

Wael B. Hallaq

WAS AL-SHAFI^ʿI THE MASTER ARCHITECT OF ISLAMIC JURISPRUDENCE?

I

During the last three or four decades, modern scholarship has increasingly come to recognize Muhammad Ibn Idris al-Shafi^ʿi (d. 820) as having played a most central role in the early development of Islamic jurisprudence. It was Joseph Schacht who, more than anyone else, demonstrated Shafi^ʿi's remarkable success in anchoring the entire edifice of the law not only in the Qur^ʾan, which by his time was taken for granted, but mainly, and more importantly, in the traditions of the Prophet.¹ Shafi^ʿi's prominent status has been further bolstered by the fact that he was the first Muslim jurist ever to articulate his legal theory in writing, in what has commonly become known as *al-Risāla*.²

Schacht's portentous findings, coupled with the high esteem in which Shafi^ʿi is held in medieval and modern Islam, have led Islamicists to believe that Shafi^ʿi was the "father of Muslim jurisprudence" and the founder of the science of legal theory, properly called *uṣūl al-fiqh*.³ His *Risāla* is thought to have become "a model for both jurists and theologians who wrote on the subject."⁴ And although it is acknowledged that later theory further elaborated the themes of Shafi^ʿi's treatise and sometimes even modified them, the origination of legal theory nonetheless remains his achievement. The medieval dictum that "Shafi^ʿi is to *uṣūl al-fiqh* what Aristotle was to logic" is still as valid as when it first appeared.⁵

This being the state of our knowledge, there appears to be little reason to question the purported fact that since its inception in the work of Shafi^ʿi, *uṣūl al-fiqh*, as we now know it, became, in an unwavering continuity, the standard legal methodology of Sunni Islam. There is even less reason to question the 9th century, chronologically so close to Shafi^ʿi, as an era that was dominated by the influential Shafi^ʿites who were zealously safeguarding the teachings of their master. True, there were some tendencies in legal thought—such as the *Zahiriyya*—that diverged from the mainstream jurisprudence as expressed in the legacy of Shafi^ʿi, but these soon dropped altogether out of the scene and, consequently, they are thought to be rather marginal. Thus, the continuity between Shafi^ʿi's theory and classical *uṣūl al-fiqh* would seem to represent a natural development, especially in that it tallies with our

Wael B. Hallaq teaches at the Institute of Islamic Studies, McGill University, 3485 McTavish Street, Morrice Hall, Montreal, Quebec H3A 1Y1, Canada.

perception of Shafi^ci, not only as the “master architect” of Islamic jurisprudence,⁶ but as the jurist-victor who brought the 8th-century unbridled law down to the knees of revelation.

The assumption of this continuity, and of Shafi^ci as the master architect of legal theory, turns out, upon a close examination of the sources, to be seriously flawed. Historical evidence in the early and medieval sources is not only discordant with this assumption but, in its aggregate effect, also seems to contradict it. In the following pages I shall attempt to show that we have no good reason to believe that such a continuity ever existed; that Shafi^ci's *Risāla* and the theory that it embodied had very little, if any, effect during most of the 9th century; and that the image of Shafi^ci as the founder of *uṣūl al-fiqh* was a later creation.

II

The most striking fact about the 9th century is that it yields no single work on *uṣūl al-fiqh*. By that we mean a work whose primary task is to lay down a systematic, comprehensive, and organically structured legal methodology whose purpose in turn is to derive legal rulings from the material sources—as was clearly the case in the 10th century and thereafter.

That we possess no complete work on the subject from that century initially becomes clear from reading the later *uṣūl* authors who mention from this period no work that can be identified as a treatise on *uṣūl al-fiqh* proper. Nor do these authors mention any authority from this period with whom we can associate a complete exposition of legal theory. We do, however, notice occasional references to such thinkers as Nazzam (d. after 835), Dawud al-Zahiri (d. 884), ^cIsa ibn Aban (d. 835), and their like, but they, as we shall see, did not write works on *uṣūl al-fiqh*, and are nearly always cited as proponents of erroneous and even heretical doctrines that are to be refuted.

When biographical and bio-bibliographical dictionaries are consulted, the absence of such works from the 9th century becomes even more evident. But in searching for titles that refer to treatises on legal theory one must be cautious, for the term *uṣūl* had a wide range of applications. Ibn al-Nadim reports, for instance, that the Hanafite Abu Yusuf (d. 798) was the author of works on *uṣūl* (*lahu min al-kutub fī al-uṣūl . . .*). It immediately turns out that these books dealt with such subjects as prayer, fasting, sales, and so forth,⁷ subjects clearly belonging to positive law (*furū^c*). Similarly, Abu Yusuf's younger contemporary, Shaybani (d. 805), is also reported as having written “books on *uṣūl*” regarding such subjects as prayer, alms tax, and so on.⁸ Thus, when we read that Mu^calla ibn Mansur al-Razi (d. 826) and Ibn Sama^ca (d. 847) have transmitted the *uṣūl* of Abu Yusuf and Shaybani, respectively,⁹ it is beyond doubt that what they have transmitted are positive-law works of the two Hanafite masters.

Ibn al-Nadim also informs us that al-Rabi^c ibn Sulayman al-Muradi (d. 884) has “transmitted Shafi^ci's works on *uṣūl*, and what he transmitted was entitled *al-Mabsūṭ*.”¹⁰ The latter, Taj al-Din al-Subki explicitly tells us, is a work on positive law, dealing with such issues as rituals, prayer, family law, and, we expect, the entire subject matter of *furū^c*.¹¹ It is significant that the application of the term *uṣūl* to

a wide range of writings, not necessarily confined to *uṣūl al-fiqh*, was predominant not only during the lifetime of Ibn al-Nadim, but even as late as the time of Subki (d. 1370). Having read Ibn al-ʿIfris's (d. ca. 1010) *Jamʿ al-jawāmiʿ fī nuṣūṣ al-Shāfiʿī*—a work clearly treating positive law¹²—Subki, impressed with it, remarks that it is “one of the earliest *uṣūl* (*min al-uṣūl al-qadīma*) . . . and has become one of the *uṣūl* of the [Shafiʿite] school of law.”¹³

Although it is often possible to establish whether or not the term refers to works on legal theory, there are instances where the term could be misleading. An excellent example is Abu Yahya al-Saji's (d. 920) treatise entitled, interestingly enough, *Uṣūl al-fiqh*. This work, in fact, has nothing to do with legal theory. Its main subjects are positive law and *khilāfiyyāt*, disagreements on positive legal doctrine, particularly, in this treatise, among Abu Hanifa, his two students, Malik, Shafiʿi, Ibn Abi Layla, Ibn Shubruma, Abu Thawr and others.¹⁴ Likewise, one would have no reason whatsoever to doubt that Ibn Maryam al-Aswani's *Jumal al-uṣūl al-dālla ʿalā al-furūʿ fī al-fiqh*, written presumably in the very beginning of the 10th century, is a work that treats legal theory, but the fact is that it does not. Subki, to whom a copy of the work was available in the *waqfiyya* of Dar al-Hadith in Damascus, felt compelled to explain to us that “what is meant by *uṣūl* [in the title] are the doctrines (*nuṣūṣ*) of Shafiʿi. . . . The author mentions that the work represents an abridgment of the doctrines. . . . In it, the author would occasionally object to these doctrines, *as he did in the chapter on bequests*” (italics mine).¹⁵

