

Impact of the events of Saqifa and Fadak on the formation of differences between the Islamic Sunni and Shia law

Introduction.

The Islamic religion is represented by two main directions: Sunni and Shia. Each of the directions has its own legal doctrine, represented by several madhhabs (legal schools). Each of them, in turn, has its own sources of law, in accordance with which religious scholars make their legal decisions. Analyzing the history of the emergence of madhhabs, we can see that their formation was influenced by historical, religious, political, social, economic and other factors. J. Schacht wrote that in the first century of the Hijri (Islamic chronology), many distinctive features of Islamic law emerged, and the emerging Islamic society created its own legal institutions.¹ At the same time, one should pay attention to the fact that in the early history of the Islamic state and the formation of Islamic law there were events in which we can see the reflection of certain religious and legal ideas, which later formed the basis of differences both between madhhabs and between whole directions of Islamic law. These events took place almost immediately after the death of the Prophet Muhammad and the election of Abu Bakr as Caliph. For the period of his reign, the events of his confrontation with members of Ahl al-Bayt (the progeny of the Prophet) are quite interesting. Firstly, this was expressed in the fact that Ali ibn Abi Talib was not among the first to take the oath of allegiance to Abu Bakr as caliph. This issue was highlighted in the works of Muslim scholars, especially Shia scholars since they consider this event to be one of the first manifestations of Shia ideology. Another such event, we consider the discussion between Fatima and Abu Bakr about the ownership of the lands of Fadak. For a brief description of this event, let us cite a hadith: 'Narrated Aisha: "Fatima, the daughter of the Prophet, sent someone to Abu Bakr (when he was a caliph), asking for her inheritance of what Allah's Messenger had left of the property bestowed on him by Allah from the Fai (i.e., booty gained without fighting) in Al-Madina, and Fadak, and what remained of the Khumus of the Khaibar booty. On that, Abu Bakr said: "Allah's Messenger said: "Our property is not inherited. Whatever we leave, is Sadaqa (charity), but the family of (the Prophet) Muhammad can eat of this property". By Allah, I will not make any change in the state of the Sadaqa of Allah's Messenger and will leave it as it

¹ Joseph Schacht, *An introduction to Islamic law* (CLARENDON PRESS • OXFORD 1983) p. 23.

was during the lifetime of Allah's Messenger, and will dispose of it as Allah's Messenger used to do". So, Abu Bakr refused to give anything of that to Fatima'.²

We believe that these two events played a very important role in the manifestation of certain features that later became inherent in the Sunni and Shia, and laid the foundations for the division of the Muslim community (ummah) into two directions, thereby forming certain characteristics for the legal systems of each of them. The purpose of this work is to examine the impact of these two events on the formation of the sources of Sunni and Shia law.

Materials and methods.

The study of Islamic law is necessary to understand its specifics since Islamic law is one of the largest religious legal systems, which covers more than 1.5 billion people who live on all continents.³ Although at the moment the boundaries between the classical legal systems have 'erased' so much that even leading specialists in the field of comparative law studies pay attention to the fact that the formulation of the 'perfect framework' for the world legal systems is practically impossible.⁴ Therefore, studies in the field of 'mixed' legal systems become relevant, which are considered as a category that includes formations in which two or more systems are applied cumulatively or interactively, as well as formations in which systems are compared as a result of more or less clearly defined spheres of application.⁵ Thus, the study of Islamic law becomes even more relevant, since there is a need not only for the availability of competent knowledge about Islamic law but also the possibility of its integration with other legal systems.

We also consider it necessary to draw attention to the importance of research on Islamic law. The methods of comparative jurisprudence should be used not only in the study of various legal systems but also in the analysis of the structural elements of Islamic law as a system and complex phenomenon. That is, a significant part of researchers, when analyzing Islamic law, do it incorrectly, considering Islamic law as a monolithic entity. Thus, most researchers mainly analyze the features of only Sunni Islamic law, extending their conclusions to all Islamic law. For example, the most famous fundamental doctrine of the 'four sources of law' in the form of the Quran, Sunnah, ijma and qiyas is the most cited by many researchers.^{6,7} At the same time, it

² Sahih Bukhari (Maktaba Dar-us-Salam, 2007) volume 5, The Book of Jihad and Expeditions Hadith No. 4580, pp. 46-48

³ Why Muslims are the world's fastest-growing religious group <https://www.pewresearch.org/fact-tank/2017/04/06/why-muslims-are-the-worlds-fastest-growing-religious-group/>

⁴ Ugo Mattei and Boris N. Mamlyuk. "Comparative International Law" BROOKLYN JOURNAL OF INTERNATIONAL LAW Vol. 36 Iss. 2011 (2011) Available at: http://works.bepress.com/ugo_mattei/41/ at 392

⁵ Palmer V. V. Two Rival Theories of Mixed Legal Systems // Journal of Comparative Law. — 2008. — Vol. 3. — Issue 1. — P. 7–33. at 29.

⁶ See Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (Islamic Texts Society, 2003)

is not characteristic of Shia Islamic law. We want to convey the idea that Islamic law has many directions, each of which, in turn, also has its own components. So, for example, we found out that Shia Islamic law is one of the two main parts of Islamic law. It is represented by the Twelver (or Imamiyyah) and Zaidi madhhabs. ‘Madhhab’ is viewed as a legal school, although this concept has gone from ‘the basic meaning of a lawyer holding a certain opinion to strict adherence to a collective, aggregate and self-sufficient legal doctrine’ (obviously, this development of events did not mean that one meaning replaces or cancels another meaning from which the first came).⁸ The Twelvers madhhab, in turn, consists of two directions - Usuli and Akhbari.⁹ The positions of the Usuli scholars also differ on many practical issues. Among them, the question of the position of Shiite scholars during the concealment of the Imam and the concept of ‘wilayat al-fakih’, which is reflected in the participation of some of them in the political life of Iran and Iraq, or in their political inactivity.¹⁰ And it is we have cited just one example of the diversity of positions and opinions of representatives of various branches of Islamic law. Thus, we can understand how necessary it is to study all directions of Islamic law.

D. Donaldson¹¹, H. Halm¹², M. Momen¹³, N. Calder¹⁴, H. Modarressi¹⁵, A. A. Sajedina¹⁶ and others were engaged in the research of Shiism. The main object of their research was most often the institution of the imamate and power in Shiite Islam.^{17 18} In this paper, we decided to draw attention to two events that we believe were fundamental to the beginning of the formation of differences between Sunni and Shia Islamic law. These events were covered mainly in historical and religious works. Thus, the most famous among them are the ‘History of Shi’ism’ by G. Kh. Muharrami, ‘Fadak in history’ by Muhammad B. Sadr, ‘Fadak’ by Seyid Mohammed Wahidi.

