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**Al-Ğuwaynī's theory of the imamate in his treatise *Ğiyāt al-umam***

By the eleventh century the community founded in the seventh century by the Prophet Muḥammad had split into several religious groups. The *umma* as a single, unified community, had become a political fiction. The Abbasid caliphate had lost its power, and the caliphs became mere puppets in the hands of the Saljuq sultans and were not in control of their dominions any more. Political theory, in Islam being part of theological works, made an effort to preserve an image of a single polity in the face of a double danger: a growing power of the Isma'ili Fatimids in Egypt and internal disturbances.

One of the most distinguished jurists and '*ulamā*' of that era, and probably one of the most important figures in the development of political and juristic theory, was Al-Māwardī (d. 1058 in Baghdad)<sup>1</sup>. His most important work, and perhaps one of the most influential in mediaeval Islamic political theory, was *Al-Aḥkām al-sulṭāniyya*. It was probably written for the caliph Al-Qādir or his successor Al-Qā'im. Al-Māwardī was a Shāfi'ī jurist, and because of his extensive knowledge and his reputation as a scholar, he was appointed *qāḍī* in various towns of the caliphate, and in Baghdad itself, where he held the office of *qāḍī al-quḍāt*. Al-Māwardī was not only a scholar and a political theorist, but also a diplomat. The caliph Al-Qādir entrusted him with the task of negotiating with the Buyids, who were the rulers of Iraq at that time. In 1043–45 Al-Māwardī also carried out a mission to the Saljuq sultan Ṭughril Beg. He worked with the aim of restoring Sunnism and preserving a single polity of the *umma*. In his works he tried to provide a

<sup>1</sup> Because Al-Māwardī and his work is the key to political theory in Islam, and not much advance was made on it by later '*ulamā*', his work and personality have attracted the attention of modern scholars. See e.g. H. Laoust, *La pensée et l'action politique d'al-Māwardī*, "REI", XXXVI; Ann Lambton, *State and Government in Medieval Islam*, Oxford University Press 1981, pp. 83–102; Patricia Crone, *Medieval Islamic Political Thought*, Edinburgh University Press 2004, passim; J. Danecki, *Polityczne funkeje islamu*, Uniwersytet Warszawski, Warszawa 1991, pp. 39–48.

legal foundation for and exposition of the theory of government and the four-caliph theory, derived from theology and from the works of his Muslim predecessors, like Al-Bāqillānī and Al-Baḡdādī<sup>2</sup>. But Al-Māwardī, one of the most important counsellors to the caliphs and a person involved in political activity, was fully aware of the powerlessness of the Abbasid caliphs. He was in favour of a strong caliphate and discouraged delegating unlimited powers to the governors, which tended to create chaos. In his books he is not concerned with legal speculation or ideas of government. He pointed out that it was not a matter for intellectual speculation because the Qur'ān contains ordinances (*aḥkām*) and distinguishes between forbidden and lawful things.

In *Al-Aḥkām* Al-Māwardī discusses the principles of political science, with special reference to the functions and duties of the caliph, the chief minister, other ministers and military leaders. He presents relationships between elements of the public and the government, the balance of power between the caliph and his sultans, and measures to strengthen the government, and, consequently, Sunni Islam, and to ensure victory in war. He also defines the principles for the election of the caliph, his qualities and the qualities of the electors, emphasizing the need for a high intellect and immaculate character in the caliph.

In Al-Māwardī's opinion the existence of the imam is a condition sine qua non for the existence of the community. He alone has the authority to delegate his power to others, sultans, amirs etc, because his authority is delegated directly by God. But Al-Māwardī emphasizes two ways in which an imam's freedom could be annulled or restricted: wardship and captivity. As Patricia Crone has pointed out, capture was a possibility considered also by other authors, for example by Al-Bāqillānī or, later on, by the subject of our article, Al-Ḡuwaynī, in his *Ḡiyāṭ*, but wardship (*ḥadr*) seems to be a category introduced and used only by Al-Māwardī. Possibly, in using such a statement Al-Māwardī tried to legitimize two caliphs, or rather two sovereigns, one the Abbasid caliph himself, and the other, the Buyid sultan, ruling at the same time.<sup>3</sup>

In the Buyid and Saljuq times the caliph retained his office, but the real power had been seized by local rulers in Muslim lands. Hence in his theory Al-Māwardī distinguished between those ruling by legal appointment (*istikfā'*) and usurpers (*istilā'*), i.e. legitimized governors of the caliphate.

<sup>2</sup> On Al-Bāqillānī and Al-Baḡdādī's theory of the caliphate, see Ann Lambton, *State*, op. cit., pp. 69–82; Janusz Danecki, *Polityczne funkcje islamu*, op. cit., pp. 31–37, Katarzyna Pachniak, *Filozofia polityki muzułmańskiej*, Dialog, Warszawa 2001, pp. 56–66.

<sup>3</sup> P. Crone, *Medieval...*, op. cit., p. 232.

