of which the sectors of expenditures are not specified.

43 Ibid., p. 241
44 Ibid.
2.2.1.1. Sources of Finance of which the Sectors of Expenditures are Specified

The sources of finance of which the sectors of expenditures are specified are:

(i) zakāt

Zakāt is distributed to the seven groups of people who are mentioned in the Qur'ān.\(^{45}\) It is certain that the groups which are meant by al-Juwaynī are the ones which are mentioned in Sūrah al-Tawbah (9):60 i.e. the destitutes, the poors, those employed to administer the fund [of zakāt], new converts [to Islām], slaves who are promised to be freed, those who are in debt, those who work in the cause of God and wayfarers.

(ii) 4/5 of al-fay'

Al-fay' is the wealth of unbelievers [which are legally acquired by the imām] including jizyah, wealth of apostates and the wealth which are left by unbelievers without fighting when the Muslims conquer their territories. According to some scholars, kharāj (singular

\(^{45}\) Ibid., p. 242
for akhrijah) is also included in al-fay'. According to al-Juwaynī's view of the acceptable opinion, the 4/5 of al-fay' is specified for the professional soldiers."

(iii) 4/5 of 1/5 of al-fay'

Similarly, the 4/5 of 1/5 of al-fay' is distributed to a specific sector. However, al-Juwaynī does not mention this sector in al-Ghaythī. He only says that the discussion on it can be found in a book specifically written for the field of fiqh.

(iv) 4/5 of the spoils of war (al-ghanīmah)

(v) 4/5 of 1/5 of the spoils of war

Al-Juwaynī does not mention the sectors to which the spoils of war should be distributed. Probably, al-Juwaynī takes for granted that the distribution of this part of the spoils of war is well-known as stated in Sūrah al-Anfāl verse 41 i.e. 1/5 for the Prophet, dhawī al-qurbā, orphans, the poor and wayfarers, and 4/5 for the soldiers who are involved in the war.

46 Ibid.
47 Ibid., p. 243
48 Ibid.
2.2.1.2. Sources of Finance of which the Sectors of Expenditures are not Specified

The sources of finance of which the sectors of expenditures are not specified are as follows:

(i) 1/5 of 1/5 of al-fay’
(ii) 1/5 of 1/5 of the spoils of war
(iii) Estates of the Muslims who died without being survived by any heir
(iv) Lost properties of when finding their owners is hopeless."

The finance which comes from the sources of which the sectors of expenditures are not specified as mentioned above is called by the Muslim jurists as exigency fund (al-mirsād li al-masāliḥ).°°

As to the wealth of which the sectors of expenditures are not specified, al-Juwaynī says that much has been discussed by the jurists and there are various opinions and disagreements. Therefore, the imām should make his own decision on this matter." For the imām to make his

49 Ibid., pp. 204 - 205
50 Ibid., p. 205
51 Ibid.
decision, al-Juwaynī provides general guides for how the
finance should be distributed. He says that there are three
categories of people to whom the finance should be
distributed:

(1) The first category is those in need (muḥtājūn).

Most of these people are those who are entitled to zakāt as mentioned earlier. The poor are also entitled to the 1/5 of al-fay' and the spoils of war.

(2) The second category of the people (aqwām) from whom the imām obtains assistance in fulfilling his duties. All the material needs of these groups must be provided by the imām in order that they should concentrate their attention to the duties which are delegated to them. Al-Juwaynī divides this category into two groups:

(i) The first group is the professional soldiers. As earlier mentioned, this group is entitled to 4/5 of al-fay'.

(ii) The second group is those who are appointed to uphold the essential elements of the religion (iqāmat arkān al-dīn). Those who
are included in the group are judges, arbitrators (hukkām), the distributors [of inheritance] (al-qassām), the muftīs, the scholars (al-mufaqqihūn) and any other who are involved in upholding the principles (gawā'īd) of the religion which diverts them from other sources of sustenance. The contribution to this second group should be taken from the exigency fund.  

(3) The third category of the people to whom the imām should distribute the finance is the group which is described by the Qurʾān. This group is called dhawī al-qurbā or Banū Hashim and Banū al-Muṭṭalib. They are entitled to a share from the 1/5 of the spoils of war. In this issue, al-Juwaynī explicitly agrees with the opinion of al-Shāfiʿī.  

It is understood that the above-mentioned financial sources are the ones for ordinary period or during the period if the bayt al-māl (national fund) still has sufficient funds for the expenditures.

52 Ibid., pp. 244 - 247
53 Ibid., p 247
3.1.3. Occassional Sources - Wealth of the Rich People

If the bayt al-māl is empty, according to al-Juwaynī, the sources of finance from which the imām may obtain are different according to the circumstances:

(i) If the non-Muslim enemy has conquered some parts of the Islamic territories, the imām has the right to command the rich people to contribute to the bayt al-māl.\textsuperscript{34}

To support this rule, al-Juwaynī bases his argument on some other legal rules. He says that it is unanimously agreed upon by the bearers of the shari'ah that if the territory of Islām is trespassed by the unbelievers, every individual Muslim is responsible to defend it. From this rule, al-Juwaynī says that if life should be sacrificed in defending the Islamic territory, it is more appropriate that the wealth should also be sacrificed.\textsuperscript{35}

Al-Juwaynī also says that it is also unanimously agreed upon by the Muslims that if there are poor people facing difficulty at any period, it is the obligation of the rich people to help them. Similarly, the rich people should contribute their wealth for the funeral (tajhīz al-

\textsuperscript{34} Ibid., p. 258

\textsuperscript{35} Ibid., pp. 258 - 259
mayyit) and other public duties. From these rules, al-Juwaynî says that it is more appropriate that the rich people should contribute their wealth for the defence of the Islamic territory."

(ii) The second situation is that when the Muslims expect that the fund in the bayt al-māl is running out and empty. As a result, the Muslims expect that their affairs and the defence of the country would deteriorate and would seduce the unbelievers to attack the Islamic territory if steps to overcome them are not taken."

In this situation also, the imām is permitted to obtain finance from the rich people. Regarding this rule, al-Juwaynî make a remark that preventing is easier that recovering (al-dafʿ ahwan min al-rafʿ)."

(iii) The third situation is that although the Muslims do not fear or expect any attack from the unbeliever enemy but the imām needs the finance for the preparation to perform jiḥād and war internally or externally."

56 Ibid., pp. 259 - 260
57 Ibid., p. 260
58 Ibid.
59 Ibid., p. 261

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In this situation, according to al-Juwaynī, the imām has the right to obtain finance from the rich people.

Regarding this rule, al-Juwaynī does not agree with the opinion of some scholars who hold the view that in this situation, the imām does not have the right to obtain finance from the rich people. "

To support his opinion, al-Juwaynī says that jihād is obligatory on every Muslim. To send armies to jihād is not an easy duty. Al-Juwaynī argues that if ignoring (taʿtīl) any of the public duties is not permitted, how could ignoring wars (al-qhazawzat) against the enemy be permitted. Al-Juwaynī also says that the matter relating to authority, if it is not overcome from the beginning, it would be difficult to be overcome when it has become extensive. He also says that among the duties of the imām is to convey the message of Islām. The most dangerous things that the imām may commit in fulfilling this duty is to ignore the army, to suspend jihād and to detain the soldiers (‘asākir) in the frontier posts."

If the imām decides to obtain finance from the rich people and orders them to contribute their wealth to bayt

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60 Ibid., pp. 262 - 262
61 Ibid., pp. 261 - 262
al-māl, they must obey the order.  

2.2.1.3.1. Limit of the Collection of Wealth from the Rich People

When bayt al-māl has sufficient fund, the imām should stop the collection of wealth from the rich people. It is not permitted for the imām to collect wealth from the rich people for building palaces or for saving.  

2.2.1.3.2. Methods of the Collection of Wealth from the Rich People

In obtaining finance from the rich people, the imām should take into consideration that he should not cause burden to them. He should not follow his own desire. Instead, he should follow correct reason [and rule] (waih al-ra'īy wa al-sawāb). For example, he should equally order all the rich people in all regions to contribute their wealth without bias. The imām may specify certain group to make contribution such as those who possess plenty of wealth and have less dependents (gīyāl) or those who possess

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62 Ibid., p. 269, p. 270, p. 271 and p. 272
63 Ibid., p. 286
64 Ibid., p. 270
65 Ibid., p. 271

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plenty of wealth and it is feared that with it, they would be evil-doers (an yatghā)."

2.2.1.3.3. Nature of the Collection of Wealth from the Rich People

As to the nature of the collection of wealth from the rich people by the imām, before giving his own opinion, al-Juwaynī precedes with two opinions of people (nās).

The first opinion is that the nature of the collection of wealth from the rich people is as loan. Therefore, when bayt al-māl has funds, the imām should repay those whose wealth was collected. Those who contribute to the bayt al-māl according to the order by the imām have the right to claim back their wealth."

The second opinion is that if the collection (istidā') of the wealth is from all the rich people in the country, the collection is not considered as a loan. However, if the collection is only made from a certain group of the rich people, the collection is considered as a loan."

66 Ibid., p. 273
67 Ibid., p. 274
68 Ibid., p. 275

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Those who hold these views base their argument on the practice of the Prophet Muḥammad. The prophet Muḥammad used to borrow (istaslafa) from the rich people or used to ask people to advance the payment of zakāt when there were poor people facing difficulty. They say that if it is permitted to collect peoples's wealth without it being through a loan, the Prophet Muḥammad would have told the people so. This shows that the nature of the collection of the wealth of the rich people by the imām should be considered as a loan. 69

Both these opinions are rejected by al-Juwaynī. According to him, the imām has the right to obtain finance from the rich people to fulfil the needs for performing his duties. It is not an obligation on him to repay the wealth which he has collected from the rich people, whether the collection was from all the rich people throughout the country or from a specific group of them. 70

The reason for the above opinion is that if there is no imām existing in power for the Muslims, it is an obligation on each Muslim who is mukallaf (possessing legal capacity) to fulfil public duties. When the imām exists, the function of the imām is only to take responsibility to

69 Ibid., pp. 274 - 275
70 Ibid., p. 275
conduct the affairs of the Muslims on their behalf. If the \textit{imām} collects wealth from the rich people to perform a public duty, the \textit{imām} only asks some of the capable \textit{mukallafīn} to fulfil the public duty which is originally the public duty of all Muslims who are \textit{mukallafīn}. When the rich people have fulfilled the duty, all other \textit{mukallafīn} are free from the obligation.\footnote{Ibid., pp. 275 - 277}

\textit{Al-Juwaynī} also argues that if the \textit{imām} has to repay the wealth which he has collected from the rich people, he would take the wealth from the \textit{bayt al-māl} for the repayment. However, it may happen that after the repayment, the \textit{imām} would need the wealth again. If that happens, he would collect again the wealth from the rich people to whom the \textit{imām} had just made the repayment. If this happens, it would lead to an unending series of collection and repayment. The repayment of the loan which is imagined, in reality, would never be realized.\footnote{Ibid., p. 276}

To support his argument, \textit{al-Juwaynī} draws an analogy with some other legal rules:

(i) If there somebody who does not possess any wealth is in hunger and is about to die, it is
the duty of the one who has food to feed the hungry person. The reason is that preserving human life is among the public duties of every Muslim at any time. When the hungry person is fed, the one who feeds him has no right to ask for compensation (i'iwad).”

(ii) It is an obligation of the rich people to feed the people in hunger. When the rich people feed the hungry, they do not have the right to ask for compensation. According to al-Juwaynī, this rule is unanimously agreed upon [by the Muslim scholars].”

(iii) The poor among the Muslims are like a poor son in relation to a father. It is not permitted for a rich father to ask his son to take a loan from him.”

(iv) If a Muslim finds a person who is caught in a fire or drowning, it is an obligation on the former to save the latter. If the former saved the latter, the former does not have the

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73 Ibid., p. 278
74 Ibid.
75 Ibid., pp. 278 - 279

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right to ask for any compensation from the latter."  

It is understood from these four cases provided by al-Juwaynī that what al-Juwaynī intends to indicate is that when the imām collects wealth from the rich people at a time of need, the rich people do not have the right to ask the imām to repay the wealth to them. Therefore, the conclusion is that the wealth which is collected by the imām when the bayt al-māl is empty or for the purpose of performing jiāhād, cannot be considered as a loan. 

Al-Juwaynī also supports his argument by providing a tradition of the Prophet Muḥammad. He says that the Prophet used to ask the rich Companions to contribute their wealth when he wanted to prepare an army for a war.”

2.2.1.4. Produce of Agriculture

If due to the vastness of the Islamic territories or other needs, a huge number of the professional soldiers, frontier and observation posts are needed and the bayt al-māl does not have adequate fund to fulfil the needs despite spoils of war and al-fay', the imām also has the right to

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76 Ibid., p. 279
77 Ibid., pp. 279 - 280

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obtain finance from the produce of agriculture."