⁷ See Wael b. Hallaq, *A history of Islamic legal theories* (Cambridge University Press, 1997)

⁸ Wael b. Hallaq, *The origins and evolution of Islamic law* (Cambridge University Press, 2005) 152

⁹ See Robert Gleave, *Inevitable Doubt: Two Theories of Shī‘ī Jurisprudence*. *Studies in Islamic Law and Society* (BRILL, 2000)

¹⁰ See more about Iran’s example: S. Golkar, *Clerical militia and securitization of seminary schools in Iran*. *Cont Islam* 11, 215–235 (2017). <https://doi.org/10.1007/s11562-017-0384-8>

¹¹ See Dwight M. Donaldson. *The Shi'ite [Shiite] Religion: A History of Islam in Persia and Irak [Iraq]* (Luzak & Company; 1st edition, 1933)

¹² See Heinz Halm, *Shi'a Islam: From Religion to Revolution*, translated from the German by Allison Brown, 1997 by Markus Wiener Publishers for the English translation.

¹³ See Moojan Momen, *An Introduction to Shiite Islam: The History and Doctrines of Twelver Shi’ism*. (New Haven, ct: Yale University Press, 1985)

¹⁴ See Norman Calder, “Judicial Authority in Imami Shi’i Jurisprudence.” *Bulletin of the British Society for Middle Eastern Studies* 6.2 (1979): 104–8.

¹⁵ See Hossein Modarressi, *An Introduction to Shī‘ī Law: A Bibliographical Study* (London: Ithaca Press, 1984)

¹⁶ See Abdulaziz Abdulhussein Sachedina, *The Just Ruler (al-sultān al-‘ādil) in Shi’ite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence*. (Oxford: Oxford University Press, 1988)

¹⁷ *ibid*

¹⁸ Norman Calder, *The Structure of Authority in Imāmī Shī‘ī Jurisprudence.* Ph.D. diss., University of London, 1980.

All these authors in their works turned to Sunni and Shia sources, considering all possible aspects of these events. But they did not consider the legal context of these events through the prism of the subsequent formation of the sources of Sunni and Shia Islamic law. Therefore, in this work, we will devote the main attention to their legal side, appealing to the arguments of both representatives of Sunni and Shia.

In writing this work, we used the following methods. One of the main ones is the comparative-legal method. That is why we have previously analyzed such a feature of Islamic law as systematicity, since, as some researchers note, the methods of comparative studies can be applied not only for comparing different legal systems but also for their components. Thus, the direction of comparative fiqh¹⁹ - comparative Islamic law is gaining more and more relevance. In the study of Islamic law, it is impossible to do without the hermeneutic method, since it is theological and philological hermeneutics that underlie the study of the scriptures. The peculiarities of using the hermeneutic method are due to the transformation of the concept of hermeneutics from an applied discipline on the interpretation of texts into 'a science containing rules for filling in the gaps in codified law and thus having a normative character'.²⁰ Mostly we have considered historical events, therefore we used also historical and biographical methods. The second method was applied in the study of historical figures and their characteristics. The historical method was used in accordance with the criteria given by Dubber, namely a critical analysis of the events in question.²¹

1 Conflict about giving the oath (Events of Saqifa)

Ali was one of the closest companions of the Prophet (he was also his cousin and son-in-law). He is one of the key figures in both Shia and Sunni Islam. He enjoys great authority because of his knowledge, since he was so famous for his knowledge of Islam that the Prophet said: 'I am the house of wisdom, and 'Ali is its door.'²² The Sunnis considered him one of their best companions, while the Shiites revered him as the best person after the Prophet Muhammad, as a full successor and imam (leader of the Muslims) appointed by Allah. His biography has been studied by a large number of both Muslim and non-Muslim researchers. We have cited all these facts to determine the important role that Ali played in Muslim society. After determining this, we can move on to the question of giving oath by him. That is, if the oath of allegiance to the

¹⁹ Mehman A. Damirli *Comparative Islamic Law: an Introduction to Theory and Methodology* (Odessa: Fund to Support of Fundamental Studies; Feniks, 2017)

²⁰ Gadamer H.-G. *Truth and Method* (in Russian) *Истина и метод: Основы филос. герменевтики*: Пер. с нем. Б. Н. Бессонова (М.: Прогресс, 1988) at 296

²¹ Markus D. Dubber, 'New Historical Jurisprudence: Legal History as Critical Analysis of Law'. *Critical Analysis of Law* 2:1 (2015)

²² Sunan Tirmidhi (Maktaba Dar-us-Salam, 2007), vol. 6, Hadith No. 3723 at 395

Caliph had not been taken by any secondary Companion or personality, then this issue would not be considered as key in determining the formation of certain differences and schisms in the ummah.

The question of taking the oath played a very important role in the feudal theocratic Muslim society. The oath (bay'ah) was primarily applicable to the Prophet, but after his death also to other leaders of the Muslim community, primarily to the Caliph as the successor of the Prophet in political affairs. Joas Wagemakers writes that this oath was a contract (treaty, covenant), in which not only the latter participated as a person receiving loyalty, but also there were those who voluntarily expressed a desire to obey their leader. He also pointed out that in practice, real voters were mainly officials in leadership positions in the caliphate, whose oaths of allegiance were considered binding on themselves and the community as a whole. Thus, some scholars believed that violation of the oath should be punishable by death.²³

Some researchers draw attention to the fact that Muhammad did not leave a full-fledged will and therefore did not identify his legal successor. In this aspect, one should pay attention to the hadiths, which are in the Sunni authoritative collections of Bukhari and Muslim. One of the first Western scholars of Shia Islam, D. Donaldson, drew attention to the following hadith from these collections: 'Narrated Ibn Abbas: "When Allah's Messenger was on his deathbed and in the house, there were some people among whom was Umar bin Al-Khattab, the Prophet said: "Come, let me write for you a statement after which you will not go astray". Umar said: "The Prophet is seriously ill and you have the Qur'an; so the Book of Allah is enough for us". The people present in the house differed and quarreled. Some said: "Go near so that the Prophet, may write for you a statement after which you will not go astray", while the others said as Umar said. When they caused a hue and cry before the Prophet, Allah's Messenger, said: "Get up (leave me alone)". Narrated Ubaidullah: "Ibn Abbas used to say: "It was very unfortunate that Allah's Messenger was prevented from writing that statement for them because of their disagreement and noise".^{24 25} There is also a large number of hadiths in which the Prophet declare Ali to be his successor. Therefore, as we can see, the issue of the awareness of people about the will of the Prophet about the successor is quite controversial, but, as H. Halm notes²⁶, nevertheless, Abu Bakr became the actual successor of the Prophet and the caliph. Abu Bakr was elected caliph

