

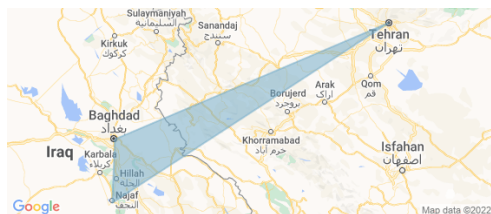
Shī'ī jurisprudence; Kitāb Al-Khilāf fī Al-Aḥkām by Al-Shaykh Al-Ṭūsī

also known as “كتاب الخلاف في الاحكام”

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Entry tags: Religious Group, Islamic Traditions, Shiite/Shi'a, Jafri, Twelver, Text, Fiqh

This article pertains to a six-volume work titled “Kitāb al-Khilāf fī Al-Aḥkām” which roughly translates to “Book of Differences Regarding Juristic Rulings.” This book is part of a wider genre of Shī'ī legal literature in which the writer poses a legal issue, states the Shī'ī position, describes the position of the other prominent legal schools (including any partisans who may have different or nuanced perspectives), and then provides reasoning (dalīl) for why the Shī'ī perspective is correct. The book contains all of the chapters one would expect in a work of fiqh (both acts of ritual worship as well as societal dealings), such as purity, almsgiving, business transactions, etc.



Date Range: 995 CE - 1066 CE

Region: Shaykh Tusi's Intellectual Milieu

Region tags: Iran, Iraq

Shaykh Tusi was born in Tus (near present day Tehran), studied in Baghdad, and subsequently established the Shi'i seminary in Najaf.

Status of Readership:

✓ Religious Specialists

Sources and Corpora

Print Sources

Print sources used for understanding this subject:

– Source 1: Al-Hasan al-Ṭūsī (ed. Al-Sayyid Ali al-Khurasani, Al-Sayyid Jawad al-Shihristani, and Shaykh Muhammad Mehdi Najaf), Kitāb al-Khilāf (Qom: Muassasa al-Nashr al-Islāmī, 2010)

Online Sources

Online sources used for understanding this subject:

– Source 1 URL: I consulted the print version

Online Corpora

Relevant online Primary Textual Corpora (original languages and/or translations)

– Source 1 URL: I consulted the print version

General Variables

Materiality

Methods of Composition

– Written

↳ Inked

– with Ink

Notes: I consulted the printed edition. I'm not sure about what the manuscript version(s) looks like, but my understanding is that ink was generally used as an instrument of writing for Islamic manuscripts.

Medium upon which the text is written/incised

– Other textile: I consulted the printed edition. I'm not sure about what the manuscript version(s) looks like, but my understanding is that manuscripts were usually written on papyrus, parchment, or paper..

Was the material modified before the writing or incising process?

– Other [specify]: I don't know

Was the text modified before the writing or incising process?

– Other [specify]: I don't know

Location

Is the text stored in a specific location?

[Note at which point in time, for reference, if known; select all that apply]

– Yes

↳ Tomb

– No

↳ Cemetery

– No

↳ Temple

– No

- ↳ Shrine
 - No
- ↳ Altar
 - No
- ↳ Devotional marker
 - No
- ↳ Cenotaph
 - No
- ↳ Church
 - No
- ↳ Mosque
 - No
- ↳ Synagogue
 - No
- ↳ Triumphal Arch
 - No
- ↳ Monument
 - No
- ↳ Mass Gathering Point
 - No
- ↳ Cave(s)
 - No
- ↳ Hilltops
 - No

↳ Other natural sanctuaries
– No

↳ Boundary markers or lines
– No

↳ Domestic contexts
– No

↳ Library/archive
– Yes

↳ Specify
– Specify: N/A

Is the location where the text stored accompanied by iconography or images?
– No

Is the area where the text is stored accompanied by an-iconic images?
– No

Production & Intended Audience

Production

Is the production of the text funded by the polity?
– No

Notes: Tusi was forced to flee when the Seljuks invaded Baghdad and burned his house.

Is the text considered official religious scripture?
– No

Written in distinctly religious/sacred language?
– No

Intended Audience

What is the estimated number of people considered to be the audience of the text

This should be the total number of people who would serve as the intended audience for the text.

