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THE CALIPHS, THE 'ULAMĀ', AND THE LAW:  
DEFINING THE ROLE AND FUNCTION OF THE CALIPH IN  
THE EARLY 'ABBĀSID PERIOD

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*Abstract*

The early 'Abbāsīd period is usually thought of as a time when a definitive and enduring separation between religion and politics took place. On this view, expressed most notably by Lapidus and Crone and Hinds, the failure of the *Mihna* instituted by the caliph al-Ma'mūn, a major showdown with prominent 'ulamā', is taken as the critical moment which marked the end of any involvement of the caliphs in matters of law. Arguing against any such separation between the religious or legal and the political realms, this essay analyses various indications in juristic and historical sources from the early 'Abbāsīd period to show that the caliph continued to be recognized as a participant in the function of commenting on or resolving obscure matters of a legal import. There is, moreover, considerable evidence to show caliphal participation in religious life in general, before as well as after the *Mihna*, and no evidence to indicate a separation between religion and politics.

*Introduction*

The question of the caliph's position in relation to the law in the first centuries of Islam is a subject of considerable significance for the social and political history of Islam, as it also is for the history of Islamic law. The terms of any inquiry into what role (if any) the caliph had in resolving legal problems or, generally, in religious life must be defined, of course, according to the peculiarities of the specific period about which this question is posed. In this essay, I shall address this question with reference to the early 'Abbāsīd era—understood here as the period from the establishment of the 'Abbāsīd dynasty in 132/750 to the death of al-Mutawakkil in 247/861.

The early 'Abbāsīd period saw the emergence of the religious scholars, the 'ulamā', as a visible and increasingly influential religious elite, the beginnings of schools of law, major developments in the study

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of *ḥadīth* and towards the formalization of the concept of the Prophet's *sunna*, and other developments which eventually led to the crystallization of Sunnī and Shī'ī Islam. This period also witnessed some remarkable initiatives, which we shall briefly review in this essay, towards defining and regulating the relationship between the caliphs and the 'ulamā'. Considering the significance of this period in Islamic intellectual and social history, it is not surprising that much of the debate on questions of religious authority has tended to be focused on the early 'Abbāsīd era; this essay will not be a *bid'a* so far as this tradition is concerned. It is striking, however, that despite varied approaches to questions of religious authority and to early 'Abbāsīd history in general there is remarkable agreement among modern scholars on the "classical model", so to speak, of the relations between the caliphs and the 'ulamā' and of the caliph's place and function (or rather, the lack of any) in the sphere of the law. This model, which postulates a comprehensive separation between religion and the state, may be paraphrased thus: the caliphs and the 'ulamā' were in sharp conflict over matters of religious authority; the caliphs lost the contest and came effectively to be excluded from all say in matters of the law and in whatever else the 'ulamā' defined as their exclusive preserve; and, once in place, this model of separation essentially persisted for much of medieval Islamic history.

In an influential article on the "Separation of State and Religion in the Development of Early Islamic Society", Ira Lapidus has argued, for instance, that the function of *al-amr bi'l-ma'rūf* came to be effectively taken over from the caliph by religious leaders and vigilante groups in the wake of the civil war between al-Amin (r. 193-98/809-13) and al-Ma'mūn (r. 198-218/813-33), and that the loss of this function in turn signifies the end of the caliph's role in the religious sphere of the community's life. The failure of the *Mihna*, the "Inquisition" instituted by al-Ma'mūn to have the *fuqahā'* and *qāḍīs* conform to the doctrine of the "createdness" of the Qur'ān, only confirmed this separation between religion and state, a separation which also entailed one between society and state.<sup>1</sup> Tilman Nagel sees the ideological initiatives of the early 'Abbāsīd caliphs as ultimately unsuccessful efforts to build their authority on the idea of the *sunna* or of the *imāma* (or both), with the

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<sup>1</sup> Ira M. Lapidus, "The Separation of State and Religion in the Development of Early Islamic Society", *International Journal of Middle East Studies*, VI (1975), 363-85. Also see id., "The Evolution of Muslim Urban Society", *Comparative Studies in Society and History*, XV (1973), 21-50, esp. 28ff.; id., *A History of Islamic Societies* (Cambridge: Cambridge University Press, 1988), 120ff.

result that Sunnī Islam developed not just in separation from, but in opposition to, the 'Abbāsids.<sup>2</sup> While Nagel considers devotion to the *sunna* and the idea of the *imāma* as “*Ersatzinstitutionen*” intended to substitute for the Prophet’s inimitable authority, Patricia Crone and Martin Hinds argue that religious authority did not die with the Prophet but rather continued in the person of “God’s caliph”.<sup>3</sup> On their showing, the Umayyad caliphs enjoyed religious authority, as also did the early 'Abbāsids. However, it is argued that by the time the 'Abbāsids came to power, the 'ulamā', armed with the concept of an immutable *sunna* of the Prophet of which they alone claimed to be the sole interpreters, were already well-advanced on the way to terminating the caliph’s religious authority. The showdown did come with al-Ma'mūn, but “the fact that the 'ulamā' had managed to produce even al-Shāfi'i before the collision came evidently meant that al-Ma'mūn’s chances of winning were slim”;<sup>4</sup> it was not long before “the vulgar masses [acting] ... under the leadership of Ibn Ḥanbal ... rejected caliphal guidance in religious matters once and for all.”<sup>5</sup>

This essay seeks to reexamine some of the key assumptions of views such as the foregoing. It will be argued here that except for the period of the *Miḥna*, there is little evidence to suggest that the early 'Abbāsīd caliphs were competing with the 'ulamā' or challenging the latter on the prerogative to define and interpret matters of law and dogma. Rather, caliphs prior to al-Ma'mūn seem essentially to have subscribed to the emerging Sunnī 'ulamā's views of what the caliph's role and function ought to be. The scholars, inasmuch as it is possible to generalize about their views, did not seek to separate or divorce religion from the state, or to divest the caliph of any role in matters of

<sup>2</sup> Tilman Nagel, *Rechtleitung und Kalifat: Versuch über eine Grundfrage der islamischen Geschichte* (Bonn: Bonner orientalische Studien [Neue Serie, Bd. 27], 1975).

<sup>3</sup> P. Crone and M. Hinds, *God's Caliph: Religious authority in the first centuries of Islam* (Cambridge: Cambridge University Press, 1986).

<sup>4</sup> *Ibid.*, 93. That it took at least a century after al-Shāfi'i's death (204/820) for his influence to be felt should caution us against the authors' appraisal that “al-Shāfi'i's views were simply nails in the caliphal coffin.” On the slow growth of al-Shāfi'i's influence, see Wael B. Hallaq, “Was al-Shāfi'i the Master Architect of Sunnī Jurisprudence?”, *International Journal of Middle East Studies*, XXV (1993), 587-605; cf. Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 67-68.

<sup>5</sup> *Ibid.*, 96. Also see *Encyclopaedia of Islam*, new edition (Leiden: E. J. Brill, 1960-. [hereafter *El(2)*]), s.v. “Miḥna” (M. Hinds). In an earlier work, *Slaves on Horses: The evolution of the Islamic polity* (Cambridge: Cambridge University Press, 1980), Patricia Crone had come to a similar conclusion regarding the separation of religion and the state, though as part of a more ambitious argument. See, for instance, *Slaves on Horses*, 85.

law. The caliph's participation in religious life was not in competition with, or over and above that of, the emergent Sunnī 'ulamā', but in conjunction with them; and both the caliphs before and after the *Mihna* and the Sunnī 'ulamā' all along seem to have recognized this.

In what follows, I shall first review three treatises, all purporting to be from the early 'Abbāsīd period, which address questions of the caliph's role and function as well as his position vis-à-vis the law. Some of what is known about the participation of the caliphs in matters of law in the early 'Abbāsīd period will be discussed next, followed by a brief analysis of how the *Mihna* of al-Ma'mūn tried, but failed, to alter the pattern and principles on which the relations of the caliphs and the 'ulamā' had come to be based in early 'Abbāsīd times.

*Defining the Caliph's Function: Three Second/Eighth Century Views*

Of the texts to be analyzed here, the earliest is the *Risāla fi'l ṣaḥāba* by Ibn al-Muqaffa' (d. ca. 139/756), a secretarial official of the caliph al-Manṣūr (r. 136-58/753-75). While the *Risāla* analyzes the problem of the caliph's function and role from the "secular" side, so to speak, the other two works come from the *fuqahā'*. One purports to be a detailed letter from a Basran *qādī*, 'Ubaydallāh b. al-Ḥasan al-'Anbarī (d. 168/785), to the caliph al-Mahdī (r. 158-69/775-85), and is a document of quite considerable interest. The other work, of far wider scope and greater interest, is the treatise on taxation which the celebrated chief *qādī* Abū Yūsuf (d. 182/798) is reported to have addressed to the caliph Hārūn al-Rashīd (r. 170-93/786-809). The attribution of this treatise to Abū Yūsuf has recently been questioned by Norman Calder, though, as will be briefly argued in due course, Calder's reasoning is far from being conclusive or convincing. The attribution of this work to Abū Yūsuf will, therefore, be accepted here, and the work will be analyzed as a product of, and as reflecting, early 'Abbāsīd times.

A. *Ibn al-Muqaffa's* *Risāla*

Of the wide-ranging concerns of Ibn al-Muqaffa' in his *Risāla fi'l-ṣaḥāba*, we need note here only what he has to say as regards the caliph's religious and, specifically, legal authority.<sup>6</sup> The caliph, he

<sup>6</sup> On Ibn al-Muqaffa', see *El*(2), s.v. (F. Gabrieli); D. Sourdel, "La biographie d'Ibn al-Muqaffa' d'après les sources anciennes", *Arabica*, 1 (1954), 307-23; J. D. Latham, "Ibn al-Muqaffa' and early 'Abbāsīd Prose", in J. Ashtiany et al., eds., *The Cambridge History of Arabic Literature: 'Abbāsīd Belle-lettres* (Cambridge: Cambridge University Press, 1990), 48-77; G. E. Lampe, Jr., "Ibn al-Muqaffa':

suggests, ought to write an "*amān*" containing principles which must be faithfully adhered to by the Khurāsānī troops, so that their wayward religious beliefs will be reformed.<sup>7</sup> To the caliph also belongs the sole prerogative, he says, to enact and promulgate legal decisions and doctrines in the form of a uniform code (*kitāb jāmi'*); and it is for him rather than anyone else to define what normative *sunna* would consist of at any given time.<sup>8</sup> No judicial decisions are thereafter to be allowed to contravene what is thus formalized in terms of the caliph's binding *ra'y*.<sup>9</sup>

If Ibn al-Muqaffa's advice tends rather blatantly in the direction of making the caliph the source of religious authority, what function or role does he envisage for the 'ulamā'? In so far as his "*ahl al-fiqh wa'l-sunna wa'l-siyar wa'l-naṣiḥa*"<sup>10</sup> are to be taken as religious scholars (or at least as a people including religious scholars) Ibn al-Muqaffa makes it clear that he conceives of their role essentially as functionaries of the caliph and part of the state apparatus. Serving as the caliph's "companions" (*ṣahāba*) is one of the functions he has in mind for them.<sup>11</sup> More striking perhaps is his suggestion that they should act as moral administrators of the communities they live in, serving to discipline and reform the people, restrain them from innovations (*bida'*) as well as civil strife (*fītan*), supervise their affairs, and report to higher authorities on matters they cannot themselves handle.<sup>12</sup>

Ibn al-Muqaffa's suggestions are of considerable interest for articulating the possibilities that may have existed, or been considered, at the outset of the 'Abbāsīd rule. That this advice comes from a Persian

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political and legal theorist and reformer", unpublished Ph.D. diss., Johns Hopkins Univ., 1987.

The text of the *Risāla* used here is that published by C. Pellat, *Ibn al-Muqaffa': "conseiller" du calife* (Paris: G.-P. Maisonneuve et Larose, 1976). For an analysis of the contents of the *Risāla*, see S. D. Goitein, "A Turning Point in the History of the Islamic State", in his *Studies on Islamic History and Institutions* (Leiden: E. J. Brill, 1966), 149-67. Also see Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 58-59, 95, 102-03, 137.

<sup>7</sup> *Risāla*, §11. Latham ("Ibn al-Muqaffa'", 67) translates *amān* as a "religious code". Goitein (*Studies*, 167) uses the term "catechism" for it, and Pellat (*Ibn al-Muqaffa'*, p. 24, §11) "règlement". Lampe ("Ibn al-Muqaffa'", 91) simply renders it as manual. On this term, also cf. S. Shaked, "From Iran to Islam: notes on some themes in transmission", *Jerusalem Studies in Arabic and Islam*, V (1984), 34. That Ibn al-Muqaffa' conceived of this "*amān*" as a document of some religious significance is clear from the context.

<sup>8</sup> *Risāla*, §36; and cf. generally §§34-37.

<sup>9</sup> *Ibid.*, §36.

<sup>10</sup> *Ibid.*, §55.

<sup>11</sup> *Ibid.*, §49.

<sup>12</sup> *Ibid.*, §55-56; cf. *ibid.*, §49. Also cf. Schacht, *Origins*, 137.

bureaucrat is not fortuitous, for it suggests the vision of a determinate religious establishment working as part of the administrative bureaucracy, somewhat in the ancient Persian tradition. Ibn al-Muqaffa's advice can also be interpreted as a plea to the caliph to check the autonomy of the religious scholars and to make them dependent on himself. The suggestion concerning the caliph's enactment of legal doctrine says as much with reference to the need for uniformity of legal practice in the empire, and the advice to co-opt the 'ulamā' into the service of the state can also be construed to have similar implications.

