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2011

COERCION IN CLASSICAL ISLAMIC LAW AND THEOLOGY

Syed, Mairaj

Princeton, NJ : Princeton University

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COERCION IN CLASSICAL ISLAMIC LAW AND THEOLOGY

Mairaj Uddin Syed

A DISSERTATION

PRESENTED TO THE FACULTY

OF PRINCETON UNIVERSITY

IN CANDIDACY FOR THE DEGREE

OF DOCTOR OF PHILOSOPHY

RECOMMENDED FOR ACCEPTANCE

BY THE DEPARTMENT OF RELIGION

Adviser: Shaun E. Marmon

November 2011

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ABSTRACT

Contemporary legal theorists and philosophers struggle to formulate standards for the identification of legitimate claims of coercion and specify its effect on moral and legal responsibility. This dissertation is a historical and analytical examination of the juristic and theological debates on the problem of coerced acts in the formative and classical periods (1st/7th–5th/11th centuries) of Islamic thought. It begins with a textual analysis of the main Qurʾānic verse and Prophetic tradition (*ḥadīth*) dealing with the issue of coercion, along with a historical analysis of the circumstances surrounding the emergence of the first extensive dispute in Islamic legal history involving coercion: the validity of coerced pronouncements of divorce and coerced undertaking of divorce-contingent oaths.

It then analyzes the treatment of compulsion and coercion in two classical theological traditions, Muʿtazilism and Ashʿarism. The Muʿtazilites held that compulsion undermines moral agency. The Ashʿarites held that it does not. Both traditions were driven to their respective positions by commitments to core values about God. The Muʿtazilites construed their systematic conception of God as just to mean that He could not hold human beings responsible for acts that they do not freely commit. They developed the most extensive psychological theory in the classical period to explain what constitutes fully volitional acts, and what constitutes compelled acts. In contrast, the most important systematic value in the Ashʿarite conception of God was His monopoly on creative agency in the universe. For the Ashʿarites, God creates all things and events, including volitional human action. To admit that coercion undermines moral agency would be to admit that God's creation of volitional human action should likewise undermine moral agency.

The dissertation then engages in a comparative examination of the coercion jurisprudence of two classical legal traditions, Ḥanafism and Shāfiʿism. It analyzes jurists' struggles to develop and justify coherent legal definitions of coercion, and their reasoning about its effect on different types of speech acts and the moral and legal responsibility for acts involving causing harm to innocent bystanders.

While theologians reasoned systematically from a few core values, jurists were working with a cumulative tradition of rules covering a much wider swath of human experience and attempting working out coercion's effect on a variety of different acts in much greater detail. Thus the jurists had to balance a number of values, not to mention the material interests of different parties on any given question of law. Contrary to much of recent scholarship on Islamic law, this dissertation shows that legal reasoning consisted of much more than interpretation of scriptural texts. Jurists cited legal principles, developed conceptual tests for future unprecedented cases, deployed metaphors, and formulated specific empirical accounts of coercion's impact on an agent's psychology in order to reason through the thorny problems coercion posed to moral and legal responsibility for action.

Acknowledgements

"My Lord, dispose me that I may be thankful for Thy blessing wherewith Thou has blessed me and my father and mother, and that I may do righteousness well-pleasing to Thee; and do Thou admit me, by Thy mercy, amongst thy righteous servants."

There are few things that combine duty, impossibility, and pleasure. Expressing gratitude is one of them. It is my pleasure to acknowledge my irredeemable debts and express thanks to my advisers. I know that I cannot ever pay them fully back. I thank Shaun Marmon for guiding me through this project, despite the many ordeals she went through during these last few years. The completion of this project is a testament to her perseverance. I thank Muhammad Zaman for looking at this draft many times, his insightful questions, and always encouraging me to think beyond the confines my discipline. I thank Jeffrey Stout for insisting on the highest standards of academic excellence in teaching and research. I thank Hossein Modarressi for his extensive and invaluable comments on the content and style of my work. I thank Michael Cook for the care with which he read my work. His incisive comments and many corrections were instrumental in making this a much better dissertation. I would be remiss to exclude those teachers I encountered before Princeton. I thank Khaled Abou El Fadl for teaching me as an undergraduate at UT Austin and guiding me as a master's student at UCLA. His passion for all things Islamic law related was infectious. I thank Michael Cooperson at UCLA, whose devotion to the *turāth* is an inspiration. Finally, I thank Yusuf Ziya Kavakci who was the first to expose me to the richness and vibrancy of the Islamic *turāth*, and who taught me in words and deeds that religion is more than dogmatism and a badge of identity.

I would like to thank the community of friends at Princeton and at UCLA, without whom graduate study could not have been possible, much less enjoyable. Joel Blecher and Lance

Jenott deserve special mention. We spent many hours talking politics, television, religion, and scholarship in the basement of 1879 Hall. I would like to thank my good friend Sibtain Abidi for the countless hours spent discussing related to Islamic studies and more. I would like to thank Behnam Sadeghi for advising me through the later years of graduate school, the job application process, and the first year of my teaching. I would like to thank Susan Gunasti, Tarek El-Gawhary, Amin Venjara, Luke Yarbrough, Intisar Rabb, Najam Haider, and Joseph Witztum, Levy McLaughlin, Joseph Winters, Terrance Wiley, Rachel Lindsey, Geoffrey Smith, Kevin Wolfe and Ian Ward for our many conversations inside and outside Princeton's seminar rooms. I have truly benefitted from our discussions on all things of small and great importance. I would like to thank Anver Emon, Jihad Turk, and Hisham Mahmoud for their companionship over the years beginning with my time at UCLA.

I would like to thank the administrators of Princeton's Religion department for their support of my work over the years. In particular I would like to thank Patricia Bogdziewicz, whose warmth, kindness, and administrative excellence is unmatched. There was nothing that Patty B. could not do.

I presented portions of this dissertation at two conferences, and would like to thank the moderators, respondents, co-panelists, and audience members for their invaluable feedback. I presented "The Development of the Disparate Power Relationships Position in the Jurisprudence on Coercion in Medieval Islamic Law" at the American Society for Legal History in November of 2010 and "Coercion in Islamic Legal and Moral Thought from the Second/Eighth till the Fifth/Eleventh Centuries" at the American Academy of Religion in November of 2008.

This dissertation would not have been possible without the support of my family. I thank my father, Taj Uddin Syed, for persevering through the immigrant experience and giving

us the American dream, and my mother, Zakira Unnisa Syed, whose love for her family, compassion for all, and confidence in her children is inexhaustible. Without the loving care she provided our children in critical moments, I could not have worked as hard and with full tranquility knowing that our children were in loving hands. I would like to thank my brother Mashood and sister Sarah, along with their respective spouses, Ambar and Caleb, for their unwavering confidence in this project and their cheerful company during the holidays.

I would like to thank Mariam Inayah Syed and Ibrahim Yasin Syed, the two loves of my life. They are not yet old enough to understand this dissertation's contents, but were no doubt absolutely essential to its successful completion. I cannot remember without rejoicing how many learned works I read and pages I wrote with either one or both of them climbing on top of me. May I provide you both as much joy as you have given me.

I save acknowledgement of the deepest debt for last. I could not have successfully completed this project without the support and love of my constant companion and wife, Erum. She has sacrificed many things so I may pursue my dream, and for that I am thankful.

For my wife, Erum Abbasi Syed,

With love and gratitude.

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Introduction

Consider the following scenarios.

Scenario 1: A man holds a gun to your head. He demands you divorce your wife, otherwise he shoots. The choice is obvious. You pronounce the formula of divorce. You escape and run to the mosque to find two groups of legal scholars engaged in debate. You interrupt the session, recount what just happened, and ask: "Am I still married to my wife?" One set of Islamic legal scholars, the Shāfiʿites, held that your pronouncement of divorce is invalid. They say you were clearly coerced, and according to the doctrine of their school, coercion invalidates a pronouncement of divorce. You are relieved. But the other group of scholars, the Ḥanafites, declares that according to the doctrine of their school, coercion, no matter how severe, does not invalidate a pronouncement of divorce. Now you are confused. You ask the scholars to justify their positions.

Scenario 2: A large and imposing man threatens to beat you to a pulp if you do not sell him your camel at well below blue-book value. You sell him the camel, then head straight for the mosque, where you find the Ḥanafites and the Shāfiʿites engaged in debate. You recount your story. All the Ḥanafites and most of the Shāfiʿites hold that you have been legally coerced. You are confused. In scenario one, the Ḥanafites refused to invalidate your divorce, despite the fact that you were threatened with death, yet now they are willing to invalidate your sale, when you were only threatened with a beating? You ask them to justify their positions.

Scenario 3: A man holds a gun to your head. He demands that you kill an innocent bystander otherwise he kills you. The choice is not so obvious. You love yourself, but killing another human being is a heinous sin. You kill the innocent bystander. You escape and run to the same mosque, this time with blood on your hands. You find the same two groups of scholars

debating some fine point of law. You recount what happened. You did not even finish your story, before they intone with a hardly masked sense of judgment, in one unified voice "You have sinned!" Before you even begin considering your eternal fate in Hell, a debate breaks out on whether or not the ruler should punish you for the crime of homicide. The scholars are as disunited on this issue as they were united in condemning your sin. The Shāfiʿites break into two groups: one group says that the ruler must punish you ***and*** the coercer, and the other group holds that ***only*** the coercer must be punished. The Ḥanafites are even more disunited. They have divided into three groups. One group holds that ***only*** you must be punished. A second group, holds that ***neither*** you nor the coercer must be punished. A third group holds that the coercer alone is held responsible, and that you are off the hook, at least in this world. You are confused. You ask each of the scholars to justify their positions.

Scenario 4: You meet the Arab poet, al-Akhṭal on your way home from the local fermented date drink bar. He is in a particularly irritable mood. The caliph ʿAbd al-Malik gave him a pittance for his last poem, so he has no money. He threatens to lampoon you in verse if you do not sell him your house for well below market value. Given the fact that his claim to fame rests partly on composing the most derisive verse in the history of Arabic literature, you make the sale, fearing the inevitable loss of honor, prestige, and social position that would have resulted from being tagged by Akhṭal's verse. You run to the mosque, and find only the Shāfiʿites engaged in legal debate. You recount the story, without luckily disclosing the verse that Akhṭal had composed for you, and ask whether you can have the sale invalidated. As usual, the jurists are divided. The Iraqi Shāfiʿites are willing to invalidate the sale. They clearly regard the threat of a public insult to be legally coercive, as long as it is directed against someone who would actual suffer the loss of social rank. A group of particularly cranky Khurasani Shāfiʿites

disagrees. They hold only threats against your life are coercive and dismiss the Iraqi Shāfiʿite legal opinion. You are confused. You ask both groups of scholars to justify their positions.

Scenario 5: A man holds a gun to your head. He does not even get a chance to make a demand, before you find yourself almost instinctually running away. In the process you run over a child killing him. After a few minutes, you gather yourself and realize what has happened. You head right away for the nearest mosque. Things are a bit different this time. Instead of the legal scholars, you find theologians. You find the Muʿtazilites on one side of the mosque and the Ashʿarites on the other. You recount the story. The Muʿtazilites hold that you were compelled by the prospect of suffering a great harm and you reacted instinctively. The Ashʿarites hold that, all things being equal, coercion does not undermine moral agency, and they direct you to the legal scholars for a decision regarding your liability for the life of the child. You are confused. You ask both groups of scholars to justify their positions.

We can easily see that coercion poses a number of problems about how responsibility for an action ought to be treated. This dissertation is, in essence a study of how classical Muslim theologians and jurists justified the positions proferred in the scenarios outlined above. It is a study of how they reasoned through coercion's effect on moral agency, and legal and moral responsibility. It examines the texts of scholars belonging to two different theological traditions, Muʿtazilism and Ashʿarism, and two different legal traditions, Ḥanafism and Shāfiʿism. The scholars that produced these texts hailed from the third/tenth to the fifth/eleventh centuries. Most of them lived either in Iraq or Iran.

The first chapter attempts to provide a historical background of the origin of much of the textual material that would play prominent roles in the later intellectual traditions. It is thus devoted to an examination of two of the most important proof-texts in the Islamic legal traditions

and an analysis of the first major dispute regarding coercion in Islamic legal history. The most important Qurʾānic proof texts excuses the believer's profession of disbelief in the case of coercion (16:106). The most predominant explanation of the historical context of the verse in the Islamic legal and exegetical sources sees it as a reponse to the capture and torture of the Prophet's prominent companion, ʿAmmār b. Yāsir. According to the report, God responds to ʿAmmār's coerced recantation of faith by excusing it in the Qurʾānic verse. By analyzing the parallels of different phrases in the verse dispersed throughout the Qurʾān I date the verse to the early Medinan time period, and show that all the parallels seem to be responses to a historical context characterized by porous communal boundaries. It seems that people were converting in and out of the different religious communities, and the coerced apostasy verse was one policy response to this phenomenon. It urged the community to disregard coerced professions of disbelief.

The most directly relevant Prophetic tradition (*ḥadīth*) on the issue of coercion states "God overlooks mistakes, acts of forgetfulness, and what people are coerced to do." While the *ḥadīth* was widely transmitted in the second/eighth and third/ninth centuries, and cited by virtually all legal scholars, the ḥadīth scholar Aḥmad b. Ḥanbal (d. 241/855) expresses skepticism regarding all but one the transmission histories of the texts. He considered only the transmission history originating with al-Ḥasan al-Baṣrī (d. 110/728) as authentic. By showing how the earliest collections of ḥadīth record only this version of the ḥadīth, I show that Ibn Ḥanbal was largely justified in his skepticism.

The earliest dispute amongst legal scholars involving coercion was about its effect on a pronouncement of divorce. One group of late first/seventh century scholars held that coercion invalidates a prouncement of divorce, and the other group held that it did not. The latter held

that coercion has no effect on the legal consequences of a pronouncement of divorce. I show that the dispute had political ramifications in the second/eighth century. Ruling elites seemed to have viewed the legal opinion that held that coercion invalidates divorce as a threat to the practice of divorce contingent oaths, and in one instance even tortured a jurist for spreading the view that coercion invalidates a divorce. I also show, though, while the coerced divorce disagreement had political ramifications, the political connotations of the position may not have motivated the jurists to adopt either side of the disagreement. Some jurists may, instead, have been motivated by methodological commitments on the ability of excuses such as coercion or intoxication to override explicit pronounciations of legal speech acts, such as divorce.

Chapter two and chapter three analyze the treatment of compulsion and coercion in two classical theological traditions, Muʿtazilism and Ashʿarism, respectively. The central question for both theological traditions was whether or not coercion undermines moral agency. The considered whether the lack of coercion or compulsion is a precondition for an agent to be held morally responsible for his acts. The Muʿtazilites answered in the affirmative. The Ashʿarites answered in the negative. Both traditions were driven to their respective positions by commitments to core values about God. The Muʿtazilites held that God is just in a way that is knowable to human beings. For them, this meant that he could not hold human beings responsible for acts that they do not freely commit. The Muʿtazilites developed the most extensive psychological theory in the classical period to explain what constitutes fully volitional acts, and what constitutes compelled acts. While the Muʿtazilites held God's justice to be a core value in their systematic theology, the Ashʿarites held God's monopoly on creative agency in the universe. God creates all things and events, including volitional human action. For this reason the Ashʿarites did not identify the absence of compulsion or coercion as a condition of moral

agency. While all Ashʿarites explicitly note that coercion does not, *prima facie*, negate moral agency, they did change the way they justified this position. Initially, the Ashʿarites argued that since coercion does not compromise an agent's reason, it does not undermine moral agency. Reason was the central capacity that provided the basis for moral agency. In an effort to bring Ashʿarite thinking futher in line with their divine command moral epistemology, some Ashʿarites changed this to the capacity to understand speech (*fahm*).

The next three chapters are devoted to the discipline of law. In these chapters I engage in a comparative examination of the coercion jurisprudence of two classical legal traditions, Ḥanafism and Shāfiʿism. I divide the analysis of the Ḥanafite legal tradition into two analytical components: defining what is coercive and identifying its moral and legal effects. Chapter four deals with Ḥanafite attempts to formulate a legal standard for identifying what is and what is not coercive. Classical Ḥanafites articulated a three-tier standard. Threats against life or limb were compellingly coercive such that the attribution of the material responsibility for bodily acts was transferred from the coerced agent to the coercer. Threats of lengthy imprisonment or enchainment were coercive only in commercial transactions, yet did not have the power to transfer the attribution of responsibility. Threats of a slight beating or imprisonment for a short time were not legally coercive. The Ḥanafites were uniquely the only group of legal scholars to hold that coercion has no effect on irrevocable speech acts, the paradigmatic instance of which was divorce. I show that the classical Ḥanafite articulation of this three-tiered legal coercion standard was primarily motivated by the desire to account for the positive legal rules of the tradition enunciated by the founding fathers, instead of an empirical account of coercion's effect on the psychology of the coerced.

Chapter five deals with Ḥanafite coerced speech and harm to others jurisprudence. It examines Ḥanafite justifications for why coercion does not undermine the legal effects of certain speech acts, such as divorce, and why even threats of imprisonment can undermine the legal effects of certain other speech acts such as transactions of sales and legal acknowledgements. For the coerced harm to others jurisprudence section, I look specifically at the case of rape and the case of murder. In both cases, the classical Ḥanafites confronted a picture where the founding fathers of the tradition had conflicting opinions. As such, the classical Ḥanafites engaged in a retrospective reconstruction of the legal and moral reasoning that lead them to divergent opinions. In both cases all the Ḥanafites held that coercion, even if compelling, cannot ever morally excuse rape or murder. The coerced commits a sin in both cases, because he has preferred his own life to the life of the victim in an area where he had no right to do so. All are equal before God when it comes to protection against unjustified harm. However, the founding fathers differed in whether the coerced can escape the legal punishments prescribed for both crimes. What seems to have become the majority position in the classical tradition held that the perpetrator of the rape and murder, while having committed a sin, is not to be punished for the crime. This presented the problem of why the legal consequences of the coerced act do not follow its moral evaluation. Much of Ḥanafite harm to others jurisprudence is a response to this legal and moral problem.

The last chapter is on the Shāfiʿite approach to coercion. I focus on two issues within the Shāfiʿite tradition: the attempt to formulate a legal standard for coercion and the issue of coerced homicide. The first issue garnered internal controversy in classical Shāfiʿism. With a few exceptions, the Iraqi Shāfiʿites adopted a flexible contextualist approach to formulating a legal definition of coercion that relied mostly on common-sensical empirical judgements about what is

coercive. Threats of beating, banishment, imprisonment, and even insult were potentially coercive. In fact, a finding of coercion could vary with the class of the coerced (e.g. the threat of an insult is coercive for the higher classes whereas it is not for the lower classes). This approach was excplicitly opposed by some Khurasani Shāfiʿītes who held that only threats against life or limb were coercive. They thought that the flexible approach introduced too much arbitrary discretion into the process of defining legal coercion. They also thought that as an empirical matter, only threats against life or limb suffiently degrade the deliberative processes involved in making choices to qualify as coercion. As was the case with the founding fathers of the Ḥanafite tradition, Shāfiʿī offered two opinions on the legal liability of the coerced in the case of coerced homicide. In one opinion he held that both the coercer and the coerced are held fully liable for the legal sanction. In another opinion he held that only the coercer is held fully liable for the murder. As was the case with the classical Ḥanafites, Shāfiʿites scholars develop retrospective reconstructions of Shāfiʿī's reasoning for both of the founder's positions.

Chapter 1: The Coerced Apostasy Verse (16:106), the "Overlooks" Hadith, and Legal Opinions in the Formative Period

1 Qur'ān

1.1 Introduction

In the course of castigating those who belie the signs of God, the Qurʾān proclaims:

> Anyone who disbelieves in God after his having belief – except one who is forced, while his heart is tranquil with faith – but anyone who has [willingly] opened his breast to disbelief, upon them is God's anger and for them is a tremendous punishment[1]

It is ironic that the feature of this verse that most contributes to its fame in the subsequent history of Islamic legal, religious, and moral though — the clause exempting those who are coerced to disbelieve from Divine anger and punishment — reads almost as an afterthought. Nonetheless, classical Muslim jurists use the verse, or more specifically the exemption clause, as a standard proof text to substantiate, at the very minimum, the mitigating effect of coercion on the moral status of the specific act of disbelief, and at a maximum to imply the general principle that coercion invalidates the legal and moral consequences of all coerced acts.[2] It is easy to surmise

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[1] Qurʾān 16:106.

[2] Jurists operating within most Islamic legal traditions regard 16:106 as a foundational text justifying the relatively global rule that coercion at the very least changes in some way the moral and/or legal status of different types of speech acts, whether in commercial transactions, emancipations of slaves, marriage, or divorce. The exception to this is the Ḥanafites, who regard 16:106 as the justificatory basis for a rule with a much more limited scope: i.e. it excuses coerced acts of apostasy. Ibn Ḥazm cites two points of consensus on issues related to coercion: that God does not hold one responsible for the utterance of disbelief if coerced, and that fear for one's life is coercive. The

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earth, sun, moon, mountains, water, plants, lightning, cattle, milk, fruit, trees, birds, animal skins for shelter, and even specific human skills. More specifically the verses point out how these natural signs are created by God in a way that is conducive to human flourishing. However the Qurʾān's use of the term 'sign' is polyvalent. In addition to God's natural creation, a sign can refer to miracles performed by God's messengers to validate their message, and the content of the messages proclaimed by those messengers. All three of these usages are employed throughout the chapter. Just as reflection on the natural signs should evoke gratitude, faith, and obedience, the expectation is the

why this verse, as opposed to the more famous 'no compulsion in religion (*lā ikrāha fī d-dīn*)[3]' verse would play a larger role in Islamic legal and moral discourses on coercion. The extent to which the 'no compulsion' verse is emphatic and unqualified is also the extent to which it is ambiguous. Is it descriptive or normative? If construed, normatively, what comprises the 'religion' in which there is no coercion? What are the various domains of human activity in which coercion may not legitimately be exercised? Does the absolute negation of coercion mean that there exists no sphere of human activity where coercion is legitimate? In contrast, the coercion exemption clause specifically notes that coercion cancels the basis for God's censure of the specific act of apostasy. The fact that the verse connects the existence of coercion specifically to excusatory effect with God provides jurists with the tools to argue for the potential excusatory effect of coercion on other types of acts. How different jurists of various legal traditions construe and apply this principle is one of the main preoccupations of this dissertation.

While the verse serves as a fundamental proof-text in the legal discourse on coercion, by itself, it leaves many questions unanswered. The first set of questions revolves around what counts as properly coercive. How is the existence of coercion determined? Is it by an objective standard such as a verifiable threat against one's life? Or is it by a subjective standard, according to the extent to which the coerced person feels, for example that his will is over-powered? The second set of questions revolves around the extent to which coercion excuses or cancels the moral or legal effects of the coerced action. Is the cancellation restricted to moral liability, such that the profession of disbelief under coercive circumstances does not make one vulnerable to Divine anger and punishment on the Day of Judgment? Or does coercion also cancel the legal

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[3] Qurʾān 2:256.

effects of the act, so that the coerced remains married to his wife, continues to inherit property, and is still a member of the Muslim community despite his profession of disbelief? The third set of questions revolves around the possible range of actions that coercion can excuse. Does coercion affect the evaluation of all action, some actions, or just the profession of disbelief?

These were questions that appeared only after the emergence of the legal traditions in Islamic history. The earliest our sources allow us to see widespread signs of such traditions is the turn of the first century. The participation of the verse in the various justificatory schemes of Muslim jurists operating within mature legal traditions tells us little about what the verse meant before the legal traditions were up and running, not to mention its meaning for those who first heard it. This chapter is devoted to answering these questions.

We shall conduct two types of analysis. First, we shall examine the intra-textual resonances of a key phrase found in the verse with the rest of the text of the Qurʾān. This will allow us to better understand the concepts that the verse invokes from within the Qurʾān itself and help us establish an early Medinan date for the verse. Second, we shall examine the content and transmission histories (*isnāds*) of the various reports in early Islamic scholarship about the historical context of the verse. The historical explanation that found most favor with the legal and exegetical scholars of later centuries was the torture of the famous companion ʿAmmār b. Yāsir at the hands of the Meccans and his resultant profession of apostasy from Islam. I argue that the linking of this incident to the coerced apostasy verse is probably more a response to the dynamics of sectarian and geographical identity construction at the turn of the first/seventh century than a historical recounting of the actual circumstances surrounding that occasioned the verse. This conclusion is based partly on an analysis of the purported sectarian affiliation and the nature of the scholarly work of prominent narrators of the historical tradition in question, and

partly on the fact that it contradicts the early Medinan date for the verse that our intra-textual Qurʾānic analysis reveals.

1.2 Intra-Qurʾānic Analysis of the Coerced Apostasy Verse (16:106)

The coercion exemption clause, "except one who is forced, while his heart is tranquil with faith (*illa man ukriha wa qalbu-hu muṭmaʾinun bi-ʾl-īmān*)" interrupts the flow of the verse. In fact it is tangential to the purpose of the verse and the larger passage in which it occurs. The point of the passage is a repetition of one of the main themes of the chapter,[4] which is to threaten those who disbelieve in God's signs with punishment,[5] and ennumerate their blameworthy moral[6] and religious characteristics.[7] The juxtaposition of the interiority of the belief of one coerced to disbelieve with the castigation of those who freely disbelieve both at the beginning of the verse and immediately following the exemption clause implies that the act of disbelieving is something observable. The term used in both places is some form of the root *k-f-r*. As noted by

[4] See the following verses which describe creation as signs (*āyāt*) of God's benevolence toward human beings, implying thereby the reciprocal expectation of gratitude and belief: 3-19; 65-69; 79-81. In these three sections the signs which should evoke the response of gratitude on the part of the reflective human addressee are natural: the earth, sun, moon, mountains, water, plants, lightning, cattle, milk, fruit, trees, birds, animal skins for shelter, and even specific human skills. More specifically the verses point out how these natural signs are created by God in a way that is conducive to human flourishing. However the Qurʾān's use of the term 'sign' is polyvalent. In addition to God's natural creation, a sign can refer to miracles performed by God's messengers to validate their message, and the content of the messages proclaimed by those messengers. All three of these usages are employed throughout the chapter. Just as reflection on the natural signs should evoke gratitude, faith, and obedience, the expectation is the same for these other types of signs, especially God's revealed messages as proclaimed by his prophets. On the concept of signs in the Qurʾān, see *Encyclopedia of the Qurʾān*, art. 'Signs' (Binyamin Abrahamov) and the classical study of key concepts in the Qurʾān, Toshihiko Izutsu, *God and man in the Koran*, Reprint ed., (North Stratford, N.H.: Ayer, 1995), 133-9.

[5] In 16:104 the Qurʾān announces "a painful chastisement" for those who disbelieve in God's signs.

[6] In 16:108 the disbelievers are described as those who "prefer the present life over the life to come."

[7] In 16:109, as a result of their disbelief, "God has set a seal on their hearts, and their hearing, and their eyes."

modern scholars, the Qurʾān uses *kufr* and its related derivatives in a wide variety of senses.[8] Toshihiko Izutsu and Camilla Adang note the gradual chronological semantic progression of the term from meanings associated with 'showing ingratitude' to meanings associated with 'denying or disbelieving' in the theological truths that Muḥammad proclaimed. While meanings associated with the cognitive operation of not believing a given truth claim are certainly central to the term *kufr* as it appears in this verse, the question of the social and political implications of the invocation of the concept seems to be unclear, especially given the fact that the verse begins by describing those who having once believed, now disbelieve. What then could be the relationship of belief and disbelief to political and social membership in a community? As it so happens, variations of the phrase "disbelieving after having believed" occur seven other times in the Qurʾān (3:100, 3:106, 2:109, 3:86, 3:90, 9:66, 9:74), and the phenomenon is described by use of another phrase in one other place (4:137). In three of these cases (3:100, 3:106, 2:109),[9] the verses caution believers against the machinations of a group[10] from amongst the People of the Book who desire for the believers to disbelieve. The verses are embedded in passages that quote the arguments offered by the Jews and Christians, sometimes between themselves, and mostly

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[8] See Toshihiko Izutsu, *Ethico-religious concepts in the Qurʾān*, [Rev.] ed., (Montreal: McGill University, Institute of Islamic Studies, McGill University Press, 1966), 119-77, and hisidem., *God and man in the Koran*, 21-3. See also *Encyclopedia of the Qurʾān*, art. 'Belief and Unbelief' (Camilla Adang).

[9] 3:100 and 3:106 are ostensibly part of the same passage.

[10] It is significant that in both 3:100 and 2:109 the Qurʾān explicitly singles out the fact that a group from amongst the people of the book desires the disbelief of the believers, implying that not all of them do so. In 3:100 this group is specifically described as a faction (*farīq*). In 2:109, the group is described numerically as many (*kathīr*). The subtlety of this language indicates fluid socio-political relations between the different scriptural communities. Donner sees this language as indicative of the fluidity of religious identity in the early part of the Prophet's mission to Medina. See Fred M. Donner, "From believers to Muslims: confessional self-identity in the early Islamic community," *Al-Abhath: Journal of the Faculty of Arts and Sciences of the American University of Beirut* 50-51 no. 2002-2003(2003): 18-28.

against the believers.[11] There is no explicit mention of Jews and Christians in the narrative context immediately surrounding 3:86 and 3:90, however three factors imply at the very least indirect reference to them:

1. the clear articulation of the status of past prophets for Muḥammad's community found in 3:84[12]
2. the insistence that only 'Islām' is acceptable as a religion (*dīn*) in 3:85[13]
3. the relative proximity to 3:100 and 3:106

In 9:66, 9:74, and 4:137, the act of disbelieving after once having believed, occurs in the context of the Qurʾān's address to the hypocrites (*munāfiqūn*). The Qurʾān identifies this group as outwardly professing allegiance to the Muslim community and commitment to Muhammad's religious message, while in actuality either failing to support that community in moments of crisis, or secretly desiring its demise.[14] Regardless of whether the context of the Qurʾān's reference to the phenomenon of changing beliefs occurs when referring to other scriptural communities or what it labels as the hypocrites, as can be gleaned from the preceding analysis, it seems safe to assume that it occurs in the context of fierce communal competition for religious

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[11] For instance, 2:111 quotes the people of the book as saying: "'None shall enter Paradise except that they be Jews or Christians,' Such are their fancies. Say: 'Produce your proof, if you speak truly.' Nay, but whosoever submits his will to God, being a good-doer, his wage is with his Lord, and no fear shall be on them, neither shall they sorrow." Again in 2:113, "the Jews say, 'The Christians stand not on anything'; the Christians say, 'The Jews stand not on anything'; yet they recite the Book. So too the ignorant say the like of them. God shall decide between them on the Day of Resurrection regarding what they used to differ about." For instance in 3:110, the Qurʾān proclaims to the community of believers that "You are the best nation ever brought forth for humans, commanding the right, and forbidding the wrong, and believing in God. Had the People of the Book believed, it were better for them; some of them are believers, but the most of them are ungodly."

[12] The verse states: "Say: 'we believe in God, and what is revealed to us, and what was revealed to Abraham, Ishmael, Isaac, Jacob and the tribes, and what was given to Moses and Jesus and the Prophets by their Lord. We do not distinguish between them. To Him [God] we submit.'"

[13] The verse states: "Whoever desires other than Islam as a religion, it will not be accepted from him, and he will be amongst the losers in the hereafter."

[14] On the hypocrites, see *Encyclopedia of the Qurʾān*, art. 'Hypocrites and Hypocrisy' (Camilla Adang).

affiliation.[15] This often involved contestation over political authority. For the Qurʾān's immediate audience, it seems, to profess disbelief is to profess allegiance to a different political community. If we assume the same type of dynamic is at play in the coercion verse's invocation of the "disbelief after belief" phrase, then the exemption clause functions not just at the religious or moral level, but also at the socio-political level. We may infer that it not only assuages the conscience of the coerced— that the fact of being coerced excuses and thus exempts a profession of disbelief from God's anger and punishment—but also informs the community of believers that a coerced profession of disbelief does not render the coerced outside the religious, social, and political community.

In addition to helping us better understand the nature of the acts of belief and disbelief referred to in the coerced apostasy verse, the intra-textual Qurʾānic analysis of the "disbelief after belief" phrase also helps us date the verse.

Classical Qurʾānic exegetical scholarship has recorded two claims on the provenance of the entire chapter that contains the coerced apostasy verse (chapter or sura 16, *al-Naḥl*, or the Bees). One position, ultimately attributed to Qatāda (d. 117/735) and al-Ḥasan al-Baṣrī (d. 110/728), considers the entirety of the chapter as Meccan.[16] Another position, attributed ultimately to Ibn ʿAbbās (d. 68/687-8), asserts that all but the last three verse of the chapter are

[15] Given the tribal nature of political action depicted in the biographies of the Prophet and chronicle histories, it is somewhat odd that the use of such vocabulary is entirely absent in the Qurʾān. Political conflicts are described entirely in religious terms.

[16] For citation of both opinions, see Jalāl al-Dīn ʿAbd al-Raḥmān al-Suyūṭī, *al-Itqān fī ʿulūm al-Qurʾān*, ed. Markaz al-Dirāsāt al-Qurʾāniyya, 2 vols., (Medina: Majmaʿ li al-Malik al-Fahd li Ṭibāʿa al-Muṣḥaf al-Sharīf, 1426), 1:50-1. Al-Suyūṭī's immediate source is al-Bayhaqī's *Dalāʾil al-Nubuwwa*.

of strictly Meccan provenance. This position holds that the last three verses were revealed at the time of the Prophet's departure from Uḥud.[17]

Modern Islamicists are divided on this issue. Blachére classifies the entire chapter as from the third Meccan phase of the Prophet's mission. The nineteenth century Orientalist, Theodor Nöldeke, and the more recent scholar Richard Bell classify the coerced apostasy verse as Medinan.[18] Behnam Sadeghi's chronology of the Qurʾān indicates an early Medinan dating for the coercion verse and in fact all of the "disbelief after belief" verses surveyed above.[19]

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[17] Ibid., 1:49. Al-Suyūṭī's immediate source is al-Naḥḥās's *al-Nāsikh wa al-mansūkh*.

[18] Régis Blachére regards the chapter as from the third Meccan phase, Régis Blachère, *Le Coran, traduction selon un essai de reclassement desourates*, 3 vols., (Paris: G. P. Maisonneuve, 1947-1950), 2:349. The exceptions would be Richard Bell and Nöldeke. Richard Bell does not classify entire chapters as either Medinan or Meccan, but individual passages and verses. He considers the coerced apostasy verse as early Medinan, Richard Bell, *The Qurʾān: translated, with a critical re-arrangement of the Surahs*, trans. Richard Bell, 2 vols., (Edinburgh: T. & T. Clark, 1960), 259. Nöldeke considers verses 1-42 to be of Meccan origin and 43f., and 111-125 to be of Medinan origin, indicating his classification of the coerced apostasy verse as Medinan. For a table comparing various chronological schemes, including Nöldeke's, see Richard Bell and W. Montgomery Watt, *Introduction to the Qurʾān*, (Edinburgh: University Press, 1970), 207.

[19] See Behnam Sadeghi, "A Stylometric Evaluation of Bazargan's Chronology of the Qurʾān", unpublished. Sadeghi relies on the chronology of the Qurʾān first developed by the Iranian scholar Mehdi Bazargan. Bazargan divided the Qurʾān's 114 surahs into 194 blocks. 59 of the surahs were preserved as single blocks, with the rest divided up into two or more blocks. He then re-arranged these blocks by the average verse-length of each block in increasing order. Bazargan asserts that the blocks with the shortest average verse-lengths chronologically precede those with longer average verse lengths. Bazargan claims that his arrangement is the relative chronology of the revelation of the Qurʾān, which is broadly corroborated by Blachére's own chronology, and the traditional understanding of the unfolding of the Qurʾān as it related to major events in the life of the Prophet as indicated in literary historical sources. Sadeghi slightly modifies Bazargan's arrangement, and then performs a battery of stylometric tests to determine whether or not Bazargan's ordering of the Qurʾānic passages is indeed its chronology. This provides purely stylistic corroboration of Bazargan's chronology independent of potentially tendentious and less-well supported information from Islamic historical sources. He writes: "In sum, the principle underlying my study is that if different, independent measures of style vary in a relatively smooth fashion over a particular ordering, then that sequence reflects the chronological order. The point is that while it is easy to find many orderings of a corpus over which one particular marker of style varies smoothly ("individual smoothness"), it is highly unlikely that an ordering will yield smooth variation simultaneously for different, independent measures of style ("uniform smoothness"), unless that ordering is the chronological one." (page 3). Sadeghi's style-only tests prove the modified Bazargan chronology. I take Sadeghi's modified Bazargan chronology and re-introduce historical chronological markers that both Islamic and most Western scholars take to correlate to specific verses in the Qurʾān, such as the fact that the chapter on spoils (Sura al-Anfāl, 8) is largely a response to the Muslim victory against the Meccans at the Battle of Badr. Since Badr occurred in the second year after the immigration (*ḥijra*) from Mecca, we now have a marker for those verses revealed in a Meccan as opposed to Medinan context.

Sadeghi's style only chronology corroborates Noldeke's dating of the passages. Noldeke relied on both stylistic and thematic criteria for his chronology.

In addition to Sadeghi's chronology, two other factors urge a Medinan context for the verse. The general themes associated with all the verses that speak of the phenomenon of changing beliefs are regarded by Islamicists as born of a Medinan context.[20] The case for a Medinan context is strengthened by the specific reference to those who immigrated after once having been persecuted, referred to four verses later in 16:110.[21] The reference to persecution in particular suggests that the immigration in question was from Medina, as opposed to the later immigrations of other Arab tribes in the peninsula to Medina.[22] Furthermore the reference to the fresh memory of persecution suggests an *early* Medinan dating for the passage.

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[20] For a discussion of the formal features of the Medinan revelations, see Neal Robinson, *Discovering the Qurʾān: a contemporary approach to a veiled text*, 2nd ed., (Washington, D.C.: Georgetown University Press, 2003), 196-8. On a discussion of the terminology and theological figures specific to the different phases of the Qurʾānic revelations, see Bell and Watt, *Introduction to the Qurʾān*, 118-20. See also *Encyclopedia of the Qurʾān*, art. 'Chronology and the Qurʾān' (Gerhard Böwering).

[21] 16:110 states: "Then, surely thy Lord – unto those who have emigrated after persecution, then struggled and were patient—surely they Lord thereafter is All-forgiving, All-compassionate."

[22] It is possible that the reference to the immigration (hijra) could be to the immigration of some Muslims to Abyssinia in the Meccan period. Watt interprets the earliest historical sources as regarding the immigration from Mecca to Medina as the paradigmatic instance of the hijra. He writes that "[T]hose who went to Abyssinia about 615 and remained there until fetched to Medina by Muḥammad in 7/628 were counted as having made a hiḏjra to Abyssinia; perhaps this was part of the inducement to go to Medina." See *Encyclopedia of Islam, Second Edition*, art. 'Hidjra' (W. Montgomery Watt). See also, *Encyclopedia of the Qurʾān*, art. 'Emigration' (Muhammad al-Faruque). Crone rejects the view that the immigration referred to in the Qurʾān is only the immigration from Mecca to Medina. She argues that the Qurʾān never specifically notes that the immigration ought to be to a particular place. She argues that the invocation of immigration in post-Qurʾānic sources display no evidence of a connection to the Prophet's migration to Medina as a paradigmatic instance of immigration that all later immigrations were derived from. Finally she interprets verse 4:100, which states, ""whoso emigrates in the way of God will find in the earth *mugāraman kaṯīra*" as implying that there are many destinations to which one may make the immigration. But the words Crone leaves untranslated "*mugāraman katīran*" can refer both to many destinations of refuge, or many paths taken to separate oneself from one's people against their wishes, without implying anything about the singularity or plurality of destinations. In fact that poetic citation that Lane adduces for his demonstration of the meaning of the word relies on the paths definition of the term and Lane himself translates the verse "he shall find in the earth, *many* a road." Moreover, the specific reference in the second half of the verse not cited by Crone mentions the object of immigration being both God and *His Prophet* (*wa man yakhruju muhājiran ilā Allāhi wa rasūlihi*)—a point that may more readily be taken to argue against Crone's contention of the non-specificity of Medina implied in the verse. In our case, the specific reference to immigration is accompanied by a reference to persecution in 16:110. This

The Qurʾānic passages that are Meccan in chronology address a socio-political situation in which the emerging Muslim community had relatively weak political power and was at the very least socially marginalized by the Meccans, if not persecuted. The Qurʾānic passages of Medinan provenance address a completely different socio-political dynamic.

Three features of the Medinan socio-political context are important in the explanation of the coercion verse. The first feature is the Prophet's eminent political status as leader of at least a major, if not the main religious community, in Medina. Second, even before the Prophet's migration, Medina was beset by the existence of diverse religious communities, most notably the Arabs and Jews. This situation was further exacerbated after the immigration, when Medina saw the introduction of yet another new religious community. Finally, the introduction of an entirely new political group in Medina provoked a negative reaction from amongst some of the newly converted Medinese. The Qurʾān labels these Medinese as the hypocrites. The Qurʾān chastises this group for their lukewarm commitment to Muḥammad's mission despite their formal allegiance, and at some points their active attempts at political sabotage. The final over-riding concern throughout the Medinan period in Muḥammad's mission was the conflict with the Meccans. These features dramatically changed the socio-political context for Qurʾānic revelations, and therefore the substance of the revelations themselves. Specifically, with respect to the apostasy verse, the interplay of these three dynamics combines to equate religious affiliation with political affiliation and thus render acts of believing and disbelieving as acts of political (dis)loyalty.

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suggests an immigration from an intolerable Meccan context. See Patricia Crone, "The First-Century Concept of "Hiğra"," *Arabica* 41, no. 3 (1994): 366 and Edward William Lane and Stanley Lane-Poole, "raghama," in *Arabic-English lexicon* (Cambridge: Islamic Texts Society, 1984).

1.3 Exegetical Tradition on the Context of the Coerced Apostasy Verse (16:106)

The exegetical tradition offers four different historical explanations for the revelation of the coerced apostasy verse. Only one of these, namely the reports about ʿAmmār b. Yāsir, would come to dominate in the classical exegetical and legal traditions. Briefly this explanation connects the revelation of the coercion exemption clause to the capture and torture of the famous companion ʿAmmār. Apparently, in order to stop the torture, ʿAmmār relented to the demand of renouncing Islam. This explanation holds that the coercion exemption clause was revealed specifically to exempt him from God's punishment for expressing disbelief after once having believed. Despite the predominant preference for this explanation in medieval religious literature of all types, I argue, by way of an isnad-matn analysis that the connection between the ʿAmmār b. Yāsir and 16:106 has more to do with sectarian identity and the formation of historical memory at the turn of the eighth century than to historical authenticity.

1.3.1 The Non-ʿAmmār Reports

1.3.1.1 The Khabbāb Report

The famous exegete, al-Ṭabarī (d. 310/923), cites a number of reports purporting to explain the historical context to which the apostasy verse was responding. In one of these reports, the Kufan scholar al-Shaʿbī (d. 104/723) asserts:

> When the slaves were tortured, all capitulated to the demand except Khabbāb b. al-Aratt. They used to be made to lie down on heated stones (*al-raḍaf*). They did not get even the least of [what they wanted] from him (i.e. Khabbāb).[23]

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[23] Abī Jaʿfar Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī: Jāmiʿ al-bayān ʿan taʾwīl āy al-Qurʾān*, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī, 1st ed., 26 vols., (Riyad: Dār ʿĀlam al-Kutub lil-Ṭibāʿah wa-al-Nashr wa-al-Tawzīʿ, 2003), 14:375. Here is the chain of transmission:

Al-Shaʿbī (d. 104/723, Kufa) → al-Mughīra b. Miqsam (d. 136/754, Kufa) → Jarīr b. ʿAbd al-Ḥamīd (d. 188/804, Kufa) → Muḥammad b. Ḥamīd (d. 248/862, Rayy)

Presumably, Shaʿbī's audience would understand the context to be the torture of the unprotected slaves who had converted to Islam in Mecca during the earlier part of the Prophet's mission.[24] As can be seen, Shaʿbī himself makes no mention of the fact that the report is an explanation of the context of the coercion exemption clause. Thus, we are led to believe it is related to the coercion exemption clause simply by al-Ṭabarī's reproduction of the report in the section in which he comments on the apostasy verse. The section is specifically titled "who said that" referring to who uttered a profession of disbelief. Presumably, al-Ṭabarī must have interpreted the content of the slaves' capitulation as complying to the demand to profess disbelief in Islam under the pain of torture and thus decided to reproduce the report in the section commenting on 16:106. The connection between the two cannot therefore be dated before al-Ṭabarī's interpretation. This is confirmed by the fact that portions of al-Ṭabarī's Khabbāb report is reproduced by an earlier source which neither alludes to nor explicitly makes the connection to the coercion exemption clause.[25]

While the purported connection between the verse and the Khabbāb incident is of a relatively late date and cannot be taken to be representative of an early historical memory, it is indicative of the types of scholarly processes as late as the late third/ninth century at work in the production of the historical memories associated with the contexts of Qurʾānic verses. Al-Ṭabarī

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[24] For instance, Ibn Abī Shayba's citation of the same report is preceded by another report originating with the Meccan scholar Mujāhid b. Jabr (d. 104/723), who described a similar incident involving Khabbāb as specifically occurring in the early Meccan phase of the Prophet's mission. See ʻAbd Allāh ibn Muḥammad Ibn Abī Shayba, *Muṣannaf Ibn Abī Shayba fī al-aḥādīth wa-al-āthār*, ed. Saʻīd Laḥḥām, 1st ed., 9 vols., (Beirut: Dār al-Fikr, 1989), 8:42, ḥadīth number 13.

[25] See ibid., 8:42. Ibn Abī Shayba produces this report in his chapter on history (*bāb al-taʾrīkh)*. Here is the chain of transmission:

Al-Shaʿbī (d. 104/723, Kufa) → al-Mughīra b. Miqsam (d. 136/754, Kufa) → Jarīr b. ʿAbd al-Ḥumayd (d. 188/804, Kufa)

adduced the report as relevant to the verse based on his prior expectation of what the verse was about and the seeming correlation between that expectation and the content of the Khabbāb report.

1.3.1.2 The Muqātil Report

In his Qurʾānic exegesis, Muqātil b. Sulaymān (d. 150/767)[26] asserts that the apostasy verse was actually revealed in relation to two seemingly different historical incidents. Specifically, the reference in the verse to apostasy, and thereby liability to God's anger and punishment was revealed regarding six individuals.[27]

The coercion exemption clause on the other hand referred specifically to a slave (*ghulām*) of one ʿĀmir b. al-Ḥaḍramī who used to be a Jew but converted to Islam when he heard the story of Yūsuf and his brothers.[28] His master, presumably ʿĀmir b. al-Ḥaḍramī,[29] beat him until he reverted to Judaism. Muqātil does not provide sources for these reports.

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[26] On Muqātil see, *Encyclopedia of Islam, Second Edition*, art. 'Muḳātil b. Sulaymān b. Baṣhīr al-Azdī al-Ḵhurāsānī al- Balkhī' (M Plessner).

[27] ʿAbdullah b. Saʿd b. Abī Sarḥ al-Qurashī (d. 36 or 37/656-8), Miqyās b. Ḍubāba al-Laythī, ʿAbdullah b. Anas b. Ḥanẓal, Ṭuʿma b. Ubayriq al-Anṣārī, Qays b. al-Walīd b. al-Mughīra al-Makhzūmī, and Qays b. al-Fākiha b. al-Mughīra al-Makhzūmī. See Muqātil ibn Sulaymān, *Tafsīr Muqātil ibn Sulaymān*, ed. Aḥmad Farīd, 1st ed., 3 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 2003), 2:239.

[28] I assume here that the report may be referring to the chapter on the story of Yūsuf in the Qurʾān (chapter 12).

[29] Not much seems to have been preserved about ʿĀmir b. al-Ḥaḍramī directly. In fact, Ibn Ḥajar merely reproduces Muqātil's report as basically most of what is known about him. He adds, that at some point after this incident, ʿĀmir himself converted and immigrated along with his slave (to where is not specifically mentioned, though Medina is the strongest presumption). Apparently, ʿĀmir was the brother of the famous (*mashhūr*) companion ʿAlāʾ b. al-Ḥaḍramī. See Aḥmad ibn ʿAlī Ibn Ḥajar al-ʿAsqalānī, *al-Iṣāba fī tamyīz al-ṣaḥāba*, ed. ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ, 1st ed., 8 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 1415), 3:469, entry number 4398. The story of his conversion conflicts with information about ʿĀmir in other sources, where he is described as being killed at Badr. Apparently he was also the person who killed the first Muslim at Badr. See Wilferd Madelung, *The succession to Muḥammad: a study of the early Caliphate*, (Cambridge: Cambridge University Press, 1997), 97, who cites Ṭabarī for his report. Ibn Saʿd also notes a report about him being the first to kill a Muslim at Badr, but does not note that he died in the battle. See Muḥammad Ibn Sa'd, *al-Ṭabaqāt al-kubrā*, 9 vols., (Beirut: Dār Ṣādir lil-Ṭibā'ah wa-al-Nashr, 1957-1968), 2:16 and 3:392.

1.3.1.3 The Mujāhid/ʿIkrima Reports

Whereas the context for the apostasy verse adduced by Muqātil is not attested in any of the sources we have surveyed, two different scholars working in a Meccan scholarly milieu in the last quarter of the first century, describe the same historical incident as the cause for the revelation of the apostasy verse. One report originates with the famous Meccan scholar, Mujāhid b. Jabr (d. 104/723) and the other from the Meccan scholar ʿIkrima (d. 105/723-4).[30] We shall begin with the Mujāhid report then note any variants from the ʿIkrima text.

Mujāhid's report on the context surrounding the coerced apostasy verse notes that presumably after the migration of the Muslim community from Mecca to Medina, some people in Mecca had converted to Islam.[31] Upon learning of their conversion some of the Prophet's companions wrote to them inviting them to Medina, adding that they would not be considered a part of the Muslim community until they left Mecca and joined the main body of the Muslims in Medina. In response to this, the new converts left Mecca with the intention of immigrating to Medina. But some of the nonbelievers of Quraysh intercepted them and subsequently tortured them, until they committed apostasy. It was regarding this incident that the coercion exemption clause of the apostasy verse was revealed. Many questions about the details of the incident are not addressed in Mujāhid's report. We do not know which companions wrote to the remnants of the Meccan Muslims; who the late Meccan converts were; or who the nonbelievers who tortured those Muslims were? Moreover, the report lacks a chain of transmission (*isnād*) documenting the transmission history of the report before Mujāhid.

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[30] On ʿIkrima, see *Encyclopedia of Islam, Second Edition*, art. 'ʿIkrima' (Joseph Schacht).

[31] Mujāhid ibn Jabr, *Tafsīr al-Imām Mujāhid ibn Jabr*, ed. Muḥammad ʿAbd al-Salām Abū al-Nīl, 1st ed., (Madīnat Naṣr [Cairo]: Dār al-Fikr al-Islāmī al-Ḥadītha, 1989), 1:353.

ʿIkrima (d. 105/723-4) is the source for a similar report about the context surrounding the revelation of the coercion exemption clause. ʿIkrima similarly locates the context of the coercion exemption clause in a period soon after the immigration to Medina. However, in addition to the coercion exemption clause of the apostasy verse, ʿIkrima identifies two other completely different Qurʾānic verses (4:97-8) as also related to the situation of a group of Meccans who converted to Islam but had remained in Mecca.[32] Apparently, when the battle of Badr occurred, no Meccans capable of fighting were left behind in the city. Thus, the Meccan Muslims who had not immigrated, participated against the Muslim army in the battle of Badr, and as a result were killed. ʿIkrima asserts that 4:98 was revealed to exempt the Meccan Muslims who, on account of their inability to fight, had stayed behind in Mecca from the punishment specified in 4:97 because they could find no way to escape from Mecca. Apparently this was the larger context that then inspired some of the Medinan immigrants to write to the remaining Meccan Muslims. The rest of ʿIkrima's report accords with the presentation of Mujāhid's text above.[33]

ʿIkrima also does not provide a source for his information. Mujāhid and ʿIkrima's reports are similar enough to warrant the inference that they are descriptions of the same event. The fact of the correlation of the textual variation with variation of different original transmitters (i.e. Mujāhid and ʿIkrima) from the same city and time period indicates that the reports were in circulation in Mecca at the turn of the first century.

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[32] "4:97 Lo! as for those whom the angels take (in death) while they wrong themselves, (the angels) will ask: In what were ye engaged? They will say: We were oppressed in the land. (The angels) will say: Was not Allah's earth spacious that ye could have migrated therein? As for such, their habitation will be hell, an evil journey's end; 4:98 Except the feeble among men, and the women, and the children, who are unable to devise a plan and are not shown a way."

[33] See Aḥmad ibn al-Ḥusayn Bayhaqī, *al-Sunan al-kubrā*, 10 vols., (Beirut: Dār al-Fikr, n.d.), 9:14.

On the surface, the content of these historical reports accords well with both our dating of the verse as early Medinan and its narrative context. The identification of the verse as early Medinan by the reports confirms our own early Medinan dating of the verse. The fact that we have similar reports originating from two Meccan authorities in the last quarter of the century transmitted along two different chains of transmission implies a very early dating for these reports. Unfortunately, neither Mujāhid nor ʿIkrima provide their own sources for their reports, thus we cannot go definitively beyond the last quarter of the first/seventh century. With that said, of all the reports surveyed in this chapter it is the Mujāhid/ʿIkrima reports that accord best with the dating of the Qurʾānic verses and the narrative context of the passage surrounding 16:106.

1.3.2 The ʿAmmār Reports

The reports that ascribe the revelation of the coercion exemption clause to the capture and torture of the famous companion ʿAmmār b. Yāsir predominate in the classical Islamic scholarly traditions. These reports can be divided into three general groups: reports that note ʿAmmār's torture without asserting any connection to the coercion exemption clause; reports that end up simply asserting that the coercion exemption clause was about ʿAmmār; and finally reports that narrate the circumstances of ʿAmmār's torture and connect it to the coercion exemption clause. I have provided a detailed analysis of both the content and transmission histories (*isnāds*) of these reports in Appendix 1 and will confine myself to a summary description of the reports and the result of the analysis here.

1.3.3 Suggested Chronology for the Reports

The reports about ʿAmmār's torture originated from most of the important cities of the empire – Mecca, Medina, Basra, and Kufa. Some of these reports are quite early, especially

Medinese ʿUrwa b. al-Zubayr's report dating to the middle of the first century. Both the geographical diffusion of the reports and the relatively early dating that can be assigned to some of them are good reasons to regard what all of these reports explicitly agree on or implicitly presuppose as historically true: that ʿAmmār was tortured in some fashion, most probably by the Meccans. While the reports agree on this much, they disagree as to the mode of ʿAmmār's torture, the details of its circumstances, and what, if any Qurʾānic verses refer to the incident.

Ibn Sīrīn's Basran reports say that ʿAmmār was left to drown in a well. A Medinan report asserts that he was tortured with fire. Meccan and Kufan reports maintain that he was left out in the hot desert-plains of Mecca in the middle of the day. While many reports assert that the coercion exemption clause of the apostasy verse was revealed about ʿAmmār, others assert that alternatively verses 16:110 or 29:2 were about him. In light of these competing explanations, what do we make of the connection between the coercion verse and ʿAmmār's torture?

There is one immediate historical problem that the connection between ʿAmmār and the coercion verse immediately faces. The gist of the reports about ʿAmmār's torture, and even Abū ʿUbayda's account alluding to the connection between the coercion exemption clause and ʿAmmār's torture, imply a Meccan dating. This differs with the early Medinan dating that my own analysis suggests. Moreover, the very fact that ʿAmmār's torture is offered up as a candidate for historical explanation for three different verses indicates not transmission of eyewitness or even hearsay reports of some sort, but rather attempts on the part of late first century scholars to correlate Qurʾānic verses with episodes from the life of the Prophet.

We can thus posit three stages in the growth of the ʿAmmār reports in general, and specifically the reports connecting the revelation of the apostasy verse to ʿAmmār. In the first stage, reports were generated that concretized a seemingly widely shared yet vague historical

memory of the torture of ʿAmmār at the hands of Meccan. At the second stage, the memory of ʿAmmār's torture is correlated with the coercion exemption clause of the apostasy verse. These reports circulated predominantly in Kufa either in the late first or early second centuries. In the third stage, the historical reports about the nature and circumstances of ʿAmmār's torture and the connection to the coercion exemption clause are asserted in a narrative that combines aspects of previous reports while alluding to the connection to the apostasy verse. What I have labeled the Abū ʿUbayda account is born. The Abū ʿUbayda account itself undergoes further elaboration, as narrative events summarily noted in the Maʿmar recension are imaginatively elaborated by positing conversations between ʿAmmār and the Prophet in the later recensions.

1.3.4 Why did the ʿAmmār Reports Predominate?

If we eliminate the ʿAmmār story as the explanation for the circumstances surrounding the apostasy verse, we are left with two generic accounts of the circumstances. Though the Muqātil and Mujāhid/ʿIkrima texts are recorded in some of the earliest extant exegetical works, their authors do not provide the sources for their texts. If we are forced to choose between the historical explanations recorded in the exegetical tradition surrounding the circumstances of 16:106, Mujāhid's account coheres best with 16:106's Medinan, perhaps even early Medinan context, as can be inferred from the verses in 16:106's immediate vicinity and its use of the disbelief-after-belief phrase.

Notwithstanding the putative historical context of 16:106, the question as to why the ʿAmmār explanation, despite its weaknesses, achieved dominance in the exegetical and legal literature remains. Here we may surmise two factors. First, the Mujāhid tradition conveys fairly generic information. It does not provide names of specific people or even tribes. In contrast, the ʿAmmār tradition is about a specific heroic personality in early Islamic history. It is easy to

surmise why scholars would find the specific and dramatic more appealing than the generic, thus contributing to the overwhelming popularity of the ʿAmmār explanation in the scholarly traditions. Even more, the memory of ʿAmmār's historical personality offended no early sectarian community. In fact, ʿAmmār's early conversion, his slave/client status, and his suffering for the cause of the Prophet's mission made him an especially appealing figure to all sectarian groups jockeying for the legitimacy of their respective theological and political commitments. He was specifically appealing to Batrī Zaydīs, because, in some sense, he exemplified their doctrine. He was remembered as a fierce partisan of ʿAlī, while at the same time participating in ʿUmar's government as governor of Kufa. For similar reasons, though not necessarily for his partisanship on behalf of ʿAlī in the first civil war, Murjiʾīs could use his example to advocate an agenda of communal integration. Because of his staunch support for ʿAlī during the civil war and his martyrdom at Ṣiffīn, ʿAmmār would become one of the seven ***truly*** steadfast companions of the Prophet for the Imāmīs. More specifically, Jaʿfar al-Ṣādiq used the memory of ʿAmmār's capitulation when coerced under persecution and its validation by the Qurʾān to argue against the policy of heroic resistance, exemplified in Shīʿī memory by Maytham al-Tammār. No one community, whether in the formative or classical periods had motivation to specifically contest the connection between ʿAmmār and the coercion exemption clause, and the Imāmī Shīʿīs had very good reason to advocate it.

The second admittedly less compelling possible reason for the popularity of the ʿAmmār explanation for the coercion exemption clause has to do with the nature of juristic discourse. The extended narrative version of the ʿAmmār tradition notes that torture is what constituted the coercive pressure upon which ʿAmmār recanted his faith. The other historical reports fill out the nature of this apostasy-excusing torture, whether by fire, drowning, beating, or otherwise. This

gives jurists, driven by the imperative to produce norms of maximally concrete guidance, a precedent with concrete direction on the types of threats that are legitimately coercive and thus exculpatory, increasing the favorability of the ʿAmmār explanation over that of others.

1.4 The Coercion Exemption Clause Outside of Legal Discourse

It seems that the immediate function of the coercion exemption clause of the apostasy verse in the Prophet's community was twofold. First it directed the Medinan community to disregard coerced professions of unbelief. By the same token it probably sought to assuage the troubled consciences of those who thought that any act of apostasy, regardless of intention, would render them outside of their chosen socio-political community and unsalvifiable. The pronouncement of the coercion exemption clause seems to have occurred in a plural religious context with multiple religious communities within Medina jockeying for political power all the while under martial threat posed by the Meccan Qurayshīs. Seen in this vein, the coercion exemption clause seems to originally have been more a qualification to a policy prescription discouraging conversion from Islam in a demanding political environment than the enunciation of a legal principle or even solution to a legal problem. This would change by the end of the first century. The first inkling that the coercion exemption clause comes to play a role as a premise in legal reasoning is found in the Meccan scholar ʿAṭāʾ b. Abī Rabāḥ's (d. 115/733) assertion that a coerced pronouncement of divorce must be considered invalid as it is a less serious a matter than committing *shirk*.[34] In the middle of the second century, Jaʿfar al-Ṣādiq cites the coercion

[34] See ʻAbd Allāh ibn Muḥammad Ibn Abī Shayba, *al-Muṣannaf*, ed. Ḥamad ibn ʻAbd Allāh al-Jumʻa and Muḥammad ibn Ibrāhīm al-Laḥīdān, 1st ed., 16 vols., (Riyad: Maktabat al-Rushd Nāshirūn, 2004), 6:415, ḥadīth number 18220 and Saʻīd ibn Manṣūr, *Kitāb al-Sunan*, ed. Ḥabīb al-Raḥmān al-Aʻẓamī, 1st ed., (Bombay: Dār al-Salafiyya, 1982), 316, ḥadīths number 1141 and 42. The ḥadīth is narrated with the following isnād to Ibn Abī Shayba (159-235/775-849): ʿAṭāʾ → ʿAbd al-Malik [Ibn Jurayj] → Hushaym [b. Bashīr]. In the context of transmitting ʿAṭāʾ's opinion on the invalidity of a pronouncement of divorce that is coerced, Hushaym explicitly transmits to Ibn Abī Shayba that Ibn Jurayj adds that ʿAṭāʾ said, associationism (*shirk*) is greater than divorce. Saʿīd

exemption clause[35] after his citation of a Prophetic dictum that states that "four [types of] actions (*khiṣāl*) are lifted from my community: their mistakes, their forgetfulness, what they are coerced to do, and what they cannot bear.[36]" Jaʿfar seems to regard both the Prophetic dictum and the Qurʾānic verse as equally and generally addressing the problem of coerced acts,[37] as opposed to excusing just coerced acts of apostasy. By the end of the second century, the eponym of the Shāfiʿī legal tradition, Muḥammad b. Idrīs al-Shāfiʿī (150-204/767-820) argues that if God excuses the believer for performing a sin as serious as apostasy when coerced, then *a fortiori* the legal effects of other types of coerced speech acts must likewise be cancelled.[38] The citation and proper interpretation of the coercion exemption clause would become a staple part of the legal and moral discourse on coercion, writ large, in all of the Islamic legal traditions.

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b. Manṣūr also receives the material from Hushaym who transmits, likewise, from Ibn Jurayj. Interestingly, Saʿīd divides the single report that Ibn Abī Shayba cites for both ʿAṭāʾ's opinion on coerced divorce and his allusion to 16:106 as justification for his position, into two different reports – one transmitting ʿAṭāʾ's opinion, the other citing the allusion to 16:106. Moreover Saʿīd explicitly notes Hushaym's claim of oral transmission from Ibn Jurayj for both reports. In contrast to Saʿīd b. Manṣūr and Ibn Abī Shayba, ʿAbd al-Razzāq records only ʿAṭāʾ's anti-validity position on coerced divorce, specifically in the context of when a political authority compels it. See Abū Bakr ibn Hammām al-Ṣanʿānī ʿAbd al-Razzāq, *al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, 11 vols., (Beirut: al-Majlis al-ʿIlmī, 1970-?), 6:406-7, ḥadīth numbers 11400 and 04. For a persuasive argument for the authenticity of the material transmitted by Ibn Jurayj from ʿAṭāʾ as recorded in the *Muṣannaf* of ʿAbd al-Razzāq, see Harald Motzki, *The origins of Islamic jurisprudence: Meccan fiqh before the classical schools*, trans. Marion H. Katz, (Leiden: Brill, 2002), 77-105.

[35] Jaʿfar also cites the famous prayer in the Qurʾān 2:286: "Our Lord, take us not to task if we forget, or make mistake. Our Lord, charge us not with a burden such as Thou didst lay upon those before us. Our Lord do Thou not burden us beyond what we have the strength to bear."

[36] Muḥammad ibn Yaʿqūb al-Kulaynī, *al-Kāfī*, ed. ʿAlī Akbar al-Ghaffārī, 8 vols., (Tehran: Dār al-Kutub al-Islāmīyya, 1377-1381 [1957-1961]), 2:462, ḥadīth number 1 in the chapter titled "What is lifted from the community (*mā rufiʿa ʿan ʾl-umma*)." Dating Jaʿfar's citation of the verse in the context of the Prophetic dictum presumes the authenticity of this report – something I have not substantiated, but am inclined to regard as probable. The report, in another form, was already circulating among other communities of ḥadīth scholars and jurists.

[37] In fact combining the verse with the cited tradition conveys the impression that coercion can potentially alter the moral and/or legal status of any type of act, speech, or otherwise.

[38] Muḥammad ibn Idrīs al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib, 1st ed., 11 vols., (al-Manṣūra: Dār al-Wafāʾ lil-Ṭibāʿa wa-al-Nashr wa-al-Tawzīʿ, 2001), 4:496.

But around the time that the coercion exemption clause starts playing a starring role in legal reasoning about coercion, it also plays a role in Shīʿī debates between Batrī Zaydīs and proto-twelver Imāmīs about the proper response to persecution from illegitimate political authorities. The sixth twelver Imām, Jaʿfar al-Ṣādiq, uses ʿAmmār's example and its Qurʾānic validation to argue against activist impulses to rebellion and for a policy of dissimulation and ultimately survival. It was perhaps in the generation before al-Ṣādiq that the connection between ʿAmmār and the coercion exemption clause solidified. The connection between the two was a part of the process of collecting and transmitting reports about the famous companion. Given ʿAmmār's unique biography, the preservation of his memory seems to have become the province of a number of competing sectarian groups in early second century Kufa. In this way the connection between the coerced apostasy verse and ʿAmmār b. Yāsir became caught up in the process of the formation of the early Muslim community's historical consciousness.

2 Ḥadīth

The ḥadith that addresses the issue of coercion most directly states, in one variation: "Indeed God has overlooked for my community mistakes, forgetful acts, and what they are coerced to do." By my count it has been transmitted over 50 unique chains of transmission before being recorded by fifteen different hadith compilers in eighteen different sources. The wording of the ḥadīths varies by the clusters of chains and can generally be divided into eleven different variations. An exhaustive analysis of the textual variations and the chains of transmissions are outside of the scope of this study. In fact, the classical jurists and theologians completely ignored the variations in the phrasing of the ḥadīth. While the question of the

ḥadīth's authenticity certainly occupied ḥadīth scholars, the legal scholars largely ignored it.[39] For this reason we will simply note the general features of how the textual variations correlated with the geographical distribution of the individuals in the chains of transmission.

Here is one instance of the the most predominant version of the ḥadīth: narrated through nineteen chains of transmission: "Indeed God overlooks, for my community, mistakes, forgetful acts, and what people are coerced to do."[40]

Despite the relatively prolix diffusion of the ḥadīth, the third/ninth century Baghdadi ḥadīth scholar, Aḥmad b. Ḥanbal (164—241/780—855) considered only one set of transmission histories to be historical. His son reports the following exchange:

> I asked him about the ḥadīth narrated by Muḥammad b. Muṣaffā al-Shāmī from al-Walīd b. Muslim from ʿAwzāʿī from ʿAṭāʾ from Ibn ʿAbbās that the Messenger of God (may God's peace and blessings be upon him) said that God overlooks for my community what they are coerced to do and mistakes and forgetful [acts], and also [about the same ḥadīth transmitted from the following chain] from al-Walīd from Mālik from Nāfiʿ from Ibn ʿUmar. He outright denied [the validity of the ḥadīth], and replied: it is only

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[39] In fact, I found only one legal scholar, the Iraqi Ḥanafite Abū Bakr al-Jaṣṣāṣ who introduced doubts about the authenticity of the ḥadith in order to limit it's subversive impact on some Ḥanafite rules related to coercion jurisprudence.

[40] For this particular ḥadīth, see Abū ʻAbdillāh Muḥammad ibn Yazīd Ibn Mājah, "Sunan Ibn Mājah," in *Hadith Encyclopedia*. (Riyad: Harf Information Technology, 2003). For other variants with the same central verb "overlooks", see the following sources: ibid., CD ROM, ḥadīth number 2034; Saʻīd ibn Manṣūr, *Kitāb al-sunan*, ed. Ḥabīb al-Raḥmān al-Aʻẓamī, 1st ed., (Dabhil: Majlis-Ilmi, 1967), 275, report numbers 1144 and 46; ʻAbd Allāh Ibn ʿAdī, *al-Kāmil fī ḍuʿafāʾ al-rijāl*, ed. Suhayl Zakkār and Yaḥyā Mukhṭār al-Ghazāwī, 3rd ed., 7 vols., (Beirut: Dār al-Fikr li al-Ṭibāʿa wa al-Nashr wa al-Tawzīʿ, 1988), 2:346-49 and 3:23,25; Bayhaqī, *al-Sunan al-kubrā*, 6:84, 7:356, 10:60-1; Muḥammad ibn ʻAbd Allāh al-Ḥākim al-Nīsābūrī, *al-Mustadrak*, ed. Yūsuf ʿAbd al-Raḥmān al-Marʿashlī, 4 vols., (Beirut: Dār al-Maʿrifa), 2:198; Aḥmad ibn Muḥammad al-Ṭahāwī, *Sharḥ Maʻānī al-āthār*, ed. Muḥammad Zuhrī al-Najjār, 4 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 1996), 3:95; Abū Ḥātim Muḥammad Ibn Ḥibban, *Saḥīḥ Ibn Ḥibbān*, ed. ʻAlāʾ al-Dīn ʻAlī ibn Balabān, Shuʿayb al-Arnāʻūṭ, and Ḥusayn Asad, 2nd ed., 16 vols., (Beirut: Muʾassasat al-Risāla, 1993), 16:202-3; Sulaymān ibn Aḥmad al-Ṭabarānī, *al-Muʿjam al-ṣaghīr*, 2 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya), 1:270; Aḥmad ibn al-Ḥusayn Bayhaqī, *Maʻrifat al-sunan wa-al-āthār*, ed. Sayyid Kasrawī Ḥasan, 1st ed., 7 vols., (Beirut: Dār al-Kutub al-ʻIlmīyya, 1991), 5:495-6, ḥadīth number 4476; Yūsuf ibn ʻAbd Allāh Ibn ʻAbd al-Barr, *al-Istidhkār*, ed. Sālim Muḥammad ʿAṭāʾ and Muḥammad ʿAlī Muʿawwaḍ, 1st ed., 8 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 6:201-2.

> transmitted from al-Ḥasan directly from the Prophet (may God's peace and blessings be upon him).[41]

It seems that Aḥmad denies the authenticity of all chains of transmission other than those involving al-Ḥasan al-Baṣrī (d. 110/729). The prospects for even al-Ḥasan's attribution to the Prophet may be bleaker than what Ibn Ḥanbal thought. The early third/ninth century ḥadīth scholar Saʿīd b. Manṣūr (d. 227/842) records two transmissions in which al-Ḥasan himself pronounces the contents of the ḥadīth without attributing it to the Prophet at all.[42] All but one of the rest of al-Ḥasan al-Baṣrī's narrations are incomplete (*mursal*).[43] In these ḥadīths he attributes the statement directly to the Prophet with no intervening narrators.[44] With the exception of the one complete chain of transmission, all of al-Ḥasan's incomplete transmissions are recorded in some of the earliest extant collections of ḥadīth, ʿAbd al-Razzāq's (d. 211/827) *Muṣannaf*, Saʿīd b. Manṣūr's (d. 227/842) *Sunan*, and Ibn Abī Shayba's (d. 235/850) *Muṣannaf*. There is one other version of this ḥadīth that also exists as an incomplete transmission, but is not transmitted through al-Ḥasan. Ibn Abī Shayba records an incomplete transmission originating with the Meccan scholar ʿAṭāʿ b. Abī Rabāḥ (d. 114/733).[45]

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[41] See Aḥmad Ibn Ḥanbal, *al-ʿIlal*, ed. Waṣiyallāh b. Maḥmūd ʿAbbās, 3 vols., (Beirut: al-Maktab al-Islamī, 1408), 1:561-2, entry number 1340.

[42] See Saʿīd ibn Manṣūr, *Kitāb al-Sunan*, 317, ḥadīth number 1144.

[43] The fourth/tenth century ḥadīth scholar, Ibn ʿAdī (d. 365/976) records the only non-mursal ḥadīth narrated through al-Ḥasan. Ibn ʿAdī has Ḥasan narrating from the companion Abū Bakra (d. 52/672). See Ibn ʿAdī, *al-Kāmil fī ḍuʿafāʾ al-rijāl*, 2:150-51.

[44] For the rest of the transmissions see the following sources: ʿAbd al-Razzāq, *Muṣannaf*, 11:298, ḥadīth number 20588; Saʿīd ibn Manṣūr, *Kitāb al-Sunan*, 317-18, ḥadīth number 1145 and 46; Ibn Abī Shayba, *Muṣannaf*, 4:39, ḥadīth number 10.

[45] See ibid., 4:153, ḥadīth number 3. Ibn Abī Shayba records ʿAṭāʾ as reporting the "Indeed God has overlooked for me" ḥadīth "had reached me (*ballagha-nī anna rasulallāh*)" without noting his source, making it also a *mursal* ḥadīth.

The rest of the transmissions are recorded in later sources. The most widely reported version of the ḥadīth is narrated through the companion Ibn ʿAbbās (d. 68/688). Other less widely reported versions are narrated through the companions Abu al-Dardāʾ (d. 32/653), Ibn ʿUmar (d. 73/693), Abū Hurayra (d. 57/677), Thawbān (d. 54/674), and ʿUqba b. ʿĀmir.

There are a number of variations of the wording of the content of the ḥadīth. Some of the variations are focused on the verb that indicates what is done to acts that are commited by mistake, out of forgetfulness, or by way of coercion. In the version we have been examining thus far, the verb is "overlooked" as in "Indeed God ***overlooks***, for my community, mistakes, forgetful acts, and what people are coerced to do." This most widely diffused version of the ḥadīth uses this verb. But the following phrases are also used, in order of decreasing diffusion:

1. "Displaced (*wuḍiʿa*) from my community are mistakes, acts of forgetfulness and what they are coerced to do" (reported through 10 chains)[46]

2. "God lifts (*raḥafaʿa*) three things from this community: mistakes, acts of forgetfulness, and an act they are coerced to do" (reported through 4 chains)[47]

3. "Indeed God, the Exalted, has pardoned (*ʿafā*) three things: mistakes, acts of forgetfulness, and what they are coerced to do" (reported through 2 chains)[48]

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[46] For this particular ḥadīth, see Sulaymān ibn Aḥmad al-Ṭabarānī, *al-Muʿjam al-awsaṭ*, ed. Abū Maʿādh Ṭāriq ibn ʿAwaḍ Allāh ibn Muḥammad and Abū al-Faḍl ʿAbd al-Muḥsin ibn Ibrāhīm al-Ḥusaynī, 9 vols., (Cairo: Dār al-Haramayn, 1995), 8:161. For the transmissions in the Sunnī sources, see the following sources: ibid., 8:161 and 6:84; Ibn Mājah, "Sunan Ibn Mājah," CD ROM, ḥadīth number 2035; Bayhaqī, *al-Sunan al-kubrā*, 6:84; al-Rabīʿ b. Ḥabīb, *Musnad al-Rabīʿ b. Ḥabīb*, 2 vols., (Dār al-Thaqāfa al-Dīniyya), 2:514. For the Shīʿite sources see: Aḥmad b. Muḥammad b. Khālid al-Barqī, *al-Maḥāsin*, ed. Jalāl al-Dīn al-Ḥusaynī, (Tehran: Dār al-Kutub al-ʿIlmiyya, 1370), 2:339, ḥadīth number 124; ; Aḥmad ibn Muḥammad al-Ashʿarī, *Kitāb al-nawādir*, (Qom: Madrasat al-Imām al-Mahdī, 1408 [1987]), 74-5, ḥadīth numbers 157 and 59; al-Kulaynī, *Kāfī*, 2:462.

[47] For this particular ḥadīth, see Ibn ʿAdī, *al-Kāmil fī ḍuʿafāʾ al-rijāl*, 2:151-2. For the other transmissions, see: al-Kulaynī, *Kāfī*, 2:462; Muḥammad ibn ʿAlī Ibn Bābawayh al-Qummī, *al-Tawḥīd*, ed. Hāshim al-Ḥusaynī al-Ṭihrānī, (Qom: Manshūrāt Jamāʿa al-Mudarrisīn fī Ḥawza ʿIlmiyya, n.d.), 353, ḥadīth number 24; idem., *al-Khiṣāl*, ed. ʿAlī Akbar al-Ghaffārī, (Qom: Manshūrāt Jamāʿa al-Mudarrisīn fī Ḥawza ʿIlmiyya, 1403), 417, ḥadīth number 9.

[48] For this particular ḥadīth, see Saʿīd ibn Manṣūr, *Sunan*, 275, ḥadīth number 1145. For the other transmission, see: al-Ashʿarī, *Kitāb al-nawādir*, 74-5, ḥadīth number 158.

4. "Unburdened (*ḥumila*) from my community are mistakes, acts of forgetfulness, and what they are coerced to do" (reported through 2 chains)[49]

5. "Permitted (tajūz) for my community are acts of forgetfulness, mistakes, and what they are coerced to do" (reported through 1 chain)[50]

There are a number of other minor variations, and also variations about the things that God overlooks (or pardons or lifts, etc.). It is not always coercion, mistakes, and forgetful acts. Sometimes God overlooks, in addition to coerced acts, also things that are "whispered in hearts that are nor acted upon or spoken." In fact twelver Shīʿite sources record that God overlooks or lifts three, four, six, and nine types of acts. In the nine-act version, the sixth twelver Shīʿite Imām Jāʿfar al-Ṣādiq (83-148/702-765) proclaims that the following are lifted from his community:

1. mistakes
2. forgetful acts
3. coerced acts
4. what is beyond one's capacity
5. what people do not know [whether an act is prohibited or not]
6. acts that are compelled by necessity
7. jealousy (*ḥasad*)
8. presaging an ill omen (*ṭiyara*)
9. speculating (*tafakkur*) [in doubts] about creation as long as it is not uttered out loud

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[49] For both of these transmissions see Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa-al-ziyādāt ʿalá mā fī al-Mudawwanah min ghayrihā min al-ummahāt*, ed. ʿAbd al-Fattāḥ Muḥammad al-Ḥulw, 1st ed., 15 vols., (Beirut: Dār al-Gharb al-Islāmī, 1999), 10:45.

[50] See ʿAbd al-Razzāq, *Muṣannaf*, 11:298, report number 20588.

We cannot date these ḥadīths with any confidence without an exhaustive examination of the content and chains of transmissions of the variations of these ḥadīths. Such an analysis would take us far outside the scope of this study. I do not think we have any reason to suspect that the Shīʿite versions of the ḥadīth attributed to Jaʿfar and the eighth twelver Imām ʿAlī al-Riḍā (153-203/765-818) are not authentic. It is quite likely that the ḥadīth had already been in circulation well before that time. We saw Aḥmad b. Ḥanbal's suspicions regarding the non al-Ḥasan al-Baṣrī versions of the ḥadīth are substantiated by the fact that the earliest ḥadīth compilations largely reflect his view. The only versions of the ḥadīth that they record have an incomplete chain of transmission, and all but one originate in al-Ḥasan al-Baṣrī. If we assume that the ḥadīth dates to al-Ḥasan al-Baṣrī or his circle, can we say anything about what may have motivated its composition and initial circulation? This is a difficult question. At most, I can say that the ḥadīth would seem to fit well with al-Ḥasan al-Baṣrī's Qadirite leanings.[51] The ḥadīth seems to urge the idea that human beings ought to be held responsible for acts that they perform willingly and with full awareness. This coheres with Qadarism's contention that human beings have the freedom to choose their acts.