– Field doesn't know

Notes: Since the majority of the population was illiterate, this is a text that was probably only read by other scholars.

Does the Religious group actively proselytize and recruit new members?

– No

Are there clear reformist movements?

(Reformism, as in not proselytizing to potential new conservative, but "conversion" - or rather, reform - to the "correct interpretation"?)

– No

Is the text in question employed in ritual practice?

– No

Notes: The rules regarding personal worship are documented in this text. But it is not a text that inherently has religious value - i.e., it is not something that is recited like the Qur'an.

Is there material significance to the text?

– No

Context and Content of the Text (Beliefs and Practices)

Context

Is the text itself accompanied by art?

– No

Are there multiple versions of the text?

– Yes

↳ Are multiple versions viewed as proper?

– I don't know

↳ Is there debate about which version is proper?

– I don't know

Is the text part of a collection of texts?

– No

If the text is not explicitly scripture, is it part of another important literary tradition?

– Yes

↳ Cultural with religious implications?

– No

↳ Behavioral literature?

– No

↳ Other

– Other [specify]: Fiqh (more specifically, comparative fiqh/jurisprudence)

Content

Is the text - or does the text include - a ritual list, manual, bibliography, index, or vocabulary?
(Select all that apply)

– Ritual manual

Are there lineages or a single lineage established by the text?

– Yes

Notes: This question is unclear.

↳ Does the lineage involve establish a chain of authority?

– Yes

Notes: Yes. Shaykh Tusi was a student of Al-Sharif Al-Murtada, who wrote a similar work of comparative jurisprudence.

↳ Is the lineage defined by concrete cycles or measures of time?

– No

↳ How is the lineage established?

– Student-Teacher Relationship

Does the text express a formal legal code?

– No

Notes: This is a legal manual written by a private scholar. It has no state-backed authority, and there are other scholars living at the same time who wrote similar legal manuals that differed on many points of law.

Formulating a specifically religious calendar?

– Yes

↳ What is the arrangement of the calendar? [Select all that apply]

– Lunar?

Notes: Hijri calendar

↳ Does the calendar specifically dictate acceptable times for certain activities?

– Yes

↳ Planting?

– No

↳ Water management? (such as opening or closing dams/dykes)

– No

↳ Harvest?

– No

↳ Naming ceremonies (for toddlers)?

– No

↳ "First haircuts" (pre-teen)

– I don't know

↳ Ceremonies marking puberty/entry into adulthood?

– No

↳ Marriage?

– Yes

↳ House construction (often a metaphor for marriage)?

– No

↳ Divorce?

– Yes

↳ Warfare?

– No

↳ Funerary services?

– No

↳ Trade/commerce?

– No

↳ Festivals?

– Yes

↳ Frequency of festivals?

– Specify: Annual

↳ Do all members of the society participate in the festival(s)?

– All members

↳ On average, how many participants are gathered at festivals?

– number: 1,000,000

Notes: It's impossible to say with any certainty how many people fasted or gathered for Hajj during that time.

↳ Is feasting part of the festival(s)?

– Yes

↳ Is food consumption limited to certain members of the population?

– No

↳ Pilgrimages?

– Yes

↳ How strict are the stipulations regarding pilgrimage?

– obligatory for some

↳ Is encouraging pilgrimages a primary reason for the existence of the text?

– No

↳ Are pilgrimages guided by the text associated with particular life events?

– No

↳ Does pilgrimage guided by this text involve/follow major routes/roads?

– Yes

↳ Is the maintenance of the routes guided by the text?

– No

↳ Is the pilgrimage conducted by walking or by other means?

– Yes

↳ Feasting?

– Yes

↳ Is feasting connected to the worship/sacrifices performed in accordance with the guidelines of the text?

– Yes

↳ Is feasting sponsored by the same entity that produced the text/copies of the text?

– No

↳ Does feasting occur in a specific locations in accordance with guidelines from the text?

– No

Beliefs

Is a spirit-body distinction present in the text?

– No

Is belief in an afterlife indicated in the text?

– Yes

↳ Is the spatial location of the afterlife specified or described by the religious group?

– No

Notes: There is a big debate in pre-modern Islamic philosophy and theology about the nature of the afterlife. But I'm not aware of whether spacial location is the subject of discussion.