If Ibn al-Muqaffa's suggestions ever reached al-Manṣūr, we know nothing about how the caliph reacted to them. There are some reports, however, according to which the caliph intended to promulgate the *Muwattā'* of the Medinese jurist Mālik b. Anas (d. 179/795) as the single and uniform basis of legal decisions in the empire, certain accounts even asserting that it was al-Manṣūr himself who commissioned the *Muwattā'*. Mālik, for his part, remained unimpressed with what the caliph supposedly intended, dissuading him by pointing out precisely what Ibn al-Muqaffa had also noted, but to opposite effect.<sup>13</sup> While Ibn al-Muqaffa had called for the caliph's promulgating a code because legal diversity was too inconvenient, Mālik reportedly argued that such regional diversity in legal matters was too developed to be harmonized or regulated.<sup>14</sup>

It is impossible to be certain about the authenticity of the aforementioned reports concerning Mālik. There is the possibility that they may have come about as an effort to extol Mālik by suggesting, for example, that he was considered the most authoritative of the *fuqahā'*

<sup>13</sup> Probably the earliest available source on al-Manṣūr's asking Mālik to compile the *Muwattā'* is 'Abd al-Malik b. Ḥabīb (d. 238/852), *Kitāb al-ta'rikh*, ed. J. Aguadé (Madrid: Instituto de Cooperacion con el Mundo Arabe, 1991), 160 (nr. 489); cf. Crone and Hinds, *God's Caliph*, 86 n. 184. U. F. Abd Allah, "Mālik's Concept of 'Amal in the light of Māliki Theory", unpublished Ph.D. dissertation, Univ. of Chicago, 1978, I, 100ff., notes that several works similar to Mālik's *Muwattā'* were written at this time; he suggests that the possibility of one of these being officially promulgated may have played a part in encouraging their composition. Other sources for the exchange between al-Manṣūr and Mālik include: Ibn Abī Ḥātim, *Kitāb al-jarḥ wa'l-ta'dīl* (Beirut: Dār al-kutub al-'ilmiyya, 1952), 29, cited in G. H. A. Juynboll, *Muslim Tradition* (Cambridge: Cambridge University Press, 1983), 62-63; al-Ṭabarī, *al-Muntakhab min kitāb dhayl al-mudhayyal min ta'rikh al-ṣahāba wa'l-tābi'in*, published in his *Ta'rikh al-rusul wa'l-mulūk* (ed. M. J. De Goeje [Leiden: E. J. Brill, 1879-1901], III, 2295-2561), 2519-20, cited in Crone and Hinds, *God's Caliph*, 86 n. 185.

<sup>14</sup> Later al-Shāfi'i was to expend much effort in his *Risāla* justifying such diversity, in the form of *ikhṭilāf*, among the scholars. See Norman Calder, "Ikhtilāf and Ijmā' in Shāfi'i's *Risāla*", *Studia Islamica*, LVIII (1983), 55-81. (I owe this reference to Professor W. B. Hallaq.)

by the caliph; or that as a paragon of the (later) Sunnī orthodox spirit, he respected and was prepared to work with the fact that there existed a diversity of approaches to matters of law. Whatever their provenance, however, these reports reveal a quite different understanding of the caliph's function than what Ibn al-Muqaffa' prescribes, and they may even be thought of as a comment on ideas such as Ibn al-Muqaffa's: it is an *'ālim* the caliph invites to draw up a legal code, proposing to make it the law of the land; the *'ālim* refuses to oblige, and the caliph apparently leaves it at that. The moral of the story, if indeed it is no more than a story, is that *no one*, not even a prominent *'ālim*, has the authority to draw up a code which might be given the sanction of law. The story is not about the separation of religion and politics, as one might be tempted to suppose, but only about the way legal understanding (*fiqh*) properly evolves in an Islamic society.

#### B. *al-'Anbarī's Letter to al-Mahdī*

Like Ibn al-Muqaffa's *Risāla*, the letter of the Basran *qādī* 'Ubayd Allāh b. al-Ḥasan al-'Anbarī is primarily a treatise on administration.<sup>15</sup> Its basic concern is to draw the attention of the caliph, al-Mahdī, to four administrative matters which, according to the author, require the caliph's concern more than anything else does. These include: (1) the

<sup>15</sup> On al-'Anbarī, see Muḥammad b. Khalaf Wakī', *Akhbār al-quḍāt*, ed. 'Abd al-'Aziz Muṣṭafā al-Marāghī (Cairo: Maṭba'at al-istiḳāma, 1947-1950), II, 88-123 (the most detailed treatment by far); Khalifa b. Khayyāt, *Ta'rikh*, ed. Akram Diyā' al-'Umārī (Najaf: Maṭba'at al-Adab, 1967), 457, 462, 470, 472, 473; Ibn Hajar, *Tahdhīb al-Tahdhīb* (Haydarabad: Maṭba'at majlis dā'irat al-ma'ārif al-nizāmiyya, 1325-27 A.H.), VII, 7ff. For further references to the sources on him, cf. the editor's footnote in al-Dhahabī, *Ta'rikh al-Islām*, ed. 'Abd al-Salām Tadmuri (Beirut: Dār al-kitāb al-'Arabī, 1987), X, 344, n. 1. For a brief study of al-'Anbarī, see J. van Ess, "La liberté du juge dans le milieu basrien du VIIIe siècle (IIe siècle de l'hégire)", in G. Makdisi et al., eds., *La notion de liberté au moyen âge: Islam, Byzance, Occident* (Paris: Société d'Édition les Belles Lettres, 1985), 25-35; id., *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra: Eine Geschichte des religiösen Denken im frühen Islam* (Berlin and New York: Walter de Gruyter, 1991-), II, 155-64.

Wakī', *Akhbār*, II, 97-107, is apparently the only available source for al-'Anbarī's letter. For brief references to this letter, cf. Crone and Hinds, *God's Caliph*, 93, 98, 103; I. Blay-Abramski, "From Damascus to Baghdad: the 'Abbāsīd administrative system as a product of the Umayyad heritage (41/661-320/932)", Ph.D. diss., Princeton, 1987, 163; id., "The Judiciary (*Qādis*) as a Governmental-Administrative Tool in Early Islam", *Journal of the Economic and Social History of the Orient*, XXXV (1992), 51, 66ff., 70; van Ess, "La liberté", 28; id., *Theologie und Gesellschaft*, II, 167; Ihsān 'Abbās's introduction to his edition of the *Kitāb al-kharāj* by Abū Yūsuf (Beirut and London: Dār al-Shurūq, 1985), 46-48. It should be noted that none of these scholars call into question the authenticity of al-'Anbarī's letter.

frontiers of the state (*thughūr*) whose defences have to be constantly guarded; (2) attention to the laws which are in force and to the affairs of those who administer them; (3) the collection of *fay'*, the administration of the lands and the people liable for its payment, and the proper distribution of the proceeds of *fay'* among those entitled to it; and, finally (4), the levy and administration of the *ṣadaqāt* taxes.

There is, however, more to this short treatise than advice on administrative matters (which need not detain us here) or of the use of religious formulae to buttress it. A notable feature of this work is the author's consistent reference to the practice of the pious. The identity of these pious men is not quite clear. One passage suggests that they include prophets (*anbiyā'*, *rusul*), rightly-guided caliphs (*al-khulafā' al-rāshidīn*), and leading scholars (*al-a'imma al-fuqahā' al-ṣiddīqīn*).<sup>16</sup> Further on in the same passage, a more picturesque characterization is offered:

They are rightly-guided guides (*al-hudāt al-muhtadūn*) and compassionate imāms (*al-a'imma al-ā'idūn*),...<sup>17</sup> men of knowledge (*'ulamā'*) [and?] deputies [of God?] (*al-khulafā'*),<sup>18</sup> in whom refuge is sought and who are unblemished (*al-mu'taṣam bihim wa'l-ma'sūmūn*). They [include] the prophets, the veracious ones (*al-ṣiddīqūn*), the martyrs (*al-shuhadā'*), and the upright people (*al-ṣāliḥūn*)....Through them has God strengthened this religion ... charted its path and established His ordinances among the people: thereby the [share of the] weak was taken [back for them] from the strong, that of the wronged from the oppressor ... and that of the pious from the vile; [through them] were the ways of the people straightened ... the land became peaceful and the people upright.<sup>19</sup>

<sup>16</sup> Waki', *Akhbār*, II, 97.

<sup>17</sup> The signification of the term *al-a'imma* is uncertain here. It could refer to caliphs or to scholars or to both. Note, however, that on several occasions al-'Anbarī uses the term "*imām*" to refer unequivocally to the caliph: Waki', *Akhbār*, II, 99 (l. 18), 100 (l. 15), 101 (l. 18), 103 (l. 14), 104 (l. 14), 105 (l. 5). On the variety of ways in which the term "*imām*" is used in early juristic literature, see Norman Calder, "The Significance of the Term *Imām* in Early Islamic Jurisprudence", *Zeitschrift für Geschichte der arabisch-islamischen Wissenschaften*, ed. F. Sezgin, I (Frankfurt, 1984), 253-64.

The sense of "*al-ā'idūn*" too is rather uncertain. According to the *Lisān al-'Arab*, someone characterized as "*dhū safh wa 'ā'ida*" is one who is "kind and compassionate" ("*dhū 'afw wa ta'attuf*"). Ibn Manẓūr, *Lisān al-'Arab* (Beirut: Dār Ṣādir, 1955-56), III, 316. Note too that a "*mu'id min al-rijāl*" is one "who knows things, one who is not inexperienced" ("*al-ālim bi'l-umūr alladhī laysa bi-ghumr*"). *Ibid.*, 315.

<sup>18</sup> The term "*khulafā'*" as used here need not exclusively refer to caliphs, though it is very likely that they are among those the author has in mind.

<sup>19</sup> Waki', *Akhbār*, II, 98.

For all its rhetorical effect, al-'Anbarī's text is vague on who exactly comprises this body of the elect. There is little doubt, however, that it is not only the prophets, nor only the religious scholars who do so, though both are of course very prominent. Some of the caliphs are certainly there, though they are left anonymous.<sup>20</sup> The elect need not all belong to a bygone age, though the sense is that most do. In any case, a sketch of the piety and practice of the elect forms the context in which the caliph al-Mahdī is called upon to follow them in their rectitude. One of the points the author wishes rather obliquely to bring home is that in the case of the rulers among these pious forbears, piety also entailed worldly success;<sup>21</sup> further, that the ruler's obedience to God's commands increased the subjects' obedience to the ruler as well.<sup>22</sup>

Perhaps the most interesting, if somewhat problematic feature of the letter attributed to al-'Anbarī is, however, the delineation, in one of its passages, of the bases of authority to which administrative and legal decisions (*al-ahkām*) should conform. First of all comes the Qur'an; then it is the *sunna* of the Prophet which has to be consulted for such *ahkām*; and in case the *sunna* too has nothing to offer on the matter at hand, the decision is to be made in accordance with what the leading scholars have agreed upon (*mā ajma'a 'alayhi al-a'imma al-fuqahā'*).<sup>23</sup> If none of these three sources of authority give any guidance, however, the governor (*al-ḥākim*) is to have recourse to his *ijtihād*, in consultation with the scholars (*ahl al-'ilm*), provided the caliph (*al-imām*) has permitted him this function (sc. *ijtihād*).<sup>24</sup> Elsewhere in the letter, the

<sup>20</sup> al-'Anbarī also refers to *al-khulafā' al-rāshidūn*, though the reference does not necessarily mean that he has the Rāshidūn caliphs of the Sunnī tradition in mind here, or all four of them, or only them. Note that the only caliphs who are actually named in this group of the elect are 'Umar I, and 'Umar II. See Waki', *Akhbār*, II, 103. al-Manṣūr is also mentioned in the letter in a certain context (ibid., 102), but hardly as a member of the elite group in question.

<sup>21</sup> Ibid., 98.

<sup>22</sup> Ibid., 98; also cf. ibid., 100, where the same point is made with specific reference to the caliph al-Mahdī himself.

<sup>23</sup> For the use of this, and similar, expressions, which were used before the technical term "*ijmā'*" (=consensus) came into vogue, see Z. I. Ansari, "Islamic Juristic Terminology before al-Shāfi'i: A semantic analysis with special reference to Kufa", *Arabica*, XIX (1972), 282ff.

<sup>24</sup> Waki', *Akhbār*, II, 101. Cf. Abū 'Ubayd al-Qāsim b. Sallām, *Kitāb al-amwāl*, ed. M. H. al-Fiḳī (Cairo: Maṭba'at al-'Āmira, 1353 A.H.), 171-71 (paras 467-74), where an 'Abbāsīd governor of Hārūn's time, 'Abd al-Malik b. Ṣāliḥ, is reported to have written to prominent *fuqahā'* on how he should respond to an act of aggression/treaty violation (*ḥadāth*) by the Cypriots. "The *fuqahā'* at that time were numerous", Abū 'Ubayd notes (p. 171), and reproduces (from the governor's *diwān*, as he tells us) the responsa of the following eight: al-Layth b. Sa'd, Mālik b. Anas, Sufyān b. 'Uyayna, Mūsā b. A'yan, Ismā'il b. 'Ayyāsh, Yahyā b. Ḥamza, Abū Ishāq al-Fazārī and Makhlad b. Ḥusayn. Abū 'Ubayd informs us that these

author briefly returns to the same question, but with a rather different emphasis:

In such matters confronting the people about which the *a'imma* are perturbed, and which are not regulated by the Qur'ān or the *sunna* of the Prophet, no one is to have precedence over the *walī amr al-muslimīn* and the *imām jamā'atihim*. Such matters are not to be decided without him; rather it is incumbent on those who are subordinate to him to refer these matters to him and to accept his ruling on them.<sup>25</sup>

The second passage quoted here seems to refer to a concrete historical situation, as does much else in the treatise. It is apparently directed against the tendency of provincial governors to take the initiative in deciding the matters at hand without deferring them to the caliph. Instances of such initiative being assumed by provincial governors are well-attested for our period.<sup>26</sup> Taking both the aforementioned passages (which refer to the sources of authority) together, the author's point seems to be that if any initiative belongs to the caliph's subordinate officials, it is only in so far as the caliph has specifically delegated it to them. For it is ultimately the *caliph's* prerogative to decide matters on which other sources of law are silent. Even as he calls for the

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*fuqahā'* differed in their opinions and advice, but that those who counselled leniency outnumbered those who stood for severe retribution (ibid., 171). In making up his mind on what advice to follow, the governor would probably have exercised his own *ijtihād*. It is quite remarkable that the whole episode, as reported here, does not appear to have involved the caliph at all. But then this governor was known for his independent ways, and was subsequently to fall a victim to the caliph's suspicions, possibly on this account. On 'Abd al-Malik b. Šāliḥ see *EI*(2), s.v. (K. V. Zettersteen); H. Kennedy, *The Early Abbasid Caliphate* (London: Croom Helm, 1981), 74-75 and index s.v.