He had no choice, as all the protectors of the caliphate in his time, such as the Buyids and the Saljuqs, seem to belong to the latter category. They had taken over control by force, and consequently the caliph legitimized their position by appointing them to their posts. They obviously did not claim to be caliphs themselves, but, like the Saljuqs, maintained to be the caliph's servants. Al-Māwardī's main aim was to strengthen the caliph's position against the usurpers. In Al-Māwardī's opinion the legalization of the *imārat al-istilā'* served to maintain the unity of the *umma*, preserving at the same time the legality of the decisions and judgements in these regions. The caliph was not obligated to instigate a jihād against the usurpers, but included them into the administrative and political organization of the caliphate. Al-Māwardī thus codified in his *Al-Aḥkām* as law what had been a long-standing practice.

Al-Māwardī was not the only jurist and theologian in the 11th and 12th centuries who tried to assert the supremacy of the caliphate. He was followed by a number of jurists, e.g. Al-Ġuwaynī and Al-Ġazālī. These '*ulamā'*' recognized the caliph's duty to defend Islam and administer the community, but on the other hand, they took into consideration the important changes that had taken place on the political scene of the caliphate, i.e. further Saljuq advances. At the peak of its power, this dynasty of Turkish origin ruled over a vast part of the Muslim world<sup>4</sup>. The Saljuqs arrived when the 'Abbāsīd rule was seriously threatened by the rival Shi'i caliphate of the Fatimids in North Africa. The Saljuqs were fervent Sunnīs and Ḥanafīs, and for this reason they made it the point of honour to replace the rule of petty local dynasties, generally Shi'i ones, by their own. The caliph Al-Qā'im welcomed Ṭughril Beg at the court and gave him an honourable mantle, but subsequent relations were not good. The caliph found that he had not much freedom to rule and administer the affairs of the *umma*. Although the Saljuqs reunited the Islamic world and received noble titles from the caliph, they preferred to see themselves and to be perceived as the protectors of the caliphate, rather than as governors or a dynasty of conquerors.

The revival of the caliphate was to be a fact, but transitory, because soon both powers had to face up to new circumstances, especially the Mongol advance. However, at the peak of their power, during the reign of Alp Arslān (d. 1072), and his successor Mālikšāh, the Saljuq sultans formally took the position of the caliph as the head of the *umma*. The actual ruler at that time

<sup>4</sup> On the history of the Abbasid caliphate, see Jerzy Hauziński, *Burzliwe dzieje kalifatu bagdadzkiego*, PWN, Warszawa–Kraków 1993, pp. 359–401, containing an extensive bibliography including Arabic sources.

was, rather, the celebrated wazīr of the Saljuq sultans, Niẓām al-Mulk (d. 1092)<sup>5</sup>. During Alp Arslān's reign Niẓām al-Mulk accompanied the sultan in all his campaigns and sometimes undertook military operations of his own but after the assassination of Alp Arslān he became the head of the Saljuq empire. Henceforward he completely dominated the young son of Alp Arslān, Mālikšāh, and adhered to a policy of his own. Niẓām al-Mulk ruled his empire with success. In 1091 he wrote *Siyāsat-nāma*, a sort of "mirror for princes"<sup>6</sup>. His work, intended as a ruler's guide, touches upon the organization of the state, the dīwān, the army etc. A fanatical Sunni, he contributed to the political and intellectual Sunni revival. Niẓām al-Mulk's aversion to the Ismā'īlīs was common knowledge and he was eventually assassinated in October 1092. His murderer was disguised, but he is generally thought to have been one of Al-Ḥasan aṣ-Ṣabbāḥ's followers. At that time Al-Ḥasan aṣ-Ṣabbāḥ, the first dā'ī of Nizārī Ismā'īlism at Alāmūt, consolidated his position in Persian strongholds. The assassination of Niẓām al-Mulk seems to have been a very important point in his policy of organizing a general rising of the Ismā'īlīs against the Saljuq rule.

It was in the rule of Mālikšāh, or rather his wazīr Niẓām al-Mulk, that one of the most influential 'ulamā' of this period, Al-Ġuwaynī, wrote a little known treatise, *Ġiyāṭ al-umam fī iltiyāṭ aḏ-ḏulam*, dedicated to Niẓām al-Mulk. Al-Ġuwaynī, celebrated under the title of *Imām al-Ḥaramayn* (imām of two Holy Cities) was connected with the Asharite school of 'ilm al-kalām. He was one of the most recognized scholars of his time<sup>7</sup>. Ibn 'Asākir called him the glory of Islam, imam of all imams.

In Nisābūr he continued to propagate the teachings of his father, but Al-Kundur, the wazīr of Tuḡhril Beg, announced the Ash'arite school's standpoint to be an 'innovation' against true religion and cursed it from the pulpits of Nisābūr. Al-Ġuwaynī had to leave Nisābūr and take refuge in Baghdad.<sup>8</sup> He taught at Mecca and at Medina for several years, hence his hon-

<sup>5</sup> See e.g. E.C. Bosworth, Niẓām al-Mulk, EI<sub>2</sub>.

<sup>6</sup> See e.g. Katarzyna Pachniak, *Naṣiḥat al-mulūk* and *Siyāset-nāma: two examples of mirror for princes*, "Studia Arabistyczne i Islamistyczne" 5, 1997, pp. 107-126.

