

## Early Islamic Legal Theory: The *Risāla* of Muḥammad ibn Idrīs al-Shāfi'ī: A Book Review

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### Introduction

Joseph E. Lowry is the Associate Professor of Arabic and Islamic Studies in the Department of Near Eastern Languages and Civilizations at the University of Pennsylvania. His research focuses on Islamic law, Arabic literature, and classical Islamic thought.<sup>1</sup> His books include *The Epistle on Legal Theory*<sup>2</sup> and *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfi'ī*.<sup>3</sup> Being a specialist in Arabic literature, he employs linguistic techniques to appreciate the structures of Divine reasoning, as identified by al-Shāfi'ī. Lowry has attempted to bring a new holistic interpretation of the *al-Risāla* to complement the existing research, which, according to him, portrays a reduced picture of the work. His book, therefore, is an endeavour to add a perspective thoroughly focused on the understanding of the substance envisaged in the *al-Risāla*. In contrast to this, the previous studies have either focused on the assertion of al-Shāfi'ī that while deriving Islamic law, Hadith is to be considered on equal footing with the Qur'ān or on the elaboration of the hierarchy of sources of Islamic law, i.e., the Qur'ān, *Sunna* and *Qiyas*.

### Overview of Early Islamic Legal Theory: The *Risāla* of Muḥammad ibn Idrīs al-Shāfi'ī

In the past, the *al-Risāla* has been celebrated for its significance in relation to the controversy surrounding the legal authority that emerged in the late 8<sup>th</sup> century.<sup>4</sup> Previously, it was considered a prototype of Islamic legal theory which was, to some extent, misleadingly understood as a theorization “consisting of a hierarchy of four sources of law that were ‘mined’ in descending order for apposite rules: the Qur'ān, Prophetic Hadith reports, consensus of the Muslim community, and the legal interpretation using analogy.”<sup>5</sup> The previous studies failed to take into account the entire perspective: they either focused on the influence that the *al-Risāla* had on Islamic legal thought or on the apparent contradiction between the primary sources of Islamic law (i.e., the Qur'ān and *Sunna*). While drawing conclusions regarding the authority of law and the ranking of sources discussed by al-Shāfi'ī, the writer looked at examples of individual problems with an atomistic approach.

Amidst this trend of scholarship on the *al-Risāla*, Lowry, through his meta-theoretical analysis, presents the work as a unified system of reasoning. He focuses on the portrayal of the law as a highly dense structure, which is organised around the defined interactions of the Qur'ān and *Sunna*. Through his identified harmonious interaction, Lowry forms an all-encompassing hermeneutical technique that traces the divine architecture of Islamic law. To substantiate this, he delves further into the analysis and interpretation of the text of *al-Risāla*. He does not rely

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<sup>1</sup> Joseph E. Lowry | Department of Religious Studies <[https://www.sas.upenn.edu/religious\\_studies/faculty/lowry](https://www.sas.upenn.edu/religious_studies/faculty/lowry)> accessed 5 August 2018.

<sup>2</sup> Joseph E. Lowry (tr) *The Epistle on Legal Theory* (NYU Press 2015). This book presents the translation of al-Shāfi'ī's *Risāla* from Arabic to English.

<sup>3</sup> Joseph E. Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfi'ī* (Brill 2007).

<sup>4</sup> Ibid, 1.

<sup>5</sup> Joseph E. Lowry (tr.) *The Epistle on Legal Theory* (NYU Press 2015), xxv.

much on the commentaries and the translations as he believes they are ensnared by the presuppositions of the ‘four source’ interpretation of *al-Risāla*.<sup>6</sup>