<sup>25</sup> Wakī', *Akhbār*, II, 105. The letter's original text reads, in part: "... *fa-inna walī amr al-muslimīn wa imām jamā'atihim lā yuqaddam fihā bayna yadayhi, wa lā yuqḍā dūnahu bal 'alā' man dūnahu raf'u dhālik ilayhi wa'l taslim li-mā qaḍā.*" The "*walī amr al-muslimīn*" and "*imām jamā'atihim*" here is to be understood as a reference to the caliph and not to the provincial governor. Compare Abū Yūsuf's "*wulāt al-amr*" whom Allāh has made "*khulafā' fi ardihī*": *Kharāj*, 71. The reference here is evidently to the caliphs; but see ibid., 262, l. 7, and 266, l. 4, where 'Umar I is quoted as referring to his governors as "*wulāt bi'l-ḥaqq*" and "*a'immat al-hudā*". On the term "imam", cf. Calder, "Significance", 253-264. *Pace* Calder, there is little justification "to see caliphal use of the term *imām* as an attempt to steal the jurists' clothes" (ibid., 264). Early juristic texts do not restrict the term *imām* to the caliph, but nowhere is there any hint that its use for the caliph signifies a competition with the jurists, or that it was used for leading jurists (and traditionists) before being used for caliphs. In numerous instances, of course, jurists themselves used the term unequivocally for the caliph. See al-Shāfi'i, *al-Umm* (Būlāq, 1321-25 A.H.; reprinted Cairo: al-Dār al-Miṣriyya li'l-ta'lif wa'l-tarjama, 1407 A.H.), IV, 118-22.

<sup>26</sup> Cf. Jacob Lassner, *The Shaping of 'Abbasid Rule* (Princeton: Princeton University Press, 1980), 3-90 passim.

conformity of administrative practice with what the sources of religious authority prescribe, al-'Anbarī makes the caliph himself an auxiliary of that chain of religious authority. The caliph too has a say in resolving legal problems which confront the people. His is a residual authority, which comes into play when all the other sources of religious authority are silent (and "the scholars are perturbed"), but it is no less real for being such.

Though the two passages discussed above seem, in several of their implications, to conform to the conditions of the early 'Abbāsīd period, they also raise some suspicion regarding authenticity. The reference to a hierarchy of the bases or sources of religious authority, to which the ruler's *ahkām* should conform, may seem to presume too developed a juristic theory for a *qāḍī* to espouse a generation before al-Shāfi'ī (d. 204/820).<sup>27</sup> But al-Shāfi'ī did not invent the four-fold schema comprising the Qur'ān, *sunna*, consensus and *ra'y*. A somewhat similar schema (with the absence of consensus, however) occurs in the longer of the two versions of a letter the caliph 'Umar I is supposed to have written to Abū Mūsā al-Ash'arī. Serjeant has argued that this version of the letter in fact originated in the early second century A.H., which means that we must also "date [the] existence of the theory on Qur'ān—*sunna*—*qiyas*—*ra'y* to early in the second century A.H."<sup>28</sup> To Wāṣil b. 'Aṭā', the putative "founder" of the Mu'tazila, is also attributed a four-fold schema of "*kitāb nāṭiq wa khabar mujtama' 'alayh wa ḥujjat 'aql wa ijmā'*"; these, to him, were the criteria for the discernment of truth (*al-ḥaqq*), and he is said to have originated the schema.<sup>29</sup> al-'Anbarī's plea for conformity of the ruler's decisions to the Qur'ān, the Prophet's *sunna*, and the scholars' agreed opinion is thus hardly exceptional, for it had already surfaced in the thinking of the scholars of the age and

<sup>27</sup> On al-Shāfi'ī's hierarchy of the sources of law, cf. Schacht, *Origins*, 134ff.; N. Calder, "Ikhtilāf and Ijmā'", 77-78. That it was al-Shāfi'ī who shaped once and for all the future course of Islamic jurisprudence no longer carries the conviction it did for Schacht: see Hallaq, "Was al-Shāfi'ī the Master Architect of Islamic Jurisprudence?"

<sup>28</sup> R. B. Serjeant, "The Caliph 'Umar's Letters to Abū Mūsā al-Ash'arī and Mu'āwiya", *Journal of Semitic Studies*, XXIX (1984), 65-79; the quotation is from p. 78.

<sup>29</sup> Abū Hilāl al-'Askarī, *al-Awā'il*, ed. Muḥammad al-Miṣri and Walid al-Qaṣṣāb (Damascus: Wizārat al-thaqāfa wa'l-irshād al-qawmi, 1975), II, 135, cited in J. van Ess, "L'autorité de la tradition prophétique dans la théologie mu'tazilite", in G. Makdisi et al., eds., *La notion d'autorité au moyen âge: Islam, Byzance, Occident* (Paris: Presses Universitaires de France, 1982), 213-14; and *ibid.*: "Le contexte ne laisse pas douter que Wāṣil pense au *ḥadīth*.... L'énumération correspond au schéma quadripartite des *uṣūl al-fiqh* classiques, la preuve rationnelle tenant la place du futur *qiyās*."

milieu to which he belonged. On the other hand, al-‘Anbarī’s point about the caliph’s *ijtihād* can also be related to some contemporary concerns of the ‘Abbāsīd caliphs (vis-à-vis their governors, for instance, in which case it would have been in line with the centralizing tendencies of the early ‘Abbāsīd period).

To al-‘Anbarī is also attributed the view that “every *mujtahid* is correct [in his judgment]” (“*kull mujtahid muṣīb*”), and that the Qur’ān, and *sunna*, allow the validity of opinions which may be mutually contradictory.<sup>30</sup> If this view is indeed al-‘Anbarī’s, we might ask what implications it has for the bases of religious authority discussed in the aforementioned passages of his letter to the caliph. In asserting the rectitude of every *mujtahid*’s judgment, al-‘Anbarī is *not* severing judgments from (a basis in) the traditional sources of religious authority but only pointing out that diversity in judgment is itself attested and thus accepted in these sources. Such a view strengthens the case for *ijtihād*, which is put forth in the letter with reference to the caliph and his governor. But, *pace* van Ess, the rectitude of every *mujtahid*’s judgment—leading to differences among scholars—does not contradict the authority of the scholars’ agreement,<sup>31</sup> which al-‘Anbarī’s letter upholds. Not only has consensus always coexisted with the doctrine of the *mujtahid*’s rectitude,<sup>32</sup> al-Shāfi‘ī’s arguments, a generation after al-‘Anbarī, for the admissibility of *ikhtilāf* may have been intended precisely to undergird the ‘ulamā’s collective authority.<sup>33</sup> A recognition of their mutual differences was, for al-Shāfi‘ī, the basis on which to bring them together; and, as for their mutual differences, they were to be thought of as the result of valid disagreement but not of error on anyone’s part.<sup>34</sup>

If a ring of authenticity is to be heard in the overall tone and tenor of al-‘Anbarī’s letter—and in its echoing many of the concerns of the time

<sup>30</sup> Ibn Qutayba, *Ta’wīl mukhtalif al-hadīth* (Cairo: Maṭba‘at Kurdistān al-‘ilmiyya, 1326 A.H.), 55-57. Also cf. Ibn Ḥajar, *Tahdhīb*, VII, 8. For a pioneering discussion of this dictum, see van Ess, “La liberté”, 25-35; id., *Theologie und Gesellschaft*, II, 155-64. al-Shāfi‘ī’s justification, in his *Risāla*, of the *ikhtilāf* of scholars and the latter’s rectitude even as they disagree among themselves bears fundamental similarity to the position enshrined in this dictum, though he does not quote it. See Calder, “Ikhtilāf and Ijmā’”, 55-81, esp. 67. Calder’s certitude that this dictum “obviously had not emerged while Shāfi‘ī was writing, but ... clearly derives from his thinking” (ibid., 67) may, however, be a bit too dogmatic in both of its affirmations. Cf. van Ess, *Theologie und Gesellschaft*, II, 164 n. 93.

<sup>31</sup> Cf. van Ess, *Theologie und Gesellschaft*, II, 162.

<sup>32</sup> I owe this point to Prof. W. B. Hallaq.

<sup>33</sup> Calder, “Ikhtilāf and Ijmā’”, 55-81, esp. 64ff., 71-72.

<sup>34</sup> Ibid.

to which it purports to belong—then we must also ask what this scholar's vision amounts to in so far as the caliph's function and relationship with the 'ulamā' are concerned. al-'Anbarī posits conformity with the tradition and practice of the elect as the essential basis of the caliph's conduct; and it is noteworthy that the 'ulamā' figure prominently in this body of the elect. He is to be seen here as taking a position drastically opposed to that of Ibn al-Muqaffa': it is not the caliph who can determine what the normative *sunna* is; rather, it is for the *sunna* of the pious forbears (as carried on by the 'ulamā') to define how the caliph is to conduct himself. But even as he derives his legitimacy from adherence to this normative tradition, the caliph, for al-'Anbarī, is also integral to its perseverance and continued vigour.

Finally, as a *qāḍī* working in the 'Abbāsīd administration, it is not surprising to see al-'Anbarī visualize the caliph and the 'ulamā' as working in close association with each other. In concluding his letter, al-'Anbarī advises the caliph "to have with him a select group of people who are truthful, have knowledge of the *sunna*, and are men of worldly experience (*ḥunka*), intellect, and piety, to help him deal with and decide on such public matters as are brought to him.... For though God has bestowed on the Commander of the Faithful knowledge of His book and *sunna* (sc. God's *sunna*?) the affairs of the people of this *umma* keep pouring in<sup>35</sup> so that attending to some of them causes him to neglect others; ... [having an advisory council] will, God willing, be a real help in these circumstances."<sup>36</sup>

Before returning to the question of the caliph's advisory council, let us first examine some of Abū Yūsuf's ideas, as set out in his *Kitāb al-kharāj*, on the caliph's function and relationship with the 'ulamā'.

### C. Abū Yūsuf's *Kitāb al-kharāj*

As already noted, the attribution to Abū Yūsuf of the *Kitāb al-kharāj* which conventionally bears his name<sup>37</sup> has recently been questioned by

<sup>35</sup> Reading *yaridu 'alayhi* instead of *radda 'alayhi*.

<sup>36</sup> Wakī', *Akhbār*, II, 107.

<sup>37</sup> On Abū Yūsuf, see: Wakī', *Akhbār*, III, 254-64, and index, s.v.; *Ta'rikh Baghdad*, XIV, 242-62; al-Dhahabī, *Manāqib al-imām Abī Ḥanīfa wa ṣāhibayhi Abī Yūsuf wa Muḥammad b. al-Ḥasan*, ed. Muḥammad Zāhid al-Kawtharī and Abū'l-Wafā al-Afghānī (Haydarabad: Lajnat iḥyā' al-ma'ārif al-Nu'māniyya, 1947); id., *Ta'rikh Islām*, XII, 496-503. For further references to the sources, see the editor's note in *ibid.*, 496f. n. 6; also see F. Sezgin, *Geschichte des arabischen Schrifttums* (hereafter *GAS*), I (Leiden: E. J. Brill, 1967), 419-21. For a modern evaluation of Abū Yūsuf's contribution to Islamic law, see, in particular, Schacht, *Origins*, *passim*; id., *An Introduction to Islamic Law* (Oxford: Clarendon Press,

Norman Calder. If Calder is right, there is not much point in studying this work in the context of early ‘Abbāsīd history. It becomes necessary then to begin by briefly reviewing some of Calder’s arguments.

Calder argues that the present text of the *Kitāb al-kharāj* is “the product of a single redactional effort” which must be dated to the middle of the third century A.H.<sup>38</sup> This view is part of a more elaborate argument which seeks to show, *inter alia*, that “[t]here are no secure examples of any works of Islamic fiqh redacted before the third or fourth decades of the third century.”<sup>39</sup> While essentially an exercise in literary analysis, Calder’s treatment of the *Kitāb al-kharāj* also offers a historical reconstruction of the circumstances in which the redaction of this work is likely to have occurred. He suggests that this treatise is to be identified with the *Kitāb al-kharāj* attributed to the Ḥanafī al-Khaṣṣāf (d. 261/874), which the ‘Abbāsīd caliph al-Muhtadī (r. 255-56/869-70) had commissioned him to write.<sup>40</sup> The conditions of al-Muhtadī’s time, it is argued, are in accord with the concerns the *Kitāb al-kharāj* shows: al-Muhtadī was very pious and sought to reform everything from morals to finances; the caliphate faced acute political and economic crises; and there is “evidence of wholesale restructuring of the financial system”.<sup>41</sup> The *Kitāb al-kharāj* seeks to affirm “absolute caliphal authority”,<sup>42</sup> especially the caliph’s discretionary powers in taxation. Nothing thus was better suited to the needs of those chaotic times.