2.2.2. It Is not Permitted for the Imam to Expect Spoils
War as A Source of Finance

Although spoils of war is a source of finance for the
imâm, it is not permitted for the imâm to expect the spoils
of war as a source of finance of the imâmate. The reason
for this rule is that spoils of war is not the objective of
the war in Islâm. The objective of the war in Islâm is to
put the word of God in a superior position (islâ' li
kalimatillâh)."

2.2.3. Fines are not Sources of Finance of the Imam

It is also not permitted for the imâm to impose fines
(durûb al-maghârim) as a type of ta'zîr punishment to be
sources of finance for the imâm. The reason for this rule
is that there is no provision in the sharî'ah permitting the
imâm to do so."
2.2.4. It Is not Necessary For the Imām to Spend all the Revenues of Each year in the Same Year

Before giving his own opinion on whether the imām has to spend all the revenues of the bayt al-māl of each year in the same year, al-Juwaynī precedes with an opinion of some groups of the early pious scholars. According to the opinion, the imām should spend all the revenues which are collected in the bayt al-māl year in the same year and no balance should be left. Therefore, if there is any excess from 4/5 of al-fay' after paying to the professional soldiers, the imām should return and recontribute the excess to them according to their status (‘alā aqdār aṭiatuhum wa aqsātuhum).”

However, if there is any excess from zakāt after the contribution to those who are entitled has been made and all those entitled have become financially independent by the payment, the excess should not be returned to them. The reason for this rule is that the entitlement of zakāt is due to their need. When their need has been lifted, they are no longer entitled. In this case, the excess of zakāt (obligatory alms) from the area where all those who are entitled have been made financially independent by the contribution of zakāt, should be contributed to those who

81 Ibid., pp. 247 - 248
are entitled in other areas or should be spent for the public interests.\textsuperscript{82}

As to the exigency fund, if there is any excess of revenue in it, according to these groups of scholars, the excess of the revenue should be spent according to the priorities. The first priority is for the expenditure of the professional soldiers, followed by those who are entitled to zakāt. The revenue in this fund is for all purposes. If any expenditure for any sector is not sufficient, it should be supplemented by the revenue from the exigency fund (al-\(\text{māl}\) al-mirsad li al-\(\text{mašālih}\)).\textsuperscript{83}

It is also the opinion of these groups of scholars that if all the needs and necessities are lifted, the excess of revenue from the exigency fund should be spent for building rest houses for travellers (\(\text{al-ribātāt}\)), bridges (\(\text{ganātīr}\)), mosques and the like.\textsuperscript{84}

The conclusion from this opinion is that all revenues of each year should be spent and no balance should be left at the end of the year, as mentioned earlier. Those who hold this opinion base their argument on the practice of

\begin{itemize}
\item \textsuperscript{82} \textit{Ibid.}, p. 248
\item \textsuperscript{83} \textit{Ibid.}, pp. 248 - 249
\item \textsuperscript{84} \textit{Ibid.}, p. 249
\end{itemize}
the Guided Caliphs. The Guided Caliphs were not used to utilize or to obtain help (mā kānū yastazhirūn) from the excess of the revenues (dhakhā'ir) of the bayt al-māl of each year for the expenditure of the following year."

Al-Juwaynī does not agree with this opinion. According to him, when all needs have been fulfilled by the imām and if it is possible for the imām to use or to obtain help (istizhār) from the balance of the revenue in the bayt al-māl for the expenditure of the following year by saving it, the imām must do so. This rule, according to al-Juwaynī, is definite."

The reason for this rule is that it is a definite rule that the imām must use or obtain help (istizhār) from the professional soldiers (al-junūd wa al-`asākir al-ma`gūd) whenever possible even if the enemy is far in distance and the territories of Islām are huge, because the country would not be safe from disasters if it does not have power prepared to defend it. The army cannot function without finance. Finance is a precondition for the army to function. If using or obtaining help from the army is compulsory, it is more appropriate that using or obtaining help from the balance of the the revenue of each year for

85 Ibid.
86 Ibid., p. 250
the following year to be obligatory. Therefore, the balance of the revenue of each year should be saved for the defence of the country in the future and should not be exhausted by building rest houses, bridges and so on."

As to the evidence which is based by those who hold the view that all the revenues of each year should be spent in the same year i.e. the Guided Caliphs were not used to utilize or to obtain help from the balance of the revenue of each year for the following year, al-Juwaynī says that during the time of the Guided Caliphs there was no revenue left to be saved at the end of every year as all the revenues were used. At the time of Abū Bakr, all the revenues were used for fighting those who refused to pay zakāt. At the time of 'Umar, as the territories of Islām expanded, the number of battles between the Muslim Armies and non-Muslim Armies increased and the affairs of the Muslims became more complicated, most of the revenues were spent on the relevant sectors. Therefore, there was no balance from the revenue to be saved." At the time of 'Uthmān, it was not certain whether there was any balance from the revenue of each year. However, in the belief of al-Juwaynī believes that 'Uthmān used to have a balance from the revenue of each year and he used to save it to be used

87 Ibid., pp. 250 - 251
88 Ibid., pp. 251 - 254

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in the future." During the time of 'Alī, it is understood from al-Juwaynī's writing that there was no balance from the revenue of each year as all the revenues were spent on fighting the rebels and on the battles preparation."

89 Ibid., p. 254
90 Ibid.
CHAPTER SIX

THE LEGITIMACY OF THE IMĀMATE OF THE FOUR GUIDED CALIPHS

From his brief writings on the imāmate in his Lamc al-Adillah and al-Irshād, it is understood that according to al-Juwaynī, Abu Bakr, ʿUmar, ʿUthmān and ʿAlī are legitimate imāms for the Muslims.¹

Al-Juwaynī provides a chapter (bāb) in his al-Irshād, to prove the legitimacy of the imāmate of the four Guided Caliphs.² The evidence for their legitimacy is the ijmāʿ of the Muslims.³ All these Guided Caliphs were appointed by the way of election (ikhtiyār).⁴

1. Evidence for the Validity of the Appointment of the Four Guided Caliphs

The validity of the appointment of Abū Bakr as the first caliph is based on the ijmāʿ of the Companions.⁵ When Abū Bakr was appointed as the successor of the Prophet

¹ Lamc al-Adillah, p. 114, al-Irshād, p. 428
² al-Irshād, pp. 428 - 434
³ Lamc al-Adillah, p. 115
⁴ Ibid.
⁵ al-Irshād, pp. 428
Muḥammad, all the Companions agreed upon his appointment and agreed to obey him as the imām. In Lamʿ al-Adillah, al-Juwaynī says that all the Muslims had agreed upon the appointment of Abū Bakr. In responding to the allegation by al-Rawḍī who say that ʿAlī opposed the appointment of Abū Bakr and refused to give his allegiance to him when he was appointed as the successor of the Prophet Muḥammad, al-Juwaynī says that the allegation was a clear lie. Instead, ʿAlī was known to have obeyed Abū Bakr, had participated in the Battle (ghazwah) against Banū Ḥanīfah and had acquired (mutasarrīya) slave girl (jāriyah) captured in the war.

Al-Juwaynī continues saying that it is true that ʿAlī was not in the Saqīfah when the appointment of Abū Bakr took place. ʿAlī secluded himself due to the sadness which was caused by the death of the Prophet Muḥammad. However, he went to Abū Bakr later on and gave his allegiance to him. His allegiance to Abū Bakr was witnessed by many people (malʾ min al-ʾishhād).

The bases for the legitimacy of ʿUmar, ʿUthmān and ʿAlī are also continuously transmitted report (khabar mutawātir)

6 al-Irshād, p. 428
7 Lamʿ al-Adillah, p. 115
8 al-Irshād, p. 428, However, al-Ṭabarī reports that ʿAlī and Zubayr stayed away from giving bayʿah to Abū Bakr until they were asked by ʿUmar to do so. (See al-Ṭabarī, op. cit., vol. 3, p. 203)
9 Ibid.
and the īmāmī. It is the īmāmī of all times on the trueness of the report that 'Umar was made appointed successor (wali al-ahd) by Abū Bakr and 'Uthmān was appointed by the shūrā among the six persons chosen by 'Umar before his death.

As to the legitimacy of the īmāmīate of 'Alī, in responding to those who argue that there was no īmāmī for the appointment of 'Alī as the īmām, al-Juwaynī says that the claim does not give any effect to the legitimacy of his īmāmīate. On the issue of the opposition of Mu‘āwiyah against 'Alī, al-Juwaynī says that what is opposed by Mu‘āwiyah was not the īmāmīate of 'Alī but the murder of 'Uthmān. Mu‘āwiyah neither denied the validity of the īmāmīate of 'Alī nor did he claim the īmāmīate for himself.

As to the conflict between 'Alī and Mu‘āwiyah, it is found in al-Juwaynī's different works that al-Juwaynī has two different views on who was on the correct side between 'Alī and Mu‘āwiyah.

In Lam‘ al-Adillah, al-Juwaynī says that Mu‘āwiyah was

10 al-Irshād, pp. 429 - 430, Lam‘ al-Adillah, p. 115
11 al-Irshād, p. 430
12 Ibid.
13 Lam‘ al-Adillah, p. 115
on the wrong side and 'Ali was on the right side.' Whereas in al-Ghiyāthī, al-Juwaynī says that 'Ali regretted for what had happened in the war between him and Muʿāwiya. Due to this regret, 'Ali accepted the arbitration (al-tabkīm) between him and Muʿāwiya for his dismissal from the post of the imāmate. It is understood from 'Ali's regret, what al-Juwaynī wants to say is that 'Ali was on the wrong side and Muʿāwiya was on the right side. To prove the wrongness of 'Ali in this conflict, al-Juwaynī says that when the conflict started between Muʿāwiya and 'Ali, many companions refused to go to the battle against Muʿāwiya when they were ordered by 'Ali such as Saʿd bin Abī Waqqāṣ, Saʿīd b. Zayd, 'Amrū b. Nufayl, ʿAbdū Mūsā al-Ashʿarī', Abdullah b. Umar, Usāmah b. Zayd' and Abū Ayyūb al-Anṣārī'.

14 Ibid.
15 al-Ghiyāthī(1), p. 114
16 Ibid., pp. 114 - 115
17 died in 55 A.H./674 C.E.
19 He is ʿAbdullah b. Qays b. Salīm Abū Musā al-Ashʿarī, probably died in 52 A.H./672 C.E (al-Ghiyāthī(1), p. 113)
20 He is ʿAbdullah b. ʿUmar al-Khaṭṭāb, d. 73 A.H./692 C.E. (al-Ghiyāthī(1), p. 113)
21 He is Usāmah b. Zayd b. Ḥārithah, most probably died in 54 A.H./673 C.E. (al-Ghiyāthī(1), p. 113)
However, 'Alī did not seriously oppose or was angry with their refusal and he still paid sustainance to them from bayt al-māl despite their refusal. Al-Juwaynī says that if 'Alī had been angry with them, he would have forced them to go to the battle against Muʿāwiya but he did not.

To substantiate the refusal of the above-mentioned Companions, al-Juwaynī provides some quotations from some of them. Al-Juwaynī says that when 'Alī summoned Saʿd b. Abī Waqqās to the battle against Muʿāwiya, he said to 'Alī:

"I will not go out. Otherwise my sword will have two tongues. One would give its witness for the faith of the believers and another would give its witness for the hypocrisy of the hypocrites".  

Abū Mūsā said to the people in Yemen opposing the battle against Muʿāwiya:

"I am a sincere advisor to you. Do not go against me. Put away your spears. Cut off your ropes (awtār) [and do not be involved in the battle against Muʿāwiya] because I have heard the Prophet said: There will be a fighting (fitan) like a night assault (gatṭi al-layl) - the one who sleeps is better than the one who sits. The one who sits is better than the one who stands and the one who stands is better than the one who walks."  

and Usāmah said:

23 al-Ghiyāthī(1), pp. 111 - 112
24 Ibid., p. 114
"O the Commander of the believers, if you were put in the hollow of a lion, I would enter with you but there is no compromise with the hell (al-nār)."

All these quoted statements support al-Juwaynī's view that 'Alī was on the wrong side. From Sa'd's statement, it is understood that Muʿāwiya represents the believers and 'Alī represents the hypocrites. Usāmah's statement indicates that the command from 'Alī to go against Muʿāwiya was a wrong command.

In conclusions, it can be understood that the conflict between 'Alī and Muʿāwiya was not due to his opposition to the imāmate of 'Alī but it was due to the murder of 'Uthmān. That was why 'Alī as the legitimate imām after 'Uthmān was not challenged by Muʿāwiya.

