“Classical” Islamic Legal Theory as Ideology

Nasr Abu Zayd's Study of al-Shafiʿi's al-Risala

Muhammad Khalid Masud

1 Introduction

Joseph Schacht opened his classical work on Islamic law in 1950 with the following statement:

The classical theory of Muhammadan law, as developed by the Muhammadan jurisprudents, traces the whole of the legal system to four principles or sources: the Koran, the sunna of the Prophet, that is, his model behaviour, the consensus of the orthodox community, and the method of analogy. The essentials of this theory were created by Shafiʿi... [H]e carried it to a degree of competence and mastery which had not been achieved before and was hardly equalled and never surpassed after him. (Schacht 1959, 1)

Obviously, classical theory to Schacht meant Muhammad b. Idris al-Shafiʿi's (d. 820) theory about the system of four sources, due to his basic interest in the history of legal hadith. He considered it classical, apparently, because to him this theory is unequalled and unsurpassable in mastery and competence. Before exploring whether the central point in al-Shafiʿi’s theory was defining the four sources, let me first consider the significance of Schacht’s characterisation of al-Shafiʿi’s theory as “classical.” It is pertinent to note that the term “classical” generally refers to Greek and Roman traditions alluding with admiration to perfection, completeness, and beauty in these cultures. Lately, it has also been used to distinguish between modern and ancient cultures and civilisations; antiquity is not necessarily used in a negative sense. However, one is not sure whether Schacht uses the term in the sense of admiration, because in an article about Islamic law written almost within a decade of the book cited above, he employed the term “classicism” as a synonym for fossilisation, decline, and immobility (Schacht 1957, 141). Furthermore, with reference to Islamic law, the attribute “classical” in modern settings may also mean that it is not adaptable to modern needs
because in this theory Islamic law is religious and sacred in its source. This perception of classical was probably born in the wake of colonial modernism that defined non-Western cultures, especially legal traditions, in terms of decadence.1 Those cultures were declining and could not be reformed; they could only be replaced with modern and more advanced legal systems.

Ironically, this approach was more agreeable to Muslim conservatives who romanticised Islamic law as perfect and ideal and hence not in need of reform. Western discourse generally ignored or did not value the voices of reformist Muslims who were critical of the conservative narrative of Islamic law and argued that Islamic law as such is not a revealed law but changeable as a human product and adaptable to the needs of time. Most Western scholarship regarded these voices as defensive and apologetic (Masud and Salvatore 2009, 36-56).

The second significance of Schacht’s statement is the pivotal place that he gave to theory, preferring it to substantive law, which he considered “practice.” Even though substantive Islamic law attracted the attention of Western scholars first and was the topic of their studies in numerous volumes, their observations about the nature and history of Islamic law were later dismissed as relating to mere “practice” in their studies of Islamic legal theory, especially on al-Shafi’i, who was often regarded as the master architect of classical Islamic legal theory.

The crucial point of reference in the studies of Islamic legal theories has been al-Shafi’i’s epistle. Arguably the first treatise that defined the Qur’an as the primary text, al-Risala links other sources to this revealed book. Studies on the history, nature, and adaptability of Islamic law have largely relied on this epistle. Since then an increasing number of scholars have offered more critical studies of Islamic legal theory, underscoring the need for further explorations into the subject.

The third significance of Schacht’s statement is that it continues to provide a framework for studies on Islamic law. Recent studies are challenging Schacht’s conclusions but continue to analyse al-Shafi’i’s contribution from the perspective of four sources.2 Bernard Weiss’ “Alta Discussion” with contemporary experts on Islamic jurisprudence in his recent publication on Islamic legal theory underlines Schacht’s continuing influence on the framework of inquiry (Weiss 2002, 385-429). Joseph Lowry suggests that al-Shafi’i’s al-Risala deserves to be studied “with a wider lens, to do justice to its aspiration to provide a general account of Islamic law, in which Prophetic

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1 For an analysis of classical Western scholarship on this point, see Masud (1995, 1-26).
authority is only one element” (Lowry 2007, 11). Yet he does not feel the need to challenge Schacht’s conclusion about al-Shafiʿi’s place in the evolution of a concept of prophetic authority. This is probably because al-Shafiʿi’s al-Risala is still considered essentially a work on Islamic legal theory. Some Muslim scholars have suggested different approaches to studying this epistle – rhetorically, hermeneutically, and historically. Due to a lack of communication between different academic communities in Islamic studies, particularly between Western and Arab scholarship, other perspectives on al-Shafiʿi’s works have not attracted due attention.

Commenting on Lowry’s scholarly study of al-Shafiʿi’s epistle (Lowry 2007), Ahmed el Shamsy observes a widening gap between Arab and Western scholarship. Despite the fact that Lowry takes note of six studies on the epistle in Arabic, he does not include them in his discussion (El Shamsy 2008). El Shamsy is also disappointed about the absence of Nasr Abu Zayd’s “highly intelligent study” of al-Shafiʿi’s al-Risala (Al-Imam al-Shafiʿi wa taʾsis al-idiyilojiyya al-wasatiyya) in Lowry’s analysis of this epistle (Abu Zayd 1992, henceforth Taʾsis⁴). It is particularly significant that Lowry mentions Abu Zayd’s study of al-Risala merely in a footnote and in connection with the four-source theory.⁴ El Shamsy’s remarks about the neglect of Arabic literature on the subject deserve serious attention in order to understand the broader scope of al-Shafiʿi’s epistle.

Nasr Abu Zayd studied al-Risala from the perspective of discourse analysis, as he was more interested in the hermeneutical issues of “religious discourse” and “textual authority” than in the problem of the “four sources.” The present essay is a focused study of Abu Zayd’s monograph on al-Shafiʿi’s al-Risala.

