

## *Uṣūl al-Fiqh* and Shāfiʿī's *Risāla* Revisited<sup>1</sup>

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### **Abstract**

In an article published in 1993,<sup>2</sup> I argued that Muḥammad Ibn Idrīs al-Shāfiʿī (d. 204/820) was not, as commonly thought, the architect of *uṣūl al-fiqh* and that this discipline emerged only after the main battles over what became the Sunnite sources of the law were won. I had dated the emergence of writings on *uṣūl al-fiqh* to the last part of the third/ninth century and the first half of the fourth/tenth, pointing to Ibn Surayj (d. 306/918) and his students as amongst the earliest exponents of this type of literature. The article contributed to the rise of a considerable controversy in the field, in which a number of critics reasserted earlier origins of the discipline. In this writing, I reply to some of these critics, while confirming the main conclusions of that article and expanding and refining its arguments. In light of new evidence, empirical and interpretive, I maintain that *uṣūl al-fiqh* proper arose slightly later than my initial estimate. I also provide an analytical description of this theoretical science and situate it within a periodizing schema that charts its development from its prehistory down to the present.

*Keywords:* *uṣūl al-fiqh*; Islamic Legal Theory; Shāfiʿī; Ibn Surayj; Sunnī Islam; historiography.

### **I – Introduction**

In an article published in 1993, I argued that Muḥammad Ibn Idrīs al-Shāfiʿī was not, as commonly thought, the architect of *uṣūl al-fiqh*. Having at the time spent nearly a decade and a half studying classical *uṣūl al-fiqh* works as well as Shāfiʿī's own writings, I was struck by the immense difference between the quality and structure of his *Risāla* and those that the later genre exhibited. In an attempt to explain this difference, I directed my attention to the legal history of the third/ninth century. What I found in the sources was something of a gap and much silence.

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1 I am indebted to Abed Awad, Omar Farahat, and Aseel Najib for closely reading the penultimate version of this article, and for offering excellent suggestions that helped improve it in a number of ways.

2 W. HALLAQ, "Was al-Shafi'i the Master Architect?" My base reference is to the Hijri calendar. I provide the Gregorian equivalent as accurately as possible when the date signals a precise event, such as the death of a jurist. But when I refer to periods or developmental phases, I round the Gregorian for obvious reasons, leaving the Hijri date to be the final standard.

This finding did not comport well with what was at the time the paradigmatic knowledge in the field, which was dominated by Schacht's writings (a domineering background perhaps too distant in the past for younger colleagues working now in the field to appreciate). On the first page of Schacht's influential *Origins of Muhammadan Jurisprudence*, he confidently asserted that Shāfi'ī carried "Muhammadan jurisprudence"—by which he meant legal theory as distinguished from "positive law"<sup>3</sup>—"to a degree of competence and mastery which had not been achieved before and was hardly equalled and never surpassed after him."<sup>4</sup> In the epilogue to the same work, he asserted that "Muhammadan jurisprudence," which reached its "apex" with Shāfi'ī, was to consolidate itself after him and then undergo "a long period of scholasticism." His conclusions, he argued, are "in harmony with the general trends of political and intellectual development" in Islam, which, sometime after Shāfi'ī, experienced stagnation and decline, where "scholasticism" set in (hence the modern-colonialist scholarly doctrine of the closure of the gate of *ijtihād*, which Schacht enthusiastically upheld).<sup>5</sup> A decade and a half later, the likewise influential Noel Coulson, without much expert knowledge on Islam's early legal history, described Shāfi'ī as the "Master Architect" and "father" of Islamic Jurisprudence.<sup>6</sup>

It was not only against the faulty perception of Shāfi'ī's thought as the "apex" of Islamic jurisprudence that I attempted to militate in that article, but also against the Orientalist paradigm of decline (now thankfully itself in irrecoverable decline). I argued then, as I continue to argue here, that *uṣūl al-fiqh* emerged only after the main battles over what became the Sunnite sources of the law were won. In that article, I dated the emergence of this discipline to the last part of the third/ninth century and the first half of the fourth/tenth, pointing to Ibn Surayj and his students as amongst the earliest and most important exponents of this type of literature. I argued then and emphasize now that the history and prehistory<sup>7</sup> of *uṣūl al-fiqh* is perhaps the best marker we have for the rise of Sunnism as a religious, intellectual, and political phenomenon.

The article contributed to the rise of a considerable controversy in the field, with critics reasserting earlier origins of the discipline. In this writing, I reply to these critics in section IV, while confirming the main conclusions of that article and expanding and refining its arguments. Before I do so, however, I frame the current controversy within the trajectory in which the discipline of *uṣūl al-fiqh* emerged as a field on its own. In light of new evidence, empirical and interpretive, I maintain that *uṣūl al-fiqh* proper arose slightly later than my

3 See the distinction he makes in the *Origins of Muhammadan Jurisprudence*, 329.

4 Ibid., 1. On p. 287, he repeats this assertion with some paraphrase.

5 SCHACHT, *Introduction*, 69-75.

6 COULSON, *History*, 53, 60-61.

7 In my usage, prehistory means the forces that shape the preconditions which give rise to a historical epoch or phenomenon, such as the confluence of the Germanic tribal cultures, the legacies of the Roman Empire, and burgeoning but early forms of Christianity, which altogether constituted the prehistory of the Christianity of the Catholic church during the centuries preceding the Enlightenment. Thus, in the vast literature about secularization of Christian forms in modernity (as formulated, for instance, by Carl SCHMITT, Alasdair MACINTYRE, Talal ASAD, et al.), it is this Christianity that is the focus of analytical gaze, not its prehistory. In my usage, prehistory is that which contributes to the making of a phenomenon without remaining an identifiable part of that phenomenon.

initial estimate, when it emerged as a *self-conscious discipline and a self-standing genre*, together with three other conditions of possibility. Thus, in the next section I begin by providing an analytical description of this theoretical science and situate it, in section III, within a periodizing schema that charts the prehistory and history of the discipline down to the the present. The analytical description, it will become evident, is instrumental to the very act of dating the rise of the discipline.

The present article, however, is not just about a critical deployment of source criticism or offering an alternative narrative of historical reconstruction. Rather, it is framed by much larger philosophical concerns that instigate a host of questions about the reason or reasons as to why we are engaged in this debate in the first place. If the discourse of this debate constitutes legal and intellectual history, which it does, then what kind of history is it that we ought to engage in? Why is it important to date the rise of *uṣūl al-fiqh* and to establish relations, or lack thereof, between this discipline and such works as the *Risāla*? Is this historiographical exercise self-justificatory, whose telos is knowledge for the sake of knowledge? What is in it for us? What is in it for the societies that we, as academics, are installed to serve? How is it important beyond registering published items on one's *curriculum vitae*? In what way does it conduce to improving the human condition, beyond career promotions in academia? So what if Shāfiʿī was or was not the founder of the discipline?

I contend that academia in general, and especially the field of Islamic studies in particular, has so far lacked the necessary clarity in articulating an intellectual mission commensurate with the exigencies demanded by the developments of late modernity. In *Restating Orientalism*, I argued that the intellectual paradigm of modern academia and the forms of knowledge it produces have been complicit in—indeed effectively conducive to—much of the problems that the modern condition has generated. The problems' register runs long, stretching from the destruction of the environment to the disintegration of the community and fragmentation of the individual, not to mention the epistemically structural entanglement with violence and genocide.<sup>8</sup> Thus, to ask what kind of history we should write is literally vital for the sustainability of the academic project, one that now stands, as an integral part of modernity, in crisis. The writing of history as we know it is perforce modern, which is to say that it stems from and is framed and defined by the modern imperatives and forms of knowledge. The choices we have are exceedingly few: we either do history as usual and continue to stand complicit in the destructiveness of the current forms of knowledge, or read history heuristically, with a view to discerning paths in a new epistemology and ethics that impede and even reverse the current course.

With this in mind, we might well ask why is it worth our while to study and date *uṣūl al-fiqh*'s rise as a legal and philosophical genre? No one closely familiar with the field of Islamic legal Orientalism can miss the genealogy of the narrative-structure that shaped the form and content of this field. When Schacht argued that Shāfiʿī represented the pinnacle of Islamic legal thought, he was engaging in a robust version of a paradigm of decline that allowed only for “scholasticism” and stagnation, where “Islamic law” lost touch with “society and state.”<sup>9</sup> His vision was merely an articulation of a scholarly discourse that

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8 For a summary of this register, see my *Restating Orientalism*, 232-34.

9 HALLAQ, “Model *Shurūṭ* Works,” 109-112.

went back to the mid-nineteenth century. Coupled with his famous major thesis about early Islamic “borrowings” from “foreign” legal systems, the relatively rapid rise of Islamic law could be explained only as a result of appropriating ready-made foreign legal systems, which he thought the early Muslims merely clothed with an Islamic veneer. In one of his later writings—which happened to be on modern “reform”—he argued that “Islamic law is to a great extent not originally Islamic,” and that modern Muslims should adopt European laws as they had done during the earliest phase of their history; all they have to do in order to make this project of massive legal transplantation palatable and legitimate is to “impose on it,” once again, “categories of Islamic jurisprudence,” an Islamic veneer.<sup>10</sup> Thus his vast writings on Shāfi‘ī’s “accomplishment” is integral to a structuring discourse that—consciously or otherwise—justified and rationalized the colonialist project in Islamic lands. As we have seen, the recent scholarship, even when it insists on Shāfi‘ī’s “founding” moment, now acknowledges that much had to be done and “accomplished” before *uṣūl al-fiqh* proper took root. Although Schacht’s thesis of decline no longer holds sway in recent scholarship, the overarching narrative of the field continues to retain strong residues even in the most recent scholarship. Thus, a first task in writing this kind of history is to subvert the truth of power, including the shaking off of this narrative structure. In its conventional sense, colonialism is obviously not the only representation of the truth of modern power.<sup>11</sup>

Yet, we can identify even a more significant reason for rewriting this kind of history, one that reconstitutes the rationale for historiography. The history of *uṣūl al-fiqh* captures Islam’s long struggle with the place of ethics in human life. It is through this discipline that Islam defined itself as a juridified, virtue-grounded paradigm (with *ṣūfism* being another central paradigm, or, one might say, co-paradigm). I say “long struggle” because the structured and structuring hermeneutics of this discipline only started in a rather embryonic form during the second/eighth century and the beginning of the third/ninth; and it took two more centuries for this struggle to come to fruition. The *uṣūl* history of this period is therefore not just a legal history—which, in the narrative I am proposing a distinctly secondary by-product—but rather a trajectory of an ethical formation that defined the moral law as a way of seeing and living in the world.

To understand the intellectual elements and contestations that went into making this two-centuries’ formation is to unravel how another culture strove, through massive internal debate and intellectual ferment, to formulate a conception of juridified practice and ethical *praxis* through and by which to live life.<sup>12</sup> In this narrative, how do we ethically represent (i.e., as a problem of moral philosophy) the tenacity of what we reductively call the “scripturalist thesis,” that which insisted on adopting an ontology governed by fixed high-order principles? What are the hermeneutical boundaries that define the scope of authority in the conception of what I have called the Great Synthesis? What are the relationships between authority and ethics, on the one hand, and authority and power, on the other? How do we redefine extra-modern power in light of the history we have at hand? How does or must cosmology inform ethics and law? What do Shar‘ī- and Ṣūfī-minded cosmologies

<sup>10</sup> SCHACHT, “Problems,” 99-129, esp. at 99-100.

<sup>11</sup> On the truth of power, re-writing History, and authorial subversion, see my *Restating Orientalism*.

<sup>12</sup> On the meaning of *praxis* as distinguished from forms of practice, see HALLAQ, *Reforming Modernity*.

consist of, and how do they play out in placing limits on human power, be it systemic or arbitrary? All these questions and many more can be meaningfully informed through a penetrating study of *uṣūl al-fiqh*, especially during the fourth/tenth century and the three decades or so that preceded and succeeded it. If *uṣūl al-fiqh* is to be more than a lifeless and arcane academic exercise, it must be brought to bear upon the fundamental ethical and epistemological problems with which late modernity is grappling.

Perhaps we should start from the beginning and interrogate the very nature of this discipline.

## II – What is *Uṣūl al-Fiqh*?

In the general discourse of our field, and especially in the scholarship making up this debate, the descriptor “*uṣūl al-fiqh*” is taken to apply, nearly indiscriminately, to any period, starting from the early third/ninth century. The descriptor comes to be interchangeably used with “legal theory,” “legal methodology,” and the like. I argue here that the confusion in the application of the compound expression “*uṣūl al-fiqh*” is largely indicative of another problem, one that is related not only to a misplaced use of this descriptor but mainly to a vague, even confused, understanding of what *uṣūl al-fiqh* itself is.

It is my argument then that *uṣūl al-fiqh* is a well-defined concept that cannot be liberally used to refer to earlier writings on aspects of the discipline, at least not without precise and numerous qualifications. To engage the descriptors of “legal theory” or “legal methodology” does not necessarily mean an engagement with *uṣūl al-fiqh*. Writing on *qiyās* or *taqlīd*, for instance, is an exercise in theoretical reflection on these themes, but it does not render this exercise an accurate expression of *writing* *uṣūl al-fiqh*. Writing on *qiyās* or *taqlīd* from a refutative and highly polemical point of view (as in the cases of Dāwūd al-Zāhirī [d. 269/883], his son Muḥammad [d. 297/910], and al-Qāḍī al-Nuʿmān [d. 363/974])<sup>13</sup> is even less so. In the repertoire I am trying to articulate, “legal theory” and “legal methodology” are generic expressions that may apply to fields of theoretical inquiry much larger, or much narrower, than *uṣūl al-fiqh*.

There are at least five conditions of possibility that must be met for a legal-theoretical exposition to qualify as *uṣūl al-fiqh*. Which is to say that the five components are the *necessary* conditions that ontologically make possible *the sufficient* condition that gives rise to this well-formed discipline. Which is also to say that all five must be present in order for the outcome to be ontologically possible *in its complete form*. The absence of one or more of these conditions in a work does not mean that the work would not generally qualify as an *uṣūl al-fiqh* treatise, but it does mean that the absence must alert us to aspects of incompleteness or a “lag” that is crucial to understanding or valuating that treatise and the theoretical trajectory in which it falls. It is only when the five conditions have been met that we can say that the work *fully* belongs in the genre.

The five conditions are as follows:

13 See STEWART, “Muḥammad b. Dāʿūd al-Zāhirī,” 99-58; ID., “Muḥammad b. Jarīr al-Ṭabarī,” 321-49.

**Condition 1: *Uṣūl al-fiqh* requires four paradigmatic sources that stand vis-à-vis each other within a particular set of logical and hermeneutical relations.**

All jurists and ulama of the post-formative period as well as modern scholars agree that the Qurʾān, Sunna, *ijmāʿ*, and *qiyās* are the quintessential sources of the *fiqh* and all derivatives thereof,<sup>14</sup> irrespective of how different these sources are from each other.<sup>15</sup> A treatise claiming to be an *uṣūl al-fiqh* work would only partially—if at all—qualify for the designation if it acknowledges other sources as paradigmatic or if it omits one of the four. And in light of the remaining necessary conditions, the chances of being considered as such a work would further diminish with the increasing non-conformity to the other conditions. This disqualification is not only because of the absence of a source *qua* source—however serious this in itself is—but also because the omission or rejection of a single source has attendant hermeneutical consequences, for every source generated its own hermeneutical and logical repertoire and, *at once*, engaged its own repertoire with all the other sources and their concomitant hermeneutical repertoires. This is another way of saying that the hermeneutical principles generated by one source stood in a dialectical *and* interdependent relationship with the others, whatever they were and however they were *hermeneutically* elaborated.

By the early fifth/eleventh century, it had become a matter of routine to mention that “*uṣūl al-fiqh* are four.”<sup>16</sup> However, this was not the case even in the preceding century, and *a fortiori* less so in the one before it. If we go by Lowry’s persuasive argument, Shāfiʿī did not uphold a theory of four sources.<sup>17</sup> Ibn Surayj’s treatise yields no enumeration of the sources as they became later routinely, but paradigmatically, defined. Ibn Surayj almost certainly upheld the authority of the four sources, but the fact that they do not appear in an explicit order is significant.<sup>18</sup> Nor does Ibn Dāwūd’s work, “reconstructed” by Stewart—a work which in any case disputed the very sources that became paradigmatic.<sup>19</sup> The earliest conscious enumeration of sources I know of comes from Abū l-ʿAbbās Ibn al-Qāṣṣ (d. 335), who was active as a mature scholar after Ibn Surayj died. Samʿānī reports that “Ibn al-Qāṣṣ said: ‘the *uṣūl* are seven: sensory perception, the intellect, the Book, the Sunna, consensus, *ʿibra*, and language’.” It is of particular interest here that Samʿānī felt compelled to correct Ibn al-Qāṣṣ immediately after rehearsing this enumeration, and did not take it for granted that the list was outlandish or irretrievably obsolete. He promptly responded by stating that

14 See Ibn Khaldūn’s bird’s-eye view, accurately reflecting *uṣūl al-fiqh*’s consensus on the four sources: “*Wa-ttafaqa jumhūr al-ʿulamāʾ ʿalā anna hādhihi hiya uṣūl al-adilla, wa-ʿin khālafa baʿduhum fī l-ijmāʿ wa-l-qiyās, illā annahu shudhūdih.*” *Muqaddima*, 359.

15 A typology of the very concept of sources or roots (*uṣūl*) is yet to be elaborated, since the qualitative differences between and among the first two substantive sources, on the one hand, and *ijmāʿ* and *qiyās*, on the other, are, in analytical terms, profoundly significant (this includes differences between the latter two as well).

16 Even in an early fifth/eleventh century theological work, the four sources are recounted as a matter of course, almost in a formulaic fashion. See Baghdādī, *Uṣūl al-Dīn*, 12: “*Al-Aḥkām al-Sharʿiyya maʾkhūdhā min arbaʿat uṣūl wa-hiya al-Kitāb wa-l-Sunna wa-l-ijmāʿ wa-l-qiyās.*”

17 LOWRY, “Does Shāfiʿī have a Theory of Four Sources?”

18 Ibn Surayj, *Wadāʿiʿ*, 516-20.

19 STEWART, “Muḥammad b. Dāʿūd al-Zāhirī,” 99-58; ID., “Muḥammad b. Jarīr al-Ṭabarī,” 321-49.

the “correct [position] is that the sources are four.”<sup>20</sup> It is also of profound interest that the later *uṣūlīs* did not, as a rule, mention Ibn al-Qāṣṣ’s enumeration, due, in my opinion, to the fact of its exceedingly antiquated nature.

Even a few decades later, we find al-Qāḍī al-Nuʿmān quite scattered in his enumeration of the sources, that is, if what he was writing can count as enumeration. In chapter two, tellingly titled “Summing Up the Opinions of Those Who Disagree on the Rules of Religion,”<sup>21</sup> he states that the Sunnites (*al-ʿamma*) are in total agreement (*ajmaʿū*) about the primacy of the Qurʾān as a source of legal norms, followed by the Sunna of the Prophet when the Qurʾān “is supposedly” silent on that norm. The consensus on sources stops here. At this point, al-Nuʿmān distinguishes between and among groups, which he does not name. He says that “many of them” hold the position that if answers are not provided in these two sources, then they seek both the opinions *and consensus* of the Companions (*qālū bi-hi wa-ajmaʿū ʿalayh*). If the Companions disagree on the matter, then they choose the position of one of them (*takhayyarnā qawla man shiʿnā minhum*). Another Sunni group or groups took the position that if the two primary sources are silent, then they resort to the consensus of the scholars, a stance that al-Nuʿmān finds so objectionable that he segregates it for a special rebuttal. The Sunnites, he continues, further disagree on what source are authoritative in the event that neither the two primary sources nor scholarly consensus supply answers. Some held the position that in such a case they follow (*taqlīd*) their ancestors’ and obey (*tāʿa*) their masters and nobility (*sādātihim wa-kubarāʾihim*). Others rejected *taqlīd* and advocated a variety of methods: thus, some took up *qiyās*, while some espoused *raʾy* and *ijtihād*, and yet others advocated *istiḥsān* or *nazar* or *istidlāl*.<sup>22</sup> Note that the scene al-Nuʿmān is describing is quite fluid, if not noticeably chaotic. The only fixed sources that everyone agreed on by his time were the Qurʾān and the Sunna. Consensus and *qiyās* continued to have many challengers, *from within “Sunnism” itself*, let alone from without.

If we accept El Shamsy’s dating of Khaffāf’s writings,<sup>23</sup> then this jurist must have been a contemporary of al-Qāḍī al-Nuʿmān. Assuming this to be true, the sources al-Khaffāf identifies seem incomplete, lacking sequence and structure. After two prefatory paragraphs, he introduces the heading “Clarification Regarding the Knowledge as to How to Reach the Permissible and Impermissible [norms].”<sup>24</sup> This is clearly a foundational “clarification” since it amounts to what later jurists designated as “The Methods by which Legal Norms are Reached” (*al-uṣūl a-latī tuʾkhadh minhā al-aḥkām*).<sup>25</sup> It is *the* place, the *locus classicus*,

20 Samʿānī, *Qawāʿīʿ al-Adilla*, I, 22: “*qāla Abū l-ʿAbbās Ibn al-Qāṣṣ, al-uṣūl sabʿa, al-ḥiss, wa-l-ʿaql, wa-l-kitāb, wa-l-sunna, wa-l-ijmāʿ, wa-l-ibra, wa-l-luḡha. Wa-l-ṣaḥīḥ anna al-uṣūl arbaʿa.*” The term *ibra* must be a prototype of *qiyās* or some similar form of inference, a term that did not survive in the later sources. It is likely that it is inspired by the Qurʾānic verse 59:2: “*fa-ṭabirū yā ʿulī al-abṣār*”; but also by Q. 3:13, 24:44, and 79:26.

