

trustworthiness, and he remains unacknowledged to us, we would not accept. Moreover, if he does not identify his [*shaykh's*] name, then ignorance is even greater; for how can the trustworthiness of one whose person is not known be known?

If it is said: The trustworthy person's transmission from him is an attestation [to his trustworthiness].

The answer to this has two bases:

First, we do not submit to this because a trustworthy person may report from someone such that if asked about him, he would either hesitate about him or discredit him. We have seen [traditionists] reporting from those who, when questioned about them, at times attest to their trustworthiness and at other times discredit them or state, "We do not know." Therefore, a reporter transmitting from such a person is actually silent with regard to his trustworthiness. For if abstention from discrediting is taken as attesting to trustworthiness, then silence about trustworthiness should likewise be taken as discrediting. It necessarily follows that if a transmitter discredits his source, he is, in fact, rendering himself a liar.

Moreover, the testimony of an indirect witness does not attest to the source, so long as he does not explicitly state it. The distinction between transmission and testimony, regarding certain divine obligations, does not necessarily change in this respect, just as it did not necessitate a change in the prohibition against the acceptance of reports from the discredited or the unacknowledged. Thus, if it is not permissible to say that a trustworthy person may only testify on the basis of a trustworthy person's testimony, then

it is not permissible with respect to transmission. Therefore, it is necessary to specify the identity of the *shaykh* and the source so that their conditions can be investigated.

If it is said: '*An'ana*'⁸⁷ transmission is sufficient in reporting, although when it is said that someone /1:170/ has transmitted from someone, and he in turn from someone else, this may imply that he himself has not heard it; rather, it has reached him through an unspecified intermediary. But with this possibility, it is still acceptable. However, in the case of testimony it is not acceptable.

We shall say: This is so provided that it does not necessarily alter the status of the transmission of the unacknowledged. But *mursal ḥadīth* are transmitted from unacknowledged persons. So, it must not be accepted.

An'anaḥ transmissions, however, became the practice among the scribes [of *ḥadīth*] because they found it burdensome to write with every name that he transmitted the report from so and so by actually hearing it from him, and thus withheld from wasting paper

⁸⁷This term is derived from the Arabic '*an*' and is used among traditionists to mean *from* or *on the authority of*, but not necessarily indicating actual hearing of a report. The dispute regarding the reliability of such reports became visible by the 3d century. Muslim b. al-Ḥajjāj defended '*an'anaḥ*' transmissions in the introduction of his collection of *ḥadīth*, known as *Ṣaḥīḥ Muslim*, 18 vols. 2nd ed. (Beirut: Dar Ihyā' al-Turāth al-'Arabī, 1972), 1:127-44. Later sources accepted this form of reporting provided that it was transmitted by those whom they considered to be trustworthy and not deceitful. Also, when it is established, the reporter actually meets with his source. Consult al-Baghdadī, *al-Kifāya*, p. 389 and Ṣāliḥ, *Uṣūl al-Ḥadīth*, p. 250.

and time; so they used abbreviations. This is only accepted in transmission if by his explicit statement or through his practice it is known that he means actually hearing. But if he does not mean actual hearing, then it is not be accepted because it wavers between *musnad* and *mursal*.

The second answer is that even if for the sake of argument sake we concede that transmission is attestation, still, unqualified attestation is not acceptable so long as one does not state the reason. Furthermore, if he explicitly states that he heard this report from a trustworthy, credible source, its acceptance is not necessary.

Also, if we concede to the acceptance of unqualified attestations, it would only be in regard to a person whose identity is known and who is not known for any *fiṣq*. As for he whose identity we do not know, perhaps if he were to be identified we would know of his *fiṣq*, which the attestor may have been unaware of. It is sufficient for every locus of obligation to accept the characterization of others when he is incapable of knowing himself. But his incapability cannot be known unless he identifies him specifically. It is for such reasons that the unqualified attestation of an indirect witness is not accepted so long as he does not identify and specify the source. For if he does, the judge may know of his *fiṣq*, prejudices, or other things.

Now, they argue [their position] on the basis of the Companions' and the Successors' agreement to accept *mursal ḥadīth* from a trustworthy person. For example, it is said that 'Abd Allāh b. 'Abbās, with all his numerous transmissions, did not hear the

Messenger of Allâh, *عليه السلام*,—excepting in four *ḥadīths*—because of his young age. He openly stated this in reported the *ḥadīth* about usury in a loan,⁸⁸ saying, “Usâma b. Zayd has reported it to me.” Also, he reported that the Messenger of Allâh, *عليه السلام*, repeated *talbiya* ⁸⁹ until he threw stones at ‘Aqaba.⁹⁰ When questioned, he said, “My brother al-Faḍl b. ‘Abbâs has told me about it.”

Similarly, Ibn ‘Umar reported from the Messenger of Allâh, *عليه السلام*, that he said, “A person who participates in a funeral prayer has measurable reward. . . .”⁹¹ He then related that this was on the authority of Abû Hurayra.

Also, Abû Hurayra reported, “Whosoever wakes up in *Ramadhân* in the state of *janâba*, should not fast.” But then he said, “I, by the Lord of the Ka‘ba, did not say it; But, Muḥammad, *عليه السلام*, said it.” But when questioned he said, “Faḍl b. ‘Abbâs reported it to me.”

⁸⁸Consult Wensinck, *Concordance et Indices de la Tradition Musulmane*, 2:217.

⁸⁹The literal meaning is to follow, obey, or respond. The term refers to the chant that Pilgrims make during *ḥajj*, “*Labayk Allâhuma labayk . . .*,” meaning, “Here I am Lord, answering Your call.”

⁹⁰This is one of *ḥajj*’s symbolic rituals where Pilgrims throw stones in three places, known as *jamarât*, east of Mecca, near Mina. See al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 3:192-206.

⁹¹For the sources of this *ḥadīth*, consult Wensinck, et al., *Concordance et Indices de la Tradition Musulmane*, 1:386-87.

Again, al-Barâ' b. 'Azib said:

Not all that we have transmitted to you we have heard from the Messenger of Allâh, *حَدَّثَنَا رَسُولُ اللَّهِ ﷺ*; but we have heard some of it [from him], while some has been transmitted to us by his Companions.

As for the Successors, Ibrâhîm al-Nakhi'î said:

If I say, 'So and so has related from 'Abd Allâh [b. Mas'ûd],' then it is indeed he who has told me. But if I say that 'Abd Allâh said . . . , ' then I have heard it from more than one person.

Similarly, the acceptance of *mursal ḥadīth* has been transmitted from a group of Successors. The answer has two sides:

The first is that this is correct; and lends proof to the acceptance of *mursal ḥadīth* by some. But this discussion is in the domain *ijtihād*; and the *ijmâ'* with regard to this is not established at all. For there is even evidence that not all [the Companions] accepted *mursal ḥadīth*. For this reason they questioned /1:171/ b. 'Abbâs, b. 'Umar, and Abû Hurayra—in spite of their prominent status—not out of doubt for their trustworthiness, but to disclose the transmitter.

If it is said: Some of them accepted [*mursal ḥadīth*] and others remained silent, and thus constituted *ijmâ'*.

We shall say: We do not submit to the establishment of *ijmâ'* based on their silence, particularly when it is in the domain of *ijtihād*. Rather, it may be that a person remains silent while he harbors disapproval or is hesitant about it.

The second answer is that among those rejecting *mursal* *ḥadīth* are those who have accepted the *mursal* of the Companions because they report from other Companions, and all are trustworthy. Some added the *mursal* of the Successors to that of the Companions, for they transmit from the Companions. Some specifically accept only the *mursal* *ḥadīth* of the senior Successors.

The preferred opinion, based on the analogy of rejecting *mursal* [*ḥadīth*], is that when a Successor or a Companion is known for his clear report or for his practice of transmitting only from a Companion, then his *mursal* *ḥadīth* is acceptable. But if this is not known, then it is not acceptable because they may transmit from other than a Companion, like the Arabs who had no Companionship. Yet only the trustworthiness of the Companions has been established for us.

