

Abū 'Ubayd never expressly takes up the authority of the Sunnah. To justify the stoning penalty, he does resort to the Prophet's inspiration, quoting a Companion's story that before the Prophet laid down the stoning penalty, his eyes glazed over and his skin grew pallid, as might have happened at receiving the Qur'ān from God (B45, M133f.). Abū 'Ubayd presumably accepted the implication that prophetic sayings not preceded by glazed eyes and pallid skin had lesser authority. (In another work, Abū 'Ubayd mentions *āyat al-rajm*, a verse of the Qur'ān calling for stoning adulterers, that was subsequently withdrawn—*ruff'a*, *usqīta*, and *nusikha* all appear elsewhere in the discussion but none is applied directly to *āyat al-rajm*. He does not justify the stoning penalty on its basis. Rather, he states that withdrawn verses such as this are for interpretation of the written Qur'ān—*ta'wīl mā bayna al-lawḥayn, mufasssiran lil-qur'ān*.)<sup>31</sup> He uses the term "Sunnah", but evidently means by it very ancient practice; that is, neither continuous local custom nor the precept and example of the Prophet alone. Hence, for example, he states that people permit the testimony of women in cases of birth, menstruation, pregnancy, and so forth from necessity, even though it is not in the Book or the Sunnah (B57, M164f.).

Muḥāsibī prefers to justify the stoning penalty by appeal to the Qur'ān alone. He relates that the stoning penalty was based on another passage of the Qur'ān, *āyat al-rajm*, whose wording had been abrogated but not its ordinance (398). Muḥāsibī later brings up consensus as telling us the one verse abrogated the other, even though the abrogating verse is no longer part of the recited text (455). Like Abū 'Ubayd for normal prophetic sayings, Muḥāsibī implicitly considers the precept and example of the Prophet (he does not refer to them as the Sunnah *tout court*) to have a lesser rank than the Qur'ān.<sup>32</sup>

<sup>31</sup> Abū 'Ubayd, *K. Faḍā'il al-qur'ān*, ed. Marwān al-'Aṭīyah, Muḥsin Kharābah, and Wafā' Taqī al-Dīn (Damascus: Dār Ibn Kathīr, 1415/1995), 320–27 = *Faḍā'il al-qur'ān wa-ma'ālimuhu wa-ādābuh*, ed. Aḥmad ibn 'Abd al-Wāḥid al-Khayyātī, 2 vols. (al-Muḥammadīyah: Wizārat al-Awqāf wa-al-Shu'ūn al-Islāmīyah, 1415/1995), 2:146–55.

<sup>32</sup> For example, see Muḥāsibī, *Fahm*, 289f., where prophecy is commended but *ḥikmah*, its superior, identified with the Qur'ān (*contra* Shāfi'ī, by the way); 305f., where the prophets are held up above other men and God contrasted as yet more knowledgeable, hence more to be heeded, than they; 413–15, where God abrogates a rule laid down by the Prophet independently of any *naṣṣ*, suggesting that he normally spoke without inspiration.

Ibn Qutaybah states succinctly that Qurʾān and prophetic Sunnah are equally forms of revelation and therefore of equal authority, the Qurʾān being the speech of God but the Sunnah his inspiration (*wahy*), having been brought by Gabriel (N166, 195, L184, 217). Ibn Qutaybah pays no attention to Companion ḥadīth, nor does he seek to prove that the Prophet spoke by inspiration—these questions seem to have been settled before he wrote.

*Abrogation as between Qurʾān and Sunnah.* Shāfiʿī frankly poses the question of whether the Qurʾān may abrogate the Sunnah or the Sunnah the Qurʾān. His discussion of abrogation seeks mainly to establish that neither Qurʾān nor Sunnah may abrogate the other (¶¶ 312–420, esp. 314). Shāfiʿī appeals to simple conservatism: if it were possible for the Qurʾān to abrogate the Sunnah, many ordinances based on the Sunnah would have to be thrown away, as one could not be sure that Qurʾānic dicta on these points had not come later and abrogated the Sunnah; e.g., the Prophet’s regulation of commerce, which might otherwise have been abrogated by the verse, “God has permitted commerce but forbidden usury” (Q.2.275; ¶ 333).<sup>33</sup>

