

*Shari'a* and the Islamic State in 19th-Century Sudan

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# *Shari‘a* and the Islamic State in 19th-Century Sudan

*The Mahdī’s Legal Methodology and Doctrine*

By

Aharon Layish



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*In Memoriam*  
*Professor Peter M. Holt*





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## Preface

My interest in the Mahdī's legal methodology started when I was working, in collaboration with my colleague Gabriel Warburg, on Ja'far Numayrī's legal experiment of reinstating Islamic law in Sudan. For some time I was under the impression that this experiment was inspired by the Mahdī's revivalist and reformist movement in Islam and hence that it was necessary to be well acquainted with the Mahdī's legal legacy. Quite soon, however, I realized that the Mahdī's legal impact was altogether moderate. In the meantime, while inspecting some of the Mahdī's documents, my curiosity in his legal methodology and doctrine grew to the point that I decided it was definitely worthwhile embarking on it as an end in itself.

From the time of Muḥammad Aḥmad's manifestation (*zuhūr*) as the Mahdī until his death (1881–85), the Mahdī wrote or dictated more than a thousand letters, proclamations (*manshūr*),<sup>1</sup> legal opinions (*fatwā, jawāb*), warnings (*indhār*), visions communicated in colloquies (*ḥaḍra*) with the Prophet Muḥammad, and rulings or decisions (*ḥukm*) on an extremely broad range of administrative, political, religious, social and legal matters. The documents were written in lithographic print. Sometime after the Mahdī's death, his successor (*khalīfa*), 'Abdallāhi, gave instructions for the publication of the Mahdī's documents and papers. This material may be divided into seven categories: (1) correspondence, (2) religious instructions, (3) mystical experiences, (4) devotions and the Mahdī's prayer manual (*al-Rātib*), (5) sermons, (6) sayings (*aqwāl*), i.e., traditions, associated with the Mahdī after his death and (7) formal sessions (*majālis*) for religious instruction reported after the Mahdī's death.<sup>2</sup>

Over the years several editions of the Mahdī's documents have appeared, the last edition, *al-Āthār al-kāmila li'l-Imām al-Mahdī*, consisting of seven volumes, appeared between 1990 and 1994. The editor of these volumes, Dr. Muḥammad Ibrāhīm Abū Salīm, who also edited some of the earlier editions, wrote instructive and useful introductions to some of the volumes. Moreover, each of the documents in the last edition is preceded by a short summary of the main issues dealt with in the document. The footnotes contain references to Qur'ānic verses mentioned in the documents, explanations of legal terms, linguistic issues, political and social events, and references to

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<sup>1</sup> See, e.g., *al-Āthār al-kāmila*, II, 290, 295.

<sup>2</sup> For further detail, see O'Fahey, *Arabic Literature of Africa*, 306ff.; Holt, *The Mahdist State*, 268ff.

previous editions. At the end of Volume 7 are indices of names, subjects, legal terms, *ḥadīths* and Qur'ānic verses. Abū Salīm's excellent editing is indispensable for orientation to and a better understanding of the content of the documents.

This study is based primarily on *al-Āthār al-kāmila*, with supplements from other editions and documents collected from various archives (see bibl.). Whenever possible the reader is referred to the lithographic versions of documents of special importance.

This study provides a mixture of English translations, arranged according to subject matter, of (1) selected passages from the original Arabic documents and (2) content analysis of other documents. It does not pretend to cover all the issues discussed in the Maḥdī's documents; rather, it attempts to present a representative collection of the main issues pertaining to *fiqh*, Islamic legal doctrine. The verbatim translation of passages is intended to provide the reader with a feeling for the original text and the personal style of the Maḥdī or the Qāḍī al-Islām. The selected passages also provide typical features of the documents, their genre and phrasing according to their function—the mode of seeking a legal opinion (*istiftā'*), followed by the legal opinion, the proclamation, the saying or tradition (*qawl*) attributed to the Maḥdī, etc. The content analysis covers a variety of documents, to the extent permitted by space limitations.

Certain aspects, pertaining to the structure and style of the documents, merit special attention. Each of the documents bears a title intended to facilitate the reader's orientation as to the main findings and the conclusions to be drawn from the text. The translation of the text is preceded by a legal introduction spelling out the main issues relevant to the case being reviewed. The legal introduction is based on modern collections of Islamic law according to the schools of law, with special reference to the Ḥanafī and Mālikī schools due to their unique status in Sudan. The collections contain references to the medieval treatises of specialists in *fiqh*. The collections resorted to in this study include 'Abd al-Karīm Zaydān, *al-Mufaṣṣal fī aḥkām al-mar'a wa'l-bayt al-muslim fī 'l-sharī'a al-islāmiyya* (11 vols.); and Muḥammad Muṣṭafā Shalabī, *Aḥkām al-usra fī 'l-islām. Dirāsa muqārana bayna fiqh al-madhāhib al-sunniyya wa'l-madhhab al-jafarī wa'l-qānūn*. The Mālikī treatises resorted to in this study are Abū Bakr Muḥammad b. Muḥammad Ibn 'Āṣim [al-Qaysī] al-Mālikī al-Gharnāṭī, *Tuḥfat al-ḥukkām fī nukat al-'uqūd wa-'l-aḥkām*, and Abū 'Abd Allāh Muḥammad b. Aḥmad 'Illaysh, *Fatḥ al-'Alī al-mālik fī 'l-fatwā 'alā madhhab al-imām Mālik* (2 vols.). The complementary literature resorted to in the legal introduction includes entries in the *Encyclopaedia of Islam*

and other scholarly literature. The legal introductions to the selected documents in this study are not an end in themselves; rather, they are meant to support the legal analysis of the issues discussed in the document under review.

The annotated English translation and the content analysis of the document appear under the title "Document." The documents display several characteristic features in terms of structure and style. They usually open with an introductory religious formula: "Praise be to the Lord" and a blessing for the soul of the Prophet and his family, intended to invoke divine guidance to the process of dispensing justice, and to confer validity and a binding character on the Mahdī's decision or proclamation. This is accompanied by phrases indicating the Mahdī's modesty and devotion to Allāh and his commitment to the integrity of Islam and the *sharī'a*. The document then specifies the name and title of the person to whom the message is addressed and the issues to be dealt with. Each document is then studied by this author in an attempt to draw conclusions within the context of the document being reviewed. An integrative conclusion relating to all the documents is given at the end of the volume.

The translations of the legal texts of the paragraphs selected for presentation in this volume attempt to retain as faithfully as possible their original linguistic register, discourse, structure and tone. On occasion, a few departures from this policy were found necessary to attain clarity and accuracy in formulating the English equivalents for commonly used legal terms typical of the Mahdī's style. To facilitate the reader's orientation, personal names have been transliterated in a standardized form adopted from literary Arabic usage.

Only Qur'ānic verses have been cited with their full vocalization including case endings and nunation (*tanwīn*). Otherwise, full vocalization has been used only in cases where it is required for properly understanding the meaning, in terms of syntax, of the Arabic text (e.g., *shar'an, qīmat al-majrūh salīman, taraknāhā lahā ihsānan minnā ilayhā, ahālī buyūtihim, wa-mā ḥaqqu [i]mra'in muslimin lahu shay'un yūṣī fīhi yabītu laylatayn illā wa-waṣīyatuhu maktūbatun 'indahū*).

Throughout this work, the *shar'ī* terms cited are given in round brackets in a literary transliteration (except for such terms as *walī* and *waṣī*) to facilitate reference to the standard dictionaries and the professional literature. Their meaning is briefly explained at first occurrence. For a fuller explanation of the term, the reader is advised to consult the English glossary of Islamic legal terms pertinent to the documents under study, to be found at the end of this volume.

The English translations reflect my own reading and interpretation of the original Arabic text. Whenever the Arabic text suggests more than one reading,

an alternative rendering is provided in the footnotes. Minor additions to the text, clarifying a legal term or situation, have been inserted in square brackets in the English translation. Extensive additions are given in a footnote.

The footnotes expatiate on relevant analytical points, on the basis of the legal and scholarly literature. The footnotes give only abbreviated titles of the sources quoted; a list of the full titles of the Islamic legal treatises, and the secondary sources referred to, in alphabetical order of the authors' names, appears at the end of this volume. The study concludes with a bibliography, glossary of Islamic legal terms and a general index.

It is hoped that this study will prove a useful contribution to the literature relating to the history of Islamic law in the Mahdist state. It is intended for students and researchers of Islamic law with special reference to Sudan; it will be valuable also to Orientalists, Islamologists, Arabists, legal and social historians, lawyers interested in comparative law, and social scientists.

## Acknowledgments

The late Prof. Peter M. Holt expressed deep interest in my research and encouraged me in many ways to proceed in the endeavor. During my sabbatical stay in Oxford in 1993 he graciously placed his personal collection of the Mahdī's documents at my disposal, for which I am profoundly indebted to him. This study is dedicated to his memory.

Holt's Sudan Collection, which includes the four volumes of the Mahdī's *Manshūrāt* with Holt's marginal notes in the text, has been handed over to the Library of Harris Manchester College, Oxford. I am most grateful to Sue Killoran, the Fellow Librarian of this Library, who allowed me free access to the Sudan Collection and other material and gave me some of the Mahdī's *Manshūrāt* and other material on long-term loan. I am also grateful to Jane Hogan, Assistant Keeper, Archives and Special Collections, Durham University Library, for allowing me free access to the Mahdī's documents and for permission to make photocopies of some documents. Thanks are due also to Harris Manchester College and Durham Castle for the hospitality extended to me during my stay there in September 2005. The Library of the School of Oriental and African Studies, University of London, allowed me access to the Holt Collection of the Mahdī's documents and permitted me to make photocopies of some documents, for which I am most grateful.

I am profoundly indebted to the late Prof. Pessah Shinar of the Hebrew University of Jerusalem for intellectual inspiration and unfailing friendship over the years. On several occasions we discussed the issue of inspiration derived from the Prophet and God as a source of law in the Mahdī's legal methodology. Shinar suggested that I pursue comparative research of the legal methodologies of revivalist and Šūfī movements in order to trace the Mahdī's sources of inspiration.

Most of the material from secondary sources for this research, including unpublished manuscripts in Arabic and other languages (see bibl.), was collected at the University of Bergen. I would like to thank R. Seán O'Fahey of the Dept. of History for putting his private library at my disposal and Knut S. Vikør, then Director of the Centre of Middle Eastern and Islamic Studies, for the warm hospitality extended to me during my visits to the Centre in 1995, 1996 and 1997. Aḥmad Ibrāhīm Abū Shūk was very helpful during my stay at the Centre, especially in reading documents pertaining to the Mahdī's legal methodology, for which I am most grateful.

Gabriel R. Warburg of the University of Haifa initiated me into the field of Sudanese studies. While working with him on our book *The Reinstatement of*

*Islamic Law in Sudan under Numayrī* (see bibl.), I was introduced to the Mahdī's documents.

I am indebted to Ruud Peters of the University of Amsterdam for allowing me to consult in manuscript form the chapters "Islamic Family Law" and "The Law of Succession" from his as yet unpublished manuscript *A Handbook of Islamic Law and Its Contemporary Application* (see bibl.). His comparative research, based on a selection of treatises from various schools of law, proved to be very useful for this study.

For a couple of years, the Mahdī's documents were read in seminars attended by under-graduate and graduate students at the Institute of Asian and African Studies, the Hebrew University of Jerusalem (see bibl., Layish, *Selection from the Mahdī's Documents*). Many orthographical, grammatical and substantive legal problems were solved through the common efforts of all the participants in these seminars, and I was able to learn a great deal from my students.

Nurit Tsafrir of Tel Aviv University read the documents pertaining to homicide and bodily harm contained in this volume. David Powers of Cornell University read the documents pertaining to inheritance and testamentary dispositions and Frank Stewart of the Hebrew University read the documents pertaining to pledge. All of them offered meticulous comments and suggestions for which I am most grateful.

Yohanan Friedmann of the Hebrew University is currently working on the Sudanese Mahdī's documents for the purpose of preparing a comprehensive comparative study on Mahdism in Islamic history. Yohanan's advice was most valuable in reaching a decision concerning the appropriate way of using the enormous amount of legal information scattered in the Mahdī's documents (see Preface). Thanks are also due to Amnon Cohen of the Hebrew University.

My former student and present colleague Eliyahu Stern of the Hebrew University thoroughly and systematically read the entire manuscript of the present volume. He offered most important and useful comments and suggestions. His expertise in classical Ṣūfism (see bibl.) and his acquaintance with Islamic law through Ṣūfī literature were indispensable in clarifying the Ṣūfī background of the Mahdī's legal methodology as well as Ṣūfī terms and allusions embedded in the Mahdī's legal documents. In addition, Stern was very helpful in making this study accessible to readers who have not specialized in Islamic law. For all this I am profoundly indebted to him. If this study has made any useful contribution to scholarship, Eliyahu Stern deserves much of the credit. It goes without saying, however, that I alone am responsible for any errors that may have remained.

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Evelyn Katrak has painstakingly edited the manuscript of this book and improved it in many respects, for which I am deeply grateful. Thanks are also due to Dr. Leigh Chipman of the Hebrew University for carefully editing the Glossary and Index.

I began my research on the Mahdī's documents more than fifteen years ago. During all this time my wife, Bilha, has stood by me. I would like to take this opportunity to thank her profoundly for her patient understanding, moral support and encouragement throughout this prolonged endeavor.

Jerusalem, June 2016



# Introduction: The Mahdī's Documents as a Source of Legal History

Broadly speaking, classical *sharī* legal methodology (*uṣūl al-fiqh*) has survived almost intact into modern times. Since the late 19th century, the ‘*ulamā*’ and non-‘*ulamā*’ have increasingly worked to update Islamic legal methodology so that Islamic law might be brought into conformity with contemporary conditions. There have been sporadic attempts to create new legal methodologies.<sup>1</sup> But the Sudanese Mahdī’s attempt to formulate a new legal methodology is a unique phenomenon that does not belong to that trend.

The Mahdī headed a millenarian, revivalist, reformist movement in Islam in the late 19th century in an attempt to restore the theocracy of the Prophet Muḥammad and the “Righteous Caliphs” (*al-khulafā’ al-rāshidūn*) in Medina. As the “Successor of the Prophet” (*khalīfat rasūl allāh*) and the “Expected (*muntazar*) Mahdī,” with direct communication to the Prophet, the Mahdī was conceived of by himself and by his adherents as the political head of the state and its highest religious legal authority (*al-marji’ al-a’lā*). Moreover, the Mahdī claimed for himself legitimacy, infallibility and moral authority. By virtue of these endowments he embodied the executive, legislative and judicial authority of the state. The Mahdī was strongly inspired by Salafī and Ṣūfī ideas under the influence of revivalist and reformist movements in Arabia and the Maghrib dating back to the 18th and 19th centuries that were associated one way or another with a *ṭarīqa* (Ṣūfī brotherhood) tradition.

The Mahdī abolished all schools of law (*madhāhib*), thus releasing himself from the burden of the *taqlīd*—that is, adherence to the *fiqh* as consolidated within each of these schools. He elaborated a unique, though simple and unsophisticated, legal methodology, according to which a Prophetic *sunna* might abrogate (*naskh*) a Qur’anic text. He rejected analogical reasoning (*qiyās*) and the consensus (*ijmā’*) of the *fuqahā’* as sources of law. Instead, he adopted inspiration (*ilhām*) from the Prophet and God as a source of law, alongside the textual sources of the Qur’ān and the *sunna*. In the event that he could not find an appropriate legal solution in the textual sources, the Mahdī would derive law by resorting to inspiration from the Prophet by means of a colloquy (*ḥaḍra*). Direct communication with the Prophet practically rendered the Mahdī an independent legislator with almost unrestricted discretion to

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1 Hallaq, *Legal Theories*, Ch. 6; idem, *Sharī’a*, 500ff.; Layish, “Islamic law in the Modern World,” 281, 283–84.

interpret the will of God outside the control of the *‘ulamā’*. Most of the contemporary *‘ulamā’* did not approve of the Mahdī’s legal methodology and disqualified him from *ijtihād*.

The Mahdī did not leave behind a legal treatise presenting his legal methodology. However, he left more than a thousand documents: legal opinions (*fatwā*), decisions or rulings in matters of law (*ḥukm*), and proclamations (*manshūr*), as well as “sayings” (*qawl*)—that is, traditions, and statements made in instructional sessions (*majlis*) attributed to him after his death.

Some important contributions have been written on various aspects of the Mahdī’s legal methodology; but no comprehensive, systematic research on his legal methodology and doctrine has so far been carried out on the basis of the entire corpus of the Mahdī’s documents. A seminar paper by Aḥmad Ibrāhīm Abū Shūk concentrates on the Mahdī’s legal methodology and illustrates its application on the basis of some of his documents. This important paper draws attention to the uniqueness of the Mahdī’s legal methodology but does not pretend to exhaust the subject or the material available on it (see bibl.).

P.M. Holt, the leading authority on the Mahdiyya, conducted extensive research on the political, religious and social history of the Mahdist state. His book *The Mahdist State in the Sudan, 1881–1898* (see bibl.) is a classic work on this theme and makes use of all kinds of material produced by the Mahdī, such as proclamations, letters, legal opinions, rulings, etc. Naturally, issues pertaining to such institutions as the caliphate (*khilāfa*), holy war (*jihād*), booty (*ghanīma*) and alms tax (*zakāt*) involve vital aspects of Islamic law. Holt is also concerned with the role of the Mahdī as a reformist legislator aiming to accommodate the *sharī‘a* to the changing political and social circumstances, and in this context he draws attention to the role of the Qur’ān and the *sunna*, as well as the inspiration conferred upon the Mahdī by the Prophet, as factors in shaping the Mahdist legislation. However, in his work the legal aspect is subordinated to the political and social aspects.

Shaked’s work on the biography of the Mahdī written by Ismā‘īl ‘Abd al-Qādir al-Kurdufānī (see bibl.) concentrates mainly on the Mahdī as a religious man and the initiator of a fundamentalist movement, from the time of his manifestation until the consolidation of the Mahdist state. Within the context of the Mahdī as a religio-political leader, but not within the context of legal methodology, such issues as the Mahdī’s infallibility and observation of the Qur’ān and the *sunna* come up for discussion. Al-‘Abbādī, in his *al-Anwār* (see bibl.), provides important information, in a rather polemical manner, on the Mahdī’s qualifications for *ijtihād*, his status as infallible (*ma‘ṣūm min al-khaṭa’*) legislator, his direct inspiration (*ilhām*) from the Prophet Muḥammad and such other

issues as the sources of law (*uṣūl al-fiqh*), the abrogation (*naskh*) of textual sources and the abolition of all schools of law. Valuable data on the tensions between the Mahdī and the *'ulamā'* on issues pertaining to the *sharī'a* may be found in works by Abū Salīm (*al-Ḥaraka al-fikriyya*) and Ibrāhīm (*al-Ṣirā'*). Vital information on the administration of justice and the application of Islamic penal law (Qur'ānic punishments) may be found in al-Muftī (*Niẓām al-qaḍā'*) and Maḥmūd (*al-'Iqāb*), respectively (see bibl.).

In this study the Ṣūfī doctrine is pursued only to the extent that it served as a source of inspiration to the Mahdī's legal methodology. Important research has been done on pre-modern revivalist movements that may have provided Ṣūfī inspiration for the Mahdī's legal methodology (see bibl., e.g., works by Karrar, O'Fahey, Radtke, Vikør and Voll).

In the course of a continuous holy war (*jihād*) against the Turco-Egyptian (and later the Anglo-Egyptian) administration, as well as Sudanese subjects who refused to acknowledge his mahdship, the Mahdī issued a variety of documents pertaining to legal matters in all domains of law. These documents were issued randomly, under the daily pressure of changing circumstances, for the practical purpose of settling public and personal disputes. Military commanders, emirs and *qādīs*, as well as private citizens, would address the Mahdī asking for his legal opinion and instructions on how to settle these disputes. In response, the Mahdī would issue legal opinions, rulings, proclamations, etc. to guide individuals and the public in general as to his policy on specific matters that came up. As a result, an enormous amount of legal material originally written lithographically was accumulated; in later years it was published in various editions, making these documents accessible for research. However, as already noted, the Mahdī did not leave behind a treatise in which he clearly and systematically defined his legal methodology and its sources of inspiration; nor did he provide guiding principles for the application of his legal methodology. Under these circumstances, the only option left to the researcher is to reconstruct the Mahdī's legal methodology and doctrine (*fiqh*) on the basis of the documents themselves. Naturally this procedure has caused occasional methodological problems in cases where there is more than one possible way to interpret the text.

The Mahdī's proclamations and legal opinions were tantamount to legislative acts. Of course, one should bear in mind that their issuance does not in itself prove that they were actually implemented. Moreover, since this writer had no access to the records of the *sharī'a* courts of the period under review<sup>2</sup>

2 An anonymous reader of this work, who seems to be well informed, reports that "there are hardly any surviving records from the Mahdist courts, including the records of the Qadi

he could not assess the extent to which the *qāḍīs* of the *sharīʿa* courts handed down their decisions in accordance with the Mahdī's legal methodology, although, as will be demonstrated below, they were required to do so. Hence it may rightly be claimed that the present study is an attempt to write a legal history on the basis of legal opinions, proclamations and traditions attributed to the Mahdī after his death, rather than on the basis of judicial practice,<sup>3</sup> which is more likely to reflect reality. The purpose of this study, however, is to reconstruct the Mahdī's legal methodology and its impact on traditional *fiqh* rather than its implementation in the judicial practice of *qāḍīs* and in daily life. In other words, we are dealing here with an attempt to identify a unique phenomenon in Sudanese legal history on the basis of the Mahdī's documents. This study is not concerned with the legal history of Sudan beyond the period of the Mahdī.<sup>4</sup>

Another methodological problem is the measure of reliability of the "sayings" (in the sense of "traditions") and statements issued at "instructional sessions" related to the Mahdī through intermediaries or transmitters. These were reported and put in writing only some years after the Mahdī's death, and it may well be that they were enlisted in an attempt to gain support for certain views. Indeed, the information derived from these sources resembles in a way the genre of the Prophetic *ḥadīth*—which is by no means a coincidence, because the Mahdī claimed to be the successor of the Prophet. The credibility of the intermediaries or transmitters merits a special study, which is beyond the scope of this study. This writer has treated the information derived from these sources at face value, though his research presumption was that this kind of documentation is less reliable than that derived from the documents issued by the Mahdī during his lifetime.

Keeping in mind the aforementioned reservations, the purpose of this study is to inspect the Mahdī's corpus of documents as a source of legal history and,

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al-Islam or the market police, and the few that do exist are not especially detailed or revealing. (Either the court records were destroyed at the time of the Anglo-Egyptian conquest in 1898, for personal or political reasons, or they were lost when the archive was transferred to Cairo early in the Condominium period. In any case, they are not to be found in Khartoum, London or Durham and do not seem to be in Cairo)." I am most grateful for this vital information.

- 3 In spite of the decisive contribution of judicial practice to the elaboration of Islamic law in the formative period, the body of the *fiqh* of the schools of law and the legal theory were the product of independent legal specialists, such as *muftīs* and author-jurists. See Hallaq, *Sharīʿa*, 36ff., 72ff., 176ff.
- 4 Once the documents of Khalīfa ʿAbdallāhi become accessible for research it will hopefully be possible to assess the impact of the Mahdī's legal methodology on the legal system of his successor. See below, Conclusion, 295, fn. 15.

more precisely, to reconstruct and analyze, from the standpoint of orthodox *sharī'a*, the Mahdī's legal methodology, its sources of inspiration<sup>5</sup> and the Mahdī's legal doctrine according to subject matter. Questions of special interest are: (1) the extent to which the Mahdī's legislation and reforms were compatible with conventional *fiqh* as consolidated in the schools of law, and (2) the Mahdī's legislation as an instrument to promote his political and social agenda and his policy of public morality.

The Mahdī's legal methodology will be assessed against the background of a millenarian, revivalist, reformist movement in Islam headed by a charismatic religio-political leader in the late 19th century, and strongly inspired by Salafī and Ṣūfī ideas. The question of the impact of the Mahdī's legal heritage on contemporary Sudan is beyond the scope of this study.

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5 Layish, "The Mahdī's Ṣūfī Inspiration" (see bibl.) is an integral part of this study.

# The Mahdist State

## 1 Political Establishment

Muḥammad Aḥmad b. ‘Abdallāh (1844–85) headed a millenarian, revivalist, reformist movement in Islam in the late 19th century, strongly inspired by Salafī ideas and his Šūfī background, in an attempt to restore the theocracy of the Prophet and the “Righteous [Orthodox] Caliphs” (*al-khulafā’ al-rāshidūn*).<sup>1</sup> The idea of Mahdism had manifested itself in Sudan as early as the 17th century. The Mahdist movement was motivated by eschatological expectations whose source of inspiration can be traced to Egypt in the 18th and 19th centuries.<sup>2</sup> In its initial stages the Mahdiyya had many of the characteristics of a social and political protest movement. Its main causes were the conquest of Sudan by Egypt under Muḥammad ‘Alī and the annexation of the former sultanate of Darfur by Egypt in 1874; the replacement, by the Turco-Egyptian regime, of the indigenous religious functionaries with orthodox ‘*ulamā*’ imported from Egypt; and the attempts to put an end to the slave trade, contrary to Sudanese vested interests.<sup>3</sup>

Muḥammad Aḥmad b. ‘Abdallāh of Dongolawi origin was born in Baḥr al-Fīl.<sup>4</sup> He claimed to have been related to the *ashrāf*, descendants of the Prophet.<sup>5</sup> He attended *khalawāt*, Qur’ān schools, and studied with local holy

1 On one occasion the Mahdī makes the following statement: “Our time is integrated (*mundarij*) in the time of the Messenger of God”; see *al-Āthār al-kāmila*, 111, 351. Salafī ideas led the Mahdī to concentrate on the Qur’ān and the Prophetic *sunna* as the textual sources of his methodology fully detached from the adherence (*ta’aṣṣub*) to the schools of law. See Abū Salīm, *al-Ḥaraka al-fikriyya*, 75–77, 79, 86, 164–65; Abū Shūk, “Minhajjiyyat al-tashrī’,” 11, col. i; below, Ch. 2. Although the Mahdī was strongly influenced by Šūfī ideas he decided to abolish the Šūfī orders in an attempt to replace loyalty to the orders with loyalty to his revivalist movement. For further details, see below, Ch. 1.4.

2 On the Mahdist idea and its connection to the Shī’a, see Holt, *The Mahdist State*, 22ff. Cf. Abū Shūk, “Minhajjiyyat al-tashrī’,” 19, col. i.

3 Holt, *The Mahdist State*, 19ff.; *idem*, “al-Mahdiyya,” 1247ff.; Holt & Daly, *The History of Sudan*, 87f.; Searcy, *The Sudanese Mahdist State*, 21–24.

4 *Al-Āthār al-kāmila*, v, 420.

5 *Ibid.*, 1, 93; *ibid.*, v, 96. The Mahdī instructed that his *ahl al-bayt*, kin—an expression borrowed from the Prophet’s kin—be treated with special care and respect; see *ibid.*, v, 67, 377. The *ashrāf* in east Sudan were not related to the Mahdī’s family; see *al-Āthār al-kāmila*, 1, 361.

men and *fakī*s,<sup>6</sup> religious teachers propagating Islam; he also received religious education in a state school. Unlike some of his colleagues, he did not proceed to al-Azhar but preferred a life of asceticism and mystic experiences within the discipline of a Ṣūfī order. He spent seven years with Shaykh Muḥammad Sharīf Nūr al-Dā'im, the grandson of Shaykh Aḥmad al-Ṭayyib al-Bashīr, who had introduced the Sammāniyya *ṭarīqa* (Ṣūfī order), a branch of the Khalwatiyya, into Sudan;<sup>7</sup> he gained a reputation for extreme asceticism and was given *ijāza*, formal authorization, to teach as a *shaykh* of the Sammāniyya.<sup>8</sup> After having moved to Abā Island, a crisis with his master caused his subsequent expulsion from the order. Muḥammad Aḥmad professed allegiance to Shaykh al-Qurashī wad al-Zayn, a rival head of the Sammāniyya, and when the latter died, his followers recognized Muḥammad Aḥmad as the new leader of the Sammāniyya.<sup>9</sup>

According to Abū Salīm, Muḥammad Aḥmad read treatises by al-Ghazālī (d. 505/1111), Ibn al-'Arabī (d. 638/1240), Ibn Idrīs (d. 1264/1847) and Aḥmad Ṭayyib al-Bashīr (d. 1246/1830). At some point he joined the Tijānī order in Berber. He had a good knowledge of the Qur'ān, *ḥadīth*, *tafsīr* (commentary on the Qur'ān) and *fiqh* (legal doctrine). His relations with the various schools of law were a function of the subject matter.<sup>10</sup> The Mahdī never left Sudan and lacked orientation in issues that faced Islam outside its borders.<sup>11</sup> He seems to have been fully aware of his limited religious and legal education, but he derived comfort and inspiration from the personal example of the Prophet

6 See Glossary, s.v. *fakī*.

7 Holt, "A Sudanese Saint," 108–15; idem, *The Mahdist State*, 21, 45–49; O'Fahey, *Arabic Literature of Africa*, 304–5; idem, "Sudanese Mahdī," 268ff.; Trimmingham, *Islam in the Sudan*, 93–95, 226–27; Karrar, *The Sufi Brotherhoods*, 43–47. The Mahdī reminds Muḥammad Sharīf Nūr al-Dā'im of his affiliation with the Sammāniyya order and urges him to join the Mahdiyya on the ground that God had informed his grandfather of the Mahdī's manifestation; see *al-Āthār al-kāmila*, I, 420, 423; *ibid.*, v, 285–86.

8 *Al-Āthār al-kāmila*, I, 47ff.; *ibid.*, VI, 16, Abū Salīm's introduction (Muḥammad Aḥmad used to perform his religious worship in accordance with the litanies {*awrād*} of the order); Abū Salīm, *al-Ḥaraka al-fikriyya*, 165; al-Qaddāl, *al-Mahdī*, 37ff., 44ff.; Shaked, *The Life of the Sudanese Mahdī*, 56–57; Sulaymān, *Dawr al-azhar*, 83; Trimmingham, *Islam in the Sudan*, 93; O'Fahey, "The Sudanese Mahdī," 270.

9 Holt, *The Mahdist State*, 21, 45–50; idem, "A Sudanese Saint," 114–15; Trimmingham, *Islam in the Sudan*, 227; O'Fahey, *Enigmatic Saint*, 35; idem, "Sudanese Mahdī," 269–71; Abū Salīm, *al-Ḥaraka al-fikriyya*, 93–94; Maḥmūd, *al-'Iqāb*, 93ff.; Searcy, *The Sudanese Mahdist State*, 24–28.

10 For further details, see below, 27.

11 Abū Salīm, *al-Ḥaraka al-fikriyya*, 79, 83–84, 95–97, 165. Cf. Mālik, *al-Muqāwama*, 154; al-Mahdī, *Yas'ālūnaka 'an al-mahdiyya*, 180, 192; O'Fahey, "Sudanese Mahdī," 274–76; al-Qaddāl, *al-Mahdī*, 53.

Muḥammad. In a letter to Shaykh Muḥammad Amīn al-Ḍarīr, the Muftī of the eastern Egyptian Sudan,<sup>12</sup> whom he regarded as one of the greatest experts on the *sharīʿa* among his contemporary *ʿulamāʾ*, the Mahdī writes that the Prophet Muḥammad was “neither *uṣūlī* (an expert in the legal theory of the *sharīʿa*) nor *naḥwī* (a philologist); rather, he was an illiterate (*ummī*) prophet, but God favored him exclusively for reasons known only to Him.”<sup>13</sup>

Muḥammad Aḥmad claimed that *sayyid al-wujūd*, which he identified with the Prophet,<sup>14</sup> informed him of his manifestation as the “Expected (*al-muntaẓar*) Mahdī” (1881). The Prophet appointed Muḥammad Aḥmad as his successor (*khallafanī*) by seating on his chair in the presence of the four caliphs, the *aqṭāb* (Ṣūfī heads)<sup>15</sup> of the *awliyāʾ* (friends of God),<sup>16</sup> the angels and al-Khaḍir, a legendary human being with angelic characteristics.<sup>17</sup> He awarded him his sword and ordered him to emigrate to Jabal Qadīr.<sup>18</sup> In a tradition attributed to the Mahdī after his death, it is reported that he was the “Seal of the Grand Caliphate (*khātim al-khilāfa al-kubrā*).<sup>19</sup> Following instruction allegedly derived from the Prophet through colloquies (*ḥaḍrāt*), Muḥammad Aḥmad b. ʿAbdallāh changed his name to Muḥammad al-Mahdī b. ʿAbdallāh.<sup>20</sup>

As the “Successor of the Prophet” (*khaliḥat rasūl allāh*)<sup>21</sup> and the “Expected Mahdī” with direct communication to the Prophet, the Mahdī was conceived of by himself and by his followers as the political head of the state and its highest religious legal authority. Moreover, the Mahdī claimed for himself legitimacy, infallibility and moral authority. Other symbols of authority were the Mahdī’s seal (*khātim*), the girding of the Mahdī with the Prophet’s sword (*ṣayf al-nabī*), the mentioning of his name in the Friday sermon (*khutba*), and the minting of coins (*sikka*) with the Mahdī’s inscriptions on them.<sup>22</sup> By virtue of all his capacities the Mahdī controlled the executive, legislative and judicial authorities in the state. In the first of these capacities he nominated

12 Holt, *The Mahdist State*, 109.

13 *Al-Āthār al-kāmila*, II, 185–86.

14 See Glossary, s.v. *sayyid al-wujūd*.

15 Ibid., s.v. *quṭb*.

16 Ibid., s.v. *awliyāʾ*.

17 Ibid., s.v. al-Khaḍir.

18 *Al-Āthār al-kāmila*, I, 336. Cf. *ibid.*, II, 280; *ibid.*, IV, 482–84, 491; *ibid.*, V, 457–60 (ʿAbd al-Qādir al-Jīlānī {d. 561/1166} was also present at the coronation). On the role of al-Khaḍir and Gabriel in the coronation, see Holt, *The Mahdist State*, 139.

19 *Al-Āthār al-kāmila*, VII, 156. Cf. Peters, “Legitimation of Power,” 412.

20 *Al-Āthār al-kāmila*, I, 221, fn. 2.

21 Ibid., V, 457ff.

22 Searcy, *The Sudanese Mahdist State*, 34, 53–54, 57, 59, 62.

three caliphs—‘Abdallāhi b. Muḥammad (who succeeded the Maḥdī after his death) as Khalīfat al-Ṣiddīq (Abū Bakr), ‘Alī b. Muḥammad Ḥilū (‘Alī wad Ḥilū) as Khalīfat al-Fārūq (‘Umar), and Muḥammad Sharīf b. Ḥāmid (the Maḥdī’s son-in-law) as Khalīfat al-Karrār (‘Alī)—the model of the “Orthodox Caliphs” serving as a source of inspiration and legitimization.<sup>23</sup> The Maḥdī proposed (but to no avail) nominating Muḥammad al-Maḥdī al-Sanūsī, the son and successor of Muḥammad b. ‘Alī al-Sanūsī (the “Grand Sanusi”), as the successor of the Caliph ‘Uthmān (Khalīfat Dhī ’l-Nūrayn), in an attempt to enlist him in a *jihād* against Egypt.<sup>24</sup> He also appointed governors, military commanders, *qādīs*<sup>25</sup> and the treasurer (*amīn*) of the Public Treasury (*bayt al-māl*) in charge of state property and the public welfare of the state. The Maḥdī’s proclamations (*manshūrāt*), legal opinions, orders, and decisions based on the Qur’ān and the *sunna* had the force of statutes enforceable in daily practice.<sup>26</sup> The Maḥdī’s position as legislator also established and consolidated his position as the custodian of public morality, the function of which was to bring Sudanese society within the orbit of the Maḥdist state.<sup>27</sup>

Exchanging a pledge of allegiance (*bay‘a*) with the Maḥdī provided acknowledgment and legitimacy of his authority as the head of the state. This practice is highly inspired by Qur’anic verses. Thus, Q. 60:12 refers to a pledge between recently converted wives of infidels and the Prophet. According to the tradition, the pledge took place in Mecca shortly after its conquest by Muḥammad and the new converts joined him in Medina.<sup>28</sup> The verse stipulates that conversion must be in good faith and Q. 60:10 provides that the converted wives must undergo a test of credibility to this effect. According to the tradition, the contract of allegiance included stipulations of both religious and political nature. The pledge was based on reciprocity: The believers, on the one hand, undertook to obey the Prophet, perform the commandments of Islam, migrate

23 *Al-Āthār al-kāmila*, 1, 335, 337. Cf. Holt, *The Maḥdist State*, 107, 113, 120; idem, “al-Maḥdiyya,” 1249, col. i; Abū Salīm, *Ta’rīkh al-Sūdān*, 46ff.

24 *Al-Āthār al-kāmila*, 1, 334ff.; Holt, “Outside World,” 278–79; idem, *The Maḥdist State*, 107, 113; idem, “al-Maḥdiyya,” 1249, col. i; Abū Salīm, *Ta’rīkh al-Sūdān*, 52; O’Fahey, “Sudanese Maḥdī,” 281; Abū Salīm and Vikør, “The Man Who Believed in the Maḥdī,” 31–32, 48–49; Vikør, *Sufi and Scholar*, 120, 154–56; Evans-Pritchard, *The Sanusi of Cyrenaica*, 19–27; Ziadeh, *A Revivalist Movement*, 51–65.

25 See below, 11ff.

26 Khālid, *al-Fajr al-kādhīb*, 21, 293; Mustafa, *The Common Law*, 39; ‘Alī, *Azmat al-islām*, 41; Mālik, *al-Muqāwama*, 151; Sulaymān, *Dawr al-azhar*, 82; Riyāḍ, *Mūjaz ta’rīkh al-sultā al-tashrī‘iyya*, 16.

27 Holt, *The Maḥdist State*, 21. Cf. Voll, “The Sudanese Maḥdī,” 162ff.

28 Rubin, *The Qur’ān*, 465–66.

to Medina and participate in the *jihād*. The Prophet, on the other hand, undertook to initiate the converts into the Muslim community and grant them such rights as protection and partaking in the booty. Moreover, Q. 48:10 provides that exchanging a pledge of allegiance with the Prophet is in fact exchanging a pledge with Allāh implying thereby that the latter has become a party to the pledge. In this way the divine authority of God and the sanctity entailed were enlisted to strengthen the Prophet's authority. Hence, revoking a pledge exchanged with the Prophet amounted to crime of apostasy.<sup>29</sup>

The Mahdī adapted the Qur'ānic pledge of allegiance to the Sudanese conditions. When appointing a new governor to a district the Mahdī would authorize him to obtain from the subjects of his jurisdiction a pledge of allegiance to God, the Prophet Muḥammad and the Mahdī himself. The formula of the pledge consisted of a complex of commitments inspired by Q. 60:12 combined with the essential principles of the Mahdiyya. Thus the Mahdī gave the governor of Marākish permission to obtain from the people of the region a *bay'a*, the formula of which is as follows:

We offer through you [the governor] our pledge of allegiance (*bāya'nā...alā yadika*) to God, His Messenger, and the Imām al-Mahdī. [We undertake to observe the following obligations]: We shall not be engaged in polytheism nor shall we steal, commit unlawful intercourse, make up falsehood slander (*'alā an lā nushrika bi-llāhi shay'an wa-la nasriqa wa-lā nazniya wa-lā na'tiya bi-buhtānin naftarīhi*), disobey (*na'ṣiya*) the Imām al-Mahdī in anything that is holy war and ethical (*ma'rūf*), or flee from holy war (*jihād*); [we shall opt] for asceticism in this world (*zuhd al-dunyā*) and be content with what God offers; and volunteer ourselves and our property in the cause (*fī sabīl*) of God seeking to please Him.<sup>30</sup>

The Mahdī terminates his message to the governor by saying:

Anyone that undertakes to comply with [the terms of] our pledge of allegiance must fulfill his obligation [as a party to the contract] because the covenant with God is incumbent upon him [and anyone who violates] the covenant of God is accountable (*wa-kull man ya'khudhu bi-bay'atinā*)

29 Landau-Tasseron, "Bay'a in Pre-Modern Islam," 5–7, 14–17, 30–31; Tyan, "Bay'a," 113–14. Cf. Peters, "Legitimation of Power," 409–11; idem, *Jihād*, 152.

30 All the elements of the pledge with the exception of holy war and asceticism appear, with minor changes of style, in Q. 60:12.

*fa-yulzimuhu al-wafā' bihā fa-innahā 'ahd allāh al-ma'khūdh 'alayhim, wa-kāna 'ahd allāh mas'ūlan). . .*<sup>31</sup>

In his letter to the governor of Fez, the Mahdī warns that anyone violating his oath will be deemed apostate (*murtadd*),<sup>32</sup> implying thereby that he will be liable to capital punishment. The people are requested to obey the governor in the light of Q. 4:59: "Obey God, and obey the messenger and those of you who are in authority." However, the duty to obey is subject to the qualification that the governor strictly adheres to the rule of "promoting the good and forbidding the wrong" (*al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar*).<sup>33</sup>

## 2 The Judiciary and *Iftā'*

The Turco-Egyptian administration introduced the *sharī* legal system in Sudan.<sup>34</sup> Although the Mālikī school was dominant among the population in the country (the Shāfi'ī school being a minority located in Berber, Suakin and Arrij),<sup>35</sup> the courts applied the Ḥanafī school. Egyptian '*ulamā'*' were brought from Egypt and Sudanese students were trained in al-Azhar and Hejaz. In the long run the emergence of a class of trained '*ulamā'*' threatened the prestige of the older *fakī* class.<sup>36</sup>

The Mahdī was the supreme head of the judicial structure. In this capacity he delegated the power of adjudication to his nominated caliphs, provincial governors, military commanders and commissioners.<sup>37</sup> The Qāḍī al-Islām or Qāḍī al-Muslimīn delegated by the Mahdī, was the most senior position in the judiciary. The first Qāḍī al-Islām in the Mahdist state was Aḥmad Jubāra, of Syrian origin who had studied at al-Azhar; he was succeeded by Aḥmad 'Alī. The Qāḍī al-Islām headed the Supreme Court in Omdurman and regulated the entire judicial system. He appointed '*ulamā'*' as *nuwwāb* (*qāḍīs*),

31 *Al-Āthār al-kāmila*, v, 108. Cf. *ibid.*, v, 13; Holt, *The Mahdist State*, 115, 117; Landau-Tasserion, "Leadership and Allegiance," 4; Searcy, *The Sudanese Mahdist State*, 38–39, 42.

32 *Al-Āthār al-kāmila*, v, 419.

33 *Ibid.*, II, 261–62. Cf. *ibid.*, I, 206–7; *ibid.*, III, 70. For further details on this duty, see below, doc. 86.

34 Al-Muftī, *Niẓām al-qaḍā'*, 73ff.

35 Abū Salīm, *Ta'rikh al-Sūdān*, 29.

36 Holt, *The Mahdist State*, 22. On the *sharī'a* courts in Darfur in pre-modern time, see O'Fahey, "Qāḍī in Dār Fūr." On *fakī*, see Glossary, s.v. *fakī*.

37 Holt, *The Mahdist State*, 132; Mustafa, *The Common Law*, 40.

subject to the Mahdī's approval. Boards composed of several judicial deputies functioned in various parts of the Mahdist state.<sup>38</sup>

During the Turco-Egyptian administration the *sharī'a* courts had jurisdiction in matters pertaining to personal status, guardianship of minors, succession, *waqf*, civil law, land and criminal law. Toward the end of that administration the jurisdiction of the *sharī'a* courts was restricted to matters of personal status.<sup>39</sup> In the Mahdist state, the *sharī'a* courts were precluded from entertaining (*'adam al-samā'*) claims that had been submitted to these courts during the Turco-Egyptian administration. This preclusion seems to have been imposed because the Mahdī was not ready as a matter of principle to recognize the validity of legal proceedings under the Ottoman law, not even during the transitional period from Turco-Egyptian to Mahdist administration. Instead, he preferred settling old disputes out of court or replacing Ottoman law by his own legislation by means of legal opinions (see below), proclamations, etc. Thus the Mahdī ruled that claims pertaining to blood disputes, criminal acts and financial claims other than debt (*dayn*), deposition in trust (*amāna*), orphans' property (*māl al-aytām*) and claims pertaining to personal status of free men—as distinguished from slaves—submitted by people of northern Sudan until the conquest of El-Obeid (Muḥarram 1302/1884) were suspended, that is, could not be litigated in court.<sup>40</sup> The period of prescription in the Mahdist state with regard to landed property (*atyān*) illegally possessed was shortened from 15 years (under the Ottoman law) to seven years. Claims to land titles could not be attended to beyond this period. Claims pertaining to property other than land could be brought to court starting from the date of the conquest of Berber (July 1884).<sup>41</sup> Hearing a case in the *sharī'a* court could be delayed on grounds of consultation with the Qāḍī al-Islām or the Mahdī himself.<sup>42</sup>

The *qāḍīs* of the *sharī'a* courts were instructed to dispense justice exclusively on the basis of the Qur'ān and the *sunna* (without specifying any particular collection of *ḥadīth*) unless new legal regulations were promulgated by the Mahdī. Thus in one case the Mahdī confirmed the appointment of a

38 Al-Muftī, *Niẓām al-qaḍā'*, 130–33; Holt, *The Mahdist State*, 22, 131–32. According to Searcy, the *ashrāf*, too, the Mahdī's kinsmen, "acted in the capacity of judges, thereby creating a great deal of confusion." See Searcy, *The Sudanese Mahdist State*, 143.

39 Al-Muftī, *Niẓām al-qaḍā'*, 76.

40 Cf. the proclamation issued by Khalifa 'Abdallāhi; see *Manshūrāt al-Mahdiyya*, 203, 206.

41 Al-Muftī, *Niẓām al-qaḍā'*, 136, 153–54. For further details, see below, docs. 7–8. On the conquest of Berber, see Holt, *The Mahdist State*, 98–99.

42 Al-Muftī, *Niẓām al-qaḍā'*, 164.

deputy *qāḍī* (*nā'ib*) on condition that he adjudicate on the basis of the textual sources and “follow his [the Mahdī's] tracks” (*yaqtafī atharahu*),<sup>43</sup> implying thereby that the Mahdī's legal opinions and proclamations were deemed a supplementary source of law to the textual sources. According to Khālid, most of the *qāḍīs'* decisions were based on the Mahdī's proclamations; a minority of the *qāḍīs*, however, used their personal reasoning (*yaḥtadhūn al-ra'y*) in their decisions. In the event of a lacuna in the textual sources most of the *qāḍīs* would request a *fatwā* from the Mahdī or the Qāḍī al-Islām before handing down a decision.<sup>44</sup> The Mahdī's decisions, based on the textual sources and—in the event of a lacuna in these sources—on inspiration derived from the Prophet,<sup>45</sup> were embedded in his proclamations and legal opinions and may be regarded as statutory legislation for all practical purposes.

According to al-Muftī, the Mālikī doctrine enjoyed the status of a residuary law in the Mahdist state. This seems to refer to cases of a lacuna in the textual sources and the Mahdī's proclamations and legal opinions. Al-Muftī further claims that the Mahdī did not interfere in matters of inheritance (*farā'id*), wills (*waṣāyā*) and manumission of slaves (*itq*) implying thereby that these matters were decided exclusively by Mālikī law.<sup>46</sup> The Mahdī did not hesitate to legislate (*sharra'ū*) in such matters as worship (*ibādāt*) and pecuniary transactions (*mu'āmalāt*). Acts of legislation, based on the Mahdī's personal *ijtihād*, are included in his *Manshūr Qawā'id al-Aḥkām*, which according to al-Muftī was not accomplished during his lifetime.<sup>47</sup>

Internal affairs of the tribes were settled by their own *shaykhs* in accordance with their tribal customary law without interference on the part of the

43 *Al-Āthār al-kāmila*, IV, 205. Cf. Holt, *The Mahdist State*, 128, 132; al-Rashīd, *al-Islām wa-ḥayātunā al-qaḍā'iyya*, 137. Khalīfa 'Abdallāhi too would instruct newly nominated *qāḍīs* to hand down their decisions on the basis of the Qur'ān, the *sunna* and the Mahdī's proclamations; see 'Alī, *Azmat al-islām*, 41; Mālik, *al-Muqāwama*, 151; Sulaymān, *Dawr al-azhar*, 82; Riyād, *Mūjaz ta'rīkh al-sulṭa al-tashrī'iyya*, 16.

44 *Al-Āthār al-kāmila*, VII, 249; Khālid, *al-Fajr al-kādhīb*, 293.

45 For further details, see below, 47ff.

46 Al-Muftī, *Nizām al-qaḍā'*, 135. As will be demonstrated below, in several specific cases the Mahdī deviated from the Mālikī doctrine pertaining to inheritance and wills; see docs. 48, 50.

47 Al-Muftī, *Nizām al-qaḍā'*, 135–37. Cf. Abū Salīm, *al-Ḥaraka al-fikriyya*, 164. Holt, *The Mahdist State*, 132; Khālid, *al-Fajr al-kādhīb*, 21, 293; Mustafa, *The Common Law*, 39. For a sample of legislative acts in matters of *jihād*, women's chastity, excessive nuptial gift, divorce, public morality, wine drinking and use of tobacco, and the penal sanctions entailed, see al-Muftī, *Nizām al-qaḍā'*, 135–36. For a detailed analysis of this legislation according to subject matter, see below, Ch. 3.

state.<sup>48</sup> There is some evidence that the Mahdī resorted to the tribal mechanism of arbitration to solve blood disputes, because these disputes by their nature might have amounted to a threat to the public order, e.g., in the event of incessant chain of blood revenge. In a letter to the tribes of Rifā'a and Juhayna, the Mahdī informs them that due to blood disputes complicated by theft of property occurring between them he has commissioned two just arbitrators (*ḥakamān 'adlān*) to handle the matter. He orders the tribesmen to stop immediately all acts of aggression and warns that anyone declining to comply with his order will have his property confiscated as booty. To reinforce his determination, the Mahdī cited Q. 49:9, which ordains:

And if two parties of believers<sup>49</sup> fall to fighting, then make peace between them. And if one party of them doeth wrong to the other, fight ye that which doeth wrong till it return unto the ordinance (*amr*) of Allāh [i.e., complies with the Qur'ān]; then, if it return, make peace between them justly, and act equitably. Lo! Allāh loveth the equitable.<sup>50</sup>

In other words, the Mahdī applies the tribal customary arbitration (*tahkīm*) as a mechanism for solving blood disputes on the basis of a precedent set by the Prophet in Medina (irrespective of its historical context) and sanctioned by a Qur'ānic verse. Unlike tribal procedure, according to which the parties choose their own arbitrators for settling a dispute,<sup>51</sup> it is the Mahdī who nominates the arbitrators. Blood offenses have to be settled in the *shar'ī* court in accordance with detailed rules of evidence and procedure.<sup>52</sup> Due to practical considerations the Mahdī prefers here to settle a blood dispute by tribal arbitration rather than by a *shar'ī qāḍī*, but he reserves to himself the option of nominating the arbitrators in order to secure the *shar'ī* nature of the settlement.

During the Turco-Egyptian administration *muftīs* were appointed in each of the *mudīriyyas* of Sudan. Shākīr al-Ghazzī was the Muftī of the Court of Appeal in Khartoum, Shaykh Aḥmad al-Azharī b. Ismā'īl was the Muftī and Chief Judge of western Egyptian Sudan and Shaykh Muḥammad Amīn al-Ḍarīr was the Muftī of eastern Egyptian Sudan.<sup>53</sup> In the Mahdist state the Mahdī established

48 Al-Nur, "Native Courts," 78.

49 Some maintain that the verse refers to disputes that broke out between Muslims in Medina belonging to the Aws and Khazraj tribes; see Rubin, *The Qur'ān*, 426, fn. 9.

50 *Al-Āthār al-kāmila*, IV, 352–53.

51 Layish, *Judean Desert Documents*, 43ff., 51 (doc. 1).

52 Peters, *Crime*, 8ff.

53 Holt, *The Mahdist State*, 107–9; Ibrāhīm, *al-Ṣirā'*, 58.

himself as the supreme *muftī* of the state;<sup>54</sup> no *muftīs* were appointed though occasionally *fatwās* were issued by the Qāḍī al-Islām.<sup>55</sup> Apart from his position in the judicial system, the latter would issue legal opinions (*iftā'*) in daily questions that were addressed to him. However, his position in this capacity was not of great importance since the Mahdī himself was profoundly engaged in *iftā'*,<sup>56</sup> which was one of the vehicles of statutory legislation.

Requests for legal opinions were delivered by *qāḍīs*, district governors, the treasurer of Bayt al-Māl<sup>57</sup> and military commanders, as well as by individuals regarding the law applicable in the transitional period from Turco-Egyptian to Mahdist administration.<sup>58</sup> Occasionally, such requests were submitted collectively on issues in which those in charge had some difficulty rendering a decision.<sup>59</sup>

The Mahdī based his legal opinions on the Qurʾān and the Prophetic *sunna*. Thus in response to a request by *qāḍīs* for a legal opinion (*istiftā'*), the Mahdī writes:

May God crown our efforts with success (*waffāqanī wa-īyyākum*) regarding the right [way] (*ṣawāb*) and make me derive [inspiration] from (*wa-jaʿalanī mimman yaʾkhudh ʿan*) Allāh by means of lights (*anwār*) from the *sunna* and the Qurʾān<sup>60</sup> and may He establish on his [the Mahdī's] behalf the light by means of which it is possible to discern and distinguish between the truth and the false (*al-furqān waʾl-tamyīz bayn al-ḥaqq waʾl-bāṭil*).<sup>61</sup>

The Qāḍī al-Islām, on his part, was inspired by the Mahdī's proclamations and legal opinions.<sup>62</sup> Hence his legal opinions seem to reflect the Mahdī's legal

54 Al-Muftī, *Nizām al-qaḍā'*, 193. For a sample of his *fatwās*, see *ibid.*, 194–96.

55 For a sample of his *fatwās*, see *ibid.*, 196–98.

56 Abū Salīm, *al-Arḍ*, 38.

57 See, e.g., *Al-Āthār al-kāmila*, IV, 14, 327, 329, 381.

58 See, e.g., *ibid.*, V, 283–84.

59 See, e.g., *ibid.*, II, 91–92.

60 On lights from the Qurʾān in Ṣūfī contest, see Stern, "On Mystical Vision and the Protection from Sin," 148 and the reference to Ghazālī in fn. 53. On the Mahdī's preference of the *sunna* to the Qurʾān, see below, 32.

61 *Al-Āthār al-kāmila*, II, 92. On *furqān* in the Qurʾān, see e.g., Q. 8:29, 21:48. On the Ṣūfī connotation of the text, see Lazarus-Yafeh, *Studies in Ghazzālī*, 288 and the reference there to al-Ghazzālī, *Ihyā' ulūm al-dīn*.

62 See, e.g., *Manshūrāt al-Mahdiyya*, 204–7.

views. No mention is made in the legal opinions of any school of law or legal treatise.

The themes of the legal opinions include all domains of law, including such problems as the reunion of families after the fall of Khartoum,<sup>63</sup> marrying a free woman alongside concubines<sup>64</sup> and the prohibition of marriage on grounds of fosterage.<sup>65</sup>

The style of requests for a legal opinion includes several formulas with minor variations.

*Opening formulas:* “What is your decision regarding the subject of . . . let us avail ourselves of it (*mā al-hukm fihā . . . afidūnā*);<sup>66</sup> “We ask your guidance as to the right direction to be followed (*narjū al-irshād li-tarīq al-sadād*).<sup>67</sup>

*Concluding formulas:* “Sir, please avail us of your response [*fatwā*] that will guide us [in the right way], God will make useful knowledge available to you and shower on you abundant rain of his kindness (*afidnā sayyidī al-jawāb murshidan afādaka Allāh ‘ilman nāfi’an wa-afāda ‘alayka min hawāṭil birrihi ghaythan hāṭilan*);<sup>68</sup> “We desire, Sir, that you let us know what is the most appropriate and sound [advice] in God’s eyes (*fa-narūm, sayyidī, an tu’limūnā bi’l-aṣṣlaḥ wa’l-aslam ‘inda allāh*).<sup>69</sup>

Actually, legal opinions issued by the Mahdī and the Qāḍī al-Islām are acts of state legislation; they are binding on those who receive them and must be applied, unlike legal opinions in traditional Islamic law.<sup>70</sup> Thus in one case the Qāḍī al-Islām terminates his legal opinion by ruling:

This is what emerges [i.e., the substance of the legal opinion] and its application should be followed accordingly without overstepping the boundaries [of the legal opinion] (*hādhā mā ṣahara fa-yaṣīr al-‘amal bihi ka-mā tawaḍḍaḥa bi-dūn tajāwuz*).<sup>71</sup>

The Mahdī did not recognize Ottoman statutory legislation. He denied the legitimacy of a human authority (*mulk, amr*) to promulgate statutes (*ḍabt*

63 *Al-Āthār al-kāmila*, IV, 273–74.

64 *Ibid.*, v, 288.

65 *Ibid.*, v, 303. For further examples, see below, Ch. 3, according to subject matter.

66 *Al-Āthār al-kāmila*, III, 110. Cf. *ibid.*, III, 130 (*afidūnā, nafa’anā allāh bi-kum wa-bi-asrārikum, wa-al-salām*); *Manshūrāt al-Mahdiyya*, 201–3.

67 *Al-Āthār al-kāmila*, IV, 14.

68 *Manshūrāt al-Mahdiyya*, 201–3. Cf. *Al-Āthār al-kāmila*, II, 91–92.

69 *Al-Āthār al-kāmila*, v, 288. Cf. *ibid.*, v, 112.

70 Masud, Brinkely and Powers, “Muftis, Fatwas, and Legal Interpretation,” 3ff.

71 *Manshūrāt al-Mahdiyya*, 204–6.

*al-qawānīn*) “contradicting the will of God.” A case in point is the imposition of unlawful taxes, referring thereby to the *jizya* (poll tax)—originally intended for “those who have been given the Scripture” (Q. 9:29)—on Muslims.<sup>72</sup> The Mahdī claimed that “God had invalidated their [Turkish] statutes by the mere manifestation of His religion (*abṭala allāh ḥukmahum bi-ḥuhūr dīnihi*).”<sup>73</sup> It is noteworthy in this context that the Mahdī refers to his version of the *sharīʿa* as “the law of the Almighty (*aḥkām rabb al-‘ālamīn*),”<sup>74</sup> His messengers and prophets<sup>75</sup>—that is, the law based on the Qurʾān and the *sunna*, to be distinguished from the conventional *sharīʿa* based on the *fiqh* of the schools of law. In a proclamation to the entire population the Mahdī writes:

When the Prophet... had me seated on the chair of the Mahdiyya he ordered me to wage a holy war against the Turks. He said to me: ‘The Turks are unbelievers (*kāfirūn*); moreover, they are the most extremist people as to unbelief (*kufr*) and hypocrisy (*nifāq*)...’ They humiliate (*ihāna*) the Prophetic Tradition and behave arrogantly (*istid‘āf*) toward Islam. They produced books [statutory codes] by which they intend to extinguish the light of God. They entitled these books as codes of statutory law (*qānūn*)...<sup>76</sup>

The import of codes from Europe, the promulgation of statutory laws and the codification of various domains of the *sharīʿa*, such as the Mejlle, were deemed by the Mahdī a threat to the *sharīʿa* and Islam, and hence sufficient grounds to declare the Turks infidels.

### 3 The ‘*Ulamā*’

The term “*ulamā*” denotes qualified jurists in *sharīʿi* respect. As noted earlier, during the Turco-Egyptian administration in Sudan some of the ‘*ulamā*’ were Sudanese students trained in al-Azhar and Hejaz and other ‘*ulamā*’ originated from Egypt.<sup>77</sup> On the face of it, it is inconceivable that the revival of a theocratic state and the emergence of a reformist movement in Islamic law would

<sup>72</sup> *Al-Āthār al-kāmila*, I, 180–81, 204; *ibid.*, II, 170. Cf. Peters, “Legitimation of Power,” 415.

<sup>73</sup> *Al-Āthār al-kāmila*, III, 162.

<sup>74</sup> *Ibid.*, II, 210.

<sup>75</sup> *Ibid.*, I, 180–81.

<sup>76</sup> *Ibid.*, V, 417.

<sup>77</sup> See above, 10.

take place without the *'ulamā'* being deeply involved, since the *'ulamā'*, by definition, are the backbone of a theocracy and of the legal system. Their support was required for the legitimacy of the Mahdī's rule and the *jihād* against the Turco-Egyptian administration and against those Muslim subjects declining to acknowledge his mahdship. Indeed, in the early stages of his manifestation the Mahdī did everything in his power to integrate the *'ulamā'* in all domains of the state, especially as *qāḍīs* in the *shar'ī* judiciary and as *mudarrisūn* (religious teachers) in the state's mosques.<sup>78</sup> The Mahdī wooed the *'ulamā'* gently. Thus he requested the Anṣār to treat considerately the senior *'ulamā'* in Khartoum and especially Shaykh Muḥammad al-Amīn al-Ḍarīr, the Muftī of eastern Egyptian Sudan, and to return to the latter various kinds of property that had been taken from him as booty.<sup>79</sup> Even after the fall of Khartoum, the Mahdī instructed the Anṣār to treat the *'ulamā'* respectfully, in spite of their cooperation with General Gordon, in an attempt to enlist them to the Mahdiyya.<sup>80</sup>

Most of the *'ulamā'*, however, did not cooperate with Muḥammad Aḥmad. They strongly criticized him for pretending to be the Expected Mahdī, a pretension that challenged the legitimacy of the Ottoman Sultan and his representative, the Egyptian Khedive. The mere recognition of Muḥammad Aḥmad as a Mahdī was in glaring contradiction to the Islamic duty of obeying the legitimate sultan and "those in charge of authority" (*ūlū al-amr*), and constituted a violation of the oath of allegiance (*bay'a*) and the covenant (*'ahd*) with God. Hence the *'ulamā'* as an Egyptian-oriented class refuted from the start Muḥammad Aḥmad's claim to mahdship.<sup>81</sup> The *'ulamā'* could not reconcile Muḥammad Aḥmad's mahdship with their tenets of belief (*mu'taqad*).<sup>82</sup> Moreover, they could not tolerate the Mahdī's deviation from conventional

78 Abū Salīm, *Ta'rikh al-Sūdān*, 32.

79 *Al-Āthār al-kāmila*, iv, 262; Holt, *The Mahdist State*, 109. In another case, a slave girl belonging to the wife of "one of the outstanding (*khīyār*) *'ulamā'*," which in addition is "related to our tribe (*lahu luḥma fī 'ashīratinā*)" had been confiscated by one of the warriors. The Mahdī requested that the Public Treasury compensate this wife with another slave girl or her price. The possibility that the Mahdī was anxious to enlist the political support of the tribe to the cause of the Mahdiyya cannot of course be ruled out. See *al-Āthār al-kāmila*, v, 401.

80 *Al-Āthār al-kāmila*, iv, 198–200.

81 Holt, *The Mahdist State*, 107ff. (the manifestos of Shākīr al-Ghazzī and Aḥmad al-Azharī b. Ismā'īl); Peters, "Legitimation of Power," 412ff., 417ff., 419; Ibrāhīm, *al-Širā'*, 58 (referring to the anti-Mahdist manifesto of Aḥmad al-Azharī, the Muftī and Chief Judge of western Egyptian Sudan); Searcy, *The Sudanese Mahdist State*, 78–79.

82 *Al-Āthār al-kāmila*, v, 96.

Islamic legal methodology and *fiqh*, his denial of the schools of law<sup>83</sup> and the 'ulamā's historic role as the authoritative interpreters of the will of God. Further, they disqualified Muḥammad Aḥmad as an 'ālim capable of exercising *ijtihād*.<sup>84</sup> The 'ulamā' deemed the denial of the schools and the conventional *fiqh* literature a negative innovation (*bid'a, iḥdāth*) and an infringement of the foundations of Islam.<sup>85</sup> During the siege on Khartoum 'ulamā' opposed the Mahdī to such an extent that they allegedly rejected General Gordon's intention to surrender to the Mahdī.<sup>86</sup>

Muḥammad Aḥmad's reaction to the 'ulamā's rejection of his mahdiship was extremely severe, to the point that he excluded them from the elect community of his followers and stigmatized them as unbelievers. He contended that his mahdiship rested on evidence (*dalā'il*) from God: "Either you believe in it or you are deemed unbelievers."<sup>87</sup> Holt notes that the stigmatization of the 'ulamā' as infidels created a dangerous schism among the Sudanese Muslims.<sup>88</sup> The Mahdī proclaimed these 'ulamā', some of whom were graduates of al-Azhar, to be venal 'ulamā' ('ulamā' *al-sū'*) and false 'ulamā' (*muqalladat al-'ulamā'*). He accused them of being "slaves of this world" in the sense of preferring the goodness of this world to that of the Hereafter, referring thereby to their denial of asceticism.<sup>89</sup> In a tradition attributed to the Mahdī, he is reported to have said:

In our time, the entire judicial practice (*'amal*) is based on the Book of God [i.e., the Qur'ān] Exalted be He and the *sunna* of our Prophet Muḥammad, God bless him and grant him salvation, regardless of the legal views [i.e., *fiqh*] (*qawl*) of the *mashāyikh* [i.e., the masters of the schools], may God be pleased with them.<sup>90</sup>

83 Abū Salīm, *al-Ḥaraka al-fikriyya*, 77; Ibrāhīm, *al-Širā'*, 44. Cf. Holt, *The Mahdist State*, 210, fn. 2.

84 For further details, see below, 49.

85 Abū Shūk, "*Minhajjīyat al-tashrī'*," 11, 19, col. ii–20, col. ii, 25, col. ii.

86 *Al-Āthār al-kāmila*, 111, 215. Abū Salīm, however, dismisses this allegation on the grounds that Gordon does not refer to it in his memoirs. See *ibid.*, fn. 2.

87 *Ibid.*, v, 96; Holt, *The Mahdist State*, 107.

88 Holt, *The Mahdist State*, 107ff.

89 *Al-Āthār al-kāmila*, vi, 183–84. Cf. Holt, *The Mahdist State*, 116; Abū Salīm, *al-Ḥaraka al-fikriyya*, 50, 168; al-Mahdī, *Yas'alūnaka 'an al-mahdiyya*, 225; Mālik, *al-Muqāwama*, 123; al-Qaddāl, *al-Mahdī*, 94–95; Sulaymān, *Dawr al-azhar*, 83ff.; Goldziher, *Muslim Studies*, 267.

90 *Al-Āthār al-kāmila*, vii, 189.

In another tradition related to the Mahdī, he is reported to have addressed the Muhājirūn—i.e., his followers who emigrated to the Mahdist state—and the Anṣār, saying:

Anyone adhering to a school of law (*madhhab*) or a text (*naṣṣ*) [i.e., a legal treatise written by an expert in *fiqh*] or a master of a school (*shaykh*) should abandon his school, his text and his *shaykh*, [respectively], because they copied from one another. They distanced themselves from the light (*nūr*) of the Prophet, God bless him and grant him salvation. We, [on the other hand,] come forward to revive (*li-nuḥyīya*) the light of the Prophet, . . . Anyone adhering in the past to an [authority of esoteric?] knowledge (*maʿrifa*) should abandon it; if he does not comply he will not be corrected (*yansalīh*).<sup>91</sup>

In a letter to one of his adherents, the Mahdī requests him to ignore compilations (*taṣānīf*) written by the *ʿulamāʾ* and apply instead commentary (*tafsīr*) on the Qurʾān, the Prophetic *ḥadīth* and reliable biographies of Muḥammad backed by an uninterrupted chain of authoritative transmitters (*al-sīyar al-ṣaḥīḥa al-masnūda*).<sup>92</sup> Consequently the Mahdī abolished all the schools of law (*madhāhib*) and prevented the circulation of their treatises. He moreover accused the *ʿulamāʾ* of collaborating with the Turco-Egyptian government for gain.<sup>93</sup> In a letter to General Gordon in the besieged city of Khartoum, the Mahdī informs him that the *ʿulamāʾ al-sūʾ* have chosen him as their *imām* and master (*ustādh*) and that they wish the victory to be on the side of the polytheists (*mushrikūn*).<sup>94</sup>

The Mahdī's attacks on the *ʿulamāʾ* culminated in the proclamation of a holy war (*jihād*) at the theological level against them. In a tradition attributed to the Mahdī after his death he is reported to have said that one of the four goals of *jihād* was "the holy war against the *ʿulamāʾ* on the issue of the exposition of truth" (*jihād al-ʿulamāʾ bi-izhār al-ḥaqq*), referring thereby to his manifestation as the Mahdī.<sup>95</sup> In yet another tradition related to him, the Mahdī is reported to have launched a war in the full sense of the term against the *ʿulamāʾ*:

91 Ibid., VII, 239. A *shaykh* may denote a master of a Ṣūfī order. On the abolition of the Ṣūfī orders, see below, 22.

92 *Al-Āthār al-kāmila*, v, 360.

93 Abū Salīm, *Taʾrīkh al-Sūdān*, 32–33. Cf. Holt, *The Mahdist State*, 132.

94 *Al-Āthār al-kāmila*, IV, 243.

95 Ibid., VII, 164 (the other goals of *jihād* were promoting asceticism {*zuhhād*} and public morality {*akhlāq*}, and elimination of the infidels, the enemies of God).

The ‘*ulamā*’ should be eliminated (*yuqṭalūn*) by the sword of the Mahdiyya because of their denial (*takdhīb*) [of the Mahdiyya] and hypocrisy (*nifāq*). Some of the ‘*ulamā*’ rescue themselves by joining us [the Mahdiyya] out of fear of our sword.<sup>96</sup>

In a letter of 17 June 1885 to the ‘*ulamā*’ of Egypt, the Mahdī urges them to believe in the unity of God (*waḥdāniyya*), referring thereby to the Mahdiyya, to fulfill the duties of worship and to adhere (*tamassuk*) to the Qur’ān and the *sunna*; he accuses them of cooperating with the Turco-Egyptian ruler by submitting to statutory laws (*qawānīn*) instead of applying the *sharī’a*. He further accuses them of denying his mahdishop and adopting infidelity (*kufr*) instead, of yielding to satanic passion by preferring this world to the Hereafter. He urges them to repent, return to God, obey the Mahdī’s order and join him in the *jihād* against the infidel enemies of God. If they comply, they will be entitled to a pledge of security (*amān*) by God, His Messenger and the Mahdī. If, however, they decline, they will be defeated as the ‘*ulamā*’ opposing the Mahdī in Sudan were defeated.<sup>97</sup> In conclusion, in the words of Abū Salīm, the Mahdī was determined to “eliminate the heritage (*turāth*) of the ‘*ulamā*’.”<sup>98</sup>

#### 4 The Şūfī Background

Most of the revivalist and reformist movements in Arabia and the Maghrib during the eighteenth and nineteenth centuries were linked one way or another with a Şūfī tradition.<sup>99</sup> Hence there seems to be a causal connection between the Mahdī’s legal reformism and his Şūfī background. Acquaintance with the legal doctrines of the *ṭarīqas*, who may have shaped the Mahdī’s legal thinking, is therefore indispensable.

The Mahdī was strongly inspired by Şūfism, both organizationally and ideologically. Abū Salīm mentions such Şūfis as Muḥyī ’l-Dīn Ibn ‘Arabī (d. 638/1240), ‘Abd al-Wahhāb al-Sha’rānī (d. 973/1565) and Aḥmad b. Idrīs al-Fāsī (d. 1253/1837) as the Mahdī’s sources of inspiration regarding the idea

96 Ibid., VII, 137, 232; Durham, SAD 97/5/6i.

97 *Al-Āthār al-kāmila*, v, 246–50. On that occasion the Mahdī informed them of his intention to conquer Egypt; *ibid.*, v, 252–53.

98 Abū Salīm, *al-Ḥaraka al-fikriyya*, 164.

99 For 18th century neo-Sufism, see Voll, “Hadith,” 264, 267ff.; *idem*, “Mizjaji Family,” 87; O’Fahey, “Ṭarīqa,” 248f.; Levtzion and Voll, *Eighteenth-Century Renewal and Reform*, 8; al-Qaddāl, *al-Mahdī*, 90.

of the Expected (*al-muntaẓar*) Mahdī. Further, he maintains that the Mahdist state was organized along the patterns laid down by Ibn ‘Arabī, who presented the Expected Mahdī as the supreme Ṣūfī *quṭb*, head of the hierarchy of *awliyā’*, and his organization as the ideal state.<sup>100</sup> The Mahdī’s attitude toward the Ṣūfī order as a socio-organizational framework was functional and utilitarian. He could not afford to tolerate competition from well-organized and highly motivated Ṣūfī orders firmly anchored in the Sudanese society. Unlike modern Libya, which emerged out of the Sanūsī order in an attempt to derive legitimacy from traditional loyalty,<sup>101</sup> the Mahdist state emerged out of a millenarian, revivalist, reformist movement, as an *alternative* to the Ṣūfī order. Hence, the Mahdī decided to abolish the Ṣūfī orders, along with the schools of law, in order to replace loyalty to the orders with loyalty to his revivalist movement.<sup>102</sup> In a letter to Muḥammad al-Amīn al-Ḍarīr, the Muftī of eastern Egyptian Sudan, the Mahdī justifies the abolition of the Ṣūfī orders on the grounds of their shaykhs’ refusal to acknowledge his mahdship.<sup>103</sup> Even the Mahdī’s doctrinal and ideological rapprochement to the Ṣūfī *ṭarīqas* may have been prompted by political considerations. Thus the very dominant role of Ibn Idrīs in the vision of the Mahdī’s manifestation could have been an attempt by the Mahdī to assert superiority over the widespread and influential Khatmiyya *ṭarīqa*. Similarly, the Mahdī’s offer to place Muḥammad al-Mahdī al-Sanūsī in the Mahdist hierarchy by designating him the successor (*khalīfa*) of ‘Uthmān should be interpreted in a political context. Al-Sanūsī was expected, in return for the nomination, to support the Mahdī’s cause by waging a *jihād* against Egypt.<sup>104</sup>

Indeed, the Mahdī took every possible measure to bring about the elimination of the Ṣūfī orders.<sup>105</sup> Thus on one occasion he instructed the Treasurer of Bayt al-Māl to exclude the Ṣūfī orders from the allocation of maintenance for the poor and the blind.<sup>106</sup> On another occasion he prohibited using such Ṣūfī titles of honor and status in the hierarchy of the orders as *shaykh*, *sayyid* and

100 Abū Salīm, *al-Ḥaraka al-fikriyya*, 15, 22 (and the references there to al-‘Abbādī, *al-Anwār*), 50.

101 Vikør, *Sufi and Scholar*, 1. Cf. Layish, *Divorce*, 17, and the references mentioned in fn. 50.

102 Cf. Searcy, *The Sudanese Mahdist State*, 123–24, 126. On the social tension caused by the abolition of the Ṣūfī orders, see Abū Salīm, *al-Ḥaraka al-fikriyya*, 86, 165–66.

103 *Al-Āthār al-kāmila*, 111, 319. Cf. *ibid.*, v, 81–82 (the Mahdī invites Muḥammad ‘Uthmān al-Mirghani, the founder of the Miḡhaniyya to submit to the Mahdiyya). On the Miḡhaniyya, see Trimmingham, *The Sufi Orders*, 116.

104 Holt, *The Mahdist State*, 113. See above, 6.

105 Abū Salīm, *al-Ḥaraka al-fikriyya*, 35, 86.

106 *Al-Āthār al-kāmila*, iv, 332.

*fakī*.<sup>107</sup> In his letter to Muḥammad Sharīf Nūr al-Dā'im, the grandson of Aḥmad al-Ṭayyib al-Bashīr, who had introduced the Sammāniyya order into Sudan, the Maḥdī requests him: "Do not pay attention to the weight of kinship (*qarāba*) and descent (*nasab*) because this brings about discord (*fitna*)." He reminds him that most of the prophets and the friends of God (*awliyā'*) emerged out of insignificance and lowness rather than power and high standing, and this applies also to the Prophet and "your Maḥdī."<sup>108</sup>

At the same time the Maḥdī adopted and accommodated to his own needs the Ṣūfī organizational networks and their mechanisms for enlisting loyalty and support.<sup>109</sup> This is hardly surprising since the Maḥdī was operating to a very large extent in his natural environment. As already noted, Muḥammad Aḥmad was a Ṣūfī shaykh before his manifestation as the Maḥdī, and he mobilized the Ṣūfī networks in Sudan to promote his cause.<sup>110</sup> Moreover, in the beginning the Maḥdiyya movement was organized along the patterns of a Ṣūfī *ṭarīqa* in matters pertaining to such hierarchal institutions as *naqīb* and *quṭb*.<sup>111</sup> Likewise, he adopted the Ṣūfī version of exchanging a pledge as a means of initiating the individual into his movement. The link between the *shaykh* and his followers is created through a covenant or contract (*'ahd*), expressed in the form of an oath or pledge of allegiance (*bay'ā*), whereby the new member is admitted to the order. This traditional pledge, combined with essential elements from the Maḥdiyya, was practiced by the Maḥdī after his manifestation.<sup>112</sup> Indeed, the Maḥdī employed a complex array of symbols, ceremonies and rituals borrowed from the Ṣūfī brotherhoods to articulate his political authority and charisma, and buttress his religious legitimacy.<sup>113</sup> A case in point is the Maḥdī's use of *dhikr* and *rātīb* as Ṣūfī rituals.<sup>114</sup> It may be justly argued that the Maḥdī succeeded in both liquidating and inheriting the Ṣūfī orders.

107 The prohibition was on the grounds that "none of the prophets, messengers, Companions or their Successors used the word *shaykh* as a title of honor or dignity the way the Turks do"; see *al-Āthār al-kāmila*, III, 76, 77ff.

108 *Ibid.*, v, 285–86.

109 Cf. Abū Salīm, *al-Ḥaraka al-fikriyya*, 165. Cf. Peters, *Jihad*, 152.

110 Karrar, *The Sufi Brotherhoods*, 4.

111 Abū Salīm, *al-Ḥaraka al-fikriyya*, 165.

112 Holt, *The Mahdist State*, 116 (cites Trimmingham, *Islam in the Sudan*, 205–6, 221); Searcy, *The Sudanese Mahdist State*, 38; on the pledge of allegiance, see above, gff.