2. Evidence for the Fulfilment of the Required Qualities by the Four Guided Caliphs

In proving the validity of the imāmate of the four Guided Caliphs, al-Juwaynī states that all the four Guided Caliphs fulfilled all the required qualities for the imāmate." As to the requirement of the descent from

25 Ibid.
26 Lātuf al-Adillah, p. 116, al-Irshād, pp. 429 - 430

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Quraysh, all of them are from the descent from Quraysh.\textsuperscript{27} It is well known that all of them are among the learned Companions and the muftīs. No one denies that they were all involved in making laws.\textsuperscript{28} Their piety and the continuation of their piety is definite as no defamation has ever been proven against them. Their constant preparedness to learn about the religion and the fact that the report about their piety which is made by trustworthy reporters also support their pious quality.\textsuperscript{29} Their contributions (āthāruhum) to Islām and their practice (sīrah) show clearly their power and capacity.\textsuperscript{30}

As to the requirement that the imām must be from the best person among the people, in Lām al-adillah, al-Juwaynī says that the best persons after the Prophet Muḥammad were Abū Bakr, then followed by ʿUmar, then ʿUthmān and then ʿAlī.\textsuperscript{31} In al-Irshād, On the same issue, al-Juwaynī says that the best persons after the Prophet Muḥammad were Abū Bakr and then followed by ʿUmar. As regard to ʿUthman and ʿAlī, there was conflict of belief on who between the two is better. To substantiate this conflict of belief, al-Juwaynī

\textsuperscript{27} al-Irshād, p. 429
\textsuperscript{28} Ibid.
\textsuperscript{29} Ibid.
\textsuperscript{30} Ibid.
\textsuperscript{31} Lām al-Adillah, p. 115
quotes the saying of the Prophet Muḥammad which is reported by ʿAlī:

"The best people after their Prophet are Abū Bakr and ʿUmar, and then God knows who is better after the two."\(^{32}\)

However, al-Juwaynī says that when the Muslims appointed the four Guided Caliphs, they appointed whom they considered to be the best persons in that order.\(^{33}\)

3. Evidence from the Saying of the Prophet Muḥammad and the Qur'ān

In addition, to the above evidences, al-Juwaynī also supports his view by quoting a saying of the Prophet Muḥammad:

"The period of the caliphate after me will be thirty years. After that, it will be followed by tyrant kings."\(^{34}\)

and al-Juwaynī says that that was the real period of the four Guided Caliphs. By this hadīth, what al-Juwaynī wants

\(^{32}\) al-Irshād, p. 431

\(^{33}\) Lāmṭ al-Adillah, pp. 115 - 116

\(^{34}\) Lāmṭ al-Adillah, p. 116
to imply is that the period which is meant by the Prophet Muhammad in the hadīth is the period of the imāmate of the four Guided Caliphs. Therefore, there is no doubt that their imāmate is legitimate.

3. Evidence from the Saying of the Prophet and the Qur'ān

Besides, in responding to the invectives by those who are against the imāmate of the four Guided Caliphs, al-Juwaynī says that there are many sayings of the Prophet and the verses in the Qur'ān which support the fact that the four Guided Caliphs are pious. The verses of the Qur'ān also praise them. However, al-Juwaynī does not quote any of the said verses in his writing.35

35 al-Īrshād, p. 433. Probably, the verses which al-Juwaynī means here are the verses which are mentioned by al-Āshārī in al-Lumā'ī, pp. 134 - 135. The verses are:

(i) "Those who lagged behind (will say), when you are free to march and take booty (in war): "Permit us to follow you" They wish to change God's decree. Say: "Not thus will you follow us". God has already declared this beforehand, "But you are jealous of us", Nay but little do they understand (such things)" (al-Fatih (48):15)

(ii) "Say to the desert Arabs who lagged behind:"You shall be summoned (to fight) against a people given to vehement war: then shall you fight or they shall submit. Then if you show obedience, God will grant you a goodly reward, but if you turn back as you did before, He will punish you with a grievous penalty". (al-Fatih (48):16)

(iii) "Say: Never shall you come out with me; for you preferred to sit inactive on the first occasion; then sit you (now) with those who lag behind". (al-Tawbah (9):83)

The verses (i) and (ii) are also mentioned in al-Ībānah, pp. 71 -72. Another verse which al-Āshārī mentioned in al-Ībānah is al-Fatih.
"God's good pleasure was on the believers when they swore fealty to you under the tree"

From the first three verses al-Ash'arī argues that the one who would summon the desert Arabs meant in the verse al-Fāṭḥ (48):16 is either Abū Bakr or ʿUmar. The reason is that "the people given to vehement war" would mean either the Persians and Byzantines or the people of Yamāmah. In his argument, al-Ash'arī says that if those people are the Persians, the Byzantines or the people of Yamāmah, Abū Bakr would be the one who is meant by the verse as those people were fought at his time. If those people are only the Persians, it could be Abū Bakr or ʿUmar as they were fought during the periods of both of them. However, if it was ʿUmar, then the imāmate of Abū Bakr was also valid as Abū Bakr was the one who appointed ʿUmar as his successor.
CHAPTER SEVEN.

THE LEGITIMACY OF THE DE FACTO IMĀMATE OF NIẒĀM AL-MULK

After discussing the third legitimate method of the appointment of the imām - the appointment by usurpation, in the second book of his political compendium, al-Ghiyāthī, al-Juwaynī continues with a detailed elaboration on the legitimacy of the de facto imāmate of a powerful and capable person whose name is not mentioned explicitly in the compendium. In the compendium, al-Juwaynī only refers to this person by titles such as Sadr al-Dīn (the Leader of the Religion), Mustakhdim al-Sayf wa al-Qalam (the User of Sword and Pen), Ghiyāth al-Dawlah (the Saviour of the Country), Sadr al-Ayyām (the Leader of the Days), Mawlānā (Our Master), Sadr al-Zamān (the Leader of the Time), al-Majlis al-Sāmi and Sadr al-Aynām. However, from indications found in his writings in the compendium and

1 Ibid., p. 363 and p. 374
2 Ibid., p. 13 and p. 118
3 Ibid., p. 18
4 Ibid., p. 18 and p. 375
5 Ibid., p. 369, p. 370, p. 381, p. 383 and p. 384
7 Ibid., p. 379
8 Ibid., p. 364

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another work, al-\textit{Agīdah al-Nizāmiyyah}, it appears that the powerful and capable person meant by al-Juwaynī in \textit{al-Ghivāthī} is Niẓām al-Mulk, the second Saljūq chief \textit{wazīr} for the ruler, Alp Arslān and the only \textit{wazīr} of his son, Malik Shah in whose reigns al-Juwaynī lived, as has been discussed earlier. The following are the grounds for this suggestion.

(i) As has been established in the Introduction, \textit{al-Ghivāthī} was written for and addressed to Niẓām al-Mulk.\textsuperscript{9} The capable and powerful person whom al-Juwaynī mentions in \textit{al-Ghivāthī} is the addressee of his writings. For example, he says:

"Go ahead oh \textit{Sadr al-Zamān}. Do not delay for what God has prepared for you (since a long time ago)."\textsuperscript{10}

Therefore, the capable and powerful person who is meant by al-Juwaynī is Niẓām al-Mulk.

(ii) The person is the one who holds authority in the Saljūq government when the battle of Manzikert between the Saljūqs and the

\textsuperscript{9} See Introduction, pp. 26 - 29

\textsuperscript{10} Ibid., p. 338
Byzantine Emperor Romanus Diogenes, occurred in 463 A.H./1071 C.E. The possibility of that person would be only either Niẓām al-Mulk as the wazīr of Alp Arslān, the Sultān. However, it is understood from the duʿā' of al-Juwaynī in al-Ghiyāthī:

"May God bless his soul with His grace"

which is meant for Alp Arslān, that Alp Arslān had died before this book was written. Therefore, the advice and suggestions which are given to be executed by that person in the compendium are definitely not addressed to Alp Arslān as he had died. It must be addressed to somebody who was still alive at the time when the compendium was written. It cannot be Malik Shah, the successor of Alp Arslān who became the Saljūq ruler between 465 A.H./1073 - 485 A.H./1093 C.E., on the grounds that Malik Shah had not yet held authority when the battle of Manzikert occurred. The battle of Manzikert did not happen during the reign of Malik Shah. Therefore, the person must be Niẓām al-Mulk.

\[\text{Note: these two different editions are based on different manuscripts}\]
The person meant by al-Juwayni was the one who has political power in his hands, possesses capacity and was independent in ruling and defending the country and a writer (yastakhdim al-sayf wa al-galam). These attributes all belong to Niẓām al-Mulk as al-Subkī says in his Tabagāt:

"He [Niẓām al-Mulk] remained in the wizārah for thirty years and his power was above the sultanate."

It is also reported in al-"Arādah fī al-Hikāyah al-Saljūqiyyah that when Niẓām al-Mulk was appointed a wazīr to Alp Arslān, he was given the power to conduct all affairs in the Saljūq government as the report says:

"and he (Alp Arslān) gave him the power (of conducting) all affairs - to make decision, to appoint, to hold, to grant, to delegate and to dismiss"

Niẓām al-Mulk is the writer of the well-known

12 al-Ghivāthī(1), pp. 332 - 334
13 Ibid., p. 333
14 Subkī's Tabagāt, vol. 4, p. 316
These attributes, therefore, exclude Alp Arslān, Malik Shāh and al-Qā'īm as Niẓām al-Mulk was more powerful than Alp Arslān and Malik Shah and it is a well-known fact, as early mentioned that after the entrance of the Buyids into Baghdad, the ʿAbbāsid caliphs had lost political power and this included al-Qā'īm. Al-Juwaynī himself has a negative attitude towards the ʿAbbāsid caliphs. In this regard al-Juwaynī, as has been discussed before, refused to accept the practice of tawliyāt al-ʿāhd by the ʿAbbāsid caliphs as a legal authority. Al-Juwaynī also downgrades the capacity of the ʿAbbāsid caliphs as he says:

"They (Saljūq soldiers) eradicated the [negative] impression which is left by the things which could not be done by those who possessed power and strength of the ʿAbbāsid caliphs".
This second statement supports the suggestion that the person meant by al-Juwaynī is certainly not one of the 'Abbāsid caliphs.

Also, in Islamic history, Malik Shah was not known as a strong, capable and independent in ruling the country as described by al-Juwaynī in *al-Ghiyāthī*. When Malik Shah became the Saljūq ruler, he was only eighteen and he died when he was thirty seven.²⁸ It is understood that Malik Shah was very dependent on Nizām al-Mulk in executing his duties. Nizām al-Mulk was even called by Malik Shah "Father", probably a shortened form of "Father Commander" (or Atabeg, a title given to Nizām al-Mulk by Malik Shah).²¹

None of Alp Arslān, Malik Shāh and al-Qā'im was known as a writer.

Therefore, all these facts would suggests that the person would be Nizām al-Mulk.

(iv) Al-Juwaynī's statements in his *al-Ghiyāthī*:

²⁰ *Cambridge History of Iran*, vol. 5, p. 67
²¹ Ibid., p. 68
(a) "Whatever duties of the imām (singular of a'immah) as have been explained earlier are delegated (mawkūl) to Ra'y Sadr al-Din...."

As has already been pointed, Sadr al-Zamān which is probably the equivalent of Sadr al-Dīn is Niẓām al-Mulk.

(b) "The rules applicable to the imām have been explained and all those rules are applicable to [you] Ra'y Sadr al-Ayyām and Sayyid al-Anām (the Master of the People)"

Sadr al-Ayyām is certainly the equivalent of Sadr al-Zamān.

This indicates that the person meant by al-Juwaynī was not the existing de jure imām, who was recognized by the majority of the Muslims at that time, the 'Abbāsid caliph, al-Qā'im. Otherwise, al-Juwaynī does not need to make such statement.

(v) Al-Juwaynī states:

"If the execution of the affairs by buchāh

22 Ghīyāthī(l), p. 374
23 Ibid., p. 375
(rebels) with the existence of the imām is legitimate, it is more appropriate that the execution of the affairs by wuzarā' al-Islām (the ministers of Islām) with the vacancy (of the qualified person for the imāmate) should be legitimate.”

This probably gives more direct indication that the one whom al-Juwaynī means is one of the wazīrs, i.e. Niẓām al-Mulk.

It is undeniable that the rejection of the legitimacy of an 'Abbāsid caliph by a Sunnite scholar is unusual. The following statement by al-Juwaynī challenging the scholars of his time when he presents his opinion that a fard kifāyah is more appropriate to be given priority than a fard 'ayn and it is obligatory to Niẓām al-Mulk to remain in his post, strengthens the above argument:

"I challenge the contemporary scholars to argue what I have explained with evidence. If there is anyone who disagrees with it, be aware of him and of following the opinion of this man..."

This statement indicates that the scholars of his time hold the view which is in contrast to his view or at least, if

24 Ibid., p. 375
25 Ibid., pp. 358 - 359
26 Ibid., p. 363
27 Ibid., p. 363
they hold the same view, such view had never been expressed before al-Juwaynī did. Otherwise, why should al-Juwaynī challenge them.