The merits of Calder’s literary analysis, or the validity of his conclusions on that basis, will not be examined here. It should be pointed out, however, that his hypothesis about the *historical* origins of the *Kitāb al-kharāj* is rather dubious—unless, of course, one is already convinced that the work in question *could not* have originated before the mid-third century. Calder is right in arguing that the treatise seeks to promote the caliph’s administrative authority, but there is no reason why the historical Abū Yūsuf could not himself have been engaged in such an effort in favour of the caliph Hārūn. Whether or not the historical Abū Yūsuf could have had a similar agenda is a question he does not raise: since, to him, this *Kitāb al-kharāj* could not have

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1964), index, s.v.

<sup>38</sup> Calder, *Studies*, 105-60, esp. 145ff.; the quotation is from p. 145.

<sup>39</sup> *Ibid.*, 146.

<sup>40</sup> *Ibid.*, 147, and n. 22 for Calder’s bibliographic references to al-Khaṣṣāf and his *Kitāb al-kharāj*.

<sup>41</sup> Calder, *Studies*, 147ff.; the quotation is from 149-50.

<sup>42</sup> *Ibid.*, 160 and 105-60, *passim*.

originated before the time to which he dates it, any effort to see how this treatise might fit the age of Hārūn al-Rashīd and Abū Yūsuf, rather than that of al-Muhtadī and al-Khaṣṣāf, would seem to be pointless. Calder correctly points out that a *Kitāb al-kharāj* is attributed to al-Khaṣṣāf; but, oddly enough, he fails to note that bio-bibliographical sources also attest to the production of earlier treatises on the same subject and often bearing the same title. "Now", Calder writes, "if Abū Yūsuf had produced prior to 182 the book that we now know as the *Kitāb al-kharāj* in the form we now have it and with the subtlety that we have recognized in it, there would have been little need for another call from the Caliph to a *faqīh* to produce another such work."<sup>43</sup>

The implications of the foregoing statement are worth spelling out here. If Abū Yūsuf's work were correctly attributed to him, then, by Calder's reasoning, *no* further works on *kharāj* ought to have been written; nor, by the same token, should any have been written *after* that of al-Khaṣṣāf if he is the author of what is usually attributed to Abū Yūsuf. This is clearly an extreme position. What about reports then that Abū Yūsuf's *Kitāb al-kharāj* was not the first work on the subject (any more than al-Khaṣṣāf's was the last)?<sup>44</sup> In fact, one of the three works on *kharāj* which are extant is attributed to Yaḥyā b. Ādam (d. 203/818), also a contemporary of the caliph Hārūn.<sup>45</sup> Calder would probably reply that the reports about earlier works of this genre are tendentious or their attributions inadmissible, again a rather high-handed way of dealing with the bio-bibliographical literature (though it must be conceded that Calder's position on this point is consistent with his over all thesis). There would still be no compelling, even plausible, reason to think, however, that al-Khaṣṣāf was the author of *this* particular, rather than just another, *Kitāb al-kharāj*. Qudāma b. Ja'far (d. ca. 320/932), for one, apparently quotes *both* Abū Yūsuf and al-Khaṣṣāf in his own *Kitāb al-kharāj*,<sup>46</sup> thus raising the distinct

<sup>43</sup> Ibid., 147. "On the other hand", Calder continues, "if the Caliph al-Muhtadī summoned al-Khaṣṣāf to produce such a work, then he might well have produced a work which called upon the authority of Abū Yūsuf. There was an obvious felicity in ascribing to him systematic opinions on taxation." Ibid., 147.

<sup>44</sup> Of the twenty-one works on *kharāj* that Ben Shemesh lists in a roughly chronological order, al-Khaṣṣāf's is the *seventh*. For this list, largely based on Ibn al-Nadīm's *Kitāb al-fihrist*, see A. Ben Shemesh, *Taxation in Islam*, I (Leiden: E. J. Brill, 1958), 3-6.

<sup>45</sup> On Yaḥyā b. Ādam see Sezgin, *GAS*, I, 520; Ben Shemesh, *Taxation in Islam*, I: *Yaḥyā b. Ādam's Kitāb al-Kharāj*. Yaḥyā is reported to have visited Hārūn al-Rashīd in Hira (Ben Shemesh, *Taxation in Islam*, I, 1), though there is no indication that he wrote this treatise for the caliph.

<sup>46</sup> The name al-Khaṣṣāf does not figure in Qudāma's *Kitāb al-kharāj*, but one

possibility that he may have had access to the work of both. If both works were indeed available to him, then we would have little reason to think that both Abū Yūsuf and al-Khaṣṣāf could not each have written on *kharāj*, or that the latter necessarily attributed his own work to the former.

That the pious al-Muhtadī, much concerned with efficient government, should have commissioned al-Khaṣṣāf to write a treatise on taxation certainly merits attention, for it tells us something about this caliph's concerns. The case of Abū Yūsuf's *Kitāb al-kharāj* shows that such works may not necessarily have been limited to administrative advice,<sup>47</sup> but might also help further the cause of caliphal authority and legitimacy, and perhaps also assist in creating a pious image for the caliph. It is easy to see, then, why al-Muhtadī should have found it useful to have such a work addressed to him. But, by the same token, it is not difficult to imagine that an earlier caliph—Hārūn al-Rashīd—would have liked a similar work produced for himself.<sup>48</sup> In the absence of conclusive evidence to the contrary, therefore, the *Kitāb al-kharāj* of Abū Yūsuf must be treated as a work *by* Abū Yūsuf himself and

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“Aḥmad b. Yaḥyā al-Shaybānī” does (once: 168). Ben Shemesh is probably right in emending the name to Aḥmad b. ‘Umar al-Shaybānī (A. Ben Shemesh, *Taxation in Islam*, II [Leiden: E. J. Brill, 1965], 8, 31), which is how al-Khaṣṣāf's name is recorded in Ibn al-Nadīm's *Kitāb al-fihrist*, ed. R. Tajaddud, 3rd edn. (Beirut: Dār al-Masira, 1988), 259. Abū Yūsuf, on the other hand, is quoted several times (see Qudāma b. Ja‘far, *Kitāb al-kharāj*, Köprülü Library MS. 1076, published in facsimile by F. Sezgin [Frankfurt: Institute for the History of Arabic-Islamic Science, 1986], index, s.v. Ya‘qūb b. Ibrāhīm Abū Yūsuf).

<sup>47</sup> Note that the *Kitāb al-kharāj* of Qudāma b. Ja‘far, the third of the three extant works in this genre, also contains a chapter which Rosenthal considers to have the elements of a Fürstenspiegel (F. Rosenthal, *History of Muslim Historiography* [Leiden: E. J. Brill, 1968], 117). S. A. Bonebakker, however, has expressed doubts whether this chapter was originally part of Qudāma's *Kitāb al-kharāj* (see *EI*(2), s.v. “Qudāma b. Dja‘far” (S. A. Bonebakker). Whether Qudāma, a *kātib*, was commissioned by anyone to write his *Kitāb al-kharāj* is not known, though it is reported that he showed it to ‘Alī b. ‘Īsā, a famous vizier of the middle ‘Abbāsīd period (ibid.).

<sup>48</sup> Abū ‘Ubayd Allāh Mu‘āwiya b. ‘Abdallāh is said already to have written for the caliph al-Mahdī what Qudāma b. Ja‘far alternately characterizes as a “*risāla*” and “*kitāb*”, and which he quotes from: see Qudāma b. Ja‘far, *Kitāb al-kharāj*, 178 and 200-01. Very much later, the caliph al-Muttaqī (r. 330-33/940-43) had a vizier, ‘Abd al-Raḥmān b. ‘Īsā, who too wrote an incomplete *Kitāb al-kharāj*, though it is not known whether the request for the work had come from the caliph. See Ibn al-Nadīm, *Kitāb al-fihrist*, 143. Many others to whom works of this genre are attributed were *kuttāb*, and thus in caliphal service; whether or not such works were commissioned by the caliphs or were written for them, they could hardly have failed to help promote the interests of the state, perhaps specifically those of the caliph. (The aforementioned ‘Abd al-Raḥmān b. ‘Īsā had himself been a *kātib*, as was Qudāma b. Ja‘far; for other examples, see Ibn al-Nadīm, *Kitāb al-fihrist*, 145, 151.)

written *for* Hārūn, as the sources say; in what follows, it is analyzed accordingly.

As the title of his work suggests, Abū Yūsuf seeks to offer to the caliph such advice as would help regulate the system of taxation in the 'Abbāsīd state. The concern, however, is not just with a well-regulated system; it is also (and perhaps primarily) with bringing this system into conformity with the opinions and principles enunciated by religious authorities such as the Prophet, his Companions (above all, 'Umar I), the Successors, and leading jurists. These two concerns are of course complementary: to organize affairs according to the given traditions and opinions is, for the author, to ensure the justice and efficiency of the system. While the bulk of the treatise addresses itself to intricate matters of financial administration, Abū Yūsuf's introduction to this work has a much wider scope and significance. The main body of the work is not without interest for our purposes, though we shall primarily focus on the introduction.

A salient characteristic of the work under discussion is Abū Yūsuf's exhortation to the caliph, in explicit terms in the introduction and implicitly throughout the treatise, to conform to and revive the *sunna* of *al-qawm al-ṣāliḥūn*.<sup>49</sup> The *sunna* which the caliph is being referred to is apparently similar to, though far more concretely perceived and known than, what al-'Anbarī had in mind; for both, however, it is conformity to this *sunna* which ought to define the caliph's conduct and the character of his polity. Abū Yūsuf gives generous examples to illustrate where such normative traditions come from and what they consist in. Several of such traditions—for instance, in the form of statements ascribed to Abū Bakr, 'Umar I, 'Alī, etc. on how they conceived of their functions as caliphs—also serve to conjure up the image of a "golden age" in the past,<sup>50</sup> an image clearly intended to serve the practical purpose of providing guidance to rulers and administrators in the present. Inasmuch as the *sunna* that the caliph is called upon to revive and conform to is a precisely known entity, it is the 'ulamā' who are its living legatees.<sup>51</sup> Abū Yūsuf seems to visualize the latter not only as the bearers of the sacred tradition but, *ipso facto*, also as the locus of religious authority. Admittedly, the latter point is not explicitly stated; that much of the book is concerned with what the *fuqahā'* think about

<sup>49</sup> *Kharāj*, 71; also cf. Abū Yūsuf's reference to those he calls "*al-wulāt al-mahdiyyūn*", though without further identification, *ibid.*, 171, 174.

<sup>50</sup> Cf. *Kharāj*, 84ff.

<sup>51</sup> Cf. Crone and Hinds, *God's Caliph*, 88-89, 91-92.

various administrative and legal matters, and how *they* understand the bearing of the *sunna* of *al-salaf al-ṣāliḥ*—of which, again, it is the scholars who are the repositories—may, however, be legitimately taken to argue for the scholars’ religious authority.

Abū Yūsuf does not forthrightly address the question of the caliph’s authority in religious matters, though some of his statements do shed some light on his views in that regard. The caliphs are “deputies on [God’s] earth”, and they are endowed with a “light” whereby they clarify and resolve matters which are obscure to their subjects.<sup>52</sup> Being divinely endowed with the “light” does not, however, have any of those connotations which a similar endowment would manifestly have in case of a Shī‘ī imām.<sup>53</sup> For Abū Yūsuf’s caliphs, the “light” essentially signifies the duty to enforce law, safeguard the rights of people, revive the *sunna* of *al-qawm al-ṣāliḥūn*, promote justice and, of course, explain obscure matters.<sup>54</sup> These are the kinds of obligations which the caliph owes to the people and to God, and for which he is responsible to God. Neglect of such obligations, Abū Yūsuf emphatically warns the caliph, can lead not only to the ruin of the community but also to his own perdition.

Abū Yūsuf’s reference to the caliph’s function of clarifying matters obscure to his subjects is of especial interest here. Such a function had already been noted by al-‘Anbarī, if rather obliquely, and, as we shall observe, occurs frequently in official documents of the ‘Abbāsīd period. The appearance of this motif in Abū Yūsuf’s *Kitāb al-kharāj* is of interest not only because it suggests the caliph’s participation in the community’s religious life, and (implicitly) in matters having a legal import, but also because this suggestion comes, in the instance under review, from one of the leading jurists of the time. Inasmuch as it occurs both in juristic treatises such as al-‘Anbarī’s and Abū Yūsuf’s *and* in ‘Abbāsīd documents, there seems to have been a shared perception between caliphs and many a scholar on this function; and since it occurs in ‘Abbāsīd documents from both before *and after* the *Mihna*, as we shall see, this motif may be taken to indicate a certain continuity

<sup>52</sup> *Kharāj*, 71: “inna’llāha ... ja’ala wulāt al-amr khulafā’ fī arḍihi wa ja’ala lahum nūran yuḍī’u li’l-ra’īya mā uzlima ‘alayhim min al-umūr fimā baynahum wa yubayyin mā ishtabaha min al-ḥuqūq ‘alayhim...” The “wulāt al-amr” seems to refer here to the caliphs.

<sup>53</sup> On the notion of divine light in Imāmi Shī‘ism, see U. Rubin, “Prophets and Progenitors in early Shī‘a Tradition”, *Jerusalem Studies in Arabic and Islam*, I (1979), 41-65. Also see M. A. Amir-Moezzi, *The Divine Guide in Early Shī‘ism* (Albany: State University of New York Press, 1994).