Al-Zuhri, after narrating a *mursal* *ḥadīth*, said, "A man at the door of 'Abd al-Mālik told me this." 'Urwah b. Zubayr, with regard to his *mursal* reports narrated through Busra, said, "One of the guards told me."⁹²

VII. DISCUSSION: A solitary report [instructive] about common necessities [i.e. every day needs or occurrences] is acceptable—contrary to what al-Karkhi holds and some of the

⁹²Ghazālī here adapts a different opinion than what he has expressed in *al-Mankhūl*, p. 275, where he, oddly enough, accepted the *mursal* *ḥadīth* from anyone at all times.

Hanafites.⁹³ For it is necessary to believe all that a trustworthy person transmits, so long as his truthfulness about it is possible. For example, the *ḥadīth* concerning the touching of the genitals has been narrated by a trustworthy person whose truthfulness is possible; therefore, we do not decisively accuse its transmitter of lying, as opposed to a situation where a reporter solitarily transmits a report which is by the nature of the case impossible for it not to be well known, as with the murder of a governor in the marketplace, the dismissal of a minister, the occurrence of a mishap in a Mosque preventing people from Friday prayer, an earthquake, the the sinking of the earth, the falling of a big star, or other wonders. For there is abundant impetus to promulgate all of these, and their concealment is impossible.

Similarly, no solitary report can be accepted in reference to the Qur'ân; for we know that the Prophet was charged to promulgate it and bring it to the attention of all the people. Therefore, the impetus to promulgate and transmit it is overwhelming because it is the foundation of religion. Thus, a single, individual reporter transmitting a *sûra* or a verse is decisively a liar.

But with reference to common necessities, we cannot conclusively charge one who reports on such things to be a liar.

⁹³Ghazâlî, *al-Mankhûl*, p. 284 relates this opinion to Abû Hanîfa himself. For another Shâfi'ite opinion, see al-Khatîb al-Baghdâdî, *al-Faqîh wa al-Mutafaqqih*, 1:137.

If it is said: [Since you cannot conclusively charge one who reports on common necessities to be a liar], then how would you base your rejection of a person whose lying is known decisively? Take, for [instance], the evacuating of excrement from either bodily passage, since man needs to relieve himself repeatedly during the course of a day and night. Yet [precisely] because this annuls ritual purity, the Messenger of Allâh, ﷺ, could not be allowed to *not* promulgate its rules, or confidentially reveal it to only a few individuals. For this would lead to the concealing of the *Shari'a* and the annulment of the worshippers' prayers, for they would be unaware. Therefore, in such cases, promulgation is necessary. Thus, great impetus to transmit this would necessarily emerge. Likewise, how can rules pertaining to the touching of the genitals—which also occurs commonly—remain concealed?

First, we shall say: This is refuted by the [examples of] *witr* prayer, rules concerning cupping and bloodletting, guffaw, the necessity for bathing after washing the dead, and reciting the second call for prayer either once or twice—all of which are common necessities that have been established by solitary reports. So, if they claim that the commonality of these necessities is not the same as the common occurrence of excretions, we shall say that the common necessities with regard to the touching and feeling [of the genitals] is not like excretions because a long period may pass without a person touching or feeling his genitals except when excreting, just as he only occasionally resorts to cupping or bloodletting. Therefore, there is no difference.

The second answer, which is substantiated, is that cupping

and blood letting, although not repeated daily, occur frequently; so how could their ruling be concealed such that it results in nullifying the prayers of many people? And even if it did not occur frequently, still how was it entrusted to solitary reporters?

Actually, there is no reason for it except that Allâh, ﷻ, did not oblige His Messenger, ﷺ, to promulgate all rules himself. Rather, He obliged him to promulgate some and permitted him to leave people to learn others through solitary reports, as He permitted him to leave people to *qiyâs* in regard to the rule of usury. Otherwise, it would have been easy for him to say, "Do not sell food in exchange for food . . .," or "Do not sell that which is measured in exchange for that which is measured . . .," so that their would have been no need to make an inference from the six mentioned [commodities].⁹⁴

Accordingly, it is possible to include common necessities as part of the public interest, requiring recourse to solitary reports. There is no absurdity in this. for in these cases, the truthfulness of the transmitter is possible, which necessitates believing him. The reason for promulgation is neither the 'commonness' nor the 'rarity' of needs. Rather, its reason is the charging of worship and obligation by Allâh. Yet what *many* people need, such as cupping

⁹⁴This is in reference to a *hadîth* in which the Prophet specifically prohibited the exchange of six commodities except in direct exchange of equal volumes — gold for gold, silver for silver, wheat for wheat, dates for dates, raisins for raisins, and salt for salt. For the various opinions held by the *fiqhî* schools, see the elaborate treatment in Zahîlî's *al-Fiqh al-Islâmî wa Adillatuhu*, 4:671-702 and Ibn Rushd, *Bidâyat al-Mujtahid*, 2:111-128.

and blood letting, is similar to what *most* commonly need in that they must not be hidden according to the *Sharî'a*.

If it is said: What is the criterion for what the Messenger, *ﷺ*, has been obligated to promulgate?

We shall say: If you want a criterion for its rational permissibility, there is none. For it is the right of Allâh to obligate His Messenger with whatever He wills. But if you are searching for its actual occurrence, it is known only from the practice of the Messenger of Allâh, *ﷺ*.

When we examine the revealed sources, we find that they are of four types:

First, there is the Qur'ân. We know that there was great concern to widely promulgate it.

Second, there is the five pillars of Islam, that is, the declaration of faith, prayer, alms, fasting, and pilgrimage. The Prophet has promulgated them in a way that they are known to the common and the elite alike.

Third, there is the principles of transactions—which are not necessary [matters of widespread promulgation]. For example, there are the principles of sales and marriage, for they have reached us via *tawâtur*. Even matters like divorce, manumissions, possession of properties, freeing a slave upon the owner's death or payment, and freedom contracts for slaves have reached the scholars via *tawâtur*. Decisive proof has been established on the basis of either *tawâtur* or the reporting of individuals before a large congregation who remained silent [in approval]. Indeed,

proof is established based on this, even though the common people did not share certain knowledge with the scholars. Rather, in such cases the common people are obligated to accept [knowledge] from the scholars.

Fourth, there are the details of this principle, namely what voids prayers or other types of worship, or what nullifies purity, such as touching and feeling, vomiting, and repeatedly wiping the head [for ablution]. Some of these [details] have become widely known, /1:173/ while others have been transmitted via solitary reports.

Indeed, it is possible for them to be among the common necessities. So, there is neither absurdity nor impediment in what has been transmitted via solitary reports. For it is possible that Allâh did not oblige the Prophet to promulgate what he did, although it was permissible.

As for what was entrusted to individuals [by the Prophet], it is possible that they were obliged to promulgate it. But what actually had happened indicates that the religious obligation was fulfilled. Never did [the Prophet] disobey the command of Allâh, **فَعَلَىٰ**, in any way.

This is the completion of the discussion on reports. Allâh knows best.

THE THIRD OF THE PRINCIPLE SOURCES

AL-IJMĀ' [CONSENSUS]

Comprising [Three] Chapters

CHAPTER ONE: ESTABLISHING [IJMĀ'] AS A VALID PROOF AGAINST THOSE WHO DENY IT

One who attempts to establish that *ijmā'* is a valid proof must first clarify the meaning of the term *ijmā'*; second, explain its concept; third, demonstrate that it is possible to ascertain it; and fourth, explain the reasons for its being a valid proof.

As for the clarifying the term *ijmā'*, we use it exclusively to mean the unanimity of the *ummah* of Muḥammad, ﷺ, particularly on certain religious issues. Its linguistic meaning is *unanimity* and *resolution*; thus it combines both of these.

So whosoever resolves something and completes his determination to implement it, it is said, '*Ajma'a*.' When a group agrees upon something, it is said, '*Ajma'u*.' This may apply to the *ijmā'* of the Jews or the Christians, as well as unanimity in other than religious affairs.

But in technical usage, this term has been specified as we have mentioned. Al-Nazzām¹ held that '*ijmā'*' is an expression for

¹ Abū Ishāq Ibrāhīm b. Sayyār b. Hānī al-Baḡrī al-Nazzām is a

every statement whose proof is evident, even if it is a statement of an individual—which is contrary to both the linguistic and technical [usages]. But he tailored it to his own view, for he did not see *ijmâ'* as a proof. Yet he had heard, by way of *tawâtur*, of the prohibition against opposing *ijmâ'*. So he said that it is every position whose proof has been established.