As a powerful and capable person, Niẓām al-Mulk was defended by al-Juwaynī as the de facto imām for the Muslims in his period.

1. Grounds for the Legitimacy of the De Facto Imāmate of Niẓām al-Mulk

According to al-Juwaynī, although Niẓām al-Mulk was not a mujtahid and did not fulfil all the required qualities for the imāmate, his de facto imāmate is still legitimate on the grounds that he was the only one (mutawabbid) who possessed capacity in his time. Explaining the capacity which was possessed by Niẓām al-Mulk, al-Juwaynī says that Niẓām al-Mulk was able to fulfil the needs of the religion of Islām — defending it, looking after the prosperity of the Muslims, purifying the religion from bid`ah, supporting the guided group i.e. the Sunnites and providing security (kafālah) for the orphans. Al-Juwaynī defends Niẓām al-Mulk by explaining the details of

28 Ibid., p. 380
29 Ibid., pp. 332 - 334 and p. 336
30 Ibid., pp. 334 - 335

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his contribution to the Muslims and the country. He says that under the de facto imamate of Niẓām al-Mulk, the religion of Islām was respected, the territory of Islām was protected, the base of authority was strong, the obedience by the people to him was well established, the support was extended to him, due to his strong power, the rebels and the heretics bowed to his authority, the security of life and wealth of the people and the security for women were guaranteed, the country was prosperous, illegal ways to gain wealth and confiscation of wealth of the people were prohibited and the sources of income of the people were well regulated by the authority. As a conclusion, al-Juwaynī says that compared to the previous periods, the period which was under the de facto imamate of Niẓām al-Mulk was full of blessing and security.\(^{31}\)

Al-Juwaynī admits that although there was a lot of blessing and security, the conditions were still not perfect. There were still transgressions of laws and morality which were committed by a small group of soldiers in some parts of the country.\(^{32}\) However, he justifies the matter on two grounds:

\(^{31}\) Ibid., pp. 340 - 343

\(^{32}\) Ibid., p. 341 and p. 344
(i) Such transgressions by soldiers are a common phenomenon which occurs everywhere and at all times.  

(ii) If the greatness of the contribution which is made by the soldiers in defending the religion and the territory of Islām from external and internal enemies is compared with the transgressions which are committed by them, the transgressions are insignificant. For the contribution against the external enemy, al-Juwaynī gives an example of the victory achieved in the battle against the Byzantine Emperor (‘Azīm al-Rūm). In the battle, the Muslim soldiers successfully defeated the Emperor and raised the flag of Islām on the top of the city of Mardin. Due to their contribution, the religion and the country of Islām were put in the high position in the eyes of the world (al-asgā‘ al-gasbah). For the

33 Ibid., p. 341
34 Ibid., p. 345
35 The battle which is meant by al-Juwaynī here is the Battle of Malazkird (Manzikert) in 463 A.H./1071 C.E. against Emperor Rumanos Diogenes. See al-Ghīṭāthī, p. 344)
36 Mardin is a great city on the top of the hill located in southern part of Turkey (See al-Ghīṭāthī, 344)
37 Ibid., pp. 344 - 345
contribution against the internal enemy, al-Juwaynī says that these soldiers have successfully fought against bid'ah, uprooted the base of Karmatians (al-Qarāmiṭah) from their area (diyārihim), eliminated the heretics (al-zanādigah) and other deviating groups completely, and achieved some other things which have not been achieved by the Abbasid caliphs."

In defending the legitimacy of the de facto imāmāte of Niẓām al-Mulk, after presenting his argument, al-Juwaynī ends his defence with a question:

"If we suppose that there is a period when one to whom the people can make their complaint does not exist and the people (al-khawāss wa al-`awāmm) are not controlled by any powerful authority (batṭāssh gawwām), is such a period nearer to the true path and stability (intizām) than a period in which the rebels are controlled and the people are protected by the soldiers with power beside their commission of insignificant number of transgressions and at the same time they uphold the true religion and firmly stand against the unbelievers?", a remark:

"One who requires a period which is pure and safe from any find dust (al-`aqzā') and muddiness (al-`akdār).

38 The Karmatians (al-Qarāmiṭah) is a subsect of the Shi‘īte. They are also called the Seveners (al-Sab‘iyyah) or the Bāṭinites (al-Bāṭiniyyah) (See EI(S), p. 179)
39 Ibid., p. 345
is trying to find something impossible"40

and a verse of a poem:

"One who asks for fire to be lighted in water is against nature"41

In another statement, al-Juwaynī says:

"If all human beings are exposed to committing mistakes which cannot be avoided, the transgressions which are committed by the soldiers are similar to a natural disaster (ṣāfah samāwiyah) which cannot be avoided."

From the above question, remark, verse of the poem and statement, it is clearly understood that what al-Juwaynī means is that:

(i) One should choose the lesser of two evils. In this case, it is clear that having an imām who upholds and defends the religion of Islām with the transgressions of the laws and morality by his soldiers is less evil than not having an imām at all.

(ii) The transgressions of laws and morality by the soldiers are unavoidable at any place or any

40 Ibid., p. 351
41 Ibid.
time. Therefore, this issue should not affect the legitimacy of the de facto imāmate of Niẓām al-Mulk.

Also, to support the legitimacy of the de facto imāmate of Niẓām al-Mulk, al-Juwaynī says that the duty of governing which is carried out by Niẓām al-Mulk is an obligatory duty in Islām. To support his opinion, al-Juwaynī argues that if saving a single life (al-raḥul al-wāḥid) is obligatory on every Muslim, it is more appropriate (awlā) that saving the religion of Islām also be obligatory. 42

Establishing the imāmate or authority in the Islamic territory is an obligation to protect the interests (istislāh) of the Muslims. By having the imām or authority, weapons and force may be used by the imām or the one who possesses the authority in protecting the interests of the Muslims. Individual Muslims are not permitted to use weapons or force by themselves without any supervision of an imām or the authority in protecting the interests of the Muslims in the Islamic land, as afore-mentioned. 43 The use of weapons or force in the Islamic land is only entrusted to the authority. The reason for this rule is that the use

42 Ibid., p. 335
43 See Chapter 4, p. 175
of weapons or force by individuals would lead to conflict among Muslims. Causing conflict among Muslims is prohibited. [Therefore, any means which would lead to a prohibited thing is prohibited]."

As to the function of the election of the imām among those qualified persons to avoid conflict between people, al-Juwaynī says that due to the uniqueness (tawabbud) of Niẓām al-Mulk who is the only person who possesses capacity with power and supporters, the above function has been fulfilled by Niẓām al-Mulk."

2. Rules Applicable to Niẓām al-Mulk as the Legitimate De Facto Imām

After proving the legitimacy of the de facto imāmate of Niẓām al-Mulk, al-Juwaynī proceeds with some other rules which should be applicable to Niẓām al-Mulk as the legitimate de facto imām of the Muslims for his time. The rules are:

44 Ibid., pp 335 - 336
45 Ibid., pp. 337 - 338, Another possible grounds for the legitimacy of the de facto imāmate of Niẓām al-Mulk which is not explicitly mentioned by al-Juwaynī but can be deduced from the political background in which al-Juwaynī lived is that the ḤAbbāsid Caliph who was supposed to be the imām for the Muslims at that time had lost power.

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2.1. Niẓām al-Mulk is Prohibited from Resigning from His Post

As the legitimate de facto imām of the Muslims for his time, according to al-Juwaynī, it is not permissible for Niẓām al-Mulk to resign from his post as a wazīr even to seclude himself to worship God. The grounds for this rule is that he was the only person who possesses the capacity to occupy the post of the imāmate of the Muslims for his time."

To support this rule, al-Juwaynī presents a long defence for Niẓām al-Mulk. Beside his saying that Niẓām al-Mulk had no comparison with anybody in his time in terms of possessing the capacity for the imāmate, al-Juwaynī also says that Niẓām al-Mulk was the only one who is capable of protecting the religion of God, supervising the performance of the religious ceremonies (sha‘ā‘ir al-dīn) in all parts of the country, preventing disaster from bid‘ah with firm attitude (al-ra‘y al-thāqib) without causing chaos (fitnah) and harm, overcoming dangers faced by the people tactfully (bi lutf), striving day and night in listening and solving people's problems without getting bored and taking care of the mosque, gatherings (majālis) and schools. Besides, Niẓām al-Mulk also respects (yata'ātāf) the scholars

46 Ibid., pp. 355 - 358
throughout the country."

2.2. It is a Personal Duty of Niẓām al-Mulk to Perform His Duty as the Legitimate De Facto Imām of the Muslims for His time

According to al-Juwaynī, due to the uniqueness of Niẓām al-Mulk as the only person who possessing the capacity for the imām of the Muslims in his time, performing his duty as the imām becomes a personal duty on him.\(^{48}\)

To support this rule, al-Juwaynī draws an analogy with three other shari`ah legal rules:

(i) Originally, jihād is a public duty on every capable Muslim. However, when a soldier (ahl al-qitāl) is already in a battle line against the enemy even though the number of the enemy soldiers is less than half of the number of the Muslim soldiers, the status of public duty which is due on him to perform jihād changes to the status of personal duty. In this case, it is a personal duty

\(^{47}\) Ibid., p. 357

\(^{48}\) Ibid., pp. 362 - 363
on the soldier to continue to perform the jihād."

(ii) Originally, a man is not permitted to go to jihād without permission from his parents. However, if he disobeys his parents and goes to jihād without their permission, once he has become involved in a battle, it is not permitted for him to withdraw from it.\(^\text{49}\)

(iii) Originally, a slave is not permitted to go to jihād without permission from his master. However, if he disobeys his master and goes to jihād, once he is involved in the battle, he has to stay until the battle ends [or he dies].\(^\text{50}\)

Based on these three rules, al-Juwaynī says that if jihād in the three shari‘ah legal rules becomes personal duty for the soldiers, the disobedient son and the disobedient slave despite the insignificant effect on the Muslims and despite their disobedience, it is more appropriate that Nizām al-Mulk remain in his post to protect the Muslims and the country of Islām and therefore, it becomes a personal duty for him, on the grounds that if

\(^{49}\) Ibid., p. 360
\(^{50}\) Ibid., p. 360
\(^{51}\) Ibid., p. 361

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he left his post, the Muslims, the religion and the Country of Islām would suffer from a disaster which would be difficult to be overcome." 52

2.3. It is Prohibited to Niẓām al-Mulk to Perform Hajj (Pilgrimage) during the Tenancy of His Post

As afore-mentioned, although al-Juwaynī says that the security of the Muslims and the country of Islām is under protection, he does not deny that the rebels and the heretics still exist. Due to this fact, the Muslims and the country of Islām still need an imām to protect them from their internal and external enemies.

Based on this reason and the fact that Niẓām al-Mulk is the only person who possesses capacity for the post of the imāmate in his time, al-Juwaynī says that it is prohibited on Niẓām al-Mulk to go to Makkah to perform hajj and leave the affairs of the Muslims without an imām. 53

To support this rule, al-Juwaynī also draws an analogy with another shari`ah legal rule. Al-Juwaynī says that an act of worship is not considered as a way to be close to God (gurbah) only by fulfilling all its essential elements

52 Ibid., pp. 361 - 364
53 Ibid., p. 364
(‘a’yāniḥā wa dḥawātiḥā), but it should also be performed in a period which is defined by the rules of God (gadāyā amr Allāh). Therefore, a prayer which is performed outside its prescribed period, even though it is performed in the best way, is not valid and is considered as a prohibited act (munkar)."

The same rule is applicable to hajj. Although all essential elements are fulfilled but if the performance of the hajj by any person would lead to harm or danger to himself or a group of Muslims, the performance of the hajj by the person is prohibited. This rule is agreed upon by all Muslims. Anyone who thinks that his hajj would cause harm himself or a group of Muslims, as above-mentioned, should delay his hajj until a time which is completely safe from any harm or danger."

Based on this rule, al-Juwaynī argues that if in such a situation, the hajj of an ordinary person becomes prohibited, it is more appropriate that the hajj of Nizām al-Mulk, as the de facto imām of the Muslims who conducts the affairs of the Muslims and protects the religion of Islām to be prohibited, on the grounds, that his leaving to

54 Ibid., p. 365
55 Ibid., pp. 366 - 367
go on hajj would cause great disasters to the Muslims."

According to al-Juwaynī, Niẓām al-Mulk is only permitted to perform his hajj when the country enjoys prosperity and adequate security from any internal and external threat."

2.4. The Duties of Niẓām al-Mulk

As to the duties of Niẓām al-Mulk, al-Juwaynī says that as Niẓām al-Mulk is a legitimate de facto imām who functions as the qualified imām in his time, all the duties of the imām which have been mentioned earlier are entrusted (mawkūl) to Niẓām al-Mulk."