<sup>54</sup> *Kharāj*, 71.

in the caliph's religious functions, a continuity all too often obscured in thinking of the *Mihna* as a watershed in 'Abbāsīd, and Islamic, history.

In concluding our discussion of the *Kitāb al-kharāj*, Abū Yūsuf's concern to provide for a close relationship of the 'ulamā' with the state should finally be noted. His insistence that the administrative cadres be staffed by trusted, pious, and God-fearing men is interpretable as an advice to recruit more people from the religious circles.<sup>55</sup> The 'ulamā's participation in the administration is, for Abū Yūsuf, the way to reform administrative abuses and a means too through which the "revival" of the *sunna* of old ought to be accomplished.<sup>56</sup> What seems equally important, though he does not say so, is that the involvement of the piety-minded would also give them a direct stake in the 'Abbāsīd state, and that would not only help the 'Abbāsīds with their religious prestige and legitimacy, but perhaps also moderate somewhat that autonomous position of the 'ulamā' in society about which the early 'Abbāsīds had some misgivings.

#### *The Caliphs and Questions of Law*

So far as the 'Abbāsīd caliphs prior to al-Ma'mūn are concerned, the lines on which al-'Anbarī and Abū Yūsuf were thinking seem to have suited their interests well. Caliphal religious policies generally tended towards courting the 'ulamā's favour and playing up the caliph's role of defending the interests of Islam and the Muslims; the advice of these authors affirms both concerns, not to mention the advocacy, by Abū Yūsuf particularly, of 'Abbāsīd legitimism. Thus far, it is as if the caliph concerned is being addressed with an exhortation he would have liked, and expected, to hear—an exhortation to which the caliph's conspicuous submission would enhance his religious image. That both al-'Anbarī and Abū Yūsuf appear, despite their differences, to affirm the primacy of the 'ulamā's religious authority may seem rather more

<sup>55</sup> *Kharāj*, 204 (section 129), 247 (sec. 188, 189), 252 (sec. 198), 253 (sec. 200), 288 (sec. 220), etc. Perhaps even more specifically, the advice could have referred to the Ḥanafīs. For it is scarcely unwarranted to suppose that Abū Yūsuf should have wanted to promote the influence of his own *madhhab*. How successful he actually was in doing so is another question, and one it is impossible to answer with any certitude: cf. Nurit Tsafrir, "The Spread of the Ḥanafī School in the Western Regions of the 'Abbāsīd Caliphate up to the End of the Third Century A.H.," Ph.D. dissertation, Princeton University, 1993, 69ff.

<sup>56</sup> Compare Abū Ishāq al-Fazārī, *Kitāb al-siyar*, ed. Fārūq Hammāda (Beirut: Mu'assasat al-risāla, 1987), for a thoroughgoing concern to see the conduct of the holy war and matters of military administration on the frontiers evaluated, and regulated, by the opinions of the scholars. The opinions quoted in this case are primarily those of the Syrian jurist al-Awzā'ī (d. 157/774).

problematic from the ‘Abbāsīd viewpoint. But this would seem problematic only if it is already taken for granted, as Crone and Hinds do, that the early ‘Abbāsīds laid claims to religious authority for themselves and were actively, if against increasing odds, competing with the scholars in that regard.<sup>57</sup> Before al-Ma’mūn took the initiative, the caliphs do not seem, however, to have challenged the ‘ulamā’s authority. It is, after all, Mālīk whom the caliph is supposed to have asked to codify law rather than taking the initiative himself; and Abū Yūsuf was, of course, a member of the official establishment, was writing under royal patronage, and was not likely to antagonize the caliph in either his affirmation of the scholars’ authority or his delineation of the caliph’s functions.

Far from being antagonized, in fact, the caliph subscribed to a view of his function that had a striking affinity to what Abū Yūsuf prescribed for him. The following passage from Hārūn al-Rashīd’s letter to Harthama b. A’yan, appointed governor of Khurasan, offers an illustration:

The caliph commands Harthamah to keep in mind the fear of God, to obey Him and to show concern for and watch over God’s interests. He should make the Book of God a guiding example in all he undertakes and, accordingly, make licit what is legally allowable according to it and prohibit what is not allowable. When he is faced with anything doubtful and uncertain in it (*mutashābihīhi*), he should pause and consult those with a systematic training and acquaintanceship with God’s religion and those knowledgeable about the Book of God (*ulī’l-fiqh fī dīn Allāh wa ulī’l-‘ilm bi-kitāb Allāh*), or alternatively, he should refer it to his Imām, so that God, may He be magnified and exalted, may make manifest to him His judgment in the matter and so that he may execute it according to his right guidance.<sup>58</sup>

At issue in this passage is not simply a matter of scriptural exegesis, but of determining how local problems are to be resolved in accordance with the Book of God. For inasmuch as the document is addressed to a governor, the context suggests that it is not just (or not primarily) the difficulties of understanding the *kitāb Allāh* itself, but the problems which might arise in its application—that is, legal problems—that require resolution. The caliph affirms the authority of the *kitāb Allāh*, but also his own authority to elucidate that which is doubtful in (or with

<sup>57</sup> Crone and Hinds, *God’s Caliph*, 80-96.

<sup>58</sup> Ṭabarī, III, 717; translation as in *The History of al-Ṭabarī*, XXX, tr. C. E. Bosworth (Albany: State University of New York Press, 1989), 274 (with minor modification); also cf. Crone and Hinds, *God’s Caliph*, 89.

reference to) it. Tellingly, however, his authority is described in conjunction (not in competition) with that of the local religious scholars. Abū Yūsuf could have had little to disagree with on the advice to consult such scholars; as noted, he was in fact much concerned to see a closer relationship between them and the 'Abbāsīd administration. Hārūn's advice to Harthama about the option of referring the problems in question to the imām, i.e. to the caliph himself, likewise figures in Abū Yūsuf's advice to Hārūn. The recognition that the 'ulamā' and the caliph are *both* fit to rule on obscure matters (*mā uzlima 'alayhim, mā ishtabaha*, in Abū Yūsuf's formulation)<sup>59</sup> is thus independently attested from both a scholar and a caliph. The caliph's authority to clarify obscure matters may perhaps be taken as comparable with the authority of the 'ulamā' to do so, which suggests at once a recognition that the latter are the locus of religious authority *and* an effort to make the caliph a part of such authority. Nor is the recognition of the caliph's religious competence peculiar to Abū Yūsuf among the 'ulamā'. Mālik, for instance, recognised the caliph's *ijtihād*<sup>60</sup> as did al-Shāfi'i<sup>61</sup> and Aḥmad b. Ḥanbal (d. 241/855);<sup>62</sup> later al-Māwardī (d. 450/1058) was to speak of "the knowledge which conduces to *ijtihād* in problems that occur (*nawāzil*) and in legal decisions (*aḥkām*)" as one of the seven preconditions for *imāma*.<sup>63</sup> That Harthama, the governor-designate, should have been advised to refer problematic issues to local scholars *or to the caliph* does not suggest two competing sources of authority here. Not only might the caliph and the 'ulamā' try to resolve obscure matters together, but the caliph's ability to do so is based on the *same* sources—the Book of God, the *Sunna* of the Prophet, and, of course, *ijtihād*—from which the 'ulamā' themselves draw their expertise and authority.

The following report, which relates to a Basran *qāḍī* of Hārūn, may throw further light on the caliph's aforementioned advice to his

<sup>59</sup> *Kharāj*, 71.

<sup>60</sup> Schacht, *Origins*, 116.

<sup>61</sup> al-Shāfi'i, *al-Umm*, IV, 138, 167.

<sup>62</sup> See the "Qit'a min muqaddimat al-shaykh al-imām Abī Muḥammad b. Tamīm al-Ḥanbalī fi 'aqīdat al-imām al-mubajjal Aḥmad b. Ḥanbal...", appended to Ibn Abī Ya'lā, *Ṭabaqāt al-Ḥanābila*, ed. Muḥammad Ḥāmid al-Fiḳī (Cairo: Maktabat al-sunna al-Muḥammadiyya, 1952), II, 280.

<sup>63</sup> al-Māwardī, *al-Aḥkām al-Sultāniyya*, ed. M. Enger (Bonn: Adolphum Marcum, 1853), 5. On al-Māwardī and the "classical" view on the caliph's position and functions, see A. K. S. Lambton, *State and Government in Medieval Islam* (Oxford: Oxford University Press, 1981), esp. chs. 5 and 6; also cf. N. Calder, "Friday Prayer and the Juristic Theory of Government: Sarakhsī, Shīrāzī, Māwardī", *Bulletin of the School of Oriental and African Studies*, XLIX (1986), 35-47.

governor, Harthama. A woman brought a case to the *qāḍī*, ‘Abd al-Rahmān b. Muḥammad al-Makhzūmī, but seems to have grown impatient with the *qāḍī*’s slow handling of it. “So [the *qāḍī*] said [to her]: ‘Your case is difficult; you will have to wait ... if I am to understand it properly. But if you want me to refer the case to the *amīr*, who can gather the Basran *fuqahā*’ for you, I will do so; or if you wish I can write to the Commander of the Faithful so that he might ask the *fuqahā*’ who are with him.’<sup>64</sup> That the caliph had *fuqahā*’ with him is no surprise. More instructive is the information that the *qāḍī* could, and no doubt did, write for decision or advice on difficult matters to the caliph (or the governor). Letters of appointment to *qāḍīs* stipulated, in fact, that they write to *the caliph* when faced with difficult problems. A standard example of such a letter, preserved in Qudāma b. Ja‘far’s *Kitāb al-kharāj* reads, in part, as follows:

[The commander of the Faithful] has ordered him [sc. the *qāḍī*] that if something is difficult to decide, he should resort to consultation and discussion with people of [sound] opinion and insight in judicial matters (*qadā*’) so that the matter can be resolved.<sup>65</sup> If [the matter at hand] remains obscure to the *qāḍī*, let him write to the Commander of the Faithful [and] explain the matter fully and truthfully ... so that [the latter] can give an answer according to which ... [the *qāḍī*] may [then] act.<sup>66</sup>

Resolving legal problems was thus not exclusively the ‘ulamā’s business but was a calling that involved the caliph too. Occasions on which early ‘Abbāsīd caliphs are reported to have instructed their *qāḍīs* on matters of legal import are not lacking in our sources. Abū Yūsuf’s *Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā* records an instance when the first ‘Abbāsīd caliph, Abū’l-‘Abbās al-Saffāḥ (r. 132-36/750-54), wrote to his Kūfan *qāḍī*, Ibn Abī Laylā, on a matter relating to pre-emption (*shuḥḥa*); the *qāḍī*, who had hitherto agreed with Abū Ḥanīfa’s view on the matter, now acted according to the caliphal directive, which also accorded with the position of the scholars of the Ḥijāz.<sup>67</sup> al-

<sup>64</sup> Wakī’, *Akhbār*, II, 142.

<sup>65</sup> On the *qāḍī*’s “*consilium*”, as Emile Tyan characterizes it, see Tyan, *Histoire de l’organisation judiciaire en pays d’Islam*, 2nd edn. (Leiden: E. J. Brill, 1960), 214ff. Tyan does not, however, discuss the *fuqaha*’s assisting the caliph in his decisions.

<sup>66</sup> Qudāma b. Ja‘far, *Kitāb al-kharāj*, 23.

<sup>67</sup> Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā*, ed. Abu’l-Wafā’ al-Afghānī (Haydarabad, 1357 A.H.), 37-38 (= al-Shāfi‘ī, *al-Umm*, VII, 99-100). Ibn Abī Laylā is also said to have written to al-Manṣūr on a theological matter, viz., Abū Ḥanīfa’s espousal of the doctrine of *khalq al-Qur’ān*: see Wakī’, *Akhbār*, III, 141-42.

Manṣūr is reported to have written to 'Abdallāh b. Lahī'a, his *qāḍī* in Egypt, on a matter of inheritance.<sup>68</sup> The same caliph instructed Sharīk b. 'Abdallāh al-Nakha'ī, who was supposedly reluctant to be appointed the *qāḍī* of Kūfa, to "implement what you are able to, and write to me regarding what you are unable to [decide]".<sup>69</sup> In appointing the Kūfan scholar 'Alī b. Mushir as his *qāḍī* of Mawṣil, al-Mahdī is reported to have questioned him about false testimony (*shahādat al-zūr*). "There are various views regarding it, O Commander of the Faithful", the *qāḍī* said. "[There is] the opinion (*qawl*) of Shurayḥ [according to which the person guilty of false testimony] is brought to his tribal community and they are told that he has lied in his testimony, so beware of him; and [there is] the opinion of 'Umar b. al-Khaṭṭāb [according to which] he is to be flogged forty times, his head shaved, his face blackened, he is to be shown around [in that condition], and then imprisoned for a long time. al-Mahdī said: 'Follow 'Umar's opinion, for God has made the truth reside in 'Umar's words.'"<sup>70</sup> The same caliph, al-Mahdī, wrote in 159/775-76 to his governor of Baṣra invoking a *ḥadīth* embodying the well-known legal dictum that "the child belongs to the marriage bed...", and instructing him to annul a decision the first Umayyad caliph had taken in contravening that principle.<sup>71</sup> It is worth noting too that in his discussion of the *dīwān* instituted by 'Umar I, al-Shāfi'ī makes it a point also to record some changes that were introduced as late as al-Mahdī's time in the shares which had been determined by 'Umar.<sup>72</sup>

Many of the scholars would undoubtedly have had reservations about the ruling elite's legal (and other) decisions. At least some of those decisions were later evaluated by jurists and agreement or disagreement with them was recorded. A Mālikī work on *jihād* notes, for instance, the impropriety of accepting *jizya* from anyone who is not subject to the Muslim dominion (*lā tuqbal al-jizya illā mimman yajrī 'alayhi ḥukmunā wa sulṭānūnā*), and therefore expresses disagreement with al-Mahdī's decision to accept *jizya* from the Byzantines.<sup>73</sup> The

<sup>68</sup> al-Kindī, *Kitāb al-wulāt wa kitāb al-quḍāt*, ed. R. Guest (Leiden: E. J. Brill, 1912), 370: "'an ibn Lahī'a qāla: kataba ilayya Abū Ja'far amīr al-mu'minīn annahu lā yajūzu li'l-hāmil ṣadaqa 'alā wārith [sic]". Also cited in Crone and Hinds, *God's Caliph*, 91 n. 211.