113 Searcy, *The Sudanese Mahdist State*, 32, 37–38, 40, 50ff., 61, 64, 74, 88.

114 See e.g., *al-Āthār al-kāmila*, I, 398 (the Maḥdī: "Pursue incessantly the *dhikr* day and night when walking or riding, when in public or alone"); *ibid.*, II, 63 (the Maḥdī instructs a tribe recently "converted" to Maḥdiyya to the study of the *dhikr* of God and the *rātīb*); *ibid.*, VII, 108 (the Maḥdī is reported to have said: "The fortress of the believer stands on

Besides adapting of the Šūfī organizational networks to his political needs, the Mahdī was strongly inspired by Šūfī ideas and concepts.<sup>115</sup> One can very easily identify in the Mahdī's documents such Šūfī concepts and terminology as *ḥaḍra*,<sup>116</sup> *ṭarīqa*,<sup>117</sup> *zuhd*,<sup>118</sup> *faqr*,<sup>119</sup> *tawakkul*,<sup>120</sup> *ṣabr*,<sup>121</sup> *fanā'*<sup>122</sup> and *ḥubb allāh*.<sup>123</sup> The Mahdī accommodated the Šūfī concepts and terms, with which

- 
- three things: recitation of the Qur'ān, invocation of God's name {*dhikr*} and attending the mosque"). Abū Salīm maintains that the Mahdī for some time included *dhikr* in his Rātīb; see *al-Āthār al-kāmila*, VI, 10–11 (introduction to the volume). Cf. [http://alzbeir.blogspot.co.il/2009/07/blog-post\\_6237.html](http://alzbeir.blogspot.co.il/2009/07/blog-post_6237.html) (last accessed in 3 September 2014). See Sviri, *The Sufis*, Glossary, s.v. *dhikr*; Trimmingham, *The Sufi Orders*, Glossary, s.v. *dhikr*.
- 115 Abū Salīm, *al-Ḥaraka al-fikriyya*, 79; Shaked, *The Life of the Sudanese Mahdi*, 41, 211, 218.
- 116 See e.g., *al-Āthār al-kāmila*, I, 77, fn. 6 (the Prophet in a *ḥaḍra nabawīyya*: "Your *shaykh* is the Mahdī"). See Trimmingham, *The Sufi Orders*, Glossary, s.v. *ḥaḍra*. For further details on *ḥaḍra*, see below, 37.
- 117 See e.g., *al-Āthār al-kāmila*, II, 70 (the Mahdī to disciples of a *shaykh*: "You are the members of the path {*ṭarīqa*} and its novices {*murīdūn*}"); *ibid.*, I, 70 (the Mahdī to his adherents: "You are the sons of the *ṭarīqa*"). See Sviri, *The Sufis*, Glossary, s.v. *ṭarīqa*; Trimmingham, *The Sufi Orders*, Glossary, s.v. *ṭarīqa*.
- 118 See e.g., *al-Āthār al-kāmila*, I, 386–87 ("Renounce the vanities of this world {*maṭālib al-dunyā*"}). Cf. *ibid.*, III, 7 ("The true believers withdraw their support of the Jāhili worldly life, its enjoyment {*tamattu*}, leisure {*rāḥa*}, accumulation of property and pursuit of enrichment"), 368 ("God is committed to subsistence {*rizq*} and spares believers this concern"). See Sviri, *The Sufis*, Glossary, s.v. *zuhd*; Trimmingham, *The Sufi Orders*, Glossary, s.v. *zuhd*.
- 119 See e.g., *al-Āthār al-kāmila*, VII, 88 (the Mahdī is reported to have said: "Poverty is an exalted rank {*martaba*} [toward approaching God]"). See Sviri, *The Sufis*, Glossary, s.v. *faqr*; Trimmingham, *The Sufi Orders*, 50.
- 120 See, e.g., *al-Āthār al-kāmila*, II, 84 (the Mahdī: "Trust in God is the treasure of the believer"); *ibid.*, III, 70 ("Anyone who joins the Mahdiyya is required to adhere to our *ṭarīqa* and put his trust in God alone, no one else"). See Sviri, *The Sufis*, Glossary, s.v. *tawakkul*; Trimmingham, *The Sufi Orders*, Glossary, s.v. *tawakkul*.
- 121 See, e.g., *al-Āthār al-kāmila*, III, 229 ("Patience entails utmost reward" {*fa-inna fī 'l-ṣabr mazīd al-ajr*}). See Sviri, *The Sufis*, Glossary, s.v. *ṣabr*.
- 122 See, e.g., *al-Āthār al-kāmila*, III, 236 ("In this temporal world, the abode of passing away, the human being possesses nothing of it except what he earns for the Hereafter" {*hādhihi al-dār al-dunyāwiyya dār fanā' wa-mā līl-'abd minhā illā mā [i]ktasaba li-ākhiratihī*}). On *al-fanā' fī allāh*, obliteration of self in God, see *ibid.*, III, 343, 345. Cf. Sviri, *The Sufis*, Glossary, s.v. *fanā'*; Trimmingham, *The Sufi Orders*, Glossary, s.v. *fanā'*.
- 123 *Al-Āthār al-kāmila*, VII, 157 (the Mahdī is reported to have said: "The root {*aṣl*} of religion is the love {*maḥabbā*} of God and His Messenger"). Cf. Abū Salīm, *al-Ḥaraka al-fikriyya*, 80; *idem*, *al-Abbādī*, 5; Sviri, *The Sufis*, Glossary, s.v. *ḥubb*.

he was well acquainted from his personal experience in the Sammāniyya order, to the ideological framework of his revivalist movement.<sup>124</sup> As will be demonstrated below, Şufism had a tremendous effect on the formation of the Mahdī's legal methodology.<sup>125</sup>

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124 Cf. Searcy, *The Sudanese Mahdist State*, 56 (visions and dreams of the Prophet), 67 (the concept of blessing, *baraka*), 68 (communion with Prophet {*ḥaḍra*} and miracles {*karāmāt*}). The Mahdī's followers ascribed miracles to him thus placing him as a Şūfi *shaykh*.

125 See below, Ch. 2.6.

## The Mahdī's Legal Methodology

The Mahdī did not leave behind any legal treatise in which he presented his legal methodology and the principles of its application. He was first and foremost a man of action, a charismatic religio-political and military leader rather than a legal theoretician or scholar. His proclamations, orders, decisions and legal opinions were issued in the course of incessant efforts to consolidate a new theocracy in a state of perpetual war, in an attempt to solve a variety of political, social and economic problems that emerged every now and then in daily life. As the head of a millenarian, revivalist and reformist movement, the Mahdī was certainly inspired by some legal principles and doctrines required for adaptation of the *sharī'a* to the conditions of his time. However, he did not take the trouble to formulate these principles and doctrines into a comprehensive, systematic treatise. In what follows an attempt is made to reconstruct the Mahdī's legal methodology and its sources of inspiration, on the basis of documents issued for practical purposes that he left behind.

### 1 Abolition of the Schools of Law

According to Abū Salīm, the most authoritative expert on the Mahdī's legal heritage, the Mahdī acknowledged the historic role of the '*ulamā'*' as the guardians of the *sharī'a*, though this role, in the Mahdī's view, had exhausted itself. The '*ulamā'*'s *ijtihādāt*, by means of which the Mahdī referred to the development and elaboration of Islamic law through conventional *ijtihād* on the basis of the classical theory of Islamic law (*uṣūl al-fiqh*), was adequate in past centuries up to his generation. In the nineteenth century, however, it was the Mahdī's conviction that the *sharī'a* should be accommodated to the needs of the time and place of his contemporaries. Since the Mahdī deemed himself the highest religious authority (*al-marjī' al-a'lā*) by virtue of his direct communication with the Prophet, from whom he received the authentic law, there was no longer any point in resorting to the '*ulamā'*' and their *fiqh*. In his capacity as the Expected Mahdī he deemed himself capable of bringing about the revival of Islam and restoring it to its position during the life of the Prophet Muḥammad.<sup>1</sup> The fact

1 Abū Salīm, *al-Ḥaraka al-fikriyya*, 167–68, 179.

that the Mahdī claimed for himself infallibility<sup>2</sup> undoubtedly qualified him in his eyes to derive law, independently from the *‘ulamā’*, from the textual sources of the Qur’ān and the *sunna* and—in the event of a lacuna in these sources—from the inspiration (*ilhām*) received directly from the Prophet Muḥammad.<sup>3</sup>

Abū Salīm further maintains that the Mahdī, though well versed in the Qur’ān and *ḥadīth* as well as in *fiqh*, did not deem himself bound by any particular school of law (*madhhab*); rather, his application of a particular doctrine in any given issue was a function of the subject matter. At the same time Abū Salīm contends that the Mahdī was inclined to apply the Shāfi‘ī doctrine in matters pertaining to worship (*‘ibādāt*); in matters pertaining to positive law (*aḥkām*) other than worship—the Mālikī doctrine (which, as already noted, enjoyed the status of a residuary law in the Mahdist state<sup>4</sup>); and in matters pertaining to theology (*tawḥīd*), aggravated punishment (*‘uqūbāt*), and denial of the miracles attributed to the friends of God (*karāmāt al-awliyā’*)<sup>5</sup>—the Ḥanbalī school.<sup>6</sup> In any case, as will be demonstrated below, in the Mahdī’s rulings in matters pertaining to positive law arranged according to subject matter, no reference is made to schools of law or their legal literature even in cases where a ruling may be identified with a legal doctrine of a particular school of law. Usually, the Mahdī’s rulings are based explicitly on the textual sources of the Qur’ān and the *sunna*.

Ibrāhīm suggests that the Mahdī intended to unite all the schools by means of the eclectic expedient (*ikhtiyār*), i.e., combining different legal doctrines from all the schools.<sup>7</sup> Ibrāhīm further contends that the Mahdī’s denial of all the schools was prompted by the desire to reach a total consensus among the *‘ulamā’* that would unite the people behind his mahdship; the more so since the ordinary people of Sudan were not at all aware of the differences between the schools.<sup>8</sup> Searcy holds that the Mahdī’s opposition to the schools was framed in terms of pure monotheism (*tawḥīd*) as articulated by

2 See above, 8.

3 For further discussion of this issue, see below, 36.

4 See above, 13.

5 Searcy, *The Sudanese Mahdist State*, 68.

6 Abū Salīm, *al-Ḥaraka al-fikriyya*, 83, 164–65. Abū Salīm’s findings seem to be based on an accumulated impression of the Mahdī’s documents; no specific examples of the Mahdī’s doctrinal inclinations are provided, not even in the marginal notes to the Mahdī’s documents. Cf. al-Mahdī, *Yas’alūnaka ‘an al-mahdiyya*, 192.

7 See Glossary, s.v. “*takhayyur*.” Ibrāhīm does not provide any instance of using this method in the Mahdī’s ruling, nor did I come across any conscious attempt to use this method in the Mahdī’s rulings pertaining to positive law.

8 Ibrāhīm, *al-Fikr al-sūdānī*, 31.

Muḥammad. Thus in response to a query about the path of the Mahdiyya he stated: "Our Path is: 'there is no god, save God and Muḥammad is the messenger of God; and our *madhhab* is the *sunna* and Qur'ān.'" Searcy further estimates that, on the purely political level, the schools were banned "in order to project an image of unity within the Mahdist state and give the Mahdī unchallenged authority to interpret the Qur'ān and the *sunna*," and that the dismantlement of the schools was "essentially a ritual revocation of the past regime [i.e., the Turco-Egyptian administration], cloaked in legal garb."<sup>9</sup>

The Mahdī abolished all schools of law and ignored legal literature and compilations (*taṣānīf*) written by the 'ulamā' while concentrating on the Qur'ān, the Prophetic *ḥadīth* and reliable biographies of Muḥammad (*al-siyar al-ṣaḥīḥa al-masnūda*),<sup>10</sup> thus releasing himself from the burden of the *taqlīd*, the adherence to the *fiqh* literature as established within each of the schools.<sup>11</sup> In a letter to a certain *faqīh*,<sup>12</sup> a teacher propagating Islam, and his tribesmen, the Mahdī reminds him that he has accepted his repentance after the *faqīh* had submitted himself to the Mahdiyya and left behind his previous learning of Islam. The Mahdī further forgives him for not being able to join the Mahdist state due to his old age and lack of physical capability. In response to the *faqīh*'s question as to whether

I [the Mahdī] have abrogated (*nasakhtu*) all the treatises dealing with legal doctrine (*fiqh*), theology (*tawḥīd*) and *ḥadīth*, with the exception of the Qur'ān, my [response] is that all those treatises that I mentioned, originate from the mighty Qur'ān. My judicial practice (*'amālī*) [i.e., deriving law] regarding the Qur'ān is based on the solid verse (*al-āya al-muḥkama*) and the sound *ḥadīth* (*aḥādīth ṣaḥīḥa*). This [i.e., the abrogation] includes everything you mentioned with respect to the books [legal treatises of all schools], especially those pertaining to doctrine (*fiqh*). As to theology (*tawḥīd*), it is integrated (*mundarij*) in the mighty Qur'ān; it is included in its [the Qur'ān's] statement: "There is no god save God [and] Muḥammad is the messenger of God. . . ." I am the renovator

9 Searcy, *The Sudanese Mahdist State*, 125, 145.

10 *Al-Āthār al-kāmila*, v, 360. Cf. Shaked, *The Life of the Sudanese Mahdī*, 59, 216; Abū Salīm, *al-Ḥaraka al-fikrīyya*, 83, 166.

11 *Al-Āthār al-kāmila*, I, 77, fn. 4, 164, 190; *ibid.*, III, 319–20; *ibid.*, IV, 485; v, *ibid.*, 367. Cf. Abū Salīm, *al-Ḥaraka al-fikrīyya*, 86; Ibrāhīm, *al-Širā'*, 34; Shaked, *The Life of the Sudanese Mahdī*, 59, 219; Peters, "Idjtihād and Taqlīd," 133, fn. 4; Schacht, "Taklīd," 630–31; Mālik, *al-Muqāwama*, 151, 153; Sulaymān, *Dawr al-azhar*, 82; Ibrāhīm, *Ta'rikh al-ta'lim*, 332.

12 See Glossary, s.v.

(*mujaddid*) of what had been wiped out (*indarasa*) of the normative legal practices (*sunan*) [of the Prophet] and the commentary on the Qur'ān (*tafsīr*) and everything that it includes. . . .<sup>13</sup>

In a similar vein, it is reported that the Mahdī said in one of his instructional sessions (*majālis*), while concentrating on the Qur'ān as the primary source of Islamic law:

Abandon all the books [i.e., the *fiqh* of all the schools] (*utrukū al-kutub kullahā*) except for the book of God because [these books] create a barrier to the understanding of the meaning of the Qur'ān (*fa-innahā hijāb 'an fahm ma'nāhu*).<sup>14</sup>

On another occasion, the Mahdī urges the people of Fez:

Stop pursuing the schools of law and the views pronounced by the Imāms [of these schools] (*wa-[an] taṭraḥū al-'amal bi'l-madhāhib wa-arā' al-mashāyikh*).<sup>15</sup>

As will be demonstrated below, in actual fact, the Mahdī's proclamations, *fatwās* and judgments may occasionally be compatible with one school or another; but this seems to be a matter of chance rather than the conscious adoption of the doctrine of a particular school.<sup>16</sup>

## 2 The Qur'ān and the *Sunna*

### 2.1 *The Qur'ān*

Verses from the Qur'ān are cited frequently in the Mahdī's documents, quite often several times in a single document. As a self-proclaimed successor to the Prophet, the Mahdī felt strongly attached to the Qur'ān, and whenever possible he identified situations that he experienced in daily practice with situations that the Prophet had experienced as it transpires in the Qur'ān or in

13 *Al-Āthār al-kāmila*, v, 367.

14 *Ibid.*, vii, 82.

15 *Ibid.*, iv, 485. *Mashāyikh* may also refer to Sūfi shaykhs, though not in this context. See above, 22.

16 See above, 7, 27, and below, 283.

the reflection of these situations in the *ḥadīth* literature.<sup>17</sup> In other words, we are dealing here with an attempt to enlist the moral lessons of the Prophet's experience to promote the Mahdī's agenda.<sup>18</sup> In this respect it may be rightly claimed that the history of the Mahdiyya cannot be fully apprehended outside the context of the Qur'ān<sup>19</sup> and the *ḥadīth*.

According to a tradition attributed to the Mahdī after his death, the Qur'ān is not only a source of law; it is the genesis of the *sharī'a*. This statement is based on his interpretation of Q. 5:3, which reads: "This day I have perfected your religion" (*al-yawma akmaltu lakum dīnakum*). According to a tradition, God pronounced this statement during Muḥammad's last pilgrimage to Mecca, shortly before he died.<sup>20</sup> The Mahdī regards this verse as evidence (*dalīl*) that

The entire [Islamic] positive law (*aḥkām*) is derived from the Qur'ān,<sup>21</sup> rather than *fiqh* [as elaborated in the legal doctrines of the schools] or any other source excluding the *sunna* of the Prophet Muḥammad . . . and this [*sunna*] had emerged from the illumination (*nūr*) of the Qur'ān.

The Mahdī further refers to a *ḥadīth* according to which the Caliph 'Umar b. al-Khaṭṭāb used "to wipe out or burn any book other than the Qur'ān out of fear that [such a book] might modify the Book of God after his [Umar's] death."<sup>22</sup>

According to Abū Salīm, the Mahdī memorized the Qur'ān and was strongly influenced by it, to the extent that it inspired his acts and decisions. He interpreted several Qur'ānic verses and wrote short treatises (*rasā'il*) in an attempt to clarify their meaning.<sup>23</sup> The Mahdī's resort to the Qur'ān was quite often instrumental; this is certainly so regarding the citation of those verses that

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17 Unless a Qur'ānic verse is cited verbatim in the Mahdī's documents it is not always possible to tell whether the situations that the Prophet experienced are derived by the Mahdī directly from the Qur'ān or from the *ḥadīth* literature. As will be demonstrated below, the Mahdī quite often regards the Qur'ān and the *sunna* as one indivisible source for deriving law.

18 See below, e.g., docs. 11, 22, 48, 82.

19 Cf. Welch, "Al-Ḳur'ān," 402, col. iiff.

20 Rubin, *The Qur'ān*, 90, fn. 3.

21 The conventional Islamicist scholarship, starting with Joseph Schacht, maintains that the Qur'ān's contribution as a source of law to the formation of the early Islamic law started as late as the dawn of the second century AH. In contrast, Hallaq suggests that the Qur'ān's contribution started from the early Meccan period, as early as when Muḥammad began to receive the Revelation; see Hallaq, "Qur'ān," 239ff.

22 *Al-Āthār al-kāmila*, VII, 24. Cf. Wensinck, *Concordance*, VI, 176, col. i.

23 *Al-Athār al-kāmila*, VI, 29 (Abū Salīm's introduction to the volume).

could provide divine support for his decisions. As already noted, his request to abandon the literature of the commentary on the Qur'ān (*tafsīr*) was motivated by the fear that this literature might create a barrier to the correct understanding of the Qur'ān.<sup>24</sup>

In a letter to one of his followers, the Mahdī explains that the derivation of positive law (*ikhrāj al-aḥkām*) from the Qur'ān is by means of God fearing (*taqwā*). In support of this statement the Mahdī cites the following Qur'ānic verses, which underline the importance of God fearing: 2:282; 65:2; 8:29.<sup>25</sup> He seems here to allude to the Qur'ān being easily accessible to every observant Muslim, with no need to resort to sophisticated interpretation. Abū Salīm maintains that the Mahdī's interpretation of Qur'ānic verses, as manifested in his documents, was not methodic (*manhajī*); rather, "its sole purpose was to gain goals that are compatible with his inclinations and confirm his [pre-designed] objectives (*wa-innamā huwa istikhrāj al-ghāyāt allatī tuwāfiq ittijāhahu wa-tu'akkid manḥāhu*)."<sup>26</sup>

## 2.2 The Sunna

The term "*sunna*" in the Mahdī's documents denotes the Prophetic *sunna* as a source of law.<sup>27</sup> The Mahdī does not refer to any specific canonical collection or otherwise from which he cites the *ḥadīths*. Abū Salīm has found that a great many of the *ḥadīths* in the Mahdī's documents were used by preachers (*wu'āz*) in religious exhortations and that in any case they did not originate from reliable collections of *ḥadīths*. Moreover, the Mahdī did not care to cite verbatim the entire narrative (*riwāya*) of a *ḥadīth*; rather, quite often he would cite only a part of the original *ḥadīth* and proceed by phrasing the rest of it in his own words, a practice that makes it difficult to distinguish between the original text of the *ḥadīth* and the Mahdī's additions.<sup>28</sup> Abū Salīm reports that occasionally he could not locate a *ḥadīth* cited in the Mahdī's documents in any collection

24 See above, 29. Cf. *al-Āthār al-kāmila*, VII, 221; *ibid.*, I, 19 (Abū Salīm's introduction to the volume).

25 *Al-Āthār al-kāmila*, III, 352. For further details on God fearing as a source for deriving legal rules, see below, 50.

26 *Ibid.*, VII, 7 (Abū Salīm's introduction to the volume). Cf. *ibid.*, I, 19 (Abū Salīm's introduction to the volume).

27 Trimingham maintains that the Mahdī adhered only to the traditions of the Ṣaḥāba, the Companions of the Prophet (*Islam in the Sudan*, 156). Although the Mahdī refers to the Ṣaḥāba quite often in his documents, this writer did not come across instances where he relies on traditions, which he explicitly attributes to the Ṣaḥāba.

28 See *al-Āthār al-kāmila*, I, 33 (Abū Salīm's introduction to the volume). For an index of the *ḥadīths* as appearing in the Mahdī's documents, see *al-Āthār al-kāmila*, VII, 401ff.

or any other source of *ḥadīths*.<sup>29</sup> Although the Mahdī is fully aware of the different kinds of traditions in terms of quality and soundness, number of transmitters and nature of the *isnād*: *ṣaḥīḥ* (sound), *ḥasan* (good), *ḍaʿīf* (weak), *maqtūʿ* (a tradition going back to a Successor {*tābiʿ*}), etc.,<sup>30</sup> he does not bother to provide the chain of transmitters of traditions cited by him; rather, he ascribes the tradition directly to the Prophet. As Abū Salīm has rightly observed, the Mahdī concentrates on the content (*matn*) of the *ḥadīth* rather than on the uninterrupted chain of authorities on which a tradition is based (*sanad*).<sup>31</sup> The Mahdī does not provide any explanation for this omission, but it may well be that this was common practice among religious functionaries, such as preachers, at the scene of the Mahdī's activity. The omission of the *sanad* may as well be a corollary of the Mahdī's alleged claim to direct communication with the Prophet, which makes the *sanad* redundant.

As will be demonstrated below, in the Mahdī's legal methodology, the *sunna* as a source of law may precede the Qurʾān, to the extent that a *ḥadīth* may abrogate a Qurʾānic verse. Naturally, the *sunna*, more than the Qurʾān, provides an abundance of legal material that can be used to promote the Mahdī's legislation. In addition, the Mahdī identifies himself with the Prophet, whom he claims to succeed. He would say to his followers: "I follow the path of the messenger of God, God bless him and grant him salvation, my time is integrated into his time and my Companions follow in his Companions' footsteps." (*fa-innī ʿalā nahj rasūl allāh . . . wa-zamanī mundarij fī zamanihi wa-aṣḥābī ʿalā qadam aṣḥābihi*).<sup>32</sup> Quite often the Mahdī resorts to Prophetic *ḥadīths* in an attempt to provide *sharʿī* legitimacy to his decisions in all domains of law and moralistic guidance to his adherents in such matters as the virtues, asceticism and withdrawal from this world.<sup>33</sup> However, as will be demonstrated below, in the event of a lacuna in the textual sources of the Qurʾān and the *sunna*, the inspiration (*ilhām*) derived from the Prophet becomes a source of law for the Mahdist legislation. Naturally, this source is closely connected to the Mahdī's claim to infallibility, which actually implies that he has almost unlimited discretion to deviate from the textual sources and the positive law as established by the schools of law on the basis of these sources.<sup>34</sup> As will be

29 *Al-Āthār al-kāmila*, VII, 401.

30 *Ibid.*, I, 20 (Abū Salīm's introduction to the volume), 141. Cf. Robson, "Ḥadīth," 24, col. ii–25, col. ii; Ibrāhīm, *al-Širāʿ*, 34.

31 See *Al-Āthār al-kāmila*, I, 19 (Abū Salīm's introduction to the volume).

32 See, e.g., *ibid.*, I, 430.

33 *Ibid.*, I, 19 (Abū Salīm's introduction to the volume).

34 For instances, see below, 29off.

demonstrated below, the Mahdī's authority as legislator has become so strong, to the point that traditions attributed to him have become a complementary source of law in their own right.

In his capacity as successor to the Prophet and reviver of religion, the Mahdī deems himself authorized to “bring to light the *sunan* of the prophets and messengers that have been extinguished” (*muḥhir mā [i]ndarasa min sunan al-anbiyā' wa'l-mursalīn*).<sup>35</sup> The revival of the Prophetic *sunna* is required in order to put an end to the spread of the “negative innovations (*bida'*) and to straying from the right path (*ḍalāl*), which brought about the destruction of religion and the rules of the Qur'ān and the *sunna*.”<sup>36</sup> The style and phrasing of these messages may have been inspired by Sūfī literature and ideas promoting renovation (*tajdīd*) in Islam.<sup>37</sup> As will be demonstrated below, the followers of the Mahdī present him as the *mujaddid* of Islam.<sup>38</sup>

According to Na'ūm Shuqayr, the Mahdī burnt all the treatises on the *sunna* and *tafsīr* as well as all “books pertaining to religion and learning” (*al-kutub al-dīniyya wa'l-ilmīyya*), a phrase that in the context under review seems to refer to such topics as worship, law and related subjects, though the possibility that Shuqayr had in mind Islamic “learning” in the widest sense of the term cannot be ruled out. In any case, he is anxious to note that no books were left in Sudan save for the Qur'ān and the Mahdī's devotional manual of invocations and prayers (*rātīb*), as well as his proclamations (*manāshīr*),<sup>39</sup> referring thereby to innovative legislation.

### 2.3 Traditions Attributed to the Mahdī

Sayings (*aqwāl*) or traditions were attributed to the Mahdī after his death. The Mahdī's status as the Prophet's successor, his direct communication with the Prophet to the point of deriving inspiration from the latter and his authority as infallible Imām—all these resulted in elevating the Mahdī's traditions to the position of a complementary source to the Prophetic *ḥadīth*. The Mahdī's traditions resemble in content and style Prophetic traditions. The words used for the transmission of these traditions are derivatives of *bashshara*, *ḥaddatha* and *akhbara*. The Mahdī's Anṣār are designated Aṣḥāb (Companions). These

35 *Al-Āthār al-kāmila*, II, 325; *ibid.*, V, 24 (*ihyā' al-sunna*), 102.

36 *Ibid.*, V, 242.

37 For commentary of *ḥadīth* on *tajdīd*, see, e.g., <http://shamela.ws/browse.php/book-8862/page-342> (last accessed 22 September 2014).

38 See below, 50.

39 *Al-Āthār al-kāmila*, VI, 22–23 (Abū Salīm's introduction to the volume referring to Shuqayr, *Ta'rīkh al-Sudan*, 641).

traditions are intended for such purposes as strengthening adherence to the Mahdī by declaring those who deny his mahdīship as infidels, promoting *jihād* against his enemies, observing strictly the duty of praying and refraining from unlawfully taking possession of booty. Quite often angels, prophets, friends of God (*awliyā'*) and such Ṣūfī figures as 'Abd al-Qādir al-Jīlānī (d. 561/1166), the founder of the Qādiriyya order, were present physically in the circumstances in which these sayings took place, probably in an attempt to provide additional support for his traditions.<sup>40</sup> The Mahdī's traditions demonstrate his status as a source of law and as an independent legislator.

#### 2.4 Custom

Custom denotes social, economic and other practices that develop among people at the "grass roots" level and force the normative system to accommodate itself, either by adopting these practices into the *fiqh* or by rejecting them on grounds of incompatibility. Classical Islamic legal theory did not recognize custom (*'urf*, *'āda*) as a source of law. Custom was incorporated into Islamic law in a variety of ways: by identifying—through expressions in the *ḥadīth*—certain practices with the *sunna* or consensus (*ijmā'*), by resorting to judicial preference (*istihsān*) and to secondary sources of law such as *fatwās*, and by using legal fictions (*ḥiyal*). Among later Ḥanafī jurists there was an increasing tendency to recognize custom as a source of law, until eventually in the 16th century it gained something close to formal recognition. Custom was formally recognized as a source of law in the Mejlle, the Ottoman Civil Code of 1877.<sup>41</sup> Custom per se is not a source of law in the Mahdī's legal methodology. To the extent that it plays a role in this context it seems to have been embedded in the traditions attributed to the Mahdī as it had been embedded in the *sunna*.<sup>42</sup> In any case, the Mahdī refers to custom in purist rather than legal terms: manners and practices that are not compatible with *sharī* morality and ethics.<sup>43</sup>

#### 2.5 Literal Reading of the Textual Sources

There is ample evidence in the Mahdī's documents of his inclination to external interpretation of the textual sources on the basis of their literal meaning, in conformity with the Zāhirī scholar Ibn Ḥazm (d. 456/1064). Cases in point are an interpretation of Q. 5:38, which prescribes amputation of a thief's hand

40 *Al-Āthār al-kāmila*, e.g., v, 455–60; Trimmingham, *The Sufi Orders*, 14.

41 Libson, "Custom," 131ff.; idem, *Jewish and Islamic Law*, 70ff.; idem, "'Urf," 887, col. ii–888, col. i.

42 Libson, "Custom," 131f.

43 See below, doc. 89.

while totally ignoring the preconditions for carrying out the punishment, such as the object taken away in secrecy (*khaḥfā'* or *sitr*) and minimal value of the stolen object (*niṣāb*), which had been elaborated on by the specialists in *fiqh*;<sup>44</sup> a literal reading of a will in favor of legal heirs in accordance with Q. 2:180 and 240, although these verses had been abrogated by Q. 4:11–12 and 176;<sup>45</sup> and an interpretation of a *ḥadīth* equating prohibition of marriage on grounds of fosterage with prohibition on grounds of kinship.<sup>46</sup>

## 2.6 Abrogation (*Naskh*)

As noted earlier, in the Maḥdī's legal methodology the Prophetic *sunna* may precede the Qur'ān as a source of law. This possibility is sustained by the Maḥdī's application of *naskh*, that is, abrogation of one textual source (*naṣṣ*) by another textual source. This procedure is intended to identify God's will in the event of doubt arising from contradictions in the textual sources. The dominant view among the *fuqahā'* is that the Qur'ān as well as recurrent *ḥadīths* abrogate solitary *ḥadīths*, but not vice versa.<sup>47</sup> The Maḥdī's application of the *naskh* procedure seems to vacillate. On various occasions, while explaining the basic rules of this procedure, he categorically maintains that a reliable (in terms of transmitters) *ḥadīth* abrogates a reliable *ḥadīth*, and a Qur'ānic verse abrogates a Qur'ānic verse.<sup>48</sup> On other occasions he maintains that "Qur'ān abrogates Qur'ān and *ḥadīth* abrogates Qur'ān."<sup>49</sup> The Maḥdī justifies the abrogation of a Qur'ānic verse by a *ḥadīth* on the grounds of public

44 See below, doc. 55. Cf. *al-Āthār al-kāmila*, III, 58 (the Maḥdī praises *jihād* in the cause of God, "according to the plain [i.e., literal] {*ṣarīḥ*} Qur'ānic verses and the texts of the Prophetic *ḥadīths*").

45 See below, doc. 50.

46 See below, doc. 14.

47 Although some jurists maintain that recurrent *ḥadīths* may abrogate Qur'ānic verses, on the grounds that both texts enjoy the status of *mutawātir* and hence are equal in status, implying thereby that they can repeal each other; see Hallaq, *Sharī'a*, 96–97; Burton, "Naskh," 1009ff.; idem, "Ḥadīth," 25; Glossary, s.v. *ḥadīth mutawātir*.

48 See e.g., *al-Āthār al-kāmila*, I, 98, 137 (a sound {*ṣaḥīḥ*} *ḥadīth* abrogates a weak {*da'īf*} *ḥadīth* and a sound *ḥadīth* may abrogate another sound *ḥadīth*), 338. Cf. Abū Salīm, *al-Ḥaraka al-fikriyya*, 75–76; Ibrāhīm, *al-Ṣirā'*, 34. As already noted, although the Maḥdī is fully aware of the different kinds of traditions in terms of quality and soundness, number of transmitters and nature of the *isnād*, he does not bother to provide the chain of transmitters of traditions cited by him.

49 *Manshūrāt al-aḥkām wa'l-ādāb*, III, 101; *Manshūrāt al-mahdiyya*, 227. Such views may be found also in reports (*riwāyāt*) attributed to the Maḥdī; see *al-Āthār al-kāmila*, v, 96.

interest (*maṣlaḥa*).<sup>50</sup> The abrogation of Qur'ānic verses by *ḥadīth* was strongly condemned by the 'ulamā', who denied the Mahdī's juristic authority.<sup>51</sup>

### 3 Inspiration (*ilhām*) Derived from the Prophet and from God

According to Eliyahu Stern, *ilhām* (lit. "inspiration") denotes an intuitive heavenly cognizance anchored in certainty—to be distinguished from comprehending some certainty intellectually. In theological and mystical literature, the *ilhām* is strongly affiliated with knowledge vested in prophets and *awliyā'* (friends of God); but unlike *waḥy*, which is mostly typical of the prophets, the *ilhām* is not designed to deliver a divine text. Mystics may obtain such cognizance on the strength of *ilhām* and a mystical experience of union with God (*wuṣūl*)—which is an advantage compared to the 'ulamā' who are dependent on scholarly proofs in order to obtain knowledge. It is noteworthy that al-Ghazālī situates *ilhām* among the degrees of intuitive knowledge that is unobtainable intellectually. In his view, *ilhām* is accessible to friends of God while *waḥy* is accessible to prophets (who rank higher in terms of virtue than the friends of God). Anyone capable of purifying his heart to the point that qualifies him to grasp the light of heavenly knowledge may perhaps reach the degree of prophecy and thus will bring about the collapse of the barrier between *ilhām* and *waḥy*.<sup>52</sup> Inspiration belongs to esoteric knowledge (*'ilm al-bāṭin*)—mystical knowledge based on revealed illumination (*ma'ārif kashfiyya*) as distinct from exoteric knowledge (*'ilm al-zāhir*) based on the textual sources (*maṣādir naqliyya*) of the Qur'ān and the *sunna*.<sup>53</sup>

Occasionally the Mahdī designates inspiration by the term *waḥy* and its derivatives. He defines *waḥy* as a "transmission of something secret to the

50 See below, 43ff.

51 *Al-Āthār al-kāmila*, II, 183. For further details, see below, 47ff. This writer, however, did not come across a single instance where the Mahdī *explicitly* abrogated a Qur'ānic verse by a *ḥadīth*, although the possibility that this was done *implicitly* cannot be ruled out.

52 Stern, "On Mystical Vision and the Protection from Sin," 140–42 and the sources mentioned in fn. 26, with special reference to Lazarus-Yafeh, *Studies in Ghazzālī*, 304–6. On *ilhām* and *waḥy* in the Qur'ān, see Macdonald, "Ilhām," 119–20; Wensinck-[Rippin], "Waḥy," 53ff. On the distinction among the Ṣūfīs between *waḥy* and *ilhām*, see Sviri, *The Sufis*, 23, fn. 5, 156, fns. 170, 174, 502 (*waḥy* is God's inspiration to prophets while *ilhām* is God's inspiration to his friends).

53 Abū Shūk, "Minhajīyyat al-tashrī," II, col. i. Cf. Trimmingham, *The Sufi Orders*, Glossary, s.v. *bāṭin*, *ma'rifa*, *zāhir*.

heart" (*ilqā' amr khafīyy fī 'l-qalb*). This may occur when citing a divine text, such as Qur'ānic verses.<sup>54</sup> The Mahdī seems to use the term *waḥy* exclusively for divine inspiration, while *ilhām* is used for both the Prophet's and God's inspiration.<sup>55</sup>

In the Mahdī's documents, *ilhām* may be communicated from the Prophet or God, either directly or by means of the "Angel of Inspiration." Verbs used to signify the process of the transmission are: *warada*,<sup>56</sup> *bashshara*<sup>57</sup> and *akhbara*.<sup>58</sup> The word *akhbara* is used for the transmission of Prophetic traditions.<sup>59</sup> Usually, *ilhām* is transmitted as a message from the Prophet to the Mahdī, in an attempt to guide him in legal and ethical matters. The transmission may take place in a colloquy (*ḥaḍra*)<sup>60</sup> between the Mahdī and the Prophet during which the Mahdī receives a vision (*ru'ya nabawiyya*)<sup>61</sup> or mystical insight (*wārid*). The vision or insight is transmitted through a dream or in a state of wakefulness.<sup>62</sup> Stern notes that one of the many experiences mentioned in Ṣūfī literature is a mystical experience described as a lofty vision (often entitled *mushāhada*), which can be accessed neither by the intellect nor by the senses but rather by the heart (*qalb*) and sometimes is experienced as seeing with one's own eyes. Occasionally this experience resembles a prophetic vision, especially when angels and God appear in the vision. The heart is often described as a mirror that if cleansed of all stains of sin and passion can reflect sublime visions. Some Ṣūfīs hold that the *awliyā'* can achieve a mystical vision of God.<sup>63</sup> Al-Ghazālī maintains that meeting with God is internal vision, which is stronger than physical vision. Al-Qushayrī maintains that believers may see God in a dream and some achieve a lofty vision of God as clear as seeing Him

54 *Al-Āthār al-kāmila*, VII, 146 (Q. 8:12). Cf. *ibid.*, VII, 28 (Q. 5:11), 55 (Q. 16:43), 57 (Q.16:68).

55 Cf. Abū Shūk, "*Minhajīyyat al-tashrī'*," 25, col. i.

56 *Al-Āthār al-kāmila*, III, 285; *ibid.*, IV, 187 (*qad waradat lanā ḥaḍra nabawiyya*). *Warada* is a common expression in Ṣūfī literature that signifies a mystical experience descending all of a sudden on a human being. I owe this observation to Eliyahu Stern.

57 *Al-Āthār al-kāmila*, III, 141 (*wa-qad bashsharanī* [the Prophet]); *ibid.*, V, 242.

58 *Ibid.*, II, 230 (*khavar nabawī*), 274 (*akhbaranī* [the Prophet]).

59 Robson, "Ḥadīth," 27, col. i.

60 See Glossary, s.v. *ḥaḍra*.

61 *Al-Āthār al-kāmila*, III, 184; *ibid.*, IV, 6. Cf. Kister, "Musaylima," 4, 7, 13ff.

62 *Al-Āthār al-kāmila*, III, 73, 87, 252. See, e.g., doc. 76 (the Mahdī's interpretation of Q. 8:41 is based on a Prophetic message), doc. 79 (a Prophetic message informs the Mahdī of Gordon's forthcoming defeat at Khartoum).

63 Stern, "On Mystical Vision and the Protection from Sin," 146–49 and the references mentioned in the footnotes.

with one's own eyes.<sup>64</sup> In a commentary on a *ḥadīth*, the Mahdī maintains with respect to Paradise in the Hereafter that those who abstain from passions are entitled “to meet God, see His noble face and enjoy His amazing proximity” (*liqā' allāh wa'l-nazar ilā wajhihi al-karīm wa'l-tamattu' bi-qurbihī al-'aẓīm*).<sup>65</sup>

Stern has observed that in Islamic literature dreams may serve as a means of revealing a truth or an authoritative message; almost every aspect of Muslim life is reflected in dreams and in commentary on dreams. The appearance of the Prophet Muḥammad in a dream testifies to the genuineness of the dream. Occasionally the dream is tantamount to the miracles (*karāmāt*) of mystics in which the Prophet may appear and instruct the dreamer to perform a specific act. Besides Muḥammad, other people of virtue who have passed away, such as Jesus, 'Alī, the Ṣaḥāba (the Prophet's Companions), the forefathers dating back to the first generations after the Prophet, or well-known mystics, would appear in a dream. The appearance of an angel in a dream is a most significant vision, since it is deemed in Islamic tradition to be one of the virtues of the prophets. Moreover, even God would occasionally appear in a dream. Genuine dreams are instrumental in guiding people, to uncover concealed secrets, etc.<sup>66</sup>

Usually, the transmission of an *ilhām* occurs while the Mahdī is in a dream state.<sup>67</sup> There is, however, evidence in his documents of the transmission of an *ilhām* while the Mahdī is in a state of wakefulness (*yaqẓa*). Thus in one case, *sayyid al-wujūd* (viz, the Prophet) tells the Mahdī that there is no doubt whatsoever regarding his mahdiship; he repeats this message three times while the Mahdī is

in a state of wakefulness, in good health, devoid of legal impediments, neither in a state of sleep, attraction, intoxication nor insanity; rather, he is in full possession of his mental faculties (*yaqẓatan fī ḥāl al-ṣiḥḥa khālīn min al-mawānī' al-shar'īyya lā bi-nawm wa-lā jadhb wa-lā sukr wa-lā junūn, bal muttaṣif bi-ṣifāt al-'aql*).<sup>68</sup>

64 Ibid., 149–53 and the references mentioned in the footnotes.

65 *Al-Āthār al-kāmila*, v, 300–1. Cf. Stern, “On Mystical Vision and the Protection from Sin,” 149, fn. 57 and the sources mentioned there.

66 Ibid., 142–44 and the references mentioned in the footnotes.

67 According to Abū Salīm, the *ḥaḍra* is tantamount to a dream; the dreamer may not understand during the dream part of the dream or forget details of what was said or seen during the meeting (*al-Āthār al-kāmila*, vii, Glossary, s.v. *ḥaḍra*). In other words, only after the dreamer awakens does he fully apprehend the message delivered to him on the basis of the details of the dream that he remembers. Cf. Abū Salīm, *al-Ḥaraka al-fikriyya*, 66; Glossary, s.v. *ḥaḍra*. For a specific case, see below, e.g., 39.

68 *Al-Āthār al-kāmila*, i, 137.

A unique description of an ecstatic experience can be gathered from a *ḥaḍra* in which the Mahdī receives a personal communication from the Prophet informing him that God, by means of the Angel of Inspiration, permits him to have concurrently in his matrimonial possession more than four wives and restore his triply-divorced wife without resorting to intermediate marriage, both in contradiction of *fiqh*:

[line 12] . . . From this Prophetic communication (*al-khabar al-nabawī*) I learned that the inspiration that God conferred upon me (*yulhimunī allāh*) by means of the Angel of Inspiration (*malak al-ilhām*),<sup>69</sup> if the Messenger of God . . . , had been present [at this very moment] he would have conducted himself in like manner. [13] And while being preoccupied with this matter [polygamy], I was approached by a sense of serenity, which I heard with the entirety of my body, without a word [14] or a voice, without secrecy or publicity, without [a sensation of] proximity or remoteness. I cannot describe the quality of anything thereof. [15] [The Qurʾānic verse] guided me toward many secrets, ‘and Allāh’s is the Sublime Similitude’ [Q. 16:60], and God shall ascend above anything that comes to one’s mind. [16] This matter is entrusted to the hands of God . . .

[17] However, what occurred to me, by means of that inspiration (*ilhām*) I received, is that I became happy [18] and relieved in regard to the matter with which I was preoccupied [the number of the wives]. Many secrets, whose understanding was unclear, were vouchsafed to me. [19] Similar to the occurrence of this serenity, I experienced something resembling it in regard to the appearance of a certain woman, an announcement of joyous news, which I connected with the naming of a son and a daughter, which God would bestow upon me from her. I heard it [viz., the announcement] with my whole body in an inward fashion (*bāṭinan*). [21] And all of that was through the power of God and His grace, not through passion for women.<sup>70</sup>

69 In other words, we are dealing here with inspiration derived from God (through the Angel of Inspiration) rather than the Prophet, though the latter is the vehicle for transmitting the content of the inspiration. The Mahdī does not disclose the identity of the “Angel of Inspiration.” Usually, this angel is identified with Gabriel. I owe this clarification to Etan Kohlberg. Cf. al-Abbādī, *al-Anwār*, 233–34. On the appearance of the “angel of *ilhām*” beside the Prophet, see, e.g., <http://www.al-shia.org/html/ara/books/lib-rejal/mahdi-96/ks2.htm> and <http://www.akhlagh.net/lib/2/9/content-2857.html> (last accessed 28 October 2014). For further discussion, see below, 40–43.

70 For the full text of this *ḥaḍra*, its translation and annotation, see Layish, “The Mahdī’s Legal Methodology,” 47–65.

Occasionally, other participants besides the Prophet are present in Prophetic colloquies, such as the four Righteous Caliphs, the Mahdī's Aṣḥāb, "an angel descending from heaven with a green crown (*tāj akḥḍar*)" [viz. al-Khaḍir],<sup>71</sup> the Prophet's Companions Ibn 'Abbās, Ibn 'Abd al-Salām and Ibn Mas'ūd, 'Ā'isha, "the Mother of believers,"<sup>72</sup> angels, *awliyā'* (friends of God), *aqtāb* ("poles," heads of the hierarchies of *awliyā'*),<sup>73</sup> *shayāṭīn* (devils)<sup>74</sup> and such Ṣūfī figures as 'Abd al-Qādir al-Jilānī (d. 561/1166) and Ibn al-'Arabī (d. 638/1240).<sup>75</sup>

In the Mahdī's documents there is some evidence of administrative decisions handed down on the basis of Prophetic colloquies. Thus in a letter to Shaykh Muḥammad Sharīf Nūr al-Dā'im, the grandson of Shaykh Aḥmad al-Ṭayyib al-Bashīr, who had introduced the Sammāniyya order in Sudan, the Mahdī tells him that after having discussed the crisis between them<sup>76</sup> in several colloquies with the Prophet, it has been decided to forgive (*'afw*) him and return to him his property that had been expropriated as booty (*taghnūm*).<sup>77</sup> And in a letter to Muḥammad Sharīf, Khalīfat al-Karrār ('Alī), the Mahdī tells him that he has instructed the Anṣār, "on the basis of a Prophetic colloquy" (*ḥaythu annahu ḥaṣalat fī dhālika ḥaḍra*) to return to the people of Bāra who have adhered to the Mahdiyya their property or, if lost, its value.<sup>78</sup>

Occasionally the Mahdī requests inspiration directly from God.<sup>79</sup> On one occasion he describes a meeting with God that resembles the ecstatic experience the Mahdī underwent during the colloquy with the Prophet in which he was advised in matters of polygamy and divorce:

71 *Al-Āthār al-kāmila*, v, 448; see Glossary, s.v. al-Khaḍir.

72 *Al-Āthār al-kāmila*, v, 452–53.

73 *Ibid.*, I, 92–93; *ibid.*, II, 280.

74 *Ibid.*, VII, 251. On devils in the Qur'ān and exegetical material, and other literature reflecting popular images associated with Ṣūfism, see Rippin, "Devil"; *idem*, "Shayṭān," 408–9.

75 See below, 52ff.

76 Muḥammad Sharīf rejected Muḥammad Aḥmad's pretension to be the Expected Mahdī and expelled him from the Sammāniyya order. See Holt, *The Mahdist State*, 45ff.

77 *Al-Āthār al-kāmila*, II, 242–43.

78 *Ibid.*, v, 165. Cf. *ibid.*, 167 (*waradat fihim al-ḥaḍra bi-radd ḥuqūqihim*), 398 (*wa-kull dhālika mim mā warada al-khabar bi-raddihi*, referring thereby to expropriated property as booty).

79 *Ibid.*, III, III ("I seek the help of God... and ask Him to grant me inspiration" {*asta'in bi-llāhi... wa-astawhibuhu al-ilhām*}); *ibid.*, IV, 194 ("From this Prophetic communication I learnt that God inspires by means of the 'Angel of Inspiration'" {*fa-min hādihā al-khabar al-nabawī 'alimtu anna alladhī yulhimunī allāh bihi bi-wāsiṭat malak al-ilhām*}). Cf. Radtke, "Sufism in the 18th Century," 350.

Something amazing happened to me with respect to the Mahdiyya. At midnight I was sitting facing the direction of the Ka'ba (*qibla*); I was not in a state of sleeping, neither light nor heavy. Rather, I was awake in full consciousness (*wa-lastu bi-nā'imīn nawman khafīfan wa-lā thaqīlan, bal ṣāḥan [ṣāḥīn] atamm al-ṣaḥwā*) when I heard God (*al-Ḥaqq*), exalted be He, [greeting me]: 'Peace upon you!' At this very moment I understood that [the one who was greeting me] was neither an angel nor a messenger (*rasūl*) because I heard him with the entirety of my body with [resort] neither to a consonant nor a voice; [the greeting approached me] from nowhere... [The experience] cannot be described secretly or publicly... This matter pertains to the [manner in which] God and His messenger bestowed [the position of] the caliphate on the Imām al-Mahdī... while Azrael [the angel of death] was carrying the banner of light (*nūr*) and the rule (*wilāya*) of the [Caliph] 'Uthmān. This [procedure of nomination] was required for the sake of the faith (*īmān*) and on account of the perfect meeting with God...<sup>80</sup>

There is some evidence that the Mahdī was inspired directly by God in making decisions in matters pertaining to the regulation of the Mahdist state. Thus in connection with booty in a *jihād* war, the Mahdī says: "I was truly inspired by God" (*bi-mā alhamanī allāh min al-ilhām al-ṣā'ib*).<sup>81</sup>

Inspiration (*ilhām*) derived from the Prophet and God, either directly or by means of the "angel of Inspiration," is the third source of law beside the Qur'ān and the *sunna*. There is ample evidence to this effect in the Mahdī's documents. Thus in one case the Mahdī decides the matter under review "in accordance with the inspiration communicated by the Messenger of God... [to me] (*bi'l-ilhām alladhī akhbara bihi rasūl allāh*)."<sup>82</sup>

In a tradition attributed to the Mahdī after his death, he is reported to have said:

If two opposing parties appear before a *qāḍī* asking him to decide the matter between them (*an yaḥkuma baynahumā*), he should... render his decision either according to the Qur'ān or the *sunna* of the Prophet, God bless him and grant him salvation or, if he finds the matter obscure, let him address us [the Mahdī]—[and it is common knowledge that]

80 *Al-Āthār al-kāmila*, III, 189.

81 *Ibid.*, IV, 59. Cf. *ibid.*, III, 156 ("[God] inspired us" {*alhamanā*}); *ibid.*, V, 13 ("God inspired all of you" {*wa-qad alhama allāh jamā'atakum*}).

82 *Ibid.*, III, 119. For further elaboration of this issue, see below, 48.

we are inspired by our Lord to follow the right way—and we shall discuss the matter with him [the *qāḍī* after having consulted the Prophet] and then he [the *qāḍī*] will render his decision [accordingly] (*wa-in [i]ltabasa 'alayhi al-amr fal-yas'alnā nahnu rabbunā yulhimunā al-ṣawāb fa-nukallimhu bihi thumma yaḥkumu*).<sup>83</sup>

In other words, since the textual sources of the Qur'ān and the *sunna* do not provide a solution in the case under review, the Mahdī, who is guided by God to follow the right way, seeks advice or inspiration from God and the Prophet as to the right solution in order to confer it on the *qāḍī*. Judging by the results, this procedure implies practically that the Mahdī uses, under the guise of inspiration from the Prophet or God, his own discretion to solve a given problem regardless of the textual sources.<sup>84</sup> The enlistment of a divine or Prophetic sanction confers upon the Mahdī a degree of discretion wider than that allowed by analogical reasoning. The legal norm established by the Mahdī on the basis of an inspiration derived from God or the Prophet is supposed to be final, irrevocable and infallible (*ma'ṣūm min al-khaṭa*).<sup>85</sup> The Mahdī derives his legitimacy from his claim to be recognized as heir (*wārith*) to, and a successor of, the Prophet (*khalīfat rasūl allāh*),<sup>86</sup> and as the “Expected Mahdī,” and from his ability to receive divine guidance and to communicate directly with the Prophet by means of colloquies.<sup>87</sup>

Moreover, the enlistment of divine guidance and Prophetic colloquies was apparently meant to place the Mahdī outside the control of the *'ulamā'*. In other words, the rule established by means of inspiration derived from God and the Prophet was not subject to the consensus (*ijmā'*) of the specialists in *fiqh*, as required in the classical theory of Islamic law.<sup>88</sup> In a way, this situation resembles the competition, dating back to the formative period of Islamic law, between *ahl al-ra'y*, who emphasized legal reasoning as a method for deriving positive law, and *ahl al-ḥadīth*, who mobilized the Prophet's authority by means

83 *Al-Āthār al-kāmila*, VII, 249.

84 As will be demonstrated below, the Mahdī's decisions based explicitly on inspiration from God and the Prophet would occasionally result in deviation not only from *fiqh* but also from the textual sources of the Qur'ān and the *sunna*. See below, e.g., docs. 17, 20, 42; 290ff.

85 Cf. Radtke, “Sufism in the 18th Century,” 359.

86 Cf. Kister, “Musaylima,” 13; Goldziher, *Muslim Studies*, 266. For a description of the Mahdī's coronation as a caliph, see *al-Āthār al-kāmila*, IV, 491; *ibid.*, v, 448.

87 See, e.g., *al-Āthār al-kāmila*, IV, 442 (*atatnā al-waṣṣiya min al-ḥadra*); *ibid.*, v, 449ff. (*ḥadra nabawiyya*).

88 See Bernard, “*Ijīmā'*,” 1023–26.

of *ḥadīths* attributed to him in order to impose their views in legal disputes between *fuqahā*.<sup>89</sup> Furthermore, it may be rightly claimed that *ilhām* ranks even higher than *ḥadīth*, since, unlike the *ḥadīth*, it is impossible to doubt its authenticity by means of the procedure of *al-jarḥ wa'l-ta'dīl*, that is, by disparaging a transmitter of *ḥadīths* and declaring him to be untrustworthy.<sup>90</sup>

#### 4 Auxiliary Sources of Law: Public Interest (*maṣlaḥa*), Necessity (*darūra*)

*Maṣlaḥa*, public interest, is the product of *istiṣlāh*, an extension of analogical reasoning (*qiyās*), a mechanism for deriving law by determining the method of suitability (*munāsaba*) with a view to identifying the “efficient cause” (*illa*, *ratio legis*). However, unlike the ordinary *qiyās*, which seeks to identify the attribute that is common to both the new case for which a new ruling is required and the original case in the textual sources, the *maṣlaḥa* is not sustained by textual evidence though it must be in harmony with the spirit of the law derived from the text.<sup>91</sup>

The term *maṣlaḥa*, and its derivatives in a variety of combinations, appears quite often in the Maḥdī's documents. The term has a very broad connotation, such as religious or public welfare or interest and *raison d'état*; it is meant to promote and justify a utilitarian approach in all spheres of society and state. Broadly speaking, the term lacks a legal dimension in its strict technical sense. Thus in one case the Maḥdī instructs the Anṣār to comply with his proclamation and to do their utmost to promote anything that is in the interest of religion (*min kull mā fīhi maṣlaḥa līl-dīn*). In another case he instructs the people to obey his agent recently appointed to their region “having regard to the welfare of religion” (*bi-ḥasab al-maṣlaḥa al-dīniyya*). By the same token, the Maḥdī instructs the caliphs and the governors to allocate the booty to the warriors of *jihād* having regard to their welfare (*maṣlaḥa*).<sup>92</sup>

There are, however, occasional instances in the Maḥdī's documents of the application of the term *maṣlaḥa* in a legal context in a manner approaching the status of an auxiliary source for deriving law, though with the implicit proviso that it does not contradict the textual sources of the Qurʾān and the *sunna*.

89 Schacht, “Ahl al-ḥadīth,” 258–59; Coulson, *History*, 52, 56, 61. Cf. *ahl al-sunna* in Abū Salīm, *al-Ḥaraka al-fikriyya*, 164.

90 Robson, “al-Djarḥ wa'l-Ta'dīl,” 462. I owe this observation to Etan Kohlberg.

91 Hallaq, *Legal Theories*, 83–84, 88ff., 110ff.; Opwis, “Maṣlaḥa,” 210–11.

92 *Al-Āthār al-kāmila*, 111, 193, 200, and *ibid.*, iv, 362, respectively.

In one case, in order to justify the expropriation of the property of well-to-do people in favor of Bayt al-Māl on the grounds of public interest, the Mahdī argues that the procedure of abrogation in the event of contradictory textual sources should be guided by *maṣlaḥa*:

[Qur'ānic] verses were abrogated (*tunsakh*) [already] during the time of the Prophet... on account of the people's welfare (*'alā ḥasab maṣāliḥ al-khalq*). By the same token, *ḥadīths* may abrogate each other [today] on account of public welfare.

The public interest (*maṣāliḥ*) today requires that all this property be attached to [i.e., expropriated by] Bayt al-Māl because the latter has neither the necessary resources for its maintenance nor [the means] for launching a *jihād* war.<sup>93</sup>

In a case pertaining to booty consisting of military equipment in Kassala claimed by Bayt al-Māl, the Mahdī warns the people against laying hands on booty “in a manner that does not please God and His Messenger” (*bi-wajh lā yurḍī allāh wa-rasūlahu*), referring thereby to contravention of the Qur'ān and the *sunna*. This phrase, which is repeated, with minor variations, on several occasions, seems to be valid also with respect to the application of public interest as an auxiliary source of law. The aforementioned proviso that the textual sources not be contradicted seems to guide the Mahdī when declaring his intention to “compile [that is, legislate] what the interest of religion requires (*nuḥarrir bi-mā taqṭaḍihi maṣlaḥat al-dīn*).<sup>94</sup> In a case pertaining to granting a pledge of security (*amān*) to people, their children and property, the Mahdī instructs the local governor to handle the matter in accordance with “the interest of religion [as represented by the Mahdiyya]” (*maṣlaḥa dīniyya*) in a manner that “pleases God, His Messenger and me.” In other words, the *maṣlaḥa* should be in conformity with the textual sources as well as with the Mahdī's legislation as a supplementary source of law, probably by virtue of his communication with the Prophet. Again, he undertakes “to formulate the law in accordance with what the interest of religion requires.”<sup>95</sup> In other words, the public interest approaches a conception that is close to an auxiliary source of law, with the aforementioned proviso that it does not contradict the textual sources.

93 Ibid., iv, 417.

94 Ibid., v, 36. Cf. *ibid.*, v, 42.

95 Ibid., v, 75.

Needless to say, on the basis of these isolated instances and in the absence of a clear definition of public interest as a source of law in the Mahdī's documents, this analysis should be treated with due caution. It seems that we are dealing here with the application of an unsophisticated concept of *maṣlaḥa* in the Mahdī's documents unconnected in any way to the mechanism of deriving law by means of analogical reasoning (*qiyās*), which is totally ignored by the Mahdī.

Avoiding harm (*ḍarar*) is a variant of *maṣlaḥa* in the sense that the law is assumed to prohibit and avoid that which is harmful to the public interest.<sup>96</sup> In one case the Mahdī instructs the Emir of Berber, Muḥammad al-Khayr 'Abd Allāh Khūjalī, to take care of the necessities of the *jihād* warriors (*mujāhidūn*) so as to keep them safe from harm (*bi-ḥāla lā yaḥsul lahum bihā ḍarar*). He leaves the emir full discretion to handle the matter while taking into account the welfare of religion, i.e., the Mahdist state (*fa-mā taraw fīhi maṣlaḥat al-dīn [i]f'ālū*). In another case the Mahdī instructs the commander of the Jihādiyya, soldiers of slave origin, to allocate money to the Anṣār in order to keep them out of harm's way (*izālat ḍarar*).<sup>97</sup>

Necessity (*ḍarūra*) is a legal principle that renders permissible something that under normal circumstances is prohibited under the *sharī'a* in an attempt to avoid harm.<sup>98</sup> In the Mahdī's documents it usually conveys a general notion of public interest outside of a legal context. Thus in one case, the Mahdī rules that the function of appointing gardeners should be the responsibility of Bayt al-Māl because "this is a matter of public interest for the Muslims (*maṣāliḥ li'l-muslimīn*) and serves their welfare and necessities (*ḍarūriyyāt*)."<sup>99</sup> In a few instances, however, it seems that necessity has the full connotation of a legal principle. The Mahdī combines this principle with the last part of Q. 5:3: "Whoso is forced by hunger (*fa-mani [u]ḍturra fī makhmaṣatin*) [to eat forbidden specified sorts of food...]." In the interpretation of this verse, as attributed to the Mahdī, he maintains:

The exceptional eight sorts of food mentioned previously in the verse are lawfully permitted on the grounds of necessity (*taḥillu li'l-ḍarūra*) and he [the believer] may provide himself (*yatazawwad*) with these [prohibited sorts of food] until he manages to dispense with them (*ilā an yastaghniya*

96 Hallaq, *Legal Theories*, 89.

97 *Al-Āthār al-kāmila*, v, 2 and 30, respectively.

98 Hallaq, *Legal Theories*, 89–90; *ibid.*, *Sharī'a*, 427, 447.

99 *Al-Āthār al-kāmila*, iv, 253. Cf. *ibid.*, iv, 49 (*inkashafa lahu sū' ḍarūra*), 109 (*hādḥā mā da'at al-ḍarūra li-bayānihi*).

'*anhunna* [*sic*]) [that is, he may not eat these prohibited sorts of food more than necessary for his own survival].<sup>100</sup>

It is noteworthy that al-Ḥasan b. Sa'd al-'Abbādī (d. 1907), the defender of the Mahdī against the '*ulamā*' who disqualify the Mahdī as *mujtahid*, deems necessity (*ḍarūra*) to be an auxiliary source for *ijtihād*.<sup>101</sup> In a letter to 'Abd al-Raḥmān al-Najūmī, Ḥamdān Abū 'Anja (the commander of the Jihādiyya) and their followers, the Mahdī permits (*jā'iz*) the warriors various kinds of foodstuff selected on the grounds of necessity (*ḍarūra*) for consumption but not for accumulating, storing or enrichment (*tamwīl*), that is, making a profit. He permits the slaughtering of cattle, which may be used as a "source of becoming wealthy" (*fa-innahā mutamawwila*), for consumption only in circumstances of necessity (*li-luzūm al-ḍarūra*). The Mahdī refers in this connection to the practice of making food permissible adopted by the Prophet's Aṣḥāb.<sup>102</sup>

The Mahdī refers quite often to the term *yusr*, "ease," and its derivatives. He cites Q. 94:5–6: "Lo! With hardship (*'usr*) goeth ease."<sup>103</sup> He also cites traditions dealing with easiness. Thus the Mahdī is quoted as having said in one of his proclamations: "Make easy rather than make difficult . . . (*yassirū wa-lā tu'assirū*)."<sup>104</sup> Broadly speaking, the Mahdī uses the term to denote a normative way of life, such as abandoning the vanities of this world and preparing for the Hereafter.<sup>105</sup> Occasionally, it seems that the term *yusr* in the Mahdī's documents serves as a variant of *maṣlaḥa*, public interest. Thus in a message to the Anṣār, the Mahdī informs them of having forgiven (*'afw*) a certain woman, her husband, brothers, sisters and other blood relatives for probably failing to adhere to his mahdīship from the very moment of his manifestation due to special circumstances (her father was imprisoned by the Turks). He requests his followers not to commit any aggression against the body and property of these relatives and urges them to submit to a sound (*ṣaḥīḥ*) tradition the opening passage of which is: "Make it easy and do not make it difficult" (*yassirū wa-lā tu'assirū*).<sup>106</sup> In other words, the Mahdī hands down a decision having regard to the welfare of people.

100 Ibid., VII, 24. Cf. Hallaq, *Legal Theories*, 110; Rubin, *The Qur'ān*, 90, fn. 3.

101 Al-'Abbādī, *al-Anwār*, 233. For further details, see below, 47ff.

102 *Al-Āthār al-kāmila*, III, 135–36.

103 Ibid., I, 414; *ibid.*, III, I; *ibid.*, V, 381.

104 Ibid., VII, 107. Cf. Wensinck, *Concordance*, VII, 365, col. i.

105 *Al-Āthār al-kāmila*, IV, 365.

106 Ibid., IV, 462. For references to the *ḥadīth*, see, e.g., Wensinck, *Concordance*, IV, 210, col. ii.

## 5 The Mahdī's Version of *Ijtihād*

*Ijtihād* (lit. "exertion [of mental energy]") in the classical theory of Islamic law (*uṣūl al-fiqh*) denotes the use, in a case for which there is no legal rule in the textual sources, of individual reasoning in an attempt to reveal God's will by means of an opinion or a rule of law by applying analogy to the Qur'ān and the Prophetic *sunna*. The *ijtihād* results in a tentative conclusion termed *ẓann* (conjecture) pending approval by the consensus.<sup>107</sup>

The term *ijtihād* and its derivatives are used quite often in the Mahdī's documents. Usually it signifies "exertion" without any legal connotation. Thus, a believer should "exert himself in doing good deeds (*al-[i]jtihād fī 'l-a'māl al-ṣāliḥāt*), or "exertion for the cause of reviving the religion of God" (*al-[i]jtihād 'alā ihyā' dīn allāh*).<sup>108</sup> Even with respect to the *qāḍī*, the term *ijtihād* should be understood in its literal sense. Thus it is reported that the Mahdī said in one of his instructional sessions (thereby citing from a *ḥadīth*):

If a judge [*qāḍī*] worships God faithfully while handing down his decision, even if he is wrong, he [still] deserves a reward and recompense; if he strives hard and his decision turns out to be correct, he is entitled to a double reward (*al-ḥākīm idhā akhlaṣa fī ḥukmihi ma'a rabbihi wa-law akhṭa'a fa-lahu ajr wa-thawāb wa-in [i]jtahada wa-aṣāba fa-lahu ajrāni*).<sup>109</sup>

Unlike in conventional *ijtihād*, in the Mahdī's legal methodology the term *ijtihād* does not signify deriving new legal rules by way of a systematic analogy (*qiyās*) from the textual sources of the Qur'ān and the *sunna*, and by resorting to the consensus (*ijmā'*) of the *'ulamā'* for approval, the latter two sources of law, analogy and consensus, being totally ignored by the Mahdī. In the event of a lacuna in the textual sources the Mahdī, after having exhausted the conventional avenues of interpretation of the sources and the technique of abrogation (*naskh*), would allegedly resort to inspiration (*ilhām*) from the Prophet and God. Moreover, as noted above, inspiration from the Prophet and God may indicate occasionally the Mahdī's legal discretion totally independent of the textual sources of the Qur'ān and the *sunna*. The Mahdī strongly denied the *'ulamā'*'s allegations that he reserved for himself the right of *ijtihād*. He argued that had his critics believed in his mahdīship they would not have

107 Hallaq, *Legal Theories*, 117–21.; idem, *Sharī'a*, 49–50, 110–11; Schacht and MacDonald, "Idjtihād," 1026–27; Coulson, *History*, 76–80.

108 *Al-Āthār al-kāmila*, II, 6 and 13, respectively.

109 Ibid., VII, 129. For references to the *ḥadīth*, see, e.g., Wensinck, *Concordance*, I, 390, col. i.

accused him of being a *mujtahid*.<sup>110</sup> The following case illustrates the circumstances and the legislative procedure of deriving a new rule by means of inspiration from the Prophet. The Mahdī was asked to issue a decision in a matter pertaining to *khul'* divorce, that is, divorce in return for compensation to the divorcing husband. The issue at stake was whether such a divorce should be counted as one of the three repudiations after which an intermediate marriage is required in order for the divorcing husband to legally remarry his ex-wife. The Mahdī ruled that had the husband failed to pronounce the word *ṭalāq*, then the *khul'* would not have been counted as a repudiation and the man could have restored his ex-wife without resorting to an intermediate marriage. On this occasion the Mahdī presented an outline of his legal methodology and its application as follows:

[For the purpose of rendering a decision,] I use neither my personal legal reasoning (*ra'y*) nor *ijtihad*; [rather, I decide] on the basis of what I find in the *sunna* and the book [Qur'ān] and [—in the event of a lacuna in the textual sources—I decide in accordance with] the inspiration that the Messenger of God, God bless him and grant him salvation, enlightens me (*fa-lā a'mal fihā bi-ra'yī wa-lā [i]jtihādī wa-innamā a'mal fihā bi-mā ajiduhu min al-sunna wa'l-kitāb wa-bi'l-ilhām alladhī akhbara bihi rasūl allāh ṣallā allāh 'alayhi wa-sallama*).<sup>111</sup>

Since the Mahdī strongly adheres to the textual sources of the Qur'ān and the *sunna*, there is good reason to assume, as a matter of principle, that he resorts to inspiration from the Prophet (or God) only in the event of a lacuna in the textual sources. Reinterpretation of these sources does not require resort to divine inspiration.

A good notion of the Mahdī's qualifications as a *mujtahid* may be drawn from a treatise written by al-Ḥasan b. Sa'd al-'Abbādī, whom he entrusted with administrative and religious tasks throughout the country.<sup>112</sup> Al-'Abbādī's

110 *Manshūrāt al-mahdiyya*, 227; *al-Āthār al-kāmila*, II, 183. For a lithographic version of the document, see *Manshūrāt al-aḥkām wa'l-ādāb*, 101.

111 *Al-Āthār al-kāmila*, III, 119. For a lithographic version of the document, see *Manshūrāt al-aḥkām wa'l-ādāb*, 15–16. On the legal consequences of *khul'*, see below, doc. 31. Cf. al-Zākī, "al-Islām wa-ḥayātunā al-tashrī'iyya," 148 (the Mahdī's *ijtihad* is based exclusively on *ilhām*, ignoring altogether all schools of law). Searcy contends, on the basis of the Mahdī's proclamations, that "it is apparent that *ilhām* was the [emphasis is mine; AL] primary source of law"; see Searcy, *The Sudanese Mahdist State*, 129. This contention, however, is not substantiated by evidence from the Mahdī's texts.

112 Abū Salīm, *al-Ḥaraka al-fikriyya*, 65; *al-Āthār al-kāmila*, v, 267–68.

treatise is a defense on behalf of the Mahdī against the ‘ulamā’, who refuted his legal methodology and disqualified him for *ijtihād* and mahdship.<sup>113</sup> Al-‘Abbādī’s definition of *ijtihād* is conventional: an intellectual effort to derive law (*istinbāt*) from the textual sources of the Qur’ān and the *sunna* by means of analogy (*qiyās*) and consensus (*ijmā’*).<sup>114</sup> He deems necessity (*ḍarūra*) to be an auxiliary source for *ijtihād*. In his view, any rule (*ḥukm*) of the textual sources—provided it has no definitive, unequivocal meaning (*dalīl qāṭi’*)—may be an object (*maḥall*) for *ijtihād*.<sup>115</sup> Although al-‘Abbādī does not provide any specific example from the domain of *fiqh* for such a rule, there can be no question that he designates a vital role to *ḍarūra* in the development of law by means of *ijtihād*.

According to al-‘Abbādī, the qualifications (in general terms) required from a conventional *mujtahid* include, *inter alia*, the ability to distinguish between a sound (i.e., based on reliable transmitters) (*ṣaḥīḥ*) and a faulty (*saqīm*) *ḥadīth*, command of the biography (*sīra*) of the Prophet’s Companions (*ṣaḥāba*), knowledge of the positive law as approved by the consensus (*ijmā’*) of the Imāms of the schools, the rules of abrogation (*naskh*), and the theory of Islamic jurisprudence (*uṣūl al-fiqh*). A qualified *mujtahid* is prohibited from adhering (*taqlīd*) to the views of other jurists on matters that he can comprehend (*idrāk*) independently.<sup>116</sup>

Al-‘Abbādī claims that the Mahdī ranks higher than a conventional *mujtahid* because in cases of doubt regarding the textual sources, he derives rules by means of inspiration (*ilhām*), while in a state of wakefulness (*yaqza*), directly from the Angel of Inspiration and the Prophet. The Mahdī gained his reputation as infallible (*ma‘ṣūm min al-khata’*)<sup>117</sup> because of his ability to clarify once and for all obscure issues in the Qur’ān and the *sunna*. Obtaining direct inspiration from the Prophet makes legal reasoning (*ra’y*) or analogy (*qiyās*) redundant. Moreover, the Mahdī is exempt from the requirement to avail himself of the ordinary qualifications for *ijtihād*—except for sanity (*‘aql*), legal majority (*bulūgh*) or apprehension of the inner meanings (*fahm al-ma‘ānī*) delivered to

113 Al-‘Abbādī, *al-Anwār*, 66; Abū Salīm, *al-‘Abbādī*, 28–29, 114–16. For further details on al-‘Abbādī’s treatise, see *ibid.*, 5ff.; *idem*, *al-Ḥaraka al-fikriyya*, 65–66; al-Mahdī, *Yas‘alūnaka ‘an al-mahdiyya*, 223; O’Fahey, *Arabic Literature of Africa*, 334–35; Abu Shouk, “Bibliography,” 134–35; Mālik, *al-Muqāwama*, 131.

114 Al-‘Abbādī, *al-Anwār*, 230–31. On *istinbāt* as a technical expression for deriving law from the legal sources by means of reasoning and mystic apprehension, see Vikør, “The Shaykh as *Mujtahid*,” 361; Sviri, “*Istinbāt*,” 383ff.

115 Al-‘Abbādī, *al-Anwār*, 233.

116 *Ibid.*, 231–32.

117 Stern, “On Mystical Vision and the Protection from Sin,” 153ff.

him by the Prophet (*sayyid al-wujūd*). Though the Mahdī may lack qualifications of a *faqīh*, he enjoys the virtue of God fearing (*taqwā*), which is no less important than acquisition of the *sharʿī* sciences. Al-ʿAbbādī seeks support for these views from ʿAbd al-Wahhāb al-Shaʿrānī (d. 973/1565) and Muḥyī al-Dīn Ibn al-ʿArabī (d. 638/1240), who allegedly claimed to have formulated rules by means of direct inspiration from the Prophet or God.<sup>118</sup> The Mahdī may not be fully qualified for *ijtihād* in conventional terms, but the direct inspiration from the Prophet, as well as his status as the latter's Successor (*khalīfa*) and his manifestation as the Expected Mahdī, legitimize his pretension to exercise *ijtihād*.<sup>119</sup> Indeed the Mahdī deems God fearing an indispensable key for deriving law (*ikhrāj al-aḥkām*) from the Qurʾān.<sup>120</sup> Abū Shūk concludes from al-ʿAbbādī's presentation that *ilhām* derived from the Angel of Inspiration is the word of God, and the rules (*aḥkām*) derived in Prophetic colloquies are conceived as *sunna* approved by the Prophet. This implies, according to Abū Shūk, that *ilhām* can abrogate the textual sources of the Qurʾān and the *sunna*, and that the Prophetic colloquies can abrogate the *sunna muḥammadiyya*. Abū Shūk concludes by stating that this presentation gave rise to the contention of the "ʿulamāʾ of the evil" (*al-sūʾ*) that the Mahdī's legal methodology clearly deviated from the classical theory of *uṣūl al-fiqh*.<sup>121</sup>

Abū Salīm evaluates the Mahdī's *ijtihād* within the context of Salafi Islam. In his view, the Mahdī's ability to derive law (*istikhrāj*) from the textual sources, the [divine] *ilhām* and the direct meetings with the Prophet in colloquies results from his status as the Expected Mahdī, whose function it is to revive Islam and bring it to its position during the Prophet's time. This function of *ijtihād* is available only to the Mahdī, who is conceived of as the highest religious authority (*al-marjiʿ al-aʿlā*).<sup>122</sup> Moreover, the Mahdī is presented by ʿAbd al-Qādir al-Kurdufānī in his treatise *Saʿādat al-mustahdī* as the *mujaddid* of Islam, whose function it is to "cause justice (*ʿadl*) to be manifested."<sup>123</sup> Khalīfa ʿAbdallāhi, the Mahdī's successor, regarded the Mahdī as the last of the *mujaddidūn*.<sup>124</sup>

118 Al-ʿAbbādī, *al-Anwār*, 233–36; Peters, "Idjtiḥād and Taqlīd," 133, fn. 4. On the two methods of obtaining knowledge (*ʿilm*) of the *sharīʿa*: divine illumination (*kashf*) and the exoteric *fiqh*, see Vikør, "The Shaykh as *Mujtahid*," 362ff.

119 Al-ʿAbbādī, *al-Anwār*, 239.

120 *Al-Āthār al-kāmila*, III, 352. Cf. Vikør, "The Shaykh as *Mujtahid*," 353.

121 Abū Shūk, "*Minhajjiyyat al-tashrīʿ*," 24, col. ii–25, col. i–ii.

122 Abū Salīm, *al-Ḥaraka al-fikriyya*, 165, 168, 189–90.

123 Al-Kurdufānī, *Saʿādat al-mustahdī*, 71–72; Shaked, *The Life of the Sudanese Mahdī*, 54.

124 Abū Salīm, *al-Ḥaraka al-fikriyya*, 89 fn. 4. Cf. *Al-Āthār al-kāmila*, v, 367 (the Mahdī: "I am renewing the [Prophetic] *sunna* and the exegesis on the Qurʾān that have been wiped

Holt maintains that the Mahdī was actually exercising *ijtihād* in his legislation. However, according to Holt, the Mahdī denied being a *mujtahid* and preferred to present his legislative acts as deriving from the superior authority of inspiration from the Prophet.<sup>125</sup> Needless to say, the Mahdī's version of *ijtihād* is not compatible with the classical theory; it is a unique version of *ijtihād*, presented as being based on *ilhām*, which practically confers upon the Mahdī a degree of legal discretion wider than that allowed by analogical reasoning and deduction from the textual sources. Moreover, the legal norm shaped in this way by the Mahdī is, contrary to the procedure of classical *ijtihād*, final and irrevocable rather than a presumptive rule or conjecture (*ẓann*) awaiting the consensus (*ijmā'*) of the *'ulamā'* for its validity.<sup>126</sup>

Knut Vikør notes that many of the so-called “reforming” or “revivalist” *Ṣūfis* since the late seventeenth century were engaged in *ijtihād*, a fact that may create the impression that there exists a “*Ṣūfī* conception” of *ijtihād*. After having consulted the writings of four *Ṣūfis*—Aḥmad b. Idrīs (d. 1253/1837), Muḥammad b. 'Alī al-Sanūsī (d. 1276/1859), Sāliḥ al-Fullānī (d. 1218/1803) and 'Abd al-Wahhāb b. Aḥmad al-Sha'rānī (d. 973/1565)—who wrote on law and shared the opinion of the necessity of *ijtihād* for revival and after having compared their views on such matters as *qiyās*, *taqlīd*, *madhhabs*, *ḥadīth*, *taqwā*, *kashf* and the infallibility of the Imāms, he came to the conclusion that *Ṣūfī* ideas, “while not fully absent from their legal works, were not the motivation and cause for their renewed claims for *ijtihād*.” Their message regarding *ijtihād* was addressed to all Muslims regardless of their position on the esoteric.<sup>127</sup>

The case seems to be different with respect to the Mahdī. He did not write on law though he was intensively engaged in applying Islamic law according to his own interpretation. The elevation of the inspiration (*ilhām*) derived from the Prophet and God to the status of a source of law at the expense of systematic analogy (*qiyās*) and consensus (*ijmā'*) while ignoring altogether all schools of law emphasizes the intimate link between the Mahdī's *ijtihād* and *Ṣūfism*. Hence, the existence of a “*Ṣūfī* conception” of *ijtihād* may be rightly claimed regarding his case.

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out” {*wa-innī mujaddid mā [i]ndarasa min al-sunan wa-tafsīr al-qur'ān*}); al-Qaddāl, *al-Mahdī*, 140.