Now, if we take into account the ambiguities involved in the use of the term *uṣūl*, the 9th century produces no work whatsoever that has the complete characteristics of *uṣūl al-fiqh*.¹⁶ In the hundreds of titles and bio-bibliographical notices belonging to the 9th century, there is no allusion to such works. And in his refutation of the *uṣūl* principles of Sunni juristic thought, al-Qadi al-Nuʿman, writing around the middle of the 10th century, confirms the data provided by the bio-bibliographical sources.¹⁷ All that is to be found in the sources are individual treatises, mainly polemical, bearing such titles as *Fī ithbāt al-qiyaṣ*, *Naqd ithbāt al-qiyaṣ*, *Ijtihād al-raʿy*, *Khabar al-wāḥid*, *al-Ijmāʿ*, and *al-Khuṣūṣ wa-al-ʿumūm*. ʿIsa ibn Aban, for instance, wrote on *qiyas* and *ijtihād al-raʿy*.¹⁸ Qasim ibn Sayyar (d. 889) also wrote two treatises, one on solitary traditions and the other in refutation of *muqallids*.¹⁹ The authors associated with such specialized tracts are known to have been involved in the polemics that so much pervaded the 9th century. The purpose of these treatises, as attested in their titles, seems to have been the defense of one juridical—and perhaps theologically related—position or another, but not to lay down, consciously and deliberately, an organically structured legal methodology whose explicit *raison d'être*, as was declared later, is to discover God's law. In any case, it is significant that no jurist is reported to have written—whether in one or several treatises—on all of these issues, much less on all the issues subsumed under *uṣūl*. Dawud ibn Khalaf al-Zahiri, somewhat of an exception, composed a number of works in refutation of a variety of doctrines held by other jurists. But these works, as Goldziher rightly noted, are “pamphlets against Hanafite works . . . put into circulation in order to dismiss the theological scruples of the reaction inclined towards traditions.”²⁰ Interestingly, among the works attributed to Dawud is a tract entitled *al-Uṣūl*. Ibn al-Nadim, however, lists the work in

the midst of titles on positive law.²¹ That the work did not treat *uṣūl al-fiqh* may also be gleaned from the fact that a student of Dawud, Abu Saʿid al-Raqqi, wrote a work, also titled *al-Uṣūl*, “on the model of Dawud’s work” that consists of a hundred chapters (*kutub*). Having already enumerated these *kutub*—clearly treating positive law—in the bio-bibliographical notice of the master, Ibn al-Nadim remarks that “we need not mention them here.”²²

The proposition that the 9th century was devoid of works on *uṣūl al-fiqh* finds further attestation in the manner in which the biographers cover this in comparison with their treatment of later centuries. The biographers never employ nomenclatures indicative of specialized knowledge of legal theory to characterize authors of the 9th century. Such descriptions as “*uṣūlī*,” “he wrote on *uṣūl*,” “he excelled in *uṣūl*,” “he was most knowledgeable in *uṣūl*,” were, with one partial exception,²³ absent from discourse on the 9th century. It is striking that once the biographers move to the 10th-century authors, such descriptions become not only frequent but indeed the norm. Moreover, on the pedagogical plane, while such statements as “he studied *uṣūl* under so and so” are countless in the biographies of the 10th century and onwards, they are markedly absent in those belonging to the 9th century.

To add to all this, the *Risāla* of Shafīʿi is mentioned rarely in the context of the 9th century, and when it is alluded to, it is usually in passing. In the immense literature relative to the legal movement of the 9th century, there are three prominent references to the treatise in the sources, one of which is quoted frequently. The first appears in Ibn Hanbal’s statement in which he allegedly recommends the *Risāla* to Ibn Rahawayh (d. 853).²⁴ But this recommendation is contradicted frequently by Ibn Hanbal’s other statements where he reportedly shuns the work. Having been asked by his student Marwadhi whether the *Risāla* is worth studying, he is said to have replied in the negative, adding that it is religiously dubious.²⁵ The second instance concerns Abu ʿAlī al-Zaʿfarani (d. 874), one of Shafīʿi’s most distinguished students, who is reported to have “read the *Risāla*” under his mentor. It is highly likely, however, that he read the old version of the treatise, since he is commonly associated with transmitting Shafīʿi’s old doctrines, doctrines the latter had presumably elaborated in Hijaz and Iraq, before he finally settled in Egypt where he is thought to have written the new *Risāla*.²⁶ The third, oft-quoted reference is to Muzani’s statement, “I have been reading the *Risāla* for fifty years, and each time I read it I learn something that I have not known before.”²⁷ We should, however, hasten to assert that such references to the treatise are relatively few and cannot be culled from the sources with ease.

It is curious, to say the least, that what is assumed to be the *uṣūl* equivalent of Aristotle’s *Organon* should be thoroughly ignored in a century that is considered one of the most dynamic phases in Islam’s intellectual history. One of the most significant pieces of evidence pointing to the marginal importance of the *Risāla* is the complete absence of any contemporary commentary on, or abridgement of, the treatise. This is at a time, we must emphasize, when commentaries and abridgments have already become commonplace. On the other hand, once the 10th century looms on the horizon, we are suddenly confronted with at least five commentaries on the *Risāla*. But more on this later.

The only so-called *uṣūl* commentary on Shafi'i known to us is Muzani's (d. 878) short work, *Kitāb al-amr wa-al-nahy 'alā ma'nā al-Shāfi'i*.²⁸ Interestingly, it is a gloss not on any section of the *Risāla*, but rather on Shafi'i's *Kitāb ṣifat nahy Rasūl Allāh*, which constitutes less than two pages of his multivolume *furū'* work *al-Umm*.²⁹ The greater part of Muzani's work (consisting of a total of ten pages) turns out to be an exposition of his own views on the subject.³⁰ Fortunately, Muzani's treatise has survived the ravages of time, and we are able to confirm its elementary nature. That Muzani, the most prominent disciple of Shafi'i, should comment on a rather slim section of a work on positive law and ignore the *Risāla* altogether is a fact that speaks for itself.

Nor is there to be found a refutation of the *Risāla*—again in a century whose landmark was the intensity with which scholars refuted one another. There were several individuals and groups who must have disagreed with, and even resented, what Shafi'i had to say in his treatise. There were the rationalists and the extreme traditionalists,³¹ for example, whose beliefs clearly ran counter to the ideas expressed therein. Yet there exists no trace of any attack directed explicitly against the treatise. Again we observe that in the 10th century we do come across such refutations, as shall be seen later.

The fact that the *Risāla* did not elicit any refutation in the first century of its life gains added significance in light of the critiques and refutations directed against Shafi'i's system of positive law. The Hanafite Bakkar ibn Qutayba (d. 884), for instance, wrote against Shafi'i's critique of Abu Hanifa.³² And Muhammad ibn 'Abd al-Hakam al-Misri (d. 881), who abandoned Shafi'i in favor of the Malikite school, criticized his former mentor in a treatise he entitled *al-Radd 'alā al-Shāfi'i fīmā khālafa fihi al-Kitāb wal-Sunna*.³³ Judging from the title, the work could be treating only some of Shafi'i's positive legal rulings that, Misri apparently thought, found no justification in the Qur'an and the Sunna. Since both Misri and Shafi'i obviously agree on the fundamental role of the two primary sources of the law and since the controversy about the textual authoritativeness (*ḥujjiyya*) of methodological principles is of a decidedly later origin, we must take it that the treatise dealt with issues of *furū'*.³⁴ Thus, we need not stress the added significance of the fact that the *Risāla* attracted neither commentary nor criticism when Shafi'i's positive law was subject to both.

III

Thus, if we assume the *Risāla* to be the first treatise on legal theory and Shafi'i to be the father of the science of *uṣūl al-fiqh*,³⁵ our assumption would be challenged by evidence from the sources. It would then make perfect sense to question these assumptions, particularly our current perception of the nature of the *Risāla*. It would not be amiss at all to ask whether the treatise truly qualifies as a work of *uṣūl al-fiqh*.

We have earlier intimated that the *Risāla* we now know represents the new or last version of the work, which Shafi'i wrote after he settled in Egypt. Although virtually nothing is known about the old *Risāla*, it is thought that it "was written originally as an apologia for the supremacy of the traditions."³⁶ This is entirely in consonance

with what we know of Shafi^ci's scholarly achievement, namely, that his ultimate goal was to establish the Prophetic traditions, together with the Qur^ʿan, as the exclusive material sources of the law. The characterization of the old *Risāla* quoted earlier is apt if we are to judge the old version by the new. The latter is predominantly a hadith work, in the sense that the emphasis on the role of Prophetic traditions in the law represents its overriding and recurrent theme. In the more recent Kilani edition of the work,³⁷ about 130 pages out of a total of 257 are entirely allotted to various issues of hadith. Significantly, a dozen pages, constituting an independent section, treat Qur^ʿanic statements that, Shafi^ci believes, make it incumbent upon Muslims to follow the Prophet and abide by his Sunna. Even when other issues are discussed, as in the case of *istihsān* and *qiyas*, the permeating theme remains the same: all law and legal reasoning must rest on the Sunna and the Qur^ʿan. When issues of language—for example, the general and the particular (*khāṣṣ/ʿāmm*)—are discussed, it is mainly for the purpose of demonstrating that the Sunna can, and should, particularize and explain the Qur^ʿan. Other issues that receive treatment by Shafi^ci are discussed not so much for their own sake as for the sake of defining their relationship with the Sunna. The exposition of the theory of abrogation, for instance, is intended to delineate the relationship between the Qur^ʿan and the Sunna when there is a conflict between the two.