2 Nasr Hamid Abu Zayd (1943-2010)

Naṣr Abū Zayd was an Egyptian Islamic scholar and an expert on Qur’anic hermeneutics. He is well-known for his two books that became controversial: his 1992 Al-Imam al-Shafiʿi wa taʾsis al-idiyilojiyya al-wasatiyya (Imam al-Shafiʿi and the foundation of the ideology of synthesis) and his 1995 Naqd

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³ I used the second edition which was revised by the author and published by Madbuli in 1996. The first edition was published in 1992; other authors usually refer to this specific edition. Henceforth, Taʾsis in the text of my essay refers to the 1996 edition.

⁴ Lowry (2002) mentions Abu Zayd’s work in a footnote (pp. 26-27, n14) but only as a “sample of modern scholars who have expressly followed the four-sources theory.”
al-khitab al-dini (Critique of religious discourse). These books challenged the mainstream Muslim views on al-Shafi‘i, uṣūl al-fiqh and Islamic tradition, and stirred the controversy that subsequently led to his exile.

Born in a village near Ṭanṭā, Abu Zayd came to Cairo and joined Cairo University in 1968. He submitted his master’s thesis on *Metaphor in the Qur’an: A Study of the Mu’tazila* in 1973. He completed his PhD dissertation on *A Study of the Exegesis of the Qur’an in Ibn ʿArabī* and joined the faculty of the Department of Arabic Language and Literature at Cairo University as an assistant professor in 1982. He was promoted to associate professor in 1987.5

In 1992 his application for promotion to the position of full professor was refused. One of the committee members accused Abu Zayd of “clear affronts to the Islamic faith,” and opposed the proposal for his promotion. Despite two reports in his favour, the Cairo University Council refused the promotion, ruling that his works did not justify it.

In 1993, he was eventually promoted to the rank of full professor by Cairo University, recognising his scholarly achievements. This appointment escalated the religious controversy. His opponents took the controversy to the *ḥisba* court and presented his books as evidence. The court declared him apostate and cancelled his appointment as professor. In 1995, the Cairo Appeals Court declared Abu Zayd’s marriage also null and void, a decision which was confirmed by the Egyptian Supreme Court. These court judgements forced Abu Zayd and his wife to go into exile in Europe. They eventually settled in the Netherlands. First, he taught at Leiden University. Later, he held the Ibn Rushd Chair of Humanism and Islam at the University of Humanistic Studies in Utrecht, the Netherlands, while supervising MA and PhD students at Leiden University as well. He also participated in a research project on “Jewish and Islamic Hermeneutics as Cultural Critique” in the “Working Group on Islam and Modernity” at the Institute of Advanced Studies of Berlin. In 2005, he received the Ibn Rushd Prize for Freedom of Thought. He died on 5 July 2010 in Cairo as a result of an unidentified virus infection and was buried in his birthplace, on the same day.

Abu Zayd’s life story, especially the controversy over his writings and consequent difficulties, shows that critical study of Islamic legal theory is not simply an academic activity. Criticising mainstream views proved to be a matter of life and death. Abu Zayd’s research work was very close to the lived realities. In an interview published in *al-Ahrām* on the day he was declared apostate from Islam and placed under house arrest, he explained how he related his writings to the events in his life. Recalling

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5 Information about Abu Zayd’s life is taken from Anis and Howeidy (1995).
his writings on religious discourse he remembered how the mainstream religious discourse shifted with the changing political perspectives in Egypt between the 1960s and 1970s:

My own experience encompasses divergent interpretations of Islam from the 1960s and 70s. In the 60s the dominant religious discourse was that Islam is the religion of socialism and social justice, and that it urges us to fight imperialism and Zionism. In the 70s, with the open door policy and peace with Israel, “Islam became the religion that guarded private property and urged us to make peace with the Israelis.” (Anis and Howeidy 2010)

Explaining the impact of the context of his writings on the concept of the text, he recalled his anxiety about the chaos to which an uninformed interpretation could lead:

This resulted in the book, The Concept of the Text: A Study in the Quranic Fields of Knowledge. My premise was that before dealing with questions of interpretation of the text, one must first define the text, examining the laws that govern the study of that text, because we cannot leave the door open for any and every interpretation. It was at this point that I began to make use of developments in hermeneutics.

The study of hermeneutics revealed to me the dangers involved in leaving a religious text prey to interpretation by anybody. Religious texts profoundly influence social and cultural life: if we place them at the mercy of the ideology of the interpreter without defining the extent to which the text lends itself to exegesis and the limits of the meaning it offers, then we are in deep trouble. Any text is a historical phenomenon and has a specific context. It is from this premise that I proceed to examine the context in which the Quran has been studied within various schools. And I discovered that the understanding of context was always partial. It had to be expanded to include pre-Islamic society, its values and traditions, to comprehend the development of the text within society. (Ibid.)

Explaining the context of his book Critique of Religious Discourse, he was reminded of his dissertations on the Muʿtazila and Ibn ʿArabī. Mainstream scholars accuse the Muʿtazila and Ibn ʿArabī of using the Qurʾan for their political purpose. How, then, is the contemporary religious discourse free from political discourse?
In this context, I am convinced that if the Mutazilites and the Sufis used the Quran to serve political ends, then this applies equally to contemporary political religious discourse. I am a man who dreams of a better future for his country, his countrymen and his students and these are the concerns that lay behind the intellectual effort which resulted in my book *Critique of Religious Discourse*. (Ibid.)

