Introduction

The Islamic legal system, like any other legal system, adjusts to political events, evolving social circumstances, and intellectual developments. Therefore, it is hardly surprising that Muslim jurists have referred to traumatic events, such as the civil strife that began during the reign of ʿUthmān b. ʿAffān (r. 23–35) and reached its climax in a series of battles during the reign of ʿAlī b. Abī Ṭālib (r. 35–40), in their writings. These violent clashes, as well as later theological controversies, tore the community apart and led to the establishment of several Islamic sects, such as the Khawārij, Shīʿa, Qadariyya and Murjiʿa, each of which considered its theological vision and political agenda to be the true expression of Islam. The evolving Islamic mainstream, the proto-Sunnīs, reacted to these political and intellectual challenges in a number of ways. Their rulers, the Umayyad and ʿAbbāsid caliphs, suppressed the rebellions of these sects, while the polemics of proto-Sunnī theologians sought to disprove their claims to truth and power, and proto-Sunnī jurists formulated legal doctrines which determined the legal and social status of the sectarians themselves.

From the first century of the Hijra onward, these religio-political sects posed a challenge to Muslim jurists. They had numerous supporters among different segments of society. Large parts of society, whether nomadic tribes or the inhabitants of different city quarters,
were persuaded to embrace sectarian beliefs and to join their political activities. Furthermore, many scholars sympathized with the sectarians’ critique of the early regimes. Some sectarians even attained high positions at the caliphal courts and exerted influence over policy. As their numbers grew and their members attained positions of power and influence, the sectarians became a force to reckon with. The appearance of these new social entities created a new social reality, and gradually Muslim jurists addressed the new configuration by working out a number of legal doctrines that aimed to regulate relations between proto-Sunnis (and later Sunnis) and the followers of the various sects. These doctrines sketched the contours of the new social order in legal terms and touched upon such issues as the validity of prayer led by a sectarian imām, attending the funeral and praying over a deceased sectarian, and the validity of the testimony of sectarians in courts of law.

This study will concentrate on one of these legal issues, namely, the status of sectarian testimony in the courts of law. In the first part it will examine a number of cases in which qādis rejected the testimony of sectarians, which will give us an idea about judicial practice. In the second part it will survey the major doctrinal trends that Muslim jurists articulated over the course of four centuries, while in the third part it will analyze the legal reasoning, religious values and social visions behind these doctrines.

**Judicial Practice**

In the first centuries of Islam, courts of law constantly developed and changed their procedures. One of the constituents of the court system that went through several modifications was testimony. Elements that were altered throughout the first two centuries included, for example, the criteria that determined who could testify, and the judicial supervi-

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1 On the history of Islamic courts of law see Tyan, *Histoire de l’organisation judiciaire en pays d’Islam*. For a shorter but up-to-date review, see Masud, Peters, and Powers, “Qadis and Their Courts.”