on authoritative statements by Mālik. If there had been a linear development from dependence on an individual shaykh to dependence on God's Prophet, then Saḥnūn's text must be a survival of an older, more primitive form of legal drafting.[6] A similar set of assumptions causes Crone to argue that the Qur'ān could not have been composed before 700 C.E.[7] Since it is evident that some legal decisions before that date were made without recourse to Qur'ānic precedent, she argues that the Qur'ān could not have existed. It is not possible, according to Crone, that Muslim jurists "could have had a scripture containing legislation *without* regarding it as a source of law" (14). Finally, Wansbrough sees in the arrangement of material in Mālik's *Muwaṭṭa'* "not so much a commentary upon scripture as a refinement of salvation history" (75). That is, by the end of the second Islamic century, legal authority resided in a clear conception of the Prophetic story, but not yet in the Qur'ān.

For all of these scholars, early legal literature presents examples of "stages" on the way toward a full-fledged theory of the four roots of law. The power of this linear development is such that "traditional" dating of Qur'ān, *Mudawwanah* or *Muwaṭṭa'* must be cast aside (in Calder's words [p. 20], as "a fact inferred from, or created to promote, the status of the work") in order to protect the linear development. Since I have already responded elsewhere to Calder and Crone, let me only say here that Calder was unfamiliar with the manuscript base of Mālikī legal texts and so did not take into account the physical evidence of colophons, *samā'*-remarks, and marginalia.[8] For Crone, I find that a distinction between compilation and canonization of the Qur'ān better explains the evidence she presents.[9]

---

[6] Calder writes: "It is inconceivable that this hadith could have been made available by Mālik, in or before 179, with the backing of Prophetic authority and in a situation where Prophetic authority counted, and yet not have affected the text of the *Mudawwanah*, which exhibits after all not only a need for authority on this matter but also a broad concern to gather all relevant material." *Studies*, 26.

[7] Patricia Crone, "Two Legal Problems bearing on the Early History of the Qur'ān," *Jerusalem Studies in Arabic and Islam* 18 (1994), 36–37. Emphasis in original.

[8] See my "Early Islamic Jurisprudence in Egypt: Two Scholars and their *Mukhtaṣar*s," *International Journal of Middle East Studies* 30 (1998), 167–182; and also my "Literary Genealogies from the Mosque-Library of Kairouan," *Islamic Law and Society* 6 (1999), 393–402 (Review article of Miklos Muranyi's *Beiträge zur Geschichte der Ḥadīṯ und Rechtsgelehrsamkeit der Mālikiyya in Nordafrika bis zum 5. Jh. d.H.*). In March, 2000, Muranyi showed me a fragment of the *Mudawwanah* in Kairouan dated to A.H. 235, Calder had speculated that it was not compiled before 250.

[9] See my *Early Mālikī Law: Ibn 'Abd al-Ḥakam and his Major Compendium of Jurisprudence.* Studies in Islamic Law and Society, vol. 14 (Leiden: Brill, 2000), 119–124.

Responding to Wansbrough, however, is not so easy. Wansbrough's methodology of analyzing texts according to their arrangement of material is an excellent starting point for marking the ways that notions of legal theory affect the writing of legal texts. Taking four excerpts from the *Muwaṭṭaʾ*, Wansbrough notes the progression from Prophetic *ḥadīth* through companions to Mālik's words, and argues, quite convincingly, that even though Mālik's role as collector and arbiter of ḥadīth is quite evident, he ultimately derives his authority from a moment in time when God sent his Prophet to Mecca and Medina. In other words, the pattern of legal drafting in these four chapters of the *Muwaṭṭaʾ* is early evidence of legal arguments resting on the foundation of a common Salvation History.[10] The problem with Wansbrough is not his method, or even the conclusions he draws from these examples, but rather a tendency to overgeneralize. Closer analysis of the *Muwaṭṭaʾ* reveals that Wansbrough underestimates the variety of legal drafting in this text, and his claim that "any sondage would do" (72) in uncovering the patterns of reasoning in the *Muwaṭṭaʾ* is premature, as this comparison of two other chapters from the *Muwaṭṭaʾ* demonstrates.

Table I
Comparison of organization of arguments in two chapters of the *Muwaṭṭaʾ*

Chapter on *Ḥajj* (first 20 pp.)	Chapter on the *mukātab* (first 20 pp.)
Prophetic *ḥadīth* followed by two companion *ḥadīth*	Two companion *ḥadīth*, then dictum by Mālik.
Four companion *ḥadīth* followed by "I heard the *ahl al-ʿilm* say"	Narrative *ḥadīth* about ʿAbd al-Malik b. Marwān.
3 Prophetic *ḥadīth* and a companion *ḥadīth*	Statement by Mālik, including his interpretation of the command in Q 24:33 and two other Qurʾānic quotations.
1 companion *ḥadīth* and two juristic dicta by Mālik	Mālik's interpretation of the second half of Q 24:33. "the best of what I have heard"
2 companion *ḥadīth*, then "*wa-hādhā aḥabbu mā samiʿtu.*"	Narrative *ḥadīth* about Ibn ʿUmar.
2 companion *ḥadīth*, then "*dhālika al-amr ʿindanā*," then companion *ḥadīth*	6 paragraphs of juristic dicta by Mālik.

[10] Wansbrough, 70–76.

Chapter on *Ḥajj* (first 20 pp.)

2 companion *ḥadīth*

2 Prophetic *ḥadīth*, two juristic dicta by Mālik

3 companion *ḥadīth*

3 Prophetic *ḥadīth*, 2 companion *ḥadīth*, 1 *mursal* prophetic *ḥadīth*.

4 Prophetic *ḥadīth*, 1 companion and 1 follower *ḥadīth*.

1 Prophetic *ḥadīth*, 2 comments from *ahl al-ʿilm* and one dictum by Mālik.

Three Prophetic *ḥadīth*, then commentary from *ahl al-ʿilm* and Mālik's confirmation.

Chapter on the *mukātab* (first 20 pp.)

A Prophetic maxim (no *isnād*) in defense of statement, then six long paragraphs of juristic dicta, with occasional reference to "*al-amr ʿindanā*."

Mālik heard that Umm Salamah entered into a severance agreement. Then 19 paragraphs of juristic dicta.

Mālik heard that ʿUrwah b. Zubayr and Sulaymān b. Yasār were asked about a case where a man and his son were in a single contract. Then 4 paragraphs of juristic dicta.

Narrative *ḥadīth* about Marwān b. al-Ḥakam; 2 paragraphs of juristic dicta.

Mālik heard that Saʿīd b. Musayyib was asked about inheritance. Then 8 paragraphs of juristic dicta.

