did include statements from Companions, Followers, and jurisprudents of the earlier eighth century. See, for example, the *Muṣannaf* of ʿAbd al-Razzāq (d. Yemen, 211/827), of which scarcely more than one entry in five goes back to the Prophet. Consider, too, Abū ʿUbayd's loose usage of "Sunnah". But now I see that the *Risālah* does not argue but simply assumes that "Sunnah" and "ḥadīth" refer to statements of the Prophet and reports about him—the eclipse of Companion ḥadīth is already complete.[51] This is to say that its outlook is that of the Six Books (earliest attributed to Bukhārī [d. Khartank, 256/870], latest to Nasā'ī [d. Palestine, 303/915?]) rather than the earlier ḥadīth collections of ʿAbd al-Razzāq and Abū Bakr Ibn Abī Shaybah (d. Kufa, 235/849). Shāfiʿī's contention that Qur'ān and Sunnah are equally inspired goes well beyond what Muḥāsibī says for the Sunnah, agreeing with a formula to be found in al-Dārimī but not, to my knowledge, before.[52]

Additionally, there is the question of literary specialization. Wael Hallaq has made much of there being, apart from the *Risālah*, no freestanding work on the theory of Islamic law in the ninth century.[53] The theory of Islamic law is prelusory to Abū ʿUbayd, the subject of some chapters in Muḥāsibī's more comprehensive work on the Qur'ān, implicit in the background for Ibn Qutaybah. So far, no one has questioned whether the *Risālah* was the first freestanding work entirely devoted to Islamic legal theory; what has been questioned is only by how much it predates other such works. It makes better sense to trace the gradual emergence of legal theory across the ninth century, increasingly prominent from, say, Abū ʿUbayd to Muḥāsibī, than to posit its emergence from nowhere early in the ninth century, to be forgotten for generations before re-emerging at the beginning of the tenth. Finally, let me recall Maitland's observation that the progress of constitutional law is not from the simple

[51] At the theoretical level, Shāfiʿī expressly rules out reliance on Companion and Follower ḥadīth in another work, *Ikhtilāf al-ḥadīth*, in margin of *Umm* 7:19f., 46f., 47f., 51. In yet other works, concerning particular points of the law, he continually reproaches the Iraqis and Medinese for allowing Companion ḥadīth to overrule prophetic, although his own practice is not fully self-consistent. For all these points, see Schacht, *Origins*, chap. 3.

[52] Al-Dārimī, *al-Sunan*, Introduction, § 49 (48 by Wensinck's reckoning): "Gabriel brought down (*kāna yanzilu bi-*) the Sunnah to the Prophet as he brought down to him the Qur'ān".

[53] Hallaq, "Was Shafiʿi?" 594f.

to the complex but from the vague to the definite. The theory of abrogation is everywhere vaguest in Abū ʿUbayd, most definite in Ibn Qutaybah and Shāfiʿī. It makes much better sense to locate the *Risālah* in Ibn Qutaybah's time than before Abū ʿUbayd's.

As for the precise date of the *Risālah* as we know it, I have argued here that it is roughly contemporary with the *Mukhtalif* of Ibn Qutaybah; that is after 256/869–70, perhaps by only a little. Calder's proposed date is *ca.* 300/912–13, but he does not argue for it in detail. I have elsewhere urged the evidence of the commentary literature, which begins in the tenth century, and of Shāfiʿī's popularity among the Ḥanābilah of Baghdad, which evidently rose in the early tenth century, in confirmation of Calder's date.[54] But Ḥanbali favor toward Shāfiʿī seems to go back earlier; for example, Ibn Hāniʾ (d. Baghdad, 275/888–89) reports that Aḥmad said Mālik, Abū Ḥanīfah, and Abū Yūsuf gave opinions according to *raʾy* but Shāfiʿī according to ḥadīth.[55] This contradicts other reports by which Aḥmad disparaged Shāfiʿī for involvement in *raʾy*, and may reflect discovery of the *Risālah*, arguing for the traditionalist thesis that one derives the law entirely from textual evidence.[56] The evidence of manuscripts is inconclusive. Our earliest manuscript of the *Risālah* is dated Dhū al-Qaʿdah 265/June-July 879 and purportedly signed by al-Rabīʿ ibn Sulaymān (p. 601). Some specialists have asserted that its being on paper, not parchment, implies a date of a century later.[57] Confirming the date written on the manuscript, a paragraph is accurately quoted by Ibn Abī Ḥātim (d. Ray, 327/938), who visited Egypt in 262/875–76.[58] The *Risālah* still stands as a masterful treatment of the theory of Islamic law, and re-assigning it to the later ninth century scarcely reduces the pleasure of reading it.