²³ Joas Wagemakers, *The Concept of Bay'a in the Islamic State's Ideology. Perspectives on Terrorism* Vol. 9, No. 4, Special Issue on the Islamic State (August 2015), pp. 98-106, at 99

²⁴ Dwight M. Donaldson. *The Shi'ite Religion: A History of Islam in Persia and Irak* (Luzak & Company, 1933), at 9

²⁵ *Sahih Bukhari* (Maktaba Dar-us-Salam, 2007) volume 7(1), The Book of Jihad and Expeditions Hadith No. 5669, p. 321

²⁶ Heinz Halm, *Shi'a Islam: From Religion to Revolution* (Markus Wiener Publishers for the English translation) at 9

during the events of Saqifa. Saqifa was a roofed building in Medina, where representatives of different clans gathered in the pre-Islamic period. A meeting took place here, which had a significant impact on the further development of the Islamic world. Consider how describes these events famous Sunni theologian and historian Tabari in his 'History of Prophets and Kings'. He wrote that when the Prophet passed away, the Ansars gathered in the building of Saqifa and began to decide who would be 'responsible' for their affairs after Muhammad. A discussion began between them about who is a worthy candidate for the position of successor to the Prophet. Unlike most historians, V. Mandelung believes that the assembly in Saqifa was not originally intended to choose a successor to the Prophet and they only decided to choose a ruler for their city of Medina. He also notes that only Abu Bakr and Umar believed that the chosen ruler should rule all Muslims.²⁷ Further Tabari writes that Umar, having heard about such a discussion, went to Abu Bakr and informed him that the Ansars were going to remove the Muhajirun from power and that it was necessary to stop it. The Muhajirun were immigrants from Mecca who were among the first to convert to Islam; the Ansars were the indigenous population of Medina, who later converted to Islam and invited the Prophet to their city. Therefore, Abu Bakr, Umar and several Muhajirun went to the building of Saqifa, where Abu Bakr preached a sermon on the superiority of the Muhajirun over other groups since they were among the first to convert to Islam. After that, a discussion began in which the Ansars wanted to propose their candidate, but Umar rejected this, arguing by the fact that someone who is not a fellow tribe of the Prophet (Muhajirun, like the Prophet, were from the Quraysh tribe) cannot be a caliph. Thanks to similar arguments and active actions of Umar, Abu Ubaydah and Abu Bakr, the members of this council came to the decision to elect the latter as the caliph.²⁸ M. Momen wrote that the election of Abu Bakr as caliph was also facilitated by the clan struggle, represented by a prolonged (more characteristic of the pre-Islamic period) enmity between the Ansar tribes Aws and Khazraj. The Ansar speculated about choosing a Khazraj chief as their leader, and so when Abu Bakr put forward his candidacy, the Aws tribe supported him. The representatives of Khazraj themselves were not completely united, and several of the leading people of this tribe were among the first to obey Abu Bakr, apparently feeling some displeasure with their leader.²⁹ In general, it is quite remarkable that not all members of that council swore allegiance to Abu Bakr, including the owner of the Saqifa building, Saad ibn Ubeida.³⁰ Shia researchers saw in

²⁷ Wilferd Madelung, *The succession to Muhammad. A study of the early Caliphate* (Cambridge University Press, 2008) at 51

²⁸ *The History of al-Tabari (Ta'rikh al-rusul wa'l muluk)*, Volume X *The Conquest of Arabia*, translated and annotated by Fred M. Donner (State University of New York, 1993) at 5-7

²⁹ Moojan Momen, *An Introduction to Shiite Islam: The History and Doctrines of Twelver Shi'ism*. (New Haven, ct: Yale University Press, 1985

³⁰ *The History of al-Tabari (Ta'rikh al-rusul wa'l muluk)*, Volume X at 9

these events an act of usurpation of power since there were not present most of leading companions present at the council and following Umar's argument that the Caliph could not be Quraysh, Ali, as a direct relative, would have been a more worthy candidate. A number of non-Muslim scholars have also, in turn, criticized certain procedural points and the decision of that council. Thus, the Italian orientalist L. Caetani wrote in his 'Annals of Islam' that he agrees with Lammens's theory of the triumvirate of Abu Bakr, Umar and Abu Ubaydah as the most likely explanation for the origin of the caliphate. They named Umar as the inspirer of their joint actions as a successful and prudent politician.³¹ In any case, there were either no people ready to challenge the council's decision, or they preferred to take a neutral position and Abu Bakr began to take the oath from the most influential representatives of the ummah.

Considering Ali's closeness to the Prophet, his taking the oath was an important, perhaps even necessary, moment for legitimizing the Caliphate of Abu Bakr. The Sunni researcher and historian Sheikh al-Qudari in his book 'Biography of the Righteous Caliphs' quotes the following words of Ali to Abu Bakr: 'However, you made a decision (to become a caliph) and did not take our opinion into account. And we believed that we also have a right since we are relatives of the Messenger of Allah ...' Ali spoke with Abu Bakr until tears flowed from Abu Bakr's eyes.³² According to the Shiite point of opinion, Ali and several of his closest companions (who were called 'Shiites of Ali' at the time of the Prophet) did not recognize the legitimacy of the Caliphate of Abu Bakr. Thus, Tabarsi cited a hadith from Imam Sadiq, who, when asked 'were there those who did not recognize Abu Bakr as the Caliph', said that there were twelve people among the Muhajirun and Ansars who did not agree with the election of Abu Bakr as Caliph, and therefore some of them wanted to raise a rebellion and came to Ali, who was supposed to be the caliph in their opinion. Ali told them not to revolt, and just go to Abu Bakr and tell him the words of the Prophet after defeating Banu Khadir: 'You must know and fulfill my will - after me Ali will be the caliph and successor.' When they came to Abu Bakr and said these words to him, Abu Bakr left them and closed in his home for three days. Only after the arrival of Umar and his companions, who 'gave Abu Bakr will (strength),' the latter came out to the people and returned to rule. Umar came to Ali's companions and said to them: 'O Shiites of Ali! Know that if you say these words again, I will order your head to be cut off.'³³ Shia sources claim that Ali decided to refrain from rebellion in order to preserve the unity of the Muslim society. Gulam-Hassan Muharrami identifies the following reasons for 'Ali's silence':

