The *Risāla* of Muḥammad b. Idrīs al-Shāfiᶜī (d. 204/820): Its Structure, Composition, and Significance for Islamic Legal Theory

David R. Vishanoff

Emory University

al-Shāfiᶜī's *Risāla fī uṣūl al-fiqh* must be one of the most studied and most controversial books in Islamic thought. I cannot hope to do more than add a few footnotes to Joseph Lowry's thorough and insightful dissertation on this text, but I hope they will prove useful ones. They concern the structure and composition of the text, and its significance for the development of Islamic legal theory.

Attempts to find a clear outline in the *Risāla* have produced some rather awkward results. Some scholars have suggested rearranging the text. Norman Calder suggested redating the text to about the year 300, a century after al-Shāfiᶜī's death, in part because of its "failures of organization," which he interpreted as signs of "organic growth and redaction." I want to offer one observation that, I hope, will ease this difficulty somewhat. Both content and formal considerations suggest that the text is not a single book composed according to a single plan and outline, but a sequence of three

related "books," each with its own very clear internal organization, and each taking the previous book as its point of departure.

Book 1 (¶¶ 1-568 of Shākir's edition) appears to have been originally composed as an independent text some time before books 2 and 3. It takes the form of a continuous monologue placed in the mouth of al-Shāfiᶜī *("qāla al-Shāfiᶜī"),* with only occasional references to a *hypothetical* interlocutor *("in qāla qāʾilun.")*

Book 1 claims that if we understand the ambiguities of the language of the Qurʾān, and employ the means prescribed by the Qurʾān for resolving its ambiguities (namely the Prophet's Sunna and *ijtihād*), we will be able to recognize that the Qurʾān itself is a clear and comprehensive statement of the law. This made it necessary to reconcile all the seemingly conflicting data of the Qurʾān and the *ḥadīth* with each other, and also with the existing body of Islamic law. al-Shāfiᶜī proposed that one key tool for achieving this reconciliation was the ambiguity of the Arabic language. Throughout Book 1 he takes sets of conflicting verses and *ḥadīth*, and, largely by exploiting their various ambiguities, he shows that it is possible to interpret them in such a way that each passage is consistent with all the others, and all of them indicate aspects of the same coherent set of legal rules.

In Book 2 (¶¶569-960) the author of Book 1 relates, in the first person, a discussion he had with one or more sympathetic but apparently real interlocutors who

have just heard him read or dictate[1] Book 1. The interlocutors' major questions are introduced by *"qāla lī qāʾilun,"* a phrase that does not occur in Book 1. Unlike the monologue in Book 1, Book 2 proceeds largely as a dialogue in the format *"qāl" / "qultu (lahu)"*. The questions sometimes seem designed to set up the point the author wants to make, but also sometimes reflect a lack of comprehension[2] that frustrates the author; this suggests to me that the author is not merely inventing the discussion for reasons of presentation,[3] but that some such discussion actually took place and is here being paraphrased.

The opening question is asked in direct response to Book 1, and raises a topic it did not address: conflicts within the Sunna. The author first gives a detailed synopsis of Book 1, which he refers back to frequently as to a previous work that is now under discussion.[4] He once very aptly refers to Book 1 as *kitāb al-sunna maᶜ al-qurʾān.*

---

[1] See 226 ¶625: offers as examples of [takhsis] "ma sama`tani Hakaytu fi kitAbi." [This seems to imply that the first part of the book has just (or previously) been read, and is now being discussed.]

[2] Find this

[3] {Calder said this was a device to allow repetition; this is nonsensical.}

[4] 211 ¶769: "taquluna," "wa-najidukum taqisuna" (in mouth of interlocutor) refers back to book 1.

212 ¶573: "ma katabtu fi kitabi qabla hadha."

212 ¶575: "kama wasaftu lak fi kitab allah wa-sunan rasul allah qabla hadha."

214 ¶571: "ma katabna fi jumal ahkam allah".

223 ¶615: "dhakartu lahu ba`d ma wasaftu fi kitab al-sunna ma` al-qur'an" - and then goes on to repeat exampes from the first part of the Risala, which may therefore have been (aptly) called (or at least thought of by the author as) "kitab al-sunna ma` al-qur'an."