21 Al-Nuʿmān, *Ikhtilāf*, 16: “*Dhikr jumlat qawl al-mukhtalifin fi aḥkām al-dīn.*”

22 *Ibid.*, 16-17.

23 EL SHAMSY, “Bridging the Gap,” 505.

24 Khaffāf, *Aqsām*, 522, par. 3: “*Al-bayān ʿan maʿrifati idrāki al-ḥalāl wa-l-ḥarām.*” On the connotations of “*idrāk*,” see Fayrūzabādī, *Qāmūs*, 938.

25 As captured from a bird’s eye view by Ibn Khaldūn, *Muqaddima*, 359. See also Usmundī, *Badhl al-Nazar*, 8: “*Kalāmunā fi ṭuruq al-fiqh innamā yusammā kalāman fi uṣūl al-fiqh.*”

where the *uṣūl* are listed and ranked. Khaffāf writes that the ways to arrive at these norms (*yudrak*, *idrāk*) are two, the intellect and revelation (*‘aql* and *sam’*). The intellect comprehends things in three ways: necessary, prohibited, and possible/permissible (*wājib*, *mumtani’*, *mujawwaz*). Revelation, however, is “divided into four parts, the Book, the Sunna, the *umma*’s consensus, or an indicant (*dalīl*) from [one of these].”<sup>26</sup> *Qiyās* makes no appearance here. Only much later, in par. 10, he offers a rudimentary and laconic definition of *qiyās*, which, in par. 20, he equates with *ijtihād*, the subject of this paragraph. This is Shāfi’ī’s position on this pair—taking them to be interchangeable, but with the crucial difference that Khaffāf was writing nearly a century and a half *after* Shāfi’ī!<sup>27</sup> In par. 16, Khaffāf finds it relevant to mention, on the authority of Ismā‘īl b. Yaḥyā al-Muzanī (d. 264/878), that Shāfi’ī thought that the “totality” of the subjects on which Muslims disagreed (*ikhtalaḥa al-nās fīhi*) are seven, the last of which consisted of the trio “*istiḥsān*, *ijtihād*, and *tathbūt al-qiyās*.” I take *tathbūt* to refer to what later *uṣūlīs* called *hujjiyya*, the justification of this method as an authoritative *aṣl* on the basis of the Qur’ān or the Sunna, or both. It is remarkable that Khaffāf still finds Shāfi’ī’s statement so relevant that he felt compelled to cite it in an otherwise compact work. A complete and, much less, coherent list of sources is nowhere to be found in this work.

Compare all this with an *uṣūl* work that appeared during the first three decades of the fifth century. Abū l-Ḥusayn al-Baṣrī (d. 436/1044), as I will show in some detail momentarily, not only recognizes this list of four sources as undisputed, normative, and altogether an integral group, but he also offers a rationalization for the *structured order* of subjects into which the four sources branch.<sup>28</sup>

**Condition 2: *Uṣūl al-fiqh* is a structured order of subject matter, dictated by a particular logical and ontological ranking and categorization.**

As we will see in section IV, prototypical works of legal theory have no particular order of subject matter. Ṭabarī’s *Bayān*<sup>29</sup> orders its materials as follows: (1) consensus; (2) solitary traditions; (3) traditions reaching the prophet; (4) abrogation; (5) ambiguous and specified traditions; (6) commands and prohibitions; (7) acts of the Messenger; (8) particular and general language; (9) *ijtihād*; and (10) invalidity of *istiḥsān*. This sequence seems to be very similar to the order followed by Ibn Dāwūd.<sup>30</sup> Notable here is the deployment of consensus *before* the discussion of legal language;<sup>31</sup> and this latter is allocated space *after* abrogation and traditions, when it should have appeared before any item on the list. Yet, we have no evidence that there was a trend, during the last decades of the third/ninth century or the first half of the subsequent one, that rendered normative

26 EL SHAMSY, “Bridging the Gap,” 523, par. 4.

27 Shāfi’ī, *Risāla*, 205.

28 Baṣrī, *Mu’tamad*, 13-14.

29 As reconstructed by STEWART, “Ibn Jarīr al-Ṭabarī,” 333, 335. Ṭabarī died in 310/923.

30 Ibid., 333-34.

31 Ṭabarī may have adopted a Mu’tazilite stand which prioritized consensus by virtue of its being a precondition for the validity of revealed language for the generations that were temporally removed from the revelatory miracle. I owe this insight to Omar Farahat.



any particular order. In fact, the concept of a self-conscious, structured order had not yet come into existence by this time.

As late as the fourth quarter of the fourth/tenth century, a structuring order of subject matter had not yet even become normative. Written in this period,<sup>32</sup> Ibn al-Qaṣṣār's work does not seem to follow any tradition of ordered writing, for instance. In the absence of any rationalization by its author, one may be tempted to say that the work is somewhat disorderly and lacking systematicity and streamlining.<sup>33</sup> After two brief introductory chapters noting the diverse nature of human reasoning and the necessity of intellectual reflection, he deals with topics in the following sequence: (1) *taqlīd*; (2) *ijtihād*; (3) [return to] *taqlīd*; (4) the Qur'ān; (5) the Sunna; (6) *ijmā'*; (7) *istidlāl* and *qiyās*; (8) general and particular language; (9) commands and prohibitions; (10) traditions/reports; (11) *dalīl al-khiṭāb*; (12) particularizing general language; (13) [return to] traditions/reports; (14) [return to] general language (*umūm*), commands and prohibitions; (15) abrogation; (16) *istiṣhāb al-hāl*; (17) [return to] consensus; and finally (18) causation (*ta'līl*). Note here the stark fact that the work effectively begins with *taqlīd*, when the normative placement of this topic—in slightly later and in post-classical *uṣūl al-fiqh* works—is at the end or near the end of works. And so is *ijtihād*, the second in the sequence. Note also the appearance of *ijmā'*, *qiyās*, and *istidlāl* before the chapters on language. Most striking, furthermore, is the relative lack of systematic treatment, whereby a subject is not expounded fully and completely before moving on to another. In this work, *taqlīd*, consensus, traditions/reports, and general and particular language, among others, command attention in more than place.

At the same time Ibn al-Qaṣṣār was writing, and possibly slightly later, Abū Bakr al-Bāqillānī (d. 403/1012) dedicated a chapter in his *al-Taqrīb wa-l-Irshād* that exhibits, in all likelihood, an unprecedented self-consciousness of a structured ordering of subject matter. The chapter title is manifestly telling: “Discourse on Delimiting *Uṣūl al-fiqh*, Ordering it, and [laying out] First Things First.”<sup>34</sup> “Delimiting” (*ḥaṣr*) clearly means that *uṣūl al-fiqh* is a finite set of principles,<sup>35</sup> that is, a bounded theory whose telos, as Sarakhsī explicitly states, is to provide solutions to an undetermined and infinite quantity of *masā'il/nawāzil/ḥawādith*, new legal questions or “cases.”<sup>36</sup> He begins by listing first (*awwaluhā*) the

32 The editor of Ibn Qaṣṣār's *Muqaddima*, 80, convincingly argues that the work was written after 375/985.

33 By every indication, *al-Ishāra fī Uṣūl al-Fiqh*, a work mistakenly attributed to Abū al-Walīd al-Bājī, is nearly identical to Ibn al-Qaṣṣār's work. In fact, it appears to be the same work, almost to the letter. Both internal and external evidence show that this work is Ibn al-Qaṣṣār's, not Bājī's. On p. 274, Ibn al-Qaṣṣār refers to his teacher Abū Bakr b. 'Abd Allāh al-Abharī as “my professor” (*shaykhunā*), for al-Abharī was indeed his actual teacher. In the *Ishāra*, the same language is used but Bājī never studied with the man, since the latter died before Bājī was born. In *Ihkām al-Fuṣūl*, Bājī refers to Abharī as “al-shaykh,” not as “shaykhunā.” See his *al-Ihkām al-Fuṣūl fī Ahkām al-Uṣūl*, 198. In addition, the work seems to be alien to al-Bājī's *Ihkām*, this latter being a sophisticated and finely elaborate work that could not have been written by the same author who wrote the *Ishāra*, a comparatively basic work. For a detailed discussion about the authentic attribution of the *Muqaddima* to Ibn al-Qaṣṣār, see the editor's introduction to the work, pp. 37, 58, 68, 74-76.

34 Bāqillānī, *Taqrīb*, I, 310: “*Al-qawl fī ḥaṣr uṣūl al-fiqh wa-tarṭībihā wa-taqdīm al-awwal fa-l-awwal minhā.*”

35 The first line of the chapter declares: “*ʾIlamū anna uṣūl al-fiqh maḥṣūra.*” *Taqrīb*, I, 310.

36 Sarakhsī, *Uṣūl*, 10: “*Al-uṣūl ma'dūda wa-l-ḥawādith mamdūda.*”

Qur'ān and the Sunna, followed by (*thānīhā*) discourse on the legal norms of the Prophet's actions (*ḥukm af'āl Rasūl Allāh*) that clarify ambiguous texts in the Book and the Sunna. This comes second, he says, *because* if these norms clarify the revealed texts, then they in effect count as "texts" (*ṣārat bi-manzilat al-khiṭāb*). Third, discourse on traditions and their modes of transmission and typological divisions. Fourth, solitary traditions and the rules governing them. Fifth, consensus. Sixth, *qiyās*. Seventh, qualifications and conditions relative to *mufṭīs* and *mustafṭīs*, as well as *taqlīd*. Bāqillānī notes that scholars at times lump the discussion of the latter three topics in one chapter, while others allocate to them separate chapters. Eighth, the original status of prohibition and permissibility (*al-ḥaẓr wa-l-ibāḥa*), if it is believed that they are *shar'ī* propositions, not *'aqlī*. Bāqillānī states that those who hold them to be rational propositions do not include such discussions in *uṣūl al-fiqh*, "but the truth of the matter is that they should be included." Furthermore, there are several topics connected with this heading, but they are not necessarily an integral part of it (*tattaṣil bihā wa-laysat minhā*). The topics are commands, prohibitions, the particular and the general, abrogation, clear and ambiguous texts, specified and unspecified speech, linguistic syllogisms, etc.<sup>37</sup>

At this point, Bāqillānī poses to explain why this specific order is "necessary" (*wājib*). It is curious, if not quite telling, that he felt compelled to stress the "necessity" of advancing the discussion of the two primary texts over "all other subjects." This could not be taken for granted. The necessity, he explains, is justified by the fact that "all legal norms are deposited (*mūda'ā*) in the Book and the Sunna, either explicitly, inferentially,<sup>38</sup> or due to a meaning embedded in them."<sup>39</sup> Within these, the Book must be advanced over the Sunna, because it is God's speech, and due, among other things, to its being the proof of the Messenger's prophethood and the authority on the grounds of which the Prophet's Sunna should be followed. Consensus comes next because it is grounded in the two primary sources. Against a partisan interlocutor who questions this order (*tartīb*) on the grounds that "you" (probably the Sunnites) "allow consensus of the *umma* to supersede the apparent meaning of the Book and the Sunna, but you do not abandon consensus due to the dictates of the two [sources]" Bāqillānī replies that "we" do not do so on *these* grounds, but rather on the grounds of other superior indicants from within the Book and the Sunna.<sup>40</sup>

Finally, *qiyās* is deferred to a subsequent stage because its authority is proven by the first three sources, and thus no conclusion derived from it can override what the texts clearly command. And it is proficiency in *qiyās* that justifies the inclusion of discussion of the *mufṭī*, whose competence is judged in relation to this inferential method; which in turn presupposes a mastery of preceding subject matter that Bāqillānī has already enumerated. And since the *mufṭī*'s *fatwā* stands for the "commoner"-questioner (*'āmmiyy*) in the place of

37 Bāqillānī, *Taqrīb*, I, 311. Under the category I have labelled "linguistic syllogisms," Bāqillānī includes *laḥn al-khiṭāb*, *mafhūm al-khiṭāb*, and *fahwā al-khiṭāb*. On these as they relate to analogy as a logical category, see HALLAQ, "Non-Analogical Arguments," 286-306.

38 "Inferentially" here refers to the linguistic syllogisms of *mafhūm al-khiṭāb* and *fahwā al-khiṭāb*. See previous note.

39 The "embedded meaning" refers to *qiyās*. Bāqillānī, *Taqrīb*, I, 312.

40 *Ibid.*, 314.

authoritative, clear texts and agreed-upon norms (*bi-mathābat al-nuṣūṣ wa-l-ijmāʿāt*), then a discussion of the *mustaftī* is also necessary at *this* stage.<sup>41</sup>

We cannot take the emergence of this discourse about order for granted. We must at least ask why it came about in the first place. I argue that at this stage of *uṣūl al-fiqh* development (i.e. during Bāqillānī's productive intellectual life), two main factors, standing in a dialectical relationship to each other, were the chief causes for the emergence of this discourse.

First, by insisting on what is to us the most obvious—namely, that the Qurʾān and Sunna come first—and by *explaining why they are first and why* consensus and *qiyās* (and hence *taqlīd*) should follow in that respective order, Bāqillānī was addressing such authors who placed the subject matter differently, advancing consensus (and at times *taqlīd*) over all else (e.g., Ṭabarī, Ibn Dāwūd, Ibn al-Qaṣṣār, et al.),<sup>42</sup> or mixing the subject matter without a clear sense of structured order (e.g., Ibn al-Qaṣṣār). In the case of consensus and *qiyās*, he was also addressing the “deniers,” those who rejected one or the other, or both.

Second, Bāqillānī—with a hawk's eye on an entire, preceding century of *uṣūl* debate, controversy, and exposition—was able to stand back, watch, and proceed to describe, in a self-conscious and systematic manner, what that century has accomplished—and in a sense also to schematically describe the winners and losers in the battles over juridical sources and hermeneutical methods. In other words, the discourse about order is a discourse about a synthesis of debates and intellectual labor that expressed the conclusions of a religio-political conflict and accommodation, but a conflict that ultimately resulted in exclusions and polar identity formations.<sup>43</sup> The chief identities, interrelated to the core, are manifestations of the synthesis of reason-revelation and its political consequence, the Sunnite-Shiʿite division. The rationalists, including the Muʿtazilites,<sup>44</sup> and the traditionalists, including the Ḥanbalites, had to tweak their doctrines and legal narratives, thereby accommodating this synthesis by the very act of their active, but adaptive, participation; hence the profound doctrinal changes that occurred in both the Muʿtazilite camp and especially the Ḥanbalite school over the following centuries.<sup>45</sup> And it was an integral part of this accommodation that the Ḥanafite school jettisoned *raʾy* and reworked its method of *istiḥsān*, among other things. Bāqillānī's chapter on structured order is therefore the “genetic code” that maturely captures the schematic characteristics of the religious-legal-political history during the two centuries preceding him.

Two or three decades after Bāqillānī, the Muʿtazilite Abū l-Ḥusayn al-Baṣrī also deployed a chapter titled “The Ordering of the Chapters of *Uṣūl al-Fiqh*.” But his justification and rationalization of this “ordering” was different from Bāqillānī's approach,

41 Ibid., 314-15.

42 See my critique of STEWART in section IV, below.

43 This is captured by Ghazālī's pithy statement about the structural interdependency between order (*tartīb*) and analytical exposition of subject matter (*taḥqīq*), see Ghazālī, *Mustaṣfā*, I, 4: “*Wa-jamaʿtu fihī [i.e., al-Mustaṣfā] bayn al-tartīb wa-l-taḥqīq li-fahm al-maʿānī, fa-lā mandūḥa li-aḥādhimā ʿan al-thānī.*” See also my discussion in *Origins*, 122-28.

44 With a caveat, as argued in n. 68, below.

45 On the Ḥanbalite accommodation, see HALLAQ, “Considerations,” 683-84.

emphasizing the priority of language and its semiotic implications. After a fairly lengthy explanation as to how each linguistic part connects with or leads to the others, he explained that the discussion of the actions of the Prophet precede abrogation, because the latter presupposes the former. He then offered a justification as to why consensus must come after abrogation, followed by a variety of subjects, including *qiyās*, the *muftī*, and the *mustaftī*.<sup>46</sup> The point I am trying to make here is that *tartīb* may vary from author to author to some (limited) extent, but a consciousness of the need for structured and rationalized ordering becomes normative by the first half of the eleventh century.<sup>47</sup> Ibn ‘Aqīl (d. 513/1119), writing a century or so after Bāqillānī, nearly replicates the latter’s ideas on the matter, at times verbatim.<sup>48</sup> By then, the structured ordering of *uṣūl al-fiqh* subject matter becomes a matter of course.<sup>49</sup>

Two caveats are in order here. First, I have argued that a structured order of *uṣūl* subject matter had not become normative by the last part of the fourth/tenth century. Yet, the beginnings of structured ordering seem to *begin* at this period, as evident in Bāqillānī’s *Taqrīb* which deploys, as we saw, an impressive chapter on the subject. Hailing from a sophisticated intellectual background that involved deep learning in a variety of sciences, Bāqillānī—though Mālikite like his contemporary Ibn al-Qaṣṣār—stood head and shoulders above his colleague, exhibiting fierce systematicity and superior modes of reasoning. My argument is then this: that there is no contradiction in a picture or a historiographical narrative that includes both Ibn al-Qaṣṣār’s and Bāqillānī’s works. Ibn al-Qaṣṣār represents the last breath of an era, while Bāqillānī represents a fresh and more developed stage of intellectual exploration of the discipline. It is therefore eminently arguable that in periodizing the history of *uṣūl al-fiqh*, we must acknowledge what might be called “Developmental Overlap,” a period in which a shift occurs without it becoming immediately normative or paradigmatic. Developmental Overlap characterizes all periods of transition, I argue, by definition as well as perforce. Yet, what is important for us here is not so much the end of the period of a Developmental Overlap as its beginning. When we observe a new development within the range of the Overlap—especially one that reasserts itself subsequently—we can say that a new period or stage in the history of *uṣūl al-fiqh* is underway.

Second, to speak of order, however well structured, is not the same as speaking of structure. *Uṣūl al-fiqh* was both a structured order *and* a structure of ideas and concepts. I will attend to the meaning and implications of structure in my concluding part.

**Condition 3: *Uṣūl al-fiqh* defines itself against other disciplines as a legal methodology whose most essential preoccupation is the articulation of *al-adilla al-ijmāliyya*.**

A classical definition of *uṣūl al-fiqh*, however varied its modes of expression may be, is that it is a field of knowledge whose preoccupation is the study of the general, higher-order, or universal indicants (*adillat al-aḥkām min ḥaythu al-jumla*), a feature that distinguishes it

<sup>46</sup> Baṣrī, *Mu‘tamad*, I, 13-14.

<sup>47</sup> See, for instance, Shīrāzī, *Sharḥ al-Luma‘*, I, 162-63; Juwaynī, *Talkhīs*, 173-74.

<sup>48</sup> Ibn ‘Aqīl, *Wāḍiḥ*, I, 145-49.

<sup>49</sup> See, for instance, Rāzī, *al-Maḥṣūl*, I, 51-53.

from the study of *fiqh*. This latter is the study of the specific indicants from which particular, individual legal norms are derived (*min haythu al-tafṣīl*).<sup>50</sup> This, of course, does not mean that the functional telos of the two fields is different, for in order to derive legal norms from indicants, the jurist must be proficient in the methodology governing the higher principles—at least those relevant to the specific case with which he is dealing. What the definitional distinction aims to clarify is that as genres, or as fields of study, they specialize in two different things. The distinction, one might say, is a formal one, not in the sense that *substantively* they are similar—they are clearly not—but rather in the sense that it is difficult to decide, in terms of *application and functionality*, where *uṣūl al-fiqh* ends and where *fiqh* begins.<sup>51</sup>

Bāqillānī explicitly states that “it is impossible to study the *fiqh* indicants without these [*uṣūl al-fiqh*] sciences.”<sup>52</sup> While *uṣūl al-fiqh* is the study and elaboration of the governing higher-order principles of legal derivation, the *fiqh* is the specific application of a particular *uṣūl* principle or principles to a *masʿala*.<sup>53</sup> Thus, the lines of distinction are indeed thin, leading some *uṣūlīs* to define their discipline as that whose “original aim” (*gharad aṣlī*) is the “derivation of legal norms.”<sup>54</sup> Others, like Bāqillānī, defined *uṣūl al-fiqh* as the group of sciences (*ʿulūm*) that are the foundations of the knowledge of legal norms,<sup>55</sup> while Juwaynī (d. 478/1085) simply stated that *uṣūl al-fiqh* “are the indicants of *fiqh*” (*adillat al-fiqh*).<sup>56</sup> Bājī (d. 474/1081) goes as far to say that “*uṣūl al-fiqh* is that on which the knowledge of legal norms is based.”<sup>57</sup> Even the much later Karamāstī (d. 900/1494) declares that *uṣūl al-fiqh*’s utility (*fāʿida*) is “the attainment of knowledge of derivative legal norms.”<sup>58</sup> (As we

50 See, e.g., Ghazālī, *Mustasfā*, I, 5. In *Irshād al-Fuḥūl*, 5, Shawkānī describes the discipline as the study of the “universal textual indicant” (*al-dalīl al-samʿī al-kullī*). See also Shīrāzī, *Lumaʿ*, 4; Ibn Barhān, *Wuṣūl*, I, 51; Rāzī, *al-Maḥṣūl*, I, 11.

51 This ambiguous “overlap” and the distinctions that needed to be made to resolve its problematics continued to haunt *uṣūlī* discussions for centuries. For a remarkable analysis of this point, see Fanārī (d. 834/1430), *Fuṣūl*, I, 18.

52 Bāqillānī, *Taqrīb*, I, 173: “*Wa-laysa yumkin al-naẓar fī adillat al-fiqh maʿ ʿadam tilka al-ʿulūm.*” See also Arabic text quoted in n. 55, below.

