



## Some Preliminary Observations on al-Šāfi'ī and Later *Uṣūl al-Fiqh*: The Case of the Term *bayān*

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### Abstract

This article follows the reception of Šāfi'ī's (d. 204/820) concept of *bayān*, beginning with Ġāḥiẓ (d. 255/868) and continuing with discussions in selected later works of *uṣūl al-fiqh*. For Šāfi'ī, in his *Risāla*, the term covered categories of divine legislative pronouncements and hermeneutical categories for addressing apparent contradictions between them. Ġāḥiẓ, in the course of elaborating his own, different concept of *bayān*, seems to have been polemically engaged with Šāfi'ī's. For Ġāḥiẓ, as for the later *uṣūl* authors, the term connotes a successful act of communication, yet later authors continued to attempt to explain Šāfi'ī's use of the term, which fit badly into their own conceptual framework. The disjunction between Šāfi'ī's and later authors' use of the term is emblematic of what is tentatively termed the linguistic turn in mature *uṣūl al-fiqh*.

### Keywords

Šāfi'ī, Ġāḥiẓ, *bayān*, *uṣūl al-fiqh*, legal theory, Islamic law, linguistics, communication.

### I. Introduction

This article traces the concept of *bayān* as elaborated in the *Risāla* of Muḥammad b. Idrīs al-Šāfi'ī (d. 204/820) through its reception in selected later works of *uṣūl al-fiqh*.<sup>1</sup> This investigation is worthwhile for several reasons: (a) because we would like to know generally how Šāfi'ī's ideas were understood by later legal theorists,<sup>2</sup> and (b) because I have argued in a recent monograph that the

<sup>1</sup> This paper was previously presented at the Conference of the School of Abbasid Studies in St. Andrews, Scotland, in June 2006 and at Yale University in November 2006. Thanks to those in attendance, and also to the editorial board of *Arabica*, for very helpful comments. I became aware of the 2003 doctoral dissertation of Mohyiddin Yahia (École Pratique des Hautes Études), which contains a discussion of Šāfi'ī's concept of *bayān*, too late to take advantage of it for this article.

<sup>2</sup> The reception of Šāfi'ī's ideas by the later *uṣūl* tradition has received some attention. An earlier generation of scholars held Šāfi'ī to occupy a foundational position with respect to *uṣūl al-fiqh*. See, e.g., N.J. Coulson's *A History of Islamic Law*, Edinburgh, Edinburgh University Press, 1964, ch. 4; and also G. Makdisi, "The Juridical Theology of al-Shāfi'ī: Origins and Significance of *Uṣūl al-fiqh*," *Studia Islamica*, 59 (1984), p. 5-47. This view has been challenged by

concept of *bayān* is central to Šāfi'ī's discussion of legal theory in his *Risāla*.<sup>3</sup> In the course of pursuing this investigation from these two angles, it was striking how various the interpretations of this idea from Šāfi'ī turned out to be in the later works on legal theory. This fact suggested a third reason for pursuing this line of research: (c) it seemed possible to use the different responses to Šāfi'ī's concept of *bayān* to try to understand the emergence of *uṣūl al-fiqh* as an organized field of knowledge with its own distinctive discursive structures. Accordingly, in this article, in addition to tracing the reception of the concept of *bayān* from the *Risāla*, some reflections on macro-level tendencies in the history of the *uṣūl al-fiqh* tradition will be offered concerning, in particular, the transition from concern with structure and contradiction evident in early Islamic legal hermeneutics to the concern with language and communication that is prominent in works of *uṣūl al-fiqh*.

In what follows, I will briefly describe Šāfi'ī's concept of *bayān*, and trace its trajectory in later works by al-Ġāḥiẓ, al-Ġaṣṣāṣ, Abū al-Ḥusayn al-Baṣrī, Imām al-Ḥaramayn al-Ġuwaynī, Ibn 'Aqīl, and Badr al-Dīn al-Zarkašī. I will then return to Ġāḥiẓ to consider what his polemical engagement with Šāfi'ī suggests about the 'linguistic turn' in Islamic legal thought.