As for the second [point], namely its concept, the proof of its conception is its existence. For we have found the *ummah* in unanimous agreement that the [daily] prayers are five and that the fasting of *Ramadân* is obligatory. How could it be impossible to conceive this when the whole *ummah* is religiously charged to adhere to the [*Shari'a*] texts and decisive proofs, and they are subject to punishment in opposing them. So, just as their unanimity is not impossible on things like eating and drinking, for the impetus [of all] agree here, similarly their [unanimity] is not impossible on following the truth and avoiding the fire.

If it is said: With all its numerousness and diversity of motives in admitting the truth or being obstinate about it, how will the *ummah's* opinions agree? This is impossible on its part, as is, say, their agreement to eat raisins on the same day.

We shall say: There is nothing preventing their consuming raisins particularly. Yet all of them have motive to admit the truth.

well-known Mu'tazilite (d. 230/845). For reference to his works, see Sezgin, *Geschichte*, 1:618; and *The Shorter Encyclopaedia of Islam*, pp. 445-446.

Why should it not be so! when the unanimity of all Jews on falsehood—despite their large numbers—is conceivable? So, why is it not conceivable that all Muslims should agree unanimously on truth? For numerousness is effective only when like things, motives, and impediments conflict, /1:174/ while *ijmâ'* is mainly based on *mutawâtir* texts and matters necessarily known by circumstantial evidences. All sane people are on one path in this regard. Certainly as to whether *ijmâ'* can be conceived on the basis of *ijtihâd* or *qiyâs*, this is a matter about which there can be discussion, which will come, God willing.

Now, on the third point, namely whether it is conceivable for *ijmâ'* to be ascertained, some have said: If ascertaining of *ijmâ'* is conceivable, then who will pursue it, considering their [peoples] dispersal through the lands?

We shall say: Knowing their [opinions] is conceivable by communicating with them verbally if they are of such numbers that their meeting is possible. If it is not possible, then the opinions of certain people can be known verbally, while the opinions of others can be known through *mutawâtir* reports about them, just as we have known of the prohibition against executing a Muslim for [killing] a *dhimmi*² is the opinion of all the Shâfi'îtes, as well as the annulment of marriage without a guardian; and as we have come to know that the view of all Christians is [belief in]

²For comprehensive treatment of the subject on the definition and the status of *dhimmis*, see 'Abd al-Karîm Zaydân, *Aḥkâm al-Dhimmiyyîn wa al-Must'aminîn fî Dâr al-Islâm* (Baghdâd: University of Baghdâd, 1963).

trinity, and that the belief of all the Magians is dualism.

If it is said: The opinions of the Shâfi'ites and Hanafites are based on one source, which is al-Shâfi'î and Abû Hanîfa, and the opinion of one person can be known. Similarly, the belief of Christians is based on Jesus, عَلَيْهِ السَّلَام. But as for the opinion of an unencompassable number of people, how will it be known?

We shall say: The positions of the *umma* of Muḥammad, صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ, concerning the affairs of religion are based on what they understood from Muḥammad, صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ, and what they heard from him. Furthermore, since the *influentials*³ are limited, and it is possible to know the view of one, it is also possible to know the view of the second, or up to ten or twenty.

If it is said: Perhaps one of them would be in the captivity of the infidels or the lands of Byzantium.

We shall say: It is necessary to have recourse to him. The opinion of a captive can be transmitted like the opinion of others; so it is possible to know it. Whoever doubts his [the captive's] agreement with the rest would not be establishing consensus.

If it is said: If his opinion can be known, perhaps he may revert from it afterward.

We shall say: His retraction has no influence after *ijmâ'* has occurred, for he is compelled by it [the *ijmâ'*]. Nor is retraction

³People who are determinants of affairs.

conceivable by all of them, for then one of the two *ijmâ's* would be in error, which is absurd, based on the proof of revealed authority.

As for the fourth point, namely establishing valid proof for the impossibility of error on the part of the *ummah*, the whole importance of the matter resides in this point, and its being proof is known only through the Book, *mutawâtir Sunna*, or Reason. As for *Ijmâ'*, it is not possible to establish it on the basis of *ijmâ'*. Indeed, they [the establishers of *ijmâ'*] desire to receive [proof] from the Book, the *Sunna*, and Reason. But the strongest of these is the *Sunna*.

We shall now mention these three approaches.

The first approach. Adhering to the Book, namely His statements, **أَقْرَبُ**:

*"Thus We have appointed you a middle ummah that you might be witnesses upon the people. . . ."*⁴

*"You are the best ummah ever brought forth for people, bidding good and forbidding evil. . . ."*⁵

*"Of those We created are an ummah who guide by the truth and by it act with justice."*⁶

*"And hold fast to Allâh's bond, together, and do not scatter."*⁷

⁴Qur'ân, 2:143.

⁵Qur'ân, 3:110.

⁶Qur'ân, 7:181.

⁷Qur'ân, 3:103.

*"And in whatsoever you differ, its judgment belongs to Allâh."*⁸ (implying that what you have agreed upon is, indeed, truth).

*"... If you dispute in anything, refer it to Allâh and the Messenger. . . ."*⁹ (Also, its implication is /1:175/ that what you have agreed upon is truth).

All these are extrinsic [proofs] which do not specify the objective. In fact, they do not even point out extrinsic indicators, though the strongest of them is His statement, *قُلُوبُ*:

*And whosoever opposes the Messenger after guidance has become clear to him and takes a path other than the path of the believers, We shall turn him over to what he has turned to and We shall roast him in Jahannam,—an evil homecoming*¹⁰

For this necessitates the following of the path of the believers. This is the verse that al-Shâfi'î relied upon.

We have treated this at length in [our] book, *Tahdhîb al-Uṣūl* [*Refinement of the Principles*],¹¹ raising questions about this verse [as a proof for *Ijmâ'*] and rebutting it. As we see it, this verse is not a decisive text for this purpose. Rather, what is obvious is that its intended meaning is that whosoever fights the Messenger, opposes him, and follows other than the path of the believers in supporting,

⁸Qur'ân, 42:10.

⁹Qur'ân, 4:59.

¹⁰Qur'ân, 4:115.

¹¹This is the second reference to this extensive work on *uṣūl*, which, unfortunately, is unlocated.

aiding, and repelling enemies from him, "*We turn him the way he turns.*" Thus, it is as if He was not content with abandoning the opposition [against the Messenger] until they joined him, following the path of the believers in aiding, defending, and submitting to him in what he commands and prohibits. This is evident and spontaneous to the understanding. But if it is not apparent, then it is [at least] plausible. So if the Messenger, ﷺ, had explained the verse in that manner, it would have been accepted. Nor would it render this an abrogation of the text, as if one explained, for example, *opposing* as *agreeing* and *following* the path of the believers as *deviating* from their path.

The second approach. This is the strongest, namely holding fast to his saying, ﷺ, "My *ummah* shall not agree on a mistake."¹² Now this, with respect to its wording, is stronger [than the above verses] and more indicative of [our] purpose. Yet it is not *mutawâtir*, like the Book. While the Book is *mutawâtir*, however, it is not an explicit [proof for *ijmâ'*].

So the way to establish the proof, in our view, is [to show] that the transmissions from the Messenger, ﷺ, display in varied words agreeing in meaning that this *ummah* is protected from error. It has become well-known at the tongue of the notables and the most reliable Companions, like 'Umar, b. Mas'ûd,

¹²The *ḥadīth* is found in *Sunan* b. Mājah, 2:1303; al-Nisābūrī, *Mustadrak*, 1:115-116; and al-Haytamī, *Majma' al-Zawâ'id*, 5:217-219.

Abû Sa'id al-Khudrî, Anas b. Mâlik, b. 'Umar, Abû Hurayra, Hudhayfa b. al-Yamân, and others whose mention would be too lengthy, to the effect that he said, **حَدَّثَنَا اللَّهُ عَلَيْهِ وَسَلَّمَ**:

"My *ummah* will not be unanimous on an error."

"Allâh will not let my *ummah* come together on an error."

"I have asked Allâh, **دُعَايَ**, that He not bring together the whole of my *ummah* on an error. And He granted it."

"Whosoever is pleased by making the wide space of Paradise his abode, he must keep to the *ummah*. For their supplication shields them from others."¹³

"Satan accompanies the loner. He is more remote from two."

