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.

> The classical theory of Muhammadan law, as developed by the Muhammadan jurisprudents, traces the whole of the legal system to four principles or sources: The Koran, the *sunnah* of the Prophet, [. . .], the consensus of the community, and the method of analogy. [note omitted] *The essentials of this theory were created by Shāfiʿī* . . .[10]

Schacht elaborates on what he means by "created" in his *Introduction to Islamic Law*, which appeared in 1964.

> Whereas Shāfiʿī had called Koran and *sunnah* the 'two principles' and considered *ijmāʿ* and *qiyās* subordinate to them, ʿabarī recognizes three *uṣūl*: Koran, *sunnah*, . . . and *ijmāʿ* . . . The final admission of *qiyās* to the 'classical' group of four *uṣūl* is the result of a compromise, on the lines envisaged by Shāfiʿī . . .[11]

Thus, according to Schacht, Shāfiʿī's theory recognized, in some sense, four *uṣūl* ("principles or sources"), but considered two of them more important than the remaining two. Later jurists simply elaborated on what was implicit in Shāfiʿī's theory, however, by adopting all four as more or less coequal "principles" of law. The final inclusion of all four of these "principles" Schacht identifies as a natural development flowing from Shāfiʿī's own, original vision.

If there is one scholar who has made the four-sources theory his own, it is Noel Coulson, who gives the closest thing to an authoritative statement of it in his *History of Islamic Law*, which also appeared in 1964. Coulson is unequivocal:

> According to ash-Shāfiʿī there are four major sources or roots (*uṣūl*) of law. The first of these is naturally the Qurʾān.[12]

Coulson explains that the other three "sources or roots" are Sunnah, *ijmāʿ*, and *qiyās*. He identifies each, when he comes to discuss them individually, as a "source of law".[13]

It would be fair to say that the vast majority of descriptions of Shāfiʿī's legal thought in the secondary literature reproduce the four-sources interpretation to varying degrees, sometimes implicitly, but usually unmistakably, and frequently unequivocally.[14]

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[10] Schacht, *Origins*, 1 (emphasis added).

[11] J. Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 60.

[12] N. Coulson, *A History of Islamic Law*, Islamic Surveys No. 2 (Edinburgh: Edinburgh University Press, 1964), 55.

[13] Coulson, *History*, 55–60.

[14] The following is a short, representative sample of modern scholars who have expressly followed the four-sources theory: N. Abū Zayd, *Al-Imām al-Shāfiʿī wa-taʾsīs*

Even more recent and more nuanced interpretations of the *Risālah* seem to rest, one way or another, on this idea of a hierarchy of sources: For example, in a 1983 article on the *Risālah* (a sensitive and perceptive study, certain problems notwithstanding), Norman Calder argues that the *Risālah* represents the expression of a particular epistemology, but it emerges that this epistemology is reflected in a hierarchy of "sources", beginning with the Qurʾān and ending with *qiyās*.[15] An even more recent, and careful, account of Shāfiʿī's thought and its place in Islamic legal history is offered by Hallaq, but it, too, shows traces of the four-sources theory.[16]

al-īdīyūlūjīya al-wasaṭīya (Cairo: Sīna, 1992), a book divided into four sections devoted to Qurʾān, Sunnah, *ijmāʿ*, *ijtihād*; M. Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), 5 ("The basic outline of the four sources of the law that al-Shāfiʿī spelled out . . ."); A. Guillaume, *Islam* (Harmondsworth: Penguin, 1954), 96 ("According to [Shāfiʿī's] theory law is based on four principles . . ."); F. Rosenthal, *Knowledge Triumphant: The Concept of Knowledge in Medieval Islam* (Leiden: E. J. Brill, 1970), 72–73 ("four fundamental sources of law . . . which Shāfiʿī discusses here"); J. Fück, review of Schacht's *Origins*, *Bibliotheca Orientalis* 10 (1953) 196–199, 197 ("Schāfiʿī's später klassisch geworden[e] Theorie von den vier Quellen des Rechtes [Koran, Sunnah, Consensus und Analogie] . . ."); W. M. Watt, *Islamic Philosophy and Theology*, rev. ed. (Edinburgh: Edinburgh University Press, 1985), 56–57 ("As a result of the work of the jurist ash-Shāfiʿī [concerning *ḥadīth*] . . . all the schools began to claim that their teachings were in accordance with Qurʾān and Ḥadīth as two 'roots of law' . . . Ash-Shāfiʿī also introduced other two [*sic*] 'roots', 'analogy' . . . and 'consensus' . . ."); J. Wegner, "Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts", *American Journal of Legal History* 26 (1982) 25–71, esp. 49–51 ("Shāfiʿī's treatment of the four roots of the law", 50).

[15] Calder provides the following appraisal of Shāfiʿī's "sources": "The complete hierarchy of sources would thus appear to be *kitāb* and *sunnah*-on-which-there-is-*ijmāʿ*, *sunnah* on which there is no *ijmāʿ* . . . *ijmāʿ* and *qiyās*". Norman Calder, "Ikhtilāf and Ijmāʿ in Shāfiʿī's Risālah", *Studia Islamica* 58 (1983), 78. To his credit, Calder does not claim that these sources lie at the heart of the *Risālah*, but rather he finds its central idea to be a fundamental epistemological division between knowledge appropriate for specialists (identified with *ikhtilāf*) and knowledge appropriate for lay persons (identified with *ijmāʿ*). Applied to Calder's list, quoted above, this epistemological dividing line would allow everyone access to "*kitāb* and *sunnah*-on-which-there-is-*ijmāʿ*" but reserve the remaining "sources" for the sole competence of the specialists. While I agree, in general, with Calder's description of Shāfiʿī's epistemology, I do not agree with his characterization of that epistemology as the main point of the *Risālah*. Lowry, "Legal-Theoretical Content", 317–361 (Chapter 5). Note also that Calder's very complicated interpretation of Shāfiʿī's concept of *ijmāʿ* in this context is problematic. Lowry, Chapter 7 generally and esp. 476–478.

[16] "The preoccupation of Shāfiʿī's *Risālah* was primarily to justify the authoritative bases of, first, the Sunnah, and, second, consensus and *qiyās*. Aside from the fact that the Qurʾān's authority was seen as self-evident, it was too well established as a source of law to warrant any justification. *But this this was not the case with the remaining three sources*". Hallaq, *Legal Theories*, 22 (emphasis added).