125 Holt, *The Mahdist State*, 122, fn. 2.

126 Cf. Coulson, *History*, 78; Hallaq, *Sharī'a*, 98ff.

127 Vikør, “The Shaykh as *Mujtahid*,” 351–75. The citation is from p. 375.

## 6 The Impact of Ṣūfism on the Mahdī's Legal Methodology

As noted earlier, the Mahdī left no treatise in which he presented his legal methodology and its sources of inspiration. In order to unearth these sources due attention should be given to the intellectual environment in which he was brought up and his spiritual outlook molded. Undoubtedly, the Ṣūfī tradition was the dominant formative factor of this environment. There is ample evidence in the Mahdī's documents to suggest that the Ṣūfī orders (*ṭarīqas*) made a profound impact on the Mahdī. The documents contain references to Ṣūfī traditions to which the Mahdī had been exposed during various stages of his life and to mediators that may have served as links between the Mahdī and the doctrines of the founders of the *ṭarīqas*.

Ṣūfī concepts and ideas had a tremendous influence on the formulation of the Mahdī's legal methodology. The guiding sources of inspiration of the Ṣūfīs as consolidated in the third and fourth centuries after the emergence of Islam are the Qur'an and the *sunna*. The Ṣūfīs credit the Prophet Muḥammad with supernatural features; his biography (*sīra*) and *sunna* are examples to be followed and his presence as a living image is to be kept in thoughts and feelings to such an extent that even after his death he can be communicated with; in later times the term "Muḥammad's path" (*ṭarīqa muḥammadiyya*) was used in this context.<sup>128</sup> Scholars underline the importance of the Prophetic *sunna* in the Ṣūfī tradition. Thus Levtzion suggests that the link between Ṣūfism and *ḥadīth* in pre-modern Islam brought about the rejection of *taqlīd* and, by implication, the renewal of *ijtihād*.<sup>129</sup> In other words, it was natural for the Ṣūfī leaders to affiliate themselves with the *sunna* and *ilhām* because of the central role played by the Prophet in their traditions. The Prophet has become the main source for deriving law, thus making superfluous sources of law based on human reasoning (*ra'y*, *qiyās*) and consensus (*ijmā'*).<sup>130</sup> Al-Ṣādiq al-Mahdī claims that Ṣūfism deems inspiration (*ilhām*) "the most preferable (*afḍal*) and sophisticated (*aḥkam*) medium (*wasīla*) for the apprehension of the religious texts."<sup>131</sup>

The term *maṣlaḥa*, public interest, in the conventional legal connotation is not known in Ṣūfī tradition. Yet it has been observed that such modernists in

<sup>128</sup> Massignon-[Radtke], "Taṣawwuf," 314, col. i, 316, col. i.

<sup>129</sup> Levtzion, "The Role of *Sharī'a*-Oriented Ṣūfī *Ṭuruq*." On the importance of the *ḥadīth* in eighteenth-century revivalism, see Levtzion and Weigert, "Religious Reform in Eighteenth-Century Morocco," 179.

<sup>130</sup> Al-Mahdī, "Mustaqbal al-Islām," 409.

<sup>131</sup> *Ibid.*, 389.

Islam as Muḥammad ‘Abduh and Muḥammad Rashīd Riḍā, who had undergone a Ṣūfī experience during their formative period,<sup>132</sup> sought to elevate the concept of *maṣlaḥa* to an auxiliary source of law.<sup>133</sup> This trend is reflected in the modernists' attempts to introduce such reforms as prohibition of polygamy and restriction of the husband's right of unilateral divorce, which were undoubtedly inspired by concern for the welfare of women and the family.<sup>134</sup>

In order to identify the Mahdī's immediate source of inspiration within the space of Ṣūfī traditions, this writer carried out a comparative analysis of the legal methodologies and related subjects of the dominant Ṣūfis regarding whom there is circumstantial evidence linking them to the Mahdī.<sup>135</sup> The Mahdī's legal methodology was inspired first and foremost by the Ṣūfī traditions that formed the social and intellectual background of his formative period. The textual sources, especially the *ḥadīth*, and concepts and mechanisms closely related to the procedure for deriving law, can very easily be traced in Ṣūfī practices. The concept of *ṭarīqa muḥammadīyya*, which provides a link between Ṣūfism and law, is a case in point. This "path" leads the enlightened mystic, by means of illumination (*fath*), to a direct encounter with the Prophet, who personally provides solutions to legal issues.<sup>136</sup> Similarly, the physical sensation caused by this encounter can be identified with the ecstatic experience (*aḥwāl*).<sup>137</sup> In Ibn al-‘Arabī's teachings, the role of the positive law (*aḥkām*) of the *sharī‘a* is phrased in Ṣūfī terms: to bring about the return to God in a way that guarantees felicity (*sa‘āda*).<sup>138</sup> The transformation of the Prophet's inspiration and illumination into a source of law facilitated the accommodation of the *sharī‘a* to contemporary requirements.<sup>139</sup> Needless to say, an encounter with the Prophet was also instrumental in bringing the community within the orbit of the Mahdist movement.

Although it may be rightly assumed that the Mahdī was directly inspired by the writings of the founders of various Ṣūfī traditions, there is no explicit evidence of this inspiration in his documents. In any case, there is no ques-

132 Hourani, *Arabic Thought*, 131, 149 (‘Abduh), 225 (Riḍā); Badawi, *Reformers of Egypt*, 83, 86–87. Cf. Smith, *Islam in Modern History*, 62–63.

133 Hallaq, *Legal Theories*, 212–20; Opwis, "Maṣlaḥa," 198–202.

134 Gibb, *Modern Trends*, 89–90; Layish, "The Contribution of the Modernists," 263, 267f.

135 Layish, "The Mahdī's Ṣūfī Inspiration," 279–308.

136 Radtke et al., *The Exoteric*, 24, 97, fn. 16; Radtke, "Ijtihād and Neo-Sufism," 914–16, 920; O'Fahey & Radtke, "Neo-Sufism Reconsidered," 65–71.

137 Trimmingham, *The Sufi Orders*, Index, s.v. "ecstasy." Cf. Voll, "The Sudanese Mahdi," 154.

138 Chittick, "Ibn al-‘Arabī," 318, col. ii.

139 *Mawlid al-nabī* is another illustration of the Prophet's role in Ṣūfī tradition. See Shinar, "Mawlid Celebrations," 373, 377, 394, 401. Cf. Goldziher, *Muslim Studies*, 258–59.

tion that he was exposed to Ṣūfī doctrines through mediators. Nor is there evidence of a highly intellectual, sophisticated discussion of these doctrines,<sup>140</sup> though one should bear in mind that the documents were issued for practical, not scholarly, purposes. On the basis of the textual sources, it is possible to identify similarities of one sort or another in matters pertaining to *madhāhib*, legal methodology and *ijtihād* between the Mahdī's approach and that of the founders of specific *ṭarīqas*.<sup>141</sup> These similarities are even more clearly manifested in matters closely related to Ṣūfī tradition, such as the colloquy (*ḥaḍra*) with or vision (*ru'yā*) of the Prophet, litanies (*awrād*), etc. There is good reason to believe that Aḥmad Ibn Idrīs al-Fāsi had a decisive impact on the Mahdī's legal methodology. And we have evidence that Shaykh 'Abdallāhi 'Abd al-Ḥafīz al-Dufārī (d. 1908) provided the doctrinal link between Ibn Idrīs and the Mahdī,<sup>142</sup> this link is further supported by a textual analysis of Ibn Idrīs' writings. One should, of course, bear in mind that the founders of other *ṭarīqas* with whom the Mahdī was acquainted were linked in one way or another to the Idrīsī tradition.

Ibn Idrīs categorically denies to the schools of law (*madhāhib*) any authority whatsoever; moreover, he deems adherence to them polytheism (*shirk*) and suggests replacing them with fear of God (*taqwā*). These views are shared by the Mahdī, who, as already noted, did not regard himself bound by any of the schools; moreover, he abolished the schools altogether. Ibn Idrīs' legal methodology consists of the Qur'ān and the *sunna*. He adheres to the literal (*ẓāhirī*) meaning of the textual sources, the inner dimension (*bāṭin*) being admissible only to those who have access to mystical knowledge. The Mahdī, too, resorts to *ẓāhirī* interpretation of the textual sources. Ibn Idrīs seems to have been the Mahdī's source of inspiration also with respect to the precedence of the Prophetic *sunna* over the Qur'ān. In the Mahdī's case, interpreting the Qur'ān in the light of Prophetic *ḥadīths* might have prepared the ground for abrogation (*naskh*) of Qur'ānic verses by Prophetic traditions.

Ibn Idrīs categorically rejects all forms of human reasoning (*ra'y*, *qiyās*) for deriving rules from the textual sources; in the event of a lacuna in these sources, the mystic alone is permitted to exercise analogy. The rejection of human reasoning can also be traced in the Mahdī's documents. Ibn Idrīs does not refer at all to consensus (*ijmā'*) of the *'ulamā'*, which implies that he

140 Cf. Voll, "The Mizjaji Family," 82.

141 For a detailed analysis of the Idrīsī tradition with reference to the sources, see Layish, "The Mahdī's Ṣūfī Inspiration," 286–92.

142 Ibid., 287, and the references mentioned in fn. 46. There are similarities between the Mahdī's Rātīb and Ibn Idrīs' litanies (*awrād*); see Aḥmad, *Ibn Idrīs*, 14.

does not recognize it as a source of law. Some argue that he acknowledges only the consensus of the Ṣaḥāba, which nevertheless diminishes its operative significance. The Mahdī, too, ignores consensus of the 'ulamā' and disregards the *fiqh* doctrines of all the schools of law. In terms of procedure and substance, inspiration (*ilhām*), the third source of law in the Mahdī's legal methodology, may perhaps be identified in Ibn Idrīs' writings with *wahy*, revelation, though the reference there is to revelation from Allāh to the Prophet. The possibility that the Mahdī extended the scope of this procedure to cover inspiration from the Prophet and God to himself cannot be ruled out. Ibn Idrīs does not seem to approve of *ijtihād* other than that of the Ṣaḥāba. He renders their legal views a source of law that may be resorted to only in a case of necessity (*darūra*). The Mahdī's version of *ijtihād* actually amounts to replacing systemic analogy from the textual sources by *ilhām* derived from the Prophet and God without being subject to the consensus of contemporary 'ulamā'.<sup>143</sup>

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143 There is no indication whatsoever in the Mahdī's documents that his legal methodology was inspired in any way by Ibn Tūmart (d. 524/1130), the Mahdī of the Almohads and founder of the religious and political movement. Ibn Tūmart regarded himself as a religious reformer, a fundamentalist who intended to reestablish what he conceived to be the original purity of the faith by reference to the Qur'ān and the *sunna*, and hence he rejected the *taqlīd*. He also claimed to be the infallible (*ma'ṣūm*) Imām, a notion adopted from the Shī'a. See Hopkins, "Ibn Tūmart," 958–60. Cf. Schacht, *Introduction*, 64–65.



**CHAPTER 3**

*The Mahdī's Legislation*





# Introduction

The Mahdī's proclamations and legal opinions are, to all intents and purposes, acts of legislation. They reflect the Mahdī's legislative authority outside the *'ulamā*'s control. The Mahdī enlisted a vast amount of legislation to achieve his political, social and economic goals: to establish a legal system based on the textual sources of the Qur'ān, and *sunna* and the inspiration derived from the Prophet and God; to consolidate the political and economic institutions of the Mahdist state; to reform the status of women within the family and of slaves; and to promote social justice, agrarian reform and public morality. However, the Mahdī was functioning under a state of emergency caused by the collapse of Turco-Egyptian rule in Sudan. The situation was further exacerbated by acts of hostility, severance from the Ottoman legal system and the emergence of a variety of problems—such as the splitting of families between the two territories, land disputes, absentees' property and pending civil claims. The Mahdī's proclamations and legal opinions, issued while fighting was still going on, bear the mark of random, hasty legislation intended to solve compelling problems. Some of the rulings in this incidental legislation came to set important precedents in the future development of the law in the Mahdist state.<sup>1</sup> In what follows, a selected sample of the Mahdī's proclamations, legal opinions and traditions attributed to him after his death is presented, according to subject matter.

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<sup>1</sup> Holt, *The Mahdist State*, 128–29.



PART 1

*Slaves*





# 1. The Slave as Property and Person

## Legal Introduction

The slave is a combination of property (*māl*) and person (*nafs*). As property he is subject to rights of ownership, which may be simultaneously shared by several owners. He may be the object of all legal transactions such as sale, gift, hire and inheritance. He has no capacity to own (*ahliyyat al-tamalluk*) or dispose of property, nor does he inherit; anything he has belongs to his master. Broadly speaking, the slave ranks with the animals.<sup>1</sup> The Imām may convert captives into slaves (*raqīq*) to be distributed as booty (*ghanīma*). Women and children become slaves by virtue of their status as captives.<sup>2</sup>

Broadly speaking, manumission is commended in the Qur’ān (see, e.g., Q. 2:177, 9:60, 24:33, 90:13), particularly in such cases as the master making amends for excessive chastisement of his slave, expiation (*kaffāra*) for voluntary breaking of the fast of Ramaḍān, and reward in the Hereafter to a man who educates his slave girl, frees her and marries her. *Ḥadīths* forbid the keeping of male Arabs in slavery. It is recommended that the Muslim slave be freed after seven years’ service (there is a controversy among the jurists regarding the non-Muslim slave). The testimony (*shahāda*) of a slave is not admissible in court. His affirmation (*iqrār*) is generally accepted in matters affecting his person but not when he is treated as property.<sup>3</sup>

## Documents

The Mahdī’s legal conception of a slave is compatible with the conventional definition. Thus on one occasion he rules that the price (*thaman*) offered in a sale or commercial transaction (*bay’a*) [*sic*] involving a slave is the slave’s value (*‘iwaḍ*) as a person (*nafs*) and as property (*māl*).<sup>4</sup> On another occasion someone illegally took away (*ghaṣaba*) a “head of slave” (*ra’s raqīq*) from his brother and gave it as a nuptial gift (*aṣḍaqa*) to his wife. The Mahdī rules that since the owner of the slave had not asked before he died that his slave be returned to

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1 Thus a chapter in Ibn ‘Aṣim’s treatise deals with the “sale of slaves and the rest of animals”; see Ibn ‘Aṣim, *al-‘Aṣimīyya*, 110ff.

2 Brunschvig, “Abd,” 26, col. ii; Zaydān, IV, § 3749; XI, § 12135; Hallaq, *Shari‘a*, 307.

3 Brunschvig, “Abd,” 25, col. ii–26, col. i, 28, col. ii, 31, col. i.

4 *Al-Āthār al-kāmila*, III, 304.

him, he lost his right of ownership over the slave.<sup>5</sup> On another occasion, the Mahdī instructs that all slave girls (*jawārin*) and concubines (*sarāriyy*) who were brought by immigrants from non-Mahdist territory (probably as booty) to the Mahdist state, must be delivered to the treasurer of Bayt al-Māl in charge of booty.<sup>6</sup> In one case the Mahdī rules that an offense pertaining to apostasy can be established on the basis of Muslim witnesses, to the exclusion of slaves.<sup>7</sup>

At the same time the Mahdī is eager to ensure it that slaves be treated kindly and with consideration. Thus in an instructional lecture the Mahdī says:

Be kind (*urfuqū*) to the slaves (*raqīq*) and do not impose on them [hard] work that is beyond their capability; feed them the same food that you consume, give them to drink what you drink and clothe them in the same clothes that you dress yourselves, because God has vested the ownership of the slaves (*riqāb*) in your hands; had He so wished He would have vested the ownership of your person in their hands.<sup>8</sup>

The Mahdī seems to have been inspired by Q. 4:36, which commends: “(Show) kindness (*ihsān*) unto . . . (the slaves) whom your right hands possess (*wa-mā malakat aymanukum*).” On another occasion he reminds his audience that God commends: “Treat kindly (*ista’nisū*) your slave girls (*jawārin*) and concubines (*sarāriyy*).”<sup>9</sup> I have not come across a single case in the Mahdī’s documents where a slave was manumitted on the grounds mentioned in the Qur’ān. Manumission on such grounds is by the nature of things a private matter of the individual. However, as far as the Mahdī was concerned slavery was a legitimate part of the existing social order and, as will be demonstrated below, apart from releasing captives who were deemed slaves by virtue of their status as booty to encourage adherence to the Mahdiyya, the Mahdī had no intention to change the social order in this regard.

5 Ibid., III, 120 (the wife herself, who stayed in Turco-Egyptian territory, was taken as booty).

6 Ibid., IV, 286–87.

7 Ibid., II, 292.

8 Ibid., VI, 274.

9 Ibid., VI, 117.

## 2. *Umm al-Walad* Lost the Child by Her Master but Both She and the Children She Gave Birth to Fathered by Slaves Are Deemed Free in Her Master's Lifetime

### Legal Introduction

Islamic law makes a rigid distinction between marriage and concubinage; a master may have sexual relations with his own female slave, but he may not enter into marriage with her. Most jurists of the Sunnī schools share the view that when a female slave gives birth to a child by her master, she becomes *free on her master's death provided the child is still alive*, by virtue of her status as “mother of a child,” *umm al-walad*. The assumption is that the master's paternity has been established or that he has recognized paternity. This legal status implies that the master cannot sell a “mother of a child” to pay off debts on the estate. The master may make a will in favor of a “mother of a child.” All legitimate and illegitimate children<sup>1</sup> whom a married female slave may have after becoming pregnant by her master are free; children born of legal concubinage inherit their father's estate alongside children born by slaves in wedlock. Muḥammad inherited the practice of *umm al-walad* from Arab paganism. Although the Qur'ān mentions concubinage on several occasions (e.g., Q. 4:3, 23:6, 33:50, 70:30), the legal position of *umm al-walad* is not defined. The institution is based on a *ḥadīth*.<sup>2</sup> The Qur'ān commends the manumission of slaves (e.g., Q. 2:177, 9:60, 24:33, 90:13).

### Document

In the case under review the Mahdī is asked by Muḥammad 'Uthmān Abū Qarja, the emir of one of the districts in al-Gezīra,<sup>3</sup> to issue a legal opinion regarding someone who owns a female slave (*jāriya*). The master was keeping her in his possession until she gave birth to a child by him. The child died and her master withdrew from her (*i'tazala 'anhā*), which seems to imply that he

1 On unlawful sexual intercourse of a female slave, see below, doc. 3.

2 Schacht, “Umm al-Walad,” 857–59; Brunschvig, “Abd,” 28, 30, 31, col. i.

3 Holt, *The Mahdist State*, 98ff.

ceased to have sexual relations with her though she continued to attend to the master's household. Subsequently she gave birth to children fathered by slaves (*mamālīk*). The *mustaftī*, the man seeking the legal opinion, asks what is the legal status of the woman and her children born by slaves.

The Mahdī's legal opinion (*jawāb*):

There is no [legal] impediment regarding her [the *jāriya's*] attendance (*khidma*) on him [her master] provided it is being done of her free will. However, she is legally deemed free (*ḥurra*), and the children she gave birth to after she had given birth to a child by her master, are likewise freemen as she is.<sup>4</sup>

The legal opinion is not compatible with the traditional *sharʿī* concept regarding the status of *umm al-walad*. Inexplicably, the Mahdī ignored the fact that the master of the female slave was still alive at the time of the issuance of the legal opinion, and that she had lost her child by him. Hence, legally, she and her children fathered by slaves were deemed slaves and her consent to the *khidma* was not relevant. It may well be that the Mahdī deliberately intended to introduce a reform to the effect that when a female slave gives birth to her master's child, even if the child dies in her master's lifetime, both she and her children born afterward by slaves become automatically freemen even prior to the master's decease. The Qurʾānic verses commending the manumission of slaves may have inspired the Mahdī.

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4 *Al-Āthār al-kāmila*, III, 70. The same *fatwā* appears also in *Manshūrāt al-Mahdiyya*, 212.

### 3. A Female Slave, the Husband's Absence, Dissolution and Chastity

#### Legal Introduction

Regarding unlawful sexual intercourse, the Qur'ān treats a female slave as a legal person rather than property though it takes into consideration her inferior status as to punishment. Q. 24:2 provides that unlawful sexual intercourse entails a hundred lashes if the parties to the offense are free, and Q. 4:25 provides that married female slaves are liable to half of the punishment prescribed for free women. If the adulterer or the adulteress is adult, free and a Muslim and has been a party to a valid, consummated marriage, he or she is assumed to be "immune" against adultery (*muḥṣan*),<sup>1</sup> and hence liable—on the basis of a Prophetic *ḥadīth*—to capital punishment by stoning.<sup>2</sup>

The Mālikī school acknowledges dissolution of the marriage, on the wife's initiative, on the ground of the husband's absence (even if the absent husband takes care of her maintenance), provided that the period of absence is one year or more, that "the wife is afraid of falling into unlawful sexual intercourse" (*an takhshā al-zawja al-zinā 'alā nafsihā*) and that the husband declines either to return or to invite his wife to join him. If the husband refuses to divorce the wife, the *qāḍī* may pronounce her divorce on his behalf (*taṭlīq*).<sup>3</sup> The Zāhirī school does not acknowledge under any circumstance the dissolution of a marriage on the ground of the husband's absence; the marriage remains intact until the death of one of the spouses.<sup>4</sup>

#### Documents

The *qāḍīs* in the Mahdist state seek the Mahdī's legal opinion regarding a female slave (*mamlūka*) married to a slave and the mother of a child, the husband having been transferred to another place thus having made their

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1 See glossary, s.v. *muḥṣan*.

2 Peters, *Crime*, 59–61. In order to mitigate the punishment for sexual offenses involving a slave, certain cases of unlawful intercourse with a female slave (e.g., by a co-owner or the master's father) are not considered as *zinā*; see Brunschvig, "Abd," 29, col. ii.

3 Zaydān, VIII, § 8790–91. Cf. Peters, "Islamic Family Law," § 0.1.5.3.

4 Zaydān, VIII, § 8794.

assembly (*ijtimāʿ*) impossible for quite a long time. As is evident from the *fatwā*, the master imposed the transfer on the husband. The question is whether the husband's forced absence provides a legal ground for dissolution of the marriage (*hal tuṭallaq minhu*) by the *qāḍī* on behalf of the husband (*taṭlīq*); if it does, then what is the minimum period of absence that creates such a ground?<sup>5</sup>

In his *fatwā*, the Mahdī suggests that the matter should be decided according to how the husband's absence might affect the conduct of the female slave (*ama*): whether or not she will be seeking to abstain from what is unlawful (*tastaʿiff*),<sup>6</sup> referring thereby to her chastity. In his view, it is useless to decide the matter merely on the basis of the wife's request because dissolution of the marriage in itself "does not solve (*mā lā yaḥull*) [the problem of the wife's moral conduct]." The Mahdī seems to refer to a situation whereby an unmarried woman might be an easy prey to sexual temptation. This interpretation may be inferred from the Mahdī's suggestion to turn for inspiration to Q. 24:33, which reads: "And let those who cannot find a match keep chaste (*wa'l-yastaʿif*) till Allāh give them independence<sup>7</sup> by His grace." The Mahdī concludes that if the wife abstains from what is unlawful with respect to her husband (*istaʿaffat bi-zawjihā*), that is, if she refrains from adultery during his prolonged absence, then it is preferable to preserve the marriage intact (*fa-bihā*). If, however, she does not keep her chastity, then she will be liable to the punishment that a female slave deserves. The Mahdī further elaborates that the disinclination out of weakness (*duʿf*) of women having no husbands (whether married before or not) (*ayyimāʿ*)<sup>8</sup> to maintain their chastity (*ʿiffa*) is notorious; hence, if the female slave in the case under review commits adultery (*zanat*) while her husband abstains from what is unlawful [i.e., adultery], she will be liable to "the half of the punishment (prescribed) for free women (*muḥṣanāt*)."<sup>9</sup>

The Mahdī's suggestion that the matter should be decided having regard solely to the wife's chastity deprives her of her right to dissolve the marriage on the ground of the husband's absence.<sup>10</sup> Rather than dissolving the marriage, the Mahdī prefers to deal with the case on the criminal level. As noted

5 *Al-Āthār al-kāmila*, II, 91. On the husband's absence as a ground for dissolution, see below, docs. 33–34.

6 Lane, *Lexicon*, 2088, col. ii.

7 Sale (*The Korān*, 348) suggests: "if they be poor, God will enrich them."

8 Lane, *Lexicon*, 138 cols. i–ii. Alternatively, the text should read *īmān*, in which case the translation should be: "women's weakness of faith."

9 *Al-Āthār al-kāmila*, II, 95 (the sentence between inverted commas is a citation from Q. 4:25). See Glossary, s.v. *muḥṣan*.

10 On sexual temptation (*anat, fitna*) in Libyan judicial practice, see Layish, *Divorce*, 92, 144; idem, *Sharʿa and Custom in Libya*, docs. 14:9–10; 30:6, 10–11, fn.13.

above, the capital punishment by stoning is relevant only with respect to a *free* adult adulterer or the adulteress who has consummated a valid marriage. The Mahdī's ruling that if it is established that the female slave has committed adultery she will be liable to a "punishment that is half of that decreed for the free women" indicates that he is referring to the punishment of lashes prescribed in Q. 4:25. The Mahdī's refusal to dissolve the marriage may have been inspired by the Zāhirī school.

## 4. A Slave's Acknowledgment of Theft Is Admissible and Punishable

### Legal Introduction

As a rule, the testimony of a slave is not admissible in court unless his acknowledgment (*iqrār*) refers to matters affecting his legal status as a person (*nafs*) as distinct from property (*māl*).<sup>1</sup>

A slave found guilty of a theft is liable to amputation of his hand provided all preconditions for the existence of theft, such as *niṣāb* (minimum value of the stolen article) and *ḥirz* (the stolen article being under guard), have been met. The punishment of amputation is based on Q. 5:38.<sup>2</sup>

### Document

In the case under review, the *qādīs* seek the Qāḍī al-Islām's legal opinion as to whether the acknowledgment of a slave (*ʿabd mamlūk*) of having committed a theft is admissible for effecting the punishment of the theft.<sup>3</sup>

The Qāḍī al-Islām Aḥmad ʿAlī issues a legal opinion based on what the late Mahdī had informed him:

If the slave acknowledges having committed a theft by way of a valid acknowledgment (*aqarra iqrāran ṣaḥīḥan*) meeting all the *sharʿī* requirements of acknowledgment,<sup>4</sup> then his acknowledgment is deemed effective (*muʿtabar*) and entails the [*sharʿī*] punishment designated for theft (*ḥadd al-sariqa*) [that is, amputation of the hand].<sup>5</sup>

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1 See legal introduction to doc. 1.

2 Zaydān, v, § 4365; Ibn ʿĀṣim, *al-Āṣimīyya*, § 1548; Brunschvig, "Abd," 28, col. ii, 29, col. ii; Peters, *Crime*, 56–57.

3 *Manshūrāt al-Mahdiyya*, 202.

4 The acknowledgment of the theft must be explicit and express the unlawfulness of the act. It must take place in court; Peters, *Crime*, 13–14.

5 *Manshūrāt al-Mahdiyya*, 205.

In other words, the Qāḍī al-Islām seems to share the view that the slave's acknowledgment is admissible in the case of theft and that the *ḥadd* punishment can be enforced provided all the formalistic requirements pertaining to acknowledgment have been met. Although the slave has no capacity to own and dispose of property, the admission of the offense affects his person rather than his status as property.

The Qāḍī al-Islām does not refer to the preconditions pertaining to the offense of theft, the fulfillment of which are indispensable for the amputation to take place.<sup>6</sup> Also no reference is made in the document to the civil aspect of the theft, that is, the return of the stolen object or payment of damages.<sup>7</sup>

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6 The Mahdī's literal reading of Q. 5:38 demonstrates his ignoring altogether the preconditions for effecting amputation; see below, doc. 55.

7 Peters, *Crime*, 55.

## 5. The Mahdī Buys Concubines and Obtains His Free Wives' Consent

### Legal Introduction

The Qurʾān permits extramarital cohabitation only between the master and his own female slave (e.g., Q. 4:24, 25). There is no limit on the number of concubines that a man may keep (Q. 4:3), but most jurists hold that the specified impediments to marriage apply also to cohabitation with concubines.<sup>1</sup>

### Documents

When the Mahdī entered El Obeid some of the Ikhwān donated several slave girls to him. Since the Mahdī was afraid that this would incite (*fitna*) his four free wives, he considered moving the concubines out of his home. Whereupon Hātif, the invisible caller in early Ṣūfism,<sup>2</sup> appeared all of a sudden and told the Mahdī that having regard to the Prophet's precedent, he might keep fifteen slave girls. Then some of the Aṣḥāb brought the Mahdī a slave girl that caused him great excitement. Hātif told him that he was at liberty to keep her and that actually the treasurer of Bayt al-Māl had chosen the girl for him "along the model (*ʿalā sikka*) of the Prophet." Hātif further tried to calm the Mahdī by suggesting that the girl was on account of the Prophet's share in the booty (*ghanīma*), referring thereby to the Mahdī's share. Then a warrior handed over the girl to the Mahdī insisting that she belonged to him. The Mahdī nevertheless felt uneasy:

I am accused of keeping many of those women [the concubines] in addition to four free women (*ḥarāʾir*) although they [the latter] do not force me in the slightest way (*bi-adnā*) [to get rid of them on the ground that] they [the concubines] are the vain pleasures of this world that cause distraction (*min jihat shughla min al-dunyā*).

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1 Brunschvig, "Abd," 28, col. i.

2 See Glossary, s.v. Hātif.

The Mahdī asked the Ikhwān's advise as to whether or not he could keep the concubines. Then the treasurer of Bayt al-Māl chose for the Mahdī another slave girl and the Mahdī reluctantly agreed to accept her in honor of Khalifa 'Abdallāhi. The Mahdī insisted that the concubines were neither part of his share in the booty (*khārijīn min al-ghanā'im*), which he had already allocated to his near kin, the poor, the orphans and the wayfarers, nor his fifth of the fifth (*bal wa-lā min khums al-khums*), that is, his share in the booty as successor to the Prophet;<sup>3</sup> rather, he bought them with his own money.<sup>4</sup> It seems that the Mahdī felt obliged out of concern for his reputation to make it publicly known that his free wives did not resist his inclination to obtain more concubines, that he moreover derived inspiration from the personal example of the Prophet Muḥammad, that the Ikhwān supported his behavior, and that the slave girls were bought with his private money.

There is indeed evidence that the Mahdī bought for himself three slave girls that had been transferred to Bayt al-Māl as booty. It was decided between the Mahdī and the treasurer (*amīn al-ṣundūq*) to settle the debt on the following basis: the price of the slave girls was fixed at 100 riyals (silver coins). One-fifth of this price, 20 riyals, had already been deducted from the budget of Bayt al-Māl on account of the Mahdī's share in the booty. The residue, 80 riyals, was to be deducted from the gold coins (the value of which was not specified) that the Mahdī had given Bayt al-Māl on account of the purchase, thus defraying the entire debt and thereby restoring his damaged reputation caused by the "stain of the booty" (*danas al-ghanā'im*). The Mahdī reminded the treasurer that one-fifth of the price is due to the Prophet's family (*ahl al-bayt*) by virtue of right (*ḥuqūq*),<sup>5</sup> the reference being to Q. 8:41 which prescribes that one-fifth of the booty is to be allocated to God, His messenger, kin, orphans, the poor and wayfarers. The implication is that the Mahdī, who relates himself to the Prophet's family, is entitled to this portion of the booty.

3 This implies that the Mahdī may participate in the division of the booty in two capacities: As the successor of the Prophet and as a member of the Prophet's family. See below, the last paragraph and doc. 77.

4 *Al-Āthār al-kāmila*, III, 62–63. For a lithographic version of the document, see Durham, *SAD* 97/5/84–85.

5 *Al-Āthār al-kāmila*, v, 382. Cf. *ibid.*, III, 154 (the Mahdī donates to the military governor of El Obeid two slave girls). Cf. Holt, *The Mahdist State*, 101.



PART 2

*Property*





## 6. Validation of the Ottoman Land Category of *Mīrī*

### Legal Introduction

Under the *sharī'a*, property includes two elements: the substance (*raqaba*) of a thing (*ʿayn*) and the usufruct (*manfaʿa*) of a thing that can be used separately. In property of *milk* category, the individual has the combination of the two elements, the substance and the usufruct, which amounts to full ownership (including the right of possession), that is, the right to own and dispose of a thing.<sup>1</sup> In land of *mīrī* category, the land belongs to the state while the rights of usufruct (*taṣarruf*) thereof are leased to the individual for the purpose of cultivation in return for an annual tax due in advance.<sup>2</sup> The Ottoman Empire introduced the *mīrī* category in the Sudan, where the extent of the *milk* property decreased the further the distance from the Nile.<sup>3</sup>

With respect to land taken from infidels, the Imām may either distribute it among the warriors as booty or leave it at the disposal of its original owners, subject to payment of land tax (*kharāj*) and poll tax (*jizya*).<sup>4</sup>

### Documents

Broadly speaking, the Mahdī did not acknowledge Ottoman statutory legislation. He denied the legitimacy of a human authority to promulgate laws contradicting the *sharī'a* such as unlawful taxes. He claimed that God invalidated the Turkish statutes by the mere manifestation of his mahdship. Moreover, he criticized the *ʿulamāʾ* that reconciled with these laws.<sup>5</sup> And yet, as far as the land was concerned, the Mahdī was ready—probably out of such economic considerations as collection of taxes—to maintain the *mīrī* category of land intact under the efficient control of the Public Treasury. Thus in an address to the inhabitants of Khartoum, the Mahdī declared that if they joined the Mahdiyya he would forgive their infidelity, as he did with respect to those residing in Turkish fortified camps, and restore to them the entirety of their

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1 Schacht, *Introduction*, 134, 136; Hallaq, *Sharī'a*, 297. Cf. Mejlle, § 125.

2 Ottoman Land law, 1858, Article 3; see Ben-Shemesh, *Land Laws*, 31.

3 Bjørkelo, *Prelude to the Mahdiyya*, 58.

4 Zaydān, IV, § 3750.

5 See above, 16–17, 19ff.

property “except for *mīrī* land and ammunition.”<sup>6</sup> Similarly, the Mahdī proposed to the inhabitants of Kassala, a pledge of security (*amān*), and conversion to Islam; if they accepted the proposal, the Anṣār would not enslave them or their children, and they would be entitled to keep some of their property; but in any case the Treasury would confiscate their *mīrī* land.<sup>7</sup>

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6 *Al-Āthār al-kāmila*, iv, 82.

7 *Ibid.*, v, 41; cf. v, 56 (*ashghāl al-mīrī*), 75.

## 7. The Mahdī Proclaims a Period of Prescription of Seven Years

### Legal Introduction

Period of prescription, i.e., the period within which a claim in respect of which an action has not been brought to court shall be prescribed, is not alien to Islamic law. In the context of period of acquisition of title to land (*amad al-hiyāza*) it implies that one can acquire the right of ownership thereof if he manages to actually possess the land during that period with no one challenging him. Article 1660 of the Mejlle provides a period of prescription of 15 years with respect to *milk* property, and article 1662 provides a period of prescription of 10 years with respect to *mīrī* property. Article 20 of the Ottoman Land Law, 1858 provides a period of prescription of 10 years with regard to *mīrī* land that has been registered in the land register. No claim is to be entertained in court except on specified grounds, such as the applicant claiming rights to property that is in a distant place (beyond the “distance of traveling”). This means that the period of absence is not taken into account in the period of prescription.<sup>1</sup>

### Document

In a letter to the emir of Berber, Muḥammad al-Khayr ‘Abd Allāh al-Khūjalī, the Mahdī refers to people in Turco-Egyptian territory who were forced to emigrate due to their association with him. They left behind land that was subsequently seized by transgressors. The Mahdī issues a proclamation announcing a period of prescription of seven years without referring at all to the Ottoman legislation pertaining to the period of prescription. The proclamation contains the following items:

1. Anyone whose land was seized by a transgressor (*zālim*) using trickery (*tahayyul*) may have his rights restored as the owner of the land by virtue of a reliable acknowledgment (*iqrār*) and testimony (*shahāda*), provided no more than seven years have elapsed since the unlawful possession (*wad‘ al-yad*) took place.

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<sup>1</sup> Ben-Shemesh, *Land Laws*, 53–54.

2. A claim [for restoration of land] by someone who was absent from the land will be attended to [in court] if he returns [to the land] within seven years; if he returns later, his claim will not be attended to.
3. With respect to the seizure of property other than land, claims may be attended to only if related to the period starting with the capture (*futūḥ*) of the Mudiriyya [by the Mahdī]; claims pertaining to the period prior to the capture even if submitted [to court] will not be attended to.<sup>2</sup>

It seems that this shorter period of prescription was intended to achieve two goals: 1. To provide the Mahdī's adherents with an opportunity to recover their property rights that had been lost under the Turco-Egyptian administration following their emigration to the Mahdist territory<sup>3</sup> once the Mahdī's forces take over the Turco-Egyptian territory; 2. To validate the illegal possession of land by Mahdist adherents following the expansion and consolidation of the Mahdist state, increasing thereby legal certainty in the domain of land rights. Thus in response to claims from the chiefs (*ʿumad*) of several tribes in the region of Berber that have adhered to the Mahdiyya, the Mahdī assures them that the houses, land and date palms that are "presently" in their possession (*taḥta aydihim*) have become their private property (*mamlūka lahum*) because they have been "laying their hands on them (*wāḍiʿūn yadahum ʿalayhā*)," that is, actually possessing the property, for almost 61 years with no one challenging them (*bi-lā munāziʿ*). The procedure of validation was apparently due to take place by means of a shorter period of prescription of seven years. The Mahdī announces that henceforth no one may challenge a possessor's rights to a property beyond this period; any claim to this effect will not be attended to in court, and any litigation (*khuṣūma*) in this regard will be null and void.<sup>4</sup> The proclamation actually implies that in the Mahdist state the new period of prescription replaces the Ottoman legislation in this domain at least as far as *milk* property is concerned.

2 *Al-Āthār al-kāmila*, IV, 55–56. For a lithographic version of the document, see *Manshūrāt fī ʿl-ḥudūd*, 37–41. Cf. *Abū Salīm, al-Arḍ*, 28–29.

3 Cf. *al-Āthār al-kāmila*, III, 164 (the Mahdī promises to "forgive" the inhabitants of Sawākin if they emigrate voluntarily to the Mahdist territory before he takes over the city. He asks his agent in the district to postpone the settlement of their debts until their property rights that had been illegally seized by the "Turks" are restored to them).

4 *Al-Āthār al-kāmila*, IV, 84.

## 8. Obtaining Ownership through an Uninterrupted Period of Prescription

### Documents<sup>1</sup>

The owner of a plot of land, after being absent for some time, claims that someone illegally took possession (*istawlā*) of his land in his absence. On his first visit to the site the owner of the plot did not challenge the illegal possession and after a short while disappeared again. On his second visit to the site he realized that the illegal possessor (*al-mustawlī*) had “exhausted the period of acquisition of title (*muddat al-ḥiyāza*),” that is, the period of prescription. The local *qāḍī* seeks the legal opinion of the Qāḍī al-Islām, Aḥmad ‘Alī, as to the decision that should be rendered in this particular case.

The Qāḍī al-Islām’s legal opinion (issued shortly after the Mahdī’s death):

Had the owner of the land during his first visit [to the site] settled down (*mutawattīnan*) and stayed a [substantial period of] time (*zamanan*) without speaking (*lam yatakallam*) [i.e., challenging the illegal possession], he would have no [right of] speaking [challenging] during his second visit. [However,] had he visited the site [during his first visit without settling down] and returned [to the site] after a short time (*qarīban*), he would have the right to speak [to legally challenge the illegal possession].<sup>2</sup>

In another case, a man illegally seized (*waḍa’a yadahu*) a plot of land belonging to somebody else and kept it for some time without having exhausted the period of prescription (*amad al-ḥiyāza*) as defined in the special proclamation issued by the Mahdī. Subsequently he disappeared, abandoning the land. Later he appeared in an attempt to manipulate the completion (*yulaffiq al-ikmāl*) of the period of prescription. The Qāḍī al-Islām rules that he cannot legally avail himself of this option,<sup>3</sup> implying thereby that ownership of a piece of land is obtained only through uninterrupted possession of the land all through the period of prescription without being challenged by the original owner.

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<sup>1</sup> For legal introduction, see doc. 7.

<sup>2</sup> *Manshūrāt al-Mahdīyya*, 205–6. Cf. *Abū Salīm, al-Arḍ*, 28–29.

<sup>3</sup> *Manshūrāt al-Mahdīyya*, 204.



PART 3

*Obligations and Contracts*





## 9. Prohibition of Lease for Rent and Agrarian Reform

### Legal Introduction

Lease (*ījār*) is the sale of usufruct (*manfaʿa*) for a specified period of time in return for rent, contracted by offer (*ījāb*) and acceptance (*qabūl*), binding (*lāzim*), with no option of rescission by any of the parties unless there is some good reason for doing so. In lease of land, it is necessary to specify the purpose for which the lease is required; if it is for the purpose of cultivation, it is required either to specify the kinds of crops or to leave the matter to the discretion of the lessee.<sup>1</sup>

### Document

Lease for rent was common practice in gum (*samgh*) plantations in West Sudan.<sup>2</sup> In a general proclamation pertaining to lease for rent the Mahdī announces:

Anyone who owns a plot of land (*tīn*) should sow it himself to the best of his ability. In the event that he is incapable (*ʿajaza*) to cultivate the land himself or if he has no need [for his own livelihood to cultivate the land], he may not [lease the land] for rent (*duqundī*) because the believers are deemed one body [in terms of solidarity]; anything done by a Muslim brother to establish equality [between the Muslims] will always be counted [to his credit] in terms of high scales vis-à-vis God; competition among the believers exists only with respect to the Hereafter. Every believer should have his own plot of land in private ownership (*milk*). [In order to secure] his share (*naṣīb*) in the Hereafter the believer, if he has more property than he needs, should give [the surplus] to his brother who is in need. . . .<sup>3</sup>

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1 Ibn ʿĀṣim, *al-Āṣimiyya*, 158, 160; Schacht, *Introduction*, 154–55; Hallaq, *Sharīʿa*, 256–58.

2 Abū Salīm in *al-Āthār al-kāmila*, 111, 118, fn. 5. Cf. Layish, *Judean Desert Documents*, doc. 33.

3 *Al-Āthār al-kāmila*, 111, 118. Cf. Abū Salīm, *al-Arḍ*, 15, 20. The Mahdī seems to have changed his mind regarding cases where the owner of the land was incapable of cultivating his own plot and permitted in such cases to resort to contracts of tenancy; see below, doc. 10.

Private property (*milk*) is well established and tolerated in Islamic law. The Mahdī nevertheless is determined to bring about a land reform, though on a voluntary basis: Everyone should have a plot of private land and cultivate it by himself. The scope of the land should satisfy one's needs; land beyond this scope should be given to needy people. Moreover, the Mahdī condemns leasing land for rent because he deems this practice a sort of exploitation of agricultural labor by landlords in glaring contradiction of Islamic law (referring thereby to the prohibition of *ribā*) and socially undesirable. The Mahdī, however, does not support his plan for agrarian reform by references to the Qur'ān or the *sunna*.<sup>4</sup>

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4 Cf. Holt, *The Mahdist State*, 130. As will be seen in doc. 10, the Mahdī mitigated the prohibition of lease for rent to some extent.

# 10. Tenancy Is Permissible if Proprietor Incapable of Cultivating Land

## Legal Introduction

*Muzāraʿa* is a contract of lease of agricultural land based on a partnership (*sharika*) in which one party provides the land and the other party the labor. The crop is shared between the parties in accordance with a fixed ratio, such as one-half, one-third or one-sixth of the crop to the owner of the land and the rest to the tenant. The contract comprises an offer and acceptance. It is required to specify the species of the seeds unless otherwise has been agreed upon between the parties. The land must be appropriate for sowing and its possession transferred to the tenant.<sup>1</sup>

## Document

The Mahdī instructs Muḥammad al-Khayr ʿAbd Allāh al-Khūjalī, the emir of Berber, to restore landed property, which had been unlawfully seized under Turco-Egyptian rule, to the original owners. He further instructs that

If an owner of the land (*tīn*) is weak (*ḍaʿīf*) to the extent of not being capable of cultivating the land, he may hire the services (*yastakhdim*) of someone in return for a consideration [i.e., part of the crop] as agreed between the parties, [the practice of tenancy] should be compatible with the practice prescribed by the Qurʾān and the Prophetic *sunna*.<sup>2</sup>

The Mahdī does not provide any references to the textual sources.

We noted earlier that the Mahdī prohibited contracts of lease for rent—regardless of the circumstances—although such contracts are recognized

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- 1 Ibn ʿAṣīm, *al-ʿĀṣimīyya*, 164, 166, 168; Donaldson, *Sharecropping in Yemen*, 60ff., 226, 228; Peters, “Sharecropping,” 85; Schacht, *Introduction*, 155f. Cf. Layish, *Judean Desert Documents*, doc. 32.
  - 2 *Al-Āthār al-kāmila*, 111, 227. Cf. *ibid.*, 111, 70 (“The owner of the land is entitled to what has been agreed upon between the parties”) and Abū Salīm’s note in fn. 2; Abū Salīm, *al-Arḍ*, 17; Holt, *The Mahdist State*, 98–99.

under the *sharī'a*. In the document under review he seems to have excluded from this prohibition cases where the owner of the land is incapable of cultivating his land himself; in such cases he permits leasing the land on the basis of partnership.<sup>3</sup>

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3 See above, doc. 9. Cf. Layish, *Sharī'a and Custom in Libya*, doc. 65.

## 11. Pledge Is Not Permissible as a Device for Circumventing Prohibition of Interest, but the Pledgee/Creditor May Deduct Expenses from the Profits

### Legal Introduction

*Rahn*, pledge, is a transfer of possession (as distinct from ownership) of a property from the debtor/pledger to the creditor/pledgee as security for the return of a loan. Except in Ḥanafī doctrine, the profits (*ghalla*) of the pledged property, e.g., the yield of agricultural land, belong to the debtor unless the contract between the parties stipulates otherwise. The Ḥanafīs hold that the debtor must secure the permission of the creditor in order to retain the profits. The contract of pledge is concluded by offer and acceptance and becomes binding (*lāzim*) when the creditor takes possession (*qabḍ*) of the object of the pledge. Neither party may sell the pledged property without the other's consent. The pledgee is liable for any damage suffered by the pledged property. When the debt is paid, the pledgee must return the object of the pledge to the debtor; if the debtor fails to repay the debt, the pledgee/creditor may sell the pledged property and reimburse himself.<sup>1</sup> Broadly speaking, pledge is recognized as a legitimate device for circumventing the prohibition of interest (*ribā*).<sup>2</sup> This seems to refer to cases where the creditor/pledgee secures the pledger/debtor's consent to forgo the profits in his favor in return for the loan.

### Documents

In what follows, a proclamation and legal opinions issued by the Mahdī and the Qādī al-Islām will be discussed.

In a general proclamation of 9 June 1884 the Mahdī deals successively with two cases pertaining to pledge. In the first case he decides:

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<sup>1</sup> Hallaq, *Sharī'a*, 267–68; Schacht, *Introduction*, 138–40; idem, "Rahn," 400; Ibn 'Āṣim, *al-Āṣimīyya*, 36, lines 23off. Cf. Layish, *Judean Desert Documents*, docs. 50–53.

<sup>2</sup> Schacht, *Introduction*, 78–79.

If someone pledges his land [as security] for a loan and stipulates [with the other party] that he [the pledger/debtor] is dispossessed (*salb*) of [i.e., agrees to forgo] the profits (*ghalla*) [implying thereby that the pledgee/creditor is allowed to keep the profits], he [pledgee/creditor] is to be given back [at the termination of the contract of pledge] the loan (*wa-man arhana arḍahu fī dayn wa-shuriṭa salb ghallatihi yu'tā daynahu*) [but not the profits from the pledge]. As from now on in any given location where the Mahdiyya has established itself, he [the pledgee/creditor] is not entitled to receive the profits because it is a debt (*lā ghalla lahu ḥaythu annahu dayn*) [i.e., an act of charity for the sake of God, and only He may reward the pledgee/creditor; see below]. As to cases that took place under Turkish rule [where the parties agreed that the pledgee/creditor, rather than the pledger/debtor, would receive the profits], no indemnity (*gharāma*) is due [implying thereby that stipulations pertaining to the profits should not be taken into account]; he [the pledgee/creditor] is entitled to receive only the substance of the loan (*wa-innamā lahu 'ayn daynihi faqat*), [without the profits].<sup>3</sup>

In the second case, the Mahdī decides:

If someone pledges his slaves (*arhana mamālikahu*) and becomes indebted (*tadayyana mālan*) [i.e., takes a loan in return for the pledge] on condition that he [the pledger/debtor] forgo (*suqūt*) the benefit (*manfa'a*) [i.e., the profits from the slaves' labor, in favor of pledgee/creditor], then if [the contract was concluded] under the Turkish rule the matter is of no relevance (*mā fāta . . . fa-qad fāta*) [implying thereby that the profits rest with the pledgee/creditor]. Regarding any given location where Mahdist rule has established itself, the [pledger/debtor's] renouncement of the benefit [in favor of the pledgee/creditor] will have no effect because the loan is for the sake of God; it is God who will reward [the pledgee/creditor] and whatever benefit [the pledge] produces comes from God (*wa-yakūn al-dayn li-llāh wa-thawābuhu 'alā allāh wa-manfa'atuhu 'inda allāh*).<sup>4</sup>

In other words, the creditor/pledgee may not derive any material benefit from the pledge; his loan is an act of charity and his reward for it (if any!) will come

3 *Al-Āthār al-kāmila*, 111, 118. Cf. Abū Salīm, *al-Arḍ*, 23.

4 *Al-Āthār al-kāmila*, 119. For a lithographic version of the document, see *Manshūrāt fī'l-ḥudūd*, 71. Cf. Abū Salīm, *al-Arḍ*, 23.

from God, presumably in the afterlife.<sup>5</sup> The denial of any material benefit from the creditor indicates that the Mahdī prohibits the use of the pledge as a device for circumventing the prohibition of interest.<sup>6</sup>

A *fatwā* issued by the Qāḍī al-Islām Aḥmad 'Alī shortly after the Mahdī passed away, sheds more light on the Mahdī's aforementioned decisions. The Qāḍī rules that since the consolidation of Mahdist rule, regardless of whether the pledge is a slave, land or something else, "the excess (*mughālāh*) [of the profits after deducting the pledgee's expenses in the course of managing the pledged property] belongs to God; hence, "the profits of the pledge should be deducted from the principal debt" (*tuḥsab al-ghalla min aṣl al-dayn*). This implies that the pledgee/creditor is not entitled to the profits of the pledge excluding the expenses "because the loan is for the sake of God; it is God who will reward [the pledgee/creditor] as laid down in the Mahdī's proclamation."<sup>7</sup> The Qāḍī al-Islām seems to refer to the Mahdī's objection to using the pledge as a device for circumventing the prohibition of interest. This implies in practice that the profits, after deducting the expenses caused to the pledgee/creditor, belong to pledger/debtor and should be deducted from the loan.<sup>8</sup>

On another occasion the Mahdī was asked to issue a legal opinion as to whether the pledgee (*murtahin*) was entitled to benefit from the profits (*yantafi' bi-ghallatihi*) in addition to receiving the entirety of the capital (*ra's al-māl*) [i.e., the loan] at the termination of the period of the pledge.

In his legal opinion the Mahdī maintains that the creditor/pledgee is "entitled to the profits of the pledge only to the extent necessary to cover his expenses" (*lahu al-intifā' min al-rahn bi-qadr al-naḥaqa*). His view is based on a sound Prophetic *ḥadīth* of reliable transmitters (ʿĀmir {d. 110/728} and Abū Hurayra {d. 57 or 58/676–78}),<sup>9</sup> which holds: "One can ride the mortgaged animal because of what one spends on it, and one can drink the milk of a milch animal as long as it is mortgaged" (*al-rahn yurkab bi-naḥaḥatihi wa-yushrab li-yawm al-sadaḍ [sic]*).<sup>10</sup> This implies that

5 I owe this observation and much more to Frank Stewart; his e-mail of 15 February 2013.

6 Cf. Abū Salīm, *al-Arḍ*, 59–60 (the pledgee may benefit from the *ghalla* provided it is deducted from the debt due to him).

7 *Manshūrāt al-Mahdiyya*, 207–8.

8 Cf. Abū Salīm's comment on the Mahdī's proclamation: "[the debtor/pledger] is not allowed to take possession (*istilā'*) of the profits as long as [the expenses incurred by the pledgee/creditor] have not been taken into account (*mā lam tuḥsab*)."<sup>9</sup> See *Al-Āthār al-kāmila*, III, 117 (caption of the proclamation).

9 Hallaq, *Origins*, 64ff., 72; Powers, *Qur'an and Ḥadīth*, 136.

10 See Wensinck, *Concordance*, II, 294, col. ii.

The profits in excess of the expenses belong to the pledger [/debtor]. The creditor [/pledgee] will take [the expenses] into account whatever their scope may be and the issue may not be left unsatisfied [i.e., the matter should be settled by mutual agreement between the parties] (*al-manāfi' al-zā'ida 'alā al-nafaqa fa-hiya li'l-rāhin yuhāsibuhā šāhib al-dayn bi'l-qadr mā balaghat wa-lā yajūz tarkuhā bi-dūn riḍan*).

The Mahdī cites in this connection Q. 2:188 in an attempt to encourage the moderate disposition of property.<sup>11</sup>

The main conclusions that may be drawn from the aforementioned documents is that contrary to the common view, according to which the pledge is a legitimate device for circumventing the prohibition of interest, the Mahdī is of the opinion that as a matter of principle taking interest by using the device of pledge is not permissible, though he agrees, having regard to economic considerations, that the pledgee/creditor may deduct from the profits the expenses incurred in the course of managing the pledge, while the residue of the profits should be deducted from the loan in a manner agreed between the parties. The Mahdī enlists the textual sources of the Qur'ān and the Prophetic *ḥadīth* to support his view. No reference is made to the schools of law regarding stipulations concerning the profits of the pledge.

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<sup>11</sup> *Manshūrāt fi 'l-ḥudūd*, 16–18.

## 12. Right of Preemption Reserved Only to the Partner, Not the Neighbor

### Legal Introduction

Preemption (*shuf'a*) is the right of the co-owner to buy out his partner's share designed for sale. Should this share be sold without his approval to a third party, the co-owner has the right to purchase it, even against the will of the new owner, who will be reimbursed. The Ḥanafis extend this right to owners of the adjacent properties, that is, to neighbors. Most of the Mālikīs (as well as jurists from other schools) do not allow extending the right of preemption to neighbors, nor do they allow selling this right or donating (*hiba*) it; but it may be transmitted through inheritance. When a co-owner sells his share to other co-owners, his partners (*shurakā'*) to this share (through other contractual obligations) participate in the sale according to their respective portions. Some Mālikīs permit exercising the right of preemption in usufruct (*manfa'a*), as in the case of renting agricultural land.<sup>1</sup>

### Document

A *qāḍī* (*nā'ib*) asks for the legal opinion of the Qāḍī al-Islām Aḥmad 'Alī as to whether the right of preemption in land and buildings is reserved only to the partner (*sharīk*) of the property, that is, his co-owner, or to both the partner and neighbor (*jār*) of the owner of the property.

The Qāḍī al-Islām's legal opinion:

Only the partner has the right of preemption; the neighbor has no right of preemption.<sup>2</sup>

Although no school was mentioned, there is good reason to believe that the Qāḍī al-Islām was inspired by the Mālikī school.

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1 Ibn 'Āṣim, *al-Āṣimīyya*, 136ff. esp. lines 919, 934, 942; Izzi Dien, "Shuf'a"; Schacht, *Introduction*, 142; Hallaq, *Sharī'a*, 306–7; Anderson, *Africa*, Glossary.

2 *Manshūrāt al-Mahdīyya*, 203, 206. Cf. Abū Salīm, *al-Ard*, 57; Layish, *Judean Desert Documents*, docs. 45–46. In one of his religious *khutbas* the Mahdī says: "You must preserve the right [of preemption?] of your neighbor (*wa-'alaykum bi-ḥaqq al-jār*).” See *al-Āthār al-kāmila*, VI, 274.



PART 4

*Family*





### 13. Marrying a Woman Promised to Another, Even after Consummation, Entails Dissolution and Discretionary Punishment

#### Legal Introduction

Under traditional *sharīʿa*, asking a girl's hand in marriage, or proposal (*khiṭba*), if accepted by the other party, is tantamount to a *promise* to marry the girl that does not constitute a contract of marriage. It is meant to provide each of the parties an opportunity to be informed of the qualities and defects of the other party; thus they may, with certain limitations, gaze (*naẓar*) at each other. It is not permissible to propose marriage to a woman who has accepted a proposal from someone else (this is based on a *ḥadīth*). Each party may break the proposal with no compensation to the other party, though the girl has to restore any gift she has received that is counted as part of the nuptial gift (*ṣadāq*). According to some Mālikīs, such as ʿIllysh (d. 1299/1881–82), the marriage of a girl who has accepted a proposal (*baʿda rukūnihā li-khāṭib*) from someone else (without this proposal having been formally broken) is void and should be dissolved (*faskh*) before consummation; but if consummated, it cannot be dissolved.<sup>1</sup>

#### Document

In a *fatwā* addressed to ʿumalāʾ, *maqādīm* and *nuwwāb al-sharʿ*, the Mahdī refers to the case of a man who had proposed marriage (*khāṭib*) and paid substantial amounts of money, probably on account of the *ṣadāq*. The conclusion of the marriage (*ʿaqada ʿalayhā ʾiṣmatan*) was postponed until the termination of the period during which the *khāṭib* was entitled to “gaze” (*naẓar*) at the girl.

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<sup>1</sup> Zaydān, VI, § 5075, 5079, 5098ff., 5105, 5114, 5118, 5120ff.; ʿIllysh, *Fath al-ʿAlī*, I, 425; Shalabī, *Aḥkām al-usra*, 50ff., 62; Peters, “Islamic Family Law,” § 0.1.1.2. On the Shāfiʿī view concerning marrying a woman promised to another in connection with King David, Uriya and Bathsheba, see Stern, *al-Qushayrī's Thought*, 188–89. Although consummation is forbidden in the absence of a valid contract of marriage, once it has taken place it entails some marital rights and obligations; see Peters, “Islamic Family Law,” § 0.1.3.1.

In the meantime a third party appeared on the scene and married the girl, probably in return for a higher amount of *ṣadāq*. The Mahdi opined:

This matter is not agreeable to God and His Messenger [that is, not compatible with the textual sources of the Qurʾān and the *sunna*]<sup>2</sup> and contradicts [the moral code of] the Mahdiyya. It is completely prohibited (*ḥarām waʿl-ḥarām*) and should not be pursued. The man in charge of this affair (*ṣāhib dhālika*)<sup>3</sup> should be flogged and put in jail and the marriage be dissolved (*tufṣakh . . . al-ʿiṣma*).<sup>4</sup>

If the marriage in the case under review had not been consummated the Mahdī's ruling of dissolving the marriage would have been compatible with the Mālikī doctrine. If, however, the marriage had been consummated then its dissolution would have been in glaring contradiction of this doctrine. The Mahdī's ruling regarding flogging and imprisonment seems to indicate that the Mahdī treated the marriage as an immoral act in terms of chastity, something approaching unlawful sexual intercourse (*zinā*), which, properly speaking, is not the case. There might have been a question of reimbursing the *khātib* for the money he had given to the girl, but the legal opinion does not deal with the civil aspect of the case. Since the number of lashes is not mentioned, it seems that we are dealing here with the Mahdī's discretionary punishment. The Mahdī intended, by means of these measures, to deter potential offenders from marrying women who had accepted proposals from other men.

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2 The traditional view provides that breaking a proposal of marriage on the initiative of either party is legitimate provided it is done for an appropriate purpose that can be justified by the *sharʿa*; otherwise (e.g., when the incentive for the break is the gain of excessive *ṣadāq*), breaking the proposal is deemed detestable (*yukrah*). See Zaydān, VI, § 5116.

3 This may refer either to the marriage-guardian of the girl or to the man who married the girl knowing that she had previously accepted a proposal of marriage.

4 *Al-Āthār al-kāmila*, v, 415. Cf. Layish, "Tajdīda," 488–503.

# 14. Prohibition for Marriage on Grounds of Fosterage Applies to All the Issue of Consanguine Brothers by Virtue of the Literal Meaning of a *Ḥadīth*

## Legal Introduction

Fosterage established by breast-feeding creates a legal impediment to marriage. The jurists differ as to the minimum number of sucks that creates such an impediment, that is, a prohibition for marriage on grounds of suckling. The dominant view among the Shāfi'īs and the Ḥanbalīs is that five sucks is the minimum required to create a prohibition for marriage. Q. 4:23 provides a list of females forbidden for marriage on grounds of fosterage (foster mothers, foster sisters, mothers-in-law, etc.) immediately after a list of females forbidden for marriage on grounds of blood consanguinity (mothers, daughters, sisters, paternal and maternal aunts, etc.). Most jurists share the view, on the basis of a Prophetic *ḥadīth*, that anyone that is prohibited on the grounds of kinship is also prohibited on the grounds of fosterage. Some jurists, however, argue that the overlap between the two categories is not absolute and that there are quite a number of exceptions “where the link creating the prohibition on the grounds of kinship does not exist with respect to fosterage” (*li-wujūd al-'alāqa al-muḥarrima fī 'l-nasab wa-'adam wujūdihā fī 'l-raḍā'*). Thus the foster mother of one of two consanguine brothers is not prohibited from marrying the other brother, while naturally the biological mother is prohibited for both of them.<sup>1</sup>

## Documents

In a request for a *fatwā*, the Mahdī is required to clarify the legal position pertaining to impediment to marriage on grounds of fosterage. In the case under review, two paternal cousins of the first degree,<sup>2</sup> the direct sons of Aḥmad and Ṭāhir, are also related to each other through fosterage (*mutarāḍī'ayn ma'a ba'ḍihim*), which implies that they have been suckled by the same woman.

1 Shalabī, *Aḥkām al-usra*, 178–79, 182ff., 191 (the citation is from p. 182); Peters, “Islamic Family Law,” 0.1.2.2.3.

2 Cousins of the first degree are not prohibited from marrying their female cousins.

The *mustaftī* claims that before the manifestation of the Mahdī it was common knowledge that in such a case the prohibition (*ḥurma*) for marriage on grounds of fosterage would have been applicable only with respect to “the sons of the two stallions” (*awlād al-faḥlayn*)<sup>3</sup> who were personally related to each other through fosterage, whereas the other brothers, that is, other biological children of Aḥmad and Ṭāhir, would not have been prohibited from marrying their paternal cousins. Now there are rumors that the Mahdī has recently extended the prohibition for marriage to *all* the consanguine brothers [of the foster brothers] and their descendants in a descending line (*kāfat al-ikhwa min awlād al-faḥlayn wa-awlād awlādihimā*), without exception. For the sake of legal certainty he asks for a legal opinion on the issue from a reliable source.<sup>4</sup>

The Mahdī’s legal opinion, based on “esoteric knowledge available to me” (*bāṭinuhu ‘ilm ladaynā*):<sup>5</sup>

The [legal] situation is that no one of the *awlād al-faḥlayn* [i.e., the direct descendants of Aḥmad and Ṭāhir, even] those that are not related to each other through fosterage (*raḍā’*), may marry the daughters of any of the other [consanguine brothers, i.e., cousins] due to the foster relationship that has been created between the two brothers; by virtue of the foster relationship created between the two aforementioned [brothers], the issue of all [the consanguine brothers] become related to each other through a foster relationship. This is the implication (*‘ibra*) to be drawn from the totality (*‘umūm*) of the literal meaning (*zāhir*) of the Prophetic *ḥadīth* . . . : ‘Anyone prohibited [for marriage] on grounds of consanguinity is also prohibited on grounds of fosterage’ (*yaḥrumu min al-raḍā’ mā yaḥrumu min al-nasab*)<sup>6</sup> [i.e., the prohibition on grounds of fosterage is total and applies to all the issue of the consanguine brothers]; it does not apply [only] to the [immediate] cause [i.e., link] (*lā bi-khuṣūṣ sababihi*) [that creates the prohibition on grounds of fosterage], unlike the view adopted (*daraja ‘alayhi*) by the *‘ulamā’*. This being the case, do not adhere (*tuqallidū*) to the schools (*madhāhib*) of the *‘ulamā’* whenever they

3 *Faḥl* is a man that causes, through sexual intercourse, his wife’s breast to flow with milk. By virtue of this fact, most of the *‘ulamā’* share the opinion that not only the woman who suckles an alien child becomes the foster mother of that child but also her husband becomes the foster father of that child. Hence the rule “the milk of the stallion causes prohibition [for marriage]” (*laban al-faḥl yuḥarrim*). See Zaydān, VI, § 5497ff.; Shalabī, *Aḥkām al-usra*, 196ff.

4 *Al-Āthār al-kāmila*, III, 33.

5 See Glossary, s.v. *‘ilm al-bāṭin*.

6 See Wensinck, *Concordance*, II, 265.

contradict the literal meaning (*zāhir*) of a Prophetic *ḥadīth*...; rather, comply with the wording of the *ḥadīth* and act accordingly.<sup>7</sup>

As to the specific case, the Mahdī rules:

The descendants of the consanguine brothers may not marry [their cousins] because they are deemed [foster] brothers by virtue of the Prophetic tradition (*fa-lā yajūz nikāḥ 'aṣaba hādihā al-nasl li-annahum ikhwān bi-dalīl qawlihi*): ... '[God] prohibits [for marriage] on the grounds of consanguinity anyone who is prohibited on the grounds of fosterage (*yuharrim min al-raḍā'a mā yuharrim min al-nasab*).<sup>8</sup>

On another occasion, the Mahdī is asked for a legal opinion as to whether the prohibition (*ḥurma*) for marriage applies exclusively to the foster brother (*raḍī'*) who is deemed son of the owner of the milk (i.e., the foster mother) and her husband who impregnated her thus causing her breast to flow with milk (*wa-yakūn ibnan li-ṣāhibat al-laban wa-li-ṣāhibihi*)<sup>9</sup> or also to the entirety of his consanguine brothers and sisters. The Mahdī's response is that the prohibition is total, i.e., it applies to all consanguine brothers and sisters. He bases his decision on Q. 4:23, and the totality (*umūm*) of the Prophetic *ḥadīth* '[God] prohibits [for marriage] on the grounds of consanguinity anyone who is prohibited on the grounds of fosterage.' In this connection he cites another *ḥadīth* whereby 'Ā'isha asks the Prophet whether her foster paternal uncle may enter her private residence, and the Prophet answers that he may by all means since he is a foster uncle, indicating thereby that he is prohibited from marrying her. The Mahdī sums up the case as follows:

Since the [consanguine] brother who has never been suckled becomes prohibited (*muḥarraman*) from marriage like his foster brother, it is necessary to prohibit from marriage (*taḥrīm*) all the [consanguine] brothers of the foster brother. This is implied from the unambiguous meaning (*ṣarīḥ*) of this *ḥadīth* and the literality (*maḥfūm*) of the above-mentioned Qur'ānic verse [Q. 4:23].<sup>10</sup>

7 *Al-Āthār al-kāmila*, III, 34.

8 *Ibid.*, III, 35; Wensinck, *Concordance*, I, 452.

9 See above, fn. 3.

10 *Al-Āthār al-kāmila*, III, 110–11. For a lithographic version of the documents, see *Manshūrāt fī 'l-ḥudūd*, 25–26; Wensinck, *Concordance*, II, 265.

The Mahdī's ruling aggravates the prohibition for marriage on grounds of fosterage, though this ruling is compatible with the majority view of the schools. The Mahdī's stance seems to be the result of his adherence to the literal (*ẓāhir*) interpretation of the textual sources and the esoteric knowledge available to him.

At the same time, the Mahdī clarifies that prohibition for marriage on grounds of suckling is created only after five or more sucks; less than five sucks are not counted as suckling. This view is compatible with the dominant view among the Shāfi'īs and the Ḥanbalīs, though there is no indication that the Mahdī was inspired by these schools. In a tradition attributed to the Mahdī he further explains that sucks are only counted before weaning (*fiṭām*).<sup>11</sup>

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11 *Al-Āthār al-kāmila*, III, III; *ibid.*, VII, 130, 229. Cf. Peters, "Islamic Family Law," § 0.1.2.2.3.

## 15. Marrying a Woman against Her Will or a Woman Who Does Not Share “Spiritual Communion” Is neither Permissible nor Advisable

### Legal Introduction

The Mālikīs, unlike the Ḥanafīs, acknowledge the guardian’s right of coercion with respect not only to a minor girl but also to an adult woman, provided she is a virgin. In other words, he may marry them off against their will. However, an adult woman who has lost her virginity (*thayyib*) must always give her consent to the marriage. The Ḥanafīs do not acknowledge the right of coercion with respect to an adult woman; she may conclude her own marriage.<sup>1</sup>

### Documents

The Mahdī sets a personal example as to the desirability of a woman’s consent to her marriage:

Every time I was offered a woman for the purpose of marriage I would stipulate her consent to the marriage; [once she expressed her consent,] I would consummate the marriage with her consent (*wa-kullamā atā lī bi-zawja ashtarīṭ ‘alayhā al-riḍā bi-hādhihi al-ḥāla fa-tadkhul ma‘ī bi’l-riḍā bihā*).<sup>2</sup>

In one case, a woman requested the protection of the Mahdī against the Ikhwān, i.e., fellow members of the Mahdiyya, on the plea that they were attempting to marry her off to someone. The Mahdī responded by sending the following instruction: “No one may marry her off unless with her consent and free choice” (*lā yatazawwajuhā illā bi-riḍāhā wa-[i]khtiyārihā*).” The Mahdī also insisted that she be allowed to keep her slave girl (*jārīya*) that had been “left from her [matrimonial] rights” (*al-bāqīya ‘indahā min ḥuqūqihā*),<sup>3</sup> which may imply that the slave girl was part of the *ṣadāq* given her on her *previous*

1 Shalabī, *Aḥkām al-usra*, 126–28, 257–58; Peters, “Islamic Family Law,” § 0.1.2.1.

2 *Al-Āthār al-kāmila*, vol. V, 210.

3 *Ibid.*, v, 22.

marriage and hence it may be assumed that she was *thayyib*. If this is so, her consent to the marriage was required also according to the Mālikī school.

On another occasion, the Mahdī sent his condolences to Fāṭima Hārūn, the widow of a martyr (*shahīd*), and her daughters. He left her the option either to join him or to stay where she was residing. As to her remarriage, he left the matter completely to her discretion.<sup>4</sup>

In a letter to one of his Anṣār, the Mahdī advises him not to marry a certain woman against her will because this might cause him great damage:

It is common knowledge that a firm spiritual communion (*wiṣālat al-rūḥ*) is the pivot [on which stable relations between the spouses is established] and the source of blessing (*akhyār*) [in married life]. Only evil people (*ashrār*) who do not pay attention to their Lord, the One, the Chosen (*al-mukhtār*) [*sic*], turn away from [the spiritual communion] to something else . . . Communion of the body and soul on the basis of blood kinship (*qarābāt al-arḥām*) may sometimes mislead. Therefore stay away from such a communion . . .

The Mahdī was informed that had that man married the aforementioned woman, she would have caused him serious harm (*ḍarar*) by bringing about his detachment from the Anṣār. He therefore strongly recommends that the man avoid this marriage, which lacks “spiritual communion.”<sup>5</sup>

The Mahdī’s advice seems to be prompted in the first place by ideological-religious incentive—lack of “spiritual communion” between the parties—indicating that the woman does not belong to the Mahdist community. The document provides also some notion of the Mahdī’s attitude regarding marriage between blood relatives. But above all, the Mahdī is eager to prohibit marrying a woman against her will, a prohibition that is in glaring contradiction of the Mālikī doctrine.

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<sup>4</sup> Ibid., IV, 222.

<sup>5</sup> Ibid., I, 417. Cf. below, doc. 32.

## 16. The Mahdī as the Supreme Qāḍī Delegates to a Woman the Power to Marry off Her Daughter

### Legal Introduction

According to most schools, only the father and after him male agnates in a specified order may act as marriage guardians of their wards regardless of their sex. Marriages contracted by other than an authorized legal guardian are null and void. In default of any of these, the *qāḍī* exercises this right by virtue of his status as the “general guardian” (*ṣāhib al-walāya al-‘amma*). The Ḥanafis, unlike the other three Sunnī schools, allow a woman to conclude her own marriage and that of someone else provided she is of age (*bāligha*) and sane (*‘āqila*). All schools agree that the marriage guardian and his ward (*al-mawlā ‘alayhi*) must share the same religion.<sup>1</sup>

### Documents

In the case under review, the Mahdī delegates to his agent the power to marry off a certain woman provided she agrees to adhere to the Mahdiyya (*tawḥīd al-rahmān*), adopt an ascetic way of life (*al-sulūk li-ṭarīq al-ākhirā*) and be helpful to the cause of the Mahdiyya (*ṭarīq allāh*). He suggests contracting the marriage after his nominated caliphs and the treasurer of Bayt al-Māl have been consulted.<sup>2</sup>

The Mahdī’s delegation of power is by virtue of his authority as the supreme *qāḍī* in the Mahdist state. It seems that the woman was brought to Bayt al-Māl as booty. Since she is referred to as “wife” (*zawja*), it might well be that her marriage was dissolved automatically on the grounds of “difference of religion” (her husband being left behind in Turco-Egyptian territory); now the Mahdī is prepared to release her and remarry her off to one of his adherents, provided she fulfills the aforementioned conditions.<sup>3</sup>

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1 Shalabī, *Aḥkām al-usra*, 255f., 258, 266ff., 275ff., 104 (a woman may conclude her own marriage); Peters, “Islamic Family Law,” § 0.1.2.2.1; Anderson, *Africa*, Glossary, s.v. *jabr*.

2 *Al-Āthār al-kāmila*, IV, 174.

3 Cf. below, doc. 38.

In a letter to ‘Ājiba Abī Bakr the Mahdī writes:

I hereby permit you (*qad ajaztu wa-adhintu*) to marry off (*an tuzawwiji*) your daughter to anyone you wish [provided that the daughter’s consent is obtained (*‘alā al-muwāfaqa*) and [that the husband] adheres to the religion [of Islam, i.e., the Mahdiyya] (*wa’l-ittibā‘ fi ’l-dīn*).<sup>4</sup>

The special circumstances of the case are not known, but there is some indication that the girl’s father (if alive) and agnates were left behind outside the Mahdist state, in which case the Mahdī regarded them as infidels. This may explain why the Mahdī as the supreme *qāḍī* delegated to the woman the power to marry off her daughter, provided she married someone who had already joined the Mahdiyya. There is no indication that the Mahdī was inspired by the Ḥanafī school.

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<sup>4</sup> *Al-Āthār al-kāmila*, v, 18.

# 17. The Mahdī Prescribes Maximal Rates for *Ṣadāq*; Deviation therefrom Entails Expropriation and Penal Sanctions

## Legal Introduction

The wife is entitled to the nuptial gift (*ṣadāq, mahr*) from her husband upon the conclusion of the marriage contract; it is the private right of the wife as a party to the marriage contract. The nuptial gift is perceived as consideration for the husband's exclusive right to sexual intercourse with her. Broadly speaking, the *mahr* is not a precondition for the validity of a marriage. Its amount is left to the mutual agreement between the parties as stipulated in the marriage contract (*mahr musamman*). In the absence of such an agreement, the Ḥanafīs and the Mālikīs prescribe a minimal nuptial gift: ten dirhams and a quarter of a dinar, respectively. They base their rule on an analogy with the *niṣāb*, the minimum value of stolen goods required for application of the *ḥadd* punishment.<sup>1</sup> The other schools do not prescribe a minimum nuptial gift but refer to a *ḥadīth* in which the Prophet allowed an iron ring or the teaching of the Qur'ān to be offered as the nuptial gift. No maximal *mahr* is recognized by any of the schools. In the absence of agreement between the parties, the bride is entitled to the proper nuptial gift (*mahr al-mithl*) that would have been paid to a woman with comparable qualities in terms of descent, virginity, wealth, etc.<sup>2</sup>

## Documents

The Mahdī persistently protects the woman's right to her *mahr* and enlists God's sanction to this end. In an instructional lecture (*khutba*) he says:

Fear God in matters pertaining to women; they are God's trust (*wadā'i*) deposited in your hands; do not wrong them (*taẓlimūnahunna*) in any matter relating to their *muhūr* or otherwise.<sup>3</sup>

1 See below, doc. 55. On *niṣāb* within the context of *zakāt*, see below, doc. 84.

2 Shalabī, *Aḥkām al-usra*, 345–47, 350ff.; Peters, "Islamic Family Law," § 0.1.3.2.2; Anderson, *Africa*, Glossary, s.v. *mahr*.

3 *Al-Āthār al-kāmila*, VI, 274.

In the event that the husband resides in Turco-Egyptian territory while the wife resides in Mahdist territory, the Mahdī is careful to distinguish between the wife's property rights and those of the husband. Thus in one case where the husband was absent in Egypt, the Mahdī writes to his Anṣār and A'wān in al-Matamma (on the Nile):

My beloved, a girl named Wadā'a, has a husband in Egypt; she is one of the female believers who have emigrated [to Mahdist territory]. She has freed (*bari'at*) herself from her husband.<sup>4</sup> No one may challenge (*yata'arraḍ*) her [i.e., possess her as booty] because of her husband's [status as an apostate] since she is one of the female believers. I have already issued a proclamation to the Anṣār in Khartoum prior to our arrival there [i.e., the capture of the town by the Mahdī] to the effect that any female Muslim believer joining you [i.e., the Anṣār] while her husband resides in a military camp (*qayqar*)<sup>5</sup> or stays with the infidels, her [property] rights (*ḥaqq*) and nuptial gift (*ṣadāq*) is by no means deemed booty, unlike her husband's rights with regard to which she may be challenged... Her [property] rights and nuptial gift may not be challenged or disputed by any of the Anṣār.<sup>6</sup>

After the fall of the province of Berber, the Mahdi instructed (7 September 1884) Muḥammad al-Khayr al-Khūjalī, the recently commissioned emir of Berber, to encourage women who had received excessive nuptial gifts prior to the consolidation of the Mahdiyya in that area, to return to their husbands voluntarily (*bi-tayyib al-nafs*) the difference between conventional and excessive nuptial gift in order to allocate it to *jihād* so that the wives will be rewarded in the next world.<sup>7</sup>

But the Mahdī went far beyond leaving the matter of the nuptial gift to the discretion of women. He prohibited by legislation excessive nuptial gift, in an attempt to diminish the expenses involved in marriage. In a proclamation he prescribes maximal rates for *ṣadāq*: ten riyāls<sup>8</sup> for a virgin (*bikr*) and five riyāls for a non-virgin (*ʿuzba*, *thayyib*). Future brides and bridegrooms are warned to abide by this ruling, failing which the nuptial gift in excess of the maximal

4 The marriage is deemed automatically dissolved on grounds of "difference of religion" of the couple. See below, docs. 37–38.

5 See Glossary.

6 *Al-Āthār al-kāmila*, iv, 461.

7 *Ibid.*, III, 227–28. Cf. Holt, *The Mahdist State*, 98–99.