He explained how his opponents shifted the emphasis and changed the context to distort his views to serve their political objectives, namely refusing him the position of professor:

But it was sections of this book, along with parts of my book on Al-Imam Al-Shafee, and a paper on ‘the distortion of context in the interpretations of the religious discourse’, that provoked these accusations of apostasy, accusations that are based on a distortion of my ideas. For example when I spoke of the *Ḥadīth* being secondary to the main text, that is the Quran, it was said that I had trivialised the value of the *Ḥadīth*. (Ibid.)

Abu Zayd’s story is one of several other events that reveal the impact of al-Shafi’i’s legal theory on Muslim thinking until today. Academic studies often tend not to include related personal stories in order to avoid subjectivism. In my view such events in fact reveal the inner reason and the true importance of al-Shafi’i’s theory and explain why it continues to be relevant today when the legal and political contexts have changed. It is for this purpose that this chapter focuses on Abu Zayd’s analysis of al-Shafi’i’s *al-Risala* as an ideology.

### 3 Islamic Legal Theory as an Ideology

From the perspective of this chapter it is significant to note that Abu Zayd’s colleagues mainly read his *Al-Imam al-Shafi‘i wa ta‘sis al-idiyilojiyya al-wasatiyya* as a book on Islamic jurisprudence. When they questioned the author’s competence on the subject, Abu Zayd insisted that al-Shafi’i’s *al-Risala* was not essentially a treatise on jurisprudence, *fiqh* or *uşūl al-fiqh*; its subject was epistemology. The question of competence was raised in the context of his application for promotion but Abu Zayd responded to it as an issue of sociology of knowledge in a broader sense. In order to understand

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this debate, it is appropriate to first briefly introduce al-Shafiʿi and his epistle.

3.1 Abu ‘Abd Allah Muhammad b. Idris al-Imam al-Shafiʿi

Born in Mecca into a noble family of the Quraysh, al-Shafiʿi studied hadith and fiqh with the masters of two prominent schools, with Mālikis in Medina from 787 until 802, and with Hanafis in Baghdad between 803 and 806. This was an extremely critical period both in a political and intellectual sense. Different groups contested for supremacy: the ahl al-ḥadīth and ahl al-raʾy contested for the authentic approach to legal reasoning; the Arabs were apprehensive of Persian cultural influences; and the Abbasids and Hashimites contended for the caliphate. Al-Shafiʿi was in contact with all these groups and was apparently deeply concerned with the dominance of Persian culture, with Muʿtazili theology, and with the neglect of hadith by most jurists. He left Baghdad for Yemen and came back to Baghdad but could not stay long. He finally moved to Egypt in 814. There his conflict with the Mālikī jurists led him to reconsider his views. Most of his biographers mention his revised views as qawl jadīd (new statements) compared to his previous positions as qawl qadīm (old statements). Al-Risala, written earlier in Baghdad, was also revised. In the later years of his life he was attacked and injured by some of his Mālikī opponents. He died in Egypt in 820.

In brief, al-Shafiʿi lived in a period in which several political, cultural, intellectual, and religious groups contested for supremacy and various traditions of religious knowledge were developing into disciplines – a context which clearly influenced al-Shafiʿi’s ideology. He studied these conflicting trends and tried to clarify the differences. Abu Zuhra describes the following as al-Shafiʿi’s major achievements: he was the first scholar to formulate uṣūl al-fiqh (legal theory); he compiled and collected Maliki and Hanafi jurisprudence; he regulated the method of raʾy (jurists’ opinions) by formulating rules for analogical reasoning; he standardised the sunna; he devised methods of interpreting the Qur’an and sunna; and he was the first to clarify the notion of abrogation (Abu Zuhra 1948, 11).

7 According to Abu Zuhra (1948, 143), al-Shafiʿi’s intellectual development could be divided into three phases: in the Meccan period he was Maliki; during his stay in Baghdad he tried a synthesis of Maliki and Hanafi jurisprudence; in Egypt he departed from both and adopted a new approach to fiqh.
3.2 Al-Shafi’i’s al-Risala

Al-Shafi’i’s al-Risala has been a point of debate not only among his contemporaries and jurists in the premodern period but also among modern scholars of Islamic law. Several commentaries on this treatise were written in the premodern period to relate it to the development within the existing legal schools. It has also engaged the attention of scholars in the modern period with reference to Islamic legal theory. One finds at least two modern strands of scholarly traditions that generated debates on al-Shafi’i’s treatise. Muhammad Shakir, Abu Zuhra, Ridwan Sayyid, Fazlur Rahman, George Makdisi, and Nasr Abu Zayd are a few examples of the tradition that studies al-Shafi’i in a broader framework of Islamic literary culture. Ignaz Goldziher, Joseph Schacht, Majid Khadduri, Wael Hallaq, and Joseph Lowry are examples of the second tradition that focuses on al-Shafi’i’s contribution to legal theory.

The writings of the second strand have greatly influenced modern scholarship on Islamic law and have kept the debate alive in Muslim societies as well. The differences in the approaches of these traditions are wider than can be classified neatly. For example, Shākir, whose diligently edited version of the text and scholarly notes earned the respect of many scholars, regarded the work focused on rhetoric (bayān) and divided the text of al-Risala into four parts: an introduction and three parts on bayān. Majid Khadduri, whose English translation of al-Risala with comprehensive notes and introduction has been well received among scholars, divided the content into fifteen parts dealing with subjects of jurisprudence. Since the latter’s table of contents is more detailed, it is useful to reproduce it here in order to have an idea of the scope of discussions in Khadduri’s translation. It is important to mention that the following headings are not from the Arabic text; Khadduri added them for the convenience of the reader (Khadduri 1987):