However, when discussing the duties of Niẓām al-Mulk, al-Juwaynī stresses three duties which he considers as urgent and necessary ones which must be carried out by Niẓām al-Mulk during his time. The three duties of Niẓām al-Mulk which are stressed by al-Juwaynī are as follows:

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56 Ibid., pp. 370 - 371
57 Ibid.
58 Ibid., p. 374 and p. 375
2.4.1. Be Informed about What is Happening In the Country and Its Conditions

It is an important duty of Niẓām al-Mulk to be informed about what is happening throughout the country, and its condition. The reason for this principle is that conducting the affairs of the subjects involves investigation (al-ittila') of the difficult and secret matters (al-qhawāmid wa al-khafāvä). If the imām is not well-informed about what is happening in the country, injustice among the people, cheating, disgraceful acts (al-makhāzī wa al-fadā'ih), refusal to fulfil financial duties to baut al-māl, stealing, rebellion and other evils may spread. As far as remote regions are concerned, Niẓām al-Mulk should employ a number of trustworthy people as his informers to observe and to report to him secretly about what is happening there. When the evil people (ahl al-khabal wa al-fasād) know about the fact that they are under observation of Niẓām al-Mulk, they would obey him and follow the true path whether voluntarily or by force. By having such intelligence service, the security of the country will be stable. Wakefulness (al-tavaqquz) and being well-informed (al-khibrah) are the foundations of

59 Ibid., pp. 377 - 378
60 Ibid., pp. 378 - 379
government (usus al-iyālah wa qā' idat al-imrah).  

2.4.2. To Consult Scholars

According to al-Juwaynī, because Niẓām al-Mulk was not a mujtahid, in performing his duties as the de facto imām of the Muslims, he had to consult the scholars. The reason for this rule is that, as mentioned earlier, when the imām is not a mujtahid, the people who possess authority (ashāb al-'amr) are the scholars. The imām who possesses the power is commanded to follow the rules (marāṣīm) made by the scholars. It is different if the imām is a mujtahid. If the imām is a mujtahid, he should not follow anyone. In contrast, he is the one who should be followed by everyone. 62

Regarding this rule, al-Juwaynī remarks that if the ruler of the time (sultan al-zaman) is not a mujtahid, the scholars are the ones who should be followed and the power of execution remains in the hands of the ruler. In this situation, the scholar of the time (ālim al-zamān) is like a prophet of the time and the ruler is like a king. 63

61 Ibid., p. 377
62 Ibid., pp. 379 - 380
63 Ibid., p. 380
When the prophets are absent, the scholars should replace their position. When the Messengers were sent by God, they were expected to change the laws (ahkām) by cancelling (naskh) the previous laws. Therefore, when the scholars make rules through their fatwā, their fatwā is considered as among the rules of God (min qadāyā awāmirillāh)." It is understood that the rules of the scholars should be implemented by the imām who is not a mujtahid.

2.4.3. Be Wakeful (al-Tavaqquz) about Religious Dissension

It is an important duty of Niẓām al-Mulk to protect the people from any destruction which may be caused by any religious dissension all the time."

Al-Juwaynī reminds Niẓām al-Mulk that although religious dissension does not occur during his time, it had happened in the past when heretics (al-zanādīqah) had once spread in the country of Islām; they made jokes of the religion of Islām." However, al-Juwaynī does not describe any specific period in which the case occurred.

64 Ibid.
65 Ibid., p. 381
66 Ibid.
Al-Juwaynī also reminds Niẓām al-Mulk that the greatest element of religious dissension in his time is the dissolution of piety from the Muslim people. They follow their desires and are more inclined to worldly interests. If steps are not taken to overcome this phenomenon, it would lead to a great disaster to the Muslims and the religion of Islam.\(^7\)

\(^7\) *Ibid.*, pp. 382 - 383
CHAPTER EIGHT

AL-JUWAYNĪ'S CONTRIBUTION TO ISLAMIC POLITICAL THOUGHT ON
THE IMĀMATE

Probably, the best method of showing al-Juwaynī's contribution to Islamic political thought on the imāmate is by investigating the origin of al-Juwaynī's thought on the subject and making a comparison between the doctrine of the imāmate of the scholars to whose works al-Juwaynī refers and the doctrine of the imāmate of the scholars who are influenced by al-Juwaynī's own doctrine on the subject. From al-Juwaynī's writings on the imāmate, the scholars to whom he frequently refers are al-Shāfiʿī, al-Ashʿarī, al-Bāqillānī and Abū Ishāq al-Isfarāyīnī. The names of these scholars are explicitly mentioned in various places in his writings on the imāmate, especially in al-Ghīvāthī. As to the scholars who are influenced by al-Juwaynī, it is well-known that al-Ghazālī is the most prominent scholar among al-Juwaynī's students. Therefore, to show al-Juwaynī's contribution to Islamic political thought on the imāmate and to show the chain of thought among traditional Muslim scholars on the topic, an investigation on the origin of al-Juwaynī's thought on the imāmate and a comparison between the thought of the scholars to whom al-Juwaynī refers and the thought of the scholars who are influenced by al-Juwaynī on the subject will be made.

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However, for the purpose of writing this thesis, the comparison which will be made will be confined to the two most prominent scholars who preceded al-Juwaynī, al-Ashʿarī and al-Bāqillānī and the immediate most prominent scholar who succeeded him, al-Ghazālī. Therefore, the thought of al-Shāfiʿī, al-Baghdādī, Abū ʿIshāq al-Isfarāyīnī, al-Māwardī and Abū Yaʿla on the subject are excluded from the discussion in this thesis. Al-Shāfiʿī's is excluded because his period is far from al-Juwaynī's period. Al-Baghdādī's is excluded because al-Juwaynī never mentions in his writings that he had ever referred to al-Baghdādī's works. Abū ʿIshāq al-Isfarāyīnī's is excluded because there is no work written by him available to be referred to for the comparison. Al-Māwardī's is excluded because al-Juwaynī does not consider that al-Māwardī's writing on the imāmate is original. Al-Juwaynī even criticizes that al-Māwardī's writings in al-Abkām al-Sultāniyyah on the imāmate as plagiarism. Abū Yaʿlā's is excluded because of two reasons: Firstly, his writings on the topics were only a copy with some modifications from al-Māwardī's writings. Secondly, it seems that there is no reference made by al-Juwaynī to his writings.

1 See al-Ghiyāthī (1), pp. 141 - 142
(a) The Origin of al-Juwaynī's Thought on the Imāmate

(i) Al-Ashʿarī's Doctrine of the Imāmate

Al-Ashʿarī is considered as the founder of Ashʿarism. For the purpose of the study of Al-Ashʿarī's doctrine of the imāmate, reference will be made to his Kitāb al-Lumāʾ fi al-Radd ʿalā Ahl al-Zaykh wa al-Bidaʾ (al-Lumāʾ), Kitāb al-Ibānāh (al-Ibānāh) and Maqālāt al-Islāmiyyīn ʿan Usūl al-Diyānah wa Ikhtilāf al-Musallīn (Maqālāt).

Al-Ashʿarī's writings on the imāmate in al-Lumāʾ are brief' and only focus on the legitimacy of the imāmate of Abū Bakr and the rejection of the Shiite opinion that ʿAlī was appointed imām by the Prophet by nass. In proving the legitimacy of Abū Bakr, al-Ashʿarī referred to some verses of the Qurʾān and the ijmāʿ of the Muslims.

In al-Ibānāh, al-Ashʿarī's writings are also brief'

2 Watt, W. Montgomery, op cit., p. 105

3 It only covers 3 pages out of 136 pages of the book. (See al-Lumāʾ, pp. 71 - 74)

4 The verses which are referred by al-Ashʿarī are al-Tawbah (9):83, al-Fatḥ (48):15, al-Fatḥ (48):16 and al-Fatḥ (48):18. For the details of the verses, See note no.38, Chapter 6

5 al-Lumāʾ, p. 134

6 It covers only 3 pages out of 74 pages of the book. (See al-Ibānāh, pp. 133 - 136)
and covers almost the same contents except that he added two other evidences for the legitimacy of the imāmate of Abū Bakr. The evidences are:

(i) the combination of the verses al-Naḥl (24):55, al-Ḥajj (22):41 and al-Faṭḥ (48):18;'

(ii) the hadith of the Prophet which says that the period of the four Guided Caliphs would be 30 years;

and a new issue on the political conflicts between the Muslims in the early period i.e. the conflict between 'Alī, Zubayr and 'Ā'ishah and the conflict between 'Alī and Mu̇āwiyyah. On this latter issue, al-Ash̄arī says that all of them were correct as they all were practising ijtihād and they all are qualified mujtahids."

Al-Ash̄arī's writings on the imāmate in Magālāt, as on other topics, are the collection of the opinions of the theological sects, such as the Sunnites, the Shi'ites, the Mu'tazilites and the Khārijites without stating explicitly his own opinion. However, al-Ash̄arī's statement in another

7 al-Ibānah, p. 71
8 Ibid., p. 73
9 Ibid., pp. 73 - 74

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part of *Magālāt* shows that his opinion is that of the Sunnites. Al-Ashʿari's writings on the imāmāte in *Magālāt* are also brief but covers more topics compared to his writings in *al-Lumāʿ* and *al-Ibānah*. The writings cover, among the main issues:¹¹

(i) the conflict between ʿAlī and Muʿāwiyyah;
(ii) the legitimacy of the four Guided Caliphs;
(iii) the legitimate method to appoint the imām;
(iv) the number of ahl al-hall wa al-ṣagd;
(v) the rule regarding the obligation to establish the imāmāte;
(vi) the number of the imām;
(vii) the possibility of the vacancy of the post of the imāmāte;
(viii) the requirement of the descent from Quraysh for the imām; and
(ix) the requirement of the best person to be the imām.

¹¹ See *Magālāt*, pp. 141 - 155
(ii) Al-Bāqillānī's Doctrine of the Imāmate

For the purpose of the study of al-Bāqillānī's doctrine of the imāmate, major reference will be made to the following books:

(i) *al-Tamhīd fī al-Radd 'alā al-Mulhīdah al-Mu'attilah wa al-Rāfidah wa al-Khawārij wa al-Mu'tazilah* (al-Tamhīd);

(ii) *al-Insāf* (translated by R.J. McCarthy in his unpublished Doctoral thesis "Al-Bāqillānī: The Polemist and Theologian", (University of Oxford, 1951), vol. 2); and


Compared to al-Ash'ārī's writings on the imāmate, al-Bāqillānī's writings are more profound and cover more topics concerning the imāmate. In addition to the issues discussed by al-Ash'ārī in his three works mentioned earlier, al-Bāqillānī adds some other issues. The al-Bāqillānī's writings on the imāmate cover 63 pages out of 241 pages of his *al-Tamhīd.*

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additional issues are the purpose of the establishment of the imāmate and the circumstances which require the desposal of the imām. 13 Besides, other than the issues which have been discussed by al-Ash'arī, al-Bāqillānī also contributes discussion on more issues to Ash'arī's doctrine. Among other main issues which al-Bāqillānī adds to al-Ash'arī's doctrine are:

(i) the requirement of the attendance of the witnesses during the making of the contract of the imāmate; 14

(ii) the denial of the right of the ummah to depose the imām on their own will; 15

(iii) the denial of the right of any of the members of ahl al-bayt wa al-aad to appoint himself as the imām; 16

(iv) the requirement of bravery, knowledge in warfare and the defence of the country; 17 status of

13 See al-Tamhid, pp. 186 - 187
14 See Ibid., p. 179
15 See Ibid.
16 See Ibid.
17 See Ibid., p. 183
ijtihād and piety for the imām;

(v) the rejection of the requirement of infallibility for the imām;\(^9\)

(vi) the purposes of the establishment of the imāmate i.e. to administer the army (tadbīr al-jaysh), to build frontier posts (ṣidd al-thughūr), to deter injustice, to uphold justice, to implement hudūd, to distribute al-fay' among the Muslims;\(^{10}\) and

(vii) the circumstances which require the deposal of the imām, i.e. apostacy, abandoning prayers and calling for the abandoning of them, fisq, committing injustice, madness, deafness, muteness, old age and imprisonment in war.

Besides, on the legitimacy of the four Guided Caliphs, in contrast to the explanation by al-Ash'arī which is brief, al-Bāqillānī elaborates the issue at great length.\(^{21}\)

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\(^{18}\) al-Inṣāf, p. 253

\(^{19}\) al-Tamhīd, pp. 184 - 185

\(^{20}\) See Ibid., pp. 185 - 186

\(^{21}\) Out of 63 pages of al-Bāqillānī's writings on the imāmate in al-Tamhīd, 54 pages are allocated for elaborating the legitimacy of the four Guided Caliphs (See pp. 187 - 241)
As to the relationship between al-Bāqillānī and al-Ashʿarī, it is worth mentioning here that al-Bāqillānī played an important and significant role, by lecturing, dictation and writing, in establishing and popularizing Ashʿarism. In his teaching, al-Bāqillānī used al-Lumāʾ of al-Ashʿarī as a basic text. Al-Bāqillānī also depends largely on the works of al-Ashʿarī in producing his own works. Al-Baqillānī's book Sharb al-Lumāʾ is most probably an elaboration to al-Ashʿarī's al-Lumāʾ. It is probable that there is no work of the Ashʿarite scholars produced within the period between al-Ashʿarī and al-Bāqillānī. Perhaps, al-Baqillānī's stance on the issue of the conflict between 'Alī and Maʿāwiya is the clearest evidence for the closeness of the relationship between his doctrine and al-Ashʿarī's. The stance of both of them is that in the conflict, both 'Alī and Muʿāwiya were correct as they were practising ijtihād.