8 See Glossary, s.v. *riyāl qushlī*.

rates will be expropriated for the poor (*masākīn*) and for the warriors of the *jihād* (*mujāhidūn*) for the cause of God.<sup>9</sup>

The Mahdī urges his adherents to reduce marriage expenses. Thus the marriage banquet should consist of dates (*walīmatuhu bi-tamr*), following the example of Fāṭima, the daughter of the Prophet, and the clothes should not exceed two sets. He also reminds them that *jihād* for the cause of God is part of the commitment undertaken in their pledge of allegiance (*bayʿa*) to the Mahdiyya.<sup>10</sup> The Mahdī claims that his reformist legislation regarding the reduction (*takhsīf*) of the nuptial gift is based on direct instruction from the Prophet (*sayyid al-wujūd*) having regard to welfare of the *umma*.<sup>11</sup>

In another proclamation, the Mahdī goes even further: If couples do not comply with his legislation and exceed the maximal rates prescribed by him, then

The husband and the wife will be punished for having contradicted [his instructions] by expropriating two-thirds [of the nuptial gift] to the Treasury of the Muslims as expiation (*kaffāra*) and charity (*ṣadaqa*) [in preparation] 'for the day when neither property nor sons can be of any use (*li-yawm lā yanfaʿ fīhi māl wa-lā banūn*) [i.e., the day of resurrection; cf. Q. 26:88].<sup>12</sup>

Finally, the Mahdī does not hesitate to impose criminal and other sanctions on those who ignore his reformist legislation. Thus on one occasion he urges his adherents:

Marry the virgin (*bikr*) for ten riyals or less and the non-virgin (*thayyib*) for five riyals or less. Contravening this prescription entails punishment by lashes or imprisonment (*ḥabs, sijn*) until one repents (*yatūb*) or dies in prison; he will be dissociated (*maqṭūʿ*) from our people; we will be mutually cleared (*bariyyūn*) [*sic*] from each other.<sup>13</sup>

9 *Al-Āthār al-kāmila*, I, 432. For a lithographic version of the document, see *Manshūrāt al-aḥkām wa'l-ādāb*, 54. Cf. Holt, *The Mahdist State*, 131.

10 *Manshūrāt al-Mahdiyya*, 300; see above, 9ff.

11 *Al-Āthār al-kāmila*, v, 418. Cf. *ibid.*, I, 231; Glossary, s.v. *sayyid al-wujūd*, On Prophetic message by means of *ilhām*, see above, 37.

12 *Al-Āthār al-kāmila*, I, 443; see Chelhod, "Kaffāra," 406–7; Schacht, *Introduction*, 185. Cf. Q. 26:88; Wensinck, *Concordance*, VI, 316, col. i (*hiya aḥabbu ilayhim min amwālihim wa-abnā'ihim*).

13 *Al-Āthār al-kāmila*, I, 307–8; cf. al-Muftī, *Nizām al-qadā'*, 137.

On one occasion the Mahdī expresses his opinion that as long as the property belongs to God and is designed to be invested in launching *jihād* in the cause of God, as embedded in the pledge of allegiance (*bayʿa*),<sup>14</sup> an excessive nuptial gift and other marriage expenses are tantamount to theft (*fa-lā yakhlū min sariqa*),<sup>15</sup> which may perhaps explain the imposition of criminal sanctions.

Needless to say, the fixing of maximal rates for the nuptial gift by the Mahdī is an innovation in glaring contradiction of the *sharīʿa*. The same applies to imposing criminal sanctions on excessive nuptial gifts. Expropriating the nuptial gift, even in favor of the poor and the warriors of *jihād*, infringes upon women's *sharīʿ* right. The Mahdī's presentation of the expropriation as expiation and charity in preparation for the day of resurrection is an attempt to justify the infringement on private rights on the grounds of religious and social arguments. It seems that the Mahdī combines motivation to remove obstacles to marriage with economic considerations in order to enrich the Treasury.

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14 Volunteering oneself and one's property in the cause of God is one of the commitments included in the pledge of alliance to be undertaken by anyone joining the Mahdiyya; see above, gff.

15 *Manshūrāt al-Mahdiyya*, 300.

## 18. Marriage with a Fifth Wife, though Irregular, Remains Intact; Instead, One of the Lawful Wives Is to Be Divorced

### Legal Introduction to Docs. 18–22

Under traditional Islamic law a free man may marry up to four wives (a slave may marry up to two wives, except for the Mālikīs who allow him four). When one of the four wives dies or is divorced, he may replace her by another wife. If the divorce is revocable (*rajʿī*), the husband has to wait until the termination of the waiting period before being allowed to marry another woman (according to the Ḥanafīs, this is requested also with respect to absolute {*bāʿin*} divorce).<sup>1</sup> A contract of marriage with a fifth wife is deemed irregular (*fāsīd*) and should be dissolved immediately; if the husband fails to divorce the wife, the *qāḍī* will do it in his stead. If the divorce of the fifth wife takes place before consummation, the wife has no monetary rights; if after consummation, she is entitled to a nuptial gift as specified (*musamman*) in the contract or, in its absence, to a fair (*mithl*) nuptial gift.<sup>2</sup> The husband must treat his wives equally (*musāwāh*) and justly (*ʿadl*). The equality is measured in quantitative terms, such as maintenance and division (*qasm*) of the husband's time between his wives, though not in matters pertaining to “inclination of the heart” (*mayl al-qalb*), which cannot be measured and hence is left to the individual's conscience. Shalabī refers in this context to the Prophet's biography according to which the Prophet strictly divided his time equally among his wives in spite of his strong preference for ʿĀ'isha. Shalabī maintains, however, that even in matters pertaining to the division of time between co-wives and provision of maintenance, “this prohibition [of polygamy] should be treated in religious [rather than legal] terms; [hence,] it is not subject to the jurisdiction of a court” (*hādhā al-taḥrīm dīnī lā yaqaʿ taḥta sulṭat al-qāḍāʾ*). If the husband has doubts as to whether he is capable of treating his wives equally and justly he should maintain only one wife. These injunctions are based on Q. 4:3, 129 and on Prophetic traditions demonstrating the Prophet's example of treating his wives equally.<sup>3</sup> There is no limit in the Qurʾān and the *fiqh* on the number of concubines that a free man

1 See Glossary, s.v. *ṭalāq bāʿin* and *ṭalāq rajʿī*.

2 For further details on irregular (*fāsīd*) marriages, see below, legal intro. to doc. 26.

3 Shalabī, *Aḥkām al-usra*, 233–39 (the citation is from p. 236); Hallaq, *Sharīʿa*, 277.

may keep. Extramarital cohabitation is permissible, though with some limitations, only between a man and his own female slaves.<sup>4</sup>

Marriage suspended to some future date (*zawāj muḍāf*) does not constitute a contract of marriage because it contradicts the very essence of marriage, which is enjoyment (*mutʿa*) of matrimonial relations; it is deemed a promise to marry.<sup>5</sup>

### Document

Aḥmad Sulaymān, the treasurer of Bayt al-Māl, asks for the Maḥdī's legal opinion regarding his legal position after having married a fifth woman. He has in his matrimonial authority (*dhimma*) two free women (*ḥurrāt*) and two emancipated female slaves (*maʿtūqāt*). Muḥammad Bey Khālid, a cousin of the Maḥdī and the sub-Governor of Dāra,<sup>6</sup> concluded in Darfur a marriage contract on behalf of the treasurer with the daughter of a well-known figure. It seems that the sub-Governor had a previous authorization from the treasurer to conclude this marriage, but he probably did not know at the time of conclusion of the marriage that the treasurer already had four wives in his matrimony. Now the fifth wife, whose marriage has been concluded in good faith, is on her way to her husband in Omdurman. The treasurer wants to know whether he should renounce (*anzil*), i.e., divorce one of his four wives before the arrival of the fifth wife or delay the divorce "until her arrival and the consummation (*dukhūl*) of the marriage with her."<sup>7</sup>

Surprisingly enough, the Maḥdī, in his legal opinion, does not rule that the marriage with the fifth wife contracted in Darfur is deemed irregular (*fāsīd*) and hence should be dissolved on the spot and that if the treasurer fails to separate from the additional wife, he, the Maḥdī, as the supreme *qāḍī* and head of the judicial structure,<sup>8</sup> is to impose the separation. Instead, the Maḥdī rules that since the treasurer failed to divorce one specific wife (an emancipated female slave, whom the treasurer mentioned by name), as the Maḥdī expected him to do, probably prior to the marriage contracted in Darfur, the treasurer should without delay renounce (*nuzūl*), i.e., divorce, one of the two

4 Brunschvig, "Abd," 28, col. i.

5 Shalabī, *Aḥkām al-usra*, 140.

6 Holt, *The Maḥdīst State*, 74.

7 *Al-Āthār al-kāmīla*, IV, 14.

8 See above, 11.

emancipated female slaves<sup>9</sup> “because this contract [with the fifth woman] has become operative already on its occurrence and is not suspended [to some future date, in which case it does not constitute a contract of marriage]” (*li-mā'anna hādihā al-'aql māḍī [māḍīn] laysa mu'ajjal*).<sup>10</sup> In other words, the Mahdī inexplicably treats the fifth marriage as a valid (*ṣaḥīḥ*), rather than irregular, marriage. He does not refer to the issue of the consummation of the fifth marriage, which may affect the wife's monetary rights on the dissolution of the irregular marriage. This may imply that the Mahdī does not deem the issue relevant to the case under review. Since the treasurer did not consummate the new marriage, the question of committing unlawful intercourse has not come up, and in any case the contraction of an irregular marriage in good faith can be defended against such a criminal charge on the grounds of uncertainty or mistake (*shubha*).<sup>11</sup>

The Mahdī's deviation from the conventional *fiqh* seems to be an attempt to extricate the treasurer, with whom he has close relations, from his personal predicament. The involvement of his cousin Muḥammad Bey Khālid, the sub-Governor of Dāra, in the conclusion of the fifth marriage may have also contributed to this deviation.

9 One may wonder why the Mahdī limited the scope of selection to the circle of the emancipated female slaves instead of leaving the option to choose any wife to the discretion of the treasurer. Once a slave is emancipated, he or she is a free person for any legal purpose. However, this may not be so in social respect.

10 *Al-Āthār al-kāmila*, IV, 15. Abū Salīm, in his caption of the document, uses the term *nāfidh* for “operative.”

11 See Peters, *Crime*, 62; idem, “Islamic Family Law,” § 0.1.4. On unlawful sexual intercourse, see below, doc. 61.

## 19. The Mahdī Offers Four Wives to the Great Grandson of Shaykh Aḥmad al-Ṭayyib al-Bashīr

The Mahdī offers al-Jalāl, the son of Shaykh Muḥammad Sharīf Nūr al-Dā'im, as a gesture of appreciation, four women of noble origin in marriage. Shaykh Muḥammad is a grandson of Shaykh Aḥmad al-Ṭayyib al-Bashīr, who had introduced the Sammāniyya order into Sudan,<sup>1</sup> with which the Mahdī was originally affiliated. In his letter to al-Jalāl the Mahdī expressed his gratitude for Shaykh Aḥmad al-Ṭayyib al-Bashīr's contribution to the promotion of the Mahdiyya and his satisfaction that al-Jalāl had “committed himself to a covenant [with the Mahdiyya] and pledged allegiance in the cause of consolidating religion” (*wa-innaka mimman 'ahida wa-bāya'a bi-nafsihi li-taqwīm al-dīn*). The Mahdī's gesture is an attempt to enlist Shaykh Aḥmad al-Ṭayyib al-Bashīr's reputation to the cause of the Mahdiyya. The letter reads as follows:

If you desire women that are tantamount to jewels (*jawhara*) and pearls (*durra*), and if you request four wives [of this quality] rather than one, I shall marry you off to them (*wa-badal al-wāḥida law ṭalabta arba'a [sic] la-zawwajnāka iyyāhunna*).<sup>2</sup>

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<sup>1</sup> Holt, *The Mahdist State*, 45–46.

<sup>2</sup> *Al-Āthār al-kāmila*, 11, 291.

## 20. The Mahdī Marries a Fifth Wife with the Prophet’s Permission

The Mahdi takes the liberty to maintain concurrently in his matrimonial authority more than four free wives. He issues a ruling to this effect, based on Qur’ānic verses and *ḥadīths* as interpreted by such commentators as ‘Ikrima (d.105/723–4), al-Daḥḥāk (d.c.105–6/723–24), Ubayy b. Ka’b (d.c.29–34/649–54) and Mujāhid (d.c.100–4/718–22), and on direct inspiration (*ilhām*) from the Prophet Muḥammad. This inspiration is derived during colloquies with the Prophet entailing sharp physical sensation.<sup>1</sup> The Mahdī finds support for the solution of his personal problems in precedents established by the Prophet Muḥammad.

Being fully aware of his deviation from the *sharī* conventional norms pertaining to polygamy and the impact it may have on the Anṣār, the Mahdī justifies his behavior as follows:

I do not absolve myself [from the guilt of marrying more than the quota of four permissible women]. Still, my Lord vindicates me . . . I know that the believers think well of me . . . I shall clarify some of the texts (*nuṣūṣ*) mentioned in some of the commentaries pertaining to a saying [of God], be He exalted: ‘It is not allowed thee to take (other) women henceforth’ [Q. 33:52], in order that relaxation be imposed on some of the Ikhwān whose hearts are dominated by the hostility of Satan, due to the women whom my Lord, praise be to Him, wanted to be in my matrimonial authority.<sup>2</sup>

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1 For a complete annotated translation of the section pertaining to polygamy with references to the commentaries and a description of the physical sensation that the Mahdī experienced, see Layish, “The Mahdī’s Legal Methodology,” 61–65. On mystical states, see Stern, “On the Authenticity of the Mystical Treatise,” 94ff. On Prophetic message by means of *ilhām*, see above, 37ff.

2 *Al-Āthār al-kāmila*, IV, 192–96; the citation is from pp. 194–95.

## 21. Equality among Free Wives

In connection with the interpretation of Q. 113, during a colloquy in which Ibn ‘Abbās, Ibn Mas‘ūd, and ‘Ā’isha, “Mother of the believers,” are present, Ibn ‘Abbās asks the Prophet for the meaning of the word *al-falaq* (daybreak) that appears in the first verse of the *sūra*, and the Prophet responds: “Two beams of the sun [light] struggling with one another (*ḥablāni yatanāṭahāni*) in the depth of Hell.” In a response to the Maḥdī’s question the Prophet says that this Hell is awaiting “a man who does not treat equally his free wives and a man who does not treat his parents dutifully<sup>1</sup> (*‘alā rajul lam ya’dil bayna zawjātihi al-aḥrār wa-‘alā ‘ā’iq [sic] al-wālidayn*).<sup>2</sup>

In connection with Q. 4:3, the Maḥdī says in an instructional lecture (*khuṭba*): “Anyone married to two wives or more should treat them equally (*fa-ya’dil baynahunna*).” The Maḥdī supports this statement by a Prophetic *ḥadīth* to this effect: “He that does not treat his wives equally, on the Day of Resurrection his half [body] will be bending down (*shiqquhu mā’il*) and the [other half] will be collapsing (*wa-shiqquhu sāqit*).”<sup>3</sup>

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1 Such treatment of parents is said in a tradition to be one of the great sins. For the tradition, see Lane, *Lexicon*, 2095, col. iii.

2 *Al-Āthār al-kāmila*, v, 452.

3 *Ibid.*, v1, 274. Cf. Wensinck, *Concordance*, 111, 160, col. i.

## 22. The Mahdī's Co-Wives Opt for an Ascetic Life and the Hereafter as a Precondition for Marriage

The Mahdī expects his co-wives to adopt an ascetic mode of life and opt for the Hereafter rather than this world in order to appease God and His Messenger. To this end he enlists Q. 33:28–29, where God urges Muḥammad to present his wives with the choice between this world and its embellishments and the Hereafter; if they opt for this world, he should divorce them in return for appropriate compensation; if they opt for the Hereafter they may expect to be rewarded. The Mahdī claims to have stipulated with each of his free wives before contracting the marriage that she should choose between the two options and that, happily enough, they have opted for the Hereafter and thereby have become his assistants (*a'wān*) in fulfilling God's command.<sup>1</sup>

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<sup>1</sup> *Al-Āthār al-kāmila*, III, 62.

## 23. Joining the Mahdiyya while Leaving Husband behind Is Not Deemed Disobedience

### Legal Introduction to Docs. 23–25

The wife must obey her husband in matters pertaining to matrimony, and first and foremost be sexually accessible to him; once consummation of the marriage takes place the wife is entitled to maintenance. The wife may leave the marital home without the husband's consent without losing her right to maintenance provided there is some legal justification for doing so, such as not enabling her to visit her relatives, non-payment of the prompt nuptial gift and failure to provide her with a proper conjugal dwelling. If the wife does not fulfill her obedience obligations, the husband has the right of marital chastisement (*walāyat al-ta'dīb*). This right is based on Q. 4:34. Prophetic *ḥadīths* do not permit beating the wife on her face; only non-severe beating (*ḍarb ghayr mubarrih*) is permitted. A wife that has been proclaimed disobedient (*nāshiza*) by the *qāḍī* loses her right to maintenance during her recalcitrance.<sup>1</sup>

### Document

The Mahdī introduced several innovations in the domain of obedience. Thus, leaving the marital home for the purpose of joining the Mahdiyya while the husband is left behind in Turco-Egyptian territory is not deemed disobedience from a *sharī* point of view. In one case the Mahdī writes to someone:

Your wife ʿĀ'isha . . . wants to visit us and to emigrate to us [Mahdist territory]. Let her emigrate (*fal-tuhājir*) and after her arrival here, God willing, you will [also] arrive [emigrate], whereupon she will return with you [to the marital home] . . . Once the wife meets me and enjoys the lights of the Mahdiyya, she may by all means return (*sa-ta'ūd*) [to your marital home].<sup>2</sup>

1 Shalabī, *Aḥkām al-usra*, 328f., 331ff., 425–26; Peters, “Islamic Family Law,” § 0.1.3.3; Hallaq, *Sharī'a*, 284–85.

2 *Al-Āthār al-kāmila*, IV, 168.

## 24. Coercive Measures to Enforce Obedience

Regarding sanctions on disobedient wives, the Mahdī suggests:

[As to the law applying to women, a wife who is disobedient to her husband] must be put in a darkened cave or house (*awkār*, *buyūt muḏlima*) until she [agrees to] return [to the conjugal dwelling] or, [if she declines], until she dies as an adulteress (*zāniya*).<sup>1</sup>

In other words, the Mahdī refrains from resorting to the *sharʿī* sanction of depriving a recalcitrant wife of her right to maintenance and prefers to resort to coercive measures in an attempt to persuade the wife to obey her husband. Moreover, the Mahdī threatens to consider a disobedient wife as an adulteress (*zāniya*), implying thereby imposing the *ḥadd* punishment of lapidation.<sup>2</sup>

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1 *Al-Āthār al-kāmila*, v. 422. Cf. resemblance to Q. 4:15 (... confine them to the houses until death take them ...). The verse was abrogated and replaced by Q. 24:2. *Manshūrāt al-aḥkām wa'l-ādāb*, 54–55 (the disobedient wife is liable to deprivation from sexual relations and to chastisement on the basis of Q. 4:34).

2 No mention is made of “enforced obedience.” Cf. Shaham, “Bayt al-ṭā’a.”

## 25. Disobedient Wife Compelled to Renounce Rights in Divorce

When the relations between the spouses seem to be beyond repair and there is no point in restoring a disobedient wife to the conjugal home, the Mahdī seeks to terminate the union between the couple while imposing on the wife a financial sanction rather than depriving her of the right to maintenance during her recalcitrance. In response to a question addressed to him by his agents (‘*umalā*’), military commanders (*maqādīm*) and *qāḍīs* (*nurwāb al-sharʿ*) concerning a disobedient wife (*nāshiza*) who hates (*kāriha*) her husband, the Mahdī rules:

She must return the nuptial gift (*ṣadāq*) and whatever she has received from her husband and [in return] be relieved [from marriage, i.e., be divorced] (*yuḥā’ anhā*) by all means; there is no advantage (*fā’ida*) [in maintaining the marriage under these circumstances].<sup>1</sup>

In other words, the Mahdī imposes on the wife a compulsory renunciation divorce, whereby she must renounce her financial rights, and the husband is released from his duty to compensate his wife with the residue of the nuptial gift (*mahr mu’akkhar*) and—by implication—the waiting-period maintenance, which is usually considered as part of the wife’s financial rights. Under traditional *sharʿa*, the renunciation and *khulʿ* repudiation are based on the mutual consent of the spouses.<sup>2</sup>

On the other hand, the Mahdī is anxious to ensure that the wife is not beaten severely. In a tradition attributed to him after his death he is reported to have said:

Do not beat [your] wives; if they make you miserable beat them symbolically with the head of the turban (*wa-in shaqat ‘alaykum fa-[i]ḍribūhunna ishāratan bi-raʾs al-‘imma*).<sup>3</sup>

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1 *Al-Āthār al-kāmila*, v, 415.

2 On *ibrāʾ* and *khulʿ*, see below, docs. 27–30; Glossary.

3 *Al-Āthār al-kāmila*, vii, 253.

## 26. A Woman's Marriage to Another Man before Establishing Her Divorce from Her Former Husband Entails Separation and Restoration to Her First Husband

### Legal Introduction

The Ḥanafī doctrine distinguishes between void (*bāṭil*) and irregular (*fāsid*) marriages, a distinction that is not always clear. A marriage is deemed void if it lacks an essential element (*aṣl*) pertaining to the nature of the contract, as in a case where there is a permanent impediment to marriage (e.g., between a brother and a sister) or a marriage with another man's wife (she belongs to the category of "prohibited women" {*muḥarramāt*} for marriage). A marriage is deemed irregular if it has a defect in a "quality" (*wasf*), i.e., a formal requirement or circumstance necessary for the contract to be valid, such as the presence of witnesses or a marriage with a woman during her waiting period. In both void and irregular marriages, as soon as the defect is known, the parties must separate, failing which the *qāḍī* will separate (*tafrīq*) them. Unconsummated irregular or void marriages entail no legal consequences. In consummated irregular marriage *ḥadd* penalty cannot be applied because of the mistake or uncertainty (*shubha*) regarding the unlawfulness of the offender's act;<sup>1</sup> the woman has to observe the waiting period; she is entitled to nuptial gift; the children are deemed legitimate; and relationship by marriage (*muṣāhara*), which is an impediment to marriage, is created between each partner to the marriage and the ascendants and descendants of the other partner.<sup>2</sup> In consummated void marriages the *ḥadd* punishment is averted if there is uncertainty regarding the contract (*shubhat al-ʿaqd*), which is presumed to exist if there is a formal semblance of right;<sup>3</sup> the only consequences are that the woman is entitled to nuptial gift (*mahr*), and a relationship by marriage between the partners is created.

The other schools make no distinction between void and irregular marriages; they distinguish between void marriages, the defects of which are unanimously accepted (e.g., a marriage with another man's wife; see *Document*

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1 For further details on this defense, see Peters, *Crime*, 21–22. On unlawful sexual intercourse and the *ḥadd* punishment, see below, doc. 61.

2 Shalabī, *Aḥkām al-usra*, 169ff.

3 Peters, *Crime*, 23.

below) and void marriages, the defects of which are not acknowledged by all schools (e.g., a temporary marriage). If the marriage has been consummated, there is a presumption of mistake (*shubha*). Broadly speaking, the legal effects are the same as those of irregular marriages under Ḥanafī law.<sup>4</sup>

According to traditional Islamic law, unilateral divorce becomes effective at the very moment of its pronouncement, provided it is pronounced by someone qualified to effect divorce with respect to a woman that is an object of divorce and provided she is actually (*ḥaqīqatan*) a wife or presumed (*ḥukman*) to be so. If it is stipulated that the divorce becomes effective at some future date (*ṭalāq muḍāf*) or if the divorce depends on the fulfillment of a condition (*ṭalāq al-ṭalāq bi'l-shart*), then either when the date arrives or the condition is fulfilled, the divorce becomes effective.<sup>5</sup>

### Document

A man allegedly divorced his wife residing in Mahdist territory while he, the husband, was in Turco-Egyptian territory shortly before the Mahdist forces took over. Subsequently, the woman married another man allegedly in good faith, that is, on the assumption that the divorce from her first husband was legally effective. Qāḍī Aḥmad in the Mahdist state, who seems to have been requested to endorse the new marriage, asked the spouses to provide him with the necessary evidence regarding the dissolution of the first marriage. Only then did it emerge that the documents of the divorce were lost on their way from Turco-Egyptian territory and all the efforts to get hold of them were in vain. Needless to say, in the absence of evidence as to the occurrence of the divorce, the marriage of the allegedly divorced wife to someone else was of great concern to the Mahdī in terms of public morality and women's chastity. Under the circumstances, Muḥammad al-Ṭayyib al-Baṣīr, the Mahdī's lieutenant in Gezira, asked the Mahdī's legal opinion as to how to handle the matter.

Broadly speaking, legal actions pertaining to matrimony that took place in Turco-Egyptian territory were totally ignored in the Mahdist state. However, the Mahdī was ready to acknowledge the validity of the first marriage because

4 Peters, "Islamic Family Law," § 0.1.4; Shalabī, *Aḥkām al-usra*, 207–8, 319–22; For the views of various schools on the prohibition for marriage of someone's wife or a woman in her waiting period, and their legal effects, see Zaydān, VI, § 5643–46.

5 Shalabī, *Aḥkām al-usra*, 494ff. Cf. Zaydān, VI, § 5184ff.

the husband and the *qāḍī* who had issued a *fatwā* dissolving the first marriage were latent adherents of the Mahdiyya. Hence the Mahdī ruled that the case should be brought before another *qāḍī* and a chance be given to prove the dissolution of the first marriage; if it succeeded, the woman would remain in the matrimonial authority of the second husband; if it failed, the second marriage would be dissolved and the woman restored to her first husband.

The Mahdī's legal opinion (*jawāb*)

My beloved [Muḥammad al-Ṭayyib al-Baṣīr],

... The dissolution of the first marriage (*faskh 'iṣmat al-zawāj*) by the husband al-Baṣīr Muḥammad occurred before you were appointed in charge of the entire people and Muslims [of Gezira] and before your authority was established [in the region]. The *qāḍī* that had been resorted to for the purpose of issuing a *fatwā* dissolving the [first] marriage was outwardly (*fī zāhirihi*) adhering to the Turks, though secretly (*bāṭin*) he adhered to us [the Mahdiyya; nevertheless,] his decision [regarding the divorce] is not deemed effective according to the law applicable in our territory because the evidence [regarding the alleged divorce] is admittedly missing. Hence, the dissolution is not [valid] whatsoever in legal respect.

Since anyone fearing God may expect an outlet [from a predicament], therefore let the second husband fear God and restore the woman [his wife] to her previous matrimony (*'iṣma*) [i.e., her first husband; if he does so,] God will reward him with blessing. And since he [the second husband] fears God [and is ready] to disengage (*tark*) himself [from the union with his wife, a union] that is not allowed [in *shar'ī* respect] according to the law applicable in our territory, therefore [you, O Qāḍī Aḥmad] dissolve it [i.e., separate between the parties] (*fassikhhu*)! Had this dissolution (*faskh*) occurred after you took over the Muslims' affairs when we appointed you in charge of them, and had the *fatwā* of the [first] *qāḍī* been issued after the emergence of our rule there [in the region], then [the *fatwā*] would have been admissible (*jā'iz*) [in *shar'ī* respect] with everything that it entails. [In that case] the second husband would have been allowed to consummate the marriage (*an yadkhula 'alā al-mar'a*) by virtue of our authority (*bi-ḥukminā*) [in the region]. However, since our authority was established only then [i.e., after the issuance of the *fatwā* pertaining to the divorce, no account is taken of the *fatwā* and hence] the [second] marriage is deemed dissolved (*fusikha*); it could by no means be binding (*lā yūthaq li'l-'aqd*) in this [*shar'ī*] respect unless the

circumstances were different.<sup>6</sup> [However,] since the first [husband] and the second [husband] are believers [i.e., adherents of the Mahdiyya], you [Muḥammad al-Ṭayyib al-Baṣīr] should treat them equally and decide the case in favor of that party that will establish his right legally, as you please [i.e., according to your discretion] (*sha'naka*). Since Qāḍī Aḥmad is faithful to God, to His Messenger and to us, you will pursue with his judgment (*imḍū ḥukmahu*), and let us be done with that.<sup>7</sup>

Since no mention is made in the Mahdī's legal opinion as to the legal effects of the dissolution, it stands to reason that the second marriage had not been consummated. This may also explain the absence of any reference to the penal aspect of the case. It seems that the Mahdī was convinced that the parties to the second marriage were entitled to the defense of doubt or uncertainty (*shubha*) that averts *ḥadd* punishment.

The Mahdī makes no distinction between void and irregular marriages, which may indicate at least that he was not inspired by Ḥanafī doctrine.

Surprisingly enough, the Mahdī does not resort to his policy of *takfīr*, according to which the first marriage could have been dissolved on the grounds of difference of religion.<sup>8</sup>

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6 That is, unless the divorce of the first marriage had been established by evidence.

7 *Al-Āthār al-kāmīla*, II, 214–15.

8 On rescission on grounds of difference of religion, see below, doc. 37. On the Mahdī's policy of *takfīr*, see below, docs. 69ff.

## 27. *Khul'* and Financial Liability Prior to the Mahdiyya

### Legal Introduction to Docs. 27–30

*Khul'* is a mode of dissolving a marriage by mutual consent of the spouses in return for a consideration. It is based on Q. 2:229, which allows the wife to redeem herself, that is, obtain a divorce, by compensating the husband, as well as on a *ḥadīth* based on the authority of Ibn 'Abbās. In the Ḥanafī and Mālikī schools, compensating the husband is not a precondition for the validity of the dissolution. In the Ḥanafī school the dissolution is effected by the husband rather than by legal proceedings. Either of the spouses may initiate the dissolution in return for a consideration to the husband—monetary rights resulting from the marriage contract, such as deferred nuptial gift (*mahr mu'ajjal*, *mu'akhkhar*). If it is established that the husband deliberately oppressed his wife to obtain *khul'*, the husband loses his right to compensation although the dissolution is valid. *Khul'* entails an irrevocable repudiation (*ṭalāq bā'in*). Some jurists, however, hold that *khul'* constitutes *faskh* (judicial dissolution) rather than a *ṭalāq* (see below).<sup>1</sup>

### Document

A man married a woman and gave her the prompt (*mu'ajjal*, *muqaddam*) *ṣadāq* while the deferred (*mu'akhkhar*) *ṣadāq* remained in his financial liability (*dhimma*). Later he divorced the wife by ordinary (*sunnī*) repudiation while both were in Turco-Egyptian territory. Subsequently the divorcing husband joined the Mahdiyya leaving his divorced wife behind. In order to keep his conscience clear before God, the man wanted to know whether he still owed his divorced wife the deferred *ṣadāq*. In his *istiftā'* for “God’s ruling” (*mā ḥukm allāh fi*), the Mahdī was asked for a legal opinion on this issue.

1 Peters, “Islamic Family Law,” § 0.1.5.1.6.2; Zaydān, VIII, § 7824ff. (definition), 7830 (references to the *ḥadīth*), 809off. (legal consequences); Shalabī, *Aḥkām al-usra*, 530ff., 552f.; Hallaq, *Sharī'a*, 283–86.

### The Mahdī's *fatwā*

The divorcing husband is released from any liability whatsoever regarding the deferred *ṣadāq*; neither the divorced wife nor anyone else may claim anything in this regard. This applies also to men who divorce their wives by means of *khul'*: They may not claim any monetary compensation on the strength of *khul'* from the property of their divorced women (*mukhāla'āt*) as far as this claim relates to the period that preceded the emergence of the Mahdiyya. However, [if the divorce took place] after [in the Mahdist state], then men and women are entitled to claim their [respective] rights regarding the two issues [i.e., deferred *ṣadāq* and compensation].<sup>2</sup>

The *fatwā* implies that marital monetary rights, like marriage contracts, have neither legal nor financial effect in Turco-Egyptian territory (presumably because the spouses are deemed infidels). On the other hand, in Mahdist territory the *sharī'a*, in its Mahdist version, is applicable. This harsh policy was intended to encourage emigration to the Mahdist state.

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<sup>2</sup> *Al-Āthār al-kāmila*, III, 152–53. See Glossary, s.v. *ṣadāq mu'ajjal*, *ṣadāq mu'akhhkar*, *khul'*.

## 28. Wife's Right to Nuptial Gift Is Not Affected by *Khul'* Agreement in the Event of the Wife's Emigration to Mahdist Territory while Leaving Her Husband Behind

In a proclamation disseminated to *emirs*, the *Qāḍī al-Islām* and *qāḍīs* all over the country some time after the Mahdī had reached Jabal Qadīr in southern Sudan (31 October 1881) and gave the mountain the name of Māssa,<sup>1</sup> the Mahdi announced:

The property given by the wife to the husband as compensation to redeem herself from the marriage (*māl al-khul'*) [which may be the nuptial gift, *mahr*, or any other property] originates usually [from the property] given by the husband [to the wife] after consummation of the marriage (*dukhūl*), realization of marital life (*istimtā'*) and progeny (*istilād*) therefrom.<sup>2</sup> [Henceforth, i.e., in Mahdist territory] it is not lawful (*lā yaṣīḥh*) to dispossess the wives [of their right to nuptial gift on account of the *khul'* agreement]. Render your judgments in accordance with the judgment prescribed by Allāh, Exalted be He, in the Qur'ān, the sublime [no specified *sūra* is mentioned].<sup>3</sup>

On the face of it, we are dealing here with the Mahdī's reform according to which a wife is not required to compensate her divorcing husband by returning the nuptial gift to obtain her release from the marriage bond in spite of her commitment to do so in the *khul'* agreement. The deviation from the rules of the conventional *khul'* seems to be prompted by the Mahdī's desire to ensure that women that had emigrated to Mahdist territory leaving their husbands behind would not lose their property rights. In other words, we have to do here

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1 Holt, *The Mahdist State*, 56.

2 According to all schools of law, with the exception of the Shāfi'ī school, there is a presumption of consummation as soon as privacy (*khabwa*) between the spouses takes place (Peters, "Islamic Family Law," § 0.1.3.1). It seems that the Mahdī mentions *istimtā'* and *istilād* as examples of consummation rather than as independent preconditions for the wife's right to nuptial gift; see below, doc. 29.

3 *Al-Āthār al-kāmila*, 1, 307 and fn. 5 there. The *fatwā* was originally published, with minor variations, in *Manshūrāt al-Mahdiyya*, 184. Cf. al-Muftī, *Nizām al-qadā'*, 137.

with a kind of enforced *khul'* on the husband without the ensuing financial consequences. Support for this assumption may be derived from the Mahdī's *fatwā* in doc. 27, according to which men who divorce their wives may not claim any compensation on the strength of *khul'* agreement from the property of their divorced women as far as this claim relates to the period that preceded the emergence of the Mahdiyya.

The Mahdī's deviation from this mode of repudiation is based on the first part of Q. 2:229, which enjoins on the husband to take back anything given to the wife prior to the divorce.

## 29. Compulsory *Khul'* of a Disobedient Wife though the Husband Is Advised to Renounce His Financial Rights

Broadly speaking, it is forbidden to impose *khul'* on a wife unless there is some *shar'ī* justification.<sup>1</sup> In the case under review, a wife of a consummated (*istimtā'*) marriage hates (*kāriha*) her husband, allegedly with no harm (*ḍarar*) having been caused to her, and has been declared disobedient (*nāshiza*). The Mahdī issues a legal opinion commending *khul'*:

If the husband divorces her by *khul'* in return for what he has given her (*khāla'ahā bi-mā a'ṭāhu lahā*) he may (*jā'iz lahu*) take back what has been given her. This opinion is based on a *ḥadīth* [recommending] not to add on what has been actually given [to the wife, i.e., *ṣadāq*], and if he [the husband] receives from her [in return for her release] less than what has been given her, it will count to his virtue (*fa-huwa khayr lahu*); and if he leaves her [i.e., releases her from the bond] without [taking] anything [from what he has given her as *ṣadāq*] and renounces (*'afā*) everything that is due to him], he will gain the best of blessings, as prescribed [in a *ḥadīth*]: 'Seek high standing before God.' [The Prophet was asked:] 'In what way?' and he said: 'Forgive the man who does you wrong, join the man who breaks relations with you and bestow upon a man who deprives you.'<sup>2</sup>

Needless to say, a Muslim can always unilaterally repudiate his wife without obtaining her consent, but then he has to bear the financial consequences of his act. The status of the wife as disobedient does not automatically deprive her of her rights as a divorced woman. Hence the *khul'* in the case under review

1 Zaydān, VIII, § 7850.

2 *Al-Āthār al-kāmila*, III, 119. For a lithographic version of this document, see *Manshūrāt al-ahkām wa'l-ādāb*, 69–70. The *ḥadīth* "*ta'fū 'amman ḥalamak wa-tu'ṭiman ḥaramak wa-taṣilu man qaṭa'ak*" has not been located in Wensinck, *Concordance* but it has been located in other collections of *ḥadīth*. See, e.g., Jalāl al-Dīn 'Abd al-Raḥmān b. Abī Bakr al-Suyūṭī, *al-Itqān fī 'ulūm al-Qur'ān*. [Riyāḍ?]: Majma' al-Malik Fahd li-Ṭibā'at al-Maṣḥaf al-Sharīf, 1426H., vol. 7, p. 2373 (the *ḥadīth* relates to Q. 7:199); *Fawā'id Ibn Ḥayyān*, *ḥadīth* no. 62 in [http://library.islamweb.net/hadith/display\\_hbook.php?hflag=1&bk\\_no=505&pid=845227](http://library.islamweb.net/hadith/display_hbook.php?hflag=1&bk_no=505&pid=845227) (last accessed in 29 July 2013). Cf. Zaydān, VIII, § 7984 (the Mālikīs allow *khul'* with no compensation).

seems to be a compulsory *khul'*; it is enforced on the wife probably because the Mahdī is of the opinion that there is no justification for her disobedience.<sup>3</sup> Even then the Mahdī highly recommends, on the basis of a Prophetic *ḥadīth*, that the husband be generous toward his wife and renounce the compensation due to him in divorce by consent.

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3 On another occasion the Mahdī expressed his opinion that divorcing one's evil wife is preferable considering the alternative: "Assume that your wife is the most beautiful and handsome wife. However, if she is evil (*tālīḥa*) her separation (*firāq*) is to be preferred considering the present situation. If, however, she is virtuous (*ṣālīḥa*), your assembly together is tantamount to the gardens of Paradise"; see *al-Āthār al-kāmila*, v, 409.

## 30. Enforced *Khul'* Following Marriage against a Woman's Consent

In a letter to Idrīs 'Iwāḍ the Mahdī writes:

My beloved, I considered you as one of the most pure, sinless, beloved and agreeable men, like the corpse of a dead man in the hands of its washer (*al-mayyit bayna yaday al-ghassāl*)<sup>1</sup> and I still count you as such. There is abundance of women [proper for marriage. Surely, just] for the sake of [marrying] a woman you will not exceed the boundaries of obedience (*ṭā'a*) [to God], which may be useful to you in the two worlds. Had this woman consented to have you (*raḍiyat bika*) [as a husband], this would have been the most desirable for me. However, she did not want you. They [the woman and her mother; see below] accuse [you] of not carrying out [the Mahdī's decree of] pardon (*'afw*) [i.e., her release from captivity]<sup>2</sup> and this is a compelling [accusation] against you. This is not appropriate [for a man of your position], the more so since she [the woman] and her mother did not express their consent (*riḍā*) [to the marriage] in the first place . . . Under these circumstances, if you deem yourself one of my Companions, you must leave her, repudiate her by *ṭalāq* and leave her to her own devices with [mutual] consent and take what you have given them [the woman and her mother, i.e., the *ṣadāq* and gifts, respectively], and let it be done with that.<sup>3</sup>

The Mahdī seems to be concerned that the woman had been married against her will although her consent was required.<sup>4</sup> The Mahdī does not pronounce the term *khul'* explicitly. However, he suggests repudiating the wife by *ṭalāq* in return for reimbursing him by the *mahr* and other expenses that he might have. Needless to say, the husband needs his wife's consent to such a deal. The combination of all these elements constitutes actually an enforced *khul'*.

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1 This is a common phrase in Sūfī literature. It denotes the virtue of man who reveals himself, devoid of any wishes of his own, before God. I owe this observation to Eliyahu Stern.

2 The woman seems to have been taken as booty in Turco-Egyptian territory and the Mahdī granted her pardon, probably following her joining the Mahdiyya, and Idrīs married her against her will.

3 *Al-Āthār al-kāmila*, v, 26.

4 On the guardian's right of coercion with respect to minor girls and adult women, see above, doc. 15.

## 31. *Khul'* Does Not Count in the Quota for Intermediate Marriage

### Legal Introduction

Under traditional *sharī'a*, after the third repudiation—whether revocable (*raj'ī*) or irrevocable (*bā'in*)<sup>1</sup>—a divorced woman cannot be legally restored to her former husband unless she has married another man, that marriage has been dissolved and the waiting period (*'idda*) has been observed.<sup>2</sup> Ibn Taymiyya (d. 728/1328) maintains, on the strength of the authority of Ibn 'Abbās, that *khul'* constitutes a *faskh* rather than irrevocable repudiation (*ṭalāq bā'in*).<sup>3</sup> Ibn Taymiyya's view implies that a woman divorced by *khul'* can be restored to her former husband without resorting to intermediate marriage.

### Document

In the case under review, the Mahdī is asked for a legal opinion as to whether *khul'* constitutes an ordinary repudiation that should be taken into account within the quota of three divorces after which an intermediate marriage is required. The *mustaftī* presumes that if *khul'* is not taken into account as a regular repudiation, then the divorced woman can be restored to her divorcing husband by a new marriage contract without having recourse to intermediate marriage. He derives support from the view ascribed to Ibn 'Abbās on this issue.

In his legal opinion, the Mahdī rules as follows:

I am referring to your question regarding someone who divorced his wife by *khul'* after having divorced her [previously] twice by [ordinary utterance of] repudiation (*ṭallaqahā marratayn*). [The question at stake is:] Does *khul'* constitute [in terms of legal consequences] a repudiation (*ṭalqa*) or rather [divorce that counts as] non-existence [i.e., the *khul'* does not count as repudiation] in which [the latter] case he [i.e., the

1 See Glossary, s.v. *ṭalāq raj'ī* and *ṭalāq bā'in*.

2 See below, doc. 43 (legal intro.).

3 See Zaydān, VIII, § 8107–8. Cf. Hallaq, *Sharī'a*, 284; Powers, *Law, Society, and Culture*, 70–71; Chehata, "Faskh," 836.

divorcing husband] may restore her [his divorced wife] without resorting to another husband [i.e., intermediate marriage] (*hal yu'addu ka'l-'adam wa-yurāji'uhā bi-dūn zawj*) on the strength of a view related to the authority of (*ruwiya 'an*) Ibn 'Abbās, or [alternatively, if *khul'* is counted as repudiation, then the husband] may not [restore his wife without intermediate marriage]?

My opinion is in the affirmative (*aqūl na'am*) [that is, that *khul'* does not constitute repudiation] if [the husband] did not utter [while pronouncing *khul'*] the expression *ṭalāq*; if he did utter the expression *ṭalāq* along with the expression *khul'*, then [the wife] is not legally permissible to him unless an intermediate marriage has taken place (*lā taḥill lahu illā ba'da zawj*).<sup>4</sup>

The Mahdī seems to have been inspired by Ibn 'Abbās, probably because the latter belonged to the generation of the Prophet and due to his reputation as “the father of the Qur'ānic exegesis.”<sup>5</sup> The Mahdī may also have been motivated by the desire to diminish the harsh consequences of three divorces.

4 *Al-Āthār al-kāmila*, III, 119. For a lithographic version of the document, see *Manshūrāt fī 'l-ḥudūd*, 69–70.

5 Veccia Vaglieri, “Ibn 'Abbās,” 40.

## 32. *Taṭlīq* of a Woman Married against Her Will

### Legal Introduction

As noted above, the Mālikīs acknowledge the guardian's right of coercion with respect to both a minor girl and an adult woman, provided she is a virgin. If the latter has lost her virginity (*thayyib*) she must always give her consent to marriage. The Ḥanafīs do not acknowledge the right of coercion with respect to an adult woman; she may conclude her own marriage.<sup>1</sup> Moreover, if a woman is married off to someone who is not religiously, socially and economically her equal (*kuf*), she or her guardian can cause a judicial rescission of the marriage on the grounds of lack of equality (*kafā'a*). According to the Mālikīs, only religious and moral qualities (*tadayyun*) count and a sinner (*fāsiq*) husband can never be the equal of a pietistic wife.<sup>2</sup>

The Mālikīs offer a variety of grounds for divorce on the wife's initiative, one of which is unlawful injurious treatment or prejudice (*ḍarar*), which may be interpreted in a very wide manner.<sup>3</sup> The Mālikīs (as well as the Ḥanafīs) regard judicial dissolution as a single irrevocable repudiation pronounced by the *qāḍī* on behalf of the husband (*taṭlīq*).<sup>4</sup>

### Document

Following a complaint by Zaynab bint Aḥmad Muḥammad Sharaf, the widow of 'Abdallāh Sharaf, a martyr (*shahīd*) who had been killed in a battle against the "infidel" Turks, the Mahdī writes to the man who married the widow:

I was informed [by the widow] that you had married her against her will ('*aqadtū* [sic] '*alayhā 'iṣma bi-dūn riḍāhā*) . . . I have dissolved your marriage to her (*ajraynā faskh 'iṣmatika minhā*). [Incidentally, be informed that] we also issued a legal opinion (*jawāb*) [in a similar case] to your brother Bashīr informing him [of his] option (*ikhtiyār*) to dissolve the

1 See above, doc. 15.

2 Peters, "Islamic Family Law," § 0.1.2.3.1; Shalabī, *Aḥkām al-usra*, 291ff.

3 See below, docs. 33, 36.

4 Peters, "Islamic Family Law," § 0.1.5.3; Shalabī, *Aḥkām al-usra*, 581f.; Zaydān, VIII, § 887off. For further discussion, see legal intro. to docs. 33–36.

marriage [of his own free will, failing which the Mahdī, as the supreme *qāḍī* and head of the judicial structure,<sup>5</sup> will do it in his stead].<sup>6</sup>

It may well be that we are dealing here with a case of dissolution of the marriage by the court on the grounds of prejudice (*ḍarar*). The prejudice is demonstrated by the marriage of the widow against her will in an attempt to possess the property left by her deceased husband.<sup>7</sup>

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5 See above, 11.

6 *Al-Āthār al-kāmila*, IV, 473. For further details, see doc. 15.

7 See below, doc. 48.

### 33. Dissolution on Grounds of Non-Provision of Maintenance by an Absent Husband

#### Legal Introduction to Docs. 33–36

All schools recognize, with certain differences, grounds for judicial dissolution at the wife's initiative. The Mālikī jurists in particular provide a generous variety of such grounds. Within the domain pertinent to docs. 33–36, they recognize three independent grounds:

1. According to the most authoritative opinion, the husband's absence for one year (some hold three years) is a ground for divorce, even if the husband has left the wife property out of which maintenance can be provided. This ground is intended to protect the wife's chastity: "[the wife] is afraid of not being able to resist temptation" (*takhshā 'alā nafsihā al-fitna*).
2. The husband's failure to provide maintenance. If the failure is the result of the husband's indigence, the *qāḍī* will grant him a delay of one to three months to settle the payment of maintenance.
3. Unlawful injurious treatment or prejudice (*ḍarar*) caused to the wife the assessment of which is left to the *qāḍī*'s discretion. If the wife cannot prove her complaint by witnesses, the *qāḍī* may resort to the procedure of arbitration on the basis of Q. 4:35.

As noted in doc. 32, regarding the legal consequences of the dissolution, the Mālikīs and the Ḥanafīs deem judicial dissolution a single *irrevocable repudiation* pronounced by the *qāḍī* on behalf of the husband (*taṭlīq*). The other Sunnī schools deem it a *rescission* (*faskh*). The Mālikīs regard divorce on the ground of failure to provide maintenance, unlike the other two grounds, as a single *revocable repudiation*. During the waiting period starting with the pronouncement of *ṭalāq* by the *qāḍī*, the husband can revoke the repudiation and restore the wife to his matrimonial authority if he pays the maintenance due.<sup>1</sup>

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1 Peters, "Islamic Family Law," § 0.1.5.3; Zaydān, VIII, § 8792 (the Mālikīs: husband's absence causes the wife to fear that she might commit adultery, *takhshā al-zinā 'alā nafsihā*), § 8825 (non-provision of maintenance is deemed one revocable repudiation), § 8838 (*taṭlīq* by the *qāḍī*); Shalabī, *Aḥkām al-usra*, 582 (prejudice), 587ff. (husband's absence and non-provision of maintenance). On waiting period, see below, docs. 39, 41, 49; Glossary, s.v. *'idda*.

## Document

Late in November 1882, while negotiating the terms of surrender of Bāra in the province of Kordofan to the Mahdist forces, 'Abdallāhi al-Nūr 'Anqara, commander of the rebels, who subsequent to his surrender rose to high rank in the Mahdist state, sent a letter to the Mahdī in which he expressed the concern of the people of Bāra with respect to husbands who had disappeared for prolonged periods (six-seven years) leaving behind their wives with no maintenance. In one particular case, the wife of an absent (*ghā'ib*) husband was married off to one of the Ikhwān without having observed the waiting period (*'idda*) prior to the second marriage. 'Abdallāhi al-Nūr asks for the Mahdī's legal opinion as to whether such a marriage is deemed valid or, if not, whether it is necessary to rescind (*faskh*) the union.

The Mahdī's *fatwā*:

If the absent husbands are in Turkish territory,<sup>2</sup> their wives are not required to observe the waiting period (*'idda*); rather, they are required to prove that their wombs are free [from pregnancy] (*barā'at arḥāmihinna*)<sup>3</sup> [for the remarriage to the Anṣār to be legally permissible]. If these [women] have married the Anṣār in the district (*jīha*) [after having proved that they were not pregnant], then they belong to their husbands' [the Anṣār's] matrimony [i.e., their new marriages are deemed valid]. If, however, the husbands are absent far away, but not in Turkish territory, and fail to provide them [the wives] maintenance (*nafaqa*), then, if [the wives] request repudiation they will be repudiated (*yuṭallaqna*) [by the *qāḍī* on behalf of the husband (*taṭlīq*)], and they may not remarry before completing the prescribed waiting period (*al-'idda al-ma'lūma*).<sup>4</sup>

The first part of the Mahdī's *fatwā* is based on his policy of *takfīr*, according to which anyone residing in Turco-Egyptian territory is deemed automatically infidel<sup>5</sup> and therefore not subject to the *sharī'a* law. In the case of an absent husband in Turco-Egyptian territory this rule implies that observance of the usual *sharī* three-months waiting period—whether in terms of menstruation

2 Unless they are on mission of *jihād*; see below, doc. 36.

3 Cf. Q. 2:228.

4 *Al-Āthār al-kāmila*, 11, 45–46. For a lithographic version of the document, see *Manshūrāt al-aḥkām wa'l-ādāb*, 27–28; Holt, *The Mahdist State*, 64, 129.

5 On the policy of *takfīr*, see above, 17 and below, doc. 37.

(*qurūʿ*), purity (*ṭuhr*) or regular months (*ashhur*)<sup>6</sup>—is not required since the wife, who is in Mahdist territory, must only prove that she is not pregnant before being legally permitted to remarry. It may well be that the Mahdī is referring here to one menstrual period (*istibrāʿ*) during which a female slave is forbidden to have any sexual intercourse to avoid confusion over paternity (unlike in the case of a free woman, where three menstrual periods are required to remove any doubt as to pregnancy); a female slave who has had intercourse with her master and is then sold to someone else, may not have intercourse with her new master unless she has completed one menstrual period.<sup>7</sup> If, however, the absent husband is in a Mahdist territory, his wife must observe the usual waiting period and she can obtain divorce on the grounds of non-provision of maintenance. It seems that the Mahdī was inspired by the Mālikī school. Thus, the dissolution of the marriage by *ṭalāq* (*yuṭallaqna*) pronounced by the *qāḍī* on behalf of the husband rather than by *faskh*, is compatible with the Mālikī school (as it is with the Ḥanafī school). The implied revocability of the repudiation on the grounds of non-provision of maintenance, however, is unique to the Mālikī school.<sup>8</sup>

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6 See legal intro. to docs. 39–41.

7 Linant de Bellfonds, “Istibrāʿ,” 253ff.; Peters, “Islamic Family Law,” § 0.1.2.2.3. See below, docs. 40 and 41.

8 See the last passage of doc. 36, below, 141.

## 34. *Tatliq* of the Wife of an Absent Husband

The Mahdī is reported to have said:

The wife of an absent husband cannot be divorced unless by an utterance pronounced either by her husband or, [if he fails to do so], by a *qāḍī* [on the husband's behalf] (*wa-inna [i]mra'at al-ghā'ib lā tuṭallaq illā bi-lafẓ min zawjihā aw min al-qāḍī*).<sup>1</sup>

In other words, if the absent husband fails to divorce his wife either himself or through delegation,<sup>2</sup> the *qāḍī* may step into his shoes and repudiate the wife on the husband's behalf.

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<sup>1</sup> *Al-Āthār al-kāmila*, VII, 251.

<sup>2</sup> See Glossary, s.v. *tafwīḍ al-ṭalāq*.

## 35. *Tatliq* on Grounds of Non-Provision of Maintenance

In a *fatwā*, the Qāḍī al-Islām, Aḥmad ‘Alī, rules as follows:

[If] a man leaves his wife without providing her maintenance not because of weakness [i.e., indigence] (*duf*), while the wife does not renounce her [right to] maintenance, and becomes absent to the extent that she suffers prejudice (*ḍarar*) [and the period of absence is] seven months and beyond that, then, if she brings her case to the *shar‘ī qāḍī* (*ḥākim*)<sup>1</sup> and provides evidence by witnesses (*bayyina*) to this effect—it is incumbent upon the *qāḍī* to repudiate her (*fa-yujrī ṭalāqahā*) [on behalf of the husband]. After having completed (*istifā’*) the waiting period of divorce, there is no impediment (*māni’*) to her remarriage.<sup>2</sup>

In docs. 33–36, we are dealing with a combination of three grounds for judicial dissolution: non-provision of maintenance, the husband’s absence and prejudice. It seems, however, that non-provision of maintenance is the primary ground here and the two others are intended to complement the first. Support for this may be gathered from the fact the divorce is due to be effected by means of repudiation (*tatliq*) rather than rescission (*faskh*).<sup>3</sup>

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1 He could well be the provincial governor to whom the Mahdī delegated the power of adjudication; see above, 11.

2 *Manshūrāt al-Mahdiyya*, 209.

3 Regarding the period of absence of seven months, see below doc. 36.

## 36. Rescission of Marriage on Grounds of Prejudice

In yet another case, the Qāḍī al-Islām, Aḥmad ‘Alī, rules as follows:

If the wives of absent husbands in circumstances other than *jihād* suffer prejudice (*yataḍarrarūn*) [*sic*], the *ḥākīm* should be attentive to their distress and rescind their marriage (*faskh*) provided the prejudice (*ḍarar*) has been established, the period of absence is seven months [or more] and the wife testifies that the husband neither left her maintenance (*naḥaḳa*) nor has she renounced her claim for maintenance from him, and that he neither sent her anything [out of which maintenance can be collected] nor appointed an authorized representative (*wakīl*) on his behalf to provide her maintenance.<sup>1</sup>

The period of absence of seven months, which may have been a matter of local custom rather than law, is less than that required by the Mālīkī law (one year) and closer to the period required by the Ḥanbalī law (six months).<sup>2</sup> More important, the dissolution of the marriage by rescission (*faskh*) rather than repudiation by *taṭlīq*, is compatible with the Ḥanbalī and Shāfi‘ī schools.<sup>3</sup> And finally, the element of prejudice, which in the case under review seems to be dominant, is taken into account by the Ḥanbalīs also within the context of the husband’s absence. Hence, one gains the impression that the Qāḍī al-Islām was inspired in this particular case by the Ḥanbalī school.

However, as already noted, the Maḥdī did not deem himself bound by any particular school of law; rather, his adherence to a school was a function of the subject matter.<sup>4</sup> Generally speaking, the cases discussed in docs. 33–36 include the same components used for judicial dissolution on *different* grounds. Hence, the most vital distinction should be made having regard to the legal consequences of the dissolution, that is, between rescission and repudiation by the court on behalf of the husband, which—in the latter case—in the event of failure to provide maintenance the dissolution is counted as a single revocable repudiation. In this respect the Qāḍī al-Islām seems to have been inspired by the Mālīkī school.

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1 *Manshūrāt al-Mahdiyya*, 205 (the *fatwā* was issued shortly after the Maḥdī’s death).

2 Shalabī, *Aḥkām al-usra*, 587–88.

3 Peters, “Islamic Family Law,” § 0.1.5.3; Shalabī, *Aḥkām al-usra*, 587ff.

4 See above, 27ff.

## 37. Rescission of Marriage on Grounds of Difference of Religion

### Legal Introduction to Docs. 37–38

Q. 60:10 provides: 1. Emigrant women that have converted to Islam in good faith are no longer permissible to their infidel husbands;<sup>1</sup> 2. Muslims may marry these women after having paid what is due to them (i.e., their *ṣadāq*); 3. Muslim husbands should sever the marriage ties with their infidel wives after mutual settlement of the expenses.<sup>2</sup>

Difference of religion should be distinguished from apostasy (*ridḍa*), which is a crime that entails capital punishment based on a Prophetic *ḥadīth*. Most of the schools deem the penalty a *ḥadd* punishment.<sup>3</sup>

### Document

The Mahdī adopted a policy of *takfīr*, that is, proclaiming Muslims, both males and females, who were staying behind in Turco-Egyptian territory rather than joining the Mahdiyya, as apostates (*murtaddūn*),<sup>4</sup> although in actual fact he treated the cases on the level of civil rather than penal law. The rescission of the marriage on grounds of difference of religion is based on Q. 60:10, which—according to the conventional exegesis—refers historically to the Meccan women who converted to Islam and emigrated to join the Prophet in Medina. In the Mahdist Sudan, in many cases where the spouses were divided between the two territories, the policy of *takfīr* caused legal uncertainty as to the status of their marital bonds.

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1 However, Q. 5:5 allows Muslims to marry adherents of revealed religions (*ahl al-kitāb*), i.e., Jewish and Christian women.

2 Difference of religion may also be an impediment to marriage. Thus equality in marriage (*kafā'a*), in terms of religious and moral qualities (*tadayyūn*), is one of the preconditions for the validity of a marriage contract. See Peters, “Islamic Family Law,” § 0.1.2.2.3 (impediments to marriage), § 0.1.2.3.1 (social and religious equality); Zaydān, VI, § 5189; Shalabī, *Aḥkām al-usra*, 291, 297. Cf. legal intro. to doc. 32.

3 For further details, see below, legal intro. to docs. 69–72.

4 On *takfīr*, see Björkman, “Kāfir;” Hunwick, “Takfir.” See below, doc. 69ff.

In the case under review, the husband was left behind in Turkish territory while his wife emigrated to Mahdist territory. Following the wife's plea for divorce (*ṭalāq*), the Mahdī issued the following *fatwā*:

Whereas the man resides with the infidels (*kafara*) while the woman is affiliated with the religion of Abraham (*dīn khalīlihi*), . . . hence, [in order to bring about dissolution of the union], her [the wife's] request to effect unilateral repudiation (*ṭalāq*) [by the husband] is not needed, [also not needed is the *qāḍī's*] pronouncement of repudiation on behalf of the husband (*taṭlīq*); rather, her marriage is rescinded (*mafsūkha*) on the strength of Q. 60:10 . . . And since she [the wife] stays in a Mahdist territory she is legally presumed (*fi ḥukm*) to be one of the female emigrants; her faith [in Islam] should be tested (*fa-[i]khtabirū imānahā*) as God, Exalted be He, requires [in the Qur'ānic verse]. If you find it [her conversion to Islam] authentic (*ṣaḥīḥ*) [i.e., in good faith], then she is [*ipso facto*] divorced. If he [the husband] has property (*māl*), then it is deemed booty (*ghanāma*) and should be transferred to the Muslim treasury since it is legally presumed (*ka-ḥukm*) to be the property of infidels within the category of *fay*,<sup>5</sup> [i.e., it belongs to the entire Muslim community].<sup>6</sup>

Needless to say, the application of the Mahdī's policy of *takfīr* with respect to Muslim subjects of the Ottoman Empire had no justification in *sharī* legal terms; it was inspired purely by political considerations.

5 On definition of *fay*, see below, doc. 73 and Glossary.

6 *Al-Āthār al-kāmila*, II, 94; Durham, SAD 97/5/16–17. Cf. *al-Āthār al-kāmila*, III, 70 (the wife will nevertheless be entitled to receive her deferred *ṣadāq* since this right is not part of the booty).

### 38. Termination of Marriage on Grounds of Difference of Religion and Rehabilitation by a New Marriage Contract

In a letter to his adherents in the military camps of Bāra and El Obeid, the Mahdī cites part of Q. 60:10, which reads: ‘And hold not to the ties of disbelieving women (*wa-lā tumsikū bi-’iṣami al-kawāfiri*) in an attempt to clarify that the union of couples divided between Turco-Egyptian territory and Mahdist territory should be terminated on the grounds of difference of religion. However, once the wife joins the Mahdiyya the husband should rehabilitate the union by means of a new marriage contract even against the woman’s will:

Any woman left behind in the two aforementioned Turkish military camps after her husband had left and joined the Anṣār laying siege [to the Turkish camps] or had already crossed the lines to our side [Mahdist territory], is deemed [automatically] divorced (*tāliq*).<sup>1</sup> Likewise, any [woman] that emigrated (*hājarat*) in order to join the Anṣār, as had been ordered [by the Mahdī], leaving behind her husband [in Turco-Egyptian territory], she too is deemed divorced (*tāliq*).

Still, you must restore the marriage bonds (*iṣam*) with your former wives who lag behind you in leaving [Turkish territory and joining the Mahdiyya]; you should not rely on the previous marriage bonds and maintain marital relations with them without [first] renewing [the marriage contracts]; this is prohibited. You are hereby informed of my [instruction]; you are advised to rely on it and act accordingly.

The Mahdī concludes by saying that since the reason for the separation has ceased to exist, the separated couples are required to resume their marriage. If the wife declines to return to her former husband, “her claim will in no way be attended to [in court]” (*lā yusma’ lahā aṣlan*). In other words, although the marriage had been totally severed on grounds of “difference of religion” and the woman may thus, strictly speaking, marry a third party, her former husband

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1 The use of the term *tāliq* is compatible with the Mālikīs and the Ḥanafīs who deem judicial dissolution a single irrevocable repudiation pronounced by the *qāḍī* on behalf of the husband (*taṭliq*). See above, legal intro. to docs. 33–36.

has the option to restore her by a new marriage contract even against her will<sup>2</sup> once she joins the Mahdist territory. This suggests that the Mahdī regards the separation between the spouses as temporary, which implies that the woman may not marry a third party.<sup>3</sup> The couples are required to repent and ask God's forgiveness regarding everything that happened during their separation.<sup>4</sup>

The rescission (*faskh*) on grounds of "difference of religion" is based explicitly on Q. 60:10, which the Mahdī incorporated to his policy of *takfīr*.

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2 See above, docs. 15 and 32.

3 On the Mahdī's attitude regarding abduction of women whose husbands were left behind in non-Mahdist territory, in an attempt to marry them, see below, doc. 65.

4 *Al-Āthār al-kāmila*, 1, 375–76. Cf. Holt, *The Mahdist State*, 128–29.

## 39. Duration of Waiting Period following Delay of Menstruation

### Legal Introduction to Docs. 39–41

In order to preclude any confusion about the paternity of the children born to a woman after the dissolution of her marriage, she must observe a waiting period (*’idda*), during which it becomes clear whether or not she is pregnant by her divorcing husband. The *fiqh* refers to waiting period in terms of menstruation (*qurū’*), purity (*tuhr*) and regular months (*ashhur*). Q. 2:228 requires divorced women to wait out three monthly periods (*qurū’*). Q. 2:234 provides that widows shall wait four months and ten days. Q. 33:49 provides that no waiting period is required if no consummation took place; and Q. 65:4 provides that the prescribed period for women who have reached the “age of despair,” i.e., women who have reached menopause or have doubts as to whether they are still likely to menstruate is three months (*ashhur*) and for those who are pregnant—until delivery.

If the waiting period is counted in menstrual periods (as in Q. 2:228), the Ḥanafīs interpret the term *qurū’* as period of menstruation whereas other schools interpret it as period *between* menstruations. According to the Ḥanafīs the waiting period expires with the termination of the third menstrual period after the divorce; whereas, according to the other schools, it ends at the beginning of the third menstrual period. If the divorced wife is a minor who has never menstruated, or if she has reached the “age of despair” and ceased to menstruate, she has to observe a waiting period of three months.<sup>1</sup>

### Document

In an *istiftā’* by Aḥmad ‘Alī, the Qāḍī al-Islām, the Mahdī is asked for a legal opinion on the rule pertaining to the duration of the waiting period of a “woman whose menstruation occurred a year after she had been repudiated” (*imra’ā ya’tihā al-ḥayḍ ba’da sana wa-ṭulliqat*). In other words, we are dealing here with a case of a woman whose menstruation ceased to be regular because she had reached the “age of despair.” The Qāḍī al-Islām asks whether

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1 Peters, “The Family Law,” § 0.1.2.2.3; Zaydān, IX, § 9233 (the rationale of *’idda*), § 9279ff. (*qurū’*), § 9295 (*ashhur*), § 9297ff. (“age of despair”); Shalabī, *Aḥkām al-usra*, 627ff.

the woman “[is required to observe] a waiting period of three menstrual cycles [*literally*, which in the case under review would have been a prolonged period of time], or otherwise? [referring thereby to Q. 65: 4]” (*fā-‘iddatuhā takūn bi-thalātha ḥayḍāt am lā?*).

The Mahdī’s *fatwā*

It is prescribed in His book [Q. 65:4], be He Exalted: ‘And for such of your women as despair of menstruation, if ye doubt, their period (of waiting) shall be three months, along with those who have it not,’ that is, a minor girl [i.e., who has never menstruated]; both a woman who has reached the age of despair (*yā’isa*) and a minor girl who has never menstruated have to observe a waiting period of three months (*ashhur*) as prescribed in the text of the [aforementioned] verse.

Regarding a young woman who has reached puberty but ceased to menstruate before the age of despair (*wa-amma al-shābba allatī [i]nqaṭ‘a al-dam ‘anhā qabla al-ya’s wa-ba‘da al-bulūgh*), she has—in accordance with a *ḥadīth* related to ‘Umar, may God be pleased with him—to endure nine months; if she fails to menstruate during this period she will have to observe a waiting period of three months (*tatarabbaṣ tis‘a ashhur, wa-in lam taḥiḍ [i]‘taddat bi-thalātha ashhur*).<sup>2</sup>

The Mahdī’s legal opinion does not refer to any school of law. The first part of the opinion is based on a literal (*ẓāhirī*) interpretation of the Qur’ānic verse and the second part on a *ḥadīth*.

<sup>2</sup> *Al-Āthār al-kāmila*, 111, 110, 112; Holt, *The Mahdist State*, 132. Regarding the *ḥadīth* related to ‘Umar, cf. Wensinck, *Concordance*, 11, 211, col. i.

## 40. A Separated Wife Who Has Not Completed One Menstrual Period May Be Restored to Her Husband without Concluding New Marriage Contract

During the siege on Khartoum some people left the Turkish military camp and joined the Mahdist forces, leaving behind their wives. After the fall of Khartoum the wives left the city and joined their husbands. Muḥammad ‘Uthmān Abū Qarja, who handled the siege of Khartoum on behalf of the Mahdī,<sup>1</sup> asked the Mahdī’s legal opinion as to whether the reunion has to be done through a new marriage contract between the separated spouses.<sup>2</sup> There is no reason to assume that the husbands divorced their wives before departure. On the other hand, there is every reason to believe that the legal complication pertaining to the wives’ status arose due to the application of the Mahdī’s policy of *takfīr*, according to which anyone residing in Turco-Egyptian territory was deemed automatically infidel.<sup>3</sup> In other words, the wives were separated from their husbands on the grounds of difference of religion (*ikhtilāf al-dīn*).

The Mahdī’s legal opinion:

The [legal] situation is as follows: As for the Ikhwān whom you mentioned, there is no objection whatsoever that [the reunion with] the entirety of the wives will take place by means of a [new marriage] contract (*fa-lā ba’sa bi-‘aqdihim*), except those wives who had not completed their prescribed waiting period (*al-‘idda al-ma’lūma*)... which is one menstruation (*qur’*) [*sic*] in which case there is no need to renew the [marriage] contract; rather, the previous [contract] will do (*bal yakfihi al-sābiq*) [i.e., is deemed valid].<sup>4</sup>

The closing sentence of the citation with the phrase “*al-‘idda al-ma’lūma*” consisting of “one menstruation (*qur’*)” appears as an interpolation (*taḥshiya*) at the bottom of the document (above the date); the Mahdī inserted it “for the

1 Holt, *The Mahdist State*, 98ff.

2 *Al-Āthār al-kāmila*, IV, 273.

3 See above, doc. 33.

4 *Al-Āthār al-kāmila*, IV, 274.

purpose of clarification (*li'l-īdāh*) [of the substance of the legal opinion].” No explanation is provided as to the legal source of this norm (“one menstruation {*qurʿ*”), which on the face of it seems to be incompatible with the conventional *sharʿī* norm for waiting period prescribed by the Qurʿān. It may well be, however, that the Mahdī was referring to the waiting period of female slaves, which is one menstrual period (*istibrāʿ*).<sup>5</sup> Indeed, according to the Mahdī’s policy of *takfīr*, the infidels were deemed slaves. It is quite possible that the Mahdī had a special interest in adopting this norm in order to facilitate the restoration of the wives to their husbands within a shorter waiting period.

In practical terms, it seems that the Mahdī deemed the separation of the spouses before the termination of the waiting period as a temporary separation that enabled the husband to rehabilitate the marriage during the waiting period, failing which the separation would become—by implication—absolute repudiation (*ṭalāq bāʿin*). At this stage, if the man wanted to restore his wife the only way to do this was by a new marriage contract. The restoration of the wife within the waiting period was optional, as in the case of revocable (*rajʿī*) repudiation, depending on the discretion of the husband.<sup>6</sup>

To sum up the Mahdī’s legal opinion regarding women who were separated from their husbands on the grounds of difference of religion (on the basis of the Mahdī’s policy of *takfīr*): If the women completed the waiting period prescribed for female slaves, which is one menstruation, the only way to restore them was by a new marriage contract. If, however, they did not complete the aforementioned waiting period, their husbands could restore them as if they were repudiated by a revocable repudiation. It may well be that the Mahdī resorted to the status of the waiting period of female slaves as a device that might legitimize the restoration of recently deserted women in non-Mahdist territories to their husbands as if they were repudiated by revocable divorce provided they could prove that they had not been impregnated by the Anṣār. The Mahdī was concerned with finding an immediate solution to an urgent problem that emerged in the course of extending the Mahdist territory. There is no explicit evidence in his documents that he deliberately intended to innovate new positive rules combining the law of divorce with the law pertaining to female slaves.

5 For further information on the term, see above, doc. 33.

6 See above, doc. 33; Glossary, s.v. *ṭalāq rajʿī*, *ṭalāq bāʿin*.

## 41. Should an Emigrant Wife Observe the Waiting Period of a Free or a Slave Woman?

Women migrated from Turkish military camps (*qayāqir*) to Mahdist territory to join their husbands. In light of the Mahdī's policy of *takfīr*,<sup>1</sup> there emerged an uncertainty regarding the legal status of emigrant women separated from their husbands on the ground of "difference of religion"; some of them were taken as booty (*ghanīma*), which implies that they were treated as female slaves, and some of them were "forgiven" (*ʿafw*) by the Mahdī following their joining the Mahdiyya, which implies that they were free for all practical purposes.

The *mustaftī* asks for the Qāḍī al-Islām Aḥmad ʿAlī's legal opinion clarifying the rules regarding wives who left along with their husbands, assuming their original marriage to be intact, and wives who were separated from their husbands and remarried them by a new contract; in both cases the question is whether in the event of divorce, the wife should observe the waiting period of a free woman (*ḥurra*) or rather that of a female slave (*ama*). As noted above, the waiting period of a female slave who has had intercourse with her master and then been sold to someone else, is one menstrual period (*istibrāʾ*) before she may have intercourse with her new master.<sup>2</sup>

The Qāḍī al-Islām's *fatwā*

Women of the *qayāqir*, regardless of whether the wife left along with her husband or preceded him [leaving the husband behind] or left after him [i.e., the husband preceded her], in both cases, a new marriage contract with her consent must be contracted. If a divorce took place after a new [marriage] contract [with her ex-husband] had been contracted (*tajdīd al-ʿiṣam*), she must observe the waiting period of free women (*ʿiddat al-ḥarāyir* [*sic*]).<sup>3</sup>

In other words, the marriage bond of women emigrating from Turco-Egyptian territory should automatically be dissolved on the ground of "difference of religion." In the event that both spouses left non-Mahdist territory *together* to join the Mahdist state, it is not clear on what ground they must be separated since there is no "difference of religion." In any case, if a husband wants to restore his

1 See above, doc. 37.

2 See above, doc. 33.

3 *Manshūrāt al-Mahdiyya*, 207 (the *fatwā* was issued shortly after the Mahdī's death).

wife, a new marriage contract should be contracted with her consent.<sup>4</sup> If, however, the husband divorces her afterward, she will have to observe the waiting period of a free, rather than a slave, woman. This implies that she is no longer counted as booty.<sup>5</sup>

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4 Elsewhere we noted that under such circumstances the marriage between the spouses must be restored even against the woman's will. See above, doc. 38.

5 See below, docs. 74–75.

## 42. The Mahdī Reinstates His Triply Divorced Wife with No Intermediate Marriage, with the Prophet’s Permission

### Legal Introduction to docs. 42–43

The four Sunnī schools of law make a clear distinction between a revocable repudiation (*ṭalāq rajʿī*) and an irrevocable repudiation (*ṭalāq bāʿin*). The former does not dissolve the marriage instantly, provided it has been consummated. The husband may, during the waiting period (*ʿidda*) of the divorce, unilaterally revoke the repudiation, even without his wife’s consent. The husband may repeat the entire process, that is, divorce the wife by revocable repudiation and revoke the repudiation, only twice. Revocation may be expressed by words or by behavior. The legal effects of revocable divorce are based on Q. 2:228–29. On the strength of Q. 65:2, the presence of witnesses is recommended. If the husband fails to reinstate his wife during the waiting period, the revocable repudiation becomes irrevocable. Irrevocable repudiation dissolves the marriage instantly with all its legal and financial consequences (such as alimony during the waiting period and deferred nuptial gift). After the first and second irrevocable repudiations, which constitute a minor irrevocability (*baynūna ṣuḡhrā*), the husband may reinstate his divorced wife, but only with her consent and by means of a new marriage contract and nuptial gift. The third repudiation becomes irrevocable *instantly* and constitutes a major irrevocability (*baynūna kubrā*), which creates an impediment to marriage with the former husband. The divorced woman cannot be legally reinstated unless she marries another man (Q. 2:230), the marriage is consummated, the wife is divorced and the waiting period has been observed. The waiting period, introduced by the Qurʾān, was intended to remove any doubt as to the paternity of a child,<sup>1</sup> whereas the intermediate marriage was intended to avoid a hasty divorce by the husband. The latter’s purpose was frustrated by the Sunnī schools, which equated triple repudiation at one and the same session with three separate repudiations. According to a tradition, ʿUmar was the first authority to recognize triple repudiation and it was approved by the consensus of the Prophet’s Companions and the analogical reasoning that repudiation is a unilateral act similar to an oath. The Mālikīs do not acknowledge a fictitious intermediate

<sup>1</sup> For further details, see above, doc. 39.

marriage by “the one who renders [a triply divorced woman] lawfully permitted [to her divorcing husband]” (*al-muḥallil min al-ṭalāq*). In other words, the marriage of the ex-wife to a third party and her repudiation by the latter should be in good faith.<sup>2</sup>

### Document

The issue of intermediate marriage was of special concern to the Mahdī since he had exhausted the quota of three repudiations with regard to one of his beloved wives. He was anxious to restore his triply divorced wife, but since his adherents declined to marry her in intermediate marriage, he managed to reinstate her without going through the embarrassing procedure of intermediate marriage. The *sharʿī* impediment was circumvented by a personal permission of the Prophet obtained through a colloquy.

In what follows the Mahdī deals with the circumstances of the reinstatement of his divorced wife:<sup>3</sup>

One of my wives has completed the quota of divorces.<sup>4</sup> . . . Some of the Aṣḥāb suffered hardship . . . I told them to [feel free] to marry [this divorced wife of mine], but they declined. Then came the [divinely inspired] message forbidding that [i.e., intermediate marriage], owing to the exclusivity (*khuṣūṣiyya*)<sup>5</sup> [of the divorced wives to the Mahdī] . . . Some colloquies (*ḥaḍrāt*) [occurred], in which came the instruction of her reinstatement [to the Mahdī without an intermediate marriage] . . .

2 Peters, “Islamic Family Law,” § 0.1.5.1.3, § 0.1.5.1.6; Hallaq, *Sharīʿa*, 280ff.; Shalabī, *Aḥkām al-usra*, 489–91, 498ff.; Layish, *Divorce*, 97–101. On intermediate marriage by means of *al-muḥallil min al-ṭalāq*, see Shalabī, *Aḥkām al-usra*, 511ff.; Zaydān, VI, § 5648ff. Cf. Layish, *Women*, 132, 173–75.

3 See *al-Āthār al-kāmila*, IV, 193–94. For a full translation and annotation of the document, see Layish, “The Mahdī’s Legal Methodology,” 47–66. On Prophetic message by means of *ilhām*, see above, 37.

4 The Mahdī refers here to his wife Fāṭima bint Ḥājj, his paternal cousin. He repudiated her prior to his manifestation; see *al-Āthār al-kāmila*, IV, 193, fn. 7.

5 On the exclusive status of the Prophet Muḥammad with regard to women, such as marriage with no *mahr* or marriage with more than four women concurrently, see Shalabī, *Aḥkām al-usra*, 108.

However, in spite of all this I was distressed with respect to her [viz., Fāṭima's] reinstatement [without an intermediate marriage] after having completed the number [i.e., the quota] of divorces, until a mystical experience occurred to me<sup>6</sup> concerning her . . . This is His word, Exalted is He, 'That thou mayst be free from blame, for Allāh is Forgiving, Merciful' [Q. 33:50].<sup>7</sup>

Needless to say, the Mahdī was fully aware of the obligatory procedure of intermediate marriage in circumstances where the quota of three repudiations had been exhausted. He pronounced his willingness to undergo this procedure with all the consequences involved. None of the Aṣḥāb, however, was ready to marry the Mahdī's triply divorced wife in intermediate marriage. Subsequently the Mahdī had a mystical experience in which the Prophet, through a colloquy, availed the Mahdī of permission to restore his triply divorced wife without going through the procedure of intermediate marriage, an option that had been available to the Prophet himself in similar circumstances. Thus the *sharī* prohibition of reinstatement was circumvented without formally breaking the *sharī* conventional rules in this matter.

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6 See Glossary, s.v. *wārid*.