↳ Is the temporality of the afterlife specified or described by the religious group?

– No

Notes: The afterlife is eternal according to Islamic belief.

↳ Is there debate in the interpretation of the language of the afterlife?

– I don't know

Notes: This is certainly not one of the prominent debates of the pre-modern period, but I don't know if there may have been some scholar(s) that addressed this topic in the past.

Is belief in reincarnation in this world specified in the text?

– No

Are there special treatments for adherents' corpses dicated in the text?

– Yes

↳ Cremation?

– No

↳ Mummification?

– No

↳ Interment?

– Yes

↳ Cannibalism?

– No

↳ Exposure to elements (e.g. air drying)?

– Yes

↳ Feeding to animals?

– No

↳ Secondary burial?

– No

↳ Re-treatment of corpse?

– No

↳ Are there specific designations for parts of corpses?

– Yes

↳ Could parts of corpses become transformed into partial bodily relics?

– No

↳ Other intensive (in terms of time or resources expended) treatment of corpse?

– No

Does the text indicate if co-sacrifices should be present in burials?

– No

Does the text specify grave goods for burial?

– No

Are formal burials present in the text?

– Yes

↳ As cenotaphs?

– No

↳ In cemetery?

– Yes

↳ Family tomb-crypt?

– No

↳ Domestic (individuals interred beneath house, or in areas used for normal domestic activities)?

– No

↳ Other formal burial type?

– No

↳ Other intensive funerary ritual

– Specify: N/A

Are there practices that have funerary associations presented in the text?

– Yes

↳ Do these practices take place at tombs/burial sites?

– Yes

↳ Do these practices take place for the veneration OR worship of the dead?

– No

Are supernatural beings present in the text?

– Yes

↳ A supreme high-god is present

– Yes

↳ The supreme high god is anthropomorphic or described in anthropomorphic terms

– No

Notes: This is a loaded question as the debate about whether God has anthropomorphic is one of the most prominent ones in Islamic history, and even lead to an inquisition. For purposes of this text, which is legal in nature, there is no discussion of this subject.

↳ The supreme high god is a sky deity

– No

- ↳ The supreme high god is chthonic (of the underworld)
 - No
- ↳ The supreme high god is fused with the monarch (king=high god)
 - No
- ↳ The monarch is seen as a manifestation or emanation of the high god
 - No
- ↳ The supreme high god is a kin relation to elites
 - No
- ↳ The supreme high god has another type of loyalty-connection to elites
 - No
- ↳ The supreme high god is unquestionably good
 - Yes
- ↳ Other features of the supreme high god
 - Specify: It is a just God
- ↳ The supreme high god has knowledge of this world
 - Yes
 - ↳ Knowledge is restricted to a particular domain of human affairs
 - No
 - ↳ Knowledge is restricted to (a) specific area(s) within the sample region
 - No
 - ↳ Knowledge is unrestricted within the sample region
 - Yes
 - ↳ Knowledge is unrestrict outside of sample region
 - Yes

↳ Can see you everywhere normally visible (in public)
– Yes

↳ Can see you everywhere (in the dark, at home)
– Yes

↳ Can see inside heart/mind (hidden motives)
– Yes

↳ Knows basic character (personal essence)
– Yes

↳ Knows what will happen to you, what you will do (future sight)
– Yes

↳ Has other knowledge of this world
– Yes

– Yes

↳ Has deliberate causal efficacy in the world
– Yes

↳ Can reward
– Yes

↳ Can punish
– Yes

↳ Indirect causal efficacy in the world
– Yes

↳ Exhibits positive emotion
– No

↳ Exhibits negative emotion

– No

↳ Possesses Hunger?

– No

↳ Can be hurt?

– No

↳ Can be tricked?

– No

↳ Can be imprisoned?

– No

↳ Is it permissible to worship supernatural being other than the high god?

– No

↳ The supreme high god possesses/exhibits some other feature

– Specify: Various features

↳ The supreme high god communicates with the living

– No

↳ Does the text make communication with supreme high-god possible?

– No

Previously human spirits are present

– No

Non-human supernatural beings are present

– No

Does the text attest to a pantheon of supernatural beings?

– No

Are mixed human-divine beings present according to the text?

– No

Is there a supernatural being that is physically present in the/as a result of the text?