In this comparison, the chapter on *Ḥajj* nicely follows Wansbrough's analysis of four chapters having to do with slaughter and sacrifice. Here, we can agree with Wansbrough that each paragraph "contains a report of precedent or of comment on precedent" and that "Mālik's own commentary is expressed almost exclusively as the transmission and alignment of such dicta" (75). Further, he is right that "reference to scripture . . . is minimal . . . and always expressed by Mālik as a tradition neither more nor less binding than those from other sources" (75). So this chapter derives authority not from the Qur'ān, but from the words of the Prophet.[11] However, the chapter on the *mukātab* slave deviates substantially from this order. Here the Prophet is almost absent, being mentioned only as the source of a legal maxim with no *isnād*. There are significant citations of Qur'ān passages and of companion and follower precedents (in both narrative and authority *ḥadīth*),[12] but even these authorities play a relatively

[11] According to Wansbrough's terminology, this is an example of paradigmatic reasoning, not polemic reasoning.

[12] In differentiating among these various sorts of arguments, I am using terminology based on Wansbrough and Calder but further refined in *Early Mālikī Law*. See pp. 90–92 for my definitions of five forms of legal writing: dialogue, juristic dicta, narrative hadith, authority hadith, and abstract cases and rules.

minor role in the formulation of the law. In fact, whole sections of the chapter contain nothing but Mālik's words, introducing abstract cases and rules (often using the formula "*wa-in . . . fa-. . .*"). For instance, this paragraph from early in the chapter simply states:

> Mālik said: If a *mukātab* slave receives his contract while he is in possession of a female slave who is pregnant with his progeny—and both he and his master are ignorant of this fact—this child does not follow him [into freedom once his contract is paid]. Rather, the child belongs to the master and the female slave belongs to the *mukātab*, since she is part of his assets.[13]

What is important here is not the intricacies of the contract of emancipation, but rather that Mālik makes this ruling without any claim to Prophetic authority or to any sort of Salvation History. Again, the majority of this chapter contains similar statements. Analysis of this chapter does not mean that Wansbrough's Salvation History theory is wrong, but only that it is of limited explanatory value. It seems, rather, that there are competing conceptions of order within the *Muwaṭṭaʾ*, reflecting competing theories of authority.[14]

The limits of the Salvation History theory are even more evident once we expand our analysis beyond the *Muwaṭṭaʾ*. Below, in Table II, I provide a comparative analysis of five early legal texts by four authors: ʿAbd al-ʿAzīz al-Mājishūn, Mālik b. Anas, ʿAbd Allāh b. ʿAbd al-Ḥakam and Abū Muṣʿab al-Zuhrī. I have chosen these par-

---

[13] Mālik b. Anas, *al-Muwaṭṭaʾ*, recension of Abū Muṣʿab, ed. Bashshār ʿAwwāḍ, vol. 2 (Beirut: Muʾassasat al-Risālah, 1992), 431.

[14] In the ensuing discussion of this paper, Kevin Reinhart suggests that the reason for these differences is that one chapter concerns issues of *ʿibādāt* while the other deals with *muʿāmalāt*, and that there are simply more relevant hadith for the *ʿibādāt*. While this point has some force, it should be pointed out that Wansbrough also analyzed chapters from the *muʿāmalāt*, so it still remains to be explained why Mālik did not adjust his chapter on the *mukātab* slave to reflect his supposed dependence on the authority of Salvation History. While I do not know of any *naṣṣ* which Mālik could have used for this particular quotation, it is instructive that he does not incorporate the important Barīrah *ḥadīth* into his chapter, even though he clearly knows it (see my discussion of this *ḥadīth* in *Early Mālikī Law*, 184–186, and now also Ulrike Mitter, *Das frühislamische Patronat: Eine Untersuchung zur Rolle von fremden Elementen bei der Entwicklung des Islamischen Rechts* (Ph.D. diss., University of Niejmingen, 1999), 101–144).

Further, the *Mudawwanah* also exhibits multiple forms of legal drafting, but reverses the expectation of greater dependence on hadith in chapters to do with *ʿibādāt*. In the chapter on *ḥajj*, Saḥnūn is exclusively dependent on Mālik's juristic dicta, as transmitted by Ibn al-Qāsim. In his chapter on the *mukātab* slave, however, numerous other authorities are mentioned, including hadith from the Prophet, transmitted on Ibn Wahb's authority.

ticular texts for several reasons, but among them is the fact that they allow us to observe differences in legal drafting which occurred over a very short period of time, and also among books from the very same author.

Before turning to my analysis, these texts need some explanation. First, with the exception of the *Muwaṭṭa'*, each of these texts is based on manuscripts from North Africa dating to the third or fourth Islamic century; some are unique manuscripts, while others have multiple witnesses. Most of these manuscripts were unknown to Sezgin, and they are part of the large cache of early Mālikī manuscripts which we are only now beginning to explore. All of the authors had an intimate relationship with Mālik b. Anas, though we may dispute to what extent they may be called members of a Mālikī school.

ʿAbd al-ʿAzīz b. ʿAbd Allāh b. Abī Salamah al-Mājishūn (d. 164/780–1) was a contemporary of Mālik b. Anas who also taught in Medina.[15] Already in 1890 Goldziher noted Ibn ʿAbd al-Barr's characterization of al-Mājishūn as "the first to summarize the teachings of Muslim theologians in Medina in a codex".[16] In 1985, Miklos Muranyi uncovered actual fragments of his lost legal books in the mosque-library of Kairouan, and these in the recension of none other than Saḥnūn b. Saʿīd. These may rightly be called the earliest fragments of *fiqh* writing in our possession.[17]

---

[15] Al-Mājishūn was a famous Medinan legal authority and a contemporary of Mālik. See al-Dhahabī, *Taʾrīkh*, (Years 161–170) 326–328; M. Muranyi, *Ein altes Fragment medinensischer Jurisprudenz aus Qairawān* (Stuttgart: Franz Steiner, 1985). However, the relationship between the two scholars was not always an easy one. See the story in Qāḍī ʿIyāḍ, *Tartīb al-madārik*. ed. Aḥmad Bakīr, 3 vols. (Beirut: Dār Maktabat al-ḥayāh, 1965), 1:164. Al-Mājishūn may have been one of ʿAbd Allāh b. ʿAbd al-Ḥakam's teachers, since "'Abd al-ʿAzīz [al-Mājishūn]" is quoted by ʿAbd Allāh b. ʿAbd al-Ḥakam in *al-Mukhtaṣar al-kabīr*, MS. Fās, fol. 21b, ll.18 and 20). Muranyi (*Materialien*, p. 11) incorrectly identifies this source as his son, ʿAbd al-Malik b. ʿAbd al-ʿAzīz b. al-Mājishūn (d. 212/827).