<sup>69</sup> Wakī', *Akhbār*, III, 150: "idhhab fa-anfidh mā aḥsanta wa taktub ilayya fimā lā tuhsin".

<sup>70</sup> Wakī', *Akhbār*, III, 219-20; cf. *ibid.*, 316.

<sup>71</sup> al-Ṭabarī, III, 480. For a study of the said *ḥadīth*, see U. Rubin, "'al-Walad li'l-firāsh': On the Islamic campaign against 'zinā'", *Studia Islamica*, LXXVIII (1993), 5-26.

<sup>72</sup> al-Shāfi'ī, *Umm*, IV, 82.

<sup>73</sup> Mathias von Bredow, *al-Jihād ḥasab al-madhhab al-Mālikī ma'a taḥqīq*

same source reports that al-Ma'mūn, when confronted with a similar situation, consulted the *fuqahā'*, who advised him against accepting *jizya* from the enemy, whereupon "he deemed their opinion correct and came back to it [sic]."<sup>74</sup> It is noteworthy, however, that even in the (retrospective) Mālikī disagreement with al-Mahdī's decision, there is no indication that the latter was (or was seen as) a challenge to the authority of the scholars, or that their disagreement represented an effort to divest the caliph of a say in matters of religion and the law. The Mālikī source merely says that "our 'ulamā' disliked [the decision],"<sup>75</sup> a formulation which leaves open the possibility that other 'ulamā' might have supported it.

As the foregoing instances indicate, whether the caliph himself decided, or participated in the *fuqahā'*'s deliberations, or had the latter alone give their verdict, or chose from their conflicting advice, he was a part of the process whereby such problems were resolved and answered.<sup>76</sup> Why else should the governor and the *qāḍī* be instructed to have recourse to the caliph in difficult problems? Not that every caliph necessarily exercised this function; but given his inclination and ability,

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*kitāb al-jihād min kitāb al-nawādir wa'l-ziyādāt li-Abi Muhammad 'Abdallāh ibn Abi Zayd al-Qayrawānī al-Nafzī* (Beirut: Franz Steiner Verlag, 1994), 430. For another instance, see Wakī', *Akhbār*, II, 96-97, where al-Mahdī is reported to have written to his Baṣran *qāḍī* al-'Anbarī "to see what canals have existed since the days of 'Umar and 'Uthmān and impose *ṣadaqa* on them, and to impose *kharāj* on those which have come about since [their time]." The *qāḍī* proved to be non-compliant, however, gathering the local legal experts (*ahl al-'ilm bi'l-qadā'*) to have them witness that he had imposed the *ṣadaqa* (rather than *kharāj*) on all the canals which exist in the Arabian peninsula, thus contravening the caliph's directives.

<sup>74</sup> Von Bredow, *al-Jihād ḥasab al-madhhab al-Mālikī*, 430.

<sup>75</sup> *Ibid.*, 430.

<sup>76</sup> See Wakī', *Akhbār*, II, 92-95, for an instance where al-Mahdī forces his Baṣran *qāḍī*, 'Ubayd Allāh al-'Anbarī, to publicly annul a decision of his. For other instances, see al-Kindī, *Quḍāt*, 413 (cited in E. Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, 1st. edn. [Leiden: E. J. Brill, 1938-43], I, 180), on the caliph al-Amin's instructing his Egyptian *qāḍī* to annul a decision of the latter's predecessor; al-Kindī, *Quḍāt*, 474-75 (cf. Tyan, *L'organisation judiciaire*, I, 180) for al-Mutawakkil's bringing together Kufan *fuqahā'* to examine an Egyptian *qāḍī*'s decision. That decision was overturned and the *qāḍī*, who was *'alā madhhab al-Madaniyyīn*, resigned. Note that it is, appropriately enough, the caliph who then instructs the new *qāḍī* to annul the decision of his predecessor, for all that the caliph himself is explicitly stated to have been guided by the council of the *fuqahā'*. Compare Wakī', *Akhbār*, II, 96, for a report which has al-Mahdī order his governor of Baṣra to gather the town's *fuqahā'* in order to examine a decision by the Baṣran *qāḍī*, and to implement that decision if those *fuqahā'* uphold it. Finally, for an example of a caliph (al-Mu'tamid) choosing between the scholars' conflicting advice, see D. Sourdel, *Le vizirat abbaside de 749 à 936* (Damascus: Institut Français de Damas, 1959-60), I, 342-43; id., "L'Autorité califienne dans le monde sunnite", in *La notion d'autorité au moyen âge*, 110.

he might; and it is not only documents from the 'Abbāsīd chancery but also writings by *fuqahā'* that say so.

The caliph's participation in resolving legal questions gives him a religious function akin to that of the scholars, not one over and above, still less against, theirs. What emerges from a careful study of the pre-*Miḥna* 'Abbāsīd period is not a struggle over religious authority, with the caliphs and the scholars as antagonists, but rather the effort, on the part of the 'Abbāsīd caliphs, to lay claim to the sort of competence the 'ulamā' were known to possess. This effort was not meant as a challenge to the 'ulamā'. It signified rather a recognition of their religious authority, an expression of the caliphal intent to act as patrons of those scholars, and, what is more, the assertion of a public commitment to those fundamental sources of authority on which the 'ulamā's expertise, and a slowly evolving Sunnism, were based.

#### *The Miḥna and its Aftermath*

The *Miḥna* instituted by al-Ma'mūn in 218/833 to test the belief of *qāḍīs, fuqahā'* and *muḥaddithūn* on the "createdness" of the Qur'ān was the most dramatic form in which the scholars' religious authority and the emerging pattern of their relationship with the caliphs was challenged.<sup>77</sup> But the *Miḥna* was not an isolated event. It was preceded by other, implicit, challenges to the nascent Sunnī religious elite, such as the caliph's proclamations that the first Umayyad caliph, Mu'āwiya, was not to be favourably mentioned,<sup>78</sup> that 'Alī was to be ranked above all other Companions of the Prophet,<sup>79</sup> and, of course, that the Qur'ān was the "created" word of God.<sup>80</sup> It was this last mentioned doctrine that the caliph made, six years after he had first proclaimed it in 212/827, the basis of the *Miḥna*. Rather than act in religious matters in

<sup>77</sup> Modern studies on the *Miḥna* include: W. M. Patton, *Aḥmad ibn Ḥanbal and the Miḥna* (Leiden, 1897); W. Madelung, "The Origins of the Controversy concerning the Creation of the Koran", in *Orientalia hispanica sive studia F. M. Pareja octogenario dicata*, ed. J. M. Barral, I (Leiden: E. J. Brill, 1974), 504-25; J. van Ess, "Ibn Kullāb et la *Miḥna*", *Arabica*, XXXVII (1990), 173-233; id., *Theologie und Gesellschaft*, III, 446-80; J. A. Nawas, "A Reexamination of three current explanations for al-Ma'mūn's introduction of the *Miḥna*", *International Journal of Middle East Studies*, XXVI (1994), 615-29; *El(2)*, s.v. "*Miḥna*" (M. Hinds), and the sources cited there. Also see Michael Cooperson, "The Heirs of the Prophets in Classical Arabic Biography" (unpublished Ph.D. dissertation, Harvard University, 1994), 329-506, for an analysis of the treatment of Ibn Ḥanbal and the *Miḥna* in medieval biographical dictionaries.

<sup>78</sup> al-Ṭabari, III, 1098.

<sup>79</sup> Ibid., III, 1099.

<sup>80</sup> Ibid., III, 1099.

conjunction with the emergent (or “proto”-) Sunnī ‘ulamā’, or conform to *their* view of what constituted “orthodox” conduct, al-Ma’mūn tried, through the *Mihna*, to bring their own “orthodoxy” into question. The implication of imposing a criterion whereby to measure their “orthodoxy” not only was that the authority of the caliph to institute such a procedure was being asserted, but also that the caliph would come across as more “orthodox” than anyone else, and more worthy of being the guardian and defender of that “orthodoxy”.<sup>81</sup> In his communications to the governor of Baghdad, the caliph made it plain that a refusal to accept the doctrine being officially sponsored would strip the ‘ulamā’ in question of recognition *as* ‘ulamā’ by the state<sup>82</sup>—the implication being that it was from the state that such a recognition was to be had.<sup>83</sup> Conversely, only those who subscribed to it could serve as *qāḍīs*, and they would also have to function as agents of the state in imposing and upholding this doctrine.<sup>84</sup> But the Inquisition was not confined only to *qāḍīs*. The probity (*‘adāla*) of all those who failed to testify to the Qur’ān’s createdness was to be nullified and their legal testimony (*shahāda*) invalidated, and they were to be disallowed from narrating *ḥadīth* or giving *fatwās*.<sup>85</sup>

In addition to demanding that the scholars conform to a criterion of right belief which *the caliph* had set for them, al-Ma’mūn also launched into savage and highly personal attacks on the reputation of many of them.<sup>86</sup> In his long catalogue of invectives, the criticism which is perhaps most suggestive of the caliph’s concerns seems to be that the *fuqahā’* and traditionists being examined aspired, in deluding the ignorant populace with their erroneous beliefs, to positions of leadership in society.<sup>87</sup> This is an allegation which tells us something not only about

<sup>81</sup> In his communications to the governor of Baghdad, al-Ma’mūn presents himself as *upholding* an “orthodoxy” rather than *instituting* it. He implicitly claims, in fact, that the doctrine he is enforcing is *not* an innovation (cf., for instance, al-Ṭabari, III, 1130)—which is what his critics said it was. Contrast Ibn Hanbal’s refrain during his interrogation in al-Mu’taṣim’s court: “Give me something from the Qur’ān or sunna of the Prophet [as proof of the Qur’ān’s createdness]”. See Ṣāliḥ b. Aḥmad, *Sirat al-imām Aḥmad ibn Hanbal*, ed. Fu’ād ‘Abd al-Mun’im Aḥmad (Alexandria: Mu’assasat shabāb al-jāmi’a, 1981), 56, 59, 63.

<sup>82</sup> al-Ṭabari, III, 1120.

<sup>83</sup> Ibid., III, 1116.

<sup>84</sup> Ibid., III, 1116.

<sup>85</sup> Ibid., III, 1115, 1120; al-Kindī, *Quḍāt*, 445-47.

<sup>86</sup> al-Ṭabari, III, 1127ff; Van Ess, “Ibn Kullāb”, 179.

<sup>87</sup> al-Ṭabari, III, 1114. Later, al-Mu’taṣim too is reported to have accused Ibn Hanbal of “coveting leadership” (*qad balaghani annaka tuḥibb al-riyāsa*): Hanbal b. Ishāq, *Dhikr miḥnat al-imām Aḥmad ibn Hanbal*, ed. Muḥammad Naghash (Cairo, 1977), 56.

the caliph's suspicions of the scholars, but also, perhaps, about the latter's growing social influence. Conversely, given the stigma which often attaches in the Islamic tradition to promoting oneself for positions of leadership, this charge indicts the scholars in insinuating that if they really were scholars they would not be seeking to promote their influence in society.

The *Miḥna* may be seen, in short, as a challenge calculated to undermine the authority as well as the social standing of the 'ulamā'. Whether al-Ma'mūn's conflict with the 'ulamā' was provoked by his assertion of religious authority, to which he saw them as a threat, or his claims to religious authority were themselves called forth by the need to make his challenge effective, need not be decided here. For either way, his claim to define right belief signified an attack on the authority and, in general, the position and influence of the 'ulamā'.<sup>88</sup>

Who were the scholars at whom the *Miḥna* was directed? A number of *fuqahā'*, judges, and *muḥaddithūn*, both from Baghdad and the provinces, are mentioned in our sources. The latter include such prominent figures as Muḥammad b. Sa'd, Yahyā b. Ma'in, Abū Khaythama Zuhayr b. Ḥarb, Aḥmad b. Ismā'il al-Dawraqī, Abū Muslim the *mustamlī* of the Wāsiṭī traditionist Yazīd b. Hārūn,<sup>89</sup> 'Alī b. al-Ja'd al-Jawharī,<sup>90</sup> 'Alī b. 'Abdallāh b. Ja'far al-Madīnī,<sup>91</sup> Abū Mushir 'Abd al-A'lā b. Mushir al-Ghassānī,<sup>92</sup> Nu'aym b. Ḥammād,<sup>93</sup> and, of course, Aḥmad b. Ḥanbal.<sup>94</sup> With some notable exceptions, of whom Ibn Ḥanbal is the most prominent, most scholars who were questioned in the course of the *Miḥna* assented to the official position, and not all seem to have done so under duress. Even Ibn Ḥanbal himself is alleged by some hostile reports to have given in,<sup>95</sup> though in view both of the subsequent favour he enjoyed with al-Mutawakkil (r. 232-47/847-61) and his harsh attitude towards those traditionists who had easily

<sup>88</sup> Cf. Nawas, "Reexamination", 615-29.