53 Karamāstī, *Zubda*, 27. Thus, whereas the investigation of a specific *ḥadīth* that bears, as a *dalāla*, on the question of concluding marriage without a guardian is the task of *fiqh*, the exposition of the doctrine that positive commands (*awāmir*) demand obligation (*wujūb*) is the task of *uṣūl al-fiqh*. See Ibn Qudāma, *Rawḍa*, 13; Usmundī, *Badhl al-Nazar*, 8-9.

54 Taftāzānī, *Ḥāshiyā*, I, 8-9.

55 Bāqillānī, *Taqrīb*, I, 172: “*Uṣūl al-fiqh ... hiya l-ʿulūm allatī hiya uṣūl al-ʿilm bi-aḥkām afʿāl al-mukallaḥīn.*”

56 Juwaynī, *Burhān*, I, 85.

57 Bājī, *Ihkām*, 171.

58 Karamāstī, *Zubdat al-Wuṣūl*, 27: “*Maʿrifat tilka l-aḥkām al-sharʿiyya al-farʿiyya.*” In the section devoted to *uṣūl* from a panoramic vintage point, Ibn Khaldūn states: “*Uṣūl al-fiqh ... huwa l-naẓar fī l-adilla al-sharʿiyya min haythu tuʾkhdh minhā l-aḥkām wa-l-takālīf*” (Ibn Khaldūn, *Muqaddima*, 359). See also Shawkānī, *Irshād al-Fuḥūl*, 5: “*Wa-ammā fāʿidat ḥādihā l-ʿilm fa-hiya l-ʿilm bi-aḥkām Allāh aw al-ẓann bihā.*” David VISHANOFF is therefore wrong to criticize my emphasis on *uṣūl al-fiqh* as “rule-creation,” although he recognizes that I do also understand it as the science of “rule-justification.” When I was writing in the 1980s and 1990s, too many did not appreciate the pragmatic and practical aspects of this science, and so my stress on its connections with the *fiqh* was intended to correct this one-sided view. This

will see in due course, treating “*uṣūl al-fiqh*” in the plural and, later on, in the singular is not without much significance).

Be that as it may, what matters to us is the *beginning* of a Developmental Overlap. Even the towering intellectual Bāqillānī does not yet know *uṣūl al-fiqh* as *adilla ijmāliyya*;<sup>59</sup> nor do Ibn Surayj, Khaffāf, Jaṣṣās, and Ibn al-Qaṣṣār. The earliest documented instance seems to be Baṣrī’s *Mu’tamad*, where the discipline is defined as “*turuq al-fiqh ‘alā l-ijmāl*.”<sup>60</sup>

Once introduced around the last quarter of the fourth/tenth century, this theoretical self-consciousness takes hold in most works of the fifth/eleventh century. From Shīrāzī (d. 476/1083)<sup>61</sup> and Ghazālī (d. 505/1111)<sup>62</sup> to Ibn Barhān<sup>63</sup> (d. 518/1124) and Ibn Qudāma (d. 620/1223),<sup>64</sup> it becomes a common feature of the definition of the discipline. But once Āmidī (d. 631/1233)<sup>65</sup> and the influential Rāzī (d. 606/1210)<sup>66</sup> write, it becomes paradigmatic and integral to the definition in nearly all later works.<sup>67</sup> Starting from about 400/1010, then, this development is powerfully indicative of the rise of *uṣūl al-fiqh* as a distinctly and self-consciously theoretical and methodological discipline, separate and distinguished in qualitative ways from *fiqh/furū’*.

#### Condition 4: *Uṣūl al-fiqh* is a self-conscious discipline and field of inquiry.

Proceeding from Condition 3, it is not difficult now to see that by the first half of the fifth/eleventh century, *uṣūl al-fiqh*, entirely unlike its prehistory, was neither defensive or factious enterprise. Even during the second half of the fourth/tenth century, it no longer struggles for striking a particular synthesis between so-called rationalism<sup>68</sup> and tradition-

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is also why I critiqued the over-emphasis on theology in the study of *uṣūl al-fiqh*, not because this discipline did not have such connections (after all, theology is patently one of the three foundations of *uṣūl*, as almost every later work explicitly states [see more on this under the next Condition]), but rather because the Orientalists made too much of it. My “*Uṣūl al-Fiqh: Beyond Tradition*” is, among other writings, precisely directed to combat this undue emphasis on the abstract and the theological. For VISHANOFF’s criticism of my work on these two accounts, see his *Formation*, 262 n. 35, 269.

59 Bāqillānī, *Taqrīb*, I, 172.

60 Baṣrī, *Mu’tamad*, I, 10. In later works, the term to express this is at times “*qawā’id*.” See, e.g., Tahānawī, *Kashshāf*, I, 39.

61 Shīrāzī, *Luma’*, 4. But also see his detailed reasoning in *Sharḥ al-Luma’*, I, 161-62.

62 Ghazālī, *Mustasfā*, I, 5.

63 Ibn Barhān, *Wuṣūl*, I, 51.

64 Ibn Qudāma, *Rawḍa*, 13.

65 Āmidī, *Ihkām*, I, 5-6.

66 Rāzī, *Mahṣūl*, I, 11.

67 See, for instance, the definition becoming a gold standard in Jurjānī, *Ta’rīfāt*, 85; Tahānawī, *Kashshāf*, I, 39.

68 “So-called” because the term must now be used with much reservation. As Omar Farahat has argued, the issue that was at stake in such debates, especially between the Ash’arites and Mu’tazilites, is whether “one can go from individual observations about the world to moral judgments about types of action. The real dispute, therefore, concerned whether there can be norms *without* revelation.” The general Mu’tazilite position did not argue for the human rational faculty as itself being *the* source of moral judgment. In this model, reason “does not *produce* normative positions, but attains them by processing information obtained through the external world.” FARAHAT, *Foundation*, 40-41 (all emphases are Farahat’s).

alism, having successfully insisted on, and maintained, certain sources and their interpretation as the foundations of a preexisting substantive law. Now, it expresses itself as a self-standing theoretical apparatus, upholding, with unqualified confidence, a finite set of sources that have between and amongst themselves intense hermeneutical relationships for both the justification of existing law and prescriptions for new cases (*nawāzil, masāʿil*).

The fourth condition is thus the discipline's arrival at the stage of self-consciousness. Self-consciousness is the capacity to render oneself the object of attention and reflection, whether it is psychological in the case of individuals or analytical or intellectual in the case of disciplines or fields of inquiry. It is the capacity to view oneself by oneself from the outside, so to speak, as an observable actor or agent. It is to ask questions about oneself as if from the outside: What am I doing? Who am I? What do I represent to myself and to others: that is, What am I? The interrogation of the "I" therefore necessarily entails that that interrogation is a projection of a Second or Third Person on the First. It is effectively to ask how and what do I look like from the outside? What am I not doing? What should I do? In short, self-consciousness is the capacity to have a higher-order thinking about oneself, one's tradition, or one's discipline.

A major manifestation of *uṣūlī* self-consciousness was the emergence of a cosmological awareness, where *uṣūl al-fiqh* became ontologically situated in a chain of being. As an intellectual and ethical formation (that is, as an activity that is at once theoretical and performative of subjectivity),<sup>69</sup> it occupied a place between *kalām* and *fiqh*.<sup>70</sup> This was not just an epistemological and logical location, but ontological as well. If God, his *al-Lawḥ al-Maḥfūz*, and an ethical structure of divine creation<sup>71</sup> are (pre-)existent realities (*mawjūdāt; wājibat al-wujūd*), and if humans and their social organization are undeniable existents as well, then *uṣūl al-fiqh* is that which also existentially stands between the two. The existential value of this discipline is then precisely to mediate between the First Principles of existence and the earthly priorities and actions of humans. No *uṣūl al-fiqh* could find a place in the world without it resting on the metaphysical and cosmological foundations laid down in *kalām*. God's existence as a prime mover needed to be established first, before one could begin to speak of prophethood and religion. And the latter two, in conjunction with God's existence, needed to be equally demonstrated before one could begin to speak of the Qurʾān as the *kalām* of God and therefore the inviolable source of the law.

It is then due to theology that *uṣūl al-fiqh* could speak of the Qurʾān as an all-inclusive source, since the Book in turn validates all the rest of *uṣūlī* repertoire in what is an unfolding series in the chain of being. This is why the great majority of mature *uṣūl al-fiqh* works insisted on including an unambiguous language to the effect that the discipline rests

69 *Uṣūl al-fiqh*, as well as all "religious" disciplines such as *fiqh*, *kalām*, *ṣūfism*, and the like, were not, obviously, mere intellectual activities but rather forms of *taʿabbud*, where the act of writing (*taṣnīf*) in these disciplines amounted to a repetitive, habituating praxis that conducted to performing subjects and subjectivities. This aspect in the study of legal, theological, *ṣūfī*, and other histories has been sorely neglected in modern writings on these fields, an aspect that demands multiple monographic studies. For some notable exceptions in the study of *ṣūfism*, see Kugle, *Sufis and Saints' Bodies*, and Bashir, *Sufi Bodies*.

70 Ibn al-Lahḥām, *Qawāʿid*, 3.

71 On these themes, see HALLAQ, "Groundwork," 239-79.

on three foundations: *kalām*, *fiqh*, and *lughā* (language). *Uṣūl al-fiqh* mediated between the First cosmological and metaphysical Principles, on the one hand, and the domain of *fiqh*, on the other; and this it did through its own higher-order principles. For it ontologically and epistemologically stood between the two, namely, between the divine architecture of justice as expressed in *kalām*, and human management as expressed in the *fiqh*.<sup>72</sup> Language was the medium and mechanism that allowed it to play this role, for if *uṣūl al-fiqh* had to be substantively reduced at all, it would boil down to being a *hermeneutical and linguistic enterprise* that unravels, or attempts to unravel, divine wisdom and intention for this human world.<sup>73</sup>

The emergence of this tripartite foundation thus marked the rise of a fundamental self-awareness of the place of this discipline in the world. It was this self-consciousness that answered, at the ontological level, the questions: Who and what am I/are we?

Parallel to our discussion of structured ordering of subject matter, here too we find that neither Ibn Surayj nor Khaffāf, Jaṣṣāṣ or Ibn al-Qaṣṣār even alludes to the foregrounding of the discipline in *kalām*, *fiqh*, and *lughā*. The latter two authors are preoccupied with *fiqh* and Mālik's "uṣūl,"<sup>74</sup> respectively. The nature of the discourse that all four jurists produced does not even allow for the possibility that they may have come close to such awareness. It is likewise remarkable that for all the theoretical sophistication of Bāqillānī, he also, insofar as I can tell, does not seem to know this idea. Neither does the slightly later Baṣrī, although on the first page of his *Mu'tamad* he mentions in passing that a person proficient in *kalām* would attain the highest understanding of *uṣūl*. By about the middle of the fifth/eleventh century or soon thereafter, this awareness becomes an integral part of *uṣūl* discourse.<sup>75</sup>

Connected to the self-consciousness that *uṣūl al-fiqh*'s telos is the study of higher-order principles (*adilla ijma'iyya, qawā'id*), there was another shift in the perception of *uṣūl al-fiqh* itself. Reflecting the early evolution of this discipline as an intense debate over the sources of the law and/or their hermeneutical significance/signification (including *ijmā'*, *taqlīd*, *qiyās*, *istihsān*, *istidlāl*),<sup>76</sup> the theoreticians of the late fourth/tenth and fifth/eleventh centuries consistently referred to *uṣūl al-fiqh* in the plural. Bāqillānī thus speaks in these terms: "uṣūl al-fiqh hiya ... al-'ulūm;"<sup>77</sup> Shīrāzī: "uṣūl al-fiqh hiya al-adilla."<sup>78</sup> Even as late as Ghazālī, and certainly in the writings of his distinguished teacher Juwaynī, "uṣūl al-fiqh hiya adillat al-fiqh," although Ghazālī does refer to it once in the singular—"ilm."<sup>79</sup> However, by Rāzī's and Āmidī's time, if not a half century or so earlier, a significant and permanent shift had occurred in denotation. In the writings of these two jurists, as well as in

72 Ibid. See also HALLAQ, "Qur'anic Constitutionalism," 1-51.

73 On the mediation between language and legal norms, see FARAHAT, *Foundation*, 164 ff.

74 Jaṣṣāṣ, *Fuṣūl*; Ibn al-Qaṣṣār, *Muqaddima*, 133.

75 See, e.g., Juwaynī, *Burhān*, I, 84.

76 As evident in Devin STEWART's articles I respond to in section IV, below.

77 Bāqillānī, *Taqrīb*, I, 172.

78 Shīrāzī, *Luma'*, 4.

79 Ghazālī, *Mustaṣfā*, I, 4-5; Juwaynī, *Burhān*, I, 85. See also the earlier Baṣrī, *Mu'tamad*, I, 10, 13.



Ibn Qudāma and countless later theoreticians, *uṣūl al-fiqh* is consistently referred to in the masculine singular.<sup>80</sup>

The shift is obviously conceptual, not merely linguistic or stylistic. It is a shift from a centrifugal conception of the field as a collection of *adilla* or “sources,” each with its own hermeneutical imperatives, to a centripetal conception of a unified and integrated science, *‘ilm*. The discipline is now seen as “*ilm al-uṣūl*,”<sup>81</sup> having systematically come together under the four-sources umbrella, with interdependent and mutually structuring relations of hermeneutics. Insofar as I can observe, no fifth/eleventh century theoretician used this language—“*ilm al-uṣūl*”—as a standard way of speaking of his field, although Ghazālī and his contemporaries seem to initiate this shift but did not complete it. By Rāzī’s time it had become a *fait accompli*. Note that this conceptual articulation of *uṣūl* as a *‘ilm* completes—but also presupposes—a series of developments in the evolution of self-consciousness: in chronological order, the first of these developments was the discovery or creation of a structured order (*tartīb*); the second is the articulation of the discipline as a study of *al-adilla al-ijmāliyya*; and the third is the ontological placement of *uṣūl al-fiqh* as resting on the three foundations of *kalām*, *fiqh*, and *lughā*.

This is not all, however. Our survey of self-consciousness reveals much about the designation or naming of this theoretical field, an issue that has plagued modern writings within this controversy. We now can see that there is a complex history of the name given to this field of inquiry. Between Shāfiʿī and Jāḥiẓ (d. 255/869), the debates on “sources” (*ijmāʿ*, *qiyās*, *istiḥsān*, etc.) had not come up with a name to designate what these debates amounted to. In Ibn Surayj’s introduction, the field is called *uṣūl al-dīn*,<sup>82</sup> and in Qādī al-Nuʿmān’s *Ikhtilāf*, it still has no technical designation, although on occasion he uses *uṣūl* and its verbal derivative, *aṣṣalū*. However, his main designation for the idea of “anchoring law in sources” seems to be “*uṣūl al-madhāhib*,” as the title of his book indicates, or “*uṣūl/aṣl al-Sharīʿa*.”<sup>83</sup> Within a couple of decades or so, the designation *uṣūl al-fiqh* begins to appear, as is routinely evidenced in the work of Jaṣṣāṣ. In other words, the designation “*uṣūl al-fiqh*” appears on the scene and enters standard usage during the second half of the fourth century, but not much earlier than its middle. It continues to be treated as a collection of “sources” and methodologies for more than a century, when in the beginning of the sixth/twelfth century, it begins to acquire the signification of a unitary and integral science. It would take another half a century to complete this process, which, once settled, it was not to change until the early nineteenth century, when the discipline met its demise at the hands of European colonialism.

Finally, the preceding discussion allows us to identify a further dimension in the development of self-consciousness, one that, I think, was located in the fifth/eleventh century and likely a decade or two earlier. This development may be designated as the professionalization of *uṣūl* as a discipline. Its condition of possibility was at a time when jurists

80 Rāzī, *Maḥṣūl*, I, 11; Āmidī, *Iḥkām*, I, 6. See also Ibn Qudāma, *Rawḍa*, 13; Karamāstī, *Zubdat al-Wuṣūl*, 27; Mārdīnī, *Anjum*, 77.

81 E.g., Āmidī, *Iḥkām*, I, 6.

82 Ibn Surayj, *Wadāʿī*, 516.

83 Nuʿmān, *Ikhtilāf*, 8-9, 13.

could describe *themselves* as *uṣūliyyūn*, as belonging to a group or a discipline that works, and produces knowledge, in a designated and commonly recognized field, with consumers of knowledge (and not just adversaries) assumed to be the intended target—much like we describe ourselves as historians, anthropologists, sociologists, or economists. This development, so my argument goes, could not be located earlier than the last quarter or third of the fourth/tenth century. It is by no means a coincidence that in his *Ṭabaqāt al-Fuqahā'*, Shīrāzī consistently (but in all likelihood unconsciously) employs two ways to describe jurists who wrote in what was becoming the *uṣūl al-fiqh* field. All authors who died around the middle of the fourth century or slightly thereafter are referred to as having “authored *uṣūl* works” or “having books of *uṣūl*” (*ṣannaḥa fī l-uṣūl*, *lahu muṣannaḥāt fī l-uṣūl*), whereas all jurists who died between 390 and Shīrāzī’s own time are described as “*uṣūlīs*” (e.g., *wa-kāna faqīhan uṣūliyyan*).<sup>84</sup> It is thus remarkable that the distinguished generation of Ibn Surayj’s students, such as Ṣayrafi (d. 330/941) and Shāshī (d. 336/947), are never called *uṣūlīs*—they just “authored books of *uṣūl*.”<sup>85</sup> Not long after Shīrāzī, reference to the scholars working in the field as “*ahl al-uṣūl*” or like expressions became ordinary routine.<sup>86</sup>

### Condition 5: *Uṣūl al-fiqh* is a genre.

Although the concept of genre is notoriously difficult to define, there are certain characteristics that have been commonly accepted in genre theory as constitutive of a genre. A basic attribute of a genre is that it is represented by texts of conventional form and content. In other words, for a genre to come into existence, there has to be a community of authors (or movie makers, as well as others) who conform to a style of writing or artistic representation; to a particular mode of organizing the literary or aesthetic corpus; and to a particular range of subject matter that gives the genre its *raison d'être*. This also implies that a genre sets the conditions for the process and logic of beginning and ending a work, and anything in between. Which is also to say that a genre represents itself through structured, systematized, and complete “texts.”<sup>87</sup> It is a family of texts that have a particular type of content, structure, and not least, functional purpose and telos. I think our discussions of Conditions 1-4 amply demonstrate the presence of these qualities in *uṣūl al-fiqh* insofar as it is a legal genre. We can readily recognize the fact that there were *uṣūliyyūn/ahl al-uṣūl* who wrote to a community of consumers (students and *fuqahā'*/ *furū'*ists, among others). They wrote in a particular style, with a generally ordered and systematized subject matter (*tartīb*) that represented a finite set of sources (*maḥṣūra*) and specialized discourse on them. *Tartīb* also dictated a middle-to-end structure and organization that was also systematic. Most importantly, this genre had a clear-cut functional purpose and telos.

Genres are also characterized by their ambition to frame the reader’s or consumer’s vision of the world through their particular lenses. One might even say that genres can,

<sup>84</sup> Shīrāzī, *Ṭabaqāt*, 111, 112, 114, 115, 122, 125, 126-27, 132, 169.

<sup>85</sup> *Ibid.*, 111, 112.

<sup>86</sup> See, for instance, Samarqandī, *Mizān*, 67, 76, 100.

<sup>87</sup> BERUKSTIENE, “Legal Discourse,” 92-93. I place the term “text” in quotation marks so as to include a wide range of literatures and literary productions as “texts” (including films, the visual arts, etc.), but the term obviously happens to be, in its conventional meaning, immediately relevant to the texts of *uṣūl al-fiqh*.

under the right conditions, form particular subjectivities. Note, for instance, how the genres taught in business schools or law schools create a certain kind of individuals, markedly different from how a music school generally forms its own subjects through habituation and embodiment in its own genres.<sup>88</sup> This feature implies that a genre by definition establishes a relationship, even a cognitive “field,” in which the producers and consumers of the genre interact.<sup>89</sup> These characteristics are likewise commonly found in *uṣūl al-fiqh*. It is a discursive tradition that not only entailed *taṣnīf* (authoring/writing) as an intellectual activity; *taṣnīf* itself was a form of *taʿabbud* that *produced and reproduced* subjects, for it was a technology of ethical self-formation. Furthermore, in terms of consumers, if *fiqh* and its praxis constituted this discipline’s destination, then *fiqh* is nothing if it is not a performative discourse, an effective discursive, praxis-based tradition forming the Muslim subject.