[16] *Muhammedanische Studien*, vol. 2 (Halle, 1889–1890), 219. Goldziher does not give a direct reference for this statement, and his previous note is to al-Zurqānī's commentary on the *Muwaṭṭa'*. I have not been able to track down the original passage either in al-Zurqānī or in Ibn ʿAbd al-Barr's works. The fragments which Muranyi discovered, however, do contain *ḥadīth*, though not in the ordered fashion found in the *Muwaṭṭa'*. It is interesting to speculate that al-Mājishūn may have first written a *Mukhtaṣar* on the order of those by Abū Muṣʿab and ʿAbd Allāh b. ʿAbd al-Ḥakam, and then later revised his text to include *ḥadīth*. According to Muranyi, the manuscript dates to the end of the third/ninth Islamic century. *Fragment*, 10.

[17] The analysis here is based on Muranyi's transcription of additional folios which he has uncovered since 1985, a total of 6 pages, making up almost the complete chapter on pilgrimage. I am indebted to Miklos Muranyi for allowing me to use his transcription of these fragments.

The transmitter of Mālik's *Muwaṭṭa'* and also author of one of the *Mukhtasar*s under discussion here is Abū Muṣʿab Aḥmad b. Abī Bakr al-Qāsim al-Zuhrī (d. 242/856).[18] If his birth date of 150/767 is accurate, he would have been 29 years old when Mālik died. Other than one short article by Schacht,[19] Abū Muṣʿab and his writings have not been the subject of any scholarly examination. What is interesting for us here is that we have both his version of Mālik's *Muwaṭṭa'* and also another work by him which appears to be based on quite a different notion of authority.[20]

The final author is ʿAbd Allāh b. ʿAbd al-Ḥakam (d. 214/829) who has been the focus of my long-standing interest. Ibn ʿAbd al-Ḥakam also transmitted a version of the *Muwaṭṭa'*, but that version is no longer extant. We do have three works by him, however, his history of ʿUmar b. ʿAbd al-ʿAzīz, and the two *Mukhtaṣar*s under consideration here. The *Large Compendium (al-Mukhtaṣar al-kabīr)* is preserved in several substantial manuscript fragments and is the subject of my book, *Early Mālikī Law*. The *Small Compendium* was thought to be lost before I identified several folios of it in Kairouan in 1996.[21] Since then, a commentary on this *Small Compendium* has been uncovered in Turkey and is now being edited.[22] In spite of Ibn ʿAbd al-Barr's comments, the *Small Compendium* does not appear to be merely a summary of the large one, since it exhibits differences both in style and organization of material.

---

[18] For Abū Muṣʿab, see al-Dhahabī, *Taʾrīkh*, (Years 241–250) 153–155; GAS 1:471–2; Schacht, "Sur quelques manuscrits de la bibliothèque de la mosquée d'al-Qarawiyyīn à Fès," in *Études d'Orientalisme*, vol. 1 (Paris: Maisonneuve, 1962), 271–284.

[19] Joseph Schacht, "On Abū Muṣʿab and his 'Mujtaṣar,'" *al-Andalus* 30 (1965), 1–14. Schacht's article is of great importance in providing a brief biography of Abū Muṣʿab, and in analyzing this manuscript and recognizing several of its key features.

[20] The manuscript of Abū Muṣʿab's *Mukhtaṣar* has a date in the colophon of Shaʿbān, 359, while the edition of his *Muwaṭṭa'* is based on a single manuscript found in Haydarābād and written in A.H. 916. Apparently, a new edition of Abū Muṣʿab's *Muwaṭṭa'* is in the works, this time based on more ancient manuscripts.

[21] Many of the manuscripts for the *Large Compendium* can be dated to the late fourth century, and the book itself must have been written before A.H. 210. See *Early Mālikī Law*, 89–90. The manuscripts of the *Small Compendium* appear to me and Miklos Muranyi to be among the oldest legal texts in the Kairouan library, probably dating to the late third century.

[22] The edition is being undertaken by Şükrü Özen, this according to a private communication from Dr. Özen to Miklos Muranyi, dated 9 November, 1998. The commentary is that by ʿUbayd Allāh al-Barqī (d. 291/904) mentioned in the biographical dictionaries. See especially Qāḍī ʿIyāḍ, *Tartīb*, 1:526 (where he lists a whole array of commentaries on this text) and my *Early Mālikī Law*, pp. 53–57.

In this comparison (see Table II), both in the chapters on pilgrimage and the *mukātab* slave, the three *Mukhtaṣar*s are almost entirely dependent upon abstract cases and rules, without recourse even to Mālik's authority. The two texts by Mālik and al-Mājishūn, in contrast, are deeply dependent on Prophetic and Qur'ānic authority in the chapter on pilgrimage, and as noted previously, less so in the chapter on the *mukātab* slave. A more careful look at the order of argument in al-Mājishūn and Mālik reveals some striking contrasts. In the first instance, Mālik begins his chapter with a quotation from the Prophet, followed by several companion *ḥadīth*, and then Mālik's voice appears as a transmitter of what the *ahl al-ʿilm* say on the subject. Al-Mājishūn, on the other hand, appears to be even more in line with classical *uṣūlī* thought, beginning with citations from the Qur'ān (with a short explanation), an extraordinary statement of the value of Prophetic Sunnah (and the role of the *nās* in interpretation), and then a quotation of Prophetic Sunnah. At this point, however, al-Mājishūn leaves behind these notions of order, drawing on a wide variety of authorities with no apparent order, often adding his own rulings.[23] Mālik, however, continues his pattern of organization, severely limiting his own voice. Considering these two texts together, Mālik's lack of particular attention to the Qur'ān is striking. As for al-Mājishūn, it seems odd that his statement on Prophetic authority does not result in a more conscious organization of his legal material.

Even more oddities arise when we look at the other three texts. Both authors, ʿAbd Allāh b. ʿAbd al-Ḥakam and Abū Muṣʿab, were transmitters of the *Muwaṭṭaʾ*, and so were well-aware of Mālik's position on organization of legal texts, yet they ignored that formal organization in their own works of jurisprudence. These *Mukhtaṣar*s contain none of the markers of Salvation History. Though they are not entirely devoid of reference to Qur'ān and Sunnah, these are only quoted when they fit into an organizational scheme marked more by logical progression of argument and sub-argument than by authority of religious texts. Given the number of early legal texts available to us, and the compelling arguments for authenticity that can be made for some of these texts, it does seem that we will have to

[23] See Muranyi's extensive comparison notes on the first folio of al-Mājishūn's text in *Ein altes Fragment*, 40–84. Muranyi notes important parallels to al-Mājishūn's statement on the value of Prophetic Sunnah in Ibn Isḥāq's *Sīrah* and al-Ṭabarī's *Taʾrīkh*. *Fragment*, 48.