"Allâh's hand is with the *ummah*, and Allâh gives no attention to the divergence of one who splits [from the *ummah*]."

"One group shall always remain predominating over truth, unharmed by whosoever disagrees with them."

which has also been transmitted:

"The disagreement of whosoever differs with them shall not harm them, except for the hardship that confronts them."

"Whosoever secedes from the *ummah* or separates even the span of a hand, he has doffed the noose of Islam from his neck."

"Whosoever separates from the *ummah* and dies, his death is in *jahaliyah*."

¹³This translation is based on 'Izz al-Dîn b. al-Athîr's interpretation in *al-Nihâya fî Gharîb al-Ḥadîth wa al-Athar*, 5 vols. ed. M. Tanâhî (Riyad: Maktabat Islâmî, 1963), 1:461 and 2:122.

These reports have remained prevalent among the Companions and the Successors up to our times. None among the transmitters of the *ummah's* forbearers and its successors repudiated them. Rather, they are accepted by those favoring the *ummah* and those differing with it. The *ummah* has ever continued /1:176/ to use these reports as arguments both in the fundamentals of religion and its applications.

If it is said: Where is the proof when the claim of *tawâtur* concerning these individual reports is impossible and *ahâd* [solitary] transmission does not yield certain knowledge?

We shall say: There are two ways to establish the grounds for proof:

First, we claim necessary knowledge that the Messenger, صلى الله عليه وسلم, has exalted the status of this *ummah*. He also informed on its immunity from error by the totality of these various reports, though solitarily they do not attain *tawâtur*. Yet is in this very way that we find ourselves compelled to recognize the bravery of 'Alî, the generosity of Hâtim, the legal insight of al-Shâfi'i, the eloquence of al-Hajâj, the preference of the Messenger, صلى الله عليه وسلم, for 'A'isha from among his wives, and his great regard for his Companions and praise of them, though no single report from among these is *mutawâtir*. Rather denial of each one them is possible, if we consider it in isolation. But this is not possible with regard to the totality.

This case resembles what is known from the totality of circumstantial evidences, which singly are not immune from doubt.

However, this doubt is removed from its totality so that necessary knowledge accrues.

The second way is that we do not claim compulsory but discursive knowledge from two aspects:

The first is that these *ḥadīths* remained well known among the Companions and the Successors, who relied on them in establishing *Ijmā'*. No one has voiced opposition or rejection to it until the time of al-Nazzām. It is impossible in light of deep-seated habit that the peoples of varied ages agree to submit to something on whose rectitude a proof was not raised, over and against differing dispositions and the disparity of ambitions and views in rejecting or accepting [things]. Therefore, a judgement established by a solitary report never ceases to be based on an opponent's dispute or an expression of irresolution.

The second aspect is that those people who brought these reports as their argument established with them a decisive principle, namely *Ijmā'*, which they ruled upon the Book of Allāh, *كُتُبُ*, with, as well as the *mutawâtir Sunna*. It is ordinarily impossible to submit to a report abrogating the Book of Allāh—which is decisive—except when [the report] relies on a decisive base. As for the abrogation of a decisive [text] by that which is not decisive, this is unknown. So let none be astonished, nor should one question how one may abrogate the decisive Book by *Ijmā'*, which relies on a report whose authenticity is unknown? Rather, how did the whole *ummaḥ* remain heedless of it until the time of al-Nazzām, so that he particularly points it out?

Here is the point of proof.

Those who oppose *ijmâ'* use three approaches: Rejection, interpretation, and contradiction. The first position concerns rejection, and there are four discussions here.

The first is their saying: Perhaps someone did oppose these reports or refute them, but it has not been transmitted to us.

We shall say: This also is belied by '*âda* [the nature of the case]¹⁴, for *Ijmâ'* is the greatest of the religious principles. Hence, if any opponent would have differed with it, indeed it would have been a great affair and that opposition would have become well known. For if the dispute of the Companions concerning the blood money for the fetus did not become effaced, nor the question of *harâm*, nor the punishment of [alcohol] consumption, then how did this opposition to a great principle become obliterated, where pronouncing [one] astray and a heretic is required for him who errs /1:177/ in its rejection and affirmation? And how did the opposition by al-Nazzâm become so well known despite the fact that he was insignificant and of mean rank, while the disagreements on the part of great Companions and Successors are concealed? This is something which has no place at all in rational thought.

The second discussion is their saying: You have brought as

¹⁴Fazlur Rahman suggests that the technical meaning of '*âda*, in this context, would be best expressed in English by the phrase *the nature of the case*.

proof for *Ijmâ'* a *ḥadīth*. Then you use *Ijmâ'* as a proof for the authenticity of that *ḥadīth*. Granted, they agreed on the soundness [of the report]; but what is the proof that that upon which they agreed—upon its soundness—is correct? Is not this the conflict?

We shall say: No. Rather, we brought as proof for *Ijmâ'* the *ḥadīth*, and for the soundness of the report, the fact that it remained through the ages without repudiation and dispute—despite the fact that it by the nature of the case requires rejecting the establishment of a decisive principle that rules over [other] decisive [principles] by a report whose rectitude is not known. Therefore, we know through *'āda* that this report is decisive, not through *ijmâ'*.

Now, *'āda* is a principle from which [several kinds] of knowledge are obtained, for through it the falsity of the opposition's claim against the Qur'ān and its arbitration is known. Also through it one knows the falsity of the claims that there is a text about the imamate, that the late morning prayer [*duḥā*] is obligatory, and that the fasting of *Shawwāl* is obligatory. For if these were so, this would have been by the nature of the case impossible to have remained silent about it.

The third discussion is their saying: On what basis do you object to one who says that perhaps they established *Ijmâ'* not on the basis of these reports but by another proof.

We shall say: It is evident that they have argued on the basis of these reports for prohibiting opposition to the *ummaḥ* and threatening whoever secedes from the *ummaḥ* and opposes it. This

is better than saying that if they had a sound basis for this, it would be manifest and well known. For it has been transmitted that they relied upon verses [of the Qur'ân] as well.

The fourth discussion is their saying: Since the Companions knew the rectitude of these reports, why did they not mention to the Successors the way their rectitude [was established] so that doubt would have been uprooted. Thus, they would have shared with them this knowledge?

We shall say: For they knew his specification, **عَلَيْهِمُ السَّلَام**, of the immunity of this *ummah*—on the basis of a totality of circumstantial evidences, other indications, and the reiteration of words and reasons—necessarily indicated that his intention was to elucidate the repudiation of error from this *ummah*. These circumstantial evidences do not fall under narration, for there is no end to their expressions.

If they were to narrate them, then each one of them would be liable to doubt. Hence, they were content with the Successors knowledge, in that through a suspect report, one cannot establish a decisive principle, and according to *'âda*, it is to be accepted. So *'âda* was much stronger with reference to the Successors than narration.

The second position concerning interpretation is that those [denying *Ijmâ'*] have three interpretations.

The first is that his statement, **حَسْبِيَ اللَّهُ عَلَيْهِمُ وَالَسَّلَام**, "My *ummah* will not agree on an error," addresses infidelity and innovation. So perhaps he meant the immunity of the whole [*ummah*] from

infidelity based on interpretation and doubt. As for his saying, "'alâ al-khaṭa'," it is not *mutawâtir*. Even if it is correct, then the term '*khaṭa*' [mistake] is generic, and it is possible to take it to mean *kufr* [infidelity].

We shall say: The term '*ḍalâl*,' in its original linguistic sense does not correspond to '*kufr*.' Allâh, ﷻ, has said, "*And He found you ḍâllan [astray], then He guided [you]*";¹⁵ and He said, ﷻ, relating about Mûsâ, "*I did it then, being one of those that stray [ḍâllîn] /1:178/*"¹⁶ He did not allege 'from the *kâfirîn*.' Rather, he meant 'from the mistaken.' Thus, it is said, "So and so strayed from the path"; and, "Astray is the endeavor of so and so." All this is 'error.' Why should it not be so! when indeed necessarily understood from these words is the exaltation of the prestige of this *ummah*, and its peculiarity in this moral excellence?

As for immunity from infidelity, He has bestowed this upon 'Alî, ['AbdAllâh] b. Mas'ûd, 'Ubay [b. Ka'b], and Zayd [b. Thâbit], according to the view of al-Nazzâm. For they died abiding by the truth.