<sup>7</sup> See, A. Lambton, *State...*, p. 103-107, P. Crone, *Medieval...*, p. 232-237, J. Danecki, *Polityczne*, p. 53-59, K. Pachniak, *Filozofia ...*, p. 76-80, W. Hallaq, *Caliphs, Jurist and the Saljuqs in the Political Thought of Juwaynī*, "The Muslim World" 74, 1984, pp. 25-41.

<sup>8</sup> Ibn al-Subkī, *Ṭabaqāt aṣ-ṣāfi'iyya*, Cairo 1964-76, vol. III, pp. 390-393, IV, pp. 209-210, G. Maqdisi, *Ibn 'Aqīl et la resurgence de l'Islam traditionaliste au XI<sup>e</sup> siècle*, Damas 1963, pp. 106-127; G. Maqdisi, *al-Ḳundurī*, EI<sub>2</sub>.

ourable title. The situation changed completely with Nizām al-Mulk's rise to power. Soon he granted his favour to the Ash'arites and Al-Ġuwaynī, along with other emigrants, returned to Nīsābūr. Nizām al-Mulk founded a madrasa there especially for him, called An-Nizāmiyya, like another establishment in Baghdad. Al-Ġuwaynī taught there until the end of his life. For some time his celebrated pupil, Al-Ġazālī, also lectured there. Subsequently, Al-Ġazālī held a chair in Baghdad's An-Nizāmiyya, where he lectured to large audiences for four years. Shortly before his death Al-Ġuwaynī went back to his home town in the futile hope of recovery, and eventually died there on 20 August 1085.

The principal domains of his researches are divided into the *uṣūl al-fiqh* and the *'ilm al-kalām*. His most important treatise, *Kitāb al-waraqāt fī uṣūl al-fiqh*, was commented upon until the 17th century.<sup>9</sup> We can mention two other treatises: *Al-Irṣād ilā qawāḥi' al-adilla fī uṣūl al-i'tiqād*, and *Kitāb al-burhān fī uṣūl al-dīn*.

Al-Ġuwaynī established a juridical method on the basis of Al-Aṣ'arī's teachings; unlike some of his predecessors, he tried to avoid using naïve examples and analogies. However, for this reason his works had a reputation of being difficult.<sup>10</sup> It was as a *mutakallim*, not as a jurist, that Al-Ġuwaynī exerted deepest influence on Muslim thought. In the opinion of some modern scholars, he successfully combined the period of the old Ash'arite school with the more systematical, philosophical and logical solutions which were to be undertaken later by the *kalām* school, and in particular by his pupil, Al-Ġazālī. Like the latter, Al-Ġuwaynī attached significance to rational methods and the Aristotelian way of reasoning, including syllogisms.<sup>11</sup>

Though Al-Ġuwaynī was famous for his contributions to the *uṣūl al-fiqh* and the *'ilm al-kalām*, he also played a significant role in the development of Muslim philosophy. He defended the Ash'arite position that emphasizes the omnipotence of God and His power compared with the complete powerlessness of human beings. God is the first cause, the sole creator of the universe and the agent (*fā'il*) for all subsequent beings. God, in Al-Ġuwaynī's opinion, has perfect knowledge about all aspects of His creation. Although He is neither a spatial nor a temporal being, it is nevertheless possible for human beings to see Him in the next life. The source of God's act

<sup>9</sup> C. Brockelmann, L. Gardet, *al-Djuwaynī*, EI<sub>2</sub>.

<sup>10</sup> For example As-Subkī in his *Tabaqāt* called Al-Ġuwaynī's treatise *Al-Burhān fī uṣūl ad-dīn – luġz al-umma* ("The enigma of the Community"), *ibidem*.

<sup>11</sup> L. Gardet, M.M. Anawati, *Introduction à la théologie musulmane*, Paris 1948.

and will is Himself, without any other cause. The existence of the world and all human actions depend upon God's will.

Like Al-Ġazālī and other Ash'arite theologians, Al-Ġuwaynī presents a hermeneutic system designed for the interpretation of the Holy Scripture in order to understand the meaning of the Qur'an and to make it accessible for the faithful. On ethical issues, Al-Ġuwaynī claimed that the moral principles of the Scripture were the only basis for judging human deeds. Whatever the Scripture declares to be good, is really good, and whatever the Scripture condemns is morally evil. Shortly, Al-Ġuwaynī rejected the Mu'tazilī opinion that there exists some rational moral truth. Al-Ġuwaynī was of the opinion that God, for the reason of His uniqueness and the complete separation from His creatures, had no obligation to interfere in the lives of His servants; therefore, He was not responsible for their good or bad choices<sup>12</sup>.

This article is an analysis of an excerpt from Al-Ġuwaynī's treatise *Ġiyāṭ al-umam* dedicated to Nizām al-Mulk and written "in a florid language strangely at odds with its steely mode of thought", as Patricia Crone observes.<sup>13</sup> The treatise in question reflects the deplorable situation in which, due to the powerlessness of the 'Abbasid caliph, there was practically no imam to head the Muslim *umma*. Al-Ġuwaynī tried to resolve a significant dilemma: whether in such exceptional circumstances it was justified to hand over power to the sultan or wazīr? The imamate was based on the traditions—and this is what Al-Ġuwaynī categorically says—but the 'Abbasid caliph was not able to defend the Muslim community any more, or to provide conditions in which the faithful could live in accordance with God's recommendations. What is the relation between religion (*dīn*) and temporal power (*dawla*)? Shortly, in *Ġiyāṭ* Al-Ġuwaynī formulated some practical proposals and laid down a legal basis for a Muslim state in the changed circumstances. He followed the path of Al-Māwardī in his theory of a new relationship between the caliph and the sultan. Al-Ġuwaynī realized that certain changes in the conception of the state were indispensable, and that the theory of the caliph's power as formulated by his predecessors, chiefly Al-Bāḡdādī and Al-Bāqillānī, was no longer relevant.