Table II
Comparison of organization of arguments in five early Mālikī texts
kitāb al-ḥajj

al-Mājishūn	Mālik b. Anas (Abū Muṣʿab)	Abū Muṣʿab *Mukhtaṣar*	*al- Mukhtaṣar al-kabīr*	*al-Mukhtaṣar al-ṣaghīr*
Four Qur'ān quotations, then explanation of point by al-Mājishūn.	Prophetic *ḥadīth* followed by two companion *ḥadīth*.	All abstract cases and rules, except for 3 mentions of the Prophet (no actual *ḥadīth*) and one of the Qur'ān (no citation).	All abstract cases and rules, except:	*farīḍat allāh ʿalā ʿibādihi fi l-ḥajj* (no Qur'ān), then 12 paragraphs of abstract rules and cases, followed by: *istaḥabba lahu ahl al-ʿilm an . . .*
uṣūl statement: *wa-qad ḥajja rasūl allāh ṣlḥm fa-arā l-nāsa manāsikahum wa-aʿlamahum mā yaḥillu la-hum fi ḥijjatihim wa ʿumratihim wa-mā yaḥrumu ʿalayhim.*	Four companion *ḥadīth* followed by "I heard the *ahl al-ʿilm* say."		Qur'ān citations (fols. 3a, 4b, 7b, 11b, 12a)	9 paragraphs of abstract cases and rules, then 1 oblique reference to Qur'ān and one brief quotation from *al-Mā'idah* 95.
Prophetic *sunnah*, no *isnād*; then 3 paragraphs of rules.	3 Prophetic *ḥadīth* and a companion *ḥadīth*.		and one juristic dictum attributed to ʿUmar [b. al-Khaṭṭāb] (fol. 13a).	Prophet's authority invoked, then 10 cases and rules, followed by *aḥabba ilā ahl al-ʿilm.*
juristic dictum from ʿUmar II and quotation from Prophet.	1 companion *ḥadīth* and two juristic dicta by Mālik.			Rest is abstract cases and rules.
explanation of point, then 3 paragraphs of abstract cases and rules.	2 companion *ḥadīth*, then "*wa-hādhā aḥabbu mā samiʿtu.*"			
Prophetic *sunnah* introduced by "*kadhālika faʿala rasūl allāh.*"	2 companion *ḥadīth*, then "*dhālika al-amr ʿindanā*," then companion *ḥadīth*.			
ḥadīth with *isnād* to Prophet and juristic dictum from Ibn ʿUmar.	2 companion *ḥadīth*.			
1 paragraph of cases and rules, introduced by "*wa-min al-sunnah . . .*"	2 prophetic *ḥadīth*, two juristic dicta by Mālik.			
	3 companion *ḥadīth*.			

al-Mājishūn	Mālik b. Anas (Abū Muṣʿab)
Prophetic quotation, followed by "*fa-ınna ta'wīlahu fī ra'ynā*"	3 Prophetic *hadīth*, 2 companion *hadīth*, 1 *mursal* prophetic *hadīth*.
rules with Prophetic mention [MS is damaged here]	4 Prophetic *hadīth*, 1 companion and 1 follower *hadīth*.
Abstract case and rule	1 Prophetic *hadīth*, 2 comments from *ahl al-ʿılm* and one statement by Mālik.
Mention of "*al-nabī*" and Marwān b. al-Ḥakam. Then *ıkhtılāf* among Ibn ʿUmar, Anas b. Mālik, al-Faḍl b. ʿAbbās and Ibn Masʿūd.	Three Prophetic *hadīth*, then commentary from *ahl al-ʿılm* and Mālik's confirmation.
1 paragraph of cases and rules, followed by *fa-ınna ıbn ʿumar kāna yarfaʿu dhālıka ılā l-nabī.*	
MS is damaged, then a paragraph of instructions on hajj addressed to second person (*anta*)	
2 paragraphs of abstract cases and rules, then Prophetic *hadīth* on the authority of Anas b. Mālik.	
Statement on authority of ʿUmar b. ʿAbd al-ʿAzīz, then 3 paragraphs of cases and rules.	

Table II (continued)
Comparison of organization of arguments in five early Mālikī texts
kitāb al-mukātab

al-Mājishūn not available	the *Muwaṭṭa'* (Abū Muṣ'ab)	Abū Muṣ'ab *Mukhtaṣar*	*al-Mukhtaṣar al-kabīr*	*al- Mukhtaṣar al-ṣaghīr*
	two companion *ḥadīth*, then juristic dictum by Mālik.	All abstract cases and rules; only mention of *kitāb Allāh* is on section on inheritance (but no quote).	one dialogue, one tafsīr of 24:33 and quotation.	Same quotation of three Q verses as in *Muwaṭṭa'*; also adds *sūrat al-ḥajj*: 82
	narrative *ḥadīth* about 'Abd al-Malik b. Marwān.		one abstract case, then quotation of Q 4:11 in discussion of inheritance.	Tafsīr of Q 24:33.
	Juristic dictum by Mālik, including his interpretation of the command in Q 24:33 and two other Qur'ān quotations.	No mention of Mālik or any other authority.	All the rest is abstract cases and rules, with one more quotation of Q 4:11.	Rest is all abstract cases and rules.
	Mālik's interpretation of the second half of Q 24:33. "the best of what I have heard"			
	Narrative *ḥadīth* about Ibn 'Umar, then 6 paragraphs of juristic dicta by Mālik.			
	A Prophetic maxim (no *isnād*) in defense of statement, then six long paragraphs of abstract cases and rules, with occasional reference to "*al-amr 'indanā*."			
	Mālik heard that Umm Salamah entered into a severance agreement. Then 19 paragraphs of abstract cases and rules.			
	Mālik heard that 'Urwa b. Zubayr and Sulaymān b. Yasār were asked about a case where a man and his son were in a single contract. Then 4 paragraphs of abstract cases and rules.			
	Narrative *ḥadīth* about Marwān b. al-Hakam; 2 paragraphs of cases and rules.			
	Mālik heard that Sa'īd b. Musayyib was asked about inheritance. Then 8 paragraphs of abstract cases and rules.			

accept the "inconceivable": that while there were clear movements toward a dependence on Salvation History as the ultimate source of legal authority, there were also competing claims to authority current among adherents of the nascent Mālikī school, and, I would argue, among other schools as well.[24]