Because of his focus on abrogation as between Qurʾān and Sunnah rather than the nature of abrogation itself, Shāfiʿī’s discussion of the stoning penalty in particular seems unsatisfactory.<sup>34</sup> According to Shāfiʿī, the Sunnah shows that the Qurʾānic penalty for adultery is abrogated (*mansūkh*). That the Sunnah has done the abrogating, although evident from his account in the *Risālah*, Shāfiʿī never expressly admits or denies (¶¶ 375–82, 685–89). It would be convenient to his argument if he brought up *āyat al-rajm*, for that would have shown that the former Qurʾānic penalty had been abrogated by another. Perhaps Shāfiʿī avoids bringing up *āyat al-rajm* to avoid in turn expanding his definition of abrogation (suppression of one obligation in favor of another) beyond juridical matters. (In other attributed works, he does recognize suppression of a verse while its ordinance remains and expressly quotes *āyat al-rajm*).<sup>35</sup> His special doctrine of

<sup>33</sup> The same argument, slightly expanded, appears also in Shāfiʿī, *Ikhtilāf al-ḥadīth*, in margin of *Umm* 7:48–50.

<sup>34</sup> Similarly, Burton, *Sources*, 146f.

<sup>35</sup> Shāfiʿī, *Umm* 5:24, cited by Burton, “Introductory Essay”, *Abū ‘Uбайд*, 27; also *K. Ikhtilāf mālik wa-al-shāfiʿī* at *Umm* 7:208, concerning the number of nursings that prevent a marriage. Shāfiʿī does not cite these suppressed Qurʾānic verses as the basis of his opinion but rather cites prophetic ḥadīth (and, at 7:208, the opinions of various Companions, implicitly based on what they had heard from the Prophet).

abrogation, that Qur'ān may not abrogate Sunnah nor Sunnah abrogate Qur'ān, involved such difficulty that only a minority of the later Shāfi'iyah troubled to uphold it, whereas the majority accepted that the Sunnah might abrogate the Qur'ān.<sup>36</sup>

Abū 'Ubayd never directly addresses the question of abrogation as between Qur'ān and Sunnah. He discusses the stoning penalty but not in these terms (B45–47, M132–36).<sup>37</sup> Stoning, he makes clear, is based on what the Prophet said or did, but one of his stories emphasizes strongly that the Prophet spoke under inspiration (B45, M133f.). Here at least is the rude beginning of a theory that Qur'ān and Sunnah are equally the products of divine inspiration.

Muḥāsibī, too, does not clearly address the question of whether the Qur'ān may abrogate the Sunnah or the Sunnah the Qur'ān. As related earlier, he considers it possible for the Qur'ān to replace an earlier ruling from the Prophet, such as praying toward Mecca (the Qur'ānic command) instead of Jerusalem (the prophetic command; 413f.). Here is implicit the abrogation of the Sunnah by the Qur'ān. On the other hand, Muḥāsibī adduces an abrogated verse of the Qur'ān, *āyat al-rajm*, to explain the stoning penalty for adultery, confirmed by the prophetic Sunnah (398). Here is a hint of Shāfi'ī's doctrine that the Qur'ān may not call for something other than the Prophet's practice without there being a sunnaic confirmation (*Risālah*, ¶ 324).

Like Shāfi'ī, Ibn Qutaybah does clearly address the question of abrogation as between Qur'ān and Sunnah. *Contra* Shāfi'ī, Ibn Qutaybah states expressly that the Sunnah may abrogate the Qur'ān

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See also *Umm* 6:143, where Shāfi'ī justifies stoning by appeal to 'Umar's example but does not mention *āyat al-rajm*; *K. Siyar al-awzā'i* at *Umm* 7:322, l. 5 from bottom, where Shāfi'ī quotes the Qur'ānic call for whipping, Q.24.2, then says that the Prophet laid down (*sanna*) stoning for the *thayyib*, without explaining whether by particularity, abrogation of the Qur'ān by the Sunnah, or confirmation of an unnamed, abrogating Qur'ānic verse; also *Ikhilāf al-ḥadīth* in margin of *Umm* 7:50, where he contrasts the Prophet's practice of stoning with the Qur'ānic call for whipping. Altogether, the theory of the *Risālah* is capable of harmonizing these various approaches, but they remain troublingly unharmonized as presented.

