

THE ROLE OF SUBJECT (*MUJTAHID*) IN AL-SHAFI'I'S METHODOLOGY: A HERMENEUTIC APPROACH

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Ever since the Qur'an was revealed, Muslims have been making great efforts to understand and live in accordance with it. Within a very short period of time after the Prophet's death, schools of fiqh emerged in the Hijaz, Iraq, and Syria. They defined the sources of the religion (*al-din*) and engaged in developing methods to better understand them. By the early part of the second century, more systematic approaches appeared; the roots of the schools that emerged reached back to the Companions of the Prophet as well as to the Prophet himself.¹ Their approaches represented man's natural tendencies to understanding the *din*. Many schools appeared only to fade away and be replaced by ones more comprehensive in their approach.² In the late second century, Imam al-Shafi'i (150-204 A.H.) put forward the first systematic methodology of fiqh. In his work, *al-Risālah*, Imam al-Shafi'i offered a methodology for the very purpose of understanding the *din*. Of course, the methodology took for granted a certain definition of Islam. Even though his methodology drew from prior lines of thought,³ it is widely accepted that as an original methodology, the Imam's theory of fiqh drastically transformed the perception of Islam that had hitherto prevailed.⁴

In order to change the approach toward the *din*, he redefined concepts such as Sunnah and *ijtihad*. He identified *ijtihad* with *qiyās*; and whereas the term Sunnah had been used for the practice of the Muslim community, the Imam restricted its application to the Sunnah of the Prophet and the Companions.⁵ In his vocabulary the concept of *hikmah* took on considerable importance. Al-Shafi'i can almost be singled out by his definition of the concept of *hikmah* from other Muslim scholars. In order to establish and consolidate the authority of the Sunnah on the basis of the Qur'an, he interpreted and defined this Qur'anic concept as being synonymous with the Sunnah.

This article proposes to investigate the bases of Imam al-Shafi'i's methodology. Furthermore, it seeks to shed light on his understanding of Islam. For this purpose I have chosen three concepts from his vocabulary: *qiyās*, *hikmah*, and Sunnah (to the extent that it is related to *hikmah* in the Imam's methodology).

The discussion centers around the question of the *subject's* position and role in the Imam's theory of fiqh. The implications of such a method will also be discussed. First, however, the scope of the ground on which the discussion will be established is examined. This ground is of "understanding." The word *fiqh*, by which these schools are categorized, literally means "to have profound understanding, knowledge, and intelligence of the meanings and objectives of verbal statements as well as actions."⁶ For the schools of fiqh the object of understanding was, of course, the *dīn* itself—*ilm al-din* (knowledge of the religion). Accordingly, fiqh was used for all branches of knowledge derived from the roots of the *dīn* in the early times of Islam.⁷ Besides the jurisprudential connotation of the term in early times, it was used for the knowledge of the basic principles of the creed, such as belief in Allah and the Hereafter.⁸ Despite its comprehensive meaning in early times, the term "fiqh" later came to be associated only with law.⁹ But even with this later limited definition its scope extends beyond a mere legal system, as the western mind would understand it. Fiqh not only covers the ritual practices of faith; "it is also science of law and morality."¹⁰ Here, ethics and religion (*din*) are inextricably mixed with the law; hence, no human act remains outside of its range.¹¹ Yet even mere legal systems are hardly separable from morality. There is an active reciprocal interrelationship between the legal and moral order. Moreover, it is observed that, as the constituents of a more basic realm, the moral values press upon the legal system and influence jurisprudential thinking.¹² Within the framework of Islam, these two realms, by their very nature, are intrinsically integrated.

To understand the *dīn* of Islam, a methodological discipline, namely, *usul al-fiqh* (the study of the origins of fiqh), has been developed by Muslim scholars. It has determined the sources of the *dīn* and studies the authority of the various sources. *Usul al-fiqh* distinguishes general statements from particular ones and implicit indications from explicit ones in religious language. By means of this discipline, the historical context of particular judgments has been studied under the notion of *naskh* (abrogation). Here, the best illustration of *usul al-fiqh's* content can be taken from *al-Risālah* itself. Imam al-Shafi'i affirms the sources of the *dīn* as the Qur'an, Sunnah, *ijmā'*, and *ijtihād* and discusses their various features. Through *ijtihād*, *usul al-fiqh* has established the ways of deriving the general principles of the *dīn* from the sources and deducing particular judgments from the principles for new situations. *Usul al-fiqh* has

continued to propose a basic methodology for understanding Islam, even after the late fourth and early fifth centuries¹³ when it came to be understood in the sense of jurisprudence and after the disciplines *usul al-hadith* and *tafsir* were fully developed to study, respectively, the *hadith* and the Qur'an. *Usul al-hadith* and *tafsir* have divided the subjects of *usul al-fiqh* among themselves and utilized methods they share with it. Yet it has kept on elaborating the core problems of understanding Islam and applying the *din* to life situations.¹⁴