## II. Šāfi'ī's Concept of *bayān*

The first sustained discussion of a legal-hermeneutical concept in the *Risāla* begins immediately after its introductory "mission-topos" section,<sup>4</sup> where Šāfi'ī

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a number of scholars, and the challenges have brought forth their own responses. For the sharpest challenge, see W. Hallaq, "Was al-Shāfi'ī the Master Architect of Islamic Jurisprudence?", *International Journal of Middle East Studies*, 25 (1993), p. 587-605. For a response to Hallaq with further references, see D. Stewart, "Muḥammad b. Jarīr al-Ṭabarī's *al-Bayān 'an uṣūl al-ahkām* and the Genre of *Uṣūl al-fiqh* in Ninth Century Baghdad," in J.E. Montgomery (ed.), *Abbasid Studies: Occasional Papers of the School of Abbasid Studies, Cambridge 6-10 July 2002*, Leuven, Peeters, 2004, p. 321-49, at 322-3 and notes. See also my "The Reception of al-Shāfi'ī's Concept of *Amr* and *Nahy* in the Thought of his Student al-Muzanī," in J. Lowry, D. Stewart and S. Toorawa (eds), *Law and Education in Medieval Islam: Studies in Memory of George Makdisi*, Cambridge, E.J.W. Gibb Memorial Trust, 2004, p. 128-49.

<sup>3</sup> Joseph E. Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfi'ī*, Leiden, Brill, 2007. This article expands on and presents additional evidence for some of the conclusions presented therein, especially p. 51-7 and 364-6. In-depth investigation of Šāfi'ī's other works on legal theory, and of the theoretical underpinnings of his *Kitāb al-Umm*, remain desiderata of the field. The origins of the technical terms of Muslim legal hermeneutics, such as *bayān*, also require further study. One may hypothesize a connection with the evolution of grammar and Qur'anic exegesis, but there may also be connections with discussions of logic and language in Late Antiquity. See Cornelia Schöck, *Koranexegese, Grammatik und Logik: Zum Verhältnis von arabischer und aristotelischer Urteils- und Konsequenz- und Schlusslehre*, Leiden, Brill, 2006.

<sup>4</sup> "Mission topos" is a term coined by Michael Cook to describe the opening passages of

defines the term *bayān* and gives extensive examples of what he means by it. His definition is, it must be said, somewhat vague. The *bayān* is, Šāfi'ī tells us,

a noun comprising several convergent basic meanings which are, however, divergent in their ramifications [*ism ḡāmi' li-mā'āni* [sic] *muḡtami' at al-uṣūl mutaṣā'ibat al-furū'*]. The lowest common denominator among those convergent and yet divergent meanings is that a *bayān* is directed to whosoever is addressed thereby among those persons in whose language the Qur'ān was revealed. (*Risāla*, § 53-54)<sup>5</sup>

In other words, the *bayān* represents a statement, communication, or address, from God, to someone, in the Arabic language. It resembles the term *ḥiṭāb* in later *uṣūl al-fiqh*.<sup>6</sup>

Šāfi'ī's examples of the *bayān* clearly illustrate what he means by the term in the context of the revealed law: it refers, for him, to the various forms that God's announcements of norms to mankind take. More specifically, it describes the finite number of textual arrangements, conceived as discrete revelatory structures composed of the Qur'ān and the Sunna, that are employed to express such norms. Šāfi'ī gives examples of five such structures, each of which is a permutation of possible combinations of the Qur'ān and the Sunna.