<sup>36</sup> Ibn al-Ṣalāh al-Shahrazūrī, *Ṭabaqāt al-fuqahā' al-shāfi'iyah*, ed. al-Nawawī, al-Mizzī, and Muḥyī al-Dīn 'Alī Najīb, 2 vols. (Beirut: Dār al-Bashā'ir al-Islāmīyah, 1413/1992), 2:553.

<sup>37</sup> *Contra* Burton, "Introductory Essay", *Abū 'Ubayd*, 25: "He accepts without demur that this is one ascertained instance of the *naskh* of the Qur'ān by the Sunna". Abū 'Ubayd certainly states that the source of the stoning penalty is the Sunnah, but whether it is an instance of abrogation, clarification, or something else he does not state.

(N195, L217). His formula is that the Sunnah determines the import of the Qur'ān, not the Qur'ān the Sunnah (*al-sunnah qāḍiyah 'alā al-qur'ān . . .*), an expression that Juynboll attributes to the traditionalist al-Dārimī (d. 255/869).<sup>38</sup> Although he also mentions *āyat al-rajm* (N313f., L346), Ibn Qutaybah plainly regards the Sunnah alone as an adequate basis for the stoning penalty (N93f., 192f., L106, 213).

*Exception as opposed to abrogation.* Abū 'Ubayd alone considers a simple exception to constitute abrogation; for example, in Q.2.229, *wa-lā yahillu lakum an ta'khudhū mim mā ataytumuhunna shay'an illā an yakhāfā allā yuqimā ḥudūda 'llāh* (B38, M113), where the phrase introduced by *illā* ("except that they two fear . . .") is said to abrogate the prohibition that immediately precedes it ("it is not licit to take anything you have given them", i.e. wives being divorced).<sup>39</sup> Shāfi'ī and Ibn Qutaybah never broach the issue. Muḥāsibī clearly distinguishes between exception and abrogation (see esp. 466).

*Abrogation of reports as opposed to ordinances.* Early Muslim theologians discussed *badā'*, effectively whether God may change his mind about what should happen. The doctrine was especially prominent among the Shī'ah, who had to explain why definite prophecies of success for their movement had failed, some of whom also why the predicted order of Imams should change.<sup>40</sup> The classic Sunni position, attributed to the earliest stratum of Qur'ān commentators, was that God may abrogate Qur'ānic ordinances but never reports of what had happened or will happen.<sup>41</sup>

Shāfi'ī, again, defines abrogation as the suppression of one obligation (*farḍ*) in favor of another (¶ 361). Therefore, he never con-

<sup>38</sup> Ibn Qutaybah, *Mukhtalif*, ed. Najjār, 199; trans. Lecomte, 222. G. H. A. Juynboll, "An Excursus on the *ahl as-sunnah* in Connection with Van Ess, *Theologie und Gesellschaft*, vol. IV", *Der Islam* 75 (1998):323. See al-Dārimī, *al-Sunan*, Introduction, § 49 (48 according to Wensinck's reckoning). An admitted complication, calling for further study, is that the same principle (*al-sunnah qāḍiyah 'alā al-Kitāb*) was quoted as a ḥadīth report (without *isnād*) to Ahmad ibn Hanbal (d. 241/855) and rejected by him according to Abū Dāwūd, *K. Masā'il al-imām Ahmad*, ed. Muḥammad Bahjah al-Bayṭār (Cairo: Dār al-Manār, 1353/1934, repr. Beirut: Muḥammad Amīn Damj, n.d.), 276.

<sup>39</sup> Abū 'Ubayd quotes a slightly shorter version of the verse, perhaps by memory, than in any of the later ten readings. There is another example of exception as abrogation ("except for those you own") on the same page.

<sup>40</sup> See *Encyclopaedia of Islam*, s.v. "Badā'", by I. Goldziher and A. S. Tritton.