The theory and content of *fiqh* represent a hermeneutic enterprise, especially in the sense of Gadamer's hermeneutical philosophy, where the ethico-practical judgment occupies a central place. To him, understanding is a kind of moral knowledge. In this regard, he refers to the concept "*phronesis*," taken from Aristotelian ethics. Moral knowledge as described by Aristotle offers a model for understanding.¹⁵ Aristotle distinguishes moral knowledge (*phronesis*) from theoretical knowledge (*episteme*). In moral knowledge, objectivity cannot be found as it is found in mathematics,¹⁶ for we cannot exclude the subject from his own action.¹⁷ Hermeneutics and, in a wider area, social sciences (*Geisteswissenschaften*) apply *this* model rather than the model of theoretical knowledge.¹⁸ The definition of hermeneutical experience does not differ from that of moral judgment. As defined, "judgment" subsumes the particular case under a universal category. Yet here judgment includes the morality of the subject. The objective of moral knowledge is to enable the subject to morally decide upon the right action in a particular situation.¹⁹ Therefore, moral knowledge determines and governs the act of moral being. Through ethical knowledge one can distinguish what should be done from what should not.²⁰ Accordingly, the process of this sort of judgment is called "practical judgment," "practical reasoning," or "practical syllogism." At this point we should indicate that this definition of hermeneutics, or moral judgment, is almost identical to Abu Hanifa's definition of *fiqh*. He sees *fiqh* as the consciousness or perception of what is right and what is wrong: "*fiqh* is the soul's cognizance (*ma'rifah*) of its rights and obligations."²¹ According to A. Fyzee, this is to emphasize the subjective element in *fiqh* and the primacy of conscience. Thus, before each action one should ask oneself: Is this right or wrong?²² A practical, reasoning person should be guided in his judgments by a concept of good. Gaining this concept gradually through his experiences of right judgments and actions, he then applies this concept in his judgments and actions.²³ A judge implements the laws that express and enforce this concept of good and justice. He can "from time to time be confronted with cases about which the existing laws yield no clear answer or perhaps no answer at all. In those situations the judge . . . must exercise *phronesis*."²⁴ This is, for Gadamer, basically what an interpreter of a text does in understanding it. The person who understands a text

applies the universals that he learns from the text to his own situation.²⁵ In the Islamic tradition this sort of reasoning has been called *ijtihād*. In a general sense, its definition is to be articulated as the definition of judgment (*hukm*): applying the general to the particular.²⁶ Basically, in *ijtihād* a *mujtahid* applies an ethico-religious principle (of '*illah* [cause, literal meaning, major premise] or *ratio legis*) that he derives from the text, to a case. He thinks that it is right to do so in a fresh particular case when he cannot find any answer from the sources.²⁷

Imam al-Shafi'i accepted *ijtihād* as a way of reasoning within the realm of the *dīn*. Considering the historical background in which his methodology was constructed, this can be considered as a concession of *ahl al-hadith* (scholars of hadith) to *ahl al-ra'y* (scholars of opinion and judgment).²⁸ For him *ijtihād* is *qiyās* (analogy). His notion of *ijtihād* or *qiyās* is basically determined by his definition of '*ilm*. He classifies the sources of the *dīn* under two main categories, namely, *khabar* (tradition or report) and *qiyās*. A scholar ('*ālim*) should talk with either a *khabar* or a likeness (*tashbih*) to it.²⁹ In other words *ijtihād* must depend on clear indications (*dalā'il*) from *khabar*.³⁰ The *ma'na* (meaning) should only be taken from the '*ilm* or *khabar*, i.e., the Qur'an, Sunnah, and *ijmā'* (the consensus of opinion of the traditional authorities). The outcome of *qiyās* is also a kind of knowledge but, as a secondary source, it cannot be considered as strong as the *khabar* even though it is authoritative.³¹ However, it gains its authority from the *khabar*.³²

Al Shafi'i is regarded as the first scholar to have justified *qiyās* on the basis of the Qur'an.³³ He cites ayah 2:150 for this purpose. With this ayah he argues that one should face the Ka'bah in prayer when it is in sight. But when it is out of sight one should turn to the direction of the Ka'bah instead of the Ka'bah itself. To determine its direction one should act according to indications. These indications are the sun, the moon, the stars, the seas, the mountains, and the wind. People use these indications in their reasoning in order to find out the right direction; likewise, they use the indications in their reasoning to find out the solutions to new cases in which there is no *khabar*. A scholar searches for the material from the *khabar* on an uncovered subject and with this material he reaches a conclusion. The scholar should observe the common principle between the *khabar* and the new case. Imam al-Shafi'i called this principle *ma'na* or *asl* (original case). He brings ayah 5:96 as an example to illustrate this aspect of *qiyās*. According to the verse, in the case of killing an animal while one is performing hajj, this animal should be compensated with a similar animal in size and in kind. Yet the similarity of which should be determined by two just judges. Al-Shafi'i adduces this example to defend his stance on *ma'na* or, as it is called in later times, '*illah*. The scholar should choose the nearest *ma'na* between the

original case (*aşl*) and the derivative case (*far'*) so that the judgment for the former (*hukm al-aşl*) can be applied to the latter.³⁴

Al-Shafi'i divides *qiyās* into two kinds. The first is where the parallel case for which the rule of law is sought precisely bears the meaning of the original case (*ma'na al-aşl*). For him there is no dispute over such a type of analogy. The second is where a parallel case may have a number of similar original cases (*uşūl*) to it; but the parallel case is covered by a case which is more analogous to it. This type of analogy is disputed amongst the users of *qiyās*.