1. That which God communicates in the form of *naṣṣ* (*mā abānahu li-ḥalqihī naṣṣan*, § 56); these include general obligations (*ḡumal al-farā'id*, such as *ṣalāt*, *zakāt*, *ḥaḡḡ*, *ṣawm*), explicit Qur'ānic declarations of illicitness (e.g., in regard to unlawful sexual intercourse, wine-drinking, certain foods, etc.), and other obligation such as *wuḍū'*. He gives the specific examples of Koran 2, 196, in which the Qur'ān identifies the sum of 3 and 7 as 10 (in regard to the pilgrimage of the *mutamatti'*) (§ 73-5); Koran 7, 142, in which the Qur'ān identifies the sum of 30 and 10 as 40 (being the number of nights promised by God to Moses) (§ 76-8); and Koran 2, 183-5, in which Ramaḍān is named (at verse 185) as the month of the fast (§ 79-81). Šāfi'ī does not expressly identify this category of *bayān* as exclusively Qur'ānic, but that fact emerges clearly from his examples, and also from his description of the other categories of *bayān*.

2. The second category comprises unequivocal Qur'ānic legislation in regard to which the Sunna plays a non-essential role. He gives the examples of the ablutions verses (principally Koran 5, 6) as self-sufficient, even though one

dogmatic works in which details of sacred history are recounted. *Early Muslim Dogma*, Cambridge, Cambridge University Press, 1981, p. 7.

<sup>5</sup> I cite A.M. Šakir's edition of the *Risāla*, Cairo, al-Ḥalabī, 1940, by paragraph number.

<sup>6</sup> On the term *ḥiṭāb*, see B. Weiss, *The Spirit of Islamic Law*, Athens, University of Georgia Press, 1998, p. 54; see also p. 34-5 and 61.

could learn from the Sunna that additional washings are optional, over and above the basic Qur'anic requirement of one (p. 84-88). He also gives the example of the inheritance verses (Koran 4, 11-12), which clearly state what shares go to whom, and also that debts and bequests take priority over the regime of forced shares, even though one learns from the Sunna that the upper limit on bequests is one-third of the estate (p. 89-91). He characterizes the relationship between the Qur'an and the Sunna in regard to this last example as follows: *fa-stagnā bi-l-tanzil fī hādā 'an ḥabar ḡayrihi* (p. 91). This category of *bayān* is one in which Qur'an and Sunna both legislate in regard to the same matter in such a way that the Qur'an's contribution is self-sufficient and the Sunna provides detail that is not strictly necessary for compliance with the law.

3. In the third type of *bayān* general obligations imposed by God in the Qur'an have their details supplied by the Sunna: *aḥkama farḍahu bi-kitābihi wa-bayyana kayf huwa 'alā lisān nabīyyihi* (p. 57, 95). Examples of this are prayer, alms-giving, fasting, and so on. These were mentioned in the first category, too, but in that case the point was evidently that the fact that one is obligated to do these things emerges in a wholly unproblematic way directly from the Qur'an, whereas in this category the details of the performance of such unquestionably obligatory acts must be supplied from the Sunna.

4. The fourth type comprises those rulings that appear in the Sunna, but not in the Qur'an: *mā sanna rasūl allāh mim mā laysa li-llāh fihi naṣṣ ḥukm wa-qad farāḍa allāh fī kitābihi ṭā'at rasūlihi wa-l-intihā' ilā ḥukmihi* (p. 58) or *kull mā sannahu rasūl allāh mim mā laysa fihi kitāb* (p. 96). Šāfi'ī gives no examples, but the point is clear enough.

5. Finally, in some cases, the *bayān* will occur by means of inference and legal interpretation, based on the Qur'an and the Sunna: *mā farāḍa allāh 'alā ḥalqihī l-iḡtibād fī ṭalabihī* (p. 59). The examples given are finding the *qibla* when out of visual range (p. 63ff., 104ff.), the problem of the inwardly deceitful witness, and the problem of estimating compensation for unlawful hunting during the pilgrimage (*ḡazā' al-ṣayd*) (p. 70 and 117ff.). These examples illustrate the epistemological assumptions underlying exercises of *iḡtibād*: that there is a pre-existing, correct answer that may, however, remain undetected. They also furnish authority for engaging in exercises of legal interpretation in other cases.