Previous scholarship has generally taken this as a reference to an otherwise unknown work by al-Shāfiʿī, but the title fits the contents of Book 1 perfectly, and what he says he treated there is in fact the central theme of Book 1, so I think it is unquestionably a reference to Book 1 as a 'book' in its own right. He then moves on to address at length the interlocutor's question, and shows how to resolve conflicts within the Prophetic Sunna, principally by exploiting linguistic and other ambiguities similar to those that allowed the Sunna to be reconciled with the Qurʾān in Book 1.

Book 3 (¶961-1821) opens with a question from the interlocutor on a new subject: the degrees of legal knowledge. Book 3 could be regarded as merely a continuation of the discussion from Book 2, following a new line of inquiry. But because it is more strongly characterized by the style of a live interaction,[5] and because it takes up a new topic, and follows a new outline that is not even hinted at in Books 1 or 2, I think it is best regarded as a separate "book." Book 3 offers procedures for arriving at rulings that are at least formally correct, in cases where the Qurʾān, even with the aid of the well-established Sunna, does not yield definite answers to legal questions. It treats, in descending order of epistemological value, individually transmitted reports, consensus, reasoning by analogy, and the views of Companions.

---

226 ¶625: offers as examples of [takhsis] "ma sama`tani Hakaytu fi kitAbi." [This seems to imply that the first part of the book has just (or previously) been read, and is now being discussed.]

[5] the author still apparently regards it as a book; see 431 ¶1184

Regarding the *Risāla* as a sequence of three distinct books helps to explain the absence of a single clear outline. This undercuts one of Norman Calder's reasons for redating the text – its "organizational failures." One cannot rule out the possibility of later additions; but on purely internal grounds it is not impossible to retain, at least as a hypothesis, the traditional ascription of the work to al-Shāfiᶜī. My favorite hypothesis, which is pure speculation at this point, is that what I have called Book 1 of the *Risāla* represents the substance of the famous Old *Risāla,* which was supposed to have been composed in Baghdād but is now thought to be lost. The Old *Risāla* reportedly dealt with abrogation and general and particular language in the Qurʾān, as well as with the Sunna. This matches the content of Book 1 quite well.[6] On that hypothesis, the present form of the text would represent a rewriting or redictation, in Egypt, of the contents of the Old *Risāla*, followed by, in Books 2 and 3, a summarized account of some of the questions that al-Shāfiᶜī faced in Baghdād when he first read the work there, together with organized responses to those questions.[7]

---

[6] Other reports that the "old *Risāla*" also included discussions of consensus and analogy sound suspiciously like attempts to anachronistically force a "four sources" model of legal theory on al-Shāfiᶜī.

[7] It is quite conceivable that the final product was not circulated as a book until near the end of al-Rabīᶜ's life, which might help to explain the lack of specific references to the work earlier in the 3d century. A *terminus ad quem* for the promulgation of the complete work is tentatively established by a quotation from Book 3 by Ibn Abī Ḥātim (d. 327/938) (in his *Kitāb al-jarḥ wa-l-taᶜdīl)* which, it has been suggested, was probably transmitted to him by al-Rabīᶜ in the year 262/875. This fits with the note at the end of one manuscript, which states that al-Rabīᶜ authorized its copying in the year 265/879.

Another argument for redating the *Risāla* is that 3d-century scholars seem to have been unaware of its ideas, at least until about the year 260, and also that its ideas really fit best into the intellectual climate of the late 3d century. So I'd like to look briefly at several ideas from Book 1, and suggest that they do in fact draw on early discourses with which al-Shāfiᶜī himself would have been familiar. Furthermore, these ideas were not ignored during the 3d century as formal legal theory began to take shape; indeed I think they were pivotal to the emergence of what we now regard as classical legal theory. Some scholars, including Joseph Lowry, have recently challenged the traditional portrait of al-Shāfiᶜī as the founder or master architect of Islamic legal theory, and have emphasized, quite rightly, the dramatic discontinuities between the *Risāla* and classical legal theory. But if we pay attention to the often neglected linguistic questions of classical legal theory – what I like to call legal hermeneutics – I believe we can see al-Shāfiᶜī's decisive influence.