Finally, genres are divisible into types, such as subgenre and supergenre. A supergenre, for example, may be adult literature as compared to youth or children literature (*War and Peace* as compared to *Harry Potter*), or religious vs. scientific, for instance. A subgenre may be the category of mystery within the larger category of crime. I argue that *uṣūl al-fiqh* lends itself to analysis in terms of this generic typology, but not without making a temporal modification to the aforementioned division: *uṣūl al-fiqh* did not constitute a genre, subgenre, and supergenre all at once. Rather, *it went through the three stages/types of genre in a chronological, diachronic order*. In other words, it evolved from a subgenre to a genre, only to develop its compass with time to a supergenre that influenced many Islamic disciplines. It is not without good reason that Samʿānī, relatively early in the history of the discipline, was able to declare that “*uṣūl al-fiqh* is the *aṣl* of all *uṣūl* and the foundation of all sciences.”<sup>90</sup> In a remarkable modern book, ʿAlī Sāmī al-Nashshār insightfully argued much the same, noting that *uṣūl al-fiqh* represented the methodology that undergirded and drove the investigative approaches (“research”) as well as the entire intellectual edifice of mainstream, indigenous Islamic sciences.<sup>91</sup>

As we have seen, the “theoretical” legal works of the late third/ninth century and their *uṣūl* reincarnation during most of the fourth predominantly constituted parts of larger works whose main subject of inquiry was not *uṣūl al-fiqh* itself. The first notable work, by Ibn Surayj, was a small part of his *fiqh* treatise *al-Wadāʿiʿ bi-Manṣūṣ al-Sharāʿiʿ*;<sup>92</sup> Ṭabarī’s *al-Bayān ʿan Uṣūl al-Aḥkām* constituted the introduction to what seems to have been an *ikhṭilāfī*/*fiqh* work, titled *Laṭīf al-Qawl fī Aḥkām Sharāʿiʿ al-Islām*.<sup>93</sup> Jaṣṣāṣ’s treatise *al-Fuṣūl fī l-Uṣūl* was likewise an introduction to his *Aḥkām al-Qurʿān*.<sup>94</sup> Khaffāf’s short

88 HALLAQ, *Restating Orientalism*, 186-97.

89 HOON, “How is a Genre Created?” 1-9.

90 Samʿānī, *Qawāṭiʿ al-Adilla*, I, 17.

91 See Nashshār, *Manāhij al-Baḥth*, h-z; also Ibn Khaldūn, *Muqaddima*, 359; Shawkānī, *Irshād al-Fuḥūl*, 2. “Indigenous” is not meant to deny the interaction between the “traditional” Islamic sciences and non-Islamic ideas (e.g., Greek), but rather to assert that there are sciences that organically grew from within Islam and its intellectual concerns and those that were cultivated in other cultures and introduced to the intellectual landscapes of Islam, mainly through translation.

92 EL SHAMSY, “Bridging the Gap,” 507 ff.

93 ROSENTHAL, *History*, 114-15. See also STEWART, “Muḥammad B. Dāʿūd,” 112.

94 See editor’s introduction to Jaṣṣāṣ’s *Fuṣūl*, 23, and Jaṣṣāṣ’s own statement on p. 40.

*Muqaddima*, as the title indicates, opened his *fiqh* book *al-Aqsām wa-l-Khiṣāl*.<sup>95</sup> Likewise, Ibn al-Qaṣṣār's *Muqaddima* introduced his *fiqh* work *ʿUyūn al-Adilla*.<sup>96</sup> ʿAbd al-Jabbār's (416/1025) *uṣūl* treatise constituted volume 17 of his prodigious theological work *al-Mughnī*. In fact, from Ibn Surayj to ʿAbd al-Jabbār, every single work on legal methodology we have was subsumed under other fields of discourse.<sup>97</sup> The refutative works of Ibn Dāwūd and al-Qāḍī al-Nuʿmān were topical and selective, interested, as we will see in section IV, in particular issues, but could hardly have been written in the way, say, Khaffāf, Jaṣṣās, and Ibn al-Qaṣṣār meant their works to be. It seems remarkable then—and a phenomenon not to be taken for granted—that Bāqillānī would author his fulsome *Taqrīb* (presumably an abridgment of another work)<sup>98</sup> as a wholly independent text.

It is then with Bāqillānī and his generation that *uṣūl al-fiqh* begins to be its own field, progressively emerging as a genre in the true sense of the term. Yet, *uṣūl al-fiqh* did not stop at the stage of genre, for it continued to develop in creative and pervasive ways. It infiltrated several adjacent domains occupied by other sciences and created its own sub-genres. In other words, it became a supergenre. Witness, for instance, the rise of dialectical disputation (*jadāl*) from the early fourth/tenth century, and probably a generation before (Ibn Surayj himself, after all, was described as an expert in *jadāl* and his student, al-Qaffāl al-Shāshī [d. 336/947], distinguished himself as a major dialectician and the “first” jurist to write on “*al-jadāl al-hasan*”).<sup>99</sup> This *uṣūlī* interest in dialectic culminates in the fifth/eleventh century with the production of a number of *uṣūl* treatises on the subject, such as Shīrāzī's *al-Maʿūna fī l-Jadāl*, Bājī's *al-Minhāj fī Tarīb al-Hijāj*, and Ibn ʿAqīl's *Kitāb al-Jadāl ʿalā Ṭarīqat al-Fuqahāʾ*. By the second half of the seventh/thirteenth century, Shams al-Dīn al-Samarqandī (d. ca. 710/1310) was able to synthesize the discipline from within the terrains of juridical dialectic as well as others, producing a *summa* that heavily relied on developments within *uṣūl al-fiqh*.<sup>100</sup> In this influential work, dialectic owes as much debt to intellectual refinements generated by *uṣūl al-fiqh* as this latter field owed dialectic itself. This development in dialectic, however, presupposed another, namely, the incorporation of Greek logic in *uṣūl al-fiqh*, which Ibn Taymiyya (d. 728/1328) was later to dispute, deploying a devastating critique of its Aristotelian variety in his *al-Radd ʿalā l-Mantiḡiyyīn al-Yūnān*.<sup>101</sup> Needless to say, by the time Ibn Taymiyya wrote, logic had been absorbed, digested, and profoundly disputed under the influence of *uṣūl al-fiqh*, no less than that of others. Between Ghazālī's famous declaration that “without logic no trustworthy knowl-

95 EL SHAMSY, “Bridging the Gap,” 510 ff.

96 See the editor's introduction to Ibn al-Qaṣṣār's *Muqaddima*, 74.

97 The later Shihāb al-Dīn al-Qarāfī (d. 684/1285) would offer *Tanqīh al-Fuṣūl fī Ikhtisār al-Maḡṣūl* as an introduction to the *Dhakhīra*, a work of *fiqh*, but “many people,” he says, took the introduction to be a separate work and “studied it as such,” so he decided, due to the popularity of the book, to annotate it into what became *Sharḥ Tanqīh al-Fuṣūl* (see p. 2). One can say that by Qarāfī's time the idea of prefixing *fiqh* works by an *uṣūlī* introduction was both rare and, when attempted, largely unsuccessful.

98 See the editor's introduction to *Taqrīb*, 81-82.

99 HALLAQ, “Tenth-Eleventh Century Treatise,” 198.

100 KARABELA, “Development of Dialectic,” 102, 118-25; MILLER, “Islamic Disputation,” 196.

101 HALLAQ, “Logic, Formal Arguments,” 315-58; ID., *Ibn Taymiyya Against the Greek Logicians*.

edge of *uṣūl al-fiqh* can be attained”<sup>102</sup> to Ibn Taymiyya’s pitiless critique, *uṣūl al-fiqh*, now a mainstream discipline, proved itself to hold command over logic, whether in acceptance or in rejection.

The discipline spread its wings much further, however: it birthed a number of subgenres that owe their existence to it either entirely or considerably. First, there arose a *takhrīj al-furūʿ ‘alā l-uṣūl* subgenre that exhibited a wide variety of approaches.<sup>103</sup> Among these, we have in published form Jamāl al-Dīn al-Isnawī’s (d. 772/1370) *al-Tamhīd fī Takhrīj al-Furūʿ ‘alā l-Uṣūl* and Shihāb al-Dīn al-Zinjānī’s (d. 656/1258) *Takhrīj al-Furūʿ ‘alā l-Uṣūl*. A second genre is that of *qawāʿid*, exemplified in the notable *al-Qawāʿid wa-l-Fawāʿid al-Uṣūliyya wa-mā Yataʿallaq bi-hā min al-Aḥkām al-Farʿiyya* by Abū l-Ḥasan ‘Alā’ al-Dīn Ibn al-Laḥḥām (d. 805/1402).<sup>104</sup> A third is the subgenre that goes under the designation of *al-Ashbāh wa-l-Nazāʾir*. One of the notable contributions in this field is Jalāl al-Dīn al-Suyūfī’s (d. 911/1505) book with the same title. A cognate subgenre, focusing on the implications of subtle but significant differences in theoretical and substantive legal concepts and principles is the *furūq* literature, Shihāb al-Dīn al-Qarāfi’s (d. 684/1285) work under the same title being a monumental example.<sup>105</sup>

An equally significant development that drew its inspiration from fifth/eleventh- and sixth/twelfth-century *uṣūl* productions is captured in the *Muwāfaqāt* of Abū Ishāq al-Shātibī (d. 790/1388). Shātibī’s work, a magisterial and highly innovative contribution, takes *uṣūl* and inductive logic in new and productive directions, while building on subgenres as those elaborated by other Mālikite jurists (e.g. Qarāfi). Here, the use of logic as known then was virtually reinvented, and legal theory recast in creative ways, although a partial debt to Ghazālī’s *Shifāʾ al-Ghalīl fī Bayān al-Shabah wa-l-Mukhīl wa-Masālik al-Taʿlīl* and similar works is highly likely. Finally, the contributions that this discipline made to linguistics and semiotics must be noted, contributions that we have not even begun to study. As the distinguished Zarkashī once remarked, *uṣūl al-fiqh* has “made a close study in certain matters in the language of the Arabs not achieved by the grammarians or the philologists.”<sup>106</sup>

### III – Periodization

In light of the foregoing discussions, we are now in a position to schematize the history of so-called legal theory from its beginnings as a rudimentary attempt at theorization to its full maturity. Accordingly, I propose the following periodization, but with the aforementioned

102 This is a paraphrase of Ghazālī’s statement (*Mustasfā*, I, 10): “*Wa-man lā yuḥīṭu bihā* [i.e., the logical introduction with which he prefaced his work] *fa-lā thiqata lahu bi-ʿulūmihi aṣlan.*”

103 Bāhusayn, *Takhrīj*; AHMAD, *Structural Interrelations*, 48-72. See also p. 18 for Ahmad’s generic typology of this *takhrīj* literature as “a genre or subgenre.”

104 See HEINRICHS, “Qawāʿid,” 365-84.

105 See HEINRICHS, “Structuring the Law,” 332-44.

106 Quoted in MAKDISI, “Juridical Theology,” 39.

caveat in respect of Developmental Overlap, to which I assign an approximate range of twenty-some years:

**Stage 1 (160/780 – 250/870):<sup>107</sup> Genesis of Theorization**

Since the first decades of Islam, when conquests were actively underway and a new world and its problems were opening up, the early pious scholars were preoccupied with answering what is perhaps the most important question of all: How should we act in a way faithful to the foundational message of our community? They found answers in many places, the Qurʾān and the local *sunnaic* practices having obviously been from the beginning a first recourse.<sup>108</sup> But they also resorted to established tribal customs as well as forms of reasoning that ranged from the rudimentary to the more developed. By Abū Ḥanīfa’s death in 150/767, the *fiqh* was still developing, and discourse on *naskh* and related issues was likewise rudimentary. The basic writings of Qatāda (d. 118/736) and Zuhri (d. 124/742) on abrogation<sup>109</sup> could barely make for a coherent or systematic way to approach the Qurʾānic text for legal purposes. As I have shown elsewhere, it would take *fiqh* another half century to reach a level of maturity, in the sense that most important questions and principles of substantive law were by that time resolved.<sup>110</sup>

The modes of reasoning sustaining this already laid-down corpus of *fiqh* continued to undergo refinements dictated by an increasing sophistication due to the intense debates that raged during the third/ninth century, and even later. Yet, rudimentary attention to theoretical systematization began with Shaybānī and his generation, having witnessed a relative leap in Shāfiʿī’s contributions. This latter, together with such figures as Nazzām, Ibn Abān (d. 221/836), Muzanī, Jāhiz, and others, were landmarks in this stage, each providing a dialectical move, through stimulus and response, that contributed to further refinements. This is also to say that none of these landmarks, whoever or whatever they were, established any fixed point of departure for what is to come. What made Shāfiʿī’s theory relevant for later *uṣūl* is not due to causes inhering in his theory as such or in his project at large. Shāfiʿī became relevant because his synthesis happened to anticipate the settlement of multiple disputes, during the century after him, as to how Muslims and Islam were to define themselves, their identity. It would be nonsensical to argue otherwise, for it is rationally conceivable that Nazzām could have been the later Muslims’ Shāfiʿī, had the Muslims of the third/ninth and fourth/tenth centuries, as a juridico-political community, decided to go a different route.

What I am arguing is that this stage cannot be characterized teleologically and monotonously, for it had no teleology (because it could not have one) and therefore it possessed no unity or a single driving force (which we erroneously attribute to Shāfiʿī, but which *uṣūl al-fiqh* came to command only in the later part of the fourth/tenth century and thereafter).

<sup>107</sup> Since this periodization cannot be exact to the year or even decade, I rounded the Gregorian equivalents for the benefit of those who do not relate to the Hijri calendar, which remains my final standard.

<sup>108</sup> See HALLAQ, *Origins*; ID., “Groundwork”; ID., “Qurʾānic Constitutionalism.”

<sup>109</sup> A number of other scholars wrote on abrogation before Shāfiʿī, including ‘Aṭā’ b. Muslim (d. 115/733), Muḥammad Ibn al-Kalbī (d. 146/763), ‘Abd al-Raḥmān b. Zayd b. Aslam (d. 182/798), and ‘Abd al-Wahhāb b. ‘Aṭā’ al-‘Ijlī (d. 204/820). See Dāwūdī, *Uṣūl al-Fiqh*, 40.

<sup>110</sup> HALLAQ, *Origins*.

And so one can realistically say that while Shāfiʿī's "project" represented a proposal that, by definition, can be either rejected or adopted, *uṣūl al-fiqh* was an effective methodology and hermeneutic that, as such, constituted a paradigm. Paradigms are, also by definition, systemic in the sense that they define and dictate the normative and standard forms of knowledge. To live in or under a paradigm is to live in a habitus with a *doxa*. Paradigms cannot be picked up or dropped off at will. But proposals can, which is why they are just proposals. This perhaps is the most important fact that distinguishes the *Risāla* from *uṣūl al-fiqh*. The rest of the substantive and hermeneutical differences between this treatise and *uṣūl* works is the function and consequence of this fundamental distinction.

Accordingly, we observe that none of the five conditions obtained at this stage.

### **Stage 2 (230/850 – 330/940): Hermeneutical Contestation of Juridical Authority**

It is impossible to identify a mainstream theory in this stage, one that was decisively more powerful than the others, assuming that such a coherent and well-structured theory existed (which obviously did not). We are not sure if the Ḥanafites were more of major players than the Shāfiʿītes, nor are we sure that the traditionalists, up to 270/880 at least, were stronger than the "rationalists."<sup>111</sup> The disputation rounds that took place between Ibn Surayj and Ibn Dāwūd<sup>112</sup> attest to the fierceness of opposition to what was to become the Great Synthesis, although the challenge was made even more existential by the presence and activism of the Fatimid advocates, most notably al-Qāḍī al-Nuʿmān. There is no period in the entire life of the discourse on "legal-sources-and-their-interpretation" that witnessed such vehement contestation by one group against another, and the groups were many. Compared to the periods before 220/840 and after 330/940, this stage was extraordinarily uncertain as to which actor or what doctrine commands the day. Not only were the sources themselves heavily disputed, but the types of interpretation/hermeneutics attached to these sources could not be settled once and for all. It was not until the Developmental Overlap period began to set in at the end of this stage that *uṣūl al-fiqh*—as represented in the five Conditions—began to appear in an embryonic form. This occurred during the generation of Shāfiʿītes and Ḥanafites who flourished during the first half of the fourth century.

Accordingly, we observe that none of the five conditions obtained at this stage.

### **Stage 3 (310/920 – 400/1010): Emergence**

As we have discussed in some detail, this stage witnessed the first articulations of legal theory, first under such names as "*uṣūl al-dīn*" (a nomenclature that came to belong exclusively to theology) but later—in the second half of it—under the proper designation "*uṣūl al-fiqh*."

Of the five conditions we have discussed, this stage meets none except the first, and even then not fully in this stage's beginnings.

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111 See n. 68, above.

112 The significance of these disputations should not be underestimated. More than one-third of Shīrāzī's biographical notice allocated to Ibn Surayj describes these "dialectical rounds," when every word of a biography, any biography, was meant to deliver an important message. See Shīrāzī, *Ṭabaqāt*, 108-09.

**Stage 4 (380/990 – 520/1130): Completion and Articulation**

As we have seen in detail, this is the phase which exhibited the full maturation of the discipline, having met all of the five conditions, to the partial exception of a supergenre.<sup>113</sup>

**Stage 5 (500/1100 – 620/1220): Refinements and Enhancements**

At this stage, culminating in such magisterial works as those of al-Fakhr al-Rāzī and Āmidī, *uṣūl al-fiqh* builds on the major achievements of the preceding stage, represented in such productions as those of the Ḥanafites Dabbūsī (d. 432/1041)<sup>114</sup> and Bazdawī (d. 482/1089), the Mālikite Bājī, the Muʿtazilite Abū l-Ḥusayn al-Baṣrī, and the Shāfiʿites Shīrāzī, Juwaynī, and Ghazālī. This stage distinguished itself by the further exploration and abstract theorization of *uṣūl* from various theological and philosophical perspectives, although the Ḥanafites, on the other side, continued to refine the direct methodological and theoretical links with *fiqh*. Nonetheless, this stage meets the same conditions as does stage 4, including the absence of a supergenre.

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**Stage 6 (600/1200 – 800/1400): Expansion and Extension**<sup>115</sup>

By this stage, all conditions have been met, including the emergence of *uṣūl al-fiqh* as a supergenre. Not only explicitly Aristotelian-Porphyrian approaches have become ordinary (as exemplified in Fanārī's work),<sup>116</sup> but much else has been added to the discipline and its outer boundaries (e.g., *takhrīj*, *ashbāh/nazā'ir*, *furūq*, *qawā'id*, etc.).

**Stage 7 (800/1400 – 1250/1830): Stability and Further Refinements**

Although this phase in the history of *uṣūl al-fiqh* remains to be studied, all indications point to a picture in which the discipline remained stable and continued to sustain the edifice of the Sharī'a, pedagogically and hermeneutically. It guaranteed the continued reproduction of a sociology of knowledge that undergirded the legal culture in its widest scope.

**Stage 8 (1250/1830 – present): Decline and Destruction**

As I have shown elsewhere, with the promulgation in 1826 of imperial edicts that aimed to reduce the autonomy and social power of the *waqf* foundations, and later through the etatizing processes that displaced the Sharī'a's structures by installing European-style courts, legal education and codes—among many other measures—the Sharī'a and its institutions came collapsing by the end of the nineteenth century (ca. 1320).<sup>117</sup> Like *fiqh*, *uṣūl al-fiqh* functionally ceased to exist by about 1300/1880, at the latest. Even its study

113 This is roughly the period to which Ibn Khaldūn assigns the full maturation of the discipline, saying that after Abū Zayd al-Dabbūsī “*kamilat ṣinā'at uṣūl al-fiqh bi-kamālihi, wa-tahadhdhabat masā'iluhu wa-tamahhadat qawā'iduhu*.” Ibn Khaldūn, *Muqaddima*, 361.

114 In further support of my late dating of the emergence of *uṣūl al-fiqh*, see Ahmad Atif Ahmad who says this of Dabbūsī: “In Dabbūsī's Ta'sīs, the *uṣūl* do not fully correspond to the *uṣūl* of legal theories in the Sunnī *uṣūl al-fiqh* tradition.” AHMAD, *Structural Interrelations*, 16-17. Cf. Ibn Khaldūn, previous note.

115 A comparison between this periodization and that provided by Talal AL-AZEM with regard to the Ḥanafite school would make for a basis of a study of its own. See his *Rule-Formulation*, 50-101.

116 Fanārī, *Fuṣūl al-Badā'ir*.

117 HALLAQ, *Sharī'a*, 396-442; ID., *Restating Orientalism*, 229-30.



became largely irrelevant, and the textual traditions as we have known them to exist for several centuries came to a halt. No longer could any jurist after the nineteenth century write in the same style, knowledge, and sophistication—all of which are obviously symptoms of the demise of the discipline as a living, systemic, hermeneutical and pedagogical tradition. As a *tradition* that conceptualized the law and served its interpretive needs, *uṣūl al-fiqh* ceased to exist. The modern, legislating, and sovereign state stood in a mutually exclusive relationship with *uṣūl al-fiqh* and its conception of the world, whether that conception was juridical, ethical, or cosmological.

#### IV – Counter-Critique

With understanding what *uṣūl al-fiqh* is, we now turn to critiques directed at my thesis that Shāfiʿī was not “the master-architect of Islamic jurisprudence.”

In three pieces of overlapping and internally repetitive nature,<sup>118</sup> Devin Stewart attempts to argue that a continuity existed between early third/ninth century jurisprudence and fourth/tenth and fifth/elventh century mature and complete *uṣūl al-fiqh*. Paving the ground for his argument, he cites George Makdisi’s work on Shāfiʿī,<sup>119</sup> where Makdisi compiles two lists of *uṣūl al-fiqh* authors mentioned in the works of Badr al-Dīn al-Zarkashī (d. 794/1392) and Tāj al-Dīn al-Subkī (d. 771/1370). In Zarkashī’s list, Muzanī appears as the earliest writer in this genre, but Stewart rightly dismisses him on the grounds that his work, dealing with *qiyās*, is devoted to only “one constituent element of the science of *uṣūl al-fiqh*.”<sup>120</sup> The next writers in line are the much later Abū l-ʿAbbās Ibn Surayj and Abū Bakr al-Ṣayrafi. In Subkī’s list, however, the first author is the distinguished jurist and theologian Abū Bakr al-Bāqillānī, who was writing, as we saw, in a somewhat established discipline. Unsatisfied with the testimonies of two of the most distinguished later legal theorists, and having cited Makdisi to the effect that Subkī nonetheless viewed the *Risāla* as a work of *uṣūl al-fiqh*,<sup>121</sup> Stewart goes on to argue that:

Hallaq holds, on the contrary, that the *Risālah* differs radically from later *uṣūl al-fiqh* in content. He sees that it focuses primarily on hadith and emphasizes the role of Prophetic traditions in the derivation of the law. In a painstaking study, [Joseph] Lowry has shown that the *Risālah*’s organizing principle is quite different from that evident in later *uṣūl al-fiqh* works. It is essentially a discussion of hermeneutics describing various possible types of interaction between scriptural texts from the Koran and hadith. Furthermore, it does not uphold the theory of four sources ... that

118 Namely, his “Muḥammad b. Dāʿūd,” 99-58; ID., “Muḥammad b. Jarīr al-Ṭabarī,” 321-49; ID., *Islamic Legal Orthodoxy*, 30-37. Since the two articles represent advanced stages in STEWART’S critique and seem to supersede the relevant arguments in the book, I shall not deal with the latter except when it is necessary.