In the final analysis, the *Risāla* appears to offer a number of propositions: (1) law must derive from revealed scripture; (2) the Sunna of the Prophet constitutes a revelation binding in legal matters; (3) there is no contradiction between the Sunna and the Qur^ʿan, or among verses or hadiths within each of the two sources; (4) the two sources complement each other hermeneutically; (5) a legal ruling derived from unambiguous and widely transmitted texts is certain and subject to no disagreement, whereas a ruling that is inferred by means of *ijtihād* and *qiyas* may be subject to disagreement; and finally, (6) the procedures of *qiyas* and *ijtihād* and the sanctioning instrument of consensus are prescribed by the revealed texts.

At best, Shafi^ci's exposition of these propositions remains rudimentary as well as erratic. Substantively, the *Risāla* has little to offer in the way of systematic methodology. Even the section on legal reasoning (*qiyas* and *ijtihād*), which one may argue is the best the *Risāla* has to offer apart from the treatment of the Sunna, is superficial and hardly provides an adequate explanation of how Shafi^ci arrived at his own legal rulings or, alternatively, how another jurist can learn from Shafi^ci in reasoning about the law.³⁸ For after all, *uṣūl al-fiqh*'s whole purpose is universally acknowledged to be the prescription/description of a methodology by means of which legal rulings can be derived from the sources.

On the whole, the *Risāla* not only lacks depth and shirks from a satisfactory, let alone full, treatment of the issues it raises, but it also leaves out altogether a host of fundamental questions considered part of, and indeed indispensable for, *uṣūl al-fiqh*. Questions of legal language, which occupy on average one-fifth to one-fourth of later treatises, are virtually absent from this one. A legion of questions pertaining to consensus, abrogation, legal reasoning, causation, and so forth, receive little, if any, attention. In short, approaching the work without preconceptions and presuppositions, it would not be far off the mark if we characterize it as a work concerned mainly with the Sunna of the Prophet and the utilization of hadith in the

elaboration of the law. Indeed, it is not without good reason that the Urdu translation of the treatise bears the title *Kitāb al-risāla ya'ni uṣūl-i fiqh va ḥadīṣ*.³⁹

Once the *Risāla* is cut down to size, it is relatively easy to explain the lack of interest in it during the century that followed its author's death. There simply was very little—besides the affirmation that the Sunna and the Qur'an must constitute the exclusive foundations of the law—that Shafi'i offered in the way of founding principles of *uṣūl al-fiqh*. His achievement, as we now see it, and indeed as medieval Muslims seem to have viewed it, lies rather in his resilient affirmation that God and, more specifically, His Messenger are the ultimate sources of the law. If a similar thesis were advanced with any marked force before Shafi'i's time, we would not have thought Shafi'i's thesis an achievement. But we do consider it so precisely because, with the benefit of hindsight, we have come to realize that his was an unprecedented synthesis between the rationalists, who were reluctant to accept Prophetic traditions, and the traditionalists who spurned all human reasoning in religious matters. But if it is a synthesis, sensibly reconciling the two camps, why then was it met with such oblivion?

Among the aforestated propositions that Shafi'i advanced and brought together in the *Risāla*, propositions 1–4 were addressed to the rationalists and proposition 6 to the traditionalists. Neither side, except Shafi'i himself and perhaps a few others (such as Karabisi!),⁴⁰ subscribed to a synthesis of the entirety of these propositions. In other words, Shafi'i's theory appealed neither to the traditionalists nor to the rationalists, and Shafi'i himself does not seem to have allied himself unequivocally with either camp. A careful examination of the sources reveals that he was indeed difficult to classify. In later literature he is made the champion of both orthodoxy and the Sunna of the Prophet (*nāṣir al-Sunna*), which is intended to mean (when it rarely fails to be stated explicitly) that he was an antirationalist. But there are so many references to the contrary, in both early and later sources, that it would be imprudent to ignore them. Even if we set aside the allegation that he was a Shi'i,⁴¹ Shafi'i was not entirely innocent of Mu'tazilite association. Not only did he himself admit his intimate knowledge of rationalist kalam, but he studied under Mu'tazili teachers, notably Ibrahim ibn Abi Yahya al-Madani and Muslim ibn Khalid al-Zanji.⁴² Al-Fakhr al-Razi, himself a Shafi'ite and an anti-Mu'tazilite, reports that the scholars are unanimous on the fact that the latter had been Shafi'i's mentor.⁴³ Furthermore, the Shafi'ite al-Abiri (d. 974), in a work entirely dedicated to the virtues and merits (*manāqib*) of Shafi'i, asserts that the staunch Mu'tazilite Bishr al-Marisi was an associate (*ṣāhib*) of the master.⁴⁴ Another of Shafi'i's Mu'tazilite connections is associated with the name of Abu 'Abd al-Rahman al-Baghdadi.⁴⁵

All these connections, however, do more to cast a shadow of doubt on Shafi'i as a traditionalist than to make him a Mu'tazilite, which by the most intolerant traditionalist standards he clearly was not. If Shafi'i was decidedly a non-Mu'tazilite and, strictly speaking, a nonrationalist, he certainly was no traditionalist. All indications in the sources point in one direction and one direction only: Shafi'i defended the traditions of the Prophet but he was neither a loyal traditionalist nor an outstanding traditionalist. As a traditionalist he betrayed his comrades when he insisted on the essential role of qiyas in the law. And as a traditionalist his knowledge was flawed. The list of 9th-century critics who disapproved of Shafi'i's qualifications as

a traditionist includes Yahya ibn Mu^cin, Ishaq ibn Rahawayh, al-Qasim ibn Sallam, and, reportedly, even Ibn Hanbal.⁴⁶ In their standard collections, the prominent Bukhari (d. 870) and Muslim (d. 875) recorded not a single tradition from Shafi^ci,⁴⁷ and they are widely reported to have considered him a weak traditionist (*kāna ḍa^cifan fī al-riwāya*).⁴⁸ And Ibn Hanbal is said to have told one of his students that the traditionist has no use for Shafi^ci's books.⁴⁹

Thus, while Shafi^ci emerges as a non-Mu^ctazilite, he most certainly did not belong to the camp of the traditionalists⁵⁰ (it clearly being understood here that while the traditionists are not interchangeable with the traditionalists, those who criticized Shafi^ci happened to belong to both groups). The most eloquent testimony for Shafi^ci's uncertain status in the religious movement of the 9th century is the distinct absence of his name from Ibn Qutayba's (d. 889) two notorious lists of the traditionalists and the rationalists,⁵¹ an absence that can be explained only when Shafi^ci is situated properly in the ideological configuration prevailing during the century following his death.

It should not come as a surprise, therefore, that Shafi^ci belonged neither to the camp of the rationalists nor to that of the traditionalists. Muzani, who is universally considered to have been Shafi^ci's chief follower until the eighth decade of the 9th century, likewise belonged to neither camp. Muzani, true, was an outstanding faqih (*ra^csan fī al-fiqh*) and dialectician, but as a *muḥaddith* he certainly was considered far from qualified.⁵² In addition Muzani had strong leanings towards I^ctizal. Al-Fakhr al-Razi reports that he studied kalam under the distinguished Mu^ctazilite ^cAmr ibn ^cUbayd, and that all scholars agree that he had Mu^ctazilite tendencies.⁵³ Indeed, it is hard to imagine that the most prominent student of Shafi^ci could have been as inclined to rationalism as the later enthusiastic Shafi^cites reported him to be when his master is supposed to be a paragon of traditionalism. If Muzani could stand in the middle of the road between traditionalism and rationalism, it is because his illustrious mentor had stood there before him.

It is worth considering at this juncture the case of Karabisi, whom we have previously seen⁵⁴ to be the only early scholar explicitly associated with *uṣūl al-fiqh*, though no title on the subject has been associated with him. Karabisi has been revealed through the sources as a scholar with an experience similar to Shafi^ci's: he first followed the doctrines of *ahl al-ra^cy* but was soon to find the *fiqhī* truth not only in the Qur^ʿan but also in the Sunna of the Prophet.⁵⁵ Furthermore, he is known widely as a professor or an expert in speculative theology (*ustādhān fī ^cilm al-kalām*),⁵⁶ and like Shafi^ci and Muzani, his qualifications as a traditionist were considered suspect by some eminent hadith scholars.⁵⁷ That he may have studied or written on *uṣūl al-fiqh*, in the same sense Shafi^ci and Muzani did, is quite possible. That his writings, if any, represented an advance over Shafi^ci is improbable, and in any case they failed to make their way to later jurisprudence.