Šāfi'ī's concept of *bayān* can therefore be summarized as follows: God always communicates norms in ways that are structured exclusively by the Qur'an and the Sunna: by the Qur'an alone, by the Qur'an and the Sunna together, by the Sunna alone, or by inference based on the Qur'an and/or the Sunna. Thus, the five modes of *bayān* are reducible to four basic combinations. Šāfi'ī lists only these four basic combinations in his first discussion of the *bayān*

(*Risāla*, § 56-9, collapsing numbers 2 and 3 in the above discussion) and then lists five varieties in his subsequent discussion (§ 73-125).

The list of modes of the *bayān* describes all possible combinations of the Qurʾān and the Sunna by which God communicates normative materials. The modes of the *bayān* furnish a simple and elegant typology, from a structural point of view, of legal rules. They comprise a symmetrical and comprehensive scheme that exhibits a clear and satisfying order. It also seems that by the term *bayān*, Šāfiʿī means something almost mechanical and certainly structural, but not something that has a qualitative sense of ‘clarity,’ i.e., the *bayān* does not necessarily connote an exceptionally successful instance of expression.<sup>7</sup> Šāfiʿī’s attempt to categorize the divine legislative usages of Qurʾān and Sunna reflects a general 9th-century, pre-*uṣūl al-fiqh* concern with contradiction in revelation and is not really focused on the nature of Arabic as a system of signification as such (which is a major preoccupation of mature *uṣūl al-fiqh*).

This five-part scheme of varieties of Qurʾān-Sunna interaction that Šāfiʿī labels ‘*bayān*’ seems to me to be the principal idea of the *Risāla*.<sup>8</sup> It is the first idea of real hermeneutical consequence and depth that appears in the *Risāla* and it supplies an outline of the *Risāla*’s form. However, the analysis and conclusions presented in the remainder of this article do not depend on accepting my understanding of the concept of *bayān* as the structuring principle of the *Risāla* and of Šāfiʿī’s legal theory as elaborated therein.

### III. Reception of Šāfiʿī’s Concept of *bayān*

Before surveying later authors’ responses to Šāfiʿī’s idea of the *bayān*, some preliminary remarks are in order. In tracing later authors’ understanding of Šāfiʿī’s concept of *bayān* it must be remembered that *uṣūl al-fiqh* has a concept of *bayān* that differs from Šāfiʿī’s. In general, it refers to the clarification of one text, often designated as *muğmal*, by another, often labeled *bayān*, after which the *muğmal* text is said to become *mubayyan*.<sup>9</sup> We might say that it is more

<sup>7</sup> However, there is no doubt (from his remarks on the Arabic language in the *Risāla*, § 127-78) that he views Arabic as a qualitatively superior linguistic medium, as “numinous” or “sacral” in the words of James Montgomery. J.E. Montgomery. “Al-Ġāhiz’s *Kitāb al-Bayān wa al-Tabyīn*,” in J. Bray (ed.), *Writing and Representation in Medieval Islam. Muslim Horizons*, London, Routledge, 2006, p. 91-152, at 101 (I am grateful to Professor Montgomery for sending me a copy of the galley of his article prior to its publication).

<sup>8</sup> As I argue in *Early Islamic Legal Theory*, ch. 1.

<sup>9</sup> This particular binary (*muğmal:mubayyan*) is related to a pair of hermeneutical concepts that Šāfiʿī uses, namely *ğumla* and either *naṣṣ* or *mufassar*. For a brief outline of Šāfiʿī’s hermeneutical rubrics, see my “The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba: A Reconsideration,” *Islamic Law and Society*, 11/1 (2004), p. 1-41. at 30-8. A more extensive discussion of

‘transitive’ than Šāfi’ī’s concept of *bayān*, and it is this difference that makes the following analysis possible, since later authors try, in general, to explain how Šāfi’ī could have such an elaborate conception of *bayān* that is so unlike its use in later *uṣūl al-fiqh*. In addition, by the time we are in the world of full-fledged books on *uṣūl al-fiqh*, the science of Arabic rhetoric, which has become highly evolved, comes to be denoted as *balāġa*, possibly *ḥiṭāba*, but sometimes also as ‘ilm al-*bayān*, and this fact has, obviously, affected both the understanding of the term *bayān* and the science of *uṣūl al-fiqh*, which is preoccupied with issues of language and signification. This point must be kept in mind because whereas for Šāfi’ī the notion of *bayān* seems to have a structural significance—denoting interaction of the Qur’ān and the Sunna—for later authors it has a more literary, linguistic, communicative, or perhaps even semiotic connotation, as well as a qualitative sense of particularly felicitous usage.