Imam al-Shafi'i maintains that the *mujtahidūn* might dispute in choosing the original case. Therefore, he implies that absolute certainty cannot be claimed in moral judgments. This point can be deduced from the evidence that he brought from the Qur'an. In the case of finding out the direction of the Ka'bah, there may be conflict of opinion among the judges. One may be right and the other wrong. Also, in determining who are the two just men for deciding the animals' similarity in size, "*mujtahidūn* inevitably are going to disagree."³⁵ Two *mujtahidūn* may differ in accepting as just one person rather than another. Therefore, he affirms that in *qiyās* there is no absolute certainty. Even though he suggests that the *mujtahid* should choose the most similar original case in *qiyās*, he knows that disagreement (*ikhtilāf*) will occur among the choosers because they will choose what they think to be similar and because they will arrive at the right answer by their own judgment.³⁶ This point becomes clear after considering that Imam al-Shafi'i and Abu Hanifa chose two different notions of resemblance (*shabah*). The former took into consideration the resemblance in respect to value (*mushabahah fi'l hukm*), whereas Abu Hanifa took into consideration the resemblance in respect to form (*mushabahah fi's-surah*).³⁷

Imam al-Shafi'i is well aware that lack of certainty and objectivity originates from the fact that, in the value judgment-making process, the subjectivity of the agent is intrinsic to the act of reasoning itself. We differ from others in judging one thing "in accordance with the degree of our knowledge of it and other's knowledge of it."³⁸ In fact, *qiyās* has been regarded by most of the *fuqahā'* as the act of the *mujtahid*.³⁹ Accordingly, their definition emphasized this aspect of its nature. Fakhr al-Din al-Razi, e.g., defines *qiyās* as follows: To establish the like of a rule of a known (case) for another known (case) by reason of their similarity in the cause of the rule in the opinion of the one who establishes it.⁴⁰ This definition was later borrowed by al-Baydawi.⁴¹ Then *fuqahā'*, including al-Shafi'i, could not separate the action of the *mujtahid* from the determination of similarity between the original and the parallel case.⁴² Stressing further the action of the *mujtahid* in *qiyās*, they thought that mere similarity between the original and the parallel case did not make up *qiyās* until a *mujtahid* tampered with it and established the judg-

ment by his own effort.⁴³ For al-Ghazali, a parallel case has no cause ('illah) which is exactly similar to the cause of the original case (*asl*). Rather, only presumption or probability (*ghalabat al-zann*), which the *mujtahid* carries, shows that the parallel case contains the same cause as the original case.⁴⁴ As far as determining the original principle in *qiyās* is concerned, al-Amidi also stresses the role of the subject in the reasoning when criticizing an earlier definition of *munasib* (determining principle)⁴⁵ as a determining principle of the 'illah. He states that this *munasib* may be an authority for the user of *qiyās* (*nazir*) but not for the opponent (*munazir*), for he might contend that his reason does not accept the 'illah selected by the user of *qiyās*. The validation of this 'illah by the user of *qiyās* on the basis of what his reason accepts cannot be preferred to the dismissal of the same 'illah by his opponent. Hence, there is no principle which can determine the preference of one over another.⁴⁶

In fact, the outcome reached by al-Amidi crystallizes this noteworthy aspect of the nature of ethico-practical rationality regarding the role of subject in this rationality. The subject's activity in *ijtihād* is not determined by any rule. When Aristotle studies his *phronesis* he underlines the very same aspect of this kind of rationality. In exercising ethical reasoning we understand the reason why the application of a moral virtue in acting in some particular way is the right thing to do. And there is no rule in exercising this kind of practical understanding of particulars. Aristotle gives the example of a mathematician to explain the nature of *phronesis*.⁴⁷ The mathematician who has to construct a triangle should determine the basic elements from which he will begin. But he has no rule to tell him which elements these are,⁴⁸ because every case of exercising is unique in itself.⁴⁹ Then the soundness of every practical syllogism depends on the person who exercises it in connection to a certain occasion. It depends on a particular person because his own good and preference is defined by major premise in the syllogism. It also depends on the particular occasion, for the occasion (parallel case) constitutes the minor premise. The conclusion of the syllogism is his action. So the practical syllogism differs radically from Aristotle's theoretical syllogism, which does not accept any reference to a particular person or occasion.⁵⁰

To take *qiyās* for granted as one of the sources of the *ḍin*, setting aside admitting the subject's involvement in the perception of the *ḍin*, is also necessarily to acknowledge the input of the subject in the *ḍin* itself. In this mode of *ijtihād* personal opinion and hence subjectivity of the *mujtahid* is already effective, both in choosing an original cause and in applying it to a fresh case. This amounts to saying that in the process of making judgment the background knowledge, i.e., earlier experiences, prejudices, perception of the *ḍin* and culture, historicity, and even psychological feelings of the *mujtahid* are actively influential in his reasoning. Imam al-Shafi'i himself in this respect draws attention to constrict-

tions of subject as the agent of value judgment.⁵¹ He warns the *mujtahid* against being hasty in expressing an opinion, not listening to the opinions of those who may disagree with him, forgetting the necessary knowledge of the Qur'an and Sunnah, being misled by personal bias, being preoccupied with one's own opinion, and not acquiring the proper knowledge of parallel cases on which to apply analogy. He also requires that the *mujtahid* have mature reasoning.⁵² This caused him to be more cautious, from a methodological point of view, on the subject.