Thus far, by following Wansbrough's methods of analysis, we have uncovered the fact that multiple and divergent goals are in evidence in these texts. Yet how does this bring us closer to understanding early Muslim legal theory? I believe we can begin to answer this question by jettisoning the idealized *uṣūlī* version of Muslim legal theory and looking anew at the complex, careful formulations in classical texts. For instance, Sayf al-Dīn al-Āmidī (d. 631/1233), defines *uṣūl* as "the indicators (*adilla*) upon which the understanding of the Sharīʿah is based, the ways in which those indicators function as indicators of the divine categorizations, and the considerations which pertain to the role of the scholar who employs those indicators in the actual formulation of the divine categorizations . . ."[25] This complex formulation already contains within it several contested axes, but what interests me here is the theological element.[26]

Āmidī twice mentions "divine categorizations" in his definition, not without reason, since legal authority and legal justice must ultimately rest on God's authority. Hallaq even goes so far as to call this "the most fundamental principle of Sunnī jurisprudence, namely, that God decides on all matters and that the human mind is utterly incompetent to function as a judge of any human act" (135). This, in fact, is an excellent reformulation of Wansbrough's thesis. Yet I believe the presumption that this was always the "most fundamental principle" of Muslim legal theory has led to some misunderstandings of early legal texts. There are, quite simply, other ways to resolve the question of God's authority, ways that do not entirely remove the human element.

---

[24] I mean here to question Calder's redating of Ḥanafī and Shāfiʿī texts, since in my opinion we know too little about competing claims for authority in these schools.

[25] Bernard Weiss, *The Search for God's Law* (Salt Lake City: University of Utah, 1992), 26.

[26] Undoubtedly, other axes could be located, and divergent goals may be found within single texts. Hallaq has noted that even within classical works of *uṣūl*, subject matter and arrangement differ. Wael Hallaq, *A History of Islamic Legal Theories: an introduction to Sunnī* uṣūl al-fiqh (Cambridge: Cambridge University Press), 1997), 127.

As a first example, I would like to return to the *Mudawwanah*, which once again Calder decided must predate the *Muwaṭṭa'*, since "It is inconceivable that [material] could have been made available by Mālik, in or before 179 . . . and yet not have affected the text of the *Mudawwana* . . ." (26). Calder is right that it is odd for Saḥnūn to base many of his arguments solely on Mālik's authority (as transmitted by Ibn al-Qāsim) when Mālik himself had based them on *ḥadīth*. Yet this fact does not prove that Saḥnūn did not know the *Muwaṭṭa'*; in fact, it is evident from the manuscripts that Saḥnūn did many surprising things. We have his own transmissions of volumes of Mālik's sayings transmitted by Ibn al-Qāsim (his *Samāʿ Mālik*) as well as Saḥnūn's own transmission of texts by Ibn Wahb.[27] Even this manuscript fragment from al-Mājishūn's text was transmitted by Saḥnūn. Yet many of the *ḥadīth* and legal pronouncements in these texts are also not found in the *Mudawwanah*. Not only did Saḥnūn have Mālik's *Muwaṭṭa'* (in some form or other) when he wrote the *Mudawwanah*, he had numerous other texts as well. Yet not one of the *ḥadīth* from these texts or from *his own copy* of al-Mājishūn appears in Saḥnūn's chapter on *ḥajj*. It seems that Saḥnūn did in fact do the "inconceivable" in this chapter. He rejected the *isnād*s and compilation methods of *ḥadīth* scholars and lifted Mālik b. Anas up to the level of ultimate religious authority, seeing in the person of Mālik b. Anas a more trustworthy transmitter of God's law.

Given what we know about texts available to Saḥnūn in Kairouan, it does not seem plausible to assert that he was ignorant of the methods of traditionalist scholarship. Rather, I would suggest that Saḥnūn is caught between two competing constructions of religious authority. On the one hand, his quotations of Qur'ān and Prophetic *ḥadīth* recognize the value of Salvation History. But on the other hand, his dependence on the words of Mālik b. Anas demonstrates that Mālik can have an equivalent authority. Therefore, early Mālikī legal literature does not demonstrate a linear development from primitive beginnings to a legal theory based on the familiar four sources, but rather it has a dialectical development, with some dependent on the authority of Qur'ān and Sunnah, others dependent on the words of

[27] Miklos Muranyi has done much work on this question. See, especially, his *ʿAbd Allāh b. Wahb: Leben und Werk* (Wiesbadan: Harrassowitz, 1992) and *Die Rechtsbücher des Qairawāners Saḥnūn b. Saʿīd* (Stuttgart: Franz Steiner, 1999).

learned individuals, and still others writing texts with no named authorities.

To help explain this variety in legal drafting I suggest that, for some of these authors, religious authority did not reside primarily in Qur'ān and Sunnah; rather, it was transmitted through an individual, a "great shaykh," invested with authority by virtue of his knowledge of the religious sources. Further, I believe this competing Great Shaykh theory served as the generative idea behind the genre of early Mālikī texts known as *Mukhtaṣar*s. As evidence, I wish to cite the important preface which Abū Muṣ'ab appended to his *Mukhtaṣar*, a text which makes almost no reference to Qur'ān, Prophet or other hallmarks of Salvation History.[28] While this preface is certainly no treatise on legal theory, it does reflect the rhetorical environment of the early ninth century.

> Some claim that the people of Medina are lost, that they make legal pronouncements without foundation and they make no sense in their rulings and their legal statements. But anyone whose statement depends on a verse from the Book of God which has been passed down, or a Sunnah [of] the Prophet of God, God's blessings and peace be upon him, which is followed, or [a report] transmitted on the authority of the Imāms of the Muslims, or an account of the [companions] of the Prophet of God, upon him be [peace, is indebted] to [those whom] God [has filled] with His knowledge.[29]
>
> God chose [the people of Medina] for His Prophet to make them his helpers and He said to him: "Take counsel with them in the affair."[30] And he gave them, and no other, through [the Prophet] a distinction and a knowledge which He has not given to others. In their homes was the revelation and from them arises the interpretation, and from them come the Imāms who should be emulated. And they are God's proof of His creation up to the day of judgement. The truth [of God] has no record [of application] except among them and for them. Medina is the place [to which the Prophet and his companions]

[28] Given the differences in style and tone between the text of the *Mukhtaṣar* and this preface, it seems reasonable to suggest that it was appended by Abū Muṣ'ab at some later point. Particularly noticeable is the fact that the *Mukhtaṣar* is very spare in its descriptions, while the preface is almost verbose in its rhetorical defense of Medinan Imāms. Different dates for the two parts of the text also make sense in light of Abū Muṣ'ab's extraordinarily long life, since by the end of his life, post-*miḥnah*, the stock of the traditionalists would have risen dramatically, making his *Mukhtaṣar* seem subversive.

[29] The manuscript is heavily damaged at this point and this phrase is a speculative reconstruction.

[30] Sūrat Āl Imrān: 159.