While we may not be able to say much about what motivated the ḥadīth's initial composition in the last quarter of the first/seventh century, we are surer ground about it's function in debates in the through the course of the second/eighth century. The earliest ḥadīth compilers, ʿAbd al-Razzāq, Saʿīd b. Manṣūr, and Ibn Abī Shayba all reproduce this ḥadīth in their chapters on coerced divorce (*ṭalāq mukrah*). In the course of citing the opinions of early

[51] On Qadarism, see *Encyclopedia of Islam, Second Edition*, art. 'Ḳadariyya' (Josef van Ess).

authorities on coercion's effect on a pronouncement of divorce, they reproduce the "overlooked" ḥadīth.

3 Formative Juristic Tradition

The coerced apostasy verse in the Qurʾān excused a profession of disbelief when coerced. Before it became a standard proof text for the exculpatory effects of coercion in the juristic discourses, it was a response to a fluid religio-political situation in the aftermath of the Prophet's migration from Mecca to Madina, when conversion between the different religious communities must have been prevalent. The ḥadīth oft cited by later jurists and most directly relevant to coercion states that God overlooks coerced acts. The specific practical legal effects of coercion would be deteremined by later jurists over the course of the second/eighth and third/ninth centuries.

By the end of the first/seventh century, religious authorities started staking out positions on coercion's effect on different types of acts: divorces, emancipations, sales, oaths, illegal sexual intercourse (i.e. rape), and the coerced violation of the norms which define certain ritual actions, such as those governing behavior during ḥajj or ʿumrah.

No issue elicited as much disagreement amongst the jurists than the validity of a coerced pronouncement of divorce. The late second/eighth scholars, Saʿīd b. Manṣūr, ʿAbd al-Razzāq, and Ibn Abī Shayba record the dispute. The following jurists held that the coerced divorce was still effective:

1. Ibrāhīm al-Nakhaʿī[52] (d. ca. 96/717, Kufa): One set of reports quotes al-Nakhaʿī as holding the divorce of the coerced as valid. Al-Nakhaʿī adds that "he saved himself by way of [pronouncing the divorce] (*inna-mā iftadā bi-hi nafsa-hu*)![53] In another

[52] See ʿAbd al-Razzāq, *Muṣannaf*, 6:410, report number 11419 and Ibn Abī Shayba, *Muṣannaf*, 6:416, report number 18227.

[53] See ibid., report number 18228.

report, al-Nakhaʿī reportedly said that even "if a sword was placed on top of man's head, and he prounonced the divorce" he would still hold that it was effective.[54]

2. Shaʿbī (d. 104/723, Kufa): there are two sets of reports of Shaʿbī's position. In one set of reports, he laments the fact that some people are lying when the claimed that he held the divorce of the one coerced to be ineffective.[55] In the second report, he distinguishes between a ruler's coercion and that of bandits'. If the ruler is the coercer, then the divorce is effective. If bandits are the coercers, then the divorce is not effective.[56]

3. Ibn ʿUmar[57] (d. 73/693, Medina)

4. Zuhrī[58] (d. 124/742, Medina)

5. Qatāda[59] (d. 117/735, Basra)

6. Saʿīd b. al-Musayyib[60] (d. 94/713, Medina)

7. Shurayḥ[61] (d. 80/699-700, Kufa)

8. Saʿīd b. Jubayr (d. 94/711 or 95/712, Kufa): in one report Saʿīd b. Jubayr is told that al-Ḥasan al-Baṣrī held that the divorce of the coerced is not effective. Saʿīd b. Jubayr responds by saying: the polytheists (*ahl al-shirk*) used to force men to disbelieve, and thereby divorce their wives. This kind of divorce is not effective. But what the Muslims (*ahl al-Islām*) do between themselves, it is effective.[62]

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[54] For this report, see ibid., 6:416, report number 18232.

[55] See Saʿīd ibn Manṣūr, *Sunan*, 274, report number 1135 and Ibn Abī Shayba, *Muṣannaf*, 6:416, report number 18226.

[56] See Saʿīd ibn Manṣūr, *Sunan*, 274, reports 1136 and 37; ʿAbd al-Razzāq, *Muṣannaf*, 6:409, report number 11422 and Ibn Abī Shayba, *Muṣannaf*, 6:416.

[57] See ʿAbd al-Razzāq, *Muṣannaf*, 6:410, report number 11421.

[58] See ibid., 6:410, report number 11420.

[59] See Ibid.

[60] See Ibn Abī Shayba, *Muṣannaf*, 6:416, report number 18229.

[61] See ibid., 6:417, report number 18230.

[62] See ʿAbd al-Razzāq, *Muṣannaf*, 6:410, report number 11418.

9. Abū Qilāba[63]

The following early jurists held that the coerced divorce was invalid:

1. ʿAṭāʾ[64] (d. 114/732, Mecca): in one report he is reputed to have justified his position by noting that "associating others with God is greater."[65] In a different report, Ibn Jurayj asks ʿAṭāʾ about a governor who comples one to divorce in a matter in which the governor was unjust. ʿAṭāʾ responds that there is no harm if he takes the oath (*laysa baʾs ʿalay-hi an yaḥlif*).[66]

2. Abū Shaʿthāʾ[67] (d. 93/712)

3. al-Ḥasan al-Baṣrī[68] (d. 110/729, Basra)

4. ʿUmar b. ʿAbd al-ʿAzīz[69] (d. 101/720, Medina): in one report, a man coerced to prounounce divorce by a government agent who beat him, wrote to ʿUmar II about his predicament. ʿUmar held that the divorce was not effective.[70]

5. Ibn ʿAbbās[71] (d. 68/687-8, Mecca): in one report, Ibn ʿAbbās held that there is no divorce for the coerced or the oppressed (*muḍṭahad*)[72]

6. Ibn al-Zubayr[73] (d. 73/692, Medina)

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[63] See Ibn Abī Shayba, *Muṣannaf*, 6:417, report number 18231.

[64] See Saʿīd ibn Manṣūr, *Sunan*, 274, report number 1141; ʿAbd al-Razzāq, *Muṣannaf*, 6:406, report number 11404.

[65] See Saʿīd ibn Manṣūr, *Sunan*, 274, report number 1142 and Ibn Abī Shayba, *Muṣannaf*, 6:415, tradition number 18220.

[66] See ʿAbd al-Razzāq, *Muṣannaf*, 6:406, report number 11400.

[67] See ibid., 6:407, report number 11403.

[68] See Saʿīd ibn Manṣūr, *Sunan*, 274, report numbers 1138 and 39; ʿAbd al-Razzāq, *Muṣannaf*, Muṣannaf, 6:407, report numbers 11405 and 06; Ibn Abī Shayba, *Muṣannaf*, 6:415, tradition number 18219.

[69] See ʿAbd al-Razzāq, *Muṣannaf*, 6:407, report number 11407.

[70] For the report about the government agent see Ibn Abī Shayba, *Muṣannaf*, 6:415, report number 18218.

[71] See ʿAbd al-Razzāq, *Muṣannaf*, 6:407, report number 11408 and Ibn Abī Shayba, *Muṣannaf*, 6:414, report number 18215.

[72] For the oppressed report, see Saʿīd ibn Manṣūr, *Sunan*, 275, report number 1143 and Ibn Abī Shayba, *Muṣannaf*, 6:414, report number 18213.

[73] See ʿAbd al-Razzāq, *Muṣannaf*, 6:407-8, report number 11409 and Ibn Abī Shayba, *Muṣannaf*, 6:415, report number 18216.

7. Ibn ʿUmar[74] (d. 73/692, Medina)

8. ʿAlī b. Abī Ṭālib[75] (d. 40/660)

9. ʿUmar b. al-Khaṭṭāb[76] (d. 23/644)

10. al-Ḍaḥḥāk b. Muzāḥim[77] (d. 105/724, Kufa)

Almost all of the scholars who operated out of Kūfa supported the position that a coerced pronouncement of divorce is still valid. Judging by the number of reports collected, along with rudimentary justification given for the position or clarification of what the position entails, we can safely judge the attributions to Nakhaʿī and Shaʿbī as historical. In one report, Nakhaʿī notes that the coerced got something out of the pronouncement of divorce: he saved himself. In another report, Nakhaʿī emphasizes the extent of his commitment to the position: even if the sword sat on the head of the coerced agent, when he pronounced the divorce, it was still effective. Shaʿbī distinguishes between the ruler's coercion and that of other parties. The ruler's coercion is effective, but not that of bandits. Judging from the number of reports collected and a rudimentary justification given for the position, we can safely judge the attributions to ʿAṭāʾ to be historical. ʿAṭāʾ argued that if coercion can excuse the most serious sin, professing disbelief (*shirk*), then surely it can invalidate a pronouncement of divorce. ʿAṭāʾ was also recorded as transmitting the "overlooked" ḥadīth examined above, though with an incomplete chain of transmission.

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[74] See ʿAbd al-Razzāq, *Muṣannaf*, 6:408, report number 11412 and Ibn Abī Shayba, *Muṣannaf*, 6:414, report number 18216.

[75] See ʿAbd al-Razzāq, *Muṣannaf*, 6:408, report number 11414 and Ibn Abī Shayba, *Muṣannaf*, 6:414, report number 18214.

[76] See ibid., 6:415, report number 18217.

[77] See ibid., 6:415, report number 18222. But he considered the emancipation of the coerced to be effective.

Two questions emerge from the survey of early opinions about the coerced pronouncement of divorce. First, when the sources record a given religious authority as having held that a coerced pronouncement of divorce is valid or invalid, what specific social practices are being referred to? What does it mean to coerce a pronouncement of divorce? To answer this question we will broaden our range of sources.

An examination of Islamic legal, ḥadīth, and biographical sources reveals that coerced divorce could refer to three different coercive scenarios: coercive pressure brought by one private party on another to pronounce the divorce, coercive pressure brought by a political authority on a private party to pronounce a divorce and coercive pressure brought upon by a private party or political authority to extract a divorce-contingent oath.

In one narrative, a man raises the issue of the status of his coerced divorce to the second caliph ʿUmar b. al-Khaṭṭāb (r. 13/634-23/644). Apparently, when the man had descended on a rope to harvest some honey, his wife took a hold of the rope and sat on it, threatening to cut it off if he did not pronounce the triple divorce. After some failed negotiation, he pronounces a triple diovorce, and then goes to ʿUmar to present his case. After hearing the story, ʿUmar advises him to return to his wife, as what he did was not a divorce.[78]

In another narrative, a woman is angry with her husband, named Mālik, and wants a divorce from him. He refuses. In the middle of the night she places a knife on his stomach, then wakes him up saying: "Woe to you Malik! By God, if you don't divorce me thrice, I shall slaughter you!" He divorces her thrice. Poor Mālik takes the case to ʿUmar. Naturally ʿUmar scolds her (*fa-shatama-ha*), asking, "What made you do this?" She replied "my anger towards

[78] See Saʿīd ibn Manṣūr, *Sunan*, 271, report number 1128. For three other versions see Bayhaqī, *al-Sunan al-kubrā*, 7:357.

him." The story does not record the reason for her anger, but does end with ʿUmar endorsing the divorce.[79]

Another example of this type of coerced divorce is the narrative recorded by the Medinese scholar Mālik b. Anas (d. 179/795) in his *Muwaṭṭāʾ*. The story recounts the tale of Thābit b. al-Aḥnaf's coerced divorce of the former *umm walad* of ʿAbd al-Raḥmān b. Zayd b. al-Khaṭṭāb[80] at the hands of ʿAbd al-Raḥmān's son, ʿAbdullāh:

> Abdullāh b. ʿAbd al-Raḥmān b. Zayd b. al-Khaṭṭāb summoned me and I went to him. I came in upon him and there were whips and two iron fetters placed there, and two of his slaves whom he had made to sit there. He said, 'Divorce her, or by He by whom one swears, I will do such-and-such to you!' I said, 'It is divorce a thousand times.' Then I left him and I saw Abdullāh b. ʿUmar on the road to Mecca and I told him about my situation. Abdullāh b. ʿUmar was furious, and said, 'That is not divorce, and she is not forbidden for you, so return to your home.' I was still not at ease so I went to Abdullāh b. al-Zubayr who was the ruler of Mecca at that time. I told him about my situation and what Abdullāh b. ʿUmar had said to me. Abdullāh b. al-Zubayr said to me, 'She is not forbedden to you, so return to your home,' and he wrote to Jābir b. al-Aswad al-Zuhrī who was the ruler of Madina and ordered him to punish Abdullāh b. Abd al-Raḥmān and to have him leave me and my family alone. I went to Madina, and Ṣafiyya, the wife of Abdullāh b. ʿUmar fitted out my wife so that she could bring her to my house with the knowledge of Abdullāh b. ʿUmar. Then I invited Abdullāh b. ʿUmar on the day of my wedding to the wedding feast and he came.[81]

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[79] See Saʿīd ibn Manṣūr, *Sunan*, 271-2, report number 1129. See also Ibn Ḥazm, *al-Maḥallā*, ed. Aḥmad Muḥammad Shākir, 11 vols., (Dār al-Fikr), 10:203.

[80] Ibn Saʿd records a report describing ʿAbd al-Raḥmān as the governor of Mecca under al-Yazīd b. Muʿāwiya. He was rescinded when ʿAbdullah b. Zubayr launched his counter-caliphate in the Ḥijāz. See Ibn Saʿd, *Ṭabaqāt*, 5:51 (ahl al-bayt).

[81] I have modified the translation found on-line here: Center for Jewish-Muslim Engagement at the University of Southern California, "Translation of Malik's Muwatta, Book 29," http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/muwatta/029.mmt.html. For the original, see: Mālik b. Anas, *al-Muwaṭṭāʾ*, ed. Muḥammad Fawwād ʿAbd al-Bāqī, 2 vols., (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1985), 2:587, report number 78.

The last narrative is found in the twelver Imāmite source, *al-Kāfī*. In the report, Manṣūr b. Yūnus[82] approaches the seventh Imām, Muṣā al-Kāẓim (d. 183/799), and asks for advice on the status of a divorce he pronounced regarding his first wife under pressure from the family of his second wife. The Imām replies "as [to what happened] between you and God – it has amounted to nothing, however if they take you to the ruler (*sulṭān*), he will decisively separate her from you."[83] Al-Kāẓim seems to be saying that from the perspective of conscience and correct legal opinion, he is not divorced, from the secular ruler's perspective, he is.

The second scenario of coerced divorce recorded in the sources is coercive pressure applied by a political authority to compel a pronouncement of divorce. We have already seen that many of the legal opinions surveyed above mention the role of the ruler in the issue. For example, the Kufan scholar Shaʿbī distinguished the legal effect of a ruler's coercion as opposed to that of bandits on a pronouncement of divorce. Only the bandits' coercion invalidates a pronouncement of divorce. A ruler's coercion does not. That second/eighth century legal scholars were confronted with cases is also evinced by the following reports: the Meccan scholar ʿAṭāʾ is asked about the case of a man coerced unjustly by a government agent to divorce his wife and the Umayyad caliph ʿUmar b. ʿAbd al-ʿAzīz (r. 99-101/717-720) is asked about a similar case also involving a government agent.

One report involving the governor of Iraq during the time of al-Ḥajjāj (d. 95/714), Yazīd b. al-Muhallab (d. 101/720), provides an example of a political authority attempting to coerce a pronouncement of divorce:

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[82] On Manṣūr, see Hossein Modarressi Tabataba'i, *Tradition and survival: a bibliographical survey of early Shīʾite literature*, (Oxford: Oneworld, 2003), 318-19.

[83] See al-Kulaynī, *Kāfī*, 6:127.

> There was a man who married the sister of Yazīd b. al-Muhallab during the time of al-Hajjāj. Her people did not like this. When Yazīd b. al-Muhallab was made governor of Iraq he sent for that man. He told him -- divorce her and he refused. Yazīd beat him and said: by God, I will not raise the whip from you till you divorce her. So he divorced her. When it was the time of ʿUmar b. ʿAbd al-ʿAzīz, he came to him and sought help. ʿUmar said: as for your beating, God will deal with it on the Day of Judgment. As for your divorce, it is endorsed (*fa-qad maḍā*).[84]

The final practice relevant to the controversy surrounding coerced divorce is the divorce contingent oath. Divorce contingent oaths seem to have been commonplace throughout Islamic history.[85] ʿAbd al-Razzāq records the views of different religious authorities on different features of the divorce contingent oath.[86] Given the existence of this social practice in early Islamic society, the question is what is the relationship between the legal views of different authorities on a coerced pronouncement of divorce and divorce contingent-oaths. A number of sources seem to indicate a close connection between oaths, divorces, and political authority.

As we saw, when the late first/seventh century Meccan scholar, ʿAṭāʾ b. Abī Rabāḥ was asked about the case of an unjust political authority that compels a man to divorce his wife, he responded by saying that there is no blame if takes the oath. ʿAṭāʾ's response implies that he understood a question about coerced pronouncement of divorce as involving the practice of taking a divorce-contingent political oath.[87] ʿAṭāʾ seems to be saying that the coerced may take the oath to escape the situation without being bound by it. Other reports suggest two things.

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[84] Saʿīd ibn Manṣūr, *Sunan*, 273, report number 1133.

[85] For an analysis of the role of divorce contingent oaths in Egyptian Mamlūk society, see Yossef Rapoport, *Marriage, money and divorce in Medieval Islamic society*, (Cambridge: Cambridge University Press, 2005), 89-110.

[86] See ʿAbd al-Razzāq, *Muṣannaf*, 6:379-82, on debates about what types of actions constitute a material transgression of the oath thereby activating the divorce. See ibid., 6:382-3 and 77-8 and Ibn Abī Shayba, *Muṣannaf*, 5:98 on whether or not beginning the oath with the divorce formula in fact activates the divorce by itself.

[87] See ʿAbd al-Razzāq, *Muṣannaf*, 6:406, report number 11400.

Political authorities extracted divorce contingent oaths to ensure compliance to specific demands. The reports also suggest that political authorities may have regarded opinions against the validity of coerced divorce to be directed against the validity of divorce-contingent oaths. Let us take a look at these reports.

In one report, Ibn al-Ashras, a North African Mālikite takes a triple divorce-contingent oath to the ruler of Tūnis. The ruler wanted to a kill a certain individual and he made Ibn al-Ashras take an oath that he would not notify that individual. Despite the oath, Ibn al-Ashras immediately informs the individual, and then goes to one Buhlūl b. Rāshid in Qayrawān to seek his advice on the status of the oath. Buhlūl tells him: Mālik says that you violated your oath, which implies that he has definitively divorced his wife. Ibn Ashras replies – I have heard Mālik say this, but I want a dispensation or some other word with this meaning. Bahlūl b. Rāshid tells him: al-Ḥasan al-Baṣrī says that it is not a violation of the oath. Ibn al-Ashras returned to his wife and adhered to the opinion of al Ḥasan al-Baṣrī.[88]

In another report, the fifth Shīʿite Imām al-Bāqir, is asked about the coerced divorce or emancipation, to which he replies that they are in reality not a true divorce and emancipation. The questioner then adds saying that he is a trader, who frequently passes by the ʿushr tax collectors upon his entrance into towns while carrying some of his wealth. He asks what he should do when asked to pay the tax. Bāqir tells him to hide as much of it as possible. Then the questioner asks what if the tax agent takes an oath of divorce or emancipation that he has nothing of value with him? Bāqir responds that he should take the oath, then takes a date and scoops up

[88] See Muḥammad ibn Aḥmad al-Qurṭubī, *al-Jāmiʿ li-aḥkām al-Qurʾān*, ed. Aḥmad ʿAbd al-ʿAlīm al-Bardūnī, 20 vols., (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1985), 10: 189.

a little butter that was in front of him and says: I don't care if you take an oath to them for divorce or emancipation or if you eat this (the date with the butter) [its all the same to me].[89]

In a third report involving divorce contingent oaths, some thieves enter a house and take some property and extract an oath of divorce or emancipation to have the owner not inform on them that they stole from him ever. The victim goes to Abū Ḥanīfa for a legal solution. Abū Ḥanīfa, the consummate jurist devises a legal stratagem to allow the victim to formally comply with the oath while being able to identify the robbers who had extracted the oath from him.[90]

The last two reports involve the founder of the Mālikite legal tradition, Mālik b. Anas (d. 179/796). In one report, the ʿAbbasid Caliph Abū Jaʿfar al-Manṣūr (r. 136-158/754-775) forbade Mālik from transmitting a ḥadīth that invalidated the divorce of the coerced. Abū Jaʿfar then sent a spy to test Mālik by asking him, presumably about the issue of coerced divorce. Mālik failed the test by narrating the ḥadīth. Jaʿfar then had him whipped.[91]

In another report, unnamed people who had grown jealous of Mālik's popularity in Medina, instigated Medina's governor Jaʿfar b. Sulaymān to take action against him. They alleged that because Mālik relied on the Thābit b. al-Aḥnaf report as the basis for his legal opinion on the issue of the divorce of the coerced agent, that he did not regard the political loyalty oaths to be binding.[92] The narratives about Mālik point to the political ramifications of a

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[89] See al-Kulaynī, *Kāfī*, 6:127, report number 2.

[90] See Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Makhārij fī al-ḥiyal*, ed. Joseph Schacht, (Baghdad: Maktabat al-Muthannā, 1968), 43-4.

[91] See Yūsuf ibn ʿAbd Allāh Ibn ʿAbd al-Barr, *al-Intiqā' fī faḍā'il al-a'immah al-thalātha al-fuqahā': Mālik ibn Anas al-Aṣbaḥī al-Madanī, wa-Muḥammad ibn Idrīs al-Shāfiʿī al-Muṭṭalibī, wa-Abī Ḥanīfa al-Nuʿmān ibn Thābit al-Kūfī, wa-ʿuyūn akhbārihim al-shāhida bi-imāmatihim wa-faḍlihim fī ādābihim wa-ʿilmihim*, (Beirut: Dār al-Kutub al-ʿIlmiyya), 43-4. Ibn ʿAbd al-Barr produces this and the following report on a section

[92] See ibid.

jurist's legal opinion on the issue of coerced divorce. Mālik's detractors clearly thought that his position on the validity of coercion's effect on pronouncements of divorce at least implied a position on the validity of political loyalty oaths. But what is the connection between the two? If we can rely on later practices oath taking practices, we find that the divorce contingent oaths were integral to the social practice of oaths of cooperation between individuals and oaths of loyalty to political authorities. To the extent that individuals conscientiously perceived the result of breaking the oath as resulting in a decisive divorce is the extent to which the practice was effective for ensuring compliance with the content of the oath. It goes without saying that positions which regarded either the coerced divorce to imply or explicitly express the invalidity of divorce contingent oaths was regarded by ruling elites as a threat to an underlying instrument of social control.[93]

Was the disagreement about coerced divorce motivated by a disagreement over what instruments of social control ought to be available to rulers? Or did the legal opinions correlate with attitudes for the ruling regime? This certainly seems plausible, but it is not the only possible explanation. The jurists may also have been motivated by methodological attitudes towards speech acts. For instance, ʿAṭāʾ who not only held that coercion invalidated a divorce, but also provided a justification for his position, also held, in contravention of the majority of early jurists, that, in one report, at least, the divorce of an intoxicated person is similarly ineffective.[94] Conversely, al-Nakhaʿī and Shaʿbī held that the divorce of an intoxicated person is

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[93] The eighth/fourteenth century Ḥanbalite scholar, Ibn Taymiyya (d. 728/1328) was similarly jailed for holding a legal position that was also perceived by ruling elites as weakening the effectiveness of the divorce contingent oath. See Rapoport, *Marriage, money and divorce in Medieval Islamic society*, 96-105.

[94] For this see Ibn Abī Shayba, *Muṣannaf*, 4: 30, report 1 and 4:31, reports 1 and 4. Alternatively ʿAbd al-Razzāq records the he did indeed hold that the divorce of the intoxicated is valid, for this see ʿAbd al-Razzāq, *Muṣannaf*, 7:82, report number 12296.

effective.[95] Moreover, while al-Nakhaʿī may have held a position helpful to the ruling regime on the issue of coerced divorce, he held that it is not permissible to hand over one's charity tax (*zakāt*) payment to an unjust ruler.[96] It is therefore equally possible that the jurists were motivated by methodological considerations about speech acts. ʿAṭāʾ seems willing to grant excuses such as intoxication and coercion the capacity to override the legal effects of pronouncements of divorce. Nakhaʿī and Shaʿbī on the other hand adopt a rigorist attitude towards a pronouncement of divorce, and methodologically seem to be unwilling to countenance excuses that set aside its legal effects.

[95] See ibid., 7:83, report number 12302 and Ibn Abī Shayba, *Muṣannaf*, 4:30, report number 8 and 4:31, report number 15.

[96] See ʿAbd al-Razzāq, *Muṣannaf*, 4:28. I originally found this cited in Muḥammad Rawwās Qalʿahjī, *Mawsūʿa fiqh Ibrāhīm al-Nakhaʿī: ʿaṣruhu wa-ḥayātuh*, 2 vols., (Beirut: Dār al-Nafāʾis, 1986), 1:539.

Chapter 2: Compulsion and Coercion in Muʿtazilite Theology

1 Justice as the Regulating Ideal of Muʿtazilite Theology

Compulsion, at a very basic level, denotes the phenomenon of being forced, in a variety of different ways, to do or not do something. The source of the compulsion could be exigent circumstances (starving in a desert), another human being (coercive threats), or even an animal (fleeing from a predator). In contrast, coercion denotes one human being's use of a threat or force to compel another to act in accord with his purpose. In the language of some jurists, the coerced becomes as if an instrument in the hand of the coercer. Thus, compulsion is a much broader concept than coercion. Coercion can be a species of compulsion. Above all else, as a theological tradition that placed a premium on free choice and moral responsibility for volitional human action, the Muʿtazilites were interested in a comprehensive analytical examination of non-volitional action. The denoted this broad category of acts compulsion, and relied on a sophisticated psychology of action to explain it.

No theological tradition in classical Islam has inspired as much systematic thought devoted to the problem of compulsion as Muʿtazilism.[97] That this would be the case is not surprising. From its opaque origins in Basran Qadarism of the second/eighth century through its contemporary survival in Zaydite thought, one of the most enduring features of Muʿtazilism is

[97] The classical Muʿtazilite theological tradition is in actuality constituted by a number of competing trends. These trends coalesce around self-identified and reproducing traditions only in the tenth century. The Muʿtazilites I primarily refer to are the Basran Bahshamīs. More specifically, the tradition that, in some sense, took the doctrinal foundations laid by Abū Hāshim al-Jubbāʾī (d. 321/933) as the starting point for further elaboration and systemization. In extant literature, this tradition finds greatest expression in the seminal works of three primary, fifth/eleventh century scholars, ʿAbd al-Jabbār al-Asadabadī and his student Ibn Mattawayh, and Abū ʾl-Ḥusayn al-Baṣrī (d. 436/1045). Our exposition of Muʿtazilism, therefore will rely primarily on the extant writings of these two scholars.

the thoroughgoing commitment to the idea that God is Just. The Muʿtazilites of the classical era would add that God is specifically Just in a way knowable to human beings independent of revelation.[98] In fact, a substantive commitment to God's justice formed one of the five principles Muʿtazilites consistently considered as constituting the core of their theology.[99] One recent scholar of Muʿtazilite ethics comments that "topics discussed under the principle of justice percolated into seminal streams of Islamic thought and practice to a greater extent than did the theological discussions of Divine unity.[100]"

The idea that God is Just and Supremely Good was not an empty formalism for the Muʿtazilites. In contrast, while the Ashʿarites similarly held that God is Just and Good, they understood this to mean simply that whatever God does is by definition Just and Good. In Muʿtazilite theology, however, human beings had access to certain fundamental moral truths that constitute justice and goodness even before God's linguistic intervention in human history. The fact that God is the perfect moral agent, in turn, meant that God would never violate any precept of justice or goodness. The Zaydite Mānkdīm (d. 425/1034), declares in his paraphrastic commentary on ʿAbd al-Jabbār's (d. 415/1025) précis of Muʿtazilite theology that God's justice requires commitment to the following substantive propositions: that He "does not commit evil,

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[98] On the origins of Muʿtazilism in what Van Ess calls the theological (as opposed to political) Qadarism of the Baṣra starting most prominently with al-Ḥasan al-Baṣrī, see Ess, "Ḳadariyya."

[99] Van Ess identifies Abū ʾl-Hudhayl al-ʿAllāf (ca. 135-227/752-841?) as probably the first Muʿtazilite to formulate the famous five principles, though he rejects Abū ʾl-Muʿīn al-Nasafī's (d. 508/1114) suggestion that Abū ʾl-Hudhayl wrote a book with the title because of a lack of corroborating evidence. Ibn al-Nadīm does not ascribe a book with that title to Abū ʾl-Hudhayl. Van Ess asserts that it is probable that the structure of Abū ʾl-Hudhayl's *Kitāb al-Ḥujja* can be described as unfolding schematically along the lines of the five principles. See idem., *Une lecture à rebours de l'histoire du mu'tazilisme*, (Paris: Librairie orientaliste Paul Geuthner, 1984), 56-7; idem., *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra: eine Geschichte des religiösen Denkens im frühen Islam*, 6 vols., (Berlin: Walter de Gruyter, 1992), 222-23.

[100] Sophia Vasalou, *Moral agents and their deserts: the character of Mu'tazilite ethics*, (Princeton: Princeton University Press, 2008), 4.

nor neglect duties, nor command evil, nor forbid good, and that all of his actions are good."[101] Moreover, we know that God's justice allows us to know what "it is permissible for him to do and what it is not permissible for him to do."[102] A couple of generations later, Al-Ḥākim al-Jishumī (d. 494/1101) adds that a commitment to justice means holding "the acts of human beings are theirs", that

1. God imposes duties for their (human beings') benefit (*li-nafʿ-him*);
2. God gives human beings the basic capacity (*qudra*), instruments, and act-specific ability (*istiṭāʿa*) before the act;
3. He does not impose a commandment (*lam yukallif*) until eliminating [any relevant] defects [preventing action];
4. He does not punish without sin (*dhanb*), nor does He hold a person responsible for the sins of another;
5. He, no doubt, rewards one who obeys Him;
6. it is rationally possible that he punish (*yajūz an yuʿāqib*) one who disobeys Him;
7. and that He has informed us that he will inevitably (*lā maḥāla*) punish him.[103]

2 Agency

Given this thoroughgoing commitment to a substantial notion of God's justice, the Muʿtazilites were keenly interested in providing an account for how human beings become moral agents. In other words, what features must the agent possess to become suitable to accept God's moral impositions (*taklīf*) such that God's moral impositions are justified as good and just? It is within this framework that the absence of compulsion is stipulated as a condition for God's moral imposition to count as just.

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[101] Mānkdīm, *Sharḥ al-uṣūl al-khamsa*, ed. Samīr Muṣṭafā Rabāb, 1st ed., (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2001), 35.

[102] Ibid., 203.

[103] I have numbered the propositions in order to ease comprehension. See al-Ḥākim al-Jishumī, *Taḥkīm al-ʿuqūl fī taṣḥīḥ al-uṣūl*, ed. ʿAbd al-Salām b. ʿAbbās al-Wajīh, 1st ed., (Ṣanʿāʾ: Muʾassasat al-Imām Zayd ibn ʿAlī al-Thaqāfīyya, 2008), 32-33.

Muʿtazilite interest in providing an account of moral agency can be partly explained by the sociological context surrounding the elaboration of Muʿtazilite doctrine in the multi-confessional atmospheres of third/ninth and fourth/tenth century Iraq. Indeed one can surmise a direct correlation between the rules of public theological debate,[104] which seemingly stipulated a prohibition of recourse to unshared scriptural passages as proof,[105] and the Muʿtazilite theological approach which begins with the attempt to establish the first obligation -- to engage in inquiry about the existence and nature of God.[106] One challenge for the Muʿtazilites in such an atmosphere was to provide a story of how the non-Muslim could be morally obliged to inquire into the revealed truths of the Qurʾān and ultimately the moral obligations enshrined in the Sharīʿa. Part of fleshing out this story required an anthropological account of the capacities, dispositions and the circumstantial conditions necessary for an agent to be justly obliged in the first place. In addition to providing their non-Muslim colleagues with an account of why they are pre-revalationally obliged to become Muslim, the theologians had to fend off, on the one hand, Muslim determinists and on the other hand, the Naturalists (*ahl al-ṭabāʾiʿ*). The Muslim

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[104] For a collection of essays on different aspects of the debate culture in Medieval Islam, see Hava Lazarus-Yafeh et al., *The majlis: interreligious encounters in medieval Islam*, (Wiesbaden: Harrassowitz, 1999). The references to the debating culture are ubiquitous throughout the biographical literature, especially, though not limited to the theologians, both of the Muʿtazilite and Ashʿarite variety throughout the classical period. Unfortunately, to date, I know of no monograph dedicated to analysis of this institution.

[105] For a fascinating report indicating some of the practices these constituted these inter-confessional disputing sessions, and analysis see Aḥmad ibn Yaḥyā ibn Aḥmad ibn ʿUmīra al-Ḍabbī, *Bughyat al-multamis fi tarikh rijal ahl al-Andalus*, ed. Ibrāhīm Abyārī, 2 vols., (Cairo, Beirut: Dār al-Kitāb al-Miṣrī, Dār al-Kitāb al-Lubnanī, 1989), 1:199.19-21; Michael Cook, "Ibn Saʿdī on truth-blindness," *Jerusalem Studies in Arabic and Islam* 33(2007), where, to the horror of a fourth/tenth century traditionalist Muslim scholar visiting Baghdad, a non-Muslim addresses a packed audience laying down the rules for the ensuing debate: "you have come together to engage in disputation (munāẓara). So the Muslims should not adduce their scripture or the word of their Prophet as proof against us, since we don't believe in [any of[this or affirm it; we engage in disputation only with rational proofs (*naẓar*) and analogy (*qiyās*)." The scholar then reported that the audience agreed to these conditions.

[106] Mānkdīm begins his work by noting that ʿAbd al-Jabbār begin his discussion of the five principles by first considering the first duty that God has imposed on the moral agent: inquiry leading to knowledge of God. See Mānkdīm, *Sharḥ*, 15.

determinists deny the possibility of any agency outside of God, while the Naturalists attributed human agency to the necessity inherent in the nature of the four elemental substances from which man is composed.[107] It is in this discursive context with multiple opponents at cross-purposes, that the Muʿtazilites constructed and refined their concept of the agent suitable to the purpose of properly being subject to rational and revelational morality.[108]

2.1 Kalām Atomism and Physical Agency

With a few differences in detail, classical Muʿtazilite and Ashʿarite theology shared a basic commitment to an atomistic account of the physical universe.[109] At a very basic level, the basic

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[107] For general information on the concept of causation by way of inherent properties in substances as addressed by the theologians, see *Encyclopedia of Islam, Second Edition*, art. 'Ṭabīa' (D.E. Pingree and S. Nomanul Haq). That Muʿtazilites deemed the naturalist picture of causation a threat to free will can be gleaned from ʿAbd al-Jabbār's lengthy criticism of Jāḥiẓ's (ʿAbd al-Jabbār refers to him by his patronym, Abū ʿUthmān) attempt to combine a commitment to naturalism in causation but preserve man's free will. ʿAbd al-Jabbār starts by citing the third/ninth century Muʿtazilite master Abū ʿAlī's criticism of Jāḥiẓ's position. See ʿAbd al-Jabbār, *al-Mughnī fī abwāb al-tawḥīd wa al-ʿadl*, ed. Ṭāhā Ḥusayn and Ibrāhīm Madkūr, 14 vols., (Cairo: Wizārat al-Thaqāfa wa-al-Irshād al-Qawmī, al-Idāra al-ʿĀmmah lil-Thaqāfa, 1960-9), 12:316-23. That Jāḥiẓ was committed to such a project can be inferred from his own writings. See specifically Jāḥiẓ, *al-Ḥayawān*, 2nd ed., 8 vols., (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1966), 2:134, where he asserts that the true scholar of theology (*kalām*) deserving of the title of master (*riyāsa*) is one who combines the discourse of religion (*kalām al-dīn*) with the discourse of philosophy (*kalām al-falsafa*). More specifically, it is the scholar who has demonstrated God's unicity (*taḥqīq al-tawḥīd*) but has also given the natural constitutions their proper explanatory role in human action (*iʿtāʾiʾl-ṭabāʾiʿi ḥaqāʾiqu-hā minʾl-aʿmāl*). For an analysis of who concretely the naturalists could have been, how Muʿtazilite and Ashʿarite theologians understood the naturalist doctrine of causation, and their arguments against it, see Marie Bernand, "La critique de la notion de nature (Ṭabʿ) par le Kalām," *Studia Islamica*, no. 51 (1980).

[108] Peters interprets ʿAbd al-Jabbār's thoughts on the nature of the human being as essentially an exercise in "deriving the qualities of man from his being charged by God." J. R. T. M. Peters, *God's created speech: a study in the speculative theology of the Muʿtazilī Qādī l-Qudāt Abū l-Hasan ʿAbd al-Jabbār bn Aḥmad al-Hamaḏānī*, (Leiden: Brill, 1976), 159. Vasalou endorses this characterization, see Vasalou, *Moral Agents*, 145. This is true to a certain extent, but it is important not to overstate the idea. It would make sense that the aspects of the nature of the human being that ʿAbd al-Jabbār would seek to highlight in the course of defining man as a moral agent, suitable for God's imposition of duties, would be theologically oriented.

[109] The origin of this fundamental atomistic account of the world is a matter of scholarly disagreement. One recent scholar has suggested an origin in the translation of texts constituting the Galenic tradition in late antiquity,though the evidence for the assertion seens inconclusive at best. Nevertheless see Y. Tzvi Langermann, "Islamic Atomism and the Galenic Tradition," *History of Science* 47 (2009). For an ultimately inconclusive yet informative discussion of the possible sources of Islamic Kalām atomism, see Shlomo Pines, *Studies in Islamic atomism*, ed. Y. Tzvi Langermann, trans. Michael Schwarz, (Jerusalem: The Magnes Press, The Hebrew University, 1997), 108-41. For what strikes me as the most plausible account of the origins of Kalām physical theory, see Alnoor Dhanani, *The Physical theory of kalām: atoms, space, and void in Basrian Muʿtazilī cosmology*, (Leiden: E.J. Brill, 1994), 182-87. Dhanani argues that the immediate sources for ideas about physical theory are the dualists and the naturalists of the

physical structure of the universe and change within it was explained by reference to what Alnoor Dhanani has aptly labeled "sparse ontology[110]": God, atoms, and accidents. According to this theory, all material substances are made up of aggregations of indivisible particles called atoms. Atoms form the basic physical building block of all matter.[111] Most of the other features that we perceive in the world around us are the result of accidents that inhere in the material substrate composed of aggregates of atoms.[112] These accidents are things such as colors, tastes, odors, heat, cold, humidity, dryness, motion, and importantly for us, the power of autonomous action or *qudra*.[113] Importantly, God is the free and intentional creator of the atoms and accidents which make up the cosmos.[114] This is not to say that God is the only creator in the cosmos. In contrast to the early determinists and the classical Ashʿarites, the Muʿtazilites held that the human being can also rightfully and non-metaphorically be described as the creator of his own volitional action.

While, like God, human beings can be the autonomous agents and creators of events, unlike God, they are materially constituted. This means that, like all other objects in the cosmos,

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third/eighth centuries, whom the theologians (*mutakallimūn*) interacted with and debated intensely. These two groups had at some point naturalized various types of physical theories ultimately from Hellenic sources.

[110] Ibid., 17.

[111] Ibid., 29-38.

[112] Ibid., 38-54.

[113] Ibid., 6.

[114] On this point, see ibid., 43-47. Whether or not God is perpetually creating atoms and accidents at each moment is a matter of disagreement amongst the early theologians. The Basran Muʿtazilites, who are the focus of our analysis, held that some atoms, bodies, and types of accidents continue to exist without requiring God's perpetual creative intervention. On this specifically, see ibid., 47. One historian of Islamic science and thought, A. I. Sabra recently characterized the atomistic ontology of the classical theologians (*mutakallimūn*) as not, in fact, consisting of "things, but events or occurrences (*ḥawādith*) in space and time;" and that this "will imply that the atom itself is such an occurrence or event that is presupposed by all other events in the World." A. I. Sabra, "The Simple Ontology of Kalam Atomism: An Outline," *Early Science and Medicine* 14(2009): 70-71.

human beings are made up at a basic physical level of aggregations of atoms. Moreover, beyond just basic material constitution, the specific characteristics of human beings are explained by reference to the accidents that come to inhere and disappear in the material substrate. Thus, the quality of the human being as an autonomous agent capable of producing events is explained by reference to the existence of the accident of capability (*qudra*) in the atoms which materially make-up the human beings.[115] The presence of the *qudar*, or quanta of capability, in the specific atoms which constitute a limb, for instance, explains not the existence of an act associated with that limb, but rather the possibility of an act of that limb.[116] The presence of the quanta of capability (*qudar*) explains not the actualization of an action, but rather its possibility.[117] This possibility for action is, at the most basic physical level, distributed to the atoms that constitute the material substrate through which the agent initiates the action.[118]

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[115] It is important to note that some accidents are the prerequisites of other accidents. Thus, only aggregates of atoms in which the accident of life inhere, can the accident of capability inhere. For this point, see Peters, *God's created speech*, 203. Importantly though, according to a fundamental principle of this atomistic physical theory, an accident cannot inhere in another accident.

[116] See Richard M. Frank, "The autonomy of the human agent in the teaching of ʿAbd al-ǧabbar," *Le Muséon* 95(1982): 327. ʿAbd al-Jabbār has two arguments for an atomic and thus material conception for the capacity to act: "First, we can perform certain acts by one of our limbs, but not by other ones; this difference cannot be caused by our being able, but only by the fact that our being able is tied to materiality and therefore limited. The second argument draws our attention to the fact that some able persons are stronger, "have more ability", than others, while all of them are able. The difference cannot be found in their being able, for they are all able, but must be found in the limitedness of their being able, which is caused by its being tied to materiality." See also Peters, *God's created speech*, 201.

[117] On the concept of qudra, or as Frank explains, "the potentiality to initiate an event in the world", in Abū ʾl-Hudhayl's metaphysics, see Richard M. Frank, *The metaphysics of created being according to Abû L-Hudhayl al-ʿAllâf. A philosophical study of the earliest Kalâm*, (Istanbul: Nederlands Historisch-Archaeologisch Instituut in het Nabije Oosten, 1966), 29-32.

[118] For a particularly clear description of how various accidents inhering in different parts of the body can create action see this example by Vasalou: "The agent is characterized by the state or attribute of the capacity of autonomous action (*qudra*) through the inherence of the accidents of this capacity in the relevant parts of their body—a capacity that ranges over crying out as well as not crying out. The agent wills to create sound, and by the inherence of the entitative accident of willing (*irāda*) and that of the knowledge (*ʿilm*) of the relevant linguistic form, the agent's combined states of capacity, willing, and knowledge bring the sound into existence, creating the

Though this atomistic account of capability coheres well with Muʿtazilite physical theory broadly speaking, it in turn created the problem of how an action could be attributed to an agent as a whole. If it is the case that the immediate cause of my possessing the ability to kick my friend is the existence of the quanta of ability that exist in my leg, how can the act of kicking be attributed to me as a moral person? Does not an atomistic account of human capability destroy a more intuitive sense of moral responsibility as a feature of an organic and unified moral personality? This was a species of a larger conceptual problem. Muʿtazilite physical theory, relying on the basic notions of atoms and accidents, was instrumental in providing them an account of the fundamental structure of the cosmos and a rational argument for God's existence.[119] However, at the same time, the vocabulary of atoms and accidents proved inadequate to the task of characterizing sentient beings as totalities more than the sum of their atomic parts, including, perhaps most importantly, God.[120]

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accident of sound in the sbustrate of the relevant bodily organ – that is the throat. Having caused this act to exist, the agent is called "one-who-cries-out." Vasalou, *Moral Agents*, 142.

[119] For a brief analysis of Abū ʾl-Ḥusayn al-Baṣrī's proof for God's existence see Wilferd Madelung, "Abū L-Ḥusayn al-Baṣrī's proof for the existence of God," in *Arabic theology, Arabic philosophy: from the many to the one: essays in celebration of Richard M. Frank*, ed. James E. Montgomery, *Orientalia Lovaniensia analecta* (Leuven, Belgium; Dudley, MA: Peeters, 2006) See specifically Madelung's brief remarks on followers of Abū Hāshim and ʿAbd al-Jabbār of the Basran school who criticized specific features of Abū ʾl-Ḥusayn's proof, specifically those relating to his denial of accidents. For these see ibid., 274 and 76. For an analysis of an argument from design proof for God's existence of the early Zaydite scholar, al-Qāsim b. Ibrāhīm, see Binyamin Abrahamov, "Al-Ḳāsim Ibn Ibrāhīm's argument from design," *Oriens* 29/30(1986). Also note that atomism was a shared feature of all varieties of classical Muslim theology. Ashʿarites too relied on a fundamentally atomistic conception of the cosmos and likewise argued on the basis of the temporality of accidents, the empirical fact of change in the world, and the illogicality of an infinite regress for the existence of God.

[120] On the atomistic starting point not yielding an adequate conception of agents as organic wholes, see Richard M. Frank, *Beings and their attributes: the teaching of the Basrian school of the Muʿtazila in the classical period*, (Albany: State University of New York Press, 1978), 40. For a concise and relatively clear formulation on the way in which the sparse ontology of atoms and accidents of the early Muʿtazilites posed conceptual problems for thinking about organic wholes, see idem., "Abu Hashim's theory of "states": its structure and function," *Actas IV congresso de estudos árabes e islâmicos* (1971): 88-91. See also Vasalou's analysis of the problems atomism posed for conceptualizing the formation of a moral personality and thereby created problems in accounting for moral responsibility for acts and Muʿtazilite attempts at conceptual solutions. Vasalou, *Moral Agents*, 138-48.

To fill this conceptual lacuna, Abū Hāshim al-Jubbāʾī (d. 321/933), a prominent doctrinal formulator of the theology of the Basran school, introduced the concept of the state or condition of a being (*ḥāl*).[121] The theory of states is conceptually related to the theory of accidents. At a minimum, accidents qualify the immediate atoms in which they inhere. Thus, the accident of brown, which exists in the atoms that constitute my skin is the cause of the brownness of my skin. This is an example of an accident that does nothing more than qualify the substrate in which it exists. But, according to Abū Hāshim and his followers thereafter, there exist other types of accidents. Some accidents not only qualify the immediate substrate in which they exist, but also cause the composite whole, part of which is composed by the immediate atoms in which the accidents inhere, to have a state related to the accident in question. For example, knowledge is an accident whose immediate physical home is the atoms which constitute the heart. Yet, we do not speak of Mairaj's heart as knowing a lot about basketball, but rather Mairaj himself. Knowledge is of one of those accidents that causes the composite whole to exist in a specific state – that of knowing. The same goes for capability. The existence of the quanta of capability (*qudra*) is the cause for characterizing the composite whole, which is the agent, as in the general state of being 'capable of action (*qādir*).[122]' For the Muʿtazilites, being capable means not only possessing the capacity to perform the act, but also the capacity to refrain from the act. The

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[121] See *Encyclopedia of Islam, Second Edition*, art. 'ḥāl' (Richard M. Frank). Importantly, the "state" concept also enabled Muʿtazilite theologians to describe God without asserting the existence of a material entity in God, thus introducing multiplicity into God's utter singularity and simplicity.

[122] For example, in relation to the state of 'knowing' Frank explains: "accident of knowing inheres only in the heart, it is the cause (*ʿilla*) of a "state" or attribute (*ṣifa*) that belongs to the entire composite, viz., that of its "being knowing" (*kawnuhu ʿāliman*). That is, the accident of knowing comes to be (*ḥadatha*) inherent (*ḥall*) in a particular part (or a defined group of atoms that constitute its maḥall: sc., the heart of the whole and the whole composite, in the unity of its being-comosed, becomes truly qualified (*mawṣūf*) as knowing (*ʿālim*). Its being-knowing (*kawnuhu ʿāliman*), however, is not itself an ontological reality; it is "a 'state' which the being is in through an inherent causal determinant" (*ḥālun huwa ʿalayhā li-maʿnan*)." Idem., "Abu Hashim's theory," 90.

capacity is thus for two options. Otherwise, the agent cannot be characterized, at the metaphysical level, as truly have choice. The Muʿtazilites also asserted that the capacity to act precedes the act. Ashʿarī would reject both of these ideas.

It is by virtue of the state of being capable then, that the act performed is attributed to the agent generally, as opposed to just the specific part of the agent's body that undertook the act. The concept of state allows the act to be legitimately ascribed to the moral personality of the agent as a whole. Importantly being competent (*qādir*) is a dispositional concept whose object is the agent, as opposed to the act, or the context of the act. As such, scholars of Islamic theology have noted, the "agent's ability to act, i.e., the state of his being insofar as he is able to act, does not itself causally entail his acting (does not cause him to act) but rather that he can act if he chooses to. That is to say, it entails the possibility of his voluntarily causing the existence of one act in preference to another in such a way that his doing so is uncaused (*min gayri ʿilla*).[123]" When an act occurs from an agent, the possession of the capacity to act is a sufficient condition for attributing the occurrence of the act to that agent.[124]

2.2 Moral Agency

However, while the capacity to act is a sufficient condition for *physical* agency,[125] it is necessary but not sufficient condition for *moral* agency.[126] The distinction between physical

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[123] Idem., "Autonomy," 327 and idem., "Several fundamental assumptions of the Baṣra School of the Muʿtazila," *Studia Islamica*, no. 33 (1971): 10. See also Daniel Gimaret, "La notion d'impulsion irrésistible' (ilğâ') dans l'éthique muʿtazilite," *Journal Asiatique*, no. 259 (1971): 30 and idem., *Théories de l'acte humain en théologie musulmane*, (Paris: J. Vrin, 1980), 18,56. Peters, *God's created speech*, 127.

[124] See ʿAbd al-Jabbār, *Mughnī*, 6a:186.13-15 where ʿAbd al-Jabbār asserts that what distinguishes the state of the aware rational agent from the asleep, the negligent, and the non-rational in the performance of action is that aware rational agent performs actions in virtue of a motivation, whereas the other types of agents perform the actions which are possible for them, though not by virtue of a motivation.

[125] I use the term "physical" broadly. ʿAbd al-Jabbār's gives a list of genera of accidents which fall under an agent's fundamental capacity for action: bodily acts (*afʿāl al-jawāriḥ*) and mental acts (*afʿāl al-qulūb*). There are five types

agency and moral agency implies that an agent can be, at a basic physical level, the author of an act, yet not be held morally responsible for that act. In the case of human beings, at least, being the author of an act does not automatically translate into liability for the moral appraisal for that act. Following distinctions widely accepted across sectarian and disciplinary boundaries, ʿAbd al-Jabbār, for instance distinguishes between the act of the sleeping, the act of the negligent, the insane, and the act of the fully-aware rational agents. All of these agents are described as possessing the basic physical capacity (*qudra*) to perform actions. If they were not capable, (*qādir*) the act would not occur from the material substrate that constitutes their specific bodies. Each category of agents is the author and creator of the physical act. If I push my wife off the bed while I am asleep, I am the author and creator of the act, but being in the state of sleep prevents the moral appraisal of blame from attaching to my act. Likewise is the case for states of insanity and heedlessness. So what distinguishes the acts of a fully aware rational agent from the acts of the heedless, the insane, and the sleeping? In ʿAbd al-Jabbār's theology it is the presence of motivations. Motivations are a systematic concept in Muʿtazilite theology. Motivations are also key to understanding Muʿtazilite thinking about free choice and compulsion. At a very basic level, free choice between alternative courses of action is characterized by a conflict of motivations, whereas compulsion to act a given way is characterized as the overwhelming dominance of a single motivation. But before delving into a discussion of motivations, free

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of bodily acts: modes of being (*akwān*), pressures (*iʿtimādāt*), compositions (*taʾlīf*), sounds, and pains. There are five types of mental acts: convictions, will, non-will, assumption, and reflection. For a further explanation of these, see Peters, *God's created speech*, 127.

[126] It is important not to lose sight of the explicitly theological sense in which the imposition of morally significant action (*taklīf*) is understood by the Muʿtazilites. God is explicitly the one who imposes obligations (*wājib*) and recommends supererogatory acts (*nadb*). For the idea that God is the explicit imposer of morally significant action (obligations and supererogatory acts) see Mānkdīm, *Sharḥ*, 344.18-20.

choice and compulsion, it will serve us well to take a step back and look at the general context in which the most extensive discussion of compulsion occurs in ʿAbd al-Jabbār's comprehensive theological work – in the volume of the *Mughnī* devoted to a systematic elaboration of *taklīf*, or the nature of God's imposition of duties on human beings.[127]

In a passage that gives us a good indication of the motivating values behind Muʿtazilite thinking on the conditions necessary for God's imposition of duties (*taklīf*) to be deemed good, Mankdīm writes:

> [God], the Eternal, does not charge the non-existent (*maʿdūm*), the weak, or the incapacitated with an obligation to perform an act, while he is in these conditions. He only imposes on him an obligation to do an act after bringing [him] into existence, giving [him] life, physical capacities (*al-aqdār*), instruments, and eliminating sickness (*izāḥat al-ʿilla*) [from him]; [all] through acts of generosity (*al-luṭf*) and in other similar ways.[128]

In his comprehensive work of theology, the *Mughnī*, ʿAbd al-Jabbār structures his discussion of God's imposition of duties around six general conditions that must be met in order for God's imposition to count as good:

1. The agent must be provided with the tools (*al-ālāt*) to perform the action that he is charged with, at the time that the performance of the action is demanded.[129]

2. The agent must have reached a certain level of maturity with respect to knowledge (*kamāl al-ʿaql*).[130]

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[127] For a general overview of the concept, with an emphasis on the theological debates surrounding it see *Encyclopedia of Islam*, art. 'Taklīf' (Daniel Gimaret) For an excellent and more extensive analysis of the concept in relation to different Islamic disciplines and the major sectarian groups, see *Dānishnāmah-ʾi jahān-i Islām*, art. 'Taklīf' (Muḥammad Manṣūr Hāshimī and Ḥusayn Hūshangī).

[128] Mānkdīm, *Sharḥ*, 276.

[129] See ʿAbd al-Jabbār, *Mughnī*, 370-1. See also Maḥmūd ibn 'Umar al-Zamakhsharī, *A Muʿtazilite creed of Az-Zamaḫšarî (D. 538/1144): (al- Minhâǧ fî uṣûl ad-dîn)*, ed. Sabine Schmidtke, trans. Sabine Schmidtke, (Stuttgart: Deutsche Morgenländische Gesellschaft, 1997), 27.

[130] Ibn Mattawayh uses this condition to explicitly exclude those unaware of their actions (*al-sāhī*), asleep (*al-nāʾim*), insane (*al-majnūn*), animals (*al-bahīma*), and infants (*al-ṭifl*). See al-Ḥasan ibn Aḥmad Ibn Mattawayh,

3. Second, there must not exist an impediment (*manʿ*) temporarily preventing the agent from performing or omitting the morally significant act (either a duty or a supererogation) in question.[131]

4. The agent must not be *compelled* to perform or omit it.[132]

5. The agent must perform the action by way of a motivation urging it.[133]

6. The agent must be characterized as possessing natural desires and aversions to the benefits and harms implicit in the pursuit of a prospective course of action[134]

Of these six conditions, condition four (the absence of compulsion (*iljāʾ*)) will form the object of our analysis. The three Muʿtazilites that will garner the bulk of our attention, ʿAbd al-Jabbār, Mānkdīm and Ibn Mattawayh,[135] understand most varieties of compulsion as a type of

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Kitāb al-Majmūʿ fī al-muḥīṭ bi-al-taklīf, ed. J. J. Houben, Daniel Gimaret, and Jan Peters, 3 vols., (Beirut: Dār al-Mashriq, 1965), 1:243. Importantly, for the classical Muʿtazilites, the term *ʿaql* refers not to a power, faculty, or tool which the agent uses in the process of reasoning (practical or otherwise), but rather "a specific aggregation of [pieces of] information (lit. knowledges, *jumla min ʾl-ʿulūm makhṣūṣa*) such that when they obtain in the [prospective] moral agent (mukallaf), [the acts of theological] inquiry, inference, and sustained performance of imposed [duties and supererogations] are possible." See ʿAbd al-Jabbār, *Mughnī*, 11:375. Generally for a sustained discussion of this condition along with objections and rebuttals to ʿAbd al-Jabbār's formulation see ibid., 11:371-87. For a more expansive explanation of the Muʿtazilite concept of *ʿaql*, see Peters, *God's created speech*, 92-3.

[131] ʿAbd al-Jabbār, *Mughnī*, 11:391-2; Mānkdīm, *Sharḥ*, 264-5. Mānkdīm lists two exemplary ways in which action can be impeded and thus excluded from the object of moral evaluation. The first is by way of being chained up or physically restricted, such that the act of walking becomes impossible for the moment. The second is by way of opposition (*ḍidd*). Here, what ʿAbd al-Jabbār described as an independent condition for the realization for legitimate moral agency, Mānkdīm seems to list as a type of impediment. He lists a scribe being prevented from writing because of a lack of a pen as an example of an impediment by way of opposition. This seems very similar to ʿAbd al-Jabbār's instrument condition (listed condition one above). See also Ibn Mattawayh, *Majmūʿ*, 1:243, though in this passage Ibn Mattawayh uses the term *al-aʿdhār*, which I take to be a synonym for impediments (*mawāniʿ*).

[132] ʿAbd al-Jabbār, *Mughnī*, 11:393-400. As we shall see, though, discussions about compulsion can be found in multiple volumes of the *Mughnī*. See also, Ibn Mattawayh, *Majmūʿ*, 1:243.

[133] ʿAbd al-Jabbār, *Mughnī*, 11:400-1.

[134] Ibid., 11:387-90. As we shall see this is essential to the Muʿtazilite idea that in order to deserve praise or reward for an action, the agent must bear some kind of burden (*mashaqqa*). That an agent be naturally desirous or averse to certain interactions with the world is a fundamental part of the cost inherent in choosing a course of action thereby deserving praise for the foregone procuring of benefit or avoiding of harm.

[135] Ibn Mattawayh was a student of ʿAbd al-Jabbār's and an author of an important commentary on one of his works. For general biographical information on Ibn Mattawayh, see *Encyclopædia Iranica*, art. 'Ebn Mattawayh, Abū Moḥammad Ḥasan' (Martin Mcdermott).

overwhelming motivation. In fact, the concept of motivations is essential to these three thinkers' understanding of human agency generally.

2.3 Motivations and Action

2.3.1 Types of Motivation

The Muʿtazilite understanding of motivation underpins their account of both compelled and non-compelled action. The doctrine of motivations (*dawāʿī*)[136] is so important that Richard Frank, the prominent scholar of classical Islamic theology asserts that "***Motivations, in brief, are the concrete bases of the rationality of human actions.***"[137] At the most general level, motivations are an agent's beliefs about prospective courses of action. Unlike other beliefs, though, the motivation is also constituted by a type of emotional force, rooted in certain natural facts of human beings that either urge and impel or discourage a considered action.

ʿAbd al-Jabbār recognized three general types of motivations to action: utilitarian, altruistic, and those relating to the intrinsic moral value of a given act. Utilitarian motivations are beliefs about benefit or harm inherent in a given course of action. ʿAbd al-Jabbār further conceives of benefit as fundamentally constituted by pleasure and joy and pain as constituted by pain and sorrow.[138] Moreover, he asserts that we know necessarily that human beings are

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[136] For a brief survey on Islamicist scholarship on the doctrine of motivations, see Frank, "Autonomy," 333, footnote 20. I have adopted Frank's translation of *daʿwā/dawāʿī* as motivation for the reasons outlined therein and my own reading of the primary sources.

[137] Ibid., 353-4.

[138] On this see Margaretha T. Heemskerk, *Suffering in the Muʿtazilite theology: ʿAbd al-Jabbār's teaching on pain and divine justice*, (Leiden; Boston: Brill, 2000), 114. Frank notes that ʿAbd al-Jabbār further defines pleasure is further defined as "the enjoyment of what is desirable (or is actually desired: *ʾidrāku l-muštahá* (sic)) and pain as its contrary. Moreover, he notes that for ʿAbd al-Jabbār the enjoyment may be physical, psychological, aesthetic, or intellectual. See Frank, "Autonomy," 334.

motivated to act by perceptions of benefit and harm.[139] The weighing of benefits and harms implicit in any course of action is one type of motivation to engage in that action or omit it.[140] Importantly, ʿAbd al-Jabbār repeatedly notes that motivations can be based on beliefs of differing levels of certitude. Being motivated to undertake a given action can be based on a belief about the beneficial or harmful consequences of the action that reaches the level of certain knowledge (*ʿilm*) or probability (*ẓann*). In other words, being motivated does not require that one's calculus about the harm to be averted or the benefit to be procured corresponds to reality. The cognitive nature of the motivation means no matter how strong the motivation is, it does not negate basic capacity. ʿAbd al-Jabbār asserts: "This is because the strength of the motivations does not negate capacity, because it is a belief, and the nature of belief and surmise is that it does not negate capacity."[141] The emotional force of the motivation seems to derive from the natural aversion to pain and the desire for pleasure.[142]

The Muʿtazilites did not only recognize perceptions of utility as motivating reasons for acting. ʿAbd al-Jabbār notes two other broad categories of motivations – altruistic and intrinsic value. In fact, part of their argument for the existence of objective moral truths perceivable by human beings outside of revelation is based on the empirical fact that human beings are

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[139] Cited in Gimaret, "La notion," 37. ʿAbd al-Jabbār writes: "We are compelled to [the knowledge] (*naḍṭarru ilā*) that when Zayd believes there is benefit or [a way of] repelling harm, his belief (*iʿtiqād*) regarding this is a motivation to that act." ʿAbd al-Jabbār, *Mughnī*, 12:208.

[140] The idea of deliberating about harms and benefits in pursuing a course of action seems to be old in the Muʿtazilite tradition. For instance see Jāḥiẓ, *Ḥayawān*, 2:146. Though in Jāḥiẓ, motivations do not seem to have any type of systematic connotation that they acquire with Abū Hāshim. Schwartz identifies Jāḥiẓ as the originator of the idea that action is not possible without a motivation, M. Schwarz, "Some Notes on the Notion of ilja' (constraint) in Mu'tazilite Kalam," *Israel Oriental Studies* 2(1972): 422.

[141] ʿAbd al-Jabbār, *Mughnī*, 12:316.

[142] On an extended presentation of ʿAbd al-Jabbār and Ibn Mattawayh's views on the nature how human beings perceive pain and pleasure, see Heemskerk, *Suffering*, 81-88.

motivated to act for altruistic reasons and by the intrinsic goodness or evil of actions themselves. Thus Mānkdīm, after quoting ʿAbd al-Jabbār's denial that all human action is essentially motivated by utilitarian concerns, notes this unattributed argument: "it is sometimes said: every rational agent, by virtue of his mature intelligence, deems providing directions to some one who is lost as a good [act], or saying "to the right or left" to a blind man who is overlooking a well into which there is a danger of him falling."[143] The fact that mature rational agents act altruistically, at times, proves that human beings are motivated by non-utilitarian concerns. The person who gives directions has nothing to gain and time and effort to lose. Yet, still, he provides directions to the lost. Similarly, the Muʿtazilites argued vociferously for the existence of intuitive moral truths that bind all rationally capable mature human beings, by pointing to the empirical psychological fact that "if it is said to a person, that if you lie I will give you a dirham, and if you tell the truth I will give you dirham, that that person will not choose to lie over telling the truth, and that this is because he knows that it is evil and has no need for [lying]."[144] This is a famous Muʿtazilite argument, and one that Ghazālī, for example, takes up with relish.[145]

The three types of motivations each refer to different aspects of the act. The utilitarian motivation is self-regarding. The emotional force impelling the agent to the act is rooted in the pleasure or pain that would accrue to the agent. The altruistic motivation is other-regarding. Concern for the welfare of another motivates the given action. The intrinsic value motivation is act-regarding. Some features intrinsic to the act itself urge the agent to either engage or avoid

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[143] Mānkdīm, *Sharḥ*, 207.

[144] Ibid., 206.

[145] al-Ghazālī, *al-Mustaṣfā min ʿilm al-uṣūl*, ed. Muḥammad Sulaymān Ashqar, 1st ed., 2 vols., (Beirut: Muʾassasat al-Risāla, 1997), 1:116-17.

the act. In ʿAbd al-Jabbār and Ibn Mattawayh's thought, the landscape of moral choice faced by the agent, is characterized by the conflict between these three types of motivations – or to put it more precisely between the utilitarian and the other two types of motivations.

2.3.2 Conflict of Motivations

As we shall shortly see, compulsion for classical Muʿtazilite authors is often simply explained as the state of an agent characterized by an overwhelming motivation to perform or abstain from an act. Importantly, the state of being compelled to either an act or an omission exempts one from the normative status of being liable for ethical and moral evaluation. Given that overwhelming motivation characterizes the state of being compelled, it is the conflict of countervailing motivations that characterizes the suitability for the normative status of liability to ethical and moral evaluation.[146] In the context of asserting the negative condition that the imposition of moral obligation cannot be considered good when compulsion is present, ʿAbd al-Jabbār stipulates the positive condition, that "it is necessary that the moral agent (*mukallaf*) is free [to perform] his act (*mukhallan bayna-hu wa-fiʿli-hi*), [characterized by a state of] countervailing motivations between the acts and their opposites."[147] Ibn Mattawayh definitively asserts that "God's imposition of duties (*taklīf*) is only completed with the conflict of

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[146] On the existence of motivations as a condition for the moral evaluation of action see ʿAbd al-Jabbār, *Mughnī*, 11:400-01.

[147] Ibid., 11:393. In another passage it is the equivalence of motivations (*takāfaʾu al-dawāʿī*) for ʿAbd al-Jabbār that renders the agent independent of the need to perform either one of the possible actions in front of him. See ibid., 6a:186. The idea of conflicting and equivalent motivations is used by ʿAbd al-Jabbār to deny that the naturalist thesis that acts come to exist in limbs by virtue of some natural constitution inherent in the limb, see ibid., 9:31. For the secondary literature on conflicting motivations see most prominently Gimaret, "La notion," 38, where I first found the referenced sources. See also Frank, "Autonomy," 336; Wilferd Madelung, "The late Muʿtazila and determinism: the philosophers' trap," in *Yād-Nāma: in memoria di Alessandro Bausani*, ed. Biancamaria Scarcia Amoretti and Lucia Rostagno, *Studi orientali* (Rome: Bardi editore, 1991), 248.

motivations."[148] ʿAbd al-Jabbār deploys the concept of conflicting motivations in countering an objection that one could be compelled to engage in inquiry about God by an overwhelming motivation reaching the point of compulsion. Being compelled to inquire about God, the first duty imposed by God on the moral agent, would have the deleterious effect of nullifying the praise and reward merited by the effort expended in the inquiry. ʿAbd al-Jabbār rejects this description of the case by denying that there could ever be a compulsion-approaching overwhelming motivation to engage in inquiry:

> It is always possible that one can be diverted from engaging in inquiry. The agent's motivations to engage in inquiry or omit it waver (*tataraddada dawāʿiyu-hu*). It is for this reason that we see many rational agents (*ʿuqalāʾ*) choose rest and indifference to inquiry (*al-naẓar*) and argument (*al-istidlāl*), either [positively] preferring that, or [pursuing] some other idle ends [instead of it] (*al-aghrāḍ al-fāsida*).[149]

Significantly, it is the conflict of motivations that activates the possibility of *moral* action and *moral* evaluation for that action. This is partly related to the idea that there must be some sort of hardship inherent in the act for an agent to deserve praise or possibly Divine reward for that action.[150] ʿAbd al-Jabbār asserts that:

> the [fundamental] aim in the imposition of [obligations and supererogations] (*taklīf*) is to present the moral agent (*mukallaf*) with the [opportunity to gain] Divine reward (*thawāb*)… and it is known that the agent does not deserve reward in [the performance

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[148] Ibn Mattawayh, *Majmūʿ*, 3:175. The idea that conflicting motivations constitute the context in which an agent chooses one course of action over another seems to have been a shared doctrine between the Basran Muʿtazilites and their Baghdadi counterparts, see Abū Rashīd Saʿīd ibn Muḥammad Naysābūrī, *al-Masāʾil fī al-khilāf bayna al-Baṣrīyīn wa al-Baghdādīyīn*, ed. Maʿn Ziyāda and Riḍwān al-Sayyid, (Tarablus: Maʿhad al-Anmāʾ al-ʿArabī, 1989), 293.

[149] ʿAbd al-Jabbār, *Mughnī*, 12:304-5.

[150] Ibid., 8:175. The idea seems to be old, it appears already in Jāḥiẓ. See Jāḥiẓ, *Ḥayawān*, 4:88.

> of actions] in which there is no hardship (*mashaqqa*) whatsoever.[151]

ʿAbd al-Jabbār connects hardship to the conflict of motivations. A conflict of motivations signifies the calculations of comparative utility that attract or avert human action. Making a choice in the face of a conflict of motivations necessarily implies that a perceived utility was forgone. Connecting the idea of hardship to the idea of motivation, ʿAbd al-Jabbār notes that "an agent deserves praise only when he could have done something other than that which [he] was urged to do by a motivation, choosing not to do it, and bearing hardship in [the act he performed] or something like it."[152] The landscape of moral choice is beset by conflicting motivations which push and pull the agent in opposing directions.[153] Often, utilitarian motivations conflict with motivations rooted in the knowledge of the intrinsic evil or good of certain types of acts. The agent deserves praise and sometimes Divine reward when he has forgone utility in favor of acting on either an altruistic motivation or an intrinsic value motivation.

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[151] ʿAbd al-Jabbār, *Mughnī*, 11:387.

[152] Ibid., 11:393. For an even more explicit connection between forgoing a motivation to act and hardship see ibid., 16:71: "And, likewise, the obtaining of desire and the conflicting motivations are considered [as part of] enabling [an agent to perform an act], because it is not possible that the agent performs an act, according to the way he was charged, except with them (*shahwa* and *taraddud al-dawāʿī*); because hardship and burden are only obtained through them, or through something that takes their place." For the idea that deserving praise is intimately connected to acting against a motivation to do an evil act see ibid., 8:176, where ʿAbd al-Jabbār asserts that "the agent deserves praise for not doing evil if there is a motivation to do it." Ibn Mattawayḥ explicitly elaborates the absence of compulsion condition for moral agency as the positive existence of a conflict of motivations. See Ibn Mattawayh, *Majmūʿ*, 2:265. Interestingly, the twelfth century Muʿtazilite scholar Ibn al-Malāḥimī completely replaces the negative absence of compulsion condition for valid moral agency with the positive stipulation that there must simply be a conflict of motivations. See Maḥmūd ibn Muḥammad Ibn al-Malāḥimī, *Kitāb al-Fāʾiq fī uṣūl al-dīn*, ed. Wilferd Madelung and Martin J. McDermott, 1st ed., (Tehran: Muʾassasah-ʾi Pizhūhishī-i Ḥikmat va Falsafah-ʾi Īrān, 2007), 218.

[153] Frank sees the 'conflict of motivations' feature of the Muʿtazilite conception of the moral world as a fundamental principle of their thought. He writes: "That an inevitable conflict between motivations to do what is right and to do what is wrong is constitutive of the human condition as ordained by God is a fundamental thesis of the Muʿtazilite system." Frank, "Autonomy," 337.

3 What is Compulsion?

The history of Muʿtazilite thought on compulsion is replete with attempts by various scholars to define compulsion. One of the two founders of the Basran school, Abū Hāshim, offered five different formulations of compulsion scattered throughout his different works.[154] Based on the Muʿtazilite literature we possess, Abū Hāshim seems to have been the first to attempt definitions of compulsion. ʿAbd al-Jabbār reviews Abū Hāshim's various attempts before endorsing the definition that he thinks is the most correct. His student, Ibn Mattawayh, adopts a non-reductive two-fold conceptualization of compulsion that attempts to account for what he perceives to be the two main types of compulsion addressed in the tradition. These are the first systematic attempts at conceptualizing compulsion, but they were not the first to attempt to address problems related to compulsion.

3.1 Compulsion in Jāḥiẓ's Rebuttal of the Materialists (Dahriyya)

The earliest Muʿtazilite treatment of compulsion that is reminiscent but not identical to the way classical Muʿtazilites conceptualize it is found in the works of the famous Abbasid essayist Abu ʿUthmān al-Jāḥiẓ (d. 255/868-9).[155] In fact, at no point does Jāḥiẓ use any of the central conceptual terms used to denote compulsion (*iljāʾ*), coercion (*ikrāh*), or necessity (*iḍṭirār*). What Ibn Mattawayh would categorize as one of two distinct methods of compulsion – being compelled to omit a prospective course of action because of the perception that it would ultimately be futile, is used by Jāḥiẓ to explain how Divine prophecies in the Qurʾān about

[154] Abū Hāshim's father, Abū ʿAlī is also seen as a founder of the Basran Muʿtazilite tradition.

[155] For biographical information, see *Encyclopedia of Islam, Second Edition*, art. 'al- D̲J̲āḥiẓ, Abū ʿU<u>th</u>mān ʿAmr b. Baḥr al-Fuḳaymī al-Baṣrī' (Charles Pellat).

actions that specific agents will take in the future does not preclude, absolutely, the choice of those agents. He writes:

> An example of this is when we know that Iblīs (i.e. Satan) will never stop being a transgressor till the Day of Judgment. If Iblīs, in his state of transgression, remembers God's factual assertion that he will never cease to be a transgressor, and he knows that God's assertion is true, it is impossible that his self motivates him to faith, and thereby find peace, given his belief that he will not ever choose faith.[156]

Conversely, Jāḥiẓ uses the same essential thought to show how God's prophecy of Muslim victory at Badr could theoretically eliminate the hardship of battle and thus the basis for deserving praise for bearing hardship.[157] He writes:

> An example of this is when God gave glad tidings of victory to the Prophet, he conveyed the news of victory and [the fact of the] angels descending [to help them in battle] to his companions. If, because of this, they were to keep this in the forefront of their minds, they would bear no burden from participating in war, and if they bore no burden, they would not be rewarded. But God, the Exalted, because of His concern for them, made them forget this in many moments, so that they may bear the hardship of fighting. [In those moments] they did not know – will they overcome or be overcome, will they kill or be killed?[158]

These two arguments occur in the context of a larger polemic against an objection Jāḥiẓ attributes to the materialists (*dahriyya*)[159] to inconsistencies inherent in the Qurʾānic narrative of

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[156] Jāḥiẓ, *Ḥayawān*, 4:88.

[157] The idea of bearing burden as characteristic of moral agency is also found in Abū Hudhayl's thought as cited by Ibn al-Khayyāṭ. See ʿAbd al-Raḥīm ibn Muḥammad al-Khayyāṭ, *Kitāb al-intiṣār wa al-radd ʿalā Ibn al-Rawandī al-Mulḥid*, ed. H. S. Nyberg, (Cairo: Maṭbaʿat Dār al-kutub al-Miṣrīyya, 1993), 70-1. For a translation and commentary of this passage see Ess, *Theologie*, 5:415-17.

[158] Jāḥiẓ, *Ḥayawān*, 4:89.

[159] On the Dahriyya, see *Encyclopedia of Islam, Second Edition*, art. 'Dahriyya' (I. Goldziher and A.M. Goichon).

the Prophet Solomon.[160] Here, Jāḥiẓ uses the "knowledge of futility of action" to show how Qurʾānic prophecies do not necessarily imply a strong determinism. The agent is prevented by way of his own belief, and not actively through Divine agency. Yet the minute that the belief subsides from the agent's mental presence, as is inevitably the case, is the minute that the agent becomes once again liable to moral evaluation of his action. This happens to be praise in the case of the Prophet's companions at Badr, and it happens to be justified punishment for disobedience in the case of Satan. Later Muʿtazilite scholars would make much use of the cognitive nature that prevents, and for them compels, certain types of actions. What functioned as a line of argumentation seemingly inspired to rebut materialist charges about inconsistencies in Qurʾānic narratives in the time of Jāḥiẓ, becomes identified specifically as a species of compulsion by Abū Hāshim.

3.2 Abū Hāshim al-Jubbāʾī and the Problems of Defining Compulsion

The discussions of coercion or compulsion in the legal literature mostly assume that it is a temporary and an out of the ordinary contextual feature of a given act. This is also mostly true of Muʿtazilite scholars. Indeed the case of compulsion most often cited over a number of works across generations is the example of fleeing when encountering or perceiving a predator.[161] The Muʿtazilites hold that the encounterer is compelled to flee because of the threat of possible harm to himself.

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[160] Specifically, Jāḥiẓ quotes the materialists (*dahrīs*) as pointing out the inconsistency between the fact that God in the Qurʾān gives Solomon power over the jinn and wind, and the ability to understand the language of the birds, and the fact that he does not know information about the Queen in Yemen. It is in the process of formulating a response to this criticism that Jāḥiẓ develops the line of argument highlighted above. On the materialist argument involving Solomon, see Jāḥiẓ, *Ḥayawān*, 4:85–86.

[161] For example see ʿAbd al-Jabbār, *Mughnī*, 6a:16, 11:394, and 13:489-99; Mānkdīm, *Sharḥ*, 16; Ibn Mattawayh, *Majmūʿ*, 2:321.

Yet, the Muʿtazilites also often consider cases that the legal scholars do not typically consider as examples of compelled behavior. We are compelled to not kill ourselves, in the absence of false belief.[162] When we are sick, sometimes, we are compelled to groan.[163] We are compelled to laugh at an incident we find amusing.[164] We are compelled to let out a scream when struck with a whip.[165] We are compelled to refrain from consuming distasteful medicine when healthy.[166] In these examples, compulsion denotes certain instinctual responses.

Later Muʿtazilites would label Jāḥiẓ's examples of action being prevented by perception of its ultimate futility as also an example of compulsion. And they would add to the examples. Thus one prevented from attacking an unjust king because he knows or preponderantly believes that if he tries he will be prevented is one compelled to omit that act.[167] The perception of futility not only compels the omission of acts in this life, but is essential in understanding the nature of human agency in the hereafter. Thus, the Muʿtazilites use the futility principle to explain why people in heaven do not commit evil acts: God tells the agents that even if they tried He would prevent them.[168] They are compelled not to commit evil acts because they are convinced of their futility.

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[162] ʿAbd al-Jabbār, *Mughnī*, 11:393. The reference to false belief is to the case of Indians who commit suicide.

[163] Ibid., 8:60.

[164] Ibid.

[165] Ibid.

[166] Ibid., 11:393.

[167] Ibn Mattawayh, *Majmūʿ*, 2:320.

[168] Ibid., 2:320.

While the Muʿtazilites labeled perceptions of futility and certain instinctual responses as compelled actions, the vast majority of examples discussed by Muʿtazilite scholars of compulsion can no doubt be reduced to an agent's perception of utility. Thus, it is the perception of overwhelming and immediate harm represented by the predator that compels one to flee. Likewise in the case of one compelled to eat carrion, an act normally considered forbidden by the law, or one compelled to flee from one's enemy.[169] But harm is not the only thing that compels. Perceptions of benefit can also compel. Thus, a person who knows that he will benefit from eating while not suffering any harm for not eating is compelled to eat.[170] Likewise, one is compelled to dig for treasure if he knows it is beneath his feet.[171]

Given the variety of phenomena the Muʿtazilites labeled as compulsion, any would be systematizer faced an uphill task. The first to attempt to tackle the task was the foundational doctrinal formulator of the Basran tradition of Muʿtazilism, Abū Hāshim al-Jubbāʾī.

Unfortunately, none of Abū Hāshim's original works have survived. We know of Abū Hāshim's views through quotations in later sources.[172] Fortunately, given the importance of Abū Hāshim to the classical Basran Muʿtazilite tradition, a significant amount of material survives in sympathetic if not outright loyal sources. ʿAbd al-Jabbār often begins discussion of a theological doctrine by reference to Abū Hāshim's view. Moreover, he often identifies the specific work of

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[169] ʿAbd al-Jabbār, *Mughnī*, 11:394.

[170] Ibid., 11:396.

[171] Mānkdīm, *Sharḥ*, 143.

[172] For an analysis of later Muʿtazilite citations of Abū Hāshim's works, see Daniel Gimaret, "Matériaux pour une bibliographie des Ǧubbāʾī," *Journal Asiatique* 264, no. 3 (1976): 298-331.

Abū Hāshim that he is citing from, creating the impression that he is quoting directly from it. Both of these facts mitigate concerns about distortion.