<sup>41</sup> E.g., Ibn Salāmah, *al-Nāsikh wa-al-mansūkh* (Cairo: Muṣṭafā al-Bābī al-Halabī, 1379/1960, repr. 1387/1967), 8, naming Mujāhid (d. early 100's/720–23), Sa'īd ibn Jubayr (d. 95/713–14), and 'Ikrimah ibn 'Ammār (d. bef. 160/777).

siders the possibility that God might abrogate a report. Abū 'Ubayd likewise pays no attention to the distinction between reports and commands. For example, he states of Q.24.3, *al-zānī lā yankīhu illā zāniyah aw mushrikah*, that it is abrogated by 24.32, *wa-ankīhu al-ayāmā minkum* (B34, M100). He is not bothered to explain that the imperfect form might be taken as a prohibition, although al-Ḍaḥḥāk ibn Muzāḥim (d. after 100/718–19) would later be quoted as saying expressly that reports implying commands, such as this very verse, might be subject to abrogation.<sup>42</sup>

Muḥāsibī argues at length that abrogation cannot apply to God's praises, characters, and names (*madḥ, ṣifāt, asmā'*), on the one hand, or to reports (*akhbār*) on the other (332–63). I might not have noticed the issue but for his long exposition. The abrogation of a character would suggest that the first had been imperfect, which cannot be (332). The abrogation of a report would suggest that it had been untrue, whereas God is above lying (332f.), or that God had not known what was going to happen, whereas God is omniscient (338–41). Some of *ahl al-sunnah* had admitted such a thing, but only, says Muḥāsibī, from lack of thinking deeply about what their admission implied (356). Muḥāsibī is also concerned to avoid the suggestion that God may change his mind, an idea he attributes to both *ahl al-bida'* and some who claim the Sunnah. *Ahl al-bida'* were apparently concerned to preserve God's transcendence of the creation, *ahl al-sunnah* overzealous to assert God's control over events, whether for good or evil (341–44).

Muḥāsibī finally tells us positively that what may come under abrogation is limited to ordinances, mainly commands, prohibitions, and worldly punishments (*aḥkām fī al-amr wa-al-nahy wa-al-ḥudūd*). Here, abrogation indicates no change of mind inasmuch as God very much wants whatever action he calls for before abrogating his call. For example, God did not change his mind as to whether the Muslims should fight the unbelievers, rather wanted them to keep the peace up to a certain point and to fight them after it (359–61).

Ibn Qutaybah mentions in passing that abrogation applies only to commands and prohibitions (*al-amr wa-al-nahy*; N90, L102).<sup>43</sup> It seems to have been a settled question by his day.

<sup>42</sup> Ibn Salāmah, *Nāsikh*, 8.

<sup>43</sup> Lecomte suggests that Ibn Qutaybah's distinction is between law and ethics, *al-amr wa-al-nahy* indicating the latter (L102fn). Since Ibn Qutaybah expressly connects

*Enumeration of varieties of abrogation.* Shāfi'ī offers one definition of abrogation, to which he sticks. He offers two possible modes of abrogation, of Qur'ān by Qur'ān and Sunnah by Sunnah (¶¶ 106–13). Implicitly, he recognizes the suppression of an ordinance while its wording remains. To the suppression of both words and ordinance he pays no attention.<sup>44</sup>

In his introduction, Abū 'Ubayd lists two varieties of abrogation, the suppression of a Qur'ānic ordinance while its wording remains and the suppression of both verse and ordinance, sometimes to be remembered but not recited, sometimes to be neither remembered nor recited (B5f, M14). Like Shāfi'ī, he does not recognize the suppression of a Qur'ānic verse with the preservation of the ordinance it once imposed.

Muḥāsibī devotes most of his chapter on abrogation to a complex list of fifteen varieties, mostly but not entirely distinguished from one another by the way in which they give rise to different rules in the law; for example, as related earlier, the disputed case where some say one verse has abrogated another but others say no (415f.).

Like Shāfi'ī, Ibn Qutaybah offers no express enumeration of the varieties of abrogation. The abrogation of Qur'ānic ordinances by either Qur'ān or Sunnah is all he needs to address, for abrogation by the Sunnah obviates resort to the suppression of wording but not ordinance (to account for stoning), while suppression of both wording and ordinance can give rise to no evident contradiction, the occasion of *Mukhtalif*. He is not averse to enumeration, though, offering a typology of the Sunnah that addresses the difficulty that some of the Prophet's sayings sound inspired, others casual or even uncertain (N194–200, L217–22).