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22 See McCarthy, R.J., "Al-Bāqillānī: The Polemist and Theologian", vol. 1, p. 315
23 Ibish, Yusuf, Political Doctrine of al-Bāqillānī, Beirut, 1966, p. 18 citing Ibn Farhūn, al-Dibāṭ, Cairo, 1911, pp. 267 - 268
24 Ibid., pp. 315 - 316
25 Ibid., p. 28
26 R.J. McCarthy, op. cit., p. 316
27 See al-Insāf, p. 20, al-Ibānāh, pp. 71 - 74

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(b) Al-Juwaynī's Contribution to Islamic Political Thought on the Imāmate

Compared to the works on the imāmate by al-Asḥārī and al-Bāqillānī, al-Juwaynī's works on the same subject are more extensive and more profound. Apart from the issues of the imāmate which had been discussed by al-Asḥārī and al-Bāqillānī, al-Juwaynī, in his works, as we have already seen, adds more issues and formulates more rules. The following are among the issues and the rules which al-Juwaynī adds:

(i) The definition of the imāmate.
(ii) The qualities of ahl al-ball wa al-`_
(iii) A discussion of the validity of the appointment by a father of his son as his succeeding imām.
(iv) The duties of the imām. This topic is elaborated by al-Juwaynī systematically, in detail and at

28 Al-Juwaynī's writing on the imāmate in al-Ghiyāthī alone covers 371 pages. The first book of his compendium is named "the book of the imāmate" (Kitāb al-Imāmah), (See al-Ghiyāthī(1), pp. 22 - 393
29 See al-Ghiyāthī(1), p. 22, see also Chapter 1, p. 24
30 See al-Ghiyāthī(1), pp. 62 - 66, see also Chapter 1, pp. 42 - 48
31 See al-Ghiyāthī(1), pp. 137 - 139, see also Chapter 1, pp. 57 - 58
great length. The duties of the imām are not discussed by al-Ashʿarī. They are also not discussed by al-Bāqillānī directly. In al-Bāqillānī’s writings, the duties of the imām are discussed indirectly, generally and briefly under the topic of the purpose of the imāmate.

(v) The number of the qualities required for the imām. It can be understood from Maqālāt that al-Ashʿarī only requires that the imām must be of decent from Quraysh and the best person of the Muslims. Al-Bāqillānī added four more qualities apart from the qualities which have been mentioned by al-Ashʿarī i.e. bravery, knowledge in warfare and the defence of the country, status of ijtihād and piety. Apart from the above-mentioned qualities, al-Juwaynī adds nine more qualities i.e. ability to see, ability to hear, ability to speak, loss of limb and organ which jeopardises the performance of the duties of the imāmate, maleness, free status, Islam, sound mind and of the age of

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32 Out of 305 pages of The Book of the Imāmate in his al-Ghīyāthī, 125 pages are allocated for discussing the duties of the imām. (See al-Ghīyāthī (1), pp. 180 - 305), see also Chapter 4, pp. 143 - 180

33 See al-Tamhid, pp. 185 - 186

34 See Maqālāt, pp. 151 - 152

35 See al-Tamhid, p. 183, al-Insāf, p. 253
majority. 36

(vi) The number of circumstances which require the imām to be deposed. This topic is not discussed by al-Ash'arī in any of his books which are referred. Al-Bāqillānī mentions eight circumstances as discussed earlier i.e. apostacy, abandoning prayers and calling for the abandoning of them, fisq, committing injustice, madness, deafness, muteness, old age and imprisonment in a war. Al-Juwaynī, in his writings, mentions ten circumstances which require the deposal of the imām i.e. apostacy, madness or mental disorder, blindness, deafness, dumbness, defect of organ or limb which jeopardises the performance of the duties of the imāmate, fisq, imprisonment in a war, loss of obedience and chronic illness. 37 It is also worth mentioning here that different from his predecessors, al-Juwaynī differentiates between the circumstances which require dismissal and the circumstances which require disqualification. 38 In discussing fisq, al-Juwaynī also differentiates between the fisq

36 See al-Ghīyāthī(1), pp. 76 - 91, see also Chapter 2, pp. 79 - 81, pp. 85 - 87

37 See al-Ghīyāthī(1), pp. 98 - 126, see also Chapter 3, pp. 117 - 130

38 See Ibid., p. 98, see also Chapter 3, pp. 115 - 131
which requires dismissal and the fisq which does not require either dismissal or disqualification”

(vii) Rules regarding the dismissal of the imām and the remedies which should be taken by the Muslims if the dismissed or disqualified imām refuses to step down from his post. These two topics are not discussed by either al-Ash'arī or al-Bāqillānī.

As to the relationship between al-Juwaynī and al-Ash'arī and al-Bāqillānī, al-Ash'arī and al-Bāqillānī are al-Juwaynī's indirect teachers as mentioned earlier. Both died before al-Juwaynī was born. However, al-Juwaynī studied from them through their books. Al-Ash'arī is described by al-Juwaynī as "our scholar" (shaykhunā). As to the relationship between al-Juwaynī's doctrine of the imāmate with al-Bāqillānī's doctrine on the same subject, al-Juwaynī's own statement as mentioned in Subki's Tabagāt shows that the influence of al-Bāqillānī's

39 Ibid., pp. 120 - 122, see also Chapter 3, pp. 121 - 127
40 See Chapter 1, p. 6
41 See Ibid.
42 al-Ghivāthī(1), p. 175, al-Shāmil, p. 6
43 See Ibid., see also Chapter 1, p. 7
However, although al-Juwaynī is an Ashʿarite scholar, not all doctrines of his Ashʿarite predecessors such as al-Ashʿarī himself and al-Bāqillānī are accepted by al-Juwaynī. In many issues, al-Juwaynī disagrees with al-Ashʿarī and al-Bāqillānī. The following are among the main issues in which al-Juwaynī disagrees with them:

(i) According to al-Ashʿarī, the number of ahl al-ball wa al-`aqd required for the appointment of the imām is one with a condition that the person must be a mujtahid and pious.44 According to al-Bāqillānī, the number of ahl al-ball wa al-`aqd is one without any condition.45 Al-Juwaynī agrees on the number of ahl al-ball wa al-`aqd with al-Asharī and al-Bāqillānī but he disagrees with al-Ashʿarī's requirement of the status of ijtihād and the lack of condition which is according to al-Bāqillānī. Al-Juwaynī requires that, among others, the person must have power or capable of providing power to the

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44 Usūl al-Dīn, pp. 280 - 281, this quotation is probably from Magālāt, p. 149
45 Al-Tamhīd, p. 178
imām."

(ii) Al-Baqillānī bases his argument on the hadīth "the imāms should be from Quraysh" to prove the validity of the requirement of the descent from Quraysh for the imām. 47 Although al-Juwaynī used to base his argument on the same hadīth in his early work 48 on the imāmate, in his later work 49 , al-Juwaynī rejects the hadīth as a valid evidence for the requirement of the descent from Quraysh for the imāmate because he argues that the hadīth is abād (reported by one person). Instead, al-Juwaynī bases his argument on imām. 50

(iii) In discussing the circumstances which require the dismissal of the imām, al-Baqillānī does not include blindness but he includes old age as one of the circumstances. 51 There is no

46 al-Ghiyāthī(1), pp. 70 – 71, See other requirements by al-Juwaynī in al-Ghiyāthī(1), pp. 62 – 66, see also Chapter 1, pp. 46 – 48

47 al-Tamhīd, p. 182, al-Insāf, p. 253

48 Lamʿ al-Adillah, p. 116

49 al-Ghiyāthī(1), p. 80, p. 313

50 Lamʿ al-Adillah, p. 116, al-Ghiyāthī(1), p. 80, p. 313, see also Chapter 2, pp. 83 – 85

51 al-Tamhīd, p. 186

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indication in al-Baqillānī's writings that he differentiates between dismissal and disqualification as does al-Juwaynī.

(c) The Influence of al-Juwaynī on al-Ghazālī

Al-Juwaynī's doctrine of the imāmate has left some influence on the Muslim scholars who came after him such as al-Ghazālī, al-Shāṭibī, al-Āmidī, Ibn al-ʿArabī, al-Nawāwī Ibn Taymiyyah, Ibn Qayyim al-Subki, Ibn Khaldūn and al-Suyūṭī. However, for the purpose of

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56 He is Muḥī al-Dīn Abū Zakariyyā Yaḥyā al-Ḥīzāmī al-Dimashqī, d. 676 A.H./1277 C.E. (EI(1), vol. 4, p. 444)

57 He is Taqī al-Dīn Abū al-ʿAbbās Abūmad b. ʿAbd al-Ḥālīm b. al-Saḥām b. ʿAbdullāh b. Muḥammad, d. 728 A.H./1328 C.E. (EI(1), vol. 4, p. 493)

58 He is Shams al-Dīn Abū ʿAbdullāh Muḥammad b. Abū Bakr, d. 751 A.H./1350 C.E. (EI(1), vol. 4, p. 149)

59 He is Taqī al-Dīn Abū al-Ḥasan ʿAlī, d. 756 A.H./1355 C.E. (EI(1), vol. 4, p. 493)

60 He is Abū Raḥmān ibn Muḥammad, d. 808 A.H./1406 C.E. (EI(1), vol. 4, p. 171)

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writing this thesis, a study will only be made on al-Juwaynī's influence on al-Ghazālī, al-Juwaynī's most prominent student. For the purpose of this study, major reference will be made to the following materials:

(i)  Fadā'ib al-Bātiniyyah wa Fadā'īl al-Mustazhiriyah (Fadā'īb);

(ii) Kitāb al-Iqtisād fī al-I'tiqād (al-Iqtisād).

By comparing al-Juwaynī's writings with al-Ghazālī's writings on the imāmate, it is found that, in general, in terms of the issues discussed, al-Juwaynī's writings are more comprehensive and in terms of elaboration, al-Juwaynī's writings are more profound. A lot of the issues discussed by al-Juwaynī are not discussed by al-Ghazālī. The main issues which al-Ghazālī ignored in his writings on the imāmate are:

(i) the definition of the imāmate;
(ii) Various qualities of ahl al-ball wa al-šaqīd;
(iii) The rule regarding the appointment of two imāms concurrently;
(iv) the appointment by a father of his son as his succeeding imām; and

(v) the circumstances which require the deposal of the imām.

Probably, the reason for ignoring these issues is to avoid repetition in writing. If this is true, this means that al-Ghazālī follows the attitude of his teacher, al-Juwaynī, not to repeat again what has been written by the previous scholars except when he differs from their views.\(^6\)

According to Fu‘ād ‘Abd al-Mun‘im Aḥmad and Muṣṭafā Ḥilmī, al-Ghazālī’s writings on the imāmate in his book al-Iqtisād seems to be a summary of al-Juwaynī’s doctrine of the imāmate.\(^7\) The probability of the correctness of this view can be justified by the fact that al-Ghazālī himself had summarized an al-Juwaynī’s book al-Burhān on Islamic jurisprudence in his book al-M ankūl.

From the study of the writings on the imāmate by both of them, it is noticeable that al-Ghazālī is very much influenced by his teacher, al-Juwaynī. As suggested by ‘Abd al-Mun‘im Aḥmad and Muṣṭafā Ḥilmī, al-Ghazālī had studied al-Juwaynī’s compendium al-Ghaythī by attending al-Juwaynī’s study circles (ḥalaqāt) in Naysābūr and had

\(^{6}\) See Introduction, p. 10

\(^{7}\) al-Ghaythī(l), p. 16 mīm

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mastered al-Juwaynī's doctrine of the imāmate, and composed them again. "Perhaps, the following examples can be some evidences to show the influence of al-Juwaynī on al-Ghazalī:

(i) From the time of al-Ashʿarī, it seems that al-Juwaynī is the first Ashʿarite scholar who states explicitly that the issue of the imāmate is not a theological issue but a legal issue. "Such a statement had not been stated by al-Ashʿarī, al-Bāqillānī, al-Baghdādī or al-Mawardī. Al-Ghazalī did the same which indicates the influence of his teacher." 

(ii) Also from the time of al-Ashʿarī, al-Juwaynī was the first Ashʿarite scholar to require possession of power and capacity as a quality for the imām. "This view is also adopted by al-Ghazalī."