ʿAbd al-Jabbār begins his discussion of compulsion by quoting the various definitions and general comments offered by Abū Hāshim. At times, Abū Hāshim freely admits that compulsion refers to phenomena, like the terms "capable agent or other attributes of a living being", that resist precise encapsulation in a formal definition.[173] At other times, in the search for a formal definition, Abū Hāshim considers the possibility that being compelled is caused by inherence of cause producing accident (*maʿnā*),[174] such that its existence in an agent is the most immediate causal factor in the agent's being compelled. More specifically, he considers the possibility that the knowledge of the harmful consequences or lack of benefit in a prospective action or the knowledge of the futility of an action could be causal factors (*maʿnā*) of compulsion,[175] but ultimately rejects these causal candidates because "they do not apply in every case, because the human being is compelled to not desire punishment (*ʿiqāb*) or harm (*iḍrār*) for himself, and [in these cases] there exists no causal determinant which constitutes the compulsion.[176]" Here, Abū Hāshim seems to be making a distinction between a belief about the consequences of an act, whether utilitarian or of futility and a compelling instinctual, and thus non-cognitive desire against pain. The instinctual aversion from punishment is both compelling and ever-present.

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[173] See ʿAbd al-Jabbār, *Mughnī*, 12:14 and 11:395–96. In contrast, Abū Hāshim notes that terms such as 'mover (*al-mutaḥarrik*)','black (*al-aswad*)', can be encapsulated in a short definition. I have emended the text from '*muḥtarik*' to the more probable '*mutaḥarrik*'. The mistake occurs in both volumes. See also Gimaret, "La notion," 31.

[174] On the term *maʿnā*, which I have inelegantly translated as cause-producing accident, see Richard M. Frank, "Al-maʿnā: Some Reflections on the Technical Meanings of the Term in the Kalām and Its Use in the Physics of Muʿammar," *Journal of the American Oriental Society* 87, no. 3 (1967): 250.

[175] ʿAbd al-Jabbār, *Mughnī*, 8:166 and 11:394.

[176] Ibid., 8:166. The assumption seems to be that the human being is repulsed by punishment or harm naturally, not by way of a cause (*maʿnā*) which comes to inhere in his material substrate.

The fact that it perpetually characterizes the state of an agent means that it cannot be the result of an accident, at a specific duration that comes to inhere in the agent's material substrate and thereby cause the state of being compelled.

Despite the difficulty involved in defining compulsion, ʿAbd al-Jabbār records five different attempts by Abū Hāshim:

1. **Two harms compulsion**: "the compelled is one who, [when] impelled to two harms (*man yudfaʿ ilā ḍararayn*), prefers the lesser over the greater (*fa-yuʾthiru ʾl-adwana min-humā ʿalā ʾl-aʿẓam*)"[177]

2. **Excluding possibility of action compulsion**: compulsion is "what requires that it not be possible for an act to occur from [the agent] other than what he was compelled towards, given that he had the basic capacity [to do it] and no impediments [obstructing it] existed."[178]

3. **Normative exclusion compulsion**: "Compulsion is not a type of act (*laysa ʾl-iljāʾa bi-jinsi ʾl-fiʿl*). It is only that which is done to a capable agent such that it excludes him from deserving praise for an action or an omission."[179]

4. **Futility of action compulsion**: "compulsion occurs sometimes with respect to omitting an action that the agent knows that if he tries it, he will be prevented [from performing it], even if the omission is a permissible action."[180]

5. **Utilitarian compulsion**: "In certain states, the human agent is compelled to [procure] benefit for or repel harm from himself or those in his care (*ʿamman*

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[177] Ibid., 8:165 and 11:394. ʿAbd al-Jabbār notes that this definition is found in Abū Hāshim's work, *Naqḍ al-Ṭabāʾiʿ*. For an analysis of citations of this text in later Muʿtazilite sources, see Gimaret, "Matériaux," 327-28.

[178] ʿAbd al-Jabbār, *Mughnī*, 11:394.

[179] Ibid., 8:165. ʿAbd al-Jabbār notes that this definition is found in Abū Hāshim's work *al-Usrūsanniyāt al-Thāniya*. This definition is also found in 11:396. Again, ʿAbd al-Jabbār notes that he found this definition in Abū Hāshim's *al-Usrūsanniyāt al-Thāniya*. However, in this volume of the *Mughnī*, ʿAbd al-Jabbār explicitly uses this definition to clarify the sense of Abū Hāshim's remarks on compulsion cited in his work *al-Usrusanniyāt al-Awala*. For an analysis of references to these texts in later Muʿtazilite texts, see Gimaret, "Matériaux," 306.

[180] ʿAbd al-Jabbār, *Mughnī*, 8:165. ʿAbd al-Jabbār does not provide a reference for this work.

yamassa-hu amru-hu). Every agent compelled to a thing – had he not been compelled, it would have been prudentially necessary for him [to do it]."[181]

The characterization of compulsion that 'Abd al-Jabbar endorses after listing Abū Hāshim's attempts at conceptualizing compulsion is the normative exclusion definition. In fact ʿAbd al-Jabbār reads the normative exclusion definition as a clarification of and expansion upon the excluding possibility definition.[182] In a sense, compulsion in Abū Hāshim's excluding possibility of action definition seems to be a grab bag category. It is defined by the absence of two other conditions for valid moral agency: basic capacity and the absence of impediments. The fact that Abū Hāshim specifies that compulsion holds only when the basic capacity for action (*qudra*) exists and temporary impediments (*manʿ*) to actions do not, indicates this. In other words, there are cases where moral evaluation fails that are not covered by the absence of basic capacity and the presence of an impediment, and this category of cases is labeled as compulsion. The normative exclusion definition takes the fact that there are cases in which moral evaluation fails as the central element in identifying compulsion. ʿAbd al-Jabbar agrees with Abū Hāshim about the difficulty of effeciently capturing the variety of phenomena that Muʿtazilites recognize as compulsion in a formal definition. In addition, he does not think there is a single accident that inheres in the human agent that causes compulsion. After surveying the range of Abū Hāshim's attempts to clarify compulsion, ʿAbd al-Jabbār endorses Abū Hāshim's normative exclusion account.[183] He reasons from the normative effect to the presence of compulsion. Thus, excluding the absence of capacity, and the absence of impediments, if we

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[181] Ibid., 11:395. Here ʿAbd al-Jabbār quotes from Abū Hāshim's work, *al-Aṣlaḥ*. For an analysis of references to this texts in later Muʿtazilite texts, see Gimaret, "Matériaux," 307.

[182] See generally his discussion of Abū Hāshim's normative exclusion definition at ʿAbd al-Jabbār, *Mughnī*, 11:396.

[183] Ibid., 8:166.

judge that a man's action is not properly the object of moral evaluation, then we have a case of compulsion. It is tempting to see ʿAbd al-Jabbar's answer as a convenient, and not principled solution to the problem of defining compulsion. But, in fact, it may be the case that for ʿAbd al-Jabbar the fact of deserving praise or blame for an action is epistemically more immediate to human agent than other types of knowledge.[184] This is evinced in his assertion that we know by way of immediacy and necessarily that the compelled agent does not deserve praise or blame for his action. Moreover, and perhaps more importantly, what is most immediately, and foundationally known in ʿAbd al-Jabbar's ethical epistemology is not the certain intuitive moral truths like lying is evil, but that agents deserve praise or blame for certain types of moral actions. According to ʿAbd al-Jabbār, we reason from this gut reaction to the existence of rational moral truths. My point is simply to show how ʿAbd al-Jabbār's preference for Abū Hāshim's normative exclusion conceptualization of compulsion is disciplined and coheres with other aspects of his thought.

While ʿAbd al-Jabbār relegates the variety of phenomena denoted as compulsion to a single essential element – the failure of valid moral appraisal – his successors Ibn Mattawayh and Mānkdīm are not as singularly reductive. Instead of defining compulsion by its normative effect, Ibn Mattawayh and Mānkdīm assert that there exist, in fact, two basic types of compulsion: by way of futility and by way of utility.[185] Of the two methods of compulsion, the majority of the examples throughout Muʿtazilite literature are by way of utility.

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[184] For a discussion of what ʿAbd al-Jabbār considers as most immediate in ethical judgments see Vasalou, *Moral Agents*, 102-15.

[185] Ibn Mattawayh, *Majmūʿ*, 2:320-1; Mānkdīm, *Sharḥ*, 143.

It is important at this point to take account of the fact that compulsion by way of utility is ultimately founded on compulsion by way of a utilitarian motivation. Utilitarian motivations can compel action in one of two ways.[186] The agent either knows or believes that a pure benefit, either completely untainted or immaterially tainted by harm, is the result of a given action. The agent is compelled to the action. For example, food for which an agent has severe hunger is placed in front of him. The agent believes that no present or future harm will result in partaking of the food. The agent is compelled to it, and nothing remains diverting him from eating it.[187] Compulsion in this case is an overwhelming motivation to action produced by a belief in or knowledge of a predominant benefit to be gained through the action. Conversely, compulsions can result from overwhelming motivations produced by beliefs in or knowledge of a predominant harm. More precisely the agent is faced with two harms in the course of a given action. One is the harm suffered for omitting the action and the other the harm suffered for committing the action. If the difference between the harms is great, then the agent is compelled to the lesser harm in order to ward off the greater harm. As we have already mentioned, the text book example of this case is the case of an agent's perception or encounter with a predator.[188] The belief or knowledge of the overwhelming harm associated with staying in place in the encounter with the predator produces the overwhelming motivation, which is compulsion, in the agent to flee. The strength of utilitarian motivations is affected not only by overwhelming

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[186] ʿAbd al-Jabbār, *Mughnī*, 12:425. ʿAbd al-Jabbār sums up the idea nicely here: "so that a rational agent when knows or believes of a great benefit becomes compelled to the act and when the harm is great becomes compelled to omit it, and thereby becomes exempt from being a moral agent (*mukallaf*) because of the strength of these motivations."

[187] Ibn Mattawayh, *Majmūʿ*, 2:321.

[188] Ibid., 2:265.

amount of benefit or harm contemplated but also by their temporal proximity to the agent at hand. Thus, in the process of arguing against the idea that an agent can practically be compelled to engage in the theological inquiry necessary to establish the existence of God and His attributes, ʿAbd al-Jabbār writes:

> If the harm is far-off, time-wise, or one of them is far-off, then the compulsion no doubt ceases. We know that the omission of inquiry in the domain of religious matters is characterized by a far-off harm. His act is contemplating to eliminate this harm. It is not possible to subsume [it to] a case of compulsion.[189]

Utilitarian motivations are, at a basic level, perceptions of harm and benefit. A perception of harm that is great and imminent compels action. What about perceptions of harm that is not great? For the Muʿtazilites, these result in prudential obligations.[190] What about perceptions of harm that is balanced equally by perceptions of benefit? These result in free choice. Therefore, compulsion is merely one end on a spectrum charting motivations' effects on the psychology of action in Muʿtazilite thinking.[191]

This idea is most clearly articulated in ʿAbd al-Jabbār's explanation for the basis of the obligation to inquire into God's existence. Ultimately the obligation to inquire is a species of the more general rational obligation to avoid harm to oneself. The obligation to avoid harm to oneself is an endemic feature of how human agents proceed to make decisions about their affairs

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[189] ʿAbd al-Jabbār, *Mughnī*, 12:352. Likewise, ibid., 14:25.

[190] This is connected to the fifth definition of compulsion listed above. When Abū Hāshim identified utilitarian motivations as a possible basis for compulsion, he also noted that compulsion is related to obligation. See ibid., 11:395. More specifically, ʿAbd al-Jabbār notes that this idea is found in Abū Hāshim's Kitab al-Aṣlaḥ. Abū Hāshim asserts that when there obtains a slight harm in a given benefit, it excludes the case from being considered as one of compulsion.

[191] Abū Hāshim and ʿAbd al-Jabbār note that obligation and compulsion are related. In fact Abū Hāshim coins the dictum, affirmed and used by ʿAbd al-Jabbār in other places, that "compulsion is a more intense form of obligation (*inna ʾl-iljāʾa ākadu min ʾl-ījāb*)." See ibid., 14:19. See also ibid., 13:335, and though not cited as a succinct formulation of a general principle, see the general tenor of the discussion in 12:352.

in this life.[192] It also motivates the agent to engage in theological inquiry in order substantiate God's existence and nature. After reaching maturity, the Muʿtazilites imagine that the agent is motivated, by way of different sources, not excluding God's gracious intervention, to consider the question of his salvation. The fear of the possible harm in the hereafter motivates the agent to undertake inquiry to quiet his soul. In this context, ʿAbd al-Jabbār makes the following observations:

> As for the case where the two harms are equal, and the agent knows that is their case, the inquirer is fully free to choose. It is not obligatory for the agent to undertake the action, and the obligation fails to hold (*sāqiṭ*). When the difference is tremendous in the harm [the act] extinguishes, the basis of compulsion has been realized (*la-ḥaqqa thabātu ʾl-iljāʾ*). When there is a difference, the basis of the obligation has been realized (*la-ḥaqqa thabātu ʾl-wujūb*), especially when the harm is far-off (*muʾajjal*) and not immediate (*muʿajjal*).[193]

The cognitional nature of the motivation that produces utilitarian compulsion has a number of systematic effects. First, an agent can very easily slip in and out of a state of being compelled through changes in beliefs alone, or a counter motivation could arise effectively diluting the overwhelming effect of the singular motivation. Muʿtazilite authors adduce a number of examples demonstrating this point.[194] ʿAbd al-Jabbār has us consider the following case: an agent characterized by

> severe hunger, who is fully able to eat (*al-mutamakkin mina ʾl-akl*), will eat, no doubt, if there is nothing to divert him (*idhā lam*

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[192] Utilitarian calculus as one account of how human agents make decisions about life seems to be an old idea in the Muʿtazilite tradition. Jāḥiẓ has an account. See Jāḥiẓ, *Ḥayawān*, 2:145-46.

[193] See ʿAbd al-Jabbār, *Mughnī*, 12:358.

[194] ʿAbd al-Jabbār lists the following example demonstrating how an agent can slip out of being compelled by way of a change in a belief about a situation, causing the compulsion to cease: one would normally be compelled to laugh at an amusing incident, but not if the amusing incident happens when in the presence of an awe-inspiring personality. See ibid., 8:59–60.

> *yakun hunāka ṣārif*). If it so happens that someone informs him while he is severely hungry, that the delicious food is poisoned, he will be diverted from eating it.[195]

Or consider this variation on the textbook Muʿtazilite example of compulsion:

> One who witnesses a predator approaching him is compelled to flee. But what if it is said to him: "the predator is a reminder [from God]. If you persevere in staying in place, you will be [rewarded] with heaven"? The agent stops being compelled to flee.[196]

In yet another example, ʿAbd al-Jabbār highlights the impact of beliefs, even false beliefs, on moving an agent in and out of a state of being compelled, and thus deserving of moral evaluation. For ʿAbd al-Jabbār, we are compelled to not kill ourselves. Moreover, suicide is seen as a grave sin by Islamic law. Yet, we do not deserve praise for not killing ourselves, because we are usually constantly in a state of being compelled not to kill ourselves. The fact of being compelled excludes us from deserving praise or blame for acts. But it is possible that this *de facto* state of being compelled not to kill ourselves can be changed by way of false beliefs. Specifically, ʿAbd al-Jabbār notes:

> even though the Indians (*al-hind*) believe that there is a benefit in killing themselves, insofar as it entails releasing light from darkness, it is still valid to morally oblige them to refuse to kill themselves and through that refusal deserve praise, if they don't do it. And if the false beliefs cease to exist they do not deserve praise because compulsion (*iljāʾ*) has obtained. For this reason, the false beliefs occupy the same position as natural aversion, in the sense that action of the one holding the false belief comes under the same

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[195] Ibid., 12:253. This example is cited and translated in Gimaret, "La notion," 47. This translation is my own.

[196] ʿAbd al-Jabbār, *Mughnī*, 12:352–53. ʿAbd al-Jabbār is trying to show how easily an agent can go from being compelled to not being compelled. Here the function of the argument is to show how the obligation to inquire into knowledge of God does not practically turn into a compulsion. If the act of initially seeking knowledge of God is compelled, then this would undermine the free-will position of the Muʿtazilites and undermine the idea of seeking knowledge of God as a meritorious action. The ease through which, by God's agency, sometimes, an agent can stop from begin compelled, as demonstrated in the example above, is equally applicable to seeking knowledge of God. It is this instability regarding this act, that practically prevents it from every being compelled.

> category of a burdensome act, and thus deserves for it, praise and reward.[197]

4 What Does Compulsion Do?

4.1 Compulsion Does not Negate Basic Capability (*qudra*) or Choice

The Muʿtazilites held that compulsion excludes the imposition of obligations from being good. Thus, they effectively held that God does not impose obligations on a compelled agent, when he is compelled, because God only performs good acts. Moreover, they held that compulsion cancels an agent's deserving of a normative evaluation, whether it be praise, blame, reward or punishment. With that said, though, ʿAbd al-Jabbār held that compulsion negates neither choice (*ikhtiyār*) nor the capacity (*qudra*) to perform an action. He writes:

> compulsion (*iljāʾ*) does not exclude the compelled from being capable of the action, nor connected to choosing it, because the one who perceives a predator, if he fears for his life, is compelled to flee. His [act of fleeing] occurs by way of his choice. Because when there appear for him paths in fleeing, he chooses to take one of them. This act is in accordance with his capacity, because he runs, according to his capacity, in fastness or slowness, and takes a path according to his knowledge of the closeness or distance of a path. Compulsion (*iljāʾ*) does not exclude him from being a capable agent of what occurs from him, even if he is diverted from one action to another action e.g. [a motivating reason] becomes strong by virtue of knowledge of harm or intense fear.[198]

ʿAbd al-Jabbār reasons from the fact that in the process of performing the compelled act, the agent uses his capacity and chooses the way in which he performs it to the fact that

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[197] Ibid., 11:394. This example is similarly quoted by ʿAbd al-Jabbār from Abū Hāshim. Abū Hāshim notes: "The human being is compelled to not kill himself. This contains the meaning of obligation. Such that if an agent had doubt/false beliefs, it would be obligatory for him to leave the act of killing himself, according to what the Indians who require that, because of a false belief which comes upon them, they deserve praise for not killing themselves, and blame for killing themselves." Ibid., 14:20.

[198] See ibid., 12:317. See also, ibid., 6b:56-57, where ʿAbd al-Jabbār asserts that compulsion does not eliminate choice. He demonstrates this using the same example of the one compelled to flee as choosing how and to where he will flee. See ibid., 8:59, where ʿAbd al-Jabbār describes the one compelled to flee as one still in possession of basic capacity, and still describable as one choosing. On this generally see Gimaret, "La notion," 46-52.

compulsion does not eliminate either. In another passage, as already noted, ʿAbd al-Jabbār argues that compulsion does not negate capacity because it is ultimately caused by a motivation, which is essentially a belief (*iʿitiqād, ẓann*) – and beliefs, as a category, do not negate capacity.[199]

4.2 Compulsion Negates Praise and Blame

Muʿtazilite scholars assert, generally, that compulsion impedes all varieties of moral evaluation. Assessments of blame, praise, reward, and punishment for/of the agent fail when the act is compelled.[200] Though, at the general level, this assertion is true, it occludes the specific ways in which Muʿtazilite scholars conceptualize compulsion as interacting with, and ultimately suspending these different varieties of evaluation.

In Muʿtazilite thought, there are three types of categories of acts that are good: simply permitted acts, supererogations, and obligations. Agents that perform actions that are simply permitted do not deserve praise for the performance. Most often, such actions are understood as motivated by the perceived benefit procured or harm avoided through the act. But, praise, on the other hand, is deserved for the performance of obligations and supererogations.[201] The

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[199] On this, see ʿAbd al-Jabbār, *Mughnī*, 12:316. In yet another place, ʿAbd al-Jabbār notes that while a motivation may "require an act it does not causally necessitate it (*wa al-dāʿīyu wa in iqtaḍā ikhtiyāraʾl-fiʿli fa-laysa bi-mujibin li-dhālika*)." For this see, ibid., 6a:188. For a greater elaboration of ʿAbd al-Jabbār's assumed distinction between "requiring" or in Gimaret's terms "determining" and "causing" an act see ibid. Gimaret sees ʿAbd al-Jabbār's distinction as contrived and philosophically inconsistent. Frank disagrees and provides an excellent explanation of ʿAbd al-Jabbār's distinction between "requiring (*iqtiḍāʾ*)" and "causing (*ījāb*)" see Frank, "Autonomy," 340-43. Madelung similarly criticizes Gimaret's characterization of ʿAbd al-Jabbār, see Madelung, "Late Muʿtazila," 247-48

[200] For example, see ʿAbd al-Jabbār, *Mughnī*, 12:425, where he asserts: "so that a rational agent when he knows or believes a great benefit becomes compelled to the act and when the harm is great becomes compelled to omit it, ***and thereby becomes exempt from being a moral agent (mukallaf) because of the strength of these motivations."*** See also, ibid., 8:172, where ʿAbd al-Jabbār explicitly asserts that compulsion excludes the application of any type of moral evaluation to the compelled agent.

[201] For a fuller treatment of the moral varieties of acts in ʿAbd al-Jabbār's thought, see George F. Hourani, *Islamic rationalism: the ethics of ʿAbd al-Jabbār*, (Oxford: Clarendon Press, 1971), 39-44.

difference between obligations and supererogations hinges on the evaluations consequent upon omission. Thus, an agent deserves blame for the omitting a performance that would satisfy an obligation but does not deserve blame for not satisfying a supererogation.[202]

In his volume devoted to debates surrounding how an agent comes to deserve moral evaluations (*istiḥqāq*), ʿAbd al-Jabbār lists the following summary conditions which must be satisfied in order for an agent to deserve praise and reward for satisfying an obligation or supererogation:[203]

1. the agent must be aware of the obligatory nature of the act or any necessary preconditions to the act[204]
2. he must perform the act because of the aspect of the act that makes it good or a obligatory[205]
3. he must be free to perform the act[206]

He notes that compulsion is a violation of the third condition.[207] In another place in the *Mughnī*, ʿAbd al-Jabbār provides two reasons why compulsion impedes the attachment of praise for an action or an omission. Both reasons are ultimately grounded in broader Muʿtazilite values about why agents deserve praise in the first place. Agents deserve praise for acts that involve bearing some type of hardship and when they are motivated either by altruism, the intrinsic moral value of an act, or an intent to fulfill a duty that God has imposed or a perform a

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[202] Ibid., 39.

[203] The section of the volume in which this discussion occurs is entitled how praise and reward is deserved for an obligation or a supererogation (*faṣlun fī kayfiyyati istiḥqāqi ʾl-madḥi wa ʾl-thawābi bi ʾl-wājibi wa ʾl-nadb*). ʿAbd al-Jabbār, *Mughnī*, 14:177.

[204] Ibid.

[205] Ibid.

[206] Ibid.

[207] Ibid., 14:178.14-17.

supererogatory act that God has recommended. Agents do not deserve praise if, they bear no hardship or if they perform it when motivated by self-regarding utilitarian reasons.

The idea of deserving praise for bearing hardship or inconvenience in the course of doing an act was already invoked by Jāḥiẓ.[208] The idea of deserving praise for hardship fits nicely with the idea that free choice is characterized by a conflict of motivations (*taraddud al-dawāʿī*). ʿAbd al-Jabbār brings the two ideas together in the following passage:

> Moreover, an agent deserves praise only when he could have done something other than what he did, and was urged to do by a motive, choosing over it, bearing hardship or something like it. This is not possible in the case of compulsion.[209]

In yet another passage the connection between conflicting motivations, the hardship at stake in performing an imposed obligation, and compulsion is more explicit:

> The stipulation of eliminating compulsion is subsumed under the [more general] condition of enablement, as we have already explained. Likewise, that desire (*shahwa*) and conflicting motivations (*al-dawāʿī al-mutaraddida*) must obtain is connected to enablement, because it is not valid that an agent do an act in the way it was imposed except in the presence of both (i.e. desire and conflicting motivations) or one of them. This is because hardship (*mashaqqa*) and burden (*kulfa*) obtain only by way of them, or something that takes their place.[210]

The conflicting motivations to act represent the conflicting goods at stake in a choice. The source of the hardship in this situation is the value foregone,[211] as represented by the

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[208] Vasalou also notes that hardship is central to Muʿtazilite thinking about why praise is deserved. See Vasalou, *Moral Agents*, 79-80.

[209] ʿAbd al-Jabbār, *Mughnī*, 11:393.

[210] Ibid., 16:71.

[211] In another part of the *Mughnī*, ʿAbd al-Jabbār asserts that "the agent has deserved praise for not doing evil if there is motivation to do it (*wa-qad yastaḥiqqu ʾl-madḥa bi-an lā yafʿalu ʾl-qabīḥa idhā kāna la-hu ilā fiʿli-hi dāʿan*)." Ibid., 8:176.

motivations ignored in the choice that was made. Compulsion occurs when either a single motivation for an act exists or when one motivation has overwhelming strength. In the case of compulsion, the foregone good, as represented to the agent in the form of a motivation, is either non-existent or negligible in comparison with the overwhelming motivation. The benefit foregone or the harm avoided is either non-existent or negligible. The agent bears no hardship in committing the compelled act or being compelled to omit an act. Thus, the agent deserves no praise for the compelled performance or omission.

Other than bearing hardship in the performance or omission of an act, ʿAbd al-Jabbār stipulates that only duties fulfilled or supererogations performed by way of an intrinsic value motivation deserve praise. Most compelled acts are compelled by way of utilitarian motivations – either by way of belief or knowledge about a prospective enormous and immediate benefit or harm. ʿAbd al-Jabbār notes:

> the agent deserves praise for an act only when he does it for what he knows of its intrinsic goodness (*li-ḥusni-hi fī ʿaqli-hi*). If, however, he did the act in order to repel an immediate harm or procure an immediate benefit (*li-dafʿi ʾl-maḍarrati aw li-ijtilābi ʾl-manfaʿati ʾl-ḥāḍiratayn*), he does not, thereby deserve praise. What he is compelled to do, he does only for its benefits or harms and therefore does not deserve either praise or reward.[212]

While ʿAbd al-Jabbār considers compulsion as impeding praise because of reasons intrinsic to how praise is deserved, the conceptual issues involved in why compulsion impedes blame normally consequent upon the commission of an evil act are a bit different. All the Muʿtazilites were committed to the position that compulsion impedes the attachment of the moral evaluation of blame from attaching to the agent in case the agent commits an evil act. The

[212] Ibid., 11:393. For a repetition of the same idea in another volume, see ibid., 16:71. See also ibid., 6a:16-17, where he describes the compelled as performing the compelled act "for its benefits and in order to repel harm from himself, and not for its intrinsic goodness. What is not done for this reason does not deserve praise."

difference between the earlier and later scholars centers around why this is so. The founders of the Basran Muʿtazilite tradition, Abū ʿAlī and Abū Hāshim, held that actions produced by agents that are either unaware of their actions or asleep cannot be described as evil.[213] ʿAbd al-Jabbār and Ibn Mattawayh cite this position in their discussion of the effect of compulsion or coercion on the moral evaluation of the act in question, implying that the same logic would commit Abū ʿAlī and Abū Hāshim to the same position with respect to compelled acts. In other words, their line of reasoning seems to be that compulsion impedes the attachment of blame because it changes the moral character of the act committed by the agent from evil. More specifically, in order for any act to be judged as evil there must be a connection to an intention to commit that act. In the case of those asleep, and, in the mind of ʿAbd al-Jabbār and Ibn Mattawayh by implicit extension, to those compelled for example, the agent does not intend to commit the evil act. Therefore, the act that was compelled or committed by an agent that was asleep is not evil. Since the act committed is not evil, the compelled agent thereby does not deserve blame for its performance.

This is not the position held by ʿAbd al-Jabbār and Ibn Mattawayh. For ʿAbd al-Jabbār, an act can count as evil, even if there is no intent to perform it on the part of the agent. What matters is the type of act committed. While compulsion, or the fact of being asleep, may impede attachment of blame to an agent who commits an evil act, it does not transform the moral evaluation of the act itself.[214] A lie perpetrated by one compelled or asleep is still a lie, though

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[213] See ibid., 6a:11, where Abū ʿAlī and Abū Hāshim are described as holding the position that "the act of an unaware agent (*sāhī*) is not [described] as either good or evil." See also ibid., 6b:337, where they apply the same position people who act while asleep.

[214] Thus ʿAbd al-Jabbār assert that an unjust act occurs in exactly the same way from the unaware agent as from one intending it, and thus for this reason it is necessary to judge both acts as evil. See ibid., 6b:338. Later he asserts

the agent is not blameworthy. Likewise, an undeserved act of harming another agent is unjust, and therefore evil, even if committed by one compelled, though the agent, again, is not blameworthy for the act. Ibn Mattawayh adds an interesting argument in favor of this position. For Ibn Mattawayh, the central issue is whether or not the evil actions of agents that do not qualify as moral agents (*mukallaf*) for whatever reason,[215] are to be considered evil. Like the Muʿtazilite scholars after Abū Hāshim, Ibn Mattawayh considered an act as evil regardless of whether or not it was committed by an agent that was not a moral agent (*mukallaf*). Justifying this position against the position of the forefathers of the school, Ibn Mattawayh argues that if the commission of acts by non-moral agents is not considered evil, then it would not be considered good to prevent non-moral agents, such as the insane or animals from committing injustice.[216] Ibn Mattawayh asserts, finally, that the same type of argument applies to those who are compelled, even though they are considered as moral agents. Any evil acts that they commit are evil, even though they are not blameworthy. The fact of compulsion impedes the attachment of blame and therefore punishment for their performance of evil acts.[217]

Unlike the two reasons given for why compulsion should impede the attachment of praise, ʿAbd al-Jabbār does not provide reasons for why an agent does not deserve blame for performing a compelled act other than noting that, "what it is not possible for an agent to escape

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categorically that "it is sufficient that for an act of injustice to be deemed evil, that it be an act of injustice, and its being such is not connected to intention." Ibid., 6b:339.

[215] Examples of non-moral agents (*ghayr mukallaf*) are those unaware (*sāhī*), asleep (*nāʾim*) insane (*majnūn*), infants (*ṭifl*), and animals (*bahīma*). See Ibn Mattawayh, *Majmūʿ*, 2:243. See also footnote 130, above.

[216] Ibid., 2:243.

[217] Ibid.

and guard against – he does not deserve blame for.[218]" ʿAbd al-Jabbār notes that there is a structural difference between deserving praise and deserving blame. An agent deserves praise when he does an act for its intrinsic goodness. He deserves blame if he commits an evil act when it is possible for him agent to avoid it (*idhā amkana ʾl-taḥarruzu min-hu*), even if he does not perform the evil act because of its intrinsic evil.[219] What compulsion does is negate the possibility of avoidance, and thus suspend the attachment of blame for the commission of the evil act.

4.3 What about harm caused to other agents?

That compulsion impedes the moral evaluations of praise, blame, reward and punishment from attaching to the compelled agent says nothing about how to deal with harm caused to oneself or to a third party as a result of the compulsion. Muʿtazilite scholars stipulated that the occurrence of unjustified harm creates an entitlement to restitution for the sufferer from the agent who caused or allowed, especially in the case of God, the harm. ʿAbd al-Jabbār understands harm (*ḍarar*) as consisting of either pain (*alam*) or sorrow (*ghamm*) or both.[220]

Although, at times, the discussions surrounding the character and conditions under which entitlements to restitution arise sound like discussions found in the legal works, the restitution assumed is not financial compensation for bodily harm suffered or property damaged or

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[218] ʿAbd al-Jabbār, *Mughnī*, 14:16. See also ibid., 6a:17.

[219] Ibid. The formulation that blame is deserved for avoidable evil acts is found in multiple places throughout the *Mughnī*. See also, ibid., 6a:28. ʿAbd al-Jabbār gives the following definition of the evil act: "The sum of what we have obtained on the definition of the evil act is this: that if it occurs in any way on the part of one who knows that it will happen in that way from him, and he is free to choose it – he deserves blame for it, if no impediment prevents him." See ibid., 6a:26. This definition of the evil act is also cited by Hourani, though the translation is my own. See Hourani, *Islamic rationalism*, 50. For yet another example of how guarding against or avoiding evil (*taḥarruz*) is connected to deserving or not deserving blame for evil, see ʿAbd al-Jabbār, *Mughnī*, 11:399.

[220] Heemskerk, *Suffering*, 114.

destroyed. Rather, the restitution is mostly otherworldly.[221] The setting for when all unsettled claims for compensation will be administered is the Day of Judgment, and God is the Divine administrator of these claims.[222] The restitution for harm suffered is paid in the currency of benefit (*nafʿ*), the opposite of harm. This benefit can be further broken down into two more fundamental components: pleasure (*malādh*) and joy (*surūr*).[223] Thus, in the hereafter, the restitution for the amount of harm suffered is conveyed in the equivalent amount of benefit.

4.3.1 Compulsion Causes the Compelled Agent to Harm Himself or Someone Else

Regardless of who the compeller is, ʿAbd al-Jabbār and Ibn Mattawayh hold that compulsion creates an entitlement to restitution for harm suffered by the compelled agent either in the process of repelling harm or of enduring it. The consequences of the compelled act, are in a sense, attributed to the compeller.[224] If harm is caused because of the compulsion, the compeller bears the duty for the compensation. The harm suffered because of a compulsion must be unavoidable. Ibn Mattawayh extends the entitlement to restitution even if the object of the threatened harm is not oneself but someone under one's care, such as one's son.[225] ʿAbd al-Jabbār notes that when compulsion results in harm to a third party, the duty of restitution is on

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[221] For the Muʿtazilites, God can be the subject of a duty to restitute for harm suffered by agents. Thus, Heemskerk notes that ʿAbd al-Jabbār held that God could restitute sufferers in this world. See ibid., 180.

[222] For a further examination of this idea, see ibid., 176-79.

[223] Ibid., 114.

[224] See ʿAbd al-Jabbār, *Mughnī*, 8:172. The compelled act has "become as if the act of the compeller, insofar as [the compelled agent] performed what was required because of him (i.e. the compeller)." Later on, in the next passage, when illustrating his larger point of why the compeller is responsible for the harm caused by way of the predator example, he again asserts that the compelled act is judged "as if it was the act of the predator (*ka-anna-hu fiʿlu ʾl-subuʿ*)". See ibid., 8:172.

[225] Ibn Mattawayh, *Majmūʿ*, 3:110.

the compeller and not the physical agent.[226] The value of the restitution is determined by the amount of harm suffered in the act of repelling the greater harm represented in threat causing the compulsion.[227] In other words, was the course of action that the compelled agent was forced to take and through which he suffered harm the only option available to him? If so, then the compelled agent is entitled to restitution from the compeller for the harm suffered. If not, then the compelled agent is judged to have initiated the harm to himself and no entitlement to restitution on the compeller entails. This is also the case if the agent undertakes the harm for a surmised benefit.[228]

Interestingly, ʿAbd al-Jabbār and Ibn Mattawayh conceive of animals as both the possible holders of entitlement to restitution for harm suffered and as agents obliged to provide restitution for harm that they caused by way of compelling a human agent. ʿAbd al-Jabbār writes:

> When the compeller to that act is other than God, the exalted, the restitution is on that [agent]. This is like when the lion advances towards him and he runs headlong into thorns, fleeing from him. The recompense for the harm he [suffered] is on the predator.[229]

The Muʿtazilites consistently asserted that the epistemological status of the belief upon which a motivation was based was irrelevant to the effectiveness of the motivation in impelling that action. In other words, one can either surmise or know that there is a treasure under foot. Either way, one is compelled to dig for the treasure. Knowing in reality or surmising with probability do not affect the fact of being compelled. This is not the case in creating entitlements

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[226] ʿAbd al-Jabbār, *Mughnī*, 13:490.

[227] Ibid.

[228] Ibid.

[229] Ibid. ʿAbd al-Jabbār gives anoother examples of compulsion producing harm to the compelled agent: an agent compelled by way of a brandished sword who harms himself when fleeing. The restitution is on the sword brandisher. See ibid.

to restitution in the case that compulsion results in harm, either to the compelled or to a third party. If one is compelled not by way of knowledge but by way of surmise, then the surmise must be vindicated as true if an entitlement to restitution is to arise. Ibn Mattawayh writes:

> Sometimes one becomes compelled because of a belief based on probability (*ghalaba fī ẓanni-hi*), so in this instance, the compulsion is because of the belief (*li-ajli ʾl-ẓann*), not the object of the belief (*lā lil-maẓnūn*), because sometimes the agent gets the belief right and sometimes wrong (*lammā kāna qad yukhṭiʾu ʾl-ẓanna wa-yuṣīb*). It is necessary if one is compelled by way of belief, that the condition not remain doubtful in establishing [they duty of] restitution upon another.[230]

4.3.2 God's Command or Compulsion Cause Harm

In addition to the possibility that animals and other human beings can be compellers, ʿAbd al-Jabbār and Ibn Mattawayh recognize that God can also be a compeller. One of the ways that God is thought to compel is by way of a state apparatus that applies coercive, harm producing sanctions legitimized by God's command or permission.[231] When any unjustified harm is ultimately the result of God's command or permission the duty of restitution for the harm suffered falls on God. The duty of restitution is enacted in order to protect God from the imputation of any unjust and evil act. God, as the supremely Good and Just agent, in Muʿtazilite theology, must be vinidicated from any suggestion of a lingering evil of unjust act. Ibn Mattawayh writes:

> Know that this chapter is built on the result of harm which is committed by the human agent (*al-ʿibād*), whereas the recompensing for it is transferred to God, insofar as he ordered it by way of an obligation, or recommendation, or compelled one to

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[230] Ibn Mattawayh, *Majmūʿ*, 3:110-11.

[231] For a presentation of ʿAbd al-Jabbār's views on compensation for pain inflicted by God's command or permission, see Heemskerk, *Suffering*, 166-69, though Heemskerk examines only pain caused by God's permitting the slaughtering of cattle, and his permitting the disciplining of children.

> it, or permitted it, or anything else that takes its place. Examples of the obligations are: obliging the *ḥadd* on one who has repented, or disciplining of children, or the many types of medicines/treatments (*ʿilājāt*) which cause pain to a person, and such… Examples of things permitted are like the slaughtering of animals (for consumption) when it is intended to obtain benefit in this life, or when an agent's condition has reached the level of being compelled, either to repel harm or to acquire benefit. In all of these, in order for God's act to be deemed good, there must be recompense. Just as we know that it would not be good for God to delegate the commission of causing pain except in the way that we have mentioned, likewise it is not good for Him to oblige, command, permit, or compel, except that He is required to recompense, which we have clarified. If this is not the case, then his obliging and permitting would be evil.[232]

Not only does restitution absolve God from the imputation of injustice and evil, but Ibn Mattawayh adds that it is consistent with the substantive notions of justice we work with in this world: "if we oblige restitution in this world (*fī ʾl-shāhid*) on one who compels another to perform a cause-producing act [which ultimately results in harm], [it] is likewise [the case with] God, if He compels."[233] Both the attempt to vindicate God from injustice and evil, and the permissibility of reasoning from substantive notions of justice that inform this worldly practice of attributing responsibility for compelled actions stem from the basic Muʿtazilite contention that some core moral notions pervade both this worldly and other-worldly realms and serve as the criterion for *understanding* the Supremely Good and Just Divine agent and *evaluating* human and animal agents.

To say that God is obliged to restitute for harm committed in the way of enforcing His command though is not to say that either mistaken or willfully deceitful application of His command creates the same obligation. For example, in the case of a legitimate ruler's (*imām*)

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[232] Ibn Mattawayh, *Majmūʿ*, 3:96.

[233] Ibid., 3:97.3-4.

mistaken verdict sentencing the accused to a corporal punishment, the right to restitution for the accused who has suffered the harm is on the ruler and not God.[234] This does not apply to the person in charge of executing the corporal punishments. ʿAbd al-Jabbār, notes that the punisher, who punishes by way of a command from the ruler, is not held responsible for restitution for the harm, even if the ruler's command is illegitimate. The punisher's actions occur by way of blind obedience (*taʿabbud*) to the command of the ruler, and are thus protected from the duty to restitute. But, if witnesses testify falsely in a case that leads to a verdict against the accused, it is the witnesses and not God who are held responsible for the harm caused.[235] Ibn Mattawayh extends ʿAbd al-Jabbār's corporal sanctions example to cases of involving property. Thus witnesses who engage in false testimony regarding property resulting in an unjust award of property are held responsible for the restitution of the harm of depriving the rightful owner of his property,[236] unless the awardee knowingly takes property unjustly, then he is responsible for the restitution.[237]

So far these examples revolve around unjustified harm resulting from the operation of a judicial system with the backing of a coercive state apparatus. Importantly the legitimacy and authority of the judicial system is based God's command. This creates the theological problem of how to deal with unjustified harm being attributed to God. The examples show two prominent Muʿtazilite scholars attempts to foreclose imputing injustice to God by creating a duty to restitute

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[234] ʿAbd al-Jabbār, *Mughnī*, 13:493.8-10.

[235] Ibid., 13:493.

[236] Ibn Mattawayh, *Majmūʿ*, 3:111.

[237] Ibid.

for unjustified harm and by clarifying exactly when and under what conditions such a duty arises for God as opposed to the human agents that administer justice.

Ibn Mattawayh clarifies the nature of the possible responsibility to restitute between God and agents ostensibly acting because of God's command in response to an objection:

> [Anonymous interlocutor:] Are you saying that God and not human agents is responsible for the restitution for any harm that He requires?
>
> [Ibn Mattawayh's Response:] This is the case if He is alone. If someone else is there with him, then the condition regarding it differs. An explanation of this: God requires the judge to handover property to Zayd based on legitimate testimony of two persons, even if the one to receive the property does not know that he does not deserve it, or is a minor, or an insane person, or something else that is like this. The recompense for this is on God, because of the act of obliging. This is not the case if the one who takes it, knows [it does not rightfully belong to him], and thus thereby takes unjustly. Upon him is the recompense then affirmed, and his way out is to return it to its prior owner/keeper.[238]

Ibn Mattawayh extends his restitution analysis to situations involving the coercive state apparatus outside the judicial system. In what we may take as a somewhat commonplace occurrence in the political culture of Ibn Mattawayh's day, he considers whether a duty of restitution arises on one who slanders another to an unjust ruler by way intimating that the slandered has been unjust to the ruler. Ibn Mattawayh asserts that indeed the slanderer owes restitution to the slandered for any anxiety (*ghamm*) that he suffered in the anticipation of the possible retribution from the ruler. But, the slanderer is not responsible for the harm initiated by the unjust ruler himself. Ibn Mattawayh reasons that the ruler is not *compelled* or *forced* by the slanderer. The slanderer merely incites the ruler to injustice. Moreover, God has established the evil of the act in the mind of the ruler, which conflicts with the motivation to evil in the

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[238] Ibid., 3:97.

slanderer's incitement to harm. Where there is a conflict of motivations – in this case the motivation to resist doing injustice, an intrinsic value motivation against the motivation to do injustice – there is a free choice. Where there is free choice there is responsibility. Thus, the ruler bears the obligation for restitution if he decides to harm the slandered.[239] Here, as in the examples dealing with the judicial system, Ibn Mattawayh understands, in a sense, the inherent coercive nature of the state apparatus, and the fact that malicious individuals can instrumentalize this coercive apparatus for their ends.

5 Coercion

Thus far we have dealt with the Muʿtazilite treatment of compulsion (*iljāʾ*), and have yet to look at how Muʿtazilite theologians treat coercion. This raises the question of the relationship between these two concepts in Muʿtazilite thought. We shall defer this question for a moment and first look at how ʿAbd al-Jabbār and Mānkdīm explicitly treat coercion.

There are two cases where Muʿtazilite authors, specifically Mānkdīm and ʿAbd al-Jabbār, devote explicit attention to coercion (*ikrāh*). In the context of discussing the various types of evil deeds (minor vs. major), Mānkdīm notes that evil acts can also be divided according to those whose status is affected by coercion and those that are not.[240] For example, professing words of disbelief is an evil act in the absence of coercion. Yet, when coerced to utter words of disbelief, the action becomes permitted, as long as the agent utters the words of disbelief without believing them. For example, the coercer could intend the utterance not as a report about what he beliefs but as a report about what Christians believe.[241] Examples of evil acts that are unaffected by the

[239] For this see ibid., 3:112-13.

[240] Mānkdīm, *Sharḥ*, 222.

[241] Ibid., 222.

presence of coercion are those that cause harm to another person, such as murder. The presence of coercion does not change what the coerced agent is obliged to do. He must sacrifice his own life rather than engage in the evil act of killing another human being.[242] Mānkdīm recommends that the coerced agent think to himself that "God's punishment is greater than the punishment of this coercer, and that if I perform what I am being coerced with, I will deserve a punishment even greater than that.[243]" Echoing the types of analysis found in the legal discourse, in both these examples Mānkdīm's focus is on the moral requirements of the coerced agent given the fact of coercion.

5.1 Coercion and Lying

ʿAbd al-Jabbār explicitly addresses the issue of coercion in the volume of the Mughnī devoted to explicating the concept of volition (volume 6b, entitled *irāda*). ʿAbd al-Jabbār devotes part of the volume to rebutting objections to some of his main ideas. In one section anonymous objectors ask ʿAbd al-Jabbār to reconcile the import of Qurʾānic verse 16:106 with the Muʿtazilite doctrinal commitment to the intrinsic evil of lying.[244] As we saw in the first chapter, 16:106 asserts: "Anyone who disbelieves in God after his having belief – except one who is forced, while his heart is tranquil with faith – but anyone who has [willingly] opened his breast to disbelief, upon them is God's anger and for them is a tremendous punishment.[245]" One possible way to interpret the verse would be to say that it permits one to lie about one's theological commitments if coerced. This presents a theological problem for the Muʿtazilites,

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[242] Ibid., 222.

[243] Ibid., 222.

[244] ʿAbd al-Jabbār, *Mughnī*, 6b:336.

[245] Qurʾān 16:106.

who as noted, held that lying is an intrinsic evil.[246] That it is evil is known by mature human beings even without revelation. Given the fact that it is an intrinsic evil, it is something that God, the Supremely Good and Just agent, would never do, nor permit other agents to do. Moreover, it is the very fact that God does not lie that guarantees revelation. We are assured that God would never lie when He communicates with us.[247] For the Muʿtazilites, the project of revelation and the Sharīʿa would never get off the ground without the operation of these principles.

Given the absolute prohibition against lying in Muʿtazilite thought, ʿAbd al-Jabbār interprets coercion, in the Qurʾānic verse, as permitting an utterance that resembles the profession of disbelief without being a lie. Rather the act permitted is:

> an allusion or an act of repelling harm without intending [the utterance] as a declarative (*khabar*), or [intending it as] a declarative in the sense of relating something from someone else (*ʿalā wajhi ʾl-ḥikāya*) and thus something true. These would be deemed evil from him in the absence of dissimulation (*taqiyya*) or fear (*khawf*), and if uttered as truth (*ṣidq*), because there is the deceit (*īhām*) of disbelief in it, and because it is a corruption of religion (*fasādan fī ʾl-dīn*), but in the presence of fear, this judgment ceases.[248]

Interpreting coercion as permitting an utterance that conveys the deceit of disbelief without technically qualifying as a lie was not the only position staked out in the history of the Muʿtazilite tradition up to the time of ʿAbd al-Jabbār. In fact, ʿAbd al-Jabbār himself reports the contrasting position of a much earlier Muʿtazilite master, Abu ʾl-Hudhayl al-ʿAllāf (d. 226/840-

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[246] For an examination of the Muʿtazilite position on lying see the excellent article by Sophia Vasalou, "Equal before the Law: the Evilness of Human and Divine Lies 'Abd al-Gabbār's Rational Ethics," *Arabic Sciences and Philosophy* 13, no. 2 (2003). See also Hourani, *Islamic rationalism*, 76-81; Ess, *Theologie*, .

[247] Vasalou, "Equal," 259-60, 68.

[248] ʿAbd al-Jabbār, *Mughnī*, 6b:336.

1).[249] ʿAbd al-Jabbār sees his task as both refuting Abu ʾl-Hudhayl's position while at the same time showing how it is not identical to the position held by one of the Muʿtazilites' main discursive opponents in ʿAbd al-Jabbār's time – the Ashʿarites – or as he pejoratively refers to them, the *mujbira*, the determinists. Abu ʾl-Hudhayl held that uttering disbelief in the presence of coercion is permitted.[250] He reasons that "in the presence of coercion (*ikrāh*), it is as if [the coerced agent's] action was that of another, and for this reason he does not deserve blame for it, and therefore it is valid that it is permitted for him."[251] ʿAbd al-Jabbār's argument against Abu ʾl-Hudhayl's position boils down to asserting again that lying is an intrinsic evil that can never be permitted and pointing out the slippery slope implications of permitting the evil of lying in the presence of fear:

> If it is possible that fear can require deeming good, an action which occurs in a manner that is evil (*al-fīʿlu ʾl-wāqiʿu ʿalā wajhin yaqbaḥ*), then we have rendered possible (*la-nujawwizanna*) the deeming good of every evil. And if it is possible to deem this as good, then why not see as possible the deeming of good of God's doing of an evil act to [fulfill] a need of a human being? Because what is deemed good for them to do in order to [fulfill] a need is deemed good for God to do to [fulfill] their need? [Accepting] this leads to accepting [that] God may command evil and utter lies in His declarative speech (*ikhbāri-hi*). This has proved that what we have said is correct regarding this issue.[252]

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[249] For summary encyclopedia entries on Abū ʾl-Hudhayl, see *Encyclopædia Iranica*, art. 'Abu 'l-Hodahyl al-ʿAllāf' (Josef van Ess); *Encyclopedia of Islam, Second Edition*, art. 'Abu 'l- Hudhayl al- ʿAllāf' (H.S. Nyberg). For the most exhaustive examination of Abū ʾl-Hudhayl, see Ess, *Theologie*, 3:209-96.

[250] Specifically, ʿAbd al-Jabbār uses the term deemed good. But the category of permitted acts is one species of the more general genera of good acts. The other two species of good acts for the Muʿtazilites, are obligations, and supererogations.

[251] ʿAbd al-Jabbār, *Mughnī*, 6b:337. As we shall see important elements of this argument are found in legal discussions of the classical period, most notably in the Ḥanafī discourse on coercion.

[252] Ibid., 6b:338.

ʿAbd al-Jabbār insists on a certain amount of deontological rigidity to resist the consequentialist implications of allowing coercion to render what he regards as a fundamental moral truth, the intrinsic evil of lying, as a permitted, and thus good act.

5.2 Compulsion and Coercion

It should be apparent by now that, for the Muʿtazila, compulsion (*iljāʾ*) refers to a wide variety of phenomena denoting the shared feature of being forced to perform or omit a given action. Given the fact that the sources of the compulsion are various, it is a valid question to consider whether what can broadly be said about being compelled, in the variety of ways the Muʿtazilites considered it, can apply and to what extent to the more specific concept of coercion (*ikrāh*), where the source of the compulsion is the deliberate act of another human agent used to achieve the end of that agent. As many legal scholars formulated, in a case of coercion, the coerced becomes merely a tool in the hand of the coercer that the coercer uses to accomplish his own end. Is coercion simply a species of compulsion? Or is coercion something different from compulsion?

Three features of Muʿtazilite thinking militate against a simple conflation of coercion with compulsion. First, none of the formal and informal definitions of compulsion surveyed thus far include any reference to one agent's deliberate use of a threat, fear, or force to compel another agent to act a certain way. At the level of definition, if anything, the focus of the various thinkers' analysis is either the psychological mechanism that causes the coercion, most notably by way of an overwhelming motivation, or reasoning from the absence of moral evaluations of compelled action. The agent, if any, causing the compulsion is not addressed as intrinsic to what makes compulsion what it is. Second, the vast majority of examples involve compulsion either by way of animal agents who do not seemingly intentionally compel action (i.e. the predator

examples), or by way of circumstances that an agent finds himself in (e.g. starvation). Even examples of compulsion where the source of the compulsion is another human agent's action, such as being compelled to flee by way of a brandished sword or knife, evince no indication that the sword brandisher, for example, deliberately flashed his sword, much less in order to compel another person to achieve his own end. Third, Mānkdīm's explicit comments on coercion seem, at the outset, to indicate tension with Muʿtazilite treatments of compulsion. At a very basic level, compulsion has the effect of cancelling blame for the commission of an evil act. As a general principle, when a compelled act causes harm to a third party, compulsion has the effect of transferring the duty of restitution for the harm done to the compeller. Yet, Mānkdīm notes that coercion does not *necessarily* change the moral categorization of an act. In some cases it can – uttering words of disbelief – an evil act can be rendered permitted, with the caveat that they be uttered without internally assenting to them. Yet in some cases, most notably those involving harm to others, coercion does not change the moral categorization of the act. Murder is still prohibited, even if one's own life is threatened, to the point that Mānkdīm encourages the would-be coerced to remember God's punishment for committing such a crime as a way to steel one's resolve and suffer death instead. This raises the question: can one be compelled to murder such that the moral evaluation of blame fails to attach to the compelled, and the obligation for the restitution of the harm of killing transfers to the compeller? The thrust of ʿAbd al-Jabbār and Ibn Mattawayh's teaching on compulsion and restitution would seem to point in this direction.

It is important to remember that, according to both ʿAbd al-Jabbār and Ibn Mattawayh, compulsion does not transform an evil act into something good or even something permitted. It merely suspends the judgment that the one compelled to commit an evil act deserves blame for that act. The act committed is still evil. The suspension of blame is justified on the basis that it

was not possible (*lā yumkin*), given the compulsion, to observe the normal duty to avoid and guard against (*taḥarruz*) committing evil. The overwhelming and immediate fear of the loss of one's life created a preponderantly strong motivation, and thus compulsion to kill. One would have to assume that the compelled act of killing is semi-instinctual. If it is semi-instinctual and automatic, then, does it make much sense to recommend the would-be coerced to remember God's severe and lasting punishment if one did kill – in effect to introduce a counter motivation and thus dilute the strength of the motivation produced by the instinct of self-preservation? Does the recommendation to fortify oneself to not kill qualify as an instance of performing the duty to guard oneself against evil? If one fails to introduce the counter-motivation, does one then deserve blame for failure to perform that duty, even if one does not deserve blame for killing another human being?

The tension manifest in Muʿtazilite thought about compulsion cancelling blame and even transferring responsibility for restitution and a resistance to conceiving of coercion as permitting harm against an innocent third party, especially if the harm considered is murder or rape, mirrors the tension found in Islamic intellectual culture at large. On the one hand, at a basic moral level, the overwhelming majority of legal scholars consistently asserted that coercion can never permit murder. Given the ubiquity of disagreement on legal issues, this in itself is a significant fact. Murder would still be a sin even if the coercer directs a credible threat against one's own life or the life of a loved one. It is, in fact, meritorious for the would-be coerced to patiently bear the trial of being killed rather than kill, rape, or substantially harm another's person's physical inviolability. Still, whether or not the coerced killer is legally liable for the criminal sanction or blood-wit provoked as much disagreement as the unanimity on the sinfulness of coerced killing.

Regardless of the tensions inherent in the Muʿtazilite motivational theory of compulsion, there does seem to be a connection between compulsion and coercion, even if Muʿtazilite authors themselves, in the extant writings surveyed here, did not make that connection. It is possible to understand a threat against one's life or limb as capable of introducing an overwhelmingly strong motivation, rooted in the instinct of self-preservation, into the agent. Legal writers of the same period all recognized a threat against life or limb as potentially coercive. In this state, according to Muʿtazilite teaching, the compelled agent is not liable for either praise or blame for any actions performed.

The legacy of Muʿtazilite teaching on compulsion is wide-reaching. Many of the ideas that come to constitute central aspects of the legal discourse on coercion find their most systematic expression in Muʿtazilite theology. Abū Hāshim's two-harms definition of compulsion, the ideas that coercion does not strip choice nor incapacitate an agent are widespread throughout the legal literature. Interestingly, as we will see, Ashʿarite authors misinterpret, either hastily or willfully, Muʿtazilite teaching on compulsion as effectively their teaching on coercion, indicating that even their contemporaries expected some conceptual overlap.

6 Conclusion

To a large extent the Muʿtazilite discourse on compulsion is framed within more fundamental substantive commitments to a specific conception of the origins of a moral order and its relationship to different types of agents. The moral order is expressed most perfectly in the actions of the Divine agent, and serves as the criterion for evaluating the conduct of all other agents. Human beings have access to the moral order independent of revelation. More concretely, human beings who have achieved intellectual maturity, have access to specific moral

truths, such as in the goodness of justice, and the evil of injustice, or that thanking the benefactor is good, and lying is evil. These fundamental moral truths not only provide human agents with a rudimentary, pre-revelational method of assessing human action, but also provide knowledge of the nature of God's moral being. God's actions, in fact, are the perfect expression of this moral order and the more specific substantive moral truths pre-revelationally accessible to human beings. It is in this larger framework that Muʿtazilite theologians systematically elaborate an account of the conditions necessary for an imposition of moral agency (*taklīf*) by God on human beings to be just and good. One such condition, as we have seen, is the absence of compulsion.

Chapter 3: Coercion in Ashʿarite Theology

1 Introduction

The Ashʿarites interpreted the Muʿtazilite version of God's moral perfection as a limitation on God's freedom. For the Ashʿarites, a moral order through legislative enactment. In fact, God creates the moral order by way of His legislative initiative. God is not bound by a morality external to Him. He is not subject to moral evaluation. In Qurʾānic parlance, "He cannot be questioned for His acts, but they will be questioned (for theirs).[253]" Thus, human beings have epistemological access to this moral order only through revelation. A second way that Ashʿarite thinking departed from Muʿtazilism is the insistence that God is truly the creator of *all* acts. The Muʿtazilites held that human beings are the creators of their volitional acts. The Muʿtazilites thought this was the only way to justify moral responsibility for human action and protect God's moral perfection from the imputation of evil human acts. Ashʿarism rejected this picture of human agency and considered it a restriction of God's creative power. God in Ashʿarite theology is the creator of all things and events, including volitional human acts.

Given these two core theological ideas, Ashʿarite thinking about the conditions for moral agency to obtain took on a different flavor than in Muʿtazilism. Unlike their Muʿtazilite counterparts, Ashʿarite scholars could not rely on substantive notions of what is just and unjust for God to do, in order to define the type of agent that can properly be the object of God's moral impositions. The history of Ashʿarite thinking on the effect of coercion on moral agency is in part, the history of attempting to find a basis for moral agency that preserved their fundamental

[253] Qurʾān 21:23.

theological commitment to God's creative agency and cohered with their Divine command moral epistemology.

2 Physical Agency in Ashʿarism: The Doctrines of Acquisition (*Kasb*) and Simultaneous Capacity (*Istiṭāʿa*)

2.1 Abū ʾl-Ḥasan al-Ashʿarī (d. 323/935)

Abū ʾl-Ḥasan al-Ashʿarī is the founder of the one of the main Sunnī theological traditions. Curiously, he began his scholarly career as a Muʿtazilite, the favored pupil of the outstanding Muʿtazilite master, Abū ʿAlī Moḥammad al-Jubbāʾī (d. 303/915-16). He would not end his career as a Muʿtazilite. In middle age, he abandoned the teachings of the Muʿtazilites in favor of the theological beliefs of the more conservative Sunnī traditionalists.[254]

One of the main poles of disagreement amongst Islamicists is the nature and extent of Ashʿarī's departure from the founder of Basran Muʿtazilism, Abū ʿAlī al-Jubbāʾī's teaching. Makdisi interprets Ashʿarī's conversion from Muʿtazilism as an *in toto* embrace of a Ḥanbalite Ahl al-Ḥadīth traditionalist position.[255] Frank interprets Ashʿarī's departure as radical modification of key tenets of Muʿtazilite theology without amounting to a repudiation of the methods of argument and key shared elements of the physical theory uniting those that engaged in speculative theology (*kalām*).[256] My own research confirms Frank's interpretation.

Though hundreds of works have been attributed to Ashʿarī in Islamic biographical and bibliographical literature, only six are extant. Of the six, three works, namely, *al-Lumaʿ*, *al-*

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[254] *Encyclopædia Iranica*, art. 'Ašʿarī' (C.E. Bosworth).

[255] George Makdisi, "Ash'arī and the Ash'arites in Islamic Religious History II," *Studia Islamica* 18(1963): 41-42.

[256] For an detailed discussion of the precise nature of Ashʿarī's departure from Muʿtazilism and his relationship with Ḥanbalism, see Richard M. Frank, "Elements in the development of the teaching of al-Ashʿarī," in *Early Islamic theology: the Muʿtazilites and al-Ashʿarī. Texts and studies on the development and history of Kalām*, ed. Dimitri Gutas (Early Islamic theology: the Muʿtazilites and al-Ashʿarī. Texts and studies on the development and history of Kalām, 2007).

Ibāna ʿan uṣūl al-diyāna, and *Risāla ilā ahl al-thagr bi-Bāb al-Abwāb* provide a snapshot of Ashʿarī's theological system.[257] I will rely primarily on these three works to explicate Ashʿarī's ideas on physical and moral agency. I will also rely on a work by a fourth/tenth century Ashʿarite scholar, Ibn Fūrak (330-406/941-1015),[258] *Maqālāt al-Shaykh Abī al-Ḥasan al-Ashʿarī, imam Ahl al-Sunna*. Writing just two generations after Ashʿarī, it seems that many contradictory opinions had been attributed to Ashʿarī on theological issues. He, therefore, took it upon himself to properly identify and clarify Ashʿarī's theological positions.[259] Ostensibly, Ibn Fūrak had access to a much greater number of Ashʿarī's works than us.

Ashʿarī shares two features with Muʿtazilite thinking on the issue of human agency. First, he conceptualizes basic human physical agency (*qudra*) in atomistic terms. Second, despite his disagreement with the Muʿtazilites on the nature of God's omnipotence and moral independence, he does think that certain conditions need to obtain before moral duties (*takālīf*) can validly be imposed on human beings. The Muʿtazilites explicitly stipulated the absence of compulsion as a condition for God's imposition of moral and religious duties. On this specific point, we have no text from Ashʿarī himself. In fact, given the fact that no later authors explicitly attribute a position to Ashʿarī specifically, it is plausible that Ashʿarī never addressed the issue. Later Ashʿarite authors addressed the issue by extrapolating from fundamental principles that they perceived as constituting Ashʿarism. Three towering thinkers of the fifth/eleventh century – Bāqillānī, Juwaynī, and Ghazālī all rejected the position that coercion

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[257] For a brief description of Ashʿarī's oeuvre, see *Encyclopedia of Religion, Second Edition*, art. 'al-Ashʿarī ' (idem.).

[258] On Ibn Fūrak, see *Encyclopedia of Islam, Second Edition*, art. 'Ibn Fūrak, Abū Bakr Muḥammad b. al-Ḥasan b. Fūrak al-Anṣārī al-Iṣbahānī' (W. Montgomery Watt).

[259] Ibn Fūrak, *Maqālāt al-shaykh Abī al-Ḥasan al-Ashʿarī, imām ahl al-sunna*, ed. Aḥmad ʿAbd al-Raḥīm Sāyiḥ, (Cairo: Maktabat al-Thaqāfa al-Dīnīyya, 2005), 3.

invalidates God's imposition of duties. But, before analyzing their respective justifications for this position in detail, it behooves us to examine the basic principles that constituted the Ashʿarite approach to human agency.

Ashʿarī notes that in order for ag agent to be eligible for moral agency, the agent must possess the basic capacity (*qudra*) for bodily action and knowledge (*ʿilm*). Like the Muʿtazilites before him, Ashʿarī notes that the basic capacity for bodily action (*qudra*) is the result of an adequate number of quanta of capacity (*qudar*) distributed to the body parts necessary to undertake, or put in Ashʿarī's own terms, *acquire* the action under question. The same principle applies to knowledge. Both knowledge and capacity are discrete, divisible components that agents can possess more or less of. If the level of the *qudar* in the body parts through which the imposed action should be performed is inadequate, then God's impositions cannot obtain, because the agent does not possess the fundamental physical ability to perform the act.[260]

Ashʿarī elaborates the knowledge condition for moral agency specifically in reference to the pre-revelational duty to know through reason.[261] The agent must possess the requisite amount of knowledge (*ʿulūm*) to perform the duty to reason (*istidlāl*) to God's existence and nature. If the agent does not possess the requisite amount of knowledge, the duty to reason about God's existence and nature fails to arise. Ashʿarī sums up the discussion by asserting:

> the imposition of duties on them is only valid with the proper functioning of their intelligences and body parts (*ṣiḥḥat ʿuqūli-him wa abdāni-him*) necessary for the performance of the imposed actions.[262]

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[260] Abū al-Ḥasan ʿAlī b. Ismāʿīl al-Ashʿarī, "Risāla al-Ashʿarī," *Darülfünun İlâhiyat Fakültesi mecmuası* (1928): 102.

[261] See for instance ibid., 102, where Ashʿarī discusses the knowledge and capacity conditions necessary for God to validly impose the duty to believe in Him.

[262] Ibid.

The use of an atomistic vocabulary to understand human action at a basic level and the idea that the agent must possess some features before God can impose commandments are continuous with Muʿtazilite thinking on moral agency.

Ashʿarī's departure from Muʿtazilism was motivated by a fundamental desire to remedy Muʿtazilism's insufficient emphasis on and deference to a core value of what he took to be the correct conception of God: that He is the ***sole*** Creative Power in the cosmos. At the level of theological doctrinal, Ashʿarī's difference from the Muʿtazilites consists of his formulation of two ideas to conceptualize human physical agency: the doctrine of acquisition,[263] and the doctrine of God's creation of the capacity to act *simultaneously* with the act itself. The former contrasts explicitly with the Muʿtazilite contention that man, and not God, is the creator of his volitional action.[264] The latter, contrasts with the Muʿtazilite thesis that the capacity to perform the act must *precede* the performance itself.[265]

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[263] Watt, based on a reading mostly of Ashʿarī's heresiological work, *al-Maqālāt al-Islāmiyyīn*, judges the 2nd/8th century Kufan theologian Ḍirār b. ʿAmr as the originator of the doctrine of acquisition. Watt notes that the doctrine of acquisition was developed further by a section of the early Muʿtazilites, and thus the doctrine already had a substantial, though conflicted history before Ashʿarī's own deployment of the concept. See W. Montgomery Watt, "The origin of the Islamic doctrine of acquisition," *Journal of the Royal Asiatic Society of Great Britain and Ireland*, no. 2 (1943). Harry Wolfson identifies Najjār's doctrinal version of acquisition in the formative period as the closest to Ashʿarī's interpretation, see Harry Austryn Wolfson, *The philosophy of the Kalam*, (Cambridge, Mass.: Harvard University Press, 1976), 686-88. Gimaret identifies Ḍirār b. ʿAmr and al-Najjār as the originators of the doctrine of acquisition. Gimaret asserts that the doctrine was elaborated in opposition to Jahm b. Safwān's thorough determinism in order to assert the way in which a human being is an agent of an act. See Gimaret, *Théories*, 68-7. For the most comprehensive account of the development of the doctrine of acquisition in the formative period see M. Schwarz, "'Acquisition' (kasb) in early kalam," in *Islamic philosophy and the classical tradition. Essays presented by his friends and pupils to Richard Walzer on his seventieth birthday*, ed. S.M. Stern, Albert Hourani, and Vivian Brown (Columbia, S.C.: University of South Carolina Press, 1973), 355-73.

[264] A review of the secondary literature on Ashʿarī's theology of human action yields three arguments for his position:

1. All created things need a creator who has full knowledge of the object created. The human being can be mistaken about the acts he undertakes, thus he cannot be their true creator. It is not possible that acts can exist without a creator; therefore God is the Creator of volitional human action. See Hammouda Ghoraba, "Al-Ashʿari's theory of acquisition (al-Kasb)," *Islamic Quarterly* 2(1955): 3; Gimaret, *Théories*, 80-81; Mohammed Yusoff Hussain, "Al-Ashʿarī's doctrine of human actions," *Islamic Quarterly* 36, no. 2 (1992): 78-79.

To deny that the human being's volitional act is his creation, in early Islamic theological debates, is to open oneself up to the accusation of conceiving of the human being as merely a puppet in God's hands. This was essentially the strong determinist position in early Islamic theological history. In fact, later Ashʿarites self-consciously positioned themselves as the *via media* between an unreasonable Muʿtazilite free will position, and a stringent determinist (*jabrī*) position.[266]

The Muʿtazilites had, in part, subscribed to the idea that a human being is truly the creator of his volitional action in order to preserve Divine/moral and human/legal accountability. If a human being is truly the creator of his volitional acts, then it follows that he can be held morally and legally responsible for those acts. If this is granted, the question arises about whether or not Ashʿarī's insistence on God's sole creative agency destroys the distinction between volitional and non-volitional acts and thereby undermines the possibility of Divine and human accountability for action?

At a basic level the doctrine of acquisition is a theological description of human action in relation to God's all-encompassing creative agency. For Ashʿarī 'acquisition' denotes all volitional human acts. He argues for the distinction between volitional and non-volitional action

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2. All the arguments that apply to God as the creator of necessary, non-volitional human action (e.g. shivering from a fever) apply equally to volitional human action. Thus God is the creator of volitional human action. See ibid., 81-82

3. If creators other than God are admitted, then the proof for God as the creator of the cosmos is weakened, as one could never be sure that the power to create was not delegated to some other creature. For this see Schwarz, "'Acquisition' (kasb) in early kalam," 374.

[265] Moreover, according to the Muʿtazilites, the scope of the capacity must not only include the specific power to perform the act for which it is a capacity, but also the capacity to refrain from performing that act. It is easy to see how Muʿtazilite physical theory concerning human action is oriented towards preserving room for a substantial notion of volitional human action and God's justice.

[266] Gimaret, *Théories*, 61.

by noting that we know by an immediate introspective knowledge that there is a difference between movement that occurs by way of "shaking from palsy or shivering from fever"[267] and the movement of "a man who goes and comes, and approaches and recedes."[268] We know of the distinction between volitional and non-volitional acts by way of introspection into our own internal states when experiencing these two different types of acts and by observing others.[269] Moreover, this knowledge impinges on the human subject. It is immediate (*ʿilm iḍṭirār*) and does not admit doubt (*lā yajūz maʿa-hu shakk*).[270] While our experience, both introspective and observational justifies a distinction between volitional and non-volitional acts, it does not tell us, at the ontological level, what differentiates the volitional act, and thus acquisition, from the non-volitional.[271]

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[267] For the McCarthy's translation, see Abū al-Ḥasan ʿAlī b. Ismāʿīl al-Ashʿarī, *The theology of al-Ashʿarī: the Arabic texts of al-Ashʿarī's Kitāb al-luma' and Risālat istiḥsān al-khawḍ fī 'ilm al-kalām : with briefly annotated translations, and appendices containing material pertinent to the study of al-Ashʿarī* trans. Richard Joseph McCarthy, (Beirut: Imprimerie Catholique, 1953), 59, §92. For the Arabic, see ibid., 41, §92.

[268] For the McCarthy's translation, see ibid., 59, §92. For the Arabic, see ibid., 41, §92.

[269] Some modern commentators have specifically emphasized the fact that Ashʿarī relies on "consciousness" of the experiencing agent of the distinction between volitional and non-volitional acts to substantiate the distinction. See for instance, ibid., 59, footnote 16 and Binyamin Abrahamov, "A re-examination of Al-Ashʿarī's theory of kasb according to Kitāb al-lumaʿ," *Journal of the Royal Asiatic Society* 2, no. 2 (1989): 211. While it is true, that Ashʿarī does refer to introspection as yielding certain knowledge about the distinction, he couples introspection with what one observes in others as also producing certain knowledge. Moreover, for both Muʿtazilites and Ashʿarites, the fact that knowledge is gained by introspection does not by itself affect its epistemological status. In other words immediate (*ḍarūrī*) knowledge could be the result of introspection or other epistemological operations, such as information obtained through the senses. Muʿtazilite scholars often argued based on premises built on immediate knowledge that is the result of introspection, as did Ashʿarite scholars, without paying any special attention to the fact that it was obtained by introspection. I say this merely to point out that the significance of Ashʿarī's invocation of the consciousness of the experiencing agent as an aspect of his epistemology does not necessarily map on to modern philosophical distinctions between subjective and objective knowledge.

[270] For the Arabic, see al-Ashʿarī, *Theology*, 41, §92.

[271] For a substantially similar discussion of Ashʿarī's epistemological justification for the distinction between volitional and non-volitional action see Schwarz, "'Acquisition' (kasb) in early kalam," 374; Wolfson, *Philosophy*, 685;Gimaret, *Théories*, 82; Abrahamov, "Re-examination," 211; Wolfson notes that the Muʿtazilites, starting with Wāṣil b. ʿAṭāʾ, as quoted in Shahrastānī's heresiographical work, *al-Milal*, used this same argument for establishing the reality of free choice. For this see Wolfson, *Philosophy*, 617-18.

Ashʿarī defines the act denoted as an acquisition as that which "occurs from the acquirer by way of a created power (*al-shayʿ waqaʿa min ʾl-muktasibi la-hu bi-quwwatin muḥdathat*)."[272] At the ontological level what separates the volitional from non-volitional acts is not the agent's experience or observation of these acts as categorically different, but rather the fact that they occur by way of a created power in the human agent. Acquisitions, like non-volitional acts, are created by God, but in contrast to non-volitional acts by way of a simultaneous, yet intermediate capacity (*qudra*). The act that occurs in this way is described as acquired by the human agent. This contrasts with the acts that occur by necessity. God creates these directly in the body of the agent without a mediating capability created in the agent.

The volitional act accepts two ontological descriptions. It is, on the one hand created by God, as it is impossible that the term creator can be applied non-metaphorically to anything besides God in the cosmos. Ibn Fūrak notes that Ashʿarī held that the term 'agent (*fāʿil*)' applies non-metaphorically only to God, and that additionally the variety of verbal nouns denoting creation apply non-metaphorically only to God.[273] The human being who performs the act is not its creator or truly its agent. He is its acquirer.[274] Therefore God cannot be described as the act's acquirer. The two labels, in Ashʿarī's theology are mutually exclusive. The volitional act, on the other hand, is capable of receiving two descriptions. It is God's creation and the human agent's

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[272] For the Arabic see al-Ashʿarī, *Theology*, 42, §92, for McCarthy's translation, see ibid., 60, §92. Gimaret also cites a definition proffered by Ashʿarī in his *Maqālāt*, see Gimaret, *Théories*, 83. Ibn Fūrak (d. 406/1015) attributes essentially the same definition of acquisition (kasb) to Ashʿarī: "what occurs by way of a created power (*mā waqaʿa bi-qudratin muḥdathatin*)." See his Ibn Fūrak, *Maqālāt*, 93. He also notes that Ashʿarī *frequently* sought to distinguish acquisitions from non-acquisitions, indicating that it was a primary conceptual concern of Ashʿarī's. See ibid., 101.

[273] Ibid., 93.

[274] Ibid., 93. Ibn Fūrak describes Ashʿarī as "consistently describing the temporally originated being (*muḥdath*) as being truly the acquirer (*wa kāna yaṣifu ʾl-muḥdatha alā ʾl-ḥaqīqati anna-hu muktasibun*)."

acquisition. Ibn Fūrak notes that Ashʿarī expresses this same idea using the following formulation: the act occurs by way of a created capacity as an acquisition, and by way of an eternal capacity as a creation (*inna-hu yaqaʿa bi ʾl-qudrati ʾl-muḥdathati kasban, wa yaqaʿa bi ʾl-qudrati ʾl-qadīmati khalqan*).[275] Ashʿarī's doctrine is in some ways the inverse of the conception of human agency in Muʿtazilism. In Muʿtazilite doctrine, the term creator can be applied non-metaphorically to either God or the human agent. The occurrence that is the act is merely someone's creation and there was no need to have a perspectival description of the volitional act. As we shall see, Ashʿarī's need to describe the act as an acquisition points to the importance of having the ability to denote the scope of human action that can properly be the object of God's moral impositions. On the one hand, God's monopoly on creative agency pulled Ashʿarī one way, but on the other hand the fact that God imposes duties, moral, legal, and religious, pulled Ashʿarī in the opposite direction. The doctrine of the acquisition is the result of this tension. Epistemologically, it is born of the need to account for the indubitable distinction between voluntary and involuntary action. Ethically, and legally, it is the answer to the need to differentiate the scope of actions that can properly be the object of God's command. Without acquisition, how could Sharīʿa get off the ground? It is this tension between conceptually preserving God's monopoly on creation and conceptually preserving an intelligible account of an agent capable of accepting and discharging God's duties that lead later Ashʿarites, Juwaynī and Ghazālī to either modify or reject central components of the Ashʿarism they inherited.

Ibn Fūrak reports one last clarification of Ashʿarī's doctrine of acquisition that is relevant to coercion's effect on moral agency in later Ashʿarite thought. He reports two conflicting opinions on whether or not knowledge or will on the part of the acquirer in the process of

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[275] Ibid., 95.

performing the act is a necessary condition for the performance to qualify as an acquisition. Part of the tension in Ashʿarī's thoughts on this issue deal with whether or not the only factor needed to qualify an act as an acquisition is whether or not it was produced by way of a simultaneous temporally created capacity.[276] Accepting this would seem to disqualify the necessity of the ostensible acquirer's will to the act or knowledge of the act as factors relevant to the determination of whether or an occurrence that happens by way of the created power is an acquisition. We know that knowledge and will may be necessary to judge an occurrence as an acquisition in Ashʿarī's thought because Ibn Fūrak notes that Ashʿarī sometimes straightforwardly asserted that knowledge and will of the acquirer are necessary for an action to be judged as an acquisition,[277] and moreover that he denied, in most of his books (*julla kutubi-hi*), the validity of the application of the description 'acquirer' to the heedless person (*sāhī*).[278]

On the other hand, Ibn Fūrak reports that Ashʿarī had contradictory responses about whether or not a well-ordered act (*al-fiʿl al-muḥkam*) performed by a person counted as an acquisition of that act? In some of his books he apparently accepted this possibility as valid – a well-ordered occurrence does not require the active knowledge of the ostensible acquirer of the

[276] Ibn Fūrak identifies this as a fundamental component of Ashʿarī's ideas on human agency by noting that his discourse fundamentally "revolves around [the idea] that the sole causal determinant [of an act] is the temporally created capacity (*fa-dāra aktharu kalāmi-hi ʿalā anna ʾl-taʾthīra fī dhālika li ʾl-qudrati ʾl-muḥdathati*)." See ibid., 95.

[277] Ibid., 95. *Wa rubba-mā qāla inna-hu lā budda maʿa-hā min irādati ʾl-muktasibi wa ʿilmi-hi*. Abrahamov, through an analysis of the *Lumaʿ* alone, concludes "al-Ashʿarī does not continue to analyze other elements of human action such as the source of the will or the source of the power to will, as one would expect in an overall theory of action." See Abrahamov, "Re-examination," 215. Unfortunately, Abrahamov did not have the chance to consult Ibn Fūrak's work, which was published for the first time, to my knowledge, only after Abrahamov published his article. Though, Ibn Fūrak does not consider Ashʿarī's conception of the human being's will in relation to God's creative activity, he, as just noted, does consider whether or not a person's will is necessary for an occurrence to count as an acquisition. In Ashʿarī's thought the acquisition functions as not only a description of man's volitional acts in relation to God's monopoly of creative agency, but also as way of demarcating that scope of acts intimately connected to moral responsibility, accountability, and evaluation. Analysis of this aspect of the function of the doctrine of acquisition is missing in most of the secondary scholarship on the doctrine of the acquisition.

[278] Ibn Fūrak, *Maqālāt*, 95.

act being performed in order to count as an acquisition. The fact that it is well ordered, apparently, suffices to trigger the judgment that the occurrence is an acquisition of the agent.[279] And yet specifically in his work entitled *Criticism of Jubbāʾī's Principles* (*wa dhakara fī naqḍ uṣūl al-Jubbāʾī*), Ibn Fūrak quotes Ashʿarī as asserting that even an agent described as an acquirer of a well-ordered act must additionally have knowledge and be fully capable of it (*fa-inna-hu idhā kāna muktasiban li-fiʿlin muḥkamin lā budda an yakūna ʿāliman bi-hi, qādiran ʿalay-hi*).[280] In the presence of such confusion, Ibn Fūrak asserts that the latter is indeed the better position. It has a more solid discursive basis (*al-athbatu fī al-naẓar*) and resonates better with Ashʿarī's fundamental principles (*al-ashbahu bi-uṣūli-hi wa qawāʿidi-hi*).[281] Moreover, Ibn Fūrak notes that most of Ashʿarī's discourse on the proof for God's existence as a being with knowledge relies on inference from His ostensibly well-ordered actions.[282] To deny a connection between knowledge and well-ordered actions, presumably, would be to undermine this fundamental proof. This argument is indicative of the aims of theology as a discipline. Perhaps more than any other discipline amongst the religious sciences (*ʿulūm al-dīn*), theology values systematic consistency across the propositions that constitute the kernel of truth claims it affirms. As a consummate theologian, Ibn Fūrak uses this disciplinary value to give preference to one of Ashʿarī's contradictory positions. If part of theology's fundamental objective is to show how

[279] Ibid., 95. Here his argument seems to stem from the fact that a fundamental capacity to do it can exist, and we can describe it as such, even if it does not result in an excellent performance. In other words, it is not necessary to have the capacity for an excellent performance of an act, in order to qualify as having a fundamental capacity for the act. In this way, knowledge of an act does not necessarily need to exist in order for one to be described as having a capacity for the act.