I  [Introduction]
II [On al-Bayān (Perspicuous Declaration)]
III [On Legal Knowledge]
IV [On the Book of God]
V  [On the Obligation of Man to Accept the Authority of the Prophet]
VI [On the Abrogation of Divine Legislation]
VII [On Duties]
VIII [On the Nature of God’s Order of Prohibition and the Prophet’s Orders of Prohibition]
Nasr Abu Zayd structured his analysis and discussion of al-Shafi’i’s treatise in five sections. In his long introduction he provided the context and background of his study and explained how his critics insisted that al-Shafi’i’s *al-Risala* was a book on *uṣūl al-fiqh* and that he, as a specialist in Arabic language and literature, was not qualified to write on *uṣūl al-fiqh*. The remaining four chapters discuss al-Shafi’i’s views respectively on the Qur’an, sunna, *ijmāʿ*, and *qiyās*/*ijtihād*. His scheme of chapters corresponds to the hierarchical description of four sources but, as I will discuss, Abu Zayd arranged them in this manner to argue how al-Shafi’i related not only the sunna but also the consensus and products of legal reasoning to the revealed text. This scheme established comprehensiveness of the revealed law (sharʿ) and the authority of the text.

In his introduction Abu Zayd gave a summary of the debates between him and his critics who eventually accused him of apostasy. He argued that al-Shafi’i’s focus was not on developing a theory of four sources but to establish the authority of the text, which he felt was threatened by various political, social, and juridical developments in the period.

4.1  Ideology

Abu Zayd reads al-Shafi’i’s discussion of jurisprudence as an ideology of power. It was quite instrumental in the establishment of the authority of the jurists and their schools. *Ijtihād* and *ijmāʿ* in these new meanings of the Qur’an and sunna aimed at discouraging the growth of independent opinion (ra’y). Abu Zayd raised the following questions about freedom and independent opinion that his critics denied in religious discourse: (1) Does analysing the thought of an imam constitute an attack on religious discourse? (2) Does the religious discourse restrict *ijtihād* to the limits defined by the elders? (3) Is the criticism on al-Shafi’i’s ideas denied in
order to defend the intellectual trends in the second century of Islam, or is it to protect today’s taqlīd of al-Shafi’i’s thought? Abu Zayd answered that Islamic renaissance and renewal in the modern context are not possible without a critical study of the tradition (Ta’ṣīs, 5-6).

Abu Zayd opened his analytical study with a discussion on how taqlīd influences epistemology. He referred to the above-mentioned debate about the compartmentalisation of knowledge. His colleagues contended that Abu Zayd was not qualified to study al-Shafi’i’s al-Risala because this book was on the subject of uṣūl al-fiqh, which was not Abu Zayd’s specialty (Baltaji 1993, 2). Abu Zayd clarified that al-Shafi’i’s al-Risala was essentially a treatise on epistemology, not on fiqh or uṣūl al-fiqh as such. Al-Shafi’i defined the theory of knowledge as providing the tools, concepts, and methods of legal reasoning. Abu Zayd explained that epistemology does not belong to one field exclusively; it cannot be separated from other fields of knowledge. They are all part of a culture. For instance, Arabic grammar, lexicology, and rhetoric are all part of Arabic culture.

Similarly, no intellectual activity can be isolated from social issues. Al-Shafi’i’s thought was not operating in a vacuum. One must understand why al-Shafi’i defended the Arabic ambiance of the Qur’an and the sunna. These are not questions of jurisprudence; they are cultural queries. Abu Zayd clarified that an idea is not determined to be correct or incorrect by itself; it is judged from the perspective of the world view of a certain individual or the group to which he or she belongs. People support diverse world views even within one culture. Regarding Islam, Muslims in general share collective and universal views but different groups differ in their world views in detail.

In early Islam, the Mu’tazila, the Ash’arite and the Shi’a held diverse world views. Abu Zayd suggested that today we use the term “ideology” to mean “world view.” He placed al-Shafi’i’s thought in the middle of other contending ideologies of his period (Ta’ṣīs, 9-10).

Abu Zayd offered a detailed analysis of the term “ideology” which in his view was based on a very comprehensive view of knowledge. It includes political, economic, social, intellectual, literary, aesthetic, and many other aspects. Ideology gains significance because it defines the standards of right and wrong which are socially rooted, and not religiously. They are neither natural and inevitable, nor final and unchangeable. They are meant to regulate social organisation.

Ideology consists of meanings and concepts; it does not necessarily correspond with reality. It is particularly significant that in Islamic history social conflicts, particularly political and economic differences, are
expressed in religious terms. These differences, therefore, are expressed as interpretations of the sacred texts. Consequently, the contestation is framed as a dispute about who owns the text or has the right to interpret it.

The Muslim intellectual history is thus essentially a socio-political history. The Muʿtazila was not simply an intellectual community of theologians; they gained political influence and tried to impose their views with the help of the Abbasid caliphs, Maʿmūn (re. 813-833) and his successors. Opposition to this group was also political. The caliph al-Mutawakkil Biʾllah (re. 847-861) promoted Ahl al-Sunna wa-l Jamāʿa and supported the school of Imam Ahmad b. Hanbal (d. 855).

Ideology is closely related to authority, power, and hegemony. Abu Zayd explained that even though a certain trend of thought is in a position of hegemony for a period of time, this does not mean that other trends in that period are invalid or heretical. In fact, the people in power use such terms as weapons to silence their opposition. Hegemonic ideologies are neither eternal nor incontestable. In an ideology the constants and variables are defined by the tradition and practice.

4.2 Text

In addition to Islamic law, discourse analysis and semiotics also use the expression “text” (naṣṣ) as a technical term. This usage has revealed its broad meaning that includes non-linguistic expressions as well. The term “text” also applies to rituals, festivals, and assemblies, in addition to other expressions in audio and visual arts. However, with reference to discourse analysis only language and symbols of communication count as text. It is nevertheless significant to note that discourse as a science is part of the whole discipline constituted by the two sciences of semiotics and discourse analysis.

