

Al-Shafi'i's Role in the Formulation of Islamic Law

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Abstract

Artikel ini coba membahaskan persoalan mengenai siapakah pengasas atau pelopor (pioneer) *usul al-fiqh* (the principles of Islamic jurisprudence). Ini disebabkan terdapat beberapa dakwaan dari beberapa pihak bahawa pengasas madhhab mereka adalah pengasas bidang tersebut. Jadi, adakah benar al-Shafi'i yang dikenali sebagai "master architect of jurisprudence" orang pertama yang mempelopori bidang *usul al-fiqh*. Ia juga membicarakan kesignifikanan kitab *al-Risalah* serta beberapa istilah yang digunakan dalam menghuraikan pencapaian al-Shafi'i dalam ilmu *usul al-fiqh*.

Al-Shafi'i and *Usul al-Fiqh*

It is widely claimed that al-Shafi'i was the first person to systematise *usul al-fiqh*.¹ However, this claim has been challenged by the Shi'ah and the followers of the Hanafi school of thought, who argued that scholars preceding al-Shafi'i had already dealt with the subject.

This needs proper investigation. One might suspect that the respective claimants were motivated by madhhab chauvinism.² For instance, the Shi'ah and the followers of the Hanafi madhhab claimed that their leaders were the founders and pioneers of *usul al-fiqh*. Al-Sayyid Hasan al-Sadr³ of the Shi'ah claimed that Muhammad al-Baqir (57-115H)⁴ and his son, Ja'far al-Sadiq (83-149H)⁵ laid the foundations of the science of *usul al-fiqh*. This was challenged by Muhammad Abu Zahrah⁶ in his *Usul al-Fiqh* who refuted the claim for lack of substantial evidence.⁷

As regards the Hanafi *madhhab*, Ahmad Hasan⁸ and Abu al-Wafa' al-Afghani⁹ claimed that prior to al-Shafi'i, Abu Yusuf (d. 182H)¹⁰ and Muhammad b. Hasan al-Shaybani, both disciples of Abu Hanifah, were already engaged in the science of *usul al-fiqh*. Al-Afghani said,

"the first man to write or compile (*sannafa*) the science of *usul al-fiqh* as far as we know was Abu Hanifah al-Nu'man. [For instance] he elucidates the methodologies of *istinbat* in his *Kitab al-Ra'y*. He was followed by his two disciples, Abu Yusuf Ya'qub b. Ibrahim al-Ansari and Muhammad b. Hasan al-Shaybani, then followed by Muhammad b. Idris al-Shafi'i".¹¹

In defending his theory, Ahmad Hasan refers to Ibn al-Nadim's *Fihrist*¹² in which the latter lists the books written by Abu Yusuf and al-Shaybani which were among the lists of books on *usul al-fiqh*. He further argues that the term *usul al-fiqh* had been used by Abu Yusuf in his criticism of the scholars of Syria for their ignorance of *usul al-fiqh*. According to Ahmad Hasan, the above reports indicate that scholars preceding al-Shafi'i and some other jurists had formulated the principles of law before him. Thus, the theory that al-Shafi'i was the first legal thinker who pioneered *usul al-fiqh* appears to be incorrect and this needs to be explained.

The term '*usul al-fiqh*' or '*usul*' before al-Shafi'i did not carry its present connotation¹³ nor had it acquired the technical meaning of the science dealing specifically with the sources of the law as defined by al-Shafi'i.¹⁴ For example, Ibn al-Nadim reports that Abu Yusuf was the author of works on *usul*. However, he immediately mentions that these books dealt with subjects such as prayer, fasting, sales and others.¹⁵ Similarly al-Shaybani is also alleged to have written books on *usul*,¹⁶ but they deal with prayer, alms tax and so on.¹⁷

Al-Shafi'i's Achievement in Formulating the Principles of Islamic Jurisprudence

Schacht,¹⁸ Coulson¹⁹ and others acknowledged that al-Shafi'i had contributed greatly to Islamic jurisprudence. They regarded him as "the father of Muslim jurisprudence" or "the master architect of jurisprudence". His contribution to jurisprudence has been compared by his biographers to the work of Aristotle on logic and to that of al-Khalil b. Ahmad on prosody (*'arud*).²⁰

However, in the opinion of Hallaq,²¹ *al-Risalah* was not the best work ever written on *usul al-fiqh*. There are reasons as to why he believes so. Firstly, there was no such work in *usul al-fiqh* proper in the ninth century following the death of al-Shafi'i. This means that there was a gap between the eighth and the tenth century. Hallaq argues that if *al-Risalah* was a very important book in *usul al-fiqh*, there should have been commentaries or even criticism from those who disagreed with al-Shafi'i's formulation. Apparently, he argues, commentaries of *al-Risalah* only appeared in the tenth century.