> emigrated and the highpoint of their community. Their influences were upon it and their rulings were made in it.[31]

Abū Muṣʿab then continues to compare the Medinans' dependence on the examples of the Imāms with the method of the traditionalists, pointing out the obvious problems with *ḥadīth*: their propensity for contradiction, and the unreliability of single transmitters.

> There have come down [to us] from the Prophet of God—God's blessings and peace be upon him—two or three conflicting reports about the same matter which cannot all be observed at the same time. In this case the people of Medina act according to only one of the three reports and argue for it [in the following way]: Surely this one is according to the custom (*ʿamal*) of the Imāms of the Muslims who followed it and arranged their actions according to it. It became the generally accepted custom among them.
>
> The People of Medina say: this is how we have found the custom of our area. [They argue that] their words in this regard are more trustworthy than a story related from one person to another (*qawlahum hādha aqwā min ḥikāyati wāḥidin ʿan wāḥid*).[32]

There are several points worth noting in this important excerpt. First, this text makes clear that writers of these *Mukhtaṣarāt* were not ignorant of the debates on legal authority which were spreading throughout the Empire in the eighth and ninth century. Like Saḥnūn, Abū Muṣʿab seems to be caught between competing ideals of authority; he writes this defensive introduction in terms of Salvation History, legitimizing Medinan custom by the city's role in receiving revelation and the Prophet, but the very existence of this apologetic preface is proof that the text was regarded as a threat to the authority of Prophet and Qur'ān. Second, it is evident that these authors see their work as different from texts ultimately based on Qur'ān and *ḥadīth*.[33]

---

[31] Abū Muṣʿab, *Mukhtaṣar*, MS. Fās, Qarawiyyīn 874, fol. 2a–b. Interesting, Wansbrough also chooses the term *imām* as the Arabic equivalent to his paradigm. *Sectarian Milieu*, 71. Schacht's translation is helpful in reconstructing some of the text, but it is rather free and also contains some significant lapses and misreadings. "On Abū Muṣʿab," 9–10.

[32] Abū Muṣʿab, *Mukhtaṣar*, MS. Fās, Qarawiyyīn 874, fol. 2b. As Schacht points out, similar arguments are found in Mālik's letter to al-Layth b. Saʿd. Robert Brunschvig, "Polémiques médiéval autour du rite de Mālik," *al-Andalus* 15 (1950), 377–435. However, this manuscript predates the earliest witness to that letter by centuries.

[33] Dutton claims the contrary, but I do not find his arguments convincing. See his *The Origins of Islamic Law* (Surrey: Curzon, 1999) and my review in *Islamic Law and Society*, 7.3 (2000).

Wansbrough's discussion of Salvation History helps explain the rhetorical environment within which Abū Muṣʿab's preface was written, but it does not explain the explicit claims for authority in this preface nor the implicit claims for authority in the text of Abū Muṣʿab's *Mukhtaṣar*. Explicitly, Abū Muṣʿab says that authority lies in dicta of the Imāms of Medina and in the common practice adopted by the people of Medina. Not only is this source the arbiter of disputes in Qurʾān and Sunnah, it is also a living source which may be consulted on matters not found in other texts. Implicitly, Abū Muṣʿab's *Mukhtaṣar* presents law as dependent on the logic of category and subcategory, the authority for which is found in the living teacher and transmitter of that law. Finally, Ibn ʿAbd al-Ḥakam and Abū Muṣʿab see their books as better representations of God's law than collections of *ḥadīth*. Moreover, their *Mukhtaṣar*s prove that juristic dicta may be used as the sole basis for complete compendia of Islamic law.

The Great Shaykh theory makes explicit what is implied in these texts: that individuals, such as Imāms and teachers, are invested with such religious authority that their words can generate law. A similar sort of religious authority may be found in other religious traditions, including those of pre-Islamic Arabia, where the *kāhin, ḥakam* and the tribal leader had law-giving functions. But ascribing religious authority to great individuals quickly became endemic in Islamic culture as well. Great men and women, while no longer prophets, were still thought to embody certain ideals of truth and justice which emanated from the divine realm.[34] This trend is particularly evident in Shīʿī and Sūfī thought, but it is also found in the ideal of *ʿadālah* so important to the Islamic court. Al-Shāfiʿī's notions of three levels of knowledge, and the very institution of *mujtahid* and *muqallid* testify to the fact that certain individuals had religious authority over others. And we need only look to the shrine of al-Shāfiʿī in Cairo's south cemetery to see the quasi-divine powers which can be attributed to great shaykhs. While the role of the Great Shaykh as a "root" of law may not have been expressed in the same way that classical *uṣūl* theory was articulated, I see it as a major impetus behind the great Mālikī *ṭabaqāt* works, which used history not to glorify the Prophet,

[34] See on this point Crone and Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1987).

but to celebrate Mālik and his followers.[35] Again, this theory does not comprise an atheistic, anthropocentric claim to authority, but is rather a fundamentally theological statement of how great persons transmit divine law.[36]

By its own logic, the Salvation History theory of authority looks backward, and the text compiler (or author) is only the latest link in a chain of transmission going back to the Prophet and the revelational moment. The major *ḥadīth* collections are key examples, as the role of compilers such as Bukhārī and Muslim is restricted to organizing and annotating the *ḥadīth*.[37] In contrast, the Great Shaykh theory of authority (at least in the eighth and ninth centuries) looks to the present, and the Prophet and Qur'ān retreat to the background. In the case of the *Mudawwanah*, the names of Mālik, Ibn Wahb and Ibn al-Qāsim are put in place of other authorities, and in some chapters, such as the chapter on *ḥajj*, the authority of Qur'ān and Sunnah is almost completely effaced, further emphasizing Mālik's role as the Great Shaykh.[38]

---

[35] George Makdisi makes it clear that the authority of *ḥadīth* rested in the legitimate authority of scholars, but he stops short of explaining the religious nature of this authority. See his "*Ṭabaqāt*-biography: Law and orthodoxy in classical Islam," *Islamic Studies* 32 (1993), 373. However, I have documented instances where *ṭabaqāt* writers have adjusted the historical record in order to transform individuals into paragons of wisdom and influence. See my "A Mirror for Qāḍīs: the lives of 'Abd Allāh b. 'Abd al-Ḥakam (d. 214/829) and Saḥnūn b. Sa'īd (d. 240/856)," unpublished paper, presented to the Second International Conference on Islamic law, Granada, Spain, 1997.

[36] In a sense, I am largely in agreement with Wansbrough's distinction between "apostolic" or "paradigmatic" arguments in legal texts and the "midrashic" or "polemic" style of *sīrah* literature. In both cases, "an authority outside scripture was invariably qualified by assertion that the relation between the two sources was exegetical." *Sectarian Milieu*, 70–72. Where Wansbrough and I disagree is the extent to which the paradigmatic style existed in a non-"apostolic" form. That is to say, these *Mukhtaṣars* (and also certain chapters in the *Muwaṭṭa'* and the *Mudawwanah*) use a paradigmatic style which is not exegetical and does not depend on Salvation History.