In discourse analysis, “text” has two levels of indication: principal and secondary. In Islamic tradition the Qurʾan and sunna, for instance, are respectively principal and secondary texts. The opinions of the jurists based on legal reasoning are subordinate texts as they are subsidiary to the secondary text. It is in Islamic cultural history that secondary texts were elevated to the level of principal text. Gradually the opinions of the leading jurists in the sciences of fiqh and tafsīr (Qur’anic exegesis) came to be recognised as principal texts.

Memory played a very decisive role in the cultural continuity during the second century of Islam. It is the period of documentation and recording. With regard to an individual, memory means remembering and repeating, but
as a cultural phenomenon it refers to a process of cultural transmission and recurring practice among a special group. It also refers to a stage in the history of a people when they move from an oral to a literate community. In Islamic history, the second and third centuries were the period of defining the basic principles, epistemological perceptions, and fundamentals of the tradition.

Imam al-Shafiʿī belonged to that period. He found diverse intellectual trends contesting for defining epistemological principles. In this period the following were some of the major debated issues: reason and revelation, raʾy and hadith, sciences of the ancients, and Arab literary heritage. The following books from that period reveal these ongoing debates: Mālik b. Anas’s (d. 712) al-Muwatta’, Ibn al-Muqaffaʾ’s (d. 756) Al-Siyasa wa-l Adab, ‘Amar b. ‘Uthman Sibawayh’s (d. 797) al-Kitab, al-Shafiʿī’s (d. 820) al-Risala and Kitab al-Umm, Abu Zakariyya Yahya b. Ziyad al-Farraʾ’s (d. 820) Maʿani al-Qurʾān, and Abu ‘Ubayda Muḥammad b. al-Muthanna’s (d. 825) Majaz al-Qurʾān. The third century was truly a period of literary blossoming. Ibn al-Nadim’s (d. 998) Kitab Al-Fihrist reflects the growth of this tradition as it preserves the titles and names of the authors of several writings in different sciences which have been lost (Taʾsis, 14).

Abu Zayd clarified that the debate on the cultural thought of that period was not about the exclusive finality of ideas, nor was the discourse about whether, for instance, reason and revelation were mutually contradictory so that only one would be the conclusive source. The debate was about priority and supremacy. Those who regarded revelation prior to reason supported tradition (naql) and gave the letter or the text priority. They expanded the scope of the meaning of the text and stressed its comprehensive nature. This emphasis provided grounds for the belief in the authority of the text.

### 4.3 The Authority of the Text

Abu Zayd distinguished between “text” and “authority of the text.” The “text” by itself is not authoritative; its authority comes from an epistemology of authority. It requires a community that formulates the authority of the text by transforming it into a socio-cultural hegemony. It defines text as the source of authority. Normally authority belongs to human reason. Authority of the text is absolute, comprehensive, and final. Freedom from the authority of the text does not mean freedom from the text; it rather means freedom from the authority that claims power by stripping the text from its context of time, space, and circumstances. It deprives the text from rational and scientific interpretation.
The community behind the authority of the text accuses its opponents of denial of the text. It denies disagreement by claiming a conflict between text and reason. In fact, humans only have the faculty of reason to understand the text. By denying the right to use this faculty the community behind the authority of the text claims unrestricted political power.

Abu Zayd argued that the conflict is not between “text” and “reason”; it is rather between reason and the authority of the text. The issue is not religious in origin; it has a historical context. The question arose during the first civil war in Islam between Ali (r. 656-661) and Mu’awiya (r. 661-680). Mu’awiya’s armies raised the Qur’an on their lances during the Battle of Šiffin (657) and invited Ali and his armies to accept the Qur’an as arbiter. They raised the slogan “sovereignty to God alone.” Ali replied, “The Qur’an does not speak, it is humans who speak” (Ta’sis, 16). One group of people in Ali’s camp accepted that invitation. However, when ‘Amr b. ‘As and Abu Musa Ash’ari were appointed as arbitrators representing Mu’awiya and Ali respectively, Ali’s followers rejected arbitration. They argued that it was human arbitration, not arbitration by the Qur’an.

Abu Zayd found a recent example of this claim of “sovereignty of God” (ḥākimiyyat-i ilāhīyya) propounded by Mawlana Mawdudi in Pakistan. It was adopted by Sayyid Qutb in Egypt and several others in the Muslim world. “Sovereignty of God” was presented as the foundational principle of the Islamic state. It called for supremacy of shari’a and authority of the ‘ulama’ who alone could interpret it.

Abu Zayd illustrated the claim for the authority of the text with reference to his contemporary scholar Muhammad Baltaji. In his article on “Kitāb al-Imām Al-Shafi’i,” Baltaji referred to the Qur’anic verses 33:36, 4:65, 5:3, and 16:89 to establish the authority of the text (Baltaji 1993). These verses declare that believers have no choice once God and his Prophet had pronounced a judgement. They are not believers until they accept the Prophet as the judge in their disputes. God has completed the religion. God revealed “the Book” that explains everything. Citing these verses, Baltaji concludes, “It is evident that belief in Islam, rather, belief in any religion, calls for absolute obedience. The literal meanings of the terms ‘ibāda and Islam in the Arabic language are respectively as follows: obedience and surrender. One who does not faithfully abide by these sacred texts crosses the boundary of faith” (Ta’sis, 18).

Abu Zayd questioned this way of arguing. First, these verses refer to specific events in the life of the Prophet. Baltaji arranges these verses in a particular sequence to delink them from their historical context in order to make them eternal. In the next step he turns his own interpretation into
the sacred text. Abu Zayd traced this method of invoking the authority of the text to al-Shafi’i (Abu Zayd 1993), who formulated the principle in the following words: “There is no new event for which the Qur’an does not have a clear ruling (ḥukm).” While al-Shafi’i referred to “the text” collectively in the form of “the Book,” Baltaji refers to specific verses and their literal meaning.