[280] Ibid.

[281] Ibid.

[282] Ibid. "Because most of his discourse takes the path of inferring through God's well-ordered actions to His existence as a Knower (*li-anna akthara mā yajrū ʿalay-hi kalāmu-hu fī ithbāti ʾl-bāriʾi taʿālā ʿāliman bi-ʾl-istidlāli ʿalay-hi bi-afʿāli-hi ʾl-muḥkamati*)."

one is rationally committed to a certain conception of God, then why hold any position as true that would weaken the attainment of this aim?

Some modern commentators have expressed reservations about the conceptual cogency of Ashʿarī's doctrine of acquisition. Like the Muʿtazilite ʿAbd al-Jabbār, they see the doctrine as nothing more than a rhetorical attempt to frustrate the application of the pejorative "determinist (*jabrī*)" label without, in reality, offering a view of human agency that substantially differs from the derided determinists of early Islam. This may ultimately be true. But, it seems that the doctrine of acquisition functions as more than an attempt to soften the thrust of the determinist implications of conceiving of God as having a monopoly on the creation of all events in the cosmos. From an ethical and legal perspective, the doctrine of acquisitions allows Ashʿarī to think about the conditions necessary for God to institute moral, legal and religious duties. God can only command an act that is acquirable. If one adds knowledge and will as additional conditions for a performance to count as an acquisition, then in fact, functionally, Ashʿarite discussions start to approach the tenor of what is found in Muʿtazilite discourses on the conditions necessary for God's imposition of duties to be good.

Ibn Fūrak notes that Ashʿarī held that only acquirable acts are properly the objects of God's commands.[283] It is for this reason that we find Ashʿarī stipulating, similar to the Muʿtazilite framework, basic physical capacity (*qudra*) and the lack of incapacity (*ʿajz*) as conditions for the imposition of duties (*taklīf*).

Three more features of Ashʿarī's thought warrant attention before we are well-placed to understand later Ashʿarite authors' attempts to grapple with the impact of coercion on moral agency from within the framework of Ashʿarism:

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[283] Ibid., 94.

1. the simultaneity of God's creation of the capacity (*istiṭāʿa*) to perform a specific act with His creation of the acquirer's act

2. the possibility that God could impose impossible or unbearable obligations (what is labeled as the '*taklīf mā lā yuṭāq*' issue in later theological and legal theory literature)

3. finally Ashʿarī's moral epistemology

All three positions contrast with the ones taken by the Muʿtazilites.

The Basran Muʿtazilites conceived of capacity as a type of accident that endures through time. More specifically, they asserted that it precedes the act for which it is a capacity and, as mentioned before, that it covers both the capacity to perform an action and the capacity to refrain from the action. To what extent this formulation of capacity was merely an outcome of the commitments that made up their physical theory and to what extent its specific construction was motivated by the desire to substantively protect the human agent's free choice is up for debate. The same is the case with Ashʿarī who disagrees with the Muʿtazilites on this doctrine. For Ashʿarī, God creates the specific capacity to perform an act simultaneously with the act itself. It neither precedes the act nor endures after it. God creates the capacity for the act in the acquirer at the same time that He creates the acquirer's act.[284] Moreover, the capacity for the act is limited to the performance of the act in question.[285] Unlike for the Muʿtazilites, the scope of the capacity does not extend to both the option of performing and refraining from it.

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[284] On this point, for the English translation see al-Ashʿarī, *Theology*, 76-78, §123-25 and for the original Arabic, see ibid., 54-55, §123-25. Ashʿarī's arguments for his position derive entirely from his physical theory. His argument against the priority of the capacity before the act stems from the fact that he does not think that an accident can endure over time. To have a capacity precede the act would be to posit that it has endurance from the time of it's beginning before the act till the time of the performance of the act. Things cannot endure without the accident of endurance (*baqāʾ*) that comes to inhere the substrate. Accidents cannot inhere in other accidents and since capacity (*qudra*) is already an accident it cannot serve as the substrate for the accident of endurance. Therefore, it is impossible that a capacity can precede the act then endure till the performance of the act itself.

[285] On this, for the English translation see ibid., 78-79, §126-28 and for the original Arabic, see ibid., 55-56, §126-28.

This leaves us with the ideas of impossible obligations and Ashʿarī's moral epistemology. Put simply, the debate on impossible obligations centers on the following questions: whether or not God can impose duties that are impossible to perform, and whether Ashʿarī's collection of commitments on other issues effectively amounts him holding the view that God can impose impossible obligations? The latter presupposes the undesirability of holding that God imposes impossible obligations.

Ashʿarī does not address the idea of impossible obligations directly.[286] We shall see how Bāqillānī and Juwaynī argue that Ashʿarī's specific conception of agency effectively commits him to the idea that God does indeed impose impossible obligations. Bāqillānī endorses this position and then uses it as a premise in his argument for why coercion does not cause the failure of God's imposition of obligations. Juwaynī rejects the position he ascribes to Ashʿarī but nonetheless remains committed to the idea that coercion does not necessarily cause the failure of the imposition of duties.

Ashʿarī's departure from Muʿtazilism can be summarized in two signature doctrines: God's monopoly on creative agency and His monopoly on the institution of moral, legal, and religious rules. The Muʿtazilites had generally held that human beings know certain fundamental moral truths independent of revelation. Ashʿarī rejected this idea. For him, God is the sole originator of all rules, and access to those truths is found only in revelation. All of the authors treated here were committed to the basic form of this moral epistemology and we will see how it is deployed on the question of the impact of coercion on moral agency.

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[286] In fact, the Ashʿarite authors surveyed here mostly infer Ashʿarī's doctrine from his collateral commitments on other issues. When Ashʿarī does address the issue of impossible obligations in his *Kitāb al-Ibāna* his treatment amounts to no more than the citation of Qurʾānic verses that he interprets as validating the idea that God could impose obligations that are capable of being fulfilled. See idem., *al-Ibāna ʿan uṣūl al-diyāna*, 1st ed., (Beirut: Dār Ibn Zaydūn, n.d.), 55.

We have no text directly from Ashʿarī or from his followers or detractors on his position on the effect of coercion on moral agency. Three other scholars surveyed in this chapter, Bāqillānī, Juwaynī, and Ghazālī enunciate the position that the absence of coercion is not, by itself, a condition for God's imposition of duties. Of the three, Bāqillānī, alone, depends on Ashʿarī's conception human agency. With that said, I would like suggest that the position that coercion does not, prima facie, render God's imposition of duties impossible is not logically inevitable in Ashʿarī's thought. Two features of Ashʿarī's thinking reviewed thus far seem to envision the possibility of such a position. First, Ashʿarī preserves the basic way of Muʿtazilite thinking about moral agency. In other words, similar to the Muʿtazilites, Ashʿarī held that certain conditions must to be fulfilled for moral agency to become possible. There may be disagreement about the content, number, and stringency of those conditions, but conditions are needed nonetheless. More specifically, the condition of the absence of basic physical incapacity (*ʿajz*) in order for moral agency to obtain in Ashʿarī's thought could conceivably serve as a potential principle to extend the negation of moral agency by way of coercion. The second feature of Ashʿarī's thought is one of the two contradictory opinions of Ashʿarī preserved by Ibn Fūrak on the question of whether acts unaccompanied by will or knowledge qualify as acquisitions. Insofar as only acquirable acts are properly the object of moral impositions and coercion could impugn the will to the act, it could conceivably render coerced acts outside of moral agency.

Scholars working within the Ashʿarite tradition did not pursue these argumentative strategies. The leading lights of Ashʿarism for the next couple of centuries adopted the position that coercion does not, *prima facie*, invalidate moral agency. In the later medieval period, hesitation about the question of whether or not coercion invalidates moral agency re-emerges,

but by that time, it is not Ashʿarī's writings that would serve as the conceptual repository for thinking about moral agency and coercion.

3 Moral Agency and Coercion

3.1 Struggles within 5th/11th Century Ashʿarism on Moral Agency: ʿAbd al-Qāhir al-Baghdādī's *Kitāb Uṣūl al-Dīn*

While a few of Ashʿarī's works have survived, almost none of the works of his immediate students have been found.[287] Our knowledge of the development of Ashʿarism thus skips a generation. The next couple of scholars we will take up, ʿAbd al-Qāhir al-Baghdādī (d. 429/1037)[288] and Abu Bakr al-Bāqillānī (d. 403/1013)[289] both originate from the following two succeeding generations. We can trace Bāqillānī and Baghdādī's intellectual genealogy to Ashʿarī's most influential student, Abu al-Ḥasan al-Bāhilī. Bāqillānī studied with him directly in Iraq. Baghdādī studied theology with one of Bāhilī's students, Abū Isḥāq al-Isfarāʾinī (d. 418/1027).

One of the first post-Ashʿarī works that have survived, Baghdādī's *Kitāb Uṣūl al-Dīn*, indicates disagreement within contemporary Ashʿarite circles about the number and stringency of conditions for moral agency.

Baghdādī cites two views on the conditions for moral agency. The holders of the stringent view thought that God could impose duties on the fundamentally incapable (*ʿājiz*) or

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[287] The exception seems to be on *Taʿwīl al-āyāt al-mushkila* (*the Interpretation of Difficult Verses*) by one Abu al-Ḥasan al-Ṭabarī. On this see *Encyclopedia of Religion, Second Edition*, art. 'Ashʿarīyah' (Richard M. Frank).

[288] See *Encyclopedia of Islam, Second Edition*, art. 'al-Baghdādī, ʿAbd al-Ḳāhir b. Ṭāhir, Abū Manṣūr al-Shāfiʿī' (A. S. Tritton) for basic biographical information on Baghdādī. For a much more extensive treatment see *Dānishnāmah-ʾi jahān-i Islām*, art. 'Baghdādī, ʿAbd al-Qāhir b. Ṭāhir (Abū Manṣūr)' (Laylā Hūshangī, Aṣghar Dādbih, and Mihrān Akhbārīfar).

[289] For brief biographical information on Bāqillānī, see *Encyclopedia of Islam, Second Edition*, art. 'al- Bāḳillānī (i.e. the greengrocer), the ḳāḍī Abū Bakr Muḥammad b. al-Ṭayyib b. Muḥammad b. Ḏjaʿfar b. al-Ḳāsim' (Richard Joseph McCarthy). For a much fuller treatment, see *Dānishnāmah-ʾi jahān-i Islām*, art. 'Bāqillānī' (ʿAbbās Ziryāb).

impose impossible duties on people. Consistent with this stringent position they held that only one condition need be satisfied for God's imposition of duties (*taklīf*) to be valid: that the commanded (*maʾmūr*) should possess mature intellectual capabilities (*kāmil al-ʿaql*). In contrast, a second group of Ashʿarites stipulated that three additional conditions must be met:[290]

1. The agent must be physical capable (*qādir*) of either performing or omitting the act, "such that obedience to God's command or disobedience by omitting the act commanded is possible"

2. The agent must know the central elements and necessary conditions of the act he is commanded to perform

3. There should be scriptural evidence indicating the commanded act must be connected to the specific act that he has been imposed with.

This tension between a minimalist view of moral agency that recognizes few conditions before the imposition of duties can obtain and the acceptance that God can, and perhaps does, impose impossible obligations and a more substantial conception of the conditions necessary for the imposition of duties to obtain is present throughout the post-Ashʿarī classical period. As we will see, much of the variation in Ashʿarite thinking about the impact of coercion on moral agency is intimately related to how moral agency is imagined.

3.2 Does Coercion Invalidate Moral Agency? Theology Meets Jurisprudence in Abu Bakr al-Bāqillānī's Jurisprudential Work, *Kitāb al-Irshād wa al-Taqrīb*

The earliest extant treatment of the issue of the impact of coercion on moral agency from within the Ashʿarite tradition is found in a work authored by the famous Mālikite chief judge of Baghdad, Abu Bakr al-Bāqillānī (d.403/1013). The discussion of the problem of the effect of coercion on moral agency occurs only in Bāqillānī's work on legal theory (*uṣūl al-fiqh*), *al-*

[290] See ʿAbd al-Qāhir Baghdādī, *Kitāb uṣūl al-dīn*, 1st ed., (Istanbul: Maṭbaʿat al-Dawla, 1928), 212.

Taqrīb wa al-Irshād, al-Ṣaghīr.[291] In the formative and classical periods, the problem of coerced acts received the most attention in works devoted to articulating positive legal rules (*fiqh*). In many ways legal theory (*uṣūl al-fiqh*), especially in the period with which we are concerned, was a way of working out systematically the implications of certain theological principles on issues covered in positive legal works.[292] To a large extent, Bāqillānī's treatment of the issue of moral agency (*taklīf*) in his work of legal theory involved showing how a theological description of agency cohered with widely accepted legal positions. At times this involved merely an integration of a theological doctrine into a legal discussion. For instance, Bāqillānī starts his discussion of the conditions necessary for God's imposition of duties (*taklīf*) by effectively asserting that it is a necessary but not sufficient condition that the act that is the object of the Divine command be an acquisition (*kasb*).[293] As we saw in Ashʿarī's teaching, part of the

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[291] This tradition of addressing the problem of coercion's relationship to moral agency in works of legal theory, ostensibly inaugurated by Bāqillānī, is continued by Juwaynī and Ghazālī.

[292] For summary remarks on the relationship between the disciplines of legal theory and theology, see Wael Hallaq, *A history of Islamic legal theories: an introduction to Sunnī uṣūl al-fiqh*, (Cambridge; New York: Cambridge University Press, 1997), 134-6. Hallaq highlights the assimilation of theological epistemology and certain Sunni metaphysical commitments about the nature of causality in the discipline of legal theory. For an integration of Ashʿarite ideas about God's creation of human acts into the work of a later Ashʿarite-Shāfiʿite legal theorist, al-Āmidī (d. 631/1233) see Bernard G. Weiss, *The search for God's law: Islamic jurisprudence in the writings of Sayf al-Din al-Amidi*, (Salt Lake City: University of Utah Press, 1992), 61-4. Makdisi makes the case that the formation of the discipline of legal theory is intimately tied to what he calls "moderate rationalism's" bid to gain legitimacy in an increasingly traditionalist Sunnī society by way of latching on to the more "orthodox" and socially accepted discipline, such as positive law (*fiqh*). Thus, he argues the generation of moderate rationalists in the early fifth/eleventh century seeks the surreptitious acceptance of moderately rationalist methods of theological inquiry and substantive theological ideas by way of inventing a new discipline intimately connected to the positive law – namely, legal theory. He argues that it is around this time that we see the "infiltration" of the Sunni Shāfiʿite and Ḥanafite legal traditions by Muʿtazilite and Ashʿarite theologians. See, George Makdisi, "The Juridical Theology of Shâfi'î: Origins and Significance of Uṣûl al-Fiqh," *Studia Islamica* 59(1984): 24-46. Hallaq sees the formation of the discipline of legal theory as an indication of the emerging rationalist-traditionalist synthesis being worked out starting in the third/ninth century. See his Hallaq, *A History*, 33.

[293] Bāqillānī, *al-Taqrīb wa-al-irshād "al-ṣaghīr"*, ed. ʻAbd al-Ḥamīd ibn ʻAlī Abū Zunayd, 1st ed., 3 vols., (Beirut: Muʾassasat al-Risālah, 1993-1998), 1:236. Note that Bāqillānī is not so much making an argument that acquisitions are the object of moral imposition as merely introducing the vocabulary of acquisition as relevant to defining the features of moral agency. He begins his discussion by asserting that there are two types of fundamental acquisitions: those that are subject to moral evaluation and those that are not.

conceptual function of the doctrine of acquisition is to denote volitional action. To assert at the beginning of a discussion that it is acquisitions that are the object of impositions is to exclude non-volitional actions by definition. For an act to count as an object of a Divine command, such that the agent comes to deserve moral approbation for the performance or non-performance of the relevant act,[294] it must be acquirable, and the agent must be rational (*ʿāqil*). Examples of agents that are capable of performing acquirable acts but do not qualify as moral agents because they lack the requisite amount of knowledge (*ʿaql*) are: animals (*bahāʾim*), minors (*aṭfāl*), and the insane (*majānīn*). Bāqillānī asserts the existence of agreement (*ittifāq*) on not regarding the actions of these agents as valid performances of a Divine command for the following reasons: their lack of intellect (*ʿaql*), the capacity for discernment (*tamyīz*), and the ability to engage with full knowledge and intent in the specific acts meant to satisfy the commands.[295]

For Bāqillānī, the possession of the capacity for rationality is a necessary but not sufficient condition to be subject to God's commands. An agent can possess the capacity to reason, but temporary states could impede that agent's use of his rational capacity. The agent could perform or omit an act forgetfully, or heedlessly, or while asleep, or in a state overcome by intoxication. Each one of these negates moral agency because it cuts the agent off from "the foundation of the intellect and discernment."[296]

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[294] Bāqillānī specifies that this is specifically what he means when he talks about factors which either prevent or eliminate the emergence of moral agency in ibid., 1:236: "the only thing we mean by the cessation of moral agency is the omission for accountability (*muṭālaba*) for either eschewing or performing [an act] and thereby obtaining promise [of heaven] (*waʿd*), threat [of hell] (*waʿīd*), reward (*thawāb*), punishment (*ʿiqāb*), praise (*madḥ*) or blame (*dhamm*) for it."

[295] Ibid., 236.

[296] Ibid., 241.

Given that the possession of rational capacity, both as an agent's disposition, and at the specific time an agent performs a morally significant act, is the basis for moral agency, does coercion compromise this rational capacity such that it undermines moral agency? Bāqillānī starts his discussion of the issue by asserting that a person can only be coerced to actions that are acquirable and over which he has basic capacity.[297] He then asserts that when coerced acts occur from an agent, they occur as his acquisitions and that they occur by way of his knowledge and his intention towards them. Therefore, coercion does not undermine.[298] Bāqillānī then offers five different arguments in the process of rebutting the opposing position. His defense of the Ashʿarite position consists of theological arguments, inferences from legal rules addressing the problem of coercion, and empirical observations. Consequently, Bāqillānī's quoted opponents include both Muʿtazilite theologians (whom he refers to as the *Qadariyya*) and legal scholars, ostensibly those without questionable theological beliefs.

He directs two arguments against the Muʿtazilite position. According to Bāqillānī, the Muʿtazilites hold coercion invalidates moral agency because the agent cannot do anything other than the coerced act.[299] Bāqillānī's first argument against this position notes that the agent possesses the basic physical capacity (*qudra*) to perform or omit the coerced act, or even perform an act that contradicts it. Bāqillānī notes that the Muʿtazilites also described the the coerced agent as still capable (*qādir*). Therefore the fact that the agent could have refused to perform the act demanded by way of coercion and bear the harm associated with refraining from it

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[297] Ibid., 250. The section is entitled: the Doctrine regarding the validity of subsuming the act of the coerced under moral agency and the disagreement regarding it (*Bāb al-qawl fī ṣiḥḥat dukhūl fiʿli ʾl-mukrahi taḥta ʾl-taklīfi wa ʾl-ikhtilāf fī-hi*).

[298] Ibid., 1:250.

[299] Ibid., 1:251.

undermines the Muʿtazilite contention that it is not possible for the coerced agent to do any other act.[300]

While this argument is based on the shared premise that coercion has no effect on basic capacity, Bāqillānī's second argument is based on a premise that only Ashʿarite scholars hold: that God can validly impose obligations that are in some sense impossible. The argument is rooted in Ashʿarī's conception of God's creative monopoly as it relates to the human being's volitional action. Bāqillānī begins the argument by noting the cardinal Ashʿarite position that God creates the capacity for a specific action simultaneous with the agent's performance of the act. Bāqillānī then construes commitment to this doctrine as necessarily committing one to the position that it is impossible for the agent to omit the act at the moment of God's simultaneous creation of the capacity for the specific act and His creation of the act itself. Yet despite the metaphysical impossibility for an agent to refrain from the act at that moment, according to Ashʿarite theology, he is still held morally responsible for it. Bāqillānī implies that if, for the Ashʿarites, moral agency survives this metaphysical description of human action, then *a fortiori* there is no *prima facie* reason to regard coercion as fundamentally compromising it.[301]

Bāqillānī's third argument consists in merely asserting that the majority of orthodox theologians (*akthar ahl al-ḥaqq*)[302] hold that it is rationally possible for God to impose

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[300] Ibid., 1:251. That Bāqillānī would ascribe such a position to the Muʿtazilites is curious and calls for comment. As shown in the previous chapter, what the Basran Muʿtazilites were committed to was the idea that *compulsion* would prevent moral agency from obtaining. When ʿAbd al-Jabbār or Mānkdīm do discuss coercion, the thrust of their discussion, in fact, assumes that coercion does not undermine at least some duties, i.e. that of refraining from lying or unjustly killing.

[301] The entire argument can be found in ibid., 1:251.

[302] To whom the label "*ahl al-ḥaqq*" (lit. people of truth) applies to at first is ambiguous. That it is most likely orthodox theologians, specifically, can be gleaned by Bāqillānī's use of the phrase the "theologians amongst the *ahl al-ḥaqq*," in another instance in the *Taqrīb*, ibid., 1:186. Moreover, what the *ahl al-ḥaqq* agree on is most likely a topic likely to be debated by theologians, as opposed to jurists or ḥadīth scholars. In yet another place in the *Taqrīb*, Bāqillānī asserts the position of the ahl al-ḥaqq as contrasting that of the Muʿtazilites: ibid., 3:384. In yet another

obligations on living rational agents (*al-aḥyāʾ al-ʿuqalāʾ*) for whom actions or omissions are not possible, even if revelation would modify this rational presumption.[303] Like the previous argument, this is an *a fortiori* argument that effectively seems to take God's determination of human volitional action for granted. Bāqillānī does not explain the reasoning behind this position.[304]

Characteristic of what we would expect to find in a work of legal theory, Bāqillānī's fourth and fifth arguments involve legal doctrine. Bāqillānī begins his fourth argument by noting that

> many jurists assert that the reason eliminating (*al-maʿnāʾl-muzīl*) inclusion of the act of the coerced as morally significant (*taḥta al-taklīf*) is that it occurs from the agent without a will or an intent (*bi-ghayri irādatin wa qaṣd*), such that it occupies the same place as the act of the asleep, and one overcome [with insanity] (*al-maghlūb*), both of whom have no intent.[305]

Bāqillānī rejects this argument and incidentally cites that the theologians (*ittifāq al-mutakallimīn*), as opposed to jurists, have agreed that it is false. He then cites the fact that the

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place, Bāqillānī not only asserts that the *ahl al-ḥaqq* oppose the Muʿtazilites on an issue, but appends the phrase that those "*fuqahāʾ* (jurists) who disagreed with the Qadariyya" were committed to the same position as the *ahl al-ḥaqq*. This last use of the phrase by Bāqillānī distinguishes the *ahl al-ḥaqq* from the jurists, which strengthens my contention that it is the theologians who are referred to here.

[303] See ibid., 1:251.

[304] It is probable that the treatment of the issue in his larger works of the same subject present the arguments more fully. As it stands, it seems to be an argument based on the authority of the competence of orthodox theologians. It is possible that this is related to what may have been a larger concern for Bāqillānī: boosting the social legitimacy of the theologians in his society. That he had this larger concern is evidenced in his uncharacteristic positions on who counts in a consensus and what qualifications one must possess to count as a *mujtahid*. On the former, Bāqillānī held that the opinions of the scholars specializing in legal theory (*uṣūl al-fiqh*), even those who do not qualify as *mujtahids*, must be included in order for a legislating consensus to be reached. See Éric Chaumont, "Bâqillânî, théologien ash'arite et usûliste mâlikite, contre les légistes à propos de "l'ijtihâd" et de l'accord unanime de la communauté," *Studia Islamica*, no. 79 (1994): 94-96. On the latter, he held that in order to qualify as a *mujtahid*, the candidate must have expertise in theology. See ibid., 85-86. Both of these positions are out of the ordinary and indicate a concern to strengthen the relevance and legitimacy of the practitioners of theology.

[305] Bāqillānī, *Taqrīb*, 1:251-2.

one who divorces his wife or kills another person knows what he does and intends to do that specific action as opposed to some other. The argumentative function of the citation of the agreement of the theologians is not clear. It could be the case that the agreement of the theologians is motivated by the empirical fact that a coerced agent does not lose the capacity to form intentions or have a will in the process of performing the coerced act. It could also be the case that Bāqillānī is asserting that given the theological nature of the question, it is the authority of the theologians that carries weight, and they happen to agree, contra many jurists who do not have the *right* competence to judge the issue, that the argument put forward by the jurists is false. It is important to note that as a Mālikite, Bāqillānī was most probably committed to the Mālikite *legal* position that coercion does in fact invalidate a pronouncement of divorce.[306] As a matter of legal doctrine all legal schools recognize that coercion has the effect of either cancelling altogether or mitigating the moral and legal responsibility of a coerced act in some if not most types of acts. Yet, here, Bāqillānī asserts that coercion by itself does not necessarily impugn moral agency.

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[306] Unfortunately, Bāqillānī's legal writings, if he had any, do not seem to have survived. With that said, we do have an encyclopedic collection of Mālikite legal thought organized by a scholar contemporaneous with Bāqillānī, the famous Ibn Abī Zayd al-Qayrawānī, who transmits the opinion that coercion invalidates pronouncements of divorce. Moreover, the eight/fourteenth century Mālikite Ibn Farḥūn notes on his biographical entry on Bāqillānī that apparently Bāqillānī sought the authority to transmit two of Ibn Abī Zayd's works on Mālikite positive law (f*iqh*), the *Mukhtaṣar* and the *al-Nawādir wa al-Ziyādāt* (*istajāza al-Shaykh Aba Muḥammad b. Abī Zayd fī Kitāb al-Mukhtaṣar wa al-Nawādir*). On the connection between Ibn Abī Zayd and Bāqillānī, see the notice devoted to Bāqillānī, Ibn Farḥūn, *al-Dībāj al-mudhahhab fī ma'rifat 'ulamā' al-madhhab*, ed. Maʾmūn ibn Muḥyī al-Dīn al-Jannān, 1st ed., (Beirut: Dār al-Kutub al-'Ilmīyya, 1996), 354.7. For Ibn Abī Zayd's discussion of the debates surrounding the legal positions on the validity or invalidity of the coerced pronouncement of divorce, see Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa-al-ziyādāt 'alá mā fī al-Mudawwanah min ghayrihā min al-ummahāt*, 10:253-57. That Ibn Abī Zayd considers the Mālikite position to be that coercion invalidates a pronouncement of divorce becomes obvious by his citation of Saḥnūn's arguments against the pro-validity Ḥanafite position. For this, see specifically ibid., 10.255-57.

It is Bāqillānī's final argument that garners the most attention in the succeeding Ashʿarite tradition, even if, at times, later authors summarily dismiss it. Bāqillānī reasons from the fact that

> God has imposed on us the duty (*taklīf Allāh*) to refrain from killing an innocent person (*al-barīʾ*) even in the presence of compulsion, and has commanded us to desist from that

to the fact that it is likewise "*possible* for God to impose on us the duty to omit every action we are coerced to perform."[307]

In fact, despite the lack of a clear text explicitly prohibiting murder even when coerced, the overwhelming majority of jurists and theologians regardless of theological affiliation or legal tradition held that under no circumstances is the coerced agent permitted to commit murder. The only other issue that garnered as much unanimity was rape. Like murder, coercion can never permit rape. As we saw, even the Muʿtazilite scholar Mankdīm advised the coerced agent to compare the punishment he would suffer at God's hand for committing murder in order to steel himself against the coercive threat leveled against his own life. Bāqillānī uses this unanimously shared core intuition to argue against the idea that coercion can, *prima facie*, invalidate moral agency. If, as all agree, the moral imposition to refrain from unjust killing survives coercive threats against one's own life, then there is nothing inherent in coercion itself that would, by itself, undermine God's imposition of duties.

Bāqillānī ends his discussion of the relationship of coercion to moral agency by considering the question of whether or not there is any standard definition of coercion that eliminates a standing legal prohibition. In other words, can coercion permit a previously forbidden action? To the extent that coercion (*ikrāh*) is conceptually related to necessity

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[307] Bāqillānī, *Taqrīb*, 1:253.

(*iḍṭirār*), this question has a long history in Islamic intellectual discourses, owing to the fact that the Qurʾān itself, many times, permits, under circumstances of necessity, the consumption of forbidden food. Bāqillānī's treatment of the problem is centered on what source possesses the authority to make determinations of when illicit acts become licit in the presence of coercion. Is it revelation or reason? Bāqillānī cites the Muʿtazilite position that coercion can have no effect on rendering evil acts (*qabāʾiḥ*) permitted.[308] Bāqillānī's response is consistent with Ashʿarite moral epistemology:

> This is false, because all acts are evil only because they are evil by way of revelation. If revelation did not make them evil, they would not be evil. Thus, it is possible that *everything* can be permitted, on the meaning that the rational agent is not prohibited from anything, nor is he threatened with punishment for performing it.[309]

Given that reason cannot determine the goodness or evil of actions, it is scripture (*samʿ*) and the extension of scriptural proofs to unprecedented cases (*ijtihād*) that determine when coercion can and cannot render forbidden acts permitted. Interestingly, though only reference to scripture can the change the normative status of acts occasioned by coercion, the description of what is coercive seems, for Bāqillānī an empirical matter – or rather something that does not necessarily have to depend on scripture. In response to a query about whether or not there exists a definition of the type of coercion that eliminates a standing prohibition, he cites a formulation of legal coercion found throughout the legal literature: in the presence fear of a harm that would result in the loss of life or even something less, provided it is not a slight harm – something that

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[308] Ibid., 1:254-5. Muʿtazilite moral epistemology stipulates that certain fundamental judgments about the evil or goodness of actions are caused by characteristics *intrinsic* to the action itself. For this reason, nothing *extrinsic* to the action itself can change its moral character. Thus you have the Muʿtazilite position that coercion cannot permit an evil action.

[309] Ibid., 1:255.

is bearable, Bāqillānī notes that the Law (*al-sharʿ*) renders a standing prohibition as something that is permitted.[310] While only the constitutional sources of the Law have the authority to allow coercion to render lift a standing prohibition, the same sources do not define coercion.

3.3 Imām al-Ḥaramayn, al-Juwaynī: Rejection of Impossible Obligations and Capacity to Understand Speech as Basis for Moral Agency

The discussion of whether or not coercion can, *prima facie*, invalidate moral agency would become a staple issue in Ashʿarite inspired legal theory. The next major writer in this tradition is the famous Imām al-Ḥaramayn, Abu ʾl-Maʿālī ʿAbd al-Malik al-Juwaynī (419-478/1028-1085).[311] In many ways Juwaynī's work, both in theology and legal theory is an extended engagement with Bāqillānī's oeuvre. His now mostly lost *al-Shāmil fī Uṣūl al-Dīn* is in fact a detailed exposition on Bāqillānī's commentary on Ashʿarī's *Lumaʿ*.[312] Chaumont notes that in Juwaynī's work of legal theory, the *Burhān fi Uṣūl al-Fiqh*, Bāqillānī is cited most second only to Shāfiʿī, the eponymous founder of the legal tradition to which Juwaynī belonged.[313]

On the basic question of whether or not coercion, by itself, undermines moral agency (*taklīf*), Juwaynī holds the same position as Bāqillānī – that it, in fact does not. However, he changes two major components of Bāqillānī's argumentation. The most fundamental change is Juwaynī's move away from identifying the possession of the general capacity for rationality (*ʿaql*) to the more specific capacity for linguistic understanding (*fahm*) as the basis of moral agency. The second change is most immediately the result of his rejection that God could

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[310] Ibid., 1:254.

[311] For basic biographical information see, *Encyclopedia of Islam, Second Edition*, art. 'al- D̲J̲uwaynī , Abu 'l-Maʿālī ʿAbd al-Malik' (C. Brockelmann and L. Gardet); *Dānishnāmah-ʾi jahān-i Islām*, art. 'Juwaynī' (Ḥusayn Hūshangī).

[312] Frank, "Ashʿarīyah."

[313] Chaumont, "Bâqillânî, théologien ash'arite et usûliste mâlikite, contre les légistes à propos de "l'ijtihâd" et de l'accord unanime de la communauté," 80.

impose impossible obligations on His human subjects. Juwaynī thinks, even though Ashʿarī may not have explicitly expressed commitment to this idea, Ashʿarī's conception of human physical agency implies as much. Because Juwaynī rejected the idea that God could impose impossible obligations on human beings, he rejected its use as an argument for why coercion does not undermine moral agency.

Juwaynī considers the issue of impossible obligations in his section devoted to defining moral agency (*taklīf*). As we saw, Ashʿarī himself does not directly address the issue of impossible obligations. Juwaynī notes, however, that some scholars attributed thought that Ashʿarī held that God *could* impose impossible obligations (*kāna yajjawizu taklīfa mā lā yuṭāq*). He adds though, some of these same scholars thought that Ashʿarī held that God in fact *does* impose impossible obligations (*wuqūʿ mā jawwazu-hu min dhalika*).[314] Juwaynī himself thinks that Ashʿarī's conception of physical agency commit him effectively to both the rational possibility and actuality of God's imposition of impossible duties. Specifically, two aspects of Ashʿarī's account of human agency commit him to the impossible duties position. First, he notes that Ashʿarī held that the capacity to perform a specific act does not precede the performance itself, whereas the command to perform the act is directed at the agent before its occurrence, when he is not actually able to perform it.[315] This qualifies as God's imposition of impossible duties. Second, in Ashʿarī's account of human agency, the human being's act occurs by way of God's power (*fiʿl al-ʿabdi wāqiʿun bi-qudrati ʾllāh*).[316] Juwaynī adds that this in effect means that the human being is held accountable for an act that is actually that of his Lord (*al-ʿabdu*

[314] al-Juwaynī, *al-Burhān fī uṣūl al-fiqh: makhṭūṭ yunsharu li-awwal marra*, ed. ʿAbd al-ʿAẓīm al-Dīb, 1st ed., (Qatar: Jāmiʿa Qatar, 1399[1979]), 1:102-3.

[315] Ibid., 1:103.

[316] Ibid.

muṭālabun bi-mā huwa min fiʿli rabbi-hi)![317] Juwaynī summarizes his own position on impossible obligations, in response to an anonymous interlocutor who asks, "So what then is the correct position (*ṣaḥīḥ ʿindakum*) in your view regarding the imposition of impossible obligations?" Juwaynī responds:

> If what is meant by the imposition (*taklīf*), is the demand of an act (*ṭalab al-fiʿl*), which is impossible – it is logically impossible (*muḥāl*) that this [would occur] from one who knows of the impossibility of the occurrence of the act that is demanded (*min ʾl-ʿālimi bi-istiḥālati wuqūʿi ʾl-maṭlūb*).[318]

Juwaynī seems to be saying that God would not impose an obligation that He knew was impossible for the human agent to satisfy. This effectively comes close to limiting what God would and would not do by recourse to a substantial notion of justice. This would bring him closer to the position that Muʿtazilites explicitly held. At the very least, the tenor of Juwaynī's arguments against the impossible obligations position implies a rejection of Ashʿarī's conception of agency. This is confirmed by the fact that he twice asserts, in the course of his discussion of impossible obligations, that he has his own specific doctrine on the creation of human acts (*khalq al-afʿāl*).[319] But, this is not consistently the case in all his works. In fact, in his work expounding the general principles of Ashʿarite theology, the *Irshād*, he in fact affirms the very

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[317] Ibid. He adds specifically that the doctrine of acquistion does ***not*** remedy the situation!

[318] Ibid., 1:104. See also his short exposition of the orthodox creed, where he specifically asserts that, "it is a fundamental creedal principle (*qāʿidatu ʾl-aqīda*) that [God's] slave is held accountable (*muṭālab*) according to what is possible (*jāʾiz*), and not [what is] impossible (*mustaḥīl*)." idem., *al-ʿAqīda al-niẓāmīyya fi al-arkān al-Islāmiyya*, ed. Muḥammad Zāhid ibn al-Ḥasan Kawtharī, (Cairo: al-Maktaba al-Azharīyya li al-Turāth, 1992), 55. In fact, consistent with what is found in the *Burhān*, as we will see below, based on what he identifies as this fundamental principle he rejects the idea that God could impose an obligation that requires simultaneous mutually exclusive actions. See ibid.

[319] Specifically, Juwaynī writes: "we will mention the essence (*sirr*) of what we believe regarding the creation of acts. But this is not the place for it." Ibid., 1:103. On the next page again he notes, again, that "as for the essence (*sirr*) of what we believe regarding the creation of acts, this is not the place for it." Ibid., 1:104.

conception of agency that he criticizes in the *Burhān*.[320] Yet, in a work devoted to explaining what he took to be the orthodox creed, *al-ʿAqīda al-Niẓāmiyya fī al-Arkān al-Islāmiyya* (*the Creed Devoted to Niẓām al-Mulk on Basic Islamic Beliefs*) he in fact provides the alternative conception of agency only hinted at in the *Burhān*.[321] Many medieval and modern commentators have tried making sense of the discrepancies between what is found in the *Irshād* and what is found in the *ʿAqīda Niẓāmiyya*.[322] What caused Juwaynī to change his mind is the cause of much speculation, and we will return to speculate ourselves in a moment.

The second substantial change from Bāqillānī to Juwaynī is in the conception of the basis of moral agency from the possession of a *general* capacity for rationality to the *specific* ability to understand speech. Bāqillānī had argued that it is the absence of the capacity for rationality that

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[320] See,idem., *Irshād ilā qawāṭiʿ al-adilla fī uṣūl al-iʿtiqād*, ed. Muḥammad Yūsuf Mūsā and ʿAlī ʿAbd al-Munʿim ʿAbd al-Hamīd, (Miṣr (Egypt): Maktabat al-Khānjī, 1950), 187-226, where Juwaynī's theological ideas on human agency seem much closer to Ashʿarī's. For his thoughts on the validity of the possibility that God could impose impossible obligations on human agents see ibid., 226-8. Here he does not seem to outright reject the doctrine. He notes that the doctrine could refer to a number of different types of scenarios, from asking an agent to perform two mutually exclusive actions at the same time (*jamʿu al-ḍiḍḍayn*) to asking him to perform an action that he is just physically unable to perform (*īqāʿu mā yukhraju ʿan qabīliʾl-maqdūrāt*). He says both of these scenarios are possible from a purely rational perspective. See specifically, ibid., 226. When pressed on whether he thinks the scenarios are valid from the perspective of revelation, he answers in the affirmative, citing the example of God's imposing the obligation to believe in the Prophet on Abu Jahl while asserting that he will never believe as an instance of the imposition of an impossible obligation of the mutually exclusive actions type. See ibid., 228. Yet, in the *Burhān*, he specifically offers an interpretation of God's imposition to believe in the Prophet on Abu Jahl as not implying the imposition of an impossible obligation, and specifically rejects it as instance of God imposing an obligation to perform two simultaneous, yet mutually exclusive actions. For this, see ibid., 104.

[321] What we have left of the *ʿAqīda Niẓāmiyya* is actually part of a larger work. See the comments of the editor Muḥammad Zāhid Kawtharī, who notes that what survives is merely a creedal introduction to a Shāfiʿite text on the fundamental religious institutions of the Sharīʿa, namely prayer, fasting, zakāt, and the ḥajj. idem., *al-ʿAqīda al-niẓāmīya*, ed. Muḥammad Zāhid ibn al-Ḥasan Kawtharī, (Cairo: Maṭbaʿat al-Anwār, 1948), 4. Juwaynī's discussion of physical agency occurs in the course of his discussion of moral agency (*taklīf*). See ibid., *al-ʿAqīda al-niẓāmīya*, 42-59. For a presentation and analysis of Juwaynī's conception of physical agency as found in the *ʿAqīda Niẓāmiyya*, see specifically Gimaret, *Théories*, 122-24.

[322] See Schwarz, "'Acquisition' (kasb) in early kalam," 379-80. See also, Gimaret, *Théories*, 120-28, who also provides a number of medieval commentators trying to determine Juwaynī's position. Richard Frank asserts that Juwaynī's own student, Abu al-Qāṣim al-Anṣārī accuses him of inconsistency regarding the creation of human acts because of the differences between what is found in *ʿAqīda Niẓāmiyya* and his other works. See Richard M. Frank, *Al-Ghazālī and the Ashʿarite School*, (Durham, N.C.: Duke University Press, 1994), 115, footnote 2. None to my knowledge have included the data found in the *Burhān*, however.

undermined the imposition of duties on the intoxicated, asleep, and the heedless. For this reason, the actions of agents in these various states are not morally significant. This is not the case with the coerced. Bāqillānī makes the empirical claim that coercion does not compromise rationality, and therefore it does not undermine moral agency. The form of the argument is exactly the same with Juwaynī, though the basis for moral agency is possession of the specific capacity to understand speech (*fahm*). The moral agency of the intoxicated is undermined by the inability to understand, specifically, the Divine address. Because of the impossibility of understanding the Divine address (*istiḥālatu fahmi ʾl-khiṭāb*),[323] the act of imposing an obligation on the intoxicated is impossible (*al-sukrānu*, *yamtaniʿu taklīfu-hu*).[324] Compliance with a command (*al-imtithāl*), and intending (*qaṣdan ilay-hi*) a performance to be an act of compliance are not possible without the capacity to understand the Divine address.[325] This is not the case of the coerced. Juwaynī writes:

> The act of imposing moral obligation on the coerced is not impossible because of the possibility of linguistic understanding (*fahm*) and complying [with a command] (*imtithāl*) even when [one is] coerced.[326]

This is the only argument Juwaynī offers for why coercion does not undermine the act of imposing a moral obligation. Juwaynī then notes that the Muʿtazilite position that one coerced to engage in acts of worship cannot possibly be regarded as a proper moral agent. He notes that this view is built on the principle that God has a duty to recompense the moral agent for the

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[323] al-Juwaynī, *Burhān*, 1:106.

[324] Ibid., 1:105. In the next paragraph Juwaynī affirms that it is likewise impossible to impose duties on the forgetful, if his forgetfulness persists in time, for exactly the same reasons offered in justification for the case of the intoxicated. See his ibid., 1:106.

[325] Ibid., 1:106.

[326] Ibid.

willing performance of a moral duty and the one forced to commit an act is not rewarded for it. Juwaynī notes that he holds the principle that God is *obliged* to recompense for the performance of duties as false, and thus does not hold that the imposition of a moral duty is impossible without the corresponding recompense.

It is here that Juwaynī notes Bāqillānī's coerced-murder argument against the Muʿtazilites, dismissing it as an intellectual lapse on Bāqillānī's part. He notes Muʿtazilite principles commit them to consider coercion as negating moral agency only when coerced to perform a moral duty, but they do not deny that an act is still prohibited, even as the coerced is forced to do it.[327] In fact, the principle of obliging God for rewarding the performance of a duty in proportion to its difficulty increases the reward for the agent because resisting the attempted coercion is a more severe form of trial (*ashaddu fī ʾl-miḥna*).[328]

Juwaynī departs from Bāqillānī's justification of the position that coercion does not, *prima facie*, prevent the imposition of moral duties in two distinct ways:

1. He rejects the idea that God can impose impossible obligations on human agents and thus does not use it as a justification for why coercion does not similarly undermine the imposition of moral duties.
2. He modifies the fundamental basis upon which moral agency hinges. For Bāqillānī it was a general intellectual capability or rationality. Anything, whether intoxication, heedlessness, or minority that compromises this generalized intellectual capacity, thereby compromises moral agency. Bāqillānī argued that coercion does not impugn this intellectual capacity, and thus the validity of moral

[327] Ibid., 1:107.

[328] Ibid., 1:107.

impositions while an agent is coerced, are not, *prima facie*, negated. Juwaynī specifies the particular intellectual capability of understanding speech (*fahm*) as the central relevant basis for deciding when moral agency succeeds and fails. Intoxication compromises this capacity. Coercion does not. Intoxication prevents impositions of duties. Coercion does not.

Are these two developments in any way connected? If we interpret Ashʿarism, writ largely, as a reaction against Muʿtazilism, then Juwaynī's interventions in the history of the tradition point in conflicting directions. On the one hand, he rejects the idea that God can impose impossible obligations. This, in fact, was the standard Muʿtazilite interpretation of what Ashʿarī's conception of agency effectively commits him to. Bāqillānī had no problem biting the bullet – he explicitly affirmed commitment to the doctrine, then went on to unashamedly use it as a premise in the argument for why coercion does not invalidate moral agency. Juwaynī rejected the doctrine outright in two works. Effectively, he ended up tacking *closer* to the Muʿtazilite position on this signature issue. Moreover, he attempted to re-formulate the conception of agency that underpinned the doctrine of impossible obligations. Yet, on the issue of the basis for moral agency, Juwaynī moves the tradition further *away* from Muʿtazilism. Identifying the specific capacity for linguistic understanding as the basis for moral agency has the effect of tighter integration with Ashʿarite Divine command moral epistemology. Gimaret has interpreted Juwaynī's attempt at reformulating dominant Ashʿarite ideas on agency as the result of the growing influence and penetration of philosophical ideas about causality as they relate to volitional human action. This may be partly true. But Gimaret did not look at Juwaynī's work of legal theory, the *Burhān*. Moreover, he did not track Juwaynī's change in positions on the doctrine of impossible obligations. Is there an explanation that can take account all three

changes: the change in Juwaynī's position on the doctrine of impossible obligations, the attempt at reformulating ideas on agency, and the change in the basis for agency? If we look once more at the *ʿAqīda Niẓāmiyya*, we find that in fact Juwaynī himself correlates two of the three changes. This may be an important clue to an explanation. Juwaynī notes that the imposition of impossible obligations is logically unfeasible because it is *unintelligible*. He writes, noting it as the second fundamental principle in his doctrinal exposition of the concept of moral agency, that

> it is a stipulation that duties be imposed on the human subject (*tawjīh al-taklīf ʿalā ʾl-ʿabd*) when he has presence of mind (*ḥuḍūr al-ʿaql*), such that he is able to *understand* the [Divine] address (*fahm al-khiṭāb*). If the agent is not in such a state, it is inconceivable that he could intend to comply with the command before understanding it, knowing [it is from] the [Divine] Commander, the Exalted. If this does not obtain, it would be an impossible obligation (*taklīf mā lā yuṭāq*), and that is logically impossible (*mustaḥīl*).[329]

In his exposition of the third fundamental principle, Juwaynī goes on to explicitly link his rejection of a specific type of impossible obligation, namely a command to perform two mutually exclusive actions at one and the same time, as contradicting the fundamental principle of the orthodox creed (*qāʾidatu ʾl-ʿaqīda*), from which all other principles relating to moral agency are derived: "that the human subject is held accountable according to what is possible, not impossible (*anna ʾl-ʿabd muṭālab bi-jāʾiz dūn ʾl-mustaḥīl*)."[330] It seems the fundamental animating concern behind the changes is the doctrinal threat that Juwaynī perceived in the legacy of Ashʿarite thought to the concept of God's command – a fundamental conceptual cornerstone of *Sharīʿa*. In a sense, it was, perhaps as a committed Divine Command, textually conservative Shāfiʿite that Juwaynī was reacting to an overly determinist Ashʿarite doctrine. It is tempting to

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[329] Ibid., 55.

[330] Ibid., 55.

see Juwaynī as attempting to save Shāfiʿism from what he took to be the pernicious features of Ashʿarism. Yet, in a sense, Juwaynī was merely re-enacting a tension inherent in Ashʿarī himself, and perhaps an enduring tension in Islamic moral, theological, and legal thought: the tension of holding simultaneously that God is the Supreme Creator and the Supreme Commander.

3.4 Ghazālī: Continuing with Juwaynī's Teachings

On this point, the Ghazālī is not an innovator. In fact, he hews closely to Juwaynī's teaching. He rejects the doctrine of impossible obligations and identifies the capacity to understand speech as the fundamental basis of moral agency. Since coercion does not undermine the latter, it, *prima facie*, does not undermine moral agency. We have seen all of this in Juwaynī, and we see it similarly, though more clearly, and in an analytical arrangement that is the hallmark of Ghazālī's writings.

Consistent with Ashʿarite writers before him, Ghazālī addresses the issue of the effect of coercion on moral agency in his works of legal theory (*uṣūl al-fiqh*). Ghazālī has two extant works of legal theory – the *Mankhūl* and the *Mustaṣfā*. Recent scholarship has dated the former to Ghazālī's early scholarly career and the latter to one of the last, if not the last, works of Ghazālī.[331] The *Mankhūl* tends to follow Juwaynī's *Burhān* in content and the order of the presentation of ideas. Compared to the *Mankhūl*, the *Mustaṣfā* is a much more substantial work, a fact that Ghazālī himself consciously acknowledges in the introduction to the work.[332]

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[331] For the most recent chronology of Ghazālī's writings, including the early composition of the *Mankhūl* compared with the late composition of the *Mustaṣfā*, see George F. Hourani, "A revised chronology of Ghazālī's writings," *Journal of the American Oriental Society* 104(1984): 290-1 and 301-2.

[332] See al-Ghazālī, *Mustaṣfā*, 1:33, where Ghazālī explicitly notes that one of his major aims in writing the book was a composition that combined good organization with a forceful vindication of the correct position (*aṣrifu ʾl-ʿināyati fī-hi ilā ʾl-talqīni bayna ʾl-tartībi wa ʾl-taḥqīq*). See also ibid., 1:33-34, where Ghazālī places the Mustaṣfā as a

Whereas the *Mankhūl*, like the *Burhān* before it, evinces the quality of an oral lecture,[333] the *Mustaṣfā* reads like a well-polished and analytically well-organized monograph.[334]

Though there are some differences between Ghazālī's justification of the standard Ashʿarite position in the *Mankhūl* and the *Mustaṣfā*, for the sake of simplicity, I will restrict my analysis to Ghazālī's treatment of coercion and moral agency as found in the *Mustaṣfā*. I will confine my comments on the *Mankhūl* to the notes.

Two features of the *Mustaṣfā* set it apart from other compositions in the field of legal theory: the fact that Ghazālī includes a chapter devoted to logic, and the general organizational scheme of the work. The work, as Ghazālī notes himself in the preface consists of an introductory chapter and four general sections.[335] The four sections are organized around the following inquires:[336]

1. On legal and moral norms (*al-aḥkām*). Ghazālī notes that these are the normative categories that characterize acts such as obligation (*wujūb*), prohibition (*ḥaẓr*), recommendation (nad*b*), discommendation (*karāha*), permission (*ibāḥa*), good

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work of median length between the now lost larger work, entitled *Tahdhīb al-Uṣūl* and the briefer work, *al-Mankhūl*. For a review of the debates within the Shāfiʿite biographical tradition about whether or not the *Mankhūl* was written either during Juwaynī's life or shortly after his death, see the editor, Hītū's introduction, idem., *al-Mankhūl min taʿlīqāt al-uṣūl*, ed. Muḥammad Ḥasan Hītū, 2nd ed., (Damascus: Dār al-Fikr, 1970), 34-36.

[333] The *Mankhūl* is essentially based on Juwaynī's teachings in the field of legal theory. On this see the closing statement in the *Mankhūl*, where Ghazālī explicitly notes that he restricted himself to Juwaynī's lecture notes (taʿlīqāt) in composing the work. Ibid., 503.

[334] Ghazālī had a reputation for composing extremely well organized works already in the medieval period. See Michael Cook, *Commanding right and forbidding wrong in Islamic thought*, (Cambridge: Cambridge University Press, 2000), 250, where he notes that Ibn Ṭumlūs (d. 620/1223f.), the Spanish doctor and philosopher, described Ghazālī's work as "unprecedentedly well-ordered and well-arranged."

[335] al-Ghazālī, *Mustaṣfā*, 1:35.

[336] Ibid., 1:39. Ghazālī uses the beautiful agricultural metaphor of the cultivator to define the organizing principles of the each of the four sections. Thus, the legal and moral norms are the fruit (*thamra*) of the cultivation. The constitutional sources (*adilla*) are the plants bearing the fruit (*muthmir*), the methods of inference are the ways of cultivating the fruit (*ṭuruq al-istithmār*), and the master jurist (*mujtahid*) is the cultivator (*mustathmir*).

(*ḥusn*), evil (*qubḥ*), properly performed (*adāʾ*), delayed performance (*qaḍāʾ*), valid (*ṣiḥḥa*), invalid (*faṣād*), etc.[337]

2. On the constitutional sources of the law (*adilla*), which are the Book (the Qurʾān), the Sunna, and consensus (*ijmāʿ*)
3. On the methods of inference (*ṭarīq al-istithmār*), which consist of the ways in which the constitutional sources indicate the legal and moral rules
4. On the one who infers (*mustathmir*), who is the master jurist (*mujtahid*)

Ghazālī's discussion of the effect of coercion on moral agency occurs in the first section – the section devoted to explicating the fundamental nature of moral and legal norms. Ghazālī divides this section into four further sub-sections. Each of these four sub-sections is devoted to clarifying issues related to an analytical category central to the nature and character of the legal and moral rules as such. There are four analytical categories that are fundamental to legal and moral norms (*aḥkām*) as such: the moral and legal norm itself (*ḥukm*) (e.g. prohibition, permission, supererogation, etc.), the Legislator (*Ḥākim*), the agent (*maḥkūm ʿalay-hi*), and the act (*maḥkūm fī-hi*). Part of each section consists simply in identifying the essential features of each of the analytical categories. For example the section defining the agent consists essentially of Ghazālī's enumeration the list of conditions that the physical agent must meet in order to properly qualify as a moral agent (*mukallaf*), and in the section defining the act to which moral and legal evaluation attaches, Ghazālī enumerates the features that the act, *qua* act, must possess to properly be the subject of moral and legal evaluations. The arguments that are relevant to coercion and moral agency are found in the section devoted to defining the moral agent (*al-maḥkūm ʿalay-hi, wa huwa ʾl-mukallaf*).

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[337] Ibid., 1:39.

Ghazālī begins the sub-section devoted to clarifying the nature of the moral agent by identifying the possession of the faculty of linguistic comprehension (*fahm*) as the basis for moral agency. He writes:

> The object of the moral and/or legal evaluation is the moral agent (*mukallaf*). Its condition is that he must be a rational agent (*ʿāqil*) who can understand the Divine address (*yafhamu ʾl-khiṭāb*). It is not possible to address inanimate bodies or animals or even the insane or the child who does not have the capacity for discernment (*al-ṣabiy alladhī lā yumiyyiz*). This is because the imposition of a moral duty requires an act of obedience (*al-ṭāʿa*) and compliance (*al-imtithāl*). This is only possible by way of an intent to comply (*qaṣd al-imtithāl*), and a condition for intending [an act] is the knowledge of the object intended (*al-maqṣūd*) and comprehension (*fahm*) of the imposed duty (*al-taklīf*). Inherent (*mutaḍammin*) in every Divine address (*khiṭāb*) is a command to "understand!" How can it be said to one who does not understand, "understand!"? Or how can one who does not hear the voice (*al-ṣawt*), like an inanimate object, be spoken to? And, even if he sometimes linguistically comprehends (*yafhamu*) something, but does not possess rationality nor circumspection (*wa lā yatathabbatu*), such as the insane or the one without discrimination – addressing him is possible, but requiring compliance from him while it is not possible that he have a valid intention is not possible.[338]

In contrast to the Muʿtazilites, a fundamental theological principle common to all Ashʿarite theologians is the idea that only God's command as represented in revelation can properly denote the moral status of acts, and therefore only God's command can impose moral duties. If God's command is the only valid source for the imposition of moral duties, then it follows that the specific capacity relevant to the validity of any moral imposition should be the capacity to understand speech. Juwaynī's departure from Bāqillānī, confirmed and more explicitly articulated by Ghazālī, can be seen as an attempt to bring tighter integration between this fundamental Ashʿarite theological commitment and the relevant issues debated in legal

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[338] Ibid., 1:158.

theory. In a sense the integration represents a further consolidation of legal theory along lines dictated by Ashʿarite moral epistemology – a moral epistemology that was defined against the Muʿtazilite, reason-centric version. As noted earlier, here we have, in the history of Ashʿarite thought, a further movement *away* from Muʿtazilism.

Ghazālī takes the integration a step further, along argumentative lines Juwaynī displayed in his creedal text, the *ʿAqīda Niẓāmiyya*. Juwaynī rejected the Ashʿarite teaching that God could impose impossible obligations.[339] In his work on legal theory, Juwaynī's rejection was based partly on a conception of agency different from that of Ashʿarī and partly a rejection of the construction of proof texts that Ashʿarī or those followers of Ashʿarī's, who held a pro-impossible obligations position, gave to certain Qurʾānic proof texts. Ghazālī similarly rejects the idea that God could impose impossible obligations. It is not clear, though, from the *Mustaṣfā* alone, whether or not this is in part based on a different conception of agency.[340] At the very least, he seems to think that neither commitment to the idea of God's simultaneous creation of capacity and act, nor a commitment to the lack of a capacity's effectiveness (*taʾthīr*) over the act

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[339] Ghazālī's presentation of the Ashʿarī position on the possibility of God's imposing impossible obligations is essentially the same as Juwaynī's. Like Juwaynī, he regards Ashʿarī as effectively committed to the idea of the validity of impossibility because of his commitment to the idea that God creates the power to perform an act simultaneously with the act itself, though his command to perform the act precedes both and because of commitment regarding the ineffectiveness of the created power's in bringing about the act. Ibid., 1:163. For essentially the same argument in the *Mankhūl*, see ibid., 22–24.

[340] In the *Mankhūl*, Ghazālī notes that the temporally created power has a "connection" to the act over which it is a power, even if they are simultaneous (*li-ʾl-qudrati ʾl-ḥādithati taʿalluqun biʾl-maqdūr*). The editor of the *Mankhūl*, Muḥammad Ḥasan Hītū glosses "connection (*taʿalluq*)" as asserting that the power effectuates the act (*liʾl-qudrati l-ḥādithati taʿthīrun fīʾl-maqdūr*). He notes that the same position is ascribed to Bāqillānī. The opposite position is attributed to Ashʿarī and notes that the effectiveness position attributed to Ashʿarī by others but explicitly endorses the anti-effectiveness position in two of his works. ibid., 26.1 and footnote 1 on the same page. On Ghazālī's conception of physical agency, see Gimaret, *Théories*, 128-32. Cite to Frank. Cite to that one article on Ghazālī's notion of agency.

commits one to the doctrine of the validity of impossible obligations.[341] His arguments against the proof-texts adduced by Ashʿarī and his followers, for the most part, mirror those of Juwaynī.[342] We will thus not review them here. His departure from Juwaynī's justificatory methodology, as found in the *Burhān*, is tied to the idea that moral agency hinges on linguistic intelligibility. From the perspective of the moral agent, in order for moral agency to obtain, the agent must possess the capacity for linguistic comprehension (*fahm*). Yet, from the perspective of the act that is imposed, the act must be linguistically intelligible. Ghazālī notes that the impossibility of the validity of impossible duties stems not "because of its intrinsic evil,[343] or because of corruption that originates from it,[344] or because of [the impossibility of the] grammatical form [which institutes it]."[345] Rather the impossible obligation

> is deemed logically impossible because of its unintelligibility (*yumtanaʿ li-maʿnā-hu*). The meaning of the imposition of an obligation (*taklīf*) is the demand (*ṭalab*) [to do] something that has hardship (*kulfa*), and the demand requires (*yastadʿī*) an object demanded (*maṭlūb*). It is agreed (*bi-ʾl-ittifāq*) that it must be the

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[341] See al-Ghazālī, *Mustaṣfā*, 1:167, where he says "our objective regarding this issue [i.e. impossible obligation] does not depend on inquiry into either the way power (*qudra*) is effective [over the act] or its time."

[342] For the Abu Jahl argument, see ibid., 1:164. For the argument based off of 2:286, the prayer, "Do not burden us with what we cannot bear!" see ibid., 1:163–64. For the arguments based off verses 7:166 and 2:65 ("Become apes, despised!"), 17:50 ("Become stones or iron!"), 2:117 ("Be! And it is"). Ghazālī cites more examples of verses of the same phenomenon, but the argument is essentially the same as Juwaynī's, namely that while the grammatical command form is used in these verses, God is not expressing a demand, therefore it is not an imposition of a duty. Rather the command form, usually construed as indicating an imposition is, in the verses cited above, used to express either impossibility of human endeavor (*taʿjīz*), or God's greatness. For this argument, see ibid., 1:165. For the same types of arguments against the construction given to proof-texts adduced by those on the other side of the position in the *Mankhūl* see ibid., 24 and 27–28.

[343] The idea that the imposition of impossible obligations is invalid because it is intrinsically evil or unjust is a Muʿtazilite argument, hence Ghazālī's explicit denial that that is the motivating reason behind his rejection of it.

[344] What this corruption (*mafsada*) could be referring to is not clear to me.

[345] Ghazālī states this because in a previous paragraph he quotes an interlocutor who asserts that the reasons for rejecting the doctrine of the impossible obligation can be delimited to: the impossibility of the grammatical form that conveys the imposition, or because of the impossibility of the content of the imposition, or because of a corruption connected to it, or because it contradicts wisdom. See al-Ghazālī, *Mustaṣfā*, 1:164.

> case that it is something understandable (*mafhūm*) to the moral agent (*mukallaf*). It is valid to say: "move! (*taḥarrak*)", if movement is understandable. If it is said to him: "shlove! (*tamarruk* – i.e. a nonsensical word)"; it is not an imposition of a duty, because it's meaning is neither intelligible (*maʿqūl*) nor understandable (*mafhūm*). It has no meaning in and of itself. It is a vacuous utterance (*lafẓ muhmal*).[346]

Whereas Juwaynī and Ghazālī's identification of the specific capacity to understand as the basis of moral agency can be interpreted as a move to bring aspects of legal theory into a tighter integration with a fundamental theological commitment to a Divine Command moral epistemology, and thus a move in a direction further away *from* Muʿtazilism, the use of the capacity to understand to reject the doctrine that God can impose impossible obligations, can be seen, at the very least as a mitigation of the determinist implications of a core Ashʿarite commitment and a contradictory movement *toward* Muʿtazilism. The contradictory conceptual movements can be perhaps be explained by the motivation to preserve the integrity of the *Sharīʿa*, and as noted above a textually conservative Shāfiʿism. Both Ashʿarī's conception of agency as consisting in simultaneous and non-causal relation between the power to act and the act itself and the possibility of impossible obligations posed acute threats to a believer's commonsensical connection to the moral duties enshrined in the *Sharīʿa*. Juwaynī and Ghazālī's ingenuity lies in using the logic inherent in an Ashʿarite inspired Divine Command morality to undermine the pernicious effects of a similarly Ashʿarite inspired conception of agency – the doctrine that God could impose impossible obligations.

The capacity to understand forms the basis for moral agency. Ghazālī uses it, additionally, to justify his position against the validity of God's imposing impossible obligations.

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[346] Ibid., 1:165. In the *Mankhūl*, Ghazālī provides essentially the same argument, noting that a command is a demand, which requires that there be an object demanded. If the object demanded is inherently unintelligible, the act of demanding is logically impossible. Ibid., 24.

It is the main argument for why moral duties cannot be imposed on the intoxicated, the heedless, and forgetful, while the agents are in these states.[347] This is not the case with the coerced. Ghazālī writes:

> The condition for the imposition of moral duties (*taklīf*) on the moral agent (*mukallaf*) is the [capacity for] listening (*samāʿ*) and linguistic understanding (*fahm*), and this is missing in the insane and the animal. The coerced understands, and his actions are within the ambit of possibility (*wa fiʿlu-hu fī ḥayyizi ʾl-imkān*), because he is capable of realizing the act or omitting it.[348]

The rest of Ghazālī's engagement with the issue of coercion's effect on moral agency revolves around law-inspired arguments, specifically in the case where one is coerced to perform a duty. Ghazālī asserts that the Muʿtazilites regard this as impossible "because it is not possible [that the agent] perform anything but the act that he was coerced to perform."[349]

In response, Ghazālī notes three cases where coercion does not affect the performance of a duty:

1. An agent can be coerced, for example, to kill a snake that is on the verge of killing another Muslim[350]
2. A non-protected non-Muslim (*al-kāfir*) can be coerced to convert to Islam[351]

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[347] Idem., *Mustaṣfā*, 1:159.

[348] Ibid., 1:170. In the *Mankhūl*, Ghazālī identifies the ability to comply with the act as a condition for valid moral agency (*sharṭu ʾl-taklīfu ʾl-tamakkunu mina ʾl-imtithāl*). He also notes that even though coerced, the agent's preference for an action remains (*īthāra-hu bāqun*) and he is capable of performing it (*mutamakkinun mina ʾl-iqdām*). Notably, he does not explicitly make reference to the capacity for linguistic comprehension (*fahm*), but does make reference to the act of compliance, which Ghazālī relates specifically to linguistic comprehension in the *Mustaṣfā*. See idem., *Mankhūl*, 32.

[349] Idem., *Mustaṣfā*, 1:170.

[350] Ibid., 1:170.

[351] Ibid., 1:170. In his medium-sized book on Shāfiʿī positive law (*fiqh*), *al-Wasīṭ*, Ghazālī identifies five areas in which coercion has no effect in cancelling the legal consequences of the legal act. One of these areas is the conversion of the non-Muslim combatant (*ḥarbī*). Despite the fact that the combatant was coerced, his conversion to Islam is valid. He notes that there were two position in Shāfiʿī legal circles of his time regarding the effect of coercion on the conversion of the protected non-Muslim (*dhimmī*), and notes that the correct position is the one that invalidates the conversion. idem., *al-Wasīṭ fī al-madhhab*, ed. Abū ʿAmr al-Ḥusaynī ibn ʿUmar Ibn ʿAbd al-Raḥīm,

3. A person can be coerced to poor out wine (*īrāqat ʾl-khamr*)[352]

In all of these cases coercion is legitimate. In the second case, the fact of coercion does not undermine whether or not the unprotected non-Muslim has successfully performed the universal duty to convert to Islam (*qad addā mā kullifa*).[353]

Ghazālī ends the section on coercion and moral agency by noting a possible conceptual difficulty with this general way of thinking about coercion and moral agency. He notes that complicity with a command counts as an act of obedience only when the agent is motivated by and responds to the call of duty. Yet, when the coerced performs the act merely to escape from someone's sword, he is not responding to the call of duty. He could only be counted as responding to the call of duty if he would have performed the act had there been no coercion.[354] Ghazālī does not attempt to solve the dilemma, but merely ends the section by encouraging his would-be reader to be aware of this subtle point – *fal yantabihu li-hādhi-hi ʾl-daqīqa*.[355]

1st ed., 4 vols., (Beirut: Manshūrāt Muḥammad ʿAlī Bayḍūn; Dār al-Kutub al-ʿIlmīyya, 2001), 3:273. For a general survey of some Sunnī ḥadīth, exegetical, and legal material on debates surrounding the categories of persons whom it is legitimate to coerce to convert, see Yohanan Friedmann, *Tolerance and coercion in Islam: interfaith relations in the Muslim tradition*, (Cambridge: Cambridge University Press, 2003), 106-20.

[352] al-Ghazālī, *Mustaṣfā*, 1:170. Coercing someone to pour out wine probably is probably related to the duty to command right and forbid wrong, specifically the legitimacy of destroying forbidden objects. For Ghazālī's take on this duty, see Cook, *Commanding right and forbidding wrong in Islamic thought*, 440.

[353] al-Ghazālī, *Mustaṣfā*, 1:170.

[354] Ibid., 170.

[355] Ibid.

Chapter 4: Coercion and Moral Agency in Ḥanafite Jurisprudence

The Qurʾān declares that believers who profess disbelief under duress are exempted from God's anger and punishment. The most important Prophetic ḥadīth text on coercion asserts that God overlooks coerced acts, along with mistaken and inattentive acts. Before the solidification of the legal traditions in the third/ninth century, the earliest disputes amongst religious authorities revolved around the validity of a coerced pronouncement of divorce or the coerced undertaking of a divorce-contingent oath. Classical Islamic theologians were concerned about the effect that coercion has on the validity of moral agency. The Muʿtazilites held that coercion invalidates moral agency in order to protect a conception of God as morally just and the moral responsibility of human agents. The Ashʿarites held that coercion does not invalidate moral agency in order to protect a conception of God as the sole creative force in the cosmos. The Islamic intellectual traditions we have encountered thus far have not provided a standard for discriminating between coercive and non-coercive acts, nor have they dealt in concrete terms with the problems of legal and moral responsibility occasioned by coercion. The Qurʾānic verse and ḥadīth speak about the consequences of coercion, as do the perfunctory declarations of the early legal authorities. The Muʿtazilites provide a wholly psychological account of compulsion. This works fine for the Muʿtazilite aim of defending systematic theological values. Muslim legal scholars, at the most general level, though sought to provide moral, legal and religious guidance for Muslims as they confronted a variety of different types of social practices, choices, and life events. As such, Islamic legal scholars confronted the problem of coercion in a much more concrete manner than the theologians. At a minimum, much as Western jurists today, Muslim legal scholars struggled to formulate a standard to help discriminate between legally valid and frivolous claims of

coercion. But because Muslim jurists also served a religious function, they also sought to provide moral guidance on some of the precarious choices that the problem of coercion occasions. Consider, for example, the following case: the coercer threatens one's life, demanding that one should kill an innocent, if the coerced chooses to comply with the coercer's demand, who is held responsible for the act? Does the coerced sin in committing the homicide and is he liable to God's anger and punishment on the Day of Judgment? Should the courts punish him? Questions such as these were the province of the scholars who specialized in the discipline of Islamic law.

The next section is devoted to analyzing the coercion jurisprudence of legal thinkers belonging to two classical Sunnī legal traditions, Ḥanafism and Shāfiʿism. Our starting point will be the early fourth/tenth century. By this time, legal scholars wrote and taught from within the confines of a legal tradition. Our ending point will be the early fifth/eleventh century. The fifth/eleventh century witnessed the emergence of a number of remarkable multi-volume encyclopedic legal works that have preserved for us the outstanding vitality of jurisprudential thought of the period.

1 Review of Current Scholarship

In the following chapters we will analyze certain key aspects of the coercion jurisprudence of two classical Sunni legal traditions, Ḥanafism and Shāfiʿism. We can divide the content of coercion jurisprudence in this period into two broad analytical areas:

1. the efforts of the legal scholars to develop and justify a legal definition of coercion
2. the efforts of legal scholars to identify and justify the legal and moral effects of coercion on different types of legal acts.

The next chapter is devoted to pursuing analysis of Ḥanafite jurisprudence in the first area. The fifth chapter is devoted to pursuing analysis of Ḥanafite jurisprudence in the second area. The final chapter combines analysis of Shafiʿite jurisprudence in both areas.

In these three chapters we shall be playing close attention to they way Muslim jurists justify the legal opinions that constitute coercion jurisprudence. We can divide the methods of reasoning used by Muslim jurists similarly into two broad analytical types:

1. scriptural reasoning
2. legal reasoning

Contemporary scholars of Islamic law are more familiar with scriptural reasoning.[356] At a basic level, scriptural reasoning involves showing how a given Qurʾānic verse or ḥadīth is the basis for a legal rule. The types of justifications that I have conveniently labeled as legal reasoning have gotten less coverage in Islamic law scholarship.[357] Legal reasoning in coercion jurisprudence in the late fourth/tenth and throughout the fifth/eleventh centuries consists of four different types:

1. use of substantive legal principles
2. use of legal metaphors and tests
3. use of particular empirical descriptions
4. comparison between different legal cases

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[356] For an examination of the validity of different types of scriptural inferences, see the scholarship on legal theory (*uṣūl al-fiqh*). Most prominently, the following texts: Bernard G. Weiss, *The spirit of Islamic law*, (Athens, GA: University of Georgia Press, 2006); Idem., *Search*; Mohammad Hashim Kamali, *Principles of Islamic jurisprudence*, Revised ed., (Cambridge, England: Islamic Texts Society, 1997; reprint, 1997); Hallaq, *A History*; Aron Zysow, "The economy of certainty: an introduction to the typology of Islamic legal theory" (Ph.D., Harvard University, 1984). For an examination of scriptural reasoning found in positive law texts (*furūʿ al-fiqh*), see: Brannon M. Wheeler, *Applying the canon in Islam: the authorization and maintenance of interpretive reasoning in Ḥanafī scholarship*, (Albany: State University of New York Press, 1996).

[357] For recent examinations of scriptural *and* legal reasoning as found specifically in fiqh works see: Baber Johansen, "Legal Literature and the Problem of Change: the Case of Land Rent," in *Islam and Public Law*, ed. Chibli Mallat (London: Graham & Trotman, 1993); idem., "Casuistry: between legal concept and social praxis," *Islamic Law and Society* 2, no. 2 (1995); Behnam Sadeghi, "The structure of reasoning in post-formative Islamic jurisprudence (case studies in Ḥanafi laws on women and prayer)" (Ph.D., Princeton University, 2006)

Both types of reasoning constitute the jurists' shared technical language, and the jurists use this shared language to accomplish two different aims. The first aim is to show other jurists how a given positive legal rule is, at the minimum, a legitimate interpretation of the scriptural sources. Many times this argumentation is directed at scholars who belong to a different legal tradition. The second aim is to establish legal principles that are maximally consistent with existing agreed upon body of positive legal rules and scriptural sources in order to provide guidance to jurists for future unprecedented cases.

Most of coercion jurisprudence for Ḥanafism and Shāfiʿism in the classical period is found in works of positive law. There are three basic types of works of positive law: the legal handbooks (*mukhtaṣarāt*), commentaries on the legal handbooks (*shurūḥ*), and works of comparative law (*ikhtilāf*).[358] The classical Ḥanafites, specifically, made a greater attempt at integrating the concerns of legal theory with their positive law.[359] For this reason, we also find coercion jurisprudence in their works of legal theory.

Before we proceed with our investigation of what these works have to say about coercion, it will be beneficial for us to get a sense of the function they played in medieval Islamic legal scholarship. We will start by reviewing existing scholarship on the issue.

Much of the focus of recent literature has been on the problem of legal change in Islamic law, and many scholars of Islamic legal history have interpreted the function and value of these in light of their analyses on this problem. The scholar of Islamic law, Joseph Schacht set the

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[358] One other possible source for the application of coercion jurisprudence to concrete historical situations is the legal responsa literature (*fatāwā*). Unfortunately, in contrast to the post-classical period, we do not possess published collections of legal response.

[359] See Murteza Bedir, "The Early Development of Ḥanafī Uṣūl al-Fiqh" (PhD, University of Manchester, 1999), 12-18 and idem., "Is there a Ḥanafī Uṣūl al-Fiqh?," *Sakarya Üniversitesi Ilahiyat Fakültesi Dergisi (Journal of Sakarya University Faculty of Theology)* 4, no. 2 (2001).

terms of the analysis of this problem. He interpreted diachronic stability of legal rules found in the positive law texts as evidence of the legal stagnation that occurred with the emergence of legal traditions. According to Schacht, by the fourth/tenth century the legal traditions monopolized legal scholarship and "the point had been reached when the scholars of all schools felt that all essential questions had been thoroughly discussed and finally settled."[360] After, the tenth century, this meant that no jurist could aspire to more than "explanation, application, and, at the most, interpretation of the doctrine as it had been laid down once and for all."[361] Jurists could no longer challenge and replace the established positive legal rules of the traditions. At most, the original contributions of authors of positive law works consisted entirely in "abstract systematic constructions which affected neither the established decisions of positive law nor the classical doctrine of the *uṣūl al-fiḳh*."[362] Yet, in a different passage he admits, "the details of the growth of doctrine within each school, though amply documented by the existing works, still remain a subject for scholarly investigation."[363] He seems to leave open the possibility that while a core set of legal rules, after the fourth/tenth century were especially resistant to outright modification, legal doctrine might grow over time.[364] Schacht seems to assume that the works of positive law (both the handbooks and the commentaries), as opposed to the collections of legal response are the most authoritative expression of Islamic law. This being the case, he identifies the growing chasm between law and social reality in the post-formative period up until modern

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[360] Joseph Schacht, *An introduction to Islamic law*, (Oxford: Clarendon Press, 1964; reprint, 1998), 70-1.

[361] Ibid., 71.

[362] Ibid., 72.

[363] See ibid., 71

[364] In another passage he identifies the legal responsa of the mufti as the mechanism through which legal doctrines might grow. For this see ibid., 74-75.

times, as the dominant feature of its history.[365] He identifies this "traditionalism" as "perhaps its most essential feature" and asserts that it is "typical of a 'sacred law'."[366] For our purposes, we ought to note one thing in particular. For Schacht the primary function of the books of positive law is to provide jurists with the most authoritative expression of school doctrine on legal issues.

Subsequent scholars have modified, extended, and criticized different features of Schacht's characterization of the nature of Islamic law and its historical development. Wael Hallaq, relying mostly on post-classical sources, asserts that works of positive law admitted change in legal doctrine by incorporating the legal responsa of the jurists in a given age, who were answering concrete problems posed by lay petitioners, judges, and state officials.[367] Islamic law was thus both intimately and organically connected to society and government and changed in response to changes in society. Johansen makes essentially the same argument through an examination of the change in the legal rules that governed taxation of agricultural land starting at the end of the classical period and culminating in the Ottoman period.[368] Both authors emphasize the relationship between two genres of legal literature: the legal responsa (*fatāwa*) and the positive law. Johansen additionally emphasizes the pedagogical function of

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[365] See ibid., 75, where he notes that Islamic law "was not altogether immutable, but the changes which did take place were concerned more with legal theory and the systematic superstructure than with positive law. Taken as a whole, Islamic law reflects and fits the social and economic conditions of the early ʿAbbāsid period, but has grown more and more out of touch with later developments of state and society." See also ibid., 199. He writes: "The nature of Islamic law is to a great extent determined by its history, and its history is dominated by the contrast between theory and practice."

[366] Ibid., 211.

[367] Wael Hallaq, "From fatwās to furūʿ: growth and change in Islamic substantive law," *Islamic Law and Society* 1, no. 1 (1994). See also his idem., *Authority, continuity and change in Islamic law*, (Cambridge: Cambridge University Press, 2001), 166-235.

[368] See Johansen, "Legal Literature and the Problem of Change: the Case of Land Rent," .

certain positive law texts,[369] and notes that even when the law that is applied, whether as the basis of a fatwa or judicial practice, relies on a legal doctrine that has effectively superseded the doctrine of the founders of the tradition, at no point do jurists within the tradition explicitly disavow the validity of the original doctrine of the founders of the tradition.[370] In contrast to Schacht, Johansen does not think that the stability of the rules articulated in the positive law texts say anything about the relative stolidity and irresponsiveness of the legal system to changing social realities.

Sherman Jackson does not attempt to challenge Schacht's "traditionalist" characterization of Islamic law. Rather, through the investigation of the constitutional aspects of a post-classical jurist's legal thought, he attempts to show that legal conformity (*taqlīd*) to a tradition played the constitutional function of limiting the discretionary powers of the ruler.[371] Moreover, he notes that legal conformity is an essential and socially necessary feature of any legal system.[372] Furthermore, he notes that legal change in pre-modern legal systems occurs not through substantive and explicit modification of core legal rules, but rather through piece-meal, scope

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[369] See ibid., 30. Johansen divides legal literature into three different types. Each type plays a different function. He identifies the textbooks (*mutūn*) as serving primarily the pedagogical function of helping to train jurists. What Johansen calls textbooks, I refer to has the legal handbooks (*mukhtaṣar*) of the school.

[370] See ibid., 46. Johansen writes: "They do not, though, consider the new doctrine to be a substitute and replacement of the old doctrine. The validity of the old and the new doctrine is, rather, a matter of the literary genre in which they are applied. There is no doubt that on the level of the mutūn – and for teaching purposes – the early legal doctrine remains dominant. But on the level of the shurūḥ and the fatāwā – and for judicial practice – the new doctrine supersedes the old one."

[371] See Sherman A. Jackson, *Islamic law and the state: the constitutional jurisprudence of Shihāb al-Dīn al-Qarāfī*, (Leiden: Brill, 1996), 70-83, 103-12.