119 MAKDISI, “Juridical Theology,” 30-32.

120 STEWARD, “Muḥammad b. Dāʿūd,” 102. This dismissal remains warranted despite the fact that Muzanī also wrote on legal language. See his “*Kitāb al-Amr wa-l-Nahy*,” in BRUNSCHVIG, “Le livre,” 145-94.

121 STEWARD, “Muḥammad b. Dāʿūd,” 102-03.

became widespread in later jurisprudence and which later scholarship ... have [sic] attributed consistently to al-Shāfiʿī.<sup>122</sup>

Stewart cares not to address the implications of Lowry's substantive and technical findings, which—as we will see in greater detail below—must be overturned or interpreted away in order for one to establish a continuity between Shāfiʿī's ideas and those that dominated later mainstream *uṣūl al-fiqh* writings.<sup>123</sup> Instead, he veers toward another path of inquiry whose focus is “culling citations from later works” in the genre so as to show that complete works in that discipline existed as early as the beginning of the third/ninth century.<sup>124</sup> The work he brings into focus is Qāḍī al-Nuʿmān's *Ikhṭilāf Uṣūl al-Madhāhib*, in which Muḥammad Ibn Dāwūd al-Zāhirī is purported to be so heavily quoted by al-Nuʿmān that Stewart thinks a case can be made that Ibn Dāwūd wrote a complete work of *uṣūl*, titled *al-Wuṣūl ilā Maʿrifat al-Uṣūl*. (Note that Ibn Dāwūd was the indomitable interlocutor of Ibn Surayj who died less than a decade after Ibn Dāwūd and to whom I attributed the first rise of *uṣūl al-fiqh* writing).<sup>125</sup>

But before Stewart delves into Ibn Dāwūd's case, he defines *uṣūl al-fiqh* as a genre “that aims to present and explain a complete, finite, and ordered collection of ‘roots’ or ‘sources’ from which all legal assessments—an infinite number—may be derived.”<sup>126</sup> Without elaborating any further on what each of the definition's terms mean, and in which period this definiendum came into existence, he begins to unravel his own argument by saying that “this concept,” presumably the definition itself, is what “sets such works as the *Fuṣūl* of Jaṣṣāṣ or the *Taqrīb* of Bāqillānī apart from al-Shāfiʿī's *Risālah*.” Although the *Risālah* “aims to provide a comprehensive method for the derivation of rulings for all possible future cases,” it “does not contain the features characteristic of later *uṣūl al-fiqh* works, nor can it likely have served as a model for them, since its organization is decidedly not based on an ordered list of *uṣūl*.”<sup>127</sup> And presumably to clinch his case, Stewart introduces a “second crucial feature”<sup>128</sup> of “*uṣūl al-fiqh* genre,” namely, that books, in order to belong to this field, must have in their title the word *uṣūl* (note, however, that it is not necessary for

122 Ibid., 103.

123 Joseph Lowry, a foremost specialist on Shāfiʿī, argues that the link between Shāfiʿī and his closest students—mainly Muzanī and al-Rabīʿ b. Sulaymān al-Murādī, “is, at the very least, fortuitous.” LOWRY, “Reception of al-Shāfiʿī's Concept,” 128. See also ID., “Does Shāfiʿī have a Theory of Four Sources?” Doctrinally and substantively speaking, even Muzanī, who was supposed to be Shāfiʿī's immediate student, had already transcended the master's teaching. “It appears that Muzanī has in many respects completely done away with Shāfiʿī's conceptual framework” (ibid., 147, 149). STEWART does not consider the implications of such findings in Lowry's work, nor does he account for El Shamsy's findings that Shāfiʿī's work experienced a “lull” during the first half of the third century. It is curious, as we will see shortly, that El Shamsy himself ignores his own findings when he speaks about a continuous development in *uṣūl al-fiqh* between Shāfiʿī and Ibn Surayj. See EL SHAMSY, Canonization, 133-37.

124 STEWART, “Muḥammad b. Dāʿūd,” 104. In his *Islamic Legal Orthodoxy*, 36, Stewart argues for the “late ninth century” as the time in which the genre of *uṣūl al-fiqh* had thrived.

125 Shīrāzī, *Ṭabaqāt*, 108-09.

126 STEWART, “Muḥammad b. Dāʿūd,” 104.

127 Ibid.

128 Ibid., 105.

Stewart to have the full designation “*uṣūl al-fiqh*,” yet we are not told how such an exclusion can be justified. Nor are we told why he calls the discipline “genre,” or what he means by it, or, still, when this discursive field constituted itself as a genre). He then avers that al-Shāfiʿī's *Risālah* “stands [further] apart, for it neither bears the term in its title nor uses it as such in the text.”<sup>129</sup>

So we here have an unambiguous acknowledgement from Stewart that the *Risālah* does not “feature” the characteristics of mature *uṣūl al-fiqh*, making Shāfiʿī anything but the founder or progenitor of this science.<sup>130</sup> Yet, in the very next sentence, Stewart throws at his reader a bombshell. “The concept of a complete, finite, and ordered list of the roots of the law, however, existed already in the early ninth century, perhaps even during al-Shāfiʿī's day.” The supposed proof of this contention is a statement culled from al-Qāsim b. Sallām (d. 224/838-39), who lists as sources of the law the Qurʾān and “what the leading jurists and righteous ancestors have ruled on the basis of consensus and *ijtihād*. There is no forth category.”<sup>131</sup> Stewart takes this last sentence as indication that Ibn Sallām was arguing against those who held *ijtihād* “and possibly consensus as well” as sources of law. The upshot of this is that although this “concept” of “a finite, countable collection of principles” is “absent in al-Shāfiʿī *Risālah* ... [it] had [nonetheless] become important by the early ninth century.”<sup>132</sup>

The question that arises here is this: Even if we submit that the “concept” of four sources had become important by Shāfiʿī's time or a few decades later, how does the mere existence of this “concept” prove anything regarding the evolution of a full-fledged hermeneutical theory of *uṣūl* by the mid-third/ninth century? In fact, it is quite likely that this “concept” existed sometime before Shāfiʿī, probably among the Ḥanafites and others, but then where does such an empirical fact, stripped from any and all contextual evidence, leave us? I will later argue that Stewart's definition of *uṣūl al-fiqh* is unduly narrow and imprecise, and because of its imprecision and incompleteness it lacks the analytical power to help in resolving the problems that this controversy about *uṣūl* raised.

Proceeding to build on the two “crucial features” of what makes a work an *uṣūl al-fiqh* production, Stewart gives a list of authors who wrote titles containing the term “*uṣūl*,” such as the Muʿtazilite Abū Mūsā al-Mirdār (d. 226/840), ʿAbd al-Malik al-Mirdāsī al-Qurtubī (d. 238/853), Ibn al-Sarrāj (d. 316/928), and the fourth/tenth century Ibn Khallād al-Baṣrī. Although we have no more than faint clues as to the nature of these works, Stewart nonetheless concludes that the “two fundamental conditions” defining *uṣūl* “had both been met by the early ninth century.”<sup>133</sup> He finds that “in some cases,” the sources preserve “substantial hints” that “are sufficient to dispel any doubts that the works in question were manuals of *uṣūl al-fiqh*.”

129 Ibid.

130 See also *ibid.*, 137, where he acknowledges that “al-Shāfiʿī's work could not have begun the *uṣūl al-fiqh* genre.”

131 *Ibid.*, 104.

132 *Ibid.*, 104.

133 *Ibid.*, 106.

One such work is *Kitāb Uṣūl al-Fuṭyā* of Jāḥiẓ, which Charles Pellat did not deem to be a book on jurisprudence, and J. van Ess took it to reflect Nazzām’s refutation of consensus (*ijmā*), refusing the idea that it is “a comprehensive exposition of *uṣūl al-fiqh*.”<sup>134</sup> But Stewart begs to differ with these eminent experts on Jāḥiẓ, fleetingly arguing instead that the work “*may have been* a comprehensive work on Jurisprudence,” that it “included as well the other topics dealt with in typical works of jurisprudence as we know them from the following centuries: the language of the Koran and the Sunnah, *qiyās*, *ijtihād*, and so forth.”<sup>135</sup> But why are none of these “topics” identified by the later sources as integral to the book? Stewart’s answer is that the “main transmitters” of the work were Shīʿites whose attitude to the work “played a role in skewing its contents.” Introducing further evidence from Zaydi sources that deal with consensus, *qiyās* and *ijtihād* in Jāḥiẓ’s work—which is to say that these sources at no point exceeded these three topics, even by Stewart’s admission—Stewart is still able to claim that “Jāḥiẓ’ *Kitāb uṣūl al-fuṭyā wa’l-ahkām* must therefore have treated *uṣūl al-fiqh*, including, at the very least, sections on consensus, legal analogy, and *ijtihād*.”<sup>136</sup>

The reader begins to wonder about Stewart’s reasoning here, if not the quality of it. First, “must have been” in the last sentence can never translate into evidence, much less a persuasive one, at least by virtue of the fact that nothing more than these supposedly three topics can with any dint of certainty be attributed to Jāḥiẓ. It is striking that Stewart’s article is excessively replete with expressions of uncertainty and speculation (“must have,” “may have been,” “suggests,” “appears to be,” “seems,” “seems likely,” “seems probably,” “quite likely,” “implies,” “possibly,” “probably,” “may be,” etc.)<sup>137</sup>—expressions that are quickly transposed to certainties, all of which go to the unsubstantiated affirmation that complete *uṣūl al-fiqh* works existed by the first half of the third/ninth century.

Second, the uncritical distinction between *qiyās* and *ijtihād* is highly problematic, both in the way Stewart conceives them as distinct categories, and as they appear in Shāfiʿī’s *Risāla*. This latter deals with them as a single entity, mingling them and using them interchangeably. Jāḥiẓ, on the other hand, treats them as separate, when it is true that they were neither separate nor interchangeable in *uṣūl al-fiqh* discipline. Here, *qiyās* structurally stands as a subset of *ijtihād*, this latter having a hermeneutical range that permeates the entire spectrum of the *uṣūl* methodology. It can be said then that neither Shāfiʿī’s *Risāla* nor Jāḥiẓ’s *Uṣūl al-Fuṭyā* reflected the integrated structure of the later *uṣūl*, since they still grappled with the ordered and hermeneutical relationship between the two concepts.

Third, if Stewart could not establish with any semblance of plausibility that Jāḥiẓ’s work covered grounds beyond these “three” topics, then what is the difference between him and Shāfiʿī, whom Stewart dismissed as the “founder” of the discipline? For, after all, Shāfiʿī’s *Risāla* does, without a doubt, cover these “three” topics and much more.<sup>138</sup> In

134 Ibid., 107.

135 Ibid., 108 (emphasis mine).

136 Ibid., 109.

137 All these citations and several more like them appear just on pp. 122-23 and 125 of STEWART’S “Muḥammad b. Dāʿūd,” but also profusely throughout (e.g., “apparently,” “may have been,” “suggests,” “we may hazard to guess,” 110, 111, 131, passim).

138 Shāfiʿī, *Risāla*, 203-219.

other words, why should Jāhīz be credited with having authored a “complete” work of *uṣūl al-fiqh* but not Shāfiʿī, especially in light of the fact that due to the existence of the *Risāla* we are able to speculate less about Shāfiʿī than about what appears to be the extinct text of Jāhīz? None of this is addressed by Stewart.

About eighteen pages into the article, Stewart begins to address his main concern, namely, Ibn Dāwūd's *al-Wuṣūl ilā Maʿrifat al-Uṣūl*.<sup>139</sup> Invoking a statement from Yāqūt's *Irshād al-Arīb* to the effect that in this work Ibn Dāwūd critiqued Ṭabarī regarding consensus, he concludes that “[t]his reference confirms that *al-Wuṣūl ilā maʿrifat al-uṣūl* is a work on jurisprudence rather than the points of law and shows that it included a chapter devoted to the topic of consensus in particular.” Stewart immediately enlarges his claim, stating that “[c]onsiderable material for what appears to be *al-Wuṣūl ilā maʿrifat al-uṣūl* is preserved” in the Fatimid work of al-Qāḍī al-Nuʿmān.<sup>140</sup> Although Ibn Dāwūd's name “explicitly appears only three times, in connection with [consensus, *qiyās*, and *ijtihād*],” there are “indications that all of these passages are attributed to him.”

It must be said that for the source-critical mind, none of Stewart's “indications” can be taken seriously. In the remaining passages, al-Nuʿmān could have been referring to any of dozens of possible interlocutors. Ibn Dāwūd obviously could hardly be the main or chief protagonist. But even if we concede that all the materials alleged by Stewart to belong to Ibn Dāwūd's work do belong to it, the total sum is admitted to be no more than “ten passages.”<sup>141</sup> Stewart lists pp. 100-101 as dealing with consensus; pp. 142-44, 151-54, 156-61, 171-73 as directed against *qiyās*; pp. 183-86, as against *istiḥsān*; pp. 186-87 on a treatment of *istidlāl*; and pp. 199-202, 205-06 as a refutation of *ijtihād*. From this Stewart leaps to the conclusion that “the amount of material cited, together with the fact that the excerpts themselves refer to a book, suggests that al-Qāḍī al-Nuʿmān had a manual of *uṣūl al-fiqh* by Ibn Dāwūd at his disposal.”<sup>142</sup> Although he admits that from “the material included in *Ikhtilāf uṣūl al-madhāhib*, one cannot actually reconstruct Muḥammad b. Dāwūd's work,” he nonetheless continues to affirm that “one can gain some idea of its original plan and contents.”<sup>143</sup>

It is not clear to me how one can, if reconstruction is impossible, still accomplish the feat of knowing the “original plan and contents” of the work. But Stewart nonetheless marches ahead to square the triangle, saying that the work is “implied” to have an introduction, followed by “what appears to be five distinct chapters,” all of which make up the work. The first chapter after the introduction is on juristic disagreement (*ikhtilāf*). With this assertion, Stewart promptly abandons his pursuit of chapter order, asserting that the book also contained chapters on consensus, *taqlīd*, *qiyās*, *istiḥsān*, *ijtihād*, and *istidlāl*, chapters

139 In “Muḥammad b. Dāwūd,” 113-14, STEWART speaks of Ibn Jarīr al-Ṭabarī as having written a work on *uṣūl*, a topic to which he dedicates another article that I will address in due course.

140 Ibid., 116.

141 Ibid., 118.

142 Ibid., 121. Joseph Lowry has argued that al-Jaṣṣāṣ (d. 370/980), a staunch critic of Shāfiʿī, very likely did not have a copy of the *Risāla*. LOWRY, “Preliminary Observations,” 518.

143 STEWART, “Muḥammad b. Dāwūd,” 122-23.

whose specific location in the work he leaves undetermined.<sup>144</sup> From this, and still forging ahead, Stewart employs what is nothing less than dubious methods of philological extractions (where intimations and excessively vague references become *textual facts*) to arrive at the stunning conclusion that “the evidence thus far provides the following sketch of the work’s contents.”<sup>145</sup> This philological footwork allows him to add the following chapters to those purported to be included in al-Nu‘mān’s work: (a) an Introduction; (b) *taqlīd*; (c) General and particular scriptural texts; and (d) Prophetic Sunna. Questions about the size, depth, substantive content, and order of these chapters remain unanswered. In fact, how could any answer be provided when we have nothing better than indirect, vague, passing, and secondhand allusions to the work, if, that is, the allusions are indeed to Ibn Dāwūd’s work, which is often unclear? Yet, Stewart is confidently able to pronounce the judgment that this “sketch, despite its limitations, suggests that al-*Wuṣūl* was a comprehensive manual of jurisprudence.”<sup>146</sup> Notice, a “sketch,” acknowledged to have “limitations” (or “severe limitations,” *certainly*) is able to tell us that the work was not only on jurisprudence but also a *comprehensive* one!

As we have seen, *uṣūl al-fiqh* not only included a vast array of topics, but also was *self-conscious* of the importance of order of its subject matter, a self-consciousness that *constituted part of the discipline’s identity* as well as one of its conditions of possibility.<sup>147</sup> Stewart’s list places consensus first, when it was commonly allocated space in the middle or in the second half of *uṣūl al-fiqh* works.<sup>148</sup> The next five chapters, 3-7—dealing with *taqlīd*, *qiyās*, *istihsān*, *istidlāl*, and *ijtihād*—are supposedly located in the middle parts of Ibn Dāwūd’s work, when they ordinarily occupied the last third of *uṣūl* treatises. The penultimate chapter on legal language is almost always the first chapter in the later works, after the introductory subject matter. And the last chapter presumably treating Prophetic Sunna usually comes around the middle of works in the established genre. Thus, in terms

144 Ibid., 123-25.

145 Ibid., 127.

146 Ibid., 127.

147 See section II, Condition 2, above. For the structural interdependency between order (*tartīb*) and analytical exposition of subject matter (*taḥqīq*), see Ghazālī, *Mustasfā*, I, 4.

148 STEWART argues that Juwaynī’s *Burhān* “attempts to reconcile the organization of al-Shāfi‘ī’s *Risālah* with that of the standard *uṣūl al-fiqh* works,” a fact that is “not surprising” given that Juwaynī “wrote a commentary on the *Risālah* itself” (“Muḥammad b. Dā‘ūd,” 128-29). In point of fact, Abū al-Ma‘ālī Imām al-Ḥaramayn al-Juwaynī, the author of *al-Burhān*, never wrote a commentary on the *Risālah*; it was his father, Abū Muḥammad (d. 438/1047), who did, as I have already noted in “Was al-Shāfi‘ī the Master Architect?” 595, 604 (note 79), 596. Furthermore, in a forced attempt to make the *Burhān* resemble the *Risālah*, Stewart mischaracterizes the former, saying that the “contents of the *Burhān* are divided into five” chapters or sections which Stewart lists as (1) *bayān*; (2) consensus; (3) legal analogy; (4) *istidlāl*; and (5) *tarjīh*. First, even this misrepresentation does not succeed in making the two works appear similar. Shāfi‘ī’s discussion of consensus is fleeting and the few paragraphs he assigns to proving its *hujjiyya* (pp. 203-05) are toward the end of the work. Furthermore, Shāfi‘ī has no sections or chapters on *tarjīh*, a discourse that developed much later. Stewart lists consensus as the second chapter in *al-Burhān*, when in fact it does not appear there until five hundred and thirty pages later. It is preceded by chapters and long sections on *taqbiḥ* and *taḥsīn* (pp. 87-100); *taklīf* (pp. 101-110); *‘ilm/‘ulūm* (111-58); *bayān* (pp. 159-68); *luḡāt* (pp. 169-98); *awāmir* (199-282); *nawāhī* (283-317); *‘umūm*, *khuṣūṣ*, *mujmal*, etc. (pp. 318-482); and Prophetic Sunna (pp. 483-616).

of material/topical coverage, and notwithstanding Stewart's excessive speculation, Ibn Dāwūd's work was sorely partial and far from "comprehensive." And in terms of meeting one of the constitutive conditions of established *uṣūl al-fiqh* genre (namely, structured order, to be discussed in due course) the work, if we accept it as an integral treatise, is both messy and directionless.

Up to this point, one does not suspect that Stewart is aware of the importance of structured order in *uṣūl al-fiqh*, but he in fact seems to be. He remarks that "by Ibn Dā'ūd's time, the conception of *uṣūl al-fiqh* as an ordered list of indicators of the law was already so ingrained that any departure from this organizing principle met with great resistance."<sup>149</sup> The matter of order aside for the moment, we must query another central issue. An order, or a consciousness of order, of "indicators" or of "sources" of the law presupposes a general agreement regarding a fixed and certain set of sources. You cannot order something that does not exist. By Ibn Dāwūd's time, such an agreement on order could not have possibly existed, by virtue of the fact that no less than seven groups were battling each other over what qualifies as "sources" of the law. There were Mālikites, Shāfiʿites, Ḥanafites, Muʿtazilites (with varied representations), traditionalists (with differing voices and a wide spectrum of positions), the emerging Ḥanbalites, Zāhirites, and others.<sup>150</sup> As I argued elsewhere, the "Great Synthesis" had not yet been reached by Ibn Dāwūd's death, although it was underway. A structured order could not have existed when that which constitutes the order, its subject and predicate, was anything but a locus of agreement. Stewart himself unwittingly recognizes this, although he makes nothing of it: "We are indebted to Qāḍī al-Nuʿmān for preserving so much of Ibn Dā'ūd's work primarily because their works [being Fatimid and Zahirite, respectively] ... aimed to disprove or invalidate many of the methodological principles that the Sunnite jurists had adopted as *fundamental elements of their theories* of legal interpretation."<sup>151</sup> But it is more than just the "methodological principles" that were the target of the Fatimid and Zāhirite jurists: they also sought to invalidate some of the very sources upheld by the other, more powerful, groups. It is also important to recognize that each and every one of the seven groups enumerated above were later corralled into Sunnism, albeit only after substantial modifications have been made, *mutatis mutandis*, to their earlier hermeneutical doctrines. Which is the entire point of the Great Synthesis.