4.4 Al-Shafi’i’s Ideology

Abu Zayd found the contemporary religious discourse similar to al-Shafi’i’s because of the strong relationship between world view and religious discourse. Like al-Shafi’i, the contemporary religious discourse considers “the text” and its literal interpretation equal in their authority. Abu Zayd pointed out that the ideology of authority defines the relationship between God and man in terms of master and slave; it is based on submission and obedience. To Abu Zayd, the Qur’anic teachings describe this relationship in terms of freedom and choice because God gives humans choice and that is why he holds them responsible for their deeds.

Abu Zayd illustrated his point with the example of al-Shafi’i’s analysis of istiḥsān. Great jurists like Mālik and Abū Ḥanīfa relied on this method but al-Shafi’i rejected it because he feared that it would add to differences and would increase the number of arbitrary opinions. “In that case every judge and mufti in a city would say what he likes. Consequently, they will issue multiple judgements and fatwas even in one case” (Taʾsis, 31). Al-Shafi’i cited Qur’anic verses condemning conflicts and concludes: “Whoever employs the method of istiḥsān in fact defies revelation” (Taʾsis, 31). Al-Shafi’i described this attitude of free expression as sudā (a person not accountable to anyone for anything) referring to the following Qur’anic verse: “Does man think that he is left to be aimless?” (Qur’an 75:36). In other words, practicing istiḥsān means rejecting accountability. He interpreted the verse by stating that nobody except the Prophet has the right to give an opinion without presenting the evidence.

According to Abu Zayd, al-Shafi’i wanted to establish the position of sunna as a source of law. The very fact that he was arguing in that direction means that this position was not yet established. Abu Zayd concluded that it is not a matter of faith that should not be questioned. It is a historical statement that could be examined and verified. Al-Shafi’i formulated his view on sunna by adding three meanings to the concept: infallibility of sunna, sunna’s linkage with the Qur’an, and extending the concept of revelation to the sunna. Al-Shafi’i interpreted the verse “He does not speak from desire; it is not but a revelation from God (Qur’an 53:3-4)” to mean that hadith was
revelation. These were al-Shafiʿi’s personal views and did not constitute a unanimously agreed position. Commenting on the above verse, Al-Tabari, for instance, reported that the pronoun “it” in the verse does not refer to the Prophet’s statement. It clearly refers to the Qur’an. The historical context of the verse refers to the Meccan opponents who raised doubts about whether the Qur’an was the revealed word of God. God clarifies that these were not Prophet Muhammad’s own words; they were certainly revealed by God (Al-Tabari 2000, 22:498).

Arguing that al-Shafiʿi’s al-Risala is a discourse on ideology, Abu Zayd began his analysis by raising two questions. Why did al-Shafiʿi raise the question about the Arabic language of the Qur’an and defended it as a language of the Quraysh? Second, why did he limit his discussion on sunna to the debates between the ahl al-ḥadīth and the ahl al-raʿy? He disagreed with those who regard al-Shafiʿi’s defence of Arabic language as a simple statement about the language in which the Qur’an was revealed. To Abu Zayd, it has a much deeper meaning. He found it closely connected with the cultural and political context that affected the conception of knowledge and authority. Abu Zayd clarified that in order to appreciate al-Shafiʿi’s thought it is necessary to place it in the political, theological, cultural, socio-economic, and juridical dimensions of the context of that debate.

According to Abu Zayd, the ideological context of al-Risala is related to the issue of Quraysh’s political and cultural supremacy. The issue came to prominence quite early in Islam, at the time of the election of the first caliph. Reference to Quraysh’s position of authority was raised in Saqifat Bani Saʿida when the Anṣār of Medina claimed their right to the caliphate. The Battles of Ridda (633), Jamal (656), and Ṣiffīn were also fought to settle the supremacy of the Quraysh. Al-Shafiʿi was a great supporter of the Quraysh; his companion Rabiʿ b. Sulayman (d. 870) presented him with a pure and noble Qurayshi descent. Al-Shafiʿi was respected among the Quraysh who helped him at times of crisis in his life, and got his appointment in Najaran under a governor in Yemen who was a Muḥṭalibi Quraysh. He moved from Baghdad to Egypt where a Hashimite ruled as the governor, and he dedicated a full chapter to the merits of the Quraysh in volume six of his Kitab al-Umm (Taʾsis, 35-43).

Abu Zayd also clarified that al-Shafiʿi is often presented as a supporter of the Alawis and is sometimes alleged to have supported the Shiʿa or Rawāfiḍ. This attribution may have been a political propaganda against him. Al-Shafiʿi supported the Alawis because they were Quraysh but he did not support the Abbasids’ cultural association with the Persian cultural influences.
Political opposition to the Abbasids also came from imams Abu Hanifa (d. 767), Malik b. Anas (d. 795), and Ibn Hanbal, but it is difficult to assert whether they did so for the supremacy of the Quraysh. Imam Malik’s fatwa that an oath of allegiance under duress is not valid, as divorce under duress is not valid either, was considered equally applicable to oaths of allegiance to both the Umayyad and Abbasid caliphs. Abu Hanifa considered divorce under duress valid but he refused to cooperate with the Abbasids – even to serve as qadi. Malik and Ibn Hanbal both defied the Abbasid imposition of the Muʿtazila. Al-Shafiʿi, on the other hand, did serve under the Abbasid caliph even though it was for a short period. He was bitterly against the Muʿtazila because to him they represented the influence of foreign thought and culture. He would not associate himself with the Abbasids because they accepted the intellectual supremacy of foreign cultural influences from Greece and Persia.