<sup>12</sup> Al-Ġuwaynī, *Kitāb al-iršād ilā qawāṭi' al-adilla fī uṣūl al-i'tiqād*, ed. M.Y. Mūsā, A. A.-M. 'Abd al-Hāmid, Cairo 1950; G. Hourani, *Juwaynī's criticism of Mutazilite ethics*, in: G. Hourani (ed.), *Reason and Tradition in Islamic Ethics*, Cambridge University Press, Cambridge 2007, pp. 124–134; O. Leaman, S. Albdour, *al-Juwaynī*, *Routledge Encyclopedia of Philosophy*, CD-version.

<sup>13</sup> P. Crone, *Medieval Islamic Political Thought*, op. cit., p. 234.

*Ġiyāṭ* is not the only treatise of this scholar to discuss the theory of the state. Al-Ġuwaynī expounded it also in the famous *Kitāb al-iršād*<sup>14</sup>, and now we will recount very briefly its most important points. Like his predecessors, he categorically rejected the Shi‘i claim that the Prophet Muḥammad had designated ‘Alī as his successor on the Ġadīr Ḥumm by *naṣṣ* (a text of designation). He stated that such a text had not survived, and the first caliph had been designated on the ground of the *iġmā‘* (consensus) of the community.<sup>15</sup> The concept of consensus was regarded by classical jurists as one of the fundamental principles which confer legitimacy on the state. Al-Ġuwaynī sustained the Ash‘arite view, put forward by Al-Aš‘arī in his *Kitāb al-luma‘*<sup>16</sup>, and continued by Al-Bāqillānī and Al-Baġdādī. He pointed out that *iġmā‘* supported a position contrary to the Shi‘i claim, and this unanimous agreement of the Muslim *umma* could not be rejected<sup>17</sup>. As Al-Aš‘arī argues, we cannot reject the validity of the consensus, because nobody can suppose that the *umma* openly (*bi-zāhir*) claims something contrary to its secret view (*bi-bāṭin*) since in such a situation the validity of the entire *umma*’s decision could be challenged.<sup>18</sup> Al-Ġuwaynī declared himself in favour of the election of the caliph, which is another concept asserted by Muslim scholars. Al-Ġuwaynī pointed out that the election had been in use from the beginning of the *umma*, and had never been rejected. In his opinion election by one elector (like Al-Aš‘arī and the others, he calls these electors *ahl al-ḥall wa-’al-‘aqd*) is permitted, because the unanimity of the *umma* is not an obligatory condition for the election.<sup>19</sup>

Al-Ġuwaynī also raises the important question of the number of caliphs holding the office at the same time. He realistically admits the possibility of two caliphs governing simultaneously, on condition, however, that they reside far away from each other.<sup>20</sup> The next important issue, particularly in his period, was the deposition of the imam. He allows the deposition of the caliph if he betrays the principles of Islam or commits a sin of debauchery

<sup>14</sup> Al-Ġuwaynī, *Kitāb al-iršād*; English translation by Paul E. Walker, *A Guide to Conclusive Proofs for the Principles of Belief*, Garnet Publishing, 2001.

<sup>15</sup> *Kitāb al-iršād*, pp. 419–432.

<sup>16</sup> Al-Aš‘arī, *Kitāb al-luma‘*, Beirut 1987, pp. 159–162.

<sup>17</sup> About the development of the concept of *iġmā‘* and its importance as a source of Muslim law, see M. Bernard, *Idjmā‘*, *EI2*

<sup>18</sup> *Kitāb al-luma‘*, p. 159.

<sup>19</sup> *Kitāb al-iršād*, p. 424.

<sup>20</sup> *Ibidem*, p. 425. He was not the first ‘*ālim* to accept such an opinion, before him Al-Baġdādī admitted that this solution was possible, but the caliphs should be separated by a sea.

(*fasaqa wa-fağara*). Moreover, the caliph can withdraw from public life. This was, in Al-Ğuwaynī's opinion, the case of Al-Ḥasan, the grandson of the Prophet, who resigned from the caliphate in favour of Mu'āwiya.<sup>21</sup> The caliph's most important duty is promoting good and forbidding evil (*al-amr bi-al-ma'rūf wa-an-nahy 'an al-munkar*), but when the caliph fails to do so, and his actions become unjust and wrong, the electors are permitted to expel him, by force, if necessary.