³¹ Leone Caetani, *Annali dell'Islam*, Vol. 1: Introduzione, dall'Anno (Forgotten Books, 2018) at 123

³² al-Khudari, Muhammad ibn 'Afifi *Biography of the righteous caliphs* (in Russian), аль-Худари, Мухаммад ибн 'Афифи *Жизнеописание праведных халифов* (М. : Умма, 2009) at 31

³³ Abi Mansur Ahmad ibn Ali ibn Abi Talib Tabarsi, *Al-Ihtijaj* (Tehran: Intisharat-e Usweh, n. d.), vol. 1, at 186-220

unwillingness to divide Muslims, danger from the munafiqun (hypocrites), the need to preserve Ahl al-Bayt (the Prophet's progeny).³⁴

At first glance, the events described above are of an exclusively historical nature, but we believe that it is their detailed study that will allow us to see the specifics of the application of 'derivative sources' of law, that is, those derived from the Quran and Sunnah, recognized by all Islamic madhhabs, albeit in different interpretations. The first such source is ijma - consensus or unanimous decision. It was the fact that the Sunnis represented the majority among Muslims that facilitated an easier way of legitimizing this source of law. That is, as we see, during the events in Saqifa, while the Prophet's companions were engaged in the election of the Caliph, Ali was busy with the Prophet's funeral. That is, during Ali's absence, Abu Bakr was elected caliph in Saqifa by the majority of his companions, which was later taken by the Sunnis for granted. Therefore, Sunnis often appeal to the following hadiths: 'My nation (ummah) will not unite on misguidance, so if you see them differing, follow the great majority.'³⁵ Almost all Sunni scholars recognized the unanimous decision of the Prophet's companions as an authoritative source of law. Shiites, on the other hand, were in the minority at almost all moments in history, just as their imams, for the most part, did not have real political power. Therefore, in the Shia legal doctrine, ijma is interpreted as a way to reveal the opinion of the imams. In particular, ijma refers to the consensus or unanimous view of Shiite scholars who lived during the time of the imams, since several prominent Shiite scholars were close companions of the imams, the Shiite doctrine emphasizes the opinion of these early Islamic scholars.³⁶

We should also pay attention to the fact that since the Sunnis represented the majority, respectively, Sunni Islamic law was dominant and therefore, until the XV-XVIth century, there was practically no state that officially adhered to Shia law. In this aspect, quite interesting is the remark of Muhammad Baqir Sadr, who wrote that the Sunni jurisprudence had to lose some of its vitality in the VIth and VIIth centuries (Hijri) and in subsequent times due to political instability and the destruction of the caliphate by the Mongols. However, it was not the political environment that prompted Shiite lawyers to engage in science and research. That is, 'they were stimulated by the needs of people who believed in Imamate of Ahl al-Beit and who turned to the lawyers of their school in order to eliminate difficulties in understanding religion and learn about their religious obligations in accordance with Sharia. Therefore, the development of Shiite fiqh was conditioned by the needs of the people, and not by the political situation, in contrast to the

³⁴ Ghulam-Hasan Muharrami, *History of Shi'ism. From the Advent of Islam up to the End of Minor Occultation* (ABWA Publishing and Printing Center, 2008) at 76

³⁵ Sunan Ibn Majah (Maktaba Dar-us-Salam, 2007), 'The Book of Troubles' Hadith No. 3950

³⁶ Nader Entessar, *Criminal Law and the Legal System in Revolutionary Iran*, 8 B.C. Third World L.J. 91 (1988), <http://lawdigitalcommons.bc.edu/twlj/vol8/iss1/8> at 94

development of the Sunni fiqh.³⁷ That is, after analyzing Sadr's words, we see that the fact that Ali was deprived of his actual political power during the events of Saqifa to a certain extent determined the trend in the development of Shia law.

In the Sunni legal schools, the fourth source of law is qiyas, while in the Twelver's (main Shiite madhhab) this place is occupied by aql (intellect, reason). In general, it is the rational ways of interpreting (extracting norms from) the Quran and Sunnah that underlie Shiite ijtiḥad - the derivation of legal norms from the Quran and Sunnah. At the same time, the Sunnis allow the use of personal judgments in the process of ijtiḥad (this point of view will be discussed in the part about Fadak). Reason became one of the main sources of Shia law precisely because Shiites attached a special role to intelligence and knowledge of religious positions because all Shiite imams were one of the leading theologians and lawyers of their time (especially imams Ali, Baqir, Sadiq and Reza). Most of the Shia arguments in favor of the fact that Ali was considered the successor of the Prophet, in addition to direct indications of this (which are recognized by the Shiites), are based on the fact that Ali was the most knowledgeable (in matters of religion and the Quran) among the Companions.

2 Fadak

Fadak was an oasis in the Khaibar area, near Medina, which had an important economic role and brought in large incomes. As a result of the peace treaty concluded between the Prophet Muhammad and the Jews who inhabited Fadak, the latter came under the control of Muslims. At the same time, there is no consensus among researchers whether Fadak became the personal property of the Prophet or the property of the Ummah. The position of the first group of researchers is dominant. At the same time, there are hadiths that tell that Fadak was presented by the Prophet to his daughter Fatima. The Sunnis find most of these hadiths to be unreliable. At the same time, the fact of litigation between Abu Bakr, the first caliph to come to power after the death of Muhammad, and Fatima is an undeniable and unquestioned historical fact. After analyzing the above, we can express two main possible reasons for these proceedings and their outcome:

1. Fatima claimed the land of Fadak as the donee party to the oral gift contract. Abu Bakr orders Fatima to bring two witnesses. Fatima's witnesses are Ali (her husband and cousin of the Prophet Muhammad) and Umm Ayman (one of the few companions of the Prophet, to whom Paradise was promised during her lifetime (we draw attention to this fact since in early Muslim society piety was considered as the main criterion the truthfulness of a person));

³⁷ al-Sadr M.B., The History of 'Ilm Al-Usul (in Russian), ас-Садр М. Б.История 'Илим Аль-Усул (Садр, 2009) at 47

2. Fatima claimed Fadak as the direct and only heir to the Prophet Muhammad. Abu Bakr responds to these claims with a hadith according to which the prophets leave no inheritance. Fatima disputes this fact, saying that the Prophet said that she would have the leadership of Fadak. In response, Abu Bakr calls on her to bring witnesses, Fatima calls Ali and Umm Ayman.