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[54] Christopher Melchert, *The Formation of the Sunni Schools of Law*, Studies in Islamic Law and Society (Leiden: Brill, 1997), 68, 147.

[55] Ibn Hāniʾ, *Masāʾil al-imām Aḥmad*, ed. Zuhayr al-Shāwīsh, 2 vols. (Beirut: al-Maktab al-Islāmī, 1394), 2:164.

[56] For an example of disparagement, see al-Qāḍī ʿIyāḍ, *Tartīb al-madārik*, ed. Aḥmad Bakīr Maḥmūd, 4 vols. in 2 + index (Beirut: Maktabat al-Ḥayāh, 1967–68?), 1:389, l. 11, 390, l. 9.

[57] See Majid Khadduri, "Translator's Introduction", *Islamic Jurisprudence: Shāfiʿī's Risāla* (Baltimore: Johns Hopkins Press, 1961), 48–51.

[58] Ibn Abī Ḥātim, *K. al-Jarḥ wa-al-taʿdīl*, 9 vols. (Hyderabad: Jamʿīyat Dāʾirat al-Maʿārif al-ʿUthmānīyah, 1360–73, repr. Beirut: Dār al-Umam, n.d.), 2:29f., directly quotes Shāfiʿī, *al-Risālah*, ¶ 1001. For Ibn Abī Ḥātim's travels, see al-Dhahabī, *Tārikh al-islām*, 24 (A.H. 321–30): 206–9.

SUMMARY TABLE

	Shāfiʿī	Abū ʿUbayd	Muḥasibi	Ibn Qutaybah
General and particular	Yes	Some	Some	No
Objects of abrogation	Yes	No	Some	Yes
Qur'ān and Sunnah as revelation	Yes	No	Some	Yes
Abrogation as between Qur'ān and Sunnah	Yes	No	Some	Yes
Exception and abrogation	No	No	Yes	No
Abrogation of Reports, ordinances	No	No	Yes	Yes (minor)
Varieties of abrogation	No	Yes	Yes	Yes
Control over examples	Yes	No	Some	Yes

General and particular indicates systematic use of *ʿāmm/khāṣṣ*. *Objects of abrogation* indicates what is abrogated according to each author, whether restricted to previous commands. *Qur'ān and Sunnah as revelation* indicates the status of Qur'ān and Sunnah. *Abrogation as between Qur'ān and Sunnah* indicates the question of whether Qur'ān may abrogate Sunnah or vice versa. *Exception and abrogation* indicates the distinction between exception (as marked by *illā*) and abrogation. *Abrogation of reports, ordinances* indicates the restriction of abrogation to *aḥkām*, excluding *akhbār*. *Varieties of abrogation* indicates the express enumeration of varieties. *Control over examples* indicates the relation between the proposed enumeration and the examples discussed.

What, then, of the themes of this conference? All four writers here considered plainly wished to justify the law by pointing out its basis in the Qur'ān and ḥadīth. On this point, the only important difference among them is that "ḥadīth" comprised a great deal more for Abū ʿUbayd, who includes the opinions of Companions and sometimes even later jurisprudents, than for Ibn Qutaybah and Shāfiʿī, who restrict it to reports of the Prophet's word and deed. At no point do these writers pretend to guide their readers to the invention of new rules, rather to the basis of the existing ones. None of the writers here considered identifies himself with a school of law, confirming that the familiar four or five did not take shape until after the ninth century.