That Ibn Dāwūd, a Sunnite, seems to have criticized Shāfiʿī for not including consensus *before qiyās*<sup>152</sup> is no proof that he did so due to an awareness of, and insistence on, a particular order of the discipline's entire range of subject matter. Ibn Dāwūd was commenting on consensus and *qiyās* alone, that is, as they stand in a relationship to each other.

149 STEWART, "Muḥammad b. Dā'ūd," 130.

150 ʿAbd al-Qāhir al-Baghdādī gives a fairly thorough list of the major factions that struggled over defining the sources of the law, a list exceedingly useful for the analysis of *uṣūl al-fiqh* genealogical development. The major actors here are the Khārijites, the Rāfidites, Muʿtazilites (especially the Nazzāmites), Qadarites, Zāhirites, and at least one other group that appears to belong to the Sunnite camp. Baghdādī, *Uṣūl al-Dīn*, 19-20.

151 STEWART, "Muḥammad b. Dā'ūd," 131 (italics mine).

152 *Ibid.*, 129-30.

This of course is the beginning of awareness regarding the importance of structured order, but it is, as we will see, a far cry from what emerges a century or so later.

With so much speculation and guesswork, Stewart nonetheless continues to make drastic claims. By Ibn Dāwūd's time, he tells us, "*Uṣūl al-fiqh* was a sophisticated science presented in comprehensive manuals."<sup>153</sup> This audacious pronouncement is made despite the full admission that immediately follows: "Who wrote these manuals and how far back the tradition goes is still unclear, though one may state *with confidence* that they originated before the late ninth century, probably even before 233/848, by which time al-Jāhīz had completed *Kitāb uṣūl al-fuyā wa-l-ahkām*."<sup>154</sup> Despite the fact that there is so much that we do not know about "these manuals"—not even if they ever existed—Stewart continues to state his case with astounding "confidence." The few pages he culls from al-Nu'mān's work and his unwarranted guesses and speculations about Jāhīz's work are insufficient evidence to justify such claims. As we have seen, most of the twenty or so pages that are claimed to belong to Ibn Dāwūd's work cannot be plausibly verified in any reasonable way to belong to that work. But it seems that Stewart belongs to the school that thinks the massive accumulation of guesswork, speculation, and unrelenting repetition<sup>155</sup> of unproven theses, if they can overwhelm the reader, will eventually result in certainty. Yet, the most striking feature of his writing is that the very hypothesis to be proven is posited, with repetition, as a given premise. Th *uṣūlī*-dialecticians detested *al-muṣādara 'alā l-maṭlūb*.

In another article apparently written in the same period as that treating of Ibn Dāwūd, Stewart argues that the famous historian and jurist Ibn Jarīr al-Ṭabarī also authored a book on *uṣūl al-fiqh*, titled *al-Bayān 'an Uṣūl al-Ahkām*. Culling evidence from later sources, he lists the chapters of the *Bayān* in the following order: (1) consensus; (2) solitary traditions; (3) traditions reaching the Prophet; (4) abrogation; (5) ambiguous and specified traditions; (6) commands and prohibitions; (7) acts of the Messenger; (8) particular and general language; (9) *ijtihād*; and (10) invalidity of *istihsān*.<sup>156</sup> Realizing that the arrangement of this material is similar to the *Zāhirī* works (which he has already discussed in the earlier article), Stewart acknowledges that Ṭabarī's work, despite the "debt" it owes to Shāfi'ī, differs from the *Risāla* in "structure, method, and content."<sup>157</sup> Ṭabarī, he observes, must have been conscious that the *Risāla* "failed quite radically to adhere to the generic conventions of *Uṣūl al-Fiqh* in his own day."<sup>158</sup> But this is not all. Ṭabarī's treatise also differs from "other later works, and shows resemblance to the manuals" of Ibn Dāwūd and his father.<sup>159</sup> "The oddity in the *Bayān* is the placement of consensus first, at the beginning of

153 Ibid., 132.

154 Ibid. (emphasis mine).

155 The language of "no doubt," "undoubtedly," and "dispel any doubt" peppers STEWART's article, a language that has a corollary to the repetitive affirmations that *uṣūl al-fiqh* works existed in a comprehensive form as early as the first decades of the ninth century. See *ibid.*, 100, 101, 106, 108, 109, 111, 113, 122, 127, 132, 133, 134, 135, 136. See also main text above, at n. 137.

156 STEWART, "Ibn Jarīr al-Ṭabarī," 333, 335.

157 Ibid., 334.

158 Ibid., 339.

159 STEWART posits but does not demonstrate that Dāwūd al-Zāhirī wrote a book on *uṣūl al-fiqh*. He does not account for, much less try to rebut, the argument I made in my article, based on Ibn al-Nadīm's *Fihrist*.



the work, followed by the chapters on the *Ḥadīth*, before the discussions of linguistic topics.”<sup>160</sup> This is quite accurate. But how is it that Ṭabarī viewed the *Risāla* to have “failed” due to its nonconformity to “*uṣūl al-fiqh*” works when his own, supposedly an *uṣūl* work, suffered from at least as flagrant a nonconformity as that which Shāfiʿī’s work is accused of? For Ṭabarī to view the *Risāla* thus, he must assume and take for granted a normative structure and organization of the *uṣūl al-fiqh* genre which developed, *as such*, decades after his death. And had he taken it for granted or considered it normative, why would he then violate that which he himself regards as legitimately normative? Or worse, why would he violate the same standard which he critiqued Shāfiʿī for failing to meet? Stewart has no answers, for he does not ask any of these questions in the first place.

At this point, Stewart adds an interesting dimension to his overall argument. Because Shāfiʿī’s *Risāla* did not pass muster with Ṭabarī and his contemporaries, Ṭabarī, in the *Bayān*, as well as other jurists, were “arguing primarily against Hanafī theorists who adopted a less strict scriptural or textual approach.”<sup>161</sup> And so it now emerges that it was the early Ḥanafītes, including Shaybānī (d. 189/805), who were the engineers of *uṣūl al-fiqh*.<sup>162</sup> Why would the Ḥanafītes, the advocates of *raʾy* and *istiḥsān*, be the architects of *uṣūl al-fiqh*—which rejected early forms of both modes of thinking? Why would they embark on constructing an *uṣūl al-fiqh* methodology—which rejects their own early forms of *istiḥsān* and categorically shuns *raʾy*—only to come around in the fourth/tenth century to accept a highly modified form of the former and distance themselves entirely from the latter? Why would the Ḥanafītes play “a role in suppressing elements of their own tradition, erasing for posterity traces of their existence and rendering the task of the historian that much more difficult”<sup>163</sup>? If they were “founders” of the discipline in the sense the later Shāfiʿītes were, why didn’t they insist on their own modes of reasoning and hermeneutics? Were the Ḥanafītes elaborating the theory on their own terms or were they mainly responding to the challenge of the Shāfiʿītes? Again, Stewart does not even begin to entertain such questions, nor does he attempt to resolve the contradictions arising from his claims. The historian’s task becomes all the more difficult indeed when history is imagined to be skewed and convoluted more than it already is.

Stewart’s guesswork and unwarranted speculations take us back to square one. My thesis that “Shāfiʿī’s theory, as innovative as it may have been,” failed to generate *uṣūl al-fiqh* works within a continuous development throughout the ninth century still stands. Even if we were to grant Stewart his guesswork and agree that Ibn Dāwūd and Ṭabarī were authors of

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“Interestingly, among the works attributed to Dāwūd is a tract entitled *al-Uṣūl*. Ibn al-Nadīm, however, lists the work in the midst of titles on positive law. That the work did not treat *uṣūl al-fiqh* may also be gleaned from the fact that a student of Dāwūd, Abū Saʿīd al-Raqqī, wrote a work, also titled *al-Uṣūl*, on the model of Dāwūd’s work” that consists of a hundred chapters (*kutub*). Having already enumerated the *kutub*—clearly treating positive law—in the bio-bibliographical notice of the master, Ibn al-Nadīm remarks that “we need not mention them here.” HALLAQ, “Was al-Shafīʿī the Master Architect?” 589-90.

160 STEWART, “Ibn Jarīr al-Ṭabarī,” 337, 338.

161 *Ibid.*, 340.

162 *Ibid.*, 341-46. In his *Islamic Legal Orthodoxy*, 36, he had argued that it was the Shāfiʿītes, not the Ḥanafītes, who “led the development of the genre.”

163 STEWART, “Ibn Jarīr al-Ṭabarī,” 347.

“developed” *uṣūl al-fiqh* works (which we cannot), this claim will not affect the argument I made that their more distinguished contemporary Ibn Surayj contributed to the venture in more lasting ways—for unlike Tabarī, and certainly Ibn Dāwūd, Ibn Surayj’s basic elaborations anticipated the paradigmatic structure and contents of “mature” *uṣūl al-fiqh*.

Whereas Stewart represented my arguments somewhat correctly (peppered, nonetheless, with out-of-context citations and downright misreading<sup>164</sup> that tend to exaggerate my position), El Shamsy, another critic, manages to distort my position and even the documentary support of my thesis almost beyond recognition. First, he alleges that I “deny the existence of a genealogical relationship between the *Risāla* and the classical genre of legal theory.” Second, he aggravates this misrepresentation by attributing to me the restricted position that I view the *Risāla* as “primarily a theoretical work whose aim is to establish the authority of *ḥadīth*, while the discipline of legal theory concerns itself with theorizing the relationship between reason and revelation.” Third, El Shamsy vitriolically and reductively claims that my “search in Ibn al-Nadim’s *Fihrist* for early works with the word *uṣūl* in the title having been unsuccessful,” I “concluded that there is no evidence of legal-theoretical literature before the generation of Ibn Surayj.”<sup>165</sup>

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It appears that El Shamsy does not appreciate the weight of meanings and complexities associated with the term “genealogical,” a term that never appears in my article on Shāfi‘ī in the first place. Furthermore, there is no language in the article, whether indirect or direct, to permit any careful reader to deduce that I was speaking about any form of genealogy or geological analysis. Our field continues to stand apart from dexterous forms of theorization that are taken for granted in most academic fields. Unless, of course, El Shamsy was using “genealogical” in its basic meaning, though even this is misleading. It is worth our while here to sum up this aspect of my larger argument in that article about the *Risāla*. While I never spoke of genealogy, I did speak of an “organic” connection between the *Risāla* and later *uṣūl al-fiqh* works, although I also argue that this connection took more than three-quarters of a century after Shāfi‘ī to become firmly rooted in juristic discourse. The problem, as I see it, relates to the claim for systematic “continuity,”<sup>166</sup> and the significance of any lack of it. And I did acknowledge that Shāfi‘ī “stood somewhere in the middle of the formative period, half-way between the crude beginnings during the very first decades of the 8<sup>th</sup> century and the final formation of the legal schools at the beginning of the 10<sup>th</sup>.”<sup>167</sup>

164 In his *Islamic Legal Orthodoxy*, 31, for instance, STEWART attributes to me this statement: “During this period [ninth century], [HALLAQ] states, *al-Risālah* met with ‘oblivion’.” He repeats the same language in his review of El Shamsy’s book, *Canonization*. See Review, 844. A careful reader, however, would have understood that I was referring to what I have called the traditionalist/rationalist synthesis, not to Shāfi‘ī’s *Risāla*. Speaking of Shāfi‘ī’s overall oeuvre and project, I say that “his was an unprecedented synthesis between the rationalists ... and the traditionalists.... But if it was a synthesis, sensibly reconciling the two camps, then why was it met with such oblivion?” HALLAQ, “Was al-Shaffī the Master Architect?” 593. It is one thing to speak of an abstract and consolidated idea like a synthesis, and quite another to speak of a text, a concrete entity that can, in part or in whole, attract or repel commentaries, abridgements, or refutations.

165 EL SHAMSY, “Bridging the Gap,” 506.

166 “Was al-Shaffī the Master Architect?” 588.

167 *Ibid.*, 597.

Similarly, I argued that the “rapid growth of the Shāfiʿite school coincided with the emergence of the ... compromise between the traditionalists and the rationalists,” which resulted in *uṣūl al-fiqh* being finally defined, and that must have taken place sometime between the death of Dāwūd al-Zāhirī (Ibn Dāwūd’s father) and the generation of Abū Bakr al-Ṣayrafī.<sup>168</sup> I also asserted that the legal theory of Ṣayrafī and his *aṣḥāb*, who were the students of Ibn Surayj, “coincided” with “Shāfiʿī’s bare thesis.”<sup>169</sup> In my concluding section, I unambiguously stated that “the history of Shāfiʿī’s *Risāla* is connected inextricably with the emergence of *uṣūl al-fiqh* as an organically structured and independent science.”<sup>170</sup> El Shamsy’s exaggerated and straw man claim that I argue for “a radical discontinuity” therefore not only misrepresents (as we will see) the empirical data I use, but also egregiously overlooks how I situate Shāfiʿī in the developments across the third/ninth and fourth/tenth centuries, which resulted in the Great Synthesis.

From the forgoing alone, there is enough evidence to throw doubt on El Shamsy’s allegation that I narrowly viewed the *Risāla* as “primarily a theoretical work whose aim is to establish the authority of *ḥadīth*.” As I have been arguing, here and in the article, Shāfiʿī struck a *hermeneutical* synthesis between reason and revelation that was not accepted (as the case of Buwayṭī demonstrates)<sup>171</sup> anytime soon after his death, but one that came to reflect the Great Synthesis reached during the first half of the fourth century. This synthesis became the hallmark of *uṣūl al-fiqh*.<sup>172</sup> At one point in the article, I did say, *among other things*, that the *Risāla* “lacks depth” and that it leaves out a “legion of questions pertaining to consensus, abrogation, legal reasoning, causation,” and so much else that it would seem to be mainly concerned “with the Sunna of the Prophet and the utilization of *ḥadīth* in the elaboration of the law.”<sup>173</sup>

None of this is much different from the general conclusions reached by various scholars after I published my article, and is certainly consistent with El Shamsy’s own acknowledgement that “questions related to Ḥadīth and their role in law” were “central” to Shāfiʿī.<sup>174</sup> Nor does this differ from Lowry’s detailed studies. In an important article, Lowry shows that although Shāfiʿī knows the “pair *amr* and *nahy*, he only has a theory of *nahy* and hardly discusses the problem of divine commands, *amr*, as such at all. In fact, his relative weighting of these two topics is almost exactly the reverse of the approach taken in the classical works of *uṣūl al-fiqh*.” Most important in this context is that Shāfiʿī saw *nahy* as a problem that “affects the Sunna only,” for he was “interested specifically in *nahy* in the Sunna—not *amr* in the Qurʾān.” The Sunna, as Lowry insightfully observed, was for Shāfiʿī “a special locus of hermeneutical problems.”<sup>175</sup>

168 Ibid., 598.

169 Ibid., 599, 601.

170 Ibid., 600.

171 On Buwayṭī, see further below.

172 See, for example, Ghazālī, *Mustasfā*, I, 5-7.

173 HALLAQ, “Was al-Shafiʿi the Master Architect?” 592.

174 EL SHAMSY, *Canonization*, 53.

175 LOWRY, “Reception,” 137, 146.

On the same page of my article, I do summarize the *Risāla*'s contents in six major points, acknowledging that the work aims to advocate (1) the exclusivity of revelation as a source of law;<sup>176</sup> (2) the Sunna as integral to revelation and thus “binding in legal matters.” The *Risāla* is peppered with statements—pregnant with theoretical implications—that it is incumbent upon Muslims to follow the Prophet and abide by his Sunna;<sup>177</sup> (3) the absence of contradiction between the Sunna and the Qurʾān ; (4) the central concept that the “two sources complement each other hermeneutically”; (5) an epistemology that distinguishes between text-based rulings and inferential ones; and (6) the textual basis of *ijtihād* and consensus.<sup>178</sup> All of this, it is true, is inextricably connected to the *ḥadīth* and its advocacy, but it also goes to my larger argument that Shāfiʿī's synthesis existed long before the general climate was ready for it. If Sunnism as a well-defined paradigm did not exist by the first decades of the third/ninth century, then Shāfiʿī's synthesis had no communal legs to stand on. For it is my argument as well that the history of the formation of *uṣūl al-fiqh* is perhaps the most accurate reflection of the history of the rise of Sunnism.<sup>179</sup>

Finally, El Shamsy's absurd reduction of my research material to a bibliographical survey based on Ibn al-Nadīm's *Fihrist* is belied by the fact, obvious in the article's endnotes, that I comb a good variety of sources, not the least of which is the multi-volume Shāfiʿīte biographical work of Subkī, a number of other Shāfiʿīte, Ḥanafīte, Ḥanbalīte and general biographical dictionaries, *manāqib* works, *uṣūl* treatises, etc.<sup>180</sup> The latter, it is true, do not appear in abundance in the article, but obviously without drawing on more than a decade of prior research and writing in this genre, involving a close study of dozens of *uṣūl* works, the very article would not have been conceived in the first place.

Be that as it may, El Shamsy argues that recent research demonstrates the untenability of my “thesis of radical discontinuity.” He cites Stewart's two articles as being part of this research, articles that we have seen to fail in showing a single complete and mature work on *uṣūl al-fiqh* prior to 310/922. He then cites as part of this research his own book, *The Canonization of Islamic Law*, singling out chapter 8. Yet, I fail to see how even the entire book can refute my position regarding the early history of this discipline. If anything, his findings support at least the main outlines of my thesis. Even Stewart, a most sympathetic reviewer and wary critic of this book, could not help but note, with an astounding accuracy, that El Shamsy has not directly addressed “Hallaq's claim” that “the *Risāla* does not resemble later manuals of *uṣūl al-fiqh* in form, a strong argument against al-Shāfiʿī's formative influence on the genre as a whole. *The Canonization of Islamic Law* passes over on this matter in silence for it does not investigate the early genre of *uṣūl al-fiqh*, its form,

176 Which sums up VISHANOFF's main argument in his *Formation*, to be discussed in due course.

177 Shāfiʿī, *Risāla*, 22, 43, 46, 47, 49, 51, 53, 56, 90, 98, and *passim*.

178 “Was al-Shafi'i the Master Architect?” 592.

179 Which is to say that Shīʿite *uṣūl al-fiqh* came into existence *after* Shīʿism was fully formed, whereas Sunnite *uṣūl al-fiqh* was itself constitutive of the very processes that gave rise to Sunnite identity. Genealogically, this is the single most important difference between the two sectarian disciplines. A further conclusion to be drawn from this field of inquiry is that Shīʿism was not alone in defining itself in opposition to the Sunnite Other, for Sunnism itself behaved very much the same in its attempts to crystalize an identity for itself.

180 HALLAQ, “Was al-Shafi'i the Master Architect?” 601-05.

or its conventions.”<sup>181</sup> As we will see shortly, El Shamsy even dedicates some five pages in his book to explaining why there was a relative neglect of Shāfiʿī's works (what he describes as a “lull”) during the decades following this jurist's death.<sup>182</sup>

Now, in this 2017 article, El Shamsy takes another aim at my argument, saying that his article “continues this line of inquiry,” namely that which he purportedly deployed in his book. His evidence consists of two short texts by Ibn Surayj and another jurist, presumably Khaffāf, a fairly obscure writer.<sup>183</sup> He emphasizes the importance of Ibn Surayj in the history of the Shāfiʿīte school, stating, with great approval, that “recent scholarship” recognized him “as an indispensable figure,” lauded “as the true father of legal schools in general and of the Shāfiʿī school in particular, and as a crucial node through which legal-theoretical thought passed to his students, who were the originators of legal theory proper.”<sup>184</sup> It is quite remarkable that El Shamsy's citations for this “recent scholarship” are two works by Christopher Melchert and K. S. Vikør, the former published in 1997 while the latter in 2005.<sup>185</sup> Tellingly, my article on Shāfiʿī, published in 1993, does not make an appearance here. Why tellingly? Because El Shamsy's argument is nearly identical to mine, and so acknowledging (much less accurately) what I had to say about Ibn Surayj will automatically preempt El Shamsy's critical momentum, rendering his “critique” of my thesis a vacuous bubble. (Incidentally, he also passes in complete silence over Stewart's unfounded claim, which contradicts his argument, that it was the Ḥanafites who embarked on the construction of “*uṣūl al-fiqh*” as early as the beginning of the third/ninth century).

In the 1993 article, basing myself on a variety of sources, I had this to say about Ibn Surayj: He “without exaggeration [was] the most significant jurist in the Shāfiʿīte school after Shāfiʿī himself.” He was “universally held to be the unrivaled leader of the school, far superior to all contemporary and earlier Shāfiʿītes, including Muzanī.” He was “distinguished as Shāfiʿī'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 Shāfiʿīte law, and his students were so numerous that he is credited with ‘spreading the *madhhab*’ to unprecedented dimensions.” He combined “a superior knowledge” of dialectic, law, and theology and excelled in them to such a degree that he “was known as the Little Shāfiʿī” and “thought by many as the *mujaddid*” of the fourth Hijri century.<sup>186</sup> Having discussed Ibn Surayj and his students, such as Ibn Ḥaykawayh, Ibrāhīm al-Marwazī, Abū Bakr al-Fārisī,

181 STEWART's review, 845.

182 See EL SHAMSY, *Canonization*, 133-37.

183 See my discussion of Khaffāf in section II, above. Note that El Shamsy himself wavers on Khaffāf's appearance on the scene, saying, on the same page, that he flourished in the “early fourth/tenth century” and—ten lines later—that the flourishing happened in the “first half of the fourth/tenth century.” “Bridging the Gap,” 505. Needless to say, someone who flourished in the early part of the century could have died by, say, 330/940, while another who flourished in the first half of the century could die as late as 370/980. In either case, we will see that Khaffāf's work does not qualify as an *uṣūl al-fiqh* treatise proper, despite all appearances.

