

PRELIMINARY REMARKS ON DE FACTO GOVERNMENT
AND THE PROBLEM OF ITS LEGITIMACY:
IMĀM AL-JUWAYNĪ'S THEORY OF *AL-SHAWKAH**

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Introduction

The present article is an in depth study of the perspective of Imām al-Ḥaramayn al-Juwaynī (d. 478 A.H.) on the position of a *de facto* government¹ in Islam. A *de facto* government is a government which is established unconstitutionally, generally through military might: such governments dominated Islamic history. With the exception of the period of the four Rightly-Guided Caliphs, during which a form of *shūrā* was practiced, arbitrary governments of many forms dominated Islamic history. Since attributing unconstitutionality to a government of a particular *imām* was regarded by many as tantamount to declaring the unconstitutionality of his decisions, including the appointment of judges the jurists stood up to work out a solution to this problem.

Although delayed due to a number of factors, al-Māwardī, in his *al-Aḥkām al-Ṣulṭāniyyah* began a systematic constitutional attempt to address the emerging rebellious governors who usurped power in territories put under their control by the Caliphs. However, by the time al-Māwardī started to address this issue, the Būyids had already been actually and unconstitutionally ruling central Baghdad. As a consequence he set out to address the question of *de facto* government in what he termed as *imārat istilā'*. After him, during the reign of the Saljuqs the issue was addressed by Imām al-Juwaynī in his new theory of

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¹ The Latin term *de facto* (by fact), as opposed to the Latin *de jure* (by law).

*al-shawkah*² (effectiveness of government).

Unlike his predecessors, Imām al-Juwaynī's central assumption was that there were no fully qualified individuals for the post of the Imāmate. As a result, legitimacy had to be sought elsewhere. A thorough inquiry into his many works, particularly *al-Ghiyāthi* seems to suggest that Imām al-Juwaynī was in favor of *shawkah*. Regardless of who and how power was established, the legitimate government was that which had the following: actual military might, continuous support and loyalty of a majority, abundance of bounty, and the supremacy of the Shari'ah. These elements together constitute the actual *shawkah*.

Despite the fact that the Imām al-Ḥaramayn's political thought has been treated in a number of Arabic, French and some English works which will be covered later, his view on this particular point remains untapped in the English language. This fact was expressed by Hamilton A. R. Gibb in his *Studies on the Civilization of Islam*, where he acknowledges:

The violent change which followed in the political structure of Islam accelerated the breakdown by forcing al-Māwardī's successors to move ever further along the path of compromise. I cannot say how the Ash'arite theory was modified in the next generation by al-Juwaini, the Imām al-Ḥaramayn, since his book *Giyathi al-Imām*³ is unfortunately not yet

² *Shawkah* is an Arabic term which literally means a weapon or the edge of a weapon. in the Qur'ān, it is used in *Sūrat al-Anfāl*: 7 to convey the same connotation. *Al-Shawkah*, if attributed to a warrior, metaphorically denotes courage, bravery, and toughness in war. Despite the fact that, as far as I know, Imām al-Juwaynī does not give any unequivocal technical definition of *shawkah* in his works; his usage of a number of other terms, however, like *al-manā'ah* (inaccessibility) in the same line gives an insight into the technical meaning of the term. For its literal meaning, see Ibn Manẓūr, *Lisān al-'Arab*, 3 vols. (Beirut: Dār al-Jil, 1988), 384.

³ It seems to me that there is a mistransliteration of the title, instead of *umam* (nations) he writes *Imām*.