By maintaining *qiyās* in his methodology, Imam al-Shafi'i departs from the stand of *ahl al-hadith* who treated *khavar* as impenetrable to the subject.⁵³ However, since he persists in *qiyās* alone and does not advance beyond it, he cannot effectively leave the circle of *ahl al-hadith*. On the one hand, he affirms the involvement of the subject with *qiyās* in understanding the *dīn*, and on the other the Imam certainly imposes limits on it. This marginalization of the action of the subject in the methodology is based on how he perceives *'ilm* and, therefore, the *dīn* itself. Hence, in his methodology, any value judgment by the *mujtahid* must depend on the literal meaning of *khavar*. The literal meaning (*ẓahir*) of the text is more appropriate and what is sought by *ijtihād*.⁵⁴ The agent is ordered to exercise *ijtihād* on the basis of the explicit meaning of the text and if he does so he will be forgiven even if he makes a mistake in his *ijtihād*.⁵⁵ The implicit meaning is known only by God.⁵⁶ At this point a heavy consistency problem should be spotted in the Imam's methodology. On the one hand he acknowledges that it is not likely to reach absolute certainty even in *qiyās*. On the other hand al-Shafi'i looks for a kind of certainty⁵⁷ and does not want to leave the absolutely secure framework of *khavar*. We can see his position more clearly in his refutation of *istihsān* which is regarded by Abu Hanifa as another mode of *ijtihād*. He rejects it on the basis that *istihsān* (application of discretion in a legal decision) is not constructed upon *'ilm* and it is nothing but seeking pleasure⁵⁸ or arbitrary law making.⁵⁹ Imam al-Shafi'i, by depending upon the text and by putting restrictions to the involvement of subject, intends to follow a way, as he calls, "more suitable" or "more secure"⁶⁰ in understanding the *dīn*.

As defined by al-Shafi'i, any mode of *ijtihād* other than *qiyās*, such as *istihsān* and *istiṣlāḥ*, is based on more general indications and principles, such as good and justice, which are usually derived from the totality of particular value judgments and experiences of the *mujtahid*. The definition of these general principles might not be inferred readily from the literal meaning of particular value judgments, but they are reached through ethical reasoning. Moreover, implementing them requires much more of man's involvement in the process than in *qiyās*. In this case the scope of man's involvement might be the same as it is in the case of *qiyās*, but the process of *istihsān*, for example, requires more profound involvement of

men than that of *qiyās*. In the former, man needs to penetrate into more and more universal, general, and basic principles and eventually into the ends of the *dīn*.⁶¹ The *telos*, here, is to achieve the values and qualities such as justice, human or public good (*maṣlaḥa*), and averting evil (*mafsada*).⁶² The agent of ethical reasoning should be guided by the adequate and rationally defensible conception of these values.⁶³ In *istiḥṣān*, for example, the agent aims at reaching knowledge about the good of an object. When he decides that an object is good, it is right for him to judge on the basis of this knowledge.⁶⁴

These values and qualities as defined by the *dīn* can be achieved by going beyond the literal meanings of particular value judgments and deliberating on them in the aggregate. Here the deliberation follows a chain of "for the sake of" until it reaches a supreme good. The deliberative task is, then, the one that operates in a hierarchical ordering of means to their ends. In this rational construction, subordinate ends constitute the means to the ultimate end.⁶⁵ In his methodology, al-Shatibi takes basic values and objectives of the *dīn* in gradation. He divides *maṣlaḥa* (benefit, interest, good) into three types, namely, *ḍarūri* (necessary), *ḥājji* (needed), and *taḥṣini* (commendable), and sees a hierarchical order among them. The *ḍarūriyyāt* constitute the basic and universally accepted principles of the *dīn*, such as the protection of *dīn*, *nafs* (self), and *māl* (property). The *ḥājjiyyāt* are needed in order to expand the objectives of the *dīn* and to remove the strictness of literal meaning which eventually leads to disruption of the *maṣlaḥa*. The third kind of *maṣlaḥa*, the *taḥṣiniyyāt*, basically cover morality. These grades are related to one another. In this hierarchical order, the *taḥṣiniyyāt* are complementary to the *ḥājjiyyāt* as the latter are complementary to the *ḍarūriyyāt*. Therefore, the disruption of *ḍarūri* necessitates the disruption of other *maṣāliḥ* (pl. of *maṣlaḥa*), whereas the disruption of other *maṣāliḥ* does not affect the *ḍarūri*.⁶⁶ He emphasizes the method of *istiḡra'* (induction) in reaching the "good."⁶⁷ He affirms the method on the basis of the passages from the Qur'an which explicate the objectives of their commands.⁶⁸ The agent, then, in order to reach a conception of good, needs to experience right ethical judgments.⁶⁹ In *uṣul al-fiqh* these right judgments are provided basically by textual evidence. According to Islam, it is through these right judgments that we achieve definitions of values, and from the values, derive the major premises of the particular judgments.

Moreover, to acquire a more adequate definition of the values, the *mujtahid* needs to take into consideration his extratextual experiences. For instance, *maṣlaḥa*, which is observed as a means of preserving the ends of the *dīn*, is known through other sources, such as circumstantial evidences and divergences of signs (*qara'in al-ahwal wa tafariq al-amarat*) along with the Qur'an and Sunnah.⁷⁰ Then the content of value definitions in the *dīn* are not confined to textual evidences. In this respect, al-

Shatibi designates a definition of *maşlahā* that can be acquired through "experiences and other means" (*bi al-tajarib wa ghayriha*) after the *dīn* establishes its foundations (*maşlahā*).⁷¹ In a famous example, accepting the leftover of prey birds as pure and, therefore, lawful to use is a conclusion of *istiḥsān*, unlike that of *qiyās*. Here reasoning departs from a textual base which regards the leftover of beasts of prey impure and takes the outcome of the experience and deliberation of the case by the agent. Beasts of prey eat or drink with their tongues and mix their saliva with the thing eaten or drunk by them, whereas a bird's beak is a kind of dry bone, and birds do not leave anything to make their leftover impure.