7 This verse relates originally to polygamy. See al-Ṭabarī, *Jāmi' al-bayān*, xxii, 24, ll. 8–14. This privilege was granted to the Prophet Muḥammad. See Q. 33:51; Sale, *The Korān*, 416, fn.1.

### 43. Reinstating a Triply Divorced Wife with No Intermediate Marriage Entails *Ḥadd* Punishment

In the case under review, a man reinstated his triply divorced wife without resorting to intermediate marriage, after allegedly having received permission for the reinstatement from the Mahdī and a *muftī*. The Mahdī deemed the case one of unlawful sexual intercourse. It may well be that the precedent set by the Mahdī of reinstating his triply divorced wife without resorting to intermediate marriage<sup>1</sup> caused some confusion among his adherents.

The Mahdī's letter to Shaykh Ṭāha Bashīr:

I received your letter informing me of someone who had triply (*thalāthan*) divorced his wife and subsequently committed an offense (*ta'addīn*) entailing *shar'ī* [i.e., Qur'ānic] punishment (*ḥudūd*) by concluding [a contract of marriage] (*'aqada 'alayhā*) with her [i.e., his triply divorced wife] before someone else had married her and consummated the marriage (*yadkhul 'alayhā*) in accordance with the *shar'ī* prescriptions (*ḥasab al-manṣūṣ shar'an*). Moreover, the man did not content himself with this but alleged that the contract had been authenticated (*tawsīq [tawthīq]*) by me, thus committing two sins (*ithm*). After having read your letter I ordered that the case be investigated and the man brought to trial [in order to punish him] in accordance with the *shar'ī'a* [on grounds of unlawful intercourse]... If it is established that the man committed [adultery] as someone who had lost his mind (*man bāda ra'yuhu*), he will be punished with an appropriate punishment... If the man deviated (*ḥāla*) [from the *shar'ī'a*] in reliance on a *fatwā* given to him by some *muftī*, the latter, too, should be brought to *shar'ī* trial.<sup>2</sup>

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<sup>1</sup> See above, doc. 42.

<sup>2</sup> *Al-Āthār al-kāmila*, v, 295.

## 44. An Oath of *Ḥarām* or Oath of Contenance without Explicitly Mentioning Repudiation Is Null and Void

### Legal Introduction to Docs. 44–46

*Īlā'* is an oath of continence sworn by the husband that may result in dissolution of his marriage. The oath is mentioned in Q. 2:226 and 227. It consists in an oath in the name of God to the effect that the husband will abstain from having intercourse with his wife for a period of at least four months. The language of the oath must be unequivocal (*ṣarīḥ*); if it is ambiguous or equivocal (*kināṭ*) it must be accompanied by intent. If the husband resumes intercourse with his wife before the termination of the period, he is presumed to having broken his oath, in which case he must expiate his perjury (*kaffāra*), which is, according to Q. 5:89, (1) feeding (*iṭ'ām*) ten poor people or (2) providing for their clothing (*kiswa*) or (3) freeing a slave (*tahrir raqaba*) or, if he does not have the means, (4) fasting (*ṣiyām*) for three days. In Ḥanafī law, if the husband has not resumed sexual relations with his wife within four months, the marriage is dissolved automatically without resort to judicial proceedings. The divorce is deemed a single irrevocable repudiation. According to other schools, the marriage can be dissolved only by judicial decision at the wife's request, which she can submit after four months. This dissolution is deemed a revocable repudiation.<sup>1</sup>

Associated with *ilā'* is the oath of *zihār*. Q. 58:2–4 deals with a pre-Islamic kind of repudiation in the form of an oath sworn by the husband to the effect that his wife shall be to him as his mother's back (*yuzāhirūna minkum min nisā'ihim*), which implies that she is sexually forbidden to him. The oath may refer to any intimate part of his mother's body. The oath in itself does not cause the dissolution of the marriage but is deemed reprehensible. Penance may take one of three courses: (1) freeing a slave or, if he does not have the means, (2) fasting two months consecutively or, if he is unable to fast, (3) feeding sixty indigent men for one day each, before the spouses may resume marital relations. If the husband breaks his oath, he must perform a heavy expiation (*kaffāra*). During the Jāhiliyya, the *zihār* created an everlasting prohibition (*tahrīm mu'abbad*) whereby the spouses were prohibited from marital

1 Peters, "Islamic Family Law," § 0.1.5.4; Zaydān, VIII, § 8133 (definition of *ilā'*), 8175 and 8185 (swearing in God's name), 8188ff (duration of *ilā'*), 8198 (expressions of *ilā'*), 8227 (legal effects of *ilā'*); Shalabī, *Aḥkām al-usra*, 607–15; Hallaq, *Sharī'a*, 286.

relations without the wife being able to release herself and marry someone else. The everlasting nature of the prohibition of the *zihār* has been abrogated in Islam, though the oath of repudiation is still valid. According to the Mālikī school, unlike other schools, if the husband refuses to break his oath, the wife can approach the *qāḍī* and demand judicial repudiation as in the case of *ilā'*.<sup>2</sup>

### Document

In the Mahdī's documents there is not a single instance in which the terms *ilā'* or *zihār* are explicitly mentioned. Legal opinions issued by the Qāḍī al-Islām and a tradition attributed to the Mahdī may, however, provide a good notion of the Mahdī's view on institutions located in the gray zone between custom dating back to pre-Islamic times and *sharī'a*.

A *fatwā* by the Qāḍī al-Islām, Aḥmad 'Alī:

Taking an oath of *zihār* or oath of continence that results in repudiation<sup>3</sup> is null and void (*al-ḥalf bi'l-ḥarām wa'l-ṭalāq laḡhw*); it is by no means binding (*lā yalzam fihi shay'*) with respect to anything due to what the Prophet, God bless him and grant him salvation, said: 'Anyone taking an oath, should swear in the name of God<sup>4</sup> or [alternatively] hold his tongue' after having said: 'Do not take an oath [of *zihār* or continence or suspended divorce that may result in] repudiation [which entails in the event of breaking the oath] manumission of a slave' (*lā tahlifū bi-ṭalāq wa-lā 'ināq [‘atāq]*<sup>5</sup>). And the ban of that oath is due to its prohibition (*tahrīm*) as sanctioned by the Imām [the Mahdī], upon him be peace: 'What is nonexistent in terms of legal consequences [i.e., repudiation] should also be perceived as nonexistent in terms of sound [i.e., uttering

2 Peters, "Islamic Family Law," § 0.1.5.4; Zaydān, VIII, § 8330ff. (the effects of *zihār*), 8339f. (termination of *zihār* by *kaffāra*), 8359ff. (manumission of a slave), 8362ff. (two months fasting), 8368ff. (feeding sixty indigent men); Shalabī, *Aḥkām al-usra*, 617–23; Hallaq, *Sharī'a*, 286–87.

3 Alternatively to oath of continence, the reference may be to suspended repudiation (*ta'liq al-ṭalāq bi'l-shart*) by way of oath, whereby the divorce becomes effective on the fulfillment of a specific condition stipulated by the husband. On suspended repudiation, see legal intro. to doc. 26.

4 In other words, an oath that does not mention the name of God is meaningless in terms of legal consequences. See below, doc. 45.

5 Lane, *Lexicon*, 1946, col. iii (*ḥalafa bi'l-'atāq*). Cf. Wensinck, *Concordance*, IV, 127, col. i (*lā yajūz ṭalāq al-ghulām . . . wa-lā 'atāquhu*).

God's name<sup>6</sup>] (*wa'l-ma'dūm shar'an ka'l-ma'dūm ḥissan*). Under these circumstances, [an oath of] prohibition entails no repudiation (*fa'l-ḥurma hādhihi lā ṭalāq 'alayhā*).<sup>7</sup>

The possibility that the Mahdī invalidates an oath of *ḥarām* or an oath of continence whenever a phrase connoting repudiation is not explicitly mentioned in the oath cannot be ruled out.

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6 It may well be that the reference is to uttering a phrase connoting repudiation. Such a possibility may gain support from doc. 46 below.

7 *Manshūrāt al-Mahdiyya*, 200 (see there in fn. 1 Abū Salīm's note regarding the author of the *fatwā*). Cf. Layish, *Shar'ā and Custom in Libya*, 63–64, doc. 15.

## 45. An Oath of *Ḥarām* Is Not Binding unless God's Name Is Mentioned

The response of the Qāḍī al-Islām, Aḥmad 'Alī, on the question of *al-ḥalf bi'l-ḥarām* as presented to the Mahdī:

Taking an oath of prohibition (*al-ḥalf bi'l-ḥarām*) of whatever kind [such as *ḡihār*, an oath of continence or suspended repudiation], regardless of whether it is reprehensible (*munkar*) or generally accepted (*ma'rūf*)—neither the oath nor the divorce is binding (*yalzam bihi*); the bond of marriage is not dissolved by it (*lā tanḥall bihi al-iṣma*) because the pronouncement of prohibition (*ḥarām*) does not constitute an oath (*yamīn*) since the oath is contracted (*yan'aqid*) only by means of the names of God and His attributes (*ṣifāt*).<sup>1</sup>

Moreover, in a tradition related to the Mahdī after his death he is reported to have said:

People should not pledge a solemn oath [to fulfill an undertaking] without mentioning God. If someone nevertheless refrains from mentioning God, he will be punished to the extent necessary to restrain him [from repeating such an oath], that is, by forty lashes. If someone wishes to aggrandize [God] and swear by God, he may say 'by Lord.'<sup>2</sup>

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<sup>1</sup> *Manshūrāt al-Aḥkām wa'l-Ādāb*, 11–12.

<sup>2</sup> *Al-Āthār al-kāmila*, VII, 129.

## 46. Breaking an Oath of Divorce Entails Expiation

A tradition attributed to the Mahdī through the transmission of Aḥmad ‘Alī, the Qāḍī al-Islām:

Taking an oath of divorce [e.g., suspended repudiation by way of oath] does not in itself constitute repudiation (*inna al-ḥalf bi’l-ṭalāq laysa fīhi ṭalāq*); rather, [it entails] expiation [in the event of breaking] the oath and refinement [in terms of discipline or good manners] (*takfīr yamīn wa’l-adab*). This is [so], according to what the aforementioned [the Mahdī] informed me, because the expression of ‘prohibition’ (*ḥaram* [sic]) is not mentioned in it [in the oath]. Yet, all [sorts of] taking oath to divorce [constitute repudiation] provided the expression *ṭalāq*, *ḥaram* [sic] or *ṭalāq* by three’ [are pronounced].<sup>1</sup>

The main conclusions that may be drawn from the aforementioned documents, to the extent that they reflect the Mahdī’s view, are: All kinds of repudiation by way of oath, including by implication suspended repudiation, are null and void if God’s name has not been mentioned in the oath; neither the oath nor the divorce is binding. With this reservation, this is a far-reaching reform.<sup>2</sup> For an oath to be valid, one should swear in the name of God. Mentioning God confers divine sanction on the oath and seems to be required to indicate the oath taker’s intention to fulfill his commitment under the oath. Omission of the name of God may entail a penal sanction. For the divorce to be effective, one of the following expressions: *ṭalāq*, *ḥaram* [sic] or ‘triple divorce’ should be pronounced explicitly. Taking an oath of *ḡihār* entails expiation (*kaffāra*) and by implication is devoid of any legal effects on the marriage bond. The Mahdī’s views are based on the Qur’ān and the *ḥadīth* (no school of law is mentioned) in an attempt to totally eradicate this Jāhilī custom.

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<sup>1</sup> *Al-Āthār al-kāmila*, VII, 137.

<sup>2</sup> On modern reforms pertaining to “triple” divorce pronounced on one and the same occasion and conditional divorce, see Layish, “Ṭalāq,” 155–56.

## 47. The Right to Custody, the Welfare of the Parents and the Best Interest of the Child

### Legal Introduction

As long as the child's mother and father are married they share custody. The divorced mother is worthier for custody than the father during the period of suckling (*raḍā'a*), which is two years. This is based on Q. 2:233, which provides that mothers shall suckle their children for two whole years if they so wish.<sup>1</sup> According to Ḥanafīs, the period of custody (*ḥaḍāna*) terminates at the age of seven with respect to a boy and nine with respect to a girl. Mālikī jurists extend the mother's custody until majority (*bulūgh*) with respect to a boy and until marriage with respect to a girl. The *sharī'a* places the child's mother first in order of the women entitled to custody, due to her natural compassion (*shafaqa*) and attachment (*'atf*) to the child. This right exists so long as she is not disqualified on such grounds as her remarriage to a "stranger" (*ajnabī*), i.e., someone who is not a relative within the forbidden degrees for marriage. This rule is based on a *ḥadīth* and the consensus of the jurists.<sup>2</sup> Once the mother is divorced from her second marriage, she regains her right to custody, provided the divorce is absolute (*bā'in*); otherwise only after the expiry of her waiting period and provided the period of custody has not terminated.

After the mother the order of priority for custody is as follows: the maternal grandmother in the ascending line (the grandmother's mother, the great grandmother's mother, etc.), the paternal grandmother in the ascending line, the germane sister (*shaqīqa*), the uterine sister (*ukht li-umm*), the consanguine sister (*ukht li-ab*), the germane sister's daughter, the uterine sister's daughter, the maternal aunts (*khālāt*), in this order: the germane aunt, the uterine aunt and the consanguine aunt, the consanguine sister's daughter, the germane brother's daughter, the uterine brother's daughter, the consanguine brother's

1 The jurists differ as to whether suckling is the mother's right or duty. See Shalabī, *Aḥkām al-usra*, 740; Rubin, *The Qur'an*, 33.

2 See Zaydān, x, § 10321.

daughter and, in their absence, the paternal aunts (*ammāt*) according to the aforementioned order.<sup>3</sup>

### Document

In the case under review, the *qāḍī* asks for the Mahdī's legal opinion regarding a divorced woman, the mother of a suckling (*raḍī'*) child, already weaned (*faṭīm*), who married another man while keeping the child in her custody. The father of the child, her first husband, seems to have transferred the child to his custody against the mother's will, probably on the ground of her marriage to a stranger. The mother wants the child to stay with her or, alternatively, with her mother or her father, the child's maternal grandmother or grandfather.<sup>4</sup> The Mahdī is asked to indicate the authority capable of compelling the father to transfer the child to his mother's custody<sup>5</sup> and, assuming that the child stays with his mother, to opine until when the mother is entitled to keep the child in her custody.<sup>6</sup>

#### *The Mahdī's fatwā*

In his legal opinion, the Mahdī expresses the view that God wants to spare both the father and the mother mutual suffering (*iḍrār*) because of the child. The father's suffering may be caused by the mother's refusal to nurse the child (*lā turḍī' lahu*). In support of this view, the Mahdī cites the following passage from Q. 2:233:

A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child.

The Mahdī rules:

As long as the child's mother is married [to someone other than the child's father], she [inevitably] forfeits (*asqaṭat*) her right against her will

3 See Shalabī, *Aḥkām al-usra*, 736ff.; Zaydān, x, § 10216ff. (definition), 10221ff. (order of entitlement to custody), 10403ff., 10414f.; Hallaq, *Sharī'a*, 287.

4 Maternal grandfather is not qualified for custody.

5 In other words, the Mahdī is asked to clarify who is in charge of executing the *qāḍī*'s decision.

6 *Al-Āthār al-kāmila*, 11, 91. Cf. Layish, *Sharī'a and Custom in Libya*, 155ff., doc. 43.

to suckling (*raḍā'a*). However, in order to avoid harm to the child she should deliver him to the custody of her sister, mother or [maternal] grandmother if she has any of them. In their absence, in order to avoid harm from the child's father (*lā yuḍār al-wālid bi-waladihi*), the child should be delivered to the custody of the father's mother or his sister or [paternal] grandmother, as prescribed in the Qur'ān.<sup>7</sup> In short, mutual agreement between the parents with respect to their child is highly desired; [in its absence,] the [child's] mother should be given preference (*tuqaddam*) [as to custody] because of her "exceeding compassion" (*li-mazīd al-shafaqa*). If [the mother] lacks it [compassion] (*idhā lam yakun lahā*), the right [of custody] is to be transferred to the [female] cognates of the mother (*aqārib al-umm*) because of their proximity to her; in the absence of a female [cognatic] relative (*qarība*), the right is to be transferred to the father's female agnatic relatives (*aqārib al-ab min al-nisā'*)...<sup>8</sup>

In any event, it is incumbent on the father to provide maintenance (*nafaqa*), since the child is related (*mansūb*) to him. Here, again, the Mahdī derives support from the aforementioned Qur'ānic verse [Q. 2:233]: 'The duty of feeding and clothing [nursing mothers] in a seemly manner is upon the father of the child.' Support for the maintenance for nursing women the Mahdī derives from a passage from Q. 65:6: 'Then, if they give suck for you, give them their due payment and consult together in kindness.'<sup>9</sup>

Broadly speaking, the Mahdī's legal opinion is compatible with the conventional *shar'ī* rules of custody including the mother's disqualification on grounds of her remarriage to a stranger. However, the Mahdī is eager to see that the matter of custody is settled by mutual agreement between the parents in order to avoid harm from either of them. The best interest of the child is also taken into consideration within the limits allowed in a legal system based on a dichotomy between agnates and cognates as well as gender division.<sup>10</sup> The Mahdī's legal opinion is based exclusively on the Qur'ān. No reference is made to the legal literature of the schools.

7 The citation in Arabic is a paraphrase of Q. 2:233. The legal opinion begins with an accurate citation of this part of the verse.

8 Such as paternal grandmother. See legal intro. to the document.

9 *Al-Āthār al-kāmila*, 11, 94–95. The citation is from p. 95. For a lithographic version of the document, see Durham, SAD 97/5/17–18.

10 Cf. Layish, "Adaptation of a Jurists' Law to Modern Times," 198–200.



PART 5

*Inheritance and Wills*





## 48. The Mahdī Offers the Widow of a Martyr the Entire Estate as Charity in a Gesture of Generosity

### Legal Introduction

Broadly speaking, the Sunnī law of inheritance consists of two distinct categories of legal heirs: The Qurʾānic heirs who take their prescribed portions (*ahl al-farāʿid*) and the male agnates (*ʿaṣaba*), in a specific order of ascendants and descendants, who take the rest of the estate (the residuary heirs). Only in the absence of blood relatives of these two categories does the inheritance belong to the “outer family” or “cognates” (*dhawū al-arḥām*), relatives that are neither Qurʾānic heirs nor male agnates. The category of the outer family is not recognized by the Mālikī school. Hence, in the absence of legal heirs of the first two categories the Public Treasury (*bayt al-māl*) takes the entire estate as a residuary heir.<sup>1</sup>

Under traditional *sharīʿa*, in the presence of a “descendant” (*walad*), i.e., a child or agnatic grandchild in the descending line, a wife (one of twelve Qurʾānic heirs) takes one-eighth of the estate whereas in the absence of a “descendant,” she takes one-quarter.<sup>2</sup> The Mālikī school does not recognize the doctrine of *radd*, i.e., the right of the Qurʾānic heirs to benefit from the residue of the estate after they have taken their prescribed portions and there are no male agnatic heirs. Under all three of the other Sunnī schools only the wife and the husband, unlike other Qurʾānic heirs, are barred from *radd*.<sup>3</sup>

The Qurʾānic inheritance verses Q. 4:11–12 deal with the prescribed portions of the Qurʾānic heirs, such as a husband and a wife, daughters, parents and brothers in the presence or absence of male agnatic heirs. Thus in the absence of a son, two daughters and more take two-thirds of the estate and one daughter takes one-half. A son converts a daughter into *ʿaṣaba* or residuary heir by virtue of the principle of *taʿṣīb* and takes twice as much as a daughter.<sup>4</sup> These verses were revealed to the Prophet Muḥammad after the widow of the martyr Saʿd b. al-Rabiʿ complained to him that her daughters’ paternal uncle had taken

1 For a detailed, systematic description of the inheritance law, see Coulson, *Succession*. For a concise description, see Hallaq, *Sharīʿa*, 289–95. See also Glossary, s.v. *ahl al-farāʿid*, *ʿaṣaba*, *dhawū al-arḥām*.

2 Zaydān, XI, § 12185ff.; Coulson, *Succession*, 41, 49–51; Peters, “The Law of Succession,” § 0.1.1.3.1.

3 Coulson, *Succession*, 49–51.

4 See Glossary, s.v. *taʿṣīb*.

possession of her husband's entire estate. She further complained that her daughters could not marry unless they had property. According to a *ḥadīth*, the Prophet called Sa'd b. al-Rabi's brother, i.e., the paternal uncle of the daughters, and said to him: "Give Sa'd's two daughters two-thirds of his property, give his wife one-eighth, and you take whatever remains." The case is discussed in *asbāb al-nuzūl*, a genre of literature, which deals with the occasions or circumstances of the revelation of Qur'ānic verses.<sup>5</sup>

### Document

In Document 32, discussed above, Zaynab bint Aḥmad Muḥammad Sharaf, the widow of 'Abdallāh Sharaf, a martyr (*shahīd*) who died in a battle against the "infidel" Turks, complained to the Mahdī that she had been given in marriage against her will. The Mahdī dissolved the marriage and on that occasion referred to the widow's rights in her late husband's estate:

I warn you [i.e., the man who contracted the second marriage] not to interfere with any of [the widow's property] rights (*ḥuqūq*), especially those pertaining to the estate (*tarikā*) of her [late] husband 'Abdallāh Sharaf who was killed as a martyr; we left to her [the entire estate] as a gesture of charity and generosity on our part (*taraknāhā lahā iḥsānan minnā ilayhā*). If you have anything on your mind come to me and we shall consider what is best for you in the two worlds [this world and the Hereafter] (*ṣalāḥ ḥālikum fī 'l-dārayn*).<sup>6</sup> This is incumbent (*lazima*) [upon you] and let it be done with that.<sup>7</sup>

The Mahdī's document does not indicate whether the martyr left any legal heirs other than his widow. Had he left any male agnatic heir [such as children], he would have—after the widow had taken her prescribed Qur'ānic

5 See Glossary, s.v. *asbāb al-nuzūl*. Coulson (*Succession*, 29–30) is of the opinion that "Sa'd's case embodies the essence of the changes introduced under Islam into customary Arabian law of inheritance." Powers (*Qur'an and Ḥadīth*, 189–90, 195) argues that the *asbāb al-nuzūl* do not constitute a reliable source for reconstructing the formation of Islamic law.

6 This is not a case of difference in domicile between Dār al-Islām (Mahdist territory) and Dār al-Ḥarb (Turco-Egyptian territory) as an impediment to inheritance. See Zaydān, XI, § 12162ff.; Coulson, *Succession*, 193.

7 *Al-Āthār al-kāmila*, IV, 473. Cf. *ibid.*, II, 94. For a lithographic version of the document under review, see Durham, SAD 97/5/17, col. i; *Manshūrāt fī 'l-ḥudūd*, 45, 57–58.

portion—exhausted the residue of the estate. Had the widow been the only legal heir, the Public Treasury as a residuary heir would have taken the remainder of the estate. Neither is there any reference in the document to the doctrine of *radd* in the event that the widow either was the only legal heir or there were other Qur'ānic heirs besides her, but no male agnatic heirs; in neither case would the widow have benefited from the *radd*. As mentioned above, according to all schools of law with the exception of the Mālikī school, Qur'ānic heirs other than the widow would have benefited from the *radd*.

As a gesture of gratitude for the martyr's contribution to the cause of the Mahdiyya the Mahdī offered his widow the *entire* estate although as a matter of law she was only entitled to her Qur'ānic portion. Had the widow been the only legal heir this gesture would have been at the expense of the Public Treasury as a residuary heir. Had there been other heirs besides the widow this gesture would have been at their expense.

The circumstance or *sabab* of the revelation of the Qur'ānic verses, that is, the personal appeal to the Prophet by the widow of Sa'd b. al-Rabī' and the latter's decision to divide the estate in a manner that was compatible with the special conditions of the case, could have inspired the Mahdī in the case under review. However, whereas the Prophet's gesture to the widow was transformed into law within the framework of the Qur'ānic inheritance verses, there is no evidence in the Mahdī's documents to the effect that the Mahdī's gesture of generosity became a binding precedent. Although there is no explicit reference to the case of the widow of Sa'd b. al-Rabī' in the Mahdī's decision, there is good reason to believe that the Mahdī was fully aware of the *sabab* of the revelation of the Qur'ānic verses. Hence, the possibility that the Mahdī attempted to create the impression that he was acting under circumstances similar to those of the Prophet in order to justify his deviation from the Qur'ānic verses cannot be ruled out.

## 49. A Widow's Waiting-Period Maintenance Is Taken Out of the Estate before Its Division

### Legal Introduction

A widow's right to maintenance out of the estate during her waiting period is disputed among the schools. According to the Ḥanafīs, she is entitled to neither maintenance (*nafaqa*) nor a dwelling (*suknā*) out of her deceased husband's estate, regardless of whether she is barren (*ḥā'il*)<sup>1</sup> or pregnant (*ḥāmīl*), because the estate belongs to the legal heirs from the moment of its owner's death.

According to the Mālikīs, the widow is entitled to maintenance (but not to a dwelling) out of the estate, provided she was capable of having sexual relations and the marriage was consummated; if she is not capable of having sexual relations she is not entitled, unless her husband had provided her with a dwelling prior to his death.

According to the dominant view in the Shāfi'ī school, the widow is entitled to a dwelling (but not to food or clothing) out of the estate, on the strength of a Prophetic *ḥadīth*.

According to the Ḥanbalīs, if the widow is barren she is entitled to neither a dwelling nor maintenance because the marriage ceases to exist at the moment of the husband's death. If the widow is pregnant, there are two views:

- (1) The widow is entitled to both maintenance and a dwelling out of the estate, as if her husband had divorced her while she was pregnant.
- (2) The widow is entitled to neither maintenance nor a dwelling out of the estate, because the estate belongs to the legal heirs, and they are not required to provide the widow with maintenance or a dwelling during her pregnancy; each heir is expected to cover his/her expenses from his/her share (*naṣīb*) of the estate. This suggests that expenses for maintenance and dwelling should be collected from the share of the widow in the estate or that of the issue of her pregnancy.<sup>2</sup>

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<sup>1</sup> Hava, *al-Frā'id al-durriyya*, 151, col. i.

<sup>2</sup> A child in embryo who is born alive is deemed a legal heir from the time of its conception. For further details, see Coulson, *Succession*, 204ff.

According to Ibn Ḥazm al-Zāhirī (d. 456/1064), the widow is entitled to neither a dwelling nor maintenance out of the estate, or from any legal heir, under any circumstances, during her waiting period.<sup>3</sup>

### Document

In the case under review, Khalīfa 'Alī al-Ḥilū<sup>4</sup> asks the Mahdī for a legal opinion regarding the division of Tātāy's estate among his heirs, some of whom reside outside Mahdist territory. Tātāy's sons died in a battle against the "infidel" Turks. Before they died, they appointed the aforementioned Khalīfa as a testamentary executor (*waṣī*) of the property of all their children, including minor children (i.e., Tātāy's grandchildren), that is, of their shares in the estate as well as rights (*ḥuqūq*) in other property (movables ?) and in "members of their households" (such as slaves or domestics) (*ahālī buyūtihim*).<sup>5</sup> Since it is not clear whether legal heirs who reside in Turco-Egyptian territory are to be treated as booty (*ghanīma*), the Khalīfa asks the Mahdī to clarify the following issues:

1. Regarding the descendants and widows of the martyrs, are both those residing in Mahdist territory and those residing in Turco-Egyptian territory entitled to their shares in the estate?
2. May the waiting-period maintenance of the martyrs' widows be collected out of the estate, that is, before the division of the estate among the heirs?
3. In the event that the widows of the martyrs do not marry after the termination of their waiting period, will they be entitled to maintenance out of the estate?<sup>6</sup>

### The Mahdī's legal opinion

... Since the aforementioned Ikhwān [those who died in the *jihād*] were faithful [to the cause of the Mahdiyya], their descendants (*wuld*) present here [in Mahdist territory in control of] their property, and their wives [i.e., widows] are entitled to whatever is found of their property; they

<sup>3</sup> Zaydān, IX, § 9559ff.

<sup>4</sup> The Mahdī nominated 'Alī b. Muḥammad Ḥilū ('Alī wad Ḥilū) as Khalīfat al-Fārūk ('Umar); see Holt, *The Mahdist State*, 116.

<sup>5</sup> On the slave as property, see above, doc. 1.

<sup>6</sup> *Al-Āthār al-kāmila*, II, 283.

may apportion [Tātāy's] estate among themselves according to the rules of inheritance prescribed in the Qur'ān.

As to the absent [heirs] and the property [in their control outside Mahdist territory], they are to be treated as absentees (*al-ghā'ib... ka'l-ghā'ib*) until God brings all of them together [in Mahdist territory], whereupon [their property will be handled] in accordance with what is written in the Qur'ān and the *sunna* ('*alā ḥasab al-wārid min allāh wa-rasūlihi*).

The [widows' waiting-period] maintenance is to be provided out of the aforementioned property [i.e., Tātāy's estate] (*wa-nafaqatuhum [sic] min dhālika al-māl al-madhkūr*). [However], after the end of their waiting period, they are entitled only to their [portions of the] estate, regardless of whether or not they re-marry.<sup>7</sup>

The Mahdī makes a clear distinction between legal heirs residing in Mahdist territory and those residing in Turco-Egyptian territory. Only the former are entitled to their shares of the estate as prescribed in the Qur'ānic inheritance verses. As for those residing in non-Mahdist territory (the absentees), they are temporarily denied their inheritance rights. The term "absentee" (*ghā'ib*) implies a temporary status (rather than legally nonexistent heirs, that is, those not counted for the purpose of division of the estate) pending repentance and forgiveness by the Mahdī, that is, until they join the Mahdiyya.<sup>8</sup> Taking into account the martyrs' contribution to the cause of the Mahdiyya, the Mahdī demonstrates willingness to forgive the absentees; once they join the Mahdiyya they will be entitled to their *shar'ī* rights in the estate.<sup>9</sup> However, if they fail to repent they will be excluded from inheritance on the grounds of difference of religion (*ikhtilāf al-dīn*) or apostasy. This implies practically that the legal heirs residing in Mahdist territory will receive their respective shares in Tātāy's estate whereas the shares of the absentee heirs will be kept until some future date by the Treasury on their behalf: If they join the Mahdiyya the Treasury

7 *Al-Āthār al-kāmila*, II, 284. For a lithographic version of the *fatwā*, see *Manshūrāt al-aḥkām wa'l-ādāb*, 35–36.

8 *Al-Āthār al-kāmila*, V, 35 (the people of the province of Kassala apply for submission to the Mahdiyya after having approached God repentantly asking for a pledge of security for themselves, their children and their property). Cf. Holt, *The Mahdist State*, 59.

9 Cf. *al-Āthār al-kāmila*, IV, 245 (a man was killed in a Turkish fortified camp in the cause of the Mahdiyya and his property there was confiscated by the Turco-Egyptian commander. The martyr's legal heirs immigrated to Mahdist territory. The Mahdī instructs Khalifa 'Abdallāhi to return the martyr's movable property to his heirs without delay; the martyr's immovable estate in the camp will be returned to the heirs once the camp is captured by the Mahdī's forces).

will release their respective shares to them; if, however, they fail to join the Mahdiyya their shares will be confiscated forever to the Treasury.

The Mahdī rules that during their waiting period the widows of martyrs are entitled to maintenance, *nafaqa* (without specifying the components of the technical term) *out of the estate, before its apportionment among the legal heirs*. In other words, the Mahdī conceives of the waiting-period maintenance as a debt on the estate that legally must be settled like any other debt, prior to the division of the estate among the legal heirs.<sup>10</sup> He does not suggest, however, any specific interim arrangements until division of the estate takes place. He further contends—unlike some of the Sunnī schools—that a widow's right in this regard is not subject to such preconditions as consummation of the marriage or pregnancy. The Mahdī's reform is extremely generous; it contrasts with the view that once the owner of an estate dies his or her property belongs to the legal heirs and each of them takes care of his/her own expenses from his/her own share of the estate. According to the Mahdī, only upon termination of the waiting period is the estate divided among the legal heirs, at which time each widow receives her share of the estate regardless of whether or not she remarries. Again, the Mahdī is eager to secure the widow's economic status, even at the risk that she might marry outside the family and transfer her share in Tātāy's estate to her new family.<sup>11</sup>

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10 Zaydān, XI, § 12007 (the settlement of a debt is first in priority).

11 Cf. Layish, *Women*, 104, 213, 281f., 317; idem, *Shari'a and Custom in Libya*, doc. 53.

## 50. Bequests in Favor of Legal Heirs

### Legal Introduction

Q. 2:180 ordains making bequests in favor of parents and close relatives. Q. 2:240 ordains making bequests in favor of widows. A Prophetic *ḥadīth* recorded in the collections of al-Bukhārī and Muslim provides that:

It is not proper for a Muslim who has something to bequeath to spend [even] two nights unless his written will is at his side (*wa-mā ḥaqqu [i]mra'in muslimin lahu shay'un yūṣī fihi yabītu laylatayn illā wa-waṣīyatuhu maktūbatun 'indahū*).<sup>1</sup>

Q. 4:11–12 and 176 abrogate Q. 2:180 and 240 and assign specific fractional shares to some of these relatives and to the spouse relict. A Prophetic *ḥadīth* imposes two restrictions, quantitative and personal, on bequests: One may not bequeath more than one-third of one's property or make a bequest in favor of a legal heir. The bequest with these two restrictions has established itself in traditional Sunnī law (Shī'ī law allows bequests in favor of legal heirs). Bequests that violate these restrictions are deemed *ultra vires* and hence null and void, unless the legal heirs give their consent after the testator's death.<sup>2</sup>

Most jurists of all schools hold that making a bequest is merely recommended (*mandūba*). There are, however, some jurists who hold that making a bequest is obligatory (*wājiba*).<sup>3</sup> Moreover, Ibn Ḥazm holds that if someone fails to make a bequest before his death, "it is by all means incumbent [on his legal heirs] to give alms (*yataṣaddaq*) on his behalf to the extent that it is feasible (*bi-mā yatayassar*), because the duty of making a bequest is obligatory with no restriction, provided that the legal heirs or the executor (*waṣī*) do not deem it an injury (*ijhāf*) to the legal heirs."<sup>4</sup>

1 Zaydān, x, § 1192 and the references there in al-Bukhārī and Muslim.

2 Peters, "Waṣīyya," 171–72; Coulson, *Succession*, 213–14; Hallaq, *Sharī'a*, 289–92. Cf. Powers, *Qur'an and Ḥadīth*, 143–89.

3 Zaydān, x, § 1196ff.

4 *Ibid.*, x, § 1198.

## Documents

Occasionally the Mahdī cites the aforementioned Prophetic tradition with a minor variation: "A man may not spend two nights unless his written will is laid under his head" as a precaution, since life is short and one might be taken by surprise and die before writing his will. "Delaying [writing a will] is tantamount to cheating and cunning on the part of the man toward himself and lack of appropriate attention to one's own affairs and those of his relatives (*ahl*) and parents (*waladān* [*wālidān*])."<sup>5</sup>

This suggests that the Mahdī does not rule out the possibility of making a bequest in favor of parents and close relatives, as prescribed by Q. 2:180. The Mahdī does not refer at all to abrogation of the bequest verses. It may well be that he regards these verses as valid and effective; in any case, there is no evidence to the contrary.

It seems, however, that making a bequest was not a common practice. In the Mahdī's documents I came across only one will and that was in the context of saint worship. The *fakī* Aḥmad al-Badrī made a bequest (*waṣīyya*) and a memorialization (*mudhākara*) in favor of al-Sayyid al-Ṣiddīq b. al-Shaykh 'Abd al-Bāqī al-Mukāshifī.<sup>6</sup> The bequest is in conformity with the conventional Sunnī rules since it was not made in favor of a legal heir.

5 *Al-Āthār al-kāmila*, 111, 51; *ibid.*, v, 262 (the Mahdī cites the same tradition communicated to him through the Prophet: *warada 'an rasūl allāh*). Cf. Wensinck, *Concordance*, VII, 229, col. i. This tradition is common among the Druze, who acknowledge complete freedom of testation. See Layish, *Druze*, 305ff.

6 *Al-Āthār al-kāmila*, 1, 201.



PART 6

*Homicide and Bodily Harm*





# 51. Intentional Homicide in Turco-Egyptian Territories Entails Compulsory Retribution with No Option of Forgiveness

## Legal Introduction to Docs. 51–52

Broadly speaking, killing or inflicting injury is classified in the *sharī'a* as private law, in the sense that it is based on the principle of private, rather than public, prosecution.<sup>1</sup> All the Sunnī schools share the view that the option of retribution (*qiṣāṣ*),<sup>2</sup> besides the option of settling the blood dispute by financial compensation, exists only with respect to intentional (*'amd*) homicide, though there are differences of opinion among the jurists as to the criterion for establishing intent (such as the lethality of the weapon used). In accidental (*khaṭa'*) homicide, the only option available for settling a blood dispute is by means of blood money (*diya*). All the schools except the Mālikīs recognize an intermediate category of semi-intentional (*shibh 'amd*) homicide, which creates a liability for enhanced blood money (*diya mughallaḥa*). Q. 2:178 encourages renouncing retribution in favor of blood money. The provision regarding the two options is based on Q. 5:45. The choice between the two options is left to the victim's kin, support for which is found in a *ḥadīth*. All the schools except the Mālikīs maintain that the blood avengers or prosecutors (*awliyā' al-dam*) are the victim's legal heirs regardless of their gender (there is a dispute as to whether the spouse relict is included). The Mālikīs, under the impact of pre-Islamic tribal law, maintain that the blood avengers consist of the victim's closest male agnates in terms of class, degree and strength of the blood tie.<sup>3</sup>

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1 For a detailed discussion of homicide in Islamic law according to all schools of law, see Anderson, "Homicide in Islamic Law," 811–28.

2 Q. 2:179 provides: "And there is life for you in retaliation." In other words, retaliation saves life in the sense that the common knowledge that shedding one's blood will not be in vain is likely to deter people from killing. On vengeance as private law in tribal customary law, see Stewart, "Tha'r," 442–43; Layish, *Judean Desert Documents*, doc. 8.

3 There are five classes or *parentelas* of male agnates: (1) the descendants, (2) the ascendants, (3) brothers and their descendants, (4) paternal uncles and their descendants, and (5) paternal great-uncles and their descendants. Agnates of a higher class exclude agnates of a lower class. Within each class, agnates of a higher degree exclude those of a lower degree. Thus, a son excludes a grandson and a father excludes a grandfather. A germane brother excludes a consanguine brother. For further details, see Peters, *Crime*, 44ff. Cf. vengeance groups in tribal law in Stewart, "Tha'r," 442–43.

The Mālikī jurist Ibn ‘Āṣim (d. 1426) maintains that once intentional homicide has been legally established, retaliation is obligatory (*mūjib*) as a basic norm, unless the victim’s kin agree to accept blood money. This view, which is shared by jurists of other schools,<sup>4</sup> emphasizes the punishing aspect of homicide, though the victim’s kin still have the discretion to settle the dispute by blood money. The Mālikīs have a unique category, *qatl ghīla*, killing under grave circumstances, which entails capital punishment regardless of the pardon of the victim’s kin. In other words, this category of killing in terms of consequences is located within the domain of public law.<sup>5</sup>

In several defined cases there is justification for killing or inflicting injury without entailing retaliation or liability for blood money. Such justification exists in a lawful execution, that is, with the approval of the state; when the act is required in the interests of the Muslim community; when the object of the act lacks legal protection (*‘iṣma*), as in the case of apostates (*murtadd*) or unbelievers residing outside the territory of Islam. In intentional homicide and bodily injury, the principle of equivalence (*mumāthala*) between the victim and the perpetrator in terms of religion and legal status (slave as distinguished from free person) must be maintained. The monetary value or blood money of the victim must be the same as or higher than that of the perpetrator to allow retaliation. The blood money of a woman is half that of a man (but a man who kills a Muslim woman is liable to retaliation) and—according to most schools—a Muslim free man cannot be executed for having killed a slave or a *dhimmi* (protected non-Muslim resident). In the case of bodily injury, if the victim chooses to retaliate, the injury he inflicts on the perpetrator’s body must be equal to the injury he, the victim, has suffered; retaliation may be effected only if it is medically possible to inflict exactly the same injury. In such a case, however, the victim may demand blood money.<sup>6</sup>

Nurit Tsafir observes in the *sharī‘a* a tendency to convert parts of the law of homicide from tortious (private) law to penal (public) law. In her view, this is demonstrated by the fact that while under customary law the *‘āqila*, solidarity group, is liable collectively for the payment of blood money in both intentional and accidental homicide, under the *sharī‘a* the *‘āqila* is liable only in accidental, but not intentional, homicide. The distinction between the two

4 See, e.g., al-Shāfi‘ī’s view: “retaliation is compulsory (*wājib*) in itself (*‘aynan*) but the avenger (*walī*) may opt for [blood] money,” in al-Samarqandī, *Tuḥfat al-fuqahā’*, vol. 3, 99; cf. al-Marghīnānī, *al-Hidāya*, vol. 4, 1061–62. I owe these references to Nurit Tsafir.

5 Peters, *Crime*, 39, 43ff.; Zaydān, v, § 4647, 4669, 4688, 4693; Ibn ‘Āṣim, *al-‘Āṣimīyya*, § 1549, 1568ff.; Hallaq, *Sharī‘a*, 320ff.

6 Peters, *Crime*, 38ff., 47–48. On equality in bodily injury, see below, doc. 53.

cases is explained by the assumption that in the latter case the killer deserves punishment while in the former case, the *‘āqila* by paying the blood money releases the perpetrator who caused the accidental homicide from punishment. In other words, the reduction of the *‘āqila*'s liability converts the payment of blood money from compensation to punishment, which actually takes homicide a step closer to the concept of penal law at the expense of private law. Another manifestation of this tendency in the *sharī‘a* is—according to Tsafrir—the restriction of the application of the right of retribution solely to the person of the killer.<sup>7</sup>

### Document

In a proclamation disseminated to *mashā’ikh al-dīn*, emirs, *qāḍīs*, *maqādīm* and their followers all over the country, the Mahdī declared a new policy regarding intentional homicide in Turco-Egyptian territories, to become effective as from the conquest of El Obeid (January 1883):<sup>8</sup>

As to the law pertaining to [intentional] homicide (*qatl*) [before the conquest of El Obeid], there used to be a distinction (*tafṣīl*) in the sense that the victim's prosecutor (*walī al-maqtūl*) had the choice to choose (*mukhayyar*) between two options: Either taking blood money (*diya*) or effecting retribution (*qiṣās*). Since the conquest [of El Obeid] the law applying to intentional homicide (*al-qatl ‘amdan*) [has been changed to the effect] that the only option available is retribution (*yata‘ayyan fīhi al-qiṣās faqaṭ*), nothing else. You are requested to act according to this proclamation.<sup>9</sup>

The denial of the option of monetary compensation while establishing retribution as the only compulsory option in intentional homicide is not compatible with the spirit of Q. 5:45, which recommends forgiveness, though it is compatible with the aforementioned tendency to convert parts of the law of

7 I am indebted to Nurit Tsafrir for these observations. Tsafrir is currently working on the transition of Islamic law from tortious to penal law within the context of *‘āqila*. Cf. Anderson, "Homicide in Islamic Law," 812ff.; Peters, *Crime*, 49–50.

8 Holt, *The Mahdist State*, 64.

9 *Al-Āthār al-kāmila*, 1, 306–7. For a lithographic version of the document, see *Manshūrāt al-aḥkām wa'l-ādāb*, 94. Cf. *Al-Āthār al-kāmila*, 1, 252–53, 300 and fn. 2, 307; al-Muftī, *Niḡām al-qadā’*, 137.

homicide from the domain of tortious (private) law to the domain of penal (public) law. The Mahdī's ruling takes intentional homicide a step further toward converting it into a crime entailing punishment,<sup>10</sup> which is alien to private law.<sup>11</sup> The Mahdī's ruling seems to have been prompted by political considerations—the desire to defend himself against the *'ulamā'* who refuted his claim to mahdīship, called on the people to fulfill their duty of obeying the Ottoman sultan and the “holders of authority,” i.e., the Khedive in Egypt, and slaying the rebels (*khawārij*) against the sultan.<sup>12</sup> By ruling that intentional homicide entailed *compulsory* retribution, as if it were a matter of public criminal rather than a private law, the Mahdī was expecting to deter people from joining forces with the Turco-Egyptian administration and potential rebels in recently conquered territories.

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10 Cf. Zaydān, v, § 4660 (“Retaliation is punishment {*uqūba*} for intentional homicide”).

11 Cf. below, doc. 67.

12 Holt, *The Mahdist State*, 107ff. For further details, see above, 18ff.

## 52. No Punishment for Killing Committed on Turkish Territory if Repentance Is Accepted by the State

The Mahdī rules that Islamic law pertaining to homicide does not apply in Turco-Egyptian territory; people should not be punished for killing committed before the territory was taken over by the Mahdī. He made the following statement:

If people [adherents of the Mahdī] shot someone in Turkish territory and killed him, the requital for the victim rests with God (*fa-jazā' al-maqtūl 'alā allāh*) [i.e., the perpetrator will bear no personal liability]. If the shooting [i.e., killing] took place [in Turkish territory, in which] afterward the Mahdiyya emerged (*ba'da ḥuṣūl al-mahdiyya*) [i.e., established itself], then if the perpetrator repents and his repentance is deemed proper, he will not be punished retroactively for the offense he committed under the Turkish rule (*idhā tāba wa-ḥasunāt tawbatuhu lā yu'ākhdh bi-mā fāta fī zaman al-turk*).<sup>1</sup>

In other words, the Mahdī suggests that killing the enemies in Turkish territory, who are deemed infidels, is justified by the interest of the Muslim community as embodied in the Mahdiyya.

The transfer of the option to pardon from the victim's kin to the state on the basis of the interest of the Muslim community signifies the transition from private to public law.

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<sup>1</sup> *Al-Āthār al-kāmila*, III, 120.

## 53. Compensation for Bodily Injuries, Regardless of their Nature, on the Basis of Slaves' Price where Equivalence in Injury Is Impossible

### Legal Introduction

There are two kinds of financial compensation for bodily injuries:

1. Compensation based on the tariff list (*arsh* or *diya*) for the loss of members, faculties and certain wounds. These are regulated by a number of principles: (1) The full blood money is due for loss of members of which the human body has only one, and half of blood money for members that come in pairs; (2) the compensations are cumulative; (3) the organs for which compensation is sought must have been sound, i.e., without defect. The resort to compensation based on the tariff list applies in cases where retaliation is not possible for some *sharʿī* impediment, such as where the perpetrator is a minor.
2. Compensation for injuries not included in the first category is assessed by experts on the market price of slaves (*hukūmat ʿadl*). This compensation is applied in cases where it is impossible to inflict on the identical member of the perpetrator exactly the same injury that the injured has undergone. For the purpose of assessment the injured is assumed to be a slave. The assessment of the injury takes place after the injured recovers. If the injury diminishes the value of the injured, he is entitled to that part of the full blood money that is proportional to the loss of value (*wa-lahu bi-nisba hādhihi al-naqīṣa min dīyatihī*) of a slave with a similar defect. The jurists are in dispute as to whether the injured is entitled to compensation for the pain he suffered or to reimbursement of the expenses incurred in medical treatment.<sup>1</sup>

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1 Peters, *Crime*, 52–53; Zaydān, v, § 4862ff., 4865, 4890, 4891, 4894. Cf. Tsafirir, “Abū Jaʿfar al-Ṭahāwī,” 138 (a condition pertaining to equality in retaliation and the reference there to al-Kāsānī, *Badāʿī*, vol. 10, 399).

### Document

A tradition attributed to the Mahdī after his death deals with his interpretation of Q. 5:45: "And we prescribed for them therein: The life for the life . . . and for wounds retaliation." According to this tradition, the Mahdī maintains that retaliation in cases of homicide refers to intentional (*ʿamdān*) killing; if, however, the killing is accidental (*khaṭaʿan*) then only blood money (*diya*) is due. As to the Qurʾānic prescription that intentional bodily injury entails retaliation (*waʿl-jurūha qiṣāsun*), which is the main issue of this document, the Mahdī rules:

The assessment of the value of the injured [must take place] after he has fully recovered; only then will attention be given to the loss of the value caused by the injury whereupon he [the injured] will receive the value of the loss [as blood money] because it is impossible to fully exact [on the perpetrator] the same injury [that the injured has undergone] (*bi-anna muqaddar qīmat al-majrūh salīman thumma yunẓar li-naqīṣat al-jurh fa-tuʿtā lahu qīmat al-naqīsa li-annahu lā yumkin fīhi al-istifā*[<sup>2</sup>]).<sup>2</sup>

The tradition does not specify the nature of the injured members or wounds. However, from the concluding part of the tradition one may infer that the Mahdī's preference for the assessed compensation on the basis of the market price of slaves (*ḥukūmat ʿadl*), while on the face of it ignoring altogether the compensation based on the tariff list (*arsh* or *diya*), is inspired by the principle of equivalence (*mumāthala*) in retaliation. In other words, whenever it is impossible to maintain that principle, regardless of the nature of the injured members and wounds, *ḥukūmat ʿadl* should be applied.

The tradition makes no mention of compensation for the pain the injured suffered or reimbursement of the medical expenses.

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<sup>2</sup> *Al-Āthār al-kāmila*, VII, 26–27, 227.

## 54. Warriors Causing Bloodshed to Muslim Civil Population Are Liable to Private Retaliation and State Sanctions

### Legal Introduction

Under traditional doctrine, state agents in charge of public security and enforcement of law, such as governors, military commanders and police officers, are as a rule exempt from criminal or civil liability for their acts. As noted earlier, even with regard to individuals who are not commissioned by the state, under certain circumstances, as in the case of infidels or unbelievers residing outside the territory of Islam or when the interest of the Muslim community so requires, killing or inflicting injury does not entail retaliation or liability for blood money.<sup>1</sup>

### Document

In a proclamation to Mahdist warriors (Aṣṣār), emirs, *maqādīm* and the caliphs nominated by the Mahdī,<sup>2</sup> the latter draws their attention to his instructions, repeated time and again, to stop shooting without taking due precautionary measures while fulfilling their functions within the encampment and its vicinity; he warns them against shooting indiscriminately and thus risking the life and property of Muslim innocent people, such as the warriors' families living in the military camp and the civil administration that is providing the facilities that are gradually undergoing a process of transformation into a permanent settlement<sup>3</sup> "lest damage (*adhiyya*) or bloodshed (*dimā'*) occur to [innocent] Muslims with no legal excuse [justifying the encroachment on] their rights [i.e., protection of life and property] (*bi-ghayr ḥaqqihā*)."<sup>3</sup> The warriors' careless behavior seems to have stirred resentment among the civil population and possibly also claims for retaliation and blood money for the loss of life and property. The Mahdī reminds the warriors and their commanders that compassion (*shafaqa*) is one of the tenets of Islamic faith. It seems that the military commanders and the soldiers failed to comply with the Mahdī's instructions

<sup>1</sup> Cf. Peters, *Crime*, 8ff., 38; see above, legal intro. to docs. 51–53.

<sup>2</sup> See above, 8–9.

<sup>3</sup> See below and Glossary, s.v. *daym*.

and as a result some Muslims were killed. The Mahdī cites the concluding part of Q. 24:63, the moral lesson of which is that Muslims should strictly obey God's commandments lest they be punished severely. He moreover emphasizes that any killing (*qatl al-nafs*)—by which he probably means regardless of whether the killing is intentional or unintentional—is the gravest offense (*akbar al-kabā'ir*). Consequently, the Mahdī announces publicly that

Henceforth anyone shooting a gun (*bunduqiyya*) or a pistol (*ṭabanajīyya*) [*sic*] within the boundaries of a military camp (*daym*) or its vicinity while the army is marching will be flogged a hundred lashes and 'imprisoned tied in chains' (*wa-yuḥbas dūr bi'l-ḥadīd*). If he belongs to the previous immigrants (*muhājirūn*) [to Mahdist territory, i.e., veteran Anṣār], his monetary allocations (*ṣarfīyya*) [from Bayt al-Māl] will be cut off. If he belongs to the other category [those who have only recently joined the Mahdiyya], he will be deprived of his right [of entitlement] (*ḥaqq*) or share (*naṣīb*) in the booty—all this provided his shooting did not hit someone; if it did, he will be punished (*fa-yu'āqab*)—in addition to the aforementioned [penal and monetary sanctions]—in accordance with what is required by *al-sharī'a al-muḥammadiyya* [i.e., he will be bound by the *sharī'* rules pertaining to homicide and bodily harm]. This [warning] is hereby brought to your attention. You are advised not to ignore its content.<sup>4</sup>

The document under review demonstrates the coexistence of public and private law and the Mahdī's authority as a legislator in the domain of discretionary punishments (*ta'zīr*). The Mahdī announces that henceforth military commanders and warriors causing negligent killing, wounds or damage to innocent civil population will not be immune against private claims for retaliation and blood money under the *sharī'a* in spite of the their being commissioned by the state to take care of public security; moreover, the perpetrators will, in addition, be liable to state civil and criminal sanctions. These sanctions are actually acts of statutory legislation for all practical purposes.

4 *Al-Āthār al-kāmila*, II, 16–17. Since the veteran Anṣār received monetary allocations on a regular basis from the Treasury, they were not entitled to any share in the booty, whereas new recruits to the Mahdiyya did not receive any allocations from the Treasury and hence were entitled to shares in the booty resulting from the battles launched by the Mahdī. See Abū Salīm's note, *ibid.*, 17, fn. 3.



PART 7

*Hadd Offenses*





## 55. Literal Interpretation and Application of Q. 5:38

### Legal Introduction to Docs. 55–57

Q. 5:38 provides that a thief, whether a male or a female, is liable to amputation of his hands. According to the dominant view among the jurists, a slave who has committed a crime of theft is also liable to amputation.<sup>1</sup> The Qur'ānic verse does not provide any definition for the theft. The jurists (with some differences of opinion) define theft entailing *ḥadd* punishment in a very restricted manner. There are preconditions for the amputation to take place, such as the object taken away in secrecy (*khafā'* or *sitr*), minimal value of the stolen object (*niṣāb*), its being of licit character, the perpetrator owing no part of the property and the property not being entrusted to him, the property being kept under guard (*ḥirz*) by its owner, the perpetrator cannot claim a good defense against a charge of theft on grounds of uncertainty or doubt (*shubha*). If any of the preconditions is missing, amputation is averted but the perpetrator is liable to discretionary punishment (*ta'zīr*). Theft is a matter of public prosecution. Once a sentence has been handed down by the *qāḍī* the amputation must be carried out.

Theft is also treated as tort within the domain of private law. If the stolen goods are returned to the lawful owner before the case is brought to court, the amputation can be prevented (on the basis of a Prophetic *ḥadīth*). If the stolen object still exists, it must be returned to its owner. If it has been destroyed, the jurists differ as to whether the victim may demand both damages and application of amputation or either of them. However, once the victim reports the theft to the authorities, he cannot pardon the defendant and prevent the amputation (provided the charge has been established).<sup>2</sup>

The jurists are in dispute regarding collective theft; some of them, including Abū Ḥanīfa and al-Shāfi'ī, hold that only in the event that the share (*ḥiṣṣa*) of *each* member in the stolen object constitutes a *niṣāb* will amputation be

<sup>1</sup> Zaydān, v, § 4365.

<sup>2</sup> Peters, *Crime*, 55–57; Zaydān, v, § 4371ff. (preconditions for theft), 4429ff. (prevention of amputation), 4439ff. (return of stolen object), 4451ff. (no amputation in raid); Ibn 'Āṣim, *al-Āṣimīyya*, § 1538ff.; Heffening, "Sariqa," 62–63; Hallaq, *Sharī'a*, 316ff.; Anderson, *Africa*, 374.

inflicted; otherwise, no amputation is to be inflicted. Other jurists, including Aḥmad ibn Ḥanbal and Mālik, hold that if the *entire* stolen object constitutes a *niṣāb*, the hands of *all* the members of the group are to be amputated.<sup>3</sup>

### Documents

In the course of an abortive conspiracy against the Turco-Egyptian administration in the vicinity of Daym al-Zubayr (in the province of Baḥr al-Ghazāl) Anṣār migrated to Mahdist territory and left behind their property. People residing under Turco-Egyptian administration took over of the absentees' property, and the Mahdī seems to have regarded the issue as a case of sheer theft.<sup>4</sup> The Mahdī commissioned Karamallāh Shaykh Muḥammad Kurqusāwī as emir in charge of a military force to cope with the challenge and instructed him to compensate the Anṣār from the Public Treasury. On that occasion he announced his new policy regarding punishment for crimes of theft: "It is hereby confirmed that [henceforth] the hand of the thief is to be amputated" (*wa-qaṭ' yad al-sāriq muwaffaq*). No preconditions for amputation were mentioned in the announcement.<sup>5</sup> We have some evidence that the Mahdī's failure to refer to the *shar'ī* preconditions for amputation as elaborated by the jurists, was not a result of a coincidence; rather, he intentionally adhered to the literal reading of the Qur'ānic verse 5:38 in order to promote the moral behavior of his adherents. Thus, in one case, the Mahdī insisted on amputation of the thief's hand regardless of the value of the object stolen:

Anyone who steals from you an object regardless of whether it is of insignificance or of significant value (*qalla aw kathura*) [i.e., regardless of *niṣāb*], you must amputate his hand so that on the day of resurrection he will rise handless wandering about randomly (*yatakhabbat*) the same way as a human being (*al-'abd*) wanders about in this world after having suffered calamity by Satan.<sup>6</sup>

3 Zaydān, v, § 4437.

4 As distinct from highway robbery; see below, doc. 60.

5 *Al-Āthār al-kāmila*, 111, 129; Holt, *The Mahdist State*, 79–80.

6 *Al-Āthār al-kāmila*, v, 418–19. Ibn 'Āṣim, too, does not mention any preconditions for amputation though he does mention *shubha* that averts punishment; see Ibn 'Āṣim, *al-Āṣimiyya*, § 1544.

It is highly likely that the Mahdī was inspired by Prophetic traditions that disregard the value of the object stolen as a precondition for amputation.<sup>7</sup>

Interestingly, in a *fatwā* issued by the Qāḍī al-Islām, he clearly deviates from the Mahdī's view regarding the *niṣāb*, though not with respect to *ḥirz*, as a precondition for the application of amputation:

Regarding the thief, it is by all means necessary to abide by the [doctrine] of the minimal value of the stolen object required for amputation though no legal account should be taken as to whether the theft took place within or outside the safe keeping area of the [stolen] object (*wa-ammā al-sāriq fa-lā budda min murā'āt al-niṣāb fi 'l-sariqa wa-lā 'ibra bi-kawn al-sariqa min ḥirz aw khārij al-ḥirz*).<sup>8</sup>

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<sup>7</sup> See, e.g., [http://library.islamweb.net/newlibrary/display\\_book.php?idfrom=2379&idto=2379&bk\\_no=17&ID=2320](http://library.islamweb.net/newlibrary/display_book.php?idfrom=2379&idto=2379&bk_no=17&ID=2320) (last accessed 1 October 2015).

<sup>8</sup> *Manshūrāt al-Mahdiyya*, 207.

## 56. A Witness to Theft Failing to Report the Crime Is Liable to Amputation

The Mahdī extends the punishment of amputation to people who witness a crime of theft without reporting it to the authorities; they are deemed offenders:

Anyone who witnesses a theft, a drink of wine or an unlawful intercourse and conceals [the offense from the authorities], his concealment is deemed mercy on them [i.e., an attempt to avert punishment from the perpetrators];<sup>1</sup> hence [the concealing witness] will be legally regarded as if he committed the offense himself (*wa-man satara 'alā sariqa ra'āhā aw shurb khamar aw zināfa-katmuhu ra'fa 'alayhim fa-huwa ka'l-fā'il*) [implying thereby that he will be liable to the punishment that the specific offense entails].<sup>2</sup>

Needless to say, deeming a witness to theft that fails to report the offense an active perpetrator is a far-reaching ruling. The reason for the Mahdī's harsh policy seems to be a result of his determination to put an end to a widespread phenomenon of theft from the booty among the warriors. On other occasions the Mahdī ruled on thefts from booty discretionary punishment, excommunication and capital punishments.<sup>3</sup>

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1 Cf. Zaydān, v, § 44429ff., (advocacy {*shafā'a*} averting *ḥadd* punishment on theft).

2 *Al-Āthār al-kāmila*, v, 419. Regarding style, cf. a Prophetic *ḥadīth* in <http://sunnah.com/adab/1/30> (last accessed 5 October 2015). See, on the other hand, Shaked, *The Life of the Sudanese Mahdī*, 59 (line 20 in al-Kurdufānī, *Sa'adat al-mustahdī*).

3 See below, docs. 58–59.

## 57. Personal Liability for the Theft: No Collective Amputation of Hands

The document under review deals with both the tortious and the criminal aspects of theft. The Mahdī is informed that three bulls have been stolen collectively by a group of thieves. He instructs his agent in the region to see to it that the bulls are restored to the legal owner. He writes to him:

We do not know who among the group did the evil. However, it is well known that the *sharī'a* punishes the individual for his own sin not for that committed by his brother (*lā ta'khudh aḥadan illā bi-dhātihi fa-lā yu'khadh aḥad bi-dhanb akh*).

The Mahdī warns that if the thieves decline to return the stolen cattle to the owner the hand of the law will reach them and they will be exposed to the discontent (*sakhat*) of God and His messenger in the two worlds (*fī 'l-dārayn*), implying thereby that they will be punished in this world and the Hereafter, in the latter case by ethical sanctions.<sup>1</sup> The Mahdī contents himself with ruling that there is no collective punishment in Islam and that everyone is punished for his own crime implying thereby that no amputation is to be inflicted on any of the members of the group.

We noted earlier that the jurists are in dispute regarding collective theft; some of them hold that only in the case that the share (*ḥiṣṣa*) of *each* member in the stolen object constitutes a *niṣāb* will amputation be inflicted, while others hold that *niṣāb* of the *entire* stolen object suffices for the amputation of the hands of *all* the members of the group. Since, however, the Mahdī does not recognize either the *niṣāb* as a precondition for amputation or the concept of collective punishment, it is hardly surprising that there is no reference in his ruling to such questions as the share of each member of the group in the stolen cattle and whether each share constitutes a *niṣāb*.

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<sup>1</sup> *Al-Āthār al-kāmila*, 1, 201.

## 58. Stealing from Booty Is Tantamount to Disbelief and Apostasy

### Documents

The Mahdī was very much concerned about people concealing booty instead of delivering it to the Bayt al-Māl. He would urge them to repent to God and deliver the booty kept unlawfully in their possession, especially weapons and horses, to the Anṣār and warriors who needed them desperately<sup>1</sup> or, alternatively, return its equivalent (*qīma*), otherwise God will not forgive them.<sup>2</sup> Moreover, the Mahdī deemed stealing from booty an offense that is graver than theft within the *sharʿī* definition entailing *ḥadd* punishment; he deemed it an act of disbelief and apostasy that entails excommunication and capital punishment.

In a proclamation to all his *umarāʾ*, *maqāḍīm* and their followers, the Mahdī clarifies:

Let it be known by all of you that anyone concealing anything of the booty, even if a few items, cannot be deemed one of our Companions; rather he is one of the Companions of Satan (*iblis*) and Antichrist (*dajjāl*).<sup>3</sup>

The Mahdī is alluding here to the fact that stealing booty is tantamount to apostasy, the punishment for which is excommunication and execution.<sup>4</sup>

On another occasion the Mahdī requests that people refrain from laying their hands on the booty of Khartoum and wait until they receive their lawful shares when the formal division of the booty takes place. He addresses also those who witness theft of booty and do not notify the authorities. Such behavior implies negation of the principle of trust in God (*al-tawakkul ʿalā allāh*) and keeping away from the illumination of the *sunna* and Qurʾān.<sup>5</sup> From the strictly technical point of view stealing from booty is not theft since booty is deemed public, rather than private, property. This may explain why the Mahdī

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1 *Al-Āthār al-kāmila*, III, 101.

2 *Ibid.*, v, 422.

3 *Ibid.*, II, 18.

4 See below, doc. 59.

5 *Al-Āthār al-kāmila*, VI, 231–32.

resorts to the domain of disbelief in his effort to preserve the integrity of booty intact until its formal division among the legal recipients.<sup>6</sup>

The Mahdī regards “concealing booty (*ikhfā' al-ghanā'im*) [from the Public Treasury] as one of the most serious forms of theft (*sariqa*).”<sup>7</sup> In the case under review the Mahdī resorts to discretionary punishments:

Anyone taking something without permission from the treasurer (*amīn*) of Bayt al-Māl or with no legitimate cause justifying such permission commits an aggression (*ta'addā*), wrong (*ẓulm*), for which he is liable to exemplary punishment (*nakāl*) and wrath (*ghaḍb*); the thing taken by him will be restored [to the Treasury], and he will be imprisoned (*sajn*) and flogged (*ḍarb*). [The perpetrator] casts on himself disgrace (*hatk sharaf*).<sup>8</sup>

However, since the property of Bayt al-Māl belongs to the entire community, every Muslim has a share in it; moreover, warriors participating in *jihād* are entitled to their portions of the booty. Hence, taking property from Bayt al-Māl or concealing booty from it is not deemed theft according to its narrow *sharī* definition, as elaborated by the jurists.<sup>9</sup> This may perhaps explain why the Mahdī suggests imposing on perpetrators such discretionary punishments as imprisonment and lashes rather than the *ḥadd* punishment of amputation.

The inconsistency in terms of gravity of the punishments imposed by the Mahdī on stealing from or the concealing of booty—capital punishment besides discretionary punishments—may be due to the specific circumstances of each case brought before the Mahdī. Thus one would expect that stealing weapons and horses, which are desperately needed for launching a war, would entail harsher punishments than concealing insignificant items from booty.

6 See, below, doc. 76.

7 *Al-Āthār al-kāmila*, II, 53.

8 *Ibid.*, II, 66.

9 See legal intro. to doc. 55.

## 59. Theft from Booty Entails Excommunication and Capital Punishment

The Mahdī threatens to take such radical sanctions against those who unlawfully possess booty as excommunication from the Mahdist community and capital punishment. He cites Q. 3:161, which according to commentators deals with booty,<sup>1</sup> to the effect that people deceiving in matters pertaining to booty are accountable on the Day of Resurrection, as well as a Prophetic message communicated to him by inspiration (*akhbaranī al-nabiyy*) that states: “whoever takes something from the booty is liable to execution (*fa-innahu yuqtal*).”<sup>2</sup>

The death penalty decreed by the Mahdī for theft of booty has no basis in the textual sources. Excommunication from the community is tantamount to denouncing someone as an apostate, and apostasy seems to provide the legal justification for the death penalty.<sup>3</sup>

In a tradition attributed to the Mahdī after his death he is reported to have said:

The Prophet, God bless him and grant him salvation, said: ‘No repentance (*tawba*) is acceptable from a thief who steals from booty unless he returns the stolen object; if he fails in doing so, then when the theft is discovered he will be liable to capital punishment (*fa-jazā’uhu al-qatl*) in this world, and to hell (*nār*) in the Hereafter . . . It is not allowed to conceal (*kitmān*) someone who steals from booty . . . If the thief from the booty is one of our Aṣḥāb [i.e., the Mahdī’s close adherents]<sup>4</sup> and he fails to return [what he took from the booty] we hereby warn him that he will be dissociated from the Aṣḥāb (*ṣuḥba*) [i.e., the Mahdist community] in this world and the Hereafter. . . .’<sup>5</sup>

Dissociation from the Mahdist community implies apostasy, with all the legal consequences that entails, including capital punishment.

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1 See Rubin, *The Qur’an*, 61.

2 *Al-Āthār al-kāmila*, I, 270–71. Also in *Manshūrāt al-Mahdiyya*, 42–43. On Prophetic message by means of *ilhām*, see above, 37ff.

3 See below, legal intro. to docs. 69–72.

4 See Glossary, s.v. *aṣḥāb*, *ṣaḥāba*.

5 *Al-Āthār al-kāmila*, VII, 199.

## 60. The Mahdī Forgives a Highway Robber Who Repents and Acknowledges Crime after Being Captured

### Legal Introduction

On the basis of Q. 5:33–34, Muslim jurists (with some differences among the schools) have developed a doctrine of banditry or highway robbery (*qaṭ‘ al-ṭarīq, ḥirāba*). The minimum element of this crime is a holdup, by means of drawn weapons coupled with the intention to frighten people traveling on a public road and prevent them from reaching their destiny. Aggravating circumstances consist of taking the victims’ property and/or killing them. Q. 5:33 provides four penalties for banditry: capital punishment, crucifixion, cross-amputation or banishment. The jurists accorded each of the penalties to the gravity of the crime. Thus taking property without causing homicide entails amputation of opposite hand and foot. The bandits’ repentance *before* they are captured and brought to justice precludes their prosecution, but it does not exempt them from criminal liability for other crimes committed during the attack such as homicide and wounding. No waiver of punishment is permitted even when next of kin and the owners of property taken by bandits waive their right of retaliation and property rights, respectively; the Imām too may not waive on their behalf because it has to do with God’s claim (*ḥaqq allāh*). Banditry is conceived of as a collective crime; all bandits are liable for the aggravating act committed by one of them. Most schools hold that claims pertaining to public-criminal law precede private-civil claims (*ḥaqq ādamī*).<sup>1</sup>

Some jurists of various schools maintain that prosecution of the offender may be averted even if repentance takes place *after* his capture and submission to justice. The jurists draw analogy from a thief’s repentance as prescribed in Q. 5:39: ‘But whoso repenteth after his wrongdoing and amendeth, lo! Allāh will relent toward him. Lo! Allāh is Forgiving, Merciful.’ Some jurists resort to a Prophetic *ḥadīth* the moral effect of which is: ‘Anyone repenting on a sin

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1 Peters, *Crime*, 57–59; Zaydān, v, § 4465 (definition), 4509f. (the crimes and their respective punishments), 4511 (adjustment of punishment to gravity of crime), 4512 (no waiver of capital punishment and crucifixion), 4515 (amputation of opposite hand and foot), 4522 (collective punishment), 4523 (no waiver of punishment).

(*dhanb*) committed by him is deemed as if he has never committed the sin,' implying thereby that he is not liable to punishment.<sup>2</sup>

### Document

Maḥmūd 'Abd al-Qādir, the military governor in El Obeid (and the Maḥdī's uncle),<sup>3</sup> informed the Maḥdī that Abū Khamsamī'a, a leader of group of bandits had been "first captured and subsequently brought to justice before you whereupon he acknowledged, of his own free will" (*wa-qubiḍa 'alayhi awwalan wa-thumma atā ilaykum wa-aqarra tā'i'an*) having committed an offense of banditry, probably of taking the victims' property for which he was liable to cross-amputation of hand and foot. The Maḥdī responded by letting the military governor know that he "hereby forgives the bandit (*fa-qad 'afawnā 'anhu*) having regard to the Qur'ānic verse [5:34] which provides that '[Bandits are liable for punishment] save those who repent before ye overpower them,' and to the Qur'ānic verse [27:11] which provides: 'Save him who hath done wrong and afterward hath changed evil for good.'

Hence the Maḥdī instructs the military governor to provide Abū Khamsamī'a with an *amān*, safe-conduct (*amminūhu*), complete the procedure of forgiveness and let him return to his kin in an attempt to cause them to immigrate to Maḥdist territory, thus enabling the leader of the bandits to become an equal member of the Anṣār. In return for the forgiveness this leader is expected to abide by the terms agreed upon with him concerning his pledge (*ta'ahhud*) to the victory of Islam and to fulfill the command of God and His Messenger in accordance with the *al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar*.<sup>4</sup>

The Maḥdī concludes his letter to the military governor by the following announcement:

Given that the aforementioned [Abū Khamsamī'a] has been forgiven, it is incumbent upon you to warn him that once he returns to his location he should inform all former members of the group of bandits (*muḥāribūn*) dating to the period prior [to the forgiveness] that they should abandon their previous practice [of banditry] and repent for the highway robbery (*yatūbū min al-muḥāraba wa-qat' al-ṭariq*). After this warning, anyone proceeding [with highway robbery], once he is captured and brought

2 Zaydān, v, § 4536ff.

3 Holt, *The Maḥdist State*, 101.

4 See below, doc. 87.

[to justice], he will be sentenced in accordance with what God prescribes [in Q. 33–34]: ‘have their hands and feet cut off,’ as prescribed by Allāh and his Messenger. Anyone committing [highway robbery] may blame no one but oneself for the disgrace in this world and the torment in the Hereafter.<sup>5</sup>

In the case under review the Mahdī forgives the leader of the bandits who was captured, brought to justice *before* repentance had taken place, in deviation from the instructions prescribed in Q. 5:33–34. The Mahdī, however, does not seek relief for his deviation from the Qurʾān in *fiqh* doctrine as elaborated by some of the schools; he refers to Q. 5:34 which insists that repentance should take place *before* capture and to Q. 27:11 which treats repentance in general terms regardless of the sequence of events. The Mahdī seems to have been inspired by political considerations, namely, the use of forgiveness as a mechanism for consolidating his position in the region.<sup>6</sup>

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5 *Al-Āthār al-kāmila*, III, 38–39. For a lithographic version of the document, see *Manshūrāt al-aḥkām wa'l-ādāb*, 68.

6 On another occasion people complained to the Mahdī: “they [the bandits] had robbed [people] on their way in an attempt to prevent them from immigrating [to Mahdist territory].” The Mahdī instructed his agent to stop the aggression against the people and return them their property. No sanctions were taken against the bandits; see *al-Āthār al-kāmila*, III, 198. On a similar occasion the Mahdī declined from making a charge against the bandits; he instructed to have the robbed money returned to the victims and threatened that if the robbers did not comply, they would have neither *amān* nor *ʿahd*; see *al-Āthār al-kāmila*, I, 230–31.

## 61. Stoning for *Muḥṣan*, Lashes for *Bikr* and Discretionary Punishment for Entering into Privacy with a Stranger

### Legal Introduction to Docs. 61–65

Under the *sharī'a*, sexual intercourse is legitimate only within a valid marriage contract or between a master and his slave girl. Q. 24:2 provides a hundred lashes on both the woman and the man who indulge in unlawful sexual intercourse (*al-zāniya wa'l-zānī*), while a *ḥadīth* provides the sanction of lapidation on the parties to such an act. The Qur'ānic verse is interpreted as referring to fornication, that is, voluntary unlawful intercourse of an unmarried man with an unmarried woman, whereas the *ḥadīth* is interpreted as referring to adultery, that is, voluntary sexual intercourse of a married person with a woman other than his wife or a woman who is married to another. For proving unlawful sexual intercourse four eyewitnesses are required, and most schools hold that a confession must be made four times in four different court sessions by analogy to the requirement of four witnesses. According to all schools, except the Ḥanafī, the penalty of a hundred lashes is followed by banishment for a period of one year for both men and women. According to the Mālikīs, only males are liable to banishment, whereas the other schools require that a close male relative accompany banished women. The fixed penalties depend on the immunity (*iḥṣān*) of the parties. *Muḥṣan* is an adult free person who has previously consummated a valid marriage. If he or she commits a crime of adultery, he or she is liable to capital punishment by stoning. The Ḥanafīs and the Ḥanbalīs require that for the penalty of stoning to be applicable, both parties must share the status of *iḥṣān*. *Shubha*, uncertainty or doubt, averts the application of the fixed punishments.<sup>1</sup>

A divorced woman, regardless of whether by revocable (*rajīʿ*) or irrevocable (*bāʿin*) repudiation, of a consummated marriage may not marry another man before terminating her waiting period in order to verify the judicial paternity

1 Peters, *Crime*, 15, 59–62; Zaydān, v, § 4009ff. (*shubha*), 4053ff., 4084ff. (witnesses), 4159ff. (banishment), 4170ff. (*iḥṣān*); Hallaq, *Sharī'a*, 312, 313.

in the event that the woman is pregnant at the time of the divorce. In irrevocable divorce the marriage is terminated on the spot; in revocable divorce the divorce becomes effective only after termination of the waiting period (*'idda*), during which the husband may reinstate his wife without concluding a new marriage contract.<sup>2</sup>

### Document

In a general proclamation to his followers, the Mahdī announces the legal sanctions due to those engaged in unlawful sexual intercourse:

A man who has committed unlawful sexual intercourse (*zānin*) is liable to lapidation (*yurjam*) if [at the time of committing the offense] he was "immune" (*muḥṣan*); if, however, he was virgin (*bikr*), he is liable to lashes (*yujlad*). If a woman enters into privacy (*istakhalat*) with a stranger (*ajnabī*) [i.e., someone who is not her *maḥram*, a relative within the forbidden degrees for marriage] causing thereby people to fear [that she might have sexual intercourse with him] (*yukhshā 'alayhā minhu*), both the woman and her partner] are liable to discretionary punishment [i.e., *ta'zīr*] (*fa-yu'addabāni bi'l-[i]jtihād*), because if a young man (*shābb*) and a young woman (*shābba*) get together (*talāqayā*) [in privacy], Satan will [inevitably] dominate them (*walāhumā*); the circumstances by all means require the presence of a mediator between them [to avoid privacy].<sup>3</sup>

The Mahdī's distinction between *muḥṣan* and *bikr* is compatible with conventional *fiqh* as elaborated by the jurists. The distinction is made with respect to the man but it may be assumed that the Mahdī intended both sexes. The sanctions are compatible with those prescribed by the *ḥadīth* and the Qur'ān, respectively, though the Mahdī does not specify the number of lashes. Judging by his reference to privacy it may well be that he intended to leave the number of lashes to the *qāḍī's* discretion.

<sup>2</sup> See above, legal intro. to doc. 39; Glossary, s.v. *ṭalāq bā'in*, *ṭalāq raj'ī*.

<sup>3</sup> *Al-Āthār al-kāmila*, v, 419; see Glossary, s.v. *muḥṣan*. Cf. *yukhshā 'alayhā al-'anat*; see Layish, *Sharī'a and Custom in Libya*, doc. 30.

The ruling with respect to privacy (*khalwa*) is presented from the point of view of the woman's chastity; privacy creates a situation whereby the reputation of the woman (and her agnates) is inevitably doomed to be damaged. The mere privacy of a woman and a stranger that is not related to her within the forbidden degrees for marriage creates a presumption of unlawful sexual intercourse. Both parties to privacy are liable to a sanction. In the case under review, the Mahdī does not distinguish between *muḥṣan* and *bikr* because the parties were a young man (*shābb*) and a young woman (*shābba*). Hence he does not posit privacy on a par with *zinā* in the full sense of the term. This may explain why he leaves the matter of rendering sanction to the discretion of the *qāḍī* in accordance with the specific circumstances of the case. In other words, we are dealing here with a discretionary, rather than *ḥadd*, punishment (*ta'zīr*). The term *ijtihād* in this context should be conceived of not as an attempt to derive a new rule from the textual sources; rather, it should be assessed within its elementary connotation as an effort to find the right solution to a given situation on the basis of the personal discretion of the *qāḍī* before whom the matter will be brought.

## 62. Marrying Another Man during Waiting Period from Divorcing Husband Entails Lapidation

### Document

In a tradition attributed to the Mahdī after his death, it is reported: “A woman of a legally consummated marriage (*muḥṣana*)<sup>1</sup> married another man during the waiting period from her [divorcing] husband (*fa-tazawwajat bi-rajul fī ‘iddat zawjihā*).” The matter was brought before the Mahdī; he sentenced her to death penalty by lapidation (*fa-ḥakama . . . bi-rajmihā*), and the sentence was carried out.<sup>2</sup> The Mahdī treats the matter as a simple case of adultery.