[37] The synoptic Gospels are another example, in which Matthew, Mark and Luke are disembodied names, mere markers of a differing textual transmission.

[38] As Christopher Melchert pointed out to me in a private conversation at Alta, this switch from a generalized Medinan basis of authority to Mālik's authority may be a key move from regional to personal schools. Indeed, in al-Barqī's (d. 291/904) commentary on Ibn 'Abd al-Ḥakam's *al-Mukhtaṣar al-ṣaghīr*, Ibn 'Abd al-Ḥakam's words are taken as representative of a Mālikī school to which one may contrast the words of al-Shāfi'ī, Abū Ḥanīfa, Sufyān al-Thawrī and others. In the colophon, al-Barqī lists the students of these eponyms from whom he gathers these school positions, yet he consistently puts the positions in the mouths of the eponyms. As far as I know, this is the earliest *ikhtilāf* work that treats Mālik, al-Shāfi'ī, Abū Hanīfa, etc. as eponyms, names which represent broad groups of scholars.

In the *Muwaṭṭa'* and al-Mājishūn's law book, the competing theories of authority help explain variations of style within these texts, which sometimes derive rulings from Qur'ān and Prophetic Sunnah and sometimes depend on rulings by authoritative individuals. In my reading, these are not transitional pieces representing a primitive form of Salvation History, rather they incorporate the sort of authority that best suits their purposes. The comparison of these two texts suggests that Mālik was more a partisan of one sort of authority (Salvation History) and al-Mājishūn of the other (Great Shaykh), but neither attempts to organize all chapters in the same way.

The *Mukhtaṣarāt* of Abū Muṣ'ab and Ibn 'Abd al-Ḥakam, however, are striking in their stylistic consistency. Unlike other texts from this period, these books use the same format for every chapter: a coherent listing of legal rules with no discussion of problematic Qur'ān texts and no listing of contradictory *ḥadīth*.[39] In the absence of explicit reference to authority, either that of the Prophet or of the eponyms, it seems to me that authority in these texts resides in the authors themselves. They presume the existence of a teaching environment, where scholars produce finished texts and depend on the devotion of their students to pass them on intact. These *Mukhtaṣarāt* are finally compendia of Abū Muṣ'ab and Ibn 'Abd al-Ḥakam's teachings, and they were passed on to generations of students and commented upon not for their preservation of Prophetic or Mālikī dicta, but for their preservation of the words of *these* great shaykhs who, through their lineage, learning and wisdom provided authoritative access to the expression of God's law.

In conclusion, I believe the postulation of this competing Great Shaykh theory can accomplish several goals. First, it helps us characterize early Mālikī legal drafting in a pro-active way. The *Muwaṭṭa'* was not compiled merely under the influence of Iraqi traditionalism, rather it also reflects the vital role of Medinan Imāms in determining law. Likewise, Calder was wrong to characterize the *Mudawwanah* as a survival of an earlier age. Instead, the *Mudawwanah* can be seen as taking Abū Muṣ'ab's notions of dependence on the great Imāms and transferring that dependence primarily, if not solely, to Mālik.

---

[39] In comparing chapters on the prayer for rain (*al-istisqā'*), for instance, Ibn 'Abd al-Ḥakam's *al-Mukhtaṣar al-ṣaghīr* gives a simple set of instructions for carrying out this ritual, with no citation of well-known Prophetic *ḥadīth* on the subject. In contrast, al-Shāfi'ī's *Kītāb al-umm* loses the train of argument in a complicated discussion over a series of variant *hadīth* on a point of relative insignificance.

Second, a proactive theory better explains the continued popularity of texts like the *Mudawwanah* among Mālikīs of the West and East. Its use of juristic dicta as a source for law allowed it to cover a vast array of legal cases not addressed by traditionalist sources. Further, this theory provides us with a partial explanation as to why we have large areas of agreement in the nascent Mālikī school in terms of content of law, but not in terms of style of legal drafting. Even in those texts that depend primarily on *ḥadīth* and Qur'ān, the interpretation of these sources seems to have been determined by a consensus among Medinan shaykhs.

Third, competing theories describe a more complex context into which the first *uṣūl* works were born, works of *ikhtilāf, al-naskh wa-al-mansūkh,* history, and traditionalist works like al-Shāfi'ī's *Risālah.* In a sense, the Great Shaykh theory arises more from a popular teaching culture, and it implies some opposition to a culture of elite theoretical treatises. Further, writings such as Abū Muṣ'ab's preface suggest a significant interaction between popular and elite culture, both in using traditionalist terms to defend works based on juristic dicta and also in resisting the thesis of the traditionalists.

Finally, this theory helps to map out the tremendous influence of individual authority in the teaching and transmission of Islamic law. In this formative period, these individuals produced their work within a developing scholastic structure, and some were even able to ensure that their compendia of law were transmitted faithfully by their students. In later periods, however, the great shaykhs would no longer be located primarily in the present. Collections and commentaries on older books would begin to replace independent treatises, and some of the past greats, like Saḥnūn and Mālik, would be subjected to ever more elaborate hagiographies. The dreams, prophecies and miracles associated with these great shaykhs of the past was a sign to later generations that these individuals had received a special dispensation from God, making them worthy authorities to transmit His law and to found, in retrospect, the schools which eventually bore their names.

DOES SHĀFIʿĪ HAVE A THEORY OF "FOUR SOURCES" OF LAW?

JOSEPH E. LOWRY (University of Pennsylvania)

I. *Introduction*

Students of Islamic law have long credited Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820) with the founding of Islamic legal theory, *uṣūl al-fiqh*.[1] It is often claimed that Shāfiʿī, eponym of the Shāfiʿite law school (*madhhab*), practically invented Islamic legal theory single-handedly, and that his *Risālah* is the book in which he first set out, in a systematic way, the details of that theory.[2] Shāfiʿī's position has recently come under attack, however. Strong cases have been made to the effect that Shāfiʿī did not actually (and certainly not personally) found the Shāfiʿite *madhhab*,[3] that he did not invent what was to become, later, *uṣūl al-fiqh*,[4] and even—though in my view less plausibly—that he is not the author of the *Risālah*.[5] Amidst all these

[1] *Uṣūl al-fiqh* in fact denotes a genre of legal writing. It is worth bearing in mind that in Islam legal theory as such does not necessarily overlap precisely with that genre. One implication of this article is that Shāfiʿī does indeed have a legal theory, but that the work attributed to him entitled *al-Risālah* does not belong to the genre of *uṣūl al-fiqh*, which probably emerged a century or so after Shāfiʿī's death. On the dating of the rise of the *uṣūl al-fiqh* genre, see the paper in this volume by Devin Stewart, the important article by another contributor to this volume, Wael Hallaq, "Was al-Shafiʿi the Master Architect of Islamic Jurisprudence?", *IJMES* 25 (1993), 587–605, and more recently Hallaq's *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 31–35.