– No

Are other categories of beings present?

– Other [specify]: N/A

Does the text guide divination practices?

– No

Supernatural Monitoring

Is supernatural monitoring present in the text?

– No

Do supernatural beings mete out punishment in the text?

– Yes

↳ Is the cause or agent of supernatural punishment known?

– Yes

↳ Done only by high god

– Yes

↳ Done by many supernatural beings

– No

↳ Done through impersonal cause-effect principle

– No

↳ Done by other entities or through other means

– No

↳ Is the reason for supernatural punishment known?

– Yes

- ↳ Done to enforce religious ritual-devotional adherence?
 - Yes
- ↳ Done to enforce group norms?
 - Yes
- ↳ Done to inhibit selfishness?
 - Yes
- ↳ Done randomly?
 - No
- ↳ Other?
 - No
- ↳ Supernatural punishments are meted out in the afterlife?
 - Yes
 - ↳ Highly emphasized by the religious group
 - Yes
 - ↳ Punishments in the afterlife consists of mild sensory displeasure
 - No
 - ↳ Punishment in the afterlife consists of extreme sensory displeasure?
 - Yes
 - ↳ Punishment in the afterlife consists of reincarnation as an inferior life form?
 - No
 - ↳ Punishment in the afterlife consists of reincarnation in an inferior realm?
 - Yes
 - ↳ Other form of punishment
 - Specify: Hellfire

↳ Supernatural punishments are meted out in this lifetime?

– No

Notes: This is not specified within the text. However, it is possible within the broader Islamic belief system.

Do supernatural beings bestow rewards in the text?

– No

Messianism/Eschatology

Are messianic beliefs present in the text?

– I don't know

Notes: They may be present implicitly to the extent that belief in the 12th Imam impacts certain legal rulings. But there is no theological discussion on the subject.

Is an eschatology present in the text?

– No

Notes: There is no explicit discussion, although it is implied since disobeying legal rules results in punishment, and obeying legal rules results in reward.

Norms & Moral Realism

Are general social norms prescribed by the text?

– Yes

Is there a conventional vs. moral distinction in the religious text?

– Yes

Notes: Everything is categorized in legal terms. Things may be permissible or prohibited, but also recommended or abhorred, with the latter two categories usually correlating with actions that have a moral impetus.

↳ What is the nature of this distinction?

– Present & clear

↳ Are specifically moral norms prescribed by the text?

– No

Notes: See notes above - moral norms are prescribed via legal categories.

↳ Moral norms apply to (select all that apply)

– All individuals within society

Notes: For some things, the rules are different for slaves. Some rules may also differ between genders.

Are there centrally important virtues advocated by the text?

– No

Notes: All of the rules that have been written about are important, so it is hard to classify any particular ones as "centrally important"

Advocacy of Practices

Does the text require celibacy (full sexual abstinence)?

– No

Does the text require constraints on sexual activity (partial sexual abstinence)?

– Yes

Notes: Sex is prohibited during certain times (e.g. while fasting for Ramadan or while a woman is on her period)

↳ Monogamy (males)

– No

↳ Monogamy (females)

– Yes

↳ Other sexual constraints (males)

– Yes

Notes: Maximum of four wives.

↳ Other sexual constraints (females)

– No

Does the text require castration?

– No

Does the text require fasting?

– Yes

Does the text require forgone food opportunities (taboos on desired foods)?

– Yes

Does the text require permanent scarring or painful bodily alterations?

– No

Does the text require painful physical positions or transitory painful wounds?

– No

Does the text require sacrifice of adults?

– No

Does the text require sacrifice of children?

– No

Does the text require self-sacrifice (suicide)?

– No

Does the text require sacrifice of property/valuable items?

– Yes

Notes: There are the concepts of "zakat" and "khums"

Does the text require sacrifice of time (e.g. attendance at meetings or services, regular prayer, etc.)?

– Yes

Does the text require physical risk taking?

– Yes

Notes: There is a discussion regarding when warfare is necessary

Does the text require accepting ethical precepts?

– Yes

Does the text require marginalization by out-group members?

– No

Notes: If anything, this text does the opposite, as it puts the Ja'fari legal school in conversation with the prominent Sunni legal schools.