64 al-Ghiyāthī(2), p. 15 mīm
65 al-Ghiyāthī(1), p. 60, al-Irshād, p. 411, Mughīth al-Khalag, f. 6, see also Chapter 1, pp. 24 - 25
66 al-Iqtisād, p. 147
67 al-Ghiyāthī(1), pp. 89 - 91, Lamf al-Adillah, p. 116, al-Irshād, p. 426, see also Chapter 2, pp. 91 - 93
68 Fadāʾīh, pp. 183 - 187

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(iii) Different from his Ash'arite predecessors, al-
Ash'arī and al-Bāqillānī, al-Juwaynī requires
that ahl al-ball wa al-aqd must possess power.
This quality is also required by al-Ghazālī."
The influence of al-Juwaynī on al-Ghazālī
becomes more obvious when both of them make
almost the same statement that it is not the
number which counts but the power which is
wielded by the imām."70

The influence of al-Juwaynī on al-Ghazālī is not only
confined to al-Ghazālī's adoption of the rules which are
formulated by al-Juwaynī, but also the adoption of the
structure of the sentences, terms and words in al-Ghazālī's
writings. For example, in discussing the issue of the claim
of the Fātimids in Egypt for the post of the imāmate, the
structure and words used by al-Ghazālī in his writings are
almost similar to al-Juwaynī's."71 Likewise, the terminology

69 Fadā'ih, pp. 176 - 177
70 See al-Ghiyāthī(1), p. 69, Fadā'ih, p. 177
71 نالرچن: في إثبات ما نحاوله في ذلك أن المانين مازالوا
باهين بخصوص هذا المنصب بقريش، ولم (42) ينوفون نقط أحد
من غير نعش إلى الامامة، [على تمادي الأمام] (3) وتطاله الأزمان،
مع العلم بأن ذلك لم كان ممكنًا، لطلبه ذرو النجدة والبأس،
وتشير (1) في ارتباطه عن ساق الجد أصحاب العدد والعدد، وقد بلغـ
However, although al-Ghazālī is much influenced by his teacher, al-Juwaynī, in the subject of the imāmate, he does not adopt all al-Juwaynī's doctrine. In certain issues, al-Ghazālī differs from al-Juwaynī.

(al-Ghiyāth (1), pp. 80 - 81),

(Fadā'īh, pp. 180 - 181), for further examples, see al-Ghiyāthī(1), pp. 147 mim - 149 mim, al-Ghiyāthī(2), pp. 14 mim - 16 mim.
In proving the requirement of the descent from Quraysh for the post of the imāmate, al-Juwaynī, in his latest opinion in al-Ghīthī, rejects the hadīth "the imāms should be from Quraysh" as a valid evidence. In contrast, al-Ghazālī accepts this hadīth as a valid evidence for the requirement."

Al-Ghazālī also differs from al-Juwaynī in the requirement of the status of ijtihād for the imām. Al-Juwaynī requires that the imām must be a mujtahīd while al-Ghazālī does not do so."

Another difference between al-Ghazālī and al-Juwaynī is the classification of the duties of the imām. Al-Juwaynī categorizes the duties of the imām, as discussed earlier, into the duties which are related to worldly affairs and the duties which are related to religious affairs, whereas al-Ghazālī categorizes the duties of the imām into those pertaining to 'ilm (religious knowledge) scientific ("ilmiyah) and practical ("amaliyyah)". The duties pertaining 'ilm are:

(i) to know the purpose of the creation of man;

73 Fadā'ih, p. 180
74 al-Ghīthī(1), p. 84, pp. 153 - 154, see also Chapter 2, pp. 89 - 90, al-Irshād, p. 426, Fadā'ih, p. 191
75 Fadā'ih, p. 195

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(ii) to know that piety comes from the heart (al-galb);

(iii) [to know that] the purpose of the caliphate is to give benefit to the people (istislāh al-khalāq); and

(iv) to know that man has a combination of both the character (ṣifah) of the angel and the animal."

The practical duties of the imām are:

(i) to conduct the duties of the imāmate by himself;

(ii) to consult the scholars;

(iii) to take care of those who are in need;

(iv) to avoid extravagance in food and dress;

(v) to know that the acts of worship are not as heavy (tavassara) for the one who rule (wālih);

[vi] [to uphold the principle that] kindness (al-rifq) should be dominant over crudeness (al-ghalzah) in conducting all affairs;

(vii) [to know that] the most important purpose of the imāmate is to seek the favor (ridā) of the people through the conformation with Islamic rules (sharī');

(viii) to know that the danger and the benefit from

\[\text{76 Ibid., pp. 195 - 202}\]
being an imām is great; and

(ix) to possess a habit of forgiving, conducting himself with gentleness and good morality, and concealing anger.”

(d) Notes on the Similarity between the Thought of

al-Ash’arī, al-Bāqillānī, al-Juwaynī and al-Ghazālī on the Imāmate

It is felt that the study of al-Juwaynī’s contribution to Islamic Political thought on the imāmate would not be completed without mentioning the common attributes between the thoughts of al-Ash’arī, al-Bāqillānī, al-Juwaynī and al-Ghazālī on the same subject i.e. all of them write on the imāmate to defend Sunnism and reject its adversaries such as Shi‘ism and Mu‘tazilism. As a result, all of them:

(i) defend the legitimacy of the imāmate of the four Guided Caliphs;”

(ii) reject the appointment of the imām by nass;”

(iii) hold the view that the appointment of the imām

77 Ibid., pp. 202 - 224


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must be by the method of election;" and

(iv) require that the imām must be of decent from Quraysh."

Perhaps these similarities are the best evidence to show the connection of thought between the above-mentioned scholars.


CONCLUSION

Al-Juwaynī's doctrine of the imamate can be summarized as follows:

Although the topic of the imamate in his early writings is composed in the books of theology i.e. Lam'e al-Adillah and al-Irshād, he explicitly states that the imamate is not a field of theology but it is among the legal fields (furū') or a field of fiqh siyāsī as it is known to the modern Muslim scholars.

The establishment of the imamate as the ideal Islamic political organization is compulsory. The basis for its establishment is ijmā' of the ummah. According to al-Juwaynī, ijmā' is a definite evidence (dalil gat'i) of Islamic Law which has similar position to the Qur'ān and the Sunnah of the Prophet Muḥammad. The first imām of the Muslims, Abū Bakr was unanimously agreed to have been appointed by election of ahl al-ball wa al-āqd. A member of ahl al-ball wa al-āqd must be male, free in status, knowledgable, Muslim, possessing power and piety. There is no specific number of ahl al-ball wa al-āqd required by al-Juwaynī. The appointment is valid even by one person of ahl al-ball wa al-āqd as long as the person is able to create power for the appointed imām.
There are three legal methods of the appointment of the imām which are recognized by al-Juwaynī i.e. election by ahl al-hall wa al-ʿaqd, assignment by the existing imām and self-appointment by usurpation of power. Al-Juwaynī rejects the appointment of the imām by the nass of the Prophet.

The contract of the imamate is for unlimited period as long as the imām fulfils the objectives of the imamate and there is no circumstance which requires his disqualification or dismissal occurring. Witness is only recommended for the appointment of the imām. The appointment of the imām is valid even if it is contracted by one who is able to create power for the appointed imām even it is not witnessed. Only one imām for all the Muslims in the world is permitted at one time in any condition.

To qualify for the post of the imamate, one must possess sound senses - able to see, able to hear and able to speak, and sound limbs and organs so that one would be able to perform the duties of the imamate independently and sufficiently. The imām also must be of descent from Quraysh, a male, free in status, a Muslim, sound mind, off age, brave, a muitahid, pious and possessing capacity. Infallibility is not required for the post of the imamate. However, according to al-Juwaynī's latest opinion, the imām
must be the best person in the ummah except that if the appointment of the best person would cause chaos and destruction to the ummah, the imamate of the less qualified person is permitted. Among the above-mentioned qualities which are required for the imamate, in the case of there being many qualified persons, between the requirement of possessing capacity and piety, possessing capacity should be given priority over piety and the priority between the requirement of possessing knowledge and the requirement of possessing capacity should depend on the current circumstances and needs. If the faith of the Muslims is safe from any problem but the country is threatened from external or internal enemies, the one who possesses capacity should be given priority. Similarly, if the country is safe from any threat from external and internal enemies but is facing problems relating to the faith (aqīdah) of the Muslim, the knowledgable person should be given priority. In the case of there being no fully qualified person for the imamate, piety should be given first priority, then followed by possessing capacity, possessing knowledge and the descent from Quraysh.

The imam should be deposed automatically if he commits apostacy, becomes mad or suffers from mental disorder, becomes blind, deaf or dumb, or suffers from defect of limbs and organs which would cause him to be unable to perform his duties of the imamate effectively. The imām
should be dismissed by *ahl al-ball wa al-ṣaqd* if he commits sin which constitutes *fisq* and his *fisq* causes disorder in his reasoning and a negative effect on the religion of Islam and the Muslims. The *imām* should also be dismissed if he is imprisoned in war or suffers from a chronic illness of which his release and recovery respectively are not expected. Loss of obedience from the people to the *imām* is another legal reason for the dismissal of the *imām*. If dismissal must be done, it must be done before the appointment of the new *imām*. If the disqualified or dismissed *imām* refuses to step down from the post of the imamate, steps must be taken by the Muslims. Among the steps suggested by al-Juwaynī is appointing a new *imām*, if the circumstances allow, despite the existence of the disqualified or dismissed *imām* as in this case, the disqualified or dismissed *imām* is considered as not existing. The new *imām* then should treat the disqualified or dismissed *imām* as a rebel. If the appointment of the new *imām* would lead to bloodshed and destruction to the Muslims, the Muslims should choose "the lesser of two evils”. If leaving the disqualified or dismissed *imām* with the power in his hands is "the lesser evil", the appointment of the new *imām* is no longer obligatory on the Muslims until the circumstances change. Creating the change in order that the appointment of the new *imām* can be made possible is the responsibility of the Muslims.
As a general rule, once the imām is appointed, it is not permitted for him to resign from the post of the imamate without any acceptable reason.

The purpose of the establishment of the imamate is to conduct the religious and worldly affairs of the Muslims. In conducting the religious affairs, the imām should protect the religion of Islām by fighting against bid'ah and heresy, abstaining himself from interfering in the conflict of opinion between the Muslim jurists, guiding the people to follow the tradition of the early pious scholars and sending missionaries to the people to explain the true teaching of Islām, to call non-Muslims to Islām by discussion and jihād, and to supervise the acts of worship which are performed by the people. In conducting worldly affairs, it is the duty of the imām to expand the territory of Islām to non-Islamic territories and to protect them from its external enemy, to provide security to the people and to fulfil the needs of those in need in the country of Islām.

In fulfilling his duty, the imām requires assistants and equipment. The assistants who are required by the imām are wazîrs, judges, governors, revenues collectors, administrators, and army commanders and officers. The equipment which is required by the imām consists of professional military force and finance. The sources of
revenues for the finance of the imamate are zakāt, al-fay' (including jizyah and kharāj), the estates which are left by the Muslims without an heir entitled to them, lost property of which the finding of its owner is hopeless, the wealth of the rich people and the produce of agriculture.

In conclusion, from al-Juwaynī's political writings, it seems that according to him, the imamate is the ideal and the only legitimate political organization for the Muslims. Al-Juwaynī's political thought which is focused on the doctrine of the imamate is purely based on Islamic sources - the Qur'ān, the Sunnah of the Prophet Muḥammad, ijmā', gīyās (analogy) and the opinions of the Muslim scholars, such as al-Shāfiʿī, al-Ashʿarī, al-Bāqillānī and Abū Ishāq al-Isfārāyīnī. There are no non-Islamic sources referred by al-Juwaynī.

From the contents of al-Juwaynī's doctrine of the imamate, it can be said that possibly with an exception of the discussion on the legitimacy of the Guided Caliphs, his doctrine of the imamate is an extension and elaboration for the doctrine of the imamate which has been discussed by some Sunnite Ashʿarite scholars before him such as al-Ashʿarī and al-Bāqillānī.

In many places in his writings on the imāmate, al-
Juwaynī explicitly quotes the opinions of al-Shāfi‘ī, al-Ash‘arī, al-Bāqillānī and al-Isfarāyīnī. Sometimes, al-Juwaynī explicitly calls these Sunnite Ash‘arite scholars as "our intellectual scholars" (a'immatinā), "my masters" (ashābi) "our shaykh" and "our ustādh" even though he does not agree with all their views.

Al-Juwaynī's doctrine of the imamate is presented in the same way as it is presented by other Sunnite Ash‘arite scholars except al-Māwardī. The thought is presented in the form of questions and answers. Most of the discussions are addressed to the opponents of the Sunnites i.e. the Shi‘ites which was very influential during that period. A few discussions are addressed to the Mu‘tazilites and the Kharijites.