A. *al-Ġāḥiẓ* (d. 255/868)

The starting point for this analysis is a possible echo of the *Risāla* in a non-*uṣūl* work, but a work that is nonetheless connected with the *uṣūl* tradition: the *Kitāb al-Bayān wa-l-tabẓīn* of al-Ġāḥiẓ.<sup>10</sup> This parallel has been noticed and discussed by James Montgomery in a recently published article on Ġāḥiẓ’s *Bayān*. I share Montgomery’s belief that Ġāḥiẓ’s engagement with Šāfi’ī is significant and will come back to this point in the conclusion to this article. Preliminarily, the existence of other evidence suggesting that Ġāḥiẓ knew who Šāfi’ī was, and that he admired Šāfi’ī for his language, should be noted. Ġāḥiẓ is reported to have said,

I have looked into the books of those luminaries who have shone so brightly in scholarship and not seen any better at composition than the Muṭṭalibī. It is as though his tongue were strewing pearls (*nazartu fī ḥā’ulā’ al-nabaġa lladīna nabaġū fī l-’ilm fa-lam ara aḥsan ta’līfan min al-Muṭṭalibī ka-anna lisānahū yantūru l-durr*).<sup>11</sup>

them is found in my *Early Islamic Legal Theory*, ch. 2. On the term *muġmal* see M.H. Kamali, *Principles of Islamic Jurisprudence*, Cambridge, Islamic Texts Society, 1991 (rev. ed.), p. 101-2; on *muġmal* and *mubayyan* see W. Hallaq, *A History of Islamic Legal Theories*, Cambridge, Cambridge University Press, 1997, p. 43-4.

<sup>10</sup> 4 vols. in 2, ed. ‘A.S.M. Hārūn, Cairo, Makatabat al-Ḥānġī, 1985.

<sup>11</sup> It is cited by A.M. Šākīr in his edition of Šāfi’ī’s short work on legal theory entitled *Ġimā’ al-’ilm*, Cairo, Maṭba’at al-ma’ārif, 1940, p. 5. It appears in two sources of which I am aware: Ibn ‘Adī, *al-Kāmil fī Du’afā’ al-riġāl*, 7 vols, Beirut, Dār al-Fikr, 1984, I, p. 124; Ibn ‘Asākīr, *Tārīḥ madīnat Dimašq*, 80 vols., ed. Muḥibb al-Dīn al-’Amrawī, Beirut, Dār al-fikr, 1995-, li, p. 370. Thanks to Professor Robert Gleave for these two references.

Ġāḥiẓ is also connected with the early history of *uṣūl al-fiqh*. Although Ġāḥiẓ's *Bayān* is not a work on legal hermeneutics, its author was familiar with the field of legal hermeneutics and wrote at least one work on the subject, the *Kitāb al-Fuṭyā*, from which the introduction survives, along with scattered quotations preserved in other works.<sup>12</sup> In the introduction to the *Kitāb al-Fuṭyā* Ġāḥiẓ says, after noting the excellence of "knowledge and its clear expression" (*al-'ilm wa-l-bayān 'anhu*), that he intends the work as "a book that collects people's disagreements concerning the bases of legal opinions," it being the case that "subsidiary rules differ and rulings contradict one another" because of such disagreements (*kitāb ḡāmi' li-iḥṭilāf al-nās fi uṣūl al-fuṭyā llatī 'alayhā iḥṭalafat al-furū' wa-taḍāddat al-aḥkām; Fuṭyā, Rasā'il, I, p. 314*). This concern with contradiction as a principal problem of legal hermeneutics is very much in line with other legal thinkers of the 9th and early 10th centuries, including Šāfi'ī, Ibn Qutayba (d. 276/889), and al-Ṭahāwī (d. 321/933).<sup>13</sup>

