THE EARLY HISTORY OF ISMAILI JURISPRUDENCE

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Law under the Fatimids

A critical edition of the Arabic text and English
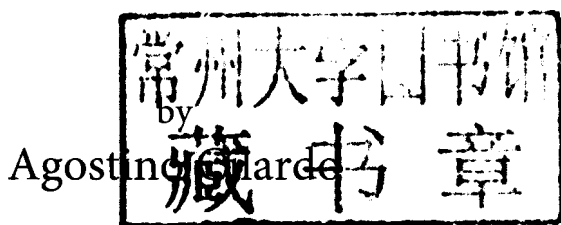translation of al-Qāḍī al-Nuʿmān's *Minhāj al-farā'iḍ*

Edited and Translated by
AGOSTINO CILARDO

The Early History of Ismaili Jurisprudence

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by

Agostino Cilardo

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Acknowledgements

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Introduction

In my research on the Islamic law of inheritance, I have utilised manuscripts written by scholars from the various schools of law. One of these is the *Minhāj al-farā'iḍ*, which is attributed to the Ismaili *qāḍī* Abū Ḥanīfa al-Nuʿmān. It has proven invaluable in helping me to fathom the various aspects of the inheritance system of the Sunni as well as the Shiʿi, Ẓāhirī and Ibāḍī schools of law.[1] With regard to the early formation of the Imāmī and Ismaili schools of law, the *Minhāj* has already helped to shed light on several issues which have been examined elsewhere,[2] but many others remain, including, for example, the relationship between the Ismaili school, the Imāmī school and the remaining law schools; the comparison of the legal works of al-Nuʿmān in order to shed light on the development of his thought. Above all, however, it has a bearing on the question of the origin of Islamic law itself. Moreover, it has informed an examination of the meaning of the Qur'anic term *kalāla*[3] as well as an

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1. Agostino Cilardo, *Diritto ereditario islamico delle scuole giuridiche ismailita e imamita* (Rome and Naples, 1993); Agostino Cilardo, *Diritto ereditario islamico delle scuole giuridiche sunnite (ḥanafita, mālikita, šāfiʿita e ḥanbalita) e delle scuole giuridiche zaydita, ẓāhirita e ibāḍita* (Rome and Naples, 1994).

2. Examples include the division of the heirs by kin into classes and the consequent negation of the doctrine of agnation, the privileges extended to the firstborn child, and the exclusion of a wife from the inheritance of some goods included in the estate. See Agostino Cilardo, 'Some Peculiarities of the Law of Inheritance. The Formation of Imāmī and Ismāʿīlī Law', *Journal of Arabic and Islamic Studies*, 3 (2000), pp. 127–137.

3. Agostino Cilardo, 'Preliminary Notes on the Qur'ānic Term *kalāla*', in U. Vermeulen and J.M.F. van Reeth, eds, *Law, Christianity and Modernism in Islamic Society. Proceedings of the Eighteenth Congress of the Union Européenne des Arabisants et Islamisants held at the Katholieke Universiteit Leuven (September 3–September 9, 1996)* (Leuven, 1998), pp. 3–12; Agostino Cilardo, *The Qur'ānic Term* kalāla. *Studies in the Arabic*

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assessment of some recent reforms in inheritance law.[4]

Since the history of the rise and the nature of the Fatimid state is well known, and the role of al-Nu'mān as a state jurist has also been widely studied, I wish instead to focus on a doctrinal comparison of al-Nu'mān's juridical works. Starting with an analysis of the *Minhāj* and highlighting the figure and works of al-Qāḍī Abū Ḥanīfa al-Nu'mān, I shall trace the development of Ismaili jurisprudence (*fiqh*) against the backdrop of the Imāmī as well as the Sunni elaboration. In so doing, I will compare the doctrines expressed in the *Minhāj* with those found in the other extant works of al-Nu'mān. From this examination, I hope to draw some conclusions about when the *Minhāj* was composed, the originality of Ismaili jurisprudence, and the relation between Ismaili jurisprudence and other schools of law.