IV

It has already been noted that while the 9th century produced neither works on *uṣūl* nor commentaries on or refutations of the *Risāla*, the 10th century produced a proliferation of literature on the subject. Once the 10th century began, a stunning

shift in bio-bibliographical discourse occurs. In what seems to be a rather rapid transformation, scholars are described in new terms quite particular to *uṣūl al-fiqh*; they now appear distinctly and technically as authors of *uṣūl al-fiqh*, as *uṣūlīs* proper, with titles that are indicative of an independent and even prominent science.⁵⁸ The following is a list of some of the first jurists who appear, from the sources, to have written or excelled in the field.

1. Abu Naḥīm ibn ʿAdī al-Astarabadi (d. 935); no title is mentioned.⁵⁹
2. Abu Bakr Ibn al-Ikhshid (d. 938), *al-Maʿūna fī al-uṣūl*.⁶⁰
3. Abu Bakr Muhammad ibn Ibrahim al-Sayrafi (d. 942), *al-Bayān fī dalāʾil al-aʿlām ʿalā uṣūl al-aḥkām*.⁶¹
4. ʿUmar Muhammad Abu Faraj al-Maliki (d. 943), *al-Lumaʿ fī uṣūl al-fiqh*.⁶²
5. Abu Mansur al-Maturidi (d. 945), *Maʾākhidh al-sharāʾiʿ fī uṣūl al-fiqh* and *Kitāb al-jadal fī uṣūl al-fiqh*.⁶³
6. Ahmad ibn Abi Muhammad al-Tabari known as Ibn al-Qass (d. 947); no title is mentioned.⁶⁴
7. Abu Bakr Muhammad ibn Ismaʿīl al-Qaffal al-Shashi (d. 948); no title is mentioned.⁶⁵
8. Abu Musa al-Darir (d. during the 940s) has a treatise on *uṣūl al-fiqh* “consisting of eight volumes.”⁶⁶
9. Abu Ishaq al-Marwazi (d. 951); title is not mentioned.⁶⁷
10. Muhammad ibn Saʿīd ibn Abi al-Qadi (d. 951), *al-Hidāya*.⁶⁸
11. Abu Bakr Muhammad ibn ʿAbd Allah al-Bardaʿi (d. 951), *al-Jāmiʿ fī uṣūl al-fiqh*.⁶⁹
12. Abu Bakr al-Dabʿi (d. 953); “he was an outstanding scholar in *uṣūl*.”⁷⁰
13. Abu ʿAlī al-Shashi (d. 955), *al-Uṣūl*.⁷¹
14. Abu ʿAlī al-Tabari (d. 961). *Uṣūl al-fiqh*.⁷²
15. Abu Bakr al-Farisi (fl. ca. 960) wrote an extensive treatise on the subject.⁷³
16. Abu al-Husayn al-Tawāʾifi al-Baghdadi (d. ca. 960); title is not mentioned.⁷⁴

With the proliferation of *uṣūl* literature, we find a sudden interest in Shafiʿi’s *Risāla* after long neglect. The treatise now succeeds in eliciting at least five commentaries, four of which belong to the 10th century. The commentators are Abu Bakr al-Sayrafi,⁷⁵ al-Qaffal al-Shashi,⁷⁶ Abu al-Walid al-Nisaburi (d. 960),⁷⁷ al-Jawzaqi (d. 989),⁷⁸ Abu Muhammad al-Juwayni (d. 1046),⁷⁹ and quite possibly ʿAbd al-Wahhab al-Baghdadi (d. 973).⁸⁰ The *Risāla* also manages to attract at least two refutations, one by the Shiʿi Abu Sahl al-Nawbakhti (d. 940s),⁸¹ and the other by a certain ʿUbayd Allah ibn Talib al-Katib, who appears to have been a contemporary of Sayrafi.⁸² Furthermore, the *Risāla* appears to have become a constitutive part of certain *uṣūl* education. It is reported, for instance, that around the middle of the 10th century Abu al-Fadl al-Nadrawi studied the work in Isfahan under Abu al-Walid ibn Mihran.⁸³

The unprecedented and intense interest in the *Risāla* and in *uṣūl al-fiqh* during the first half of the 10th century seems to be associated with certain figures whose intellectual tendencies represent a new formation in the religious history of Islam. One of these figures was Abu al-ʿAbbas Ibn Surayj (d. 918), without exaggeration the most significant jurist in the Shafiʿite school after Shafiʿi himself. Unfortunately, none of Ibn Surayj’s works has survived, although if we go by the biographical and doctrinal data provided by early and later sources, he no doubt emerges as the most towering personality in the early history of Shafiʿism.

Unlike any other Shafīʿite after Shafīʿi, Ibn Surayj is universally held to be the unrivaled leader of the school, far superior to all other contemporary and earlier Shafīʿites, including Muzani. Significantly, unlike Muzani, he is distinguished as Shafīʿi's loyal and true disciple who single-handedly defended the *madhhab* and rendered it victorious. In his time, he was the most influential professor of Shafīʿite law, and his students were so numerous that he is credited with "spreading the *madhhab*" to unprecedented dimensions. He also is said to have been the first to teach juridical dialectic and to combine a superior knowledge of hadith and *fiqh*. And like Shafīʿi, he combined all this with a knowledge of kalam. Small wonder then that he was known as the Little Shafīʿi, and that he was thought by many as the *mujaddid* (reformer) of the fourth hijri century, Shafīʿi having been assigned to the third.⁸⁴

Although there is no evidence to indicate that Ibn Surayj wrote a complete work on *uṣūl al-fiqh*, he seems to have assimilated all teachings on the subject from within and without the Shafīʿite school. He fiercely debated with the Zahirites, both Dawud and his son Muhammad, on matters of legal methodology. He is reported to have written, while mortally ill, a fifteen-folio epistle, addressed to the jurists of Shash and Firghana, in which he expounded, in what must have been an outline, the *uṣūl* principles of the then prominent mujtahids, that is, Shafīʿi, Malik, Sufyan al-Thawri, Abu Hanifa and his two disciples, and Dawud.⁸⁵ But it is indeed telling that even Ibn Surayj, with the intense detail of biographical notices he is accorded, is not reported to have written an *uṣūl* work proper.

Nonetheless, the first and foremost Shafīʿite authors who did write complete works on *uṣūl* were Ibn Surayj's students. Among these students, who are reported to have made up most of the prominent Shafīʿites during the first half of the 10th century,⁸⁶ are Ibn Haykuwayh (d. 930), Ibrahim al-Marwazi (d. 951), Abu Bakr al-Farisi, Ibn al-Qass, Abu Bakr al-Sayrafi, and al-Qaffal al-Shashi, to mention only a few.⁸⁷ Although all of them are associated with the first generation of scholars to have composed works on *uṣūl*, the latter two deserve special attention since in later biographical and *uṣūl* works they emerge as the most significant authors on the subject. Sayrafi, the first commentator on the *Risāla*, is reckoned not only the author of "an unprecedented treatise on *uṣūl*," but also "the most knowledgeable scholar on *uṣūl al-fiqh* after Shafīʿi."⁸⁸ And, as we have seen, Qaffal was the author of both a commentary on the *Risāla* and a treatise on legal theory, as well as the first to have written on juridical dialectic.⁸⁹ That both were distinguished *uṣūlis*, *muḥaddiths*, speculative theologians, and dialecticians betrays their debt to Ibn Surayj who mastered all these sciences and placed them in the service of the law.

The legacy of Ibn Surayj was passed by al-Qaffal to Abu Muhammad al-Juwayni, the last commentator on the *Risāla* we know. Abu Muhammad studied hadith and law under al-Qaffal and is said to have graduated only after he perfected the latter's *ṭarīqa*, the method and treatment of the law peculiar to a jurist.⁹⁰ It is therefore far from being a mere historical chance that the rise of *uṣūl al-fiqh*, and consequently the unprecedented interest in the *Risāla*, coincided with the emergence of a community of scholars, belonging to two consecutive generations, who had at their disposal a combination of traditionalist and rationalist sciences—a combination that had no antecedents and that proved to be so crucial.⁹¹

Turning back to the earlier centuries will shed further light on the question of why Shafi'i's theory, as innovative as it may have been, failed to arouse the interest of his followers for nearly a century and why the flourishing of *uṣūl al-fiqh* came only after a century after the demise of its supposed founder.