But how many individuals have been immune from infidelity until they died? So what is the peculiarity for the *ummah*? Hence, this implies that he meant something from which individuals are not immune—forgetfulness, mistakes, and lying—whereas the *ummah* is immune from them, attaining the same status as the

¹⁵Qur'ân, 93:7.

¹⁶Qur'ân, 26:20.

Prophet, *ﷺ*, regarding immunity from error in religion.

Now, that which is generated from without religion—war, peace, developing a town—in general, this requires immunity for the *ummah*, as well. However, this is dubious. Yet in religious affairs, the necessity of immunity from error is decisive, as it was for the Prophet, *ﷺ*. For he did err in the matter of the pollenization of date palms; then he said, “You know the affairs of your world, and I know the affairs of your religion.”

The second interpretation is their saying: The thrust of this [argument] is that it be general, necessitating the *ummah's* immunity from *all* errors, where it is possible that its meaning be *some* kinds of error, such as testifying on the Day of Judgement, what conforms to a *mutawâtir* text, or that which conforms to rational proof, excluding whatever is based on *ijtihâd* and *qiyâs*.

We shall say: No one from the *ummah* has gone to such minute exposition that whatever rationally indicates a basis warranting their error in something indicates its warranting in something else. Furthermore, since there is no differentiation, there is no specification with which to proceed arbitrarily without any proof. In addition, no one specification is worthier than next.

Or perhaps he has blamed whosoever opposes the *ummah*, and has commanded that we conform. If it were not known where the immunity lies, following it would be an impossibility, unless immunity is absolutely established and the virtue and nobility of this *ummah* is proven by it.

As for immunity from some [errors] to the exclusion of

others, this is established for every infidel, let alone the Muslim, for there is no person that errs in everything. Rather, every human being is immune from error in some things.

The third interpretation is that [they say] his *ummah*, *صلى الله عليه وسلم*, namely all of those who believe in him until the Day of Resurrection, the whole of them—from the beginning of Islam until the end of the life of this world—will not agree on an error. Rather, every judgment that has been passed unanimously by [Muslims] of all the generations after the raising of the Prophet, *صلى الله عليه وسلم*, is correct. For *ummah* expresses *the whole*.

How could this be! when those who have died in our times are of the *ummah*, and the consensus of those after them is not the consensus of the entire *ummah*. The proof for this is that if they had opposed [consensus] and then had died, consensus after them would be inconsequential. Also, it is as if those before us who opposed [consensus] are not in agreement—even though they are dead.

We shall say: Just as it is not possible that one intends by *ummah* to include the insane, the children, the still born, and those in-womb, though they are part of the *ummah*, it is not possible that one intends by it the dead and those who have not yet been created. Rather what is understood [by the word *ummah*] is people for whom differing and agreeing is conceivable /1:179/. But agreement or disagreement is inconceivable on the part of the non-existent and the dead. The proof for this is that [the Prophet] commanded the following of the *ummah*. He denounced those who

deviated from conformity. Thus, if the intended meaning was what they mentioned, then following and disagreeing are conceivable only on the Day of Resurrection, not in this world. It is therefore known decisively that its intended meaning is a consensus that can be violated and opposed in this world, which means those who exist in each generation.

Now when a person dies but the influence of his opposition remains, then his opinion does not die with his death. Sufficient discussion of this will come later, Allâh, ﷻ, willing.

The third position is objections based on [Qur'ânic] verses and hadîths.

As for the verses, all that they contain is prohibition against infidelity, apostasy, and wrong doing. This is general for everyone. If this were not possible, the how would they be prohibited from this, as with His statement, ﷻ:

*"And that you say concerning Allâh what you do not know,"*¹⁷

*"Whosoever among you turns from his religion and dies disbelieving."*¹⁸

*"And consume not your goods from among yourselves in vanity";*¹⁹

¹⁷Qur'ân, 7:33.

¹⁸Qur'ân, 2:217.

¹⁹Qur'ân, 2:188.

and other such examples?

We shall say: This is not a prohibition for them from coming together as a whole²⁰; rather, this is a prohibition for individuals, even though everyone per se is included in the prohibition. But even if we concede this, still, neither the existence of what is prohibited nor the possibility of its occurrence is a condition for prohibition. For Allâh, ﷻ, knew that not all sins would occur with them. Yet, He prohibited them from *all*. Also, that which is contrary to what is known does not occur. He said to His Messenger, ﷺ, "If you were to commit shirk, all your deeds would come to naught"²¹; and "Do not be of the ignorant ones . . .,"²² while He knew that He had made him immune from these [sins].

Then there are the reports of his saying, ﷺ:

Islam began alien, and it shall return to being alien as it began.²³

The best generation is mine; then those who succeed them; then those who succeed them; then lying will become rampant, so much so that a man will swear without being asked to take an oath and will offer himself as a witness

²⁰The context necessitates this interpretation. The Arabic text has '*an al-ijtimâ*', meaning *from coming together* which does not make sense.

²¹*Qur'ân*, 39:65.

²²*Qur'ân*, 6:35.

²³Wensinck, *Concordance et Indices de la Tradition Musulmane*, 5:437.

without being asked to give testimony.

The Hour will not come except on the evil ones of my *ummah*.

We shall say: These and their like indicate that disobedience and lying will become rampant. But it does not indicate that none will remain who hold fast to the truth. Nor does it contradict his saying, *صلى الله عليه وسلم*:

A group from among my *ummah* will always remain with the truth until Allâh's command comes and until the *Dajjâl* [anti-Christ] appears.

Why should it not be so! since these reports do not approach in rectitude and prevalence the *hadîths* which we have relied upon.

The third approach is reliance on rational method. An explanation of this is that the Companions, when they came to a decision and declared that they were conclusive in it, would only hold it as conclusive on decisive grounds. And since they were so numerous that their numbers reached the point of *tawâtur*, then by the nature of the case it is impossible for them to deliberately lie, and it is impossible for them to err such that not one of them would become aware of the truth.

In addition, their arrival at a final decision without any decisive proof is an error. Thus, their being decisive inappropriately is, in the nature of the case, impossible. So, when they ruled on the basis of *ijtihâd* and agreed /1:180/ upon it, it should be known that the Successors emphatically disapproved of their [the Companions'] opponents and that they would decisively

hold to [the Companions' position]. Thus, their decisiveness in this would be out of place. This [decisiveness] is also impossible except on conclusive grounds. Otherwise, it is impossible by the nature of the case that truth should evade all them, in spite of their numerousness, such that not one of them realizes the truth.

Similarly, we know that if the Successors agreed upon something, the successors of the Successors would disapprove and decisively denounce the opponents [of the Successors]. But this decisiveness would be out of place since this is impossible in the nature of the case except on conclusive [proofs].

In this manner, they say: If the *people of influence*²⁴ were reduced to a number short of *tawâtur*, then, in the nature of the case, it is not impossible for them to be liable to error or to deliberately lie for a motive. Therefore, there is no valid proof for this.

But this approach is weak in our view because the source of error is either deliberate lying or their assumption of that which is not decisive as decisive. The first is not conceivable with a number [required] for *tawâtur*. As for the second, it is conceivable, since the Jews, [for example], have decisively held the falsity of the prophethood of Jesus and Muḥammad, عَلَيْهِمَا السَّلَام, and they exceed the number [required] for *tawâtur*. But their decisiveness is improper, for they assumed what is not decisive to be decisive.

²⁴Literally, *the people of loosening and binding*, meaning the influential people in society whose opinions hold sway, more or less, over the masses.

Those who deny the temporal origin of the world and prophethood, and commit all kinds of [heretical] innovations and aberrations, their number reaches the number [constituting] *tawâtur*, and truth can accrue by their reports; but they have erred by being decisive inappropriately. One who posits this must consider the consensus of the Jews and the Christians as valid proof and that it is not peculiar to this [Muslim] *umma*. Yet they [the Jews and the Christians] have agreed upon the falsity of the religion of Islam.

If it is said: This is reliance on customary behavior, and in supporting the second approach you were inclined to '*âda*.