*Relation between the given enumeration and given instances of abrogation.* Shāfi'ī's command of his evidence is excellent except, as noted, concerning the penalty for stoning. Ibn Qutaybah's is equally good.

Abū 'Ubayd's brief enumeration of the varieties of abrogation (two) badly fails to comprehend all the varieties he then brings up as actual examples. Among other things, the object of abrogation is sometimes nothing more than the misunderstanding of the Companions, as

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*al-amr wa-al-nahy* with liability to abrogation, though, it makes more sense to me to interpret Ibn Qutaybah's distinction as between ordinances that may be abrogated as opposed to reports and predictions that may not.

<sup>44</sup> Similarly, Burton, *Sources*, 203f.

related earlier; abrogation may take the form of a verse's becoming effective in a different way in different circumstances (e.g., when to command and prohibit, B98–102, M286–94); and there are expressly three varieties (*anwāʿ*) of abrogation concerning marriage, prohibition being abrogated by permission, permission being abrogated by prohibition (e.g., *mufah*), and the disputed case (B24, M73), a distinction he mentions with regard to no other subject.

Muḥāsibī proposes fifteen categories of abrogation, not just two, and he is much more successful than Abū ʿUbayd at controlling his evidence. Some still eludes his grasp, though. One instance has been mentioned already, a change of procedure in the call to prayer that was first abrogated by a Companion's vision (415). Also, a few of his proposed categories overlap. The thirteenth category is the simple case in which the community is agreed on the abrogation of one verse by another (450). It seems unclear how this differs from Muḥāsibī's second, where the ordinance of one verse supersedes the ordinance of the other. Indeed, two of his examples are also treated under other categories: Q.22.39, said to abrogate commands to be patient in the face of assault (404, 450), and the stoning verse (398f., 455). Perhaps Muḥāsibī considered these cases to rest more securely on consensus than on the plain meaning of the Qur'ān.

### *Conclusion*

The Islamic sciences took their classical form over the course of the ninth century. The classic doctrine of Qur'ānic abrogation in particular turned out to be close to what Shāfi'ī makes explicit and Ibn Qutaybah tends to assume.<sup>45</sup> Abū ʿUbayd often hints at later developments, but his own presentation is usually quite crude. Muḥāsibī's analysis is a good deal more sophisticated; however, some of his formulations are only provisional compared with Shāfi'ī's and Ibn Qutaybah's, while some of his concerns would scarcely survive the century, such as the distinction between exception and abrogation.

A number of scholars have observed that the *Risālah*'s theory of sources had little evident influence in the ninth century. Therefore,

<sup>45</sup> See Burton, *Sources*; Ibn Salāmah, *Nāsikh*; and al-Naḥḥās, *al-Nāsikh wa-al-man-sūkh*, ed. Sulaymān ibn Ibrāhīm ibn ʿAbd Allāh al-Lāḥim, 3 vols. (Beirut: Mu'assasat al-Risālah, 1412/1991).

the reader will not be surprised at my adding Abū ‘Ubayd, Muḥāsibī, and Ibn Qutaybah to the list of those who apparently ignored the *Risālah*. Apart from his never mentioning Shāfi‘ī, Abū ‘Ubayd would have to have been dull-witted indeed to have read so masterly a presentation of abrogation as that of the *Risālah* and then gone on to write so crude and clumsy a one as *Nāsikh*; however, there is no hint in the biographical literature that Abū ‘Ubayd was dull-witted, so it seems indisputable that Abū ‘Ubayd had never read the *Risālah*. Muḥāsibī’s discussion of abrogation is far better ordered than Abū ‘Ubayd’s, but he, too, shows no consciousness of Shāfi‘ī’s definitions where he certainly should have noticed them had he ever read the *Risālah*; for example, at the problem of abrogation as between Qur’ān and Sunnah. Ibn Qutaybah also shows no sign of knowing the *Risālah*, although the way he frames the essential problems, such as abrogation as between Qur’ān and Sunnah, seems close to Shāfi‘ī’s, anyway.