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1 See Glossary, s.v. *muḥṣan*.

2 *Al-Āthār al-kāmila*, VII, 135, 231.

## 63. Hundred Lashes on Women Exposing Themselves to Men

### Documents

In a proclamation to his followers throughout the country, the Mahdī launches, on the basis of Q. 24:30–31 and a *ḥadīth*, a public campaign in an attempt to preserve women’s chastity under a threat that failing to comply with his instructions will entail the Qur’ānic punishment of a hundred lashes due on fornication. The Mahdī is concerned by the fact that

Most people today do not proceed beyond denying access (*ḥajr*) [to women, i.e., keeping them in seclusion] and assuming a veil (*ḥijāb*)<sup>1</sup> [that precludes people from seeing a woman’s face]. Hence, it is obligatory (*wajaba*) that all unmarried women (*lā ‘iṣma lahum wa-lahunna*) be kept in seclusion and prohibited from walking on roads where men are walking; [their chastity cannot be protected] save by their seclusion... [A Prophetic *ḥadīth*] commands: ‘separate between men and females.’ [The Prophet] asked his daughter Fāṭima: ‘What is the most desired status for a woman?’ And she responded by saying ‘That neither a man sees her nor she sees a man.’ [The Prophet] was amazed by this answer and said [citing Q. 3:34]: ‘They were descendants one of another’ (*dhurriyyatan ba‘duhā min ba‘din*).<sup>2</sup>

All this implies [according to the Mahdī] that all women—except for a minor girl that is not [as yet] desired (*lā tushtahā*) [by men], or an old woman that is not [any longer] an object of temptation (*mutajālla*)<sup>3</sup> and has [already] ceased to be desired by men (*arab*); moreover, even female

1 Lane, *Lexicon*, I, 516, col. i. On *ḥijāb* in the Qur’ān and as a social custom, see Chelhod, “Ḥidjāb.”

2 In this context the verse seems to imply that the separation between the sexes should proceed in future generations. The combination of the Prophetic *ḥadīth* with Q. 3:34 within this context appears in the collection of traditions related to the Mahdī. See *al-Āthār al-kāmila*, VII, 21. The *ḥadīth* has been located in *Qūt al-qulūb* by Abū Ṭālib al-Makkī (a Ṣūfī text of the 10th century. I owe this observation to Eliyahu Stern). See <http://www.islamport.com/w/akh/Web/239/730.htm> (last accessed: 15 February 2015).

3 See, e.g., *Ḥāshiyat al-Dasūqī ‘alā al-Sharḥ al-kabīr* [by Aḥmad al-Dardīr] by Muḥammad b. Aḥmad b. ‘Arafa al-Dasūqī al-Mālikī (d. 1230/1814) in [http://library.islamweb.net/newlibrary/display\\_book.php?flag=1&bk\\_no=13&ID=599](http://library.islamweb.net/newlibrary/display_book.php?flag=1&bk_no=13&ID=599) (last accessed 15 February 2015).

slaves (*imā'*) and young females (*shabāb*) are prohibited from going out to the market and [public] roads; [they may walk only] in places where there are no men. A woman that [nevertheless] goes out [to public places] after [the expiry of a] three-day warning (*tanbīh*) is liable to a hundred lashes as a reprimand (*zajr*) to her and as a warning (*'ibra*) to others.

Emirs, inspectors of the markets (*ḥākim al-sūq*),<sup>4</sup> *qāḍīs* and the *khalīfas* nominated by the Mahdī<sup>5</sup> throughout the country were instructed to see to it that the campaign is strictly carried out.<sup>6</sup>

As noted above, the sanction of a hundred lashes is a *ḥadd* punishment for the crime of unlawful intercourse based on Q. 24:2. The norm of a hundred lashes indicates that the Mahdī deems the exposure of women to the public tantamount in terms of gravity to unlawful intercourse of a virgin (*bikr*). He enlists the Qur'ān and the *ḥadīth* to his campaign to protect women's chastity.

4 On *ḥākim al-sūq*, see below, doc. 86.

5 The reference is to 'Abdallāhi b. Muḥammad, 'Alī b. Muḥammad Ḥilū, and Muḥammad Sharīf b. Ḥāmid; see above, 9.

6 *Al-Āthār al-kāmila*, II, 263–64. Cf. *ibid.*, III, 71 (women with minor children who have no servants to help them, may wander around provided they raise no concern that they might cause temptation {*lā yukhshā minhunna fitna*}); *ibid.*, III, 113 (the Mahdī rules that it is prohibited to shake hands with a woman unless a marriage contract has been performed and *ṣadāq* paid); *ibid.*, I, 281 (wives and daughters should be prevented from grazing freely with the animals in an empty space or mixing with alien men); Holt, *The Mahdist State*, 130–31.

## 64. A Woman Exposing Her Face or Speaking Aloud Is Liable to 27 Lashes

### Document

The Mahdī calls upon his adherents to protect women's chastity by properly dressing them and concealing their bodies and faces. He quotes to this end Q. 33:59 instructing the Prophet: "Tell thy wives and thy daughters and the women of the believers to draw their cloaks round them (when they go abroad)." Moreover, the Mahdī urges his adherents who come across a woman "exposing her head [in public] or abandoning her veil (*tārika li-sitrihā*) to beat her (*fa-[i]dribūhā*)."<sup>1</sup>

On another occasion, the Mahdī instructs his adherents to see to it that women

Do not walk out [of their homes] unless there is some *sharʿī* necessity nor raise their voice in public (*jahran*); men may not hear their voices unless behind a veil (*hijāb*) . . . Women should conceal themselves behind their clothes . . . A woman exposing her head [face] even for one moment as well as a woman speaking aloud [i.e., a woman's voice is indecent] should be beaten 27 lashes.<sup>2</sup>

27 lashes do not constitute a Qurʾānic *ḥadd*. It seems that the Mahdī does not deem the offense serious enough to merit a hundred lashes as in the case of fornication. On the face of it, the penalty can be defined as a discretionary punishment (*taʿzīr*). However, as will be demonstrated below (doc. 88), this specific punishment has become an established norm anchored in the Mahdī's decrees that may be regarded as acts of legislation for all practical purposes and consequently has ceased to be a discretionary punishment. This norm was innovated by the Mahdī in an attempt to deter such offenses as a man talking to a strange woman (*ajnabiyya*) who is neither related to him by marriage nor prohibited for some legal reason (*wa-laysa bi-ʿāqidin ʿalayhā wa-lā li-amr sharʿī*).<sup>3</sup>

1 *Al-Āthār al-kāmila*, 1, 276.

2 *Ibid.*, 1, 302–3.

3 *Ibid.*, 1, 303–4. For a lithographic version of the document, see Durham, *SAD*, 97/5/87.

Holt maintains that the severity of the Mahdī's legislation should not be dismissed as mere blind conservatism; the emergence of the Mahdiyya alongside the war against Turco-Egyptians had shaken the basis of the social order to the point that the Mahdī had to have recourse to these measures in an attempt to maintain discipline among the large tribal forces upon which he depended. Moreover, the Baqqāra women in the west enjoyed greater freedom than did the riverain women. Holt estimates that the harsh legislation should be seen as an attempt to provide greater security to the women. Mustafa maintains that the Mahdī's harsh legislation was intended to restore the religious beliefs that were severely shaken under "Jāhiliyya," that is, Turkish rule, and to consolidate a fully pledged Islamic state under the Mahdī's moral standards.<sup>4</sup>

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4 Holt, *The Mahdist State*, 130–31; Mustafa, *The Common Law*, 40.

## 65. Kidnapping a Free Married Woman and Marrying Her Entails Imprisonment and Lashes

### Documents

As already noted, the matrimonial ties of spouses separated as between Mahdist and non-Mahdist territory were severed during the war launched between the Mahdī and the Turco-Egyptian forces.<sup>1</sup> There were cases where Anṣār kidnapped women who had been left behind in Turco-Egyptian territory, in order to marry them. The Mahdī, on his part, was determined to enable the reunion of the separated spouses once the women immigrated to Mahdist territory and joined the Mahdiyya. To this end the Mahdī imposed punishments of imprisonment and lashes on the kidnapers and prohibited the Anṣār from marrying these women by denouncing such marriages as crimes entailing God's punishments associated by implication with *zinā* and *ḥadd* punishment. The Mahdī was also anxious to enable unmarried women who had been kidnapped by Anṣār to immigrate to the Mahdist state and marry appropriate men in terms of equality in marriage (*kafā'a*).<sup>2</sup>

The Mahdī was informed that some of the Anṣār disobeyed his order that

[Free] married women in the military camps are to be returned (*tusal-lam*) to their husbands [residing in Mahdist territory] and that no one may challenge a husband with respect to his wife.

Some of the Anṣār claimed that the Mahdī's order was practically not binding (*lā yulzam al-'amal bihi*). In several cases the Anṣār kidnapped married women and kept them in custody (*ḥabasahā*), in an attempt to disconnect them from their husbands and marry them. Some of the women sought shelter with the Mahdī and appealed for help (*mustaghītha*).

The Mahdī ruled that anyone holding a woman without being legally entrusted with her as a reliable guardian (*amīn*), protecting her and bringing her to a trustworthy authority such as the treasurer of Bayt al-Māl, should be condemned for his misbehavior, disobedience to God and the disgrace caused to the honor of the wife (*yahtikūn al-ḥarīm*). Whereupon the Mahdī instructed Khalifa 'Abdallāhi, other caliphs and the righteous Anṣār to look into the

1 See above, docs. 37–38.

2 See Glossary, s.v. *kafā'a*.

matter and impose on the perpetrators a month's imprisonment and forty lashes (*sawt*) to be inflicted on them every day as expiation (*kaḥḥāra*) and as a lesson (*'ibra*) to others.<sup>3</sup>

Surely, we are not dealing here with a *ḥadd* punishment; rather, it is a statutory punishment for the abduction of women in circumstances that might have caused damage to their reputation in terms of chastity.

In a letter to the *'umalā'*, *nuqabā'* and the Anṣār in the military camps (*ḍaym*) of al-Hawā and al-Sharq dealing with the issue of separated spouses that have reunited in Mahdist territory, the Mahdī instructs as follows:

1. Regarding all the wives, who are free women (*ḥurrāt*), that have left military camps [in Turco-Egyptian territory] in order to rejoin their husbands, it is forbidden to anyone of the Aṣḥāb and Aḥzāb to marry them; these wives must be transmitted (*tusallam*) to their husbands.
2. Unmarried women that reside in military camps should be entrusted to the protection of a guardian within the prohibited degrees for marriage (*walī maḥram*), with a liability (*b'it-ḍamān*) [for safeguarding their chastity] or, in his absence, of a reliable man (*amin*) or someone entrusted to this end (*mu'taman*) who will see to their welfare until God decides their future (*ḥukm allāh fihinna*) [i.e., their proper marriage by means of their guardian].
3. The Anṣār are hereby warned not to marry any of these women from the *qayāqir*, whether a minor or an adult, a virgin or a non-virgin. Anyone infringing this prohibition will be deemed a perpetrator (*jānin*) and hence liable to God's judgment (*ḥukm allāh*).<sup>4</sup>

The terms "perpetrator" and "God's decision" are meant to create an association with a crime against God's right (*ḥaqq allāh*) that entails a *ḥadd* punishment. The Mahdī does not refer to what seems to be a crime of abduction (*khatf*),<sup>5</sup> probably because the Anṣār took hold of the women in good faith believing them to be captives of war or legitimate booty. The Anṣār may have further thought that the matrimonial units of the married women had been automatically rescinded on the grounds of difference of religion. The Mahdī insists on pointing out that the women were free (*ḥurrāt*), rather than captive, at the time of the abduction, to clarify that their marriage bonds had not been rescinded on the grounds of difference of religion.

3 *Al-Āthār al-kāmila*, IV, 340–41.

4 *Ibid.*, IV, 286–87.

5 On abduction, see glossary, s.v. *khatf*. Cf. Layish, *Judean Desert Documents*, doc. 10.

## 66. Sodomy Entails Decapitation by Sword

### Legal Introduction

Most schools equate homosexual intercourse (with penetration) (*liwāt*) to unlawful heterosexual intercourse entailing capital punishment. There are differences of opinion as to punishment: The Mālikī and some Shāfi'ī and Ḥanbalī jurists hold that the penalty is death, either by stoning (Mālikī school), the sword (some Shāfi'ī and Ḥanbalī jurists) or, at the discretion of the court, by killing the culprit in the usual manner with a sword, stoning, or throwing him from a (high) wall. Some of the Shāfi'ī and Ḥanbalī scholars hold that the death penalty by stoning applies only to the active partner or to anyone who is *muḥṣan*, and that otherwise the punishment is flogging in combination with banishment. The Mālikīs hold that both parties are liable to lapidation regardless of the *iḥṣān*. Abū Ḥanīfa (unlike Abū Yūsuf) and the Zāhirīs hold that the *ḥadd* punishment is not applicable in a case of homosexual intercourse; it entails only discretionary punishment (*ta'zīr*).<sup>1</sup>

### Documents

In a letter to Khalīfa 'Abdallāhi, his successor, the Mahdī writes:

Since the aforementioned accused [one of the Aṣḥāb] has admitted—in my [the Mahdī's] presence and the presence of the truly noble Aṣḥāb—having committed this detestable (*munkar*) act, he can by no means obtain atonement (*kaffāra*) before God except by amputation of his head (*qaṭ' al-ra's*) [that is, by sword] and by departing from the transitory life opting for the only abode left [i.e., the Hereafter]... As to the second [accused], he should be exempt from *ḥadd* penalty because he is a minor (*ṣaghīr*) who has not attained majority (*bulūgh*) and sexual puberty (*ḥulum*) and because of the absence of [four eye] witnesses (*bayyina*);<sup>2</sup> let him repent (*tawba*) sincerely... and let his father discipline him (*wal-yu'addibhu*).<sup>3</sup>

1 Peters, *Crime*, 61, 62, 86; Zaydān, v, § 3986, 3988–92. Cf. Hallaq, *Sharī'a*, 315.

2 Four eyewitnesses are required to prove a charge of adultery. See legal intro. to doc. 61.

3 *Al-Āthār al-kāmila*, II, 333–34.

The document defines the offense as a “detestable (*munkar*) act” without specifying its essence. Abū Salīm explains in his caption to the document that it deals with “a moral offense” (*jarīma akhlāqīyya*) without elaborating any further. The Mahdī deems the application of capital punishment with respect to the active party in the crime the only option for purging the sin. The execution by sword does not indicate that the Mahdī was inspired by any particular school of law. The punishment was to be carried out by Aṣḥāb probably as state agents. The minor boy, the object of the crime is exempt from punishment on account of his being a minor and in the absence of eyewitnesses to the crime. The first accused is convicted on the basis of his confession, making the evidence of witnesses redundant. No mention is made of the number of the confessions. The Mahdī cites a Qur’ānic verse that urges Muslims to obey God (Q. 13:29) and another verse that warns them against the punishment awaiting those preferring the vain pleasures of this world (Q. 10:7–8), in an attempt to draw moral support for his judgment.

A tradition attributed to the Mahdī on the same issue is more specific. The charge against the active accused is sodomite crime (*fi’l qawm Lūt*) with a minor boy who has not reached majority (*bulūgh*). The accused has acknowledged the charge in the presence of the Mahdī and some of the Aṣḥāb. The Mahdī decides to decapitate him in order to chasten him (*taṭhīran lahu*). The boy “the object [of the crime]” (*al-maf’ūl bihi*) is exempt from punishment because he has not reached majority. According to the transmitter of the tradition, when the Aṣḥāb arrived in order to execute the perpetrator (*tawajjahū li-qatlihi*) the Mahdī “rendered the judgment in a proclamation” (*ḥarrara lahum manshūran*) probably in an attempt to publicly clarify that the execution was to be carried out on the basis of legitimate legal proceedings.<sup>4</sup>

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4 Ibid., VII, 129 (the transmitter notes that he still keeps the original *manshūr* with him).

## 67. A Husband Sentenced Successively to *Ḥadd* Punishment for *Qadhf* and to Compulsory Retribution for Killing His Wife's Alleged Harasser

### Legal Introduction

Q. 24:4–5 provides that if a person accuses a woman of unlawful intercourse without supporting his accusation by four eyewitnesses, he is liable to the punishment of *qadhf*, which is 80 lashes and deprivation of the right to testify. According to most schools, for the penalty to be applied, the woman whose chastity is the object of the defamation must be, in addition to fulfilling the usual conditions of *iḥṣān* applicable to the parties of illicit sex, a person who has never been convicted of unlawful sexual intercourse or been subjected to the *li'ān* procedure.<sup>1</sup> The punishment of *qadhf* belongs to both private and public law. The Ḥanafī doctrine gives more weight to the public aspect of the offense. Hence it maintains that the injured party cannot withdraw his claim for punishment. The Mālikī doctrine, on the other hand, allows the injured party to withdraw his claim provided he is motivated by the protection of his own reputation; hence after his death his heirs may demand punishment if the allegation of *zinā* also affects their honor.<sup>2</sup>

The husband may kill with impunity a person in the very act of committing a sexual crime (*flagrante delicto*) against his wife provided the killing is the only way to stop the continuation of the crime.<sup>3</sup> The schools differ regarding the evidence that the defendant must produce in order for this defense to be accepted. The Ḥanafīs and the Shāfi'īs require that the act of the unlawful sexual intercourse be proven by four male eyewitnesses (*bayyina*), whereas the other schools accept the testimony of two witnesses on the assumption that the witnesses are required as a defense against a charge of homicide.<sup>4</sup> The subject is discussed intensively in the *ḥadīth*.<sup>5</sup> The majority of jurists maintain

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1 *Li'ān* is a procedure, by means of which a husband can deny the paternity of a child born in wedlock. For further details, see Glossary, s.v. *li'ān*.

2 Peters, *Crime*, 63–64; Zaydān, v, § 4329, 4334f.

3 One may kill a man in the very act of committing a crime on two grounds: defense of one's honor and the necessity of halting a crime in progress; Peters, *Crime*, 26.

4 *Ibid.*, 26–27.

5 E.g., Zaydān, v, § 4207, 4209.

that four witnesses or, in their absence, the acknowledgment of the harasser's heirs are indispensable conditions for the husband to be exempt from retribution (*qiṣāṣ*). The dominant view among the jurists is that the husband may kill the harasser (as well as his own wife if she collaborated with the harasser). If there are witnesses to the adultery or, in their absence, if the harasser's blood avenger (*walī* [*al-dam*]),<sup>6</sup> acknowledges the adultery, the husband is liable to neither retribution nor payment of blood money (*diya*); if the avenger does not acknowledge but there is circumstantial evidence (*qarā'in*) as to the adultery, such as the husband finding the harasser in his own house with his kin "on one mattress" (*fīrāsh*) or in a "situation arousing suspicion" (*wad' murīb*), the husband is exempt from retribution but he must pay blood money because of the doubt (*shubha*) as to the option of retribution.<sup>7</sup>

### Document

A man complained to a commander of an encampment (*ṣāhib al-ḥilla, al-ḥākim*) that someone was "treating friendly" (*mukhālil*) (*sic*), i.e., wooing, the man's wife. The commander warned the wife's "deceiver" (*mukhāwin*), i.e., the alleged harasser, that he would take legal action against him if he continued to enter the complainant's matrimonial home. The alleged harasser seems to have ignored the warning. Subsequently the husband came across the alleged harasser in his home in what he claimed to be a state of privacy (*khalā'*) with his wife. No witnesses were present at the scene. According to the husband's version, he was furious because of the repeated intrusions, and when the harasser began insulting him he could not bear the provocation any longer and killed him. The Mahdī, who was asked for a legal opinion on the case, ruled as follows:

6 All the schools except the Mālikīs hold that the blood avengers are the victim's heirs regardless of their sex. Some of the schools exclude the spouse relict. According to the Mālikī school, which adopted the pre-Islamic tribal blood-money group, the avengers are the victim's closest male agnates in the order of inheritance: the descendants, the ascendants, the brothers and their descendants, the paternal uncles and their descendants, the paternal great-uncles and their descendants (agnates of a higher class exclude those of a lower class). See Peters, *Crime*, 44ff.; Stewart, "Tha'r."

7 Zaydān, v, § 4210–11, 4220. The entire procedure takes place in court and the *qādī's* discretion plays a vital role.

Since [the husband] did not prove [that an act of unlawful sexual intercourse (*zinā*) had taken place] by means of eyewitnesses, [his accusation against the victim] is nothing but (*mujarrad*) an unfounded accusation of unlawful intercourse (*qadhf*) with respect to the aforementioned man [the victim that allegedly] had insulted him (*sabbahu*). Hence it is imperative [that the husband] be punished [successively] by the sanction prescribed for unproven accusation of *zinā* and be executed [by way of retribution] for killing a person (*fa-yalzam ḥadd al-qadhf wa'l-qatl 'an al-raqaba allatī qatalahā*) in accordance with what God, be He Exalted, says [in Q. 24:4]: 'And those who accuse honourable women but bring not four witnesses,' etc.<sup>8</sup>

The Mahdī's legal opinion deals with two different issues, the first belonging to public law and the second to private law. The punishment on *qadhf* is a matter of public law. The husband could not provide eyewitnesses to the act of adultery. The Mahdī declined to regard the mere entrance of the alleged harasser into the husband's home as tantamount to a state of privacy (*khalā'*) with the wife. Nor did he regard the commander's warning to take legal action against the alleged intruder if the latter continued to enter into the complainant's matrimonial home as a circumstantial evidence to the charge that an illegal intercourse or privacy between the victim and the wife had taken place. Hence the Mahdī convicted the husband to the *ḥadd al-qadhf*, which is 80 lashes.<sup>9</sup> The Mahdī's conviction and punishment on the charge of *qadhf* is compatible with the literal reading of Q. 24:4–5.

Regarding homicide, the Mahdī might have been impressed by the husband's acknowledgment to have killed the intruder as a result of the latter's provocation, but in the absence of a proven charge of illegal intercourse between the victim and the wife the option that the husband was entitled to benefit from the good defense of having killed with impunity the alleged harasser in the very act of committing the crime (*flagrante delicto*) was irrelevant. The Mahdī decided that the killing husband *must* be executed by way of retribution (*qiṣāṣ*) without leaving the victim's blood avenger the option of blood money (*diya*). The compulsory retribution is in line with another case

8 *Al-Āthār al-kāmila*, III, 110, 112. For a lithographic version of the document, see *Manshūrāt al-ahkām wa'l-ādāb*, 10.

9 On an earlier occasion, in an attempt to elevate the moralistic behavior of his followers, the Mahdī added 20 lashes to the punishment of *qadhf*, thus fixing the punishment at 100 lashes. After the Mahdiyya "consolidated" (*istaqarrat*) itself, the Mahdī restored the Prophet's original legal norm (*ḥukm*), which is 80 lashes; see *al-Āthār al-kāmila*, II, 93–94.

discussed earlier according to which the only option available in intentional homicide is retribution. The denial of the option of monetary compensation is not compatible with the spirit of Q. 5:45 which commends forgiveness. As already observed in the former case, there is a tendency to convert parts of Islamic law of homicide from tortious (private) law to penal (public) law.<sup>10</sup> The expansion of the public domain at the expense of private domain seems to have been in line with the Mahdi's political and social agenda, that is, to secure law and order in the country.<sup>11</sup>

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10 See above, doc. 51.

11 For a discussion on the transition of Islamic law from tortious to penal law within the context of *āqila*, see above, doc. 51 and the reference there to Nurit Tsafir's work.

## 68. Consumption of Wine and Use of Tobacco Entails *Hadd* and Statutory Punishments

### Legal Introduction

Drinking wine (*khamr*) is prohibited in Q. 5:90. A Prophetic *ḥadīth* prescribes 40 lashes for this offense. ‘Umar increased the sanction from 40 to 80 lashes. All the schools, with the exception of the Shāfi‘īs, follow the example of ‘Umar. According to Prophetic *ḥadīths*, any intoxicating liquor (*muskir*) is deemed wine and hence prohibited (*ḥarām*) by the textual sources and the consensus (*ijmā‘*) of the jurists. There is, however, some controversy about drinking alcoholic beverages other than wine. Most schools put them on a par with wine and hold that their consumption in whatever quantities is punishable; but the Ḥanafīs hold that if a person drinks these beverages, he will be punished only if he actually gets intoxicated.<sup>1</sup>

Some jurists hold that anything that drives one out of his mind even with no intoxication (*mā yughayyib al-‘aql bi-lā iskārah*) entails discretionary punishment (*ta‘zīr*). Thus drugs such as hashish (*ḥashīsha*) and opium are prohibited.<sup>2</sup>

### Documents

Broadly speaking, the Mahdī is anxious to uproot, by means of a variety of sanctions, such practices as wine drinking (in its broad definition) and the use of tobacco. In a proclamation addressed to the region of al-Qaḍārīf in the eastern district of Sudan, renowned as a center for growing tobacco, the Mahdī extends the definition of wine to tobacco and adds statutory punishments to the conventional penalties imposed on offenses prohibited by the Qur’ān:

Anyone drinking wine (*khamr*) and using tobacco (*tunbāk*) is liable to [the penalty of] eighty lashes (*sawṭ*); if he is not deterred [from repeating the offense], he will be imprisoned (*ḥubīsa*) and restrained (*zujira*). Still,

1 Peters, *Crime*, 64; Zaydān, v, § 4337–38, 4350. Cf. Anderson, *Africa*, 375.

2 Zaydān, v, § 4340–42, 4351, 4353–54.

if he is not deterred, he may by all means be disciplined by confiscating part of his property (*māl*); and if this too does not deter him, it is necessary to confiscate all his property as [if it were] booty (*taghnīm*) for the sake of personal restraint (*zajr*) and as a moral lesson (*'ibra*) to others.<sup>3</sup>

Moreover, the Mahdī extends the definition of wine (*khamr*) to “all kinds of intoxicating liquor” (*al-khamr wa-jamr al-muskirāt*),<sup>4</sup> prohibits the use of tobacco and imposes the penalty of 80 lashes on the use of all kinds of intoxicating liquor as well as on the use of tobacco. On one occasion, the Mahdī reports that the Prophet has instructed him: “Anyone using tobacco will be punished (*yu'addab*) until he dies or reverts (*yarji*).”<sup>5</sup> According to a tradition attributed to the Mahdī he is reported to have said that corruption (*fasād*) caused by tobacco is worse than that caused by wine.<sup>6</sup> On another occasion the Mahdī opined that the penalty for tobacco use should be heavier than that for wine drinking—100 compared to 80 lashes.<sup>7</sup>

According to al-Muftī, the Mahdī announced by means of proclamations a tariff of penalties for tobacco use and wine drinking with the effect of formal statutes (*manshūrāt qawā'id al-aḥkām*): tobacco use entails 80 lashes (and the tobacco is to be destroyed by fire); transaction in tobacco entails 27 lashes; wine drinking “even if by a suck of needle [i.e., injection]” entails 80 lashes and a seven-day imprisonment.<sup>8</sup> With the exception of 80 lashes, which is a *ḥadd* punishment (based on a *ḥadīth*), all other sanctions are innovative statutory punishments. The penalties of imprisonment and confiscation of property as if it were booty, were innovated by the Mahdī in an attempt to deter potential offenders. The punishment of 100 lashes, originally designed for illicit intercourse committed by a non-*muḥṣan*, was extended to tobacco use anchored in formal statutes. The Mahdī usually reserved the sanction of confiscation for “infidels,” that is, people in Turco-Egyptian territory, who for one reason

3 *Al-Āthār al-kāmila*, IV, 109; Holt, *The Mahdist State*, 166–67.

4 *Al-Āthār al-kāmila*, VI, 260 (*khuṭba*).

5 *Ibid.*, V, 418. On Prophetic message by means of *ilhām*, see above, 37ff.

6 *Al-Āthār al-kāmila*, VII, 133.

7 *Ibid.*, VII, 254.

8 Al-Muftī, *Niẓām al-qaḍā'*, 136. Cf. *al-Āthār al-kāmila*, V, 339 (anyone drinking wine is liable to 80 lashes and five-day imprisonment. The punishment for using tobacco is 80 lashes and one-month imprisonment). Cf. doc. 88 (80 lashes and seven-day imprisonment).

or another declined to join the Mahdiyya. These penalties demonstrate the Mahdī's policy of adjusting public law to the current requirements of the state.<sup>9</sup>

In a tradition attributed to the Mahdī, he is reported to have said that Q. 16:67, which commends drinking the fruits of the date palm and grapes, had been revealed before the prohibition of wine drinking, to be abrogated (*mansūkhā*) later by Q. 5:90. Alternatively, the Mahdī suggests an interpretation according to which the reference in Q. 16:67 is to those who drink wine in order to become intoxicated by the love (*ḥubb*) of God.<sup>10</sup>

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- 9 *Al-Āthār al-kāmila*, v, 318 (elimination of reprehensible {*munkarāt*} practices such as wine drinking and the use of tobacco). Cf. *ibid.*, vi, 250 ("Do not desire *shurb al-samm* {toxin} *wa'l-ḥanḏal* {colocynth}!").
- 10 *Ibid.*, vii, 56–57. Cf. Rubin, *Qur'ān*, 220, fn. 67. Intoxication by the love of God is a common motive in the Ṣūfī literature. See, e.g., Stern, "On Mystical Vision and the Protection from Sin," 157–59, and the references to the sources mentioned in the footnotes; *idem*, *al-Qushayrī's Thought*, 173, fn. 18 and the sources mentioned there.

## 69. Apostasy in Fundamental Principles: Denial of the Mahdī's Mahdship

### Legal Introduction to Docs. 69–72

In classical *fiqh*, apostasy (*ridḍa*, *irtidād*) applies to Muslims who renounce Islam by words or conduct. The renouncement is demonstrated by rejecting fundamental principles of faith by using meaningful expressions concerning the belief in God and His prophet, deeds, such as withdrawal from Islam, and omission, such as negligence in the application of the *sharī'a*. The crime entails capital punishment based on a Prophetic *ḥadīth*. Most of the schools deem the penalty a *ḥadd* punishment. The Ḥanafīs justify the penalty on the strength of the apostates' potential as combatants against Islam. Hence only male apostates are liable to execution whereas female apostates are liable to imprisonment until they repent. All the schools grant the apostate a three-day delay for repentance, failing which the execution is carried out. The Ḥanafīs hold that the delay is not mandatory.<sup>1</sup>

### Documents

Apostasy in the case of Sudan refers in the first place to those who had “converted,” that is, joined the Mahdiyya but later rebelled and withdrew. The Mahdī extends the legal category of apostasy to cover his legal opponents who have not “converted,” that is, have not recognized his mahdship. These consist of two groups: the Turco-Egyptian administration and Sudanese people who prefer to sit on the fence rather than take a decisive move toward the Mahdiyya. The Mahdī resorts to the policy of accusing his political opponents of apostasy (*takfīr*) as a justification for launching *jihād* against the Turco-Egyptian regime

1 Peters, *Crime*, 64–65; Zaydān, § 4572 (definition), 4573ff. (preconditions for apostasy), 4585ff. (apostasy in fundamental principles), 4588ff. (apostasy in expressions), 4592f. (apostasy in deeds), 4594f. (apostasy in omissions), 4596 (negligence of the *sharī'a*), 4597ff. (execution), 4606ff. (repentance before execution); Friedmann, *Tolerance and Coercion*, 130–31, 134, 157ff. (*tawba*), 135ff. (female apostate), 143–44 (repeated apostasy), 149ff. (*sabb al-rasūl*); Schacht, *Introduction*, 131.

and as a means to persuade Sudanese people under that regime to acknowledge his mahdiship. In his view, ignoring his mahdiship is tantamount to rejecting fundamental principles of faith. In territories taken over by the Mahdī, there is ample evidence of Sudanese people being enslaved and their property expropriated to the Public Treasury, of marriage unions being dissolved on grounds of difference of religion and of private transactions being ignored. At the same time, the Mahdī is fully aware of the consequences of taking this policy to extremes. I have not come across a single instance in his documents of females being executed or imprisoned by the state on grounds of apostasy. On the contrary, as will be demonstrated below, the Mahdī is concerned to offer “apostates” forgiveness (*ʿafw*) and a pledge of security (*amān*) against a charge of apostasy and against accountability for breaking the covenant (*ʿahd*) with him once they repent (*tawba*), which practically implies acknowledgment of his mahdiship and emigrating to the Mahdist state. When this happens they may expect slaves to be manumitted and their property restored.

Needless to say, from a purely orthodox *sharʿī* point of view the Turks and the Egyptians were legitimate Muslims in every respect.<sup>2</sup> As may be expected, the *ʿulamāʾ* criticized the Mahdī for declaring anyone denying his mahdiship to be an apostate; they rejected the contention that belief in the Mahdī was one of the tenets (*arkān*) of Islam.<sup>3</sup> The Mahdī bases his decisions and legal opinions on the Qurʾān and the *sunna*. No resort is made to doctrines of any of the schools of law.

What follows is a sample of proclamations, legal opinions, Prophetic messages and traditions attributed to the Mahdī demonstrating his policy of *takfīr*, arranged according to subject matter.

The Prophet Muḥammad informs the Mahdī by means of a communication:

[I was informed by the Prophet:] Whoever doubts (*shakka*) my mahdiship is deemed one that blasphemes (*kafāra*) God and His Messenger. He repeated [the statement] three times and provoked me (*ḥarraḍanī*) to launch a war against the Turks who oppose and deny my mahdiship. Those who follow them by opposing me should be fought against in a holy war (*jihād*). He [the Prophet] designates them as infidels (*kuffār*);

2 Abū Salīm, in contradiction of the Mahdī’s view, is of the opinion that it is not permissible, from a *sharʿī* point of view, to pronounce declared Muslims performing the “five tenets [of Islam]” (*al-arkān al-khamsa*) as infidels (*takfīr*) and to spill their blood just because they oppose the Mahdī; Abū Salīm, *al-Ḥaraka al-fikriyya*, 77.

3 Cf. Ibrāhīm, *al-Ṣirāʾ*, 33.

moreover, they are the extremist infidels because they try to switch off the light of Allāh.<sup>4</sup>

On another occasion, the Mahdī urges his adherents: "Slay the Turks wherever you find them" in compliance with what is prescribed in Q. 9:5. Within its historical context, this verse implies that killing Turks is mandatory, since as infidels they are not protected by a pledge of security (*amān*) nor do they benefit from the option of forgiveness (*'afw*).<sup>5</sup>

In a letter to the people of Fez the Mahdī writes:

Anyone doubting (*shakka*) my mahdishop is deemed blaspheming (*kafara*) God and his Messenger; he, his children and property will be treated as booty (*ghanīma*) on behalf of the Muslims.<sup>6</sup>

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4 *Al-Āthār al-kāmila*, I, 338. Cf. *ibid.*, I, 78. Abū Salīm notes that a colloquy of this kind served the Mahdī as justification for denouncing his opponents as infidels (*takfīr*); (*ibid.*, fn.1); *ibid.*, III, 101 ("Anyone opposing us [the Mahdī] has no share in Islam" (*wa-man khālafanā fa-laysa lahu min al-islām naṣīb*); *ibid.*, v, 457; *ibid.*, v, 247 (in an address to the 'ulamā' of Egypt, the Mahdī writes: "The Turks are infidels"); Holt, *The Mahdist State*, 59; Hunwick, "Takfīr," 122; Trimmingham, *Islam in the Sudan*, 153, 155–56.

5 *Al-Āthār al-kāmila*, III, 327. Cf. *ibid.*, II, 281; Rubin, *The Qur'ān*, Q. 9:5.

6 *Al-Āthār al-kāmila*, IV, 482–83; *ibid.*, v, 223 (the same citation).

## 70. Apostasy in Deeds: Withdrawal from Islam and *Sharīʿa*

For some time the al-Ḥawāzma tribe participated in the *jihād* on the Mahdī's side. Then on several occasions the tribe rebelled and withdrew from the Mahdist territory. Their leader Ḍayf Allāh Nuwāy was detained. The Mahdī accuses the tribesmen of apostasy (*irtidād*), urges them to repent and offers them forgiveness:

If you believe in God and the Hereafter, withdraw from the position you have adopted and turn repentantly to God (*anībū ilā allāh*) and emigrate to our side as soon as you receive this letter. Let it be known that we have already forgiven all of you; the entirety of your property (*amwāl*) is kept with us in trust (*amāna*). Once you join us we shall restore you [the property] and grant you forgiveness (*ṣafḥ*) in accordance with what is prescribed by Allāh . . . [in Q. 5:13]: 'Thou will not cease to discover treachery from all save a few of them. But bear with them and pardon them.' . . . Be attentive to this negligence and get rid from this muddy polytheism (*shirk*) and join us promptly with sincere repentance (*tawba*) and regret (*nadam*) before you will be liable to the threats (*wa'īd*) prescribed [by God] . . . [in Q.2:217:] 'And whoso becometh a renegade and dieth in his disbelief such are they whose works have fallen both in this world and the Hereafter.' . . . If you decline [to rejoin the Mahdiyya] you will fall into God's hands wherever you are. But if you respond by listening and obedience, you will be entitled to a pledge of security (*amān*) by God, His Messenger and mine [the Mahdī's].<sup>1</sup>

In a proclamation addressed to famous shaykhs and Anṣār al-Dīn, the Mahdī writes that the Turks are

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1 *Al-Āthār al-kāmila*, v, 33–34 (the citation is from p. 34); *ibid.*, iv, 458–60 (the Mahdī accuses the governor of Dongola of having violated the covenant {*ahd*} with him. He reproaches him for fighting against the Muslims and assisting the infidels and threatens to put him in prison unless he repents and be forgiven “the same way Yūsuf forgave his brothers”); *ibid.*, v, 35 (the people of the province of Kassala seek submission {*taslīm*} to the Mahdiyya; they have approached God repentantly asking for a pledge of security for themselves, their children and property), 158. Cf. Holt, *The Mahdist State*, 59, 202–3.

Apostates (*murtaddūn*) from Islam since a long time ago; they have been fighting God and his Messenger; they have modified what had been prescribed by God and his Messenger in religion [i.e., the Qurʾān and Prophetic *sunna*]. . . . They have been ruling and adjudicating (*ḥakamū*) in accordance with a law other than that descended by God, the Lord of the Universe, and have imposed on [the Muslim subjects] the poll-tax that [originally] God had prescribed [in the Qurʾān] for Jews, Christians and the polytheists (*mushrikūn*).<sup>2</sup>

The Mahdī deems the Ottoman legislation, which started prior to his manifestation, a negative innovation that is tantamount to apostasy in deeds with all the legal consequences involved.

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<sup>2</sup> *Al-Āthār al-kāmila*, 1, 108 (the reference is to statutory legislation, *qānūns*, concerning taxes). Cf. Zaydān, v, § 4596.

## 71. Apostasy in Omission: Failure to Immigrate to Mahdist Territory

In a proclamation to the entire community, the Mahdī instructs the people either to fight the Turks in *jihād* or immigrate to Mahdist territory with their property and family:

Anyone that does not chose one of the two options and pretends to approve the Mahdiyya and submit oneself (*muslim*) to it is deemed a hypocrite (*munāfiq*) [in religion] and the enemy of God and hence should be totally dissociated [from the *umma*] (*laysa minnā wa-lā nahnu minhu*) [implying practically being denounced as an apostate].<sup>1</sup>

The Qur'ānic commentators identify the hypocrites (*munāfiqūn*) with a group of the Arab population of Medina led by 'Abdallāh ibn Ubbay. They ostensibly accepted Islam merely out of beneficial considerations while in actual fact they opposed the Prophet and the immigrants who had come along with him from Mecca and settled in Medina. Moreover, it is further argued that they had joined the believers at the battle of Uḥud only to withdraw later out of fear.<sup>2</sup> The Mahdī makes the association with the group through the keyword *munāfiq* in an attempt to extend the category of apostates to cover his contemporary *munāfiqūn*. The Mahdī warns that obedience to the Turks is tantamount to unbelief (*kufr*). On the other hand, he assures anyone joining the Mahdiyya before the *jihād* against the Turks starts that he will benefit from a private guarantee (*dakhala fī 'l-ḍamān al-khāṣṣ*), that is, a pledge of security, against a charge of apostasy.<sup>3</sup>

In a tradition attributed to the Mahdī he is reported to have said, probably in association with the situation dating back to the time of the Prophet: "Anyone staying behind (*yatakhallaf*) [in Turco-Egyptian territory] and fails to emigrate (*hijra*) to us [to Mahdist territory] is deemed infidel (*kāfir*)."<sup>4</sup> The tradition ranks failure to emigrate to Mahdist territory on the same level with negligence in the application of the *sharī'a*.

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1 *Al-Āthār al-kāmila*, 1, 196.

2 Rubin, *The Qur'ān*, Q. 3:167. See also e.g., Q. 8:49, 9:64, 67, 101.

3 *Al-Āthār al-kāmila*, 1, 118.

4 *Ibid.*, VII, 81. On the doctrine of *hijra*, i.e., the obligation to immigrate to Islamic territory, in nineteenth-century Islamic religious movements, see Peters, *Jihad*, 152.

## 72. Punishments on Apostasy and Repentance

In a letter to Khalīfa ‘Abdallāhi, his successor, the Mahdī instructs him to encourage a group of people, probably on the verge of renouncing the Mahdiyya, to rejoin him, on the strength of a threat to punish by execution those who do not comply. The Mahdī instructs that these people should be warned as follows:

If any of you contradict (*khālafā*) [the Mahdī] or betray (*khāna*) [i.e., depart from the Mahdiyya], he will bear the consequences (*fa-yajrī ‘alayhi*) and be liable to execution (*qatl*)... If, however, they sincerely repent (*tābū*), improve (*aṣlahū*) their behavior, and prepare their hearts for the beloved [i.e., the Mahdī], the death penalty will be replaced [i.e., commuted].<sup>1</sup>

Although the Mahdī does not use the term *ridda* or any of its derivatives, he seems to refer to the people as potential apostates.

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<sup>1</sup> *Al-Āthār al-kāmila*, 111, 318. Cf. Holt, *The Mahdist State*, 4–5.



PART 8

*International Law*





## 73. Expansive Definition of *Fay'*: Property Surrendered by Infidels by Agreement to be Distributed According to Q. 59:7

### Legal Introduction

According to Cahen and Løkkegaard, the term *fay'* refers to immovable property acquired by conquest (*anwatan*), i.e., unconditional surrender, to be distinguished from surrender by agreement (*ṣulḥan*). *Fay'* has come to be identified as a kind of a *waqf* in perpetuity for the benefit of successive generations of the community implying thereby that it is inalienable, unlike movable booty, *ghanīma*, distributable among the entitled recipients. *Fay'* land was subject to *kharāj* tax. Zaydān, on the other hand, defines *fay'* as property surrendered by infidels “easily<sup>1</sup> without being engaged in fighting” (*‘afwan ṣafwan min ghayr qitāl*),<sup>2</sup> or property left behind by runaway infidels, or estate with no heirs belonging to infidels who died in the Abode of Islam to be surrendered to the Public Treasury as a residuary heir. Q. 8:41, which is—according to many commentators—the earlier verse pertaining to booty, which traditionally regulates the rules for the distribution of booty taken in wars, provides that what has been taken as booty (*annamā ghanimtum*) is to be divided into five equal parts: One-fifth is assigned to five categories of beneficiaries: (1) God and the Prophet; (2) the [Prophet’s] close kin; (3) [needy] orphans; (4) the needy (*masākīn*); and (5) wayfarers (*wa-[i]bni al-sabīl*). By implication, the rest of the booty, i.e., the remaining four-fifths, are designated to the welfare of the Muslims, such as salaries for the warriors.<sup>3</sup> According to commentaries, women too are entitled to shares in the booty within the various categories. The division of the landed property among the recipients implies that they

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1 Lane, *Lexicon*, 2094, col. ii.

2 This phrase appears many times in al-Qurṭubī, *al-Jāmi‘ li-aḥkām al-Qur‘ān*. See <http://islamport.com/w/tfs/Web/1179/6630.htm> (last accessed: 8 February 2016).

3 On the historical circumstances of the revelation of Q. 8:41, see Sale, *The Korān*, 172, fn. 2; Rubin, *The Qur‘ān*, 147, fn. 41.

are subject to *'ushr* tax.<sup>4</sup> Q. 59:7, which is a deviation from Q. 8:41, provides—according to commentaries—that the *fay'* (*mā afā'a*) is to be divided to the following beneficiaries: One-fifth to God and his Prophet who acts in His behalf, i.e., the State and the remaining four-fifths to (1) the [Prophet's] close kin; (2) the orphans; (3) the needy; (4) and the wayfarers—all of them weak recipients. According to Q. 8:41, only one-fifth of the booty is to be divided to the aforementioned beneficiaries and the remaining four-fifths is designated to the warriors. Commentators reconcile the contradiction between the two verses by holding that Q. 59:7 deals with booty that is acquired by the Muslims without being engaged in fighting, that is, through surrender by agreement (*ṣulḥan*) whereas Q. 8:41 deals with booty that is acquired by conquest (*'anwatan*).<sup>5</sup>

### Documents

The Mahdī proclaimed with regard to the Turkish districts of Dārā and Kabkābiyya in southern Darfur that had been “conquered by agreement, that is, not by means of holy war (*futiḥat ṣulḥan ya'nī bi-dūn jihād*)”:

Its entire land is to be treated as *fay'* on behalf of God and His messenger by virtue of what [God], Exalted be He, said [in Q. 59:7]: “That which Allāh giveth as spoil (*mā afā'a*) unto His messenger from the people of the townships, it is for Allāh and His messenger and for the near of kin and the orphans and the needy and the wayfarer.” Having said so, the followers (*atbā'*) [i.e., the warriors] are warned not [to take anything] from the booty.<sup>6</sup>

In another proclamation to all of the emirs, *qāḍīs*, agents (*'ummāl*), the “poor” (*fuqarā'*), *fuqahā'* and *'ulamā'*, the Mahdī again rejects the warriors plea for booty on the grounds that the land had not been acquired by force on the battlefield, referring thereby implicitly to Q. 59:7. The Mahdī writes:

4 Cahen, “Bayt al-Māl,” 1144, col. i; Løkkegaard, “Fay’,” 869, col. ii; Zaydān, IV, § 3745–47. On a modern attempt to combine between *fay'* and *waqf* for political purposes, see Reiter, “Palestine is Holy Muslim Waqf Land.”

5 Rubin, *The Qur'ān*, 461, fn. 7. Cf. Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, 36. For further details, see doc. 76.

6 *Al-Āthār al-kāmila*, II, 222. Cf. Holt, *The Mahdist State*, 74–76.

You have neither legal right (*ḥaqq*) nor share (*naṣīb*) whatsoever in the property of El Obeid on the grounds of its being booty (*ghanīma*) because God has designated the land to us as *fay'* (*afā'a*) by virtue of its being conquered without being engaged in fighting (*futiḥat bi-ghayr qitāl*); hence the entire property is *fay'* and belongs solely to the Public Treasury. What we have given you [from this property] was merely on account of courtesy and charity (*iḥsān*). Regarding [your request for] allocation [of subsistence to the warriors] (*ṣarf*), you have no right to it unless you have reached a stage of weakness (*ʿajz*) due to starvation [in which case you will be entitled by virtue of Q. 59:7].<sup>7</sup>

In both cases the Mahdī ignored Q. 8:41, which traditionally regulates the rules for the distribution of booty, and applied instead Q. 59:7 thus enabling the Mahdī to exclude the warriors from entitlement to booty on the grounds that they were not engaged in fighting.

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7 *Al-Āthār al-kāmila*, II, 179–81. Cf. *ibid.*, II, 336 (the Mahdī allows allocation of *fay'* to weak people {*du'afā'*}); *idem*, v, 160–62 (the Mahdī expropriates the docks on the Nile used for the transportation of warriors on the presumption that they should be deemed *fay'* and hence each one of the poor {*masākīn*} is entitled to a share {*naṣīb*} in the annual rent received for operating the docks); Abū Salīm, *al-Arḍ*, 32–33.

## 74. Property and Persons Acquired as Booty

### Legal Introduction to Docs. 74–75

The term *ghanīma*, spoils or booty, is applied specifically to property acquired by force from non-Muslims. It includes movable and immovable property, persons whether prisoners of war (*asrā*), or women and children (a separate category within the captives). The Imām may convert male captives into slaves (*raqīq*) and they will be treated as *ghanīma*. Women and children become slaves automatically by virtue of their status as captives.<sup>1</sup>

Broadly speaking, all the Sunnī schools hold that Muslims do not inherit from apostates from Islam. All apostates' property, whether acquired before or after the act of apostasy, is classified as booty and belongs to the Public Treasury. According to the exceptional view of the Ḥanafīs, the apostate is deemed legally dead at the very moment of committing apostasy, since he loses his legal protection and—if he does not return to Islam—he may be killed with impunity. Accordingly, his relatives inherit any property he possessed prior to apostasy, and any property subsequently acquired is classified as booty.<sup>2</sup>

### Documents

Besides evidence of a variety of movables that were acquired as booty to the Treasury,<sup>3</sup> there is also evidence of immovable property taken as booty. On one occasion the Mahdī instructed Khalīfa ʿAbdallāhi to spare the private landed property of officers and their soldiers in Omdurman “due to their having been tamed to submit to religion” (*li-ajl taʿlīfihim liʾl-dīn*), that is, having joined the

1 Zaydān, IV, § 3745, 3748, 3749; Løkkegaard, “Ghanīma,” 1005, cols. i-ii; Khadduri, *War and Peace*, 119. On the status of non-combatant unbelievers in Islamic law, see Landau-Tesseron, “Non-Combatants.”

2 Coulson, *Succession*, 188–89; Zaydān, XI, § 12149ff., 12154 (the exceptional view of Abū Ḥanīfa).

3 *Al-Āthār al-kāmila*, II, 163 (donkeys, camels, horses, cattle {*abqār*}, bedding spread on the floor {*farsh*}, money {*nuqūd*}, weapons of various kinds). Cf. Abū Salīm, *al-Ard*, 34–35.

Mahdiyya, and take as booty only the *mīrī* land as well as weapons (*asliḥa*) and ammunition (*jabkhāna*).<sup>4</sup>

In a proclamation to the emir of Maḥkamat Dārā, ‘Abd al-Ṣamad Sharafī, the Mahdī clarifies the status regarding the “Turks” that had left the scene of the battle of al-Jurda before it took place:

If someone [of these “Turks” left the scene before the day of the battle, that is, did not participate in the battle against the Mahdist forces] while pronouncing the Mahdiyya to be true (*muṣaddiqan*) and submitting to it, nothing of his property will be seized as booty (*yughannam*); on the contrary, he will be entitled to receive the entirety of his property. However, if he left [the scene of the battle] out of fear while denying (*munkiran*) the Mahdiyya the entirety of his property will be expropriated as booty (*ghanīma*) on behalf of Bayt al-Māl.<sup>5</sup>

In other words, leaving the scene before the battle while denying the Mahdiyya indicates the very moment of becoming an apostate with all the consequences pertaining to the property involved.<sup>6</sup>

Regarding the property of certain tribes who were absent from their territory when the territory was taken over by the Mahdist forces, the Mahdī rules:

The entirety of this property shall be treated as absentees’ property and hence duly expropriated as booty on behalf of the Public Treasury (*amwāl...fa-kulluhā ghanīma li-annahā bi-‘adam ‘ayn ṣāḥibihā ṣārat li-bayt al-māl*).<sup>7</sup>

4 *Al-Āthār al-kāmila*, IV, 197. Since *mīrī* land in any case belongs to the state, it seems that the reference is to the rights of usufruct (*taṣarruf*); see above, doc. 6.

5 *Al-Āthār al-kāmila*, II, 166.

6 Cf. *Ibid.*, I, 244 (the Mahdī refers to a Prophetic *ḥadīth* whereby the Prophet says that anyone of the apostates who will join his forces before the battle will be entitled to keep his property (*man kharaja ilaykum bi-kāba qabla qitāl al-jum‘a fa-māluhu lahu*) and concludes by saying that anyone staying in a Turkish fortified camp {*qaqra*} after the battle will be treated as booty). I was not able to locate the *ḥadīth*, which is integrated in the text of the Mahdī, in the canonical collections.

7 *Al-Āthār al-kāmila*, II, 166.

## 75. Men, Women and Children as Booty

The Mahdī authorizes Shaykh ‘Asākir Abū Kalām, the chief of the Jimī‘ tribe northeast of the Nūba Mountains, to conduct an investigation as to the estate (*matrūkāt*) of Jabr al-Dār al-Ḥumaydī,

who died as an infidel (*kāfirān*) and hence his estate (*tarikā*) is deemed booty (*ghanīma*) on behalf of the Muslims [that is, the Public Treasury] . . . His children and wives [by virtue of their being slaves] as well as everything included in his property is deemed booty . . .

The Mahdī nominates Shaykh ‘Asākir as his agent (*nā’ib*) to see to it that the aforementioned belongings of the man who died without acknowledging his mahdiship is delivered to the Public Treasury. In the event that someone challenges him by preventing him from fulfilling his mission, he is hereby invested with full authority to kill him and confiscate his property (*wa-qad abahñā laka damahu wa-mālahu*).<sup>1</sup>

While laying siege to Khartoum, the Mahdī writes to his adherents and especially Daf‘allāh, the disciple of the religious leader Shaykh al-‘Ubayd w. Badr, who abandoned his neutrality in favor of the Mahdī once he realized that General Gordon’s position had deteriorated militarily. He calls upon them to assist him in the *jihād* against the infidels (*kafāra*), referring thereby to Gordon and his Sudanese supporters:

Anyone [among the Sudanese] who stays behind (*takhallafa*) [that is, abstains from joining the battle on the Mahdī’s side] after our [i.e., the Mahdī’s forces’] arrival [in Khartoum], his blood may be shed with impunity (*damuhu hadr*) and his children will be deemed booty (*ghanīma*) on behalf of the Muslims.<sup>2</sup>

This statement implies that non-participation in the *jihād* is tantamount to apostasy. The apostate’s children are automatically converted to slaves and expropriated in favor of the Public Treasury.

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1 *Al-Āthār al-kāmila*, I, 133. Cf. *ibid.*, I, 439 (“As far as the Turks are concerned, their men and women are booty”). Cf. Holt, *The Mahdist State*, 52.

2 *Al-Āthār al-kāmila*, II, 70 Cf. Holt, *The Mahdist State*, 96ff.

In yet another case, the Mahdī gives permission to Aḥmad b. al-Ḥājj and his group to kill people from al-Dinkā who disobey the Mahdī by refusing to join the Mahdiyya, to confiscate their property and their children and send them as booty to Bayt al-Māl. He deems them “polytheists” (*mushrikūn*),<sup>3</sup> probably in an attempt to underline the gravity of their refusal to acknowledge his maldiship.

In an *istiftā'* the Mahdī is asked for a legal opinion regarding wives of infidels (*kafara*) fighting against the Mahdī “and those who joined them [i.e., Sudanese residents]” in the Turkish fortified camps under siege. In his legal opinion, the Mahdī cites a Prophetic *ḥadīth* and concludes that the infidels' property, wives and children are deemed booty (*ghanīma*).<sup>4</sup>

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3 *Al-Āthār al-kāmila*, III, 346.

4 *Manshūrāt fī 'l-ḥudūd*, 20–21.

## 76. Division of Booty to Recipients

### Legal Introduction

Broadly speaking, the division of booty in Islamic law is based on Q. 8:41, which provides that one-fifth (*khums*) thereof—the share of the state—belongs to the following recipients (*ahl al-khums*): God and His messenger, the near kin (i.e., the Prophet's family), the orphans, the poor and the wayfarer. There are differences of opinion among the schools as to the distribution of the booty within each of the categories. Thus the Ḥanafīs hold that the one-fifth should be divided into three parts only: one to the Prophet (and after his death to his successor as caliph), the second to the Prophet's near kin and the third to be divided among the orphans, the poor and wayfarers. The Mālikīs hold that the division of one-fifth should be similar to the *fay'*, namely to be divided evenly among the poor and the rich. The remaining of the booty, four-fifths, belongs—according to commentaries—to the warriors and others participating in the holy war against the infidels (*jihād*). Q. 59:7 deviates from the aforementioned rules of division; it provides that the entire booty, which commentaries regard as *fay'*, belongs only to the recipients included in the one-fifth in Q. 8:41 and should be distributed among them in the following manner: one-fifth to God and His messenger who acts on his behalf and the remaining four-fifths to the other recipients, all of them belonging to needy classes.<sup>1</sup> As noted earlier, commentators reconcile the contradiction between the two verses by holding that Q. 59:7 deals with booty that is acquired by the Muslims through surrender by agreement (*ṣulḥan*) whereas Q. 8:41 deals with booty that is acquired by conquest (*anwatan*).<sup>2</sup>

After having distributed the *khums* among its recipients, in accordance with the provision of Q. 8:41, the commentaries hold that small paltry gifts (*raḍkh*) are distributed among slaves, women, youth and free non-Muslim subjects living in Muslim countries (*ahl al-dhimma*) that have participated in battle, each one receiving in accordance with his contribution to the military effort and having regard to their economic status (*ghanā'*). The remainder of the booty is distributed among those who were present at the battle, the warriors and

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1 Khadduri, *War and Peace*, 121–23; Sale, *The Korān*, 172 fn. 2; Rubin, *The Qur'ān*, 147, 461; Løkkegaard, "Ghanīma," 1006, col. i (division of the booty on the basis of military potential). Regarding *fay'*, see above, doc. 73.

2 See above, legal intro. to doc. 73.

other functionaries.<sup>3</sup> All the schools make a distinction, in the matter of the four-fifths of booty, between a horseman (*fāris*) and an infantry. Thus Mālik, al-Shāfi'ī and Ibn Ḥanbal apportion three parts to the former (two to the horse and one to its rider) and one part to the latter.<sup>4</sup>

### Documents

On several occasions the Mahdī seems to have interpreted Q. 8:41 literally. Thus regarding the booty of Fanqar and Fashoda, the Mahdī issues instructions to “exclude one-fifth thereof [and allocate it to the Treasury] before dividing [the remaining four-fifths] among the Anṣār.”<sup>5</sup> Similarly, in a letter to ‘Abdallāh al-Sanūsī, the Mahdī reminds him of the rule: “one-fifth (*khums*) [of the booty] should be allocated to the Treasury.”<sup>6</sup>

However, occasionally the Mahdī has his own interpretation of Q. 8:41 regarding the division of the booty among the recipients. With respect to the booty of al-Fāshir [El-Fahsher] in the southern district of Darfur, which was taken by conquest (*anwatan*), the Mahdī rules:

Divide [the booty] into five shares (*takhmīs*) in accordance with the Qur’ān [8:41] and the *sunna* of the Prophet . . . [and allocate them as follows:] four shares (*ashum*) to the warriors to be equally apportioned between the rich and the weak (*da’if*), as decreed by God and his Messenger. The fifth share [belongs] to the Treasury, as decreed by God in his book [Q. 8:41]: ‘And know that whatever ye take as spoils of war. Lo! a fifth thereof is for Allāh and for the messenger [i.e., the state], and for the kinsman [of the Prophet] (who hath need), and orphans and the needy, and the wayfarer.’<sup>7</sup> Excluded (*mā ‘adā*) [from the apportionment

3 Zaydān, IV, § 3752. Some of the jurists hold that a woman participating in the battle, which implies that the land was acquired by conquest rather than by agreement, is entitled to a share in the booty, but the dominant view is that she is entitled to only a small, paltry gift; *ibid.*, IV, § 3760. Cf. above, doc. 73 (women are entitled to shares in the booty within the various categories).

4 For further details, see Khadduri, *War and Peace*, 123. On division of the booty on the basis of military potential, see Løkkegaard, “Ghanīma,” 1006, col. i.

5 *Al-Āthār al-kāmila*, I, 226–27. Cf. Shaked, *The Life of the Sudanese Mahdi*, 99 (citing *Kitāb sa’ādāt al-mustahdī bi-sīrat al-Imām al-Mahdī*, line 131); Holt, *The Mahdist State*, 125–26.

6 *Al-Āthār al-kāmila*, I, 433.

7 On the differences of opinion among the schools as to the distribution of the booty within each of the categories, see above, legal intro.

of the fifth share are] such fire weapons, as rifles, cannons, rockets, ammunition as well as mounts for riding, female mules, *jihādiyya* (soldiers of slave origin) and their wives (*harīm*) [as part of the booty] and the like, regarding which neither apportionment nor division into five shares (*takhmīs*) shall take place; these items are due solely to the Treasury<sup>8</sup> as ordained by a Prophetic message (*khabar nabawī*) [by means of a colloquy];<sup>9</sup> you should regard the entire complex of this [legislation] in the light of the best interest for the consolidation of religion (*maṣlahah li-taqwīm al-dīn*), [i.e., the Mahdist state]. Execute [this order] because it is based on what a witness (*shāhid*) [the Mahdī can testify to] while the absent (*ghā'ib*) [from the colloquy with the Prophet] cannot testify to.<sup>10</sup>

The Mahdī's interpretation of Q. 8:41 is based on personal communication with the Prophet: The Treasury takes one-fifth of the booty, which the Mahdī regards as belonging to the Mahdist community as a whole, to be divided to the recipients in accordance with the state's needs.<sup>11</sup> He excludes from the apportionment such essential items as cannons and ammunition, horses, female mules and *jihādiyya*, probably in order to distribute them among the warriors, regardless of the four-fifths due to them, according to his own discretion as the supreme commander of the army.<sup>12</sup> The remaining of the four-fifths of the booty is to be equally apportioned among the warriors without distinction between rich and poor<sup>13</sup> and regardless of the warriors' status based on military profession.

8 In other words, these items due to their military importance will be excluded from any apportionment and will be kept in the Treasury as a special reservoir at the disposal of the Mahdī for pure military purposes. Cf. *al-Āthār al-kāmila*, I, 439 (the Mahdī rules that the weapons and horses should be kept in the region as a reservoir until they are requested by him).

9 On Prophetic message by means of *ilhām*, see above, 37ff.

10 *Al-Āthār al-kāmila*, II, 221–22. Cf. Abū Salīm, *al-Ard*, 36; Holt, *The Mahdist State*, 16, 125–26.

11 Cf. Holt, *The Mahdist State*, 125.

12 In a *fatwā*, the Mahdī expresses his view that it is rather important that military equipment and horses be distributed to those qualified to fight, provided their loyalty to the Mahdiyya is unquestionable; see *Al-Āthār al-kāmila*, IV, 5–6.

13 The Mahdī instructs the treasurer of Bayt al-Māl to allocate grants (*ṣarf*) only to those of the Ikhwān who have no share in the booty, or have donated their share as a *waqf* in the cause of *jihād* and have no other property for their subsistence; see *al-Āthār al-kāmila*, III, 329. Cf. Løkkegaard, "Fay'," 869.

Of special interest is the exclusion of women (*ḥarīm*) as part of the booty from the apportionment to the recipients. It may well be that the Mahdī was concerned by cases whereby Anṣār unlawfully enslaved free women<sup>14</sup> or took as wives married women that had been separated geographically from their husbands. The keeping under the control of the Treasury of women that had been expropriated as booty could enable the Mahdī to avoid moral corruption of this kind and also to release women who would repent and join the Mahdiyya.<sup>15</sup> These innovative reforms in the matter of distribution of booty are based on the principle of *maṣlaḥa*, the public interest or *raison d'Etat*. The resort to a Prophetic message (*khabar nabawī*) seems to have been inspired by the desire to strengthen, in the Mahdī's view, the *shar'ī* legitimacy of the reforms and to avoid public criticism on the part of the 'ulamā'. The Mahdī makes no reference whatsoever to any of the schools of law.

On another occasion, when there were rumors that the Anṣār were not enthusiastic enough to persist in a siege while, on the other hand, they were too eager to carry out a raid on the Abyssinians in an attempt to collect booty, the Mahdī made an *ad hoc* distinction in the matter of distribution of the booty among the warriors between professional soldiers, referring thereby to highly trained, motivated and disciplined soldiers whose fighting was their sole occupation, and others recruited to launch a battle in case of emergency:

If the warriors (*mujāhidūn*) are nothing but totally dedicated to the cause of God (*munqati'ūn li-llāh*) and they have no other desire but Allāh and no profession but the *jihād* and they are neither engaged in transactions nor in cultivating the land, [in that case,] the Treasury in charge of collecting and keeping the entirety of the booty will distribute it bit by bit [to the warriors according to the Mahdī's discretion] since they have no means other [than the booty]. [On the other hand,] if the *mujāhidūn* have professions (*ḥiraf*) [other than fighting] and they are summoned together for [the sole purpose of launching] *jihād* for a specified period of time at the end of which they return to their professions, then [the Qur'ānic distribution of the booty will be applicable which implies:] one-fifth is due [to the recipients mentioned in Q. 8:41] and the remaining

14 In another proclamation, the Mahdī requests the Anṣār not to enslave (*istirqāq*) free-born men and women (*ḥarā'ir*) other than the "Turks," who are deemed booty for all practical purposes; see *al-Āthār al-kāmila*, I, 439.

15 See above, docs. 30, 32 (restoration of women, who had been married against their will, to their husbands).

[four-fifths of the booty] will be distributed to [the *mujāhidūn*] in accordance with the commentaries' interpretation of Q. 8:41 and the Prophetic *sunna*.<sup>16</sup>

Such a distinction can hardly be reconciled with the principle of equal division of the booty between the poor and rich.

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16 *Al-Āthār al-kāmila*, IV, 379.

## 77. Compulsory Allocation of Booty to the Madhī's Kin and Companions

### Legal Introduction

Q. 8:41 provides that one-fifth (*khums*) of the booty belongs to the following recipients (*ahl al-khums*): (1) God and His messenger (who acts on His behalf); (2) the near kin (i.e., the Prophet's family); (3) the orphans; (4) the poor; (5) and the wayfarer. Assuming that one-fifth of the booty is equally distributed between the five categories, each of them is entitled to four per cent of the entire booty (*khums al-khums*).<sup>1</sup>

### Document

In a letter to 'Abd al-Ṣamad Sharafī on the occasion of his appointment as a *nā'ib* (*qāḍī*) in the district of Dāra, the Mahdī writes:

I have decided [on the basis of a precedent; see below] that your brothers, the emigrants (*muhājirūn*) [from Turco-Egyptian territory who had joined the Mahdiyya and by implication participated in the *jihād*] should strip (*tajrīd*)<sup>2</sup> [i.e., renounce, the booty in their possession] especially (*khuṣūsan*) in favor of the Prophet's descendants belonging to His family (*ahl al-bayt min al-ashraf*) [i.e., the Mahdī's kin]<sup>3</sup> and the leading personalities of my Companions (*khawāṣṣ aṣḥābī*),<sup>4</sup> one of which is you. Indeed, they [the Ikhwān in some other parts of the Mahdist state] have [previously] stripped (*tajarradū*) [i.e., renounced] booty and [i.e., including immovable] property (*amwāl*) [in their possession] in adherence to a

1 Cf. Løkkegaard, "Ghanīma," 1005, col. ii.

2 The word *tajrīd*, lit. "stripping," has a Ṣūfī connotation. Thus the phrase *tajrīd al-tawhīd* refers to the mystical virtue by means of which it is possible to strip the cognitive obstacles debarring unique spiritual apprehension of the unity of God. See Stern, *al-Qushayrī's Thought*, 44, fn. 117, 71–72, fn. 211. Cf. Svirī, *The Sufīs*, 289–90, fn. 285. I am grateful to Eliyahu Stern for this observation.

3 Since the Mahdī regarded himself as the successor (*khalīfa*) of the Prophet, his close relatives stepped into the shoes of the Prophet's near kin for the matter.

4 The Mahdī does not specify the identity of the members of this elite. On the Ṣūfī connotation of the term *khawāṣṣ*, see Stern, *al-Qushayrī's Thought*, 105, fn. 293.

Prophetic message (*khbar nabawī*) [that had reached the Mahdī by means of a colloquy, to the extent that] nothing was left in their possession [from the booty] save (*mā fāḍil ma‘hum illā*) some pregnant female-slaves (*jīwār ḥaml*) and those among them who have [already] given birth (*wālidāt*) [to descendants. According to the Prophetic message], the payment of [their share] of the booty [to the Mahdī’s kin] should be effected either presently if one has some [property available to deliver], or by acknowledging a debt [to the Mahdī’s kin] if one lacks the means, [to be defrayed] when the price [of the booty] is available (*bi-daf‘ al-ghanīma ḥāḍīran li-man wajada shay‘an wa-iqrāruhā fī dhimma al-mu‘dim li-ḥīn wujūd al-thaman*). And if one does not provide something [as donation to the Mahdī’s kin], God will [certainly] know the truth regarding his intention [to donate or to decline thereof] externally and inwardly and one’s matter will be transmitted to God who will [surely] exact the debt [from the debtor] (*yūfī mā ‘alayhi min al-dayn*), regardless of whether [the debtor] is a dead man or alive [that is, either in this world or in the Hereafter, implying thereby by hook or by crook]. . . .<sup>5</sup>

In other words, the Mahdī is determined to impose the renunciation of booty in favor of his close kin: the renunciation is a matter of state law rather than a voluntary donation that—on the basis of the precedent mentioned in the letter—seems to have been applied in other parts of the Mahdist state. To this end the Mahdī enlists the religious and moral sanction of the Prophet by means of the latter’s messages delivered to the Mahdī,<sup>6</sup> as a means to strengthen his rule. The Mahdī threatens to use harsh measures, through the interference of God, against those who do not comply with his policy.

Against this background, it is no wonder that people accused the Mahdī of preferring his kin in the matter of the division of booty.<sup>7</sup> On the other hand, the Mahdī announces that he will donate his share of the booty in favor of the Muslim community on account of his asceticism (*zuhd*):

5 *Al-Āthār al-kāmila*, 11, 7.

6 On Prophetic message by means of *ilhām*, see above, 37ff.

7 Ibrāhīm, *al-Širā’*, 33.

I donate my right [of entitlement] in the fifth share of the booty (*awhabtu ḥaqqī min al-akhmās*) and other property [in my private possession] in favor of the Muslims and I induce my kin to abstain from taking (*zahhadtu ahlī min al-tanāwul*) [anything from the booty] absolutely in the endeavor to protect people from misery and poverty.<sup>8</sup>

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8 *Al-Āthār al-kāmila*, v, 210.

## 78. Women Participating Physically in *Jihād* Fighting

### Legal Introduction

*Jihād*, holy war against infidels, is a religious duty and, according to some authorities, a “pillar” (*rukṅ*) of Islam along with prayer, fasting, etc.<sup>1</sup> Those who fall in *jihād* are martyrs of the faith. Basically *jihād* is *farḍ kifāya*, i.e., a number of persons performing the obligation exempt the rest of the community from this duty. However, *jihād* may also be *farḍ ‘ayn*, a duty that falls on every individual in territory nearest to the enemy and in a town under siege. In an organized state, the sovereign has the discretion to declare the *jihād* as a *farḍ ‘ayn*. Women too are bound by the duty of *jihād*, both collective and individual. However, a woman’s participation in *jihād* is subject to her husband’s and the Muslim sovereign’s permission, while precautions are taken against sexual corruption (*mafsada*) and having regard to public interest (*maṣlaḥa*). In addition, women may volunteer for *jihād* by contributing property (*jihād al-māl*), by making propaganda (*jihād al-lisān*) and by inciting people (*jihād al-taḥrīḍ*) to the cause of *jihād*.<sup>2</sup>

### Documents

In a letter to *mashā’ikh al-dīn, umarā’, nuwwāb* and *maqādīm* the Mahdī, while urging his adherents to participate in *jihād* for the cause of God, expresses his opinion regarding the participation of women in *jihād*:

If a woman becomes of age (*qā’ida*) [*sic*] and men cease to regard her [as an object of sexual] desire (*arab*), then she may physically participate in fighting in a *jihād* by using her hands and feet. As to young girls (*shābbāt*),

<sup>1</sup> Ed. “Rukn,” 539.

<sup>2</sup> Tyan, “Djihād,” 539, col. i; Zaydān, IV, § 3586, 3601ff., 3609ff. (women may participate in all kinds of forces), 3614–17, 3619 (women’s functions in fighting), 3627f. (women bearing weapons), 3640 (women participating in general call to arms), 3652ff., 3670ff., 3833f. (*jihād al-māl*), 3848, 3855 (*jihād al-lisān, da’wa*), 3859 (*jihād al-taḥrīḍ*), 3865 (*ḥathth*); Hallaq, *Sharī’a*, 324ff.

they may participate in *jihād* only with their souls (*nufūs*) [referring thereby to *jihād al-lisān* and *jihād al-tahrīd*].<sup>3</sup>

On another occasion the Mahdī, after urging the people to join the *jihād* against his enemies, announced a commitment (*ʿahd*) to the effect that all women that cannot walk on their own feet in military marches or physically participate in strenuous fighting will be exempt from joining the warriors. Women's request for a woman's company (*zāmila*) (*sic*) during a military march will be denied. Women will be staying behind with the Mahdī's adherents (*aḥbāb*) that do not participate in fighting, to assist with protecting the town and consolidating religion.<sup>4</sup>

The Mahdī has no inhibitions whatsoever against women participating in fighting for the cause of God provided they are physically capable and that no moral corruption is anticipated.

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3 *Al-Āthār al-kāmila*, I, 302. For a lithographic version of the document, see Durham, SAD 97/5/87; *Manshūrāt al-aḥkām wa'l-ādāb*, 29–30. Cf. al-Muftī, *Niẓām al-qaḍā'*, 135–36.

4 *Al-Āthār al-kāmila*, II, 318, and Abū Salīm's note in fn. 1.

## 79. The Mahdī Urges General Gordon either to Accept *Amān* or Embrace Islam

### Legal Introduction to Docs. 79–80

Under the Islamic law of war, alien non-Muslims belonging to “Abode of War” (*dār al-ḥarb*) who are conquered by the Islamic state must be either converted (though not by force) or enslaved, or, if they reject both alternatives—be killed (excepting women, children and slaves). *Amān* is a safe-conduct or pledge of security by which the life and property of an alien non-Muslim (*ḥarbī*) become protected for a limited period (the length of which is disputed by the jurists). Permanent security is acquired either by conversion to Islam or by political submission to the Islamic state, i.e., acceptance of the status of *dhimmī*.<sup>1</sup> The term *amān* is derived from Q. 9:6: “If a polytheist asks you for protection ([*ʔ*] *stajāraka*), give it to him (*fa-ajirhu*) [i.e., give him protection (*jīwār*)], so that he may hear Allāh’s words, then let him go to his place of safety (*maʿman*).” According to the legal literature, the opening passage of Q. 9 details the scope of the pact of security (*ʿahd*) between the believers and the polytheists.<sup>2</sup> Every Muslim of age in full possession of his mental faculties, male or female, free or slave, may offer *amān* to alien non-Muslims. The Muslim sovereign alone is qualified to grant *amān* to undetermined groups, such as the population of a whole city or territory. During his stay in Islamic territory, a person protected by *amān* (*mustaʿmin*) can be assimilated to the *dhimmīs* as far as civil law is concerned, though he is under no obligation to pay taxes. However, the jurists are in dispute as to whether the *mustaʿmin* is subject to the *ḥadd* punishments applicable to the *dhimmī*. If the *mustaʿmin* acts against the interests of the Muslims, the sovereign may terminate his *amān* and deport him to the “Abode of War.” *Amān* is a non-binding contract and may be violated by its granter. If the *amān* is for a qualified period of time, its validity terminates automatically at the end of the term. The *amān* granted to *dhimmīs* is meant to be forever (*taʿbīd*); the sovereign may nevertheless violate it if there is some interest (*maṣlaḥa*) in doing so.<sup>3</sup>

1 See legal intro. to doc. 81.

2 For further details, see Rubin, *The Qurʾān*, 152f.; Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, 33.

3 Schacht, “Amān,” 429, col. i–ii; idem, *Introduction*, 130, 131; Zaydān, IV, § 3795ff., 3801–3; Hallaq, *Sharīʿa*, 332–33; Friedmann, *Tolerance and Coercion*, 46, 115ff., 119–20 (a prisoner of war who embraces Islam), 123 (*amān*).

## Documents

For almost six months, until the fall of Khartoum on 25 January 1885, the Mahdī was engaged in dispatching letters to General Gordon urging him to either accept *amān* or embrace Islam and join the Anṣār. The Mahdī warned that if Gordon failed to accept either of these suggestions he would proceed with the siege until the fall of the city, with all the consequences that would involve.

In a letter of Shawwāl 1301 (corresponding to 25 July to 22 August 1884), the Mahdī invites General Gordon to surrender to Islam and promises that if Gordon surrenders (*idhā sallamta*) before Khartoum is taken over, then

Your body, property, family and everything you own, whether few or much, will be secured [under a contract of *amān*] (*fa-takun āminan*) except for the [state] rights of *mūrī* land,<sup>4</sup> a special [category] which is deemed booty (*mā 'adā ḥaqq al-mūrī al-makhṣūṣ bihi fa-huwa ghanīma*), and anyone of the Christians who surrender with you will be safe [under a contract of *amān*] (*āmana*) [*sic*] on the basis of the aforementioned terms. We hereby safeguard you all on account of these [terms] by means of a pledge of security (*amān*) granted by God, His Messenger and I, the servant of God; spare your life and save your honor and property . . . We are obligated to fulfill our pact of security (*wa-innamā yulzimunā al-wafā' bī'l-'ahd*) provided you behave in accordance with what is implied by our letter.<sup>5</sup>

In a letter to General Gordon of 2 Muḥarram 1302 [corresponding to 21 October 1884] the Mahdī takes the matter a step further by inviting Gordon to convert to Islam:

It is hoped that God will guide you to Islam, to surrender (*taslīm*) so that you and those who are under your command embrace Islam (*tuslīmū*) so that you gain eternal happiness and blessing . . . If you turn repentantly (*anabta*) to God, Exalted be He, and resign yourself to the will of God [that is, embrace Islam] (*aslamta al-amr li-llāh*) and His Prophet, and accept our mahdiship as true (*ṣaddaqtā*), then send us a letter on behalf of yourself and the entirety of those who are with you after having laid down your equipment and stopped fighting in order that we send you someone to safeguard your safety (*li-nursila lakum man yu'ammīnukum*) [to accomplish the formal procedure of granting the *amān*]. In this way

4 State land in which the individual has the right of usufruct (*manfa'a*); see above, doc. 6.

5 *Al-Āthār al-kāmila*, III, 213ff. (the citation is from p. 216); Holt, *The Mahdist State*, 111ff.