In Chapter 1, Lowry addresses the misconception of Western scholarship with regards to al-Shāfi‘ī’s notion of *bayān*, which has been referred to as the way God used revealed texts to communicate laws to humankind. Lowry identifies that most of the preceding scholars, including L. I. Graf, Majid Khadduri, Mohammed Arkoun, and Ahmad Hasan have correctly identified the five modes of *bayān*.<sup>7</sup> However, all of these authors lack an account for the significance and link of the conception of *bayān* with the whole legal theory provided in *al-Risāla*.<sup>8</sup> Graf does not provide any account of the significance of *bayān* in the larger context of al-Shāfi‘ī’s legal thought. He fails to consider the purpose of al-Shāfi‘ī’s explanation of the modes of source interaction.<sup>9</sup> Khadduri, also, does not provide a comprehensive description of the concept of *bayān*.<sup>10</sup> Rather, he synthesises the idea implicit in Graf’s study that, “*Bayān* is specially connected in some way with the Qur’ān”,<sup>11</sup> and considers the notion of *bayān* as “an introduction to a fuller treatment of the Qur’ān, from a judicial viewpoint.”<sup>12</sup> Moreover, the analysis in all these studies assumes the premise that *al-Risāla* articulates a theory of four sources of law.<sup>13</sup> Against this prevalent notion, Lowry argues that the concept of *bayān* is linked to the whole idea of *al-Risāla*, and the premise pertaining to four sources of law completely overlooks its significance with regards to the interaction between the Qur’ān and the *Sunna*.<sup>14</sup> Furthermore, Lowry considers it to be the broader framework rather than just limited to the Qur’ān, which facilitates, reflects and organises the interaction among the sources of law to harmonise the apparent contradiction among them.

Lowry explores the principles of textual interpretations that are applied to the Qur’ān and Prophetic traditions. He further examines the techniques for harmonising contradictory precedents, legal epistemology, rules of inference, and the discussions of when legal interpretation is required, as envisaged in *al-Risāla*.<sup>15</sup> The author illustrates his theoretical claims with numerous examples drawn from nearly all areas of Islamic law, including ritual law, commercial law, tort law, and criminal law.

Chapter 2, thus, provides hermeneutical techniques and legal reasoning of al-Shāfi‘ī, which Lowry employs in order to understand the derivation of Islamic law from the revealed texts. He attempts to harmonise all three sources of Islamic law: the Qur’ān, *Sunna* and *Qiyas*. He takes the seeming contradiction in the revealed sources, as a complexity that signifies a divine plan, to express the law through a combination of revealed texts. In this chapter, the author appreciates al-Shāfi‘ī’s techniques to bring about a coherent picture of Islamic law that not only deals with a variety of problems, but also creates such a harmonious format that is in

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<sup>6</sup> (n 3) 19.

<sup>7</sup> Ibid, 46-51.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid, 46.

<sup>10</sup> Ibid, 47.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, 46-48.

<sup>14</sup> Ibid, 12-13 & 46-51.

<sup>15</sup> Ibid, 61-117.

line with the conception of *bayān*. He identifies a unified system of reasoning from *al-Risāla* consisting of six hermeneutical rubrics divided into three groups.<sup>16</sup> The first group of hermeneutical rubrics consists of *amm* and *khass*, *jumla:nass*, and abrogation or *naskh*, which primarily focuses on the source interaction. The second group comprises *ikhtilaf al-hadith* (apparently contradictory Hadith texts) and *nahy* (prohibitions uttered by the Prophet), which concern *Sunna* as a stand-alone source of law. The third group consists of *ijtihad/qiyas*, which guide in situations “where no source appears to contain an apposite passage.”<sup>17</sup> The organisation of these groups containing the hermeneutical rubrics corresponds to the schema of modes of source interaction provided in the *bayān*.<sup>18</sup>

After providing the tools and system of reasoning in the first two chapters, in the following two chapters, Lowry investigates al-Shāfi'ī's treatment of *Sunna* and Qur'ān from a judicial point of view.

Chapter 3 of the book presents al-Shāfi'ī's case for *Sunna* to be treated as a source of Islamic law coequal to the Qur'ān, and argues for its inclusion as an exclusive legislative supplement to the Qur'ān. This chapter responds to the problems that made al-Shāfi'ī define the boundaries of extra-Qur'ānic materials, and also provides a credible justification for the use of such materials. This aspect of *al-Risāla* has been a subject of scholarly debates for a long time. It has also been celebrated as one of the achievements of this foundational piece of Islamic Jurisprudence.

Chapter 4 investigates al-Shāfi'ī's treatment of the Qur'ān as the legislative source. With the inclusion of *Sunna*, al-Shāfi'ī provides a framework that defines the boundaries of all the primary sources of law so that they may present a coherent view of the Divine Law. Al-Shāfi'ī assigns almost equal legislative roles to both sources of law. However, by discussing the problems of individuals, it appears that in his perspective, the *Sunna* has to be taken into consideration in order to interpret the Qur'ān in a detailed form.