We shall say: '*Ada* does not [usually] prevent the number constituting *tawâtur* from deeming what is indecisive as decisive. Therefore, we said that the condition of a *mutawâtir* report is that it should be based on something perceptible. Yet the nature of the case bars compliance with and silence about those who reject the Book and *mutawâtir Sunna* on the basis of an *ijmâ'* whose proof is an uncertain report that is not decisive.

Now, all that is *necessary* is known through sense perception, circumstantial evidence, or intuition—and their mode is one. People are agreed on its attainment, and the nature of the case makes it impossible for the people of *tawâtur* to neglect it. But as for that which is discursive, its methods vary. So, it is not inconceivable in the nature of the case for the people of *tawâtur* to agree upon error with regard to it. Thus, this is the difference between the two approaches.

If it is said: [As for] your reliance on this second approach, that is, that what they agreed upon is truth and not error, what is the proof for the obligatoriness of its observance? For every *mujtahid* attains the truth, and it is not obligatory upon another *mujtahid* to follow him. Although a false witness is a liar, a judge must heed him. Consequently, requisite compliance is one thing, but a thing being true is something else.

We shall say: The *ummah* has agreed on the necessity of adhering to *Ijmâ'*, and that it is [the kind of] truth which must be followed. In accordance with their being true in their statements, it is necessary to follow *Ijmâ'*. Furthermore, we say that the principle for every truth whose truth is known is /1:181/ necessary compliance. Complying with a *mujtahid*, however, is obligatory, except on the part of [another] *mujtahid* who also is correct. So, truth that accrues through his *ijtihâd* is preferred to that which has accrued by the *ijtihâd* of others, as far as the former is concerned. Also, a lying witness—if it is known that he is a liar—must not be followed.

This is supported by his [the Messenger's] denunciation of one who opposes the *ummah*, and by [the fact] that he [the Messenger] has mentioned this in the context of praising the *ummah*. But this is realized only by the obligatoriness of compliance [with *Ijmâ'*]. Otherwise, the only meaning that remains is that they are correct if they attain the proof of the truth. This is possible with respect to everyone of the individual believers. So it offers neither praise nor any [peculiar] distinction.

CHAPTER TWO: EXPLANATION OF THE CONSTITUENTS OF *IJMA'* IT HAS TWO CONSTITUENTS: THE PARTICIPANTS AND *IJMA'* ITSELF

The First Constituent: The Participants

The [participants] are the *ummah* of Muḥammad, ﷺ. The apparent [meaning] of this includes all Muslims. But for every apparent [meaning] there are two distinct extremes concerning omission and confirmation [of participants], as well as similar intermediates.

As for what is clear concerning confirmation, this refers to every *mujtahid* whose *fatwâ* is accepted. He is definitely of the people of influence [*ahl-al-ḥall wa al-'aqd*] and his agreement is necessary for *Ijmâ'*.

As for what is clear concerning omission, this refers to the children, the insane, and those in the womb, even though they are regarded as part of the community. We know certainly that he, ﷺ, did not intend with his saying, "My community will not agree on error," other than those whose agreement is conceivable. Furthermore, dispute in a question occurs only after understanding it. Therefore, one who does not understand does not enter into [dispute].

Between these two extremes are the common people, the *faqîh* [legist] who is not an *uṣûlî* [jurist], an *uṣûlî* who is not a *faqîh*, the *fâsiq* [unrighteous] *mujtahid*, the heretic, and the novice among the Successors who approached the rank of *ijtihâd* in the time of the Companions. Therefore, we shall describe each one in a

discussion.

I. DISCUSSION: It is conceivable to include the common people in *Ijmâ'* because the *Shari'a* is divisible into that which the common people and those of distinction share in understanding, such as the five prayers, the obligatoriness of fasting, *zakât*, and *hajj*. This has been unanimously agreed upon. The common people concur with those of distinction on [this] *ijmâ'*. But [it is further divisible] into that whose [knowledge] is confined to specialists, such as the details of the conditions of prayer, business transactions, manumissions, and *istilâd*.²⁵ The common people are in agreement that the truth with regard to this is that upon which influential people and the specialists unanimously agree, without concealing any opposition to it at all. Thus, they are also in agreement about it. It is appropriate to call this the *Ijmâ'* of the entire *ummah*, such as in the case when the army empowers a group from among the people of wisdom and reflection to make peace with the community of a fortress. When they agree with them on something, it is said that this occurred with the agreement of the whole army. Therefore, all that has been agreed upon by the /1:182/ *mujtahids* is agreeable with regard to the common people, and based on it the consensus of the *ummah* is completed.

If it is said: When a common person is in opposition to an

²⁵This refers to seeking children from a slave girl. Consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 67.

occurrence that the specialists of the same era have unanimous agreement on, is *ijmâ'* constituted without him? And if it is, how is the common person excluded from the entire *ummah*? And if it were not constituted, how could the position of a common person be considered?

We shall say: People have disputed this. Some of them say that it is not constituted because he is of the *ummah*. Consequently, his concession is required either in general or in particular. Some others have said—which is more correct—that it is constituted based on two evidences.

The first is that a common person does not possess the capacity to seek the truth because he does not have the skill for this purpose. So he is similar to a child or an insane person with regard to the deficiency [of the skill]. Nothing is understood by “immunity of the community from error” other than immunity on the part of those for whom it is conceivable to arrive at the truth, that is those who have the capacity.

The second, which is stronger, is that the first generation, the Companions, agreed that the common people should not be taken into consideration concerning this matter—I mean the leading personalities of the Companions and their masses. For if a common person makes a statement [on a technical issue], it is certain that he is saying it out of ignorance, that he does not know what he is saying, and that he does not possess the capacity to agree or disagree about it. Therefore, it is not conceivable for this to issue from an intelligent common man because an intelligent person would delegate what he does not know to he who knows. But this

case is imaginary and does not actually occur at all.

What indicates the validity of *ijmâ'* is that a common man disobeys by his opposition to the '*ulamâ*.' This has been made unlawful for him. What, for example, indicates his disobedience is what has come down concerning the denunciation of ignorant rulers when they go astray and lead [others] astray without knowledge, as in His saying, *وَالَّذِينَ هُمْ عَنْ آلِهَتِهِمْ كَانُوا يَعْلَمُونَ*, "... Those of them, whose task is to investigate, would have known the matter. . . ." ²⁶ So He turned them from dispute to the people of investigation. Also, many reports have been transmitted obliging recourse to the '*ulamâ*' and prohibiting the *fatwâs* [authoritative opinions] of the common people based on ignorance and whim. But this does not indicate the occurrence of *ijmâ'* without them because it is possible for a common man to disobey by opposing [the '*ulamâ*'], just as disobeying by opposing a solitary report. But the existence of *ijmâ'* is not realized because of his opposition. Rather, the proof is in the *ijmâ'*. So if it does not occur because of disobedience or by what is not disobedience, then it is not proof and the evidence is what we have mentioned before.

II. DISCUSSION: When we say that the opinions of the common people should not be taken into consideration for lacking the skills, then many a theologian, grammarian, commentator on the Qur'ân, and traditionist may be deficient in the skill through which rules are known.

²⁶Qur'ân, 4:83.

So, some people have said that only the opinions of the independent *imâms* of the *madhhabs* should be accepted as *fatwâs*, such as al-Shâfi'î, Mâlik, Abû Ḥanîfa, and their likes from among the Companions and the Successors.

Some of them added to the [independent] *imâms* the *faqîhs*—who have memorized the details of the rules and upheld them—but excluded the *uṣûlî*, who neither masters nor memorizes the details [of *fiqh*].

But the correct [position] is that the statement of an *uṣûlî*—who knows the avenues of [deriving] rules and how to extract them from the implied meanings, the texts, the cases of command and prohibitions, the general statements, and who knows how the texts impart their meanings, and [knows] how to reason—is worthier of consideration than a *faqîh* who memorizes details. Indeed, he who possesses this expertise is the one who can apprehend rules at will, even if he does not memorize /1:183/ the details.