Norman Calder has suggested that repetition in the *Risālah* is evidence of its taking form over time as a "school text", not a new work deliberately authored and distributed in multiple copies. Gradual, multiple authorship of the *Risālah* is conceivable; however, I acknowledge only that redating it to the last quarter of the ninth century implies pseudonymity. On internal evidence, multiple authorship over time seems most likely behind the *Nāsikh* of Abū ʿUbayd. If not for Muḥāsibī's repeatedly quoting it, one might propose that the introductory section on the theory of abrogation so poorly controls the examples that follow just because it was added at a later date, when the theory of abrogation had become more clearly defined. Instead, it appears more likely that Abū ʿUbayd took a collection of instances, gathered by himself or others, and appended a theoretical introduction. All the others read as coherent, unified works, clearly responding to arguments but not themselves the record of debate within small circles such as Calder finds in the *Mukhtaṣar* of al-Muzanī and other early handbooks of jurisprudence. Islamic legal theory seems to have emerged in the ninth century *pari passu* with a class of professional jurisprudents writing for a universal audience.

MUḤAMMAD B. DĀ'ŪD AL-ẒĀHIRĪ'S MANUAL OF JURISPRUDENCE, *AL-WUṢŪL ILĀ MA'RIFAT AL-UṢŪL*

DEVIN STEWART (Emory University)

Generic conventions, in legal literature as in court poetry and national epics, shape not only texts but also thought itself. Like language, they mould, while at the same time reflecting, institutional and ideological assumptions, boundaries, and commitments. The important role played by genre in the transmission of knowledge in the medieval Islamic world may be obvious enough from works in the various sciences themselves, but it is also apparent in medieval scholars' theoretical statements. Ibn Khaldūn, for example, clearly equates the genres of scientific works with the sciences or disciplines they describe. Sciences, like the works which detail them, are naturally divided into specific chapters or sections, and those chapters are divided into specific problems or questions. The chapters on ritual purity, prayer, alms, marriage, and manumission in compendia of law, or the chapters on the imamate and the attributes of God in theological works are not just convenient pegs on which to hang material relevant to the study of those fields; they represent the inherent structures of those sciences. To master these chapters and questions is to master the science. To produce a new genre, Ibn Khaldūn explains, is to invent a new science, even if its elements formerly existed scattered in works belonging to other genres. If learning is an acquired craft, it stands to reason that the genres through which learning is acquired shape categories and modes of thought.[1]

For the study of Islamic law, legal institutions, and intellectual history, one of the most important genres is arguably that of *uṣūl al-fiqh*, which, perhaps more than any other, seems to embody the community of interpretation of Muslim theoretical jurists. It was in *uṣūl al-fiqh* manuals devoted to legal theory and methodology that many of the great theoretical battles of Islamic legal history were fought. There, the sacred epistemology of Islam, or at least the jurists'

[1] Ibn Khaldun, *The Muqaddimah: An Introduction to History*, 2nd ed., 3 vols., trans. Franz Rosenthal (Princeton: Princeton University Press, 1967), 1:76–83; 3:284–87.

version thereof, was expressed, debated, and hammered out. Fakhr al-Dīn al-Rāzī (d. 606/1209) writes, ". . . the most important of sciences for the *mujtahid* is that of *uṣūl al-fiqh*; all other sciences are unimportant in this regard".[2] While one may imagine a cadre of jurists, a system of law, and a sophisticated community of legal interpretation existing without the particular genre of *uṣūl al-fiqh*—indeed, the Rabbinic legal tradition would seem to provide such a counterexample, having by and large produced no genre equivalent to *uṣūl al-fiqh*—an understanding of the tradition of *uṣūl al-fiqh* manuals is indispensable for an understanding of Islamic legal and intellectual history. Unfortunately, the early history of the genre is shrouded in mystery, primarily because so many works from its formative period, the eighth, ninth, and tenth centuries, have been lost. The present essay contributes to the investigation of the *uṣūl al-fiqh* genre in this sparsely documented period, focusing on a work by Muḥammad b. Dāʾūd al-Ẓāhirī.