184 EL SHAMSY, “Bridging the Gap,” 507.

185 MELCHERT, *Formation*; VIKØR, *Between God*.

186 “Was al-Shafi'i the Master Architect?” 595-96. Ibn Surayj may have also been knowledgeable in *ṣūfism*, having probably been close to Junayd. See KARAMUSTAFA, *Sufism*, 22, 35n.88.

Abū Bakr al-Ṣayrafi and al-Qaffāl al-Shāshī, I concluded that these “two consecutive generations [i.e., Ibn Surayj’s and that of his students], who had at their disposal a combination of traditionalist and rationalist sciences,” were the true exponents of *uṣūl al-fiqh*,<sup>187</sup> although—as I show below—the discipline was to need another third or half of a century to bring about *uṣūl al-fiqh* as a mature *genre*. The two “consecutive generations” were “to conceptualize legal theory as a synthesis between rationality and the textual tradition,” which is why Ibn Surayj is credited with the title “the middle-of-the-roader.”<sup>188</sup>

I have also noted that “there is no evidence that Ibn Surayj wrote a complete work on *uṣūl al-fiqh*,”<sup>189</sup> an observation that El Shamsy acknowledges but has nothing to say about its relation to his work.<sup>190</sup> As he himself in effect concedes, Ibn Surayj’s work *al-Wadā’i‘ li-Manṣūṣ al-Sharā’i‘* is neither a full *uṣūl* work nor a work fully dedicated to the *uṣūl* discipline, but rather “contains both positive law and legal theory.” The *uṣūlī* part, quite short, “served as one of the main sources on Ibn Surayj’s ideas” on *uṣūl al-fiqh* for Badr al-Dīn al-Zarkashī,<sup>191</sup> an encyclopedic author on the subject. El Shamsy quotes a statement from Ibn Surayj that “contextualizes” the placement of this short theoretical work in his larger *fiqh* book. Ibn Surayj tellingly speaks of his contemporaries and predecessors as having extensively written about substantive law while disagreeing amongst themselves, this being “due to their refraining from clarifying their method [of legal derivation] (*istinbāṭ al-uṣūl*).... I therefore decided to compose a work that brings together methods (*uṣūl al-dīn*) and individual rules (*furū’*).”<sup>192</sup>

First, note here that the towering and encyclopedic Zarkashī relied on this partial *uṣūl* book to “uncover” Ibn Surayj’s legal theory. If Zarkashī had another “complete” *uṣūl al-fiqh* book from Ibn Surayj, he would undoubtedly have used it.

Second, while Ibn Surayj attained a good level of mastery in legal theory, the writings on this subject during his time, as we will see, cannot be said to have constituted a genre and an entirely independent field of inquiry. Just as *Bayān* and *Fuṣūl* were prolegomena to the *tafsīr* works of Ṭabarī and Jaṣṣāṣ, respectively, so was Ibn Surayj’s tract an addendum to his *furū’* work (as was the *Muqaddima* of the later Ibn al-Qaṣṣār).<sup>193</sup> That “*uṣūl*” was so commonly attached to larger works in more established fields is a fact that has not yet been

187 Ibid., 596.

188 Ibid., 599, and p. 604, n. 98.

189 Ibid., 596.

190 On p. 507, n. 11, of his “Bridging the Gap,” EL SHAMSY quotes my “claim” to the effect that “there is no evidence that Ibn Surayj wrote a complete work on *uṣūl al-fiqh*,” but he does not explain how his work refutes this “claim.”

191 Ibid., 507.

192 Ibid., 507-08.

193 Ibn al-Qaṣṣār’s *Muqaddima* constituted the first part of his *khilāf* work *Uyūn al-Adilla*. See the editor’s introduction to the *Muqaddima*, 74. See also Khaffāf’s work that EL SHAMSY edited in his article. Moreover, it is noteworthy that ‘Abd al-Jabbār’s *Mughnī*, a multi-volume theological work, included a volume on *uṣūl al-fiqh*. Yet, having flourished in a Developmental Overlap, ‘Abd al-Jabbār also wrote an independent work, titled *al-Nihāya fī l-Uṣūl*. See *Mughnī*, XVII, 102.

sufficiently appreciated, a fact that speaks of the relative infancy of the field and one that has been complained about by later *uṣūl* writers.<sup>194</sup>

Third, Ibn Surayj's own "contextualizing" of the work is quite telling: He is informing his contemporaries and associates that they need to probe the methodology that leads them to *fiqh*, explaining in the process why they disagree on their outcomes. Such an explanation would have sounded extremely trite a century later, but it obviously was not for Ibn Surayj and his generation. *Uṣūl al-fiqh* was still not the most obvious discipline, a "new creation in Islam" (*mustahdath ft l-umma*), as Ibn Khaldūn aptly noted (though even for the shrewd observer that he was, his estimate, reflecting later projections, was anachronistically too early).<sup>195</sup> Furthermore, the discipline had not yet developed a state-of-the-art name for itself: Ibn Surayj does not yet know *uṣūl al-fiqh*, using instead *uṣūl al-dīn*. This infant designation is just what it is: infant. An infant does not yet know his or her name! All this, however, is borne out by El Shamsy's own concluding statement about Ibn Surayj: Ibn Surayj, El Shamsy tells us, "also takes some very unusual positions that diverge both from al-Shāfiʿī's *Risāla* and from the later theoretical literature."<sup>196</sup> But none of this matters to El Shamsy, who marches ahead without examining how these crucial and central facts about Ibn Surayj can place his work, with nuance, in the trajectory of *uṣūl al-fiqh* development.

Finally, one must note the overall claims that El Shamsy makes in his article. He sums up his findings in three points. First, he affirms that his "broad comparison... indicates that by this time [300/912] Muslim jurists accepted as given an established discourse of legal theory—at this stage called *uṣūl al-dīn*, not yet *uṣūl al-fiqh*." Second, "legal-theoretical discourse was not carried on exclusively in the form of dedicated monographs, but also in introductions or conclusions to works of positive law" (and we may add *tafsīr/ahkām al-Qurʿān*). "Third, a gradual development from al-Shāfiʿī to the classical fourth-/tenth-century texts on legal theory can be discerned."<sup>197</sup>

Note here that the first finding is not substantiated: there is no evidence or argument in El Shamsy's article to the effect that *uṣūl al-fiqh* was "an established discourse," certainly not in the sense being disputed in the present controversy. If "established" means that *uṣūl al-fiqh* reached maturity or was formed as a genre, then the claim is unsustainable, whether by El Shamsy's work or any other (more on this to come). If it means that the *beginnings of theorization toward a full elaboration of the discipline* had already begun by Ibn Surayj and his contemporaries, then this conclusion adds nothing to my findings which El Shamsy militates against. Second, and as I mentioned earlier, El Shamsy glosses over the significance of the fact that "*uṣūl*" works in that early period all too frequently formed prolegomena or addenda to larger works, when this phenomenon almost entirely disappeared from the fifth/eleventh century onward. Nor was there any confusion after the fourth/tenth century with regard to which discipline the designation of "*uṣūl al-dīn*" belongs. And finally, there is nothing in El Shamsy's article to sustain or prove the claim that "a gradual development from al-Shāfiʿī to the classical fourth-/tenth-century texts on legal theory can

194 See, for example, Baṣrī, *Muʿtamad*, I, 7.

195 Ibn Khaldūn, *Muqaddima*, 360.

196 EL SHAMSY, "Bridging the Gap," 509.

197 *Ibid.*, 515.

be discerned.” To be substantiated, such a claim must account for the dynamic but slow evolution of debates on fragments of what became later as legal theory, from Shāfi‘ī’s death to about 270/880. As noted earlier, El Shamsy does not address this history in his book, and much less in the article under consideration.

Another critic whose “argument is in sympathy with that of El Shamsy” is David Vishanoff. The fundamentals of the agreement between the two scholars is that, Vishanoff states, “al-Shāfi‘ī introduced the whole textual paradigm on which classical legal theory is based.”<sup>198</sup> Vishanoff says this in the same footnote where he registers his disagreement with my article, although he manages to invoke the article disapprovingly a number of other times throughout the text. Before proceeding further to speak about his findings, it is worthwhile reasserting immediately that I did not dispute the relevance of the essentials of Shāfi‘ī’s theory to later *uṣūl al-fiqh*—every jurist who mattered accepted the basic givens of a revelation-based law, with all that is entailed in terms of hermeneutical-legal derivation. In fact, I emphatically and repeatedly argued that Shāfi‘ī’s synthetic theory was “innovative” and that it “coincided”<sup>199</sup> with the synthesis to be reached nearly a century after his death. This is precisely why it was relevant to Ibn Surayj and his students, although one can find much in fourth/tenth and fifth/eleventh century theory—and in Ibn Surayj’s own thought—that diverged from the arguments of the *Risāla*. The second half of my article does not tire of repeating the correspondence between Shāfi‘ī’s synthesis and the legal theory that came later to be taken for granted. And in the conclusion I do unequivocally state that: (1) Shāfi‘ī’s *Risāla* “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*.”<sup>200</sup> This characterization is not much different from Vishanoff’s own description of what his work, in its main thesis, tries to show, namely, that the *Risāla* posed the “basic hermeneutical problem [of]... how to negotiate the problematic relationship between revealed texts and legal rules.”<sup>201</sup> While Vishanoff goes the route of hermeneutics and language in order to uncover the techniques and modalities of Shāfi‘ī’s theory, I was interested in the final and macro results of this process, namely, logical systematization and effectual legal reasoning which take for granted the important basic theses in Vishanoff’s detailed research; (2) the “*history of Shāfi‘ī’s Risāla is connected inextricably with the emergence of uṣūl al-fiqh as an organically structured and independent science*”;<sup>202</sup> (3) the “simultaneity”—in the first half of the fourth/tenth century—between the rise of *uṣūl al-fiqh* and the marked appearance of commentaries on, and refutations of his work—“*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 [of uṣūl al-fiqh] in the beginning of the 10<sup>th</sup> century*.”<sup>203</sup>

198 *Formation*, xvi, n. 27.

199 “Was al-Shāfi‘ī the Master Architect?” 596, 599, as well as 598, 601.

200 *Ibid.*, 600 (emphasis added).

201 VISHANOFF, *Formation*, xvi.

202 “Was al-Shāfi‘ī the Master Architect?” 600 (emphasis added).

203 *Ibid.*, 600 (emphasis added).



Thus, a close reading of my article reveals that Vishanoff's position on the *relevance* of the *Risāla* to later *uṣūl al-fiqh*—i.e., that it laid down the essentials of anchoring law in revealed texts—is remarkably close to mine, although we naturally frame the problem in different terms. So the question that arises is this: What does Vishanoff object to in my thesis? Like the earlier critics I have discussed—who think that I argued for a “radical discontinuity”<sup>204</sup> between Shāfiʿī's theory and later *uṣūl* literature—Vishanoff insists that there was a continuity from the *Risāla* onwards. Ironically, in a footnote documenting his statement that the *Risāla* was “known and circulated and used and disputed”<sup>205</sup> in the third/ninth century, he cites my article on Shāfiʿī, where I acknowledge that there were instances in which Shāfiʿī's work was discussed and criticized, citing such names as Ibn Ḥanbal, Bakkār Ibn Qutayba, Abū ʿAlī al-Zaʿfarānī, and Muzanī.<sup>206</sup> But I do argue that the third/ninth century attacks were not necessarily against Shāfiʿī's *Risāla* as a whole but against certain doctrines in it.<sup>207</sup> Furthermore, I do describe such instances as “relatively few” considering the “immense literature”<sup>208</sup> that was produced in that century. This is a relative assessment, and considering the *relatively little* and thin empirical evidence that these critics have managed to unearth since the publication of my article a quarter of a century ago, my estimate is truer now than it was then.

Vishanoff's vehemence in defending the hypothesis of continuity could not come without a heavy price. Immediately after he asserts that there are “numerous reports” of the *Risāla* being discussed and disputed, he begins a series of qualifications that undermine his own argument. “It is true that al-Shāfiʿī's proposals did not immediately win the day; his hermeneutical devices were sometimes ignored... As late as the turn of the fourth/tenth century, some scholars writing on the reconciliation of conflicts in revelation seem not to have taken into account the arguments of the *Risāla*, even though their project was related to Shāfiʿī. Also many legal works continued to rely heavily on non-Prophetic reports (which al-Shāfiʿī marginalized) until the late third/ninth century.”<sup>209</sup> In a footnote, he cites Norman Calder who notes that neither Ibn Quatyba's *Taʿwīl Mukhtalif al-Ḥadīth* nor Ṭahāwī's *Bayān Mushkil al-Āthār* seem to take note of the *Risāla*'s arguments, saying that his own

204 See particularly EL SHAMSY's radical misreading of my work in “Bridging the Gap,” 506.

205 VISHANOFF, *Formation*, 64, and n. 237.

206 “Was al-Shāfiʿī the Master Architect?” 590-91.

207 Ibid., 591. In his otherwise useful study of Ibn Abān, Murteza BEDIR concludes that this Ḥanafite jurist's critique of Shāfiʿī's work was limited to the issue of Prophetic traditions, a fact that confirms, for Bedir, Hallaq's “findings regarding Shāfiʿī, i.e., that [his] *Risāla* was primarily concerned with prophetic authority.” Bedir thinks that my assertion that “Shāfiʿī's name did not attract opposition during the third/ninth century, in particular in the field of legal theory, is too sweeping, given [Ibn Abān's] efforts.” Yet, Bedir himself acknowledges that “nothing in the statements attributed to [Ibn Abān] ... contains a direct reference to Shāfiʿī,” although this latter was the Ḥanafites' “principal opponent.” See BEDIR, “An Early Response to Shāfiʿī: ʿĪsā B. Abān on the Prophetic Report (*Khabar*),” *Islamic Law and Society*, 9.3 (2002): 285-311, at 309. See also Hüseyin HANSU, “Debates on the Authority of Hadith in Early Islamic Intellectual History: Identifying al-Shāfiʿī's Opponents in *Jamāʿ al-ʿilm*,” *Journal of the American Oriental Society*, 136.3 (2016): 515-33, where the author concludes that “Shāfiʿī's views on *ḥadīth*” had a lasting influence, including on later Muʿtazilites.

208 HALLAQ, “Was al-Shāfiʿī the Master Architect?” 590.

209 VISHANOFF, *Formation*, 64-65.

“reading of al-Ṭaḥāwī bears this out.”<sup>210</sup> In my own article, I have also noted the glaring absence of Shāfiʿī’s name from the two famous lists in Ibn Qutayba’s work *al-Maʿārif*.<sup>211</sup> Vishanoff himself finds this “particularly striking in light of the fact that al-Ṭaḥāwī (*Bayān Mushkil al-Āthār*, 1:084.7) quotes directly from the principal transmitter of the *Risāla*, al-Rabīʿ ibn Sulaymān al-Murādī.”<sup>212</sup>

Note here that two of the most focused specialists on Shāfiʿī, Vishanoff and El-Shamsy, admit that Shāfiʿī’s proposal did not immediately win the day and in fact experienced a “lull” for a few decades after his death. It is also important to note that the focus of Vishanoff’s work is not the third/ninth century, for he explicitly admits, as his entire book evinces, that his “sources ... are the systematic legal theory manuals that survive from the late fourth/tenth and early fifth/eleventh centuries,” it being the case that “only a few writings on legal theory survive from the third/ninth and early fourth/tenth centuries.”<sup>213</sup> Given this, it is telling how thin Vishanoff’s argumentation becomes when he speaks of “continuity” between Shāfiʿī and later theory: He finds that this “continuity... is to be found precisely in this hermeneutical analysis of ambiguity, and in the imagined correlation between law and revelation that this analysis was designed to support. Al-Shāfiʿī may not have been the ‘architect’ of Islamic legal theory, but he certainly appears to have launched it as a hermeneutical enterprise.”<sup>214</sup>

If “launching” means that he was the first prominent name to have argued a thesis of the sort he advanced, then I would have no objection to this characterization. In fact, I wholly endorse it. But if this “launching” intends to insist on continuity, then we must clarify what continuity means. To Vishanoff, “instances of opposition to al-Shāfiʿī’s proposals” during the third/ninth century appear to be subsumed under the meaning of continuity, and here I beg to differ. In my view, for “continuity” to mean the ordinary connotations of the term, there would have had to be a steady and regular flow of commentary, interpretation, transmission, and hermeneutical construction of the *Risāla*’s arguments, without a few decades of “lull,” and certainly without the fundamentals of “Shāfiʿī’s proposal” being disputed as a legitimate methodology by numerous third-/ninth-century groups, circles, and scholars, *including his own students* (which I have enumerated above). Vishanoff’s “instances” thus pertain to foundational matters, not just details. Furthermore, the later Shāfiʿītes would also be expected to have accepted Shāfiʿī’s doctrine at least substantially, but we will see that this was not the case. If the third/ninth century was the time of vehement disputes about the very sources of the law, which no serious scholar can deny, then there was no fixed or commonly accepted legal theory, a theory that largely defined what Sunnite law and Sunnism came to be. This background of fermentation, of intellectual

210 Ibid., 64 n. 239.

211 HALLAQ, “Was al-Shafiʿi the Master Architect?” 594.

212 VISHANOFF, *Formation*, 64, n. 239, tries to mitigate this “striking” fact by quoting LOWRY who argues that this is due to the “different purposes of the two works;” but this does not resolve the problem of total absence of Shāfiʿī in other sources (e.g., Ibn Qutayba’s lists) when invoking him would have been so natural if VISHANOFF’s and EL SHAMSY’s imaginings were to be true.

213 VISHANOFF, *Formation*, xvi.

214 Ibid., 260.

and even political dispute, hardly supports any claim for continuity, be it the case of Shāfiʿī's "proposal" or any other.

While Vishanoff's claims—considering the totality of his and other critics' evidence—are far-fetched, his thorough work does nonetheless reveal what lies at the heart of the current controversy. If he were to take his own words seriously, and tease out their full implications, he would have to abandon his thesis of continuity. There was no continuity in the robust and organic sense I have just described, not only because the biographical and bio-bibliographical evidence does not support a claim for continuity, but also, substantively speaking, the desiderata and teleology of Shāfiʿī's doctrine and that of later *uṣūl al-fiqh* differed widely. What Shāfiʿī forged, with "sweat and blood," became the bare outline and taken-for-granted basis of later theory, but not without considerable methodological modifications and theoretical expansion and distension along the way.

Vishanoff perceptively recognizes that what emerged from Shāfiʿī's "ad hoc solutions to concrete interpretive problems was not a rulebook for applying texts, but a toolbox of hermeneutical devices for negotiating the problematic relationship between the evolving and contested discourse of positive law, and an evolving and contested body of authoritative texts."<sup>215</sup> Key here is the term "evolving," which makes the use of "ad hoc" quite meaningful. Thus, the "overall purpose" of Shāfiʿī's hermeneutic "was not to create or justify legal rules, but to validate a certain imagined canon ... the proper basis for (what) a truly Islamic law should be."<sup>216</sup> All this, Vishanoff realizes, was taken for granted by later legal theory.<sup>217</sup> Most importantly, if this theory had a purpose, it was precisely that with which Shāfiʿī never bothered: the rationalization of the law and the continual construction of it. Which is to say that *uṣūl al-fiqh* not only looked back to validate and derive lessons from existing *fiqh* (one of its three foundations), but also looked forward to the further elaboration of the law, whether through fresh *ijtihād* or creative *taqlīd*.<sup>218</sup> *Uṣūl al-fiqh* was a

215 Ibid., 61.

216 Ibid., 62 (emphasis mine).

217 Ibid., 62: Legal theory is "a way of either creating or justifying law."

218 For a subtle analysis of rule-discovery within *ijtihād* and *taqlīd*, see the work of Talal AL-AZEM, *Rule-Formulation and Binding Precedent in the Madhhab-Law Tradition* (Leiden: Brill, 2016). See also my *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001). – In a recent article, Sherman Jackson claims that between my early work on *ijtihād* (1984) and the later *Authority, Continuity and Change in Islamic Law* (2001), I "reversed course" with regard to *taqlīd*, now accepting it, without acknowledging his contribution, as a creative juridical activity and agent of legal change. (See JACKSON, "Ijtihad and Taqlid;" the contribution he refers to is his *Islamic Law and the State*). However, I see no reversal here but a shift in focus, despite Jackson's wily manipulation of citations from my work, and arguments from silence, all intended to show my supposed debt to his monumental and supposedly unique discovery. It is true that my concern in the early period of my career was to show that the so-called "closure of the gate of *ijtihād*" and its supposed consequences in terms of "rigidity" and "ossification" did not occur; hence my focus on *ijtihād* as contrasted to the generally negative view of *taqlīd* (which not only Schacht but also all Muslim jurists disdained and derided generally, especially when the term was used without qualification). But as early as 1984, it was clear to me that "ijtihād continued to be employed but mostly without being recognized under its proper name" ("Was the Gate of Ijtihad Closed?" 32). In later years, and as a continuation of my larger project, I turned my attention to the question of legal change, which required a foray into the formation of the *madhhabs* as the sites of juristic authority, as well as the authoritative, *post factum* construction of the school

forward-looking hermeneutical enterprise, among other things. Shāfiʿī's was not. Yes, Shāfiʿī states in the beginning of the *Risāla* that every *nāzila* must find a solution in God's Book,<sup>219</sup> but this cannot be interpreted in any way that attributes to Shāfiʿī a clear and articulate, much less systematic, vision of a forward-looking methodology, one whose main preoccupation is laying the methodological foundations for discovering God's ethico-legal intentions. His theory was defensive and squarely situated within the polemics of its own times. From the experience of reading his *Risāla*, *Kitāb Jamāʿ al-ʿilm*, and other parts of *al-Umm*, one can vividly imagine real persons debating and interrogating him. His defensive "proposal" was just that, a proposal, partly accepted, partly rejected, even by his own followers ("partly accepted," it must be emphasized, because nearly no one denied the Qurʾān the status of being the first and foremost source of law). Which is to say that between the "ad hoc" nature of Shāfiʿī's project and his struggle for the basics (those foundational facts that were taken for granted by the middle of the fourth/tenth century), it is hardly reasonable to argue that *uṣūl al-fiqh* took off where Shāfiʿī left it. It would take about a century after he wrote the new *Risāla* for the essentials of his proposals to be rehabilitated within the walls of the Great Synthesis, and even then not without much pruning, modification, expansion, and exogenous osmosis.