[i.e., if you convert] you will gain the utmost benefit of the two worlds. If, however, you fail to comply, then you shall be informed of a war to be launched by God and His Messenger. Be informed that God, Exalted be He, is capable of destroying you as He has destroyed those who preceded you who were stronger than you in terms of strength and numbers; you, your property and children will be deemed booty (*ghanīma*) on behalf of the Muslims; you shall regret [your failure to embrace Islam] but your regret will be in vain, because once the war starts, even if you surrender it will be regarded as [conquest] “by force” (*‘awwatan*) [i.e., unconditional surrender], rather than voluntary (*raghbatan*) surrender [i.e., “surrender by agreement,” *ṣulḥan*, with all the legal consequences involved].<sup>6</sup>

In a letter to Gordon of 29 Muḥarram 1302 [corresponding to 17 November 1884] the Mahdī repeats his offer to Gordon to embrace Islam: “surrender so that you secure your life and that of your men” (*fa-sallim taslam anta wa-man ma’aka*).<sup>7</sup> In another letter shortly afterward, the Mahdī writes to Gordon:

If you convert and surrender to Islam we [hereby undertake to] forgive you (*fa-in aslamta wa-sallamta fa-qad ‘afawnā ‘anka*) and respect you and forgive everything caused by you; if, however, you refuse [to convert], you have no chance of revoking the wish of God.<sup>8</sup>

In other words, the Mahdī is not content any more with surrender followed by *amān*; he insists on conversion and threatens harsh measures if Gordon does not comply, although, strictly speaking, Islamic law does not permit conversion by coercion.

In yet another letter, of 25 Rabī Awwal, 1302 [corresponding to 13 January 1885], shortly before the fall of Khartoum, the Mahdī offers Gordon to “enter into our pledge of security (*amān*) and liability [for safety] (*ḍamān*).” He claims to have been informed by a Prophetic message (*akhbaranā rasūl allāh*) [by means of a colloquy]<sup>9</sup> of Gordon’s forthcoming defeat in Khartoum. He offers Gordon and the soldiers under his command either to accept *amān* and surrender in order that God rescue them (*man āmana [sic] wa-sallama yunjihi*

6 *Al-Āthār al-kāmila*, IV, 9, 12–13. On the legal consequences involved in conquest “by force,” see above, legal intro. to doc. 73.

7 *Al-Āthār al-kāmila*, IV, 45.

8 Ibid., IV, 156, 201–2 (the Mahdī requests Gordon to clarify whether he accepts his offer to convert or persists in his endeavor to wage war).

9 On Prophetic message by means of *ilhām*, see above, 37ff.

*allāh*) or return to their country. The Mahdī is ready to renounce the sum of 20,000 pounds offered to him as ransom (*fidā'*) for the release of Gordon. He cites Q. 4:29 in which God forbids Muslims to be engaged in killing each other.<sup>10</sup> In another letter he warns Gordon: "You cannot escape your death, O infidel (*kāfir*), either in war or in hunger."<sup>11</sup>

On 16 February 1885, shortly after the fall of Khartoum the Mahdī offers the English officers and soldiers either to convert to Islam or accept a pledge of security:

Surrender and you will be safe and embrace Islam (*wa-sallimū taslamū wa-aslimū*) and God will reward you twice . . . If you surrender [by agreement], your private rights will not be challenged except for the [state] rights of *mīrī* land, weapons and jabākhīn<sup>12</sup> . . . you will be subject to the *amān* of God, His Messenger and the servant of God [the Mahdī], and you will be integrated into the ranks (*wa-takūnū min ḍimn*) of our Anṣār [!]. We have no intention to enslave (*isti'bād*) any of you . . . Our only intention is to guide you to God. . . . God demonstrates through me His mercy (*rahma*) to those who obey Him by following me as He demonstrates vengeance (*naqma*) to those who disobey Him by opposing me. . . .<sup>13</sup>

To sum up, the Mahdī is ready to offer Gordon and his English soldiers a contract of *amān* (with some limitations pertaining to *mīrī* land) if they surrender by agreement (*ṣulḥan*). Moreover, if they accept his invitation to embrace Islam he is ready to offer them full integration into the ranks of the Anṣār and Aṣḥāb. There is indeed evidence of Christians converting to Islam (Muslimāniyya) and of an offer made to Gordon to appoint him to a senior office in the Mahdist administration.<sup>14</sup>

10 *Al-Āthār al-kāmila*, IV, 207–8. For further details, see Holt, *The Mahdist State*, 111–12.

11 *Al-Āthār al-kāmila*, IV, 242–44, 271–72 (Khartoum fell, and Gordon "who was given an opportunity to repent to God and convert, refused and was killed" [30 January 1885]).

12 See Glossary, s.v. *jabkhāna*.

13 *Al-Āthār al-kāmila*, IV, 307–8. Cf., on the other hand, *ibid.*, v, 122 ("Anyone embracing Islam or submitting himself [to Islam even] by an *unconditional surrender* will, with the kindness of God, be integrated into the ranks of the Aṣḥāb and Anṣār" {*man aslama wa-sallama 'amwatan fa-[i]ndaraja bi-faḍli allāh ma'a al-aṣḥāb wa'l-anṣār*}). The Mahdī explains the deviation of his policy by considerations of *raison d'Etat* {*'alā ḥasab maṣlaḥat al-dīn*}). For Khalifa 'Abdallāhī's letter of invitation to Queen Victoria to convert to Islam, see Searcy, *The Sudanese Mahdist State*, 131ff.

14 Holt, *The Mahdist State*, 111.

## 80. The Mahdī Invites the Governor of Egypt to Submit to Islam

### Document

In his letter to the Governor (*wālī*) of Egypt of 3 Ramaḍān 1302 [corresponding to 16 June 1885], the Mahdī expresses concern about the obliteration (*indirās*) of religion and the obstruction (*aṭṭalat*) of the laws of the Qurʾān and the *sunna*. He is determined to bring about a revival of the Prophetic *sunna* and eradication of the negative innovations (*bidaʿ*) and infidelity (*kufr*). He declares: “Anyone doubting my mahdship does not believe in God and His messenger; hence his body and property are deemed booty on behalf of the Muslims.” The Mahdī warns the governor not to rely on the “*ulamāʿ* of the evil,” who prefer the vanity of this world to the Hereafter. The Mahdī calls upon the governor, who does not acknowledge his mahdship, which, in the Mahdī’s view, is an essential tenet of Islam,<sup>1</sup> to embrace Islam:

I hereby write to you this letter, while I am in Khartoum, out of mercy for you and out of a desire to guide you. Hopefully God will open your heart (*yashrah ṣadraka*) to submit to Him and guide your piety (*ṣalāh*) and senses (*rashād*) in the two worlds. I am on my way to your district quite soon leading the army of God . . . Since [Anglo-Egyptian] Sudan is already doomed (*qad intahā*), if you hasten to submit (*taslīm al-amr*) to the Mahdiyya and to repent (*ināba*) to God, the Lord of creation (*rabb al-bariyya*), you will gain eternal happiness and secure (*ammanta*) your life, property and honor, along with those who respond to our call. If you refuse [to accept our proposal] and proceed, challenging the way leading to prosperity (*falāh*) and good sense, you will be accountable for your sin (*alayka ithmuka*) and that of those who follow you and are doomed to fall into our grip even if you [seek shelter] in fortified castles. Consider this as my warning to you. . . .<sup>2</sup>

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1 See above, doc. 70.

2 *Al-Āthār al-kāmila*, v, 241ff. (the citation is from p. 245).

## 81. A *Dhimmī* Staying behind in Turco-Egyptian Territory Given the Choice either to Convert to Islam or Be Proclaimed *Harbī*

### Legal Introduction to Docs. 81–82

The term *dhimma* designates a contract through which the Muslim community accords hospitality and protection to members of other revealed religions living within the “Abode of Islam” on condition that they acknowledge the domination of Islam. Those who are entitled to this protection are called *dhimmīs* or *ahl al-dhimma*. The Qur’ānic basis for this protection is Q. 9:29, which provides: “Fight against those who have been given the Scripture who do not believe in Allāh nor the Last Day, and do not forbid what Allāh and His messenger have forbidden, and do not follow the religion of truth, until they pay the tribute (*jizya*) out of hand, while in a state of humiliation.” In other words, the payment of a fixed poll tax by the *dhimmīs* under humiliating conditions signifies their acknowledgment of Muslim rule and hence there is no reason to fight them any longer. Some of the Muslim jurists regard this verse as a prescription to limit the rights of the *dhimmīs*.<sup>1</sup>

The life and property of *dhimmīs*, free non-Muslim subjects living within the “Abode of Islam,” are protected under the umbrella of the Islamic covenant (*‘ahd*). In principle, they may retain their autonomy and follow the rules of their own religion, to the extent that Islam tolerates it. In actual fact, *dhimmīs* are not treated as equal to Muslims; they are discriminated against to demonstrate their tolerated status. Thus they must wear distinctive clothing; their houses must not be higher than those of the Muslims; they may not ride horses or bear arms; a Muslim man may marry a *dhimmī* woman but not the other way around; a *dhimmī* cannot own a Muslim slave; the blood-money (*diya*) for a *dhimmī* is (broadly speaking) less than that for a Muslim. The discriminatory provisions against the *dhimmīs* are demonstrated in *Shurūt ‘Umar*. Levy-Rubin suggests that it started in the eighth century, most probably at the time of ‘Umar II b. ‘Abd al-‘Azīz, and culminated at the turn of the century and the beginning of the ninth century. This agreement, which regulates the relations between the Muslims and the *dhimmīs*, gradually replaced the

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1 On the interpretation of the verse, see Cahen, “Djizya,” 561, col. ii–562, col. i; Rubin, *The Qur’ān*, 156–57.

surrender agreements dating back to the seventh century.<sup>2</sup> The contract of *amān* is concluded by the *dhimmī*'s offer and the sovereign's acceptance. The contract is meant to be everlasting (*mu'abbad*), unlike the temporary contract granted to a *ḥarbī*, a non-Muslim "in a state of war," who enters Muslim territory. The contract of *amān* granted to the *dhimmīs* is binding on the Muslims as long as the *dhimmīs* are bound by the rules of Islamic law pertaining to them: paying the poll tax and abstaining from waging war against the Muslims.<sup>3</sup>

### Documents

Ibrāhīm al-Badawī bought land (*ṭīn*) from people belonging to Rifā'a and al-Dāḥilāb and sold it to a *dhimmī*, a Christian called Ḥanna. The transaction took place during the Turco-Egyptian administration. When the Mahdī took over, the people of Rifā'a and al-Dāḥilāb denied the transaction and claimed that Ibrāhīm had taken possession of the *ṭīn* illegally (*waḍ' yad*).

The Mahdī is asked for a legal opinion as to whether it is legally possible to challenge the validity of the transaction after the lapse of approximately six years since the conclusion of the transaction and whether the land should be transferred to the Treasury.<sup>4</sup> The first question arose having regard to the possibility that the denial of the claim on the grounds of the change of the political regime might cause legal uncertainty as to the validity of transactions contracted during the Turco-Egyptian administration. The second question seems to refer to the contention that the land is deemed booty and hence should be transferred to the Treasury.

In his *fatwā*, the Mahdī rules as follows:

Challenging transactions that took place between the Turks and their subjects is liable to cause great chaos (*khalal*) and lack of rectitude (*istiḳāma*) [i.e., legal vacuum creates uncertainty]. Hence the purchase of the land by Ibrāhīm Badawī shall not be challenged (*lā yunqaḍ*) because the transaction was binding (*mūjjib*) according to people's [Ottoman] law (*qānūn*); had it not been so [the change of the political

2 For a full account of *Shurūṭ 'Umar*, its alternatives and their sources of inspiration, see Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, Ch. 2.

3 Zaydān, IV, § 3803ff.; Schacht, *Introduction*, 130ff.; Cahen, "Dhimma," 227ff.; Friedmann, *Tolerance and Coercion*, 46 (*ahd*, *dhimmī* contract), 54ff., 123 (*amān*, safe-conduct). Cf. doc. 79.

4 *Al-Āthār al-kāmila*, III, 130.

regime], the petitioner [on behalf of Ḥanna] would have been entitled (*la-[i]staḥāqqā*) [to the land] in the event the present claimant [Ḥanna] had brought the case before the former judge [who would have decided the case according to Ottoman law]. However, under the present circumstances (*wa-law kāna ka-dhālika*), had the Christian [Ḥanna] converted to Islam (*aslama*), he would have kept the land as its owner intact (*fā-milkuhu lahu*). [On the other hand,] had he not converted, [the land] would have been transferred to the Treasury as in the case of property ([*a*]mwāl) belonging to Turks and Christians [that choose to] remain in their infidelity (*kufṛ*) or reside in the Turkish fortified camps.<sup>5</sup>

The Mahdī is of the opinion that the validity of transactions concluded in accordance with the Ottoman law in Turco-Egyptian territory should be kept intact in order to avoid chaos and legal uncertainty. This implies that Ḥanna, a Christian Ottoman subject, had, by virtue of being a *dhimmī*, the legal capacity to own and dispose of property under the Turco-Egyptian administration in the region. However, once the territory became part of the Mahdist state, the Mahdī leaves Ḥanna the choice between two alternatives: either to convert to Islam, in which case he will be able to keep the land in his private ownership, or—if he declines to convert—maintain his Ottoman identity in which case he will be treated as an infidel with the inevitable result that his property will be deemed booty and hence transferred to the Treasury.

On the face of it, the Mahdī's approach is not compatible with the eternal nature of the contract of *amān* granted to *dhimmīs*. In the end of the citation the Mahdī provides a hint that may explain the conversion of the Christian subject from the status of a *dhimmī* to that of a *ḥarbī*: By staying behind in Turco-Egyptian territory the Christian *dhimmī* is regarded as cooperating with the Mahdī's enemies, thus violating his obligations under the contract of *amān* and placing himself on the same level with the *ḥarbīs*. This is why the Mahdī leaves the Christian with the choice of either converting to Islam or being proclaimed a *ḥarbī*. Needless to say, one would expect that the Mahdī's legal opinion as a state law had—beyond the private case of Ḥanna—far-reaching repercussions on the status of all of the *dhimmīs*, once residents of the Turco-Egyptian state, in the Mahdist state.

5 Ibid., III, 131. For a lithographic version of the document, see *Manshūrāt al-ahkām wa'l-ādāb*, 43–44. Cf. Abū Salīm, *al-Arḍ*, 18–19.

## 82. Redemption of “Infidel” Captives Converted to the Mahdiyya on Presumption of Good Faith

### Document

In a letter to Khalifa ‘Abdallāhi, the Mahdī instructs him to release two men who were taken as captives, on the assumption that their submission to the Mahdiyya was in good faith. He derives inspiration from the personal example of the Prophet.

If we proceed [with the case] in accordance with the *shar‘ī* [procedure] literally having regard to the outward circumstances (*wa-idhā ‘amilnā bi-zāhir al-shar‘ alā zāhir al-aḥwāl*) while entrusting God with the secrets [of a human being] as it should be, then we are spared this trouble, since God, our proxy (*wakīl*) and pledge (*mutakaffil*), is in command of the secrets and rewards on the consciences; He saves us the trouble regarding anyone approaching us with secrets. And God, Exalted be He, had said regarding captives who caused concern to the generous donors of payments of ransom (*fidya*) for their release (*itlāq*) [from captivity] [Q. 8:71]: ‘And if they would betray thee, they betrayed Allāh before’ (*wa-in yurīdū khīyānataka fa-qad khānū [a]llāha min qablu*).

... If the two [captives] are Muslims who had submitted themselves (*munqādīn*) [to the Mahdiyya], then release them in pursuance of the *shar‘a* unless there is some [concrete] secret information [indicating apostasy from the Mahdiyya]. And if it is established [afterward] that they had betrayed secretly (*khānū sirran*) then God who is the proxy in our cause will enable us to overcome them.

The Mahdī seeks moral support from the Prophet who, according to his interpretation of Q. 8:71, had released captives on the assumption that they had not betrayed God and that had they betrayed, God would have informed the Prophet of the betrayal and would have helped him to overcome them as is indicated in the aforementioned Qur’ānic verse.<sup>1</sup> The Mahdī deems submission to the Mahdiyya conversion to Islam.

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1 *Al-Āthār al-kāmila*, III, 188. Cf. Rubin, *The Qur’ān*, 150.

PART 9

*Alms Tax*





## 83. The Alms Tax as a Ritual and a State Instrument for Social Justice

### Legal Introduction

*Zakāt*, alms tax anchored in the Qurʾān, is an obligatory payment of a determinate portion of specified categories of one's lawful property for the benefit of specified categories of recipients. Broadly speaking, *zakāt* is classified as a property tax rather than income tax. It applies almost exclusively to the property of private individuals. The property of the government, including the assets of the Public Treasury (*bayt al-māl*) as well as *waqf*, the property of minors and those with incapacity are exempt from *zakāt*. All Sunnī schools except the Mālikīs impose *zakāt* on slave owners. *Zakāt* is paid either in kind or in its value (*qīma*). In the *ḥadīth*, failure to pay alms tax may subject the owner of the property to corrective discretionary punishment (*taʿzīr*)<sup>1</sup> in addition to seizure of *zakāt* on "apparent" (*zāhir*) property, i.e., livestock and crops,<sup>2</sup> and disqualification for testimony. Broadly speaking, *zakāt* has to be distinguished from *ṣadaqa*, which is voluntary alms. In the course of time, however, *zakāt* became a form of voluntary charity for the poor, thus reducing its nature from public law to private ritual law.<sup>3</sup>

Q. 2:271 allows for payment of *zakāt* both publicly and privately; the latter option underlines its nature as voluntary charity for the poor. Ritual features of the alms tax may be found in the Qurʾān. Thus Q. 9:103 provides the means for religious purification: 'Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow, and pray for them . . .' (*khudh min amwālihim ṣadaqatan tuṭahhiruhum wa-tuzakkīhim bihā*), and Q. 30:39 contrasts the intended increase of wealth in usury. The validity of payment of *zakāt* as an act of worship (*ʿibāda*) depends on the requisite intention (*niyya*) of the payer. The element of intention is based on the *ḥadīth*: 'Acts [of worship] are [deemed valid] only if they are anchored in intentions' (*innamā al-aʿmāl*

1 See Glossary, s.v. *taʿzīr*. A Prophetic statement provides that if a person does not pay *zakāt*, he should be disciplined by confiscating part of his wealth in addition to the *zakāt* due from him. See Izzi Dien, "Taʿzīr," 406, col. i.

2 See Glossary, s.v. *māl zāhir*.

3 Zysow, "Zakāt," 406–7, 410, 418–20; Zaydān, I, § 722–23, 741; Schacht, *Introduction*, 105, 118, 206. Cf. Abu Shouk and Björkelo, *The Public Treasury*; Layish, "Saudi Arabia," 281, col. i (conversion of *zakāt* into statutory law).

*bi'l-niyyāt*). Those who do not pay *zakāt* are deemed hypocrites and God will not accept their prayers.<sup>4</sup>

*Zakāt al-fiṭr*, a religious obligation anchored in a *hādīth*, is a payment due on behalf of all Muslims, male and female, minor or adult, slave or free, in connection with the termination of the fast (*fiṭr*) of Ramaḍān.<sup>5</sup>

Since the Ṣūfīs own no property they do not pay *zakāt* and despite their poverty, their spiritual wealth disqualifies them as recipients. The Ṣūfī writers, however, find ample scope for the giving of *zakāt* in a wider sense that encompasses acknowledgment of all the benefits bestowed by God.<sup>6</sup>

### Documents

In a proclamation to the inhabitants of al-Qaḍārif, an eastern district of Sudan and pre-eminently a trading center with a tobacco-growing industry run by Europeans,<sup>7</sup> the Mahdī urges the people to pay the alms tax by resorting to both promises of rewards in the next world and threats based on the Qur'ān and the *ḥadīth*:

God has imposed upon you rights (*faraḍa 'alaykum ḥuqūqan*) [that are due to Him, i.e., alms tax]; He collects them from the rich among you and delivers them to the poor among you with a view to cleansing (*tathīr*) and purifying (*tazkiya*) you and obtaining for you a better place (*tatyīb*) in the next world. Anyone refusing [to pay alms tax] out of stinginess (*bakhila*) will be exposed to the threats of the Qur'ānic verses (*al-āyāt*) and the traditions (*aḥādīth*). Anyone paying [the alms] without delay and fulfilling his duties, God will bestow upon him [good] promises (*wa'd*) and glad tidings (*bishārāt*). Perform what God has imposed upon you in high spirits [and pay the alms] to your agent (*āmil*)...<sup>8</sup>

The Mahdī underlines the ritual nature of the alms tax as a means to personal purification of the soul and its importance as a state instrument for promoting social justice in terms of distribution of property. At the same time, the Mahdī

4 Zysow, "Zakāt," 408, cols. i–ii, 417; Zaydān, I, § 935–36.

5 Zysow, "Zakāt," 418, col. i; Zaydān, I, § 940f.

6 Zysow, "Zakāt," 418, col. ii.

7 Holt, *The Mahdist State*, 166–67.

8 *Al-Āthār al-kāmīla*, IV, 108–9.

does not renounce the option of enforcing the tax by state sanctions based on the textual sources of the Qur'ān and the *sunna*.

There are isolated instances in the Mahdī's documents of *zakāt al-fiṭr*. Thus in one case the Mahdī urges the people to pay "what is due to God (*ḥaqq allāh*), that is, alms-tax (*zakāt*) out of your property alongside the alms of the breaking of the fast (*fiṭra*),"<sup>9</sup> in order to ensure a comfortable life in this world and in the Hereafter.<sup>10</sup>

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9 See Lane, *Lexicon*, 2416, col. ii (*al-fiṭra* means *ṣadaqat al-fiṭr*).

10 *Al-Āthār al-kāmila*, v, 339. Cf. *ibid.*, II. 158–59; Abū Salīm, *al-Arḍ*, 40; Zysow, "Zakāt," 418, col. i.

## 84. *Niṣāb* and Rates of *Zakāt*

### Legal Introduction

The *ḥadīth* regulates all kinds of property subject to *zakāt*, and specifies the minimum amount (*niṣāb*) of any kind of property required for the imposition of the tax, as well as the rate of *zakāt* imposed on the *niṣāb* and the rule of one-year holding (*ḥawl*).<sup>1</sup> The *sharī'a* provides detailed provisions pertaining to the *niṣāb* on livestock, crops, mines (*ma'din*), precious minerals (*rikāz*) and merchandise (*tijāra*, *urūd*).<sup>2</sup>

### Documents

In a letter to the Ja'aliyīn, a tribe residing in the neighborhood of al-Qaḍārif, the eastern district of Sudan, the Mahdī provides a detailed table of the *niṣāb* and the progressive rates of tax imposed on various species of livestock and grain. Thus the *niṣāb* of camels is five camels and the rate of tax on 5–9 camels is one *shāh* [*shā'*] (ewe); on 10–15 camels—2 *shā'*s; the *niṣāb* of *ghanam* (sheep and goats, small cattle) is 40 *ghanam* and the rate of tax on 40–120 *ghanam* is one *shā'*; the *niṣāb* of *baqar* (cattle) is 30 *baqar*, and the rate of tax on 1–30 heads of cattle is one *tabī'*;<sup>3</sup> every 40 *baqar* entail a tax of one *musinna*.<sup>4</sup>

Regarding the alms imposed on crops (*zakāt al-ḥubūb*)—grain, cereals, corn—the Mahdī makes a distinction for the purpose of *niṣāb* between land irrigated solely by rain and land irrigated by *sāqiya* (water scoop, wheel or irrigation canal).<sup>5</sup> As for the first category, the *niṣāb* is five *awsuq*, each *wasq* being 60 *ṣā'*.<sup>6</sup> The tax on one *wasq* is a tithe (*'ushr*). The tax on land irrigated by *sāqiya* is “half a tithe,” i.e., one-twentieth. Having clarified all the technical details, the Mahdī concludes as follows:

1 Zysow, “Zakāt,” 408, col. i; Zaydān, I, § 744–45.

2 Zysow, “Zakāt,” 411, col. ii–13, col. ii; Zaydān, I, § 753ff., 295ff., 809ff., 823ff.

3 The young one of a cow in the first year; see Lane, *Lexicon*, 295, col. ii.

4 A beast advanced in age, such as an ox, sheep or goat in its third year; see Lane, *Lexicon*, 1439, col. iii.

5 Cf. *dawālib*, a kind of waterwheel; a machine that is turned by a horse or the like; Lane, *Lexicon*, 902, col. iii.

6 *Ṣā'*, a cubic measure of varying magnitude; Wehr, *Dictionary*, 530.

Be informed that whoever declines to pay [the rates of] the alms tax [of his own free will, the alms] will inevitably be taken from him even by means of force (*lā budda an tu'khadh minhu wa-law kurhan*).<sup>7</sup>

In a letter to his agent in al-Gezira, the Mahdī instructs that if a *sāqiya* is shared by several partners (*mushtarikūn*), the alms tax will be taken from the entire harvest on the day of harvesting (*hiṣād*) before it is divided among the partners. If, on the other hand, each of the partners runs a *sāqiya* by means of his own domestic animals and servants, the tax is to be collected from each of them separately, provided each share reaches the *shar'ī niṣāb*. A landowner (*ṣāhib al-tīn*) who leases his land on the basis of a tenancy contract, that is, in return for a portion of the crop, will pay his share of the tax "in accordance with the terms agreed upon [between him and the tenants]" (*lahu mā yatarāḍawna bihi*). In other words, he will pay *zakāt* in accordance with his portion of the crop.<sup>8</sup>

The *niṣāb* of gold is 20 dinars and that of silver (*fiḍḍa*) is 200 dirhams. The rate of tax on each of the metals is one-quarter of an *'ushr*, i.e., 2.5 percent.<sup>9</sup>

Once the Mahdī established his sovereignty over the tribes, he imposed the *shar'ī zakāt* on their cattle and crops. The Mahdī appointed agents all over the country to levy the *zakāt* for the Treasury, and they were required to carry out their work in accordance with the instructions of the Qur'ān and the *sunna*. Taxes were largely paid in kind; the use of coined money was rare.<sup>10</sup>

In a general proclamation to his adherents the Mahdī prescribes the rates of tax imposed on various types of property: one-tithe on land irrigated solely by rain; one-half of a tithe, i.e., 5 percent, on irrigated land and crops (*ḥubūb*), and one-quarter of a tithe, i.e., 2.5 percent, on gold and silver. The Mahdī explains the rationale of the rates by saying that these have been determined "by way of graduation [in descending line] until the cost [i.e., the input invested in the taxed property] reaches its highest level (*fī 'l-tadrīj ilā bulūgh al-kamāl min nafaqat al-kamal*)."<sup>11</sup> Both the graduated taxes and their rationale are compatible with the orthodox *shar'ī*. The rate of *zakāt* is inversely related to the effort expended in producing the growth from which *zakāt* is due: the higher the

7 *Al-Āthār al-kāmila*, IV, 108–9. Cf. *ibid.*, IV, 406–7.

8 *Ibid.*, III, 70. See above, docs. 9–10. The Qāḍī al-Islām issued a legal opinion based on the Mahdī's letter to his agent in al-Gezira; see *Manshūrāt al-Mahdiyya*, 212. Cf. Abū Salīm, *al-Ard*, 16, 32; Zysow, "Zakāt," 414–15.

9 *Al-Āthār al-kāmila*, IV, 407.

10 *Ibid.*, II, 119–20. Cf. Holt, *The Mahdist State*, 126–27.

11 *Al-Āthār al-kāmila*, II, 176. See above, 262 (*zakāt al-ḥubūb*).

effort the lower the tax rate. Thus, unlike in land irrigated solely by rain, in irrigated land the employment of human or animal labor for conveying the water to the plants is indispensable. The rate of *zakāt* on gold and silver is the lowest in the aforementioned graduation, probably because of the expense involved in the coinage of these metals. In other words, the state compensates those who invest in their property to the point of exempting them altogether from property tax.<sup>12</sup>

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12 Thus, gold and silver in the form of a decorative article for wearing (*ḥaly*) are exempted from *zakāt* by some of the schools. See Zysow, "Zakāt," 413, cols. i–ii.

## 85. Recipients of *Zakāt*

### Legal Introduction

The recipients of *zakāt*, particularly the poor, are the main concern of the tax. They are listed in Q. 9:60 (with some differences of opinion among the schools as to interpretation): (1) the poor (*fuqarāʾ*) and (2) the indigent (*masākīn*); (3) the agents in charge of collecting the alms; (4) “those whose hearts are to be reconciled” (because of some doubt in an attempt to bring about their conversion) (*al-muʿallafa qulūbuhum*); (5) slaves (*riqāb*) (who contracted to purchase their freedom, *mukātabūn*, but lack the means to do so); (6) debtors (*ghārimūn*) (who lack the means to satisfy their debts); (7) those “in the path of God (*fi sabil Allāh*) (such as the volunteers to *jihād*); (8) and the wayfarers (*ibn al-sabil*) (who find themselves without means to meet their living expenses).

Broadly speaking, the wealthy (though the test for determining wealth is in dispute among the schools), unbelievers, slaves—other than those mentioned above in class (5)—direct ascendants, descendants, and wives are disqualified from receiving *zakāt*. It is disputed whether the Prophet’s kin qualify if they fail to receive their allotted portion of the booty (*khums al-khums*).<sup>1</sup> *Zakāt al-fitr* is designated only for the poor (based on a *ḥadīth*).<sup>2</sup>

### Documents

Broadly speaking, the allocation of *zakāt* in the Mahdist state is compatible with the list of recipients mentioned in Q. 9:60. The Treasury provides the allocations from its resources. Occasionally the allocations are supported by reference to the Qurʾān and *sunna*. Most of the allocations are given to the poor (*fuqarāʾ*) and indigent (*masākīn*). Thus in one case, the Mahdī, while issuing a reminder about the duty to pay *zakāt*, requests the emir of Darfur to treat with “friendliness (*riḥq*) and compassion (*shafaqa*) the weak (*duʿafāʾ*) and poor, especially those Muslims adhering to the Mahdiyya,” implying thereby that the

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1 Zysow, “Zakāt,” 415, col. ii–16, col. ii, 418; Zaydān, I, § 859–61, 863ff., 874–75 (a wife whose husband does not provide her with appropriate maintenance in accordance with her social status or if she has no property of her own, is entitled to *zakāt* on account of her being poor regardless of whether or not her husband is rich), 917 (the Prophet and his kin are disqualified). Cf. Rubin, *The Qurʾān*, 160, fn. 60.

2 Zaydān, I, § 972.

latter were preferred to other poor people.<sup>3</sup> In another proclamation to ‘Urbān al-Rawāwiqa, the emir is requested to “treat with kindness,” that is, provide *zakāt* allocations, to the orphans and the poor as well as to wayfarers (*abnā’ al-sabīl*),<sup>4</sup> and “to bring people closer to God” (*wa’l-‘amal bi-mā yuqarrib ilā allāh zulfā*).<sup>5</sup>

The allocations for the poor consist of food (*mu’na*) with daily yield (*ghilāl*), a cook for preparing the food, supply of water and daily money allocations to cover their necessities, an *imām* to lead prayer and a shelter (*takiyya*) to protect them against the sun (*istiḏlāl*).<sup>6</sup> In one case, the allocation consisted of provision of a slave girl (*jāriyya*) and a female domestic servant (*khaddāma*) and some money to construct a house.<sup>7</sup> In yet another case the Mahdī instructs to support a woman who takes care of orphan children by giving her a few sheep and slaves.<sup>8</sup>

The allocations to the *mujāhidūn*, warriors engaged in holy war against infidels, are intended to cover their expenses, such as food, clothing and a riding animal (*rukūb*).<sup>9</sup> Allocations are also given to the martyr (*shahīd*)’s relatives, such as wife and mother.<sup>10</sup>

There is isolated evidence in the documents of slaves being taken care of by allocations from *zakāt*. Thus after the fall of Khartoum the Mahdī instructs the treasurer of Bayt al-Māl to spend on the children of slaves (*awlād al-‘abīd*) according to his discretion.<sup>11</sup> In one case, the treasurer informs the Mahdī that a great number of slaves taken as booty following the fall of Khartoum arrived in Bayt al-Māl. Since the expenses of their maintenance are enormous, he suggests either selling them or enlisting them in the army. The Mahdī prefers the second option.<sup>12</sup>

The Mahdī uses the alms tax as a state instrument for social welfare, the poor being the main recipients, as well as for political purposes.

3 *Al-Āthār al-kāmila*, II, 21. Cf. Triminigham, *Islam in the Sudan*, 155.

4 This seems to refer to immigrants to the Mahdist territory.

5 *Al-Āthār al-kāmila*, II, 158–59. The word *zulfā* appears in Q. 34: 37 and 39:3; but in the case under review this may refer to class (4) mentioned in Q. 9:60.

6 *Al-Āthār al-kāmila*, IV, 335. Cf. *ibid.*, IV, 294–95 (allocations to the needy); *ibid.*, III, 124 (people coming from far away).

7 *Ibid.*, v, 272.

8 *Ibid.*, II, 144.

9 *Ibid.*, IV, 1. Cf. *ibid.*, IV, 315–16 (allocation of 30,000 riyāl among military units {*bawāriq*}); *ibid.*, IV, 297–98; VII, 137.

10 *Ibid.*, II, 14–15.

11 *Ibid.*, IV, 250. Cf. Holt, *The Mahdist State*, 103, 125–27.

12 *Al-Āthār al-kāmila*, IV, 305–6. See Glossary, s.v. *jihādīyya*.

PART 10

*Public Morality*





## 86. “Governor of the Market” as Public Prosecutor

### Legal Introduction<sup>1</sup>

*Ḥisba* (lit. “calculation” or “sufficiency”) is a non-Qurʾānic term that denotes both the collective obligation (*farḍ kifāya*) of every Muslim of “commanding right and forbidding wrong”<sup>2</sup> and the function of the *muḥtasib* to supervise the moral behavior in the markets. More specifically, the *muḥtasib*’s functions were to check the weights and measures in the market (*sūq*) and to supervise the performance of religious obligations, the propriety of behavior between the sexes in the public space and the application of discriminatory measures against the *dhimmīs*. Unlike the *qāḍī* and the *shurṭa*, the *muḥtasib* intervened of his own accord, without waiting for a complaint. In this respect he partly filled the lack of the office of public prosecutor in Islam.<sup>3</sup> The penalties the *muḥtasib* could inflict without resort to other juridical authorities were normally reprimand, beating, a parade in disgrace through the streets and confiscation of incorrect weights and measures and faulty products. The *muḥtasib* was appointed by the State, usually through the governors or the *qāḍīs*.<sup>4</sup> The *muḥtasib* had to be a man known for his moral integrity and for his legal authority; he was therefore usually a *faqīh*. The institution, which was Islamicized by the early ‘Abbāsids,<sup>5</sup> continued to exist throughout the greater part of the Muslim world until the reforms of the modern period.<sup>6</sup>

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1 Unless other sources are mentioned, the legal introduction on the *muḥtasib* is based on Cahen and Talbi, “Ḥisba,” 485–89.

2 Cf. Cook, *Forbidding Wrong in Islam*, 73ff.; idem, “al-Nahy ‘an al-munkar.” The Mahdi quite often resorts to this phrase, which is very common in the Qurʾān. Thus, whenever he appointed a new emir to any of the districts he would instruct the people within his jurisdiction to obey him as long as he “command you right and forbid you wrong” (*yaʾmurukum biʾl-maʾrūf wa-yanhākum ʾan al-munkar*). See, e.g., Q. 7:157. See *al-Āthār al-kāmila*, 11, 315; *ibid.*, v, 106, 136.

3 Schacht, *Introduction*, 207.

4 On the state as an agent of forbidding wrong, see Cook, *Forbidding Wrong in Islam*, 65ff.

5 Schacht, *Introduction*, 52.

6 Cf. Cook, *Forbidding Wrong in Islam*, 137ff.

## Document

There is ample evidence in the Mahdī's documents of the revival of the institution of the *muḥtasib* for the purpose of implementing his policy regarding public morality. Thus, the Mahdī instructs that whenever *ḥākim al-sūq*, the "governor of the market"—an institution apparently inspired by the "inspector of the market," the *muḥtasib*—comes across a woman who does not abide by his order to avoid mixing with strangers, he should bring her to trial before a *qāḍī* who will punish her in accordance with the statutory punishments on moral offenses. In a general proclamation to his adherents all over the country, the Mahdī imposes various prohibitions intended to regulate and control public morality, especially women's chastity. To this end he instructs:

The matter [of maintaining public morality] is hereby entrusted to *ḥākim al-sūq* in the market. [Likewise,] every emir is in charge [of the chastity] of the women under his jurisdiction; if a woman violates [the Mahdī's prohibition enjoining women from mixing with strangers in the market,<sup>7</sup> *ḥākim al-sūq* and the emir] will bring her to trial before the *qāḍī*, who will decide her case [i.e., sinful behavior and render his punitive decision].

The Mahdī concludes his proclamation by drawing the attention of the "governor of the market," the entirety of the emirs, the *qāḍīs*, and in particular the three nominated *khalīfas*<sup>8</sup> to the *al-kitāba fī 'l-ḥudūd*, referring thereby to the "proclamation pertaining to the Qūr'ānic punishments" (*manshūr al-ḥudūd*) issued by the Mahdī.<sup>9</sup>

We are dealing here with a Mahdist version of the institution of *ḥisba*. The governor of the market, alongside such senior officials as *khalīfas* and the emirs, functions as a public prosecutor. He is in charge of bringing the perpetrator of moral offenses to trial before a *qāḍī*, who in his turn is expected to apply the Mahdī's statutory punishments, when the offense under review does not justify applying a Qur'ānic punishment as in the case of women mixing with strangers in the market.<sup>10</sup>

7 See below, doc. 88.

8 See above, 9.

9 *Al-Āthār al-kāmila*, II, 264. Cf. Searcy, *The Sudanese Mahdist State*, 141 (*shaykh al-sūq*).

10 On the *ḥisba* as an instrument for enforcing Islamist legislation in Sudan during Ja'afar al-Numayrī, see Layish and Warburg, *Sudan*, 150–52.

## 87. Appointment of Arbitrators to Consolidate the Mahdiyya and Enhance Public Morality in Light of “Commending Right and Forbidding Wrong”

### Document

There is evidence in the Mahdī's documents of enlisting arbitrators (*muḥakkamūn*) from among the Anṣār to assist with the consolidation of religion (*iqāmat al-dīn*), that is, the Mahdiyya, in the districts. The Mahdī seems to have appointed the arbitrators for this mission with the expectation of enlisting their charisma and reputation as knowledgeable experts to impose his mahdship and his code of moral behavior on the population by peaceful means. The arbitrators are explicitly guided to perform their task “in light of the duty of commanding right and forbidding wrong” (*ma'a al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar*).

The terms of reference of the arbitrators, however, are much wider than those of *muḥtasibs*. The range of their duties, some of which are within the authority of the head of the state, consist of a variety of subjects pertaining to private and public law: Constructing mosques with *imāms* to lead the prayers five times a day and the prayer of Friday (*ṣalāt al-jamā'a*); overseeing repentance (*tawba*) for past misbehavior (probably for denying the Mahdī's mahdship); prohibition of the consumption of and trading in wine and tobacco; purifying the houses of worship (*buyūt al-dīn*) (probably from *'ulamā'* opposing the Mahdī); consolidating the Prophetic *sunna* and eradicating such innovations (*bida'*) and errors (*ḍalālāt*), dating back to the Jāhiliyya, as prohibiting women from lamenting (*niyāḥa*) over the dead; avoiding unlawful sexual relations (*zinā*) and temptations (*fitan*), theft (*sariqa*) and deceit (*ghashsh*); payment of *zakāt* tax on property; delivering booty to the Treasury; protecting women's chastity by proper dressing (as ordained in Q. 33:59) and by keeping them and their daughters indoors. The offenders of religious duties are liable to flogging. With a view to accomplishing all these tasks, the arbitrators are empowered to issue proclamations (*manshūrāt*) to the entirety of the people of the districts “commending them (*ta'murūhum*) what we [the Mahdī] have instructed you [the arbitrators] to do [right] and forbidding them (*tanhawhum*) what we have forbade you to do.”<sup>1</sup> Although the arbitrators are not actually *muḥtasibs* within the strict sense of the term, they are expected to fulfill their mission in the light of the normative concept of the *ḥisba*.

<sup>1</sup> *Al-Āthār al-kāmila*, 1, 275–76.

## 88. A Catalogue of Statutory Punishments on Moral Offenses

### Documents

One of the Mahdī's means to secure public morality was the circulation of a catalogue of punishments for moral offenses. On the face of it, these could have been classified as discretionary punishments (*ta'zīr*) intended to complement the *ḥudūd* punishments.<sup>1</sup> However, these punishments derived their force not from *fiqh* but rather from their status as the Mahdī's decrees, the fulfillment of which was obligatory on the state judiciary and executive functionaries. In a special proclamation addressed to the *mashā'ikh al-dīn*, emirs, *nuwwāb*, *maqādīm* and their followers, the Mahdī prepared a catalogue of moral offenses entailing specified sanctions that should be regarded for any practical purpose as *statutory* punishments, the legal norms of which were adopted from specified *ḥudūd* punishments:<sup>2</sup>

- (1) Using foul language indicating adultery (*takallama bi-fāḥisha*) entails 80 lashes.<sup>3</sup>
- (2) Addressing a believer by such terms as dog, swine, Jew,<sup>4</sup> Christian, procurer (*dayyūth*, *mu'arraṣ*), adulterer (*fājir*; *zānin*), thief (*sāriq*), faithless (*khā'in*), cursed (*mal'un*), infidel (*kāfir*), or sodomite (*lūṭī*) entails 80 lashes and a seven-day imprisonment.
- (3) Talking to an alien woman (*ajnabiyya*) (that is, not related within the forbidden degrees for marriage) that is other than the speaker's wife (*wa-laysa bi-āqidin 'alayhā*) with no *shar'ī* justification entails 27 lashes.
- (4) Smoking tobacco (*dukhān*) entails 80 lashes<sup>5</sup> and the destruction of the tobacco by fire.

1 See Izzī Dien, "Ta'zīr."

2 *Al-Āthār al-kāmila*, I, 303–5. For a lithographic version of the document, see *Manshūrāt al-ahkām wa'l-ādāb*, 30–31.

3 This sanction is reserved by *fiqh* for unproven accusation of illegal sexual intercourse (*qadhf*) entailing *ḥadd* punishments; see above, doc. 67.

4 It is reported in a tradition related to the Mahdī: "The Jews have three qualities which keep the believer away from them: the love of property, hedonism and avarice"; see *al-Āthār al-kāmila*, VII, 91, 215. For a lithographic version of this document, see Durham, SAD 97/5/2, col. ii.

5 Probably by analogy to wine drinking; see above, doc. 68.

- (5) Trading in tobacco (though not using it) entails 27 lashes.
- (6) Wine drinking, even sucking by a needle (*maṣṣa ibra*), as well as assisting one's friend to drink wine even one draught (*jur'a*) or from a vessel (*inā*) entails 80 lashes and a seven-day imprisonment.<sup>6</sup>
- (7) A man intentionally (*ʿamdan*) breaking a prayer (*ṣalāt*) ritual before its termination is deemed disobedient (*ʿāṣin*) to God and His Messenger. According to one version (*qīla*), he is regarded as infidel (*kāfir*) and according to another version he is liable to capital punishment (*yuqṭal*).<sup>7</sup> If the offender's neighbor (*jār*) refrains from notifying the offense to the emir after having failed to prevent the offense himself, he is liable to 80 lashes and a seven-day imprisonment. According to one version (*wa-qīla*): his property is deemed booty (*ghanīma*), which implies expropriation by the Treasury.<sup>8</sup>
- (8) Relatives of a five-year old girl who fail to conceal her behind doors are liable to lashes though not to imprisonment, probably out of concern for the girl's chastity.
- (9) If a slave girl (*ama*) has sexual relations with a person outside wedlock (*ma'ahā rajul bi-ghayr 'aqd*) and her master is informed of this and yet refrains (*ṣabara*) even for a single day from reporting the matter to the authorities,<sup>9</sup> according to one reading, he is liable to capital punishment (*yuqṭal*); according to another reading, he is liable to imprisonment (*ḥabs*); and according to yet another reading, his property will be expropriated as booty.
- (10) Greeting an alien woman is prohibited (*ḥarām*). Shaking a woman's hand entails 100 lashes for both parties; embracing or closely associating with a woman entails 50 lashes as well as two consecutive months of fasting

6 Cf. doc. 68, fn. 8 (80 lashes and a five-day imprisonment).

7 The different versions here and below are due to illegibility of the Mahdī's text. Various editions of the Mahdī's documents adopted different versions. The word "*qīla*," which appears twice in *al-Āthār al-kāmila*, was added by Abū Salīm. In the lithographic version of *Manshūrāt al-aḥkām wa'l-ādāb*, 31, there is only one version, which combines the offense with the punishment: *wa-qīla kāfir yuqṭal*. The implication, however, is the same: breaking a prayer ritual before its termination is deemed infidelity, which falls within the domain of *ḥudūd* punishments. Abū Salīm holds that there is no indication that capital punishment for this offense was applied during the Mahdist period. See *al-Āthār al-kāmila*, 1, 304, fn. 9.

8 See *al-Āthār al-kāmila*, 1, 304, fn. 10, 305, fn. 3.

9 Some hold that reporting the offense to the authorities (*tabliḡh*) is the duty of everyone in the community, while others hold that this is the duty of the master alone; see Abū Salīm, *Al-Āthār al-kāmila*, 1, 305, fn. 4.

- (*ṣīyām*) or, alternatively, the manumission of a slave (*ʿitq raqaba*).<sup>10</sup> This is deemed as repentance and God will forgive him. If he repeats his misconduct, he will be liable to punishment (*jazāʿ*).
- (11) Cursing (*sabba*) and mocking one's father is not compatible with God's commandment to behave kindly (*al-amr bi'l-ma'rūf*) toward parents, which the Mahdī equates with the religious duty to worship (*ʿibāda*) God, referring thereby to Q. 2:83 and Q. 17:23–25. If no repentance takes place, the offender is liable to 80 lashes, imprisonment (*yuḥbas*) and reprimand (*yuzjar*).<sup>11</sup>
- (12) Selling goods (*amtiʿa*) out of greediness (*ṭamaʿan fi kathrat al-māl*) to infidels, when the offender is fully aware of the state prohibition (*manʿ*) and warning (*taḥdhīr*) against doing so, entails confiscation of property to the Treasury, and if the offender declines to repent and repeats the crime, his hand will be amputated.<sup>12</sup>

Occasionally, especially in civil matters, the Mahdī prefers to resort to ethical sanctions rather than imposing statutory punishments. Thus in a proclamation addressed to merchants engaged in transactions in the market of El Obeid and elsewhere, he urges justly weighing goods (*al-wazn bi'l-qist*) in all financial transactions and refraining from deceit (*kidhb*), cunning (*makr*), cheating (*khidāʿ*), fraud (*ghashsh*), deception (*khiyāna*), non-fulfillment of a commitment (*ʿadam al-wafāʾ bi'l-ʿahd*), oath or pledge, and false oath (*al-yamīn al-fājira*), as prescribed in the Qurʾān and the *sunna*. He cites Q. 3: 77: “Lo! Those who purchase a small gain at the cost of Allāh's covenant and their oaths, they have no portion in the Hereafter. Allāh will neither speak to them nor look upon them on the day of Resurrection. . . .”<sup>13</sup>

10 *Al-Āthār al-kāmila*, III, 109. See Glossary, s.v. *kaffāra*.

11 The Mahdī reprimands the practice of cursing a free man (*sabb al-ḥurr*) and warns against using obscene (*fawāḥish*) language. The Prophet has informed him that such language causes damage to the reputation of the Mahdiyya. He cites Q. 49:11, the moral lesson of which is that people should not deride other people, who may be better than them; see *al-Āthār al-kāmila*, II, 93. For a lithographic version of the document, see Durham, SAD 97/5/15–16. On Prophetic message by means of *ilhām*, see above, 37ff.

12 *Manshūrāt al-aḥkām wa'l-ādāb*, 14. Amputation of the hand as *ḥadd* punishment is reserved for theft. See above, doc. 55.

13 *Al-Āthār al-kāmila*, I, 359–60.

## 89. Negative Innovations Entail Discretionary Punishments

### Legal Introduction

Q. 5:90–91 and 2:219 put games of hazard (*maysir*) on a par with drinking wine as far as prohibition is concerned. However, no *ḥadd* punishment is designed for games of hazard in the textual sources.

### Documents

The Mahdī was anxious to restore the Islamic state dating back to the Prophet and the “Righteous Caliphs,” to strictly adhere to the Qurʾān and the *ḥadīth* and eradicate the negative innovations and superstitions (*khurāfāt*), thus purifying the belief in the unity of God (*tawḥīd*), according to the Mahdist doctrine.<sup>1</sup>

In a proclamation to the inhabitants of the region of al-Qaḍārif in the eastern district of Sudan, the Mahdī announces that anyone playing games of hazard, such as *minqala*, *ṭāwla* and *ṭāb*, will be punished “in accordance with your exertion” (*bi-ḥasab [i]jtihādikum*), which seems to imply discretionary punishment (*taʿzīr*) of the local authority.<sup>2</sup> The Mahdī deems such practices as wine drinking, use of tobacco, clapping (*ṣafq*) (probably in festivities), dancing (*raqṣ*), and eating pork, customs dating back to pre-Islamic times (*sunna Jāhiliyya*), strictly forbidden (*muḥarramāt*) and punishable by God by exemplary punishments in this world and the Hereafter. He is determined to eradicate what he deems corruption (*fasād*) in order to spare life.<sup>3</sup> Some of these practices—wine drinking and eating pork—have already been prohibited in the Qurʾān.<sup>4</sup>

Other negative innovations are singing (*ghināʾ*), mourning (*niyāḥa*) the dead, funeral rites (*janāʾiz*) led by women, crying [at funerals], charms (*tabarruj*) displayed by women, spreading mattresses (*firāsh*) on the floor for the

1 Abū Salīm, *al-Ḥaraka al-fikriyya*, 164; see above, 6.

2 *Al-Āthār al-kāmila*, IV, 109; Holt, *The Mahdist State*, 166–67. For details on these games, see Lane, *Manners*, 350, 351 (*manqala*), 353; *al-Munjid*, 834, col. iii. On drinking wine, see above, doc. 68.

3 *Al-Āthār al-kāmila*, v, 338; Holt, *The Mahdist State*, 130.

4 See, for instance, Q. 2: 173 (eating pork), Q. 5: 90 (wine drinking).

mourners in excess of three days, and women mixing with men. The Mahdī condemns these practices as Satanic customs and mental sedition (*taswīlāt*) caused by the Devil. Inventing negative innovations (*ibtidāʿ*) is in glaring contradiction to the normative customs set by the forefathers (*salaf*) and should be treated as the source of all evil (*sharr*) that brings about corruption of the Mahdist society and the destruction of Islam.<sup>5</sup> In a *khuṭba*, the Mahdī claims that people are misled by the customs of negligent people (*ʿādāt al-ghāfilīn*) that consequently enable Satan to entrench customs in their hearts, weaken their confidence (*yaqīn*)<sup>6</sup> [in God] and adhere to innovations and deviation (*bidaʿ waʿl-inḥirāf*) from the path of God.<sup>7</sup> Hence the elimination of these innovations has become one of the Mahdī’s objectives of the *jihād* campaign. In a letter to the *faqih* [*faqih*]<sup>8</sup> Bilal Ṣābūn, the Mahdī writes:

You should eliminate innovations (*izālat al-bidaʿ*) and reprehensible deeds (*munkarāt*) and renounce all the forbidden acts (*muḥarramāt*) on account of what had been prohibited by Allāh and the Prophet, that is, the Qurʾān and the Prophetic *sunna*, and provoke incessantly the Muslims against [these innovations] and concentrate on *jihād* against the infidel Turks and others.<sup>9</sup>

Within this effort, the Mahdī calls upon his adherents: “Preserve my *sunna* and the *sunna* of the righteous successors after me.”<sup>10</sup> Moreover, the Mahdī regards the elimination of these customs as part of an effort to bring about the revival of Islam (*ihyāʿ al-dīn*).<sup>11</sup> In a general appeal to his followers, the Mahdī says:

God has demonstrated through me [i.e., through the Mahdī’s manifestation] (*aẓharanī*) compassion (*raḥma*) to the believers in order to revive what has become obliterated and wiped out (*indarasa*) of the impact of

5 *Al-Āthār al-kāmila*, V, 318, 336. Cf. *ibid.*, I, 302 (young girls may not “play up their charms in the manner practiced in the First Jāhiliyya”). For a lithographic version of the document, see Durham, SAD 97/5/87; *Manshūrāt al-aḥkām waʿl-ādāb*, 29–30. Cf. al-Muftī, *Nizām al-qaḍāʾ*, 135–36.

6 The words “*ghāfil*” and “*yaqīn*” have Ṣūfī connotations par excellence. See Glossary, s.v. *ghafla*, *yaqīn*.

7 *Al-Āthār al-kāmila*, VI, 153–54.

8 See Glossary.

9 *Al-Āthār al-kāmila*, V, 367–68.

10 *Ibid.*, V, 318.

11 *Ibid.*, III, 105.

religion and faith (*amāna*) [of Islam] caused by the negative innovations and the destruction caused by the customs of the infidels (*ʿawāyid* [*sic*] *al-kāfirīn*).<sup>12</sup>

The Mahdī concludes by declaring: “all these [innovations] are forbidden and the transgressors are by all means liable to punishment (*fā-innahā muḥarrama wa-lā budda min al-muʿāqaba fihā*),”<sup>13</sup> by which he seems to refer to discretionary punishments.

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12 Ibid., IV, 490–1.

13 Ibid., IV, 52.



PART 11

*Testimony*





# 90. A False Witness Is Liable either to Be Decapitated or Have His Property Taken Away or His Hand Amputated

## Legal Introduction

Giving testimony in court is a collective obligation in the sense that a number of persons performing the obligation exempt the rest of the community from this duty (*farḍ ‘alā ’l-kifāya*); however, this collective obligation becomes an individual obligation in the event that someone might lose his right if a specific witness declines to testify to it (based on Q. 2: 282). An *‘adl*, a competent witness, is defined as a major, sane, free Muslim fulfilling all the requirements of Islamic law, who faithfully performs his religious duties and moral life and who has not committed great sins or persevered in small sins. Before a witness is allowed to testify, the *qāḍī* has to establish his good morals by secret and public inquiry (*tazkiya*, *ta’dīl*). Under traditional Islamic law, a witness who is not an *‘adl* is prohibited from giving testimony. Most schools do not admit a witness who has interest in the case and would profit from his testimony.<sup>1</sup>

## Documents

In a *fatwā* related to the Mahdī he is addressing two questions:

1. Are witnesses to a private claim (*da‘wa*) with [an established] reputation of good character (*‘adāla*) required—[in the event there is some suspicion of bias]—to take an oath (*tahlif*) [by Allāh that they have no interest in the case] before testifying in court, or rather are they exempt from such an oath?
2. In the event that someone slanders (*qadh*) their reputation as witnesses, and it has come out as a result of inquiry that the slander is justified (*idhā tabayyana*), should or should not the slander be taken into account (*mu’tabar*) as to their eligibility for testifying, i.e., prohibit them from testifying in court?<sup>2</sup>

1 Peters, “Shāhid,” 207–8; Anderson, *Africa*, Glossary, s.v. *‘adl*, *ta’dīl*, *tazkiya*.

2 *Shuhūd al-da‘wa al-ma’rūfūn bi’l-‘adāla hal yajib tahlifuhum am lā wa-hal al-qadh fi ’l-shuhūd mu’tabar idhā tabayyana am lā?*

The Mahdī's legal opinion:

[In the event there is some suspicion of bias] the witnesses must by all means take an oath (*ḥalf*) [by God before testifying in court], since God, Exalted, has prescribed regarding this testimony [Q. 5:107]: "And let them [the two other witnesses] swear by Allāh (saying): 'Verily our testimony is truer than their testimony.'" The slander of the witnesses should be taken into account (*mu'tabar*) since God, Exalted, has prescribed [in Q. 5:106]: 'Let there be . . . two witnesses, just men from among you.' Anyone that a slander against him has been established cannot be deemed a witness of good character (*wa'l-thābit fīhi al-qadh laysa bi-'adlin*).<sup>3</sup>

In other words, the Mahdī is of the opinion that in the event that there is some suspicion of bias, being an *'adl* is not in itself enough in order for him to be eligible to testify in court; the witness must clear himself by taking an oath clearing himself from this suspicion.

In a tradition related to the Mahdī he is reported to have said with respect to a false witness (*shāhid al-zūr*):

Let [the false witness] choose [for himself one of the following punishments]: either to be decapitated or have his property taken away or his hand amputated (*khayyirūhu immā an yardā bi-qat'i ra'sihi, aw yuslaba māluhu, aw qat'i yadihi*).<sup>4</sup>

No details are mentioned in the tradition regarding the circumstances in which these harsh punishments were rendered. It is highly likely, however, that the false witness tried to gain some benefit from his testimony, thereby causing severe damage to one of the parties. I have not come across, in the Mahdī's documents, a single instance where a false witness was confronted with any of these options.

3 *Manshūrāt fī 'l-ḥudūd*, 19–20. These verses were prescribed in circumstances where the legal heirs suspect that the witnesses to a testamentary disposition have falsified their testimony in an attempt to derive some benefit for themselves. See Rubin, *The Qur'ān*, 103–4.

4 *Al-Āthār al-kāmila*, VII, 139–40, 232.

## Conclusion

The Mahdī's legal methodology is comprised of the textual sources of the Qur'ān and the *sunna*, and—in the event of a lacuna—the inspiration (*ilhām*) derived from the Prophet and God and such auxiliary sources of law as public interest (*maṣlaḥa*) and necessity (*ḍarūra*). His legal methodology is unique in that it was molded under the profound impact of both Ṣūfism and Salafism. The most important manifestation of Ṣūfism in the legal context is the elevation of the inspiration derived from the Prophet and God to a source of law.<sup>1</sup> The Salafī imprint—that is, the normative legal tradition of the forefathers—was manifested in the emphasis laid by the Mahdī on the Prophetic *sunna* and the adoption of the concept that the latter could abrogate a Qur'ānic text. Moreover, the Mahdī's identification with the Prophet Muḥammad, whom he claimed to succeed, and with whatever Prophetic tradition stands for may explain the Mahdī's rejection of the legal doctrines and methods of reasoning (*ra'y, qiyās*) of all schools.

The Mahdī abolished all schools of law. Although there is every reason to believe that he was acquainted to a certain extent with legal doctrines of all the schools, he did not deem himself bound by any of these schools. In the event of a lacuna in the textual sources the Mahdī would naturally tend to apply *fiqh* doctrines from the Mālikī school, which traditionally was dominant among the Sudanese population, rather than doctrines from the Ḥanafī school, which was imposed on the Sudanese *shar'ī* judiciary by the Ottomans. Thus the Qāḍī al-Islām ruled in one case that the right of preemption was reserved only to the partner, not the neighbor (doc. 12). Occasionally, however, he would apply legal norms from other schools; in none of these cases, was any mention made of the school's identity. It seems that the Mahdī's selection of a particular *fiqh* doctrine was essentially premeditated in accordance with his view of the desired legal norm in the case under review; hence, the application of a particular doctrine of any of the schools seems to have been a function of the subject matter rather than the other way around. Consequently, there was no point, in the Mahdī's view, in specifying the names of the 'ulamā' and their school affiliation, the only exception being *fuqahā'* belonging to the generation of the Prophet. A case in point is the Mahdī's reliance on Ibn 'Abbās, who does not deem *khul'* divorce a repudiation in terms of legal consequences and hence excludes it from the quota of three repudiations that entails intermediate marriage (doc. 31). The Mahdī's preference for *fuqahā'* belonging to the

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1 In a social context, Ṣūfī organizational institutions were accommodated to the Mahdist state.

generation of the Prophet is observable also with respect to such jurists as ʿIkrima, al-Daḥḥāk, Ubayy b. Kaʿb and Mujāhid (doc. 20).

Another feature of the Maḥdī's legal methodology, which is closely connected to the Salafī emphasis on the textual sources of the Qurʾān and the *sunna*, is the Maḥdī's inclination to a literal reading of the textual sources and their assessment at face value while ignoring their interpretation as manifested in the *fiqh* doctrines of the schools. This inclination is demonstrated, e.g., in the Maḥdī's literal reading of Q. 5:38 regarding amputation of a thief's hand, thereby extending the scope of definition of theft liable to *ḥadd* punishment while ignoring altogether the preconditions for effecting amputation, such as minimal value of the stolen object (*niṣāb*) and uncertainty or doubt (*shubha*), which avert the *ḥadd* punishment (doc. 55). Similarly, the Maḥdī's sweeping ruling that the prohibition on grounds of fosterage, that is, relationship created by breast-feeding, applies automatically to all the issue of the blood brothers—based on a literal reading of Q. 4:23 and a *ḥadīth*—exacerbated the prohibition of marriage on grounds of fosterage (doc. 14). This is also the case with respect to the Maḥdī's ruling that the waiting period of a mature woman who has experienced a delay of menstruation is—on the basis of a literal reading of Q. 65:4—three months (doc. 39).

It is noteworthy in this connection that although the Maḥdī was fully aware of the procedure of abrogation (*naskh*), he did not seem to apply this procedure to the Qurʾānic verses that ordain making a bequest in favor of the testator's close kin (Q. 2:180 and Q. 2:240) (doc. 50); according to the *fuqahā's* conventional view, these verses were abrogated by later verses assigning specific fractional shares to some of these relatives and to the spouse relict (Q. 4:11–12 and 176).

The Maḥdī's legal methodology was based on his legal authority; his adherents deemed him the highest religious-legal authority (*al-marjiʿ al-aʿlā*). His version of *ijtihād* was unique in that it pretended to be based on an inspiration derived from the Prophet and God that actually conferred upon the Maḥdī a degree of legal discretion wider than that allowed by classical *ijtihād* based on analogical reasoning and deduction from the textual sources. The legal norm formulated by the Maḥdī on the basis of his interpretation of the textual sources and the inspiration derived from the Prophet and God was presumed to be final, irrevocable and infallible (*maʿṣūm min al-khaṭaʿ*). In addition, the Maḥdī derived his legitimacy from his pretension to be the heir (*wārith*) to, and successor of, the Prophet (*khalīfat rasūl allāh*) and the “Expected (*muntaẓar*) Maḥdī.”

The Maḥdī's main concern was to secure independence from Turco-Egyptian rule in order to establish a theocracy under his own leadership

bound by his version of the *sharīʿa*. The Mahdī used his legal methodology as an instrument to promote his political and social agenda as well as in the pursuit of public morality. Thus the Mahdī had a consistent policy of denouncing political adversaries as infidels (*takfīr*).<sup>2</sup> He would urge his adherents: “Slay the Turks wherever you find them” since as infidels they were not entitled to protection by a pledge of security nor did they deserve forgiveness (doc. 72). The Mahdī’s policy of *takfīr* is manifested in many of the decisions and legal opinions issued by him: Denial of or expressing doubt about his mahdship was defined as apostasy in the fundamental principles of faith or the blaspheming of God; withdrawal from Islam and the *sharīʿa*, as conceived of by the Mahdī, was deemed apostasy in deeds; and failure to emigrate to Mahdist territory was deemed apostasy in omission on the same level as negligence in the application of the *sharīʿa* (docs. 69–72). This policy seems to have been motivated by the desire to deter Muslims from joining forces with the Turco-Egyptian administration and potential rebels in territories recently conquered by the Mahdī.

The Mahdī extended his struggle against those who denied his mahdship to the domain of personal status. Thus he ruled that if a wife joined the Mahdiyya, leaving her husband behind in a Turkish-Egyptian territory, she should not be deemed disobedient, with all that this entails under the *sharīʿa* (doc. 23). Actually, her emigration to join the Mahdiyya created a situation of “difference of religion,” which in itself is a *sharʿī* ground for dissolution of the marriage. Indeed, in several cases the Mahdī ruled rescission (*faskh*) on the grounds of difference of religion on the basis of Q. 60:10, referring thereby to the historical event of the Meccan women who converted to Islam and emigrated in order to join the Prophet in Medina (docs. 37–38). The Mahdī ruled that marriage contracts had neither *sharʿī* legal nor financial effect in Turco-Egyptian territory, presumably because he deemed the spouses infidels (doc. 27). Similarly, the Mahdī, prompted by political considerations, ruled that a killer residing in the Mahdist state would not be punished retroactively for an offense he had committed under Turkish rule—an offense that is classified in the *sharīʿa* as private law—if his repentance was accepted by the state, i.e., if he joined the Mahdiyya (doc. 52). By the same token, the Mahdī ruled that intentional homicide committed under Mahdist rule entailed compulsory retribution with no option of forgiveness in an attempt to deter people from joining forces with the Turco-Egyptian administration and potential rebels in recently conquered territories (doc. 51).

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2 Cf. Khālid, *al-Fajr al kādhīb*, 21.

In order to put an end to the widespread phenomenon among the warriors of stealing from the booty, which was likely to cause damage to the military effort against the Turks, the Mahdī ruled that such a crime entailed discretionary punishments, excommunication and capital punishment, implying thereby that stealing from booty was tantamount to apostasy and provided legal justification for execution (docs. 58–59). In a case of a different kind, the Mahdī forgave a highway robber who repented and acknowledged having committed a crime *after* being captured although Q. 5:34 provides that repentance should take place *before* capture. The Mahdī seems to have used forgiveness as a means for consolidating his position in the region (doc. 60).

The Mahdī ruled that a woman might participate in fighting in *jihād* for the cause of God, using her hands and feet, provided she was physically capable and old enough not to attract men's attention as an object of sexual desire (doc. 78).

The Mahdī deprived a Christian *dhimmī* of his right to a safe-conduct (*amān*) on the grounds that by staying behind in Turco-Egyptian territory—until it was taken over by the Mahdī—he was regarded as cooperating with the Mahdī's enemies thus violating his obligations under the contract of *amān* and placing himself on the same level with the *ḥarbīs*, unprotected non-Muslims. Hence the Mahdī left him with the choice either to convert to Islam or be proclaimed *ḥarbī* (doc. 81). Due to his lack of orientation in international affairs the Mahdī was determined to apply Islamic international law as an instrument for handling political disputes with Christian powers such as Great Britain. Thus he offered General Gordon and his English soldiers a contract of *amān*, with some land limitations pertaining to *mīrī* land, provided they surrendered by agreement. Moreover, he invited them to embrace Islam and integrate into the ranks of the Anṣār (doc. 79).

The Mahdī's legal methodology was also instrumental in promoting his social agenda. Thus although the institution of slavery was part of his worldview, he was concerned that slaves and concubines be treated kindly and considerately by their masters; moreover, he extended the status of *umm al-walad* to the effect that not only her children by her master but also children she gave birth to afterward who were fathered by slaves be deemed manumitted even in her master's life (docs. 1–2). The Mahdī improved the legal status of women within the family. Thus he did not approve of marrying a woman against her will (doc. 15); such a marriage entailed enforced *khul'* (doc. 30) or dissolution effected by the *qāḍī* (*taṭlīq*) (doc. 32). Moreover, the Mahdī delegated to a woman the power to marry off her daughter to anyone she wished provided the daughter's consent was obtained (doc. 16). He highly recommended maintaining equality among free wives in polygamous marriages (doc. 21). He declared

all kinds of repudiation by way of oath, including by implication suspended repudiation, to be null and void (unless God's name has been mentioned in the oath) (doc. 46). Even when there was justification for a *khul'* divorce, as in the case of a disobedient wife, the Mahdī advised that the husband renounce his financial rights (doc. 29). He further ruled that a *khul'* agreement should not affect the wife's right to *mahr* if she had immigrated to the Mahdist state (doc. 28). The Mahdī's aforementioned ruling, in reliance on Ibn 'Abbās, that *khul'* did not constitute repudiation in terms of legal consequences seems to have been motivated by his desire to diminish the harsh consequences of three divorces after which the divorcing husband might not legally restore his divorced wife unless an intermediate marriage had taken place (doc. 31). The Mahdī provided the wife with such generous grounds for judicial dissolution as non-provision of maintenance by an absent husband, the husband's absence in a non-Mahdist territory (which is a ground for *takfir*) and prejudice caused to the wife (docs. 33–36). These rulings may be regarded, from the point of view of women, as extremely liberal reforms some of which were introduced, through parliamentary legislation, only in the 20th century.<sup>3</sup>

The Mahdī acknowledged the right of a widow to waiting-period maintenance (without specifying the components of the term "maintenance"—which traditionally consists of food, clothing and matrimonial dwelling) *out of the estate* with no such preconditions as consummation of the marriage or pregnancy. The Mahdī further ruled that the widow had right of inheritance regardless of whether or not she remarried after the expiry of the waiting period. This extremely generous and innovative reform contrasts with the normative basic view in some of the schools that once the owner of an estate dies his property belongs to the legal heirs. The Mahdī perceived this right as a debt to be defrayed before the division of the estate among the legal heirs (doc. 49).

Where the mother of a minor child was married to a third party, the Mahdī recommended settling the issue of custody by mutual agreement between the parents; in the absence of such an agreement, the child's mother should be given preference as to custody because of her "exceeding compassion" and having regard to the welfare of the child (doc. 47), although the principle of the welfare of the child is not recognized under orthodox Islamic law.

Besides the ritual nature of the alms tax as a means of personal purification (*taḥīr*; *tazkiya*) of the soul, the Mahdī underlined the importance of the tax as a state instrument for promoting social justice in terms of distribution of property ("God collects it [the alms tax] from the rich among you and delivers it to the poor among you") though he did not change the basic concept according

3 Layish and Shaham, "Nikāḥ"; Layish, "Ṭalāk."

to which the rate of *zakāt* is inversely related to the effort expended in producing the growth from which the tax is due (the higher the effort the lower the tax rate), a concept that is not compatible with the concept of progressive tax (docs. 83–84).

The Mahdī introduced substantial reforms in land tenure. Thus he announced a seven-year period of prescription, which is shorter than that of the Ottoman period of prescription (doc. 7). He adopted the Ottoman land category of *mīrī* (doc. 6), although on the doctrinal level he absolutely denied the Ottomans' right of legislation. He promoted a land reform: Everyone was entitled to own a plot of land to be cultivated by himself to satisfy his needs; land beyond this extent should be given to needy people. He condemned leasing land for rent on the grounds that this might weaken the solidarity of the believers as a social non-competitive unity aiming at equality between its individuals. This seems to imply that the Mahdī regarded leasing as exploitation of the agricultural labor force and socially undesirable. If, however, the landowner was incapable of cultivating the plot by himself, he might lease it for rent (*ījār*) or on the basis of a tenancy contract (*muzāra'ā*), that is, in return for a share of the crops (docs. 9–10). By the same token, the Mahdī did not permit using a pledge as a device for circumventing prohibition on interest, but at the same time he allowed the pledgee/creditor to deduct the expenses of managing the pledge from the profits (*ghalla*) of the pledge, while the residue of the profits should be deducted from the loan (doc. 11).

Apart from social reforms, the Mahdī made a special effort to establish himself as the custodian of public morality, in an attempt to maintain a strict, uncompromisingly puritan way of life. Besides his concern to promote women's legal rights, the Mahdī strove hard to maintain the normative Islamic values pertaining to chastity. Seclusion of women was an essential part of the Mahdī's policy of public morality. Women exposing their faces to men were liable to 27 lashes, and women speaking aloud in public—implying thereby that a woman's voice was indecent—were liable to a hundred lashes (docs. 63–64).<sup>4</sup> Holt suggests that the Mahdī's regulations pertaining to veiling and segregation, and his prohibitions on excessive *mahr* and extravagant wedding expenditure, should be assessed as measures to defend married women and increase their safety.<sup>5</sup> Marriage to a woman promised to another, even if consummated, entailed dissolution and discretionary punishment (doc. 13). Likewise, a woman's marriage to another man before formally establishing her

4 Cf. Holt, *The Mahdist State*, 130–31.

5 *Ibid.*, 131.

divorce from her former husband entailed separation and her restoration to her former husband (doc. 26).

The Mahdī was very strict about crimes of illegal sexual intercourse. The punishment corresponded to the severity of the circumstances: Those who had experienced legitimate sexual relations in matrimony (*iḥṣān*) were liable to capital punishment by stoning; virgins (*bikr*) were liable to lashes; and a woman who entered into privacy (*khalwa*) with a stranger was liable to discretionary punishment (doc. 61). By the same token, a divorced woman who married another man during her waiting period was liable to lapidation (doc. 62). The Mahdī allowed women to participate in fighting for the cause of God provided that no moralistic corruption was anticipated (doc. 78). Kidnapping a married woman who had been left behind in Turco-Egyptian territory in order to marry her, while the husband was expecting to reunite with her in Mahdist territory, entailed imprisonment and lashes (doc. 65). The Mahdī, as do most schools, deemed sodomy to be unlawful heterosexual intercourse, entailing decapitation by sword, a punishment that might have gained support by some Shāfiʿī and Ḥanbalī jurists (doc. 66). The Mahdī made every effort to uproot, by means of *ḥadd* and statutory punishments, the consumption of wine (or any intoxicating liquor) and use of tobacco (doc. 68).

The Mahdī's version of the inspector of the market, "the governor (*ḥākim*) of the market," in his capacity as public prosecutor, was one of the main instruments for enhancing public morality. Occasionally the Mahdī appointed arbitrators to assist him with consolidating the Mahdiyya and enhancing public morality in light of "commanding right and forbidding wrong" (docs. 86–87). One of his means to promote public morality was the circulation of a catalogue of statutory punishments on moral offenses confirming or complementing the *ḥudūd* punishments; moreover, the punishments listed in the catalogue should be regarded for all practical purposes as *statutory* punishments (doc. 88). Similarly, in order to bring tribal society within the orbit of normative Islam, the Mahdī was determined to "eradicate non-normative and reprehensible customs" (*izālat al-bidaʿ wa'l-munkarāt*) incompatible with *sharīʿa* and the social order (doc. 89).<sup>6</sup> The possibility that the Mahdī invalidated an oath of *ḥarām* or oath of continence whenever a term connoting repudiation was not explicitly mentioned in the oath cannot be ruled out (docs. 44–46).

The Mahdī's moralistic approach is also demonstrated in the domain of testimony. Thus he ruled in one case that a witness whose good reputation had been challenged because of some suspicion of bias should swear by God that he had no interest in the case under review before being

6 Cf. Holt, *The Mahdist State*, 130–31. Cf. Mustafa, *The Common Law*, 39–40.

admitted to testify in court, and that a false witness deserved harsh punishment, such as decapitation, amputation of his hand or confiscation of his property (doc. 90).

Undoubtedly, the Mahdī was engaged in intensive reformist and purist legislation. However, there was no attempt on his part to introduce the reforms systematically. Rather, he reacted to the daily pressures of a changing reality; he proved himself to be a pragmatic legislator with no inhibitions about adapting the *sharī'a* to his political, social and personal needs, occasionally at a very high price from the point of view of traditional Islamic law. Quite often, the Mahdī's legislation resulted in explicit deviations from the orthodox *sharī'a*, or at least in what was incompatible with its spirit. Thus he imposed criminal sanctions on excessive *mahr*, even though no maximal *mahr* is recognized in Islamic law; or he expropriated part of the *mahr* in favor of the poor or the warriors of *jihād*, even though *mahr* is the private property of the wife (doc. 17). The Mahdī commended using such coercive measures as putting the wife in a darkened cave or house to enforce obedience to her husband, rather than resorting to the *sharī* sanction of depriving a recalcitrant wife of her right to maintenance (doc. 24), or compelling a disobedient wife to renounce her rights in divorce, i.e., the deferred nuptial gift and—by implication—the waiting-period maintenance though the Mahdī may at the same time advise the husband to renounce his financial rights (docs. 25, 29). The Mahdī married a fifth wife and reinstated his triply-divorced wife with no intermediate marriage—in both cases in glaring contradiction of *sharī'a* though with the Prophet's alleged permission, available to the Mahdī alone, not to others (docs. 20 and 42–43). In one case, the Mahdī ruled that the marriage to a fifth wife, though deemed irregular under *sharī'a*, be allowed to remain intact; instead, he instructed that one of the lawful wives was to be divorced (doc. 18). A wife that had been left behind in a Turkish military camp while her husband joined the Mahdist forces was deemed separated from her husband, probably on the grounds of difference of religion (*ikhtilāf al-dīn*). The Mahdī ruled, nevertheless, that she could be restored to her husband without performing a new marriage contract, provided she had not completed a waiting period of *one* menstruation (*qur'*); such a short period is not compatible with the waiting period prescribed by Q. 2:228 (unless the Mahdī was referring to the waiting period of female slaves) (doc. 40). By the same token, the Mahdī ruled that if the absent husband was one who stayed behind in Turkish territory, thus causing the dissolution of the marriage contract on the aforementioned grounds, the wife was not required to observe the waiting period (*idda*) for her remarriage with the Anṣār; rather, she was required to prove only that

her womb was free from pregnancy (*barāʿat arḥāmihinna*), which may refer to a waiting period of one menstruation (*qurʿ*) (doc. 33).

The Mahdī allocated the entire estate to a martyr's widow as charity, regardless of other legal heirs and contrary to the doctrine of *radd*—the right of the Qurʾānic heirs to the residue of the estate in the absence of male agnatic heirs (*ʿaṣaba*)—the allocation being incompatible with the rules of inheritance prescribed by the Qurʾān and elaborated in the *fiqh* of the schools. The Mahdī could have been inspired here by the circumstance (*sabab*) of the revelation of the Qurʾānic verse—that is, the personal resort of the widow of Saʿd b. al-Rabiʿ to the Prophet (doc. 48). Moreover, it is highly likely that the Mahdī did not rule out the possibility of making a will in favor of parents and close relatives as prescribed by Q. 2:180 and 240, regardless of these verses having been abrogated by Q. 4:11–12 and 176 (doc. 50).

As already noted, the Mahdī's literal reading of Q. 5:38 regarding amputation of a thief's hand, demonstrates his ignoring altogether the preconditions for effecting amputation, one of which is the minimal value of the stolen object (*niṣāb*). On one occasion the Mahdī insisted on amputation of the thief's hand regardless of the value of the object stolen; he might have been inspired by some Prophetic traditions (doc. 55). On another occasion, when three bulls were stolen by a group of people, he ruled that since it was impossible to establish the identity of the individual personally responsible for the theft, no one would be punished—referring by implication to amputation. He moreover ruled that there was no collective punishment in Islam. Although three bulls seem to constitute a *niṣāb*, the Mahdī did not refer to such questions as the minimal value of the share of each partner or of the entire group in the stolen cattle, both because he did not regard *niṣāb* as being of any relevance to theft in the first place and because he did not recognize the concept of collective theft (doc. 57). The Mahdī ruled that theft from booty entailed dissociation from the community and capital punishment, probably on grounds of apostasy (doc. 59); moreover, the witness to a theft who failed to report the crime was liable to amputation of his hand as if he were a thief (doc. 56). We noted earlier a case where the Mahdī forgave a highway robber although the repentance and acknowledgment of having committed the crime took place *after* rather than *before* being captured as required by Q. 5:34. The deviation from the Qurʾānic verse seems to have been prompted by a political consideration, i.e., to use the forgiveness as a means to cause the bandits to immigrate to the Mahdist territory (doc. 60).

In an attempt to elevate the moralistic behavior of his followers, the Mahdī added 20 lashes to the punishment of *qadhf*, a false accusation of unlawful

sexual intercourse traditionally entailing 80 lashes, thus fixing the punishment at 100 lashes. Only when the Mahdī was assured that the Mahdiyya had consolidated itself in the country did he restore the original Qur'ānic punishment, which is 80 lashes (doc. 67).