To be sure, Shāfi‘ī is said to have written the *Risālah* and the other surviving works of his in Egypt, whereas Abū ‘Ubayd and the rest worked in Baghdad. However, Shāfi‘ī is said to have last visited Baghdad just six years before his death. It is incredible that he should have sounded like any other man of his time when there, then in the last six years of his life produced the *Risālah* and the rest seventy-five years ahead of their time. Moreover, Bayhaqī expressly reports that the *Risālah* was known in Baghdad.<sup>46</sup> At the least, the later biographical tradition is almost impossible to square with the evidence of ninth-century jurisprudence.

Wael Hallaq has conservatively proposed that ninth-century jurists ignored the *Risālah* because it was too far ahead of its time in proposing a compromise stance between *ra’y* and *ḥadīth*; that is, its restriction of the evidence of God’s will to Qur’ān and *ḥadīth* while allowing reason considerable play in interpreting that evidence.<sup>47</sup> Apparently, its treatment of abrogation was likewise too far ahead of its time for Abū ‘Ubayd and Muḥāsibī to think it worth their reading. At only one point does Shāfi‘ī in the *Risālah* sound like Abū ‘Ubayd, mainly in ignoring the distinction between reports and ordinances, expounded at length by Muḥāsibī and referred to incident-

<sup>46</sup> Bayhaqī, *Manāqib* 1:225, by which Aḥmad ibn Ḥanbal’s effects included both Iraqi and Egyptian versions.

<sup>47</sup> Hallaq, *History*, 31f., 34.

tally by Ibn Qutaybah. Either the *Risālah* was written when tradition says, before reports and ordinances became an issue, or it was written much later, after polemist like Muḥāsibī had settled the issue. Everywhere else, Shāfi'ī's approach belongs alongside Ibn Qutaybah's, not before Abū 'Ubayd's and Muḥāsibī's. In his understanding of abrogation itself strictly as the suppression of an ordinance, Shāfi'ī is close to Ibn Qutaybah in the later ninth century; likewise in his understanding of the authority of the Qur'ān and Sunnah, respectively, as equally inspired. In enumerating a mere two varieties of abrogation, Shāfi'ī appears more like Abū 'Ubayd than Muḥāsibī, who lists fifteen; however, his control over the evidence is hugely better than Abū 'Ubayd's, so again he comes closest in style to Ibn Qutaybah, who likewise deals with only two varieties and sticks to them.

One objection to Hallaq's contention is that, far from being committed to either *ra'y* or ḥadīth to the point of ignoring a work that tried to synthesize them, Abū 'Ubayd, Muḥāsibī, and Ibn Qutaybah were all advocates of precisely such a middle course as the *Risālah* takes. It is because of their middle position that Abū 'Ubayd and Muḥāsibī were disparaged by Aḥmad, leader of the traditionalist party, and retrospectively included in the Shāfi'ī school.<sup>48</sup> They of all scholars ought to have heeded the *Risālah*.

Norman Calder suggests that the *Risālah* had no discernible influence in the ninth century because it was not written by Shāfi'ī at all, rather by some follower (or circle of followers) using his name in the early tenth century. Although I would assign it to the last quarter of the ninth century rather than the first of the tenth, I do think redating the *Risālah* is the most economical way to account for its neglect. In other respects than abrogation, as well, the *Risālah* looks contemporary with the *Mukhtalif* of Ibn Qutaybah, not fifty years earlier. As noted before, both the *Risālah* and the *Mukhtalif* of Ibn Qutaybah argue against persons who would be guided by the Qur'ān alone, throwing out ḥadīth-based rules. Perhaps fifteen years before,