In Chapter 5, after drawing the boundaries of the legislative roles of both the primary sources of Islamic law, Lowry attempts to extract a coherent view of al-Shāfi'ī's legal epistemology. In the context of the debates pertaining to the contradiction in Islamic legal knowledge, al-Shāfi'ī's *al-Risāla* provides the solution to this issue. In this chapter, Lowry sheds light on al-Shāfi'ī's assertion for the need of a class of experts who are well versed in the knowledge of the Qur'ān, *Sunna*, and *usul-al-fiqh*. Through this restriction over the class of interpreters, it can reasonably be deduced that al-Shāfi'ī attempted to bring some consistency and predictability in the Islamic legal framework. As per Lowry, this is “a tactic for circumscribing structural subjectivity and uncertainty in a divine law.”<sup>19</sup> However, al-Shāfi'ī's claim that law should be a text that is fundamentally accessible to all for interpretation incorporates the diverse needs of the people and preserves the universal and dynamic character of the Islamic law. Lowry, after this comprehensive interpretation, raises a question, which he claims to have been missed by al-Shāfi'ī: “If the experts sometimes do not know that they do not know the law, then

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<sup>16</sup> Ibid, 61.

<sup>17</sup> Ibid, 62.

<sup>18</sup> Ibid, 118.

<sup>19</sup> Ibid, 272.

how do they ever know that they know it?"<sup>20</sup> By positing this question, he anticipates that al-Shāfi'ī would have suggested that the experts must remain in contact with each other and continue sharing their knowledge, so that they may respond to the issues that come to them in an optimum manner.<sup>21</sup>

In Chapter 6, Lowry investigates the polemical context in which *al-Risāla* was written and attempts to identify the evidence and its response. Firstly, he identifies the groups that were named in the *al-Risāla* and then traces the way al-Shāfi'ī invokes the vocabulary of contemporaneous theological debate.<sup>22</sup> In the first part, Lowry notes that al-Shāfi'ī recognised the class of scholars (*ahl-al-ilm*), and also acknowledged *ahl al-ilm bi'l-lisan* (language), *ahl al-ilm bi'l-maghazi* (the Prophet's military exploits), and *ahl al-ilm bi'l-Qur'ān*. Al-Shāfi'ī assigns *ahl-al-ilm* with the strenuous task of exercising *ijtihad* while connecting their answer to revelations. He then moves on to those who are well versed in the legal theory (*ahl al-fiqh*), and certain other such groups such as the *al-khassa* (the specialist) and the *muhaddithun* (Hadith specialists). In contrast to these groups, al-Shāfi'ī refers to those who do not belong to the *ahl al-ilm*, and implicitly categorises the *ahl al-uqul* (the people of intellects), as those who give priority to reason over revelation. Al-Shāfi'ī does not appear to vest trust in 'the people of intellects' because they excessively exercise *istihsan*, leading to arbitrariness in their judgment. Here, Lowry, through his translation of a passage of *al-Risāla*, asserts that some of the 'people of intellects' may also be a part of *ahl al-ilm* and there is no fine line dividing them.<sup>23</sup> Keeping his version of translation and the preceding text of *al-Risāla*, Lowry deduces that, "Shāfi'ī means to oppose the *ahl al-ilm* to the *ahl al-uqul* generally, even though the other possibility cannot be completely excluded."<sup>24</sup>

In the last chapter, Lowry explains al-Shāfi'ī's notion of *ijmā'*. He finds that al-Shāfi'ī considered *ijmā'* to be an important tool to supplement the interpretation of the Qur'ān and *Sunna*. Al-Shāfi'ī maintains it to be the consensus between the scholars (*ahl al-ilm*) and the specialists (*al-khassas*). Therefore, this notion can be employed where there is a difficulty in the interpretation of the revealed texts, but it has to be based on an authority. After such a thorough analysis and reassessment of al-Shāfi'ī's *al-Risāla*, Lowry concludes, with some general observations regarding the notion of *bayān*, by summarising the legislative roles of the Qur'ān and *Sunna*, and the hermeneutic techniques, to harmonise them along with the relationship between *al-Risāla* and *usul al-fiqh* that he describes.

## **Analysis**

There are multiple aspects of this book that make it a scholarly piece. The book creates its own value in proving the relevance of *al-Risāla* in the contemporary world. These aspects include the structure, analytical framework, and its treatment of other scholarly works.

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<sup>20</sup> Ibid, 274.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, 275.

<sup>23</sup> Ibid. 291.

<sup>24</sup> Ibid.