Al-Nu'mān is generally considered the founder of Ismaili jurisprudence, and its greatest exponent. Most scholars nevertheless assert that Ismaili *fiqh* lacks originality and is closely dependent on other systems of Islamic law. The present study takes this as its cue to provide evidence to the contrary by a detailed examination of the differences between Ismaili and other *fiqh*.

Stimulated by the challenge formulated by Muḥammad Waḥīd Mīrzā,[5] but limiting myself to the topic of inheritance, I shall thus proceed to conduct a comparative study between the Ismaili system of jurisprudence and the other Islamic systems of law. But such a study ought to start by questioning Mīrzā's general observation that (1) there are no noteworthy differences between the Ismaili form

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Language and Poetry, ḥadīṭ, tafsīr *and* fiqh. *Notes on the Origin of the Islamic Law* (Edinburgh, 2005).

4. Agostino Cilardo, 'On Some Recent Laws on the Islamic Law of Inheritance', in A. Fodor, ed., *Proceedings of the Arabic and Islamic Sections of the 35th International Congress of Asian and North African Studies (ICANAS) (Budapest, 1–7 July 1997), Part II: The Arabist, Budapest Studies in Arabic,* 21–22 (Budapest, 1999), pp. 193–204.

5. That is, to 'conduct a comparative study between the Ismaili system of jurisprudence and the other Islamic systems of law' ('Il aurait été intéressant de faire une étude comparative entre le système ismaélien et les autres systèmes de jurisprudence musulmane'). See Muḥammad Waḥīd Mīrzā, 'Avant-propos' in his edition of *Kitāb al-iqtiṣār,* by al-Qāḍī Abū Ḥanīfa al-Nu'mān (Damascus, 1376/1957), p. xxxviii.

of *ʿibādāt* (religious practices) and other forms of *ʿibādāt*, and (2) Ismaili rules on *muʿāmalāt* (with respect to marriage, repudiation and inheritance, for example), totally diverge from those of Sunni and Imāmī systems of law. Such comparisons may appear pedantic, but they are necessary in order to definitively fix al-Nuʿmān's own theological background and thereby explore whether this was Mālikī or Ḥanafī, and to establish the doctrinal position of the *Minhāj* with respect both to his other works and to works by the Imāmīs and the Sunnis.

Chapter 1

The life and works of al-Qāḍī Abū Ḥanīfa al-Nuʿmān

I. The Fatimids and al-Qāḍī Abū Ḥanīfa al-Nuʿmān

The history of the Fatimid dynasty (297-567/909-1171) and the life and work of the Ismaili author and jurist al-Qāḍī al-Nuʿmān (d. 363/974) during this period are popular fields of research for both Western and Muslim scholars of Islamic studies.[1] The recurring allegations, products of a Sunni polemic, that Ismailism is similar to the religion of the Majūs and that the Ismailis tried to put an end to the domination of Arabs and Islam, while themselves seeking to dominate the Majūs, are obviously false.[2] De Sacy[3] believes that until Abū ʿAbd Allāh al-Shīʿī (d. 298/911),[4] the Ismailis were nothing more than an ordinary sect of the Shīʿis. This opinion is shared by Ivanow[5] who maintains that 'Ismailism was in its plain religious

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1. See, for instance, Farhad Daftary, *The Ismāʿīlīs: Their History and Doctrines* (2nd ed., Cambridge, 2007), pp. 167–172; Farhad Daftary, *Ismaili Literature: A Bibliography of Sources and Studies* (London, 2004), pp. 142–146; Farhad Daftary, *Ismailis in Medieval Muslim Societies*, Ismaili Heritage Series, 12 (London, 2005); Sumaiya Abbas Hamdani, *Between Revolution and State: The Path to Fatimid Statehood, al-Qadi al-Nuʿman and the Construction of Fatimid Legitimacy* (London, 2005); and the Bibliography in the present work.

