

**Disagreements of the Jurists:  
A Manual of Islamic Legal Theory**

*Al-Qāḍī al-Nu‘mān, ed. and trans. Devin Stewart  
New York: New York University Press, 2015. 448 pages.*

The book starts with “The Provenance of this Book” and states that the beginning of all manuscripts show a short text by al-Qadi al-Nu‘man to demonstrate that it was passed down from his father and grandfather. After this, it lists who they are and their positions as judges and proclaims that the book was written for the Fatimid caliph al Mu‘izz (r. 953-75).

The “Introduction” acquaints the reader with al-Qadi al-Nu‘man and this work, providing a bibliography of his other books. The sources of his works are mentioned as being mainly Zaydi and Imami (mostly Kufan) and suggest a compromise between Shi‘ism’s two traditions while refuting Sunni theories of legal interpretations. Al-Nu‘man wrote several treatises showing his engagement with Sunni Islam. These polemical works refute the Maliki jurist Muhammad b. Ahmad al ‘Utaqi, Ibn Qutaybah, al-Shafi‘i, and Ibn Surayj al-Baghdadi. The author suggests that the words “a certain Baghdadi” may refer to Ibn Surayj. This work, plus his *Da‘ā’im al-Islām*, form the basis of Ismaili law. The content and significance of *Ikhtilāf Uṣūl al-Madhāhib* are explained, and all works dealing with it are listed in a useful bibliography. The “Prologue,” which sets the scene, states that differences existing among all those who pray toward Makkah, use the same Qur’an, accept the same Prophet, and yet are dispersed into disputing parties and numerous groups.

In the first chapter, “The Cause of Disagreement,” al-Nu‘man omits the chains of orally transmitted reports and cites only those that are famous and reliable (e.g., Ali’s), praises Ali, and cites a Prophetic tradition attesting to Ali’s competence. Ja‘far al-Sadiq is quoted about the cause of disagreement, namely, those who assumed authority, unlike the Prophet, did not know all of the answers to all of the questions. Al-Nu‘man opines that the Umayyads and Abbasids had no knowledge of what God permitted or prohibited; they just desired power, ambition, and worldly matters, handing over the religious responsibility to commoners in exchange for their support (p. 13).

In the second chapter, “Disagreement over the Rulings of the Religion,” al-Nu‘man states that Qur’anic rulings, and then the prophetic Sunnah, must be implemented. He contrasts that with the Sunni additions of following the Companions’ practice and the jurists’ *ijmā’*. Al-Nu‘man shows that different groups disagree on analogy and inference, which are merely different labels denoting their own opinions. The third chapter, “Against Disagreement over the Rulings of the Religion,” invokes Q. 6:38 and Q. 4:59 to reveal the invalidity of their claims and rights to declare what is lawful or unlawful. The fourth chapter, “The Method of the Adherents of the Truth When the Correct Ruling on an Issue Is Not Known,” shows the instructions of al-Mu‘izz, as Imam/authority, quoting a long passage by the caliph (pp. 34-41) highlighting that he should ask the Imam for explanation if unsure. For him, the sources of law are the Qur’an, Sunnah, and the Imams (p. 43). This is followed by anti-Sunni polemics (p. 45) and a validation of the Imamate.

In “Against Arbitrary Submission to Authority,” al-Nu‘man, building on the previous chapter, argues that after the Prophet’s death nobody had ultimate authority, except the Imams citing Ḥadīth al-Thaqalayn. Surprisingly he does

not cite the widely used Ḥadīth Ghadīr al-Khumm or Ḥadīth al-Manzilah. Al-Nu‘man argues that submission to Companions’ authority is based on a tradition, not the Qur’an. In his opinion, the first disagreement concerned the succession (Imamate). After giving more examples, he discredits that tradition as misunderstood because not all Companions were pious and they disagreed among themselves. Thus there could be no *ijmā‘* that yielded the subsequent emergence of various *madhāhib*. He named Abu Hanifah (who used personal judgment), Malik b. Anas (who changed his mind about triple divorce), and al-Shafi‘i (whose changed his original Makkan views in Madinah, in Iraq, and finally in Egypt). He omits Ibn Hanbal, probably due to his criticism of the Shi‘ah.