In the juridical context, al-Shafiʿi’s views also illustrate his apprehension of foreign influences. Contrary to the *ahl al-ḥadīth*, the *ahl al-raʾy* seemed to have accepted the non-Arab ways of thought and practice. His discussion of the sources must be studied in the above-mentioned context.

5 The Quraysh and the Arabic Language

Al-Shafiʿi regarded Arabic as the most comprehensive language; it had a more extensive vocabulary than any other language. He even linked its comprehensive nature to the Prophet and revelation; only a prophet could have extensive knowledge of this language. He also explained that this linkage between Arabic and the Quraysh went back to pre-Islamic period, and that made the Quraysh extremely important.

The significance of the Arabic language is also the point where al-Shafiʿi differs from the Hanafis as to whether one can say one’s prayers in a language other than in Arabic. Hanafis allowed it but al-Shafiʿi did not; he even did not consider a contract of marriage valid if the acceptance and offer were not expressed in Arabic. Likewise he insisted that a marriage could only be validly repudiated in Arabic.

Al-Shafiʿi considered it necessary to defend the Qur’an as purely Arabic. This position was related to the debate at that time about parts of the Qur’anic vocabulary which was not Arabic by origin. Al-Shafiʿi vehemently denied the existence of any foreign vocabulary in the Qur’an. His defence was not directed to this particular vocabulary in the Qur’an; he was defending the pure and comprehensive nature of Arabic language and the
comprehensibility of the Qurʾan. Admission of foreign vocabulary would mean that some among the Arabs would not know these words and their meaning.

Al-Shafiʿi developed his defence on four sets of arguments. One expounds the idea that Arabic is the most comprehensive among the languages; its vocabulary is sufficient to express all meanings and concepts. Secondly, he argued that this language is so comprehensive that it was only a prophet who could master it completely. One may understand this statement as to mean that the Arabic language is not an ordinary language; its origin is divine. His third argument was that all Arabs understand the Qurʾan; nothing is foreign to them. Fourthly, he argued that the Arabic language has several dialects; the Qurʾan was revealed in the dialect of the Quraysh. This last argument, according to Abu Zayd, transformed his defence of the Arabic language and the comprehension of the Qurʾan into an ideology.

As mentioned already, contrary to the ahl al-raʾy Ḥanafis, al-Shafiʿi did not allow the use of Persian or any language other than Arabic in rituals and contract settlements. His opposition to the ahl al-raʾy is also evident in his position about the discussion on whether a word is general (ʿāmm) or particular (khāṣṣ) in its meaning. In other words: with regard to the question whether meanings of a word apply to all the referents of a word or denote only certain particular referents, al-Shafiʿi held that a word could be used in its general and/or particular meaning. Only the Arabs understood the proper usage.

Abu Zayd approached al-Shafiʿi’s views from the perspective of discourse analysis. He explained that al-Shafiʿi was not the first or the only one to hold this view. It was a common view among al-Shafiʿi’s contemporaries to reject the primary role of human reason; it was a dependent role that only served as a tool for understanding and interpreting “the text.” “The text” conveyed its meaning in diverse ways of connotation. To al-Shafiʿi, the word “all” (kull) in the verse “God is the creator of all things” is general and even includes human actions.

The second type of general statement is when both meanings, general and particular, are denoted without deleting the general meaning. For instance, the Qurʾanic verse 9:120 demands the people in and around Medina not to stay behind when the Prophet Muhammad went out for jihad and not to prefer their personal interests over those of the Prophet. The verse is both general in its meaning as far as giving preference to the Prophet is required. It is particular in the sense that only those who have the capacity to fight were required to go along with the Prophet.

The third is the type of generality that is apparent in its meaning whereas its denotation of the non-apparent meaning lies in the particular sense.
The example is the Qur’anic verse 3:173: “Those unto whom men said: Lo! The people have gathered against you, therefore fear them. But [the threat of danger] increased their faith and they cried: Allah is Sufficient for us! Most Excellent is He in whom we trust!” In this verse the general meaning is quite apparent; however, “the people” are not specified yet they do not include all the people.

In sum, al-Shafi’i argued that only the Arabs – particularly the Quraysh – would understand where the general and particular meanings apply. Among them the Prophet was best qualified to understand the Arabic text. That is the reason why the Qur’an and sunna are closely connected. Al-Shafi’i did not choose between the ahl al-ḥadīth and the ahl al-ra’y; he was essentially saying that only the hadith of the Prophet can explain what the Qur’an means. In that sense the sunna of the Prophet has authority similar to the Qur’an, because the Prophet’s source of knowledge was divine revelation.

Al-Shafi’i’s discussion of the Qur’an, sunna, ījmāʿ, and qiyās is not only a discussion about the sources and epistemology but also about an ideology that connects them as interdependent and mutually connected to the divine revelation. As such, the four sources are part of “the text” or, rather, together constitute “the text.” Collectively they become “the conclusive texts.” He considers sunna definitive, even if it is a hadith reported by a solitary narrator. Similarly he regards consensus, opinion, and ījtihād based on qiyās as definitive.

Abu Zayd further observed that al-Shafi’i defined ījmāʿ from two perspectives of his ideology. First he aimed to extend the scope of “text,” and second, he wanted to restrict the scope of diversity of opinion (ikhtilāf) by consensus. Consequently he distinguished between the consensus on the transmission of the reports about sunna and the consensus as a product of legal reasoning. He included continuity or continuous practice (tawātur) in the meaning of ījmāʿ.