In fact, it is highly plausible to argue, as Lowry convincingly did, that even by the time of Muzanī, Shāfiʿī's theory, whose core and substance was the concept of *bayān*, was already in good part obsolete.<sup>220</sup> But Lowry went much further. Through detailed analysis

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"founders," among other things. Here, complex juristic processes were at work, including the end spectrum of *taqlīd* which, as I argued, bordered on *ijtihād*. This component of *taqlīd*—properly known as *ittibāʿ*—was obviously relevant to the arguments I was deploying. The other end of *taqlīd*'s spectrum and much in between was and remains objectionable, to this day. In a nutshell, the difference between Jackson's work and mine is that he wants to subordinate all post-formative legal developments under *taqlīd*, a thesis he incorrectly deems to be his original contribution to the field, but which I continue to find all too categorical and radical. To the extent that I did not footnote Jackson's book, *mea culpa*. I should have done so, if only to reassure him of the attention he seeks. (On the jurists' condemnation of *taqlīd*, and on its differentiation from *ittibāʿ*, see, among other works, Ibn ʿAbd al-Barr, *Jāmiʿ Bayān al-ʿilm*, II, 109-33: "*Bāb Fasād al-Taqlīd wa-Nafyihi wa-l-Farq bayna al-Taqlīd wa-l-Ittibāʿ*"). – In the same year Jackson's book was published, Norman Calder voiced a similar criticism of my earliest work, this likewise having been a part of Calder's "general theory" about *ijtihād* and creative and non-creative *taqlīd*. But Calder at least fairly acknowledged—basing himself on an article I wrote two years before Jackson's book appeared—that "Hallaq shows remarkably how he has not stopped thinking about these matters [regarding *madhhabic* *ijtihād* and creative *taqlīd*]. Here, all the major questions that had demonstrably contributed to the theoretical explorations of Ibn al-Ṣalāḥ and al-Nawawī emerge too for him... The real existence of *muftīs* who were actually *muqallids* and, sometimes, scarcely capable of even low-grade *ijtihād* is recognized as a factor requiring to be caught in a theoretical frame." See CALDER, "Al-Nawawī's Typology," 159-60, and especially 161, for the quote. My article that Calder referred to in 1996 was eventually published under the title "Ifta' and Ijtihad in Sunni Legal Theory," in the same year as Jackson's book also saw light (Calder had already obtained the manuscript of the article from me some two years earlier). Although Calder does not fully appreciate the importance of my early work's focus, he remains, unlike Jackson, a balanced and nuanced critic. Crucially, his article on Nawawī had put the case for creative *taqlīd* (or *ittibāʿ*) more pointedly and effectively than Jackson's (concurrently published) work did, a stark fact that seriously challenges Jackson's claim for his supposedly unique discovery and exclusive influence on others.

219 Shāfiʿī, *Risāla*, 14-15.

220 See n. 123, above. See also LOWRY's work *Early Islamic Legal Theory*, whose most important con-

of Shāfiʿī's central problem of *bayān* and how it was received by later theorists, he demonstrated that a fundamental “transition” occurred “from concern with structure and contradiction evident in [Shāfiʿī's work] to the concern with language and communication that is prominent in works of *uṣūl al-fiqh* ... [U]ṣūl al-fiqh has a concept of *bayān* that differs from Šafiʿī's,” a concept that is both “unprecedented” and later rejected by his own followers.<sup>221</sup> Even as early as Jāhiz, he argued, the transformation amounted to nothing less than a “linguistic turn,” ushering in the works of *uṣūl* a preoccupation “with issues of language and signification” that are of “more literary, linguistic, communicative, or perhaps even semiotic connotation.”<sup>222</sup>

Even when Shāfiʿī's theoretical claims were not obsolete, they were deemed too radical even by his closest and most loyal students. El Shamsy's and Zysow's own empirical findings about Buwayṭī (d. 231/846) demonstrate this much, although these two authors are silent as to the significance of these findings. In his “compendium (*mukhtaṣar*) of his master's writings,” Buwayṭī includes at the end of the work a “paraphrased abridgement” of the *Risāla*. This part, merely four folios, amounts to about two percent of Buwayṭī's total work, and about 4% of the *Risāla* itself. His abridgment addresses only three topics in the latter work, and excludes the rest. One of the three topics occupies “a significant part of the abridgment,”<sup>223</sup> where Buwayṭī in effect takes a negative stance toward *qiyās* and relegates it to an inferior position, although it ranked in Shāfiʿī's theory as the only valid form of legal inference. And so Buwayṭī, supposedly the “first Shāfiʿī,”<sup>224</sup> in effect turns out to be a partial dissident, refusing to accept one of the most fundamental elements in his “master's” theory.<sup>225</sup>

If Shāfiʿī's theories of *bayān* and *qiyās* were most central to his entire project, and if these fundamental components were largely rejected by the later theorists and by his contemporaries and even immediate followers, respectively, then what is the real achievement of this “arch-jurist”? It seems that the short answer to this question is this: Shāfiʿī, as Schacht has shown beyond doubt, insisted on the primacy of Qurʾān and *ḥadīth* as the exclusive sources of the law, the former needing no further legitimacy, whereas the latter was the battleground on which Shāfiʿī fought his war against those who either rejected it on principle or those whose use of it was unsystematic, even inconsistent and sporadic. But to introduce the two textual sources as the exclusive sources of the law, much had to be done by way of reasoning and inference, both understood by him to be modes of thinking that require precise and rigorous methods of analysis. For *raʾy* and *istiḥsān*—two modes of

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tribution is the major argument that the *Risāla*'s main theoretical investment was the elaboration of a theory of *bayān*, one that dominates the work.

221 Shāfiʿī's “questionable” theory of *bayān* allowed the later Ḥanafites to level devastating attacks against the Shāfiʿītes. See LOWRY, “Preliminary Remarks,” 514-15, 518.

222 Ibid., 506, 509, and in more detail, 510.

223 EL SHAMSY and ZYSOW, “Al-Buwayṭī's Abridgment,” 332 (emphasis mine).

224 EL SHAMSY, “First Shāfiʿī.”

225 The implications of Buwayṭī's demotion of *qiyās* should not be underestimated. The fact that his “*Mukhtaṣar* reached a wide audience earlier than al-Shāfiʿī's own works” (EL SHAMSY, “First Shāfiʿī,” 333) is not a coincidence, and may well have been due to the unpopularity of Shāfiʿī's ideas during the first half of the third/ninth century, the period of the “lull.”

reasoning that constituted Shāfiʿī's focus of critique—were not dissociated from the careless and unsystematic reliance on *ḥadīth*, which is to say that he saw these sources and their hermeneutical exploitation as interconnected problems of ontology and epistemology, respectively. The introduction of *ḥadīth* as a systematic scriptural source therefore required a systematic method of reasoning, which unfolded in his concept of *qiyās/ijtihād*. All the remaining issues that represented hermeneutical engagement and the assertion of authoritativeness (*hujjiyya*, of both *qiyās* and consensus, even dissensus [*ikhtilāf*])<sup>226</sup> were essential yet subordinate to this overarching concern with *particular* sources and *particular* derivation of rules therefrom.

This “advance” is what the later theorists remembered that Shāfiʿī accomplished, and this is why he was credited with a monumental achievement that was much later viewed as a synthesis between rationalism and traditionalism.<sup>227</sup> But what the later jurists did not care to articulate is something that would have, had they brought it to light, undercut their own project. For what they were doing—that is, their defining concern—was to construct the authority of this jurist as the Founder of their school, a *post eventum* process of authorization on which all schools embarked, each promoting their own eponym as a Founder, using—as I have shown in detail elsewhere—a variety of techniques that consisted of bio-bibliographical data, constructed narratives, and substantive legal doctrines, among other things.<sup>228</sup> That Shāfiʿī's “findings”—however innovative at the time—were either rejected or taken for granted by the middle of the fourth/century is a fact that finds support in a closer look at what *uṣūl al-fiqh* was to mean for the Sunnite tradition as a whole. That his theory of the two textual sources and their *ijtihādīc* derivation constituted the common denominator with later *uṣūl al-fiqh* is—as I have argued in my article—his true, though distinctly *post eventum*, accomplishment.

## V – Conclusion

It is then my argument that while the controversy over the legacy of Shāfiʿī's *Risāla* has encouraged scholars during the last two decades to uncover manuscripts and collect fragmentary evidence relevant to the debate, the overall contributions and arguments do not amount to proving a narrative of continuity and, much less, provide an account of structural links between the work of this supposedly “master-architect” and the later genre. Schacht (and Coulson, who follows him with an abounding measure of *taqlīd*) had argued that

226 See CALDER, “Ikhtilāf and Ijmāʿ.”

227 This is what I argued for in “Was al-Shaffī the Master Architect?” 597-98 and *passim*. Some critics thought that by rationalists and traditionalists I was referring exclusively to *ahl al-ḥadīth* and *ahl al-raʾy*, but as evident on p. 598, I regard the Muʿtazilites, for instance, as belonging to the rationalists (as I do the Ḥanafites), while the traditionalists, under my implicit definition, included many Ḥanbalites and others, such as the *Hashwīyya* (whom I described as “ultratraditionalist.” *Ibid.*, 598). For caution in the use of “rationalists” and “rationalism,” see n. 68, above.

228 The construction of the eponyms' authority was a major concern of my *Authority, Continuity and Change*. However, much work remains needed in order to unravel how (i.e., the *particular modalities* that) each school employed in its processual construction of the eponym as a “founding” figure.

Shāfiʿī's legal thought equaled, if it did not surpass, all later jurisprudential elaborations, which at any rate soon sunk into a state of futile scholasticism that was associated in his mind with stagnation and ossification of the *Sharīʿa*. But later scholarship on *uṣūl al-fiqh* came to recognize that these are unsubstantiated claims, and my 1993 article, along with others,<sup>229</sup> had their target this constellation of Schacht's ideas.

By about 2002, when Schacht was long out of the way and forgotten as a precipitator for much refutative scholarship in the 1980s and 1990s, critics stripped my said article of its historical context and instead focused their attention on proving that my thesis of a patent lack of continuity between Shāfiʿī's *Risāla* and *uṣūl al-fiqh* was unsustainable. I argue here that the aggregate and cumulative effect of this scholarship has nonetheless failed to prove the alleged continuity. Not a single work of *uṣūl al-fiqh* from the first three-quarters of the third/ninth century could so far be produced. And now there is more doubt than existed in 1993 that the works produced during the period between about 270/880 and 310/920 qualify as works of *uṣūl* proper. Devin Stewart, a chief critic, has introduced evidence on the basis of which he formulated a two-pronged argument that in effect reinforces my thesis rather than his. On the one hand, he acknowledges, as I do and have done since 1993, that it is neither Shāfiʿī nor any Shāfiʿīte could be held responsible for initiating the theoretical construction of *uṣūl al-fiqh* in the early third/century. To this extent, his argument supports my position. On the other hand, he insists that it was the Ḥanafites who initiated this process of construction, an insistence that goes well beyond the plausible view that the Ḥanafites effectively participated, as interlocutors and opponents, in the raging debates over sources during the course of the third/ninth century. It is undeniable that without these contestations no *uṣūl al-fiqh* could have arisen, and that the very Ḥanafīte challenge to the other “debating” groups (which I identify above) was an essential ingredient in the emergence of *uṣūl al-fiqh* nearly a century later. But Stewart does not proffer any convincing evidence to prove his argument, which is more an afterthought than it is a sustained, premeditated argument. It simply cannot be taken seriously.

The second prong, on the other hand, is represented in his arduous efforts in gathering fragmentary evidence, which yielded less proof of his own thesis and more for mine. It shall be recalled that my argument—admittedly limited to extensive bio-bibliographical evidence—is that it was Ibn Surayj and his students who were the earliest expositors of *uṣūl al-fiqh*. As counter-evidence, Stewart marshals fragments from Ibn Dāwūd and Ṭabarī, both of whom were almost exact contemporaries of Ibn Surayj (the three having all died within a dozen years from each other). Even if we grant Stewart his claim as to the subject matter these two jurists wrote about, none of his overall arguments refutes the dating of the rise of *uṣūl al-fiqh* I argued for in the 1993 article. Among the three, Ibn Surayj is universally acclaimed to be the towering jurist, and explicitly associated in the classical literature with a new way of thinking, having mastered so many disciplines. Most important is that unlike the defunct Jarīrians and Zāhirites, Ibn Surayj's jurisprudence represented the Great Synthesis in ways that the two others could not. It is therefore difficult to grant Stewart his claim, since after all is said and done, the works of these two jurists do not—as we have

229 See, for instance, HALLAQ, “Was the Gate of Ijtihad Closed?”; ID., “On the Origins of the Controversy”; ID., “Model *Shurūṭ* Works.”

seen in detail—show structural (and in the case of Ibn Dāwūd, substantive) affinity with either later *uṣūl* works and much less with the *Risāla*.

The next critic, El Shamsy, argues for a relative continuity from Shāfiʿī to Ibn Surayj but his overall argument (like Vishanoff's) remains unsubstantiated. In fact, El Shamsy is rather contradictory on the matter, for he advocates continuity when much of the evidence he himself adduces runs counter to his own claim: Ibn Surayj did not know the familiar structure of *uṣūl al-fiqh*, nor does he even know the discipline by its name (even less than what I expected Ibn Surayj to know when I wrote my 1993 article). Nor does his work comport with earlier or later works: Ibn Surayj, El Shamsy tells us, “also takes some very unusual positions that diverge both from al-Shāfiʿī's *Risāla* and from the later theoretical literature.”<sup>230</sup> But the claim for continuity persists, despite the fact that El Shamsy himself acknowledges and discusses the reasons for the relative neglect of Shāfiʿī's works during the first half of the third/ninth century. And when he, in another article, studies Buwayṭī, he finds that the “First Shāfiʿī” (i.e., Buwayṭī, Shāfiʿī's student and supposedly follower) has virtually abjured one of the most important cornerstones of his master's thought: *qiyās*. We remain askance at the quality and meaning of the “continuity” that El Shamsy advocates. Nonetheless, the recovery of Ibn Surayj's work no doubt remains an advance in scholarship, if only to show that even my own estimates of the *uṣūl* development by this jurist's time were somewhat exaggerated. Which is to say that Ibn Surayj's work calls for a revision of my original estimate to a slightly later period, while at the same time considerably militating against El Shamsy's (and Vishanoff's) estimate for an earlier dating.

It might be safe to assume that a recovery of an *uṣūl al-fiqh* work from before Ibn Surayj's time would be impossible, irrespective of whether the work bears the term “*uṣūl*” or not.<sup>231</sup> The reason for this impossibility is in fact simple: *Uṣūl al-fiqh* is *product of a process, and thus could not, ipso facto, precede the very process of which it is an effect and outcome*. There is no amount of manuscript retrieval or scouring for fragmentary evidence that could overcome this logical and ontological fact. And I think it is precisely here where the critics missed a crucial and monumental consideration: They took *uṣūl al-fiqh* to be a “collection of sources,” as Stewart called them,<sup>232</sup> and failed to see that *uṣūl al-fiqh* is a *structured* theory of sources and methodologies, and not just an *ordered* system of thought. *Order (tartīb) is the function of structure*. Structure is not just an arrangement, ordering, or topical configuration of subject matter. Structure means that *there are no veritably discrete parts in this system*, because all parts are interconnected and interdependent, substantively and, especially, hermeneutically and epistemologically. There is no part that can, on its

230 EL SHAMSY, “Bridging the Gap,” 509.

231 The term “*uṣūl*,” I have argued, can be found as early as Shaybānī, but we know with near certainty that this designation referred to principles of substantive law, not to “legal theory.” See HALLAQ, “Was al-Shāfiʿī the Master Architect?” 588. In “Muḥammad B. Jaʿfīr,” 341–42, STEWART unconvincingly argues the opposite. If nothing else, it would be interesting to try to make sense of the fact that an extraordinarily distinguished jurist and theologian as late as Ibn Surayj does not yet know the expression “*uṣūl al-fiqh*” (as EL SHAMSY concedes, “Bridging the Gap,” 515). If by Shaybānī's time the designation was truly coterminous with “legal theory” and “legal methodology,” as Stewart argues, Ibn Surayj, flourishing a whole century after Shaybānī, would have to be deemed a clueless aspirant!

232 STEWART, “Muḥammad b. Dāʿūd,” 105, and passim.



own, be deemed complete. Every part stands in a semiotic, hermeneutical, logical, and substantive legal relationship to other parts within that system of thought. In this system, as I believe in every other, the structure is everything, for it is more than the sum total of all its parts. Inasmuch as *qiyās*, for instance, cannot be—in all these hermeneutical and other ways—independent of the Qurʾān, the Qurʾān, in this system, can never stand on its own, and thus inextricably remains interconnected and interdependent with *qiyās* and every other component. And if a component of the theory appears not to have an immediate structural relation with another (an assumption made only for the sake of argument), the latter would be structurally interconnected and interdependent with yet other parts with which the former is tied in structural ways; which is to say that in *uṣūl al-fiqh* there is no “source,” including the Qurʾān, that is complete and autonomous by virtue of itself, for every “source” interacts with, draws from, and eventually depends on other parts of the *uṣūl* repertoire.

To miss the immense significance of structure is to allow for the erroneous thinking that a discussion or refutation of *qiyās*, consensus, or otherwise, constituted, in most of the third/ninth century, a discourse on *uṣūl al-fiqh*. To describe this discourse as such is to distort the fact that what was happening was a major conflict over hermeneutical and legal methodologies and *the very sources* from which and for the sake of which these methodologies were articulated in the first place; all of which disputes having been atomistic events or ad hoc controversies that were a far cry from engaging in structure, or the elaboration thereof. From Shāfiʿī to Ibn Dāwūd, the debates reflected a foundational disagreement over sources, but from Ibn Surayj’s time, and especially by the time his students wrote, the discourse began to exhibit preoccupation with structure, having taken the emergent sources for granted. Al-Qāḍī al-Nuʿmān was perhaps the last breath of opposition.

When the *uṣūlīs* proper came to order their discursive subject matter (Condition 2, above), they first did so logically, and only second ontologically, because *it was the act of ordering the sources* that constituted their priority. This priority, logical ordering, is itself significant, and not to be taken for granted. Of course, logical ordering implied the ontological structure, but also masked it to the point of appearing as if it had replaced it. Yet, if the route of logical ordering won the day, it was because it was the function of the very history that gave rise to *uṣūl al-fiqh*, a history that is constitutive of the very discipline and genre—almost exactly in the way the theories of the Caliphate, Sultanate, and *siyāsa sharʿiyya* were determinately conceptualized within a historical context that in fundamental ways imposed on political discourse its own conceptions of reality. The logical ordering was thus the result of a long but acrimonious history that stretched from as far back as the early second/eighth century, a history not unlike that of the so-called “first civil war” that left an indelible mark on the much later political conceptions. ‘Abd al-Qāhir al-Baghdādī was an astute historian when he articulated the rise of *uṣūl al-fiqh* as that theoretical system that eventually emerged out of battles between or amongst fairly well-identified adversaries.<sup>233</sup> The ordering then reflected the paradigmatic discursive assertion and reassertion of victory in the disputes, if not also acrimonious conflicts, between and among these contending groups.

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233 See n. 150, above.

Yet, the atomizing nature of these disputes should not be allowed to mask what I have called in the 1993 article the “organically structured”<sup>234</sup> nature of *uṣūl al-fiqh*, which is to say, in an inverse way, that it is this structure—as defined above—that made *uṣūl al-fiqh* what it came to be. This structure was not just a theoretical process, but a choice of how a majority of Muslims wanted to see the world and the modes in which they wished to live in it. This is why, as I have argued earlier, *uṣūl al-fiqh* was an integral part of Islamic cosmology, one that defined a set of hermeneutical principles that struck a particular balance between the higher principles of the divine, on the one hand, and human rational thrust, on the other.<sup>235</sup> Yet, it was the entirety of principles, low- and high-order, that defined this particular legal, political, and communal way of life—proverbially called the way of the Middle-of-the-Roaders (*al-umma al-wasaṭ*). And it is precisely this “middle way”—what I have called the Great Synthesis—that *uṣūl al-fiqh*, the “noble science,”<sup>236</sup> reflected and defined. Modern scholarship has yet to contend with this *uṣūl* history as the most defining process of how Sunnite Islam came to be, and it is both ironic and unfortunate that not a single critic of mine took up the challenge of situating the process of *uṣūl* evolution, including its prehistory, within this colossal historical formation. For the history of *uṣūl* will remain unwritten without placing this paradigmatic discipline in the historical macro-processes that finally came to give Islam, in all of its political, theological, and moral-legal varieties, its forms, structures, modes of subjectification, and traditions.

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234 HALLAQ, “Was al-Shafī‘i the Master Architect?” 600 (twice), 588, 589.

235 On higher principles as they relate to moral philosophy, see HALLAQ, *Restating Orientalism*, 155-57.

236 See a typical description given by Ibn Khaldūn, *Muqaddima*, 359: “*‘Ilm anna uṣūl al-fiqh min a‘zam al-‘ulūm al-shar‘īyya wa-ajalluhā qadran wa-aktharuhā fā‘ida*”; Shawkānī, *Irshād al-Fuḥūl*, 2.

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