Does the text require participation in small-scale rituals (private, household)?

– Yes

↳ What is the average interval of time between performances?

– I don't know

Notes: It depends on the movement of the sun, as prayer times are dependent on its position throughout the day.

Does the text require participation in large-scale rituals?

– Yes

↳ On average, how many participants gather in one location?

– Field doesn't know

Notes: It's impossible to say as an empirical matter how many people gathered for Hajj, etc. during that time

↳ Interval of time between performances (in hours)

– I don't know

Notes: This question is unclear

↳ Are there orthodoxy checks?

– No

Notes: There are certain punishments for apostasy, etc.

↳ Are there orthopraxy checks?

– No

Notes: There are certain consequences if someone doesn't follow the rules (e.g. penance)

↳ Does participation entail synchronic practices?

– Yes

↳ Is there use of intoxicants?

– No

Are extra-ritual in-group markers present as indicated in the text?

– Yes

Notes: Many non-ritual legal matters have differing legal opinions among the Ja'fari school and the other Sunni legal schools.

Does the text employ fictive kinship terminology?

– No

Does the text include elements that are intended to be entertaining?

– No

Does the text specify sacrifices, offerings, and maintenance of a sacred space?

– Yes

↳ Are sacrifices specified by the text?

– Yes

↳ Animal sacrifice?

– Yes

↳ Human sacrifice?

– No

↳ Are there self-sacrifices specified by the text?

– No

↳ Are there material offerings present?

– No

↳ Is attendance to worship/sacrifice mandatory?

– Yes

↳ By the community?

– Yes

↳ By specific individuals?

– Yes

↳ Is the maintenance of the place regulated by the text?

– No

Institutions & Production Environment of Text

Society & Institutions

Society of religious group that produced the text is best characterized as:

– Other

Notes: Private scholar

Are there specific elements of society that have controlled the reproduction of the text?

– Other

Notes: Private scholars

Welfare

Does the text specify institutionalized famine relief?

– No

Does the text specify institutionalized poverty relief?

– Yes

Notes: There are specific rules regarding charity

Does the text specify institutionalized care for elderly & infirm?

– Yes

Notes: There are specific rules regarding taking care of parents

Other forms of welfare?

– Yes

Education

Are there formal educational institutions available for teaching the text?

– Yes

Are there formal educational institutions specified according to the text?

– No

Does the text make provisions for non-religious education?

– No

Does the text restrict education to religious professionals?

– No

Does the text restrict education among religious professionals?

– No

Is education gendered according to the text?

– Yes

Notes: It is gendered in the sense that it is assumed that only men serve as jurists

Is education gendered with respect to this text and larger textual tradition?

– Yes

Notes: Yes - many aspects of Islamic law are gendered

Does the text specify teaching relationships or ratios? (i.e.: 1:20; 1:1)

– No

Are there specific relationships to teachers that are advocated by the text?

– No

Are there worldly rewards/benefits to education according to the text specified by the text itself?

– No

Bureaucracy

Is bureaucracy regulated by this text?

– No

Notes: The text itself is not a formal legal code, so to speak of bureaucracy being regulated by it is incorrect. That being said, it was intended to serve as a source of reference for religious scholars and communities, who presumably applied its rulings on a private basis. Fast forward to Safavid times or the construction of the modern nation-state in Iraq and Lebanon, where the courts do (or did) incorporate Ja'fari law, it is conceivable that this particular text was used as a source for legal deliberations (at least indirectly, through reference to a modern jurist that drew on the work of Shaykh Tusi), but further research would need to be done on the matter.

Public Works

Does the text detail interaction with public works?

– No

Taxation

Does the text specify forms of taxation?

– Yes

↳ Does the text require the religious group in question levy taxes or tithes?
– Yes

↳ Are taxes levied on the group's adherents by an institution(s) other than the religious group in question?
– No

↳ Is taxation linked to an understanding of charitable giving?
– Yes

Warfare

Does the text mention warfare?

– Yes

↳ Does the text dictate how to control an institutionalized military?
– No

↳ Does the text restrict/advocate for participation in exogenous military organizations?
– No

↳ Does the text celebrate/bemoan protection/subjugation by an exogenous military force?
– No

Food Production

Does the text mentioned food production/disbursement?

– No