First let me state what I believe was the driving problematic behind the development of classical legal hermeneutics. My reading of the great theorists of the 4th century is that they were trying to fit Islamic law into a coherent epistemology. They were trying to show that it was philosophically possible to regard Islamic law as revealed; and also that the actual content of Islamic could plausibly be said to be derived from the actual corpus of revelation.

The principal key to solving this problem was a formal analysis of language, which I like to break down into five major topics:

1) the problem of reference: how do words come to have meanings both in the lexicon and in actual utterances?

2) clarity and ambiguity.

3) the scope of reference of words: *al-ᶜāmm wa-l-khāṣṣ.*

4) modes of speech, especially commands and prohibitions.

and 5) explicit and implicit meaning *(al-mafhūm* and related matters).

By categorizing Qurʾānic words and phrases in terms of these five categories, it was possible to justify the kinds of interpretive moves that were necessary for correlating the canon of revelation with the canon of law.

Now this is also the project of Book 1, and to a great extent also Book 2, of the *Risāla:* to establish the possibility of correlating law with revelation. And al-Shāfiᶜī did so first and foremost through an analysis of language which touches on all five of these topics, though not always using the classical terminology.

1) The problem of reference: al-Shāfiᶜī did not put forward a theory of how words come to have established meanings; but he did employ the idea that expressions have a basic apparent meaning *(ẓāhir),* yet they can be used in a way that does not accord with their apparent meaning. This idea was also being developed at the end of the 2d century by writers such as Abū ᶜUbayda in his *Majāz al-Qurʾān.* (Here I should acknowledge Wolfhart Heinrich's very helpful work on this topic.) al-Shāfiᶜī did not use

the term *majāz* in the *Risāla*, but his examples included the phrase "ask the town," which Abū ᶜUbayda also used, and which eventually became a stock illustrations of *majāz* in classical legal theory. This claim that revelation sometimes departs from apparent meaning was contested already in the first half of the 3d century, most notably by Dāʾūd al-Ẓāhirī.[8] Once the 3d-century Muᶜtazila had developed a theory of how words come to have meaning, and used that theory to define *majāz*, al-Shāfiᶜī's claim that revelation can legitimately be interpreted contrary to its apparent meaning became one of the basic tools of classical legal hermeneutics.

2) Clarity and ambiguity: The general notion of ambiguity in Qurʾānic language was discussed well before al-Shāfiᶜī by Qurʾānic exegetes.[9] But al-Shāfiᶜī's most important category of ambiguity may have been original: *jumla* – summary language that does not convey the complexity of the reality to which it refers. Whenever a text is less detailed than the law it is supposed to impose, al-Shāfiᶜī regards it as *jumla*. This allows him to adduce some other evidence as a clarification or elaboration *(tafsīr),* to show that the text does in fact support his view of the law, despite its vagueness or its apparent incompatibility with the law or with other texts. (When the apparent meaning of a text matches al-Shāfiᶜī's view of the law, he calls the text unambiguous *(naṣṣ).*) al-Shāfiᶜī's method of using texts to clarify one another regardless of the order of their revelation

---

[8] al-Jāḥiẓ (d. 255) also cites some people who denied *majāz* / departure from apparent meaning.

[9] E.g. *wujūh al-qurʾān;* discussions of *al-muḥkam wa-l-mutashābih;* Muqātil b. Sulaymān's list…

was disputed during the 3d century by the Muᶜtazila, who rejected the notion of "delayed clarification." But al-Shāfiᶜī's basic idea of classifying texts as ambiguous so that other texts could be used to modify them … caught on. It was refined and systematized into four-fold or eight-fold classifications of ambiguity, in which *jumla* was replaced with *mujmal* and given a narrower technical definition.[10]