Now, it will be noticed that, in most the above accounts, what passes for a "theory" (Schacht's term) proves not much more than a four-part list. Yet, one has the feeling from descriptions of Shāfiʿī's legal thought in the secondary literature that his alleged development of this four-part scheme represents a watershed in early Islamic legal thought.[17] I suspect that at least some of the proponents of the four-sources theory implicitly conceive of these lists of sources as a suggested method for finding legal rules. That is, the arrangement of the four elements in question in a list suggests that these sources should be mined, in descending order (beginning with the Qurʾān), for apposite legal rules. Thus characterized, Shāfiʿī's theory, as elaborated in the *Risālah*, would be the following: Look first for an apposite rule in the Qurʾān, then, if there is none, in the Sunnah, then in *ijmāʿ*, and then in *qiyās*. Patricia Crone has noted: "As is often the case with beliefs which no one has questioned, there exists no authoritative statement of the prevailing view".[18] In my view, the related ideas of an epistemological hierarchy and of "mining" the sources in descending order likely stand behind most incarnations of the four-sources interpretation of the *Risālah*, but I have to admit that it is very difficult to find any outright linking of these two views in the secondary literature. On the other hand, I find it hard to believe that what amounts to a mere list could be considered a major turning point in the development of early Islamic legal thought. Surely someone must have thought that Shāfiʿī had an idea to go along with his lists![19] In any event, the interpretation of the *Risālah* as a book which promotes, as its central idea, a four-part list—whether or not some concept of "mining" the sources is implied—fails once one scrutinizes the text of the *Risālah*.

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[17] According to Schacht, Shāfiʿī's "*legal theory* is much more logical and formally consistent than that of his predecessors". Schacht, *Introduction*, 46 (emphasis added). In this passage, it is true, Schacht is not referring directly to the notion of four sources, but we have already seen that he considered Shāfiʿī the ultimate source of this idea, and that he labels it a "theory". Coulson refers to Shāfiʿī as "master architect", which seems to me unlikely to refer to anything but Shāfiʿī's alleged construction of a theory of four hierarchically arranged sources. Coulson, *History*, 53ff.

[18] Patricia Crone, *Roman, Provincial and Islamic Law* (Cambridge: Cambridge University Press, 1987), 40 (footnote omitted).

[19] In fairness, Calder, in the above-cited article, does represent an exception to the trend to reduce Shāfiʿī's thought to a four-part list. It also would be remiss

B. *Whence the "Four Sources" Theory?*

Before turning to the *Risālah*, it is worth asking why so many people, and for so long, have conceived of the *Risālah* in this way. Two possible answers to this question suggest themselves. One is that Muslim jurists after Shāfiʿī (mostly Shāfiʿīs?) must have interpreted the *Risālah* in this fashion, or at any rate conceived of legal theory in this way at some level[20] and then retrojected that conception on

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here not to mention John Burton, who has probably made more progress than anyone else in deciphering the concerns that led to the composition of the *Risālah*, namely the need to develop hermeneutic techniques to account for contradictions in the revealed source-texts, Qurʾān and Sunnah. See J. Burton, *The Sources of Islamic Law* (Edinburgh: Edinburgh University Press, 1990). On the other hand, unlike Calder, Burton does not really propose an overarching interpretation of Shāfiʿī's legal thought as expressed in the *Risālah*. It should also be noted that there is another trend in scholarship on Shāfiʿī's legal thought, begun by Schacht, which portrays Shāfiʿī as insisting that the Sunnah be taken seriously as a source of law and made part of revelation: "Shāfiʿī was the first lawyer to define *sunnah* as the model behaviour of the Prophet, in contrast with his predecessors for whom it was not necessarily connected with the Prophet . . ." Schacht, *Origins*, 2. That is, Shāfiʿī was the first jurist to insist that the *sunnah* be limited to the model behavior of the Prophet, and that the model behavior of the Prophet be the exclusive supplement to the Qurʾān. For good summaries of this view, see Crone, *Roman, Provincial and Islamic Law*, 24–26 and, e.g., Burton, *Sources*, 15. Of course, the four-sources theory hardly follows logically from the need to bolster the authority of the Prophetic Sunnah.

[20] On the other hand, in the case of the post-Shāfiʿī Muslim writers on *uṣūl al-fiqh*, it is not always so easy to find plain statements of the four-sources theory. Still, the idea of a hierarchy of sources (often three) is frequently explicit: Khawārizmī (d. 387/997) says that there are three *"uṣūl al-fiqh": kitāb allāh, sunnat rasūl allāh*, and *ijmāʿ al-umma. Mafātīḥ al-ʿulūm*, ed. I. al-Abyārī (Beirut: Dār al-Kitāb al-ʿArabī, 1984), 21. Al-Juwaynī (d. 478/1085) says that the "*adillat al-fiqh*" are three: *naṣṣ al-kitāb, naṣṣ al-sunnah al-mutawātirah*, and *al-ijmāʿ. Al-Burhān fī uṣūl al-fiqh*, ed. ʿA. M. al-Dīb (al-Manṣūra: Dār al-Wafāʾ li ʾl-Ṭibāʿah wa ʾl-Nashr wa ʾl-Tawzīʿ, 1992), v. 1, 78. Al-Ghazālī (d. 505/1111) identifies the "*adillat al-fiqh*" as *al-kitāb, al-sunnah*, and *al-ijmāʿ. Al-Mustaṣfā fī ʿilm al-uṣūl*, ed. M. ʿAbd al-Shāfī (Beirut: Dār al-Kutub al-ʿIlmīyah, 1993), 6. Ibn ʿAqīl (d. 513/1119) identifies the "*uṣūl*" as *al-kitāb, al-sunnah, al-qiyās, qawl al-ṣaḥābī ʿalā al-khilāf*, and *istiṣḥāb al-ḥāl. Al-Wāḍiḥ fī uṣūl al-fiqh*, Part 1, ed. G. Makdisi (Beirut: Franz Steiner Verlag, 1996), 2. The Qurʾān-Sunnah-*ijmāʿ*-*qiyās* scheme is implicit in the works of other writers, such as Averroës (d. 594/1198), who says that legal rules result from either the words, deeds, or tacit approvals of Muḥammad ("words", *lafẓ*, presumably includes the Qurʾān), or from an analogy which rests thereupon, and that *ijmāʿ*, in turn, rests on one of the foregoing. Although he groups these elements together in this way, he also says that the first four (texts from Muḥammad and analogies based on them) are "*ṭuruq*" and that *ijmāʿ* is not an "*aṣl*" in itself. *Bidāyat al-mujtahid*, vol. 1 (Cairo: al-Maktabah al-Tijārīyah al-Kubrā), 3–5. One could also cite a verse by the Sufi theosophist Muḥyī al-Dīn Ibn al-ʿArabī (d. 638/1240): *wa-ammā uṣūlu l-ḥukmi fa-hya thalāthatun/kitābun wa-ijmāʿun wa-sunnatu muṣṭafā * wa-rābiʿuhā [!] minnā qiyāsun muḥaqqaqun/wa-fīhī khilāfun baynahum marra wa-nqaḍā (ṭawīl)*. *Dīwān*, ed. N. al-Jarrāḥ (Beirut: Dār Ṣādir, 1999), 31, no. 29.

to the *Risālah*. This interpretation seems then to have been accepted by European scholars. This issue belongs to the history of the reception of the *Risālah* and I will not address it in this article.[21] The other possible answer has to do with certain passages in the *Risālah*, and it is on these passages that I will focus in this article. In these passages, the nouns *kitāb allāh, ijmāʿ*, and *qiyās* or *ijtihād* appear, in that order, often connected by conjunctions. But what do these "lists of authorities"[22] mean? To find out, we have to look at the text of the *Risālah*.