The introduction proper to Ġāḥiẓ's *Bayān* begins some 70 pages into volume one of the standard edition.<sup>14</sup> At that point, Ġāḥiẓ offers a definition of the concept of *bayān*, in regard to which there are several points of interest, each of which points to what Montgomery identifies as "an intellectual and polemical connection" between the *Risāla* and the *Bayān*.<sup>15</sup> First, even though Ġāḥiẓ defines *bayān* very differently than Šāfi'ī, the diction of Ġāḥiẓ's definition of *bayān* (at *Bayān, I, p. 76*) parallels very closely that of Šāfi'ī, at least in part. I give the quotations below, putting the exact parallels in bold-face type and a further overlap in vocabulary in roman type.

<sup>12</sup> The introduction is published with Ġāḥiẓ's *Rasā'il*, 4 vols., ed. M.'A.S. Hārūn, Cairo, Maktabat al-Ḥānḡī, 1964, p. 309-19. Surviving quotations from Ġāḥiẓ's *K. al-Fuṭyā* have been collected and studied as a repository of the theological and legal-theoretical ideas of Ġāḥiẓ's teacher al-Nazzām (d. before 230/845) by van Ess, *Das Kitāb an-Nakt des Nazzām und seine Rezeption im Kitāb al-Fuṭyā des Ġāḥiẓ*, Göttingen, Vandenhoeck & Ruprecht, 1972.

<sup>13</sup> Devin Stewart has suggested that the *Kitāb al-Fuṭyā* is an early work of *uṣūl al-fiqh*. "Muḥammad b. Dā'ūd al-Zāhiri's Manual of Jurisprudence, *al-Wuṣūl ilā ma'rifa al-uṣūl*," in B.G. Weiss, (ed.), *Studies in Islamic Legal Theory*, Leiden, Brill, 2002, p. 99-158, at 108-9. On hermeneutical techniques for harmonization in these authors' works, see N. Calder, *Studies in Early Muslim Jurisprudence*, Oxford, Clarendon Press, 1993. (on Šāfi'ī, Ibn Qutayba and Ṭahāwī); G. Lecomte, "Un Exemple d'Évolution de la Controverse en Islam: De l'*Iḥṭilāf al-Ḥadīth* d'al-Šāfi'ī au *Muḥṭalif al-Ḥadīth* d'Ibn Qutayba," *Studia Islamica*, 27 (1967), p. 5-40 (Šāfi'ī and Ibn Qutayba); and my "Legal Hermeneutics of al-Shāfi'ī and Ibn Qutayba," cited above (also on Šāfi'ī and Ibn Qutayba).

<sup>14</sup> Ġāḥiẓ himself, ever playful, reminds us that the introduction might have come at the beginning instead but that for unstated reasons of organization, he postponed it; *Bayān, I, p. 76*; see Montgomery, p. 116, 120.

<sup>15</sup> Montgomery, p. 102. He does not discuss the following points of contact in detail, but it seems very likely that he had them in mind when he says that "the 'influence' of... Šāfi'ī looms large in Ġāḥiẓ's discourse on *bayān*." Montgomery, p. 126.

Ġāhiz: *wa-l-bayān ism ġāmi' li-kull šay' kašafa laka qinā' al-mā nā...*  
 Šāfi'ī: *wa-l-bayān ism ġāmi' li-mā'āni muġtami' at al-uṣūl mutašā' ibat al-furū'*

Concededly, the overlap is not in the substantive part of either definition, but by one measure the congruence is striking: An electronic search of the precisely overlapping part of this phrase on www.alwaraq.com revealed three occurrences, all in *adab* works that were quoting the *Bayān* of Ġāhiz.<sup>16</sup> So it is an unusual turn of phrase, shared perhaps exclusively by the *Risāla* and the *Bayān wa-l-tabayīn*.