Al-Juwaynī's doctrine of the imamate is very detailed and critical. Up to al-Ghāzālī, al-Juwaynī's doctrine of

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1 al-Ghīthī(1), p. 247, p. 200, see also Chapter 5, p. 53, Chapter 4, p.160
2 al-Ghīthī(1), p. 69, p. 175, see also Chapter 1, p. 49, p. 774
3 al-Ghīthī(1), p. 73, see also Chapter 1, p. 49, p. 71
4 al-Ghīthī(1), p. 175, see also Chapter 1, p. 74
5 al-Ghīthī(1), p. 326, see also Chapter 1, p. 68
6 al-Irshād, p. 426, see also Chapter 2, p. 84
7 al-Ghīthī(1), p. 175, see also Chapter 1, p. 74
8 Ibid.
the imamate can be considered as the most extensive and the most detailed one compared to the doctrine composed by other Sunnite Ash'arite scholars.

However, although al-Juwaynī's doctrine is an extension and elaboration for the Sunnite Ash'arite scholars who lived before his time, his thoughts are original and are built from his own *ijtihād*. This is a clear difference between him and al-Mawardī as the doctrine of the imamate which is composed by al-Mawardī in his al-Ābkām al-Sultāniyyah is a collection of the views of the scholars who came before him. As stated by al-Juwaynī, al-Mawardī's writing is not built by his own *ijtihād*. Due to this reason, in al-Ghīthī, al-Juwaynī criticizes al-Mawardī as a plagiarist. However, his criticism of al-Mawardī does not mean that he dislikes al-Mawardī is not personal but due to his negative attitude towards *taqlīd*.

As a result of al-Juwaynī's use of *ijtihād*, he adds many new views and rules to the opinions of his predecessors of the Sunnite Ash'arite scholars and elaborates them in detail. Among the new views and rules which are added or extended by him are the number of the qualities required for the imamate, the circumstances which require the disqualification or dismissal of the imām by

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9 See al-Ghīthī(1), pp. 141 - 142, see also Chapter 8, p. 249
fisq, the requirement of possessing power for ahl al-ball wa al-'aqd, the number of the duties of the imām and the finance of the imamate. In many places of his writings, al-Juwaynī himself states that the views or rules which he composes have not been discussed by any of the previous Muslim scholars.

In many issues he disagrees with those Muslim scholars. Among others, the issue of the validity of the hadīth "the imāms must be from Quraysh" as the evidence for the requirement that the imām must be a Qurashi, the validity of a dhimmī as a wazīr, the prohibition of having two imāms at the same time, loss of the sense of smell as a circumstance which requires disqualification of the imām and the correctness of Mu'āwiyah in his conflict with 'Alī.

The originality of al-Juwaynī's thought can also be proven by the characteristic of his thought that it is developed through stages and in some issues, his views are contradictory to each other. Such a development and contradiction can be found in his three books which contain his writings on the doctrine of imamate i.e. Lam' al-

10 Cf. Chapter 8, pp. 257 - 260
11 For example, See al-Ghivāthī(1), p. 267
12 Cf. Chapter 8, pp. 261 - 263
Adillah, al-Irshād and al-Ghiyāthī.

The following are among the issues on which his views are developed through stages and of which some of them are contradictory to each other:

(i) The number of the qualities required for the imamate.

(ii) The invalidity of the hadīth "The imāms should be from Quraysh".

(iii) The appointment of the less qualified person as the imām.

(iv) The requirement of fisq as a circumstance for the disqualification or dismissal of the imām.

(v) The permissibility of resignation by the imām from the post of the imāmate.

To be more exact, as is mentioned earlier in this thesis, al-Juwaynī passes through three stages in his thought on the second and the third issues until he has settled with his latest views. In the fourth and the fifth issues, he passes through two stages which are contradictory to each other.
Another reason which may also support the fact that al-Juwaynī's doctrine of the imamate is original and is built from his own ijtihād is that not only does he disagree and reject the opinions of the adversaries of the Sunnites i.e. the Shi'ites, the Mu'tazilites and the Kharijites, but he also disagrees and rejects the opinions of the scholars from his own sect, the Sunnite Ash'arites.

As far as sect is concerned, there is no doubt that al-Juwaynī belongs to the Sunnite Ash'arites. As has been mentioned earlier, most of the questions presumed and answered in his writings are meant to respond to the views of the adversaries of the Sunnites. The sects which are sometimes mentioned explicitly by al-Juwaynī are such as the Shi'ites, the Imamites of the Rafidites, the Zaydites, the Mu'tazilites and the Karmatians.

This fact is also supported by his defence of the legitimacy of the imamate of the four Guided Caliphs as the Sunnite Ash'arite scholars had done before him. Besides, al-Juwaynī also proves the legitimacy of Niẓām al-Mulk as the de facto imām of the Muslims for his time. It is known in history that Niẓām al-Mulk was a wazīr for the ruler of the Saljūqs who gave all his efforts in supporting Sunnism

13 The most detailed defence for the legitimacy of the four Guided Caliphs by any Sunnite Ash'arite scholars before al-Juwaynī is by al-Bāqillānī in his al-Tamhīd.
and fighting against the adversaries of the Sunnites such as the Shiites and the Mu’tazilites.

As to the influence of his doctrine on his well-known student, al-Ghazālī, to some extent, it can be concluded that it is clear that al-Ghazālī was influenced by his teacher, al-Juwaynī, in his thought on the imamate. For example, al-Ghazālī is the second Sunnite Ash’arite scholar who explicitly states that the issue of the imamate is not among the theological issues as is claimed by the Shiites but is an issue of the branches of Islām or the issue of the derived laws. The first Sunnite Ash’arite scholar who expresses this statement is al-Juwaynī.

The qualities which are required for the imamate which are found in al-Ghazālī’s writings are almost similar to those which are found in al-Juwaynī’s writings. Some issues which are not clearly explained by al-Juwaynī are re-explained by al-Ghazālī in his writings such as the basis (mustanad) of the ʿilmāʾ on the issue of the obligation to establish the imamate and the meaning of the terms "al-naṣīḥah" and "al-kifāyah". Also, possibly due to the influence by al-Juwaynī’s defence for Niẓām al-Mulk as the de facto legitimate imām of the Muslims for his time even though Niẓām al-Mulk does not fulfil all the qualities required for the imamate, al-Ghazālī defends al-Mustaṣfāhi as the legitimate imām of the Muslims for his time.
However, not all the issues or rules which are put forward by al-Juwaynī are agreed by al-Ghazālī, as discussed earlier. 14

In comparing al-Ghazālī's thoughts on the imamate with that of al-Juwaynī's, it is found that the scope of al-Juwaynī's thoughts is much wider and more detailed than that of al-Ghazālī. Many issues which are discussed by al-Juwaynī are not discussed by al-Ghazālī such as the definition of the imamate, various qualities which are required by ahl al-ball wa al-agd, the rules regarding the appointment of two imams at the same time, the circumstances which require the disqualification and dismissal of the imam and the finance of the imamate.

As a whole, it can be said that al-Juwaynī's doctrine of the imamate is the largest contribution to the topic from any Sunnite Ash'arite scholars up to and including al-Ghazālī. By this finding, the claim by Muḥammad Muslehuddin that the list of the qualities required for the Īmām which are required by al-Māwardī is the longest of all becomes no longer valid. 15

14 See Chapter 8, pp. 268 - 270
15 See Muslehuddin, Muḥammad, Islam and Its Political System, Islamabad, 1988, p. 106
APPENDIX I: LIST OF AL-JUWAYNI'S WORKS

1. al-Asālib. On ʿilm al-khilāf. This work has not been found yet. (See ʿAbd al-ʿĀzīm al-Dīb, Fīqh Imām al-Ḥaramayn, p. 257)

2. al-ʿAqīdah al-Nizāmiyyah fi Qawā'id al-Arkān al-Islāmiyyah. ed. Muḥammad Zahid al-Kawtharī and has been translated into German by Helmut Klopfer. On ʿilm al-kalām.


Fuad °Abd al-Mun'im and Mu'tafa al-Ḥilmi, Alexandria. Mainly on fiqh sīyāsi.


10. al-Irshād fī usūl al-fīqh. Ms.


12. al-Kāmil fī Ikhtisār al-Shāmil. Ms. On ʿilm al-kalām (?)

13. Kitāb Majārib Abkām al-Khulafā' fī Ayyāmihim. This work is not proven available but al-Juwaynī mentioned it in al-Ghaythī (See ʿAbd ʿAṣim al-Ḍib, al-Ghaythī(1), p. 115)

15. **Kitab al-Multahidin**. Ms.. On *usūl al-fiqh*.

16. **Laghz al-Ummah**. Ms.. On *fiqh* (?)


19. **Manāzirah fi al-Jidāl wa al-Ijtihād wa al-Qiblah**. On *usūl al-fiqh*.


21. **Mukhtasar al-`Irshād li al-Baqillānī**. Ms.. On *ilm al-kalām* (?)

22. **Mukhtasar al-Nihāyah**. Ms.. On *fiqh*.

23. **Nihāyah al-Matlab fi Dirāyah al-Madhhab**. Most Ms. are available at *Ma'had Iḥyā' al-Makhtūṭāt li Jāmi'ah*.
al-Duwal al-Árabiyyah, Cairo. First volume has been edited by Dr. ŠAbd al-Ázim al-Dib. A compendium of fiqh. Probably comprises of 27 volumes.


30. al-Talkhīs. Ms.. On Usūl al-Fiqh (?)

APPENDIX II

AL-JUWAYNĪ'S TEACHERS

(a) Indirect Teachers:

1. ʻAlī b. Isma‘īl Abū Ḥasan al-As̲h̲ārī (d. 320 A.H./912 C.E.)
2. Abū Bakr Muḥammad b. al-Ṭayyib al-Bāqillānī (d. 403 A.H./1012 C.E.)

(b) Direct Teachers:

5. Manṣūr b. Rāmīsh (d. 428 A.H./1036 C.E.)
6. Abū Nu‘aym al-Isfahānī (d. 430 A.H./1038 C.E.)
7. Abū Sa‘d ʻAbd al-Rahmān b. al-Ḥasan b. ʻAlīk (d. 431 A.H./1039 C.E.)

الحاسان الأشعرى (ك.ه. 432 م/1040 م)

9. أبو سعد عبد الرحمن بن حمдан النصارى النصارى

10. الإمام أبو محمد الجويني

11. أبو عبد الرحمن محمد بن عبد العزيز النحوي

12. أبو عبد الله الخباز

13. أبو القاسم السيكافي

14. أحمد بن الحسين بن علي بن عبد الله بن موسى بن عبد البار النصارى

15. أبو الحسن بن محمد بن أحمد أبو علي المازووي

16. الشيخ أبو الحسن علي بن فقهاء بن علي بن علي المكيشل

17. أبو الحسن محمد بن أحمد المزكي

(ك.ه. 432 م/1040 م)

(ك.ه. 433 م/1041 م)

(ك.ه. 439 م/1047 م)

(ك.ه. 441 م/1049 م)

(ك.ه. 449 م/1057 م)

(ك.ه. 452 م/1060 م)

(ك.ه. 458 م/1065 م)

(ك.ه. 462 م/1069 م)

(ك.ه. 469 م/1076 م)

(ك.ه. 469 م/1076 م)
APPENDIX III

AL-JUWAYNĪ'S STUDENTS

1. Abū ʿAlī al-ʿUthmānī (d. 468 A.H./1075 C.E.)
3. Abū Muḥammad al-Astārabādhī (d. 491 A.H./1097 C.E.)
4. Abū al-Qāsim al-Juwaynī (d. 492 A.H./1098 C.E.)
5. Abū Nasr al-Argiyānī (d. 499 A.H./1105 C.E.)
7. Abū Ḥāmid al-Ghazālī (d. 505 A.H./1111 C.E.)
8. Iḥṣāṣ al-Ḥarrāsī (d. 510 A.H./1116 C.E.)
10. Abū al-Qāsim al-Anṣārī (d. 512 A.H./1118 C.E.)
11. al-Sabbāk
15. ʿAbd al-Ghafīr al-Fārisī (d. 529 A.H./1134 C.E.)
16. al-Furqānī (d. 531 A.H./1136 C.E.)
17. Abū Saʿd al-Muʿadhdhin (d. 531 A.H./1136 C.E.)
18. al-Aḥmad (d. 534 A.H./1139 C.E.)
19. al-Khuwāfī (d. 536 A.H./1141 C.E.)

*See Nouri, Moufid Muhammad, "The Scholar of Nīshāpūr 700 - 1225 A.D." pp. 615 - 616*
20. al-Damghāni  
(d. 545 A.H./1150 C.E.)

21. Abū al-Maʿāli al-Khawāfī  
(d. 555 A.H./1160 - 1 C.E.)
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