[372] See ibid., 80, where Jackson writes: "Law, on the other hand, to borrow the observation of Thomas Hobbes, is not philosophy. Its dictates cannot remain forever open to dispute and reconsideration; nor can it accommodate, let alone promote, change and innovation to a degree that would threaten its essential function, namely, the preservation of order."

restricting, exception making growth to a body of law over time, a process that the legal historian Alan Watson has termed legal scaffolding.[373]

Khaled Abou El Fadl challenges two aspects of Schacht's conception of Islamic law. First, also relying on the scholarship of Alan Watson, he notes that law, as a discipline is conservative by nature because of its social function. It seeks to resolve conflicts peaceably and has inherent regard for public order.[374] Given these features of law as a discipline, Abou El Fadl asserts that historians will not find evidence for legal change by looking at the core legal rules that make up a given field. Rather, historians must pay attention to what he calls the micro-discourses, or the details of the legal discourse to track change over time. He contends that jurists often tend to bend the thrust of core legal rules of a tradition, not by attempting to modify them directly, but rather by qualifying them in different ways at the level of detail. He also argues that the purpose behind the modification of inherited micro-discourses is not necessarily aimed towards concrete social change.[375] He writes:

> Rather, the purposes of the creative process are negotiative, symbolic, clarifying, and at times intentionally obfuscating. It often legitimates, aspires, educates, and protests. Importantly, the creative process is expressed primarily through the subtleties of language, and hence, unless one focuses on the details of the juridical linguistic practice, one would not be able to notice, much less appraise, the dynamics of the legal discourse.[376]

Eyup Kaya has shown that belonging to a legal tradition did not require absolute commitment to only the positive legal rules of the founders of the tradition. In fact, he shows

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[373] Johansen, "Legal Literature and the Problem of Change: the Case of Land Rent," 96-102.

[374] See Khaled Abou El Fadl, *Rebellion and violence in Islamic law*, (Cambridge: Cambridge University Press, 2001), 23-31.

[375] See ibid., 321-33.

[376] See ibid., 323.

that in the medieval period, scholars belonging to the same legal tradition yet operating from different geographical locales articulated the juristic doctrines of the legal school in different ways. He specifically shows, for example that in fact, Ḥanafite jurists of Balkh and Bukhara specifically rejected the application of aspects of the law of retaliation (*qiṣāṣ*) because it asumed the tribal social structure of Arab society. Khurasan did not have a tribal social structure.[377] Through an analysis of the internal disagreement within Ḥanafism, Kaya argues that belonging to a tradition did not necessarily mean ironclad commitment to the legal opinions of the founders of the legal tradition. Rather, being a member of a tradition required commitment to a cumulative tradition of juristic thinking as a starting point for one's own position. He calls this open-ended process of legal reasoning that begins with the tradition, "intra-madhhabic reasoning." He writes:

> It is a reasoning that operates in a particular juristic tradition, one that builds on what has been accomplished in a certain juristic past. Intra-madhhabic reasoning is legal thinking about history. There are Hanafis such as al-Karkhī who rejected the typical opinions of Abū Ḥanīfa, or those, such as Abū al-Qāsim al-Ṣaffār of tenth-century Balkh, who disagreed with Abū Ḥanīfa on thousands of issues, but there was not one Hanafi who did not take the Hanafi juristic tradition as a legal source.[378]

Somewhat in contrast to the way Hallaq and Johansen read the positive law texts, Brannon Wheeler has argued that the function of positive law texts was not necessarily only justification and defense of inherited positive legal rules as a type of eternal legal truth. Rather, positive law texts played the pedagogical function of demonstrating to students how to reason

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[377] See Eyup Said Kaya, "Continuity and Change in Islamic Law: the Concept of Madhhab and the Dimensions of Legal Disagreement in Hanafi Scholarship of the Tenth Century," in *The Islamic school of law: evolution, devolution, and progress*, ed. P. J. Bearman, Rudolph Peters, and Frank E. Vogel, *Harvard Series in Islamic Law* (Cambridge, Mass.: Islamic Legal Studies Program Distributed by Harvard University Press, 2005), 31.

[378] See ibid., 39.

according to the principles of the tradition. For Wheeler this reasoning consisted primarily of showing how the rules of the tradition are derived from the Qurʾān and wholly consistent with the Prophet's own interpretive practices vis-à-vis Qurʾānic revelation.[379] Somewhat similarly, Norman Calder, against what he perceived as a trend in post-Schachtian scholarly literature, argued that classical positive law works were wholly unconcerned with engaging social reality. They were wholly intellectual products that allowed jurists to display interpretive and literary virtuosity. This consisted of defending the doctrines of the traditions against external criticism and showing how the legal rules maintained maximal fidelity to the Divine sources of the law and maximal coherence with each other. Calder writes:

> The discovery that the primary (not the exclusive) aim of a *mabsūṭ* [encyclopedic positive law book] is to provide arguments (causes) for the basic propositions of a *mukhtaṣar* prompts reformulation of what a *mukhtaṣar* is. A *mukhtaṣar* provides a basic pattern of norms which define the discipline of the law. A *mabsūṭ* demonstrates the truth and validity of the norms by grounding them in argument: arguments of authority (divine and prophetic) predominate, but arguments of reason and general coherence are also brought into play, as are definitions and linguistic usage… The justificatory material in a *mabsūṭ* represents an attempt to assert the status of the core rules (the *mukhtaṣar*) as a demonstrative science. The validity of the law as a whole depends on a hierarchy of arguments: those that ground the *mukhtaṣar* in reasons, and those that extrapolate from the *mukhtaṣar* new rules.[380]

Through an examination of Ḥanafite positive law texts related to women and public prayer, Behnam Sadeghi shows that the neither the legal sources (Qur'an and Sunnah) of norms nor the various techniques of reasoning (textual and legal) *determine* the rules of the legal

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[379] This is how Wheeler characterizes how Ḥanafite jurists perceived the role of the Prophet in deriving legal rules.

[380] Norman Calder, *Islamic jurisprudence in the classical era*, ed. Colin Imber, (New York: Cambridge University Press, 2010), 39.

tradition. The conservatism of a legal tradition cannot be attributed to its "religious" nature or the fact that it is regarded as a "sacred law" or Islamic law's specifically textualist conception of authority. He also cautions historians against using arguments found in works of positive law as evidence of the social or communal values of a particular society, noting that the received laws of a legal tradition have an inherent stability, what he calls legal inertia. For these reasons, the justificatory arguments used by authors of positive law books cannot be regarded as the true causes of the laws themselves. Nor can they be regarded as evidence of the jurists' own personal values. Jurists working within the legal traditions work within certain professional constraints. Any arguments forwarded by jurists must carefully be scrutinized with this in mind. Part of the tradition-bound jurist's job is to defend the legal rules of the tradition.

Hallaq and Johansen interpret the positive law works as continually updated authoritative expressions of the legal doctrines of the tradition. Importantly they rely, to a large extent, on post-classical positive law texts and collections of legal responsa to make this point. Wheeler and Calder interpret the positive law texts as mostly pedagogical tools and literary products that are produced within a cumulatively unfolding literary tradition.[381] As such the primary function of the positive law texts is less to update the law or provide the latest authoritative expression of a given tradition's doctrine as applied in real life, but rather, at a basic level, to justify the

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[381] Robert Gleave characterizes the thrust of Calder's scholarship in the following terms: That is, in classical Muslim jurisprudence, the motives for an individual scholar's involvement may be hazy, but the discipline as a whole is designed to serve a primarily religious and/or aesthetic purpose. Those who write works of fiqh (in whatever subgenre), or act as muftis (at whatever level), or collate their own fatwas or those of others into ordered and organised collections, all are fulfilling a religious obligation. The products of this activity, the literary works themselves, are, at one time, an encoded theological message and examples of literary artifice. To try to use such works to predict practice, or as a contrast to practice, or as a means of modifying practice is to adopt the 'least interesting' of the available approaches. For Calder, these commonplace methodologies in Islamic legal studies do an injustice to the literature that has formed the core of the learned discipline of fiqh." See Robert Gleave, "Introduction," in *Islamic jurisprudence in the classical era*, ed. Colin Imber (New York: Cambridge University Press, 2010), 17.

positive legal rules that constitute the bedrock of the tradition and to demonstrate their coherence. Much of the disagreement between these two camps can perhaps be explained by the nature of the sources each relied on and the purpose of their respective analyses. Hallaq and Johansen were interested in the question of the possibility and mechanics of legal change in pre-modern Islamic legal systems. Wheeler and Calder were interested in examining positive law works as intellectual products. They limited themselves to texts from the classical period and did not consult collections of fatwas.

Since we will be looking at classical texts, our own examination of coercion jurisprudence tends to share Calder and Wheeler's emphasis on the pedagogical function and intellectual nature of the positive law texts. Admittedly, we will not primarily be attemping to track legal change. Rather the focus of our examination will be twofold: a cross tradition comparative examination of the types of justifications that constitute coercion jurisprudence and an analysis of the conceptual tensions that animate it. We will be looking at how medieval jurists thought through the problems that coercion posed to legal and moral accountability.

2 Ḥanafite Positive Legal Rules Regarding Coercion

At a basic minimum, belonging to a legal tradition meant commitment to at least a majority of the positive legal rules that constituted the tradition's core doctrinal identity.[382] In

[382] There is some disagreement about what at the bare minimum constitutes allegiance to a legal tradition. Is it allegiance to the rules? Is it allegiance to a specific interpretive methodology? Is it simply a matter of self-identification? To what extent is this allegiance binding. Must one accept all the legal rules of the founding fathers to qualify as a member of the tradition, or just some? Jackson seems to think that allegiance consists of commitment to a body of positive legal rules. See Jackson, *Islamic Law and State*, 73, where he seems to specifically exclude interpretive principles as relevant to membership in a legal tradition. For an analysis of what one $7^{th}/13^{th}$ century Mālikite jurist Qarāfī (d. 684/1285) thinks allegiance to a tradition consists of, see ibid., 113-23. Eyup Kaya thinks that regarding the legal heritage of a given tradition as one's own starting point is sufficient to qualify for membership in a tradition. Kaya, "Continuity and Change in Islamic Law: the Concept of Madhhab and the Dimensions of Legal Disagreement in Hanafi Scholarship of the Tenth Century," 38-40. El-Shamsy also seems to regard membership in a tradition requiring commitment to the legal paradigm initiated by the founder. See Ahmed El Shamsy, "From tradition to law: The origins and early development of the Shafi'i school of law in ninth-century Egypt" (Ph.D., Harvard University, 2009), 168-79.

the post-formative period of Islamic legal history, legal thought unfolded within the confines of a legal tradition.[383] The tradition's legal rules were the starting point for coercion jurisprudence in the classical period. The best sources for the gist of the legal rules are the legal handbooks (*mukhtaṣars*) of the fourth/tenth century.[384] Most coercion jurisprudence is found in works that were composed by jurists of the fourth/tenth and fifth/eleventh centuries as commentaries on these handbooks. The fourth/tenth century legal handbooks were summations of the legal lectures of the founding fathers of the traditions in question. These texts seem to have met a useful pedagogical value, hence their widespread fame and use. They distilled the essential positions of the founding jurists into a compact single volume.[385] As such, they are light on

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[383] There is a fair amount of literature tracing the development of the legal traditions in Islamic history. The most authoritative starting point for this literature is undoubtedly Schacht's influential work, *An introduction to Islamic law*. For his description of the emergence of legal traditions, specifically as sites of legal conformity (*taqlīd*) see Schacht, *An introduction to Islamic law*, 58-68. For a modification of Schacht's historical narrative, see Wael Hallaq, "From Regional Schools to Personal Schools of Law? A Reevaluation," *Islamic Law and Society* 8, no. 1 (2001). For an analysis of the historical emergence of the traditions as loci of legal authority, reasoning, and change see idem., *Authority*, 57-120. For the historical development of the legal traditions as institutional sites for the production of legal knowledge, see Christopher Melchert, *The formation of the Sunni schools of law, 9th-10th centuries C.E*, (Leiden: Brill, 1997). For a recent comprehensive historical account of the emergence of Shāfiʿism as a tradition, see El Shamsy, "From tradition to law: The origins and early development of the Shafi'i school of law in ninth-century Egypt,".

[384] The emergence of these summations in the early part of the tenth century seem to have been a trans-tradition phenomenon originating in Egypt. For instance see the handbook of the Malikite Ibn ʿAbd al-Ḥakam (d. 229/814), the Shāfiʿite handbooks of Buwayṭī (d. 231/846) and Muzanī, (d. 264/877) and the Ḥanafite handbooks of Ṭaḥāwī (d. 321/933) and Marwazī (d. 334/975). For some basic information on the Ḥanafite handbooks see Kaya, "Continuity and Change in Islamic Law: the Concept of Madhhab and the Dimensions of Legal Disagreement in Hanafi Scholarship of the Tenth Century," 212, note 5. For an analysis of Buwayṭī's legal handbook see Ahmed El Shamsy, "The first Shāfiʿī: the traditionalist legal thought of Abū Yaʿqūb al-Buwayṭī (d. 231/846)," *Islamic Law and Society* 14, no. 3 (2007). For a comparison of Buwayṭī and Muzanī's legal handbooks, see ibid., 334-6. For an analysis of Ibn ʿAbd al-Ḥakam's handbooks, see Jonathan E. Brockopp, "The Minor compendium of Ibn ʿAbd al-Ḥakam (d. 214/829) and its reception in the early Mālikī school," *Islamic Law and Society* 12, no. 2 (2005). Fadel argues that the legal handbooks of the 7th/13th centuries sought to simplify and pare down the accumulation of legal doctrine over the previous centuries. He thus interprets the emergence and popularization of the legal handbooks in this period for the Malikites specifically as a type of codification of Islamic law. See Mohammad Fadel, "The social logic of taqlīd and the rise of the Mukhataṣar [sic]," *Islamic Law and Society* 3, no. 2 (1996): especially 219-33. It is not clear that the same argument can be made for the handbooks of the 3rd/9th and 4th/10th centuries.

[385] For example, on the Shāfiʿīte side, El-Shamsy calculates that Buwayṭī's handbook was 10% of the total length of Shāfiʿī's *Umm*, while Muzanī's was 16%. See El Shamsy, "From tradition to law: The origins and early development of the Shafi'i school of law in ninth-century Egypt," 166.

justifications and argument. The Egyptian Ḥanafite jurist, Abū Jaʿfar al-Ṭaḥāwī (d. 321/933)[386] wrote one of the most famous handbooks in the history of Ḥanafism.[387] Around the same time a Transoxanian Ḥanafī, al-Ḥākim al-Shahīd al-Marwazī (d. 334/975) also composed a handbook.[388] This work was not as influential as Ṭaḥāwī's within the tradition, and in fact the only way it has survived is because the famous eleventh century jurist Sarakhsī wrote his famous commentary upon it, the *Mabsūṭ*. There is one other handbook that is important for our time period, that of the Iraqi jurist Qudūrī (d. 428/1037).[389] These texts differ little from each other in their articulation of the core positive legal rules that comprise the bedrock of Ḥanafite coercion jurisprudence. We will use them simply to familiarize ourselves with these positive legal rules. We will focus on the attempt to formulate standards for defining legally admissible coercion, the rules that note the impact of coercion on different types of speech acts, on prohibitions related to the consumption of illicit foods and beverages, and the prohibitions related to causing physical or financial harm to others.

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[386] For information on Ṭaḥāwī, see *Encyclopedia of Islam, Second Edition*, art. 'al-Ṭaḥāwī, Aḥmad b. Muḥammad b. Salāma b. ʿAbdal-Malik al-Azdī al-Ḥaǧrī Abū Ǧafar' (Norman Calder). See also Muḥammad Zāhid al-Kawtharī, *al-Ḥāwī fī sīrat al-Imām Abī Ja'far al-Ṭaḥāwī*, (Cairo: Maṭbaʿat al-Anwār, 1368 [1949]).

[387] According to Aḥmad al-Naqib, a historian of Ḥanafism, Ṭaḥāwī was the first to collect the opinions of the three founding jurists of Ḥanafism, Abū Ḥanīfa, Abū Yūsuf and Shaybānī and arrange them under chapter headings inspired by the organizational scheme found in the Shāfiʿite scholar, al-Muzanī's famous *Mukhtaṣar*. Muzanī was Ṭaḥāwī's uncle. Aḥmad ibn Muḥammad Naṣīr al-Dīn Naqīb, *al-Madhhab al-Ḥanafī: marāḥiluhu wa-ṭabaqātuh, ḍawābiṭuhu wa-muṣṭalaḥātuh, khaṣāʾiṣuhu wa-muʾallafātuh*, 1st ed., 2 vols., (Riyad: Maktabat al-Rushd, 2001), 2:462.

[388] For information on Marwazī's work see ibid., 1:145. For basic biographical information see, 'Abd al-Qādir ibn Muḥammad al-Qurashī, *al-Jawāhir al-muḍīya fī ṭabaqāt al-Ḥanafīya*, ed. 'Abd al-Fattāḥ Muḥammad al-Ḥulw, 2nd ed., 5 vols., (n.p.: Hajar li al-Ṭibāʿa wa al-Nashr wa al-Tawzīʿ, 1993), 3:313-15.

[389] The historian of Ḥanafism, Aḥmad al-Naqīb, claims that it is the most widely studied and commented upon text in Ḥanafite history. For this see Naqīb, *al-Madhhab al-Ḥanafī*, 2:465. For a description of Qudurī's handbook, including its influence within Ḥanafism through the ages see ibid., 2:464-67. For basic biographical information see the editor's introduction to a recently published work of his, Aḥmad ibn Muḥammad al-Qudūrī, *al-Mawsūʿa al-fiqhīya al-muqārana: al-Tajrīd*, ed. Muḥammad Aḥmad Sirāj and 'Alī Jumʿa Muḥammad, 1st ed., 12 vols., (Cairo: Dār al-Salām lil-Ṭibāʿa wa-al-Nashr wa-al-Tawzīʿ wa-al-Tarjama, 2004), 1:6-23.

The authors of the legal handbooks begin by first defining the types of threats that legitimately qualify as coercive when the coercer demands that the coerced commit an act that is typically forbidden by law, like eating carrion or pork or drinking wine. What is coercive in these cases is a credible threat directed against one's life or limb or some other form of physical harm in which the likely loss of life or limb is feared.[390] If one is confronted with such a threat, it becomes wholly permissible for the coerced to consume the illicit substances. In fact, refusing to consume the food in cases of necessity to the point of perishing from the refusal actually constitutes sinful behavior.[391] Lesser threats, such as the threat of imprisonment do not transform the prohibition into permission.

The authors add that the threat must be credible. In the words of Qudūrī: it must be made by someone who can follow through with its execution.[392] This qualification for the coercer is only stated in the rule that enunciates the permission for consuming illicit foods, but it is safe to assume that it applies to all the other rules that deal with coercion.

Life or limb-threatening coercion *excuses*, but does not fully permit apostasy. The coerced is not held legally or morally responsible for his blasphemous utterances. However,

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[390] See for instance, Aḥmad ibn Muḥammad al-Ṭahāwī, *Mukhtaṣar al-Ṭaḥāwī*, ed. Abū al-Wafā al-Afghānī, (Hyderabad: Lajnat Iḥyāʾ al-Kutub al-Nuʿmānīyya, 1370), 405-7. Ṭaḥāwī lists the following examples of threats to life or limb: a threat against one's life, the threat to chop one's hand or other limb off, or the threat to lash one a hundred times or so. In the process of enumerating the examples, he enunciates the general principle that any threatened act in which loss of life or limb is feared qualifies as coercive. Marwazī similarly notes that the threat of death renders the consumption prohibitions, permitted. Interestingly, he adds that some contemporary Ḥanafites defined coercion when the demand is to violate a consumption prohibition, as forty lashes, the least severe *ḥadd* penalty. See Abū Bakr Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Kitāb al-Mabṣūṭ*, ed. Abū ʿAbd Allāh Muḥammad Ḥasan Muḥammad Ḥasan Ismāʿīl al-Shāfiʿī, 1st ed., vol. 30, (Beirut: Dār al-Kutub al-ʿIlmīyya, 2001), 24:59. See Aḥmad ibn Muḥammad al-Qudūrī, *Mukhtaṣar al-Qudūrī fī al-fiqh al-Ḥanafī*, ed. Kāmil Muḥammad Muḥammad ʿUwayḍa, 1st ed., (Beirut: Dār al-Kutub al-ʿIlmīyya, 1997), 229.

[391] For this position see al-Sarakhsī, *Mabsūṭ*, 24:172and Naqīb, *al-Madhhab al-Ḥanafī*, 229. Ṭaḥāwī does not address whether refraining from committing the demanded act in an instance of coercion is sinful. He merely speaks of the dispensatory permission to commit the demanded act.

[392] Ṭaḥāwī notes that a thief or someone else makes the threat. Marwazī notes that a leader of a Muslim or *dhimmī* gang makes the threat.

unlike the previous cases, the Ḥanafites considered persevering to the point of being killed or harmed while refusing to apostasize meritorious.[393]

The prohibitions against the consumption of illicit foods or apostasy do not involve the interests of other people, unlike the prohibition of murder or rape. These prohibitions involve protecting innocents from suffering harm. How coercion interacts with these moral valuations elicited disagreement within the tradition. In fact, as we will see, these issues tended to be the ones that garnered the least amount of consensus amongst Muslim scholars. On the issue of coerced homicide, the case imagined is the following: a coercer threatens the life of the coerced if he does not kill a particular person. What is the legal penalty if the coerced actually commits the act in this circumstance? Ṭaḥāwī notes disagreement amongst the founding fathers on whether the coerced or coercer or both are held legally responsible for the homicide. Abū Ḥanīfa held that the coercer is to be killed while the coerced is not. Abū Yūsuf held that the coercer is held liable for the blood money, while the coerced is not held legally responsible for the act. Finally, Ṭaḥāwī notes that Zufar held that the coerced is to be killed, stating that coercion does not permit murder. Ṭaḥāwī explicitly endorses this position as better than the other two and as the one that he adopted.[394] Qudūrī does not note the difference of opinion amongst the founding jurists and simply states that even life-threatening coercion does not excuse murder. The coercer is committing a sin (*ithm*) if he commits the murder, and he becomes the object of retaliation (*qiṣāṣ*).[395] Marwazī presents only Abū Ḥanīfa and Shaybānī's position: when the threat is

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[393] Ṭaḥāwī does not discuss the issue of apostasy. al-Qudūrī, *Mukhtaṣar*, 229-30.

[394] al-Ṭahāwī, *Mukhtaṣar*, 411.

[395] al-Qudūrī, *Mukhtaṣar*, 230.

against the life of the coerced and he kills another person, the coercer is held liable for the maximum possible penalty. The coerced is not legally liable.[396]

The case of rape is similar to the case of coerced murder. All three of the authors of the legal handbooks record disagreement amongst the founding jurists on the issue. The case imagined is the following: a coercer threatens the life of the coerced if he does not rape a particular person. What is the legal penalty if the coerced actually commits the act in this circumstance? Ṭaḥāwī records two different opinions for Abū Ḥanīfa. In one opinion he held that the coerced is to be punished (*yuḥadd*) for the crime of fornication (*zinā*). In the second opinion, apparently shared by Abū Yūsuf, if the coercer is the ruler then the coerced is not to be punished. However if the coercer is someone other than the ruler, then the coerced is to be punished. Shaybānī held that if the coercer is someone other than the ruler but his method of coercion resembles that of the ruler's, the coerced is not to be punished for the crime. Finally Ṭaḥāwī analogizes from Zufar's position on coerced murder and notes that the coerced ought to be punished, which he proclaims as the correct position. Both Marwazī and Qudūrī, with slight differences, reproduce the same opinions, though, unlike Ṭaḥāwī neither endorses a specific view.[397]

In all of these cases, the coercer demands that the coerced commit a forbidden act, whether the consumption of illicit foods or harming innocent bystanders. But how does coercion interact with acts that are morally neutral and merely permissive in the view of the law? Contracting a sale or a marriage, or uttering a pronouncement of divorce is an example of this

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[396] Marwazī enunciates the rule in the context of the command of a government agent sent to a rural district by the caliph. This agent commands the illegal killing threatening someone's life. al-Sarakhsī, *Mabsūṭ*, 24:84.

[397] See ibid. and al-Qudūrī, *Mukhtaṣar*, 230.

type of legal act. Here the Ḥanafites make a curious distinction. Contrary to the previous set of cases the threats of beatings, amputations, and imprisonment are deemed legally coercive if the demand is to engage in a commercial transaction, whether selling or buying property or acknowledging a debt. Only threats against life or limb have any possible effect on modifying prohibitions, or the legal consequences that followed from violating them. Threats of beatings and imprisonment, and not just threats against life or limb, create the option of cancellation for the coerced in commercial exchanges and outright invalidate legal acknowledgements.[398] On the other hand, consistent with ancient Kufan legal doctrine examined in the first chapter, not even threats against life can invalidate the legal consequences of acts such as divorce and emancipation. The same rule applies to contracting a marriage, revoking a pronouncement of divorce, and vows.[399] A coerced pronouncement of divorce has the exact same legal consequences as that of one freely pronounced. Coercion has no effect on the validity of the divorce, no matter how severe the threat. However, if the coerced has not consummated the marriage, then he has recourse to half of the value of the dowry against the coercer, an amount that he would normally owe the wife had he not been coerced.[400] Likewise, the coerced has recourse to the value of the emancipated slave against the coercer, and the slave's patronage relation (*walāʾ*) belongs to the coerced. Ṭaḥāwī provides cursory justification for the distinction between acts such as divorce and those such as sales. He notes that in the case of sales, the law

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[398] See al-Ṭahāwī, *Mukhtaṣar*, 407-8 where Ṭaḥāwī says that threats against life, of beating (*ḍarb*), amputation (*qatʿ*), and imprisonment (*ḥabs*) invalidate acknowledgement of debt, and differentiates between contract of sale, which accept revocation because of coercion and marriages, divorces, emancipations, and acts of revoking a pronouncement of divorce, which do not. See also al-Qudūrī, *Mukhtaṣar*, 229.

[399] See al-Ṭahāwī, *Mukhtaṣar*, 407, al-Sarakhsī, *Mabsūṭ*, 24:67, al-Qudūrī, *Mukhtaṣar*, 229.

[400]All of the Islamic legal traditions require a dowry paid by the husband to the wife in order as an essential condition for the validity of a marriage. In cases where a divorce takes place before a marriage is consumated the jurists, relying on the Qurʾānic verse, 2:237, note that the husband is responsible for paying half the dowry.

recognizes *ex post facto* invalidation, either due to a defect (*ʿayb*) in the product exchanged or because of the stipulation of the option to return the product after a review (*khiyār al-ruʾya*).[401] Because these acts accept other types of cancellation, they also accept cancellation because of coercion. This is not the case in acts such as marriage, divorce, or emancipation. The law does not recognize any means of an *ex post facto* invalidation for these types of acts.

Unfortunately we just do not have many sources documenting the arguments behind the rules for the second/eighth and third/ninth centuries. The legal handbooks functioned as a primer for beginning students to quickly learn the main rules of the tradition. Often times they were memorized. For subsequent generations of scholars, they served as the object of commentary in legal lectures, which are presumably the origins of the arguments that make up coercion jurisprudence in subsequent centuries. For these reasons it is not surprising that the legal handbooks contain little argument and justification.

The legal handbooks leave many questions unanswered. How did the Ḥanafites justify the idea that threats against life or limb are coercive, in certain cases, in the absence of scriptural text or an uncontroversial empirical standard, without inviting the charge of arbitrariness? Why are threats of imprisonment and beating coercive in contracts of sale, such that it creates a right of cancellation for the coerced, but divorces, for example, are entirely unaffected? What differentiates sales, also a type of speech act, from divorces and emancipations? These last two questions are especially salient given the fact that all other legal traditions held the coercion invalidates all speech acts, whether sales or divorces. The Ḥanafites had the burden of justifying their position against live opponents.

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[401] See al-Ṭahāwī, *Mukhtaṣar*, 408.

Given the disagreement internal to the tradition on the issues of the legal liability in cases of rape and murder, what is the correct position? What is the moral status of the coerced should he decide not to persevere till death and instead commit harm against another human being? Can one be a sinner and avoid the legal punishment for either murder or rape? If so, how is this justified? The answers to these questions are what make up Ḥanafite coercion jurisprudence in the fourth/tenth and fifth/eleventh centuries.

3 A Note about Sources for Ḥanafite Coercion Jurisprudence

Over the course of the next two chapters we will be relying on the legal works of five different Ḥanafite jurists, one of whom we have already encountered: Abū Jaʿfar al-Ṭaḥāwī (d. 321/933), Abū Bakr al-Jaṣṣāṣ (d. 370/981), Abū Zayd al-Dabūsī (d. 430/1039), Abū Sahl al-Sarakhsī (d. 483/1090), and Bazdawī (d. 482/1089).

We have already seen Ṭaḥāwī's immensely popular legal handbook. As we noted, handbooks as a general rule contain very little legal argumentation. In order to get a sense of Ṭaḥāwī's legal thought, we will be relying instead on his law oriented ḥadīth commentary, the *Sharḥ maʿānī al-āthār*. The purpose of this work is to defend Ḥanafite rules from opponents who claim that the rules contradict established Prophetic ḥadīth.

Jaṣṣāṣ was the leading Ḥanafite scholar in his day and age.[402] He lived in Baghdad. He has written a number of works that have survived. We will be relying on his work on Qurʾānic exegesis and his recently published commentary on Ṭaḥāwī's legal handbook. Jaṣṣāṣ's works are our first extensive sources for Ḥanafite coercion jurisprudence.

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[402] See *Encyclopedia of Islam, Second Edition*, art. 'al-ḎJaṣṣāṣ, Aḥmad b. ʿAlī Abū Bakr al-Rāzī' (O Spies). See also, Bedir, "Early Development," 21-26.

The most prominent figure in the next generation of Ḥanafites is the Transoxanian jurist Abu Zayd al-Dabūsī (d. 430/1039).[403] We will rely mostly on his recently edited book of comparative legal argumentation, the *Asrār*. The book is organized in the same type of chapter organization as the books of positive law, though it is not a commentary on a legal handbook. It presents the basic Ḥanafite legal rules on a given issue and presents legal and scriptural justifications for those rules. The discussion unfolds in a dialogue with Shāfiʿite legal rules and justifications. We will also rely, to a much lesser extent, on his work of legal theory (*Taqwīm uṣūl al-fiqh wa-taḥdīd adillat al-sharʿ*). This work is famous for solidifying a specifically Ḥanafite approach to legal theory (*uṣūl al-fiqh*).[404] It is the first Ḥanafite work to devote a section on coercion in a work of legal theory.

The most important Ḥanafite in the succeeding century is undoubtedly the Transoxanian jurist Abū Bakr al-Sarakhsī (d. 483/1090).[405] The most voluminous source for coercion jurisprudence in the classical age is Sarakhsī's chapter on coercion in his monumental work of positive law, the *Mabsūṭ*. To my knowledge it must rank as the largest work written on the issue of coercion, ever, up until his time, covering over 150 published pages. Unfortunately we will only cover a few issues discussed by Sarakhsī in his coercion jurisprudence. The *Mabsūṭ* is a

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[403] For information on Dabūsī, see ibid., 26-30.

[404] Bedir identifies Jaṣṣāṣ as the originator of this tradition and Dabūsī as the introducing important modification's to Jaṣṣāṣ's legacy in this field. He isolates two features of the particularly Ḥanafite way of doing legal theory. He writes: "in the dominant Ḥanafī *uṣūl* tradition, every principle of *uṣūl* is put to the test of practical law of the school. This works in two ways, i.e. they, on the one hand, test practical law (*furūʿ*) with the theoretical law (*uṣūl*) (test of justification); on the other hand, more interestingly, they test the theoretical principles of *uṣūl* with the cases drawn from the practical jurisprudence (*furūʿ*)." Idem., "Is there?," 165-6 and 69.

[405] For biographical information, see *Encyclopedia of Islam, Second Edition*, art. 'al-Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl Abū Bakr, Shams al- Aʾimma' (Norman Calder) and Bedir, "Early Development," 30-5.

commentary on the earlier Ḥanafite Marwazī's legal handbook, parts of which we have already encountered above.

Our final source will be the Transoxanian ʿAlī b. Muḥammad's (d. 482/1089) work of legal theory, *Kanz al-wuṣūl ilā maʿrifat al-uṣūl*.[406] Bazdawī transforms Dabūsī's few remarks on coercion into an independent chapter. Unlike the previous works, Bazdawī's aim is not so much to justify Ḥanafite positive legal rules. In fact he only cites scripture once, and unlike other jurists, does not indicate those legal rules on which the founding fathers of the tradition disagreed. Bazdawī seems interested in providing a legal principle based discussion of how Ḥanafite coercion jurisprudence works in general.

4 Defining Compelling Coercion

As we saw above, only threats against life and limb can transform the moral valuation of acts such as the consumption of illicit foods. In fact, such threats render consumption wholly permitted, such that not eating to the point of dying is sinful. The Ḥanafites point to a number of Qurʾānic passages to substantiate this rule. These passages though do not address the case of coercion specifically. One typical verse states:

> These things only has He forbidden you: carrion, blood, the flesh of swine, what has been hallowed to other than God. ***Yet whoso is constrained, not desiring nor transgressing, no sin shall be on him***; God is All-forgiving, All-compassionate.[407]

Muslim jurists interpret this verse to permit the consumption of food in circumstances of necessity. In order to link this verse to the issue of coercion, though, two steps are still needed. First, coercion involves one human being forcing another human being to do something that she

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[406] For basic biographical information see ibid., 35-8 and *Dānishnāmah-ʾi jahān-i Islām*, art. 'Bazdawī' (Sayyid Riḍā Hāshimī).

[407] Qurʾān 2:173, Arberry translation. The other verses are: 5:3, 6:115, 6:119, 6:145, 16:119.

does not want to do by way of a threat of some sort. This verse mentions only constraint however undefined as lifting the prohibition of consuming the illicit foods mentioned at the beginning of the verse. Does coercion count as a type of constraint mentioned in the verse? Second, the verse does not define what it means to be "constrained" or in an alternative translation of the verse, "driven by necessity". There is a third problem identified by commentators on the verse, the import of the qualifying phrase "not desiring nor transgressing." Jaṣṣāṣ takes up these problems in his commentary on the legal verses of the Qurʾān (*Aḥkām al-Qurʾān*).

He interprets the verse as indicating not only permission to specifically consume illicit foods in the presence of a necessity, but as also more generally a connection between necessity and permission, regardless of the type of act under consideration. He accomplishes this by reading 2:173 in conjunction with 6:119. In 6:119 the Qurʾān notes "God has clarified for you what is forbidden, exempting that to which you are driven by necessity." He argues that:

> In these verses God has mentioned necessity, and in some of them he has indicated permissibility when necessity exists without qualification, such as in 6:119. The latter [verse] requires the inference (*fa-aqtaḍā*) that permissibility exists when necessity does in every case in which necessity exists.[408]

Jaṣṣāṣ interprets 6:119 as indicating the principle that necessity lifts prohibition because it does not explicitly link the prohibition to illicit foods as is the case in other verses. This is a key step in extending the possible effect of coercion on prohibitions to acts outside of consuming forbidden foods.

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[408] Aḥmad ibn ʿAlī al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, ed. ʿAbd al-Salām Muḥammad ʿAlī Shāhīn, 3 vols., (Beirut: Dār al-Kutub al-ʿIlmīyya, n.d.), 1:154.

Amongst other similar passages, 2:173 qualifies the necessity exemption by noting that the consumer should consume the food without "desiring" nor "transgressing". Jaṣṣāṣ notes a dispute about the meaning of the phrase "not desiring nor transgressing" and mentions two opposing camps. The "not desiring" translation that I have given to part of the phrase can actually also be translated as "not rebelling." For this reason one camp held that the permission to eat the illicit foods in circumstances of necessity is given only to those that have not rebelled against legitimate political authority nor initiated a journey in the pursuit of a sinful goal.[409] Given this construction of the phrase, only those who have not rebelled against legitimate political authority may partake of carrion in circumstances of necessity. The interpretation of the phrase given by the other camp holds that the phrase sets limits on the amount that can be consumed in a circumstance of necessity.[410] Jaṣṣāṣ holds this to be the right opinion.[411]

He then turns his attention to defining the nature of the limits implied by the phrase "not desiring nor transgressing." He classifies this verse as inherently indeterminate (*ijmāl al-lafẓ*)[412] and in need of clarification (*iftiqāri-hi ilā bayān*), to the point that it cannot be taken to indicate a legal rule. The indeterminancy must be remedied if the verse can serve as a basis for a legal rule. We must, therefore, seek clarification of the verse from other sources. He writes:

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[409] Jaṣṣāṣ attributes this view to eighth century Meccan scholars Mujāhid and Saʿīd b. Jubayr, and Shāfiʿī. See ibid.

[410] Jaṣṣāṣ attributes this view is to Ibn ʿAbbās, al-Ḥasan, Masrūq, Mālik b. Anas and the Ḥanafites generally. See al-Jaṣṣāṣ, *Aḥkām*, 1:155.

[411] Ibid.

[412] The bayān/mujmal conceptual pair is very important in Jaṣṣāṣ's legal hermeneutic. See the following sections in his work of legal theory: on the meaning of the term 'indeterminate (*mujmal*): Aḥmad ibn 'Alī al-Jaṣṣāṣ, *Uṣūl al-Jaṣṣāṣ al-musammā al-fuṣūl fī al-uṣūl*, ed. Muḥammad Muḥammad Tāmir, 1st ed., 2 vols., (Beirut: Manshūrāt Muḥammad 'Alī Bayḍūn, Dār al-Kutub al-'Ilmīyya, 2000), 1:19-29, on the conceptual consequences of classifying a text as indeterminate for a legal rule ibid., 1:182-88, on the mechanics of clarification (*bayān*), ibid., 1:238-79. For a short explanation in English of the term 'indeterminate' see Kamali, *Principles of Islamic jurisprudence*, 101-2 and also Zysow, "Economy," 95-6. On its role in the post-classical hermeneutic of the Shāfiʿite legal theorist al-Āmidi, see Weiss, *Search*, 447-67.

> When we are able to use the rule given by the verse it is incumbent upon us to use it. The way that it becomes possible [for us] to use it is by affirming the construction of the phrase "transgressing and sinning" as referring to only consuming *the amount of food necessary to stave off death* and extinguish the fear of loss of one's life. Does not God say: "Do not kill yourselves?" (Qurʾān 4:29)? Whoever refuses to eat what is permitted to the point of dying, kills himself, according to all of the scholars.[413]

Jaṣṣāṣ implies in this passage that the circumstance of necessity that renders forbidden foods permitted is a situation in which one fears for one's life. He argues that, in this circumstance, not consuming the amount of food necessary to stave off death is akin to suicide, which is prohibited. He makes the point explicit later on and connects the concept of necessity to that of coercion. He broadens the concept of necessity on his interpretation of 6:119, which he argues connects necessity to permission even outside the context of the specific foods mentioned in verse 2:173 (carrion, swine flesh, blood, and meat slaughtered for other gods). He writes:

> the meaning of necessity (*ḍarūra*) here is fear of harm to oneself or one's limbs by not eating. There are two meanings included (*qad inṭawā*) in the verse. One meaning refers to an occasion where only carrion is found. The other meaning [refers to] when foods other than carrion exist, but a person is coerced to eat it by way of a threat against his life or limb. We hold that both meanings are intended by the verse, because it bears both [meanings] (*li-iḥtimāli-hima*). It is narrated that Mujāhid used to interpret the verse as referring to the necessity present in coercion (*wa qad ruwiya ʿan Mujāhid anna-hu taʾawwala-hā ʿalā ḍarūrati ʾl-ikrāh*). If it is the case that the necessity of the case of carrion is the harm that one fears for his life in not consuming it, then this is present also in the necessity of coercion.[414]

The basis of the Ḥanafite rule permitting forbidden food when confronted with a threat against life or limb are these Qurʾānic verses. The Qurʾān does not define what this necessity

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[413] al-Jaṣṣāṣ, *Aḥkām*, 1:155.

[414] Ibid., 1:157.

consists in, nor does it define the limits of the permissibility of consuming the previously forbidden foods. The rule indicated by these verses cannot be operationalized unless this indeterminacy is resolved. Jaṣṣāṣ clarifies the indeterminacy by defining necessity as consisting of fear for the loss of one's life or limb, and notes that this situation can arise not only by way of finding oneself in exigent circumstances, but also by way of being coerced by another person who threatens one's life or limb and demands the consumption of illicit foods. He bolsters his argument by citing an early Meccan authority (Mujāhid) as also interpreting the verse in this way. His argument for why one sins if one refuses to eat food to the point of death when compelled, analogizes to the rule against suicide.

This only covers the rule about coercion and forbidden foods. Moreover, Jaṣṣāṣ makes the seemingly general claim that necessity and permission go together. But, there are many types of forbidden acts, such as murder and rape. Can the necessity engendered by threats against one's life or limb also permit rape and murder? Can it do more than change the moral valuation of an act? Can it transfer responsibility from the coerced to the coercer? If so, how is this justified?

In order to pursue these questions we will now turn to Jaṣṣāṣ's work of positive law, the *Sharḥ ʿalā mukhtaṣar al-Ṭaḥāwī fī al-fiqh al-Ḥanafī*. Unlike the collection of rules found in the handbooks, Jaṣṣāṣ organizes the chapter on coercion according to the types of potentially coercive threats and the differential moral and legal effect they have on different types of acts.

Before we begin with the core of his analysis, we should note one important difference between the authors of the handbooks and Jaṣṣāṣ. The authors of the handbooks used concrete examples such as thieves, leaders of criminal gangs, rulers, or the agents of rulers to denote the

coercer. Jaṣṣāṣ stipulates that the coercer is generically one who is a holder of power (*al-musallaṭ*) and who commands obedience (*al-nāfidh al-amr*).[415]

Jaṣṣāṣ begins by summarily noting that potentially coercive threats can be divided into three types:[416]

1. threats against life or limb
2. threats of imprisonment or enchainment that result in severe anxiety and great harm, but would not reach the point of endangering life or limb
3. threats of a beating, or a lash or two, or imprisonment for a day or so

Let us begin with the first category. We have already seen both from the legal handbooks and from Jaṣṣāṣ's Qurʾān commentary on the necessity verses that these types of threats permit previously prohibited foods and excuse apostasy. This type of coercion also has the potential to transfer the legal consequences of the coerced acts from the coerced (who is the physical agent (*fāʿil*) to the coercer, specifically when the demanded act involves material liability for causing harm of some sort or the law of retaliation (*qiṣāṣ*). We have seen examples of what Jaṣṣāṣ explicitly labels as transference in some of the positive legal rules we reviewed above. Life/limb coercion, at least according to the opinion ascribed to Abū Ḥanīfa, results in the transference of the legal punishment for murder from the coerced to the coercer. We also saw that while coercion cannot invalidate pronouncements of divorce or emancipation, life/limb coercion allows the coerced to seek compensation from the coercer for the value of the slave, or half the dowry in case he has not consummated the marriage. It is precisely these types of acts that Jaṣṣāṣ points to as examples of the transferal effect of this type of coercion.[417]

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[415] idem., *Sharḥ mukhtaṣar al-Ṭaḥāwī fī al-fiqh al-Ḥanafī*, ed. 'Iṣmat Allāh 'Ināyat Allāh Muḥammad and Sā'id Bakdāsh, 1st ed., 8 vols., (Beirut: Dār al-Bashā'ir al-Islāmīyya lil-Ṭibā'a wa-al-Nashr wa-al-Tawzī', 2010), 8:437.

[416] Ibid.

[417] Ibid., 8:443.

Writing in Transoxania about a hundred years later, Sarakhsī modifies Jaṣṣāṣ's concrete life/limb threat standard for what is compellingly coercive, by introducing the coerced agent's subjective state of mind as a feature relevant to the legal definition of compelling coercion. In the process of criticizing a view, presumably circulating in Ḥanafite circles, that defined compelling threat as the least severe *ḥadd* punishment (40 lashes), he asserts that defining a fixed standard for compelling coercion cannot be established by reason, and adds that there exists no scriptural text establishing such a standard. Given the fact that individuals differ in the severity of beatings their bodies can bear, there is no alternative to admitting that what is coercive depends on what the coerced thinks will be the probable result if the coercer fulfilled his threat. If it occurs to the mind of the coerced that he will neither perish nor lose a limb if the coercer executes his threat, then he is not compelled. If he thinks he will lose his life or limb, then he is compelled, even if the threat is only ten lashes.[418]

Sarakhsī identifies the subjective fear of the coerced as decisive in judgments about whether or not particular threats are compellingly coercive. He adds that such fears need not be based on certain knowledge that the threat made by the coercer is credible. Probability suffices. He points to the case of a person killing an intruder in his home without giving warning. It is permissible to kill him because of the probability that if one gives a warning then the intruder may kill the owner of the home. If probability has the effect of protecting a person from legal and moral liability in this case, then it is also legally effective in coercion jurisprudence.[419]

Let us return to Jaṣṣāṣ's tripartite scheme. Jaṣṣāṣ's second category of coercive threats is threats of imprisonment for a sufficiently long period of time. Unlike life/limb coercion, Jaṣṣāṣ

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[418] al-Sarakhsī, *Mabsūṭ*, 24:59.

[419] Ibid., 24:61.

notes that these threats do not result in the transference of any legal consequences of physical acts.[420] However they can result in the cancellation of speech acts that stipulate contentment (*riḍā*) as a condition for their validity. The paradigmatic example of such acts for the Ḥanafites is sales.

Jaṣṣāṣ's justification for the coercive nature of threats of imprisonment or beating consists of the citation of companion and early authority reports and unanimously accepted legal practice. He cites a text attributed to ʿUmar (d. 23/644) ("no man that is beaten, fettered, or deprived of food is safe from himself") and an early religious authority, Shurayḥ (d. 78/698) ("imprisonment is coercive, being fettered is coercive") to justify the rule that imprisonment or being fettered can be coercive, in certain cases. He also makes an empirical argument based on an accepted legal practice. He notes that all jurists agree on the validity of the practice of imprisoning a debtor who refuses to pay his debt. While in this case, the force is legitimate because the debtor has refused to honor a rightful claim,[421] Jaṣṣāṣ uses it as evidence for the fact that it indeed does successfully change the debtor's mind.

Sarakhsī similarly notes that threats of imprisonment and enchainment do not amount to compelling coercion, and therefore cannot change the moral evaluation of prohibited act. Imprisonment and enchainment do not meet this standard, unless one is enchained or imprisoned without regular access to food and water. Even when one does not have access to food and water, one can only start giving into to the coercer's demand when one has reached the starting

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[420] Physical acts contrast with speech acts. Homicide, murder, rape or the destruction of property are examples of physical acts.

[421] al-Jaṣṣāṣ, *Sharḥ*, 8:440.

point of death by starvation.[422] Threats of a lash or two are similarly not considered compellingly coercive, but if one believes that loss of life or limb will ensue from a single beating, then compelling coercion has been realized. Similarly, Sarakhsī counts threats of amputating a finger or toe as resulting in compelling coercion, because he considers them limbs.[423]

According to Jaṣṣāṣ, threats of a slight beating or imprisonment or being fettered for a day or two are not to be considered legally coercive. They have no effect on the legal consequences of the action demanded by the person making the threat.[424]

Thus far we have dealt with sources that attempt to formulate a legal definition of coercion. We have used Jaṣṣṣāṣ's three-tier framework to organize our discussion and noted where subsequent Ḥanafite legal scholars modified or developed ideas found in Jaṣṣāṣ. Threats against life or limb belong to the highest tier. These types of threats are compellingly coercive. They have the potential for transforming the moral categorization of forbidden acts and transferring the attribution of legal responsibility for the coerced act from the coerced to the coercer, in cases where the coerced act is a type of physical act. Jaṣṣāṣ provides a scriptural argument for why compelling coercion can transform the moral categorization of some prohibitions, but provides no argument for why it could transfer legal responsibility or why this is the case for only certain types of acts. We find justifications for these positions in the writings of Dabūsī. For Dabūsī, part of the justification for why compelling coercion can result in transference consists in a psychological account of its effect on the coerced. But before we can

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[422] al-Sarakhsī, *Mabsūṭ*, 24:59-60.

[423] Ibid., 24:59.

[424] al-Jaṣṣāṣ, *Sharḥ*, 4:438.

attend to this account, we will take a step back and look at how Ḥanafite jurists conceived of the effect of coercion on moral agency generally. The first evidence we have for such thinking is with Dabūsī.

5 Moral Agency and Coercion

In his book on comparative law, *al-Asrār fī al-Uṣūl wa al-Furūʿ*, Dabūsī asserts that coercion does not negate moral agency. In fact, the coerced continues to be an addressee of the Divine law:

> We say that the coerced is [still] the addressee (*mukhāṭab*) of the Divine Law. We agree on the fact that if the coerced is coerced to commit fornication, and performs that act, he sins, and that if perseveres and is killed, is rewarded. If he is coerced to eat carrion and eats it, he does not sin, and if he perseves to the point of being killed he sins.[425]

Dabūsī introduces two ideas that would become the staple of Ḥanafite coercion jurisprudence in subsequent generations: Coercion does not eliminate moral agency and it does not eliminate choice. In his work on legal theory, he describes the coerced as in fact choosing to do what he does, intending to do it. The coerced is confronted with two bad choices and he chooses the lesser of two evils based on knowledge and intent.

Sarakhsī refines Dabūsī's ideas. He begins the chapter on coercion in his book of positive law by defining coercion in the following terms:

> Coercion denotes an action that one directs towards another, through which [the coercer] negates [the coerced's] contentment, and degrades his choice (*yufsidu bi-hi ikhtiyāra-hu*), without thereby eliminating the coerced's suitability (*ahliyya*) [for moral

[425] Abū Zayd ʿAbd Allāh ibn ʿUmar al-Dabūsī, "al-Asrār fī al-Usūl wa al-Furūʿ" (PhD Dissertation, Erciyes Üniversitesi, 1997), 998.

> and legal accountability] or cancelling [him from being the addresee of] the Divine Law (*khiṭāb*).[426]

Dabūsī had noted simply that coercion does not eliminate coerced's choice. The coerced still chooses what he does. Sarakhsī modifies this formulation by noting that while coercion does not eliminate choice, it does render it defective. He goes on to make the same argument as Dabūsī though in more generic terms. The coerced is tried by the ordeal of being coerced, and the fact of being tried confirms that he is subject to the address of the Divine law, such that when he is coerced sometimes he is obliged to do what the coercer demands, sometimes he is permitted, sometimes he is excused, and sometimes he is forbidden. The fact that some type of command is present even when coerced is evidence that he is still under some type of moral valuation.

The late fifth/eleventh century Transoxanian legal theorist, Bazdawī divides the types of coercion by the effect that it has on the distinct analytical terms used by Dabūsī and Sarakhsī before him. His three categories of potentially coercive threats match Jaṣṣāṣ's tri-partite analysis, though instead of differentiating the categories by examples of concrete threats (life/limb vs. imprisonment vs. slight beating), he differentiates them by the effect that coercion has on contentment and choice. The first category, which he calls compelling coercion (*al-mulji'*) **eliminates contentment** *and* **degrades choice**. The second category **eliminates contentment** but does *not* **degrade choice**, and the last category has **no effect on either**. Similar to Dabūsī and Sarakhsī he also affirms that no matter coercion's effect on choice and contentment it does not undermine moral agency and he repeats Sarakhsī's generic version of Dabūsī's argument. He adds that it makes no sense to say that coercion can obliterate choice, for

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[426] al-Sarakhsī, *Mabsūṭ*, 24:47.

if the coerced "is forced to choose, he has effectively *agreed* with the coercer, so then how could he be someone who does not choose?"[427] For this reason he must be regarded as still, despite the coercion, the subject of the Divine command (*mukhāṭab*).

Concretely what Bazdawī has labeled compelling coercion and what both Sarakhsī and Bazdawī describe as degrading choice and eliminating contentment are Jaṣṣāṣ's threats directed at life and limb. Jaṣṣāṣ argued coercive threats against life or limb are simply a species of the necessity that changes the moral evaluation of some acts. He does this by way of an interpretation of the necessity verses in the Qurʾān. Dabūsī adds an empirical justification to Jaṣṣāṣ's scriptural argument for the impact of compelling coercion on certain legal acts. In his work of comparative law Dabūsī provides a psychological account, on three different occasions for why threats against life specifically are compelling, and why they therefore result in transference. On one occasion he writes, when a person

> is threatened by death, there does not remain in the case of the life of this world and the management of its goods (*fī ḥaqq-i ḥayāti d-dunyā wa tadbīr maṣlaḥatih-hā*) an opportunity for him to choose something other than what he is compelled to do to avert annihilation.[428]

On another occasion, he writes:

> When an agent fears the loss of a limb or something greater, his ability to reason becomes degraded (*fasada raʾyu-hu*) and his discernment vanishes (*dhahaba tamyīzu-hu*). The human being only uses his reason to save his life and admits no other consideration. The ability to [actively] discern between saving oneself and [some other good] does not remain. His sole intention

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[427] ʿAlī ibn Muḥammad Bazdawī and ʿAbd al-ʿAzīz ibn Aḥmad Bukhārī, *Kashf al-asrār ʿan Uṣūl Fakhr al-Islām al-Bazdawī*, ed. ʿAbdullah Maḥmūd ʿUmar, 1st ed., 4 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 5:2430.

[428] al-Dabūsī, "Asrār," 999.

> is to save himself and it occupies the same place as the intention of an animal that has no reason at all.[429]

On a third occasion, he writes:

> There does not remain a valid choice (*ikhtiyār ṣaḥīḥ*) for anything else when a person fears being killed. By a natural cause (*bi-ḥukm-i ṭ-ṭabīʿa*), he becomes compelled (*muljaʾan*) to the act that will repel being killed. He becomes as if he had no choice.[430]

Threats against life or limb, according to Dabūsī have the unique ability of degrading the psychological faculties involved in the balancing of this-worldly goods when making choices about courses of action. There seems to be a tension, most acute in Dabūsī's writings, between the idea that coercion does not undermine moral agency and the idea that compelling coercion degrades choice to the point that it transfers legal responsibility from the coerced to the coercer. On the one hand, in his work of legal theory, *Taqwīm uṣūl al-fiqh wa-taḥdīd adillat al-sharʿ,* Dabūsī affirms that choice is involved even in coercion, though it may be unnaturally burdened choice. The coerced is faced with two bad choices, and redirects his intention to saving himself from impending harm. Yet, in order to justify why certain types of threats can result in the transference of the legal consequences, he describes the deleterious effects of coercion on various psychological processes and capacities. On the one hand, coercion does not undermine moral agency, because it does not actually eliminate choice. The coerced is still under some type of command. On the other hand, Dabūsī must rationalize why compelling coercion can indemnify the coercer for crimes against the body or property committed physically by the coerced, and change the moral valuation of prohibited acts. To do that Dabūsī offers a picture of the psychological impact of a threat against life or limb. It is important to note that Dabūsī does

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[429] Ibid., 1000.

[430] Ibid., 1006.

not begin with the psychological impact of coercion (whether compelling or something less severe) to build his coercion jurisprudence on this empirical picture. Rather, the psychology justifies the positive legal rules the transfer legal liability for material harm in cases of compelling coercion. Importantly, this same psychological picture does not lead to the invalidation of speech acts such as divorce. Not all coercion rules hinge on this empirical picture. How the Ḥanafites justified this discrepancy is the subject of our next chapter.

6 The Instrument Test

Jaṣṣāṣ held that threats against life and limb are compellingly coercive and offered a scriptural justification for why they have the ability, in some cases, to change the moral valuation of the act demanded of the coerced. Dabūsī adds a psychological argument for why such threats are compellingly coercive. Jaṣṣāṣ identified a second feature of compelling coercion: in some cases, it can transfer the legal consequences of a coerced act from the coerced to the coercer. We have yet to encounter a justification of why this is so. Starting with Dabūsī's writings we find Ḥanafite jurists systematically made reference to the instrument metaphor in order to justify transference of legal consequences. Specifically they argued that when the coercion is compelling, the coerced effectively becomes like an instrument in the hand of the coercer. For this reason the legal consequences of certain acts are ascribed to the coercer. Dabūsī's writings are the first to evince widespread use of the instrument metaphor to justify transference. It is probably the case, though, that the instrument metaphor emerged initially as a way to justify Abū Ḥanīfa and Shaybānī's opinion in the case of coerced murder. They held that it is the coercer and not the coerced that are held fully liable for the legal sanctions of the crime. The instrument metaphor is first found in Jaṣṣāṣ's work of positive law. Jaṣṣāṣ argues that given a compelling threat,

> the coerced in this case becomes like an instrument in the coercer's act of killing; as if he had fastened a sword to the coerced's hand, then struck the victim with it. In this case the retaliation (*qiṣāṣ*) is on the coercer and not the coerced.[431]

Dabūsī extends the instrument metaphor to all of the cases that Jaṣṣāṣ had categorized as capable of transferring the legal consequences of an action from the coerced to the coercer in the face of a compelling threat, i.e. all physical acts. Dabūsī formulates the principle that compelling coercion has the effect of transferring the legal consequences of an action from the coerced to the coercer, in those cases where it is empirically conceivable that the coerced can serve as the coercer's instrument. For Dabūsī, the instrument metaphor not only justifies transference, but also serves as a test. If it is empirically conceivable that the coerced can serve as the instrument of the coercer in a given case then the transference is successful. If it is not empirically conceivable, then the legal consequences of the coerced act remain restricted to the coerced. Paradigmatic cases of successful applications of the instrument test are bodily acts that cause harm to the body or property of others. In this case the coercer is indemnified for the harm caused, because it is empirically feasible that the coercer could have used the body of the coerced to cause the harm. According to Dabūsī, compelling coercion renders the action of coerced like that of "a rock that has no choice, which the coercer uses to destroy, turning the physical agent (*al-mubāshir*) into an instrument of the coercer in this way."[432] Coerced legal speech acts, rape, and certain ritual acts such as being forced to break one's fast or one's prayer, or one's state of consecration on pilgrimage (*iḥrām*) are examples of acts whose legal

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[431] al-Jaṣṣāṣ, *Sharḥ*, 8:452. Before introducing the instrument metaphor, Jaṣṣāṣ argues that everyone agrees that if the coerced and the would-be victim have every right to attempt to defend themselves jointly against the coercer, as if he were physically making a charge at them intending to kill him. They have every right to kill the coercer in this case. The fact that the coercer's blood can legitimately be spilled, Jaṣṣāṣ argues, indicates that the legal consequence of his action is reduced solely to him.

[432] al-Dabūsī, "Asrār," 1001. See also ibid., 999, for a similar idea.

consequences cannot be transferred from the coerced to the coercer. Given Dabūsī's psychological account of why compelling coercion turns the coerced into an instrument, "like a rock that has no choice" how can he justify the idea that legal speech acts for example cannot be invalidated by compelling coercion? Here Dabūsī offers the following argument. He emphasizes that the instrument test must be construed in a strict empirical fashion: "at the empirical level it is not possible for a human being to speak with the tongue of another, such that choice does not remain for the speaker",[433] and for this reason the case of coerced speech fails the instrument test, and the consequences remain attached to the coerced. The same goes for the case of being coerced to break one's fast and being coerced to rape a bystander.[434]

After Dabūsī, the instrument test played a key role in Ḥanafite understanding of the legal effects and limits of threats against life or limb. Both Sarakhsī and Bazdawī used it systematically to simultaneously justify transference and limit its scope.[435] Sarakhsī adds, and Bazdawī reproduces, an additional argument for why compelling coercion can transfer consequences in those cases where the instrument test succeeds. He writes:

> The most correct opinion is that the effect of [compelling] coercion makes the coerced an instrument of the coercer. The action then becomes attributed to the coercer in this way, and the coerced is made an instrument. This does not happen by considering coercion as fundamentally eliminating his choice. But it does degrade his choice, when [coercion] reaches the level of compulsion. This is because man is naturally disposed to love his life, and this forces him to perform that which the coercer demands. In this way his choice is degraded. The degraded [choice] when compared to the [fully] valid [choice] should be

[433] Ibid., 1001.

[434] For the case of fasting, see ibid., 1005 and rape, see ibid., 1007.

[435] See for example, Sarakhsī's introduction to his analysis of coercion, where he notes that compelling coercion transfers attribution of legal consequences from the coercer to the coerced, except in those cases where it is not feasible that the coerced could be a tool of the coercer, such as legal speech acts. al-Sarakhsī, *Mabsūṭ*, 24:48.

> regarded as if completely absent. Therefore the action is attributed to the coercer, because he has a completely valid choice, while the coerced has become an instrument of the coercer. As a legal matter, his choice has been eliminated when compared to the valid choice [of the coercer], and therefore the act becomes attributed to the coercer because of the existence of a valid choice for him, and the coerced becomes like a tool of the coercer because, legally speaking, of the absence of his choice when compared to the fully valid choice.[436]

Sarakhsī introduces the idea that in any compelling coercion case, there are in fact two choices being made by two different agents. There is the free choice the coercer makes to use coercion to accomplish his aim, and there is the degraded choice of the coerced. The judge is thus faced with giving effect to one of two choices: the free choice of the coercer and the degraded choice of the coerced. The judge ought to give effect to the free choice, and this involves transferring the attribution of the legal consequences of the coerced act from the coerced to the coercer.[437] Bazdawī reproduces Sarakhsī's two choice analysis of compelling coercion.[438]

7 Conclusion

The classical Ḥanafites and the Ashʿarites agree that coercion does not invalidate moral agency. The Ashʿarites, Juwaynī and Ghazālī had argued that since coercion does not undermine the capacity to understand speech, it does not undermine moral agency. The capacity to understand speech was the basis of moral agency, since it is through revelation that God's commands are communicated to human beings. The Ḥanafites did not use this argument.

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[436] Ibid.

[437] Sarakhsī enunciates the same principle later on. In cases involving the destruction of property where it is possible to regard the coerced as the tool of the coercer, the preference is given to the valid choice over the degraded choice. al-Sarakhsī, *Mabsūṭ*, 24:73.

[438] ʿAlī ibn Muḥammad Bazdawī and al-Ḥusayn ibn ʿAlī Saghnāqī, *al-Kāfī: sharḥ al-Bazdawī*, ed. Fakhr al-Dīn Sayyid Muḥammad Qānit, 1st ed., 5 vols., (Riyad: Maktabat al-Rushd, 2001), 5:2436-8.

Similar to some of the arguments found in Ashʿarite works, the Ḥanafites inferred from the fact that in some cases the coerced is still held morally and legally responsible for the consequences of his act to the fact that it does not undermine moral agency.

We should take note of two features of Ḥanafite coercion jurisprudence thus far:

1. the relative stability of the rules that govern different types of coerced acts within the tradition over time

2. the growth of and systematic adjustment to the justification for these rules over time

At no point do Ḥanafite jurists attempt to modify the legal rules first articulated by the authors of the legal handbooks. In fact the legal definition of coercion developed first by Jaṣṣāṣ takes the legal rules describing the legal and moral effects of coercion on different types acts as the starting point. This did not change with subsequent Ḥanafite scholars. As we will see, unlike the case with Shāfiʿism, the Ḥanafites did not disagree about what is and what is not coercive.

What does change in the positive law literature is the growth of justifications for the legal definition of what is coercive in Ḥanafite legal literature. Jaṣṣāṣ justified the compelling effects of threats against life or limb by an interpretation of the necessity verses in the Qurʾān. Dabūsī relied instead on an empirical argument about the effects of compelling coercion on the decision-making process of the coerced agent. He argued that a threat against life or limb compromised the deliberative capacity of the coerced agent to such an extent that he metaphorically becomes an instrument of the coercer. He additionally uses this argument to justify why compelling coercion can result in the transference of legal responsibility for the coerced act from the coerced to the coercer. However, the instrument metaphor could not be a global coercion rule, because of Ḥanafite rules on speech acts. For this reason Dabūsī limits the impact of the instrument test by stipulating that it can only successfully transfer legal responsibility in cases where it is physically conceivable for the coercer to use the coerced to perform a given act. According to

Dabūsī, it is impossible for the coercer to use the coerced to perform a speech act; therefore compelling coercion does not result in the transference of the legal consequences of speech acts. Ḥanafite positive legal rules hedge in the impact of the empirical psychological picture of compelling coercion's effects and the instrument metaphor. The instrument metaphor and test became staple features of Ḥanafite jurisprudence in the legal thought of Sarakhsī and Bazdawī. Sarakshī and Bazdawī incorporate and systematize Dabūsī's arguments. According to them compelling coercion eliminates contentment and degrades, but does not eliminate choice. These are not simply psychological categories. The reason why the Ḥanafites would want coercion to wholly eliminate contentment is because contentment is an essential feature in the validity of commercial transactions, as opposed to unilateral speech acts. The reason why Ḥanafites would not want compelling coercion to eliminate choice is because they want to preserve the idea that coercion does not eliminate moral agency, and choice is the fundamental basis for moral agency. Yet compelling coercion does degrade choice because Sarakhsī and Bazdawī compare the degraded choice of the coerced agent to the valid choice of the coercer for an additional argument for transference. For this same reason, the second category of threats (e.g. imprisonment) also eliminates contentment but do not degrade or eliminate choice. This second category of threats, not conincidentally, only has legal effect on commercial exchanges. The Ḥanafites calibrated their empirical observations about the impact of different forms of coercion on the psychology of the coerced with a view toward preserving inherited Ḥanafite rules. As we will see in chapter seven, this is not necessarily the case to the same extent with the Shāfiʿites.

Chapter 5: Ḥanafite Coerced Speech and Harm to Others Jurisprudence

1 Introduction

In the previous chapter we analyzed Ḥanafite discussions of coercion's *prima facie* effect on moral agency. We saw that the Ḥanafite scholars held that the the coerced, no matter how severe the coercion, is still under some type of moral charge. We also analyzed Ḥanafite attempts to define the various types of coercion and their relative effects on different types of acts. We focused on compelling coercion and why the Ḥanafites thought that it has the potential, at least in some types of acts, to change its moral valuation and to transfer the legal responsibility for the coerced act from the coerced to the coercer.

In this chapter we will analyze how the Ḥanafites thought about the legal and moral consequences of coercion on different types of acts. Specifically we will analyze Ḥanafite justifications of coercion's impact on speech acts and on causing harm to others.

2 Coerced Speech Jurisprudence

2.1 Scriptural Arguments

Recall that the basic positive rules of the Ḥanafite tradition held that coercion does not have uniform effects on speech acts. Speech acts such as divorce and emancipation were not at all affected by coercion, even if it was compelling. Speech acts such as sales and gifts, however, were affected by coercion. In cases of the latter type, coercion created an option for the coerced to either cancel or ratify the sale or the gift willingly when the coercion had passed. The authors of the legal handbooks note that generally speaking coercion has an effect on speech acts in those cases where the law recognizes an *ex post facto* rescission option. Thus, Ḥanafite jurisprudence

on coerced speech revolves around generating explanations for two discordant Ḥanafite legal positions:

1. Why does coercion, no matter how severe the threat, have no effect on certain speech acts such as divorce?
2. Why do minimally coercive threats such as beating and imprisonment, on the other hand, have an effect on speech acts such as sales and acknowledgments?

Of the classical legal traditions, only Ḥanafism preserved the ancient Kufan rule that coercion has no effect on pronouncements of divorces and emancipations. By the third/tenth century, all other legal traditions, non-Sunnī included, held that coercion invalidates a pronouncement of divorce. One of the major burdens of Ḥanafite scholars in the succeeding centuries was justifying the Ḥanafite position in the face of the scriptural and legal arguments developed by rival traditions criticizing the Ḥanafite view. Much of Ḥanafite coerced speech jurisprudence is directed towards accomplishing this objective.

The Ḥanafites we examine in this study stem predominantly from Iraq, Iran, or Transoxania. In these areas in the fourth/tenth through sixth/twelfth centuries, the main competing tradition was Shāfiʿism.[439] For this reason Ḥanafites concentrate the defense of their position against Shāfiʿite criticisms.

The Ḥanafite jurists' analysis of coerced speech jurisprudence consists of two analytical components. The scriptural component aims to show how the relevant Qurʾān and ḥadīth texts support the Ḥanafite position. This involves two steps: a presentation of the central proof-texts

[439] On the spread of Shāfiʿism and Ḥanafism in Iran and Transoxania, see Wilferd Madelung, *Religious trends in early Islamic Iran*, (Albany, N.Y.: Persian Heritage Foundation, 1988), 26-38. For an analysis of the at times violent conflict between Shāfiʿites and Ḥanafites in Eastern Iran and Transoxania, see Richard W. Bulliet, *The patricians of Nishapur: a study in medieval Islamic social history*, (Cambridge, Mass.: Harvard University Press, 1972), 28-46.

that Ḥanafites rely on to justify the legal rules related to speech acts and argument for why the proof-texts adduced by Shāfiʿites for their position do not necessitate the Shāfiʿite position.

The second component involves formulating principles that explain the coherence between rules that both traditions share and applying those same principles to rules on which they differ. For example, both traditions hold that coercion can invalidate the legal consequences of apostasy and contract of sale. Shāfiʿites assert that since both are speech acts, intention is the central element in the legal analysis of the validity of speech acts. It is because coercion vitiates intention that both traditions have adopted the positive legal rules regulating coercion's effect on apostasy and sale. They therefore argue that the same type of analysis ought to extend to speech acts such as coerced pronouncements of divorce and emancipation, and that the Ḥanafites' rule on coerced divorce is incoherent with their rules on coerced apostasy and sale.

2.1.1 Ḥanafite Proof Texts

In contrast to commercial exchanges, which require the consent of two or more parties in order for legal consequences to take effect, unilateral speech acts require only the pronouncement of the legally relevant speech by the holder of the relevant capacity in order for the legal effects to take place. The Ḥanafite authors treat divorce as the paradigmatic instance of a unilateral irrevocable speech act. They assume that the arguments they adduce on justifying the Ḥanafite position on the validity of a pronouncement of divorce despite coercion applies equally to other types of speech acts of the same type. Other types of unilateral speech acts are emancipations, vows, and oaths.

Of the four Ḥanafite authors surveyed in this chapter (Jaṣṣāṣ, Dabūsī, Sarakhsī, and Bazdawī), Jaṣṣāṣ, Dabūsī, and Sarakhsī treat the scriptural evidence for the Shāfiʿite and Ḥanafite positions. Of the three only Jaṣṣāṣ and Dabūsī cite Qurʾānic verses as evidence for the

validity of the Ḥanafite position. Specifically they cite a set of Qurʾānic verses, considered fundamental proof texts in the law of divorce:

> 2:29 A divorce may be [revoked] twice, whereupon the marriage must either be resumed in fairness or dissolved in a goodly manner. And it is not lawful for you to take back anything of what you have ever given to your wives unless both [partners] have cause to fear that they may not be able to keep within the bounds set by God: hence, if you have cause to fear that the two may not be able to keep within the bounds set by God, there shall be no sin upon either of them for what the wife may give up [to her husband] in order to free herself. These are the bounds set by God; do not, then, transgress them: for they who transgress the bounds set by God-it is they, they who are evildoers! 2:30 So if a husband divorces his wife (irrevocably), He cannot, after that, re-marry her until after she has married another husband and He has divorced her. In that case there is no blame on either of them if they re-unite, provided they feel that they can keep the limits ordained by God. Such are the limits ordained by God, which He makes plain to those who understand.

Jaṣṣāṣ specifically categorizes the verse as a justification that relies only on its apparent meaning (*fa-amma al-dalīl ʿalā ṣihhati qawli-nā min jihati al-ẓāhir*). Jaṣṣāṣ notes that the general sense of the verse's phrasing requires that one affirm the validity of a coerced pronouncement of divorce (*wa ʿumūmu-hu yūjib wuqūʿa ṭalāq al-mukrah*) because it does not specifically distinguish between coerced and uncoerced pronouncements.[440] Dabūsī reproduces this same argument.[441]

In addition to the Qurʾānic verses, Jaṣṣāṣ and Dabūsī cite ḥadīth texts. For Sarakhsī, the ḥadīth texts, along with companion and successor reports are the main proof texts in coerced speech jurisprudence.

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[440] al-Jaṣṣāṣ, *Sharḥ*, 5:6.

[441] See al-Dabūsī, "Asrār," 997, though unlike Jaṣṣāṣ he does not reference either the apparent or general senses of the verses.

In one ḥadīth cited by all three scholars, the Prophet is confronted with the case of a woman who climbs on top of her husband while he was sleeping. She holds a knife to his neck and demands a divorce. The husband complies then presumably later complains to the Prophet about it. The Prophet replies, "there is no rescission in divorce (*lā qaylūla fī al-ṭalāq*)."[442]

In another ḥadīth, the Prophet declares, "Every divorce is valid except that of the minor (*al-ṣabī*) and the partially-insane (*al-maʿtūh*)." The Ḥanafites construe this report as establishing that ***only*** minority and insanity invalidate a pronouncement of divorce. Sarakhsī further argues the one coerced to pronounce the divorce is not in the same class as a minor or insane person, because in his case moral agency and the status of being under moral obligation persist despite the coercion (*li-baqāʾ l-ahliyya wa al-khiṭāb maʿa al-ikrāh*).[443]

A final proof text relevant to the Ḥanafite position on coerced legal speech acts is a ḥadīth attributed to the Prophet in which he equates the legal effects of serious and jestful speech in three specific matters: marriage, divorce, and manumission.[444] The Shāfiʿites interpreted this text narrowly to assert that only the excuse of jest would not invalidate the legal consequences

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[442] al-Jaṣṣāṣ, *Sharḥ*, 5:6; al-Dabūsī, "Asrār," 997; al-Sarakhsī, *Mabsūṭ*, 24:50. Exactly what the sense of the Arabic word "qaylūla" is debated in the legal community. Jaṣṣāṣ assumes that the word is a synonym for "iqāla" which is cancellation or rescission. On the debate of the term's meaning see ʻAlī ibn Muḥammad al-Māwardī, *al-Ḥāwī al-kabīr fī fiqh madhhab al-Imām al-Shāfiʻī raḍiya Allāh ʻanh: wa-huwa sharḥ Mukhtaṣar al-Muzanī*, ed. ʻAlī Muḥammad Muʻawwaḍ and ʻĀdil Aḥmad ʻAbd al-Mawjūd, 1st ed., 19 vols., (Beirut: Dār al-Kutub al-ʻIlmīyya, 1994), 10:228-9. Sarakhsī notes that the term can either mean rescission or can refer to the mid-day nap. Either way he interprets that ḥadīth as justifying the Ḥanafite position. In the latter case, the Prophet merely asserted that the man was tried by ordeal of falling asleep at that time, and that this does not prevent the legal validity of the pronouncement of divorce. I ought to point out that the published version of Sarakhsī's text should probably be emended from the existing "*bi-hādha li-ajli **yawm** al-qaylūla*" to "*bi-hādha li-ajli **nawm** al-qaylūla*". Incidentally, in contrast to Dabūsī, Jaṣṣāṣ cites complete chains of transmissions for each of the ḥadīths he uses.

[443] al-Sarakhsī, *Mabsūṭ*, 24:52.

[444] al-Jaṣṣāṣ, *Sharḥ*, 5:7; al-Dabūsī, "Asrār," 998; al-Sarakhsī, *Mabsūṭ*, 51. Unlike the other two Jaṣṣāṣ cites the entire chain of transmission for the ḥadīth. Sarakhsī additionally cites reports attributed to ʾUmar, ʾAlī, and Ibn al-Musayyib containing substantially the same idea.

that follow from pronouncing a divorce, consenting to a marriage, or emancipating a slave.[445] They held that the effect of the ḥadīth is to establish that after pronouncing a divorce one cannot claim he was just joking to seek to invalidate it. Jaṣṣāṣ on the other hand interprets the text in the following way:

> The Prophet equalized the legal effects of the one who is serious and the one who jests even though one of them intended to cause the legal consequence of the utterance, while the other did not. This indicates that the legal consequence is binding for him who utters the divorce, and that the absence of his will [for it] has no effect in lifting the legal consequence of his utterance.[446]

Dabūsī uses the ḥadīth to establish features of speech acts that are mutually exclusive.[447] All speech acts are either serious or jestful, and in the cases of marriage, divorce, and emancipation, performing a speech act in the jestful mood has no vitiating effect on the legal consequences of the act. Factually speaking, a coerced speech act is serious. Therefore, Dabūsī argues just as the Prophet denied the validity of the excuse of jest in these three types of speech acts, it would even more so be the case with coerced speech acts. He writes:

> The speech of the coerced is serious, even though he is coerced to adopt the serious mood, and he has obeyed what was demanded of him [by the coercer], except he did not do it while being satisfied with his choice. This is because nothing else occurred to the mind of the agent [when the coercer demanded the pronouncement] and he responded in a serious mood, though he acted out of fear.[448]

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[445] For example, see al-Māwardī, *al-Ḥāwī*, 10:230.

[446] al-Jaṣṣāṣ, *Sharḥ*, 5:7.

[447] He argues that the serious/jest dichotomy as applied to speech acts is similar to the truth/falsehood dichotomy as applied to legally relevant factual statements. In both cases the categories are mutually exclusive. See al-Dabūsī, "Asrār," 998.

[448] Ibid.

Sarakhsī makes substantially the same argument as Dabūsī, adding that contentment and coercion are mutually exclusive categories. Coercion negates contentment, but, according to the law the validity of these types of speech acts do not depend on contentment, therefore coercion has no effect on their validity.[449]

2.1.2 Ḥanafite Treatment of the Shāfiʿite Proof Texts

Ḥanafite scriptural justification not only needed to show how proof-texts justify a positive rule in their tradition, but also needed to defend the legal rule against the scriptural justifications produced by legal traditions with conflicting rules governing the same case. The Shāfiʿites held that coercion invalidates all speech acts including acts such as divorce. Many of their justifications relied on different proof-texts entirely. The Ḥanafite jurists attempt to show why these proof-texts do not commit them to the Shāfiʿite rule. The most important proof-text was a ḥadīth that states, in one version: "God overlooks the mistaken, forgetful and coerced acts of my community."

2.1.2.1 "God overlooks the mistaken, forgetful and coerced acts of my community" Ḥadīth

That this was one of the most important proof-texts in coerced speech jurisprudence for the Ḥanafites is evidenced by the fact that even the third/ninth century Ḥanafite Ṭaḥāwī devotes a chapter to explaining why it does not undermine the Ḥanafite position on coerced speech acts. Ṭaḥāwī notes that two different groups interpret the ḥadīth differently without naming them explicitly. One group interprets the ḥadīth to establish the rule that coercion invalidates marriages, oaths, emancipations, and divorces. The second group holds that the text refers only to the effect of coercion on the legal and moral effects of apostasy. For this group, the ḥadīth

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[449] al-Sarakhsī, *Mabsūṭ*, 24:51-2.

addresses the same historical context and issue as 16:106 of the Qurʾān, coerced apostasy. He admits that the text can support both interpretations and offers an argument that tips the balance in favor of the second camp. He notes that everyone agrees that in the case of a man who forgetfully utters the divorce formula regarding his wife, the divorce is effective and that it is not undermined by his forgetful action. No one thinks that the ḥadīth applies to this case and it is likewise the case for coerced divorces, emancipations, vows, and marriages.[450]

In contrast to other Ḥanafite authors, Jaṣṣāṣ adopts another strategy entirely. He dismisses the legal value of the ḥadīth by citing the ḥadīth scholar, Aḥmad b. Ḥanbal's (d. 241/855) opinion that only the chains of transmissions of versions of the ḥadīth that have al-Ḥasan al-Baṣrī elevating attribution directly to the Prophet are historical (*mursal*). According to Ibn Ḥanbal, all the other versions are fabricated. Jaṣṣāṣ adds that since the opponents of the Ḥanafites make it a policy not to rely on ḥadīths with such chains of transmission they cannot rely on it as proof for their legal positions.[451]

Jaṣṣāṣ however adds that even if one were to assume that the ḥadīth is authentic; it still does not support the rule that coercion invalidates a pronouncement of divorce. He notes that if we were to rely on the literal sense of the ḥadīth to construct a legal rule, it would imply the negation of the actual occurrence of the coerced act, because the literal sense of the ḥadīth is "Coerced acts are lifted from my community (*rufiʿa ʿan ummatī mā istukrihū ʿalay-hi*)." But we can see with our very eyes that the coerced act, for example, has in fact occurred. Therefore this interpretation is absurd. When this is the case we must assume that the Prophet intended

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[450] Aḥmad ibn Muḥammad al-Ṭaḥāwī, *Sharḥ Maʿānī al-āthār*, ed. Muḥammad Zuhrī al-Najjār and Muḥammad Sayyid Jād al-Ḥaqq, 1st ed., 5 vols., (Beirut: ʿĀlam al-Kutub, 1994), 3:96.