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[21] One other potential factor affecting the European reception of the *Risālah*, and Coulson's particularly rigid description of Shāfiʿī's alleged four sources in particular, deserves consideration, namely the possible influence of H. L. A. Hart's notion of the "master rule of recognition". Hart identifies the crucial "step from the pre-legal to the legal" as "the acknowledgment of reference to [a particular writing, for example] as *authoritative*, i.e., as the *proper* way of disposing of doubts as to the existence of a rule for conclusive identification of the primary rules of obligation". H. L. A. Hart, *The Concept of Law*, 2d ed. (Oxford: Clarendon Press, 1994), 94–95. Hart distinguishes between "rules of recognition" and "primary rules of obligation". Simply put, rules of recognition tell one where to look to find rules of obligation, which, in turn, furnish discrete norms. The four-sources interpretation of the *Risālah* may have resulted from viewing the lists of authorities in the *Risālah* as a four-part rule of recognition of the type described by Hart, and from the subsequent elevation of those lists, consistent with Hart's own hierarchical distinction between rules of recognition and rules of obligation, to the principal point of the *Risālah*. To my delight, my suspicions on this score were confirmed at the Alta symposium when Professor John W. Welch of the J. Reuben Clark Law School of Brigham Young University asked whether I thought that legal positivism in general, and Hart in particular, might not lie behind the vitality of the four-sources interpretation of the *Risālah* in the secondary literature.

[22] I use the term "authority" here more or less in the sense in which it is used by Anglo-American jurists, namely, to mean a discrete instance of information which must (mandatory authority) or may (merely persuasive authority) be taken into account by a jurist who attempts to discover the law. In the context of litigation, lawyers practicing in the United States must usually file a "memorandum of points and authorities" in support of their contention that the law is favorable to their client. Authorities are what a jurist furnishes in answer to the question: Do you have any authority (e.g., a precedent, a statute, a maxim of equity, and so on) for such-and-such proposition of law? Note that the items in Shāfiʿī's lists are, strictly speaking, collective terms for different bodies of discrete authorities, and thus it is true that the term "authority" for, e.g., *ijmāʿ* is not a perfect match, since it is an individual instance of *ijmāʿ* that constitutes an authority in this sense. Still, I consider "authority" superior to "source" since source is easily confused with (or probably is intended to mean, in the four-sources context) "source of rules" or "source of law". As will, I hope, become obvious, the items in Shāfiʿī's lists of authorities do not constitute "sources of law" in the sense in which that phrase is commonly understood. I do not have a specific Arabic equivalent in mind for the term "authority" as I am using it, though in *uṣūl al-fiqh* works, and even in the *Risālah*, the term

III. *Shāfiʿī's Lists of Authorities*

By my count, there are eighteen lists of authorities in the *Risālah*, defining a list for these purposes as any mention of two or more authorities appearing in some kind of obviously serial ordering. Sometimes these lists follow or precede an explicit injunction to consult the named authorities in a particular situation. In some lists, the elements are connected by conjunctions. In others, the elements are separated by phrases or sentences, but there is usually little doubt that Shāfiʿī is offering a list in such situations.

A. *The Lists Considered Out of Context*

Below is a table setting forth the raw data on these lists, which for these purposes are organized by the number of elements they contain, and supplemented by a few brief explanatory remarks. Three of these lists have two elements, two have three elements, eight have four elements, and five have five elements.[23]

Two elements:

¶397 (*kitāb allāh . . . sunnah*);

¶881 (*sunnah . . . aw ijmāʿ*);

¶1101 (interlocutor: *naṣṣ khabar aw dilāla fīhi aw ijmāʿ*).[24]

Three elements:

¶1682 (*kitāb . . . aw sunnah . . . aw qiyās*);

¶1727 (*[Qurʾān] aw sunnah aw ijmāʿ*).

Four elements (listing only the contents of those which are *not kitāb, sunnah, ijmāʿ, qiyās/ijtihād*):

¶120;

¶597 (*al-kitāb wal-sunnah wal-āthār*, with *qiyās* juxtaposed to the other three, so that this could be read as a three-element list);

ḥujja sometimes means something like "authority" or "mandatory authority", and its translation in those contexts as "argument" or "proof" can be misleading.

[23] Citations to the *Risālah* are to paragraph numbers in the edition by A. M. Shākir (Cairo: Ḥalabī, 1940).

[24] *Naṣṣ khabar* refers to the Qurʾān or the Sunnah, so perhaps this should be a three-element list. One might also cite the passages at ¶¶47, 122 and 607 as examples of lists which contain two elements. The word spelled DLALH is more usually vocalized *dalāla* (e.g., Hallaq, *Legal Theories*, Index, 289; Kamali, *Islamic Jurisprudence*, Index, 409), but since I am quoting exclusively from Shākir's edition of the *Risālah*, I follow Shākir's vocalization of it as *dilāla*.

¶959 (the reference to *qiyās* is implicit);[25]
¶1012;
¶1321 (interlocutor);
¶1470 (*kitāb* implicit, but expressly mentioned at ¶1469);
¶1471 (*al-sunan wa-aqāwīl al-salaf wa-ijmāʿ al-nās wa-ikhtilāfuhum wa-lisān al-ʿarab*) (if *ijmāʿ* and *ikhtilāf* are considered separate topics, this could be a five-element list);
¶1812 (interlocutor).