Now an *uṣûlî* is capable of this, while a *faqîh* memorizing details is not capable of this. And the proof that the memorization of details is not to be considered is that al-'Abbâs, Zubayr, Ṭalḥa, Sa'd, 'Abd al-Raḥmân b. 'Awf, Sa'id b. Zayd b. 'Amru b. Nufayl, Abû 'Ubayda b. al-Jarrâḥ, and their likes did not poise themselves for *fatwâs* and did not show themselves as such, as did the three 'Abd Allâhs,²⁷ 'Ali, Zayd b. Thâbit, and Mu'âdh. But they considered

²⁷This is in reference to 'Abd Allâh b. Mas'ûd, 'Abd Allâh b. 'Abbâs, and 'Abd Allâh b. 'Umar.

their opinion [al-'Abbâs, Zubayr, etc.] if they were in opposition. Why should this not be so! for they were capable of the supreme imamate and since, in particular, most of them were in the *shûra* [counsel] and did not memorize [*fiqhî*] details. In fact, those details were not yet compiled; but they knew the Book and the *Sunna* and were capable of understanding them. But, [even] one who memorizes may not remember the minute details of, say, menstruation and testaments. So the basis of the details is analgous to these minute details. Therefore, their memorization is not required.

So, the *uṣūlî's* opposition must be considered as well as the opposition of a distinguished *faqîh* because they possess the skill in general. They say what their opinion is on the basis of a proof. As for the grammarian or the theologian, they should not be considered because they are [considered] among the masses with respect to this science, except in the case that falls under a question based on grammar or theology.

If it is said: Is this a decisive issue or is it open to *ijtihâd*?

We shall say: It is open to *ijtihâd*. However, if we allow his statement [the grammarian or the theologian] to be considered, *ijmâ'* would become suspect were it to be opposed. Thus, it would not be a decisive proof. On the contrary, it is a decisive proof only when they do not oppose.

As for the opposition of the masses, this does not occur. And if it does happen, it is only in words by the tongue, for he admits his ignorance by what he says. The falsity of his statement is

decisive, such as the statement of a child. As for this case, however, it is not the same.

If it is said: Should, then, an *uṣūlī* follow the *faqīhs* concerning details they have agreed upon and acknowledged as correct, and will *ijmā'* then be constituted?

We shall say: Yes, for there is no opposition. The *uṣūlī* has generally agreed, though he was not aware of the details, just as the *faqīhs* have agreed upon that which the theologians have unanimously decided as correct, such as the questions of ability [*istita'a*],²⁸ inability, substance, accidents, contradiction, or variations. So *ijmā'* occurs by general agreement, just as it occurs on the part of the masses because each party is like a commoner in relation to that science which he has not obtained, even though he has acquired another science.

III. DISCUSSION: When a heretic dissents, *ijmā'* cannot be concluded without him if he has not become an unbeliever. Rather, he is like a *fāsiq* [corrupt] *mujtahid*, and the opposition of a *fāsiq mujtahid* is considered.

If it is said: Perhaps he deceives in manifesting dissent while he himself does not believe it.

²⁸ According to Jurjānī, *Kitāb al-Ta'rīfāt*, p. 19, this term is linguistically synonymous to '*qudrah*,' '*quwa*,' '*wus*,' and '*taqa*.' But in the technical usage in theology it refers to a character that enables creatures to act or not to act.

We shall say: Perhaps he is telling the truth. His assent is inescapable, even if we do not confirm his conformity. Why should it not be so! For we can know the belief of a *fâsiq* by the circumstantial evidences of his positions in his debates and arguments, while an innovator is credible in that his statements are acceptable, for he does not perceive that he is a *fâsiq*. But when he becomes an infidel through his innovation, then, at that point, his opposition is disregarded, even though he prays toward the *qibla* and believes himself to be a Muslim. For [the word] '*ummah*' does not /1:184/ mean *those who pray toward the qibla*. Rather, [it is] the believers—and he is an infidel, even if he does not perceive that he is a disbeliever. Certainly!

But if he is a proponent of anthropomorphism and the corporeality [of God] and we charge him with infidelity, then one cannot infer falsity of his view on the basis of the consensus of his opponents on the falsity of corporealism, concluding that they constitute the entire *ummah* without him. For their being the whole *ummah* rests on his removal from the *ummah*. Yet elimination from the *ummah* is conditional on proof of [his] infidelity. Therefore, it is impermissible that the proof of [his] infidelity be dependent upon charging him with infidelity. This leads to proving something by itself. Of course, after we have declared him an infidel on the basis of a rational proof, if he dissents on another question, he will not be considered.

If he repents, but still insists on opposing that question which they agreed upon while he was an infidel, then his opposition would not be taken into account after [his return to] Islam because

he was preceded by the *ijmâ'* of the entire *ummah*, and the participants of the *ijmâ'* at that time were the entire *ummah* without him. Therefore, he is similar to an infidel opposing the whole *ummah* who then he becomes a Muslim but still insists on this opposition. Indeed, this should not be taken into account, except in the view of those who require the expiration of the generation of this *ijmâ'*.

If it is said: If a few of the *faqîhs* abandon the *ijmâ'* on the basis of the opposition of a heretic charged with infidelity—were it not known that his heresy necessitates infidelity—and assume that the *ijmâ'* cannot be constituted without him, then should he be excused, since the *faqîhs* do not possess awareness of what interpretations render him an infidel.

We shall say: This question has two forms. One of them is that the *faqîhs* say, "We do not know whether his heresy necessitates infidelity or not." So, in this case they will not be excused about him since they are obliged to have recourse to the scholars of *usûl*. Furthermore, it is incumbent upon those scholars to inform them. Then when they rule upon his infidelity, they [*fuqahâ'*] must comply. But if they are not content with complying, then they must inquire about the proof, so that when its proof is mentioned to them, they understand it absolutely because its proof is decisive. But if one does not comprehend it, he is not excused, just as one who does not understand the proof for the truth of the Messenger, ﷺ, [is not excused]. For there is no excuse when Allâh, ﷻ, has manifested decisive proofs.

The second form is when the innovation and convictions of [the heretic] have not reached [the *faqîh*]. So he abandons the *ijmâ'* because of his [the heretic's] opposition. Thus, he [the *faqîh*] is excused in his mistake and not accountable for it. Moreover, *ijmâ'* is not a conclusive proof with respect to him, just as when an abrogating proof does not reach him. For he is not attributed with negligence, contrary to the first form, where he is able to refer [to the *usûlîs*] and investigate.

So, there is no excuse for him in his abandonment, similar to one who accepts the witness of the Seceders [*Khawârij*] and judges by it. He is mistaken because the proof for the infidelity of the Khârijites [rebell] against 'Alî and 'Uthmân, رُخِوُا لَهُمُ—holding them to be infidels and believing the [shedding of their] blood and the [seizure of their] property [as lawful]—is evident and quickly realized. Therefore, there is no excuse for one who is not aware of it, in contrast to one who judges by false evidence while he is not aware; for there is no way for him to know the truthfulness of the witness. But he has a way of knowing his infidelity.

If it is said: What makes him an infidel?

We shall say: This discussion is lengthy. We have pointed out something /1:185/ of it in [our] book, *Faṣl* ²⁹*al-Tafrîqa bayna al-*

²⁹It appears that the editor of the Amîrî edition has either made a mistake in the title or that this is a 'misprint, for the name is found in the sources as *Fayṣal* not *Faṣl*. This work has been translated into German in 1938 by A.I. Runge, and it has been abridged in Spanish in 1929 by Asin Palacios. See Badawî, *Mu'allifât al-Ghazâlî*, p. 167. Check also Ghazâlî, *al-Munqidh min al-Dalâl*, ed. Jamîl Salîba and Kâmil 'Ayyâd, (n.p.: Dâr al-Andulûs,

Islâm wa al-Zandaqa [A Clear Distinction Between Islam and Heresy]. The extent that I can mention here is that this is reduced to three categories.

The first is that the very believing of it [*kufr*] is infidelity, like denying the Maker and his attributes and rejecting prophethood. The second is believing in what prevents him from acknowledging the Maker and His attributes and assenting to His messengers. Consequently, he is compelled to reject this since they are mutually contradictory. The third is that which revealed authority states cannot emanate except from an infidel, like worshipping fire, prostrating to an idol, disclaiming a *sûra* of the Qur'ân, denying some of the messengers, regarding as lawful adultery and alcohol, abandoning prayer, and, in sum, rejecting that which is known by *tawâtur* and necessarily as part of the *Sharî'a*.

IV. DISCUSSION: Some people have said that the *ijmâ'* of other than the Companions should not be considered. But we shall refute this. Also, some people have said that after the Companions, the *ijmâ'* of the Successors may be considered. However, the opposition of a Successor in the time of the Companions is disregarded. But the *ijmâ'* of the Companions cannot be repudiated by his disagreement.