As far as the qualities required of the caliph are concerned, Al-Ğuwaynī states that he must come from Muḥammad's tribe, Quraysh, but if it is not possible, the office could be held by another person. God knows best. It is worth noting that this view reflects the complicated political situation in his time and expresses Al-Ğuwaynī's desire to reconcile political theory and practice. Then he points out that the caliph must be a *muğtahid*, educated in Islamic law, because he should issue fatwas himself, without any help of the scholars. He must defend the Muslim frontiers and must be a *qādī*, a judge. The imm must also be a Muslim, male and of free status. All these qualities had been enumerated by Al-Ğuwaynī's predecessors.<sup>22</sup> But Al-Ğuwaynī does not accept the Shi'i doctrine of the sinlessness and purity (*'iṣma*) of the imam, arguing that the caliph's *'iṣma* would require an impeccable character of the other governors also, which is not admitted.<sup>23</sup>

Al-Ğuwaynī was also concerned with the problem, much discussed in his time and posed by the contemporary situation, namely the concept of the excellent (*afdāl*) and the less excellent (*mafḍūl*) caliph. He states that the less excellent can be chosen, when the circumstances compel to do so.<sup>24</sup> In Al-Ğuwaynī's opinion the imam should have special competence (*kifāya*) for governing. This quality was later enumerated by Al-Ğazālī among the most important traits required from the caliph<sup>25</sup>

In short, in *Kitāb al-iršād* Al-Ğuwaynī abandoned the theory of the ideal state based on the principles revealed by God and practised by His *umma* in the beginning. Instead, he proposed a theory of the state with a strong government and a caliph not necessarily coming from the Al-Quraysh tribe. This theory Al-Ğuwaynī developed in *Al-Ğiyāṭ*. He pointed out that the key function of the imamate was to create conditions for the people to live a good life. The basis for this is provided by Islamic law, but only power

<sup>21</sup> Ibidem, p. 426.

<sup>22</sup> J. Danecki, *Polityczne funkcje islamu*, pp. 24–73, passim; Katarzyna Pachniak, *Filozofia polityki muzułmańskiej*, pp. 55–80, passim.

<sup>23</sup> *Kitāb al-iršād*, pp. 426–427.

<sup>24</sup> Ibidem, pp. 429–431.

<sup>25</sup> Al-Ğazālī, *Faḍā'ih al-bāṭiniyya*, Amman 1993, p. 116.



could guarantee the defence of the Muslim *umma* and Muslim lands. Power, in Al-Ġuwaynī's opinion, ought to be combined with *kifāya*, the essential quality in decision-making. Practically all the other qualities could be abandoned, should they interfere with proper government.

The treatise *Ġiyāt* is divided into three main parts.<sup>26</sup> In the first one, and the most important for our analysis, the author discusses the problem of the imamate, the necessity of its existence, the qualities required from the candidate for the office of imam, his election, the circumstances in which his deposition is possible etc. On many points, Al-Ġuwaynī repeated the opinions which he had presented earlier in *Al-Iršād*. He states that the appointment (*naṣab*) of the imām is necessary (*wāğib*), because the imam is the only one who can restrain people from following the way of Satan. A society without a caliph could plunge into anarchy and unbelief.<sup>27</sup>

As far as the choice of the imam is concerned, Al-Ġuwaynī rejected the *naṣṣ* in favour of the *iğmā'* of the community. The expression of the *iğmā'* on this issue is the election (*ihtiyār*) of the caliph by a group of electors (*ahl al-ḥall wa-āl-'aqd*). The political legitimacy of the imamate could not be derived directly from any textual source, since a firm textual statement, having been recognized by the Shi'is (*naṣṣ qāṭi'*), was lacking. Consequently, political legitimacy had to be achieved through the principle of consensus.<sup>28</sup> The question of the imamate should not be subordinated to the rules of reason, but rather to scriptural evidence<sup>29</sup>. But since the Holy Qur'ān did not transmit to us any specific statement on the subject, the validation of the doctrine of the imamate and the person of the imam falls under the principle of *iğmā'*. Following the tradition of his predecessors, Al-Ġuwaynī recalled the early years of Islam, and the events immediately after the death of the Prophet, when the Companions had gathered on the *yawm as-saqīfa*. This is another argument for the rejection of the *naṣṣ*, because the successor of the Prophet had been chosen that day. Al-Ġuwaynī also rejected the Shi'i argument that the designation of the new imam could have taken place in confidence (*bi-kitmān*), without any word. He stated that it was not possible, since such an argument could complicate matters of religion, with regard to the Qur'ān, for instance.<sup>30</sup>

<sup>26</sup> Al-Ġuwaynī, *Ġiyāt al-umam fī iltiyāt al-umam*, ed. 'Abd al-Azīm ad-Dīb, Cairo 1981; second edition, ed. H. al-Manṣūr, Beirut 1997. All references in this article are to the first edition.

<sup>27</sup> *Ġiyāt*, § 19, pp. 23–24.

<sup>28</sup> *Ibidem*, § 30, pp. 28–29.

<sup>29</sup> *Ibidem*, § 52, 53, pp. 44–45.

<sup>30</sup> *Ibidem*, § 43, pp. 37–38.

In Al-Ġuwaynī's opinion an oath of allegiance (*bay'a*) was testimony to the *iḥtiyār*. In the time of the Rightly Guided Caliphs the oath had been given to each of them, including to 'Alī, the fourth and last caliph.<sup>31</sup> The author argues that the imam is established by election executed by the *ahl al-ḥall wa-āl-'aqd* (those who loose and bind). In his time, however, this kind of election was much more complicated in practice as compared to the time of the Prophet, when such a group had included the most respected Muslims. For this reason he discusses the qualities required from them and the circumstances of the caliph's election.