Five elements:

¶¶1329–1332 (*[Qurʾān] aw sunnah . . . naqalahā al-ʿāmmah ʿan al-ʿāmmah . . . wa . . . sunnah min khabar al-khāṣṣah . . . wa . . . ijmāʿ . . . wa . . . ijtihād bi-qiyās*);
¶1468 (*al-kitāb wal-sunnah wal-ijmāʿ wal-āthār wa . . . al-qiyās*);
¶1805 (interlocutor; the usual four elements juxtaposed with *aqāwīl al-ṣaḥābah* so perhaps this is a four-element list; see ¶¶1806–1810 below);
¶¶1806–1810 (*aqāwīl al-ṣaḥābah, al-kitāb aw al-sunnah aw al-ijmāʿ aw . . . al-qiyās*; in response to the interlocutor at ¶1805, with the same implications);[26]
¶¶1813–1817 (*al-kitāb wal-sunnah al-mujtamaʿ ʿalayhā . . . wa . . . al-sunnah qad ruwiyat min ṭarīq al-infirād lā yajtamiʿ al-nās ʿalayhā . . . wa . . . al-ijmāʿ thumma al-qiyās*).

I would like first briefly to consider these lists out of context, and to ask whether they hold together in some obvious way. As can be seen, they in fact do not. In the first place, the various lists appear messy, in that it is not always easy to decide how many elements they have. Second, some of the lists' elements are connected by the conjunction *wa* ("and"), some by *aw* ("or"), some by *thumma* ("then", one occurrence), and some by larger samples of language, with or without a conjunction. Thus, the relationship between the various listed authorities is nuanced and variable (hence the occasional

[25] In this passage, the word *maʿnā* appears in what could be interpreted as the fourth position of the list, which suggests that Shāfiʿī is referring to *qiyās*. *Maʿnā* is a technical term used by Shāfiʿī to describe the analogy warranting rationale underlying an exercise of *qiyās* (Hallaq's *ratio legis; Legal Theories*, 29). See, e.g., *Risālah* ¶¶124, 1334, and 1493. The term "analogy warranting rationale" I have taken from the useful article of S. Brewer, "Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Argument by Analogy", *Harvard Law Review* 109 (1996), 965, 1021–1026.

[26] ¶¶1805–1810 contain a number of lists, some of which have the classic four elements, but since they all form part of the same discussion—namely, what to do with the opinions of the Companions—I have grouped them together. I discuss them in detail below.

difficulty in representing the relationship of the various elements to one another). Third, and perhaps most important, the lists' elements themselves appear quite fluid when viewed in this way (i.e., out of context). Even the lists which have four elements do not always have those four which the four-sources theory identifies as the classic ones. More generally in regard to all these lists, there seems to be no discernible correlation between the *number* of elements in a given list (i.e., two, three, four or five) and the specific, individual authorities which that list contains. Preliminarily, then, one could defensibly suggest that it is arbitrary to reduce the above-summarized lists to a fixed scheme of Qur'ān-Sunnah-*ijmāʿ*-*ijtihād*, let alone to conclude that some grand, overarching, and internally consistent theory could be distilled from them.

B. *The Lists Considered In Context*

Even if Shāfiʿī's lists of authorities resist reduction to a neat, four-part scheme of Qur'ān-Sunnah-*ijmāʿ*-*ijtihād*, that fact hardly leads to the conclusion that the lists are only so much meaningless verbiage. Rather, it merely means that we have to consider the possibility that the lists have some other meaning or meanings for Shāfiʿī; and to discover what those meanings are, we have to consider context. To understand the context, we must put aside the lists themselves and focus on the larger discussions of which they are a part. This procedure will show that Shāfiʿī's lists of authorities fall naturally into several groups, each of which belongs to a distinct legal-theoretical point or concept which appears in the *Risālah*. In terms of their elements, the lists within each of these groups vary greatly. This fact suggests that Shāfiʿī is much less concerned with the particular elements or their ordering in a given list, but rather with the general idea in the context of which a given list is cited.

Lists of Secondary, Corroborative Authorities

The largest group of lists of authorities in the *Risālah*, seven of the eighteen listed above, are connected with an idea which runs throughout the *Risālah*. This idea is one which I would identify as Shāfiʿī's principal canon of construction. It appears in many different places in the *Risālah*, cutting across all, or nearly all, of Shāfiʿī's various hermeneutic techniques. This canon of construction provides, simply, that, if one plans to choose between two competing interpretations,

especially if one's choice is the less obvious of the two, then one must have a reason to support that choice.[27]

Here is an example of Shāfiʿī's canon of construction: At *Risālah* ¶818, Shāfiʿī says the following:

> [. . .], it is necessary, for whoever hears a *ḥadīth*, to interpret it according to its least restrictive and most general meaning [*ʿalā ʿumūmihi wa-jumlatihi*] unless that person finds some indication [*dilālah*] by which he can draw some sort of distinction in regard to it [= the *ḥadīth*].

In other words, a legal text must be interpreted in a common-sense manner, absent some other indication (*dilālah*) that it be interpreted in some less obvious way. It is to this idea that the largest group of lists in the *Risālah* are attached. That is, if we were to add, e.g., "by adducing a passage from Qur'ān, Sunnah, etc." to the end of the above quotation, we would have a statement of Shāfiʿī's principal canon of construction, followed by a list of authorities. The idea would be: If you plan to offer the less obvious interpretation,[28] then you need a reason; acceptable reasons would be, e.g., some support from Qur'ān, Sunnah, *etc.*

But we do not need to imagine how Shāfiʿī would attach a list of authorities to this point, since he does so himself, repeatedly. Consider the following example:

> As for [texts] which have two possible meanings: It is incumbent on scholars not to give them a restrictive, rather than a non-restrictive, interpretation except on the basis of some indication [*lā yaḥmilūhā ʿalā khāṣṣ dūna ʿāmm illā bi-dilālah*], whether from the Sunnah of God's Messenger, or from the *ijmāʿ* of Muslim scholars . . . (*Risālah* ¶881)

That example contains a list of two authorities. Here is one with three:

> Only rarely do they [= scholars] disagree such that we cannot, ourselves, find some indication concerning it [= the matter about which there is disagreement] from God's Book, the Sunnah of His Messenger, or an argument from *qiyās* based on them, or on one of them [*kitāb allāh aw sunnat rasūlihi aw qiyāsan ʿalayhimā aw ʿalā wāhid minhumā*]. (*Risālah* ¶1682)

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[27] Frequently, Shāfiʿī must offer a less than obvious—which is to say a strained—interpretation because of contradictions in, or between, Qur'ān and Sunnah. Shāfiʿī's canon of construction seems meant primarily to apply in such difficult cases.

[28] Or, as we will see, if one needs some support for choosing one of several apparently equally apposite texts.