2. Wladimir Ivanow, *Studies in Early Persian Ismailism* (Leiden, 1948), pp. 177–178.

3. Antoine Silvestre de Sacy, *Exposé de la religion des Druzes* (Paris, 1838), vol. 1, p. lxxii.

4. Called al-Muḥtasib, the founder of Fatimid rule in North Africa; see S. M. Stern, ʿAbū ʿAbd Allāh al-Shīʿī', in *EI2*, vol. 1, pp. 103–104.

5. Wladimir Ivanow, *Brief Survey of the Evolution of Ismailism* (Leiden, 1952), p. 74.

system closely connected with moderate, or Twelvers', Shiism',[6] even if he rightly observes that 'the elements of Shiism probably did not go further than the importance attached to the theocratic principle and a strong sympathy with the house of the Prophet'.[7]

Five stages in the evolution of Ismailism can be distinguished,[8] but it was during the second stage, which coincided with the Fatimid era,[9] that both the Ismaili movement and Ismaili literature attained maturity. It is through the efforts of al-Qāḍī al-Nuʿmān during this period in elaborating the Ismaili juristic system that he may be rightly considered the Fatimid jurist above all others and perhaps led Poonawala to observe that 'Ismaʿili law began with Nuʿmān and ended with him'.[10]

Al-Nuʿmān[11] entered the service of the first Fatimid Imam-Caliph

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6. The name of this branch of the Shiʿa is equally Twelvers or Ithnāʿasharīs (Arabic), because they believe in twelve imams; they are also called Imāmīs, because of the fundamental role of their imams, both as legitimate interpreters of the Islamic sources and as leaders of their community. See W. Madelung, 'Imāma', in EI2, vol. 3, pp. 1163–1169.

7. Ivanow, *Brief Survey*, p. 31.

8. Ibid., pp. 28–30.

9. On the Fatimids, see Étienne M. Quatremère, 'Mémoires historiques sur la dynastie des Khalifes Fatimites', *Journal Asiatique*, 2, no. 3 (1836), pp. 97–142; Ferdinand Wüstenfeld, *Geschichte der Fatimiden-Chalīfen nach arabischen Quellen* (Göttingen, 1881); E. Graefe, 'Fāṭimids', in *EI*, vol. 3, pp. 88–92; Marius Canard, 'Fāṭimids', in *EI2*, vol. 2, pp. 850–862. More recent sources are cited in Daftary, *Ismaili Literature*, under Thierry Bianquis, Michael Brett, Heinz Halm, Yaacov Lev, Paul Walker, etc.

10. Ismail K. Poonawala, 'Al-Qāḍī al-Nuʿmān and Ismaʿili Jurisprudence', in Farhad Daftary, ed., *Mediaeval Ismaʿili History and Thought* (Cambridge, 1996), p. 132. See also Shamoon T. Lokhandwalla, 'The Origins of Ismaili Law' (D. Phil. thesis, Faculty of Oriental Studies, University of Oxford, 1951), pp. 17–18, 233.

11. See Ḥusain F. al-Hamdānī, 'Some Unknown Ismāʿīlī Authors and their Works', *Journal of the Royal Asiatic Society* (1933), pp. 368–370; Wladimir Ivanow, *Ismaili Literature. A Bibliographical Survey* (Tehran, 1963), pp. 32–37; Āghā Buzurq, *al-Dharīʿa ilā taṣānīf al-Shīʿa* (Tehran, 1355–1381/1936–1961), vol. 8, pp. 197–198, no. 771; Muḥsin al-Amīn al-Ḥusaynī al-ʿĀmilī, *Aʿyān al-Shīʿa* (Beirut and Damascus, 1370–1382/1951–1962), vol. 50, pp. 13–15, no. 11169; Carl Brockelmann, *Geschichte der arabischen Litteratur (GAL)*, 2 vols., 2nd ed., Weimar, 1943-1949; 3 supplements, Leiden, 1937–1942, vol. 1, p. 201, no. 5; Brockelmann, *GAL*, supplement no.