The Mahdī's interpretation of Q. 8:41 suggests some important deviations in the division of booty among the recipients. Thus four-fifths of the booty was to be equally apportioned among the warriors, without distinction between rich and poor and regardless of the warriors' professional status (doc. 76). On another occasion the Mahdī ignored Q. 8:41, which traditionally regulated the rules for the distribution of booty, and applied instead Q. 59:7, which enabled him to exclude the warriors from entitlement to booty on the grounds that it was not acquired by conquest (doc. 73).

Occasionally the Mahdī expanded the domain of public law at the expense of private law out of political considerations. Homicide, which is traditionally classified in the *sharī'a* as private law with a tendency to convert parts of it from tortious to penal law, is a case in point. By ruling that intentional homicide in the Mahdist state should entail compulsory retribution with no option of forgiveness (doc. 51), the Mahdī took intentional homicide a step further toward converting it into a crime entailing punishment. Compulsory retribution at the state's initiative is, by its nature, punishment that is alien to private law. The denial of the option of monetary compensation is not in line with the spirit of Q. 5:45, which recommends forgiveness. We have noted the case where the Mahdī sentenced a husband to *ḥadd* punishment for *qadhf*, followed by execution for having killed a man whom the husband claimed had harassed his wife sexually. The Mahdī ruled that the husband was not entitled to benefit from the defense of killing a man in the very act of committing the crime (*flagrante delicto*) and hence should be executed by way of retribution without leaving the victim's heirs the choice to settle the dispute by either retribution or blood money (doc. 67).

*Zakāt*, alms tax, originally an obligatory tax, became in the course of time a form of voluntary charity for the poor, thus converting its nature from public law to private law. The Mahdī though acknowledging the ritual nature of the alms tax underlined it as a state instrument for promoting social justice by mean of state sanctions, thus reinstating its nature as public law (doc. 83).

The Mahdī's legal experiment is unique also in the sense that it was carried out outside the *'ulamā'*'s control. In fact, it was meant in the first place to deprive the *'ulamā'*, as a class, of their historic role as the exclusive authoritative interpreters of the will of God. The elevation of the inspiration derived from the Prophet and God to a source of law in circumstances where there is a

lacuna in the textual sources of the Qurʾān and the *sunna*, made the analogical reasoning (*qiyās*) and the consensus (*ijmāʿ*) of the specialists in *fiqh* redundant. As the Mahdī was a charismatic leader and a religious-legal authority, his legal opinions, proclamations, decisions, warnings, etc. actually operated as state mechanisms of legal accommodation. Since it was apparently impossible to doubt the authenticity of *ilhām* from the Prophet and God (unlike, e.g., with regard to a *ḥadīth*), *ilhām* became a central vehicle in implementing the Mahdī's policy. In actual reality, beyond the sphere of conviction or faith, the Mahdī's decisions allegedly based on *ilhām* were the product of his legal discretion as applied in light of the *raison d'Etat* as he understood it and occasionally in contravention of the textual sources of the Qurʾān and the *sunna*. In other words, the Mahdī's decisions and rulings as embedded in his proclamations and legal opinions were, for all practical purposes, acts of human legislation.<sup>7</sup> An-Naʿim holds that the Mahdī's decrees were the only authoritative source for the interpretation of the Qurʾān and the *sunna*.<sup>8</sup> Al-Zākī maintains that the Mahdī's legal opinions based on *ijtihād* (*ārāʾ* [*i*] *ijtihādiyya*) and interpretation of the textual sources in light of inspiration derived from the Prophet were initiated "regardless of the *fuqahā*'s views."<sup>9</sup>

It is doubtful whether the Mahdī's legal methodology and its application have left any substantial imprint on contemporary Islamic legal theory or positive law in modern Sudan, let alone the Muslim world as a whole. Al-Ṣādiq al-Mahdī, a great-grandson of Muḥammad Aḥmad (the Mahdī), leader of the Umma Party and Imām of the Anṣār, is a prominent representative of neo-Mahdism, one of the most powerful political and religious forces in modern Sudan. Al-Ṣādiq suggests accommodating the *sharīʿa* to present-day conditions by means of *ijtihād* based on the classical theory of Islamic law as well as on such auxiliary sources as *maṣlaḥa* and *ḍarūra*. Yet al-Ṣādiq's *ijtihād* is exercised by means of state codification and statutory legislation based on eclecticism from Sunnī and Shīʿī schools, subject to the review of a legislative council of *ʿulamāʾ* whose function it is to ensure that the product of statutory *ijtihād* be compatible with the *sharīʿa*.<sup>10</sup>

Ḥasan al-Turābī, who led the Muslim Brothers since 1964, played a decisive role in Jaʿfar al-Numayrī's legal experiment of reinstating the *sharīʿa*.

7 Cf. Holt, "Mahdiyya," 1251, col. ii–52, col. i. For a collection of the Mahdī's legislation in all domains of law, see *Manshūr Qawāʿid al-Aḥkām* in al-Muftī, *Niẓām al-qaḍāʾ*, 135–37.

8 An-Naʿim, *Reformation*, 126.

9 Al-Zākī, "al-Islām wa-ḥayātunā al-tashrīʿiyya," 148.

10 Layish and Warburg, *Sudan*, 87–89.

His legal methodology was inspired by a combination of traditional Islamic legal theory and Western legal doctrines, a combination that can by no means be reconciled with the Mahdī's legal methodology. Thus in the event of a lacuna in Islamist statutes and in the Qur'ān and the *sunna*, the Sudanese Judgments (Basic Rules) Act, 1983 allows the civil judge (the *sharī'a* courts having been abolished) to exercise *ijtihād* on the basis of legal sources and principles in the following order: *ijmā'*, *qiyās*, *maṣlaḥa*, legal precedent (in the Sudanese national courts), custom, and the English principles of natural justice, 'justice, equity and good conscience.'<sup>11</sup>

It seems that the Mahdī's legal experiment was doomed to failure from the very beginning. The elaboration and implementation of a new legal methodology based on the textual sources and the inspiration derived from the Prophet and God, while ignoring altogether *fiqh* literature of the schools, had no chance whatsoever to succeed without the cooperation of the 'ulamā'; such cooperation was indispensable for the legitimacy of the legal methodology. Yet the 'ulamā' as a class denied Muḥammad Aḥmad's pretension to be the Expected Mahdī and Successor (*khalīfa*) to the Prophet Muḥammad. Moreover, they disqualified him as a religious-legal authority capable of exercising *ijtihād*. As noted earlier, Abū Salīm claimed that the Mahdī's abolition of the schools was prompted by his desire to reach a total consensus among the 'ulamā', a consensus that would unite the entire community behind his mahdship;<sup>12</sup> Al-Ṣādiq al-Mahdī held, however, that the Mahdī's attempt to reach such a consensus on the basis of his legal methodology failed completely, even among his own fellow 'ulamā'.<sup>13</sup>

After the Mahdī passed away, the alleged link with the inspiration derived from the Prophet and God, which was an operative source of law, was severed. 'Abdallāhi, his successor, was first and foremost concerned with the consolidation of the Mahdist state and its transformation from a theocracy to a hereditary monarchy. His nomination as Khalīfat al-Ṣiddīq implied that 'Abdallāhi succeeded the Mahdī as Abū Bakr had succeeded the Prophet. 'Abdallāhi used the rhetoric of the Mahdiyya to promote his own ambitions;<sup>14</sup> however, his being illiterate deprived him of any chance whatsoever to replace the Mahdī

11 Ibid., 89–90, 286; Layish, "Ḥasan al-Turābī."

12 See above, 27, fn. 6.

13 Al-Mahdī, *al-Uqūbāt*, 206.

14 Thus the 'Proclamation of Hair' contains a series of visions and mystical experiences of 'Abdallāhi; see Holt, *The Mahdist State*, 139. Cf. Searcy, *The Sudanese Mahdist State*, 149.

as a religious authority.<sup>15</sup> And finally, the defeat of the Mahdist state by the English-Egyptian forces in the late nineteenth century severed the revivalist movement from the basis of its political support, on the one hand, and exposed Sudanese society to the material and ideological impact of the external world, on the other.

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15 Holt, *The Mahdist State*, 135, 205, 264–66. ‘Abdallāhi pretended to preserve the legal legacy of the Mahdi by applying his legal methodology in daily practice (see, e.g., above, 13, fn. 43). Once the documents of Khalifa ‘Abdallāhi are inspected (see above, Introduction, 4, fn. 4) it will be possible to accurately appraise the role of ‘Abdallāhi in preserving the Mahdi’s legal methodology and *fiqh*.



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## Glossary\*

<i>āda</i>	(pl. <i>ādāt</i> ) (1) custom, 276; (2) custom as a source of law in the Mahdī's legal methodology, 34; also <i>urf</i>
<i>ʿadāla</i>	good character required of a witness to a claim, 281; also <i>ʿadl</i>
<i>ʿadam al-samāʿ</i>	court's preclusion from entertaining specified claims; used as a procedural device for denial of litigation, 12
<i>ʿadl</i>	(1) justice, 50, 184, 185; (2) husband's impartiality toward his wives, 111; (3) a competent witness, i.e., of good character, 14, 282; also <i>ʿadāla</i>
<i>ʿahd, ʿahd allāh</i>	(1) pact of security between the believers and the polytheists (Schacht, "Amān," 429, col. ii), 248, 249; (2) covenant, expressed in the form of a pledge of allegiance, whereby a new member is admitted to a Šūfī order or the Mahdist community (Holt, <i>The Mahdist State</i> , 116), 10–11, 18, 23, 201, fn. 6, 210, 222, 224, fn. 1, 253; (3) commitment, 247, 274; (4) commitment with special reference to <i>dhimmīs</i> , 253–54; also <i>bayʿa, dhimma</i>
<i>ahl (āl)</i>	family, kin
— <i>al-bayt</i>	(1) the Prophet's family, 6, fn. 5, 73, 243; (2) the Mahdī's kin, household ( <i>al-Āthār al-kāmila</i> , 111, 62–63), 6, fn. 5, 243
— <i>al-dhimma</i>	free non-Muslim subjects living in Muslim countries, 238, 253; also <i>dhimmī, dhimma</i>
— <i>al-farāʿiḍ</i>	lit. "those entitled to prescribed portions," a group known as the Qurʾānic heirs (Coulson, <i>Succession</i> , 35ff.), 167; also <i>ʿaṣaba, dhawū al-arḥām</i>
— <i>al-ḥadīth</i>	the Traditionists who mobilized the Prophet's authority by means of <i>ḥadīths</i> attributed to him in order to impose their views in legal disputes between <i>fuqahāʾ</i> (Schacht, "Ahl al-Ḥadīth," 258–59; Coulson, <i>History</i> , 52, 56, 61), 42–43
— <i>al-khums</i>	the five groups of recipients who are entitled to one-fifth of the entire booty, which is the state's share, 238, 243; also <i>khums al-khums</i>
— <i>al-raʾy</i>	jurists who adhered to legal reasoning as a method for deriving positive law, 42
<i>ahlīyyat al-tamalluk</i>	capacity to own property, 63
<i>ahwāl</i>	—see <i>ḥāl</i>

\* The Arabic *al-*, being a definite article, has been disregarded in alphabetization. Page numbers in bold indicate principle references.

- aḥzāb* (sing. *ḥizb*) lit. “parties,” (1) people gathering together in response to a call of their party (*al-Āthār al-kāmila*, VII, Glossary), i.e., the Mahdī’s adherents, 211; (2) Ṣūfī prayers and litanies (Trimingham, *The Ṣūfī Orders*, Glossary, s.v. *ḥizb*), specific invocations of God to be read at unspecified times (*al-Āthār al-kāmila*, VI, 9)—see *awrād*
- ajnabī* lit. “stranger,” someone who is not a relative within the forbidden degrees for marriage with respect to a woman or a child, 161, 203; also *maḥram*
- ama* (pl. *imāʿ*) female slave, 68, 150, 207, 273
- ʿamal* lit. “judicial practice,” Mālikī judicial practice of the *sharʿa* courts in North Africa since the fifteenth century that compromised with custom (Coulson, *History*, 143ff.; Schacht, *Introduction*, 61–62), 19, 20
- amān* (1) a contract of safe-conduct or pledge of security by which the life and property of a non-Muslim belonging to the Abode of War or a Muslim who has not joined the Mahdī become protected (Levy-Rubin, *Non-Muslims*, 32), 21, 44, 78, 200, 201, fn. 6, 222, 223, 224, 248, 249, 250, 251, 255, 286; (2) an everlasting contract of safe-conduct granted to a *dhimmī*, 248, 254; also *dār al-ḥarb*, *mustaʿmin*
- amāna* trust, deposition in trust, 12, 224
- amīn* (1) reliable guardian, 210; (2) trustee, 211
- *bayt al-māl* the treasurer of the Public Treasury, 9, 73, 197, 210; also *bayt al-māl*
- *al-ṣundūq* the treasurer of the Public Treasury in the Mahdist state, 73
- al-amr biʿl-maʿrūf waʿl-naḥy* the duty of every Muslim “to command right and forbid wrong,” as well as the function of the inspector of the market to supervise the moral behavior of the people in the town, particularly in the markets, 11, 200, 271, 274; also *muḥtasib*, *ḥisba*
- ʿan al-munkar*;
- al-amr waʿl-naḥy*
- amwāl* (sing. *māl*) *ẓāhira*—see *māl ẓāhir*
- anṣār* (sing. *nāṣir*) lit. “helpers,” (1) originally, the supporters of the Prophet Muḥammad at Medina during his emigration (Watt, “al-Anṣār,” 514–15), 20; (2) the Mahdī’s supporters, the term being derived metaphorically from the Prophet’s Anṣār, 18, 33, 43 (*aṣḥāb*, Companions), 46, 78, 104, 108, 115, 137, 200, 210, 241, 249, 271, 290; (3) warriors in the Mahdist state (*al-Āthār al-kāmila*, VII, Glossary; Holt, *The Mahdist State*, 56n), 19, 33, 40, 45, 46, 144, 149, 186, 187, 192, 196, 211, 239, 251, 286; also *aṣḥāb*, *aʿwān*, *ikhwān*

- *al-dīn*  
 ‘*anwatan* lit. “the helpers of religion,” the Maḥdī’s supporters, 224  
 lit. “[surrender] by force,” unconditional surrender with the result that property and prisoners of war, including women and children, are deemed booty, 231, 232, 238, 239, 250, 251, fn. 13; also *ṣulḥan*
- ‘*aqd*  
 — *bāṭil* contract of marriage (or sale):  
 void; marriage lacking a fundamental element (*aṣl*) of the contract, 121  
 — *fāsid* irregular; marriage that has a defect in a “quality” (*waṣf*) of the contract, 111, 112, 121
- ‘*āqil*  
 ‘*āqila* sane, 105; also ‘*aql*  
 solidarity group based—according to all schools with the exception of the Ḥanafīs—on male agnates or part thereof, which is liable collectively for payment of blood money (Peters, *Crime*, 49–50), 180–81, 217, fn. 11
- ‘*aql*  
 ‘*aqwāl* sanity, 49; also ‘*āqil*  
 —see *qawl*
- al-arkān al-khamsa* lit. “the five foundations,” (1) the double testimony that there is no god but God and that Muḥammad is the Messenger of God (*shahādatayn*); (2) performance of prayer (*ṣalāt*); (3) payment of alms tax (*zakāt*); (4) performance of pilgrimage (*ḥajj*); and (5) fasting (*sawm*) during the month of Ramaḍān (Hallaq, *Sharī‘a*, 225ff.), 122, fn. 2.
- arsh* compensation for bodily injury based on the tariff list for the loss of members, faculties and certain wounds, 184, 185; also *ḥukūmat ‘adl, diya*
- ‘*aṣaba* (1) agnates, relatives through males, 101; (2) male agnatic heirs, residuary heirs after the Qur’ānic heirs have taken their shares of the estate (Coulson, *Succession*, 33ff.), 167, 291; also *ahl al-farā’id, dhawū al-arḥām*
- asbāb al-nuzūl* (sing. *sabab*) lit. “the occasions or circumstances of the revelation,” a genre of literature, which deals with the occasions or circumstances of the revelation of Qur’ānic verses developed in connection with attempts, during the first centuries A.H., to reconstruct the life of the Prophet Muḥammad. The *asbāb al-nuzūl* consists of reports indicating where, when, and under what circumstances certain Qur’ānic verses were revealed (Coulson, *Succession*, 29–30; Powers, *Qur’an and Ḥadīth*, 189–90, 195), 168

- aṣḥāb* (sing. *ṣāhib*) (1) the Prophet's Companions, 32, 46; (2) metaphorically, the Mahdī's close adherents, 33, 40, 72, 153, 154, 198, 211, 212, 213, 243, 251; also *ṣaḥāba*, *anṣār*, *a'wān*, *ikhwān*
- aṣhrāf* (sing. *sharīf*) lit. "noble," (1) a title of those who claim descent from the Prophet Muḥammad (Trimingham, *The Sufi Orders*, Glossary), 6, 243; (2) metaphorically, the Mahdī's relatives (*al-Āthār al-kāmila*, VII, Glossary), 6, fn. 5, 12, fn. 38
- aṣl* (pl. *uṣūl*) an essential element of the contract of marriage, 121
- asrā* (sing. *asīr*) prisoners of war, 234
- aṭyān* (sing. *ṭīn*) landed property, 12
- a'wān* (sing. *'awn*) the Mahdī's helpers, 108, 117; also *anṣār*, *aṣḥāb*, *ikhwān*
- awlād al-faḥlayn* lit. "the issue of two stallions," in connection with impediments to marriage on grounds of fosterage established by breast-feeding, 100
- awliyā'* (sing. *walī*) friends of God; Ṣūfī holy men; the most exalted Ṣūfis (Radtke, "Walī," 109–12; Stern, "On the Authenticity of the Mystical Treatise," 99, 100; idem, "On Mystical Vision and the Protection from Sin," 164ff.; Trimingham, *The Sufi Orders*, Glossary, s.v. *walī*; *al-Āthār al-kāmila*, I, 190; V, 467; Svirī, *The Sufis*, General Index), 8, 22, 23, 34, 36, 37, 40
- *al-dam* blood avengers or prosecutors in case of homicide, 179, 215
- awrād* (sing. *wird*) litanies, invocations of God (*ad'iya*); Qur'ānic verses and *ḥadīth* authorized by the *shaykh* of the *ṭarīqa*, read at a fixed time of the night and day (*al-Āthār al-kāmila*, VI, 8, 192; *ibid.*, VII, Glossary; Trimingham, *The Sufi Orders*, Glossary, s.v. *wird*), 7, fn. 8, 54
- 'ayn* (pl. *a'yān*) tangible thing, *res*, 77; also *raqaba*
- bāligh* of age, 105; also *bulūgh*
- banū al-sabīl* wayfarers, 231, 266
- baraka* lit. "blessing," power of holiness or charisma possessed by *awliyā'* transmitted by inheritance or contact (Holt, *The Mahdist State*, 18; Searcy, *The Sudanese Mahdist State*, 67), 25, fn. 124
- bāṭil* —see *'aqd*
- bāṭin*, *bāṭinī* lit. "esoteric, interior, hidden [knowledge]," 36, 100; also *'ilm al-bāṭin*, *zāhir*
- bay'a* (1) a pledge of allegiance, 18, 23, 110; (2) a covenant, drafted in specified wording, between the Mahdī and his followers

- whereby one is admitted into the community (*al-Āthār al-kāmila*, VII, Glossary; Holt, *The Mahdist State*, 116), 9, 10, 23, 109
- baynūna kubrā* lit. “a major irrevocable repudiation,” created after the third repudiation, whether revocable or irrevocable. The divorced woman is not allowed to remarry her ex-husband unless an intermediate marriage has taken place, 152; also *ṭalāq*, *al-muḥallil min al-ṭalāq*
- *ṣughrā* lit. “a minor irrevocable repudiation,” created after the first or the second irrevocable repudiation. The husband may reinstate his divorced wife, with her consent, during or after the waiting period by means of a new marriage contract and *mahr*, 152; also *ṭalāq*, *‘idda*
- bayraq* (pl. *bawāriq*, *bayāriq*) lit. “banner,” army in Mahdist Sudan (*al-Āthār al-kāmila*, VII, Glossary), 266, fn. 9
- bayt al-māl* public treasury (Cahen, “Bayt al-Māl”; Abu Shouk & Bjørkelo, *The Public Treasury*), 9, 15, 22, 44, 45, 64, 72, 73, 105, 112, 167, 187, 196, 197, 210, 235, 236, 237, 240, fn. 13, 259
- bayyina* a proof by means of witnesses, 140, 212, 214
- bid’a* (pl. *bida’*) negative innovation, 19, 33, 160, 252, 271, 276, 289
- bikr* virgin, 108, 109, 202, 203, 204, 207, 289
- bulūgh* majority, puberty, 49, 147, 161, 212, 213, 263; also *bāligh*
- ḍabṭ al-qawānīn* promulgation of statutes, 16
- dajjāl* Antichrist. In Arabic, the word is used to denote the personage endowed with miraculous powers who will arrive before the end of time and, for a limited period of time, will let impurity and tyranny rule the world which, thereafter, is destined to witness universal conversion to Islam, 198
- dalīl* (pl. *dalā’il*) proof, evidence, 30, 101
- *qāṭi’* a textual source that has a definitive, unequivocal meaning (al-‘Abbādī, *al-Anwār*, 233), 49
- ḍamān* (1) criminal or civil liability, 211; (2) liability for safety, 226, 250
- dār al-ḥarb* lit. “the Abode of War,” non-Muslim territories under perpetual threat of *jihād*, 168, fn. 6, 248
- *al-Islām* lit. “the Abode of Islam,” a territory under Muslim sovereignty in which Islamic law prevails, 168, fn. 6
- ḍarar* harm, prejudice, 45, 104, 129, 134, 135, 136, 140, 141; also *maṣlaḥa*
- ḍarb ghayr mubarrih* non-severe beating of a disobedient wife, 118; also *nāshiza*
- ḍarūra* necessity as auxiliary source of law, 43, 45–46, 49, 55, 283
- da’wa* (1) civil claim, 281; (2) Islamic missionary activity; propaganda, 246, fn. 2

- daym* military encampment (*mu'askar*) of the Mahdist warriors that has been gradually transformed into a permanent settlement (*al-Āthār al-kāmila*, Glossary; *ibid.*, 11, 16, fn. 3 (Abū Salīm's note), 330; Holt, *The Mahdist State*, 12–13), 187, 211
- dayn* debt, 12, 90, 91, 92, 244
- dhanb* sin, 195, 199–200
- dhawū al-arḥām* lit. “the possessors of a uterine relationship,” cognates. In context of inheritance law it refers to the “outer family,” all relatives other than Qur'ānic heirs (*ahl al-farā'id*) and male agnatic heirs (*ʿaṣaba*) (Coulson, *Succession*, 30–31), 167; also *ʿaṣaba*, *ahl al-farā'id*
- dhikr* lit. “recollection,” “naming” (in Sufism), rhythmical invocation of God's name; incessant repetition of certain words or formulas in praise of God, meditative technique for the concentration of the mind, often accompanied by music and dancing (Trimingham, *The Sufi Orders*, Glossary; Svirī, *The Sufis*, 383; Wehr, *Dictionary*; *al-Āthār al-kāmila*, VII, Glossary), 23–24, fn. 114
- dhimma* (1) matrimonial authority, 112; (2) financial liability, 125, 244; (3) contract of hospitality and protection granted to *dhimmīs* in return for acknowledgment of Muslim rule, 253; also *ahl al-dhimma*, *dhimmī*, *amān*
- dhimmī* a free non-Muslim subject of the Abode of Islam whose life and property are protected in return for acknowledgment of Muslim rule (Schacht, *Introduction*, Glossary), 180, 248, 249, 253, 254, 255, 269, 286; also *dhimma*, *amān*, *ʿahd*
- diya* blood money or compensation for causing homicide or bodily harm, 179–80, 181, 184, 185, 215, 216, 253; also *arsh*, *ḥukūmat ʿadl*
- *mughallaḏa* enhanced blood money, 179
- dukhūl* consummation of marriage, 112, 127
- duqundī* lease of land for rent (*al-Āthār al-kāmila*, III, 118, fn. 5; Holt, *The Mahdist State*, 130), 85
- fāḥisha* (pl. *fawāḥish*) obscene language; foul language indicating adultery, 272, 274, fn. 11
- fakī* (pl. *fuqarā'*) a dialect form of *faqīh*, a religious teacher (Holt, *The Mahdist State*, 18); a Muslim holy man or *shaykh* (Searcy, *The Sudanese Mahdist State*, 74), 7, 11, 23, 175; also *faqīh*, *faqr*
- fanā'* lit. “passing away [of the soul],” the final obliteration of personal activity experienced as an absorption, a cessation of being, in God (Massignon-[Radtke], “Taṣawwuf 1,” 314, col. i;

- Trimingham, *The Sufi Orders*, Glossary; Sviri, *The Sufis*, General Index), 24
- faqih* popular usage of *faqih*, expert of *fiqh*, jurist (al-*Āthār al-kāmila*, VII, Glossary), a teacher propagating Islam, 28, 276
- faqr* poverty, in Ṣūfī context (Trimingham, *The Sufi Orders*, 50; Sviri, *The Sufis*, General Index), 24
- farā'id* (sing. *farīda*) lit. "religious duties," *shar'ī* prescribed portions allotted to legal heirs—see *ahl al-farā'id*
- fard* (pl. *farā'id*) a religious duty:
- *'ayn* a duty that falls on every individual, 246, 281
  - *kifāya*, *fard 'alā al-kifāya* an obligation performed by a number of persons exempting the rest of the community from this duty, 246, 269, 281
- fasād* corruption, 219, 275
- fāsīd* —see *'aqd*
- fāsiq* sinner, 134
- faskh* rescission; judicial dissolution of a marriage on the basis of specific grounds, 97, 123, 125, 132, 134, 136, 137, 138, 140, 141, 145, 285
- fath* (in Ṣūfī context) illumination, 53
- faṭīm* a weaned child, 162
- fatwā* (pl. *fatāwā*, *fatāwin*) a formal legal opinion issued by the Mahdī or a *muftī* or a specialist in *fiqh*, xv, 2, 13, 15, 16, 29, 34, 68, 91, 97, 99, 123, 126, 128, 137, 140, 141, fn. 1, 143, 147, 150, 155, 157, 162, 193, 254, 240, fn. 12, 281; also *jawāb*, *muftī*
- fay'* immovable property acquired by conquest from infidels, to be reserved by the Public Treasury for the Muslim community, 143, 231, 232 and fn. 4, 233 and fn. 7, 238
- fidā'* ransom for captive, 251
- fiqh* Islamic legal doctrine, dealing also with religious and moral aspects, xvi, 3, 4 and fn. 3, 5, 7, 17, 19, 20, 26, 27, 28, 29, 30, 34, 35, 39, 42 and fn. 84, 49, 50, fn. 118, 55, 111, 113, 146, 201, 203, 221, 272, 283, 284, 291, 293, 294, 295, fn. 15
- firāq* separation between husband and wife, 139, fn. 3
- fiṭām* weaning, 102
- fitna* civil strife, discord, temptation, 23, 68, fn. 10, 72, 136, 207
- fuqahā'* (sing. *faqih*) specialists in *fiqh*, 1, 35, 43, 269, 232, 283, 284, 293
- fuqarā'* (sing. *faqīr*) lit. "the poor," (1) in a Ṣūfī context (Massignon-[Radtko], "Taṣawwuf," 314, col. i); (2) recipients of *zakāt* listed in Q. 9:60, 232, 265

- ghafla* lit. “negligence,” in Šūfī context, preoccupation with self to the point of forgetfulness of God (Trimingham, *The Šūfī Orders*, Glossary; Sviri, *The Sufis*, General Index), 276, fn. 6
- ghalla* profits of a pledged property, 89, 90, 91, 288
- ghanīma* (pl. *ghanā'im*) booty, spoils of war, 73, 143, 150, docs. 74–77
- gharāma* indemnity, 90
- ghashsh* deceit, fraud, 271, 274
- ḥabs* imprisonment, 109, 273
- ḥaḍāna* custody of a minor child, 162
- ḥadd* —see *ḥudūd*
- ḥadīth* (the same for pl.) a tradition or report of the Prophet’s statements and conduct, xvi, 4, 7, 12, 20, 27, 28, 30 and fn. 2, 31 and fn. 38, 32, 33 and fn. 37, 34, 35 and fns. 47–48, 36 and fn. 51, 38, 43, 44, 47, 51, 52, 53, 54, 63, 65, 67, 91, 92, 97, 99, 100, 101, 107, 115, 116, 118, 125, 129 and fn. 2, 130, 142, 147 and fn. 2, 160, 161, 168, 170, 174, 179, 191, 194, fn. 2, 199, 202, 203, 206 and fn. 2, 207, 214, 218, 219, 221, 235, fn. 6, 237, 259, 260, 262, 265, 275, 284, 293
- *ḍaʿīf* a weak tradition with no claim to reliability, 32, 35, fn. 48, 87, 239
- *ḥasan* a good tradition for establishing points of law, 32
- *maqṭūʿ* a tradition going back to a Successor regarding his own words or deeds, 32
- *mutawātir* a tradition with a great number of reliable transmitters that precludes any possibility of collusion, 35, fn. 47
- *ṣaḥīḥ* a sound, reliable tradition in terms of transmission or transmitters of a *ḥadīth*, 32, 35, fn. 48, 46, 49
- *saqīm* a faulty, unreliable tradition, 49
- ḥaḍra* (pl. *ḥaḍrāt*) lit. “[being in the] presence [of the Prophet],” (1) in Šūfī usage, it designates a vision in which the Prophet Muḥammad is present (Macdonald, “Ḥaḍra,” 51; Trimingham, *Islam in the Sudan*, 215), 24, 54; (2) in Mahdist usage, it designates a “colloquy,” the emphasis being on the message the Prophet communicates to the Mahdī rather than his visual appearance (Holt, *The Mahdist State*, 105, fn. 1; Shaked, *The Life of the Mahdi*, 45), xv, 1, 24, fn. 16, 37, 39 and fn. 70, 40; (3) the presence of the Prophet in a dream (*al-Āthār al-kāmila*, vii, Glossary), 38, fn. 67
- ḥāʿil* barren, 170
- ḥakam* arbitrator, 14; also *muḥakkam*, *taḥkīm*

- ḥākīm*  
— *al-sūq* (1) governor, 215, 289; (2) *qāḍī*, 47, 140, 141  
lit. “governor of the market,” a synonym of *muḥtasib*, 207, 270;  
also *muḥtasib*
- ḥāl* (pl. *aḥwāl*) a mystical situation; ecstatic experience; a transi-  
tional spiritual “state” of enlightenment or “rapture” associ-  
ated with passage along the Ṣūfī “path” (Trimingham, *The Sufi*  
*Orders*, Glossary; Sviri, *The Sufis*, General Index), 53
- ḥalf*  
— *bi’l-ḥarām* taking an oath:  
taking an oath pronouncing the wife prohibited, 156, 157, 158,  
159, 289  
— *al-yamīn* taking an oath, 159, 160
- ḥāmīl* pregnant, 170
- ḥaqq* (pl. *ḥuqūq*) right, claim, truth, 15, 20, 40, fn. 78, 73, 103, 168, 171:  
— *ādami* private, civil claim, 199  
— *allāh* public, criminal law, 199, 211, 261
- al-Ḥaqq* God, 41
- ḥarām* a *sharʿī* prohibition, 98, 218, 273
- ḥarbī* lit. “a non-Muslim in a state of war,” whose life and prop-  
erty are completely unprotected unless he has been granted  
temporary safe-conduct (*amān*) (Schacht, *Introduction*, 131),  
253–55, 286; also *dār al-ḥarb*, *amān*
- hatk sharaf* rendering disgrace, 197
- ḥayḍ* menstruation, 146, 147
- ḥātīf* invisible caller in early Sufism (Wehr, *Dictionary*; for citations  
in Ṣūfī literature, see Sviri, *The Sufis*, General Index, 593), 72
- ḥijāb* veil, 206, 208
- ḥirāba* banditry or highway robbery, 199; also *qaṭʿ al-ṭariq*
- ḥirz* lit. “custody,” stolen property being kept under guard in a safe  
place by its possessor (a precondition for the amputation of  
the thief’s hand), 70, 191, 193
- ḥisba* lit. “calculation” or “sufficiency,” a term denoting both the duty  
of every Muslim to “command right and forbid wrong” and the  
function of the *muḥtasib* to supervise the moral behavior par-  
ticularly in the markets, 269, 270, 271; also *al-amr bi’l-maʿrūf*  
*wa’l-nahy ʿan al-munkar*, *muḥtasib*
- ḥiyal* (sing. *ḥīla*) legal fictions, 34
- ḥizb* (pl. *aḥzāb*)—see *aḥzāb*
- ḥubb allāh* lit. “love of God,” in Ṣūfī context (Sviri, *The Sufis*, General  
Index), 24

- ḥudūd* (sing. *ḥadd*) mandatory punishments, based on the Qurʾān and the *sunna*, prescribed for specific offenses (Peters, *Crime*, 53ff.), 155, 270, 272, 273, fn. 7, 289
- ḥukm* (pl. *aḥkām*) (1) a rule in matters of *fiqh*, xv, 2, 17, 49, 216, fn. 9; (2) a legal presumption, 122, 143; (3) a judicial decision, 16, 47, 124, 125, 211; (4) authority, 123
- ḥukūmat ʿadl* compensation for bodily injuries assessed by experts on the market price of slaves and applied in cases where it is impossible to inflict on the identical member of the perpetrator exactly the same injury that the injured has undergone, 184–85; also *arsh*, *dīya*
- ḥulūm* sexual puberty, 212
- ḥurma* prohibition (for marriage), 100, 101, 158
- ʿibādāt* matters of worship, 13, 27
- iblīs* Satan, 196
- ʿidda* a woman's legally prescribed waiting period after termination of marriage either by divorce or by husband's death during which she may not remarry, 132, 137, 146, 147, 148, 150, 152, 203, 205, 290; also *baynūna ṣuḡhrā*, *ṭalāq rajʿī*
- ʿiffa* woman's chastity, 68
- iftāʾ* issuance of legal opinions, 11, 15; also *fatwā*
- iḥṣān* —see *muḥṣan*
- ijāb wa-qabūl* lit. “offer and acceptance,” concluded in one session (*majlis*) required for the validity of a *sharʿī* contract (such as marriage or sale), 85
- ijār* lease for rent, 85, 288
- ijāza* formal authorization to teach as a *shaykh* (in a Ṣūfī order), 7
- ijmāʿ* consensus of the *fuqahāʾ* as a source of law in the Sunnī legal methodology, 1, 34, 42, 47, 49, 51, 52, 54, 218, 293, 294; also *uṣūl al-fiqh*
- ijtihād* lit. “exertion,” (1) creative legal reasoning or judicial discretion, 203, 204, 275; (2) the classical mechanism for deriving law from the textual sources of the Qurʾān and *sunna* by means of systematic analogy and consensus, 2, 19, 26, 49, 50; (3) the Mahdī's version for deriving law from the textual sources and inspiration from the Prophet and God, 13, 46, 47–51, 284, 293; (4) Salafī version of, 50; (5) Ṣūfī version of, 51, 52, 54, 55; (6) statutory version of, 294; also *mujtahid*, *istikhrāj*, *istinbāt*, *ilhām*, *ijmāʿ*, *qiyās*, *sunna*, *uṣūl al-fiqh*

- ikhrāj al-aḥkām* (or *istikhrāj*) deriving law from the textual sources, 26, 31
- ikhtilāf al-dīn* difference of religion, 172, 290
- ikhṭiyār* eclecticism from all schools of law, 27; also *takhayyur*
- ikhwān* (sing. *akh*) lit. “brethren,” (1) fellow members of an order (Trimingham, *The Sufi Orders*, Glossary); (2) fellow members of the Mahdiyya, 72, 73, 101, 103, 115, 137, 148, 171, 240, fn. 13; also *aṣḥāb*, *anṣār*, *aʿwān*
- ilāʾ* an oath of continence sworn by the husband that may result in dissolution of his marriage, 156, 157
- ilhām*, lit. “inspiration,” transmitted to the Mahdī by the Prophet or God through “the angel of inspiration” (*malak al-ilhām*), sometimes identified with Gabriel, to guide him in legal and ethical matters (*al-Āthār al-kāmila*, VII, Glossary; cf. Svirī, *The Sufis*, 502), 1, 2, 27, 32, 36–43, 47, 48, 49, 50, 51, 52, 55, 115, 283, 293; also *waḥy*
- illa* lit. “efficient cause,” *ratio legis* in connection with elaborating law by means of analogical reasoning (*qiyās*); the attribute that is common to both the new case for which a new ruling is required and the original case in the textual sources (Hallaq *Legal Theories*, 83–4, 88–9, 112; Opwis, “Maṣlaḥa,” 210–11), 43; also *munāsaba*
- ilm* mystical knowledge of God based on Qurʾānic verses and Prophetic traditions (Trimingham, *The Sufi Orders*, 130, 151; Svirī, *The Sufis*, 467):
- *al-bāṭin* internal, esoteric knowledge (Massignon-[Radtke], “Taṣawwuf,” 314, col. i), 36, 54, 100; also *bāṭin*
  - *al-ẓāhir* external, exoteric knowledge (Trimingham, *The Sufi Orders*, 148), 36, 54; also *ẓāhir*
- imām* (pl. *aʿimma*) (1) a leader in public worship or of the Muslim community, 20, 33, 41, 51, 55, fn. 143, 63, 77, 157, 199, 234, 266, 271; (2) a nominal founder of a school of law (*madhhab*), 29, 49; also *madhāhib*
- īmān* faith, 41, 143
- indhārāt* lit. “warnings,” a genre of documents issued by the Mahdī, xv
- iqrār* acknowledgment; admission, 63, 70, 79, 244
- irtidād* apostasy from Islam, 221, 224; also *murtadd*, *ridda*
- ʿisma* lit. “protection,” (1) bond of marriage, 97, 98, 123, 134, 159; (2) matrimonial authority of husband over wife, 123, 206; (3) legal protection, 180; (4) infallibility; also *maʿṣūm min al-khaṭaʾ*

- isnād* lit. “support,” the chain of authoritative transmitters of a tradition going back to the source of the tradition, 32, 35, fn. 48; also *sanad*
- istibrāʿ* menstrual period, 138, 149, 150
- istiftāʿ* the mode of asking a legal opinion, xvi, 15, 125, 149, 237; also *fatwā*
- istiḥsān* judicial preference, a mode of reasoning that yields reasonable results in terms of fairness or common sense, unlike strictly logical inference, such as *qiyās* that may lead to an undue hardship (Hallaq, *Sharīʿa*, 50), 34
- istikhrāj* derivation of law from the sources of law, 31, 50; also *istinbāʿ*, *ijtihād*
- istimtāʿ* lit. “enjoyment,” realization of marital life, consummation of marriage, 127, 129
- istinbāʿ* derivation of law from the sources of law, 49; also *istikhrāj*, *ijtihād*
- istiṣlāh*, an extension of analogical reasoning having regard to public interest, 43; also *qiyās*, *maṣlaḥa*
- ithm* sin, 155, 252
- ʿitq raqaba* manumission of slaves, 13, 274
- ʿIzrāʿīl* Azrael, the angel of death (Wehr, *Dictionary*), 41
- jabkhāna* (pl. *jabākhīn*) ammunition (*al-Munjid*, s.v. *al-jabākhāna*), 235
- Jāhiliyya* (1) pre-Islamic period, 156, 271, 275, 276, fn. 5; (2) Turkish rule, 209
- jāʿiz* admissible in respect of the *sharīʿa*, 46, 123, 129
- janāʿiz* (sing. *jināza*) funeral rites, 275
- jānīn* perpetrator, 211
- al-jarḥ waʿl-taʿdīl* disparaging and declaring a transmitter of *ḥadīths* untrustworthy (Robson, “al-Djarḥ waʿl-Taʿdīl,” 462), 43
- jarīma akhlāqīyya* moral offense, 213
- jāriya* (pl. *jawārin*) slave girl, 65, 66, 103, 266
- jawāb* lit. “answer,” formal legal opinion issued by the Mahsī, a *muftī* or a specialist in *fiqh*, xv, 16, 66, 123, 134; also *fatwā*
- jihād* holy war against infidels, 2, 3, 9, 10, 18, 20, 21, 22, 34, 41, 43, 44, 45, 108, 109, 197, 110, 141, 171, 221, 222, 224, 226, 232, 236, 238, 241, 243, 246, 247, 265, 276, 286, 290; also *mujāhid*
- *al-lisān* (or *daʿwa*) making propaganda on behalf of holy war, 246, 247
- *al-māl* contributing property to holy war, 246
- *al-taḥrīd* inciting people to the cause of holy war, 246, 247

- jihādīyya* non-Arab troops composed of black soldiers of slave origin conscripted from the south and the Nūba mountains, largely recruited from the Turco-Egyptian army that had been taken prisoner by the Mahdist forces (Holt, *The Mahdist State*, 16; Searcy, *The Sudanese Mahdist State*, 58), 45, 46, 240
- jiwār* protection (Levy-Rubin, *Non-Muslims*, 33), 248
- jizya* poll tax, 17, 77, 253
- jurūḥ* (sing. *jurḥ*) injuries, 185
- kafā'a* principle requiring husband to be his wife's equal in such matters as descent (*nasab*), financial standing (*māl*), legal status and religiosity, 134, 142, fn. 2, 210
- kaffāra* expiation, atonement, 63, 109, 156, 160, 211, 212
- kāfir* (pl. *kuffār*, *kafara*) infidel, unbeliever, 17, 226, 236, 251, 272, 273, 277
- karāmāt al-awliyā'* lit. "miracles of friends of God," gifted spiritual powers (Sviri, *The Sufis*, General Index; Trimingham, *The Sufi Orders*, Glossary; Searcy, *The Sudanese Mahdist State*, 68), 27, 38
- kāriha* a disobedient wife who hates her husband, 120, 129
- kashf* mystical revelation (Trimingham, *The Sufi Orders*, Glossary; Sviri, "Sufism: Reconsidering Terms," 32), 36, 50, fn. 118, 51; also *ma'rifa*
- khabar* report or tradition from the Prophet:
- *al-āḥād* lit. "solitary reports," the term used for traditions from a relatively small number of transmitters, not enough to make them *mutawātir* (Robson, "Ḥadīth," 25, col. ii)—see *ḥadīth mutawātir*
- *nabawī* communication from the Prophet (*al-Āthār al-kāmila*, VII, Glossary), 37, fn. 58, 39, 240, 241, 244, 250
- al-Khaḍir, al-Khiḍr lit. "the green one," legendary human being living an eternal life who had become an angel; he appears, under different guises, in different places and times, whenever his help is needed to guide people in the mystical "path"; occasionally, he was identified as Elijah; a prophet to whom the Ṣūfis attribute immortality, omniscience and omnipresence; he can make himself invisible at will and speak the languages of all peoples; Ṣūfis regard him as a friend of God (*walī*) who protects people against all kinds of evil; he is deemed God's successor (*khalīfa*) on the sea and his authorized representative (*wakīl*) on land (Wensinck, "Al-Khaḍir," 904–5; Sviri, *The Ṣūfis*, 549; Holt, *The Mahdist State*, 106, 139–40; Shaked, *The Life of the Sudanese*

- Mahdī*, 216, fn. 91; cf. Searcy, *The Sudanese Mahdist State*, 56–57), 8, 40
- khafāʿ* lit. “secrecy,” an object taken away in secrecy as precondition for the amputation of the thief’s hand, 35, 191
- khālifa* (pl. *khulafāʿ*) lit. “successor,” (1) “caliphs” nominated by the Mahdī, xv, 9, 22, 40, 73, 171, 207, 210, 212, 227, 234, 256, 270, 294, 295, fn. 15; (2) the Mahdī as successor of the Prophet, 50, 243, fn. 3, 294; also *khilāfa*, *al-khulafāʿ al-rāshidūn*
- *rasūl allāh*. The Mahdī, 1, 8, 42, 284
- khalwa* (pl. *khalawāt*) (1) normally a Ṣūfī’s retreat. In the Mahdī’s time it had a sense of a Qurʾānic school (Holt, *The Mahdist State*, 19), 204; (2) privacy between husband and wife or between a man and a woman, 127, fn. 2, 203, 215 (*khalāʿ*), 289
- khamr* wine, 218, 219
- kharāj* land tax, 77, 231
- khaf* abduction, kidnapping, 211
- khātib* a man asking a girl’s hand in marriage, 97, 98; also *khūṭba*
- khātim al-khilāfa* lit. “Seal of the Grand Caliphate”; the title was attributed to the Mahdī after his death, 8
- *al-kubrā*
- khilāfa* caliphate, 2, 8; also *khalifa*
- khūṭba* a proposal of marriage, 97; also *khātib*
- khīyāna* deception; betrayal, 256, 274
- khulʿ* lit. “divestiture,” a divorce by agreement in which the wife redeems herself from marriage for a consideration (usually, the entirety of the nuptial gift or part thereof) given to the husband, 48, 120, 125, 126, 127, 128, 129, 130, 131, 132, 133, 283, 286, 287
- al-khulafāʿ al-rāshidūn* lit. the “Righteous [Orthodox] Caliphs” of Medina, i.e., Abū Bakr, ʿUmar, ʿUthmān, and ʿAlī (632–661), 1, 6
- khums al-khums* lit. “fifth of the fifth,” each of the five groups of recipients of the booty is entitled to four percent of the entire booty, 73, 243, 265; also *ahl al-khums*, *takhmīs*
- khurāfa* (pl. *khurāfāt*) superstition, 275
- khushūma* litigation, 80
- khūṭba* religious public address or lecture, the subject of which is usually admonition (*waʿz*) and religious guidance (*irshād*); the Friday sermon; an instrument for spreading the Mahdī’s missionary activity (*al-Āthār kāmila*, VI, 95, 98), 116
- kidhb* deceit, 274
- kufʿ* a man who meets the requirements of *kafāʿa*, 134; also *kafāʿa*

- kufr* infidelity, unbelief, 17, 21, 226, 252, 255
- lāzīm* legally binding, 85, 89
- liʿān* dissolution of marriage through a process of mutual imprecations by the spouses in the case of an unproven charge of adultery against the wife and denial of paternity of a child born in wedlock (Shalabī, *Aḥkām al-usra*, 597ff.; Zaydān, VIII, § 8396ff.), 214
- liwāṭ* homosexual intercourse, 212
- maʿārif kashfiyya* illumination, 36; also *maʿrifa*, *kashf*
- madhāhib* (sing. *madhhab*) schools of law, 1, 20, 29, 54, 100
- mafsada* moral corruption, 246
- mahdī* lit. “the rightly guided one,” the name of the restorer of religion and justice expected to rule before the end of the world
- *al-muntaẓar* lit. “the Expected Deliverer,” the Sudanese Mahdī’s manifestation in March 1881 on the island of Abā (Holt, *The Mahdist State*, 46ff.), 1, 8, 22, 284
- mahr* nuptial gift, bride-price, 107, 120, 121, 125, 127, 131, 152, 153, fn. 5, 287, 288, 290; also *ṣadāq*
- *al-mithl* proper nuptial gift due to a woman of comparable qualities in terms of descent, age, social status, physical shape and morality, 107, 111
- *muʿajjal* deferred nuptial gift, payment of which is delayed until a specified date or event in the course of the marriage; the husband’s decease, but not divorce, terminates the delay, 125; also *mahr muʿakkhar*
- *muʿajjal* prompt nuptial gift, payable at the conclusion of the marriage and, in any case, prior to its consummation, 125
- *muʿakkhar* deferred nuptial gift, 120, 125; also *mahr muʿajjal*
- *muqaddam* —see *muʿajjal*; also *mahr muʿajjal*
- *musamman* specified nuptial gift agreed between the parties and stipulated in the marriage contract, 107, 111
- maḥram* a relative within the forbidden degrees for marriage, 203, 211
- majālis* (sing. *majlis*) the Mahdī’s instructional sessions in defense of the Mahdiyya, attributed to him after his death (*al-Āthār al-kāmila*, VII, 1–3), xv, 2, 29
- makr* cunning, 274
- māl* (pl. *amwāl*) property, 63, 70, 109, 143, 172, 219, 236, 282
- *al-aytām* orphans’ property, 12
- *ẓāhir* lit. “apparent property”—as distinct from *māl bāṭin*, “hidden goods,” such as gold and silver—livestock and crops, cattle

- for stock raising (but not for agricultural work) out of which the alms tax is collected (Johansen, *Contingency*, 147–48, 480; Aghnides, *Islamic Theories and Finance*, 296, 428, 526; Zysow, “Zakāt,” 408, col. i; Anderson, *Africa*, Glossary), 259
- malak al-ilhām* the Angel of Inspiration, usually identified with Gabriel, 39 and fn. 69, 40, fn. 79
- mamlūk* (pl. *mamālīk*) slave, 66
- maʿnan* (pl. *maʿānin*) in Šūfī context, inner meaning, essence, significance (Trimingham, *The Sufi Orders*, Glossary), 49
- mandūb* lit. “recommended,” one of the *al-ahkām al-khamsa*, the “five religio-legal qualifications” (Schacht, *Introduction*, 121), 174
- manfaʿa* the usufruct (or benefit) of property, 77, 85, 90, 93, 249, fn. 4
- māniʿ* (pl. *mawāniʿ*) impediment (to marriage), 140
- manshūr* (pl. *manshūrāt*, *manāshūr*) the Mahdī’s proclamation (*al-Āthār al-kāmila*, II, 243), xv, 2, 9, 213, 270, 271
- maqādīm* (sing. *miqdām*) military commanders; courageous warriors (Lane, *Lexicon*, vol. II, Suppl. 2986, col. i), 97, 120, 81, 186, 196, 246, 272
- maʿrifa* (pl. *maʿārif*) in Šūfī context, esoteric knowledge or mystical gnosis of God; *ʿarīf* (pl. *ʿarīfūn*) lit. “one who has been given mystical knowledge” (Sviri, *The Sufis*, 467; Trimingham, *The Sufi Orders*, Glossary; Searcy, *The Sudanese Mahdist State*, 61), 20; also *kashf*, *maʿārif kashfiyya*
- al-marjiʿ al-aʿlā* lit. “the highest religious legal authority,” a degree attributed to the Mahdī, I, 26, 50, 284
- maṣādir naqliyya* the textual sources of the Qurʾān and the *sunna* (Cf. Abū Shūk, “Minhajjiyyat al-tashrīʿ,” II, col. ii), 36
- masākīn* the indigent, the needy, a category of beneficiaries of booty, 231, 233, fn. 7, 265
- maṣlaḥa* (pl. *maṣālīh*) (1) a concept of public interest or *raison d’état*, 240, 241, 246, 248, 251, fn. 13; (2) a mechanism of deriving law by means of analogical reasoning (*qiyās*); it plays a role in determining the method of suitability (*munāsaba*) that identifies the “efficient cause” (*ʿilla*, *ratio legis*) (Hallaq, *Legal Theories*, 83–4, 88ff., 112; Opwis, “Maṣlaḥa,” 210–11), 35–36, 43–46, 52, 53, 283, 294; also *munāsaba*, *ʿilla*, *ḍarar*, *qiyās*
- maʾšūm min al-khaṭaʾ* infallible, 2, 42, 49, 55, fn. 143, 284
- matn* (pl. *mutūn*) the content or text of a *ḥadīth* as distinct from the chain of its transmitters, 32
- matrūkāt* estate, 236

- ma'tūq* emancipated slave, 112
- al-mawlā 'alayhi* the guardian's ward, 105
- mawlid al-nabī* birthday of the Prophet marked by popular celebration and liturgical recital in his honor (Trimingham, *The Sufi Orders*, Glossary), 53, fn. 139
- maysir* games of hazard, such as *manqala* (or *minqala*), *ṭāwla* and *ṭāb* (Lane, *Manners*, 350, 351, 353; *al-Munjid*, 834, col. iii), 275
- milk* private property in terms of ownership and rights of usufruct (*taṣarruf*), 77, 79, 80, 85, 101, 255; also *taṣarruf*
- mīrī* land whose ownership belong to the state while the rights of usufruct may be leased to the individual, 77, 78, 79, 235, 249, 251, 288, 286
- mu'āmalāt* pecuniary transactions, 13
- mudarris* religious teacher, 18
- muddat al-ḥiyāza* (or *amad*) the period during which acquisition of title to the land is legally possible; the period of prescription, 79, 81
- mudhākara* memorialization, 175
- muhājirūn* lit. "immigrants," (1) originally referred to the early Meccan Muslims who fled the city with the Prophet in 622 and settled in Medina; (2) metaphorically, the Mahdī's adherents who migrated from Turco-Egyptian territory to the Mahdist state, 20, 187, 243
- muhakkam* arbitrator, 271; also *ḥakam*, *taḥkīm*
- al-muḥallil min al-ṭalāq* lit. "the one who renders [the divorced wife] lawfully permissible [to her first husband]," a man who marries a triply-divorced woman by intermediate marriage with the intention to divorce her so as to make it possible for her former husband to reinstate her by a new marriage contract, 153; also *ṭalāq*, *baynūna kubrā*, *taḥlīl*
- muḥṣan* lit. "immune," a free adult Muslim, who has consummated a valid marriage is deemed immune from temptation; hence, if he [or she] commits adultery he [or she] is liable to stoning. Some of the schools require that both parties must share this status for the penalty to be applicable, 67, 68, 202, 203, 204, 205, 212, 219
- muḥtasib* the Islamic inspector of the market, public prosecutor in charge of public morality (Cahen & Talbi, "Ḥisba," 485–89), 269, 270, 271; also *ḥisba*, *ḥākīm al-sūq*

- mujaddid* lit. “renewer,” renovator sent by God to the Muslim community at the turn of each of century. The Mahdī deemed himself authorized—in a Ṣūfī style and phrasing—to bring to light the rules of the Qurʾān and the *sunna* of the Prophet and messengers that had been extinguished and to put an end to the spread of the negative innovations, which brought about the destruction of religion, 28–29, 33, 50–51
- *al-dīn* lit. “renewer of the faith” in the Mahdist state (Searcy, *The Sudanese Mahdist State*, 8off.), 33
- mujāhid* (pl. *mujāhidūn*) lit. “holy warrior” in *jihad*, 109, 241, 242; also *jihād*
- mujtahid* a qualified specialist in *fiqh* who exercises *ijtihād*, 46, 48, 49, 51; also *ijtihād*
- mumāthala* a principle in retaliation according to which equivalence between the victim and the perpetrator in terms of religion and legal status (slave as distinguished from free person) must be maintained, 180, 185
- munāfiqūn* (sing. *munāfiq*) hypocrites, dissenters. The Mahdī uses the term as equivalent to apostates carrying the historical connotation of schism within the *umma* dating back to the period of the Prophet, 226
- munāsaba* lit. “suitability,” the method of identifying the “efficient cause” (*illa*, *ratio legis*) (Hallaq, *Legal Theories*, 83–84, 88ff., 112; Opwis, “Maṣlaḥa,” 210–11), 43; also *illa*, *maṣlaḥa*
- munkar* (pl. *munkarāt*) reprehensible in terms of morality and negative innovations, 11, 159, 200, 212, 213, 220, fn. 9, 271, 276, 289
- murīd* (pl. *murīdūn*) lit. “he who seeks [spiritual enlightenment],” a disciple, novice of a Ṣūfī order (Trimingham, *The Sufi Orders*, Glossary; Sviri, *The Sufis*, General Index), 24, fn. 117
- murtadd* lit. “one who turns back,” especially from Islam, apostate, 142; also *irtidād*, *ridda*
- murtahin* pledgee, 91
- muṣāhara* relationship by marriage, 121
- mushāhada* a mystical experience which can be accessed neither by the intellect nor by the senses but rather by the heart, 37
- mushrikūn* (sing. *mushrik*) polytheists, 20, 225, 237
- muskir* intoxicating liquor, 218, 219
- Muslimāniyya* Christians converted to Islam in the Mahdist state (Holt, *The Mahdist State*, 111; *Sudanic Studies* 18{2007}, 16), 251

- mustaftī* the person who seeks an opinion on a point of law from a *mufti*, xv, 66, 100, 132, 150; also *fatwā*
- mustaghītha* lit. “a woman seeking shelter.” The Mahdī uses a legal term to connote married women who left their husbands behind (and hence were exposed to danger) to join the Mahdiyya, 210
- mustaʿmin* a non-Muslim protected by *amān*, 248
- muʿtabar* taken into account, effective in legal respect, 70, 281, 282
- mutajālla* a woman who is not an object of temptation, 206
- mutawātir* —see *ḥadīth*
- muzāraʿa* contract of lease of agricultural land in which one party provides the land and the other party the labor, the crop being shared between them in accordance with a fixed ratio, 87, 288
- naḥaqa* maintenance, (1) a woman’s right in consummated marriage to food, clothing and matrimonial dwelling, the level of which is determined in accordance with her socio-economic status before marriage (Hallaq, *Sharīʿa*, 288–89), 137, 141, 163, 170, 172, 173; (2) expenses, cost, 91, 92, 263
- naḥs* lit. “soul,” person (as distinct from *māl*, “property”), 63, 70
- nāʾib* (pl. *nuwwāb*) (1) authorized representative, 236; (2) deputy of the *qāḍī*, 13, 93, 120, 243
- nakāl* exemplary punishment, 197
- naqīb* (pl. *nuqabāʾ*) a guardian of the liturgy or a chief in a Ṣūfī order (Trimingham, *The Sufi Orders*, Glossary), 23
- nasab* paternity; descent, kinship, 23, 99, 100, 101
- nāshiza* lit. “recalcitrant,” a wife who has been proclaimed disobedient by the *qāḍī* (she loses her right to maintenance during her recalcitrance), 118, 120, 129
- naṣīb* lit. “share,” (1) a share of an estate, 170, 233; (2) a share in booty, 187
- naskh* abrogation of a textual source of the Qurʾān or the *sunna* by another textual source, 1, 3, 35–36, 47, 49, 54, 284
- naṣṣ* (pl. *nuṣūṣ*) (1) a text of the Qurʾān or *sunna*, 35; (2) a legal treatise written by a specialist in *fiqh*, 20
- niṣāb* (1) the minimal value of stolen goods required for application of the *ḥadd* punishment of amputation, 35, 70, 107, 191, 192, 193, 195, 291; (2) the minimal amount of a specified kind of property required for the imposition of the alms tax, 262, 263, 284
- niyāḥa* mourning, lament over the dead, 271, 275
- qabḍ* taking possession of an object by virtue of a contract, 89

- qadhf* a false accusation of unlawful sexual intercourse entailing 80 lashes, 214, 216, 272, fn. 3, 291–92
- qāḍī* a religious judge of a *sharīʿa* court, 3, 4, 9, 11, 12, 13, 14, 18, 41, 42, 47, 67, 68, 70, 81, 91, 93, 105, 106, 118, 120, 121, 122, 123, 124, 132, 134, 135, 136, 137, 138, 139, 140, 143, 162, 181, 191, 203, 204, 207, 211, 215, fn. 7, 232, 243, 269, 270, 281, 286
- *al-islām* (in the Mahdist state) head of the Supreme Court in Omdurman in charge of the judicial system, xvi, 11, 12, 15, 16, 70, 71, 81, 89, 91, 93, 127, 140, 141, 146, 150, 157, 159, 160, 193, 263, fn. 8, 283
- qānūn* (pl. *qawānīn*) statute; statutory law, 17, 21, 254
- qarāba* kinship, 23, 104
- qarābāt al-arḥām* blood kinship, 104
- qarāʿin* (sing. *qarīna*) circumstantial evidence, 215
- qasm* division of the husband's time between his wives, 111
- qaṭʿ al-ṭarīq* banditry or highway robbery, 199, 200; also *ḥirāba*
- qatl* homicide, 181, 187, 198, 213, 216, 227
- *ʿamdan* intentional killing, 181
- *ghīla* killing under grave circumstances that entails capital punishment regardless of the pardon of the victim's kin, 180
- *khataʿan* accidental homicide, 179, 185
- *shibh ʿamd* semi-intentional homicide that creates a liability for enhanced blood money, 179; also *dīya mughallaḥa*
- qawl* (pl. *aqwāl*) lit. “saying,” (1) a Prophetic tradition, 101; (2) a tradition attributed to the Mahdī after his death, xv, xvi, 2, 33–34; (3) legal view, 19
- qayqar* (pl. *qayāqīr*) Turkish fortified camps (cf. *qaqra* in *al-Āthār al-kāmila*, III, fn. 9), 108, 150, 211
- qibla* direction toward the Kaʿba to which Muslims turn in praying, 41
- qīṣāṣ* retribution in the case of causing intentional homicide or bodily harm, 179, 181, 185, 215, 216
- qiyās* (1) judicial reasoning, 52, 54, 283; (2) systematic analogy of the Qurʾān and *sunna* as a source of law in Islamic legal methodology, 1, 43, 45, 47, 49, 51, 293, 294; also *uṣūl al-fiqh*, *maṣlaḥa*
- qurʿ* (pl. *qurūʿ*) period of menstruation, 146, 148, 149, 290, 291
- qutb* (pl. *aqṭāb*) lit. “pole” or “axis,” the highest member in the hierarchy of *awliyāʿ* (friends of God) in Sūfī orders (Trimingham, *The Sufi Orders*, Glossary; Sviri, *The Sufis*, General Index; Searcy, *The Sudanese Mahdist State*, 69), 8, 22, 23, 40; also *awliyāʿ*

- raḍāʿ, riḍāʿ*  
or *raḍāʿa*  
*radd* suckling, a legal impediment to marriage on grounds of fosterage, 99, 100, 101, 161, 163  
lit. “return,” the right of the Qurʾānic heirs to the residue of the estate after they have taken their prescribed portions and there are no male agnatic heirs, 168, 169, 291; also *ahl al-farāʿiḍ*, *ʿaṣaba* a suckling—see *raḍāʿ*
- raḍīʿ*  
*rahn* pledge, transfer of possession of property from the debtor (pledger) to the creditor (pledgee) as security for the return of a loan, 89, 91
- raqaba* (1) a tangible thing, *res*, of property, 77; (2) slave, 156, 274; also *ʿayn*, *ʿitq raqaba*
- raqīq* (sing. and coll.) slaves, 63, 64, 234
- raʾs al-māl* capital, 91
- rātīb* (pl. *rawātīb*) a set of invocations to God, prayers and Qurʾānic verses prescribed by the founder of a Ṣūfī order and imposed on his adherents to be read at specified times of the day (*al-Āthār al-kāmila*, VI, 9), 23, 33
- al-Rātīb* the devotional manual compiled by the Mahdī (Holt, *The Mahdist State*, 165; Trimmingham, *The Sufi Orders*, Glossary; O’Fahey, *Arabic Literature of Africa*, I, 328), xv, 24, fn. 114, 54, fn. 142
- raʾy* legal reasoning; a personal opinion, 48, 49, 155
- ribā* lit. “increase,” interest, usury, 86, 89
- ridḍa* apostasy from Islam, 142, 221, 227; also *irtidād*, *murtadd*
- riqāb* (sing. *raqaba*) slaves, 64, 265; also *raqaba*
- riwāya* (pl. *riwāyāt*) report attributed to the Mahdī, 31
- riyāl* silver coin; the Mahdist silver *riyāl* was equivalent to the Egyptian *riyāl* (Searcy, *The Sudanese Mahdist State*, 62), 108
- *qushlī* Turkish-Arabic name for Austrian (Maria Theresa) dollars (Holt, *The Mahdist State*, 257, fn. 2), 108, fn. 8
- rukṅ* (pl. *arkān*) lit. “support” or “prop,” a “pillar” of Islam, 246
- ruʾyā* vision, dream (Trimingham, *The Sufi Orders*, Glossary; Sviri, *The Sufis*, General Index), 54
- ruʾya nabawiyya*,  
*ruʾyat al-nabī* a vision derived from the Prophet, 37
- sabab* —see *asbāb al-nuzūl*
- ṣabr* patience, in Ṣūfī context (Sviri, *The Sufis*, General Index), 24
- ṣadāq* nuptial gift; bride-price, 97, 98, 103, 107, 108, 120, 129, 131, 142, 207, fn. 6; also *mahr*
- *muʿajjal*,  
*muqaddam* prompt nuptial gift, 125

- *mu'akkhkar* deferred nuptial gift, 125, 143
- ṣadaqa* voluntary alms, a charitable donation, 109, 259
- ṣaḥāba* (sing. *ṣāḥib*) Companions of the Prophet dating from the first conversion; the Prophet's contemporaries who knew him personally, 31, fn. 27, 38, 49, 55; also *aṣḥāb*
- ṣāḥib al-walāya* lit. "the possessor of the general guardianship," the *qādī's* function in default of a legal guardian, 195
- *al-ʿamma*
- ṣaḥīḥ* valid (marriage), 113
- salaf* the "pious ancients" of early Islam, 276, 284
- salafī* the normative tradition of the forefathers. In the Mahdī's practice, this trend—strongly influenced by the revivalist and reformist movements in Arabia and the Maghrib—is manifested in the emphasis laid on the textual sources of the Qur'ān and the *sunna*, 1, 5, 6, 50, 283, 284
- sanad* chain of transmitters of traditions, 32; also *isnād*
- sāqiya* water scoop, wheel or irrigation canal, 262–63
- sariqa* theft, 70, 110, 193, 194, 197, 271
- surrīyya* (pl. *sarārīyy*) concubine, 64
- sayf al-nabī* lit. "the Prophet's sword," one of the Mahdī's symbols of authority, 8
- sayyid al-wujūd* in Ṣūfī context, "the master of knowledge," the stage beyond ecstasy (Trimingham, *The Sufi Orders*, Glossary, s.v. *wajd*, *wujūd*). The Mahdī identifies *sayyid al-wujūd* with the Prophet (*al-Āthār al-kāmila*, v, 418), 8, 38, 50, 109
- shahāda* testimony, evidence of witnesses, 63, 79
- shāhid* witness, 63, 240
- *al-zūr* false witness, 282
- shahīd* martyr, one killed in battle with infidels, 104, 134, 168, 266
- shaqīq, shaqīqa* full brother (or sister), germane brother (or sister), 161
- sharīʿa* (1) the sacred jurists' law of Islam, 2, 3, 5, 8, 17, 26, 45, 53, 77, 88, 97, 98, 110, 120, 132, 157, 161, 167, 179, 180, 181, 202, 221, 262, 285, 290, 292, 293; (2) in the Mahdist version, xvii, 17, 21, 30, 126, 137, 155, 187, 195, 226, 256, 263, 285, 289
- *muḥammadiyya* Islamic sacred law, 187
- sharīk* (pl. *shurakāʿ*) partner, 93
- sharika* partnership, 87
- shaykh* (pl. *mashāyikh*) (1) head of a Ṣūfī order, 22, 23, 24, fns. 116–17, 25, fn. 124, 29, fn. 15; (2) master or founder of a school of law, 20
- shirk* polytheism, 54, 224

- shubha* (pl. *shubhāt, shubuhāt*) uncertainty or doubt averting Qur'ānic punishments (Peters, *Crime*, 21–22), 113, 121, 122, 124, 191, 192, fn. 6, 202, 215, 284
- *al-'aqd* semblance of a contract, 121
- shuf'a* the right of preemption, the option of the co-owner (or neighbor) in property (or usufruct) to buy out his partner's share designed for sale, 93
- sikka* the minting of coins, 8
- sīra* (pl. *sīyar*) biography of the Prophet, 49, 52
- sitr* —see *khafā'*
- ṣiyām* fasting, 156, 274
- Ṣūfī* a Muslim mystic; a mystical view, concept, doctrine, order or tradition, xix, xx, 1, 3, 5, 6, 7, 20, fn. 91, 21, 22, 23, 33, 34, 37, 40, 52, 53, 54, 131, fn. 1, 220, fn. 10, 243, fn. 2, 260, 276, fn. 6, 283
- suknā* a matrimonial dwelling, 170
- ṣulḥ* a legally binding contract or treaty (*mu'āhada*) between Muslims and non-Muslims to suspend fighting and establish peace for a specific period of time (Khadduri, “*Ṣulḥ*,” 845–46; Zaydān, IV, § 3809, 3811), 231, 232, 238, 250, 251
- ṣulḥan* surrender by agreement, 231, 232, 238, 250, 251; also *'anwatan*
- sunna* normative legal custom or conduct, especially that of the Prophet, 1, 2, 6, 9, 12, 13, fn. 43, 15, 17, 19, 21, 27, 28, 29, 30, 31–33, 34, 35, 36, 41, 42, 43, 44, 47, 48, 49, 50, 52, 54, 55, fn. 143, 59, 86, 87, 98, 172, 196, 222, 225, 239, 242, 252, 261, 263, 265, 271, 274, 276, 283, 284, 293, 294; also *uṣūl al-fiqh*
- *jāhiliyya* customs dating back to pre-Islamic times, 53, 275
- ṭā'a* obedience of a wife to her husband, 131
- ta'addīn* lit. “transgression,” offense against law, tort, negligence, 135
- ta'aṣṣub* ardent zeal for a school of law, 6, fn. 1
- tābi'* (pl. *tābi'ūn*) lit. “Followers [of the Prophet's Companions],” the succeeding generation after the Prophet's generation, 32
- ṭābū* land registry, 227
- ta'dīl* —see *tazkiya*
- tafrīq* lit. “separation of spouses,” i.e., dissolution, 121
- tafsīr* commentary on the Qur'ān, 7, 20, 29, 31, 33, 51, fn. 124
- tafwīḍ al-ṭalāq* lit. “delegation of the power to repudiate,” delegation to wife of power to divorce herself (Shalabī, *Aḥkām al-usra*, 521ff.; Peters, “Islamic Family Law,” § 0.1.5.1.5), 139, fn. 2
- taḥkīm* arbitration, 14; also *ḥakam, muḥakkam*
- taḥlīl* —see *al-muḥallil min al-ṭalāq*

- tajdīd* —see *mujaddid*
- takfīr* charge of unbelief, excommunication, 124, 137, 142, 143, 145, 148, 149, 150, 160, 221, 222, 223, fn. 4, 285, 287
- takhayyur* lit. “selection,” combining different legal doctrines from the dominant school or other schools, or from early independent jurists, in order to support reformist norms that have been predetermined, 27, fn. 7
- takhmīs* division of the booty into five shares for the purpose of its distribution among the recipients, 239, 240; cf. *khums al-khums* a Ṣūfī shelter, 266
- takīyya* a Ṣūfī shelter, 266
- ṭalāq* repudiation:
- *bāʿin* lit. “final,” irrevocable repudiation, becomes operative immediately with all attendant legal effects, 111, 125, 132, 149, 152, 161, 202; also *baynūna ṣughrā*
  - *muḍāf* suspended repudiation, 122
  - *rajʿī* revocable repudiation, enables the husband to reinstate his wife during the waiting period without concluding a new marriage contract; the divorce becomes irrevocable after the expiry of the waiting period, 111, 132, 149, 152, 202; also *ʿidda*
- taʿlūq al-ṭalāq biʿl-shart* (1) conditional (*muʿallaq*) repudiation that becomes effective on the uncertain occurrence of a specific event in the future, 122; (2) suspended (*muḍāf*) repudiation that becomes effective on the occurrence of a specific future date (in Mālikī doctrine, such a stipulation is null and void and the repudiation becomes immediately operative) (Shalabī, *Aḥkām al-usra*, 494ff.; Peters, “Islamic Family Law,” § 0.1.5.1.4), 122, 157, fn. 3
- taqlīd* lit. “imitation,” adherence to the authoritative opinions of *mujtahids* within each of the schools of law, 1, 28, 49, 51, 52, 55, fn. 143
- taqwā* fear of God, 31, 50, 51, 54
- tarika* estate, 168, 236
- ṭarīqa* (pl. *turuq*) lit. “path,” a Ṣūfī order; a mystical method (Trimingham, *The Sufi Orders*, Glossary), 1, 7, 21, 22, 23, 24 and fns. 117 and 120, 52, 54
- *muḥammadiyya* lit. “Muḥammad’s path,” the “path” that leads the enlightened mystic to a direct encounter with the living Prophet who personally clarifies for him all legal decisions (Radtko et al., *The Exoteric*, 97, fn. 16), 52, 53
- taṣānīf* (sing. *taṣnīf*) compilations of *fiqh* treatises, literary works, 20, 28

- taṣarruf*  
*taʿṣīb* rights of usufruct, 77, 235, fn. 4; also *milk*  
a principle of inheritance, according to which a son converts his sister, the daughter of the deceased, into an *ʿaṣaba* or residuary heir, the son taking twice as much as the daughter (Coulson, *Succession*, 41–42), 167
- taṭlīq* repudiation pronounced by the *qāḍī* on behalf of the husband, 67, 68, 134, 136, 137, 139, 140, 141, 143, 144, fn. 1, 286
- tawakkul* trust in God, mystic state of abandonment into God’s hands (Trimingham, *The Ṣūfī Orders*, Glossary; Sviri, *The Sufis*, General Index), 24, 196
- tawba* repentance, 183, 198, 212, 222, 224, 243, fn. 2, 271
- tawḥīd* in Ṣūfī context, unity of God (Sviri, *The Sufis*, 284), 27, 28, 105, 275
- taʿzīr* a corrective punishment imposed by the judge or executive official at his discretion for an offense that does not fall within the definition of one of the offenses for which a particular penalty (*ḥadd*) is prescribed (Peters, *Crime*, 65ff.; Izzi Dien, “Taʿzīr”; Anderson, *Africa*, Glossary), 187, 203, 204, 208, 212, 218, 259, 272, 275
- tazkiya* a credibility test of a witness, by secret and public inquiry, initiated by the *qāḍī*, before the witness is allowed to testify in court, 281
- thayyib* an adult woman who has lost her virginity, 103, 104, 108, 109, 234; also *ʿuzba*
- ṭīn* —see *atyān*
- ʿulamāʾ* (sing. *ʿālim*) the religious scholars of Islam, 1, 2, 3, 6, 8, 11, 17, 18, 19, 20, 21, 26, 27, 28, 36, 42, 44, 46, 47, 49, 51, 54, 59, 77, 100, 182, 222, 223, fn. 4, 232, 241, 271, 292, 293, 294
- *al-sūʿ*, lit. “the *ʿulamāʾ* of evil,” *ʿulamāʾ* accused of cooperating with the Turco-Egyptian administration while denying Muḥammad Aḥmad’s mahdship (Abū Salīm, *al-Ḥaraka al-fikriyya*, 50), 19, 20, 50, 252
- ūlū al-amr* lit. “those in charge of authority,” the political authority, 18
- ʿumad* (sing. *ʿumda*) chiefs of tribes, 80
- ʿumalāʾ* (sing. *ʿāmil*) agents for collecting taxes, 97, 120, 211
- umarāʾ* (sing. *amīr*) emirs, governors, 196, 246
- umm al-walad* a female slave who gives birth to a child by her master becomes free on her master’s death, provided the child is still alive, 65, 66, 286
- ʿuqūba* punishment, 182, fn. 10

- ʿurf* customary law, 34; also *ʿāda*  
*ʿushr* lit. “tithe [of the produce],” land tax levied from Muslims (in the Ottoman empire), 232, 262, 263  
*uṣūl al-fiqh* (sing. *aṣl*) lit. “the roots of Islamic legal doctrine,” Islamic legal theory consisting of the four sources of law: Qurʾān, *sunna*, *ijmāʿ* and *qiyās*, 1, 3, 8, 26, 47, 49, 50; also *sunna*, *ijmāʿ*, *qiyās*, *ijtihād*  
*uṣūlī* expert in the theory of law, 8  
*ʿuzba* a non-virgin, 108; also *thayyib*  
*waḍʿ al-yad* unlawful possession, 79, 254  
*waḥdāniyya* the unity of God, 21  
*waḥy* in the Maḥdī’s documents, divine inspiration (cf. Wensinck-[Rippin], “Waḥy,” 53ff.; Sviri, *The Sufis*, 502), 36–37, 55; also *ilhām*  
*wakīl* authorized representative, proxy, 141, 256  
*walad* lit. “descendant,” a child or lineal agnatic grandchild (in inheritance), 167  
*walāyat al-taʿdīb* marital chastisement, 118  
*walī* —see *awliyāʾ*  
     — *al-maqtūl* the victim’s prosecutor, 181  
*waḥf* religious, pious endowment, 12, 231, 232, fn. 4, 240, fn. 13, 259  
*warada* in Ṣūfī literature, a common expression signifying a mystical experience descending on a human being all of a sudden, 37, fn. 56, 40, fn. 78, 175, fn. 5; also *wārid*  
*wārid* (pl. *wāridāt*) mystical occurrence or experience; mystical insight; revelation in the broad sense of mystical enlightenments (Knysh, *al-Qushayrī’s Epistle on Sufism*, 108; Trimmingham, *The Sufi Orders*, Glossary; *al-Āthār al-kāmila*, VII, Glossary), 37; also *warada*  
*waṣf* a quality necessary for the validity of a contract such as the presence of a witness, 121  
*waṣī* testamentary executor, xvii, 171, 174  
*waṣīyya* (pl. *waṣāyā*) will, bequest, testamentary disposition, xvii, 174, 175  
*wird* —see *awrād*  
*yāʿīsa* lit. “a desperate woman,” a woman who has reached the “age of despair,” i.e., ceased to menstruate, 147  
*yaqīn* lit. “certainty,” one of the highest ecstatic experience in Ṣūfism (Sviri, *The Sufis*, General Index), 276; also *ḥāl*  
*yaqḥa* state of wakefulness; in full possession of one’s mental faculties, 38, 49

- yusr* lit. “ease” or “easiness,” a variant of *maṣlaḥa*, 46
- zāhir, zāhiri* lit. (1) “external,” exoteric knowledge based on the textual sources, 36, 102; (2) literal interpretation of the Qurʾān and the *ḥadīth* connected with the unique legal school of Ibn Ḥazm (d. 456/1063) that may have inspired the Mahdī, 54, 69, 100, 101, 102, 147, 212; (3) lit. “apparent (property),” 259; also *bāṭin*
- zakāt* alms tax, 2, 259, 260, 262, 263, 264 and fn. 12, 265, 266, 271, 288, 292,  
— *al-ḥitr*, a religious obligation in connection with the termination of the fast of Ramaḍān, 68, 260, 261, 265
- zālim* transgressor, 79
- zānin* a man who has committed unlawful sexual intercourse, 203, 272
- zann* a presumptive rule or conjecture awaiting the consensus (*ijmāʿ*) of the ‘*ulamāʿ*’ for its validity (Coulson, *History*, 78; Hallaq, *Sharīʿa*, 98ff.), 47, 51
- zawāj muḍāf* marriage suspended to some future date, 112
- zihār* a derivative from *zahr*, lit. “back,” an oath denoting incestuous comparison (“you are for me like my mother’s back”) thereby deeming the wife forbidden and divorced, 156, 157, 159, 160
- zinā* unlawful sexual intercourse punishable by a Qurʾānic punishment, 67, 98, 136, fn. 1, 194, 204, 210, 214, 216, 271
- zuhd* in Ṣūfism, asceticism, world-denial (Sviri, *The Sufis*, General Index; Trimingham, *The Sufi Orders*, Glossary), 10, 24, 244  
— *ʿl-dunyā*, withdrawal from worldly things, such as property; asceticism (Sviri, *The Sufis*, 317–18), 10
- zuhūr* manifestation (of Muḥammad Aḥmad as the Mahdī), xv, 17
- zulm* wrong, 197

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