[451] al-Jaṣṣāṣ, *Sharḥ*, 5:9.

something not present in the actual words of the ḥadīth. The ḥadīth must be read elliptically. In order to complete the meaning of the ḥadīth we must identify words that will generate the full meaning of the ellipsis. This is one strategy that can be pursued in order to discover the legal rule implicit in the ḥadīth.[452]

According to Jaṣṣāṣ we face two possibilities in attempting to establish the legal intent of the ḥadīth. We must attempt either to identify the missing element in order to establish the legal intent or regard the phrasing of the text as metaphorical. If we pursue the former strategy, we should keep in mind that legal presumptions about the attributes of the scope of a text, such as specificity and generality, can only be made about the actual phrasing of the text and not the missing element. If we pursue the latter possibility, we should know that we can only use a text metaphorically if we have some kind of evidence that justifies movement away from the apparent sense of the text. Though Jaṣṣāṣ does not explicitly say so, the latter possibility is unjustifiable, since apparently we lack evidence that would warrant such a move. We are left with the former possibility.[453]

Jaṣṣāṣ identifies two possible candidates for the missing element. The meaning of the ḥadīth could be either, "[***the legal consequences of***] coerced acts are lifted from my community" or "[***the sinful effects of***] coerced acts are lifted from my community." It cannot be both because we have already noted that legal presumptions about the generality of the scope of a text can only be made about the text's actually phrasing. Therefore, we cannot rely on the legal presumption that the text refers to both, this worldly legal consequence, and other worldly sin. We must choose one of the two constructions. We cannot simply choose, arbitrarily, one

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[452] Ibid., 5:10.

[453] Ibid., 5:10-11.

meaning over the other. In order to tip the balance in favor of one of the two constructions, we need evidence external to the text, perhaps from other texts. It is here that Jaṣṣāṣ asserts that the text must mean "[***the sinful effects of***] coerced acts are lifted from my community," because the meaning of phrases such as "God forgives John" or "God pardons John", is the prima facie sense is that God negates the sinful, otherworldly consequences of the offending act. Moreover, the fact that all jurists hold that mistaken or forgetful pronouncements of divorce are still binding indicates that the meaning of the ḥadīth must be that the "***sinful consequences*** of the mistaken, forgetful, and coerced acts are lifted from my community." For these reasons, it cannot be the case that the ḥadīth negates the legal consequences of coerced divorce.[454]

Dabūsī adopts a strategy similar to Jaṣṣāṣ. He notes that both Shāfiʿites and Ḥanafites admit in some cases that neither coercion nor lack of intent invalidates the legal consequences of a coerced or mistaken act. Based on this fact, Dabūsī argues that we are forced to construe the ḥadīth not as a global rule about the impact of coercion on the legal consequences of a particular act, but in a more modified sense. What is this modified sense? The apparent sense of the phrasing of the ḥadīth is insufficient to support a legal rule. In order to construct a legal rule we must read into the text what it inferentially requires. According to Dabūsī's legal hermeneutics, in executing this inferential-requirement (*iqtiḍāʾ*) construction of the ḥadīth we must add additional elements to the scriptural text in order to complete the meaning necessary for the construction of a legal or moral norm.[455] With respect to the strength of the relationship of a

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[454] Ibid.

[455] Importantly the authority of the legal or moral norm is still conceived of as depending upon the text from which it is derived. Dabūsī notes that despite the fact that information additional to the text is required, he still insists that the legal rule is attributed to the text (*ḥukm ʾl-muqtaḍā muḍāf ilā n-naṣṣ*). See *Taqwīm* Abū Zayd ʿAbd Allāh ibn ʿUmar al-Dabūsī, *Taqwīm uṣūl al-fiqh wa-taḥdīd adillat al-sharʿ*, ed. ʿAbd al-Jalīl ʿAṭā, 1st ed., 2 vols., (Damascus; Ṭarābulus, Lebanon: Dār al-Nuʿmān lil-ʿUlūm; Dār al-Imām Abī Ḥanīfah, 2005), 1:314. It is for this reason that it is still considered, by the scholars of jurisprudence, a linguistic inference, as opposed to an operation of analogy or

legal norm to the scriptural text from which it is inferred, it is the lowest grade of four types of linguistic inferences.[456] Dabūsī grades a legal rule based on what a scriptural text inferentially requires as epistemically the weakest type of scripturally based rule. As far as linguistic inferences go, Dabūsī considers it to have the most tenuous connection to the scriptural text. Given the fact that 'inferential requirement' hermeneutical procedure is the lowest grade of linguistic procedures in extracting a legal rule from the scriptural text, we must construe the scope of the application of the legal rule as narrowly as possible. In the case of the lifted ḥadīth, Dabūsī notes that this means that in the cases of forgetfulness, mistake, and for our purposes, coercion, "only the judgment of sin has been negated (*wa qad intafā ḥukm al-ithm*)" from the coerced agent.[457] The fact of being coerced eliminates moral, otherworldly liability before God. However, the text cannot be construed to imply anything about the this-worldly legal consequences of his acts, despite the fact of coercion. For all of these reasons, the lifted ḥadīth cannot be read as supporting the Shāfiʿite rule.

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reason. While there was widespread agreement on regarding 'inferred requirement' as a linguistic operation, there was disagreement about whether or not the weakness of the operation had an effect on the scope of the application of the normative rule. Dabūsī reports there was, with the Ḥanafites regarding the hermeneutical operation as downgrading the presumptive generality of the scope, and the Shāfiʿites holding to the position that the operation has no effect on the scope. For the Shāfiʿites, the rule derived from the text remains at the same level of generality. For a theoretical exposition of the hermeneutical technique of 'inferential requirement', see Dabūsī, ibid., 1:314-21. For western scholarship, see Zysow, "Economy," 97, who, relying on later Central Asian Ḥanafites, defines the inferential requirement as "the legal background necessary for the text to take effect." See also, Kamali, *Principles of Islamic jurisprudence*, 128-30.

[456] The other three categories in order of decreasing strength are: the plain expression (*ʿibārat al-naṣṣ*) of the text, the indications of the text (*ishārat al-naṣṣ*), the allusions of the text (*dalālat al-naṣṣ*). For this see al-Dabūsī, *Taqwīm*, 300-26. For contemporary scholarship on these categories in Muslim legal theory, more generally, see Kamali, *Principles of Islamic jurisprudence*, 124-48 and Zysow, "Economy," 90-98

[457] See al-Dabūsī, "Asrār," 1001.

2.1.2.2 Re-Interpreting the "Actions are [judged] by intentions" Ḥadīth

Ṭaḥāwī and Dabūsī cite the famous ḥadīth, the beginning of which states that "actions are [judged] by intentions", as a proof text supporting the rule that coercion invalidates all speech acts, including divorces. Māwardī does not cite this ḥadīth as proof for the Shāfiʿite position. Ṭaḥāwī denies that the ḥadīth establishes the rule that intention must accompany a speech act for it to be deemed legally valid. He re-interprets the ḥadīth as stipulating that Divine reward in the hereafter correlates with the intention for which an agent performs an action.[458] It has no legal effect on the issue of coerced divorce.

Dabūsī interprets the "intentions" ḥadīth in the same way that he interpreted the "lifted" ḥadīth. He notes the fact that the law for both the Ḥanafites and the Shāfiʿites, in many cases, judges the validity of at least some actions without considering intention, means that the ḥadīth must be interpreted in light of what is inferentially required to establish a different legal rule. Just as he argued for limiting the scope of the "lifted" ḥadīth to moral consequences in the hereafter, so also he argues that the "intention" ḥadīth must be construed to refer only to rewards in the hereafter. The function of the Prophetic ḥadīth is only to notify believers that God rewards them according to what they intended by their acts (*wa qad taʿallaqa bi-ʾl-niyya ḥukm al-thawāb fa-lam yathbut mā siwā-hu*).[459] By doing this, Dabūsī aims to remove the centrality of considerations of intention in assessments of the legal, this-worldly validity of coerced legal speech, especially those that are irrevocable, once uttered.

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[458] al-Ṭahāwī, *Sharḥ Maʿānī al-āthār*, 3:96.

[459] al-Dabūsī, "Asrār," 1001.

2.1.2.3 Re-Interpreting the "No divorce in the case of closure (*lā ṭalāq fī ighlāq*)" ḥadīth

Māwardī cites this ḥadīth as proof that coercion invalidates a pronouncement of divorce. He cites the linguistic authority Abū ʿUbayd (d. 224/838), who glosses the "closure" as coercion, because coercion closes off choice.[460] Dabūsī cites it as a Shāfiʿite proof text but does not attempt to re-interpret it.[461] Jaṣṣāṣ is the only Ḥanafite who deals with this ḥadīth and argues that the closure refers not to coercion but to insanity because when "a person's door is closed in upon him, he is prevented from [legally] engaging in all types of legal acts." Only insanity, and not coercion, legally prevents the validity of *all* types of legal acts, therefore the ḥadīth refers to insanity.[462]

2.2 Case Arguments

We can divide justifications in coercion jurisprudence amongst classical Ḥanafites as falling into two main types: scriptural and legal. Scriptural arguments seek to show how a scriptural proof text supports a rule that the tradition upholds. It seeks to make up the textual gap between a proof-text and a rule and reconcile the two. Scriptural arguments can also seek to show why a given proof-text does not commit a tradition to a rule that is the opposite or different from the one to which the tradition is committed. In this case, scriptural arguments seek to prove that a gap exists between a proof text and a rule. Ḥanafite coercion jurisprudence consists also of another type of analysis, what I call legal analysis. Legal analysis consists, among other things, of invocation of substantive legal principles as justifications for existing legal rules and guides for the discovery of new legal rules. The epistemic origin of these legal rules is varied.

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[460] al-Māwardī, *al-Ḥāwī*, 10:228-9

[461] al-Dabūsī, "Asrār," 996

[462] al-Jaṣṣāṣ, *Sharḥ*, 5:8-9.

Sometimes they are scriptural sources. Yet other times they represent, in abstract form, the common feature of different rules within a tradition or shared by multiple traditions. Still at other times they are succinct metaphors or tests that encapsulate the values that jurists perceive govern the jurisprudence of a given field. The instrument metaphor or test is an example of this type of legal analysis. Legal analysis also consists of the comparison of different cases. It often involves responding to charges of unprincipled or arbitrary reasoning posed by scholars of opposing traditions by showing why the two cases are not governed by the same principle. This will become clearer through the examples we will encounter below.

The Ḥanafite position on the ineffectiveness of coercion on irrevocable legal speech acts presented three major threats to the internal coherence of the Ḥanafī *corpus juris* as a whole. If intention is not a valid legal criterion for invalidating irrevocable coerced speech, then what explains the Ḥanafite position on the invalidity of the legal speech acts of the minor, or the fact that coerced acknowledgements (*iqrārāt*) are invalid, or that coercion has the effect of creating at least defective, and thus voidable *ex post facto*, commercial transactions, also a type of speech act?

Ḥanafite jurists make use of three different principles to justify their approach to coerced speech. In the course of defending the Ḥanafite position against Shāfiʿite charges of systematic inconsistency, Dabūsī refers repeatedly to the idea that the formulation and application of the law can only rely on that which is empirically verifiable. He argues that since intention is private, *prima facie* considerations of the validity of legal acts can not rely on it, and therefore coercion's effects on intention or willingness do not necessarily lead to invalidating the legal consequences of the act.

The second principle holds that we cannot regard coercion as simply eliminating the moral or legal consequences of an act. Just as coercion does not eliminate moral agency or choice, it cannot simply eliminate the legal consequences of an act, rendering it legally as if it did not happen.[463] This is found as a fundamental principle of coercion jurisprudence first in Sarakhsī, and is again cited later by Bazdawī.[464] Bazdawī describes the idea that coercion completely eliminates an act as a fundamental principle of Shāfiʿite coercion jurisprudence. One gets a sense that for the Ḥanafites, at least, being accused of rendering acts that have happened as if they did not is a bad thing, but why this is bad is given no explanation. In contrast to legal elimination, Sarakhsī holds up the idea of transference. Compelling coercion, for those acts that pass the instrument test, transfers legal consequences, instead of eliminating them altogether.

Coercion does not eliminate moral responsibility and has the effect of transferring legal consequences for acts that pass the instrument test. Speech acts fail the instrument test, and coercion cannot simply render the legal consequences of uttered speech acts as if they did not exist. Only one option is left for the Ḥanafites, which they readily acknowledge as the final fundamental principle of coerced speech jurisprudence. As a legal presumption one must acknowledge the validity of the legal acts caused by an agent that has the legal competence to engage in those acts and has the appropriate legal relationship to the legal object (*taṣarruf min ahli-hi fī maḥalli-hi*).[465] This idea is spelled out first in Dabūsī,[466] and Sarakhsī claims that it is implicit in the legal precedents (ḥadīths, companion statements, and legal doctrines of the early

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[463] In Ḥanafite texts the most commonly used Arabic term to denote this concept is *ihdār*. At times it is *ilghā'*.

[464] See al-Sarakhsī, *Mabsūṭ*, 24:87, 173-4 and Bazdawī and Saghnāqī, *al-Kāfī: sharḥ al-Bazdawī*, 4:540-1. For the germs of the argument in Dabūsī, see al-Sarakhsī, *Mabsūṭ*, 998-1000; al-Dabūsī, "Asrār,".

[465] al-Sarakhsī, *Mabsūṭ*, 24:67.

[466] al-Dabūsī, "Asrār," 998.

authorities) cited at the beginning of his chapter on coercion.[467] The Ḥanafites shift the object of analysis from whether an individual speech act was willed or intended by an agent to whether the agent had the capacity to engage in that act.

2.2.1 The Case of the Speech Acts of Minors and the Shāfiʿite Intention Principle

Dabūsī notes that the reason minors are not held responsible for their actions is because they lack the requisite intellectual and physical capacities to willingly undertake obligations.[468] This is a position that is shared by both Ḥanafite and Shāfiʿite legal scholars. Dabūsī's Shāfiʿite interlocutors go a step further. They note that what the insane, the asleep, and the minor have in common is the lack of an intention when performing a speech act. It is this lack that accounts for the rules of both traditions that invalidate the consequences of any of their speech acts.[469] They further note that in the case of the minor, he lacks the specific capacity of being able to discern the particular meanings of words, and thereby form a particular intention in their use.[470] Similarly, they urge, as Dabūsī himself would accept, that the coerced performs the speech act not to express an intention, but rather to repel the harm threatened against him. If it is the lack of either an intention behind a speech act, or a capacity to even form an intention that prevents legal

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[467] al-Sarakhsī, *Mabsūṭ*, 24:67.

[468] See al-Dabūsī, "Asrār," 999, where Dabūsī notes that revelation makes the full maturation of the intellect a stand in for the balance of the various types of capacities needed to accomplish the duties owed to God. Dabūsī notes that this is an act of mercy on the part of God (*al-sharʿ aqāma al-bulūgh ʿan ʿaql fī tawajjuh al-khiṭāb maqām iʿtidāl al-asbāb allatī yabtanī ʿalayhā al-khiṭāb min anwāʿ al-qudra li-iqāmat mā khūṭab taysīran ʿalaynā*), for had God made the acquisition of the actual capacities to discharge duties owed to Him, then this would have caused us much hardship (*fa-innahu law banāhu ʿalā adnā ʾl-qudra la-aḥarajna fī iqāmatihi*). In his work of jurisprudence, the *Taqwīm*, Dabūsī echoes the same sentiments, though he specifies that the ability to understand and be able to perform the duties is one of the capacities that he refers to more ambiguously in the *Kitāb al-Asrār*. For this see idem., *Taqwīm*, 2:894.

[469] Idem., "Asrār," 996.

[470] In ibid., , Dabūsī writes, "he has no discernment that he may intend through discernment [the] pre-determined [meanings] of words (*lā tamyīz la-hu li-yaqṣida bi-al-tamyīz mā wuḍiʿa al-kalām la-hu*)."

consequences from flowing from a minor's legal speech act, then can it not be argued likewise for the coerced?

Dabūsī attempts to neutralize this argument by asserting that legal rules and judgments can only be based on what is empirically accessible. Intentions are not empirically accessible. In an argument Sarakhsī reproduces, Dabūsī asserts that while it is the case that possession of the relevant capacities is necessary for acquiring full legal and moral competence, the moment at which specific individuals actually acquire those capacities is "an internal matter that people vary in (*amr bāṭin yatafāwatu fī-hi al-nās*)," [471] and thus an "impossible matter to get to know (*fa-yataʿadhdharu al-wuqūf ʿalayhi*)" [472] for establishing moral and legal competence. In fact, precisely for this reason, the Divine Law fixes the age of majority as the moment at which individuals can be held morally and legally responsible.[473] He asserts that the only consideration for determining the validity of speech acts "is whether or not it is uttered by one who has the competence to form an intention and not on its reality (*tubnā ʾl-aḥkām ʿalā kawn ʾl-fāʿil min ahl ʾl-qaṣd dūn ḥaqīqat ʾl-qaṣd*)." [474] Again, the reason for this is because intention is an internal act. Dabūsī uses a hypothetical example to demonstrate his point. Consider the following case:

> A man says to his wife: if you love me, you are divorced. His wife, when she is angry [at some point] says, "I love you." She is considered as divorced even if the husband denies [that she loves him]. This is because love exists in the heart. [From a legal perspective] it is impossible to depend upon its *reality* in assessing the legal consequences. They are connected to the cause that

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[471] Ibid., 999; al-Sarakhsī, *Mabsūṭ*, 24:62.

[472] al-Dabūsī, "Asrār," 999.

[473] See ibid., , "thus, revelation has established the full maturation of the intellect as majority, which, customarily is the cause of the equanimity of the intellect (*fa-aqāma al-sharʿu al-bulūgha ʿan ʿaql alladhī huwa sababu iʿtidāli ʾl-aqli ʿādatan*)." See also al-Sarakhsī, *Mabsūṭ*, 24:62.

[474] al-Dabūsī, "Asrār," 999.

> customarily indicates [the reality], which is the testimony of the tongue.[475]

In addition to denying the claim that legal judgments regarding the validity of speech acts are dependent upon the integrity of intention, he also denies the Shāfiʿite claim that intention is vitiated by coercion, arguing:

> the coerced only acts out of discernment and perspicacity because he knows the two evil options [before him] distinguishes the lesser evil and chooses it. He is however forced to do it unwillingly, not desiring it willingly.[476]

The coercer fully intends the act he performs. It is not intention that is compromised by coercion, but willingness, and Dabūsī disputes the contention that willingness (*ṭawāʿiya*) is essential to the validity of speech acts by invoking the case of the insane (*majnūn*). The insane, he argues, speak willingly, but the law regards that speech as nonsense (*laghw*) because he has no discernment (*tamyīz*), nor reason (*ʿaql*).[477]

Moreover he argues that the burden of proof is on those who stipulate that willingness is an essential criterion for making determinations on the validity of speech acts, "because it [willingness] is a hidden attribute, one of the attributes of the heart, and therefore it is impossible to base assessments of validity upon it (*wa-li-anna al-ṭawʿ ṣifa bāṭina min ṣifāt al-qalb fa-yataʿadhdharu bināʾ al-ṣiḥḥa ʿalayhi*)."[478] Willingness "can cease to exist through hidden reasons known only to the agent (*fa-innahu yazūl bi-asbāb khafiyya lā yaʿrifuhā ghayru ʾl-*

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[475] Ibid.

[476] Ibid.

[477] Ibid.

[478] Ibid.

mutaṣarrif)."[479] It is "even less accessible to knowledge than equanimity of intellect (*wa-innahu akhfā min maʿrifa ʾl-ʿaql*),"[480] the underlying cause of majority.

Sarakhsī has a similar description of exactly what one coerced to pronounce the divorce is doing. He asserts that coercion does not eliminate intent or choice. He writes:

> This is because the coerced knows two evils and chooses the lesser. This is evidence for the right functioning of his choice. How could [coercion] eliminate his choice, when he intends to do that action because he intends to repel evil from himself. He cannot accomplish that without pronouncing the divorce. Only an intent being an intent can allow one to accomplish one's end. Therefore we know that he chooses and intends, but not for an intrinsic reason. On the contrary, [he does it] to repel harm from himself. He occupies the same status as the jester, who intends the utterance, choosing it, not for its legal consequence, but for something else. The divorce of the jester is [still] valid. Through [examination] of this case it becomes clear that contentment with the legal consequence after intent [to introduce] and choose the legal cause is not a legal consideration.[481]

We have here a demonstration, in summary form of Ḥanafite strategy on coerced speech. Consistent with their overall empirical description of the effect of coercion on choice, they maintain that the coerced pronouncer of divorce (or emancipation) is still choosing to utter the divorce formula. The most important proof-text and rule that the Ḥanafites thought relevant to the case of coerced speech was the case of the jester. Ḥanafites urged the similarity between coerced pronouncement of divorce and a pronouncement made in jest, because all of the Sunnī legal traditions upheld the validity of a divorce pronounced in jest. Part of the Ḥanafite jurisprudence is the result of a tension between two legal principles. The Shāfiʿites urged the

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[479] al-Dabūsī, "Asrār," 999.

[480] Ibid.

[481] al-Sarakhsī, *Mabsūṭ*, 24:69.

application of the principle that intentions are an integral component to judging the legal validity of specific speech acts. Since coercion vitiates intention, it must be the case that coerced speech acts are invalid. Ḥanafites urged the application of the principles that speech acts ought to be judged by whether or not the speaker possesses the relevant capacity to legally do the act. If he does, then the law must presume the validity of the speech act. Furthermore, the principle that the legal validity of acts is based on what is empirically available precludes recourse to private intentions in making judgments about a speech act's validity. These two principles combined to support the Ḥanafite rule that coerced speech is still legally effective, at least when it comes acts such as divorces. At this point it behooves us to keep in mind that the relationship between legal principles and legal rules is not necessarily straightforward. It is not the case that Shāfiʿites always allowed considerations of intention to trump the *prima facie* sense of an uttered speech act. They did not. In fact, for the Shāfiʿites divorces made in jest were still fully effective. Nor is it the case that the Ḥanafites consistently excluded considerations of intention in all legal rules, and relied only on the empirically available to assess the legal and moral effects of acts. Legal principles do not fully determine legal rules. They definitely have a backward looking rationalizing function. The rules precede the principles and legal scholars generate the principle by reflection on the rules. The principles function to partly justify existing legal rules within a tradition. But, they also have a prospective substantive-guiding function. In difficult cases that cannot easily be subsumed under existing rules, or in the process of formulating new rules, legal principles, as much as constitutional texts, play a role in determining (though perhaps not fully) the substance of the new legal rules or how a given rule ought to be applied to a difficult case.

Ḥanafite coercion jurisprudence did not just have to respond to the position adopted by all of the other legal traditions that coercion invalidates all speech acts. Ḥanafite coerced speech

jurisprudence was complicated by the fact that the Ḥanafites held that coercion does in fact invalidate legal acknowledgements and created the option of cancellation for commercial exchanges. Both acts are types of legal speech. This, of course, invited charges of inconsistency, and the Ḥanafites tried to show why legal acknowledgements and commercial exchanges were different from divorces and emancipations.

2.2.2 The Case of Coerced Acknowledgements (*Iqrārāt*)

Legal acknowledgements are the explicit recognition of certain facts that affect the legal status, in some way, of the acknowledger. One of the most important types of acknowledgement, in Islamic legal thought, is the admission of a debt owed to someone else. The difference between an acknowledgement and a speech act is that speech acts create new set of legal rights and obligations. A pronouncement of divorce, for example, creates the duty to pay off the marriage gift, or eliminates the duty of maintenance. An acknowledgment does not by itself create new rights and duties, but legally confirms the historical event that created the new legal situation in the past.

The question before the Ḥanafite jurists was to explain why Ḥanafites considered coercion to render acknowledgments invalid but not legal speech acts? At a basic level, both involve legally relevant speech. If coercion has no effect on a pronouncement of divorce then why can it invalidate an acknowledgement of a divorce? Why does an acknowledgement not fail the instrument test?

Dabūsī and Sarakhsī assert that in contrast with coerced speech acts the central criterion for determining whether or not an acknowledgement is legally affirmed is whether or not it is

true.[482] An acknowledgement is declarative speech (*ikhbār*) about a past event.[483] Here Dabūsī is making a distinction between speech acts, which create legal consequences by their very performance, and declarations, which rely on correspondence to some external past state of affairs in order to validate the established legal consequences of that past event. The former, as speech acts, creates legal truth. The latter, as declaratives, must conform to a past event *in order* to affirm legal truth. The fact that declaratives, as opposed to speech acts, purport to be about some past event, changes the relationship between validity and willingness. As seen above, Dabūsī refused to countenance the possibility that coercion's vitiation of willingness could invalidate a speech act. However, the situation is different for coerced acknowledgements. In fact, he promotes the possibility that in the case of acknowledgements, coercion's effect on the willingness of an acknowledgement can lead to invalidating it by tipping the scale in favor of finding the acknowledgement false. Dabūsī notes:

> We take his condition of willingness as an indication of truth. Willingness (*ṭawʿ*) is taken to indicate that he is not lying about himself. We take coercion as an indication of a lie. It is apparent that he said what he did to repel harm, not to make what had happened manifest [in speech].[484]

It is not the lack of unwillingness itself that invalidates the acknowledgement. Rather, the unwillingness of the coerced agent act tips the favor of judging the acknowledgement to be false, and a acknowledgement considered legally false is invalid.

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[482] al-Dabūsī, "Asrār," 1000, the invalidity of the acknowledgement is "because it is a lie, not because it is coerced speech. The invalidity stemming from the lie, is because of the lie's connection to something other than what it purports to be about (*li-anna-hu kidhb lā anna-hu kalām mukrah wa fasād ʾl-kidhb li-anna-hu iḍāfa ilā ghayr maḥalli-hi*)." See also al-Sarakhsī, *Mabsūṭ*, 24:61.

[483] al-Dabūsī, "Asrār," 1000, "Because the legal purpose of an acknowledgement is [to act] as a stand-in for that which the report is about before his act of declaring it (*li-anna maḥall ʾl-ikhbār qiyām al-mukhbir ʿan-hu sābiqan qabl ikhbāri-hi*)."

[484] Dabūsī, *Kitāb al-Asrār*, 1000.

Sarakhsī's analysis of this problem is substantially similar to Dabūsī's. Sarakhsī's justification for why coercion invalidates acknowledgements but not speech acts is related to his justification for why coercion invalidates the legal consequences of an act of apostasy (also a type of speech), because Sarakhsī legally conceptualized apostasy as a type of acknowledgement. The object about which apostasy is an acknowledgement or a factual report is the apostatizer's theological beliefs. For Sarakhsī, "the coerced speaks, giving a report about his belief."[485] In this way it is an acknowledgement. The judicial presumption before taking account of any positive evidence in favor or against any given acknowledgement's validity is to suspend judgment about its truth or falsehood.[486] One way of tipping the balance in favor of truth and therefore in favor of regarding the acknowledgement as legally valid is to discern whether or not the acknowledger uttered the acknowledgement willingly. "In the case of the coerced, the fact that there is a sword over his head is evidence that it is a lie. The fact that the declarer made an acknowledgment by choosing to do so does not make it a reality."[487] In this way coercion invalidates an act of apostasy as it would all acknowledgements.

2.2.3 The Case of Coerced Commercial Transactions

Commercial transactions are speech acts, like divorces and emancipations, and yet, in contrast to either, coercion has the effect of creating a defective contract that the coerced can either cancel or confirm after the coercion has ceased. In fact, the Ḥanafites admit the least severe type of threat as legally coercive when it comes to commercial transactions. The writers of the legal handbooks provided one justification for why commercial transactions are different.

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[485] al-Sarakhsī, *Mabsūṭ*, 24:69.

[486] See this sentiment also at ibid., 24:61.

[487] Ibid., 24:69.

They seem to have regarded commercial transactions as different from unilateral speech acts such as emancipations, divorces, and vows, because the existing positive Ḥanafite legal rules governing commercial transactions already recognized a right of rescission. This was not the case with speech acts such as marriage, divorce, and vows. Presumably since Ḥanafite positive law already recognized a right of rescission for commercial transactions, then likewise, it can recognize coercion as having the potential to impugn the transaction.

How did the Ḥanafites justify this differential attitude, since both divorces and sales were speech acts? Starting with Jaṣṣāṣ, along with the rescission argument, Ḥanafite scholars started positing that contentment (*riḍā*) was a relevant psychological category for the coercion jurisprudence related to the validity of commercial transactions.[488] Threats against life or limb or lesser types of threats, such as imprisonment vitiated contentment and therefore created the option of rescission in coerced commercial transactions. For commercial transaction, contentment was a necessary condition for their full legal validity. The question naturally arises as to why contentment is considered only in commercial transactions, and not other types of speech acts? Only Dabūsī ventured to justify this differential treatment of legal speech.

In response, Dabūsī offers a scriptural argument. Dabūsī construed the central Qurʾānic verse in the law of commercial exchange, "O You who believe! Eat not up your property among yourselves in vanities: But let there be amongst you trade by mutual contentment (*ʿan tarāḍin*),"[489] as positively stipulating the condition of "mutual contentment (*ʿan tarāḍin*)" for the full effectiveness of all commercial exchanges. Dabūsī infers from the fact "the exceptional clause is [described] by the attribute of mutual contentment, that it is known that what is

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[488] See al-Jaṣṣāṣ, *Sharḥ*, 8:438.

[489] Qurʾān 4:29.

specifically excepted is the opposite of mutual contentment, which is coercion (*wa lammā kāna ʾl-istithnāʾ bi-ṣifa al-tarāḍī ʿulima anna al-mustathnāʾ min-hu bi-khilāf al-tarāḍī wa huwa al-kurh*)."[490] In fact, Dabūsī asserts, had it not been for this scripturally based provision, commercial legal speech acts would have taken a form similar to that of divorces.[491] Here he makes the provocative suggestion, that had there been no Divine law text addressing the matter, the sale would be completely valid as long as the seller was categorized as legally competent to do it (i.e. possesses majority, rationality, etc.) and has a legitimate connection to the object sold (e.g. he is the owner).[492] For Dabūsī, the paradigmatic rational cases seem to be the irrevocable legal speech acts such as divorce. The Divine law qualifies this legal rule with respect to commercial transactions by adding an extra condition (mutual consent) and positively forbids other types of transactions.[493] Interestingly, the statement seems to suggest that there exist positive legal rules accessible to reason independent of God's revelation, and forms the base structure that is subsequently modified by revelation. For Dabūsī it seems that in a sense, God uses equity reasoning (*istiḥsān*) to modify the rational rule in order to meet certain public policy considerations.

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[490] al-Dabūsī, "Asrār," 1002.

[491] See ibid., where he basically says that coerced sales "would have been effective like divorce (*fa-kāna yanbaghī an yanfudh ka-al-ṭalāq*)."

[492] Ibid.

[493] In terms of Islamic legal history, this is a fairly bold move, and strengthens Bedir's characterization of Dabūsī's commitment to the idea that "reason constitutes the fundamental structure of morality and law while revelation makes additional adjustments over that structure." Bedir relies on Dabūsī's famous jurisprudential text, *Taqwīm*. See Murteza Bedir, "Reason and revelation: Abū Zayd al-Dabbūsī on rational proofs," *Islamic Studies* 43 no. 2(2004): 240.

2.2.4 Why Did not the Ḥanafites Simply Change their Minds?

Before we turn our attention to coercion jurisprudence involving causing harm to others, we pause to consider why the Ḥanafites did not just adopt the rule the coercion ***can*** invalidate unilateral speech acts, bringing them into alignment with all the other legal traditions? There are three possible ways to answer this question. One answer has to do with the nature of legal rules. In a recent analysis of the structure of legal reasoning in Ḥanafite legal texts dealing with the issue of women and public prayer, Sadeghi found that the justifications for legal rules change at a much faster rate than the legal rules themselves. In fact, once a legal rule is accepted as part of the *corpus juris* of a given tradition, it hardly ever changes. In fact a rule only changes if it becomes socially or politically intolerable for one reason or another. The cause of change in legal rules has nothing to do with the principles and scriptural interpretations cited by jurists who justify those rules. Laws change for social reasons, and justifications emerge to smoothe over that change. Relying on the scholarship of Alan Watson, Sadeghi terms the persistence of legal rules over time legal inertia. Given the fact of legal inertia, we do not need an explanation for why a given legal rule persists over time. It does so because it is recognized as the law. Once the coerced divorce rule was recognized as part of the Ḥanafite corpus juris, its perpetuation and justification by Ḥanafites should be assumed, and since all three of the founding fathers of Ḥanafism agreed on the rule, its place as part of the Ḥanafite *corpus juris* was assured.[494]

The second possible explanation has to do with the nature of the social practices that the legal rules govern. Baber Johansen has argued that the reason why Ḥanafite rules regulating commercial contracts differ from rules regulating marriages, divorces, and emancipations has to

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[494] Behnam Sadeghi, *Women and Prayer in the Islamic Legal Tradition: the Logic of Law Making*, (Cambridge: Cambridge University Press, forthcoming).

do with the differences in the objects being exchanged in these social transactions. People engage in commercial contracts in order to exchange commodities. The legal rules regulating such exchanges stipulate very little if any conditions on who may engage in such transactions. Any legally competent agent can enter into commercial contracts and be assured of equal treatment regardless of whom that agent is transacting with. Furthermore, the legal rules allow for a variety of ways for the people engaging in commercial transactions to opt out of them. As we have seen, Ḥanafite jurists held that coercion renders commercial transactions voidable. In contrast, marriages, divorces, and emancipations entail substantial modifications to households. Ḥanafite legal rules encourage, for example equality of familial standing in marriage contracts.[495] Importantly for our purposes, Johansen notes that in contrast to the legal rules regulating the validity of commercial transactions, rules regulating marriage, divorce and emancipation "follow the principle of a strict formalism which leaves very little place for intent, purpose, and knowledge of the parties concerned. Social exchange is a very serious business in which room for maneuvering is restricted to the utmost in order to avoid the disruptive effects of frustrated hopes and expectations and of negative classification."[496] The coerced divorce, marriage, and emancipation rules are merely an extension of the formalist logic governing the rules regulating how these social transactions ought to be concluded. The difference between the way commercial transactions and social transactions are regulated stems from the social attitudes towards the objects being exchanged in each of the respective transactions. Because substantial changes to the household were involved in divorces, marriages, and emancipations, presumably

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[495] See Baber Johansen, "The Valorization of the Human Body in Muslim Sunni Law," *Interdisciplinary Journal of Middle Eastern Studies* 4(1996): 71-73.

[496] See ibid., 74

the Ḥanafites wanted to inject as much predictability and certainty into transactions that had a lot riding on them. For this reason they adopted the strict formulist approach. The Ḥanafite rule on coerced divorces, marriages, and emancipations are simply an extension of this formulist approach. The reason why these rules persist as part of the Ḥanafite *corpus juris* is because the social attitudes regarding the nature of the social tranactions persist.

There is certainly something to Johansen's observation that the differences in the way that commercial transactions and social transactions are regulated derive from the differences in the types of objects being exchanged. Yet, presumably, these social attitudes were held not just by Ḥanafite jurists or even in Ḥanafite majority societies. Arguably, these attitudes were held by non-Ḥanafites as well, and non-Ḥanafites jurists held that coercion invalidates divorces, marriages, and emancipations.

The final approach is to emphasize the intellectual function of the classical positive law texts and note that the rules in the positive law texts do not necessarily constrain Ḥanafite jurists from adopting legal positions outside of the tradition when intolerable social harm would occur if they applied their own legal rules. This approach emphasizes that while it may be true that once a legal rule is accepted as part of the *corpus juris* of the tradition it tends to persist over time, this does not mean that the rule is automatically applied by judges and muftis. It seems, in the post-classical period at least, from time to time Ḥanafite judges authorized judges of another tradition to apply the rules of that tradition, and Ḥanafite muftis relied on the legal doctrines of other legal traditions in cases where the application of a Ḥanafite rule would cause undue social harm.[497]

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[497] See Rudolph Peters, "What does it mean to be an official Madhhab? Hanafism and the Ottoman empire," in *The Islamic school of law: evolution, devolution, and progress*, ed. P. J. Bearman, Rudolph Peters, and Frank E. Vogel, *Harvard Series in Islamic Law* (Cambridge, Mass.: Islamic Legal Studies Program Distributed by Harvard University Press, 2005), 155-57.

For example, the Indian Ḥanafite Ashraf ʿAlī Thānawī used Mālikite doctrine on the required waiting period for wives of missing husbands to argue for a rule that contravened the Ḥanafite rule, and in fact urged its adoption as state law in India.[498] Perhaps most directly relevant for our purposes, in a collection of fatwas, the tenth/sixteenth century Ḥanafite Ibn Nujaym (d. 970/1563) is recorded as holding that coercion does in fact invalidate a pronouncement of divorce, even while he defends the traditional Ḥanafite rule that coercion has no effect on the legal effects of a divorce in his work of positive law.[499] In light of these observations, what then is the function of the positive law works? The authors of the positive law works sought to provide as convincing a justification of each individual legal opinion that fell within the aegis of the tradition as possible. They sought to validate the legitimacy of the legal rules that make up the tradition as a comprehensive starting point for legal inquiry and analysis. In the process they sought to communicate the techniques of reasoning that reconciled the legal rules with the scriptural sources and the substantive principles that demonstrated the coherence of the legal rules as a whole to their pupils. More than anything, as we saw Calder note above, the positive law works were intellectual products, and their relationship to the norms being applied in either the courts or offered as fatwas was more complicated than previously thought. The fact that the coerced divorce rule persisted and that it elicited justification over the history of Ḥanafism, cannot therefore be be explained by reference to historical facts external to the workings of the Ḥanafite tradition as an intellectual tradition or to external social values.

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[498] Muhammad Qasim Zaman, *Ashraf 'Ali Thanawi: Islam in modern South Asia*, (Oxford: Oneworld, 2008), 62-5.

[499] For the fatwa, see Dāwūd ibn Yūsuf al-Khaṭīb and Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *al-Fatāwā al-Ghiyāthīyya*, 1st ed., (Būlāq (Cairo): al-Maṭbaʿa al-Āmīrīyya, 1321), 169 and for the work of positive law, see Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *al-Baḥr al-Rāʾiq*, ed. Zakariyya ʿUmayrāt, 6 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 1418[1997]), 3:428.

3 Causing Harm to Others Coercion Jurisprudence

Much of Ḥanafite coerced speech jurisprudence consists of defense against perceived criticism launched by scholars outside of the tradition. This is not the case with the coercion jurisprudence on issues involving causing harm to others. In fact Ḥanafite coercion jurisprudence in this area originates in the disagreement amongst the founding fathers. Much of the jurisprudence consists of the classical jurists' attempts at reconstructing the legal reasoning behind the divergent opinions of the founders.

For the Ḥanafites, being coerced to cause harm to others consisted mostly of two types: harm against another person's property and harm against another person's body. As we saw earlier, only compelling coercion (threats against one's life or limb) had the potential to excuse (but never permit) causing harm against someone else. The problems of rape and murder attracted the most analysis. Unlike the cases of coerced speech above, the founding jurists of the Ḥanafite tradition were deeply divided on what the correct legal rule was for rape and murder. At the very minimum, classical Ḥanafite jurists had the task of explaining why the founding fathers disagreed. Since the justifications for these early opinions were either minimal or unrecorded, much of the jurisprudence on these two issues involves an after the fact reconstruction of the legal and moral reasoning that could have lead them to diverge.

3.1 Rape

As we have already noted, there were three different opinions attributed to the founding fathers of the school on the issue of the penalty for committing rape when coerced. Let us review them here. The Ḥanafite tradition attributes two opinions to Abū Ḥanīfa alone. In the first opinion, Abū Ḥanīfa held that coercion cannot serve as an excuse for rape in any way, and therefore, the coerced should be held liable for the full corporal punishment (*ḥadd*). Apparently

Abū Ḥanīfa later modified this opinion and held that if the coercer is someone other than the ruler (*sulṭān*), then the coerced is held fully liable for the punishment. However if the ruler is the coercer, then the coerced is not liable for the punishment. Finally, Abū Yūsuf and Shaybānī both held that if non-rulers are capable of coercing in the same way as rulers,[500] then the distinction between rulers and non-rulers is immaterial. The coerced is not punished.

Ḥanafite jurisprudence on this issue revolved around why Abū Ḥanīfa could have changed his mind and what could possibly justify the distinction between rulers and non-rulers in his second opinion. We will start with the second question first.

For this question, Jaṣṣāṣ reproduces the reasoning of his teacher, the Baghdadi Ḥanafite, Abū al-Ḥasan al-Karkhī (d. 340/952). Karkhī makes a procedural argument as to why it would matter that the coercer is a ruler or not. He begins by noting that it is possible that Abū Ḥanīfa meant the highest legitimate political authority, i.e. the Caliph, when using the term ruler (*sulṭān*).[501] If this is the case, then if the Caliph orders someone to commit rape (an illegal sexual act), then he has effectively disqualified himself from the office of the Imamate on moral grounds. He has coerced someone to commit a sin, and thereby become a sinner (*fāsiq*).[502] The coerced is then committing a punishable offense when there is no head of state. The religious corporal punishments (*ḥadd*) are only applied when a legitimate government exists. Since there is no head of state at the time that the crime was committed, the punishment must not be applied.[503] The case is similar to when punishment should not be applied because there is no

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[500] Sarakhsī construes the opinion attributed to Abū Yūsuf and Shaybānī as simply asserting that if non-rulers are capable of fulfilling their threat, then the coerced is not punished. See al-Sarakhsī, *Mabsūṭ*, 24:104.

[501] al-Jaṣṣāṣ, *Sharḥ*, 8:455.

[502] Ibid.

[503] Ibid.

ruler at all or when the punishment is committed outside of Islamic legal jurisdiction (*dār al-ḥarb*).[504] This is also the same reason that the ruler himself is not punished, because when he commits a punishable offence according to the religious law (i.e. a *ḥadd* infraction), he disqualifies himself from office, and thereby commits the act when there exists no ruler to implement the punishments.[505]

If on the other hand, Karkhī adds, Abū Ḥanīfa did not mean the caliph by the term ruler and in fact meant any holder of political office, then the punishment should not be applied because the holder of the political office stands in for the ruler (*imam*).[506] It is part of the political office holder's job to seek a way to cancel the punishment.[507] Though neither Karkhī nor Jaṣṣāṣ say so, presumably coercion can serve at least as a legitimate impediment to the application of the punishment, and therefore the office holder ought to cancel the punishment.

Sarakhsī does not present either one of these arguments as an explanation for why Abū Ḥanīfa makes a distinction between rulers and non-rulers. Rather he notes that in the time of Abū Ḥanīfa, the ruler, as in the holder of the highest executive office, was factually the most powerful person in the land and commanded the obedience of all people.[508] This being the case, the coerced could always seek the aid of the ruler against the unjust threat made by non-rulers.[509] Of course this would not work if the coercer were the ruler himself. In fact it was because things

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[504] Ibid., 8:456.

[505] Ibid.

[506] Ibid.

[507] Ibid.

[508] al-Sarakhsī, *Mabsūṭ*, 24:104.

[509] Ibid., 24:104-5.

had changed in Abū Yūsuf and Shaybānī's time that they modified Abū Ḥanīfa's opinion by obliterating the distinction between rulers and non-rulers.[510] In support of Abū Yūsuf and Shaybānī's opinion Sarakhsī himself adds that non-rulers' threats are potentially more coercive than those of rulers. The ruler is full of confidence in his commands because he knows he will not simply disappear one day. For this reason, he is not in danger if he does not actually fulfill all the threats that he makes. Non-rulers, on the other hand are hasty. They are not as confident about the prospects of their power, and therefore unlikely to not attempt to fulfill all of their threats.[511]

This leaves us with the second question. Why did Abū Ḥanīfa change his mind about whether or not the crime warranted the punishment? Recall the first opinion held that coercion could never cancel the legal punishment of the coerced. It all comes down to how an erection ought to be construed. Sarakhsī reconstructs the reasoning behind Abū Ḥanīfa's first opinion. A claim of coercion, no matter how severe, can never invalidate the crime of rape, is that

> a man's erection is inconceivable without pleasure (*ladhdha*). Pleasure is evidence of willingness. Erections do not occur in the presence of fear.[512]

But what then to make of his second opinion, where whether or not the coerced is punished depends on whether the coercer is a ruler or not. In this case, presumably the coerced would still require an erection to commit the rape. The Ḥanafites imply that Abū Ḥanīfa must have changed his mind about what the erection signifies. An erection does not necessarily

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[510] Ibid., 24:104.

[511] Ibid.

[512] For this see ibid., 24:103. See also al-Jaṣṣāṣ, *Sharḥ*, 8:455, where Jaṣṣāṣ notes that erections cannot occur without desire (*shahwa*) and they therefore indicate willingness (*ṭawʿ*) and contentment (*riḍā*) and al-Dabūsī, "Asrār," 1007.

indicate the absence of fear or willingness. For example, Sarakhsī in the course of justifying Abū Ḥanīfa's second opinion writes:

> An erection is not evidence of the absence of fear. An erection sometimes occurs naturally [without choice] because of the strength of the sexual desire the God implanted in men and sometimes it occurs by way of volition. Consider that someone asleep may have an erection, naturally without his choosing or intending it[513]

Other than Ṭaḥāwī, who sided explicitly with Abū Ḥanīfa's first opinion, it is not clear where the later Ḥanafites themselves stood. Jaṣṣāṣ merely notes opinions and the possible reasoning behind them.[514] Dabūsī does the same in summary fashion.[515] Sarakhsī provides independent arguments in favor of Abū Yusuf and Shaybānī's opinion, while simply reciting the reasoning behind the other opinions, so it seems that he favored their opinion.[516] This is frequently a feature of the reasoning found in books of positive law. Many times there is no attempt to tip the balance in favor of one rule over another.[517]

We are left with three more questions related to the issue of rape: is there a punishment for the coercer, what about the rape victim and what about the moral issues surrounding rape?

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[513] See al-Sarakhsī, *Mabsūṭ*, 24:104.

[514] See al-Jaṣṣāṣ, *Sharḥ*, 8:454-56.

[515] See al-Dabūsī, "Asrār," 1007.

[516] See al-Sarakhsī, *Mabsūṭ*, 24:104-5.

[517] Wheeler and Calder are the only scholars that I have seen notice and attempt to explain this feature of the positive law books. Wheeler thinks that classical scholars reconstructed the reasoning behind the opinions of the founding fathers to demonstrate how they are reducible to different applications of principles that all share in common. I do not agree with his interpretation, but see Wheeler, *Applying*, 150. Calder thinks that the reconstruction of arguments for competing positions is partly the result of the text's pedagogical function in classical legal academia. Wheeler makes a similar claim. See specifically Calder, *Islamic Jurisprudence*, 55 for his comments on the nature of Sarakhsī's style and contribution to the Ḥanafite tradition in the *Mabsūṭ*. See also Wheeler, *Applying*, 164-5.

Sarakhsī dispenses with the first question easily. The coercer is not liable for any criminal penalty. The reason has to do with the instrument test. Rape fails the instrument test; therefore the legal consequences cannot be transferred to the coercer. Sarakhsī writes "it is inconceivable that the coerced can become a tool of the coercer."[518] The Ḥanafites construed the instrument test very strictly. The instrument test only succeeds in transferring legal consequences from the coerced to the coercer if it is literally the case that the coercer can forcibly use the body of the coerced to cause the harm.

That pre-modern scholars would raise the question of the legal liability of the rape victim is owed to the way that they conceptualized rape.[519] They conceptualized it as an act of forced fornication. Fornication, sex outside of a legitimate relationship, which for the classical Ḥanafites would be either marriage or slavery, is a punishable offense for both of the parties, the man and the woman. Since rape is an instance of coerced fornication, its affect on the liability of the man and the woman would be a question that would naturally arise. All of the legal traditions held that the victim[520] is not held liable for the punishment. In fact both Sarakhsī and Bazdawī note that a woman is not to be punished for being the victim of a rape even when the coercer's threat is merely imprisonment. In other words the threat does not have to be compelling in order to create a legal doubt that subverts the punishment, and when the threat is compelling, she is fully excused. Part of the reason she is excused is because of the nature of her function in the rape. For Sarakhsī while she functionally enables (*tamkīn*) the act to take place in

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[518] al-Sarakhsī, *Mabsūṭ*, 24:104, Bazdawī and Bukhārī, *Kashf*, 4:556.

[519] On the treatment of rape in formative Islamic law and the classical Mālikite school, see Hina Azam, "Sexual violence in Maliki legal ideology: From discursive foundations to classical articulation" (Ph.D., Duke University, 2007).

[520] In all of the legal literature that I have consulted the jurists presume that the victim is a woman.

the sense that the rape could not happen without her, she is not an active agent. She is not the physical author of the act of rape (*laysa min jihati-hā mubāshiratun li-ʾl-fiʿl*).[521] She is merely the object (*fa hiya mafʿūlun bi-hā*)[522] or recipient of the act (*maḥall al-fiʿl*).[523] Sarakhsī adds that she could be involved in an act of fornication while she is asleep or not even fully aware.[524] Both Bazdawī and Sarakhsī are careful to differentiate the moral impact of coercion on the status of the act for the woman. Bazdawī notes that if the coercion is compelling she is fully excused for the rape. In contrast to the man, since she causes no harm to anyone else, the prohibition that is being violated by the act resembles the prohibitions associated with duties owed to God,[525] such as not uttering words of belief. The structure of liability in this case is reward if one perseveres the threatened harm by refusing to submit to the coercer's demand, and excuse in case one submits to his demand.[526] Non-compelling coercion does not excuse the act, but it is sufficient to create a legal doubt (*shubha*) that subverts the punishment in this world.

Both Sarakhsī and Bazdawī assert that this structure for the moral and legal liability for the coerced rape is not the same for the man.[527] Sarakhsī notes that coercion, whether compelling or otherwise does not affect the prohibition against either rape for the man or murder. He writes:

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[521] al-Sarakhsī, *Mabsūṭ*, 24:158.

[522] Ibid.

[523] Ibid., 24:103

[524] Ibid.

[525] Bazdawī and Bukhārī, *Kashf*, 24:567.

[526] See ibid., 4:567.

[527] See al-Sarakhsī, *Mabsūṭ*, 24:158, where he explicitly notes that "we differentiate between the side of the man and the woman in the case of coercion by way of threats against life." See similarly, Bazdawī and Bukhārī, *Kashf*, 567.

> If the coerced performs the act [of rape], he has committed an injustice. The prohibition against injustice is eternal. This is the case even if she gave him permission. Her permission is not given legal consideration. Moreover, the prohibition against fornication is eternal. It admits no exception. In no case is it ever permitted, in contradistinction to the prohibition against carrion or the meat of the pig.[528]

Sarakhsī gives two reasons for why the prohibition against rape never ceases. One is that in contrast to prohibitions dealing with the consumption of forbidden foods, rape is an act of injustice that violates the rights of others. The prohibition against injustice does not admit exceptions or suspensions. The second difference is that the Divine texts themselves *specifically* suspend the prohibitions against carrion and pigs in cases of dire necessity. No such exemption exists for either rape or murder. To this, Bazdawī adds another reason. He writes:

> Fornication, similar to homicide or injury, are those acts that coercion can neither permit, nor excuse, because the evidence for an excuse is fear of loss [of life or limb] and in this respect the coerced and the person whom the coerced would violate are equal. Coercion is [legally and morally] eliminated in cases dealing with the life of the person whom the coerced would violate, because of [incommensurable] conflict [between the values of the two persons].[529]

Bazdawī asserts that there is no disciplined way to weigh the harm that would be suffered by the coerced against the harm that would be suffered by the person whom the coerced would harm. All are equal before God.[530]

For these reasons, the prohibition against coerced fornication stands especially firmly for the man. Because of the passive nature of the woman's role in the rape, the jurists do not

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[528] al-Sarakhsī, *Mabsūṭ*, 24:105.

[529] Bazdawī and Bukhārī, *Kashf*, 4:562-3.

[530] He adds that there is another harm in the case of rape. Assuming that the rape causes pregnancy, the act causes the ruination of the legal basis for attribution to the biological father (*fasād firāsh*), because it the pregnancy occurs in a relationship not sanctioned by the law. Ibid., 4:562.

conceive of her as actively harming another individual. In the eyes of Sarakhsī she is not committing an act of injustice. The absence of active harm on her part results in a less stringent burden of moral and legal responsibility.

Given that coercion does not eliminate the prohibition against the rape, then how do they justify the suspension of the legal this-worldly punishment of the coerced? Sarakhsī starts by explicitly noting that threats of imprisonment cannot result in the suspension of the punishment. If a coercer threatens imprisonment or enchainment and demands rape, and the coerced complies, he is to be punished.[531] If the threat is compelling, then he is not to be punished. The suspension of the punishment is not because the act is morally excused. The act is still unlawful. Similar to the case of the woman who submits to rape when the threat is imprisonment, the compelling coercion creates a legal doubt (*shubha*) that suspends the punishment. The man still sins. Sarakhsī writes:

> If he refuses to rape to the point of being killed, he is rewarded for that because he has refused to commit a prohibited act. He has striven to obtain God's pleasure by desisting from violating the limits of religion and by seeking to be careful in not overstepping them, even in cases where he would have been excused, such as in uttering words of disbelief. We clarified in that case that if he refuses to the point of being killed, he is rewarded. This is even more so in the case where there is no excuse.[532]

This divergence between the demands of morality and the demands of this-worldly legal punishment is also a central tension in coerced murder jurisprudence, and in fact constitutes one of the core problems that Ḥanafite jurists attempt to explain.

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[531] al-Sarakhsī, *Mabsūṭ*, 24:105-6.

[532] Ibid., 24:105

3.2 Murder

Islamic legal rules regulating intentional and unlawful killing give the appropriate legal heir of the victim many options in how proceed against a person convicted of homicide. The heir has the option of seeking the criminal's execution. Alternatively, he could seek financial compensation, or even pardon the offender.[533]

We have already seen how the authors of the legal handbooks noted a substantial difference of opinion on who is to be punished in the case of coerced murder. Let us review it here. Zufar held the most stringent position: the coerced is held fully responsible for the murder and he is liable to the highest possible punishment. Abū Ḥanīfa and Shaybānī held the opposite view: that the coercer and not the coerced is held fully responsible for the murder. Abū Yūsuf occupied a middle position. He held that neither ought to be held liable for the corporal punishment, but held that the coercer is responsible for the blood money (*diya*).

Jaṣṣāṣ affirms the position that coercion can never permit murder or rape because the act constitutes a transgression against the rights of other people. The principle of equality of security from harm against their persons precludes lawful preference of one life over another without just cause.[534] Similarly all the other Ḥanafite scholars either imply or explicitly state that coercion has no effect on the moral status of killing another person. The stability of the moral prohibition against homicide though did not translate into an equally stable response regarding the this-worldly legal consequences of the act. It is not surprising therefore to find that much of coerced homicide jurisprudence is devoted to explaining how the coerced, according to the dominant

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[533] For an account of the main principles and rules regulating homicide according to classical doctrine, see Rudolph Peters, *Crime and punishment in Islamic law: theory and practice from the sixteenth to the twenty-first century*, (Cambridge, UK: Cambridge University Press, 2005), 38-53.

[534] al-Jaṣṣāṣ, *Aḥkām*, 3:251.

opinion in classical Ḥanafism, is not held legally responsible for the act, yet at the same time sins if he commits it.

Even while it was the Abū Ḥanīfa/Shaybānī position that dominated classical Ḥanafism, Dabūsī and Sarakhsī attempt to reconstruct the reasoning behind Zufar and Abū Yūsuf's position. The essential structure of both Dabūsī's and Sarakhsī's reconstruction of Zufar's argument is to reason from the classical Ḥanafite agreement that the coerced sins when he kills to the fact that he ought to be held liable for the crime. If it is the case that coercion truly turns the coerced into an instrument, such that the legal consequences of the act are transferred to the coercer, then it ought also invalidate his choice of becoming the instrument in the first place.[535] If coercion invalidates the coerced's choice of becoming an instrument then he ought not be considered a sinner. But no Ḥanafite could make this claim. All classical Ḥanafites seem to have held that the coerced indeed sins when he kills, no matter how severe the coercion. Zufar's position urges, therefore, that he ought to be held legally responsible for it.

Sarakhsī's reconstruction of Zufar's justification offers four different arguments:

1. reference to scripture
2. invocation of the equality between the coerced and the victim
3. analogy to the case of starvation
4. analogy to the case of self-defense

Let us start with the scriptural argument: the Qurʾān asserts "whomsoever is killed unjustly, we have given the heirs [of the victim] a right."[536] The law of retaliation stipulates that the content of the undefined right in the Qurʾānic text includes retaliation against the killer for

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[535] See al-Dabūsī, "Asrār," 1006.

[536] See Qurʾān 17:33.

the crime. The question is, who qualifies as the killer, the coercer or the coerced? Sarakhsī argues that since murder is an empirically perceivable act (*fiʿl maḥsūs*), the empirical killer is the coerced, and he is to be held liable for the act.[537] The second argument asserts "whomsoever kills one who is his equal to save himself has intentionally [violated] an indemnifiable right. Therefore the full legal sanction (*qawad*) is required on him."[538] This claim emphasizes the fact that the coerced has made a preference in an area where he has no right to do so. In the third argument, Sarakhsī notes that the case of one coerced to kill is similar to the case of one compelled by starvation to kill and eat the flesh of another human being. In the starvation case, the killer, even if compelled, is still held legally responsible for the act of homicide.[539] This should likewise be the same result for the case of coerced homicide. Finally, the very fact that the victim of an attempt by the coerced to kill him has a legitimate right to kill the coerced in self-defense indicates that the law holds the coerced responsible for the act of attempting to kill the victim in some way. Otherwise it would not have been wholly permissible for the victim to defend himself to the point of killing the coerced.[540]

This leaves us with justifications for the other two opinions. Abū Yūsuf held that neither the coerced nor the coercer is held liable for the full legal punishment: retaliation. In his opinion, the coercer is, however, responsible for the payment of the blood money (*diya*) to the heirs of the victim within three years by drawing on his personal property.[541] For Abū Yūsuf, apparently,

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[537] See al-Sarakhsī, *Mabsūṭ*, 24:85.

[538] See ibid.

[539] Ibid., 24:85-6.

[540] Ibid., 24:85.

[541] The stipulation that he should pay out of his own pocket highlights the fact that the victim's *ʿāqila* is not financially responsible for the crime.

the physical act of killing can only be attributed to the physical agent of the act.[542] Presumably for this reason, the coercer cannot be held liable for the retaliation. As for the coerced, Dabūsī notes that for Abū Yūsuf it is the existence of legal doubt that impedes the application of the penalty to the coercer.[543] According to Dabūsī's reconstruction of Abū Yūsuf's legal opinion, the penality of retaliation (*qiṣāṣ*) is only executed when the murder is *intentionally* committed and there exist no legal doubts about the commission of the crime. It is for this same reason, for example, that a person, whose act unintentionally results in the death of another, is not liable for retaliation. Because the coerced, similarly, does not intend the victim's death, he is not held liable to the retaliation. In the case of the coerced, the coerced "did not [truly] intend to kill, but rather intended to save his own life."[544] The lack of valid intent creates a legal doubt that impedes the implementation of the corporal punishment. It is precisely the same legal reasoning behind the unanimous Ḥanafite rule regarding rape.[545] In both cases, the coerced, when compelled by a threat against life or limb, escapes the punishment (*ḥadd*), because of the presence of a legal doubt.

Sarakhsī's arguments are substantially similar, though he only addresses why the coercer is not held fully liable. He does add, though, that the fact that the coerced is still regarded as having sinned is evidence that the "entirety of the act cannot be attributed to the coercer."[546]

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[542] See al-Dabūsī, "Asrār," 1006.

[543] Ibid. On the role of legal doubt in Islamic law see Intisar A. Rabb, "Doubt's benefit: Legal maxims in Islamic law, 7th-16th centuries" (Ph.D., Princeton University, 2009).

[544] al-Dabūsī, "Asrār," 1006.

[545] Ibid.

[546] al-Sarakhsī, *Mabsūṭ*, 24:88.

Furthermore, retaliation (*qiṣāṣ*) only becomes incumbent in the case of full physical action. Since the coercer is not the physical agent, the retaliation cannot be directed against him.[547]

This leaves the third opinion on coerced homicide, shared by two of the founding fathers of the tradition, Abū Ḥanīfa and Shaybānī. Both jurists held that only the coercer is held fully liable for the act of homicide. Most Ḥanafite writing on coerced homicide is devoted to answering two questions: what justifies the dominant position that holds the coercer fully responsible for the murder and why then is the coerced still considered to have committed a sin? Jaṣṣāṣ begins his analysis by noting that the rule on coerced destruction of property holds the coercer and not the coerced responsible for financial compensation in case he coerces someone to destroy property.[548] The fact of coercion transfers the legal responsibility of the act of destruction from the coerced to the coercer. The coercer is therefore held responsible for compensating the owner of the property. Jaṣṣāṣ urges the same legal conclusion in the case of coerced homicide. Furthermore in a version of an argument that we have already seen above, the very fact that both the coerced and the intended victim may legitimately band together in order to kill the coercer without fear of the moral or legal consequences is an indication of the fact that the legal consequences of coercion have an effect on the coercer's legal responsibility. This case also shows that the act of coercion has the effect of rendering the spilling of his blood permissible.[549]

But how does Jaṣṣāṣ respond to the argument that the legal consequences should follow the moral consequences of the coerced act? The underlying reasoning for Zufar's position held

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[547] Ibid.

[548] al-Jaṣṣāṣ, *Sharḥ*, 8:451-2. Dabūsī notes that Abū Ḥanīfa and Shaybānī's rule on coerced homicide is the result of an analogy drawn against the case of coerced property destruction. al-Dabūsī, "Asrār," 1006.

[549] al-Jaṣṣāṣ, *Sharḥ*, 8:452.

that the coerced sins in killing and ought to be held legally responsible. To this Jaṣṣāṣ responds with the examples of three other cases in Ḥanafite legal thought where the commission of sin does not necessarily translate into legal responsibility. In one case, a Muslim is given a guarantee of safe-passage (*amān*) by a non-Muslim sovereign. The holder of the guarantee of safe passage kills another Muslim while outside of Islamic legal jurisdiction. He has committed a sin, but is not liable for the punishment for murder, because he committed the act outside of the state's legal jurisdiction.[550] In another case, a person outside of Islamic legal jurisdiction converts to Islam and then kills another Muslim. Again, he has committed a sin, but is not subject to any of the legal penalties for homicide.[551] A third case involves the way in which retaliation is exacted on a person who committed homicide. The Ḥanafites held that the criminal is to be executed only by use of a sword. If however, the executor exacts the retaliation by the use of fire, he has sinned. But he is not held legally responsible for the act.[552] Jaṣṣāṣ's point is to demonstrate to other Ḥanafites who might be sympathetic to Zufar's position (such as Ṭaḥāwī) that indeed in three different cases Ḥanafite rules show that legal consequences do not follow from moral consequences. If in these cases a man can be a sinner, liable to God's accountability in the next world, without being held accountable in this world, then there is no *a priori* reason why this could not also be the case with coerced murder.

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[550] Ibid.

[551] Ibid.

[552] Ibid. Peters notes that Ḥanafites and Shīʿites in fact stipulate that the execution can only take place by the sword. Other schools hold that death should be inflicted in the same way that the victim was killed. In the above case, the Ḥanafites imagine a situation where the Ḥanafite rule on execution is violated. It could also be possible that even those schools that admitted execution according to the method that the victim was killed ruled out execution by fire because of its particularly cruel nature. In either case, the executor has violated an ethical rule, but one that does not have legal consequences. For a presentation of the rules see Peters, *Crime*, 37.

Dabūsī begins his analysis of the Abū Ḥanīfa/Shaybānī position by applying the instrument test in showing how transference of the legal consequences from the coerced to the coercer succeeds. The instrument test held that compelling coercion results in the transference of the legal consequences for those acts in which it is empirically conceivable that the coercer could have physically used the body of the coercer as merely an instrument. Since it is possible to imagine that the coercer could have grabbed the arm of the coerced and literally used it as instrument to kill the intended victim, application of the instrument test yields a successful transference result.[553] In this case Dabūsī notes that it is specifically a threat against life (*bi-wa'īd al-qatl*) that constitutes the compelling coercion.[554] In previous cases he had defined compelling coercion as threats against life or limb. It is not clear whether the omission of the threat against limb is intentional. But it is likely that since the coercer's demand is the life of the victim, in order for the threat to count as compelling, it would have to be commensurate with the demand. Only a threat against the coercer's life can work in transference. This idea is not found in Dabūsī's writings, though it is found in Sarakhsī's work.[555]

The second part of Dabūsī's analysis consists in justifying why the coerced is still considered a sinner if he is not responsible for any of the legal consequences for his act. Dabūsī introduces the case of a *muḥrim* (someone who has entered into a ritual state of consecration during pilgrammage) who is coerced to kill prey to analyze the nature of the sin the coerced commits in the case of homicide. A valid performance of the pilgrimage (greater or lesser) requires that a person ritually enter into a state of consecration. Practically speaking this

[553] al-Dabūsī, "Asrār," 1006.

[554] Ibid.

[555] See also Sarakhsī, where he likewise omits reference to the threat against limb as also legally coercive in the case of coerced homicide. al-Sarakhsī, *Mabsūṭ*, 24:86-7.

involves the observation of specific proscriptions above and beyond those that are in effect outside the state of consecration. One such proscription requires *muḥrims* to refrain from hunting. If a *muḥrim* violates this prescription, he has rendered his state of consecration defective. In order to render it whole again he must do certain acts of expiation. In the case of the coerced *muḥrim's* act of killing an animal, the question that coercion naturally raises is whether it is the coerced or the coercer who is held responsible for the act of expiation. Dabūsī's presentation of the case introduces a further complication: what if the animal does not exist in the wild but is owned by a third party? Who is held responsible for the financial compensation to the third party for the animal? It was commonly accepted that in this case, despite the fact of coercion, it is still the *muḥrim* who must perform the acts of expiation to restore his state of consecration, but the coercer is held financially liable for the compensation of the destroyed animal. Dabūsī explains that the application of the instrument test fails in transferring the legal consequences of the coerced act with respect to the expiation, but succeeds with respect to the financial compensation.[556] Part of the reason it fails is because the object of the transgression is the *muḥrim's* personal state of consecration (*jināya ʿalā ʾl-iḥrām*).[557] The same analysis applies to the Ḥanafite requirement that one coerced to break his fast or his prayer is still obliged to make-up the fast or the prayer, because these are actions that pertain to a person's observations of religious proscriptions (*jināya ʿalā ḥudūd dīni-hi*) and do not admit transference. Similarly the coerced murder is in fact a transgression against two objects. It is not only a transgression

[556] al-Dabūsī, "Asrār," 1007.

[557] Ibid.

against the victim's person (*jināya ʿalā ʾl-maqtūl*).[558] It is also a transgression that violates prescriptions that apply to the coerced's personal religious duties. The instrument test succeeds in validating transference of the legal consequences associated with the transgression against the victim's person, but fails in transferring the coerced's transgressions against his own personal religious obligation to not kill. By invoking the accepted logic of the effect of coercion on the case of the *muḥrim*, Dabūsī has demonstrated why the coerced sins when he kills, but at the same time why he avoids the legal consequences for his act.

Sarakhsī reproduces variations of Jaṣṣāṣ and Dabūsī's justifications for the Abū Ḥanīfa/Shaybānī position on coerced homicide. Similar to Jaṣṣāṣ, he asserts the fact that the coerced still sins does not necessarily mean that he ought to be held legally responsible for the act.[559] He notes that in the case of a man who gives someone else permission to cut off his hand, the amputator sins in committing the act, but cannot be held legally responsible for it.[560]

Sarakhsī's explanation of the nature of the coerced's sin mirrors Dabūsī's analysis above. He asserts that while coercion can change whom the act can be attributed to, it cannot change the nature of the object that the act is directed towards. In the case of coerced murder there exist two such objects. One object is the person of the victim, which constitutes a violation of an indemnifiable right (*fa-amma fī ḥaqq al-ḍamān fa-maḥall al-jināya nafs al-maqtūl*).[561] The legal

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[558] Dabūsī is not claiming that the coercer does not sin. Insofar as the instrument test transfers the attribution of the legal consequences of the homicide to him, he is regarded as the one who intended to kill the victim. In doing so, he has committed a willful act of supreme harm against the victim. This is a sin, such that he is obliged to do expiation if the victim's heirs choose to either pardon or demand the blood money from him. For all of this see, ibid. For substantially the same argument see also Bazdawī and Bukhārī, *Kashf*, 558-9.

[559] al-Sarakhsī, *Mabsūṭ*, 24:87.

[560] Ibid.

[561] Ibid.

consequences of the act of murder originate in the violation of this right, regardless of whether the act is attributed to the coerced or the coercer. The instrument test can validate successful transference from the coerced to the coercer when it comes to the legal consequences that originate in this object. But the second object is the religious proscriptions that apply only to the person of the coerced. He writes:

> When we say that the coerced is a sinner and that in the case of sin the act is attributed to him, it is because it is a transgression against his religion (*jināya ʿalā dīni-hi*). He commits an act that is purely prohibited (*ḥarām maḥḍ*).[562]

The nature of this object does not admit transference. In the case of the violation of the coerced's religious duty, it is not conceivable that the coerced can serve as the instrument of the coercer.[563]

4 Conclusion

Modern Islamicists often emphasize the scripturalist basis of Islamic legal rules. There is no doubt that Muslim jurists concieved of the authority and validity of rules as stemming from their fidelity to texts that originated in a Divine source. Indeed, a considerable amount of Islamic legal theory (*uṣūl al-fiqh*) is devoted to an examination of the validity of different forms of reasoning from the scriptural sources. Because much of recent Islamic legal scholarship has tended to focus on this genre of legal literature, the "textualist" or "scripturalist" feature of Islamic law has naturally been highlighted. More recent scholarship has focused on the genre of legal maxims (*qawāʿid*). Unlike hermeneutical principles that guide the process of derving legal rules from scriptural sources, legal maxims or principles tend to encapsulate substantive legal

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[562] See ibid. In the same passage he describes the sin as consisting as a "transgression against the bounds of his personal religion (*al-jināya ʿalā ḥadd dīni-hi*)."

[563] Ibid. For substantially the same argument see Bazdawī and Bukhārī, *Kashf*, 556.

values. The principles themselves have legal content and are not merely guidelines for how to reason from scriptural texts to rules, though they do not have the specificity of legal rules. Our analysis of Ḥanafite coercion jurisprudence demonstrates the presence of both types of reasoning in positive law texts.

Scriptural reasoning consisted of showing why a given scriptural texts either commits or does not commit the jurist to the rule in question. The Ḥanafites draw upon different hermeneutical strategies, of less and more technical complexity to make these types of arguments. The most technically sophisticated argument was Dabūsī's inferential requirement argument to undermine the force of the lifted ḥadīth. Dabūsī makes this argument in his positive law work, the *Asrār*, and discusses its theoretical validity in his work of legal theory (*Taqwīm*).

The Ḥanafites' legal analysis consisted of a number of different types of arguments. Dabūsī cited the substantive principle that legal judgments ought only to be based on empirically available information, for instance, to undermine the Shāfiʿite contention that coercion vitiates intention and therefore invalidates a pronouncement of divorce. He deploys the instrument metaphor to show how compelling coercion can result in the transference of the legal responsibility for an act from the coerced to the coercer. Compelling coercion renders the coerced agent similar to a non-thinking instrument in the hand of the coercer. Dabūsī was also the first Ḥanafite to reference the effect of the threat against life on the psychological capacities of the coerced. When the threat is compelling, he argues, coercion fundamentally compromises the deliberative processes associated with making a choice. For this reason, the coerced agent should not be held legally responsible for some of his acts. Legal analysis in this instance amounts to formulating an empirical description of coercion's effect on the coerced agent to justify why legal responsibility falls from the coerced or is transferred to the coercer. Dabūsī

also formulates a test that later Ḥanafites used extensively in their coercion jurisprudence. He transformed the instrument metaphor into a test that was deftly able to summarize the Ḥanafite approach to compelling coercion's effect on different types of acts. The test held that if it is conceivable that the coercer could use the body of the coerced as an instrument to commit an act, then compelling coercion can transfer the legal responsibility for the act from the coerced to the coercer. If however it is inconceivable that this be the case, as in rape or legal speech, then the consequences remain attributed to the coercer. Finally, the Ḥanafites used extensive comparison of rules governing different types of cases to justify the rule under discussion. They point to the case of jestful speech's ineffectiveness in undermining the legal consequences of divorce, for example, to urge the same result in coerced divorce. They cite the cases of starvation, self-defense, and murder outside Islamic legal jurisdiction to urge structurally similar conclusions in the case of coerced homicide and rape. This type of legal analsysis seeks to defend the coherence of the relevant coercion rule with the Ḥanafite *corpus juris* or rules of different traditions by showing comparing it to structurally similar cases.

Much of coerced speech jurisprudence consisted of arguments based on the interpretation of different scriptrual texts. However this same type of reasoning was absent from causing harm to others jurisprudence. Why is this the case? Recall that the Ḥanafites adopted legal opinions that ended up contradicting the rules of all of the other legal traditions on coercion's impact on unilateral speech acts. Given this major difference, the only way to persuade, justify, and defend Ḥanafite rules was by recourse to what all of the legal traditions shared – a commitment to the scriptural texts. For this reason scriptural reasoning played a much more prominent role in coerced speech jurisprudence than in coerced causing harm to others jurisprudence.

The Ḥanafites had different standards for what is coercive for different fields of law. For commercial transactions, a threat of imprisonment or severe beating was sufficient to create the option of recisssion for the coerced agent. But this same threat would not suffice if the coerced demanded harming another person, either bodily or financially. While a threat against one's life was sufficient to deter the criminal penalty for homicide or rape, it could not invalidate a pronouncement of divorce. For the Ḥanafites what is legally coercive was not simply an empirical matter. This way of treating coercion though is not unique to the Ḥanafites. In fact American coercion jurisprudence displays similar features. What is legally coercive in contracts is not the same as what is legally coercive in marriages and adoptions for example. In fact, until very recently, courts routinely upheld that pressures, which would normally render a contract voidable would not have the same effect on a marriages. In effect, shotgun weddings resulted in legally valid marriages. For instance a 1952 New York court "approved the use of legal pressure as "the right and proper course," saying "to accede to the suggestion of duress would destroy a time honored method long used by society as a means of protecting itself against the evils of illegitimate children, unmarried mothers and 'ruined' womanhood."[564] The courts used certain public policy interests to raise the threshhold of what is considered coercive in marriage. Similarly, the courts were unwilling to rescind a natural mother's surrender of a child to adoptive parents on the grounds that she was forced by environtmental or emotional stress. The courts thought that the finality and irrevocability of the adoption process were in the best interests of the child, and therefore were unwilling to consider arguments about the quality of the natural mother's volition in order to set aside the adoption.[565]

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[564] The case is cited in Alan Wertheimer, *Coercion*, (Princeton, N.J.: Princeton University Press, 1987), 76.

[565] See ibid., 77-84.

Similarly we find that the Ḥanafites were sensitive to the different features of coerced acts. For speech acts, the Dabūsī relied on the legal principle that the validity of legal acts can only be based on the empirically observable. He reasons since intentions are not empirically observable, we cannot rely on them to make judgments about the validity of coerced speech. In the place of assessments of intention, he substitutes the mental capacities of the agent, and notes that coercion does not undermine these capacities. If the agent is judged to have the relevant mental capacities necessary to make legally effective speech, then we should presume that the speech is legally valid. While intention and mental competence were the relevant terms for Ḥanafite coerced speech jurisprudence, this was not the same case with coerced harm to others jurisprudence. While conflict with other legal traditions was the driver of coerced speech jurisprudence, disagreement amongst the founding fathers of Ḥanafism was the driver of coerced harm to others jurisprudence. No issue evinced both as much consensus and as much disagreement than coerced rape and homicide in both Shāfiʿism and Ḥanafism. In both traditions, jurists unanimously held that rape and murder are still sinful regardless of coercion. Yet the jurists were divided on the legal consequences of these coerced acts. Two opinions are ascribed to Shāfiʿī on coerced homicide. Three opinions are found within Ḥanafism on the same issue. A number of competing interests beset Ḥanafite coerced homicide jurisprudence. Homicide was one of the venial sins (*kabāʾir*) in Islamic religious culture, condemned in no uncertain terms in the Qurʾān. At the same time the Ḥanafites held that compelling coercion has the effect of transferring the legal consequences of an act from the coerced to the coercer in bodily acts. Moreover, the Ḥanafites held that protection against illegal harm is held equally by all human beings. The coerced agent has no more right to his life than the victim. The Ḥanafites balanced these competing interests by adopting the opinion that the coerced is not held legally

responsible for the homicide. The coercer is held liable to the full legal sanction. But they also insisted that despite the fact that he is not punished for the crime in this world, he has still committed a sin, because he has violated his personal religious obligation to not harm others.

The same type of tensions animates coerced rape jurisprudence, with a few differences. The Ḥanafites pay specific attention to the functional role of the rape victim in order to determine the structure of moral and legal liability. A rape victim can accede to a rape when the threat is imprisonment and still escape the legal penalty for illegal sexual intercourse. A rape victim does not at all sin when the coercion is compelling. This in contrast to a man who is coerced to rape. If the coercion is compelling, he may not be held legally liable, but still sins, similar to the structure of moral and legal responsibility in coerced homicide. If the threat is mere imprisonment, he must refuse the coercer's demand to rape, and if he accedes he is held liable to the full legal sanction.

Chapter 6: Coercion in Shāfiʿite Jurisprudence

1 Introduction

The nature of our sources with Shāfiʿism is different from what we had with Ḥanafism. We did not have any sources from the founding fathers of Ḥanafism on coercion. In contrast, the founder of Shāfiʿism, Muḥammad b. Idrīs al-Shāfiʿī's (d. 204/820) writings include justification and legal analysis of rules. However, unlike the Ḥanafite legal handbooks of the same period, the legal handbooks of succeeding generations of Shāfiʿite scholars contain little reference to coercion. Therefore we have a gap of about a century and half before we see Shāfiʿite legal writing on coercion again. As was the case within Ḥanafism, most classical Shāfiʿite coercion jurisprudence is found in the voluminous positive law books of the fifth/eleventh.

In many respects, Shāfiʿite coercion jurisprudence is less complicated than the Ḥanafite counterpart. This is in large measure because the Shāfiʿites had a much more straightforward approach to coerced speech acts. For the Shāfiʿites, coercion cancelled the legal consequences of all speech acts. A coerced pronouncement of divorce was as invalid as a coerced sale. The Shāfiʿites therefore did not have the problem of justifying how coercion can have different effects on different types of speech acts. Since all of the other legal traditions had a similar position, they did not have to defend against the arguments of competing traditions.

With that said, Shāfiʿite coercion jurisprudence revolves around the analysis of two significant problems. In the late fifth/eleventh century, a controversy within Shāfiʿism emerged about how to legally define coercion. One approach favored a flexible contextualist approach. According to this approach, what is coercive depends on a variety factors, including the coerced's ability to persevere the threat, social status of the coerced, and the relationship between the coercer's demand and threat. This approach seems to have dominated amongst the

fifth/eleventh century Iraqi jurists. The second approach eschewed the flexible, contextualist approach and favored a firm red line standard for defining coercion. In the red line approach, only credible threats against life or limb are legally coercive. Factors such as the subjective ability of the individual coerced to bear the threat or his social status or the correlation between the coercer's demand and the coercer's threat are immaterial to determining legally valid claims of coercion. This approach was favored by some Khurasani jurists of the same time period. Classical Shāfiʿīte jurisprudence, particularly in the thought of Imām al-Ḥaramayn al-Juwaynī was devoted to the analysis and resolution of this controversy.

The second problem originates in Shāfiʿī's own conflicting opinions about the case of coerced homicide. The Shāfiʿites are similar to the Ḥanafites on this issue. Given the fact that two opinions are attributed to Shāfiʿī, subsequent Shāfiʿite legal analysis was devoted to the reconstruction of the reasoning behind each of Shāfiʿī's opinions along with submitting a justified preference for one of the two opinions.

2 Muḥammad b. Idrīs al-Shāfiʿī: Defining Coercion and its Effects

Shāfiʿī has garnered much attention in Western scholarship.[566] He is seen as a pivotal figure in the emergence of legal traditions oriented towards the legal rules and methodology of a founding figure.[567] Unlike the founders of Mālikism and Ḥanafism, Shāfiʿism did not emerge in a direct way from the legal culture and teaching of a particular region. He studied with Mālik in Medina, engaged in vigorous debate with Shaybānī in Iraq, and ultimately settled and died in

[566] For basic biographical information, see *Encyclopedia of Islam, Second Edition*, art. 'al-Shāfiʿī' (Éric Chaumont).