That is, in any version of the narrative, Fatima's argumentation is reduced to the testimony of Ali and Umm Ayman. Consider how this situation was resolved in accordance with one of the hadiths. When Abu Bakr told Fatima that the prophets did not leave an inheritance, she and Ali cited verses from the Quran as counterarguments (we will look at them later). Then Abu Bakr said: 'Aisha (author's note: daughter of Abu Bakr and one of the wives of the Prophet) and Umar testified that they had heard from the Prophet, and he said: "The Prophet does not leave an inheritance." She (author's note: Fatima) said: "This is the first false testimony that was testified, and for me, there are witnesses of this (testifying) with what is in true Islam." Then Abu Bakr told her to bring her witnesses. Umm Ayman said that she personally saw the Prophet asking her and Ali to witness that Fadak should be ruled by Fatima. In response to the testimony of Umm Ayman: "Umar said: "You are a woman, and we cannot admit the testimony of one woman, and as for Ali, he testifies in his favor (i. e., he is a biased witness)". She (author's note: Fatima) stood up angrily and said: "O Allah! These two have been unjust to the daughter of Your Prophet of her right, so Intensify Your Trampling upon them both!" Further in the hadith, it is said that Fatima turned personally to several other companions who did not support her and she told her husband Ali not to allow Abu Bakr and Umar (Abu Bakr's successor as caliph) to attend her funeral.³⁸

Thus, after analyzing the composition of the witnesses of each of the parties, we see that Umar drew attention to the fact that Fatima's husband Ali and the woman Umm Ayman were witnesses, and as is known in Islamic procedural law, the testimony of two women is equal to that of one man. At the same time, it is quite remarkable that the witnesses of the hadith of Abu Bakr were his own daughter Aisha (a woman, and therefore her testimony is also equal to half the testimony of one man) and his closest associate Umar. Thus, one side of the litigation was Fatima, Ali (members of the Prophet's family, referred to as Ahl al-Bayt in Shiism) and their supporters (Umm Ayman), while the other were the Prophet's Companions who came to power after his death (Abu Bakr, Umar) and their supporters (Aisha, who went down in history as Ali's enemy in the Battle of the Camel). It is precisely this division of the parties - into Companions and members of the Prophet's family; it is this factor that underlies the division of the Islamic ummah into Sunni and Shia directions.

³⁸ Sheikh Muhammad Baqir Al Majlisi, Bihar Al-Anwaar – The summary of the pearls of the Ahadeeth of the Pure Imam, Volume 29 at 112-120

The famous modern Salafi scholar Sheikh Uthman Al-Khamis wrote that from reliable versions of the story about Fadak it follows that when Fatimah came to Abu Bakr for her inheritance, Abu Bakr refused her, justifying his refusal with the words of the Prophet, which he personally heard from his lips: ‘We (Prophets) have no heirs and whatever we leave behind is charity’³⁹ ⁴⁰ And in the version of Imam Ahmad it is said that the Messenger of Allah said: ‘Indeed, we, the prophets, do not leave an inheritance’⁴¹ From the versions contained in the Sahihs, it follows that Fatima was angry with Abu Bakr for this. Further, Sheikh Uthman tried to prove the specific mistakes made by Fatima, justifying the correctness of the position of Abu Bakr, drawing attention to the misinterpretation of the verses of the Quran, which narrated about inheritance after the prophets. He pointed out that all the cited verses mean the inheritance of knowledge, not property.⁴² Among these verses were:

- وَوَرِثَ سُلَيْمَانُ دَاوُودَ وَقَالَ يَا أَيُّهَا النَّاسُ عَلِمْنَا مَنَظِقَ الطَّيْرِ وَأَوْتَيْنَا مِن كُلِّ شَيْءٍ إِنَّ هَذَا لَهُوَ الْفَضْلُ الْمُبِينُ

‘And Solomon inherited David. He said, "O people, we have been taught the language of birds, and we have been given from all things. Indeed, this is evident bounty.’(Quran 27:16)⁴³

- وَإِنِّي خِفْتُ الْمَوَالِيَ مِن وَرَائِي وَكَانَتِ امْرَأَتِي عَاقِرًا فَهَبْ لِي مِن لَّدُنكَ وَلِيًّا

يَرِثُنِي وَيَرِثْ مِنْ آلِ يَعْقُوبَ وَاجْعَلْهُ رَبِّ رَضِيًّا

‘And indeed, I fear the successors after me, and my wife has been barren, so give me from Yourself an heir

Who will inherit me and inherit from the family of Jacob. And make him, my Lord, pleasing [to You].’ (Quran 19:5-6)⁴⁴

Fatima referred to these verses on the advice of her husband Ali, who after the Prophet among his Companions was considered the most knowledgeable about the Qur'an - this fact is recognized by all researchers. However, none of his works devoted to exegesis have survived to this day, with the exception of certain passages in the sermons and letters of the imam, collected in ‘Nahj al-Balagha’ (‘The Way of Eloquence’).⁴⁵ After Ali ibn Abi Talib, according to the general belief, no one of the Companions did not know the Qur'an better than Ibn Abbas. He was called Tarjuman al-Qur'an (‘Interpreter of the Quran’). He himself admitted that he borrowed

³⁹ Sahih Muslim (Maktaba Dar-us-Salam, 2007) volume 5, The Book of Jihad and Expeditions Hadith No. 4580, at 46-48

⁴⁰ *Ibid* Hadith No. 4582, at 49-50

⁴¹ Imam Ahmad, al-Musnad (Maktaba Dar-us-Salam, 2012) Hadith No. 9972

⁴² Sheikh Usman al-Khamis, The period from Islamic history from the death of the Prophet ﷺ to 61 AD. (In Russian) Шейх Усман аль-Хамис, Период из исламской истории от кончины Пророка ﷺ до 61 г. х. (Издательский дом Свет Ислама, 2012) at 214, 216-217

⁴³ <https://quran.com/27/16?translations=101,85,20,22,84,21,19,18,17,95>

⁴⁴ <https://quran.com/19/5-6>

⁴⁵ See Yasin T. al-Jibouri, Nahjul-Balagha: Path of Eloquence, Vol. 1 (AuthorHouse, 2013)

much in understanding and commenting on the Qur'an from his mentor - Ali ibn Abi Talib.⁴⁶ Thus, in this discussion we also see different exegetical concepts (namely, authorities for interpretation), which later became characteristic of different areas of Islamic religion and Islamic law.