Al-Ghazali also asserts that human good can be defined by external evidences (*bi tafariq ahkam wa iqtiran dalalat*) without being supported by any particular textual evidence. In his illustration, infidels shield themselves with a number of Muslim captives and attack the Muslims. If Muslims do not counterattack the infidels they would all be killed. Even though by the Shari'ah it is not permitted to kill Muslims, various external evidences permit the killing of a few Muslims to save the lives of the majority of the Muslims.⁷² In *qiyās* and in other ways of *ijtihād*, the *mujtahid* formally follows the same stages. He has the original case, the '*illah*' produced from the original case or cases, and the fresh case to apply the '*illah*'. Yet *qiyās* as understood by Imam al-Shafi'i does not require an adequately accomplished definition of basic and general principles of the religion and suffices only with the immediate and literal meanings ('*illah*') of the previously given judgments. If in the procedure of ethico-practical judgment it is required to judge with general principles, then the *ijtihād* offered by the Imam cannot be regarded as a thorough project to understand Islam, for the project does not fully follow the natural process of ethical rationality and, therefore, properly activate and actualize the system as a whole. Moreover, it is very likely to create an unbearable vacuum in the system. Even though the project has a major premise (or '*illah*') in order to mechanically operate the procedure, the premise and, then, the project itself simply fall short because ethical rationality demands that the definition of basic principles be derived through profound deliberation. Deliberation is also necessary to produce right ethical judgments in accordance with the system because superficially phrased major premises will eventually conflict with the basic and general values of the system, which are never negotiable. Mentioned implications of the Imam's project, of course, are all because of the idea of holding literal meaning of *khābar* and restricting the subjective inputs in the perception of the *dīn*. Unfortunately, however, this idea overlooks the fact that *qiyās* is simply enough to allow sheer subjective and extra-textual inputs in understanding Islam.⁷³

The same restricting attitude toward the role of the subject by Imam al-Shafi'i can be seen in his treatment of the concept of *hikmah* and Sunnah.

He interprets the concept *hikmah* in the ayats 2:129, 2:151, 3:164, and 33:34 as Sunnah. For him the concept cannot definitely be understood as other than Sunnah.⁷⁴ He uses these ayats to supply an authoritative base for the Sunnah of the Prophet. It is accurate to say that he has a unique stance regarding the definition and interpretation of this concept.

Lexicographers literally define the word *hikma* as "to prevent, restrain, or withhold somebody from acting in an evil or corrupt manner."⁷⁵ The *tafāsīr* (pl. of *tafsīr*) basically share the meaning given in lexicons. Mujahid (21–103 A.H.) defines it as "understanding [fiqh], reason and correctness [*iṣābah*] in speech without prophethood [*nubuwwa*]."⁷⁶ To Ibn Qutayba (213–276 A.H.), *hikmah* is knowledge (*ilm*) and action (*amal*). Unless a person combines these two in himself he cannot be called *hakim*.⁷⁷ Al-Tabari (224–310 A.H.) sees that *hikmah* is taken from *hukm* which means to differentiate right (*haqq*) from wrong (*bātil*).⁷⁸ Therefore, if a person is called *hak—m* or owner of clear *hikmah*, then it is meant that he is clearly right in his speech and action. These definitions and interpretations show that the concept connotes the meaning of ethical reasoning through which the agent reaches in the end a deep understanding and ethical judgment. This is how *hikmah* works within the finitude of human nature. This is ethical reasoning, and the *telos* here is "the good" and "the truth." Within this general meaning the Sunnah of the Prophet covers a considerably important place in Islamic *hikmah*. To confine the concept, however, only to the Sunnah is not possible or correct. Ibn Kathir (665–738 A.H.) affirms that *hikmah* cannot be confined to prophethood as *hikmah* is more general than the latter and prophethood is more specific than *hikmah*.⁷⁹ The concept covers understanding of the Qur'an by the Prophet as well as by any other believing *hakīm* who is equipped with the basic values of Islam. Yet Imam al-Shafi'i confines his definition of *hikmah* to the Sunnah of the Prophet. And he does not stop there. Taking one step further, he regards the Sunnah as a revealed knowledge,⁸⁰ not an *ijtihād* of the Prophet. We will not discuss the nature of the Sunnah in detail here, but because of its relevance in this context, we will briefly touch upon the authority and value of the Sunnah of the Prophet.

The Sunnah of the Prophet and, to a certain extent, the judgments of the his Companions, are authoritative sources for right judgment. The Sunnah is, by its nature, the *ijtihād* of the Prophet, since as a human (*bashar*) subject, he could be corrected by *waḥy*. This happened during the *waḥy* several times and as such is technically called '*itāb* (lit., rebuke; namely, Allah's warning His Messenger). If we take the Sunnah as revelation by nature then it will be very difficult to explain these '*itāb* cases.⁸¹ This amounts to saying that first Allah sent a revelation to His Prophet causing him to make a mistake and then blamed him because of this very same mistake. The Companions of the Prophet also shared the

privilege of being corrected by *wahy* because they partook in the same historicity as the Prophet. Yet this privilege does not affect the nature of the Sunnah and change it from being the Prophet's *ijtihād*; likewise, this aspect of its nature does not diminish the its authority. Imam al-Shafi'i, therefore, understands the Sunnah and *hikmah* to be totally different in nature. It is not a kind of practical, ethical and, by its nature, particular judgment of a prophet or believing *hakīm*, but a knowledge revealed to the Prophet and put into his heart to convey to his people. Of course, this is contrary to the accepted definition of *hikmah* on the basis of consensus. Despite his immense influence on *uṣūl al-fiqh*, the definition has not been well received by subsequent jurists.⁸²