We begin with the 8th century, which saw the initial stages of the development of Islamic law and jurisprudence. The studies of Schacht, Goldziher, and others have shown that the 8th century started with an overwhelming movement towards human reasoning, commonly known as *ra'y*. But by the middle of that century, another competing movement stressing the role of traditions was already on the rise. By the time Shafi'i, as an independent scholar, appeared on the scene, the movement of *ahl al-ra'y* was beginning to decline, and this was due to the rapid increase in the volume of Prophetic traditions that have infiltrated legal doctrines. Shaybani's positive law exhibits, perhaps better than any other, this stage of development, where hadiths constitute an important, but by no means exclusive, element in the law. In Shafi'i, as we have seen, the ultimate sources of the law become the Qur'an and the Sunna. *Ra'y* as an expression of rationalist and utilitarian tendencies was to be wholly expunged, hence his vehement opposition to *istihsān*. This is precisely where Shafi'i was his own jurist. While he unconditionally rejected *ra'y* and insisted on the overriding authority of the Qur'an and Prophetic Sunna, he salvaged certain elements of *ra'y* and molded them into arguments that may be used in the law only insofar as they derive their premises from revelation.

It has been little emphasized since Goldziher's death that the 9th century was as dynamic and as crucial as the 8th in the history of Islamic jurisprudence. And we tend to minimize, perhaps due to our preoccupation with Schacht's findings, the consequential role of the legal movements in the 9th century and their impact on Islamic legal theory and positive law in the centuries that followed. To be sure, Shafi'i in no way represented the culmination of Islamic law and jurisprudence. If anything, he stood somewhere in the middle of the formative period, half-way between the crude beginnings during the very first decades of the 8th century and the final formation of the legal schools at the beginning of the 10th. For Shafi'i succeeded neither in ejecting *ra'y* from the domain of legal reasoning nor, in consequence, in rendering the Prophetic Sunna unconditionally admissible. During the decades after his death, most of the Hanafites and no doubt the Mu'tazilites continued to uphold, under different guises, the role of human reason in the law.

A more significant development after Shafi'i, and by far more influential, is the rise of the anti-*ra'y* movement represented by Ibn Hanbal and Dawud ibn Khalaf al-Zahiri, among others. While both approved of Shafi'i, they went much further in their emphasis on the centrality of scripture and on the repugnant nature of reasoning. But their positions on reasoning, perhaps the best legal indicator to measure their tendencies, were by no means identical. Ibn Hanbal, as we can glean from his positive law, did not favor the practice of *qiyas*, unless it was absolutely necessary.⁹² Dawud, on the other hand, rejected it categorically.⁹³

There emerges here a clear pattern: Shafi'i's predecessors make recourse to their *ra'y* with, more or less, little attention to the Sunna. Shafi'i regulates *ra'y* in

the form of *qiyas* and assigns it a role subsidiary to that of the revealed sources although it remains an essential part of his methodology. Ibn Hanbal seldom resorts to *qiyas*, and he would rather do without it. Dawud completely rejects it in favor of a literal reading of the Qur^ʿan and the Sunna. In both time and doctrine, then, Shafi^ʿi's position is located in the middle between the early *ra*^ʿy libertinism and the later Zahirite conservatism.

Contrary to the pattern according to which traditionalism had evolved in the 9th century, the rationalist movement began to experience a process of decline, particularly, as is well known, after the *mihna*. From this point on, the rationalists were drawing closer to the traditionalists, but only in one sense: they could no longer afford to ignore the scripture as the exclusive foundation of the law, and they were compelled to submit to the divine decree as the first and last judge of human *shar*^ʿi affairs.

On the other side, the traditionalist camp also was compelled to make some concessions. Soon the Hanbalites, among others, were to ignore their eponym's dislike for *qiyas*, and their legal methodology was to become virtually interchangeable with that of the other schools' proponents. It is significant that those who did not make these concessions, such as the ultratraditionalist Hashwiyya and the Zahirites, were ultimately doomed to extinction.⁹⁴

With the death of Shafi^ʿi and for long thereafter, Shafi^ʿi's middle-of-the-road thesis had relatively few supporters. If we go by Subki, the author of the most comprehensive biographical work on the Shafi^ʿites,⁹⁵ we find that the list of Shafi^ʿi's associates (*aṣḥāb*) did not exceed 41, including such jurists as Ibn Hanbal, Abu Thawr (d. 854), ʿAbd al-Hakam al-Misri, and Ibn Rahawayh, who did not follow his teachings and who had their own agendas.⁹⁶ Many others were merely associated with Shafi^ʿi, and we have no evidence that they studied under him more than some *fiqh* and hadith. His followers who had died by 912 but who did not know him in person, numbered only 31.⁹⁷ This is to be contrasted by the number of his followers who died in the fourth hijri century (A.D. 912–1009), which reached the astounding figure of 171.⁹⁸

The rapid growth of the Shafi^ʿite school coincided with the emergence of the aforementioned compromise between the traditionalists and the rationalists, which resulted in *uṣūl al-fiqh*'s being finally defined, and that must have taken place sometime between the death of Dawud al-Zahiri and the generation of Abu Bakr al-Sayrafi. Being the ultimate synthesis of revelation and systematic human reasoning, *uṣūl al-fiqh* could not have become normative prior to the beginning of the 10th century. Shafi^ʿi's rudimentary thesis was not well supported and none of his students appears to have defended it. Muzani, who was most likely to have carried on Shafi^ʿi's mission, was, as we have seen, tending more to rationality than to hadith, and in any case he was deemed to have diverged from the path of Shafi^ʿi, both in positive law and legal theory.⁹⁹ The most important of Shafi^ʿi's immediate disciples turns out, after all, not to have been so faithful to the teachings of the master.¹⁰⁰

It was not until Ibn Surayj and the generation of his younger contemporaries that the traditionalist–rationalist compromise manifested itself. He, and his disciples, were *muhaddiths*, faqih, and speculative theologians, without this entailing a contradiction in terms. And as such, they were to conceptualize legal theory as a

synthesis between rationality and the textual tradition. Ibn Surayj's legal theory, we must stress, could have been only the child of its own environment. Aside from the proposition that embodied that synthesis, there is little in Shafi'i's theory that survived into the later works. But this synthesis was crucial, and Ibn Surayj as well as his followers accredited it to Shafi'i. This is why Ibn Surayj was considered the first true representative and the unequalled champion of the Shafi'ite school. And this is why he was, significantly, referred to as the middle-of-the-roader (*sālik sabil al-inṣāf*).¹⁰¹ Ibn Surayj, who was an excellent *muḥaddith* and a moderate *mutakallim*—and who battled the Zahirites to the end of his days—articulated the synthesis and paved the way for his students, the likes of Sayrafi and Qaffal, to discourse on it and elaborate it in greater detail.

When these students found their legal theory to coincide with Shafi'i's bare thesis that they began to glorify Shafi'i as an *uṣūlī* and as the founder of the discipline. This glorification became increasingly necessary as the other schools, especially the Hanafite, as is well known, to advertise their early masters as the founders of *uṣūl al-fiqh*.¹⁰² But that Shafi'i's image as the founder of this discipline began to grow only from the beginning of the 10th century can be illustrated clearly in the development of the *manāqib* genre dedicated to him.

The first work of *manāqib* available to us belonged to Abu Hatim al-Razi (d. 938). In this work Razi allots a number of chapters to demonstrate Shafi'i's excellent knowledge of subjects upon which the construction of the law depended. In one chapter, which consists of about 51 lines, the author discusses Shafi'i's proficient knowledge of what he calls, significantly, *uṣūl al-ilm*, by which he clearly means *uṣūl al-fiqh*.¹⁰³ In these lines, he mentions Shafi'i's doctrine of consensus (in one line), and he briefly speaks—in 15 lines—of his theory of *qiyas*. The rest of the lines deal with a miscellany of subjects including *hadith*. Nowhere in the entire treatise does Shafi'i appear as the founder of *uṣūl al-fiqh*. It is to be noted that Razi's work, in its published form, consists of about 300 pages, each containing an average of 8 lines. It is significant that out of an approximate 2,400 lines, Razi should have devoted only 51 lines to Shafi'i's *uṣūl*. Moreover, in this chapter there is no reference whatsoever to the *Risāla*. In fact, in the entire work the *Risāla* is mentioned only twice, and then in passing. In both cases it is referred to, significantly, in the context not of law but rather of *ṭalab al-ḥadīth*.¹⁰⁴