[567] See Joseph Schacht, *The origins of Muhammedan jurisprudence*, (Oxford: Clarendon Press, 1950), 1-39. For a criticism of this view see Hallaq, "From Regional Schools to Personal Schools of Law? A Reevaluation".

Egypt. The main source for Shāfiʿī's legal thought is his work of positive law, the *Umm*.[568] This work preserves not only Shāfiʿī's legal positions but also his justifications and criticisms of competing positions.

Shafīʿī offers a legal definition of coercion in his chapter on legal acknowledgements (*iqrār*).[569] For Shāfiʿī, coercion invalidates the legal consequences of all speech acts. He uses the apostasy verse to justify this position. He argues that if God cancels the legal effects of an act as serious as apostasy when coerced, then *a fortiori*,[570] the legal consequences of other types of legal acts should be invalidated.[571] He then proceeds to offer a definition of coercion. Coercion occurs when,

> one finds himself in the hands of one whom he cannot refuse, whether ruler (*sulṭān*), thief (*liṣṣ*) or usurper of authority, such that the coerced (*mukrah*) fears him, to the point that (*dilālatan*) if he refuses to say what he is commanded to, the coercer ***will*** enact either a painful beating upon him, or something more severe, or [something that will lead to] the loss of his life.[572]

Later on, Shāfiʿī adds that threats of imprisonment and enchainment have similar effect. In these cases, Shāfiʿī regards the fear of the duration of the possible imprisonment (*ṭūl al-ḥabs*) or

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[568] For an analysis of the contents and authenticity of Shāfiʿī's texts including the *Umm* see El Shamsy, "From tradition to law: The origins and early development of the Shafi'i school of law in ninth-century Egypt," 216-77.

[569] Following the lead of the legal handbook author and Shāfiʿī's student Muzanī, classical Shāfiʿite jurists discuss legal definitions of coercion in their chapter on divorce.

[570] For an analysis of the legitimacy of *a fortiori* reasoning amongst the Shāfiʿites, see Zysow, "Economy," 158-61.

[571] al-Shāfiʿī, *al-Umm*, 4:496-7. Specifically, Shāfiʿī refers to legally relevant speech acts (*aḥkām ʾl-ikrāh ʿalā ʾl-qawl kullihi*). In another place, Shāfiʿī uses the same type of reasoning based on the apostasy verse to justify the fact that coercion renders the consumption of pork, or entering a church permitted. He states generally that coercion can render prohibited acts permitted as long as it does not involve harm to others and specifically notes that coercion cannot render homicide permitted. See ibid., 5:702-3.

[572] Ibid., 4:496.

enchainment (*ṭūl al-qayd*) as specifically coercive.[573] Shāfiʿī adds however, if a person believes that the coercer will not be able to follow through on the threat of a beating or he is certain that he will be released from prison or unchained, or that he would only be imprisoned for an hour, then he should not comply with the coercer's demand. If he does, then the legal consequences of his speech acts are effective.[574]

2.1 Shāfiʿī on Superior Orders

Classical Shāfiʿites present the issue of coerced homicide in much the same way that classical Ḥanafites did. Their analysis revolves around the question of the effect of coercion on the legal and moral responsibility for the act of homicide. As was the case in Ḥanafism, later Shāfiʿites attribute two conflicting opinions to Shāfiʿī on the issue. In one opinion, Shāfiʿī held that the commander and the commanded are both held fully liable for the act, and in another opinion, Shāfiʿī held that only the commander is held responsible. Importantly, Shāfiʿī himself discusses the case of coerced homicide within his larger discussion of the problem of superior orders to kill another human being.

Fundamentally, the case of superior orders involves a superior's command to kill illegally. The case involves questions about who legitimately qualifies as a superior and who is held legally responsible for the illegal act. Shāfiʿī begins the discussion by asserting that a legitimate ruler is held responsible for the illegal homicide. He bases this rule on a case that emerged in the time of the first caliph Abū Bakr (d. 13/634). Apparently a man claimed that the governor of Yemen had unjustly amputated his hand and foot. Abu Bakr responded by saying:

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[573] Ibid., 4:497. Shāfiʿī qualifies this general rule by saying that if the coerced admits later on that he feared that he would be imprisoned only, at the time for an hour, or that the threat would not executed, at all, then he is not excused for any immoral content of what he declared.

[574] Ibid.

"If he has indeed unjustly harmed you then I will take retaliation from him on your behalf!"[575] Shāfiʿī construes this companion report as substantiating the rule that a superior is liable for unjustly harming others.

The next material issue for Shāfiʿī is the question of whether the commanded knew of the illegality of the command to kill.[576] Only once this issue is dispensed with, can the possible moral and legal effects of coercion be taken into consideration. If the commanded did not know that the command was illegal, then he is excused for the crime, and the superior is held fully liable. With that said, though, Shāfiʿī expresses the preference that the commanded should still undertake the expiation (*kaffāra*) for the crime. If the commanded knew that the command was illegal, then ***both*** he and the ruler are held fully liable for the crime. In both cases the ruler is held fully responsible for the homicide.

The question that generates disagreement is whether or not the commanded is also deemed fully liable if he knew that the request was illegal, but was coerced by the ruler.[577] Shāfiʿī does not note what this coercion consists in. He does not stipulate whether there needs to be an explicit threat or whether the illegal command of the ruler is implicitly coercive, such that an explicit threat is not needed.

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[575] Ibid., 7:106-7.

[576] Ibid., 7:107.

[577] In fact, Shāfiʿī extends the liability of the ruler (*sulṭān*) to the full sanction for homicide in two other cases which involve coercion, but not necessarily an intent to kill on the part of the ruler. In one strange case, the ruler coercively orders that either a cyst/tumor (*silaʿa* or *akila*), or the limb on which the cyst resides be removed (*qaṭʿ*). If the subject dies, then the ruler becomes liable. In the second case, the ruler is not fully liable, just financially. If he coerces someone to climb up or go down (e.g. into a well) and the climber slips, falls, and as a result dies, then he becomes liable for the blood money. Shāfiʿī adds that in all cases similar to this latter, the resultant legal judgment is the same. Still later on, Shāfiʿī enunciates an even more general legal principle – any order not in the best interests of the Muslims which the ruler coerces a man to perform, in which he dies, the ruler is financially liable for his blood-money. See ibid., 7:218.

After specifying that both the commander and the commanded are jointly held liable to the full legal sanction for homicide, in case that the commanded knew that the command was illegal, Shāfiʿī considers the impact of coercion on this position. What if the commander coerces the commanded to kill? Shāfiʿī notes two positions presumably circulating in the legal circles of his day, on the legal and moral responsibility of the coerced.[578] Shāfiʿī does not note a preference for either one of the positions and this is probably the reason why later Shāfiʿites attribute two opinions to him on this issue. One position held the coerced fully responsible. The coerced violated the prohibition against wrongful killing. Coercion only nullifies the legal and moral effects of acts that do not involve harm to bystanders.[579] The second view holds that the coerced is not held responsible for the full legal sanction because the existence of coercion creates a legal doubt (*shubha*). He is, however held responsible for half of the blood money and he must do expiation (*kaffāra*) for the act.[580] Regardless of the legal penalty, in another passage Shāfiʿī asserts that while coercion generally speaking can render previously prohibited acts, permitted, it cannot have that effect if the coerced act involves harming others (*lā yaḍurru aḥadan*).[581] Specifically he writes that if "someone is coerced to kill another, it is not permitted that he do that."[582] This position, in broad strokes resembles Ḥanafite thinking on coerced murder. Classical Ḥanafites understood the disagreement amongst the founders of the school as

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[578] Ibid., 7:107.

[579] Ibid.

[580] Ibid.

[581] Ibid., 5:701-2.

[582] Ibid., 5:702.

wholly about the legal consequences of coerced homicide. All assumed as Shāfiʿī explicitly noted that coercion cannot ever permit murder.

In the cases discussed above, the commander is either the ruler himself or his supreme executive aides. In both cases, Shāfiʿī assumes the commander is a legitimate political authority. But not all holders of *de facto* power are legitimate political authorities. Shāfiʿī then turns his attention to who qualifies as a superior. He notes that if the superior is an acting provincial governor (*al-wālī al-mutaghallib wa al-mustaʿmal*) who has illegitimately usurped power (*idhā qahara fī mawḍiʿi-hi*) over an area, and he commands an illegal killing, he is held responsible for the homicide regardless of the length of his tenure in the position.[583] If the power of the superior is based on the following of a band of thieves, or social solidarity of some other sort (*al-rajul al-mutaghallib ʿalā ʾl-luṣūṣiyya aw ʾl-ʿaṣabiyya*), and he is so powerful over the commanded that the commanded cannot refuse the command (*idhā kāna qāhiran lil-maʾmūr lā yastaṭīʿ al-imtināʿ min-hu*), the commander and the commanded are held fully responsible for the crime.[584] If, however, the superior is a village strong man who has not established domination over everyone in the village, but has overcome the commanded, although not to the point that he is unable to refuse the commander either through resisting or fleeing, or by seeking aid from some other group, then it is only the commanded that is held fully liable for the homicide. However, Shāfīʿī holds the commander liable for discretionary punishment (*ʿuqūba*). If the superior's power is such that the commanded is not able to refuse, then both are liable to the full penalty.[585]

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[583] Ibid., 7:107.

[584] Ibid. This position seems to imply that if the coerced can be judged to have been capable of refusing the command, then the liability for the murder falls away from the commander.

[585] al-Shāfiʿī, *al-Umm*, 7:107-8.

In all of these cases the material issue at stake for Shāfiʿī is whether the superior is held responsible. In cases not involving overt coercion, he seems to assume that the commanded is also held responsible, and in a case of superior orders involving coercion, he notes two conflicting opinions. Regardless of the complication introduced by coercion in the case of superior commands, in cases where the superior is not the legitimate political authority, Shāfiʿī's operating principle in determining whether or not the superior is held responsible is the extent of his power over the commanded. Is it so categorical, that the commanded cannot refuse? If so, then the superior is also held responsible. Only in the case legitimate political authority does Shāfiʿī entertain the possibility that coercion can mitigate the coerced's responsibility.

After Shāfiʿī's writing, we do not find much Shāfiʿīte writing on coercion until the early fifth/eleventh centuries. The most influential Shāfiʿite texts in the generation immediately after Shāfiʿī were undoubtedly the legal handbooks written by two of his students, Abū Ibrāhīm Ismāʿīl al-Muzanī (d. 264/877) and Abū Yaʿqūb Yusūf al-Buwayṭī (d. 231/846). Unfortunately, Buwayṭī's legal handbook survives only in manuscript form and I have not been able to consult it. Muzanī's handbook has been published. It has served as the basis for numerous commentaries, including two texts we shall be looking at shortly.

Muzānī reduced Shāfiʿī's discourse on coercion to two sentences. First he reproduced Shāfiʿī's opinion on coercion's effect on a pronouncement of divorce in the chapter devoted to divorce and not in legal acknowledgments. In one place he notes that Shāfiʿī held that the divorce of the coerced and the insane are not effective (*wa law mukrah wa maghlūb ʿalā ʿaqli-hi fa-lā yalḥaquhu al-ṭalāq*).[586] All subsequent Shāfiʿites follow Muzanī's lead, in this respect.

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[586] Ismāʿīl ibn Yaḥyā al-Muzanī, *Mukhtaṣar al-Muzanī fī furūʿ al-Shāfiʿīyya*, ed. Muḥammad ʿAbd al-Qādir Shāhīn, 2nd ed., (Beirut: Dār al-Kutub al-ʿIlmīyya, 1998), 258.

Instead of discussing the legal definition of coercion in the chapter on legal acknowledgements as Shāfiʿī had done, they discuss it in the chapter on divorce. Interestingly no Shāfiʿite references Shāfiʿī's thoughts on the legal definition of coercion from his discussion in the *Umm*. They take Muzanī's extract and offer empirical standards for what is legally coercive on their own and at the most discuss competing theories circulating amongst classical Shāfiʿite scholars.

In another place, Muzānī adds that the reason why Shāfiʿī held that the coerced pronouncement of divorce is invalid is because the coerced lacks the positive will to perform the action that he does. This is the same reason why the intoxicated who is incapable of understanding or the asleep person's pronouncement of divorce is similarly invalid.[587]

3 Māwardī and Shīrāzī: The Flexible Contextualist Approach of Iraqi Shāfiʿism

Our knowledge that there existed two competing approaches to defining coercion within the classical Shāfiʿism stems, at the earliest, from Juwaynī's work of positive law, the *Nihāyat al-Maṭlab*. The two extant positive law works of the generation preceding Juwaynī, Abū ʾl-Ḥasan b. Muḥammad al-Māwardī's (364/974—450/1058)[588] encyclopedic *al-Ḥāwī* and Abū Isḥāq al-Shīrāzī's (393/1003--450/1058)[589] smaller work contain no indication of disagreement internal to the Iraqi Shāfiʿite tradition. We will begin by analyzing these two texts.

Shīrāzī's treatment of coercion is substantially similar to Māwardī's in its analytical approach and substantive content. The nature of the relationship between Shīrāzī's and

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[587] Ibid., 268.

[588] For biographical information on Māwardī, see *Encyclopedia of Islam, Second Edition*, art. 'al-Māwardī, Abu 'l-Ḥasan ʿAlī b. Muḥammad b. Ḥabīb' (C. Brockelmann).

[589] For basic biographical information on Māwardī, see ibid.art. 'SHīrāzī' (Éric Chaumont).

Māwardī's text is unclear. It could merely be the case that both Māwardī and Shīrāzī are simply expressing Iraqi Shāfiʿite consensus on coercion. Due to their substantial similarity, our main source will be Māwardī's text. I will cite the relevant corresponding passages to Shīrāzī's work in the footnotes.

Māwardī's discussion of the legal definition of coercion occurs in his chapter on divorce, more specifically immediately after his treatment of the issue of coerced divorce.[590] He begins by noting that legal acts relating to coercion can be divided into three generic types: those that are invalidated by coercion and are not treated the same as freely chosen acts, those that are valid despite the presence of coercion and are treated the same as freely chosen acts, and those about which there are conflicting legal opinions attributed to Shāfiʿī.[591]

Māwardī lists examples of the following types of acts as unaffected by coercion: an enemy combatant's conversion to Islam (*islām ahl al-ḥarb*),[592] the legal consequences that follow from drinking breast milk (*riḍāʿ*), events that lead to minor ritual impurity (*ḥadath*), and a performer of a ritual prayer that has done ablution by passing his hand over his leather socks whose leather socks come into contact with a ritually impure substance (*ṭarḥ al-najāsa ʿalā ʾl-muṣallī ʿalā khuffi-hi idhā kāna māsiḥan*). Māwardī does not extensively justify why the legal consequences of these types of acts are not undermined by coercion. He offers justification for

[590] His treatment of the issue of coerced divorce is a criticism of the Ḥanafite position and justification of the contrasting Shāfiʿite position. See al-Māwardī, *al-Ḥāwī*, 10:227-31. None of the other classical Shāfiʿite authors treated in this chapter either defend the Shāfiʿite position from Ḥanafite arguments or criticize the Ḥanafite position on coerced divorce. For the discussion in Shīrāzī see Abū Isḥāq Ibrāhīm ibn ʿAlī ibn Yūsuf al-Shīrāzī, *al-Muhadhdhab fī fiqh al-Imām al-Shāfiʿī*, ed. Zakarīyā ʿUmayrāt, 3 vols., (Beirut: Dār al-Kutub al-ʿIlmīyya, 1995), 3:4-5 and idem., *al-Tanbīh fī-al-fiqh ʿalā madhhab al-Imām al-Shāfiʿī*, 2nd ed., (Cairo: Muṣṭafá al-Bābī al-Ḥalabī, 1951), 112.

[591] al-Māwardī, *al-Ḥāwī*, 10:231.

[592] On this see Shīrāzī who lists it as an act of legitimate coercion, al-Shīrāzī, *al-Muhadhdhab*, 4.

only two of the cases: the case of being coerced to drink breast-milk and the case of coercing an enemy combatant to convert to Islam. In the course of his criticism of the Ḥanafite position on legal speech, he differentiates why the Shāfiʿites can legitimately distinguish between the effect of coercion on the legal consequences of drinking breast milk and legal speech acts by noting that drinking breast milk is a bodily act that does not admit legal consideration of intent (*fiʿl lā yurāʿā fī-hi ʾl-qaṣd*), where as pronouncing a divorce or a legal acknowledgement is speech and speech admits legal considerations of intent.[593] Thus the legal arguments that justify why all legal speech is undermined by coercion do not extend to the case of drinking breast milk. He notes that coercing the enemy combatant to convert is a religious duty that the sources of the law have stipulated, in contrast to the case of the protected non-Muslim (*dhimmī*) who has paid the poll tax (*jizya*).[594]

For the Shāfiʿites, coercion invalidates the legal consequences of most types of acts. Given that this is the case, most Shāfiʿite coercion jurisprudence is oriented towards formulating a legal standard for validating claims of coercion. Māwardī divides his coercion standard into three distinct analytical components: conditions that have to do with the coerced, those associated with the coercer, and the conditions that must characterize the act of coercion itself.[595] The vast majority of Māwardī's discussion focuses on the last set of conditions. The structure of his discussion is simple. Only once these three sets of conditions are met can coercion have a legal and/or moral effect.

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[593] al-Māwardī, *al-Ḥāwī*, 10:229.

[594] Ibid. Māwardī notes that coercing the protected non-Muslim to convert would be an act of injustice and coercion would invalidate the legal consequences of the conversion.

[595] al-Māwardī, *al-Ḥāwī*, 10:231-2.

Māwardī begins with the coercer. In order for a claim of coercion to succeed the coercer must possess overwhelming power (*qāhir*). Māwardī notes that in fact there are two types of possessors of power. One type of possessor of power has general capacity (*ʿāmm al-qudra*). Examples of this type include rulers. The other type has a more specific capacity (*khāṣṣ al-qudra*). Examples of this type include criminals (*mutalaṣṣiṣ*) and masters over their slaves. Regardless of type, the power over the coerced must be effective (*nāfidha*).[596]

Not only must the coercer possess power, his threat must be credible. The coercer must be able to fulfill the threat against the coerced. Interestingly though, Māwardī does not say that the credibility of the threat is an objective feature of the coercer. Rather the judgment about the credibility of the threat is evaluated through the subjective belief of the coerced. But, Māwardī stipulates that the coerced must be convinced through empirical signs (*bi-ʾl-imārāt al-ẓāhira*) that the coercer will fulfill his threat upon refusal.[597] In other words the threat must be credible and the coerced ought to be able to point to concrete signs proving it. If the coerced is convinced that the coercer will probably not be able to fulfill his threat (*lam yaghlib ʿalā al-nafs*),[598] then it is merely possible that the coercer could fulfill the threat, and the claim of coercion will fail.

A second set of conditions applies to the coerced. First, the coerced must not be able to defend himself from the threat. Concretely he must not be able to flee from the coercer. If he is able to flee, then the claim of coercion fails. Second, if the coerced knows that his appeals to

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[596] Ibid., 10:232. Shīrāzī simply stipulates that the coercer must possess power. See al-Shīrāzī, *al-Muhadhdhab*, 3:4.

[597] al-Māwardī, *al-Ḥāwī*, 10:232. Shīrāzī drops the requirement that the belief of the coerced must be based on empirical signs. He only stipulates that the coerced must believe that in all probability the coercer (*yaghlabu ʿalā ẓanni-hi*) will fulfill his threat.

[598] Ibid.

fear God will be effective on the coercer, then the coercion claim fails. Third, there should exist no one who could aid the coerced or intercede on his behalf with the coercer. Only if the coerced is not able to flee, seek outside help, or appeal to the coercer's conscience, can a successful coercion claim be made.[599]

The rest of the conditions have to do with the nature of the coercer's threat. Māwardī outlines seven types of threats. All of these threats must be illegal.[600] Māwardī characterizes all seven types as involving manifest harm and injury (*al-ḍarar wa al-adhā al-bayyin*) to the coerced.[601]

The first category consists of threats against life, which Māwardī labels as the greatest harm that could afflict a person.[602] These include not only threats against the life of the coerced, but also threats against the life of bystanders. Māwardī considers the potentially coercive effect of a threat directed against three different categories of bystanders. The first is direct ascendants (father, grandmother, etc.) and descendants (daughter, grandson, etc.). Threats to anyone in this category count as coercive because, according to Māwardī, the extent of the genealogical overlap (*baʿḍiyya*), between the third party and the coerced requires similarity in legal effects (*taqtaḍī tamāzuj fi ʾl-aḥkām*).[603] The second is a category of people who have no direct relation to the

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[599] al-Māwardī, *al-Ḥāwī*, 10:234. See also al-Shīrāzī, *al-Muhadhdhab*, 3:4, where Shīrāzī simply states that the coercer must be so powerful that the coerced would not be able to defend himself. He combines the coercer power requirement with the lack of self-defense requirement on the part of the coerced.

[600] al-Māwardī, *al-Ḥāwī*, 10:232.

[601] Ibid.

[602] Ibid. Shīrāzī simply states that a threat against life is coercive, without delving into the extended discussion about bystanders. See al-Shīrāzī, *al-Muhadhdhab*, 3:4.

[603] al-Māwardī, *al-Ḥāwī*, 10:232.

coerced. Māwardī gives cousins and complete strangers as two examples of this type of bystander. Threats to the lives of people in this category do not amount to coercion. Māwardī justifies the exclusion by noting that there is some distant relation (*tanāsub baʿīd*) between all people.[604] Presumably, to admit threats against this set of bystanders would be to formulate a coercion standard that was too liberal. The third category of bystanders consists of those whom one is forbidden to marry (*dhū raḥim maḥram*), such as paternal and maternal aunts and uncles.[605] Māwardī cites two opinions on whether or not threats against the life of this category of bystanders are legally coercive. One opinion held that such threats were coercive because the law recognizes them as them as a legal category, *maḥram* – those whom one is forbidden to marry. The other opinion held they were not, because of a lack of an adequate amount of genealogical overlap (*baʿḍiyya*) between the coerced and the bystanders.[606] He does not indicate which opinion he favors.

The second broad type of legally coercive threat is the threat of severe injury (*al-jarḥ*). Examples of this type include the loss of a limb or injuries involving the spilling of blood. These threats are coercive because of the amount of pain involved and the possibility that one could lose one's life.[607]

The third type is the threat of a beating. These are coercive though Māwardī excludes the case in which the coercer threatens loafers and vagabonds (*ahl al-shaṭāra wa al-ṣaʿlaka*). He

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[604] Ibid.

[605] Ibid.

[606] al-Māwardī, *al-Ḥāwī*, 10:232-3.

[607] Ibid., 10:233. See also al-Shīrāzī, *al-Muhadhdhab*, 3:4.

adds that individuals that belong to these social groups actually compete with each other in the amount of pain they can bear.[608] Empirically speaking, threats of beating directed at people who belong to these social classes do not coerce.

The fourth type is the threat of imprisonment. Māwardī identifies three types of imprisonment, two of them count as coercive and another does not. Imprisonment for a long period of time is coercive. Imprisonment for a short period of time, such as a day, is not. Finally imprisonment in which the imprisoned does not know how long it will last is coercive.[609]

The fifth type is a threat directed against the destruction of the coerced's property. These fall into three categories. The first category consists of threats directed against a substantial amount of property, to the point that if the property were lost, the material well being of the coerced would be affected. These threats are deemed as coercive. The second is threats towards an insignificant amount of property. This type of threat is not coercive. What about threats against a significant amount of property the loss of which would ***not*** have an effect on the material well-being of the object of the threat because of the coerced's vast wealth? Māwardī notes that there are two opinions on the matter. One view simply held that it is coercive because of the amount of property destroyed, and the other view did not consider it coercive, because in relation to what the wealthy coerced possesses, the harm suffered by the coerced is insignificant.[610]

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[608] al-Māwardī, *al-Ḥāwī*, 10:233.

[609] Ibid. See also al-Shīrāzī, *al-Muhadhdhab*, 3:4.

[610] al-Māwardī, *al-Ḥāwī*, 10:233. Shīrāzī lists only this last opinion. Threats against someone's property who would not be affected by it are not coercive. See al-Shīrāzī, *al-Muhadhdhab*, 3:4.

The sixth type is the threat of banishment.[611] Māwardī notes that if the threat of banishment means that the coerced does not have the ability to move his family and property with him, it is coercive. If the object has the ability to move, Māwardī notes two views. The first view denies it is coercive by noting that with respect to his ability to procure whatever he desires all lands are equal (*li-tasāwī ʾl-bilād kullihā fī maqāmi-hi fī-mā shāʾa min-hā*).[612] The second view holds that it is coercive because banishment is a punishment considered to be similar to a religious punishment (*ḥadd*) and because of the harm that the coerced would suffer from being separated from his homeland.[613]

The final type of threat is threat of public denigration. Māwardī notes that there are two possible types of denigration. One type is coercive, the other is not. If the denigration (*istikhfāf*) is directed toward one of the rabble (*ruʿāʿ*), who do not condemn such behavior and amongst whom such insults do not lead to a loss of social position, then it does not amount to coercion.[614] There are two views on whether or not denigration directed towards one of the people of reputation (*al-ṣiyānāt*) or chivalric manners (*dhawī ʾl-murūʾāt*) amounts to coercion.[615] The first

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[611] Compare with Shīrāzī who notes that banishment that results in separation between one and is extended family is coercive. See ibid., 3:4.

[612] al-Māwardī, *al-Ḥāwī*, 10:233. See also al-Shīrāzī, *al-Muhadhdhab*, 3:4.

[613] al-Māwardī, *al-Ḥāwī*, 10:233. Shīrāzī also cites this opinion, see al-Shīrāzī, *al-Muhadhdhab*, 3:4. Banishment is a *ḥadd* penalty because it is a possible punishment for banditry. See Qurʾān 5:33. For banishment as an Islamic legal punishmet, see *al-Mawsūʿa al-Fiqhiyya*, art. 'Nafīyy' (Wizāra al-Awqāf wa al-Shuʾūn al-Islāmiyya). On the historical practice of the punishment of banishment in Seljuk society, see Christian Lange, *Justice, punishment and the medieval Muslim imagination*, (Cambridge: Cambridge University Press, 2008), 94-97.

[614] al-Māwardī, *al-Ḥāwī*, 10:233.

[615] Ibid., 10:234.

holds that it is, because of the loss of standing and the resulting pain.[616] The second holds that it is not because people know that the targets of the denigration were wronged by it. Māwardī suggests that an inquiry should be made into the condition of the target of the denigration. If he is from the class of those who seek prominence in this world, then the threat of denigration is coercive, as it is bound to result in a loss of social position amongst his peers. If, however, he is from the class of those who pursue the hereafter and have divorced themselves from this-worldly concerns, then a denigration is not coercive as it does not diminish his social position amongst his peers. In fact, the denigration may even elevate his social position.[617]

Māwardī ends his discussion on the legal standard for defining coercion on this note. However, he does not address the issue of coerced homicide in the chapter on coerced divorce, other than to note that it is part of a set of issues about which Shāfiʿī had conflicting opinions.[618] The more detailed examination of the issue of coerced homicide occurs in his chapter on homicide.

3.1 Māwardī and Shīrāzī on Coerced Homicide

A central controversial issue within Shāfiʿite coercion jurisprudence was whether or not the coerced is held fully liable for the homicide. Shāfiʿī had two positions on the issue. In both opinions, the coercer is held fully liable for the punishment. Shīrāzī notes that this is so because the coercer is the initiator of a cause the preponderantly leads to the killing.[619] He compares the

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[616] Ibid. See al-Shīrāzī, *al-Muhadhdhab*, 3:4 where a public denigration is only coercive if it is directed against someone of high social stature (*dhawī ʾl-aqdār*} who would suffer diminished social status because of it.

[617] al-Māwardī, *al-Ḥāwī*, 10:234.

[618] Ibid., 10:231. Māwardī mentions that Shāfiʿī had conflicting opinions also about rape, coerced breaking of a fast, and coerced breaking of ritual prayer.

[619] al-Shīrāzī, *al-Muhadhdhab*, 3:178.

role of the coercer to that of a man who throws a spear to kill someone. The difference of opinions was focused on the issue of the legal responsibility of the coerced. One opinion held that the coerced is not liable for the full legal sanction and the other opinion held that he is. As was the case in Ḥanafism, Māwardī presents the legal reasoning behind both positions.

As was the case with Shāfiʿī himself, Māwardī embeds the issue of coerced homicide within a larger discussion about the liability of homicide that is the result of illegal superior orders. The discussion about illegal superior orders unravels in much the same way as it did in Shāfiʿī's work. Briefly, the commanded (*al-maʾmūr*) is excused for the homicide if he did not know that the execution was unjust and that he believed the ruler only orders killings that are legal.[620] Only the ruler himself is held liable to the full extent of the legal sanction (*qawad*) for the crime. If, on the other hand, the commanded knew that the command was illegal, then there is one of two alternatives. Either the illegal command was executed by the commanded out of free will (*mukhtār*) or he was coerced.[621] If the former, according to Shāfiʿī's predominant opinion (*ẓāhir min madhhab al-Shāfiʿī*) and the position of the majority of jurists in the tradition, the commanded, and not the ruler, is regarded as the killer and thus he, alone, is held liable for the sanction (*qawad*).[622]

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[620] Though, Māwardī, and Shīrāzī, both cite Shāfiʿī's position that it is recommended (*yustaḥabb*) that the commanded should perform expiation (*kaffāra*) as he was the direct physical cause (*mubāshir*) of the death. See al-Māwardī, *al-Ḥāwī*, 12:72.

[621] Ibid.

[622] However, Māwardī does not let the ruler completely off the hook. The ruler (*imām*) is still sinning (*āthim*) even though he is not liable for any legal sanction, whether retaliation (*qawad*), blood money (*diya*) or expiation (*kaffāra*). Māwardī labels the commanded (*maʾmūr*) a transgressor (*ʿāṣī*). Māwardī does note some disagreement on this issue amongst some of his colleagues who held the commander along with the commanded equally liable for the full legal sanction purely for his illegal command. Māwardī notes that from the perspective of public welfare (*maṣlaḥa*) and restraining the enmity of rulers, this view has its strong points, even if it is weak from the perspective of analogical reasoning. See Ibid.

If the command is accompanied by a coercive threat, then the commander becomes liable to the full legal sanction for homicide. There exist two views on whether or not the commanded (*maʾmūr*) is likewise liable. The first view, which Māwardī later on endorses, holds both the commander and the coerced commanded (*al-maʾmūr al-mukrah*) as equally and fully liable.[623] Shīrāzī notes that some Shāfiʿites compared the coerced to a person, when compelled by starvation, kills another to eat him.[624] In this case the killer, despite the exigent circumstances, ought to be held fully responsible.

The second view held that the full legal sanction falls only on the ruler (*imām*) and not on the coerced.[625] However, Māwardī notes that the colleagues who supported this second view disagreed on the basis for this rule. One group, whom he identifies as the Baghdadis, held that the cause for the non-application of the sanction is the fact that coercion is a type of legal doubt (*shubha*). Thus, in applying the generally accepted legal principle that doubts repel punishments, the punishment for the homicide is repelled from the coerced. Categorizing coercion as a type of legal doubt, however, does not necessarily lead to full moral and legal exculpation. The coerced, though no longer liable to the corporal punishment of retaliation (*qawad*), can still be held liable for half the blood money (*diya*).[626]

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[623] Ibid. Māwardī wrongfully attributes this view to the early Ḥanafite jurist Zufar b. al-Hudhayl.

[624] al-Shīrāzī, *al-Muhadhdhab*, 3:178.

[625] Shīrāzī notes that some Shāfiʿites compared the case of the coerced to someone who kills an attacker in self-defense. In this case the physical killer is not held legally responsible for the killing and neither should the coerced. See ibid.

[626] al-Māwardī, *al-Ḥāwī*, 12:73.

The other group, the Basrans, employed legal reasoning similar to that of the Ḥanafites in their defense of the legal opinion that the coerced should not be held legally responsible for a homicide. These Basrans held that the legal basis for complete cancellation of the liability is the fact that coercion is a type of compulsion (*iljāʾ*) and necessity (*ḍarūra*) that results in transferring the judgment of who actually performed the act (*fiʿl*) from the physical agent (*mubāshir*) to the commander (*al-ikrāh iljāʾ wa ḍarūra tanqulu ḥukm al-fiʿl ʿan al-mubāshir ilā al-āmir*). The coerced therefore should not be held legally responsible for the crime. The coerced is not liable for the corporal sanction (*qawad*), or the blood money (*diya*) or the expiation (*kaffāra*). The Baṣrans compare this case to that of the judge who is compelled to convict a defendant for the crime of homicide on the basis of false testimonies (*shuhūd al-zūr*) and sentence him for execution. The implication of Māwardī's Basrans' position is that no jurist would regard the judge as the one who killed an innocent person. Rather that responsibility would rightly fall on the one who knowingly gave false testimony.[627] They urge a similar conclusion in the case in coerced homicide.

Māwardī notes another disagreement internal to the camp that was willing to recognize coercion as a type of excuse in the case of homicide. Does the fact that the demanded act is murder change what threatened acts can constitute a legally successful claim of coercion? One view denies that there is a relationship between what the coercer demands and threatens in determining whether or not coercion has any effect in the case of homicide. The threatened act could be killing, maiming, confinement, destruction or usurpation of property. According to this view, what is legally coercive when the demand is murder is the same as what is legally coercive

[627] Ibid. Māwardī correctly attributes this view to Abū Ḥanīfa and Shaybānī.

when the demand is divorce. The second view holds that only when the threat is against one's own life, can coercion serve as a legal excuse in the case of homicide. The jurists who hold this position argue that the inviolability (*ḥurma*) of lives ranks higher (*aghlaẓ*) than the inviolability of property, which requires that the threatened action which would constitute the exculpatory coercion to kill must of necessity be of an equally severe type.[628]

3.2 Concluding Remarks on Iraqi Shāfiʿism

Classical Shāfiʿite coercion jurisprudence is on the whole much less complicated than its Ḥanafite counterpart. Much of this stems from a less complicated body of positive law governing coercion cases. The Ḥanafites had to expend much energy and generate justifications for their approach to legal speech. The Shāfiʿites did not have this problem. The vast majority of legal acts, including all varieties of legal speech, were invalidated by coercion. The only question was defining what was coercive. Here the Iraqi Shāfiʿites of the fifth/eleventh centuries do not evince the same concern for pressing conceptual problems as their Ḥanafite counterparts. There is very little scriptural justification for coercion related rules, nor is there much of an attempt at formulating metaphors, tests and legal principles to impose coherence on inherited positive legal rules and encapsulate guiding principles for unprecedented future cases. The Iraqi Shāfiʿites do not paint a psychological picture of the effect of coercion on choice, contentment, or willingness. In fact much of Iraqi Shāfiʿite coercion jurisprudence consists of simply noting the variety of conditions that must be present for a claim of coercion to be legally effective. The conditions are commonsensical: the coercer must be powerful, his threat must be credible, the coerced should have possible recourse to aid against the coercer, etc. Threats that involve manifest harm or injury are coercive, and the Shāfiʿites list many different types of threats that

[628] al-Māwardī, *al-Ḥāwī*, 12:75-6.

concretize what they mean by this manifest harm. These include not just bodily harm, but also psychological harm, as in the loneliness that would stem from being banished from one's homeland. Sometimes, the threats are only coercive when directed at certain types of people. Hence the threat of public insult is only coercive if it is directed at a person who would suffer social harm from that act. The threat of a beating is not coercive if it is directed against people who compete with each other on how much of painful beating they can suffer. Therefore, at least in certain types of threats, what is coercive requires an examination of the social status of the object of the threat. It is precisely this flexible, contextualist approach that is criticized by the famous Khurasani Shāfiʿite Imām al-Ḥaramayn al-Juwaynī.

4 Juwaynī and Khurasani Shāfiʿism on the Legal Definition of Coercion

By the beginning of the fifth/eleventh century, Shāfiʿism had split into two competing orientations: the Khurasani school and the Iraqi school. We do not know the nature of the issues that divided the two schools. The editor of Juwaynī's work of positive law, the *Nihāyat al-Maṭlab*, ʿAbd al-Aẓīm Maḥmūd al-Dīb, thinks that as there emerged two different intellectual centers for the teaching of Shāfiʿite doctrine in the third/ninth century (Baghdad in Iraq, Nishapur in Khurasan), the jurists over the course of the next century and a half simply diverged on a number of positive law issues.[629] According to Dīb, this initial divergence solidified into recognizable approaches to Shāfiʿite law in the fifth/eleventh century, with the emergence of two scholars representing the intellectual approaches of the two different regions. For Iraq it was the teaching of Abū Ḥāmid al-Isfarāʾini (d. 406/1015), and for Khurasan, it was Abū Bakr al-Qaffāl

[629] al-Juwaynī, *Nihāyat al-maṭlab fī dirāyat al-madhhab*, ed. ʻAbd al-ʻAẓīm Maḥmūd al-Dīb, 1st ed., 21 vols., (Jeddah: Dār al-Minhāj lil-Nashr wa-al-Tawzīʻ, 2007), 1:148-9. Chaumont asserts that the Khurasani Shāfiʿites were "more speculative" than the Iraqis. See *Encyclopedia of Islam, Second Edition*, art. 'al-Shāfiiyya' (Éric Chaumont).

al-Ṣaghīr (d. 417/1026).[630] The scholarly production of these two scholars provided the base of opinions, principles, justifications, and legal arguments for subsequent scholars studying Shāfiʿite law in each of the two respective intellectual centers.[631] Māwardī was a direct student of Isfarāʾīni's, and his work of positive law is based on Isfarāʾinī's scholarship.[632] Shīrāzī also belonged to the Iraqi school and his work is representative of the Iraqi approach.[633] Dīb identifies Juwaynī's positive law work as emerging from the Khurasani context but, at times, attempting to synthesize the two different variations of the Shāfiʿite tradition. He characterizes Ghazālī's medium sized work of Shāfiʿite positive law, the *Wasīṭ*, in the same way.[634]

Juwaynī's discussion of the legal definition of coercion reflects the internal debate within fifth/eleventh century Shāfiʿism. While the Iraqi school seems to have settled on the approach outlined above,[635] the Khurasani School was a different matter. Some Khurasani scholars gravitated towards the Iraqi approach, and others, most notably the founder of the Khurasani School diverged.

Before presenting his own views on the matter, Juwaynī reviews the various positions within Shāfiʿism. At the outset of the discussion, Juwaynī admits, "what constitutes coercion is deep and abstruse issue that the legal scholars (*fuqahāʾ*) have devoted little attention to."[636] He

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[630] al-Juwaynī, *Nihāyat*, 1:134.

[631] Ibid., 1:141.

[632] Ibid.

[633] al-Juwaynī, *Nihāyat*, 1:142.

[634] Ibid., 1:149-50.

[635] Indeed the very fact that Māwardī and Shīrāzī did not disagree and presented substantially the same doctrine is proof of that. Moreover, Juwaynī's presentation of the Iraqi approach is consistent with the coercion jurisprudence found in Māwardī and Shīrāzī. For this see, ibid., 14:162.

[636] Ibid., 14:161.

first presents the Iraqi approach. The Iraqi approach, according to Juwaynī admitted threats not only against life and limb, but also destruction of property as legally coercive. He adds that they held that "anything that is difficult to bear, and what is customarily counted as a psychologically compelling cause" could qualify as a coercive.[637] In contrast Juwaynī notes that the founder of the Khurasani School, Qaffāl, held that coercion arises only

> if the coercer causes fear by way of [threatening] an imminent causing of pain on the [coerced's] body, which he cannot bear. As in if the coercer said: kill John (*fulān*) otherwise, I will kill you if you do not kill him, or [if the coercer said:] I will cut off one of your limbs or I will lash you with a whip or I will starve you or deny you water or imprison you forever. All of these are coercive. If the coercer says I will do these things to you tomorrow, it is not coercive. If he says I will destroy your property or kill your son, it is not coercive, because these are punishments that do not deal with the body. If [the coercer] said I will slap you in the market, and the coerced is someone of high social stature, this is not coercive, even if bearing this is difficult for the person.[638]

Qaffāl's coercion standard is manifestly different from that of the Iraqis. He explicitly rejects consideration of public humiliation and in general regards only imminent threats of severe harm directed against the person of the coerced as legally coercive. Juwaynī records that Qaffāl's student, Ḥusayn b. Muḥammad al-Marwazī (d. 462/1069), modified Qaffāl's standard. He notes that for Marwazī, a legally valid claim of coercion arises when the coercer causes fear through threat of a bodily punishment that, had it occurred, the coercer would have legally been liable to retaliation (*qiṣāṣ*). He adds that if the coercion threatens eternal imprisonment, it is not sufficient for legal coercion. However if he threatens eternal imprisonment in the dungeon of

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[637] Ibid., 14:162.

[638] See Ibid. Juwaynī quotes this text from one of Qaffāl's student, whom he refers to simply by the title, the Judge. The judge was al-Qāḍī Ḥusayn b. Muḥammad b. Aḥmad al-Marwazī (d. 462/1069).

castle where people routinely die, then it is coercive. Marwazī's formulation attempts to link the coercion standard to something already legally recognized: the Qurʾānically mandated procedure to deal with the direct causation of severe types of bodily harm (*qiṣāṣ*). By doing so, he does not substantially change Qaffāl's formulation, but he does attempt to put it on a surer epistemic basis by grounding it in a Qurʾānically mandated law.

Qaffāl and Marwazī's attempt to tighten the coercion standard was not necessarily representative of Khurasani Shāfiʿism. For example, Juwaynī records Marwazī's remark that the Iraqis stipulate that the relationship between the coercer's demand and threat are legally relevant to the evaluation of a claim of coercion.[639] Marwazī denies this but reports that some other Khurasani scholars held that coercion is simply what a person is not capable of bearing and occurs when the coerced thinks that in all probability the coercer will fulfill his threat. He also notes that other scholars added that what is coercive is relative to the customs of the people, such that the threat of a single slap in public directed towards a person of high status (*sharīf*) is coercive in his case. These unnamed Khurasani scholars seem to have much in common with the approach of their Iraqi counterparts. On the question of whether or not a threat against property or one's son is coercive, Marwazī reports that his own teacher and a student of Qaffāl's, Abū Muḥammad al-Juwaynī (d. 438/1046) held that what is legally coercive depends on the relationship between the coercer's threat and his demand, such that what is coercive when the demand is divorce is going to be different from what is coercive when the demand is homicide. Marwazī adds that Abū Muḥammad preferred the following standard when it came to divorce: what would reasonable people (*ʿuqalāʾ*) prefer to do instead of pronounce a divorce? He answers that it would be long imprisonment, a painful beating, or an apparent loss in manly

[639] Māwardī actually recorded disagreement on this issue.

honor (*murūʾāt*). Presumably, when the demand is divorce, and the threat is something similar to the examples listed above, we have a legally valid coercion claim, and the pronouncement of the divorce is invalid, as the Shāfiʿites unanimously hold.

From Juwaynī's presentation the Khurasanis appear to have been divided. Some prefer the strict standard that admits of no contextual considerations, and others prefer a standard similar or even more flexible to that of the Iraqis. After discussing the competing Shāfiʿite orientations Juwaynī sides with the stricter standard.

Juwaynī criticizes two features of the flexible approach: it's contextualism and its desire to correlate the coercer's demand to his threat in determining what is coercive. Both features introduce a degree of arbitrariness that is not suitable to the legal domain. He thinks that considerations of social status[640] or the amount of personal wealth[641] or individual ability to bear a beating[642] would require inquiry into the specific situation of every individual, and this can only be done from within his individual perspective. Juwaynī asks: if we admit considerations such as the amount of personal wealth to determine whether the threat to destroy property will be coercive, what is to stop the inquiry into attempting to determine an individual's psychological disposition towards wealth? The stingy would feel pain at what the lavish would not. This type of inquiry has no discernable non-arbitrary end and is outside the province of law (*wa al-kalām yakhruju ʿan ḍabṭ al-fiqh*).[643] This is likewise the case with those who would want to stipulate a reasonable person standard for admitting what is coercive by comparing the coercer's demand

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[640] al-Juwaynī, *Nihāyat*, 14:167.

[641] Ibid.

[642] al-Juwaynī, *Nihāyat*, 14:166.

[643] Ibid., 14:167.

with his threat. Ultimately the amount of anxiety or pain that an individual is capable of bearing is reducible to his natural constitution. These are considerations that the law does not admit (*wa laysa min awzān al-fiqh*).[644] As for correlating the coercer's demand with his threat, in order to determine whether a threat is coercive, again the standard is arbitrary. For example, in the case that a coercer demands a divorce, it could be the case that on one day the coerced would prefer imprisonment over divorce and on another day he would not. This very variation does not make it much different from the types of normal everyday choices that individuals make throughout their lives. Indeed time burdens man with such difficult choices all the time (*fa-qad yurhiqu al-zamān al-marʾa ilā amthāli-hi*).[645] To say that a choice is difficult cannot then amount to a legal standard for coercion.

Eschewing the arbitrariness of the flexible standard, Juwaynī supports the alternative red line approach to defining coercion: only threats against life or threats of acts that could lead to the loss of life are coercive. He writes:

> the approach of those who have attained the truth is that coercion is that which strips power and ability such that there does not remain for a man the opportunity to either delay or hasten [choice]. He has become as if he has no choice. This is the case with one threatened with death or cutting off of limb. The coercer's demand is not available to him for deliberation or choice.[646]

For Juwaynī only imminent threats that truly either eviscerate or severely degrade deliberation and choice can legitimately count as coercive. Juwaynī's arguments for this type of standard are two-fold. He thinks that it avoids potentially arbitrary determinations of what is

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[644] Ibid., 14:164.

[645] Ibid., 14:165

[646] Ibid.

coercive that the flexible standard admits. He seems to think that the type of empirical inquiry that the flexible standard demands to validate claims of coercion is beyond the disciplinary scope of jurists and judges. He also thinks that only imminent and credible threats against one's life or limb are in fact empirically coercive. These threats do not merely burden choice; they either eliminate deliberation and choice or severely degrade them.

5 Juwaynī on Coerced Homicide

While classical Shāfiʿite scholars may have differed about formulating a legal definition of coercion, this is not the case with coerced homicide. Juwaynī's presentation of the issue notes no internal disagreement on the matter. His presentation differs little from that of his Iraqi counterparts.

Similar to the Ḥanafite authors we surveyed above, he does explicitly note, however that the coerced sins when he kills.[647] The dominant opinion within classical Ḥanafism was that the coercer, if the coercion is compelling, and not the coerced, is held legally responsible for the crime. Recall that Māwardī and Shīrāzī had attributed two opinions to Shāfiʿī. In one opinion Shāfiʿī held that both the coercer and the coerced are held equally liable to the fully legal sanction for homicide. In a second opinion, Shāfiʿī held that only the coercer is held liable to the full legal sanction. Juwaynī identifies the first opinion as correct, arguing that "the coerced physical agent kills, [commits a] sin, and is not excused. The physical agent is the strongest cause [of the homicide]."[648] Full liability is also obliged on the coercer, because the rule conceives of the coercer and the coerced as equal partners in the crime. While the coerced is the

[647] al-Juwaynī, *Nihāyat*, 16:114

[648] Ibid., 16:115

actual physical killer, the coercer is "the compeller who uses the strongest of causes to preponderantly cause the killing."[649]

On the issue of superior orders, Juwaynī introduces some new justifications for Shāfiʿite rules. When a ruler orders a subordinate to kill illegally, the first question Shāfiʿī himself asked was whether or not the subordinate knew of the illegality of the killing. If the subordinate did not know that the command was illegal then he is not held responsible for the crime. The ruler is held fully liable. Juwaynī makes a rare consequentialist argument for why this rule ought to be upheld. He writes: "If we connect liability [for the homicide] to the executor, then politics will not be ordered, and everyone who kills will fear the [legal] consequences [for his act]."[650]

If the subordinate knew that the order was illegal, then the question devolves to whether or not the command of the ruler is coercive. If it is accompanied by an explicit threat, then the command of the ruler is coercive. But what if the command is not accompanied with an explicit threat? Is the command alone coercive in virtue of the fact that it was issued by the ruler? Juwaynī notes that the works of positive law record a dispute on this issue. Juwaynī himself thinks that if the coerced fears that if he does not comply with the command he will lose his life then the command is coercive,[651] but professes not understanding the basis of the dispute on whether or not a ruler's command by itself can be regarded as *prima facie* coercive. He seems to think that holding a political office is immaterial to the determination of whether or not a given command is coercive. All that matters is whether in the mind of the coerced the commander has

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[649] Ibid.,

[650] Ibid., 16:121

[651] Ibid.,

a history of attacking those who oppose him. This, and not the fact of political office, is the relevant consideration in determining whether or not a command, is coercive.[652]

6 Conclusion

When we compare Shāfiʿite coercion jurisprudence to Ḥanafite coercion jurisprudence, three differences stand out. First Shāfiʿite coercion jurisprudence is much simpler. Shāfiʿite scholars did not have the task of justifying why certain types of speech acts were unaffected by coercion. The exceptions to the legal and moral effectiveness of coercion were few. Perhaps because they were marginal and exceptional and they did not conflict with the doctrines of the other major traditions, they required little active justification. With the exception of causing harm to others, Shāfiʿites did not need to develop the three-tiered coercion standard developed by the Ḥanafites. One legal standard could do the work in different fields of law.

Second, while Shāfiʿite jurisprudence is simpler, the Shāfiʿites themselves are much more internally divided than the Ḥanafites. In coercion law and jurisprudence, at least, the Ḥanafites never went beyond the limits of the opinions of the founders of the school. In fact, only one Ḥanafite scholar, Ṭaḥāwī went so far as to explicitly endorse the position of Zufar, against the positions of the three founding fathers, on the issue of coerced homicide. When it came to developing a legal standard for coercion, all the Ḥanafites, regardless of historical period or regional affiliation adopted the three-tiered standard. This is manifestly not the case in Shāfiʿism. In fact, even though the founder of the school, Shāfiʿī gives examples of coercive threats, later Shāfiʿites neither quote nor reference Shāfiʿī's ideas. While the Iraqi Shāfiʿites seem to have kept within the spirit of Shāfiʿī's formulation of what is legally coercive, some of the Khurasanis went a different route entirely. Juwaynī quotes all manner of other Shāfiʿite

[652] Ibid.,

scholars but does not quote the relevant passage from Shāfiʿī's *Umm*. Juwaynī admits ***only*** threats against life or limb as legally coercive. Shāfiʿī admitted threats of imprisonment and enchainment as potentially coercive. Why did the Shāfiʿites not pay attention to Shāfiʿī's own formulation of legal coercion?

To my mind three possibilities present themselves. The first is related to an idea referenced by Sherman Jackson. According to Jackson, the seventh/thirteenth century Mālikite jurist Qarāfī excluded the empirical observations of the founding jurists of a legal tradition as proper objects of legal conformity (*taqlīd*). Only their normative opinions are the proper object of legal conformity.[653] Given the Shāfiʿites basic empirical attitude to developing a legal formulation of coercion, it may be the case that they felt they could ignore Shāfiʿī's personal observations about what is empirically coercive. Only his opinions about coercion's legal effects on, for example, a pronouncement of divorce is binding for them. A second possible reason is related to an attitude towards legal conformity that originated with Shāfiʿī himself. Shāfiʿī himself taught his students that they ought to discard his opinion if it conflicted with sound hadiths.[654] Ahmed El-Shamsy argues that one of his students, Buwayṭī, took this as a central methodological principle of Shāfiʿism. In fact, Buwayṭī applies this principle several times to depart from Shāfiʿī's opinion.[655] I do not mean to imply that the disunity of the classical Shāfiʿites is the result of this methodological bias in Shāfiʿism. Admittedly Shāfiʿī's coercion formulation is not in conflict with any hadith that we have seen. No subsequent Shāfiʿite makes mention of such a conflict. Rather, I suggest that compared with the Ḥanafites, because of a

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[653] Jackson, *Islamic Law and State*, 114-16.

[654] El Shamsy, "The first Shāfiʿī," 320.

[655] Ibid., 320-1.

methodological bias downplaying legal conformity, at least in certain respects, originating from the founder of the tradition, later Shāfiʿites felt less bound to Shāfiʿī's pronouncements than their corresponding Ḥanafite counterparts. The third possibility relates to Muzanī's legal handbook of Shāfiʿī's opinions. This handbook was extremely influential in Shāfiʿism. Māwardī's *al-Ḥāwī* and Juwaynī's *Nihāyat al-Maṭlab* are structured as commentaries on Muzanī's handbook. Recall that Muzanī relocated Shāfiʿī's opinion on coercion's effect on speech acts from where it was in Shāfiʿī's *Umm* (the chapter on legal acknowledgements) to the chapter on divorce. Perhaps more importantly, in the process, Muzanī dropped Shāfiʿī's thoughts on what is potentially coercive. It is possible that because of Muzanī's interjection, later Shāfiʿites simply neglected to look to the right place in Shāfiʿī's own work.

The final important difference between Ḥanafite and Shāfiʿite approaches to coercion jurisprudence has to do with the types of analysis employed by both groups of scholars. Ḥanafite analysis and justification of coercion related rules consisted of scriptural and legal arguments. In fact, what the Shāfiʿites seem to have regarded as merely an empirical matter – what is compellingly coercive – the Ḥanafite Jaṣṣāṣ felt the need to justify by way of a textual analysis of the Qurʾānic verses dealing with the dispensation to consume prohibited foods in circumstances of necessity. The Ḥanafites also used a variety of legal arguments, from the comparison of cases, to the citation of legal principles, to the development of metaphors and tests (instrument metaphor and test). Importantly their empirical account of the psychology behind compelling coercion was formulated in such a way as to ensure that it did not undermine legal rules regulating coercion's effect on unilateral speech acts (e.g. divorce). Shāfiʿite coercion jurisprudence on the other hand consists of little analysis of scriptural texts or legal analysis. In fact, there is little argumentation, generally speaking. The Iraqi Shāfiʿites cataloged the types of

the threats that are potentially coercive, noting the contexts and circumstances that may be relevant to a legal finding of coercion. Juwaynī disagreed with the Iraqi Shāfiʿites' coercion standard because he did thought that the types of inquiries they recommended were outside the province of legal inquiry. Inquiry into context and circumstance and the mind of the coerced introduce an unacceptable amount of arbitrary discretion into the law. His second argument held that only threats against life or limb are in fact, empirically speaking, coercive, because only imminent threats that fundamentally disrupt normal deliberation on different courses of action are coercive.

What explains the difference between how coercion is conceptualized by these two traditions? It is clear that much of the complexity of Ḥanafite coercion jurisprudence is driven by the more complicated positive legal rules regulating different types of legal acts, specifically on coerced unilateral speech acts. When coercion has different effects on different types of acts, that automatically makes the formulation of a coercion standard and its justification more difficult. The fact that the classical Ḥanafites were saddled with a positive legal rule on unilateral speech acts that rendered them on the opposite side of all the other legal traditions increased the need for an extensive justification of the school doctrine. No doubt this plays a large part in explaining their coerced speech jurisprudence. This however, does not explain their analysis of coerced homicide. Of the Shāfiʿites surveyed above, only Juwaynī notes explicitly that coercion can never permit homicide. The coerced still sins, even if he avoids some form of a legal penalty, by killing an innocent bystander. Unlike the Ḥanafites, he does not, however offer a reason for why this is the case. The Ḥanafites felt it necessary to justify why legality and morality diverge by constructing the personal religious obligation of the coerced as an analytical object against which the coerced transgresses and thereby sins.

Conclusion

We will conclude this study by briefly comparing how thinking about the problem of coercion is treated in the different disciplines that we have encountered, namely Qurʾānic exegesis, ḥadīth studies, theology and law. The first chapter was in essence a historical analysis of the dynamics that produced some of the most important scriptural proof texts used by later classical legal scholars. We saw that the coerced apostasy verse can be read as a response to what must have been an extremely fluid religious and political situation immediately after the Prophet's migration to Medina. Through an examination of parallel passages we saw that the Qurʾān was generally concerned, at that historical moment with conversion out of Islam. The coerced apostasy verse, then, directed the Muslim community to excuse coerced conversions from Islam. The most directly relevant and oft-cited ḥadīth in coercion jurisprudence declared that God overlooked coerced acts. We saw that the earliest version of the ḥadīth probably originated in the religious thought of the Qadarite, al-Ḥasan al-Baṣrī, and noted that it coheres well with Qadarism's emphasis on free will. The most extensive controversy in the first/seventh century involving coercion was about its effects on a prounouncement of divorce. We saw that the controversy had political ramifications, because rulers considered an opinion that held that coercion undermines the validity of divorce as weakening the effectiveness of divorce contingent loyalty oaths. None of these findings though had much of an impact on Islamic theological and legal thinking on coercion. When jurists spoke of the historical context that may have motivated the revelation of the coerced apostasy verse, they cited the story of the Meccans' capture and torture of the prominent companion, ʿAmmār b. Yāsir, ignoring all other reports. Only one jurist noted Aḥmad b. Ḥanbal's skepticism regarding the authenticity of the "overlooked" ḥadīth, even when it would have been in the Ḥanafites best interests to highlight his doubts. The arguments

produced by the Shāfiʿites and Ḥanafites in coerced speech jurisprudence make no reference to the political ramifications of holding a position on coerced divorce. These points indicate the jurists' relative disinterest in the findings of the ḥadīth scholars or a close examination of the chains of transmissions of reports in general. It was more efficient or acceptable, for example, for Ḥanafite jurists to accept the "overlooked" ḥadīth as authentic but undermine its implications for their position on coerced divorce than to attempt to dismiss the ḥadīth as unathentic. Neither the jurists nor the theologians evince any interest in a survey of all the reports explaining the revelation of the coerced apostasy verse. The ʿAmmār report, for reasons explained above, gained prominence in Islamic intellectual culture, and neither the theologians nor the jurists had any disciplinary motivation to challenge its prominence by turning to other reports. On the whole, the jurists and the theologians seemed to have been insulated from the analysis of scholars in other disciplines and from the data collected therein.

There are differences in the ways in which classical theologians and jurists treated coercion. As a discipline, theology was responsible for generating a rational account of the relationship between God and the cosmos. For this reason, they paid attention to things such as the nature of the fundamental building blocks of the material universe. For classical theologians, this involved a sparse ontology of atoms and accidents. Atoms and accidents also materially constituted human beings, and theologians explained the physical events occurring in or produced by human beings by reference to this ontology. Some of these physical events were volitional actions, and coercion was a problem that affected this subset of events. Regardless of the differences between the Muʿtazilite and Ashʿarite positions on coercion or compulsion's effect on moral agency, we can see similarities in the way they reasoned through the problem that coercion posed for moral agency. For both sets of theologians, the issue of how to

conceptualize coercion was influenced by the hierarchy of intellectual values that the traditions tried to uphold. For the Muʿtazilites, the highest value was preserving a substantial notion of God as a supremely good and just being. As such, God holds human beings responsible only for acts that they freely chose. The classical Muʿtazilites developed a sophisticated and systematic explanation of what a freely chosen acts looks like. Their motivational version of psychology stipulated that a freely chosen act is one that occurs when no one motivation to do or omit an act dominates over others. The freely chosen act is suspended by conflicting motivations pushing and pulling the agent in different directions. The Muʿtazilites relied on this same psychology to explain compelled action. A compelled action is the result of an overwheening motivation, usually of the utilitarian type to perform or omit a given action. When acts are compelled, the agent is not held liable for the moral assessment of the act. For God to do so would be unjust. He would then be committing an evil act and this would undermine God's justice and goodness. The values at stake for the Ashʿarites were different. The supreme values for Ashʿarism were preserving God's monopoly on the sole creative agency in the cosmos and His monopoly over the institution of morality. God creates all events, including volitional human action, and He institutes the moral law through His command. In order to safeguard these values, the Ashʿarites held that reason cannot come to the conclusion that coercion undermines moral agency. If the Ashʿarites had held this to be the case, then they would have been forced to admit that God's creation of human acts undermines moral agency. We can see how commitment to core theological values in both traditions influenced their approach to the question of coercion or compulsion's impact on moral agency. This is not how jurisprudential reasoning about coercion unfolded.

The theologians reasoned systematically from a few core values and sought to build a fairly comprehensive metaphysical system in order to precisely define the place of the human agent and his moral responsibilities within that system. The jurists were much less interested in metaphysics. They were working with a cumulative tradition of rules covering a much wider swath of human experience, and were tasked with working out coercion's effect on a variety of different acts in much greater detail. Coercion posed a simpler problem for the theologians: does it undermine moral agency? The jurists had to determine its specific effects on different types of acts, not to mention how it affected the moral and legal responsibility of the coerced and the coercer, and the rights of bystanders, if necessary. The sheer number of issues that need to be addressed did not allow jurists to reason systematically from a few core values. The jurists had to balance a number of values, not to mention the material interests of different parties. Consequently, the jurists paid much greater attention to the specific features of the coerced act. Their analysis of coerced homicide for example was different from their analysis of coerced speech. Whereas the theologians proceeded systematically, working out the implications of certain core values on different theological issues, the jurists proceeded atomistically. For the jurists, each act involved in a coercive situation involved the analysis of potentially different proof-texts, legal values, and features of acts. For example, coerced speech jurisprudence involved the analysis of coercion's impact on intenion, but not coerced rape. Rape involved the commission of unjustified physical harm against another person, but coerced divorce did not.

Appendix 1: Transmission History of the ʿAmmār Report

The most predominant explanation for the context behind the revelation of the coerced apostasy verse (16:106) involved the capture and torture of the famous companion, ʿAmmār b. Yāsir. Before delving into an analysis of its transmission history, one thing is in order. Michael Lecker, a modern Islamicist, published an article that implies an explanation on the connection between ʿAmmār b. Yāsir and the coerced apostasy verse not noted in pre-modern Islamic sources.

He argues that Ḥudhayfa b. al-Yamān and ʿAmmār b. Yāsir were actually Jewish converts to Islam.[656] This claim is primarily based on the fact that classical exegetical sources preserve material that implies that the Qurʾānic verse 2:109,[657] which describes the desire of the people of the book for recent converts to Islam to return to their previous religion, was revealed specifically about Jewish desire for Ḥudhayfa b. al-Yamān and ʿAmmār b. Yāsir to return to the Judaism. If this is the case, then the connection between the coercion exemption clause and ʿAmmār, a prominent companion, could have had the purpose of exonerating ʿAmmār from the charge of apostasizing to Judaism on the grounds that he was coerced. What makes Lecker's argument persuasive in the case of Ḥudhayfa is the corroborative force of incidental details from different types information (genealogical, geographical, and biographical) preserved in historical reports. Lecker is able to provide corroborative genealogical and geographical evidence showing

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[656] Michael Lecker, "Ḥudhayfa b. al-Yamān and ʿAmmār b. Yāsir, Jewish Converts to Islam," *Quaderni di Studi Arabi* 11(1993).

[657] "Many of the People of the Book wish that they might restore you as unbelievers, after you have believed, in the jealousy of their souls, after the truth has become clear to them; yet do you pardon and be forgiving, till God brings His command; truly God is powerful over everything."

the plausibility of Ḥudhayfa's Jewish heritage. However, this is missing for ʿAmmār. Moreover, this would clearly contradict the memory recorded and assumed by Islamic biographical and *sīra* sources of ʿAmmār's early conversion in Mecca, a place for which there is little evidence for the existence of a Jewish community. It is more plausible that ʿAmmār is included in the Jewish plea for Ḥudhayfa's conversion because ʿAmmār was Ḥudhayfa's Medinan "brother," a fact noted by Lecker himself.[658]

The following basic facts about ʿAmmār's biography should help in the analysis of the various reports about ʿAmmār's torture. It seems that ʿAmmār was an early convert to the Prophet's mission in Mecca. He is said to have participated in the early campaigns after the migration to the Medina. After the Prophet's death, he seems to have been a prominent member of the political elites in charge of governing a quickly burgeoning empire. He was appointed by ʿUmar as governor of Kufa and is noted to have been a partisan of ʿAlī, ultimately dying on ʿAlī's side at the battle of Ṣiffīn (37/657).[659] Both his connection to the garrison city of Kufa and the memory of his loyalty to ʿAlī's cause are important factors in the origin and dissemination of reports about ʿAmmār's torture.

The reports on ʿAmmār's torture can be found in ḥadīth, exegetical, biographical, and *sīra* sources. These reports can be divided into three thematic categories:

1. Reports that note ʿAmmār's torture without asserting any connection to the coercion exemption clause

2. Reports that end up simply asserting that the coercion exemption clause was about ʿAmmār
3. Reports that narrate the circumstances of ʿAmmār's torture and connect it to the coercion exemption clause

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[658] Lecker, "Ḥudhayfa b. al-Yamān and ʿAmmār b. Yāsir, Jewish Converts to Islam," 150, footnote 4.

[659] See *Encyclopaedia of Islam*, art. 'ʿAmmārb.Yāsir b. ʿĀmir b. Mālik, Abu 'l-Yaḳzān' (H. Reckendorf).

We shall now examine these three categories of reports in order to date them, locate the geographies of their circulation and, where possible, to note the role played by the process of sectarian and regional identity formation in the generation of the content of the reports.

1 Torture Reports with no Reference to the Coercion Exemption Clause

Of the three categories of ʿAmmār reports, the reports that only attest to his torture without either explicitly connecting the incident to the coercion exemption clause or alluding to it are both the most numerous and geographically diverse. We will begin with the Medinan reports.

The earliest reliably attestable reports happen to be of Medinan provenance. One of these originates with ʿUrwa b. al-Zubayr (23—93/643 or 4—94/712-13, Medina),[660] the famous proto-historian and ḥadīth scholar, who simply asserts that "ʿAmmār used to be one of the oppressed (*mustaḍʿafīn*) who was tortured in Mecca to make him recant his religion."[661] Another early Medinan report asserts that ʿAmmār, along with others[662] was tortured to the point that he didn't even know what he was saying.[663] In yet another Medinan report, an unnamed eyewitness

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[660] See ibid.art. 'ʿUrwa b. al-Zubayr' (G. Schoeler).

[661] Ibn Saʿd, *al-Ṭabaqāt*, 3:248. Muḥammad b. ʿUmar al-Wāqidī (d. 207/822), Ibn Saʿd's source for this report identifies the 'oppressed' (*mustaḍʿafūn*) as those without a people or tribe in Mecca, whom Quraysh used to torture in the sun-baked hot grounds of Mecca in the middle of the day. Here is the chain of transmission for the report:

ʿUrwa b. al-Zubayr (23/643-4—93/711-2 or 94/712-13, Medina) → Yazīd b. Rūmān (d. 130, Medina) → Muʿāwiya b. ʿAbd al-Raḥmān b. Abī Mirzad (n.d./Medina) → Muḥammad b. ʿUmar al-Wāqidī (d. 207/822, Medina/Baghdād)

[662] The other individuals mentioned in the report are: Ṣuhayb, Abū Fakīha, Bilāl, and ʿĀmir b. Fuhayra. Ṣuhayb and Abū Fakīha are similarly described as being tortured to the point that they lost consciousness of what they were saying.

[663] See Ibn Saʿd, *Ṭabaqāt*, 3:248. The report goes on to assert that 16:110 was revealed regarding Bilāl and ʿĀmir b. Fahīra. Whether or not the report asserts that the same verse was revealed also about those who were tortured to the point of losing control over what they were saying, like ʿAmmār, Ṣuhayb, or Abū Fakīha is not clear. Here is the chain of transmission for the report:

ʿUmar b. al-Ḥakam b. Thawbān (37/658—117/735, Medina) → ʿAbd al-Ḥakīm b. Ṣuhayb (n.d., n.p.) → ʿUthmān b. Muḥammad (n.d., Ḥijāz) → Muḥammad b. ʿUmar al-Wāqidī (d. 207/822, Medina/Baghdād)

recounts that after seeing welts (*ḥabaṭ*) on ʿAmmār's back, he asked him what they were. ʿAmmār replied, "This is from when the Quraysh used to torture me in the sun-baked hot grounds of Mecca (*ramaḍāʾ Makka*)."[664] Taken together, at a minimum we can establish the fact

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On ʿUmar b. al-Ḥakam b. Thawbān, see al-Bukhārī, al-Taʾrīkh al-kabīr, 6:147, entry number 1978; Ibn Saʿd, *al-Ṭabaqāt*, 5:281; Aḥmad ibn ʿAlī Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 1st ed., 14 vols., (Beirut: Dār al-Fikr li-al-Ṭibāʿa wa al-Nashr wa al-Tawzīʿ, 1984), 7:382-3, entry number 716. Ibn Saʿd locates ʿUmar in a Medinan context, specifically identifying his family as clients (ḥulafāʾ) of the ʿAwfī Anṣārīs, and noting that he was 80 when he died in 117/735. Very little biographical information exists on ʿAbd al-Ḥakīm b. Ṣuhayb, other than the fact that one ʿAbdullah b. Jaʿfar b. ʿAbd al-Raḥman narrates from him. ʿAbdullah was a Medinan who died in 170/787 and is noted to have narrated from ʿAbd al-Ḥakīm, a fact which helps us both date and place ʿAbd al-Ḥakīm. On ʿAbdullah b. Jaʿfar, see ibid., 5:150-1, entry number 295. On ʿAbd al-Ḥakim b. Ṣuhayb see al-Rāzī, al-Jarḥ, 6:35, entry number 187. In fact Ibn Saʿd himself, our source for this report on ʿAmmār in another report, has ʿAbd al-Ḥakīm transmitting to ʿAbdullah b. Jaʿfar who is then al-Wāqidī's immediate source. This report is also about the companion Ṣuhayb b. Sinān (d. 38/659, Medina). See Ibn Saʿd, *al-Ṭabaqāt*, 3:228. We have no death date for ʿUthmān b. Muḥammad. His nisba, Hijāzī, implies where he lived. This is confirmed by the fact that the rijāl critics attribute a scholarly relationship between him and ʿAbdullah b. Jaʿfar. See Muḥammad ibn Ismāʿīl Bukhārī, *al-Taʾrīkh al-kabīr*, ed. Muhammad ʿAbd al-Muʿīd Khan, 8 vols., (Diyar Bakir (Turkey): al-Maktaba al-Islamiyya), 6:249-50, entry number 2305;Abū Ḥātim Muḥammad Ibn Ḥibban, *Kitāb al-Thiqqāt*, ed. Muḥammad ʿAbd al-Muʿīd Khān, 9 vols., (Hyderabad: Majlis Dāʾira al-Maʿārif al-ʿUthmāniyya, 1393[1973]), 7:203-4; Muḥammad ibn Aḥmad al-Dhahabī, *al-Kāshif fī ma'rifat man la-hu riwāya fī al-kutub al-sitta*, ed. Muḥammad ʿAwwāma and Aḥmad Muḥammad Nimr al-Khaṭīb, 2 vols., (Jeddah: Dār al-Qibla lil-Thaqāfa al-Islāmīyya and Muʾassasat ʿUlūm al-Qurʾān, 1992), 2:13, entry number 3737.

[664] See Ibn Saʿd, *al-Ṭabaqāt*, 3:248. Here is the chain of transmission for the report:

Unnamed eyewitness → Muḥammad b. Kaʿb al-Quraẓī (d. 118/736, Medina) → al-Ḥārith b. al-Faḍl (n.d., Medina) → ʿUthmān b. Muḥammad (n.d., Ḥijāz) → Muḥammad b. ʿUmar al-Wāqidī (d. 207/822, Medina/Baghdād)

On Muḥammad b. Kaʿb al-Quraẓī see Bukhārī, *al-Taʾrīkh al-kabīr*, 1:216-17, entry number 679; Abū Ḥātim Muḥammad Ibn Ḥibban, *Kitāb al-jarḥ wa-al-ta'dīl*, 9 vols., (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1952), 8:67, entry number 303;Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 9:373-4, entry number 691. All of these sources indicate that while Muḥammad b. Kaʿb was originally in Medina, he lived in Kufa awhile, before returning home. None of these sources record the existence of a scholarly relationship between Muḥammad and al-Ḥārith. The sources are virtually silent on al-Ḥārith. In fact, his name as it exists in the chain of transmission above needs to be emended from al-Ḥārith b. al-Faḍl to al-Ḥārith b. al-Fuḍayl. The emendation is justified by the fact that most other instances of Ibn Saʿd's citation of al-Ḥārith has him listed as ibn al-Fuḍāyl. See for instance Ibn Saʿd, *al-Ṭabaqāt*, 1:204, 3:59, and 5:93. While none of the *rijāl* sources indicate a scholarly relationship, Ibn Saʿd has al-Ḥārith transmitting one more report from Muḥammad b. Kaʿb, through his son ʿAbdullah b. al-Ḥārith. This report is also on ʿAmmār, whom the report notes, was in the infantry (*rajjāla*) of ʿAlī during the battle of Ṣiffīn. In another report transmitted by ʿAbdullah from his father al-Ḥārith, the companion Khuzayma b. Thābit (d. 37/658) refuses to take sides in the battle of Ṣiffīn until he knows which side ʿAmmār will die on, referring to the famous ḥadīth in which the Prophet prophesizes that the rebellious sect (*al-fīʾa al-bāghiya*) will kill ʿAmmār. As for the Sunnī *rijāl* sources, Ibn Ḥibbān notes merely that he was a Medinan of Anṣārī extraction. See Abī Ḥātim Muḥammad Ibn Ḥibbān, *Mashāhīr 'ulamāʾ al-amṣār wa-a'lām fuqahāʾ al-aqṭār*, ed. Marzūq ʿAlī Ibrāhīm, (al-Manṣūrah [Egypt]: Dār al-Wafāʾ lil-Ṭibāʿa wa-al-Nashr wa-al-Tawzīʿ, 1991), 219, entry number 1082 and Ibn Ḥibban, *Kitāb al-Thiqqāt*, 7:31; Ibn Ḥajar, notes that he was simply a Medinan, Aḥmad ibn ʿAlī Ibn Ḥajar al-ʿAsqalānī, *Lisān al-mīzān*, 7 vols., (Beirut: Muʾassasat al-Aʿlamī lil-Maṭbūʿāt, 1971), 2:156, entry number 688. For ʿAbdullah b. al-Ḥārith b. al-Fuḍayl, see Ibn Saʿd, *al-Ṭabaqāt*, 5:410-11. Ibn Saʿd records ʿAbdullah's death date as 164/781. Interestingly, the Shīʿī *rijāl* critic al-Ṭūsī indicates that one al-Ḥārith b. al-Fuḍayl was a companion of the Imām ʿAlī

of the circulation of reports in Medina in the middle of the first century asserting that ʿAmmār was tortured in Mecca. ʿUrwa's report asserts further that this torture occurred in Mecca, whereas the report originating with ʿUmar b. al-Ḥakam (see fn. 40) records the severity of that torture – ʿAmmār lost consciousness of what he was saying.

A couple of Meccan reports, ostensibly circulating around the turn of the first/seventh century that find their way to Basra in the middle of the second/eighth century assert the Prophet's involvement in the affair of ʿAmmār's torture, noting that "As ʿAmmār's family was being tortured, the Prophet walked by, telling them: rejoice O family of ʿAmmār, you have been promised heaven!"[665] Another Meccan report, from around the same time period, does not describe ʿAmmār's torture but rather asserts that the verse 29:2, "Do men think that they will be left alone on saying, 'We believe', and that they will not be tested?," was revealed about when ʿAmmār was tortured for the sake of God (*yuʿadhdhab fī ʾl-lāh*).[666]

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b. al-Ḥusayn, al-Sajjād (d. 95/712). This may explain the preservation and circulation of the ʿAmmār material by al-Ḥārith. See Muḥammad ibn al-Ḥasan al-Ṭūsī, *Riǰāl al-Ṭūsī*, ed. Jawād al-Qayyūmī al-Iṣfahānī, (Qom: Muʾassasat al-Nashr al-Islāmī, al-tābiʿa li-Jamāʿat al-Mudarrisīn bi-Qum, 1415 [1994]), 112, entry number 1109.

[665] Ibn Saʿd, *al-Ṭabaqāt*, 3:249. Here is the chain of transmission for the report:

Abū al-Zubayr, Muḥammad b. Muslim b. Tudrus (d. 126/744, Mecca) →Hishām [b. Abī Abdillah Sunbur] al-Dastuwāʾī (d. 154/771, Mecca) → Muslim b. Ibrāhīm (d. 222/837, Basra)

For the other report see Ibid. There are slight variations in the content (*matn*) of the report. The specific members of ʿAmmār's family – himself, his mother, and his father, whom the Prophet walks past are indicated, and the relative location where they were being tortured is specified, the plains (*al-Baṭḥāʾ*), presumably of Mecca. Here is the chain of transmission for this report:

Yūsuf b. Māhak (d. 110/729, Mecca) → Abū Bishr, Jaʿfar b. Iyās (d. 125/743, Mecca) → Shuʿba b. al-Ḥajjāj (d. 160/777, Basra) → Al-Faḍl b. ʿAnbasa (d. 201/817, Wāsiṭ)

[666] Ibid., 3:250. Here is the chain of transmission for the report:

ʿAbdullāh b. ʿUbayd b. ʿUmayr (d. 113/732, Mecca) → Ibn Jurayj (d. 150/767, Mecca) → Ḥajjāj b. Muḥammad, Abū Muḥammad (d. 206/822, Syria)

A Basran report, originating with the famous Basran scholar Muḥammad b. Sīrīn (d. 110/720),[667] narrates the following about ʿAmmār's torture: "the Prophet met ʿAmmār, while ʿAmmār was crying. [The Prophet] started to wipe [ʿAmmār's] eyes while saying: 'the disbelievers captured you, drowned you, and you said such and such. If they do it again, then do it again! (*fa-in ʿādū fa-ʿud*)'."[668] A report that originates in Kufa at the turn of the first/seventh century but travels to Basra around the middle of the second, asserts that the polytheists (*mushrikūn*) burned ʿAmmar with fire, and that the Prophet, as he was walking past ʿAmmār, passed his hand over his head, saying "Become cold and a source of peace for ʿAmmār, O Fire, as you were for Abraham!"[669], prophesying at the end of the report that the transgressing party will eventually kill ʿAmmār.[670]

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[667] *Encyclopedia of Islam, Second Edition*, art. 'Ibn Sīrīn, Abū Bakr Muḥammad' (T. Fahd)

[668] This report is recorded in two different sources, with slight textual variations between them. The one quoted above is found in Ibn Sa'd, *al-Ṭabaqāt*, 3:249. Here is the chain of transmission:

Muḥammad b. Sīrīn (d. 110/720, Basra) → ʿAbdullah b. ʿAwn (d. 150/767, Basra) → Ismāʿīl b. Ibrāhīm al-Karābisī (d. 194/810, Basra)

See Muḥammad Ibn Isḥāq, *Sīra Ibn Isḥāq: al-musammāt bi-kitāb al-mubtadaʾ wa al-mabʿath wa al-maghāzī*, ed. Muḥammad Ḥamīdullah, (Rabāṭ: Maʿhad al-Dirāsāt wa al-Abḥāth li al-Taʿrīb, 1396 [1976]), 4:172, report number 241. The textual variations are insignificant for our purposes, but since they correlate with the difference in who ʿAbdullah b. ʿAwn transmits to, strengthen the plausibility of transmission from ʿAbdullah b. ʿAwn. Here is the chain of transmission for the second report:

Muḥammad b. Sīrīn (d. 110/720, Basra) → ʿAbdullah b. ʿAwn (d. 150/767, Basra) → Yūnus [b. Bukayr] (d. 199/815, Kufa)

[669] This is a reference to the Qurʾānic verse where God commands the fire to be cool and a source of peace when Abraham's disbelieving community threw him into it: "21:69 We said, 'O Fire! be thou cool, and (a means of) safety for Abraham!'"

[670] The last phrase is a prominent independent ḥadīth with sectarian implications. As it so happens, ʿAmmār was killed fighting for ʿAlī against Muʿāwiya at the Battle of Ṣiffīn. The ḥadīth then, has the implication of identifying Muʿāwiya's side as wrongful in the conflict. On this, see Abou El Fadl, *Rebellion and violence in Islamic law*, 40. Here is the chain of transmission for the report:

ʿAmr b. Maymūn al-Awḍī (d. 74/695, Kufa) → Abū Balj, Yaḥyā b. Sulaym b. Balj (n.d., Kufa) → Abū ʿAwāna, Waḍḍāḥ b. ʿAbdullah (d. 176/793, Basra) → Yaḥyā b. Ḥammād (d. 215/830, Basra)

Two ʿAmmār reports are of particular interest to us because they exemplify the theological and political debates in which ʿAmmār's biography is implicated. In a report that originates in Kufa and then circulates in Basra, ʿUthmān b. ʿAffān (d. 35/656), the third caliph, reports: "When I drew near to the Prophet, he took my hand and started walking towards the pebble-filled valleys (*al-baṭḥāʾ*) [of Mecca], till we reached ʿAmmār, his father and his mother while they were being tortured. Yāsir [ʿAmmār's father] exclaimed – 'this is fate's (*al-Dahr*) [doing]![671]' The Prophet said to him: 'Be patient. O God forgive Yāsir's family' and it was done (*wa qad fuʿilat*)."[672] The fact that this report putatively originates with ʿUthmān b. ʿAffān,

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[671] The reference to *al-Dahr* here reflects pagan Arab belief in the vicissitudes of life which randomly beset human beings with difficulty and ultimately death. Yāsir's invocation of this idea is in manifest contradiction with the monotheistic conception of a purposeful God who tries human beings through ordeals for a reason. On *al-Dahr*, see Izutsu, *God and man in the Koran*, 124-9 and idem., *Ethico-religious*, 47-8; Watt, "Hidjra."; *Encyclopedia of the Qurʾān*, art. 'Fate' (Ahmet T. Karamustafa).