However, such an argument does not imply that the *al-Risalah* was unimportant. It most probably indicates that the work was not yet widely known, for Ibn Qutaybah in his *Ta'wil Mukhtalaf al-Hadith* mentioned al-Shafi'i only once. Besides, Abu 'Ubayd did not mention al-Shafi'i at all whereas his and Ibn Qutaybah's work were among the important ones produced after al-Shafi'i.

Norman Calder, in his *Studies in Early Muslim Jurisprudence* agrees with Hallaq's theory. He further adds that al-Shafi'i's achievement in *usul al-fiqh* was not unrecognised by Muslim authors but also had no tangible effects on juristic thought, perhaps before the beginning of the fourth century of Hijrah.²²

Terms *Ibda'*, *Wa'*, *Ta'sis* and *Ikhtira'* (Innovation, Pioneering, Founding and Inventional)

There is concern about the terms used to describe al-Shafi'i's contribution and his achievement in *usul al-fiqh*. He is always described as the founder and pioneer of *usul*

al-fiqh. Some scholars, like al-Buti²³ do not agree totally with the use of such terms for he deems them inaccurate and improper. Instead, he suggests terms like *tadwin*, *kitabah* and *tasni'*²⁴ (compilation, writing).

Al-Buti's suggestion arises because he claims al-Shafi'i was not the first to mention *usul al-fiqh*. He argues that the usage of the term *usul al-fiqh* had begun right from the early days of Islam. According to him, al-Zarkashi²⁵ reported that Ibn 'Abbas held to the principles of *'ulum* and *khusus*, while others held fast to *dalalat al-mafhum*. Moreover the *Hadith* of Mu'adh b. Jabal²⁶ was said to have explicitly indicated the hierarchical order of these arguments in Islam.²⁷

Before al-Shafi'i, scholars had already used *usul al-fiqh* to extrapolate rulings. However, they did not lay down the general rules (*qanun kulli*).²⁸ Thus, when people before Aristotle, Khalil b. Amad and al-Shafi'i²⁹ mentioned the subjects of deriving rulings, they were discussing them on the basis of ideas and thought rather than its mechanisms. So, to a certain extent, the criticisms advanced by al-Buti and others seem to be quite correct, but it was al-Shafi'i who systematised the science of *usul al-fiqh* and put it in written form, thus ensuring that specialists would not commit mistakes in deriving rulings (*istinbat*).³⁰

Notes

- 1 Ibn Khaldun, *Muqaddimah*. 1410H. Iran: Maba'at Amir, p. 455; J. Schacht, *The Origins of Muhammadan Jurisprudence*. pp. 56,77, 59, 79, 287, 315ff and passim; N.J. Coulson, *A History of Islamic Law*, pp. 60-1; Abu Zahrah, *al-Shafi'i*. p. 178; Majid Khadduri, *Islamic Jurisprudence Shafi'i's Risala*. pp. 40-1; Badran, Abu al-'Aynayn Badran, *Usul al-Fiqh al-Islami*. n.d. Iskandariyyah: Mu'assasat Shabab al-Jami'ah, p. 11; John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation*. p. 12; M. R. 'Uthman, "al-Imam al-Shafi'i Wadi' 'Ilm al-Usul", paper presented in *International Seminar on al-Shafi'i*, 13-15th. August 1990, Selangor Malaysia, pp. 32-3.
- 2 One exception to this is the opinion of a contemporary scholar Muhammad Abu Zahrah who, although a *Hanafi* follower, acknowledges al-Shafi'i's contribution and believes the latter should be credited with regard to *usul al-fiqh*. See M. R. 'Uthman, "al-Shafi'i Wadi' 'Ilm al-Usul", p. 41.
- 3 Muhammad Abu Zahrah, *Usul al-Fiqh*. p. 11. See also M. R. 'Uthman, "al-Shafi'i - Wadi' 'Ilm al-Usul al-Fiqh", p. 39.
- 4 Hashim Ma'ruf al-Hasani, *Sirat al-A'immah al-Ithna 'Ashar*. 1977. vol. II. Beirut: Dar al-Ta'aruf, p. 195.
- 5 Al-Hasani, p. 233.