Over a century later, Bayhaqi (d. 1066) wrote another work on Shafi'i's *manāqib*. A comparison between his and Razi's work is most revealing. In Bayhaqi, Shafi'i is not only a genius of *uṣūl al-fiqh*, but the founder of the discipline,¹⁰⁵ and the *Risāla*, in its old and new versions, receives a comprehensive treatment, including the reasons for its composition.¹⁰⁶ The new *Risāla* is mentioned at least eighteen times, and the old three times. In addition to a chapter devoted to Shafi'i's *uṣūl al-fiqh*, which Bayhaqi uniquely characterizes as "portentous,"¹⁰⁷ there are other chapters describing the master's proficiency in the knowledge of *hadith*, Qur'an, language, positive law, and other issues that are constitutive parts of, or relevant to, *uṣūl al-fiqh*. In contrast to Razi's 51 lines, Bayhaqi allocates a staggering 160 pages (out of a total of 918) to Shafi'i as an *uṣūlī*. The image of Shafi'i as the founder of the discipline is similarly drawn by al-Fakhr al-Razi (d. 1209) who devotes about 114 pages of his 525-page treatise to the same issues Bayhaqi had already raised.¹⁰⁸

It would be safe to assume that sometime before Bayhaqi—but certainly after Abu Hatim al-Razi—Shafi'i's image as the founder of *uṣūl al-fiqh* had become firmly established. This intervening period between the two *manāqib* authors coincides, we must note, with the career of Abu Muhammad al-Juwayni, the last commentator on the *Risāla*.¹⁰⁹ That Shafi'i's treatise failed to attract further commentary in the decades and centuries that followed explains the role that Shafi'i, as the founder of the discipline, was required to play in his school. Once this image as the founder was irrevocably established, commentaries on his treatise ceased forever. In a field where commentaries were the norm, the discontinuity of interest in commenting on the *Risāla* also explains the irrelevance of the work's themes to the far more complex and different methodology of *uṣūl al-fiqh*. This irrelevance is attested to eloquently in the relatively infrequent citation of Shafi'i's views by later theoreticians.

VI

To conclude, the history of Shafi'i's *Risāla* is connected inextricably with the emergence of *uṣūl al-fiqh* as an organically structured and independent science. As a full-fledged methodology, *uṣūl al-fiqh* represents a synthesis of reason and revelation, the former being the means by which the latter is interpreted so that the divinely prescribed law can be known. The constitutive elements of *uṣūl al-fiqh*—epistemology, legal language, the theory of abrogation, transmission of the texts, consensus, qiyas, ijihad, taqlid, and so forth—are organically interconnected and interdependent, and the absence of any such element would create an incorrigible imbalance in legal methodology. Therefore, *uṣūl al-fiqh* as a legal methodology is larger than the total sum of its constitutive parts. Our sources strongly indicate that this methodology, with all its constitutive parts, did not exist in the 9th century. This conclusion is further bolstered by additional evidence to the effect that in this century the *Risāla* was marginal, attracting neither commentaries nor refutations.

With the advent of the 10th century, *uṣūl al-fiqh* works begin to proliferate, and simultaneously the *Risāla* succeeds in attracting a number of commentaries and at least two refutative dissertations. This simultaneity should by no means be explained away as coincidental, for such an explanation would ignore blatantly the historical sequence of events that led up to the emergence, in the beginning of the 10th century, of *uṣūl al-fiqh* as an organically structured discipline.

Shafi'i's *Risāla* as the embodiment of his legal methodology has, in our view, gained the distinction of being the first attempt at synthesizing the disciplined exercise of human reasoning and the complete assimilation of revelation as the basis of the law. Because Islamic law and jurisprudence did finally come to accept this synthesis, we were led to believe that *uṣūl al-fiqh* as we know it began with Shafi'i. But Shafi'i's synthesis appeared at a time in which only a few were willing to embrace it. It would be rather simplistic to think that once Shafi'i laid down his synthesis, which attempted to reconcile the theses of the traditionalists and the rationalists, it was immediately adopted by the two camps. For Shafi'i's theory to prevail would have required that the two camps abandon their doctrines once and for all and join Shafi'i's ranks. But this did not happen, and evidence in fact points

to the contrary: Shāfiʿī's synthesis was, and remained for a long time, a minority view. The traditionalists rejected his *qiyas*, and the rationalists were reluctant to accept his thesis that revelation is the first and last judge of human affairs. It was only towards the end of the 9th century that the two camps drew closer to each other, and a synthesis of traditionalism and rationalism was accomplished. With the emergence of this synthesis, whose causes and characteristics are yet to be studied, the way to *uṣūl al-fiqh* was finally paved. And once this science bloomed, at the hands of Sayrafi, Qaffal, and their like, the rudimentary synthesis created by Shāfiʿī a century earlier became relevant and thus was rejuvenated in the form of commentaries on the *Risāla* and by attributing the entire ramifications of the synthesis to Shāfiʿī himself. Shāfiʿī thus becomes the founder of *uṣūl al-fiqh*.

Our conclusion presents us with two significant implications. First, Shāfiʿī's achievement must not be carried too far. He advanced or, to put it more accurately, proposed an unprecedented synthesis of rationalism and traditionalism, but his proposal was not to become relevant until a century later, thanks not to him but to such jurists as Ibn Surayj, Sayrafi, and Qaffal whose achievement was the product of a combination of circumstances that arose at the end of the 9th century and the beginning of the 10th. In other words, Shāfiʿī's law and jurisprudence represented not the pivotal point of Islamic law, but rather a middle stage between the crude beginnings at the outset of the 8th century and the true culmination that took place nearly a century after his death. The second implication, which can hardly be over-emphasized, is the central importance of the 9th century in the history of Islamic legal theory. This century, no less than the 8th, determined the direction that Islamic jurisprudence was to take in its future course.

NOTES

Author's note: This article represents an expanded version of two lectures delivered at the MESA annual meeting in New Orleans (19–22 November 1985) and at the University of Chicago (5 November 1987).

¹See Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, 1975).

²Aḥmad Muḥammad Shākir, ed. (Cairo, 1892). For the original title of the work and the presumed reasons for its composition, see Majid Khadduri, trans., *Al-Imām Muḥammad ibn Idrīs al-Shāfiʿī's al-Risāla fī Uṣūl al-Fiqh*, 2nd ed. (Cambridge, 1987), 19 ff.; Fakhr al-Dīn Muḥammad ibn ʿUmar al-Rāzī, *Irshād al-ṭālibīn ilā al-minhāj al-qawīm fī bayān manāqib al-imām al-Shāfiʿī*, ed. Aḥmad al-Saqqā (Cairo, 1986), 153; George Makdisi, "The Juridical Theology of Shāfiʿī: Origins and Significance of *Uṣūl al-Fiqh*," *Studia Islamica* 59 (1984): 6, 9.

³See, for example, Ignaz Goldziher, *The Zāhirīs: Their Doctrine and Their History*, trans. W. Behn (Leiden, 1971), 20–21; N. J. Coulson, *A History of Islamic Law* (Edinburgh, 1964), 56; Joseph Schacht, *An Introduction to Islamic Law* (Oxford, 1979), 48.

⁴See Khadduri's introduction to his translation of the *Risāla*, 42.

⁵See, for example, Rāzī, *Irshād*, 156; Coulson, *History*, 61

⁶Coulson, *History*, 53.

⁷Ibn al-Nadīm, *Fihrist* (Beirut, 1978), 286.

⁸*Ibid.*, 287.

⁹*Ibid.*, 286, 289.

¹⁰*Ibid.*, 297.

¹¹Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā*, 6 vols., 2nd ed. (repr., Beirut, n.d.), 1:277.

¹²See n. 13 as well as Abū Bakr Hidāyat Allāh al-Ḥusaynī, *Ṭabaqāt al-shāfiʿiyya*, ed. ʿĀdil Nuwayhid (Beirut, 1979), 90, where a reference is made to the chapter on ablution, a chapter that has no place in *uṣūl al-fiqh* works.

¹³Subkī, *Ṭabaqāt*, 2:227. The work clearly treats positive law because Subkī remarks that he has in his possession an incomplete copy of the work “up to the chapter on bankruptcy (*taftis*).”

¹⁴Subkī (ibid., 2:226) characterizes the work as one concerned with “*fiqh* and *khilāfiyyāt*”; see also ʿAbd Allāh Muṣṭafā al-Marāghī, *al-Faṭḥ al-mubīn fī ṭabaqāt al-uṣūliyyin*, 3 vols. (Cairo, n.d.), 1:177.