A woman cannot be a member of the group of electors because no woman (neither Fāṭima nor any of the Prophet's wives) had participated in the election of the caliph after Muḥammad's death. Nor can a woman be an imam, Al-Ġuwaynī writes, since she is not allowed to recite the Qur'ān or pronounce the *ḥuṭba*.<sup>32</sup> The electors should come from among the scholars ('*ulamā'*), and *muğtahids*, because the caliph himself should be from among the *muğtahids*, and as such he can be elected only by another *muğtahid*.

He notes that the scholars differ as to the number of electors, they claim that the best number is four, but sometimes there could be only two of them. He asserts that *iḥtiyār* is valid if contracted by a single qualified man.<sup>33</sup>

In Al-Ġuwaynī's theory there appears the important notion of special power (*šawka*), developed later by Al-Ġazālī. The scholars regarded it as the necessary condition for the functioning of the state. At that time it was the Saljuqs that possessed the *šawka*, and for this reason Al-Ġuwaynī discusses it among the conditions of the oath of allegiance. He states that the *bay'a* is valid if taken by one member of *ahl al-ḥall wa-āl-'aqd*, but he should be an important person (*marmūq*), with the *šawka*.<sup>34</sup> In Al-Ġuwaynī's opinion, this quality is so essential that he even allows an oath taken in secret (*bay'a sirra*), if this should ensure the *shawqa* for the imamate.

As far as the qualities of the caliph are concerned, Al-Ġuwaynī divides them into four categories. The first one concerns the senses. The author states that the imam cannot be blind or totally deaf, because such defects make one incapable of governing the state. However, partial deafness is tolerable. The senses of taste and smell have no influence on the matter of the imamate.<sup>35</sup> The second category concerns limbs. Al-Ġuwaynī maintains that the lack of both limbs, upper or lower, makes the imamate invalid, but if

<sup>31</sup> Ibidem, § 64, p. 55.

<sup>32</sup> Ibidem, § 73, 75, pp. 62, 54.

<sup>33</sup> Ibidem, § 87, pp. 69–70.

<sup>34</sup> Ibidem, § 88, 89, pp. 71–72.

<sup>35</sup> Ibidem, § 98–101, p. 88.

only one limb is lacking, this does not disqualify the candidate. Similarly, a person blind in one eye or without a nose can be elected caliph.

In the next category Al-Ġuwaynī discusses the necessary qualities (*ṣifāt lāzima*). The first quality discussed by Al-Ġuwaynī's predecessors was descent from the Quraysh. They generally agreed that the imam should come from the tribe of the Prophet, particularly to counter Fatimid propaganda, since the descent of the Fatimids from the Quraysh was not recognized by the Abbasids. But in *Ġiyāt* Al-Ġuwaynī gives the way to his realistic view on political matters. Throughout the book he stressed that the key quality required in the imamate was *kifāya*, the special ability to govern, related to the capability of organizing armies, defending the frontiers and managing the affairs of the *umma*. He adds that *šawka* is also very important. Against this background Quraysh descent is the least important factor, since governmental ability does not depend on it.<sup>36</sup> Among other qualities required of the caliph Al-Ġuwaynī names: the male sex, liberty, maturity, wisdom, audacity, great vitality.

In the last category he lists acquired qualities (*ṣifāt muktasaba*): *'ilm* (religious learning) and *wara'* (probity). The first one is important: the imam should be a better *muġtahid* than other scholars. Since the imamate concerns also religious matters, the caliph should be an expert on Islamic law, in regard to things lawful and unlawful and all ordinances. Moreover, by virtue of his decision-making powers regarding the matters of the *umma*, he is not obliged to consult (*taqlīd*) other scholars<sup>37</sup>. He is able to act on his own (*istiqlāl*). It should be noted that on this issue Al-Ġuwaynī's opinion is contrary to that of his pupil, Al-Ġazālī. The latter held that the caliph was obliged to consult with and seek advice from other scholars.<sup>38</sup> The caliph-muġtahid is able to win the loyalty of his people and to impose his own opinion, (*ra'y wāḥid*) which could be helpful in the business of administration (*tadbīr*). Al-Ġuwaynī also insists on the importance of the *naġda* (courage)<sup>39</sup> and *kifāya*. Like other Sunni scholars he rejects sinlessness (*'iṣma*) as an obligatory quality of the caliph. On this issue he contradicts all the Shi'i claims and statements that each imm has to be pure and infallible.<sup>40</sup>

The caliph is a guarantor of the existence of the community and a guardian of all of the society's affairs, religious and mundane. Al-Ġuwaynī

<sup>36</sup> Ibidem, § 106–109, pp. 79–82.

<sup>37</sup> Ibidem, § 113, 116, pp. 84 ff.

<sup>38</sup> J. Danecki, *Polityczne funkcje islamu*, pp. 151–154.

<sup>39</sup> Ibidem, § 346–350, pp. 240–244.

