TRACING NUANCE IN MĀWARDĪ’S *AL-AHKĀM AL-SULṬĀNIYYAH: IMPLICIT FRAMING OF CONSTITUTIONAL AUTHORITY*

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**INTRODUCTION**

The normal or canonical list of Western scholars to whom we turn for understanding Sunni *fiqh* constitutional thought has been Gibb, Lambton, and now Crone. All of them follow Gibb in examining a series of thinkers, from Māwardī’s immediate theologian precursors Bāqillānī (d. 403/1013) and Baghdādī (d. 429/1037), to Māwardī (d. 450/1058), then to Juwaynī (d. 478/1085), Ghazzālī (d. 505/1111), and Ibn Jamāʿa (d. 733/1333), down to Ibn Taymiyyah (d. 728/1328) (with varying additions), and in focusing on each thinker’s treatment of the imamate itself—prerequisites for office, election, duties, disqualification, deposition, and the like. This is a gripping tale because during the same period the caliphate goes through various life and death throes, is finally terminated, and then begins a half-life in other bodies.

All these accounts share in degrees a single approach to the succession of Muslim theories about the caliphate. They construe it as a series of capitulations, a progressive bending or abandonment of legal principles to justify existing circumstances, which in the end weakened *sharīʿah*’s claim on rulers and acquiesced in, or even aided and abetted, a sorry history of arbitrary and semi-secular absolutism. According to this approach, Māwardī’s predecessors, obsessed with shoring up the legitimacy of the Sunni caliphate at a time when it faced rival Shīʿī claims backed by the powerful Fāṭimid caliphate, bent ideals in order to justify the history of the caliphate up to their time. Or, in Gibb’s words, speaking of Māwardī’s predecessors, whom he calls the framers of the “classical” theory of the caliphate:

> By disregarding the stipulation that the *imām*’s authority is bound up with his maintenance of the *sharīʿah* on the one hand, and insisting upon the unchanged obligation of submission to him on the other, they emptied the “contract” of all moral content and left only the factor of power operative in the political organization of the Community.¹

As the next step in the succession, it fell to Māwardī to devise doctrines to legitimize caliphs who had fallen entirely under the thumb of Shi‘ī Būyid rulers. Again, in Gibb’s words, Māwardi did still more to “undermine the foundations of all law…. Already the whole structure of the juristic theory of the caliphate was beginning to crumble…. Finally, Māwardī’s successors, laboring to maintain an Islamic political theory as the caliphate continued a mostly downward course and eventually was extinguished, continued making concessions until, as Gibb puts it, by further “apply[ing] [Māwardī’s] principles…brought [the juristic theory] crashing to the ground.” Gibb also, somewhat inconsistently, describes the entire sequence of Sunni political and constitutional writings as not influencing events but as rather dictated by them: they are “only the rationalization of the history of the community…. All the imposing fabric of interpretation of the sources is merely the post eventum justification of the precedents which have been ratified by ijmāʿ.”

But it is important to recognize that Gibb’s analysis operates from within a conception of Islamic legal and political history now being rapidly eroded. What was Gibb’s understanding of the Islamic theory of

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2 Gibb, “Al-Mawardi’s Theory,” 164. See also Gibb, “Sunni Theory,” 142–143; Lambton, State, 102. Writing some 15 years later, in 1955, Gibb does acknowledge that late medieval constitutional writers partly redeem the essential principle of the state’s subservience to shari‘ah. He states that, from Ibn Taymiyyah onward, Islamic political teachings converged on “the principle…that the true caliphate is that form of government which safeguards the ordinances of the shari‘ah and aims to apply them in practice.” “Constitutional Organization,” 26. In other words, in the end the theorists had shifted their crucial criterion for the legitimacy of the Islamic state from the person of the holder of power—particularly his qualifications and manner of selection—to whether he in fact upholds shari‘ah. See Lambton, State, 309. Later authors have criticized Gibb for overstating the loss to the “rule of law” entailed by theories like Māwardi’s or Ibn Jamā‘a’s. Mikhail, Politics, 28, 42–43; Crone, God’s Rule, 233. But even these later authors employ, in their accounts of the sequence of Islamic political thinkers, the same theme: Islamic political thought preserved Sunni legitimacy only through progressive deviations from a pre-existing shari‘ah ideal that became as a result ever more unattainable. Mikhail, Politics, xxxi (“‘ulamā‘ had to accept serious limitations as far as government was concerned”), 26, 29; Crone, God’s Rule, 219–255, esp. 254–255 (e.g., “constant stretching of basic principles”). To say this often accords with the tone with which medieval scholars presented their doctrines. My account hypothesizes that these scholars took their positions (and framed them as they did) not regretfully but intentionally, to strengthen the shari‘ah rule of law as they viewed it. Their purpose was to advance a new theory of state legitimacy dominated by fiqh and scholars while subtly undermining older legitimacies, Islamic and non-Islamic, focused on the ruler.

3 Gibb, “Al-Mawardi’s Theory,” 162. Here Gibb invokes a notion of ijmā‘ that is now in retreat—the idea that, as one of the four fiqh roots or sources of law, consensus or ijmā‘ transforms any late-arising practice tolerated by the community into an eternal tenet of shari‘ah, as indisputable as if it had been literally revealed in the Qur‘ān itself. Gibb, Mohammedanism, 65; compare Hallaq, History, 76.