Abū Bakr Muḥammad b. Dāʾūd al-Ẓāhirī (255–97/868–909), litterateur, jurist, and son of the famous founder of the Ẓāhirī school of law, Dāʾūd b. Khalaf al-Iṣbahānī (d. 270/883), is reported to have authored a work entitled *al-Wuṣūl ilā maʿrifat al-uṣūl*. It is argued here that a number of passages preserved in the polemical text *Ikhtilāf uṣūl al-madhāhib* ("*The Divergence of the Juridical Principles of the Schools of Law*") by the Fatimid jurist al-Qāḍī al-Nuʿmān (d. 363/974) derive from this text. Analysis of the passages in question, several of which are attributed explicitly to Muḥammad b. Dāʾūd, demonstrates that *al-Wuṣūl ilā maʿrifat al-uṣūl* ("*The Path to Knowledge of Jurisprudence*") was a manual of *uṣūl al-fiqh*, similar in conception, form, and content to extant manuals from later times. Furthermore, this work was not the first of its kind, but part of an existing genre with established conventions. The author was deeply engaged in legal theoretical polemics over the issues of consensus, legal analogy, *istiḥsān*, and *ijtihād*, drawing on other authors and responding to opponents, either past or contemporary, who had written independent and comprehensive works on *uṣūl al-fiqh*.

In a 1984 study, George Makdisi noted that one of the striking problems for the student of Islamic jurisprudence is the lapse in time,

[2] Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī ʿilm uṣūl al-fiqh*, 2 vols. (Beirut: Dār al-kutub al-ʿilmīyah, 1988), 2:499.

as much as two centuries, between the *Risālah* ("*The Epistle*") of al-Shāfi'ī (d. 204/820) and the first independent and comprehensive works on *uṣūl al-fiqh* that are extant.[3] This gap, narrowed to some extent by the recent publication of *al-Fuṣūl fī al-uṣūl* ("*The Chapters, On Jurisprudence*") by Abū Bakr al-Jaṣṣāṣ al-Rāzī (d. 370/980), *al-Muqaddimah* ("*The Introduction*") by Ibn al-Qaṣṣār (d. 398/1008), and *al-Taqrīb wa'l-irshād fī tartīb ṭuruq al-ijtihād* ("*The Assistance and Guide, Providing an Orderly Arrangement of the Methods of Legal Investigation*") by al-Bāqillānī (d. 403/1013),[4] remains an obstacle to scholarship, particularly since the ninth and tenth centuries, a period of tremendous intellectual ferment, witnessed many developments crucial for the subsequent history of Islamic law, legal theory, and the transmission of knowledge, not the least of which were the formation of the legal *madhhab*s and the collective professionalization of the jurists. To remedy this situation, Makdisi's study presents two medieval lists of independent *uṣūl al-fiqh* manuals and commentaries on al-Shāfi'ī's *Risālah*, one derived from al-Subkī's (d. 700/1371) commentary on the *Mukhtaṣar* ("*The Epitome*") of Ibn al-Ḥājib (d. 646/1249) and the other from Badr al-Dīn al-Zarkashī's (d. 794/1392) *uṣūl al-fiqh* work *al-Baḥr al-muḥīṭ* ("*The Surrounding Sea*"). Each reports four commentaries of the *Risālah*. Al-Subkī's list gives in addition 28 works on *uṣūl al-fiqh*, not counting the *Risālah* itself; al-Zarkashī's list gives 34.[5] These lists do not entirely demonstrate that the *uṣūl al-fiqh* genre reaches back in an unbroken tradition directly to al-Shāfi'ī's work. In each list, the first commentary on *al-Risālah* to appear is that of al-Ṣayrafī, who died in 330/942, well over a century after al-Shāfi'ī wrote the *Risālah*. The first *uṣūl al-fiqh* work mentioned by al-Subkī is *al-Taqrīb wa'l-irshād* by al-Bāqillānī (d. 403/10130). In al-Zarkashī's list, one may discount the work *Kitāb al-qiyās* ("*The Book on Legal Analogy*")

[3] George Makdisi, "The Juridical Theology of al-Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh", *Studia Islamica* 59 (1984):5–47, here p. 13.