To conclude, we can make the following points: First, the *qiyās* of al-Shafi'i does not complete the procedure of ethical reasoning.⁸³ If the *mujtahid* needs to study the particular value judgments in totality to reach the basic values of the *dīn* going beyond their literal meanings, then Imam al-Shafi'i faces in his methodology the risk of not exhausting all the values and qualities in understanding the *dīn* and, therefore, understanding according to this method always bears the possibility of being incomplete. Imam al-Shafi'i overemphasizes the literal meaning of *khābar* and marginalizes the role of subject in the perception of the *dīn* at the expense of basic, general, universal, and ahistorical values defined by *dīn* in toto. Second, this attitude entails idealization⁸⁴ of the particular value judgments assigned in textual evidences over values and qualities in the *dīn*. Regardless of its historicity, the *khābar* has been imposed upon all other historicities as a unique, universal, and ahistorical framework,⁸⁵ whereas they are realizations and examples of universal values in particular cases within space and time.⁸⁶ Through the totality of these realizations and examples, the basic definitions of the values of the *dīn* can be reached. Third, this negative attitude toward the subject also affects the conception of "good" in the *dīn*. According to the necessary implication of this attitude the only "good" in the *dīn* is in the literal meaning of textual evidences and therefore, extratextual evidences are necessarily to be regarded as extrareligious, too. A subject's experiencing other than textual sources are *ex-hypothesi*, not regarded as good and as entity to be allowed into the religious perception. The destiny of the attitude is eventually and inevitably the dissolution of the integrity of the life of Muslims and the *dīn* as a way of life. For here, life is divided into religious and extrareligious parts. The attitude, with its unique definition of *hikmah*, creates further problems in the methodology. Fourth, the Imam establishes the authority of the Sunnah by rejecting the subjective initiative of the Prophet and hence, fails to penetrate into the real nature of the Sunnah. Last, Imam al-Shafi'i does not acknowledge the Prophet's right to exercise his rationality and express his own opinion on any case, for whatsoever he utters is by his definition revealed *hikmah* from Allah;

whereas he allows a believing *hakīm* to exercise his ethical rationality through *qiyās* even though he does so to a limited extent.

Notes

1. The school established in Iraq by Abu Hanifa was attributed to Abdullah b. Mas'ud and Ali b. Abi Talib. Malik followed 'Umar and his son Abdullah b. 'Umar and Abu Bakr. Awza'i in Syria again relied on Abu Bakr, 'Umar, and Ibn 'Umar. See Schacht, *The Origins of Muhammedan Jurisprudence* (Oxford: Clarendon Press, 1979), pp. 21–34; see also Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1982), pp. 28–36.

2. *Ibid.*, pp. 26–48.

3. Muhammad Abu Zahra, *Usul al-Fiqh* (Cairo: Dar al-Fikr al-Arabi, 1958), p. 13.

4. This widely held opinion is not accepted by Wael B. Hallaq to the effect that Imam al-Shafi'i's line in *usul al-fiqh* had been adopted only after the intellectual ground became suitable to his line a century later. Yet he confirms that al-Shafi'i was the first in his synthetic and reconciliatory line.

5. Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1984), pp. 23, 130.

6. E. W. Lane, *An Arabic-English Lexicon*, 8 vols. (London: Williams and Norgate, 1963–1993), s.v. *fqh*; Ibn Manzur, *Lisan al-Arab*, 15 vols. (Beirut: Dar al-Sader, 1955), s.v. *fqh*; Abu Zahra, *Usul al-Fiqh*, p. 5; "Fiqh," *Encyclopedia of Islam*, Vol. II, (Leiden: E.J. Brill, 1983), pp. 886–891.

7. *Ibid.*, p. 887.

8. *Ibid.*; also see Abu Zahra, *Usul al-Fiqh*, p. 6.

9. Rahman, *Islamic Methodology in History*, p. 131. On the early character of *fiqh*, see also Schacht, *The Origins of Muhammedan Jurisprudence*, p. 26f.

10. N.J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1978), p. 83.

11. Asaf Fyzee, *A Modern Approach to Islam* (Bombay: Asia Publishing House, 1963), p. 31.

12. Wolfgang G. Friedman, *Legal Theory*, 5th ed. (New York: Columbia University Press, 1967), pp. 26–28.

13. Maqdisi gives an early definition of *usul al-fiqh*: "it may simply mean that the work dealt exclusively with positive law, or with the Koran, the Sunna, consensus (*ijmā'*), or analogical reasoning (*qiyas*), that is with one or another of the sources or 'roots' of jurisprudence, not with jurisprudence as a constituted science." See George Maqdisi, "The Juridical Theology of Shafi'i Origins and Significance of *Usul al-Fiqh*," *Studia Islamica*, 59 (1984), pp. 5–47.

14. For an effective comparison between *fiqh* and *tafsir* regarding their character and functions, see John Burton, "Law and Exegesis: The Penalty for Adultery in Islam," in eds. Hawting and Abdul Kader A. Shareef, *Approaches to the Qur'an* (Routledge, 1993), pp. 269–284; also, for how *usul al-fiqh*, keeping its central position, stayed related to the life and the tendencies lived in the course of Islamic history of thought, see Wael B. Hallaq, "Was al-Shafi'i the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies*, 25 (1993), pp. 587–605.

15. Hans G. Gadamer, *Truth and Method*, 2nd ed., trans. by Joel Weinsheimer and Donald G. Marshall (London: Sheed and Ward, 1989), p. 324.

16. *Ibid.*, p. 314.