¹⁵Subkī, *Ṭabaqāt*, 2:108. We ought to mention that the term *uṣūl* is at times used to mean “standard” or “classical” works; see Shams al-Dīn al-Dhahabī, *Siyar al-lām al-nubalāʾ*, ed. Shuʿayb al-Arnāʾūṭ and Akram al-Būshī, 23 vols. (Beirut, 1986), 15:438, who speaks of a certain Abū al-ʿAbbās al-Miṣrī as having usurped 500 *uṣūl* volumes from the library of a colleague.

¹⁶It is to be noted here that Shāfiʿī does not know the designation *uṣūl al-fiqh*, and his use of the term *aṣl* or *uṣūl* does not carry the connotation attached to it later. He seems to have given his treatise the title *al-Kitāb*. Only later did it come to be known as *al-Risāla*, probably going through a period of transition in which it was known as *Kitāb al-risāla*. For evidence of the original title of the work, see Khadduri, trans., *Risāla*, pars, 96, 332, 573, passim.

¹⁷*Ikhṭilāf uṣūl al-madhāhib*, ed. Muṣṭafā Ghālib (Beirut, 1973).

¹⁸Ibn al-Nadīm, *Fihrist*, 289.

¹⁹Subkī, *Ṭabaqāt*, 2:78.

²⁰Goldziher, *Zāhiris*, 34–35.

²¹Ibn al-Nadīm, *Fihrist*, 303.

²²Ibid., 306; see also Subkī, *Ṭabaqāt*, 2:46.

²³The exception is the case of Ḥusayn ibn ʿAlī al-Karābīsī (d. 859 or 862) who is described by Abū ʿĀṣim al-ʿAbbādī in *Ṭabaqāt al-fuqahāʾ al-shāfiʿiyya* (ed. Gösta Vitestam [Leiden, 1964], 24–25) as “one of the early jurists who was knowledgeable in *uṣūl*” and by Abū Ishāq al-Shīrāzī in *Ṭabaqāt al-fuqahāʾ* (ed. Iḥsān ʿAbbās [Beirut, 1970], 102) as having “written many works on *uṣūl al-fiqh* and *furūʿ*”; see also Dhahabī, *Siyar*, 12:79–81. It is to be noted, however, that later sources report no work written by Karābīsī on the subject. In fact, the most detailed biographical account on Karābīsī provided by Subkī (*Ṭabaqāt*, 1:251–56) does not associate him with *uṣūl al-fiqh*, either as an author or as a scholar.

²⁴Muḥammad ibn Abi Ḥātim al-Rāzī, *Ādāb al-Shāfiʿī wa-manāqibuhu*, ed. ʿAbd al-Ghanī ʿAbd al-Khālīq (Cairo, 1953), 61–62.

²⁵Muḥammad ibn Abī Yaʿlā Ibn al-Farrāʾ, *Ṭabaqāt al-ḥanābila*, ed. M. H. Fiḳī, 2 vols. (Cairo, 1952), 1:57.

²⁶Subkī, *Ṭabaqāt*, 1:250–1.

²⁷See, for example, Aḥmad ibn al-Ḥusayn Abū Bakr al-Bayhaqī, *Manāqib al-Shāfiʿī*, ed. Aḥmad Ṣaqr, 2 vols. (Cairo, 1971), 1:236; Subkī, *Ṭabaqāt*, 1:242.

²⁸Muzanī’s commentary is edited and translated by Robert Brunschvig in “Le livre de l’ordre et de la défense d’al-Muzani,” *Bulletin d’études orientales* 11 (1945–46):145–94; Arabic text, 153–63.

²⁹Muḥammad Zahri Najjār, ed., 8 vols. (Cairo, 1961), 7:291–92.

³⁰Only pp. 153–56 (line 4) of *Kitāb al-amr wa-al-nahy* treat the purported meaning (ʿ*alā maʿnā*) of Shāfiʿī’s doctrine, although it is highly likely that even pp. 153 (line 20)–56 represent Muzanī’s own views, not those of Shāfiʿī.

³¹On the traditionalists (*ahl al-ḥadīth*) and the rationalists (*ahl al-raʾy*), see Goldziher, *Zāhiris*, 6–19; Schacht, *Origins*, 36–81, 253–57, passim.

³²Zayn al-Dīn Qāsim ibn Quṭlūbughā, *Tāj al-tarājim fī ṭabaqāt al-ḥanaḥiyya* (Baghdad, 1962), 19–20.

³³Dhahabī, *Siyar*, 12:500; Subkī, *Ṭabaqāt*, 1:224. Most biographical works attribute al-Miṣrī’s critical attitude toward Shāfiʿī to a personal conflict between the two.

³⁴So must we take Abū Zakiriyyāʾ al-Kinānī’s (d. 902) *al-Ḥujja fī al-radd ʿalā al-Shāfiʿī*; see Fuat Sezgin, *Geschichte des arabischen Schrifttums*, 9 vols. (Leiden, 1967–), 1:475, 485.

³⁵It is interesting to note the change in the title of Khadduri’s translation of the *Risāla*. When it was first published in 1961, the title read *Islamic Jurisprudence: Shāfiʿī’s Risāla*. In the 1987 edition, however, it was entitled, significantly, *Al-Shāfiʿī’s Risāla fī Uṣūl al-Fiqh: Treatise on the Foundations of Islamic Jurisprudence*.

³⁶Khadduri, *al-Risāla*, 41.

³⁷Cairo, 1969.

³⁸In his *Irshād*, 157, al-Fakhr al-Rāzī apologizes for the defects in Shāfi'ī's *Risāla*, saying in effect that all pioneering works entail some shortcomings.

³⁹Muḥammad Amjad 'Alī, trans. (Karachi, 1968).

⁴⁰See n. 23.

⁴¹Ibn al-Nadīm, *Fihrist*, 295: "al-Shāfi'ī was a staunch advocate of Shī'ism" (*wa-kāna al-Shāfi'īyyu shadīdan fī al-tashayyū'*).

⁴²Rāzī, *Irshād*, 44, 104; on 66, Rāzī speaks of Shāfi'ī's outstanding knowledge of dialectic, speculation and disputation—qualities that were entirely absent in the camp of the traditionalists. See also Aḥmad ibn Yahyā Ibn al-Murtaḍā, *Ṭabaqāt al-mu'tazila*, ed. S. Diwald-Wilzer (Wiesbaden, 1961), 43.

⁴³Rāzī, *Irshād*, 44.

⁴⁴Cited in Subkī, *Ṭabaqāt*, 2:149.

⁴⁵*Ibid.*, 1:222.

⁴⁶Rāzī, *Irshād*, 228–29.

⁴⁷Subkī, *Ṭabaqāt*, 2:4; Rāzī, *Irshād*, 230.

⁴⁸Rāzī, *Irshād*, 230.

⁴⁹Ibn al-Farrā', *Ṭabaqāt*, 1:38.

⁵⁰On Shāfi'ī's opposition to the traditionalists, see Schacht, *Origins*, 128–29.

⁵¹Abd Allāh Ibn Qutayba, *al-Ma'ārif* (Karachi, 1976), 216–30.

⁵²See n. 53.

⁵³Rāzī, *Irshād*, 138. Also, Subkī alludes to Muzanī's Mu'tazilite tendency (*Ṭabaqāt*, 1:241). On his skill as a dialectician and lack of qualifications as a traditionist, see Dhahabī, *Siyar*, 12:492–93; 14:371. That he was not, strictly speaking, a Mu'tazilite is evidenced by the fact that he is not included in Mu'tazilite biographical works. See, for example, Ibn al-Murtaḍā, *Ṭabaqāt al-mu'tazila*.

⁵⁴See n. 23.

⁵⁵Subkī, *Ṭabaqāt*, 1:251–55.

⁵⁶Shirāzī, *Ṭabaqāt*, 102.

⁵⁷Reported by Subkī on the authority of al-Khaṭīb al-Baghdādī (*Ṭabaqāt*, 1:252).

⁵⁸It is significant that at this time titles carrying the term *furū'* also begin to appear, *furū'* and *uṣūl* being now dichotomous; see, for example, *Kitāb al-furū'* by Ibn al-Ḥaddād al-Miṣrī, who died in 956; Dhahabī, *Siyar*, 15:446.

The evidence in our sources thus indicates that the appearance of the designation *uṣūl al-fiqh* as well as of complete works on the subject belongs to the beginning of the 10th century, not to the end of it, as Makḍīsī seems to suggest; see his "Juridical Theology of Shāfi'ī," 5, 13–14.