[4] See al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl*, 4 vols., ed. 'Ujayl Jāshim al-Nashmī (Kuwait: Wizārat al-awqāf wa'l-shu'ūn al-islāmīyah, 1994); Ibn al-Qaṣṣār, *al-Muqaddimah fī al-uṣūl*, ed. Muḥammad b. al-Ḥusayn al-Sulaymānī (Beirut: Dār al-gharb al-islāmī, 1996); al-Bāqillānī, *al-Taqrīb wa'l-irshād al-ṣaghīr*, 3 vols., ed. 'Abd al-Ḥamīd b. 'Alī Abū Zunayd (Beirut: Mu'assasat al-risālah, 1993). Also publised is an abridgement of the *Taqrīb*, Imām al-Ḥaramayn al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, 3 vols., ed. 'Abd Allāh Jawlam al-Nibalī and Shubbayr Aḥmad al-'Amrī (Mecca: Maktabat dār al-bāz, 1996). The works of al-Jaṣṣāṣ and al-Bāqillānī are incomplete, lacking substantial sections, most regrettably the introductions.

[5] Maksidi, "Juridical Theology", 30–32.

attributed to al-Muzanī (d. 264/878) since its title suggests that it is devoted to only one constituent element of the science of *uṣūl al-fiqh*. The earliest comprehensive works included would then be *Kitāb al-ʿidhār wa'l-indhār* ("*The Book of Excuse and Warning*") by Ibn Surayj (d. 306/918) and *al-Dalā'il wa'l-aʿlām* ("*The Book of Indications and Signs*") by al-Ṣayrafī.[6] Even in combination, the two lists do not show the abundant production of *uṣūl al-fiqh* works in the ninth and tenth centuries.

Wael Hallaq has recently critiqued the received wisdom that al-Shāfiʿī founded the science of *uṣūl al-fiqh* with the *Risālah*, stressing the break between that work and the earliest known works of *uṣūl al-fiqh*. Drawing on biographical and bibliographical sources, Hallaq presents a list of *uṣūl al-fiqh* works demonstrating the proliferation of such works in the tenth century. The same, he claims, cannot be said for the ninth century. According to him, the earliest works in the genre were composed by Shāfiʿī students of Ibn Surayj, such as Ibn Ḥaykawayh (d. 318/930), al-Ṣayrafī (d. 330/942), Ibn al-Qāṣṣ (d. 335/946–47), al-Qaffāl al-Shāshī (d. 336/948), Abū Isḥāq Ibrāhīm al-Marwazī (d. 340/951), and Abū Bakr al-Fārisī (fl. ca. 350/960).[7] Reinhart also assigns Ibn Surayj a pivotal role in the development of *uṣūl al-fiqh*, reporting that he wrote a work on "Principles and Derivations" (*al-uṣūl wa'l-furūʿ*).[8] The present author compiled a list of *uṣūl al-fiqh* works up to and including those of al-Qāḍī ʿAbd al-Jabbār (d. 415/1025). This catalogue includes a number of early texts which Hallaq dismisses or overlooks, such as works attributed to al-Karābīsī (d. 848/962–63), al-Qāḍī Ismāʿīl b. Isḥāq b. Ḥammād al-Azdī (d. 282/895), and Ibn Surayj himself, but still does not show the extensive production of *uṣūl al-fiqh* manuals in the ninth century.[9]

Related to the question of the temporal gap between later works on jurisprudence and the *Risālah* is that of the relationship, in terms

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[6] Ibn al-Nadīm gives this title as *al-Bayān fī dalā'il al-aʿlām ʿalā uṣūl al-aḥkām* ("*The Explanation, On the Signs' Indications of the Principles of Legal Rulings*"). Muḥammad b. Isḥāq al-Nadīm, *al-Fihrist*, ed. Riḍā Tajaddud (Tehran: Dār al-masīrah, 1988), 267.

[7] Wael B. Hallaq, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence?", *IJMES* 25 (1993): 587–605; idem, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 30–35.

[8] A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995), 14–15.