<sup>89</sup> These five, as well as Ismā'il b. Dāwūd and Ismā'il b. Abī Mas'ūd are the seven scholars who were the first to be summoned to Raqqa for questioning by the caliph about *khalq al-Qur'ān*. All of them testified to the doctrine, both in Raqqa and later, publicly, in Baghdād. al-Ṭabarī, III, 1116-17; also cf. Ḥanbal b. Ishāq, *Dhikr miḥna*, 34-36. On Ibn Sa'd, see Sezgin, *GAS*, I, 300-01; on Yahyā b. Ma'in, *ibid.*, I, 106-07; on Abū Khaythama, *ibid.*, I, p. 107; on al-Dawraqī, *ibid.*, I, 112.

<sup>90</sup> al-Ṭabarī, III, 1121; on him, cf. Sezgin, *GAS*, 105.

<sup>91</sup> al-Khaṭīb al-Baghdādī, *Ta'rikh Baghdād* (Cairo: Maktabat al-khānjī, 1931), XI, 466-67 (nr. 6349); on him, cf. Sezgin, *GAS*, I, 108.

<sup>92</sup> al-Ṭabarī, III, 1130. On him, cf. Sezgin, *GAS*, I, 100-01.

<sup>93</sup> al-Kindī, *Qudāt*, 447; *El(2)*, s.v. "Nu'aym b. Ḥammād" (C. Pellat); Sezgin, *GAS*, I, 104-05.

<sup>94</sup> Sezgin, *GAS*, I, 502-09.

<sup>95</sup> See *El(2)*, s.v. "*Miḥna*"; Cooperson, "Heirs of the Prophets", 340ff.

consented to al-Ma'mūn's doctrine, that seems rather unlikely.<sup>96</sup> But for our purposes at least, who consented and under what sort of pressures is less important than whose consent *mattered* to the ruling elite carrying on this persecution.

The lists of names our sources preserve—of which the foregoing is a small sample from among the *muḥaddithūn*—are untidy. Among them, there are prominent scholars and obscure ones, reliable (for Sunnī *rijāl*-critics at least) and unreliable ones. Those interrogated and persecuted also included many jurists,<sup>97</sup> which means that the Inquisition cannot be said to have been directed only against the *aṣḥāb al-ḥadīth*. There were *fuqahā'* on the side of the persecutors too, and doubtless traditionists as well.<sup>98</sup> The identity of the schools of law was still in the process of articulation at the time of the *Miḥna*,<sup>99</sup> but insofar as individual scholars are recognizable as Ḥanafis, there were adherents of this school on both sides.<sup>100</sup> To a certain extent, then, the *Miḥna* can also be seen as a conflict *between* the scholars themselves.<sup>101</sup> Yet, the prominence of the *aṣḥāb al-ḥadīth* among those interrogated, the identification of the doctrine in question with the Mu'tazila, and the virtual absence of any prominent Shī'a in the ranks of those who were questioned<sup>102</sup>

<sup>96</sup> Among the scholars who were interrogated by the governor of Baghdād, only two men, Ibn Ḥanbal and Muḥammad b. Nūḥ, are said to have remained defiant: al-Ṭabarī, III, 1131. Many of those who assented to the official dogma could hardly have done so out of conviction, however, as the caliph himself was apparently aware (cf. *ibid.*, 1132). For Ibn Ḥanbal's refusal to narrate *ḥadīth* from those *muḥaddithūn* who had given in to government pressures during the Inquisition, see Ṣāliḥ b. Aḥmad, *Sira*, 80; Ibn Ḥajar, *Tahdhīb*, I, 273-74; *ibid.*, XI, 287.

<sup>97</sup> For general references to the "*fuqahā'*" interrogated during the *Miḥna*, see al-Kindī, *Qudāt*, 447; al-Ṭabarī, III, 1121.

<sup>98</sup> Cf. Ḥanbal b. Ishāq, *Dhikr miḥna*, 43, where Ishāq b. Ḥanbal, Ibn Ḥanbal's uncle, is said to have asked the governor of Baghdad, Ishāq b. Ibrāhīm, to "gather the *fuqahā'* and 'ulamā'" to engage in disputation with the imprisoned Ibn Ḥanbal, and to release the latter should he win the argument. "But I did not mention the *ahl al-ḥadīth wa'l-āthār* to him", Ishāq b. Ḥanbal is said to have reminisced. The implication of the latter statement is not clear, though it can perhaps be taken to mean that Ibn Ḥanbal would not have wanted to debate with some of his erstwhile colleagues (the *muḥaddithūn*) who had been won over by the government. In any case, *fuqahā'* and judges are mentioned as attending the questioning of Ibn Ḥanbal in al-Mu'taṣim's court. *Ibid.*, 49.

<sup>99</sup> As Tsafirir has argued: "Hanafi School", 1ff. and *passim*.

<sup>100</sup> Tsafirir, "Hanafi School", 107ff.; *El(2)*, s.v. "al-Miḥna"; W. M. Watt, *The Formative Period of Islamic Thought* (Edinburgh: University of Edinburgh Press, 1973), 284-85.

<sup>101</sup> H. F. I. Kasassebeh, "The Office of Qāḍī in the Early 'Abbāsīd Caliphate, 132-247/750-861", unpublished Ph.D. diss., University of London, 1990, 131-32.

<sup>102</sup> Note, however, that Ibn Ḥanbal is reported to have cited the Imāmī Shī'ī imām Ja'far al-Ṣādiq as one of those who did not adhere to the doctrine of *khalq al-Qur'ān*: Ṣāliḥ b. Aḥmad, *Sira*, 91. To Ja'far is attributed the position that the

suggests that the Inquisition was directed not at scholars in general but against scholars associated with a certain trend. I do not wish to draw sharper lines than a messy body of evidence permits, but it does seem, at least from the names in the foregoing list, that the *Miḥna* is best characterized as an assault on the proto-Sunni religious scholars. It was these scholars whose religious authority—most notably, perhaps, in the form of a growing specialization in *ḥadīth*, with all the prestige this vocation conferred—and influence among the people were disquieting to al-Ma'mūn, and it was they in particular he tried to rein in through the *Miḥna*.

The nature and implications of the religious authority that al-Ma'mūn appears to have claimed for himself merits a brief excursus here. It is tempting but erroneous, I think, to view this caliph as “assuming for himself the prerogatives of [the Shi'ī] imām, displaying the religious authority which he had won thereby in the institution of the *Miḥna*.”<sup>103</sup> The claims of the imām, at least as depicted in the early Imāmī Shi'ite tradition, are far more extensive than what al-Ma'mūn appears to have coveted for himself. This caliph saw it as the caliphs' function

to guide back to Him [*scil.* God] the one who has turned aside from Him...; trace out for ... [his] subjects the way of salvation for them; draw their attention to the limits of their faith and the way to their heavenly success and protection from sin; and reveal to them those of their affairs which are hidden from them and those which are dubious and obscure by means of what will remove doubt from them and bring back illumination and clear knowledge to them all.<sup>104</sup>

The sort of knowledge al-Ma'mūn claims for himself here would enable him to guide his subjects to the right path and ultimately to salvation; such knowledge is evidently not given to his subjects, which is why they need someone like him. But this knowledge is quite different, it seems, from the esoteric knowledge of everything past, present and future, to which the Shi'ī imām lays claim, and which is

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Qur'an is *laysa bi-khāliq wa lā makhluq*: *ibid.*; also see Madelung, “The Origins of the Controversy”, 508.

<sup>103</sup> Crone and Hinds, *God's Caliph*, 94. Also cf. D. Sourdel, “La politique religieuse du calife 'abbaside al-Ma'mun”, *Revue des Etudes Islamiques*, XXX (1962), 27-48; A. Arazi and A. Elad, “L'épître à l'armée: al-Ma'mūn et la seconde da'wa”, *Studia Islamica*, LXVI (1987), 44ff.

<sup>104</sup> al-Ṭabari, III, 1117. The Arabic text reads, in part: “*wa yakshifū lahum 'an muḡhaṭṭayāt umūrihim wa mushtabahātihā 'alayhim bi-mā yadfa'ūn al-rayb 'anhum wa ya'ūd bi'l-diyā' wa'l-bayyina 'alā kaḡḡatihim*”. (Note that al-Ma'mūn speaks of the caliphs in the plural here, thus rhetorically claiming that his vision is—or ought to be—shared by other caliphs as well.)

among the fundamental bases of his claim to be the imām.<sup>105</sup> The notion of clarifying obscure matters for his subjects recalls statements by Abū Yūsuf and Hārūn. As we have seen, al-Ma'mūn goes further and claims a religious authority which would not only be uniquely his, but which would also enable him to define the criteria of right belief rather than merely deciding and enforcing matters according to such criteria. Yet it does not follow that he thereby becomes, or seeks to become, a Shī'ī imām, say, in the tradition of the early Imāmiyya. The sort of knowledge al-Ma'mūn claims for himself is ultimately more akin to that of the emerging Sunnī 'ulamā's than it is to the Shī'ī imām's. True, the latter too is an 'ālim—indeed, the 'ālim par excellence—but, unlike al-Ma'mūn, the sort of 'ilm he claims is in large part, at least in the early stages of the development of Imāmī doctrine, supernatural and esoteric. The analogy of al-Ma'mūn's claims with those attributed to the Shī'ī imām is thus not just superficial but also misleading.

After the death of al-Ma'mūn (d. 218/833), the *Mihna* continued in operation under his two immediate successors. Rather curiously, though, his claims to religious authority were neglected, and in this sense there already was a reversion to the pre-Ma'mūnid tradition. The *Mihna* was now prosecuted more as a matter of commitment to the *sunna* of their predecessor, and, as our sources insist, due to the influence of Mu'tazilī scholars, of whom the chief *qāḍī* Ibn Abī Du'ād (d. 240/854) was the most influential, than for any apparent interest the caliphs may have had in asserting their own religious authority.<sup>106</sup> Or so it seems. It is important to bear in mind that most of our sources represent the viewpoint not of the prosecutors of the *Mihna* but of the persecuted. Ibn Ḥanbal may have come out of the Inquisition as a hero,

<sup>105</sup> Amir-Moezzi, *Divine Guide*, 69ff. Contrast Hossein Modarressi, *Crisis and Consolidation in the Formative Period of Shi'ite Islam* (Princeton: The Darwin Press, 1993), 3-105 passim, for the view that the "moderate" or "mainstream" Imāmiyya of the second-third/eighth-ninth centuries considered the imām essentially as the most learned of scholars. Yet he recognizes that the imām's "knowledge was qualitatively different from that of other learned men for it was the knowledge of the House of the Prophet, which derived ultimately from the Prophet himself. It was, therefore, unquestionable truth and indisputable authority, representing in effect a part of the revelation that the Prophet had received from God." (Modarressi, *ibid.*, 9). In general, Modarressi probably draws too sharp a line between his "moderates" and "extremists"; and though his work demonstrates the differences in early Shī'ī conceptions of the imām's authority, the "moderate" views need not have been quite so uniform as he suggests. Could one not believe in the imām's esoteric knowledge and yet distance oneself from other "extremist" positions?

<sup>106</sup> For a sympathetic biography of Ibn Abī Du'ād, see van Ess, *Theologie und Gesellschaft*, III, 481-502.

but the Sunnī sources also have a definite interest in representing him as such. By the same token, it is possible that presenting the caliphs al-Mu'taṣim and al-Wāthiq as only half-heartedly continuing the policy of their predecessor may have been a way of demonstrating the moral bankruptcy of the whole affair and, perhaps also, of mitigating their culpability for it.<sup>107</sup> Yet, even as tendentious representation, early accounts of the *Miḥna* reveal much about the 'ulamā's religious authority, especially in relation to the caliphs. I shall base some brief remarks in this regard on two of the earliest treatments of the *Miḥna*, one of which comes to us from Ṣāliḥ b. Aḥmad, a son of Ibn Ḥanbal, and the other from his nephew, Ḥanbal b. Ishāq.

That these sources purport to be almost contemporary with Ibn Ḥanbal does not, of course, vouch for their truth-claims, but it does mean that they can give us a fair idea of how the position of the caliphs vis-à-vis the 'ulamā' was visualized in the milieu in which these texts originated. In this regard, it is striking that the influence which Ibn Abī Du'ād is shown to wield over the caliphs here makes the same general point as does al-Mu'taṣim's ironic admiration and solicitude for Ibn Ḥanbal: this caliph comes across as utterly convinced of the scholars' authority, and the only question is whose authority, among the scholars, he would defer to. It is the Mu'tazilī chief *qāḍī*, of course, who eventually has his way, but the celebrated flogging of Ibn Ḥanbal does not take place before the caliph has exhausted his patience and energy trying to persuade the latter to give in. The image of al-Mu'taṣim these sources conjure is that of a caliph who seeks collaboration, not confrontation, with the scholars: as this caliph is supposed to have said, Ibn Ḥanbal is the kind of scholar he would like by his side "to stave off the heretics (*ahl al-milal*) from me";<sup>108</sup> and he vows to break Ibn Ḥanbal's fetters with his own hands if only the latter should relent.<sup>109</sup>

If the purpose of the *Miḥna* was to curb the scholars' religious authority, then, on the above view at least, it had failed long before al-Mutawakkil officially terminated it. The accounts of Ibn Ḥanbal's son and nephew may represent al-Mutawakkil's ostentatious deference to the 'ulamā's authority rather more than they do the attitudes of al-

<sup>107</sup> For the treatment of the *Miḥna* in biographical literature, see Cooperson, "Heirs of the Prophets", 340-400. My analysis, though indebted to Cooperson's, differs from his in being concerned not with how later biographers may have dealt with the uncomfortable suggestion (which Cooperson is inclined to accept) that Ibn Ḥanbal may have capitulated during the *Miḥna*, but rather with the representation of the 'ulamā's authority in some of the earliest accounts of the Inquisition.