17. J. Donald Monan, *Moral Knowledge and its Methodology in Aristotle* (Oxford, 1968), p. 62f.

18. Gadamer, *Truth and Method*, p. 314.

19. *Ibid.*, p. 317.

20. *Ibid.*, p. 22.

21. Quoted in Fyzee, *A Modern Approach to Islam*, p. 29 f., 32.

22. *Ibid.*

23. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988), p. 118.

24. *Ibid.*, p. 119.

25. Gadamer, *Truth and Method*, p. 324.

26. Abd al-Aziz al-Bukhari, *Kashf al-Asrar ala Usul al-Bazdawi*, III (Istanbul: Darsaadat, 1308), p. 268.
27. Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1986), p. 18.
28. See I. Goldziher, *The Zahiris, Their Doctrine and Their History*, trans by Wolfgang Behn (Leiden: E.J. Brill, 1971), p. 20.
29. Muhammad b. Idris al-Shafi'i, *al-Risala*, ed. Ahmad Muhammad Shakir (Beirut: Dar al-Kutub al-Turath, 1979), p. 507.
30. *Ibid.*
31. *Ibid.*, pp. 40, 359, 477; Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 12.
32. Al Shafi'i, *Al-Risala*, p. 23 f.
33. See Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 11.
34. Al-Shafi'i, *Al-Risala*, p. 23 f.
35. *Ibid.*, p. 493.
36. *Ibid.*, p. 483; see also Majid Khadduri, *Islamic Jurisprudence: Shafi'i's Risalah* (Baltimore: John Hopkins University Press, 1961), p. 292.
37. In the case of the murder of a slave, the killer will not be killed and his price will be paid to the master according to al-Shafi'i and Malik, who liken a slave to an animal or chattel (*mamluk*) on the account that both of them are bought and sold. On the other hand, Abu Hanifah and Ibn Ulayyah take him as a free man and stipulate that the killer either be killed or the price be paid. See Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 302.
38. Al-Shafi'i, *Al-Risala*, p. 482; see also, Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 291.
39. See Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 107ff.
40. Fakhr al-Din al-Razi, *Al-Mahsul fi 'Ilm Usul al-Fiqh*, vol. II (Beirut: Dar al-Kutub al-Ilmiyya, 1988), p. 239; see also Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 104.
41. Jamal al-Din Ibn al-Hasan al-Isnawi, *Nihayat al-Sul fi Sharh Minhaj al-Wusul ila 'ilm al-Usul*, vol. III (Beirut: Dar al-Kutub al-Ilmiyya, 1984), p. 3.
42. See Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 111.
43. *Ibid.*
44. Abu Hamid al-Ghazali, *Al-Mankhul min Ta'liqat al-Usul*, ed. M.H. Haytu (Damascus: Dar al-Fikr, 1970), pp. 380, 383.
45. This definition belongs to Abu Zayd al-Dabusi: "Munasib is a quality which is acceptable to reason when it is presented to it." See al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, vol. IV (Beirut: Dar al-Kutub al-Ilmiyya, 1985), p. 237; see also Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 251.
46. Al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, p. 237.
47. "That practical wisdom (*phronesis*) is not scientific knowledge is evident; for it is, as has been said, concerned with the ultimate particular fact, since the thing to be done is of this nature. It is opposed, then, to intuitive reason; for intuitive reason is of the limiting premises, for which no reason can be given, while practical wisdom is concerned with the ultimate particular, which is the object not of scientific knowledge but of perception—not the perception of qualities peculiar to one sense but a perception akin to that by which we perceive that the particular figure before us is a triangle; for in that direction as well as in that of the major premise there will be a limit." From Aristotle, *Nicomachean Ethics, The Basic Works of Aristotle* (New York: Ransom House, 1941), p. 1142a 25-29.
48. MacIntyre, *Whose Justice? Which Rationality?*, p. 129.
49. Al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'yya*, vol. IV (Cairo: Matbaa al-Salafiyya, 1341), p. 48.
50. MacIntyre, *Whose Justice? Which Rationality?*, p. 129.
51. Aristotle refers to a number of impediments of right ethical reasoning. Immaturity is one of them. The young make mistakes due to the lack of experience. The young may also be misled by passion. The other one is lack of education both in the development of good habits and intellectual training. This person fails to attain true *telos*, and his passion will divert him. "For someone who lives according to passion would not listen to an argument designed to redirect him, nor would he understand it." See Aristotle,

Nichomachean Ethics, The Basic Works of Aristotle, pp. 1093a 2-10; 1095b 4-6; 1179b 26-27.

52. Al-Shafi'i, *Al-Risala*, p. 510f; see also Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 307.

53. The engagement of subject in the rationality has recently located on the center in the dispute between philosophical schools for another time. The Cartesian rationality excluded any subject input from any reasoning to the effect that the reason should work outside prejudices, tradition, and authority. Gadamer, however, holds *phronesis* or ethical reasoning as the true model of understanding. And he acknowledges the role of subject as an inseparable element for understanding. Gadamer's stand is against what he calls "romantic hermeneutics" that followed basically the Cartesian rationality in *Geisteswissenschaften*. This notion of absolute reason overlooks that reason can only operate within historical conditions and a living tradition. "The important thing is to be aware of one's own bias, so that the text can present itself in all its otherness and thus assert its own truth against one's own foremeanings." See Gadamer, *Truth and Method*, p. 269.

54. Al-Shafi'i, *Al-Risala*, p. 39; see also Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 78.

55. Al-Shafi'i, *Al-Risala*, p. 497; see also Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 300.

56. Al-Shafi'i, *Al-Risala*, p. 498; see also Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 300.

57. Compare the interpretative translation by Khadduri with the original. See Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 80, and al-Shafi'i, *Al-Risala*, p. 41.