At the same time, the main argument given in the Sunni sources in favor of the correctness of Abu Bakr is a hadith in which Abu Bakr claimed that he personally heard the Prophet Muhammad say that the prophets do not leave an inheritance (various versions of this hadith were given above). That is, Abu Bakr became the only person who heard this hadith. M. Baqir Sadr questioned the veracity of this hadith, pointing out a number of reasons:

1. there are several other hadiths in which Abu Bakr nevertheless agreed to recognize Fadak as the property of Fatima, but for a number of reasons changed his position;

2. how is it possible that the prophet said his position on the inheritance to Abu Bakr personally, without telling his other Companions or relatives-heirs, especially taking into account the fact in which the Prophet was in a warm relationship with his daughter;

3. Ali was considered the guardian (keeper) of the Prophet. Shiites see this as a prerequisite for the imamate of Ali, while Sunnis believe that Ali was the custodian of the knowledge of the Prophet. Even considering the latter fact, how is it possible that the opinion of the keeper of the knowledge of the Prophet is not heeded?⁴⁷

Thus, we see that Shia scholars are questioning Abu Bakr's words, while some Sunni sources doubt Fatima's testimony. They write that 'in the conflict with Fatima, the truth was on the side of Abu Bakr because he relied on a reliable statement of the Prophet. Therefore, no one can accuse Abu Bakr of mistakes or violation of Islamic law. On the contrary, Muslims recognize the correctness of the decisions made by Abu Bakr and consider him the best person and leader in the Muslim community after the Prophet in its entire history.'⁴⁸

You should also pay attention to the Sunni understanding of *ijtihad* because quite often in the Sunni literature we can see a similar formulation 'such and such did *ijtihad*, if his *ijtihad* was correct, he will receive a double reward, if not, then one.' Thus, in the book 'al Munjar fil a'lam' Aqqad wrote that Abu Bakr could get approval from some of the Companions of the Messenger of Allah, including Fatima. However, he did nothing of the kind, and preferred *ijtihad*.⁴⁹ That is, if the Shiites consider the 'nationalization' of Fadak as a violation of the rights of Ahl al-Bayt

⁴⁶ Khorramshahi, *Koranology (essays on the Quran and its role in the formation of culture)*, in Russian/Хуррамшахи Баха ад-Дин. Корановедение (очерки о Коране и его роли в формировании культуры) (Садра, 2016) at 335-336

⁴⁷ Shaheed Muhammad Baqir As-Sadr, *Fadak in history*. Translated by Abdullah Al-Shahin (Ansariyan Publications, 2006) at 162-164

⁴⁸ Ibn Hajar al-'Asqalani, *Fath al-Bari*. Vol. 7 at 494

⁴⁹ See Abbas Mahmoud al-Aqqad, *al Munjar fil a'lam* (Mostafa Ali Ismail; 1 edition, 2016)

and the daughter of the Prophet, then the Sunnis consider this only as one of the possible options for ijihad. By the way, it is in this way that Sunni scholars ‘justify’ the conflicts that existed between different Companions of the Prophet, who are recognized as righteous in accordance with the Sunni religious doctrine. Shiites do not recognize this concept and consider only members of Ahl al-Bayt (Family of the Prophet) and their supporters to be truthful and pious. Based on this position, the specifics of this discussion as a whole becomes clear. That is, for the Sunnis, Abu Bakr is an indisputable authority, while for the Shiites Fatima is such. Let us examine this issue in more detail.

The Sunni religious doctrine recognizes the concept of the righteousness of the Companions, who were considered the best people after the Prophet. Any Muslim, regardless of gender and age, who at least once saw the Prophet, and a blind man, if he spoke to him, is considered a Companion (Sahaba). All of them had to follow Islam until their death. One who was not a Muslim during the life of the Prophet, but became one after, could not be considered a Sahaba.⁵⁰ Others believe that the very word ‘sahaba’, which comes from the Arabic word for ‘communication’, implies the continuity of contact with the Prophet and the narration of hadith from him. Thus, it is argued that one or the other of these criteria, namely a long company or frequent narration of hadiths, must be fulfilled in order to qualify a person as a Companion.⁵¹ Abu Bakr, in turn, was considered the best among the Companions, which is why he was elected Caliph. So, in one of the Sunni books we see the following lines: ‘The best of people after the Messenger of Allah and other prophets and messengers, peace be upon Him, is Abu Bakr As-Saddiq, then Umar ibn Al-Khattab, after him Uthman ibn Affan, after which - Ali ibn Abi Talib, may Allah be pleased with them.’⁵² It was in this sequence that they occupied the posts of caliphs, although each of them became caliph for different reasons - Abu Bakr was elected by the decision of the council, Umar was appointed by Abu Bakr, Uthman was appointed by the decision of the council created by Umar, Ali was chosen by the majority of Muslims. As we indicated earlier, all the Companions were truthful, but at the same time they had conflicts with each other (including the Fadak events), therefore the Sunnis argue that each of the companions did ijihad, which most often manifested itself in the derivation of Sharia norms from the Quran and Sunnah (they are called texts, an-nass) mainly on the basis of their own judgments. In this aspect, interesting is the work of the well-known Shia scholar of the XXth century Sharaf al-Din

⁵⁰ Sahaba - Companions of the Prophet (in Russian) Сахабы - сподвижники Пророка <https://islam-today.ru/obsestvo/raznoe/sahaby-spodvizniki-proroka/>

⁵¹ Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (Islamic Texts Society, 2003) at 211