3) Scope of reference: the problem of determining the scope of general expressions in the Qurʾān seems to have been raised first by theologians defending their views on whether *all* grave sinners would be eternally in hell, or only unbelieving grave sinners.[11] al-Shāfiᶜī applied this concept to legal interpretation. One of his favorite devices for reconciling revealed texts was what would later be called particularization *(takhṣīṣ)* – using one text to show that another apparently contradictory text was actually intended to refer to less than its apparent scope of reference. al-Shāfiᶜī's liberal use of *takhṣīṣ* was disputed already during his lifetime, or soon after his death, by the Ḥanafī ᶜĪsā ibn Abān (d. 221). *Takhṣīṣ* became one of the two main topics of 4th-century legal hermeneutics, where there was fierce debate over what kind of evidence was required to particularize a general expression. The Shāfiᶜiyya defended a low standard of evidence,

---

[10] Categories ostensible *determine* which text can modify which text, but in fact the categories are defined in terms of whether a text has been modified by another, so they are really a way of justifying an interpretation by claiming that one text is clearer than another.

[11] The Ḥanafī 'founding fathers' also used the term *ᶜumūm* in the sense of incorporative reference: a thing is referred to generally by an expression that denotes something of which it is a part, as for example a gem is referred to generally by the expression 'ring.

thus maintaining the power and flexibility that al-Shāfiᶜī accorded to *takhṣīṣ* as a device for reconciling the canons of law and revelation.

4) Modes of speech – commands and prohibitions: Here again al-Shāfiᶜī introduced the key questions: to reconcile prohibitions with conflicting statements of permission, he argued that prohibitions are ambiguous with respect to both their scope of reference and their legal force (that is, they may render things forbidden or merely disapproved). Both ideas were developed by his pupil al-Muzanī (d. 264), who broadened the discussion to include commands as well as prohibitions; his work will be the subject of a forthcoming article by Joseph Lowry. By the time al-Ashᶜarī wrote his *Maqālāt* at the end of the 3d century both the scope and the legal force of commands were standard topics. During the 4th century commands became the second of the two main topics of legal hermeneutics.

Finally (5), al-Shāfiᶜī recognized both positive implication (e.g. prohibition of less implies prohibition of more)[12] and negative implication (e.g. the imposition of tax on certain kinds of livestock implies other livestock is exempt),[13] though he did not use the classical terminology. He was later credited with formalizing these principles,[14] which

---

[12] See *al-Risāla,* ¶175, ¶1492-1495. ¶175: Sometimes something is made known by ma`nA rather than by IDAH al-lafZ (as in pointing), and this is considered a more excellent form of speech than explicit reference. [This foreshadows mafhUm and other types of dalala.]

[13] See *al-Risāla,* ¶521.

[14] al-Juwaynī (*al-Burhān* (1997), 165-166) says he explained (and accepted) both *mafhūm al-muwāfaqa* and *mafhūm al-mukhālafa* in *al-Risāla.*

became important in classical legal theory; but actually it appears to me that these concepts were already established before al-Shāfiᶜī, and though he mentioned them, they were not central to his method.

Now it is noteworthy that none of these five linguistic topics was thought up by al-Shāfiᶜī; they were all being addressed in one way or another by Qurʾānic exegetes or theologians or jurists before or around al-Shāfiᶜī's time. But al-Shāfiᶜī brought them together in the service of law, and showed how they could be used to demonstrate the *possibility* of correlating the existing canon of law with his new canon of revelation. This application of linguistic analysis was not ignored, but on the contrary was disputed and elaborated over the course of the 3d century. It therefore seems to me that the *Risāla* fits quite well the state of language analysis at the beginning of the 3d century. And its basic hermeneutical vision did shape the development of classical theory. al-Shāfiᶜī's treatment of my five topics of legal hermeneutics is admittedly a far cry from the systematic structure and the technical vocabulary of the classical theory. But his *Risāla* does represent the first known formulation of both the central hermeneutical problem of legal theory (the correlation of law with revelation) and the principal classical solution to that problem (the analysis of linguistic ambiguity.) al-Shāfiᶜī can no longer be viewed as the "master architect" who established structure of Islamic legal theory, but perhaps he was the ingenious *bricoleur* who cobbled together a range of existing ideas about language to demonstrate the possibility of grounding Islamic law in revelation.