It is the same argument that al-Shafi’i developed about the Arabic language of the Qur’an. He argued that the existence of certain non-Arabic words and the ignorance of some Arabs about their meaning do not disprove the comprehensiveness and comprehensibility as essential characteristics of the Arabic language. Similarly, he argued with reference to solitary reports of hadith (akhbār aḥād) that even though some scholars may not know a particular sunna, the fact that they are known to the scholars in general is sufficient to prove their authenticity. He concluded that it is inevitable that the consensus of the Muslim community is based on “a text” even though only a few scholars know about “the text.” If the community as a whole has knowledge about the general meaning of “the text,” it is regarded a valid
consensus. In other words, the disagreement of some about the text and their different opinions could be dismissed. It is dismissing history as a fact and ignoring the historicity of divergent opinions. As a result, the consensus is transformed into a religious text that is conclusive in its meaning and connotation.

6 Knowledge of the Specialists

Al-Shafi’i described five types of authentic knowledge: (1) *mutawātir*, the information that is continuously transmitted from one generation to the other. The authenticity of this type of knowledge comes from continuity (*tawātur*), or, in other words, agreement between the specialists. (2) *Ta’wil*, the knowledge derived through interpretation of the text. Since *ta’wil* is more than relying on apparent meaning, it is only the agreement between the experts that validates the transfer of meaning of “a text” from apparent to other connotations. “The text” retains its apparent meaning if there is no such consensus. (3) *Ijmāʿ*, which itself is the source of authentic knowledge. Unanimous opinion, even if not based on the specific text of the Qur’an or sunna, constitutes valid knowledge. *Ra’y* or arbitrary opinion cannot produce *ijmāʿ* because it implies that there was disagreement. *Ijmāʿ*, on the contrary, expresses an agreement between the experts and assumes the knowledge of the Qur’an and sunna. (4) *Khabar wāḥid*, hadith or knowledge transmitted by one or few reporters, is also authentic knowledge because it is knowledge of the special people or community. (5) *Ijtihād/qiyās*, the fifth type of authentic knowledge, is derived from reasoning. It is authentic because it is based on a Qur’anic injunction. More importantly, it is authentic because it is restricted to the method of deduction; it must be derived from seeking similarity in “the text” that applies to the case in question.

According to al-Shafi’i, *qiyās* is restricted to discovering a rule that actually already exists in the religious texts, even if it is hidden. This definition is based on the belief in the comprehensive nature of the religious text; it has answers to all the questions. This definition restricts the role of human reasoning to a framework of reasons and indications in the religious texts for the outside facts in the world of existence. *Qiyās* is thus based on presuming the existence of similarities between the texts and the world of facts. Consequently, for al-Shafi’i all knowledge in addition to the Qur’an and sunna is discoverable by *qiyās*. By restricting *qiyās* to text al-Shafi’i aimed at eliminating disagreement and *ra’y*. *Istihsān* belongs to *ra’y* and hence cannot produce valid knowledge.
Al-Shafi’i also discussed another classification of knowledge from the perspective of specialisation. General knowledge about obligation and duties is common knowledge, and specialist knowledge pertains to details of these obligations. The latter type of knowledge is specialist knowledge. It may be understood as the need for a separate discipline or the need for a distinct community of specialists devoted to details unlike the common people who have basic and general knowledge about religion.

To conclude, Abu Zayd read al-Risala from a different perspective than others. His discourse analysis approach allowed him to look into al-Risala not simply as a discourse on jurisprudence and theology, but as a “text” that reflects a much more complex context. It reveals not only the contemporary debates but also the direction and role that al-Shafi’i intended for jurisprudence to take. Abu Zayd explained his approach saying:

Truly speaking, discourse analysis is a science to discover explicit and hidden meanings in a discourse, as well as the unspoken and assumed connotations because discourse as such employs separate tools of expression to convey the intended conclusions. Discourse, unlike language communication, connects communication with the intended results. (Tasis, 44-45)

7 Concluding Remarks

The term “Islamic law” is used to describe shari’a (divine or revealed laws assumed to be preserved in the Qur’an and sunna) and fiqh (interpretations, opinions, and doctrines of the jurists), two important concepts in the Islamic legal tradition, understandable to a modern student of law. It has, however, problematised the conception and history of law in Islam from a modern perspective and has raised critical questions not only about its nature, origins, and evolution, but also about its jurisdiction, legislation, reform, and procedure. Islamic law has been further characterised as “classical,” “religious,” and “jurists’” law. Consequently, the modern student of Islamic law is confronted with an extremely complex legal tradition. It has a continued history of more than a thousand years and its rich literature abounds in thousands of volumes, a large number of which are still in manuscript form. In practice, it has a parallel existence with a number of other legal systems regulated by the kings, police, fiscal administration, and several different types of courts. Its application has relied more on fatwa (jurists’ opinions) and madhhab (schools of fiqh) institutions than on qadi
(judges appointed by Muslim rulers) courts. It has gradually developed into a very intricate science of jurisprudence. Some of the present approaches which focus on al-Shafi’i’s *al-Risala* as a classical legal theory have raised more questions and have even compelled to critique and revise this thesis. They have reaffirmed the complexity of the Islamic legal tradition.

In view of these complexities, a general overview of *fiqh/shari’a* doctrines, schools, and their evolution is not helpful. Nasr Abu Zayd’s analysis of al-Shafi’i’s *al-Risala* provides significant insights into the development of *fiqh* in the third century of Islam. It suggests new perspectives to study this development as the emergence of a community of specialists. *Al-Risala* provides not only the need and justification for such a community. It also defines the framework of *fiqh* as a discipline that ensures continuity with the earlier generation of scholars and warrants its authenticity by preventing the influence of foreign cultures that were contributing to conflicts and differences and thus threatened the unity and consensus in the community.

**Bibliography**