[9] Devin J. Stewart, *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt lake City: Utah University Press, 1998), 33–36.

of form, content, and intellectual pedigree, between them. Makdisi notes a significant shift in the content of jurisprudential works which he attributes to the introduction of theological topics on the part of Mu'tazilī theologians in the course of the ninth and tenth centuries. Questions such as the relationship of reason to revelation, the inherent permissibility or prohibition of acts, the legal status of acts before revelation became standard elements of the genre by the time al-Qāḍī 'Abd al-Jabbār (d. 415/10250) composed his work *al-'Umad.*[10] Nevertheless, Makdisi views the *Risālah* as indeed an *uṣūl al-fiqh* work, the first of its kind. Hallaq holds, on the contrary, that the *Risālah* differs radically from later works of *uṣūl al-fiqh* in content. He sees that it focuses primarily on hadith and emphasizes the role of Prophetic traditions in the derivation of the law.[11] In a painstaking study, Lowry has shown that the *Risālah*'s organizing principle is quite different from that evident in later *uṣūl al-fiqh* works. It is essentially a discussion of hermeneutics describing various possible types of interaction between scriptural texts from the Koran and hadith. Furthermore, it does not uphold the theory of four sources—the idea that the law derives from or is based on the Koran, Sunnah of the Prophet, consensus, and legal analogy or *ijtihād*—that became widespread in later jurisprudence and which later scholarship, both in Islamic jurisprudence and in the Orientalist tradition, have attributed consistently to al-Shāfi'ī.[12]

Studies to date on the history of Islamic law thus leave two fundamental questions concerning *uṣūl al-fiqh* unanswered. It is still not clear when the genre began or how al-Shāfi'ī's work is related to subsequent treatments of Islamic jurisprudence. This being the case, modern scholars have some tools for the investigation of *uṣūl al-fiqh* in its early stages. Biographical and bibliographical sources are certainly useful, though they present a number of problems of interpretation. It is often difficult or impossible to tell from the title of a work whether it indeed belonged to the *uṣūl al-fiqh* genre. The term *uṣūl* does not always appear in the titles of such works, especially if the title cited is a truncated version of the original. Moreover,

[10] Makdisi, "Juridical Theology", 16.

[11] Hallaq, "Shafi'i", 592.

[12] Joseph E. Lowry, *The Legal-Theoretical Content of the Risāla of Muḥammad B. Idrīs al-Shāfi'ī*, Ph.D. dissertation, University of Pennsylvanian, 1999; idem, "Does Shafi'i Have a Theory of 'Four Sources' of Law?" in this volume.

the term *uṣūl* itself was used for a variety of meanings in a number of fields and does not necessarily indicate a work on jurisprudence. It may refer to questions of theological dogma, principal questions concerning the points of law,[13] principal questions in other sciences, or other dictated texts. Nevertheless, the continued and assiduous investigation of biographical and bibliographical sources such as the *Fihrist* of Ibn al-Nadīm (fl. 377/987) remains valuable. Another fruitful method of investigation involves culling citations from later works, primarily those in the *uṣūl al-fiqh* genre. This has served with relative success in one modern scholar's collection of the opinions on jurisprudence of Abū al-Ḥasan al-Karkhī (d. 340/952), the famous Ḥanafī professor.[14] Using these methods, this essay identifies several early manuals of jurisprudence and argues that the genre of *uṣūl al-fiqh* was well established already before the tenth century.

Before proceeding, it is necessary to define the genre under consideration. A bona fide *uṣūl al-fiqh* work is one that aims to present and explain a complete, finite, and ordered collection of "roots" or "sources" from which all legal assessments—an infinite number—may be derived. Most later *uṣūl al-fiqh* works, in their form and theoretical apparatus, owe a recognizable debt to this concept, which sets such works as the *Fuṣūl* of al-Jaṣṣāṣ or the *Taqrīb* of al-Bāqillānī apart from al-Shāfiʿī's *Risālah*. The *Risālah* may be seen as an *uṣūl al-fiqh* work in the sense that it aims to provide a comprehensive method for the derivation of rulings for all possible future cases. Nevertheless, it does not contain the features characteristic of later *uṣūl al-fiqh* works, nor can it likely have served as a model for them, since its organization is decidedly not based on an ordered list of *uṣūl*. The concept of a complete, finite, and ordered list of the roots of the law, however, existed already in the early ninth century, perhaps even during al-Shāfiʿī's day. Abū ʿUbayd al-Qāsim b. Sallām (d. 224/838–39), an early jurist who served as judge in Ṭarsūs, made the following statement concerning legal methodology:

> The sources of legal rulings (*uṣūl al-aḥkām*) which a judge cannot transgress to adopt others are: the Book, the Sunnah, and what the leading jurists and righteous ancestors have ruled on the basis of consensus

[13] Makdisi, "Juridical Theology", 7–9; Hallaq, "Shāfiʿī", 588–90.

[14] Abū al-Ḥasan al-Karkhī, *al-Aqwāl al-uṣūlīyah*, ed. Ḥusayn Khalaf al-Jubūrī (N.p.: Ḥ.Kh. al-Jubūrī, 1989).

> and *ijtihād*. There is no fourth category. *Ijtihād* in our view only refers to selection from these opinions if they differ or contradict one another by careful consideration and assiduous pursuit of what is closest to rectitude and correctness. . . .[15]

Abū ʿUbayd uses the term *uṣūl al-aḥkām* "the sources of legal rulings" here as an equivalent of *uṣūl al-fiqh*, in the same way it would be used in the later genre. He conceives of the *uṣūl* as a finite, countable collection of principles or sources from which all legal assessments may be derived. What is more, his remarks imply criticism of similar lists, proposed by other legal theorists, where *ijtihād* certainly, and possibly consensus as well, appeared as independent principles. This concept, absent in al-Shāfiʿī's *Risālah* and at the heart of the *uṣūl al-fiqh* genre, had become important by the early ninth century.

A second crucial feature of the *uṣūl al-fiqh* genre is the use of the term *uṣūl* itself, with the particular sense of basic sources or principles on which further elaboration of the law is based. Here again, al-Shāfiʿī's *Risālah* stands apart, for it neither bears the term in its title nor uses it as such in the text. Bibliographic information available shows that the term *uṣūl* "roots, principles" became popular in book titles in a number of fields in the ninth and tenth centuries. The terms *uṣūl al-fiqh* or *uṣūl al-aḥkām* belong to this general trend, as does the term *uṣūl al-dīn*, referring to theology. The term *uṣūl* here refers to principles on the basis of which the further conclusions of the science may be elaborated. A *Kitāb uṣūl al-dīn* is attributed to the Muʿtazilī Abū Mūsā ʿĪsā b. Ṣubayḥ al-Mirdār (d. 226/840–41), reputed to have been the first to spread Muʿtazilī teachings in Baghdad.[16] Ibn Khallād al-Baṣrī (fl. 4th/10th c.) also wrote a work on dogmatic theology entitled *Kitāb al-uṣūl*.[17] Abū Marwān ʿAbd al-Malik b. Ḥabīb al-Sulamī al-Mirdāsī al-Ilbīrī al-Qurṭubī (d. 238/853 or 239/854) supposedly wrote *Kitāb uṣūl al-farā'iḍ*, on inheritance law.[18] Another work with an analogous title is *Uṣūl al-naḥw* by Abū Bakr Muḥammad Ibn al-Sarrāj (d. 316/928).[19] These two fundamental

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[15] Al-Qāḍī al-Nuʿmān, *Ikhtilāf uṣūl al-madhāhib*, 212.

[16] Ibn al-Nadīm, *al-Fihrist*, ed. Tajaddud, 206–7.

[17] Ibn al-Nadīm, *al-Fihrist*, ed. Tajaddud, 222.

[18] Brockelmann, *GAL*, GI:156.

[19] The title is given thus in Abū Bakr Muḥammad b. al-Ḥasan al-Zabīdī al-Andalusī, *Ṭabaqāt al-naḥwīyīn wa'l-lughawīyīn*, ed. Muḥammad Abū al-Faḍl Ibrāhīm