<sup>108</sup> Ṣāliḥ b. Aḥmad, *Sira*, 59; cf. Ḥanbal b. Ishāq, *Dhikr miḥna*, 52.

<sup>109</sup> Ṣāliḥ b. Aḥmad, *Sira*, 59, 60; Ḥanbal b. Ishāq, *Dhikr miḥna*, 52.

Mu'taṣim and al-Wāthiq. Yet they do indicate how the authority of scholars—even of vicious scholars—was seen by those who were intimate members of Ibn Ḥanbal's circle. In general, this view is in remarkable accord with the pattern we have observed as emerging in the caliph's relations with the 'ulamā' before the *Miḥna*: nowhere in these accounts of Ibn Ḥanbal's Inquisition is the propriety of the 'ulamā's acting in concert with the caliphs questioned. What is deplorable here is only that the caliph was influenced by the wrong scholars,<sup>110</sup> not that scholars associated themselves with him; indeed, as noted, one is made to believe that al-Mu'taṣim already wanted to utilize the services of Ibn Ḥanbal, just as al-Mutawakkil tried to after the Inquisition. Nor, in these accounts, is there any hint that the caliph's participation in religious life ought to cease. If anything, these accounts seem concerned to exonerate a caliph like al-Mu'taṣim for the role he almost inadvertently found himself playing;<sup>111</sup> but there is no denial that, under the right circumstances and for the right cause, the caliph's role is desirable.

The *Miḥna* was a severe shock for the emergent Sunni 'ulamā', and it is not unlikely that the gravity of the Inquisition's challenge to their autonomy contributed towards what Norman Calder, in another context, characterizes as the "developing professionalization of the juristic classes".<sup>112</sup> Yet, despite its significance as an unprecedented challenge to their authority and social influence, the *Miḥna* was hardly a watershed in the religious policies of the early 'Abbāsīd caliphs. The failure of the Inquisition did not alter but only confirmed the trends and tendencies which were emerging before it was instituted. Contrary to what is sometimes suggested,<sup>113</sup> its failure did not result in a usurpation by the 'ulamā' of the caliph's role as the guardian of the community's religious life. The 'ulamā', of course, shared this function with the

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<sup>110</sup> Or rather, by people who were not scholars at all. Ibn Ḥanbal is quoted as saying, for instance, that Ibn Abī Du'ād "was the most ignorant of people in *'ilm* and *kalām* ....; he had no knowledge of anything" (*mā kāna lahu ma'rifa bi-shay*): Ḥanbal b. Ishāq, *Dhikr miḥna*, 51.

<sup>111</sup> Cf. Ḥanbal b. Ishāq, *Dhikr miḥna*, 51.

<sup>112</sup> Calder, *Studies*, 185.

<sup>113</sup> For example, by Lapidus, "Separation of State and Religion"; cf. Crone and Hinds, *God's Caliph*, 93-97. Crone and Hinds concede, however, that "the desanctification of the institution [of the caliphate] was never complete.... There is no point in Islamic history at which the caliphate can be said to have been entirely devoid of religious meaning." *Ibid.*, 97. This "religious meaning" was, however, essentially symbolic, so that "the caliph had to satisfy himself with political power." *Ibid.*, 97.

caliph, but they never denied it to him, nor do the caliphs ever seem to have relinquished it. We have noted, with Calder, al-Muhtadī's commitment to reform—not just of the finances but also of public morality. al-Mas'ūdī speaks explicitly of this caliph's "ordering the good and forbidding evil", and gives many examples of that activity on his part.<sup>114</sup> He wanted, as he is represented as saying to those who eventually murdered him, "to have [the people] follow the *sīra* of the Prophet, of his household, and of the *khulafā' al-rāshidūn*".<sup>115</sup> This did not appeal much to his detractors, and there is the suggestion that he may have carried his religious zeal to what many thought were inordinate lengths.<sup>116</sup> Yet the role of *al-amr bi'l-ma'rūf*, and the caliph's general guardianship of religious life, continued. One telling instance of the caliph's engagement with religious trends and attitudes in the (post-*Mihna*) society over which he presided is worth considering here.

In 284/897, the caliph al-Mu'tadid intended to have a document cursing Mu'awiya, the first Umayyad caliph, read to the populace, but it is said that his advisers eventually dissuaded him from putting this intention into effect. al-Ma'mūn had had a similar intention, and al-Ṭabarī notes that the document al-Mu'tadid wanted to have read out may, in fact, have been based on the one which had been prepared at al-Ma'mūn's behest.<sup>117</sup> The following passages are among some of its more remarkable:

Praised be God Who made the Commander of the Faithful and his rightly guided and directed forbears the heirs of the Seal of the prophets and Lord of the messengers! He has put them in charge of the religion of Islam, charged them with setting straight God's believing servants, and entrusted them with the preservation of the pledges of wisdom and the heritage of prophethood.... The Commander of the Faithful has learned that a number of ordinary people have been beset by doubt (*shubha*) in their religious beliefs and have been affected by corruption in their faith.... [He] takes a very serious view [of this, and] ... considers a failure to express his disapproval as harmful to himself regarding the religion of Islam, as detrimental to the Muslims whose affairs God has entrusted to him, and as a neglect of the duty imposed upon

<sup>114</sup> al-Mas'ūdī, *Murūj al-dhahab*, ed. M. Muḥyī al-dīn 'Abd al-Ḥamīd (Cairo: Maktabat al-tijāriyya al-kubrā, 1958), IV, 183, and 183-94, *passim*.

<sup>115</sup> *Ibid.*, IV, 186. al-Muhtadī's piety served his later image well. According to a report transmitted by the historian Muḥammad b. Yaḥyā al-Ṣūlī, many a *faqīh* and *muhaddith* agreed that al-Muhtadī ought to be counted among a select group of caliphs comprising the four *khulafā' al-rāshidūn* and 'Umar b. 'Abd al-'Azīz. See al-Lālakā'ī, *Sharḥ uṣūl i'tiqād ahl al-sunna wa'l-jamā'a*, ed. Aḥmad b. Sa'd al-Ghāmīdī (Riyāḍ: Dār ṭība li'l-nashr wa'l-tawzī', 1994), VIII, 1473.

<sup>116</sup> Cf. al-Mas'ūdī, *Murūj*, IV, 183, 186.

<sup>117</sup> al-Ṭabarī, III, 2165-66.

him by God to set straight opponents, inform the ignorant, establish proofs against doubters, and control the obstinate.... Good people! Get away from what makes God angry at you and turn to what makes Him pleased with you!.... Follow the straight path, the manifest road, and the people of the house of mercy, through whom God guided you in the beginning and saved you from injustice and hostility in the end.... O people! It is through us that God has guided you aright. We are the ones appointed to preserve God's concerns among you. We are the heirs of the Messenger of God (*warathat rasūl Allāh*) and the ones who are in charge of the religion of God. Thus stay where we put you, and execute what we command you to do! For as long as you obey the vicegerents of God and leaders toward right guidance (*a'immat al-hudā*) along the path of faith and the fear of God, you will be all right...<sup>118</sup>

Whether this document is in fact based on an earlier version ordered by al-Ma'mūn, and if so to what extent, it is impossible to say. There is no characteristically "Ma'mūnid" assertion of religious authority here which would necessitate that it be placed in his time, and the documents that have come down to us from his reign, e.g. his letters on the createdness of the Qur'ān,<sup>119</sup> are markedly different: to take only the most striking example, they show none of the reliance on the authority of *ḥadīth* that al-Mu'taḍid's document so amply exhibits. Note should also be taken of the fact that al-Ṭabarī reproduces this document in his account of the reign of al-Mu'taḍid, not of al-Ma'mūn. But even if it is granted that the document originated in al-Ma'mūn's reign, the fact that al-Mu'taḍid could seriously think of having it proclaimed suggests that he subscribed not only to what is said in it about Mu'āwiya but also to what it asserts about the caliph's functions. But then, as I have argued, there is as little reason to suppose that after the *Miḥna* the caliphs came to lose their religious functions to the 'ulamā' as there is to view the caliphs and the 'ulamā' as engaged in a bitterly unrelenting struggle for religious authority before the *Miḥna*. As for the *Miḥna* itself, it was precisely this role of being the defender of the faith that al-Mutawakkil was asserting in terminating it, and Ibn Ḥanbal is on record as having acknowledged it for the caliph.<sup>120</sup>

"According to Aḥmad b. Ḥanbal," Lapidus writes, "it was the duty of the 'ulamā' to revive and preserve the law, and the duty of all Muslims to 'Command the good and forbid the evil', that is, to uphold

<sup>118</sup> For the full text of the document, see al-Ṭabarī, III, 2166-77; translation as in *The History of al-Ṭabarī*, vol. XXXVIII, tr. F. Rosenthal (Albany: State University of New York Press, 1985), 48-63 (with some modifications).

<sup>119</sup> al-Ṭabarī, III, 1112ff., 1117ff., 1125ff., 1131-32.

<sup>120</sup> al-Khallāl, *Masā'il*, fols. 5a, 176b-179a.

the law, whether or not the Caliphate would properly do so.... The implication of Aḥmad's view is to circumscribe the authority of the Caliphs in religious matters and, though Aḥmad did not have a language to express it, to recognize a practical distinction between secular and religious authority."<sup>121</sup> Ibn Ḥanbal certainly did not have to be convinced of the 'ulamā's religious authority, nor was he unique in that position. But an assertion of such authority does not necessarily signify that the caliph is being stripped of all religious functions, and that he is no longer relevant to the community's religious life. The following paraphrase of what purports to be Ibn Ḥanbal's views in this regard comes from a later Ḥanbalī, Abū Muḥammad Rizq Allāh b. 'Abd al-Wahhāb al-Tamīmī (d. 488/1095):

[Ibn Ḥanbal] used to command that the true faith should be brought forth whenever corrupt doctrines made their appearance. The purpose, he said, is to establish the proofs of [the religion of] God; but doing so should not lead to hardship.... If it is possible to take [the matter] to the authorities (*al-sultān*), so that the latter can put an end to that [particular threat to the true faith], then one should not become involved with it [lit.: not stretch the hand towards it]. The authorities are better suited to dealing with it (*bihi awlā*). However, if one fears that the opportunity to act would be lost before the matter is brought to the authorities, then he must hasten [to act] provided that [in so acting] he does not endanger his life, or stir turmoil (*fitna*), or expose religion to disgrace and thereby weaken it. It is incumbent (*yajibu*) on all to assist the authorities when the latter seek assistance in putting an end to what is reprehensible. It is incumbent upon the 'ulamā' to contest whatever innovations (*bida'*) and false beliefs arise, by establishing proofs which would eliminate doubts and end the darkness of error. On the Imām and his deputy [for their part], it is incumbent to enforce [what the 'ulamā' have established as proofs] and to oblige the deviant (*ahl al-zaygh*) to abandon their ways after the proofs have been made clear to them. If they refuse, the Imām, following the dictates of his *ijtihād*, should punish them to the extent he deems necessary to ensure their return [to right belief].... Likewise, in case of rebels (*al-bughāt*), he should call upon them to return to the truth, should dispel their doubts, and [try to] bring them back [to the community's fold?] in the most lenient way possible. He should then deal with them according as his *ijtihād* guides him, resorting to force if he despairs of them, and if they refuse his call and war breaks out.<sup>122</sup>

<sup>121</sup> Lapidus, "Separation of State and Religion", 383.

<sup>122</sup> "Qit'a min muqaddimat al-shaykh al-imām Abī Muḥammad..." in Ibn Abī Ya'lā, *Ṭabaqāt*, II, 280. On Abū Muḥammad, the source of this 'aqida, see Ibn Rajab al-Baghdādi, *Kitāb al-dhayl 'alā ṭabaqāt al-Ḥanābila*, ed. H. Laoust and S. Dahan (Damascus: al-Ma'had al-Faransī li'l-dirāsāt al-'Arabiyya, 1951), 96-106. There is no compelling reason to suppose that the views attributed to Ibn Ḥanbal

The significance of the foregoing statement is two-fold. It recognizes, firstly, that the caliph has an essential role to play in religious life, and it is only when such role is lacking that others may step in and even then not unconditionally. Secondly, the statement emphasizes the functional interdependence and intimate collaboration of the caliphs and the ‘ulamā’. They do have different functions—which is what makes it a collaboration—but there is no sense here that caliphs are any less integral to the preservation of religious life, or any less involved in it, than are the ‘ulamā’. Crone and Hinds have concluded their study of “religious authority in the first centuries of Islam” by arguing that *because* “all aspects of life are covered by a single sacred law ... collaboration between [God’s] rival representatives [*scil.* His caliphs and the ‘ulamā’] was ruled out until one or the other side had won.... As it was the ‘ulamā’ won.”<sup>123</sup> But except for the interregnum of the *Miḥna*, there is little to suggest that there was even a contest between the caliphs and the ‘ulamā’, much less that the failure of the Inquisition permanently altered either the character of caliphal authority or the caliph’s relations with the ‘ulamā’. A difference of function between the caliphs and the ‘ulamā’ in and by itself does not necessarily signify a *separation* of state and religion; nor even are the functions all too rigidly separated. The caliph too exercises his *ijtihād* after all, and with the ‘ulamā’ establishing the proofs of religion, as the foregoing statement has it, he too dispels the rebels’ doubts to bring them back to the community’s fold. Some of the other juristic texts we have analyzed earlier make clear that it is not only the doubts of the rebels but also legal and administrative matters obscure to his governor and *qāḍī* that are to be referred to him. The caliph does not define the law; but, even after the *Miḥna*, he remains part of the religious circles in which it is interpreted.

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here were not espoused by him, but even if that turns out to be the case, they would still reflect the thinking of Hanbali circles and be significant for that reason.

<sup>123</sup> *God’s Caliph*, 109-110.