[672] This report is recorded in various forms in two different sources: Ibn Saʿd, *al-Ṭabaqāt*, 3:248-9, Abū Bakr Aḥmad ibn ʿAlī al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād aw Madīnat al-Salām*, ed. Muṣṭafā ʿAbd al-Qādir ʿĀṭā, 14 vols., (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 11:342. Ibn Saʿd notes two different transmission histories. The Khaṭīb records four different transmission histories, of which I provide only the higher part here. Here are the chains of transmission for reports:

1. ***Ibn Saʿd*:** ʿUthmān b. ʿAffān (35/656) → Sālim b. Abī ʾl-Jaʿd (d. 97/716, Kufa) → ʿAmr b. Murra al-Jumalī (d. 118/736, Kufa) → al-Qāsim b. al-Faḍl (d. 167/784, Basra) → ʿAmr b. al-Haytham (d. 198/814, Basra)

2. ***Ibn Saʿd:*** ʿUthmān b. ʿAffān (35/656) → Sālim b. Abī ʾl-Jaʿd (d. 97/716, Kufa) → ʿAmr b. Murra al-Jumalī (d. 118/736, Kufa) → al-Qāsim b. al-Faḍl (d. 167/784, Basra) → Muslim b. Ibrāhīm (222/837, Basra)

3. ***Al-Khaṭīb al-Baghdādī:*** ʿUthmān b. ʿAffān (35/656) → Sālim b. Abī ʾl-Jaʿd (d. 97/716, Kufa) → ʿAmr b. Murra al-Jumalī (d. 118/736, Kufa) → al-Aʿmash, [Sulaymān b. Mihrān] (d. 148/766, Kufa) → Manṣūr b. Abī ʾl-Aswad (n.d., Kufa) → Muḥammad b. al-Ṣalṭ (d. 218/833, Kufa)

4. ***Al-Khaṭīb al-Baghdādī:*** ʿUthmān b. ʿAffān (35/656) → Sālim b. Abī ʾl-Jaʿd (d. 97/716, Kufa) → ʿAmr b. Murra al-Jumalī (d. 118/736, Kufa) → al-Aʿmash, [Sulaymān b. Mihrān] (d. 148/766, Kufa) → Manṣūr b. Abī ʾl-Aswad (n.d., Kufa) → Abū ʾl-Ḥasan b. ʿUbayd (I could not identify this narrator)

5. ***Al-Khaṭīb al-Baghdādī:*** ʿUthmān b. ʿAffān (35/656) → Sālim b. Abī ʾl-Jaʿd (d. 97/716, Kufa) → al-Aʿmash, [Sulaymān b. Mihrān] (d. 148/766, Kufa) → ʿIsā b. Zayd b. ʿAlī b. al-Ḥusayn (n.d., Kufa)

6. ***Al-Khaṭīb al-Baghdādī:*** ʿUthmān b. ʿAffān (d. 35/656) → ʿAbdullah b. al-Ḥārith (d. 84/703, Medina) → ʿAbd al-Raḥmān b. Abī Ziyād (d. 174/791., Kufa) → al-Aʿmash, Sulaymān b. Mihrān (d. 148/766, Kufa) → Sulaymān b. Qaram (n.d., Kufa)

is about ʿAmmār, and circulated originally in Kufa raises suspicion that it was contrived as part of a broader on-going argument about the legitimacy of competing claimants to Muslim political rule.

The post-Prophetic history of ʿUthmān and ʿAmmār's relationship is contentious to say the least. Once ʿUthmān ascended to the caliphate, he reportedly replaced ʿAmmār as governor of Kufa. Moreover, ʿAmmār is later implicated in supporting the faction that ultimately assassinated ʿUthmān, the act which ostensibly lead to the first civil war. After ʿUthmān's death, ʿAmmār played an influential role on the side of the fourth caliph ʿAlī in rallying Kufans to ʿAlī's cause against Muʿāwiya. Muʿāwiya couched his refusal to recognize the legitimacy of ʿAlī's caliphate as justified by ʿAlī's inaction in pursuing ʿUthmān's assassins and the proximity of the group that killed ʿUthmān to ʿAlī's cause. Thus both the figures of ʿAmmār and ʿUthmān became quickly lodged in the early community's historical memory as intimately associated with the opposing sides of the first civil war. As a result, finding a report purportedly from the time of the Prophet with both figures raises suspicion regarding its historical authenticity. The fact that three of the transmitters of the report either self-identified or were attested by others as

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There are textual variations between the Khaṭīb and Ibn Saʿd's version of the report. In the Khaṭīb's version, ʿUthmān notes merely that he was with the Prophet, when he walked by ʿAmmār's family as they were being tortured, when he exhorts them "Be patient, O family of Yāsar, for you have been promised heaven." The report does not note where the torture was taking place, nor does it ascribe any specific speech to Yāsir (i.e. *al-Dahr*!). The fact that we have two chains with ʿAmr b. Murra narrating to two different people, al-Qāsim b. al-Faḍl and al-Aʿmash, along with content variation between them strengthens the case for dating this report to at least the lifetime of ʿAmr, around the turn of the first/seventh century. That this tradition was transmitted primarily in Kufa and seems to have found favor amongst the Imāmī community there can also be gleaned through the *isnāds*. More specifically, the individuals al-Aʿmash transmits to are recorded in Shīʿī *rijāl* sources. For Manṣūr, see Aḥmad ibn ʿAlī al-Najāshī, *Rijāl Najashī*, ed. Mūsā al-Shabīrī al-Zanjānī, (Qom: Muʾassisa al-Nashr al-Islāmī al-Tābiʿa li-Jamāʿa al-Mudarrisīn, 1416; reprint, 5th), 414, entry number 1103, who notes he was a reliable (*thiqqa*) Kufan narrator of al-Ṣādiq's. For ʿIsā, see al-Ṭūsī, *Rijāl al-Ṭūsī*, 257, entry number 3642, who classifies him as a Kufan narrator of al-Ṣādiq. For Sulaymān b. Qaram, see Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 4:187, entry number 367, who quotes a number of earlier Sunnī rijāl critics as excessive in his Shīʿī-ness (*kāna yufriṭu fī t-tashayyuʿ*) and Ṭūsī, who classifies him as a Kufan narrator of al-Ṣādiq's, al-Ṭūsī, *Rijāl al-Ṭūsī*, 216, entry number 2839.

possible Murjiʾīs further strengthens this suspicion.[673] This suggests that the report's immediate discursive function was intimately connected to a Murjiʾī project of reconciliation.[674] This suggestion is strengthened by the existence of a report with almost the exact same purported transmission history (*isnād*) that even more explicitly manifests signs of a Murjiʿī project.[675] In

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[673] The three narrators are Sālim b. Abī ʾJaʿd, ʿAmr b. Murra, and al-Qāsim b. al-Faḍl. The case with Sālim's purported theological leanings is ambiguous. Ibn Saʿd ascribes a statement to Sālim's father where, after describing his six sons, two of whom had Shīʿī leanings (*yatashayyaʿān*), two of whom were Murjiʾīs, and two of whom held the beliefs of the Khawārij, he notes that between them, they have completely opposed God! See Ibn Sa'd, *al-Ṭabaqāt*, 6:292. For a repetition of the same sentiment see ʿAbd Allāh ibn Muslim Ibn Qutaybah, *al-Maʿārif*, ed. Sarwat Ukāsha, (Cairo: Dār al-Maʿārif, 1969), 452 and Muḥammad ibn Aḥmad. al-Dhahabī, *Siyar al-aʿlām al-nubulāʾ*, ed. Ḥusayn Asad and Shuʿayb Arnaʾūṭ, 23 vols., (Beirut: Muʾassasa al-Risāla, 1993), 5:109, entry number 44. The report does not clarify which heresy Sālim was guilty of. In contrast with the ambiguity surrounding Sālim's political and theological views, ʿAmr b. Murra reportedly self-identified as a Murjiʾī. See Aḥmad ibn 'Abd Allāh al-'Ijlī, *Ma'rifat al-thiqāt min rijāl ahl al-'ilm wa-al-Ḥadīth wa-min al-ḍu'afāʾ wa-dhikr madhāhibihim wa-akhbārihim*, ed. 'Abd al-'Alīm 'Abd al-'Aẓīm al-Bastawī, 2 vols., (Medina: Maktabat al-Dār, 1985), 2:185-6, entry number 1408, where he declares, "I looked into these views, and I have not found a people better than the *Murjiʾa*. I am a *Murjiʾī*." Shuʿba b. al-Ḥajjāj, one of ʿAmr's primary transmitters was asked, "Why do you transmit from ʿAmr b. Murra, when he was a Murjiʾī?", to which he responded that ʿAmr was "the most trustworthy and knowledgeable of the people." See Ibn Ḥibban, *Kitāb al-jarḥ wa-al-ta'dīl*, 701:148, entry number 56. Ibn Qutayba lists ʿAmr b. Murra as one of the *Murjiʾa*, see Muḥammad ibn Aḥmad al-Dhahabī, *Mīzān al-i'tidāl fī naqd al-rijāl*, ed. 'Alī Muḥammad al-Bajāwī, 4 vols., (Cairo: 'Īsā al-Bābī al-Ḥalabī, 1963-1964?), 625. Al-Dhahabī quotes Mughīra b. Miqsam as describing ʿAmr as infatuated with the ideas of the *Murjiʾa*, Ibn Ḥajar al-'Asqalānī, *Lisān*, 3:288, entry number 6447. See also Ibn Ḥajar, who is probably relying on these earlier sources himself, idem., *Kitāb tahdhīb al-Tahdhīb*, 8:90, entry number 163. Al-Dhahabī and Ibn Ḥajar, relay the assessment of the ḥadīth critic, Abū Dāwud, who describes him simply as a Murjiʾī. See al-Dhahabī, *Mīzān*, 3:377, entry number 6731. Van Ess classifies him as a quietist Kufan Murjiʾī who seems to have been on intimate terms with moderate Shīʿīs, see his, Ess, *Theologie*, 1:179. Ibn Ḥajar's citation of Abū Dāwud has him specify al-Qāsim as a Basran Murjiʾī, Ibn Ḥajar al-'Asqalānī, *Kitāb tahdhīb al-Tahdhīb*, 8:296, entry number 596. Van Ess classifies al-Qāsim as a Basran Murjiʾī, and characterizes the Basran Murjiʾīs as generally anti-Shīʿī, see Ess, *Theologie*, 2:164-5.

[674] Recent scholarship asserts that the Murjiʾism started out as a doctrinal attempt to grapple with the sectarian repercussions of the first civil war. On the difference between early and classical Murjiʾīsm and its development and the interpretation of early Murjiʾī theological and political claims as aimed towards producing communal unity and integration in a fiercely sectarian atmosphere, see Michael Cook, *Early Muslim dogma: a source-critical study*, (Cambridge: Cambridge University Press, 1981), 29-32 and 43; *Encyclopedia of Islam, Second Edition*, art. 'Murdjiʾa' (Wilferd Madelung) and "The early Murjiʾa in Khurāsān and Transoxania and the spread of Ḥanafism" in *Der Islam* 59 no. 1 (1982), 32; Khalil Athamina, "The Early Murjiʾa: Some Notes," *Journal of Semitic Studies* 35, no. 1 (1990): 116; and most recently Kamran Scot Aghaie, *The women of Karbala : ritual performance and symbolic discourses in modern Shiʿi Islam*, (Austin: University of Texas Press %@ 0292709366 (cloth : alk. paper) %7 1st, 2005), 3.

[675] See Aḥmad Ibn Ḥanbal, "Musnad Aḥmad b. Ḥanbal," in *Hadith Encyclopedia*. (Riyad: Harf Information Technology, 2003). Here is the chain of transmission for the report:

ʿUthmān b. ʿAffān → Sālim b. Abī ʾl-Jaʿd (d. 97/716, Kufa) → ʿAmr b. Murra al-Jumalī (d. 118/736, Kufa) → al-Qāsim b. al-Faḍl (d. 167/784, Basra) → ʿAbd al-Ṣamad b. ʿAbd al-Wārith (d. 207/823, Basra)

this report, ʿUthmān gathers the companions of the Prophet, one of whom was ʿAmmār, and proclaims that the Prophet preferred Quraysh over all people, and preferred the Banū Hāshim over all of Quraysh, to which the people responded with silence. He then proclaims that if he had been given the keys to heaven, he would have given them to the Banū ʿUmayya so that even the last one of them would have entered it. He then calls Ṭalḥa and al-Zubayr and narrates the story about the torture of ʿAmmār's family in the desert plains of Mecca. We should note that the report goes out of the way to note that ʿAmmār was amongst those companions whom ʿUthmān gathers together. Moreover, not only do we have ʿAmmār and ʿUthmān in one prophetic scene together, but we also have Ṭalḥa and Zubayr, also major players in the first civil war.

One final report exists in a recently found recension of a part of Ibn Isḥāq's famous prophetic biography (*sīra*). Ibn Isḥāq cites an unidentified man from the family of ʿAmmār as his source for this information. The report mirrors vocabulary used by the Meccan reports discussed above. Similarly, it recounts how the Prophet was walking past ʿAmmār and his mother as they were being tortured in with pebbles in the vehemently hot basin valleys of Mecca,

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Interestingly Ibn ʿAsakīr reproduces the report from Aḥmad b. Ḥanbal and calls this the summary form of a full-length report. I shall not reproduce the transmission histories of the Ibn ʿAsakīr reports because they are identical to the one found in Aḥmad b. Ḥanbal's *Musnad* in the upper part. There are a number of key differences between the summary and full-length version. The part similar is ʿUthmān's eyewitness account of ʿAmmār's torture in the desert plains of Mecca. The most important difference is the fact that ʿUthmān, in a heated verbal exchange with ʿAmmār, ends up verbally abusing and physically attacking ʿAmmār to the surprise of a number of on-lookers. ʿUthmān, out of seeming regret at his actions, has Ṭalḥa and Zubayr then offer ʿAmmār three familiar options in cases of injury: retaliation, monetary compensation, or pardon. ʿAmmār refuses all three up until the time he meets the Prophet and complains to him. Then ʿUthmān gathers the Banū Umayya and effectively blames them for his actions against one of the companions of the Prophet, whereupon he narrates the story of his witnessing the torture of ʿAmmār's family. The report can be taken to be an attempt at reconciling a number competing tensions in the historical memory of the poor treatment meted out to ʿAmmār during ʿUthmān's reign, including his dismissal from the governorship of Kufa.

saying, "Patience! O family of Yāsir. You have been promised heaven.[676]" In contrast with the Meccan reports, though, Ibn Isḥāq's version adds two details. First it notes that ʿAmmār's mother refused to accede to the demands, and was ultimately killed. Second it more specifically identifies the clan which engaged in the torture, as one of the clans (*ḥayy*) of Banū Mughīra b. ʿAbdullah b. Makhzūm.[677]

As should be apparent thus far, none of the reports surveyed connect the torture incident to the revelation of the coercion exemption clause. In fact, one report connects ʿAmmār's torture to a different verse entirely. In terms of chronology, the earliest reports hail from the middle of the first/seventh century. Most of the reports come from around the turn of the century, with some possibly originating in the first half of the second century. Geographically, the reports originated in the most important intellectual centers of the Empire – Mecca, Medina, Basra, and Kufa. All of the reports indicate that at the very minimum some people harmed ʿAmmār. In fact the earliest report, from the Medinan scholar ʿUrwa b. al-Zubayr, asserts the basic fact that ʿAmmār was tortured in Mecca. Other reports elaborate on methods of torture (drowning, by fire, etc.). Some assert the role of the Prophet in the purported incident. Others assert that ʿAmmār's whole family was tortured. The last report discussed above involves the companion ʿUthmān b. ʿAffān. Further analysis of the report's transmission history indicates the high probability of the

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[676] See Ibn Isḥāq, *Sīra Ibn Isḥāq: al-musammāt bi-kitāb al-mubtadaʾ wa al-mabʿath wa al-maghāzī*, 172, report number 239. This is a publication of three recent manuscripts which contain copious quotations from a lost recension of Ibn Isḥāq's work of Prophetic biography (*sīra*). The two manuscripts from Qayrawān are recensions of the Kufan scholar Yūnus b. Bukayr (d. 199/815), while the Damascan manuscript is the recension of Razian scholar Muḥammad b. Salama (d. 191/807). The value of the work lies in the fact that it contains material that differs from the extant and enormously popular work of Ibn Hishām. On these points, see Ḥamīdullah's introduction, pages لب لج. However, it also contains some material that is not ultimately attributed to Ibn Isḥāq, indicating that at least one of the narrators of Ibn Isḥāq's material, Yūnus b. Bukayr (d. 199/815), added material of his own from other sources. Thus, what we are ultimately dealing with is, in some sense, really partly a product of this scholar's work.

[677] On the Banū Makhzūm, see Madelung, "EI$_2$.".

contrived nature of some of the contents of the report and provides clues about the motivations behind the construction, preservation and circulation of the ʿAmmār torture reports in early Islamic society. From the perspective of content, none of the reports seem to be responding to legal and moral concerns surrounding the problem of coerced apostasy. With that said, we have yet to examine the connection between the apostasy verse, or more specifically the coercion exemption clause of the apostasy verse, and ʿAmmār. It is to this that we now turn.

2 Reports which Simply Assert the Connection between ʿAmmār's Torture and Coerced Apostasy Verse (16:106)

A number of reports either explicitly link the coercion exemption clause to ʿAmmār, or allude to one of its distinctive phrases (*muṭmaʾinnun biʾl-imān*) in the course of recounting the events surrounding ʿAmmār's capture and torture. The vast majority of these reports seem to have originated and circulated in Kufa at the behest of a number of different scholars of varying theological persuasions. As we shall see, some of these reports are implicated in an on-going dispute between Zaydī Batrī and Imāmī Shīʿī factions on the correct stance to take against what both mutually recognized as an illegitimate ruling regime.

Two reports attributed alternatively to the Kufan authorities, Ghazwān (Abū Mālik) and al-Ḥakam b. ʿUtayba (d.113/732), simply assert that the coercion exemption clause was revealed about ʿAmmār.[678] Significantly, both al-Ḥakam and his immediate narrator Jābir are identified

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[678] For the al-Ḥakam report see Ibn Abī Shayba, *Muṣannaf*, 7:524, report number 14 and Ibn Sa'd, *al-Ṭabaqāt*, 3:250, who both cite the same exact *isnād*. Here is the chain of transmission:

Al-Ḥakam b. ʿUtayba (d. 113/732, Kufa) → Jābir b. Yazīd b. al-Ḥārith (d. 128/746, Kufa) → Isrāʾīl b. Yūnus (d. 160/777, Kufa) → Wakīʿ b. al-Jarrāḥ (d. 196/812, Kufa)

For a modern summary biography of al-Ḥakam and description of his doctrine, see Ess, *Theologie*, 1: 242-3, who classifies him as a Batrī Zaydī. Ibn Ḥajar ascribes Shīʿī inclinations to al-Ḥakam, though qualifies this by stating he did not used to manifest it, Ibn Ḥajar al-'Asqalānī, *Kitāb tahdhīb al-Tahdhīb*, 2:373, entry 756. Al-Ḥakam also makes appearences in the Imāmī ḥadīth criticism literature. Apparently he was known to have visited al-Bāqir's circle. See al-al-Najāshī, *Rijāl Najashī*, 360, entry 966 and 112, entry 1099. Ibn Dāwūd al-Ḥillī notes that he was a

in Sunnī *rijāl* sources, at the very least, as harboring sympathetic Shīʿī sentiments. On the other hand, Shīʿī sources note that either al-Ḥakam was a Sunnī jurist, and record accusations that he was a Murjiʾī, or that he was a Batrī Zaydī.[679]

Another Kufan report ultimately attributed to Ibn ʿAbbās goes beyond simply connecting the revelation of the verse to ʿAmmār. The report asserts that the polytheists captured ʿAmmār, tortured him, then released him. Thereafter, ʿAmmār returned to the Prophet and told him about

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Sunnī jurist and records the accusation that he may have been a Murjiʾī, *al-Ḥasan ibn ʻAlī Ibn Dāwūd al-Ḥillī, Kitāb al-Rijāl, ed. Muḥammad Ṣādiq Āl Baḥr al-ʻUlūm, (Najaf: al-Maṭbaʿa al-Ḥaydarīyya, 1972), 243, entry 163*. Al-Shahīd al-Thānī al-Ṭāwūsī, notes that he was a Batrī, *Ḥasan ibn Zayn al-Dīn Ṣāḥib al-Maʿālim and Aḥmad ibn Mūsā Ibn Ṭāwūs, al-Taḥrīr al-Ṭāwūsī: al-mustakhraj min kitāb Ḥall al-ishkāl lil-Sayyid Aḥmad ibn Mūsá al-Ṭāwūs,* ed. Fāḍil al-Jawāhirī, 1st ed., (Qom: Maktabat Āyat Allāh al-ʻUẓmʹa al-Marʿashī al-Najafī, 1411[2001]), 166-7, entry 28. Jābir b. Yazīd, for the most part has a poor reputation as a traditionist, and is held to be a believer in the theological doctrine of a special type of resurrection (*rajʿa*) in Sunnī works. On the doctrine of *rajʿa*, see *Encyclopedia of Islam, Second Edition*, art. 'Radjʿa' (Etan Kohlberg). See Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 2:41-4, entry 75 and Ibn Saʿd, *al-Ṭabaqāt*, 6:346. While al-Ḥakam, though acknowledged, got at most a warm reception in Shīʿī sources, Jābir b. Yazīd was acknowledged as one of their own, though even here there is some reservation. He is regarded as a transmitter of both al-Bāqir and Jaʿfar, and interestingly enough is noted to have written something on Qurʾānic exegesis and personal virtues/hagiography. See al-Najāshī, *Rijāl Najashī*, 128-30, entry 332. For a contemporary treatment of Jābir's scholarly activities and beliefs, see Modarressi Tabataba'i, *Tradition*, 86-103. Specifically, on the nature of Jābir's collection of scholarly material on both exegesis and virtuous qualities, he writes: "the main thrust of Jābir's commentary on the Qurʾān was to prove that every praise and laudatory comment found there was directed towards ʿAlī, his descendeants and their followers and that their enemies were the butt of all Qurʾānic condemnations", ibid., 97. Isrāʾīl has a good reputation amongst the Sunnī critics and seems simply to be acknowledged as a narrator of al-Jaʿfar, without further comments, with the Shīʿī critics. See Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 1:229-31, entry 496 and al-Maʿālim and Ibn Ṭāwūs, *al-Taḥrīr al-Ṭāwūsī*, 165, entry 1899.

For the Ghazwān report see Ibn Abī Shayba, *Muṣannaf*, 7:524, report number 12 and al-Ṭabarī, *Tafsīr al-Ṭabarī*, 14:375. Here is the chain of transmission:

Ghazwān, Abū Mālik (n.d., Kufa) → Ḥuṣayn b. ʿAbd al-Raḥmān (d. 136/754, Kufa) → Hushaym b. Bashīr (d. 183/799, Wāsiṭ)

Interestingly, Ibn Saʿd describes him as having an interest in exegesis but narrating few ḥadīth (*ṣāhib tafsīr wa qalīl ʾl-ḥadīth*). See Ibn Saʿd, *al-Ṭabaqāt*, 6:295. This fact is confirmed by a cursory examination of the *Muṣannaf* of Ibn Abī Shayba. See Ibn Abī Shayba, *Muṣannaf*, 3:115, 3:429, 3:55, 4:183, 4:571, 7:56, 8:304, 8:47. The most prominent transmitter of his exegetical remarks is the early Kufan exegete al-Suddī, Ibrāhīm b. ʿAbd al-Raḥmān (d. 127/745) and less so, Ḥuṣayn b. ʿAbd al-Raḥmān, as in the above chain. The Ṭabarī report has Hushaym narrating to one Yaʿqūb b. Ibrāhīm (d. 252/866, Baghdād).

[679] On the Batrīyya, see *Encyclopedia of Islam, Second Edition*, art. 'Batriyya or Butriyya' (Wilferd Madelung). See also idem., *Der Imam al-Qāsim ibn Ibrāhīm und die Glaubenslehre der Zaiditen*, (Berlin: de Gruyter, 1965), 49-51. The early Batrīs are described as committed to the idea of the supreme excellence of ʿAlī as candidate for the Imām as immediate successor to the Prophet, over and above the other three caliphs. However, unlike other Imāmīs, this did not mean the illegitimacy of the Imāmates of either Abū Bakr or ʿUmar.

what transpired in the encounter with the Quraysh. It was at this juncture that the coercion exemption clause and the threat of punishment at the end of the verse revealed.[680]" ʿAṭiyya b. Saʿd (d. 111/729), another Kufan Shīʿī who composed a title on exegesis, attributes this report to Ibn ʿAbbās (d. 67/687).[681]

That ʿAmmār would serve as an authority of some sort to Kufans of varying theological and political persuasions is not entirely surprising. ʿAmmār's role as a Kufan governor under the caliphate of ʿUmar and his loyalty to ʿAlī's side in the civil war made him appealing to a whole host of different communities. The memory of his partisanship for ʿAlī and his martyrdom at Ṣiffīn made him favorable to both the more ideologically doctrinaire but politically quietist proto-Imāmīs of the period and the ideologically pragmatic but politically activist Batrī Zaydīs. The fact that he served as a governor of Kufa under ʿUmar ***and*** fought for ʿAlī made him an appealing figure for a Murjiʾī project of political and theological integration and the Batrī Zaydī desire to temper and widen ʿAlid claims to political rule. The fact that he was a famous companion of the Prophet, a governor of Kufa, and a martyr in ʿAlī's cause against Muʿāwiya's Syrian army made him a good candidate for communities who would assert the relative merit of Kufa in Islamic religious culture. In these larger motivations we have an explanation for why a

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[680] al-Ṭabarī, *Tafsīr al-Ṭabarī*, 14:373-4.

[681] Here is the chain of transmission:

Ibn ʿAbbās (d. 67/687, Medina) → ʿAṭiyya b. Saʿd al-ʿAwfī (d. 111/729, Kufa) → al-Ḥasan b. ʿAṭiyya (d. 181/798, Kufa) → al-Ḥusayn b. al-Ḥasan b. ʿAṭiyya (d. 251/865, Baghdad) → Saʿd b. Muḥammad b. al-Ḥasan b. ʿAṭiyya (n.d., n.p.) → Muḥammad b. Saʿd b. Muḥammad b. al-Ḥasan b. ʿAṭiyya (d. 276/890, Baghdad)

This is not the *isnād* as Ṭabarī records it in his exegesis, who gives not personal names but the family relationships through which the information reached Ṭabarī's immediate informer. However, Ṭabarī uses this same *isnād* throughout his exegesis. I fill in the actual names of the transmitters in this chain based on Isaiah Goldfield's research. On ʿAṭiyya b. Saʿd as the composer of an exegesis, see Fuat Sezgin and Carl Brockelmann, *Geschichte des arabischen Schrifttums*, 13 vols., (Leiden: Brill, 1967), 1:30-1. See Isaiah Goldfeld, "The 'Tafsīr of Abdullah b. ʿAbbās'," *Der Islam* 58(1981): 131.

scholar such as al-Ḥakam would assert that a particular Qurʾānic verse was about ʿAmmār, specifically, and why it would be preserved and circulated by the likes of Jābir b. Yazīd, or in Kufa generally.

Like al-Ḥakam and Ghazwān, ʿAmmār's grandson, Abū ʿUbayda b. Muḥammad b. ʿAmmār similarly ascribes the revelation of the coercion exemption clause as related to ʿAmmār.[682] Though, unlike the ascriptions to al-Ḥakam and Ghazwān, Abū ʿUbayda also narrates, in a separate transmission, a detailed report surrounding the circumstances of ʿAmmār's capture and torture. Unlike the ʿAmmār reports examined thus far, this report is the most widely recorded, occurring in four different works with full chains of transmission. We shall encounter this report in more detail below.

Unlike the previous reports attributed to al-Ḥakam, Ghazwān, and Ibn ʿAbbās, whose main point was is to assert the connection between ʿAmmār and the coercion exemption clause, two reports found in the Imāmī source, *al-Kāfī*,[683] deploy the ʿAmmār incident and its connection to the coercion exemption clause in the context of a larger policy recommendation advocating precautionary dissimulation over more active resistance.[684] One of the reports originates with Jaʿfar al-Ṣādiq (d. 148/766), and the other Jaʿfar ultimately attributes to ʿAlī b. Abī Ṭālib. In the

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[682] See Ibn Sa'd, *al-Ṭabaqāt*, 3:249-50. Here is the chain of transmission, which will be analyzed in greater detail below:

Abū ʿUbayda b. Muḥammad b. ʿAmmār b. Yāsir (n.d., Medina) → ʿAbd al-Karīm al-Jazarī (d. 127/745, Medina/Jazīra) → ʿUbaydallah b. ʿAmr (d. 180/797, Syria) → ʿAbdullah b. Jaʿfar al-Raqqī (d. 220/835, Raqqa)

[683] For a useful general introduction to the *Kāfī*, and its author, al-Kulaynī, see Muhammad Ismail Marcinkowski, "Al-Kulainî and his early Twelver-Shîʿite ḥadîth-compendium al-Kâfî: selected aspects of the part al-Uṣul min al-Kâfî," *Islamic Culture* 74, no. 1 (2000). On the compiler of the Kāfī, al-Kulaynī, see *Encyclopedia of Islam, Second Edition*, art. 'al-Kulaynī (or al-Kulīnī), Abu Djaʿfar Muḥammad b. Yaʿḳūb b. Isḥāḳ al-Rāzī' (Wilferd Madelung).

[684] Significantly, Kulaynī classifies both of the ḥadīths under the chapter on precautionary dissimulation (*bāb al-taqiyya*).

first report, Jaʿfar, asks, rhetorically, "what prevented Maytham[685] from engaging in precautionary dissimulation (*taqiyya*), when he knew the following verse was revealed about ʿAmmār and ʿAmmār's companions: except one who is forced, while his heart is tranquil with faith.[686]" In the second report, Jaʿfar is asked about a speech of ʿAlī's, in which he commands the people: "O People! You will be asked to slander me, and do it. Then, you will be asked to dissociate from me, do not do it." To this Jaʿfar exclaims about how people lie about what ʿAlī said, and amends the text of the latter part of the speech to: "Then you will be asked to dissociate yourself from me, but I follow the religion of Muḥammad." A questioner then asks him, what he thought about choosing death over dissociation, in response to which Jaʿfar goes on to explicate as a general rule that one is neither obliged nor permitted to do anything but what ʿAmmār did (*dhālika ʿalay-hi wa mā la-hu illa mā maḍā ʿalay-hi ʿammār b. yāsir*). Jaʿfar then connects

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[685] The reference is to Maytham al-Tammār's (d. 60/580) martyrdom, a prominent companion of ʿAlī, who refused to dissociate himself from him or his cause on the pain of torture and death at the hands of ʿUbaydallāh b. Ziyād (d. 67/686), the governor of Kufa. Generally on Maytham, and specifically on his activity in transmission see Modarressi Tabataba'i, *Tradition*, 1:42-5.

[686] al-Kulaynī, *Kāfī*, 2:220, ḥadīth number 15. Here is the chain of transmission:

Jaʿfar al-Ṣādiq (d. 148/766, Medina) → Muḥammad b. Marwān (n.d., n.p.) → Jamīl [b. Darrāj] (d. late 2nd/8th century, Kufa) → [Muḥammad] Ibn Abī ʿUmayr (d. 217/832, Baghdad) → Abū ʿAlī b. Ibrāhīm, [Ibrāhīm b. Hishām] (n.d., Kufa/Qum) → ʿAlī b. Ibrāhīm (fl. ca. 307/920, Qum)

On ʿAlī b. Ibrāhīm see Amīn Turmus ʻĀmilī, *Thulāthīyāt al-Kulaynī wa-qurb al-isnād*, 1st ed., (Qom: Muʾassasat Dār al-Ḥadīth al-Thaqāfīyya, 1417[1996 or 1997]), 25 and 60-63. Al-ʿĀmilī describes ʿAlī as one of the Kulaynī's primary sources for the *Kāfī*. For ʿAlī's father, Ibrāhīm b. Hishām, see ibid., 64-8 and the sources cited therein. On Jamīl, see Modarressi Tabataba'i, *Tradition*, 307-8. The identification of the immediate narrator of Jaʿfar's statement, Muḥammad b. Marwān has been difficult to say the least. The modern Imāmī scholar al-Khūʾī, records no less than fourteen different Muḥammad b. Marwāns. Of these fourteen, three were identified by various scholars from within the Imāmī rijāl tradition as having been a transmitter of Jaʿfar's: Muḥammad b. Marwān b. ʿUthmān, who is simply identified as a Medinan; Muḥammad b. Marwān al-Dhuhlī, who is identified as Basran who died in 161/778; and Muḥammad b. Marwān al-Baṣrī, who is identified as Basran. It is possible that the two Basrans are in fact the same individual, as the rijal scholar identify both as having been of Kufan origin but of Basran domicile. For these see Abū al-Qāsim ibn ʻAlī Akbar Khūʾī, *Muʻjam rijāl al-ḥadīth*, 5th ed., 24 vols., (n.p.1413[1992]), 17:216-22. Also see, ʻAbd al-Ḥusayn Shabastarī, *al-Fāʾiq fī rūwāt wa-aṣḥāb al-Imām al-Ṣādiq*, 1st ed., 3 vols., (Qom: Muʾassasat al-Nashr al-Islāmī, 1418 [1997 or 1998]), 3:185-7, entry numbers 3133-35.

ʿAmmar's action to the revelation of the coercion exemption clause in the apostasy verse.[687] Here Jaʿfar uses ʿAmmar's act and its sanction by the coercion exemption clause as an argument for tempering the heroic impulses for martyrdom in the community and the inevitable state repression such acts invite and a general argument for a policy prudent dissimulation.

Jaʿfar's text is a complicated rejoinder to the contemporary Batrīs of his and his father's generation. A putative Batrī version of the text is preserved in a fourth century Sunnī source. We can infer that it is Batrī because of the role of Salama b. Kuhayl (d. 121/739) in its transmission history; he is explicitly identified as a Batrī by Imāmī *rijāl* sources.[688] Just as Jaʿfar claimed, the text circulated by Salama has ʿAlī declare:

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[687] al-Kulaynī, *Kāfī*, 2:219, ḥadīth number 10. Here is the chain of transmission:

Jaʿfar al-Ṣādiq (d. 148/766, Medina) → Masʿada b. Ṣadaqa (n.d., Basra) → Hārūn b. Muslim (fl. ca. 240/855, Samarrāʾ) → ʿAlī b. Ibrāhīm (fl. ca. 307/920, Qum)

Interestingly, the modern Imāmī scholar, al-ʿĀmilī, offers this *isnād* specifically as a paradigmatic example of a short, three-tiered chain of transmission, which occurs often in Kulaynī's *al-Kāfī*. See ʿĀmilī, *Thulāthīyāt al-Kulaynī wa-qurb al-isnād*, 33. On Masʿada see Modarressi Tabataba'i, *Tradition*, 319-22. On Harūn b. Muslim see ibid., 92-99, the sources cited therein and al-Khaṭīb al-Baghdādī, *Tārīkh*, 14:22 see also Modarressi Tabataba'i, *Tradition*, 322 on the relationship between Masʿada and Hārūn. Significantly the Imāmī *rijāl* tradition records doubts on the Shīʿī bona fides of both Masʿada and Hārūn. Al-Najashī states somewhat opaquely that Hārūn had a view on the issue of predestination (*jabr*) and anthropomorphism (*tashbīh*). The significance of this statement is not clear to me, though al-ʿĀmilī attempts to vindicate Hārūn of the implications of Najashī's statement. More significantly for our purposes, Masʿada is described specifically as a Batrī. For some of these ascriptions in the Imāmī *rijāl* tradition see ʿĀmilī, *Thulāthīyāt al-Kulaynī wa-qurb al-isnād*, 114-17 and the sources cited therein. For the earliest ascription see, Muḥammad ibn al-Ḥasan al-Ṭūsī, *Ikhtiyār ma'rifat al-rijāl, al-ma'rūf bi-Rijāl al-Kashshī*, ed. Mīr Dāmād al-Astarābādī and Mahdī al-Rajāʾī, 2 vols., (Qom: Muʾassasat Āl al-Bayt, 1404 [1983 or 1984]), 2:687-8. Al-Ṭūsī describes Masʿada b. Ṣadaqa as a Sunnī and counts him as a transmitter of al-Bāqir, see his *Rijāl Ṭūsī*, 146, entry number 1609. I cannot make sense of the Batrī ascription for Masʿada. From the perspective of the substance of the text, Jaʿfar's text is a rejoinder to a specifically Batrī rendition of ʿAlī's speech circulated by a known Batrī, Salama b. Kuhayl, a contemporary of al-Bāqir. The Batrī rendition fits with Zaydī activism against an illegitimate regime. Masʿada's text does not fit this aspect of the Zaydī political project, and in fact dilutes it. For al analysis of Masʿada's putative sectarian affiliation by looking at the substance of the texts in which he is a transmitter, see Modarressi Tabataba'i, *Tradition*, 320, who provides evidence for both Masʿada's Sunnī and Shīʿī predilections. For a vindication of both the charges of Batrism and Sunnism by a comparative analysis of the judgments of a number of Imāmī and Sunnī rijāl critics, see ʿĀmilī, *Thulāthīyāt al-Kulaynī wa-qurb al-isnād*, 124-30, who points out the categorization of Masʿada as Jaʿfar al-Ṣādiq's transmitter is inconsistent with Batrism as a phenomenon prevalent in al-Bāqir's time.

[688] See al-Ṭūsī, *Ikhtiyār ma'rifat al-rijāl, al-ma'rūf bi-Rijāl al-Kashshī*, 2:499-500. Al-Ṭūsī identifies the following as Batrīs by name: Sālim b. Abī Ḥafṣa, al-Ḥakam b. ʿUtayba, Salama b. Kuhayl, Abū al-Miqdām Thābit al-Ḥaddād, then proceeds to provide a definition of Batrism. See also, at another place, ibid., 2:504-5, where al-Kashshī

> Indeed when you will be offered the chance to slander me, slander me. If you are offered the chance to dissociate from me, *do not dissociate from me*, because I follow Islam (*fa-innī ʿalā ʾl-islām*). Let any one of you extend his neck and have his mother grieve for him. For indeed he does not have this world, nor is there an afterlife after Islam. Then he, [ʿAlī] recited, 'except for one coerced while his heart is at peace with faith.'[689]

Here the practical import in the difference between the two texts seem to be whether dissociation from ʿAlī is a *duty* when one's life is on the line, as implied by Jaʿfar's statement, or merely a *dispensation*, as implied by the Batrī text. Both cite the coercion exemption clause. Interestingly, Jaʿfar cites the specific example of ʿAmmār as proof regarding what is to be done when one's life is on the line. I think the choice of ʿAmmār is purposeful because he may have been regarded by the Batrīs as especially authoritative owing to his reputation as a fierce partisan of ʿAlī and his participation in ʿUmar's government. He exemplified, in a sense, the Batrī political conviction that loyalty to ʿAlī does not necessarily imply condemnation of the first two caliphs. Jaʿfar's rejoinder to the Batrī text works on a couple of different levels. It both denies the particular wording of the Batrī text, and specifically asserts both the apostasy verse and its

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transmits an seemingly apocryphal account of some Batrīs dispute with al-Bāqir and the origin of the their name. Cite to Van Ess on Salama. Van Ess classifies Salama as a Kufan Batrī colleague of al-Ḥakam b. ʿUtayba, see his Ess, *Theologie*, 1:243-4.

[689] See al-Ḥākim al-Ḥākim al-Nīsābūrī, *al-Mustadrak*, 2:358. Here is the chain of transmission:

Abū Ṣādiq, ʿAbdullah b. Nājid (n.d., Kufa) → Salama b. Kuhayl (d. 121/739, Kufa) → Sufyān al-Thawrī (d. 161/778, Kufa) → Ibrāhīm b. Muḥammad b. al-Ḥārith b. Asmāʾ (d. 185/801, Syria) → Muʿāwiya b. ʿAmr b. al-Muhallab (d. 214/830, Syria) → Muḥammad b. Aḥmad b. al-Naḍr al-Azdī (d. 291/904, Baghdad) → Abū Bakr b. Isḥāq

A similar text, without isnād, is cited in the Imāmī source, Muḥammad ibn al-Ḥusayn al-Sharīf al-Raḍī, *Nahj al-balāghah*, ed. Muḥammad ʿAbduh, 4 vols., (Qom: Dār al-Dhakhāʾir, 1412), 1:105-6. The last part of the speech recorded in this source accords with a portion of the speech in recorded in the al-Ḥākim al-Nīsābūrī, *al-Mustadrak*, 2:358. Significantly, here, ʿAlī is quoted as actually saying what Jaʿfar belies – he permits his followers to curse (sabb) him, but forbids them from dissociating (barāʾā) from him. Kohlberg explains the distinction between ʿAlī's commands as resulting from the fact that "dissociation from the Qurʾān is applied only to polytheists, and that dissociation from ʿAlī is therefore tantamount to declaring him a polytheist." Kohlberg himself is relying on later Imāmī scholars for this explanation. Generally, on this discussion see Etan Kohlberg, "Barā'a in Shīʿī doctrine," Jerusalem Studies in Arabic and Islam 7(1986): 154-6.

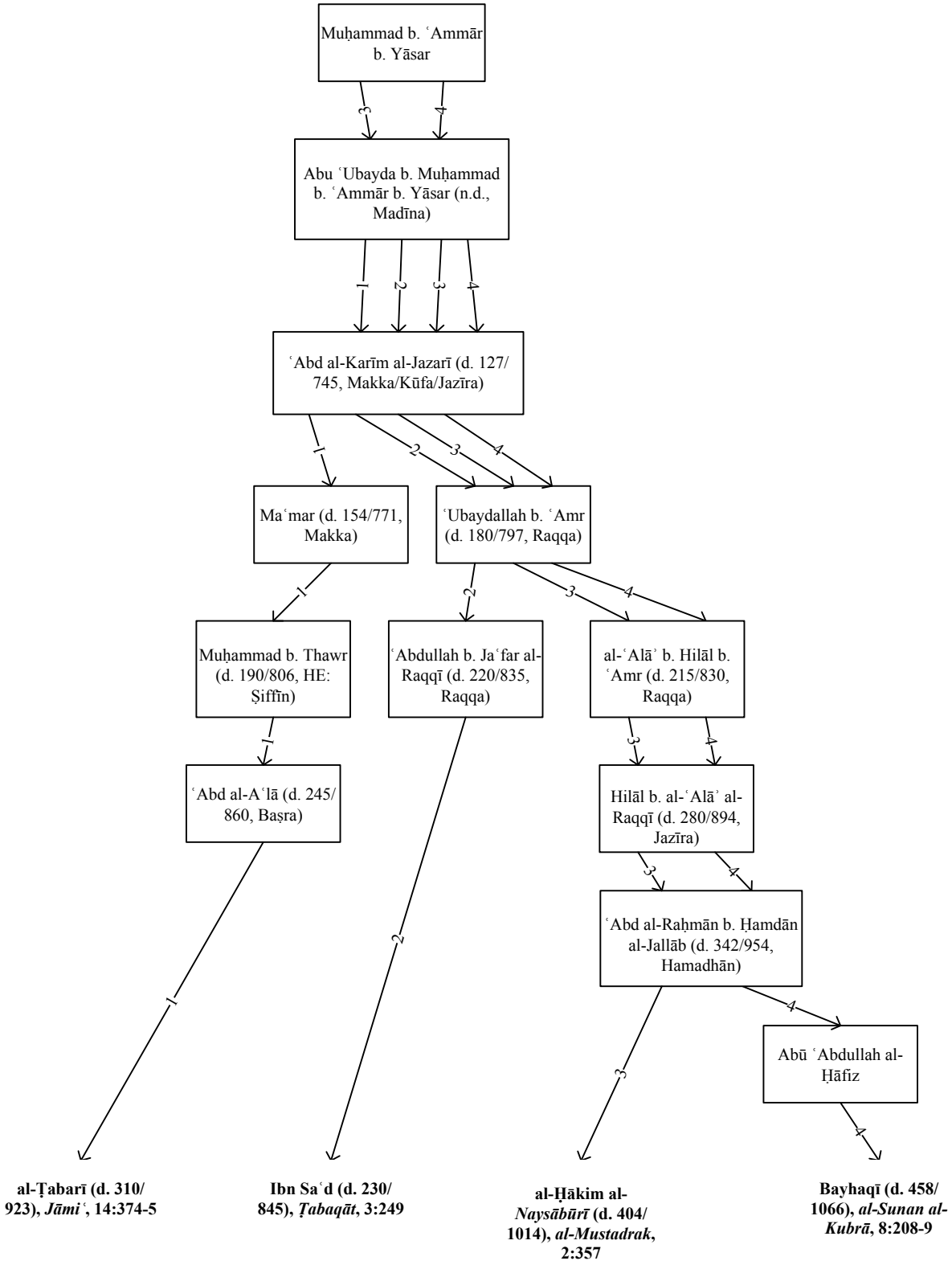
connection to an internal Batrī authority to argue against an activist resistance to dissociation, and for a duty of dissimulation. While Batrīs see the history of ʿAmmār's political affiliations as a cultural resource, the Imāmīs of Muḥammad al-Bāqir's and Jaʿfar al-Ṣādiq's generation see his capitulation under Qurashi persecution, and its Qurʾānic endorsement as a resource for their own politics of passive resistance.

The existence of the Abū ʿUbayda reports, which I will show is most likely to have originated and circulated in Medina, along with the lack any recognizable defect in its transmission history, makes a definitive claim of Kufan origin for the connection between ʿAmmār and the coercion exemption clause difficult. It could be the case that Abū ʿUbayda got the idea of connecting the coercion exemption clause to ʿAmmār's torture from the Kufans, or vice versa. I see no definitive way to settle the issue of which way the transmission went. Yet, we still have a good case about why the connection between ʿAmmār and the verse would to matter to Kufans much more than it would to the other cultural centers of the empire. The very fact that multiple individuals either explicitly assert, or assume the connection, preserve and circulate the report, and argue on its basis indicates at least this much. We have seen why this would be the case specifically in Kufa.

3 Torture Reports with Allusion to Coerced Apostasy Verse (16:106)

Abū ʿUbayda's account for the specific circumstances surrounding ʿAmmār's capture and torture, and the allusion to the coercion exemption clause was one of the most popular in later classical exegetical and legal literature. Because of its later fame, I shall engage in a much more detailed analysis of this report. The Abū ʿUbayda account is ultimately recorded with the entire transmission history in four different sources. Below you will find the transmission histories of the four accounts depicted schematically.

Figure 1: Transmission history of ʿAbū ʿUbayda's account of ʿAmmār's Torture



3.1 Abū ʿUbayda Reports

Here is the text of one of these accounts. Let us call this the summary account:

> The polytheists captured ʿAmmār b. Yāsir and then tortured him to the point that he capitulated to some of what they wanted from him. He then complained to the Prophet about it. The Prophet asked: 'how did you find your heart?' ʿAmmār replied: 'tranquil with faith'. The Prophet said: 'if they return, then repeat [what you said]!'[690]

Here is the text of another account. Let us call this the extended account:

> The polytheists captured ʿAmmār b. Yāsir and did not let him go until he reviled the Prophet and mentioned something good about their gods. Then, they let him go. When he came to the Prophet, the Prophet asked him: what do you have to tell me?[691] ʿAmmār replied: Evil!, O messenger of God, I was not freed until I reviled you and mentioned something good about their gods. The Prophet asked: how did you find your heart? ʿAmmār replied: 'tranquil with faith,' to which the Prophet said: 'if they do it again, then do again [what you said]!'[692]

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[690] For this account, see al-Ṭabarī al-Ṭabarī, *Tafsīr al-Ṭabarī*, 14:374-5. Here is the chain of transmission for the report:

Al-Ṭabarī: Abu ʿUbayda b. Muḥammad b. ʿAmmār b. Yāsir (n.d., Medina) → ʿAbd al-Karīm al-Jazarī (d. 127/745, Mecca/Kufa/Jazīra) → Maʿmar (d. 154/771, Mecca) → Muḥammad b. Thawr (d. ca. 190/806, Yemen/Basra) → ʿAbd al-Aʿlā (d. 245/860, Basra)

[691] My loose translation of the phrase '*mā warāʾuka*, which would literally mean 'what is behind or in front of you?' is based on its metaphorical usage which classical scholars of literature have identified as first being uttered in this form by the Arab King al-Ḥārith b. ʿAmr and the poet al-Nābigha al-Dhubyānī, see Aḥmad ibn Muḥammad Maydānī, *Majmaʿ al-amthāl*, ed. Naʿim Ḥusayn Zarzūr, 2 vols., (Beirut: Dār al-Kutub al-'Ilmīyya, 1988), 2:262-4.

[692] The earliest extant source for this report is Ibn Saʿd, *al-Ṭabaqāt*, 3:249. This report is reproduced in identical fashion in Bayhaqī, *al-Sunan al-kubrā*, 8:208-9, under the chapter on coerced apostasy and in al-Ḥākim al-Nīsābūrī, *al-Mustadrak*, 2:357. Al-Ṭabarī's version of the tradition summarizes the main elements of Ibn Saʿd's report adding that the polytheists tortured ʿAmmār. Here are the respective chains for three of the accounts:

***Ibn Saʿd*:** Abu ʿUbayda b. Muḥammad b. ʿAmmār b. Yāsir (n.d., Medina) → ʿAbd al-Karīm al-Jazarī (d. 127/745, Mecca/Kufa/Jazīra) → ʿUbaydallah b. ʿAmr (d. 180/797, Raqqa) → ʿAbdullah b. Jaʿfar al-Raqqī (d. 220/835, Raqqa)

1. ***Bayhaqī*:** Muḥammad b. ʿAmmār b. Yāsir → Abu ʿUbayda b. Muḥammad b. ʿAmmār b. Yāsir (n.d., Medina) → ʿAbd al-Karīm al-Jazarī (d. 127/745, Mecca/Kufa/Jazīra) → ʿUbaydallah b. ʿAmr (d. 180/797, Raqqa) → al-ʿAlāʾ b. Hilāl b. ʿAmr (b. 150/767—d. 215/830, Raqqa) → Hilāl b. al-ʿAlāʾ al-Raqqī (d. 280/894, Jazīra) → ʿAbd al-Raḥmān b. Ḥamdān al-Jallāb (d. 342/954, Hamadhān) → Abū ʿAbdullah al-Ḥāfiz

Neither the summary nor the extended accounts explicitly relate the event of ʿAmmār's capture to the revelation of the coercion exemption clause. But two factors encourage connecting the two. First, the texts of both accounts use the distinctive Qurʾānic phrase found in the coercion exemption clause, "at peace with faith." Second, as noted above, a report with the exact same transmission history indicated in chain 2 of figure 1 above explicitly connects the clause to ʿAmmār, though without providing an account of what specifically happened to him.

As can be seen there are substantial content variations between the two reports. However, both reports share the main elements of the narrative – capture, torture, capitulation, verbal exchange with the Prophet with allusion to the verse ("at peace with faith") and the Prophet's recommendation to repeat what he said if the polytheists come for him again. The second account is a dramatic expansion of the first in two ways: it specifically mentions what the polytheists wanted from ʿAmmār – that he slander the Prophet and praise their gods and it quotes the conversation between the Prophet and ʿAmmār at the beginning of the encounter – the Prophet is quoted as asking "What do you have to tell me?" and ʿAmmār describes the specific demands that he capitulated to. The variations in the two accounts also track variations in the chains of transmission.

The three extended accounts are all narrated from ʿAbd al-Karīm al-Jazarī to ʿUbaydallah b. ʿAmr (see Figure 1, chains 2-4), while the summary account is narrated by ʿAbd al-Karīm al-Jazarī to Maʿmar b. Rāshid (see Figure 1, chain 1). The fact that the difference in the substance of the extended and summary accounts correlates with difference in who ʿAbd al-Karīm

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2. ***Al-Ḥākim al-Naysābūrī***: Muḥammad b. ʿAmmār b. Yāsir → Abu ʿUbayda b. Muḥammad b. ʿAmmār b. Yāsir (n.d., Medina) → ʿAbd al-Karīm al-Jazarī (d. 127/745, Mecca/Kufa/Jazīra) → ʿUbaydallah b. ʿAmr (d. 180, Syria) → al-ʿAlāʾ b. Hilāl b. ʿAmr (b. 150/767—d. 215/830, Raqqa) → Hilāl b. al-ʿAlāʾ al-Raqqī (d. 280/894, Jazīra) → ʿAbd al-Raḥmān b. Ḥamdān al-Jallāb (d. 342/954, Hamadhān)

transmits *to* (ʿUbaydallah b. ʿAmr vs. Maʿmar b. Rāshid) strongly supports dating at least these texts to ʿAbd al-Karīm's lifetime in the late first and early second century. This gives us a good *terminus ante quem*. But which text, if identifiable, was ʿAbd al-Karīm most likely transmitting? We have two possible answers for why the discrepancy between the two texts could exist. Either they are evidence of ʿAbd al-Karīm transmitting the text differently on two different occasions. Or one of the texts is a better representation of what ʿAbd al-Karīm transmitted, while the other is the result of interpolations or summation introduced by later transmitters. It should be noted that the formula denoting the mode of transmission between ʿAbd al-Karīm and his respective narrators, Maʿmar and ʿUbaydallah, is the ambiguous "ʿ*an*", excluding the possibility of verbatim oral transmission of the text.

There are a couple of factors in favor of conferring Maʿmar's text with the more authentic status. First, it is more likely that Maʿmar actually heard the text directly from ʿAbd al-Karīm, owing to a presumed closeness in age between ʿAbd al-Karīm and Maʿmar as opposed to ʿAbd al-Karīm and ʿUbaydallah. ʿAbd al-Karīm died in 127/745 and Maʿmar died in 154/771. Compare this to the difference in death dates between ʿAbd al-Karīm and ʿUbaydallah, who died in 180/797. While actual transmission between ʿAbd al-Karīm and ʿUbaydallah is plausible, it is not likely. It is probable that ʿUbaydallah is transmitting ʿAbd al-Karīm's ḥadīths through some other party in a Jazīran transmission context. The second factor is a disputable hermeneutical principle which states that, all things being equal, an extended account is an expansion of a summary account. This is based on the rebuttable intuition that stories grow in detail and drama as time moves forward. If we are to date a text to ʿAbd al-Karīm's time, Maʿmar's is the more likely candidate. But, can we go any earlier? Do we have good reason to date the text to either

ʿAbū ʿUbayda's lifetime (Figure 1, chains 1 and 2), or better yet, his father's, Muḥammad b. ʿAmmār (Figure 1, chains 3 and 4)?

Two of the chains of transmission of the extended account purport to originate from ʿAmmār's grandson, Abū ʿUbayda (Figure 1, chains 1 and 2), while the other two indicate that Abū ʿUbayda received his information from his father, ʿAmmār's son, Muḥammad b. ʿAmmār (Figure 1, chains 3 and 4). It is likely that the two chains that indicate origination from Muḥammad b. ʿAmmār may in fact be an instance of correcting a perceived instance of *irsāl*[693] (omission of a source narrator by later transmitters in the chain). Later narrators, perhaps inferring that Abū ʿUbayda must have gotten this information about his grandfather from his father, and thus added Muḥammad b. ʿAmmār as the originator of the report. The fact that this occurred relatively late in the chain of transmission, can be inferred from the fact that ʿAbd al-Karīm narrates the report to two individuals – ʿUbaydallah and Maʿmar both of whom occur in chains which originate with Abū ʿUbayda (Figure 1, chains 1 and 2). Thus we can reliably assume that the back-extension of the *isnād* was not done by any of these individuals. The correction of a perceived instance of *irsāl* must have been committed by someone after ʿUbaydallah. We can rule out ʿAbdullah b. Jaʿfar (Figure 1, chain 2), who transmits from ʿUbaydallah, but cites Abū ʿUbayda as the originator of the report. This leaves us with individuals after ʿUbaydallah in chains 3 and 4. To pursue which of these individuals may have been the culprit would take us far from our purpose,[694] which is merely to show that the

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[693] *Irsāl* refers to the practice of omitting a source transmitter. With respect to Prophetic ḥadīth it refers to the common phenomenon of a successor omitting the source companion and purportedly transmitting a saying of the Prophet directly.

[694] Looking at the assements of the *rijāl* critics, our most likely candidate is al-ʿAlāʾ b. Hilāl. He gets the lowest marks of our candidate *irsāl* correctors. Ibn Ḥibbān accuses him of switching and changing the names of transmitters and declares that in no case can his ḥadīth be used as a proof, *Muḥammad Ibn Ḥibbān, Kitāb al-majrūḥīn min al-muḥaddithīn wa-al-ḍuʿafāʾ wa-al-matrūkīn, ed. Maḥmūd Ibrāhīm Zāyid, 3 vols., (Mecca: Dār al-*

attribution to Muḥammad b. ʿAmmār occurred late in the game, and can thus be dismissed as the real historical originator of the report. The report cannot be reliably dated to before the time of Abū ʿUbayda. Now we shall see what can be said about attributing it to Abū ʿUbayda or at least dating it to his time period.

As the chains of transmission indicate, all of the reports have one transmission link in common, namely the connection between Abū ʿUbayda and ʿAbd al-Karīm. Unlike ʿAbd al-Karīm's transmission to Maʿmar and ʿUbaydallah, where we were able to correlate content variation with variation in transmission, we cannot perform the same test here. We are then forced to rely on two sources of information for the purposes of attempting to get a more specific date for the report: the assessments of the *rijāl* critics on Abū ʿUbayda and ʿAbd al-Karīm, and the general features of their transmission activity as gleaned from both the content of *what* they transmit and *from whom* and *to whom* they transmit.

We do not have much information about Abū ʿUbayda himself and in fact the early *rijāl* critics record some disagreement about whether or not Abū ʿUbayda and Salama b. Muḥammad b. ʿAmmār b. Yāsir, both putatively ʿAmmār's grandsons are actually the same person.[695] The

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Bāz li al-Nashr wa al-Tawzīʿ), 2:184-5. Admittedly though, *irsāl* correction seems more like the work of an expert ḥadīth scholar seeking to complete isnāds rather than the work of a careless scholar prone to mix up names. Regardless, see also the ḥadīth critics cited by Ibn Ḥajar, who all give him low marks. Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 8:182-3, entry number 351.

[695] Al-Rāzī reports that his father thought that Abū ʿUbayda was not named as such, meaning he either did not have a name other than his patronymic (*kunya*) or it was not known. Moreover, al-Rāzī reports his father's view that his ḥadīth are to be rejected. See Ibn Ḥibban, *Kitāb al-jarḥ wa-al-taʿdīl*, 9:405, entry 1944. Bukhārī, however seems to regard Abū ʿUbayda and Salama to be two distinct people and even cites an eyewitness report implying that. He also records two separate entries for the individuals. For Salama, along with citation of the eye-witness report, see al-Bukhārī, *al-Taʾrīkh*, 4:77, entry 2011. For the entry on Abū ʿUbayda, see Bukhārī, *al-Taʾrīkh al-kabīr*, 52, entry 449. To add to the confusion, in yet another place al-Rāzī, on the authority of his father, reports that Abū ʿUbayda was actually ʿAmmār's son, not grandson. See ʿAbd al-Raḥmān ibn Muḥammad Ibn Abī Ḥātim, *Kitāb bayān khaṭaʾ Muḥammad b. Ismāʿīl al-Bukhārī fī Tārīkhuh*, (Diyar Bakir (Turkey): Maktaba Islāmiyya, n.d.), 156-7, entry 735. The later ḥadīth critics echo the confusion regarding the identity and ambivalence toward whether his ḥadīth are reliable. Mizzī and Ibn Ḥajar, perhaps relying on al-Rāzī's statement, report the possibility that Salama and Abū ʿUbayda may be the same person, though Mizzī prefers the two-person view based on Bukhārī's report. See Yūsuf

fact that there are a substantial number of ḥadīth that are transmitted through Abū ʿUbayda through a variety of transmitters though, to my mind, considerably mitigates this doubt. Significantly, the rijāl critics do not explicitly record or allude by way of *niṣba* to the place of Abū ʿUbayda's residence. We can infer that he must have been a Medinan, at least with respect to his transmission activity, through looking at who he narrated to and from. The narrators are predominantly Medinan.[696] Moreover the relative differences in death dates of the individuals he transmits *from* as opposed *to* those he transmits *to* seem reasonable, thereby increasing the plausibility of his transmission activity. The fact that both Abū ʿUbayda's sources and his transmitters were predominantly Medinan also seems to strengthen the plausibility of his transmission activity. We can also infer the relative date of his transmission activity as occurring in the first quarter of the second/eighth century (ca. 100-125/719-743). Interestingly, though Abū ʿUbayda is ʿAmmār's grandson, all of the reports he transmits as found in the some of the

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ibn al-Zakī ʿAbd al-Raḥmān al-Mizzī, *Tahdhīb al-Kamāl fī asmāʾ al-rijāl*, ed. Bashshār ʿAwwād Maʿrūf, 1st ed., 35 vols., (Beirut: Muʾassasat al-Risāla, 1980-1992), 34:61-3, entry 4-7498 and Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 12:144, entry 4-8568. The early *rijāl* critics probably also have in mind the paucity of material transmitted through Salama. He is found in only one ḥadīth about ten etiquette practices which the Prophet proclaims is part of a human being's nature (*fiṭra*). See Abū Dāʾūd Sulaymān ibn al-Ashʿath al-Sijistānī, "Sunan Abī Dāwūd," in *Hadith Encyclopedia*. (Riyad: Harf Information Technology, 2003), Ibn Mājah, "Sunan Ibn Mājah," CD ROM, ḥadīth #290, and Ibn Ḥanbal, "Musnad Aḥmad b. Ḥanbal," CD ROM, ḥadīth #17606 for the ḥadīth. He is said to have transmitted it from his father, ʿAmmār. That ʿAmmār's family may not have been well-known is also confirmed by the fact that Ibn Isḥāq, himself narrates one account of the torture of ʿAmmār's family from an unidentified male member of his family. For this see, Muḥammad Ibn Isḥāq, *Sīra Ibn Isḥāq*, ed. Muḥammad Ḥamīdullah, 5 vols., (Rabāṭ: Maʿhad al-Dirāsāt wa al-Abḥāth li al-Taʿrīb, n.d.), ??:172, report number 239. It is possible that the unidentified member in this report is actually Abū ʿUbayda. Interestingly, this report differs from a similar report in Ibn Hishām's recension of Ibn Isḥāq's *sira*. Most important from our perspective is the fact that the former provides the source which Ibn Isḥāq relied upon, an unknown man from the family of ʿAmmār. Ibn Hishām merely cites Ibn Isḥāq, omitting his mention of his source. For the Ibn Hishām version of this same report, see ibid., 1:403-4, report number 311.

[696] He transmits from the following five people: Jābir b. ʿAbdullah (d. 78/698, Medina), al-Rubayyiʿ bt. Muʿādh b. ʿAfrāʾ (n.d., Medina), Ṭalḥa b. ʿAbdullah b. ʿAwf (d. 97/716, Medina), Miqsam b. Bajra [the mawlā of ʿAbdullāh b. Ḥārith] (d. 101/720, Mecca), and al-Walīd b. Abī al-Walīd (n.d., Medina). He transmits to the following four people: Usāma b. Zayd (d. 153/770, Medina), Saʿd b. Ibrāhīm b. ʿAbd al-Raḥmān b. ʿAwf (d. 125/743, Medina), ʿAbd al-Raḥmān b. Isḥāq b. ʿAbdullah (n.d., Basra), and Muḥammad b. Isḥāq b. Yasār (d. 150/767, Medina/Baghdād).

standard Sunnī collections of the late third and fourth centuries are about personalities and issues that don't seem to have a direct connection to ʿAmmār's biography.[697] In fact in one case, Abū ʿUbayda transmits information about ʿAmmār not directly, or even from his father, but through a third party.[698] Thus it is possible that Abū ʿUbayda may merely have been reporting a tradition about ʿAmmār that he received through other unnamed sources. In other words, the fact that he was ʿAmmār's grandson did not necessarily grant him insider access to information about ʿAmmār. On the whole, how does this information help assess the probability of transmission between Abū ʿUbayda and ʿAbd al-Karīm? Dating Abū ʿUbayda's transmission activity to the first quarter of the second/eighth century and locating it in Medina implies at the very least the plausibility of contact with ʿAbd al-Karīm. Given the plausibility of Abū ʿUbayda's contact with ʿAbd al-Karīm, what can then be known about ʿAbd al-Karīm?

In general, ʿAbd al-Karīm gets high marks from the *rijāl* critics.[699] Many of ʿAbd al-Karīm's primary sources are prominent Meccans from the turn of the first century, such as ʿAṭāʾ

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[697] Doing a narrator search in the software program *Mawsūʿat al-ḥadīth al-sharīf* on Abū ʿUbayda yields 13 total ḥadīths, which can grouped into five different groups. Briefly they are about a range of issues, with no unifying thematic, sectarian, or political concern. The ḥadīths are about the following topics: the validity of the practice of wiping one's leather socks (*masḥ ʿalā ʾl-khuffayn*) and turban (*ʿamāma*) (Muḥammad ibn ʻĪsā al-Tirmidhī, "Jāmiʻ al-ṣaḥīḥ," in *Hadith Encyclopedia.* (Riyad: Harf Information Technology, 2003)); the fact that one who dies defending his religion, property, self, or family, dies as a martyr (Aḥmad ibn Shuʻayb al-Nasāʾī, "Sunan al-Nasāʾī," in *Hadith Encyclopedia.* (Riyad: Harf Information Technology, 2003); al-Sijistānī, "Sunan Abī Dāwūd," CD ROM, ḥadīth #4142; Ibn Ḥanbal, "Musnad Aḥmad b. Ḥanbal," CD ROM, ḥadīth #1565); a report about the workings of a *muzāraʿa* contract (al-Nasāʾī, "Sunan al-Nasāʾī," CD ROM, ḥadīth #3466; al-Sijistānī, "Sunan Abī Dāwūd," CD ROM, ḥadīth #2942 and 452, Ibn Ḥanbal, "Musnad Aḥmad b. Ḥanbal," CD ROM, ḥadīth #20606 and #41); an apocryphal report about the Khawārij who will go deep into the religion to the point of leaving it (ibid., CD ROM, ḥadīth #6741); and a physical description of the Prophet al-Dārimī, "Sunan al-Dārimī," CD ROM, ḥadīth #60.

[698] See the report about information conveyed about the circumstances surrounding the Prophet's marriage to Khadīja in Bayhaqī, *al-Sunan al-kubrā*, 7:129. In this tradition Abū ʿUbayda gets information about ʿAmmār's tradition regarding the circumstances of the Prophet's marriage to Khadīja, from the Medinan Muqsim, the *mawlā* of ʿAbdullah b. al-Ḥārith, who transmits from ʿAbdullah, who in turn transmits from ʿAmmār.

[699] See Bukhārī, *al-Taʾrīkh al-kabīr*, 6:88, entry number 1794, where he quotes the famous ḥadīth scholar Sufyān b. ʿUyayna remarking that he had never seen anyone like ʿAbd al-Karīm. Al-ʿIrāqī praises the precision of his transmission practice, saying that he only transmitted by saying "I heard" or "I asked". While this is an exaggeration, as an analysis of how he's quoted in the chains of transmissions of actual ḥadīths has him narrate often

b. Abī Rabāḥ, Mujāhid b. Jabr, and ʿIkrima, whereas who he transmitted to are both Meccan and Kufan, such as Maʿmar b. Rāshid, Ibn Jurayj, Sufyān al-Thawrī, and Isrāʾīl b. Yūnus.[700] Ultimately, ʿAbd al-Karīm seems to have settled somewhere in the Jazīra (northern ʿIraq/Syria), thus his *nisba*. Anecdotal evidence about ʿAbd al-Karīm's transmission activity in Kufa found in biographical sources corroborates information gleaned from the presence of Kufan scholars in his chains of transmission. The fact that Abū ʿUbayda transmitted mostly to and from Medinans while ʿAbd al-Karīm transmitted mainly to and from Meccans or Kufans though is not problematic in assessing the plausibility of the transmission between the two individuals. Mecca, because of its status as the pilgrimage center in the empire was the meeting ground for scholars from all of the other regions, and the location of much inter-regional transmission activity. Many of the ḥadīth recorded through ʿAbd al-Karīm are of strictly legal import, ranging from Prophetic reports about proper ḥajj practices,[701] to the legality of certain types of drinks,[702] to rules about sexual intercourse,[703] and Prophetic comment on different types of commercial practices.[704] Outside of Prophetic ḥadīth ʿAbd al-Karīm transmits the opinions of early Meccan

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using the transmission formula of "*ʿan*", al-ʿIrāqī's assertion can be construed as making a relative judgment on the precision of ʿAbd al-Karīm's transmission activity. See Ibn Ḥibban, *Kitāb al-jarḥ wa-al-taʿdīl*, 6:58-9, entry number 310, who quotes Aḥmad b. Ḥanbal, Yaḥyā b. Maʿīn, and al-Rāzī's father as declaring ʿAbd al-Karīm, sound (*thiqa*). For more judgments by the rijāl critics, see Ibn Ḥajar al-ʻAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 6:333-4, entry number 717.

[700] See ibid., 6:333-4, entry number 717, for a list of narrators.

[701] Assuming the transmission ascriptions to ʿAbd al-Karīm to be true, of course, he seems to have taken an interesting in collecting and transmitting material about ḥajj ritual. See for instance the following ḥadīths Muḥammad ibn Ismāʻīl Bukhārī, "Ṣaḥīḥ al-Bukhārī," in *Hadith Encyclopedia.* (Riyad: Harf Information Technology, 2003); Muslim ibn al-Ḥajjāj, "Ṣaḥīḥ Muslim," *in Hadith Encyclopedia.* (Riyad: Harf Information Technology, 2003); al-Tirmidhī, "Jāmiʻ al-ṣaḥīḥ," CD ROM, ḥadīth # 876, al-Nasāʾī, "Sunan al-Nasāʾī," CD ROM, ḥadīth #2802, 927, 3032.

[702] See Muḥammad ibn ʻĪsā al-Tirmidhī, "Jāmiʻ al-ṣaḥīḥ," ibid.

[703] See ibid., CD ROM, ḥadīth #127 and al-Sijistānī, "Sunan Abī Dāwūd," CD ROM, ḥadīth #231.

[704] See Aḥmad ibn Shuʻayb al-Nasāʾī, "Sunan al-Nasāʾī," ibid.

juristic authorities like ʿAṭāʾ and Ṭāwūs to Meccan scholars like Maʿmar and Ibn Jurayj.[705] Unlike the case with the narrators of the Kufan report connecting the coercion exemption clause to ʿAmmār, no overt political or sectarian motivation is detectable either internally in Abū ʿUbayda's ʿAmmār report, or in the ḥadīth corpuses of Abū ʿUbayda and ʿAbd al-Karīm, or in the information preserved about the two individuals in biographical and *rijāl* sources.[706] What can this analysis tell us about dating the report to Abū ʿUbayda?

There are good reasons both for and against dating the tradition to Abū ʿUbayda's lifetime. Let's start with the reasons for regarding the report as originating in Abū ʿUbayda's lifetime. First, we have found no good reason to doubt the attribution made to him in the chains of transmission. Second, an analysis of the ḥadīths and historical reports in which he is found as a transmitter has manifested a fairly plausible profile for a historical narrator. The chains of transmissions we have reflect that a diverse number of people narrate both from him and to him. Yet, despite this diversity, they all hail from the same region, the Ḥijāz, and in fact the vast majority comes from the same city –Medina. An analysis of the various death dates given for those from whom he purportedly narrated from and to also strengthens the plausibility of the profile. The relative differences between the death dates of his sources and who he transmits to are reasonable.

The reasons against attributing are three fold. The weakest reason is the suspicion cast by some of the *rijāl* critics on both Abū ʿUbayda's identity and the acceptability of his narrations. I

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[705] ʿAbd al-Karīm al-Jazarī is a prominent transmitter in ʿAbd al-Razzāq's *Muṣannaf*. On this, and ʿAbd al-Karīm's biography and narrator profile, see Motzki, *Origins*, 226-331.

[706] This is my own impression after glancing through the corpus of ḥadīths transmitted through him. Interestingly, Sufyān al-Thawrī is quoted as approvingly saying that none of the following scholars was a theologian (*mutakallim*) amongst them: ʿAbd al-Karīm, Ayyūb, and ʿAmr b. Dīnār. See Ibn Ḥajar al-ʿAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 6:333-4, entry number 717.

think this is a weak reason because of the plausibility of his narrator profile that I outlined above. The second reason is partly independent of the purported chains of transmission and relates to the relationship between the various reports connecting ʿAmmār's torture and to the coercion exemption clause. Briefly, what is the nature of the relationship, if any, between summary reports that merely assert that the coercion exemption clause was revealed about ʿAmmār, and those that assert in dramatic detail what exactly happened to him? It is tempting to see the dramatic reports as imaginative expansions of the summary report, and thus chronologically later. We examined this earlier in the question of which text – Maʿmar's or ʿUbaydallah's is most likely to be dateable to ʿAbd al-Karīm's lifetime. Could the Maʿmar recension of Abd al-Karīm's account similarly be seen as an expansion of the simple connection made between ʿAmmār and the coercion exemption clause attributed to the prominent Kufan scholars Ghazwān (Abū Mālik) and al-Ḥakam b. ʿUtayba? If we answer this affirmatively, then a Kufan context, and thus a dating to ʿAbd al-Karīm's lifetime, as opposed to Abū ʿUbayda's makes more sense.

In contrast with the Abū ʿUbayda's Medinan transmission context, there is evidence of ʿAbd al-Karīm's association with Kufa. In addition, ʿAbd al-Karīm's death date implies scholarly activity in the generation after Ghazwān, and immediately after al-Ḥakam, thus putting him both geographically and temporally in the right place to either introduce or pass on the dramatic expansion of the simple assertion that the coercion exemption clause was revealed about ʿAmmār made in previous generations. Finally, by locating the source of the report in Kufa, we place it in a context about which we have a better understanding of the possible motivations behind the move to associate ʿAmmār with the apostasy verse. Dating the report to ʿAbd al-Karīm's time has the downside of denying Abū ʿUbayda's essential role in transmitting

the report, as asserted in all of the transmission histories (*asānīd*) of the reports. We have no corroborative evidence to support this.

3.2 The ʿUmar, mawlā of Ghafra Report

There is one remaining account which connects the apostasy verse with the torture of ʿAmmār b. Yāsir. Here is the text of the report:[707]

> When the Prophet left as an emigrant to Medina, the polytheists captured ʿAmmār b. Yāsir and ʿAbdullah b. Saʿd, who willingly remained a disbeliever. As for ʿAmmār – they continued to torture him until they almost killed him. When they saw that he refused to disbelieve, they said: "curse the Prophet and we will release on you your way." When he did that, they released him. He left until he entered upon the Messenger of God. When he saw him, he [the Prophet] said: "Abū Yaqẓān has succeeded." He [ʿAmmār] responded: "He has not succeeded nor won." The Prophet asked: "What is wrong with you, Abū Yaqẓān? He responded: "They beat me until I cursed you." He asked: "How did you find your heart?" He responded: "loving you and believing in you." To which the Prophet replied: "Even if they seek more from you than that, then do it."

Unlike the Abū ʿUbayda reports surveyed thus far, the allusion that connects the report to the apostasy verse is not the allusion to ʿAmmār's state of mind when he uttered phrases of disbelief as quoted in the coercion exemption clause (i.e. at peace with faith), but rather ʿAbdullah b. Saʿd's willing choice to remain a non-Muslim after his apostasy upon his capture by the Quraysh (i.e. willingly opened his breast to disbelief). The report is thus not only a further expansion of the extended Abū ʿUbayda account but also incorporates information

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[707] ʿUmar ibn al-Shabbah, *Tāʾrīkh al-Madīna al-munawwara*, ed. Fahīm Muḥammad Shaltūt, 4 vols., (Qom: Dār al-Fikr, 1410), 2:480-1. A variant of this report, also originating from ʿUmar, the client of Ghafra, is preserved in an Imāmī source, though without the allusion to 16:106, nor the chronological setting. See al-Ṭūsī, *Ikhtiyār maʿrifat al-rijāl, al-maʿrūf bi-Rijāl al-Kashshī*, 1:150-2, report number 70. This fact strengthens the attribution to ʿUmar, as these two different reports have ʿUmar transmitting to two different people. Here is the chain of transmission for the report as found in Ibn Shabba:

ʿUmar *mawlā* of Ghafra (146/764, Medina) → Nāfiʿ b. Yazīd (d. 168/785, Marw) → ʿAbdullah b. Wahb (d. 197/813, Marw) → Ibrāhīm b. al-Mundhir (d. 236/851, Medina)

asserted by the Abū ʿUbayda report which simply asserts that the coercion exemption clause was about ʿAmmār, while the willing acceptance of disbelief clause was about ʿAbdullah b. Saʿd, and the report produced in Muqātil b. Sulaymān's exegesis on the verse similarly connecting the willing disbelief clause to ʿAbdullah b. Saʿd, among others. In contrast to the other reports, this one explicitly mentions the specific time frame of the incident – right after the Prophet's personal immigration to Medina. However, the author of the work that preserved this report, Abū Zayd b. Shabba, himself raises doubts about the report on chronological grounds. He essentially argues that the fact ʿAmmār, along with ʿUmar b. al-Khaṭṭāb left Mecca before the Prophet is much better established.

The source of the report is one ʿUmar b. ʿAbdullah, a *mawlā* of Ghafra, a Medinan who died in 146.[708] ʿUmar does not identify from whom he got his information, thus, we can only speculate as to his sources based on the content of the report that we have seen elsewhere. It is possible that ʿUmar b. ʿAbdullah may have tampered with the report that he actually got from other sources, with an eye to reconciling the discordant facts about its chronology. This suspicion is strengthened by a piece of information adduced by the *rijāl* critic, Ibn Ḥibbān, who alleges that ʿUmar b. ʿAbdullah "used to be amongst those who change reports and transmit from authorities that which did not resemble the ḥadīths of the well established figures."[709]

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[708] Apparently his death was important enough to be mentioned by Khalīfa b. Khayyāṭ, see his, Khalīfah ibn Khayyāṭ al-ʻUṣfūrī, *Tārīkh Khalīfah ibn Khayyāṭ al-ʻUṣfurī, t. 240 H-854 M*, ed. Suhayl Zakkār, (Beirut: Dār al-Fikr li al-Ṭibāʿa wa al-Nashr wa al-Tawzīʿ, 1993), 342.

[709] Ibn Ḥibbān, *Kitāb al-majrūḥīn min al-muḥaddithīn wa-al-ḍuʻafāʾ wa-al-matrūkīn*, 2:81. Other *rijāl* critics either give him a passing grade, or list him as weak. They also comment on the predominantly *mursal* character of his transmission activity. Aḥmad b. Ḥanbal remarks that there is nothing wrong with him but notes also that his ḥadīth are *mursal*. Ibn Ḥanbal, *al-ʿIlal*, 3:107, number 4424. Al-Nasāʿī regards him as weak. Aḥmad ibn Shuʻayb al-Nasāʾī, *Kitāb al-ḍuʻafāʾ wa-al-matrūkīn*, ed. Maḥmūd Ibrāhīm Zāyid, (Beirut: Dār al-Maʿrifa li al-Ṭibāʿa wa al-Nashr wa al-Tawzīʿ, 1986), 221, number 456. For a compilation of the judgments of other *rijāl* critics, see, Ibn Ḥajar al-ʻAsqalānī, *Kitāb tahdhīb al-Tahdhīb*, 7:414-15, number 784.

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