⁵² Book of Clerical Board of Ukraine's Muslims (In Russian) Имам Абу Ханифа – великий теолог Ислама. О его жизни и некоторых трудах Серия «Наследники Пророков» Издание седьмое «Аль-Иршад» Киев-2012 ДУХОВНОЕ УПРАВЛЕНИЕ МУСУЛЬМАН УКРАИНЫ at 18

al-Musavi al-Amili 'Al-Nass wa I-ijtihad', which lists hundreds of cases when the first caliphs, rulers and some of their companions used 'ijtihad', contradicting 'an-nass' (that is, they expressed their personal opinion contrary to the obvious words of the Prophet). Sharaf ad-Din expresses his scientific and critical views on each of these cases. He divided these contradictions into two types: some are generally incompatible with any principle (even according to Sunni views), and some arose due to ignorance of the present solution, which was corrected after studying the present solutions. Thus, in the first chapter of the book, Sharaf ad-Din lists the cases when the first caliph Abu Bakr expressed his personal opinion contrary to the words of the Prophet, including the refusal to join the army of Osama b. Zayd, rejection of the share of 'relatives', struggle with those who could not pay zakat to him, overlooking Malik b. Nuwayra being killed at the command of Khalid b. Walid, an agreement with some polytheists who wanted to return their slaves who converted to Islam and many others.⁵³ Among these acts of behavior were the events of Saqifa and the 'nationalization' of Fadak that we are considering. That is why the use of ijtihad was strongly condemned by Shiite imams and scholars up to the XII - XIIIth century, when, thanks to the activities of Shia scholars, the Sunni concept of ijtihad was transformed into the Shiite term 'ijtihad' - deductive derivation of legal norms from primary sources, that is, exclusively rational methods of interpretation took the place of own judgments.

The Shia religious doctrine, unlike the Sunni one, does not recognize the concept of the righteousness of all the Companions, considering only a few of them worthy. Shiites believe that only those who did not show hostility towards Ahl al-Bayt (the Prophet's family) were worthy Companions. Thus, if the Sunni hadith scholars recognize as authentic all the hadiths dating back to the Companions of the Prophet, the Shiites do not do this, narrowing the circle of reliable hadith transmitters. At the same time, the main distinguishing feature of Shiism is the concept of the Imamate. In accordance with it, Allah appointed imams from among the descendants of the Prophet, who are sinless, omniscient and must have to rule the Islamic state. But the first caliphs for various reasons usurped power, depriving the most worthy candidate of power in the person of Ali. So, proceeding from the concept of infallibility, which also exists in Sunni Islam and according to which only the prophets are sinless, the Shiites consider the chosen members of Ahl al-Bayt as such. A large number of polemical and theoretical works of Shiite scholars are devoted to the argumentation of this position. Here is just one of the most popular hadiths. Aisha said: 'The Prophet went out one morning wearing a striped cloak of black camel hair. Al-Hasan bin Ali came and he enfolded him in the cloak, then Al-Husain came and he enfolded him in it, then Fatimah came and he enfolded her in it, then Ali came and he enfolded him in it, then he said: "Allah wishes only to remove Ar-Rijs (evil deeds and sins) from you, O members of the

⁵³ Abdul Hussein Sharaf al-Din, Al-Nas and Al-Ijtihad, (Al-Imam al-Sayyid Press, Beirut) vol. 2

family, and to purify you with a thorough purification.”⁵⁴ By cleansing, Shia and some Sunni scholars understood cleansing from sins, that is, infallibility. Now the question arises who is this Ahl al-Bayt. Thus, the Great Ayatollah Makarem Shirazi in his work ‘Cognition of Shiism’ gives a short biography of fourteen sinless (ma'sum) - the Prophet Muhammad, Fatima al-Zahra and twelve imams.⁵⁵ Thus, it was this factor that influenced the expanded understanding of the Sunnah as a source of law in Shiite legal schools. I. Goldziher wrote that there is a misconception that the Shiites do not follow the Sunnah. The reason for this error is caused by the existence of the antithesis ‘Sunna - Shia’, which does not correspond to reality, because Shiites follow the Sunnah of the Prophet.⁵⁶ But since, in addition to the Prophet, the Shiites also consider Fatima and the imams to be sinless, their actions and statements are also included in the concept of ‘Sunnah’. Thus, we can say that from the Shia point of view, Fatima did not even need to provide evidence, since all her actions are automatically considered godly and she is not capable of committing sin and injustice. Although in the conditions in which she found herself, she had to bring evidence and witnesses that were not accepted by Abu Bakr, who had opposite views on the position of Fatima and the issue of inheritance after the prophet. At the same time, the procedural features of this whole discussion are quite interesting. Sayyid Muhammad Wahidi, in his work on the Fadak issue, for comparison pointed to the situation with the famous Companion Jabir. First, it should be clarified what exactly happened to Jabir. The hadith says: ‘Jabir says: “His Grace the Messenger of Allah, addressing me, said: “When property will come from Bahrain, you will receive a certain part from it. The property had not yet arrived in the Hijaz when the Messenger of Allah left this mortal world. When it (author's note: property) arrived, Abu Bakr announced: “Anyone who has anything in this, let him come to me.” Then I came to Abu Bakr and said that the Messenger of Allah had promised me a certain amount from this property. Abu Bakr gave me the promised, after which he said: “Take twice more!”’⁵⁷ Jabir is a respected Companion in both Sunnism and Shiism, but Wahidi drew attention to this narrative for two main reasons:

1. Abu Bakr did not demand from Jabir to bring witnesses of what the Prophet promised to the latter, but at the same moment he demanded it from Fatima, the Prophet's daughter, whose reputation is beyond doubt;

⁵⁴ Sahih Muslim (Maktaba Dar-us-Salam, 2007) volume 6, The Book Of The Virtues Of The Companions (May Allah Be Pleased With Them) Hadith No. 6261, at 284

⁵⁵ Makarem Shirazi, Cognition of Shiism (in Russian) Макарем Ширази, Познание шиизма (изд. Имам Али ибн Аби Талиб (да будет мир с ним), 2011) at 118

⁵⁶ Ignac Goldziher, Lectures on Islam (in Russian) Гольдциер И. Лекции об исламе (СПб.: Тип. Акц. Общ. Брокгауз - Эфрон, 1912) at 212-213

⁵⁷ Sunan Kubra (Maktaba Dar-us-Salam, 2007) volume 6 at 302

2. Ibn Hajar Asqalani, citing this story in his book, writes: ‘This story indicates that the speech of the Companions is an argument and their opinion must be accepted, even if they say something to their advantage. In this tradition, Abu Bakr did not demand from Jabir to witness his words. In addition, this story is used for a fatwa’⁵⁸

Based on the second point, we see that Asqalani, one of the most prominent Sunni scholars of hadith, points out that the testimony of the Companion, even in his own favor, is acceptable and permissible, while we have seen that Umar emphasized that Ali has its own benefit in giving evidence in favor of Fatima. Having analyzed all the above information, we consider it necessary to focus on one more fact. This discussion had a large number of contradictions, which led to the fact that in subsequent times, the decision of Abu Bakr was canceled by some subsequent caliphs (Umar ibn Abd al-Aziz, al-Ma'mun), who believed that Abu Bakr by his decision violated the rights of Fatima, so they gave Fadak to descendants of Fatima. Thus, Fadak passed from hand to hand, since the successors of the above two caliphs, coming to power, nationalized Fadak back.