[2] For a detailed account of the content of Shāfiʿī's *Risālah*, see my dissertation, "The Legal-Theoretical Content of the *Risāla* of Muḥammad b. Idrīs al-Shāfiʿī", (Ph.D. diss., University of Pennsylvania, 1999).

[3] Christopher Melchert, defining a *madhhab* as a self-perpetuating conglomeration of jurist-scholars with a regular curriculum, convincingly dates the actual founding of the Shāfiʿite *madhhab* to the lifetime of Ibn Surayj (d. 306/918). C. Melchert, *The Formation of the Sunni Schools of Law* (Leiden: Brill, 1997), chapters 4 and 5.

[4] See the references to Hallaq's writings in note 1, above.

[5] This idea was first proposed by Norman Calder in his *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 223–243. On literary grounds, Calder believes the *Risālah* to be a product of corporate authorship, put together over a period of time, and finds it too sophisticated in its hermeneutical arsenal to be a product of the early 3d/9th century. He dates it, accordingly, to the early 4th/10th

revisionist impulses surrounding Shāfiʿī's place in early Islamic legal thought, one question which seems to me to be ripe for reconsideration has been left largely unaddressed, namely: what is the nature of Shāfiʿī's legal theory (or of the legal theory attributed to him)? In this article, I deal with that question, at least in part, by re-examining what is usually claimed to constitute the central idea in Shāfiʿī's *Risālah*. In particular, I hope to show that the usual account of the *Risālah*'s contents—namely, that Shāfiʿī has a theory of four sources of law—does not correspond to what one actually finds in the *Risālah*.[6]

The title of this paper ("Does Shāfiʿī have a Theory of 'Four Sources' of Law?") poses a question the answer to which is an emphatic "no". An emphatic "no" because I am not going to argue that Shāfiʿī has a theory of four something-or-others that do not quite rise to the level of sources (whatever a "source" may be), or that, instead of a theory of four sources, he has, say, three. Rather, I will try to show that there is no support, or at least not in Shāfiʿī's *Risālah*, for a reduction of his legal theory to a four-part scheme or hierarchy, or to anything which even resembles a four-part, three-part, or even—except heavily qualified—two-part scheme or hierarchy. I will do this by examining precisely those passages in the *Risālah* which might be thought to support the interpretation against which I am arguing—namely, that the *Risālah* can be boiled down to a theory of four sources—in order to show that they do not in fact support that interpretation. In my conclusion, I will briefly outline what, in my view, represents a more likely candidate for the actual theory offered by Shāfiʿī in the *Risālah*.

---

century. Melchert, *Formation of the Sunni Schools*, 68, has followed Calder, though he is now inclined to date the *Risālah* slightly earlier than Calder (for which, see his article in this volume). I have argued in my dissertation and in a paper and hope to show in a forthcoming article that Calder's arguments for redating the *Risālah* are flawed. The paper in question is "Calder, Shāfiʿī, and Ibn Qutayba: On the Relative Sophistication of Hermeneutic Techniques" (paper presented at the 210th meeting of the American Oriental Society, Portland Oregon, March 13, 2000; rev. version given at BRISMES, Cambridge, England, July 3, 2000).

[6] I limit this study to Shāfiʿī's *Risālah* for two reasons. First, of all the writings attributed to Shāfiʿī, it is the only one which attempts to set forth a comprehensive theory of law (which I will describe below). Second, the interrelationship of the various writings attributed to Shāfiʿī has yet to be explained. For one attempt to put his writings in chronological order, see J. Schacht, *Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), Appendix I, 330. For a surprisingly powerful argument that the voluminous *Kitāb al-umm*, traditionally considered Shāfiʿī's major work on positive law, was compiled after Shāfiʿī's death, see Z. Mubārak, *Iṣlāḥ ashnaʿ khaṭaʾ fī tārīkh al-tashrīʿ al-islāmī: Kitāb al-umm* (repr. Cairo: Maktabat Miṣr, 1991).

II. *The "Four Sources" Theory*

I am going to refer to the interpretation against which I am arguing as "the four-sources theory". At its most basic, the four-sources theory describes Shāfiʿī's legal theory as one which rests on, or perhaps consists in its entirety of, the notion that there are four sources of law:[7] Qur'ān, Sunnah, *ijmāʿ* ("consensus"), and *ijtihād/qiyās* ("legal interpretation"/"analogical reasoning"). In other words, Shāfiʿī's legal theory, on this view, comprises a four-part list, arranged hierarchically, always beginning with the Qur'ān and always ending with *qiyās/ijtihād*. The objection might be raised that I am creating a straw man, that no one really conceives of Shāfiʿī's theory so crudely. It is possible to show, however, that this four-sources view, or something like it, informs most discussions of the legal-theoretical content of the *Risālah*.

A. *The Four-Sources Theory in the Secondary Literature*

The first major study of the *Risālah* was L. I. Graf's 1934 Dutch dissertation.[8] Graf summarizes the contents of the *Risālah*, dividing his work into four chapters, entitled "Koran", "Sunnah", "Idjmāʿ", and "Ḳiyās", respectively. He offers little explanation of how these four elements, or the other ideas which he describes in the *Risālah*, hold together, but presumably he believed that this four-part division had some explanatory power since it furnishes the framework for his analysis. He does suggest that these four elements are the "*wortelen*" which appear in his own work's title ("roots", presumably a translation of the Arabic word *uṣūl*, as in *uṣūl al-fiqh*).[9]

The next major work to deal with the *Risālah* was Joseph Schacht's ground-breaking study *Origins of Muhammadan Jurisprudence*, which appeared in 1950. In that work, Schacht says that

[7] Since I will be arguing that the notion of a four-part hierarchy cannot possibly represent the principal idea of the *Risālah*, I will not consider the complicated question of what constitutes, or what previous interpreters of the *Risālah* have considered, a "source", or the related problem of whether the word *uṣūl* (sg. *aṣl*) in the phrase *uṣūl al-fiqh* is appropriately translated as "sources", "roots", and so on.

[8] L. I. Graf, *Al-Shāfiʿī's Verhandeling over de "Wortelen" van den Fiḳh* (Amsterdam: H. J. Paris, 1934). Graf's description of the *Risālah*'s contents is not inaccurate, but he does not seem to believe that the work has any overarching point.

[9] For example, Graf, *Shāfiʿī's Verhandeling*, 65.