In chapter 6, “The Difference between Submission to Illegitimate Authorities and Referral to Legitimate Authorities,” al-Nu‘man states that lawful/unlawful should only be determined according to the Qur’an or Hadith. Otherwise, as shown previously, errors follow that lead to contradicting God as well as His Book and Messenger. Al-Nu‘man asks the Imam for explanations, for God commands the Imams through a chain that goes all the way back to the Prophet. Hence, he rejects analogy, personal judgment, *istiḥsān*, and *istidlāl*. According to a tradition by Ja‘far al-Sadiq, the Imams receive no revelation but follow the Quran, whereas the jurists corrupt its rules.

The titles of the next six chapters all start with “against,” for al-Nu‘man refutes consensus, speculation, analogy, preference, inference, legal interpretation, and personal judgment, respectively. He explains that consensus is the majority opinion and disagrees on how it is formed and what group should be recognized. He contends that the set fundamental Sunni principles are invalid because the ummah is not united on one doctrine. He contests speculation on matters that are not found in the Qur’an. Theories on *nazar* (speculative reasoning) are absent in extant *uṣūl al-fiqh*. He states that the numerous jurists differ among themselves on the validity of analogy for theological doctrine or legal rulings. In his opinion, preference is mainly based on personal judgment. For al-Nu‘man, inference is personal judgment and preference in legal interpretation. This chapter is influenced by Zahiri *fiqh*.

In the last chapter, al-Nu‘man lists and builds upon the Sunni jurists’ opinions, explaining that judgment should be exercised to seek answers from the Qur’an and Sunnah. He accuses al-Shafi‘i, mentioning the title of his book, of inconsistency. He usually does not mention authors or their books on the assumption that any informed reader would know such things.

Al-Nu‘man recognizes three sources of law: the Qur’an, the Sunnah, and the Imams’ pronouncements. It remains unclear whether his definition of the Sunnah is based on oral reports going back to the Prophet exclusively or also to the Imams; however, this work’s polemical nature proposes that he uses it

as his opponents would. Throughout the work, he extensively uses reports of early Imams but does not call them “Sunnah.” He justifies using the pronouncements of current and former Imams as a third source of law, intrinsic to the Qur’an and Sunnah, citing Q. 4:59 and Q. 16:43.

He is critical of Sunni views of religious authority, which he simplifies as deviations from the truth because (1) the Sunni caliphs proved their illegitimacy by turning away from religion and focusing on worldly wealth and power and (2) Sunni jurists claimed religious authority (for which they had no authorization) to impose their views. He alleges that a pact between these two groups gave jurists free rein to control religion so long as the caliphs could rule as they wished – a pact that resulted in tyranny. Jurists should rather serve as sources of guidance and reference for the people. His own authority as a jurist is subordinate to that of the Imam, which he emphasizes.

This important work sheds light on the early history of Islamic legal theory in general, not just Fatimid jurisprudence. In the course of his refutations and elaborations that Sunni *madhāhib* are a means to exclude the Shi‘i jurists from being considered part of orthodoxy, the book offers a comprehensive review of Sunni jurisprudential theories as they existed in the mid-tenth century, which have not been preserved. The development and different stages of issues like consensus, *ijtihād*, *taqlīd*, *qiyās*, and *istihsān* have not survived, and the variety of opinions narrowed and consolidated over time, which makes it hard to reconstruct their development. Hence, the portions he quotes preserve parts of the sources in the debate.

Stewart identifies some of the works used by al-Nu‘man. One important feature that he stresses is that al-Nu‘man was a materialist, a legal interpreter who demanded certainty when formulating the law, whereas his Sunni opponents were formalists who demanded correct procedure but not certainty (p. xxvi). For al-Nu‘man, probability or ambiguity are not necessary in the formulation of laws, as there is a living Imam who, unlike the Twelver Shi‘i Imam, was not in occultation and thus could address current issues. In addition, with all of al-Nu‘man’s refutations and denunciations of Sunni hermeneutic techniques as being subjective, because humans are fallible, his book *Ikhtilāf* resembles the works of Sunni *uṣūl al-fiqh*.

The work is very important for students of jurisprudence and for reconstructing *fiqh*’s development. Retaining the original Arabic makes it easy to consult the text.

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