Here is an example which contains what I am tempted to call a classic list of four authorities:

> *Hadīth* can be contradictory, in which case I adopt one of them [over the other] by means of reasoning on the basis of a passage from the Book, a Sunnah, an instance of *ijmāʿ*, or an argument using *qiyās* [*istidlālan bi-kitāb aw sunnah aw ijmāʿ aw qiyās*]. *Risālah* ¶1012.

What is the significance of the items in the lists? It seems clear enough from these passages: They represent secondary, corroborative authority which is brought to bear on *other*, primary texts, in order to justify particular interpretive moves made in regard to those *other* primary texts. It is the *other* texts which are, in a strict sense, the actual "sources of law", not the elements in the lists. The elements in the lists show some instability precisely because what is important, for Shāfiʿī, is to have some support for an interpretation and, while any support will not do, there are several varieties of acceptable support. In fact, the lists are attached to an underlying idea to which the lists themselves and their elements are quite incidental: legal interpretation, especially in difficult cases, requires a justification. This point *is* an important, recurring idea in the *Risālah* (see the next paragraph and accompanying note for other occurrences of it).

In the above three passages, as well as in four other passages (at *Risālah* ¶¶397, 959, 1470, and 1727), Shāfiʿī expresses this point unequivocally. Thus, fully seven of the eighteen passages which contain lists of authorities express this idea, and several others express it without an accompanying list.[29]

Authority for Discrete Doctrines of Legal Theory

Four of Shāfiʿī's lists of authorities appear in the context of attempts to justify discrete legal-theoretical positions which he takes in the *Risālah*. Arguably, these passages lend indirect support to my interpretation of the passages I have already analyzed inasmuch as they

[29] See, e.g., ¶¶342 (referring to Sunnah only, a one-member list), 543 and 629 (each stating or suggesting that a *dilālah* in Sunnah allowed a non-obvious interpretation of the Qur'ān), 923–4 (stating that a Sunnah may only be interpreted in a non-obvious way in light of another Sunnah), and perhaps ¶594, which is, however, difficult and likely corrupt. The passage at ¶¶778–782 should probably also be included here, and could possibly be considered a list of authorities as well. I already quoted the passage at ¶818.

offer lists of authorities which are presented not as "sources of rules", but, rather, as instances of authority which validate particular claims about how to find or derive rules from *other* texts.

For example, at ¶597 Shāfiʿī says that he employs the technique of *qiyās* because support for its use can be inferred from the Qur'ān, the Sunnah, and non-Prophetic reports: *akhadhnāhu istidlālan bil-kitāb, wal-sunnah wal-āthār.*[30] The list contains items that provide general authority for engaging in a particular kind of legal interpretation.

At ¶1101, Shāfiʿī's interlocutor asks whether there is any authority (*ḥujjah*) for relying on uncorroborated reports (*khabar al-wāḥid*) as a valid and binding source of law and, if so, whether such authority is to be found "in an explicit, revealed text [*naṣṣ khabar*], in an indication derived from such a text [*dilālah fīhi*], or in *ijmāʿ*" (*Risālah* ¶1101). The list in question—which has the three elements *khabar, dilālah* in a *khabar, ijmāʿ*—identifies places where Shāfiʿī's interlocutor expects to find support for using a certain kind of text as primary authority.

In another example, at ¶1321, Shāfiʿī's interlocutor returns to the issue of *qiyās* and asks what authority there is for employing it as a technique of legal reasoning:

> On what basis do you maintain that one resort to *qiyās* in situations where there is no [relevant] passage from the Qur'ān, Sunnah, or *ijmāʿ*? Is *qiyās* a binding, explicit revealed text [*naṣṣ khabar lāzim*]?

The question is one to which a passage cited above, ¶597, could be an answer. The point of it is to find out what justification there is for a doctrine of theory (namely, that *qiyās* is a permissible technique of legal reasoning). An implication of the question seems to be that *qiyās* comes into play only after one has consulted the other three items listed. But, then again, it is only an implication of the question, not the question actually posed. Moreover, it is the interlocutor's phrase, not Shāfiʿī's, and the ensuing discussion does not really provide any help in interpreting it. Shāfiʿī, in response, denies that *qiyās* (he means the result of employing *qiyās*) is a *naṣṣ* at all, but he never takes up the first part of the question (*Risālah* ¶1322).

In a later passage concerning *ijtihād*, Shāfiʿī says that, in order to make arguments using *qiyās*, one must know "the Sunnahs which

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[30] This represents Shāfiʿī's reply to his interlocutor's question at ¶569: "What authority [*ḥujjah*] do you have for engaging in or refraining from *qiyās*?"

have previously come into force,[31] the opinions of early authorities, the people's *ijmāʿ* and their disagreements, and the Arabic language" (*Risālah* ¶1471). Here Shāfiʿī uses a list to state the necessary qualifications for a practitioner of legal interpretation by means of analogy.

The above four examples show that the lists of authorities in Shāfiʿī's *Risālah* can have a variety of functions. None of them states outright that the "four sources" should be searched, in descending order, for rules of positive law, though they do suggest that the authorities included in the lists are relevant to various kinds of legal questions. To the extent that some of them provide authority for certain propositions of legal theory rather than for rules of positive law, they in some sense corroborate the results reached in individual exercises of legal reasoning using *other* texts, and so resemble, in a way, the first seven examples which I cited, which, as we saw, provided secondary, corroborative authority for interpretations of other underlying texts.

Ijtihād and Revelation

Ijtihād is of great concern to Shāfiʿī and we have already seen that it figures in some of the above-discussed passages. For Shāfiʿī, *ijtihād*, or, more precisely, *qiyās*, is the technique by which he demonstrates in theory, and urges in practice, that the Islamic revelation offers an all-encompassing body of divine legislation.[32] Shāfiʿī implicitly (or perhaps explicitly) acknowledges that Qurʾān and Sunnah do not always contain a *directly* apposite passage for a given legal eventuality. *Qiyās* represents the technique by means of which a practitioner can adduce an *indirectly* relevant passage from a revealed text, and apply its underlying principle (policy reason or analogy warranting rationale, *maʿnā*) to a new case. Thus, even if revelation does not directly govern or regulate a particular situation, its scope can be extended by means of analogy so that it provides a rule for that situation. In this regard, the point of *ijtihād* and *qiyās*, in Shāfiʿī's thought, is to guarantee that revelation always provides the basis for

[31] *Mā maḍā qablahu min al-sunan.* On the meaning of the root MḌY in connection with the word *sunnah*, see M. Bravmann, *The Spiritual Background of Early Islam* (Leiden: E. J. Brill, 1972), 139–151.