⁵⁹Abbādī, *Ṭabaqāt*, 55; Subkī, *Ṭabaqāt*, 2:242–43.

⁶⁰Dhahabī, *Siyar*, 15:217–18; Ibn al-Nadīm (*Fihrist*, 245–46) states that the author did not complete the work.

⁶¹Ibn al-Nadīm, *Fihrist*, 300; 'Abd al-Hayy Ibn al-'Imād, *Shadharāt al-dhahab fī akhbār man dhahab*, 8 vols. (Cairo, 1931–32), 2:325; 'Abbādī, *Ṭabaqāt*, 69; Abū al-'Abbās Aḥmad ibn Muḥammad Ibn Khallikān, *Wafayāt al-a'yān wa-anbā' abnā' al-zamān*, ed. Iḥsān 'Abbās, 8 vols. (Beirut, 1977), 4:199; Shirāzī, *Ṭabaqāt*, 111.

⁶²Ibn al-Nadīm, *Fihrist*, 283.

⁶³Ibn Quṭlūbughā, *Tāj al-tarājim*, 59.

⁶⁴Subkī, *Ṭabaqāt*, 2:103; Shirāzī, *Ṭabaqāt*, 111.

⁶⁵Shirāzī, *Ṭabaqāt*, 112; Subkī, *Ṭabaqāt*, 2:176 ff.; Ibn Khallikān, *Wafayāt*, 4:200–201.

⁶⁶Ibn Quṭlūbughā, *Tāj al-tarājim*, 86.

⁶⁷Shirāzī, *Ṭabaqāt*, 112.

⁶⁸Subkī, *Ṭabaqāt*, 2:159.

⁶⁹Ibn al-Nadīm, *Fihrist*, 330.

⁷⁰Jamāl al-Dīn 'Abd al-Raḥīm al-Asnawī, *Ṭabaqāt al-shāfi'īyya*, ed. 'Abd Allāh al-Jubūrī, 2 vols. (Baghdad, 1970–71), 2:123; Subkī, *Ṭabaqāt*, 2:81–82.

⁷¹Beirut, 1982.

⁷²Shirāzī, *Ṭabaqāt*, 115; Subkī, *Ṭabaqāt*, 2:217.

⁷³Ibn al-Murtaḍā, *Ṭabaqāt*, 102.

⁷⁴*Ibid.*, 109.

^{75c}Abbādī, *Ṭabaqāt*, 69.

⁷⁶Shirāzī, *Ṭabaqāt*, 112.

⁷⁷Asnawī, *Ṭabaqāt*, 2:472; Ḥusaynī, *Ṭabaqāt*, 245–46.

⁷⁸Khadduri, *al-Risāla*, 42.

⁷⁹Subkī, *Ṭabaqāt*, 3:186, 208.

⁸⁰Ibn Khallikān, *Wafayāt*, 3:219 ff.

⁸¹Dhahabī, *Siyar*, 15:328.

⁸²Ṣayrafi not only commented on the *Risāla* but also wrote a rebuttal against al-Kātib's refutation of the work; see Ibn al-Nadīm, *Fihrist*, 300. It was not possible to establish al-Kātib's identity. We must note that the sources report at least three other critiques of Shāfi'ī by two Mālikites and a Ḥanbalite. The two Mālikites are Bakr ibn Muḥammad al-Qushayri (d. 955) and Abū Bakr al-Dīnawari (d. after 940); see Dhahabī, *Siyar*, 4:427, 537. The Ḥanbalite is Ghulām al-Khallāl (d. 947); see Ibn al-Farrā², *Ṭabaqāt*, 2:119–20. However, it cannot be established whether the object of these critiques was Shāfi'ī's positive law or legal theory.

⁸³Subkī, *Ṭabaqāt*, 2:241.

⁸⁴On Ibn Surayj, see *ibid.*, 2:87–96; Dhahabī, *Siyar*, 14:201–4; Ibn Khallikān, *Wafayāt*, 1:66–67; ^cAbbādī, *Ṭabaqāt*, 62–63; Ibn al-^cImād, *Shadharāt*, 2:247–48.

⁸⁵Reported by Subki (*Ṭabaqāt*, 2:307) on the authority of the historian ^cAlī ibn Ḥusayn al-Mas^cūdī. Subkī had in his possession a copy of the epistle.

⁸⁶Shirāzī, *Ṭabaqāt*, 109.

⁸⁷On Ibn Haykuwayh, see Dhahabī, *Siyar*, 15:379. On al-Marwazī, Ibn al-Qāṣṣ, Ṣayrafi, and Shāshī, see Shirāzī, *Ṭabaqāt*, 111–12; Ibn al-^cImād, *Shadharāt*, 2:339; Ibn Khallikān, *Wafayāt*, 4:199. On Abū Bakr al-Fārisī, see Ibn al-Murtaḍā, *Ṭabaqāt*, 102.

⁸⁸Ibn Khallikān, *Wafayāt*, 4:199; Subkī, *Ṭabaqāt*, 2:170.

⁸⁹Ibn Khallikān, *Wafayāt*, 4:200–201.

⁹⁰Subkī, *Ṭabaqāt*, 3:208; Ibn al-^cImād, *Shadharāt*, 3:261–62.

⁹¹That a jurist of the 10th century combined a proficient knowledge of rationalist and traditionalist disciplines was still considered remarkable even in the 14th century. Subki, for instance, clearly makes a point of mentioning such a combination; see his *Ṭabaqāt*, 2:79, 81.

⁹²Susan Spector, "Aḥmad Ibn Ḥanbal's *Fiqh*," *Journal of the American Oriental Society* 102 (1982): 461–65.

⁹³For a brief account of Dawūd's teachings, see Goldziher, *Zāhiris*, 27–39.

⁹⁴See W. B. Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16 (1984): 7–10. On the Ḥashwiyya, see A. S. Halkin, "The Ḥashwiyya," *Journal of the American Oriental Society* 54 (1934):12.

⁹⁵Subkī admits (*Ṭabaqāt*, 1:285, 2:18–20) that he includes the biographies of those who are worthy of mention because "there is no sense in mentioning the others, for it would be a waste of ink."

⁹⁶*Ibid.*, 1:186–285. On Ibn al-Ḥakam, Abū Thawr, and Ibn Rāhawayh, see *ibid.*, 1:223–24, 227 ff., 232 ff. For more on Abū Thawr, see Ibn al-Nadīm, *Fihrist*, 297.

⁹⁷Subkī, *Ṭabaqāt*, 1:285–301; 2:2–79.

⁹⁸*Ibid.*, 2:79–322. The rapid increase in the number of Shāfi'ītes during the 10th century must be in good part attributed to Ibn Surayj, under whom, as we have seen (section IV), the major figures of the Shāfi'īte school have studied. Ibn Surayj's numerous students have in turn become influential and have attracted, in various parts of the Muslim world, a great number of disciples; see sources cited in nn. 86–89.

⁹⁹*Ibid.*, 1:244, 247; Asnawī, *Ṭabaqāt*, 1:34–35.

¹⁰⁰Muzanī's position vis-à-vis Shāfi'ī's doctrine is well illustrated in an anecdote that, even if not genuine, also portrays Ibn Surayj's attitude towards Muzanī as Shāfi'ī's chief student. Ibn Surayj is reported to have said that "on the Day of Judgment Shāfi'ī will appear [before God] and Muzanī will follow on his heel. Shāfi'ī will say: O God, this man [Muzanī] has corrupted my sciences (*ʿulūmī*). Thereupon, I (Ibn Surayj) shall say to him: Go easy on Abū Ibrāhīm [al-Muzanī] for I have mended what he had adulterated." If this anecdote truly illustrates Ibn Surayj's view of Muzanī, it must be taken to refer to Muzanī's rationalist inclination on certain matters of *uṣūl*, not *furūʿ*, because we know that Ibn Surayj admired his works on positive law and, in fact, wrote in verse to extol them; see Subkī, *Ṭabaqāt*, 2:87, 92–93.

^{101c}Abbādī, *Ṭabaqāt*, 62.

¹⁰²See Makdisi, "Juridical Theology of Shāfi'i," 6–7.

¹⁰³Rāzī, *Ādāb al-Shāfi'i*, 231–37.

¹⁰⁴Ibid., 62, 63.

¹⁰⁵Bayhaqī, *Manāqib*, 1:368–84.

¹⁰⁶Ibid., 1:230–36.

¹⁰⁷Ibid., 1:368.

¹⁰⁸Rāzī, *Irshād*, 153–88, 189–268.

¹⁰⁹See n. 79.