<sup>40</sup> *Ġiyāt*, § 126 ff, pp. 92 ff. The issue of *'iṣma* was one of the most discussed questions in medieval political theory. See e.g. K. Pachniak, pp. 116–119.

opens his discussion of the control of religious affairs by distinguishing between the control of the principle of religion (*aṣl ad-dīn*) and its rules (*furūʿ*).<sup>41</sup> On the first matter the caliph's foremost obligation is to protect religion from all the heresies and doubts. For this reason he should be a muḡtahid, capable of recognizing an apostasy (*kufr*) and showing the heretics the way back to the true faith. He also applies the obligatory penalties so that the community might be protected from sinfulness.<sup>42</sup> In the second category the control exerted by the caliph is related to the Friday prayer and supervising the pilgrimage to Mecca; when people neglect their religious duties, such as prayer, the ruler should admonish them.<sup>43</sup>

But religious matters are only one side of the coin, the other one is temporal power, and the two should be related — this thesis seems to be reaffirmed with the establishment of the Saljuqs. Without the ruler's control over mundane affairs, his subjects could not live a good life, conformed to the principles of Islam nor manifest the superiority of Islam over all other religions. Consequently, the caliph's important duty is to undertake jīhd in order to expand the frontiers of Islam and to protect the caliphate, both against the enemies and against apostasies. The author goes on to discuss in detail the circumstances in which the killing of apostates is allowed. Special attention of the caliph should be focused on the borderland.<sup>44</sup> The security of the caliphate's roads is also crucial, since it helps in the spreading of Islam. The ruler also administers justice to thieves and controls the state treasury. He collects legal alms according to the prescription of Islam, which are part of the national wealth.<sup>45</sup> Among the caliph's duties Al-Ġuwaynī also mentions the applying of legal penalties. The ruler should be careful to violate neither God's prohibitions nor the rights of the people. As far as the public treasury is concerned, the caliph is obligated to pay all functionaries in due time and to help the needy, without parsimony and according to legal prescriptions.<sup>46</sup> Al-Ġuwaynī also discusses in detail the conditions of undertaking a ġihād against an enemy, especially he tries to explain how a ġihād could be financed.<sup>47</sup>

Al-Ġuwaynī devotes one chapter to the conditions for the deposition (*halʿ*) of the imām. His predecessors had also discussed the situation in

<sup>41</sup> *Ġiyāṭ*, § 267, 268, pp. 182–183.

<sup>42</sup> *Ibidem*, § 275 ff, pp. 187 ff.

<sup>43</sup> *Ibidem*, § 287–292, pp. 197–200.

<sup>44</sup> *Ibidem*, § 304 ff, 310 ff, pp. 206 ff, 211 ff.

<sup>45</sup> *Ibidem*, § 301 ff, pp. 204 ff.

<sup>46</sup> *Ibidem*, § 351–366, pp. 244–256.

<sup>47</sup> *Ibidem*, § 366 ff, pp. 256 ff.

which the caliph should be removed from office. They listed for example: loss of probity by reason of heresy, injustice, sin, physical and mental infirmities, generally all the circumstances affecting the caliph's capacity to carry out the business of government. Al-Bāqillānī also included loss of liberty through captivity, as the imām was not able at that time to fulfil his responsibilities.<sup>48</sup> Al-Māwardī stressed that the deposition of the caliph could be caused by loss of probity by reason of heresy or evil conduct (*fisq*) or loss of liberty.

Al-Ġuwaynī writes that the imam should be deposed if he abandons religion; in the case of mental illness making him unfit to carry out the responsibilities of his office<sup>49</sup>, and when he loses his liberty by reason of captivity.<sup>50</sup> However, we should note his opinion on the question of the deposition an immoral imam (*fāsiq*). Al-Ġuwaynī asserts that as long as the caliph's *fisq* does not interfere with the proper governing of the state, his immortality has no significance. But the imām has public duties, and if he neglects to fulfill them because of his *fisq*, it would be better to depose such a malefactor.<sup>51</sup> But what does the deposition of the imm really mean? Who effects it and how? Al-Māwardī discusses this issue in his *Al-Aḥkām*, pointing out that sometimes this task belongs to the group of electors, but in fact he does not propose any legal means by which to effect such a deposition. Generally, Muslim scholars found the question of deposition confusing, as in the problem at issue theory and practice did not tally. At that time deposition was not effected by the group of electors, but by force, by the next caliph.

Al-Ġuwaynī argues that sometimes it would be better for the people to be deprived of the leader-wrongdoer.<sup>52</sup> They could then practise the shara according to their own opinion. He presents some ways in which deposition should be effected, pointing out, however, the difficulties involved in the deposition of the evil caliph and the election of the next one; sometimes it is simply impossible to depose the ruler or to find a new candidate with all the required qualities.<sup>53</sup> But if the electors are able to find an appropriate candidate, they could announce the caliph's deposition and elect a new one. He has an obligation to remove the former caliph; if the ruler refuses to step

<sup>48</sup> Al-Bāqillānī, *At-Tamhīd fī ar-radd alā al-mulḥida al-mu'aṭṭila*, in: Y. Ībiš, *Nuṣūṣ al-fīkr as-siyāsī al-islāmī. Al-Imāma 'inda as-sunna*, p. 132.