[32] Shāfiʿī says that *ijtihād* and *qiyās* "are two names for one concept", "*humā ismān li-maʿnā wāḥid*". *Risālah* ¶1324.

a legal decision, even if at first glance revelation does not appear to furnish a rule which is directly on point.

It is in this context of his insistence on using *ijtihād* and *qiyās* to contain legal enquiry within revelation that Shāfiʿī recites two lists of authorities. The first of these, which occurs early in the *Risālah*, has the classic four elements:

> It is not for anyone, ever, to express an opinion about whether something has been made licit or forbidden, except on the basis of knowledge [*min jihat al-ʿilm*]. The basis of knowledge is, in turn, a text from the Book, or the Sunnah, or *ijmāʿ*, or *qiyās*. (*Risālah* ¶120)

Now, Shāfiʿī does not elaborate on this list in this passage, but he repeats this idea, and the list, almost verbatim later in the *Risālah*, and from the context of that second passage, we can glean his overarching point.

In that second passage, which appears in a much more extensive discussion of *ijtihād*, Shāfiʿī uses the same vocabulary as in the first one, quoted above:

> God did not allow anyone after His Messenger to make [legal] pronouncements except on the basis of some knowledge which has previously come into force [*min jihat ʿilm maḍā qablahu*]. The basis of such knowledge [*jihat al-ʿilm*] remains the Book, the Sunnah, *ijmāʿ*, reports [*āthār*], and what I have described concerning making *qiyās*-based arguments from these. (*Risālah* ¶1468)

The Arabic phrase *min jihat al-ʿilm* appears twice in each of these two passages and, of course, both pronouncements concern *ijtihād*,[33] which facts lead to the conclusion that Shāfiʿī wishes to make the same point in both passages. This second passage occurs, specifically, in the course of Shāfiʿī's denunciation of *istiḥsān* ("what someone deems good") as a technique of legal reasoning or rather of legal interpretation.[34] In Shāfiʿī's view, *istiḥsān* is inferior to *ijtihād* because *istiḥsān* results from the practitioner's mere personal opinion and so by definition, and quite unlike *ijtihād*, does not involve revelation at all. It is very clear that, for Shāfiʿī, *all* law derives from revealed texts.[35] That is why Shāfiʿī denounces *istiḥsān*: it represents nothing

[33] Though perhaps, not readily apparent from the two quotations, this is crystal clear from the context. See *Risālah* ¶¶104–125 (discussion of *ijtihād* as the fifth mode of the *bayān*) and ¶¶1321–1670 (principal discussion of *ijtihād*).

[34] Shāfiʿī's criticism of *istiḥsān* occurs at *Risālah* ¶¶1456–1468.

[35] I take this to be one of the main points of his theory of the *bayān*, which I

more than a jurist's unsupported opinion, unsupported, that is, by specific revealed authority. In context, then, these two lists stand for revelation as such, and "knowledge", *ʿilm*, turns out to be knowledge of revelation.[36] This follows from the fact that Shāfiʿī opposes the items in the two lists, as sources of *ʿilm*, to *istiḥsān*, which Shāfiʿī ridicules as a method that ignores revelation. Obviously, Qur'ān and Sunnah constitute divinely-inspired texts, and *qiyās* represents a method for deriving rules from Qur'ān and Sunnah. For Shāfiʿī, *ijmāʿ* always represents the opinion of scholars, and that opinion always concerns the interpretation of a revealed text.[37] *Āthār* undoubtedly represent pronouncements concerning the interpretation of Qur'ān and Sunnah.[38]

Crucially, the elements in the two lists differ; the second list includes a fifth element, "*āthār*". If the point of reciting these lists were to suggest a fixed four- or five-part scheme as a central, reified concept in Shāfiʿī's thought, surely they would have been identical, since the rhetoric ("no one may . . .") and the vocabulary (*jihat al-ʿilm*) are identical in both, and the general point in each case seems to be the same. In the context of Shāfiʿī's argument, it seems clear that the elements in these two lists simply represent the various ways in which revelation, or information about revelation, might present itself to the practitioner. What is important about the items in these lists is that they collectively constitute one side of the binary opposition revelation:not-revelation. The most that one can conclude from

discuss below. In fact, Shāfiʿī's theory of *ijtihād* and *qiyās* constitutes a denial that there is such a thing as legislative silence in Islam. Shāfiʿī's legal theory is driven in its overarching form and its details by such theological considerations.

[36] As Calder puts it, "'*ilm* is defined [in the *Risālah*] as relating only to knowledge of the law". "Ikhtilāf and Ijmā'", 70 (note omitted).

[37] My interpretation goes against that of Schacht and Calder, both of whom think that Shāfiʿī has two (or more) kinds of *ijmāʿ*, one formed by the Muslims at large and one formed by scholars alone. Schacht, *Origins*, e.g., 90; Calder, "Ikhtilāf and Ijmā'", e.g., 76–77. Schacht and Calder were mislead by Shāfiʿī's use of phrases like *ijmāʿ al-muslimīn* or *ijmāʿ al-nās*, both of which in fact refer to the *ijmāʿ* of scholars. An examination of those problems in which Shāfiʿī actually invokes *ijmāʿ* also shows that it always concerns the interpretation of a revealed text. Lowry, "Legal-Theoretical Content of the *Risālah*", 426–480 (Chapter 7).

[38] This follows from the context of Shāfiʿī's critique of *istiḥsān*, and from his statement, discussed below, to the effect that the opinions of Companions are only relevant to the extent that they conform to Qur'ān and Sunnah. It also follows from Shāfiʿī's theory of the *bayān*, which I discuss below. Kamali defines *athar* (sg. of *āthār*) as "deeds and precedents of the Companions". Kamali, *Principles of Islamic Jurisprudence*, 402. However, since Shāfiʿī expressly refers to the *aqāwīl al-ṣaḥāba* elsewhere (see below), for him it may include the "deeds and precedents" as well as the opinions of persons in later generations.

Shāfiʿī's recitation of these two lists is that Shāfiʿī is out to champion revelation as the sole source of law.