But this [position] is corrupt when the Successor has reached the rank of *ijtihâd* before the formation of the *ijmâ'* because he is part of the *ummah*. So the *ijmâ'* of those other than him cannot be

the *ijmâ'* of the entire *ummah*. Rather, it is the consensus of some, while valid proof is in the *ijmâ'* of all. Certainly if they arrive at *ijmâ'*, and he reaches the rank of *ijtihâd* after their consensus, then he is preceded by the *ijmâ'*. So now he must not dissent, as one who becomes a Muslim after the completion of *ijmâ'*. Proof for this is the statement of Allâh, ﷻ, "And whatever you are at variance on, the judgment thereof belongs to Allâh." ³⁰

But there is disagreement on this. This is proven by the consensus of the Companions to tolerate a Successor's difference [of opinion] and by the absence of their objection against him. Therefore, it is *ijmâ'* from them concerning the permissibility of differing. Why should it not be so! For it is known that many of the associates of 'Abd Allâh [b. Mas'ûd], such as 'Alqama, al-Aswad, and others used to give *fatwâs* during the generation of the Companions, as did Hasan al-Baṣrî and Sa'id b. al-Musayyab.³¹ So how can their dispute not be considered?

In general, a Companion has no excellence over a Successor except by virtue of his Companionship. Thus, if this virtue [were what] qualified *ijmâ'*, then the opinions of the Anṣâr could be annulled by the statements of the Muhâjirîn, the opinions of the Muhâjirîn by the statements of the ten,³² the opinion of the ten by

³⁰Qur'ân, 42:10.

³¹Sa'id b. al-Musayyab b. Hazn al-Makhzûmî was a prominent Successor (d. 93 H.); see Dhahabî, *Tadhkirât al-Huffâz*, 1:54; Ibn Hajar, *Tahdhîb al-Tahdhîb*, 4:84; and Suyûtî, *Tabaqât al-Huffâz*, p.17, for his biography.

³²This refers to the ten Companions to whom the Messenger

the statements of the four Caliphs, and their opinions by the statements of Abû Bakr and 'Umar, رَضِيَ اللهُ عَنْهُمَا.

If it is said: It has been reported from 'A'isha, رَضِيَ اللهُ عَنْهَا, that she rebuked Abû Salama b. 'Abd al-Rahmân for equating himself with the Companions, saying, "A chick is crowing with the roosters."

We shall say: What we have cited is decisive. What you have attributed to 'A'isha has not been established except by a solitary report. Even if it were established, it is her opinion. There is no proof in it. Furthermore, perhaps she intended to prevent him from opposing them in what they previously have agreed upon. Or perhaps she disapproved of his dissent in a question which, in her opinion, was not liable to *ijtihâd*, as she objected to Zayd b. Arqam on the issue of '*ina*,³³ thinking that the necessity of discontinuing the pretext was decisive.

Know that controversy is conceivable in this question, according to those who agree that the *ijmâ'* of the Companions can be repudiated by the opposition of one of the Companions. As for one who holds that the opinion of the majority cannot be voided by the minority, however it may be, his statement is not specific to the

gave tidings that they shall go to Paradise.

³³*ʿIna* is a controversial sales transaction where the form satisfies, in appearance, the letter of the *Sharî'a* Law. An example is given as follows: A commodity is sold at a certain price. But it is—at the time of sale—resold by the buyer to the original seller for a higher price, with the payment deferred until a fixed time. See Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 4:68, 509; and Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p 326.

Successors.

V. DISCUSSION: /1:186/ The *ijmâ'* of the majority holds no proof when accompanied by opposition of a minority. Some people say it is a proof. Others say if the minority's number reaches the number of *tawâtur*, it annuls the *ijmâ'*; but if it is less, there is no annullment. The more founded [opinion], according to us, is that infalibility is only established by the unanimity of the *ummah*. But this [case] is not the *ijmâ'* of all; rather, it is disputed. He said, *وَأَمَّا*, "And whatever you are at variance on, the judgment thereof belongs to Allâh." ³⁴

If it is said: Sometimes the word '*ummah*' is applied, meaning the *majority*, just as one says, "Banû Tamîm protect their neighbors and honor their guests," meaning the majority.

We shall say: Those who are proponents of the generic [usage] relate this to the totality. But arbitrary qualification [of the term] is not allowed, except with proof or necessity. Yet there is no necessity for it here. As for those who do not hold this, it is possible that they intend by this less [than the totality]. But the intended portion [of the *ummah*] is not distinguished from what is not intended. Rather, the *ijmâ'* of the entirety is necessary; so it is known that the intended portion is included [with them].

Why should it not be so! while reports have come confirming the scarcity of people of the truth, since he said, *وَأَمَّا*, "And

³⁴Qur'ân, 42:10.

they, on that day, shall be few"; also, he said, *هَذَا إِلَهُ عَالِيكُمْ وَاسْمُهُ*, "And this religion shall return to being alien, as it began alien." Also, Allâh *سُبْحَانَهُ*, said:

*"Most of them do not understand."*³⁵

*"Few among my servants are thankful."*³⁶

*"How often a little company has overwhelmed a numerous company by Allâh's leave."*³⁷

Since there is no precept and no resistance, there is no escaping considering the view of the entirety.

The second proof is the *ijmâ'* of the Companions on allowing the dissent of individuals.

Upon how many questions have individuals stood alone in opinion, like the solitude of b. 'Abbâs regarding 'awl,³⁸ which he rejected?

If it is said: No. Rather they rejected b. 'Abbâs' view of

³⁵Qur'an, 29:63; 49:4.

³⁶Qur'an, 34:23.

³⁷Qur'an, 2:249.

³⁸Linguistically the term means *imbalance*. When applied to inheritance it means the reduction in the shares of the heirs in order to include other beneficiaries. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 325. For an elaborate discussion on 'awl complete with case examples, see Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 8:353-358.

"temporary marriage" as lawful and that usury was [only] associated with loans. Also, 'A'isha disputed b. Arqam in the question of *'ina*.³⁹ In addition, they [the Companions] contested Abû Mûsâ al-Ash'arî's claim that sleep does not void ablution. Again, they disapproved of Abû Talha [al-Anṣārî's] opinion that eating hailstones did not break the fast. This is because they stood alone with regard to their [position].

We shall say: No. Rather, they dissented in their opinions against the conveyed *Sunna* which was well known among them. Or, they opposed obvious proofs which had been established in their [the Companions'] view. Then, we say, grant that they rejected this solitary stand [in opinion]. But this individual denies their rejection of him, so *ijmâ'* is not constituted. Thus, there is no valid proof in their denial in the presence of individual dissent.

They⁴⁰ have two doubts.

The first doubt is their saying, "A statement of an individual where he reports about himself does not impart [certain] knowledge." So how can this void a statement of a number where certain knowledge accrues through their report about themselves, owing to their attaining the number of *tawâtur*? As a result of this, some people have said that the number of a minority, when it reaches the point of *tawâtur*, disproves *ijmâ'*.

³⁹See note above.

⁴⁰Ghazâlî is refereing to those holding the opposing view in the above argument.

This is faulty on three points:

The first is that the truth of the majority, even if it is known, is not the truth of the whole *ummah* and their compact. Yet valid proof lies in unanimous agreement. So, this proof is null and void because they are not the whole *ummah*.

The second is that a lie of an individual cannot be known [conclusively], for he may be truthful. Consequently, the issue [under consideration] would not be of unanimous agreement on the part of all the truthful, if he [the individual] were to be truthful.

The third is that one cannot consider what they conceal [in their hearts]. Rather, worship is connected to what they manifest. Hence, this is their opinion and their way, not that which they conceal.

If it is said: Is it possible that the *ummah* conceal a contradiction to what it manifests?

We shall say: This, if it is so, /1:187/ however, is only conceivable on the basis of dissimulation and compulsion—and that becomes apparent and well known. But if it does not become well known, it is absurd, for this leads to the concurrence of the *ummah* on error and falsehood, which is impossible on the basis of revealed authority.

The second doubt: Dissent of the individual is deviation from the community, and this is forbidden for him. For the loner is blameworthy, and he is like the isolated sheep [separated] from the flock.