<sup>48</sup> For Aḥmad's disparagement of Abū 'Ubayd, see Ibn Abī Ya'la, *Ṭabaqāt* 1:57. For disparagement of Muḥāsibī, see al-Khaṭīb al-Baghdādī, *Tārīkh* 8:215f.; Ibn Abī Ya'la, *Ṭabaqāt* 1:62f., 233f.; al-Dhahabī, *Tārīkh al-islām*, ed. 'Umar 'Abd al-Salām Tadmūrī, 65 vols. to date (Beirut: Dār al-Kitāb al-'Arabī), 18 (A.H. 241–50):209f. For inclusion in the Shāfi'ī school, see 'Abbādī, *Ṭabaqāt*, 37 (Abū 'Ubayd), 27f. (Muḥāsibī); also Subkī, *Ṭabaqāt* 2:153–60 (Abū 'Ubayd), 2:275–84 (Muḥāsibī).

in *Mushkil ta'wīl al-qur'ān*, Ibn Qutaybah had argued rather against persons who would apparently dismiss the Qur'ān itself. It makes better sense to suppose that the controversy over priority of Qur'ān and ḥadīth arose at about the time of the *Mukhtalif* (also the *Sunan* of Dārimī, which quotes the same ḥadīth report as the *Risālah*)<sup>49</sup> than to suppose that that it arose in the early ninth century in Shāfi'ī's lifetime, disappeared for fifty years, then re-emerged. The Shu'ūbī controversy is plainly behind the long section of the *Risālah* indignantly urging that the Qur'ān was sent to the Arabs entirely in their language (¶¶ 127–76). Regularly, the earliest philologist quoted against the notion that the Qur'ān includes loan words was Shāfi'ī's contemporary Abū 'Ubaydah (d. ca. 210/825–26). His argument is primitive, quoting *bi-lisān 'arabī mubīn* (Q.26.195) and urging that it was mere coincidence that Arabic, Persian, and Aramaic should have words identical in form and sense. Abū 'Ubayd accepted that there were loan words in the Qur'ān but held that they must have been introduced and Arabicized long before the revelation. Ibn Qutaybah was of course a major proponent of Arabic *adab* but fairly tolerant of non-Arab pretensions. Shāfi'ī's polemic is far more sustained than Abū 'Ubaydah's, and should be from Ibn Qutaybah's time or later, not two generations before.<sup>50</sup>

Shāfi'ī's working definition of "Sunnah" is likewise close to Ibn Qutaybah's. Following Schacht, I once took the *Risālah* to argue for the authority of prophetic ḥadīth as opposed to the opinions of Companions, later jurists, and local traditions. In Shāfi'ī's own time (that is, the early ninth century), the category "ḥadīth" normally

<sup>49</sup> "There will come a time when a man will lean on his couch (*arīkah*), relating my words (*ḥadīth*), and will say, 'Between us and you is the Book of God. Whatever we have found it to permit, we have considered it permissible. Whatever we have found it to forbid, we have considered forbidden. Is not what the Messenger of God has forbidden like what God has?' " Dārimī, *Sunan*, Introduction, § 49 (48 according to Wensinck's reckoning); Shāfi'ī, *Risālah*, ¶ 295; also idem, *Bayān farā'id allāh*, *Umm* 7:264, ll. 13–15, 265, ll. 5–8. Quoted from Ibn Mājah and pointed out in the *Risālah* by Burton, *Sources*, 24f.

<sup>50</sup> On Abū 'Ubaydah himself, see *Encyclopaedia of Islam*, new edn., s.v. "Abū 'Ubaydah", by H. A. R. Gibb. On the question of loan words in the Qur'ān, see Abū 'Ubaydah, *Majāz al-qur'ān*, ed. Muḥammad Fu'ād Saẓgīn, 2 vols. (Cairo: Muḥammad Sāmī Amīn al-Khānjī, 1374, 1381/1954, 1962), 1:8, 17f.; al-Suyūfī, *al-Muzḥir fī 'ulūm al-lughah wa-anwā'ihā*, ed. Muḥammad Aḥmad Jād al-Mawlā, 'Alī Muḥammad al-Bijāwī, and Muḥammad Abū al-Faḍl Ibrāhīm, 2 vols. (Cairo: 'Isā al-Bābī al-Ḥalabī, n.d.), 1:266–68; L. Kopf, "Religious Influences on Medieval Arabic Philology", *Studia Islamica*, no. 5 (1956), 33–59, esp. 40–45.

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

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

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

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

<sup>53</sup> Hallaq, "Was Shafi'i?" 594f.