Opinions of the Companions

The exchange between Shāfiʿī and his interlocutor at ¶¶1805–1811, concerning legal opinions of Muḥammad's Companions, provides a good example of how Shāfiʿī's lists of authorities (and those of his interlocutor) require careful study. At ¶1805 the interlocutor puts the following question to Shāfiʿī:

> I have understood your doctrine concerning *ijmāʿ* and *qiyās*, after [having previously understood] your doctrine concerning rules from God's Book and from the Sunnah of His Messenger. Do you not also consider the opinions of the Companions of God's Messenger if they disagree [or: are divergent] with respect to [the above-listed authorities]?[39]

The classic list of four sources lurks in this passage, to be sure, but the interlocutor's question is quite subtle: he wants to know whether, in a case where the opinions of the Companions somehow problematize the interpretation of a revealed text, Shāfiʿī takes such opinions into account. In other words, the legal-theoretical implication of the question is that passages from the Qur'ān and the Sunnah, as well as instances of *ijmāʿ* and exercises of *qiyās*, can raise difficulties which can only be resolved by the consideration of additional information. The interlocutor wants to know about the permissibility of considering a specific variety of such additional information. As for the four-sources theory, the only implication one can really draw from the question is that Shāfiʿī has discussed *aḥkām* in the Qur'ān and Sunnah before discussing *ijmāʿ* and *qiyās*, and this is a fair interpretation of the order of topics in the *Risālah*.[40] Note that the form of the question does not suggest that one should mine the four sources and, if they provide no help, turn to the opinions of the Companions. Rather, the question is about what role to allot the Companions' opinions when textual troubles arise.

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[39] *Qad samiʿtu qawlak fī al-ijmāʿ wal-qiyās baʿd qawlik fī ḥukm kitāb allāh wa-sunnat rasūlihi a-raʾayta aqāwīl aṣḥāb rasūl allāh idhā tafarraqū fīhā*? Possibly, the implicit subject of *tafarraqū* is "people" or "scholars", but the import of the question is more or less the same: are the Companions' opinions relevant in difficult cases?

[40] But the *Risālah* does not, in its overall organization, reflect the four sources theory. See note 52 below.

At ¶1806, Shāfiʿī gives the following answer, including a list of authorities, to the interlocutor's question:

> I said: We adopt those [opinions of the Companions] which comport with the Book, the Sunnah, *ijmāʿ*, or that which is most validly used in an analogy.[41]

This seems to mean—taking into account the foregoing question—that in those cases where one has already identified a relevant revealed text, and that text poses some interpretive difficulty, then it would be permissible to adduce the opinion of a Companion as an interpretive aid, provided that it was otherwise in harmony with the revealed text already under consideration or with some other revealed text. The answer contains a four-part list with the classic elements. The overall point of the exchange, however, has little to do with four sources as such. Instead, it simply recalls the idea with which I began my consideration of Shāfiʿī's lists: in difficult cases, one needs a principled reason for one's interpretation. In this instance, the principled reason can be derived from the opinion of a Companion (and it is implicit in the interlocutor's question, and obvious from Shāfiʿī's answer, that the Companions' opinions which they are discussing directly concern the interpretation of revealed texts).

The interlocutor follows up his first question with another, at ¶1807, and we need to understand both it and Shāfiʿī's answer, since each contains a list of authorities. The interlocutor asks the following:

> Is it the case that if one of them [= the Companions] espouses a doctrine which no one else among them is known to have accepted or disputed, then is there some authority in your favor for following it—whether in a passage from scripture, or a Sunnah, or a matter on which people have formed *ijmāʿ*—such that it would become one of the principles [? *al-asbāb*] which you could adopt as a *khabar*?[42]

In other words, (a) is there some revealed authority for using an uncorroborated opinion of a Companion and (b) would you call such an opinion, or use it as you would use, a *khabar*, a passage from a

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[41] *Fa-qultu naṣīr minhā ilā mā wāfaqa al-kitāb aw al-sunnah aw ijmāʿ aw [mā?] kāna aṣaḥḥ fī al-qiyās.*

[42] *A-raʾayta idhā qāla al-wāḥid minhum al-qawl lā yuḥfaẓ ʿan ghayrihi minhum fīhi lahu muwāfaqatan wa-lā khilāfan a-tajid laka ḥujja bittibāʿihi fī kitāb aw sunnah aw amr ajmaʿa al-nās ʿalayhi fa-yakūn min al-asbāb allatī qulta bihā khabaran?* "*Al-asbāb*" is difficult to translate because it is not a usual technical term which Shāfiʿī uses in the *Risālah*.

revealed text transmitted in the ordinary course. Here we have a three-part list from the interlocutor which asks—in a way similar to a group of lists which I have already discussed above—about the revealed authority for a discrete principle of legal theory, namely, the status of an uncorroborated opinion from a Companion.[43]

Shāfiʿī responds (¶1808) that he knows of no such authority in a scriptural passage (*kitāb*) or in a Sunnah, but that scholars are inconsistent in their use of the Companions' opinions. The interlocutor then (¶1809) presses Shāfiʿī for a definitive answer about whether he uses them anyway and Shāfiʿī responds (¶1810) as follows:

> I said: [I] follow the opinion of such a lone individual if I can find no passage from scripture, no Sunnah, no *ijmāʿ*, and nothing with the same underlying policy reason that one could then use as the basis for a ruling in the [new case], or which could [otherwise?] be used as the basis for an analogy.[44]

Here we have a pronouncement which looks like a classic four-part list, and which even suggests a kind of mining of the listed authorities. Is it possible to read this passage as advocating the "four sources" or their being "mined" as overarching, independent ideas? The answer is no. The conversation in which this passage appears (¶¶1805–1810) can be summarized as follows:

> Interlocutor: What about the opinions of the Companions in difficult cases?
> Shāfiʿī: Fine, as long as they don't contradict revelation.
> Interlocutor: What about uncorroborated opinions of Companions? Is there revealed support for using them?
> Shāfiʿī: No! And worse yet, people use them in a very inconsistent way.
> Interlocutor: OK, but what about them!?
> Shāfiʿī: As an absolutely last resort, when all other options are exhausted, I might use one.

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[43] The interlocutor also suggests, with this question, that the lone opinion of a Companion might parallel the isolated prophetic report, *khabar al-wāḥid*.

[44] *[Ṣirtu ilā] ittibāʿ qawl wāḥid idhā lam ajid kitāban wa-lā sunnah wa-lā ijmāʿ wa-lā shayʿ fī maʿnāhu yuḥkam lahu bi-ḥukmihi aw wujida maʿahu qiyās.* The last phrase, "*aw wujida maʿahu qiyās*", seems redundant since the invocation of the idea of the *maʿnā* (relevantly similar "policy reason", "analogy-warranting rationale") as a shared element between two cases is part of Shāfiʿī's theory of *qiyās*. See Lowry, "Legal-Theoretical Content", 202–228; Hallaq, *Legal Theories*, 23 (translating *maʿnā* as *ratio legis*).