58. *Ibid.*, p. 507.

59. Muhammad b. Idris al-Shafi'i, *Kitab al-Umm*, vol. VI, ed. Muhammad Zahra al-Najjar (Beirut: Dar al-Ma'rifa, n.d.), p. 203.

60. Al-Shafi'i, *Al-Risala*, p. 41.

61. Al-Shatibi, *Al-Muwafaqat fi Usul al-Shar'iyya*, vol. IV, p. 205f.

62. Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 409ff.

63. For a comprehensive outlook of derivation methods for 'illah in *usul al-fiqh*, see Hasan, *Analogical Reasoning in Islamic Jurisprudence*, pp. 123ff, 233ff. On derivation of major premise see MacIntyre, *Whose Justice? Which Rationality?*, p. 130f.

64. Abu al-Husayn al-Basri, *al-Mu'tamad fi Usul al-Fiqh*, vol. II (Beirut: Dar al-Kutub al-Ilmiyya, 1983), p. 297.

65. MacIntyre, *Whose Justice? Which Rationality?*, p. 130ff.

66. Al-Shatibi, *Al-Muwafaqat fi Usul al-Shar'iyya*, vol. II, pp. 7-17.

67. *Ibid.*, vol. II, pp. 6-7.

68. See, for instance, in the Qur'an 2:183, 4:165, 5:6, 7:172, 11:7.

69. In fact, there is a circularity in having right judgments and acquiring a conception of good in ethical reasoning. In order to judge rightly we need to know what is good. We can only achieve the knowledge of good on the basis of experience of right judgments. In Aristotle these right judgments are provided by *polis*, whereas in religion they are given by revelation (*wahy*). This is a different kind of source for right judgments by nature. Yet the procedure differs in neither of them. For both the ethical judgments of *wahy* and that of man follow the same procedure. Both of them are the judgments reached through the process of practical syllogism. This is the only reason why man can understand the judgments of *wahy*. The subject is God. Therefore, the nature of His judgments is different from human judgments.

70. Taj al-Din al-Subki, *al-Ibhaj fi Sharh al-Minhaj*, vol. III, p. 184.

71. Al-Shatibi, *Al-Muwafaqat fi Usul al-Shar'iyya*, vol. II, p. 48.

72. Al-Ghazali gives this example to explain the conditions which he stipulated for the validity of *maslaha*. As an 'illah, it should be necessary (*daruri*), certain (*qat'i*) and universal (*kulli*). See Abu Hamid al-Ghazali, *al-Mustasfa min 'ilm al-Usul*, vol. I (Beirut: Dar al-Kutub al-Ilmiyya, 1322), p. 313f.

73. Ibn Hazm, *al-Ihkam fi Usul al-Ahkam*, vol. VIII (Beirut: Dar al-Kutub al-Ilmiyya, 1985), pp. 555ff, 579f.

74. Al-Shafi'i, *Al-Risala*, pp. 32, 86ff.

75. Lane, *An Arabic-English Lexicon*, 8 vols. (London: Williams and Norgate, 1963-1993), s.v. *hkm*. See also Ibn Manzur, *Lisan al-Arab*, 15 vols. (Beirut: Dar al-Sader, 1955), s.v. *hkm*.

76. Muhammad b. Jarir al-Tabari, *Cami' al-Bayan an Ta'wil al-Qur'an*, vol. XXI (Beirut: Darl al-Fikr, 1984), p. 67.
77. Abu Muhammad Ibn Qutayba, *Gharib al-Qur'an* (1278/1958), p. 32.
78. Al-Tabari, *Cami' al-Bayan an Ta'wil al-Qur'an*, vol. I, pp. 557-558.
79. Ismail Ibn Kathir, *Tafsir al-Qur'an al-Azim*, vol. I (Beirut: Dar al-Ma'rifa, 1983), p. 322.
80. Al-Shafi'i, *Kitab al-Umm*, vol. V, p. 127.
81. Qur'an 8:67, 9:43, 10:99, 66:1, 80:1-10.
82. Al-Amidi defines *hikmah* as "the purpose (*maqsud*) of giving the law." See al-Amidi, *al-Ihkam fi Usul al-Ahkam*, vol. III, pp. 180, 212, 251, 255.
83. Yet the very nature of this sort of reasoning forced him practically to go beyond *qiyas* and apply *istihsan* in understanding the *din* despite his theoretical rejection of it. See al-Amidi, *al-Ihkam fi Usul al-Ahkam*, vol. IV, pp. 391-392. Again, the adoption of *istishab* by Shafi'i scholars shows that the nature of the rationality dictated itself in the understanding of the *din*.
84. Khadduri, *Islamic Jurisprudence Shafi'i's Risalah*, p. 43.
85. Hasan, *Analogical Reasoning in Islamic Jurisprudence*, p. 13.
86. See I. Ragi al-Faruqi: "Whenever the Holy Qur'an makes mention of lower ethico-religious values, or of values belonging to other realms, or of real-existent, it must do so, not for their own sake but for the sake of those higher ethico-religious values which are its prime object. . . . The relevance of the nonethico-religious values and of real-existents in the Holy Qur'an must then be that of an example, of an explanation or clarification, of an instance, real and historical, to be analyzed so as to reveal the realization or violation of the ethico-religious principle in question." "Towards a New Methodology For Qur'anic Exegesis," *Islamic Studies*, 1:1 (1962), p. 39.