- 6 Abu Zahrah, *Usul al-Fiqh*. p. 11.
- 7 For more information on Shi'is, see Heins Halm, *Shiism*. (Originally published in 1987 in German as *Die Schia* by Wissenschaftliche Buchgesellschaft, Darmstadt. Transl. by Janet Watson) 1991. Islamic Surveys Series, Edinburgh University Press; Moojan Momen, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism*. 1985. New Haven : Yale University Press, pp. 184-91 (under the title The Development of Shi'is *Usul al-Fiqh*).
- 8 Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. p. 179.
- 9 M. R. 'Uthman, "al-Shafi'i-Wadi' 'Ilm al-Usul", p. 36 cites Abu al-Wafa' al-Afghani in his *Introduction to Kitab Usul al-Sarakhsi*. vol.I. p. 3. Cf. aha Jabir al-'Alwani, "al-Shafi'i Jami' Shatat Usul al-Fiqh wa Wadi' Qawa'id Tadwinih", p. 16 cites *Miftah al-Sa'adah*. vol. II, p. 37 and al-Makki, *Manaqib al-Imam al-A'zam*. vol. II. p. 245.
- 10 Al-Suyuti, *Tabaqat al-Huffaz*. p. 122.
- 11 'Uthman, "al-Shafi'i Wadi' 'Ilm al-Usul", p. 36 cites al-Afghani, *Introduction to Kitab Usul al-Sarakhsi*. vol. I, p. 3.
- 12 Ibn al-Nadim, *al-Fihrist*. p. 288.
- 13 Wael B. Hallaq, "Was al-Shaf'i the Master Architect of Islamic Jurisprudence?", *IJMES* 25 (1993), pp. 588-589.
- 14 Majid Khadduri, *Islamic Jurisprudence Shafi'i's Risala*. p. 40-1.
- 15 Ibn al-Nadim, *al-Fihrist*. p. 286.
- 16 There are works of al-Shaybani that seem to have dealt with *usul al-fiqh*. They are *Kitab Ijtihad al-Ra'y*, *Kitab al-Istisan* and *Kitab Usul al-Fiqh*. See Ibn al-Nadim, *al-Fihrist*. p. 288.
- 17 Ibn al-Nadim, p. 287.
- 18 Schacht, *The Origins*. pp. 56, 59, 77, 79, 93, 134, 287, 314.
- 19 Coulson, *A History of Islamic Law*. pp. 53, 61.
- 20 Cf. Muhammad Abu Zahrah, *al-Shafi'i*, p. 179.
- 21 W. B. Hallaq, "Was al-Shafi'i the Master Architect of Islamic Jurisprudence", pp. 587ff.
- 22 Norman Calder, *Studies in Early Muslim Jurisprudence*. 1993. Oxford: Clarendon Press, p. 67.
- 23 Muhammad Sa'id Ramadan al-Buti, "Athar al-Shafi'i fi Manhaj al-Tafkir al-Islami - Qadiman wa Hadithan", paper presented in *International Seminar on al-Imam al-Shafi'i*, p. 2.

- 24 Hajji Khalifah in his *Kashf al-Zunun 'an Asma' al-Kutub wa al-Funun. 1943. Wakalah al-Ma'arif*, uses this term (*tasnif*) in describing al-Shafi'i's achievement in *usul al-fiqh*. It is also used by Badr al-Din al-Zarkashi in *al-Bahr al-Muhit* as cited by Manna' al-Qattan , *al-Tashri' wa al-Fiqh fi al-Islam Ta'rikhan wa Manhajan*. 6th ed., 1975. Beirut: Mu'assasat al-Risalah, pp. 306-7. While Ibn Khaldun, *al-Muqaddimah*, p. 455 uses word *kitabah* to describe it.
- 25 Al-Buti, p. 2, citing al-Zarkashi, *al-Bahr al-Muhit fi Usul al-Fiqh*. vol.I, p. 5.
- 26 The *Hadith* of Mu'adh b. Jabal is a well-known legal *Hadith* in the literature of Islamic jurisprudence. It lays down the guidelines for Muslims to derive rulings (*hukm*) in certain given circumstance. The hierarchical order of the proofs is the Qur'an, the *sunnah* of the Prophet, and the *ijtihad*.
- 27 Cf. Ibn Khaldun, *al-Muqaddimah*. pp. 452-3.
- 28 M. F. 'Uthman, "al-Shafi'i *Wadi*", p. 33.
- 29 To trace the position of *usul al-fiqh* in the early days of Islam see M. F. 'Uthman, "al-Shafi'i *Wadi*" *'Ilm al-Usul*", pp. 26-32; Badran, Abu al-'Aynayn Badran, *Usul al-Fiqh al-Islami*. pp. 5-11.
- 30 Al-Buti, p. 1.