Shāfiʿī says that he will use Companions' opinions which coincide with revealed authority, and that he would use an uncorroborated Companion's opinion in the extraordinary eventuality that there is no revealed authority and not even an analogy is possible.[45] This dialogue is carefully constructed to show Shāfiʿī's exasperation with his interlocutor, who fails to grasp Shāfiʿī's essential point: revelation is paramount and all-encompassing. It may be convenient for Shāfiʿī to list four ways in which revealed texts might present themselves for legal analysis, but the context hardly allows the conclusion that the four authorities listed are being urged in a fixed order as the basis for a theory of the law.

Legal Epistemology

There is, of course, some consistency in Shāfiʿī's ordering of the elements in his lists. Most obviously, those lists that contain both Qur'ān and Sunnah always begin with those two elements, in that order. This fact probably tempted commentators to conclude that this particular ordering had some broader implication. In some lists (but only *some* lists), this particular ordering does have a particular function: it expresses Shāfiʿī's legal epistemology, which has been studied and intelligently analyzed by Calder, as I have already noted.[46]

At ¶¶1329–1332, in a discussion of the epistemological implications of *ijtihād*, Shāfiʿī says that an objectively (i.e., metaphysically) correct understanding of the law (*iḥāṭa fī al-bāṭin wal-zāhir*)[47] can be found in an explicit text (*naṣṣ*)[48] from the Qur'ān or from the kind of Sunnah which has been recurrently transmitted. Less than certain knowledge may be found, by contrast, in Sunnahs which are not so widely transmitted, or in knowledge from *ijmāʿ*, or knowledge from *ijtihād* which derives from *qiyās*. That is, an answer based squarely on an explicit passage in Qur'ān or a recurrently transmitted instance

[45] In other words, almost never. As I read the *Risālah*, this situation should not be able to arise at all. It is certainly a situation which Shāfiʿī portrays in the *Risālah* as marginal, or perhaps only hypothetically possible, at best. See the discussion below concerning his concept of the *bayān*.

[46] For Calder's reading of the lists which I discuss in this section, see note 15, above. In general, I accept Calder's interpretation of Shāfiʿī's epistemology and his reading of these passages.

[47] Literally: encompassing both the metaphysically correct and the merely apparently correct result.

[48] *I.e.*, hermeneutically self-sufficient.

of the Sunnah raises no epistemological difficulties. By contrast, an answer which can only be supported by reference to an isolated Sunnaic report, an instance of *ijmāʿ*, or an argument based on *ijtihād/qiyās*, does raise epistemological difficulties.

This discussion is reprised at the very end of the *Risālah*, when the interlocutor asks Shāfiʿī about the epistemological value of *ijmāʿ* and *qiyās* relative to scripture and Sunnah (¶¶1812, 1814). Shāfiʿī responds by dividing various authorities into three groups. The first group contains "the Book" and the Sunnah whose sound transmission, or interpretation, is universally acknowledged (*al-sunnah al-mujtamaʿ ʿalayhā alladhī lā ikhtilāf fīhā*; ¶1815). These authorities provide legal rules the interpretation of which is both apparently and objectively certain (*al-ḥaqq fī al-ẓāhir wal-bāṭin*). The second group comprises only *akhbār āḥād*, isolated and uncorroborated reports, described as *al-sunnah qad ruwiyat min ṭarīq al-infirād* (¶1816). These authorities provide legal rules which can only furnish a superficial level of certainty (*ẓāhir*) and it cannot be known whether one's interpretation of them is objectively correct. Finally, the third group comprises *ijmāʿ* and *qiyās*. Shāfiʿī says nothing further about *ijmāʿ*. He does explain, however, that *qiyās* is to be used only in cases of necessity (*manzilat ḍarūrah*) and that it may not be used if there is a directly relevant revealed text (*khabar*) (¶1817). Shāfiʿī then says that employing *qiyās* is like performing ablutions with sand (*tayammum*): If water is available for the ablutions, then performing them with sand cannot engender ritual purity; purity only results from ablutions using sand when there is no water (¶1817). "Similarly", he concludes, "those things that come after the Sunnah constitute authority [*ḥujja*] if one has no Sunnah [*idhā aʿwaza min al-sunnah*] (¶1818)."[49]

It seems very clear, as Calder has observed, that the above exchange (¶¶1812–1818) simply continues a theme which runs throughout the *Risālah*: Shāfiʿī's insistence on the division of all legal knowledge into that which is unproblematic and can therefore be known by "the generality" and that which is problematic and should therefore remain under the control of "the specialists".[50] The first group of authorities belongs to the former type and the second and third groups

[49] The book ends at ¶1821, in which Shāfiʿī compares the various epistemological values of these several sources with the varying evidentiary value of various kinds of testimony.

[50] Calder, "Ikhtilāf and Ijmāʿ", 78.

belong to the latter. Shāfiʿī's point, then, is that different kinds of legal authority engender different levels of epistemic certainty, and therefore entail the need for a class of experts, at least in difficult cases. The lists of authorities which occur in the course of this discussion are, perhaps, not exactly irrelevant to this important idea, but their details are hardly determinative of it either.

C. *Lists of the Form* Qurʾān-Sunnah-ijmāʿ-ijtihād/qiyās; *Mining*

I have sought to show in the above discussion that Shāfiʿī's lists, however many members they may have, never constitute the focal point of his discussions of legal-theoretical issues. This fact strongly suggests that they do not constitute the core of his legal theory. Just to drive this point home,[51] I would like to focus, briefly and as a conclusion to this section, on the classic four-part lists among those which have been examined above. Of the eighteen lists which I identified at the outset of this article, by my count only six unproblematically contain the four elements Qurʾān, Sunnah, *ijmāʿ*, and *ijtihād* or *qiyās*. Of these six, three (¶¶959, 1012, and 1470) occur in the first group of lists which I discussed, and clearly represent, therefore, lists of secondary, corroborative authorities used in relation to other texts which provide the primary evidence of rules. One other such list (¶120) occurs in a discussion concerning *ijtihād* and the importance of limiting legal enquiry to revealed texts (this particular list has a fraternal—but not identical—twin at ¶1468, which contains five members, as I noted above). The remaining two "unproblematic" lists (¶¶1321, 1812) represent utterances of the interlocutor and cannot simply be taken as expressions of Shāfiʿī's own ideas. In light of all of the above evidence, it is not possible to maintain the four-sources interpretation of the *Risālah.*

IV. *The Other Theory in the* Risālah

If Shāfiʿī's lists of authorities do not represent the central legal-theoretical achievement of the *Risālah*—and they would be not only the best, but really the *only* evidence of the four-sources theory[52]—then

[51] And lest it be thought that I have simply muddied the waters by considering lists which are not of the form Qurʾān-Sunnah-*ijmāʿ*-*ijtihād*/*qiyās*.

[52] In order to rescue the four-sources interpretation, it might be argued that the