Lowry's effort to present the case of *al-Risāla* in its comprehensive form has made it easier to understand the complex subject matter that is envisaged in this foundational document of Islamic jurisprudence. The structure and organisation of this book adds more to its accessibility; the arguments are well-structured and presented in a clear, concise and coherent manner. In addition to this, the book showed a clear progression of ideas based on substantial supporting evidence from the texts under discussion. He reflects a unity of thought in his thesis, and does not deviate from the central theme presented in the introduction of the book. Importantly, he has identified a largely neglected purpose of al-Shāfi'ī's *al-Risāla* in order "to discover and portray the divine law's architectonics and to demonstrate the validity of that portrayal through deployment of specific hermeneutical techniques in numerous carefully reasoned, discrete legal problems that... [aids to] bring order to a set of texts that... appeared difficult to reconcile."<sup>25</sup>

Lowry has provided a broadened theoretical framework and focuses on creating a gray area between scholarly works, rather than categorising them in black and white. Such a framework is well complemented by the extensive examination of the past scholarship on *al-Risāla*, and the identifications of their achievements and limitations. His text-oriented approach throughout the book is commendable, because it adds more credibility to the analysis. Furthermore, through such an approach, he has avoided imposition of his work over the past scholarship; rather it facilitates him to analyse them in the form that they appear to exist in. Lowry addresses the tendencies in the previous work that characterise the *al-Risāla* into prevalent categories, such as "pro-traditionalist" or "anti-rationalist". Lowry's book, based on a thorough research of the existing scholarship, attempts to relieve the reduced significance of *al-Risāla* from the defined prevalent categories.

Through such an approach, Lowry's (re)interpretation of *al-Risāla* – being dynamic in nature – makes it more relevant in this day and age. The new perspective brought by Lowry asks questions that are prevalent in contemporary public discussions. These discussions include, for instance, the question of contradictions in the revealed text of the Qur'ān, between the Qur'ān and *Sunna* and the concept of *jihād*. Similarly, questions related to the authority of *Sunna* from a juridical perspective, and the role of experts in the derivation of Islamic law, are also topics of debate in the contemporary world. In this regard, Lowry's book is a commendable effort, which addresses such queries in a scholarly manner. He identifies the diversity of meanings within a text, and appreciates other meanings that have already been identified.

Lowry's reinterpretation reflects a widening gap between Arab and Western scholarship on *al-Risāla*.<sup>26</sup> Although, the author mentions six studies on the epistle in Arabic, he does not discuss them substantively in his analysis.<sup>27</sup> This shows that the Lowry's study of *al-Risāla* is limited to the Western studies and does not really look at the Arabic work. Therefore, it lacks a comprehensive and broadened view on *al-Risāla*. Consequently, it compromises his claim of

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<sup>25</sup> Ibid, 1.

<sup>26</sup> Muhammad Khalid Masud, "Classical" Islamic Legal Theory as Ideology – Nasr Abu Zayd's Study of al-Shafi'ī's *al-Risāla* in Léon Buskens and Annemarie van Sandwijk (eds), *Islamic Studies in the Twenty-First Century* (Amsterdam University Press 2016) 185.

<sup>27</sup> (n 3).

using a broadened framework for the study as it merely discusses the Western studies on *al-Risāla*.

This book sheds light on the work of *al-Risāla* by providing a detailed analysis. There remains, however, a doubt as to the nature of Lowry's claim as he does not appear to acknowledge the possibility of any other significant scholarly work on the *al-Risāla*. Consequently, if he claims that his findings of the *al-Risāla* are the only significant ones, then he would be no different from the scholars that he is criticising.

### **Conclusion**

*Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʿī*, through its hermeneutical analysis, offers an in-depth understanding of the most foundational text of Islamic Law, *al-Risāla*. It attempts to bring a new holistic interpretation *al-Risāla*, which broadens its relevance and importance from merely a system that presents hierarchy of sources to the system of hermeneutical techniques to understand the Divine reasoning in the most coherent form. It also presents a case for legislative value of *Sunna* and draws the boundaries for legislative role of both the primary sources of Islamic law: Qurʾān and *Sunna*. Although, the book does not substantively focus on the literature written on *al-Risāla* in Arabic or any other language, but it enables readers to comprehensively understand the discourse surrounding the epistle of Islamic legal theory in Western scholarship. By virtue of this, it allows the readers to engage with the different perspectives existing in the Western scholarship, and helps them look at *al-Risāla* without limiting them to any particular framework.