<sup>49</sup> *Ġiyāt*, § 175, p. 122.

<sup>50</sup> *Ibidem*, § 177, p. 123.

<sup>51</sup> *Ibidem*, § 138–152, pp. 98–107.

<sup>52</sup> *Ibidem*, § 151, p. 106.

<sup>53</sup> *Ibidem*, § 155–158, pp. 109–110.

down, it is permitted to treat him as one of the rebels. But Al-Ġuwaynī envisages a situation in which the removal of the rebel could provoke disorder in the *umma*, and admits that leaving him in place is then possible.

The third possible case of deposition, reflecting the circumstances in which the Seljuks had come to power, is the most interesting. The author states that ordinary people are not permitted to take action to rescue the state, but a powerful, prestigious man, supported by his followers, could do so. As such he is a person who commands good and forbids evil (*al-amr bi-al ma'rūf wa-an-nahy 'an al-munkar*). If Islam is in danger, such an individual is then allowed to depose the caliph. The author clearly has in mind his protector, Nizām al-Mulk.

Al-Ġuwaynī states that the imam is not allowed to depose himself, if he knows that such an act could provoke disorder in the society. On the other hand, if his self-deposition could help maintain order in the *umma*, he has to step down.<sup>54</sup>

Al-Ġuwaynī belongs to those Muslim theorists who followed the way paved by Al-Māwardī as far as the formal institutions of government are concerned. He allows delegation of the caliph's power to his functionaries, a practice then commonly accepted. We could recognize in it the natural consequence of his views on the nature of the imamate: the uppermost consideration is to ensure that the imam has real power and can thus act effectively.

The author discusses the officials of the caliph, dividing them into several groups: those to whom full powers of the caliph are entrusted, and those who obtain only limited powers for specific purposes. The first category is divided into those to whom power is entrusted by the caliph himself upon his death under a special act (*'ahd*), and those who seize the caliphate by conquest during the former caliph's lifetime. The first instance is in conformity with the Muslim law and the *iğmā'*. The candidate should be endowed with all the required qualities, and after the death of the predecessor he duly becomes the true imam.<sup>55</sup> The scholar allows hereditary caliphate, in which the father designates his son as the successor, but he observes that the latter should not assume office before his father's death.

When the caliph delegates (*fawwāda*) his power to another person while retaining control over the whole, the person to whom his duties are delegated is called not a successor, but a *wazīr*. The latter does not become a caliph even though he enjoys considerable independence. Like Al-Māwardī, Al-Ġuwaynī states that in the case of designation for the wazirate the caliph's

<sup>54</sup> Ibidem, § 185–191, pp. 128–131.

<sup>55</sup> Ibidem, § 195–200, pp. 133–136.

investiture is needed. A good imam should delegate his powers, as he is not able to run the whole administration personally, but the wazīr's power is exercised within defined limits and under the caliph's supervision.<sup>56</sup> The author stresses that the wazīr must not be as independent (*laysa 'indahū istiqlāl*) as the caliph himself. The qualities required from the wazīr are the same as from the imam with the exception of the Quraysh origin. Al-Ġuwaynī mentions intelligence among the essential qualities (*fiṭna*), but contrary to Al-Māwardī he states that appointment of a non-Muslim, a Christian or a Jew (*dimmi*), for the office is not allowed. He argues that a non-Muslim could not be a good Muslim.<sup>57</sup> Let us note here that Al-Māwardī held that dhimmis and slaves might only become wazīrs of execution (*tanfid*), but not wazīrs of delegation (*tafwīd*).<sup>58</sup>

Apart from the wazīr, the caliph could also appoint other functionaries to help him in the business of administration. Generally, the qualities required of such an official are limited to the special skills needed to fulfill his function. Al-Ġuwaynī also distinguishes functionaries whom the caliph entrusts with special functions, for example the offices (*wilāyāt*) concerning marriages, the protection of the treasure, and providing for the basic needs of his people. He defines the responsibilities involved in each type of office.

Al-Ġuwaynī is also concerned with the problem of the caliph less excellent (*mafḍūl*). Generally, his predecessors accepted the imamate of such a person, pointing out that the choice of the *mafḍūl* is better than disorders. Al-Ġuwaynī maintains that the *mafḍūl* could be chosen, but only on condition that there is no *imām afdal*.

Generally he rejects the possibility of two imams holding the office simultaneously, since it could provoke disorder and the people could not be sure which of them they should obey. But if two caliphs reside in widely separated areas, their coexistence is possible.<sup>59</sup>

Al-Ġuwaynī in his treatise continued the thought of Al-Māwardī, for whom the first problem was to provide a ruler who embodied the political power and the unity of the *umma*. For himself, like for his most celebrated pupil, Al-Ġazālī, who accepted most of the propositions of his master, the imamate by usurpation was better than powerless caliphate of the Abbasids. Once again in Islam the theory described reality.

<sup>56</sup> Ibidem, § 229 ff., pp. 153 ff.

<sup>57</sup> Ibidem, § 232–233, pp. 155–157.

<sup>58</sup> Al-Māwardī, *Al-Aḥkām al-sulṭāniyya*, pp. 25–27.

<sup>59</sup> *Ġiyāt*, § 252–262, pp. 172–179.