Also, when analyzing the argumentation of each of the parties, we found Umar's assessment of Ali's testimony very interesting, namely the words ‘as for Ali, he testifies in his favor’. We will not give an assessment of this statement, since this issue is more of a religious nature than a legal one. We would like to emphasize that it is possible to see the relationship between this statement of Umar and some judicial decisions of modern Sharia courts. One of these can be found in the study by Shahbaz Ahmad Cheema ‘Socially Abhorrent but Legally Acceptable: A Study of Alleged Conversions of Sunnis and Shias in Cases of Inheritance in Pakistan’. The study examines cases in which the heirs, trying to get their share of the inheritance, proclaimed the deceased testator to be a Sunni or Shiite in order to obtain the maximum personal benefit according to the right of the latter's personal status. Thus, in the case of Mr. Qamar Sultan vs. Ms. Bibi Sufiadan (2010), after the death of the testator, his mother, sister and collateral claimed the inheritance. Believing that the deceased was a Shiite, his property was distributed completely in favor of his mother and sister, and collateral was excluded from the number of heirs in accordance with the norms of Shia law. After that, collateral filed a lawsuit in court, in which he noted that the deceased was a Sunni Muslim, therefore, this relative is entitled to 1/6 of the inheritance. Both sides put forward evidence and presented witnesses in court to support their position. According to the court, there was not much difference between the reliability of the evidence provided by the parties, except that the evidence presented by the mother in the court of the ownership of her son (deceased) was motivated by the financial benefit of her daughter (sister of the deceased) and the exclusion of collateral from among the heirs. Given the mother's

⁵⁸ Seyyed Muhammad Wahidi, Fadak (in Russian) Сейид Мухаммад Вахиди, Фадак (г. Кум, отдел исследований, 2005) at 28-29

financial interest in her daughter's enrichment, the court refused to rely on this evidence, and the deceased was declared Sunni; therefore, that relative was entitled to his share of the inheritance. This decision of the Lahore High Court was appealed to the Supreme Court, where the last court in 2012 upheld the decision of the first on the same basis.⁵⁹ Thus, in fact, we see that the Pakistani courts used the same reasoning as Umar, giving advice to Abu Bakr in the latter's decision.

Conclusion.

We have considered the most important aspects of two events from the early history of Islam - the events in Saqifa and the events of Fadak. From the analysis of the events in Saqifa, we came to the conclusion that at that moment such a feature of Sunni Islam as following the opinion of the majority manifested itself, which contributed to the recognition of ijma as one of the main sources of Islamic law.

As for the events of Fadak, in the discussion that took place we saw a confrontation between the opinion of the Companions and the opinion of the members of the Prophet's family. We also saw a certain specificity in the interpretation of the Qur'an and in following the various exegetes of the Qur'an. In general, we propose to consider all the features considered during the study in the concept of sources of law in brief in accordance with each source of law.

The Quran is the main religious value of Islam and the absolute authority for all Muslims so much that the recognition of the distortion of the Quran leads a person out of Islam. Sunnis and Shiites recognize the Quran in the form in which it has survived to this day since its text has not undergone changes. But there are differences in the interpretation of the Qur'an between the two main directions. The main one is that the Shiites recognize Ahl al-Bayt as the only correct interpreters of the Quran. This comes from the hadith Sakalein, in which the Prophet said: 'O people! Indeed, I have left among you, that which if you hold fast to it, you shall not go astray: The Book of Allah and my family, the people of my house.'⁶⁰

The Sunnah is also the main source of Islamic law for both directions, but based on the differences discussed in the article, we can highlight the following distinctive features inherent in different directions:

- Sunnis recognize the concept of the righteousness of the Prophet's companions, that is, the first generation of Muslims. Accept hadiths from any of them, while presupposing the possibility

⁵⁹ Shahbaz Ahmad Cheema, *Socially Abhorrent but Legally Acceptable: A Study of Alleged Conversions of Sunnis and Shias in Cases of Inheritance in Pakistan*, *South Asian Studies A Research Journal of South Asian Studies* Vol. 29, No. 1, January – July 2014, pp. 281-291. At 285

⁶⁰ Sunan Tirmidhi (Maktaba Dar-us-Salam, 2007), vol. 6, Hadith No. 3786 at 435

of some of them committing incorrect ijihad, which in turn does not deprive them of 'righteousness';

- Shiites follow the members of the Prophet's Family and their supporters, recognize the infallibility of all 12 imams and Fatima. The Shiites also recognize hadiths of infallible as equal to the hadiths of the Prophet, since the former complement and in some cases detail the latter. In addition, they do not consider those companions of the Prophet who were hostile to Ali and Ahl al-Bayt as reliable transmitters of hadiths.

After the death of the Prophet (and the termination of direct contacts with the imams for the Shiites), it became necessary to form the ilm usul al-fiqh — the science of the principles of jurisprudence, thanks to which 'derivative' sources of law were created. In the course of analyzing the events in Saqifa and Fadak, we traced the following features that became inherent in the Sunni and Shia legal doctrines. In the first of them, ijma was formed on the basis of the unanimous decision of the Companions, which flowed from the recognition of their righteousness and the fact that the Sunnis have always represented the majority of Muslims. On the whole, the Shia legal doctrine was characterized by the practical non-use of ijma. It was also characterized by the high role of reason and rational methods as the only correct ways to derive norms from the Quran and Sunnah. Sunni jurists allowed themselves to use personal judgments to the extent that they believed that the Quran and Sunnah were not comprehensive and sufficient sources of law. Shiite jurists believed that all the necessary Laws are in the Quran and Sunnah and it is only necessary to derive them from these primary sources. Therefore, they allowed themselves to use ijihad, removing from it their own opinion of the jurist and leaving only deductive rational methods of interpreting the Quran and Sunnah.

Thus, in Sunni law, the doctrine of four main sources of law was formed, including the Quran, Sunnah, ijma and qiyas. At the same time, the Shia law of the Twelvers madhhab currently has the following sources: the Quran, Sunnah, ijma and aql (intellect). The formation of such doctrines of sources of law was due to religious and historical factors, and in certain historical events we can see the prerequisites for their formation, which become obvious in a retrospective analysis of these events.