Second, Ġāhiz, more or less like Šāfi'ī, claims that there are five types of *bayān*. I give each author's list below.

Mode of the <i>bayān</i>	Šāfi'ī	Ġāhiz	
1.	Qur'ān alone	<i>lafz</i>	(speech)
2.	Qur'ān and non-essential Sunna	<i>išāra</i>	(gesture)
3.	Qur'ān and explanatory Sunna	<i>'aqd</i>	(enumeration)
4.	Sunna alone	<i>ḥaṭṭ</i>	(writing)
5.	legal interpretation/analogy ( <i>iġtihād/qiyās</i> )	<i>nišba</i>	(non-language based inference) <sup>17</sup>

Ġāhiz lists only two categories that involve language (the first and fourth, *lafz* and *ḥaṭṭ*), whereas all of Šāfi'ī's varieties involve revelatory texts and so, by extension, language. However, both authors do list a kind of inference in the fifth slot, which brings us to the third parallel.

For Šāfi'ī, *iġtihād* and *qiyās*, his fifth variety of *bayān*, are based on Qur'ānic or Sunnaic texts, but the paradigmatic example of *iġtihād* that he uses repeatedly is that of finding the *qibla* when out of visual range of Mecca. In this regard he notes, using supporting prooftexts from the Qur'ān, that one aid in finding the *qibla* consists of signs of nature that have been provided by God, such as the stars (e.g., Koran 16, cited at *Risāla*, § 113: "[God set up] signs, and by the stars they are guided"). Thus, the example contemplates a non-linguistic but divinely furnished basis for an inference, even though in this initial discussion of *iġtihād*, the example illustrates more the epistemological assumptions that underlie the exercise of *iġtihād* than the procedure for making an inferential nexus between a text and an actual case (*Risāla*, § 104-25). However, precisely in regard to epistemological underpinnings, Šāfi'ī's discus-

<sup>16</sup> Search conducted on May 11, 2006.

<sup>17</sup> Montgomery, p. 128, translates these terms as "word," "indication," "counting," "writing," and "location." Montgomery translates *nišba* as "location" to highlight a possible connection with Arabic renderings of the seventh of Aristotle's ten categories (as listed in the *Topics* at I.9, 103b20-25). In the context of the instant article, "sign" might be an appropriate translation.



sion in the *Risāla* is very close to that of Ġāḥiẓ in the *Bayān*. Ġāḥiẓ defines *niṣba*, his fifth variety of *bayān*, as an “expressive circumstance without verbal expression” (*al-ḥāl al-nāṭiqa bi-ḡayr al-laḡz*, *Bayān*, I, p. 81), and notes that this phenomenon is amply attested by the creation of the heavens and earth (*ẓāhir fi ḥalq al-samawāt wa-l-ard*), an example strikingly similar to that given by Šāfi‘ī in relation to finding the *qibla*.

While none of these points of contact on its own clinches the case for a connection between Ġāḥiẓ’s and Šāfi‘ī’s notions of *bayān* in the *Bayān* and the *Risāla*, cumulatively they are suggestive. Ġāḥiẓ was a voracious reader whose writing style is playful and suffused with allusion and deliberate misdirection (as in the introduction to the work under discussion, the *Bayān*). Moreover, as we shall see, Ġāḥiẓ’s definition of *bayān* reverberates in some later *uṣūl al-fiqh* texts.<sup>18</sup> Therefore, as Montgomery has already argued, Ġāḥiẓ not only had Šāfi‘ī in mind when he composed his own definition and discussion of the concept of *bayān*, but also perceived the centrality of the notion of *bayān* to the argument set out in Šāfi‘ī’s *Risāla*.

This discussion has thus far dwelled on surface similarities (though they are key similarities), and before moving on to the *uṣūl al-fiqh* texts, we need to consider the substance of Ġāḥiẓ’s notion of *bayān* briefly, as well, since it is very different from Šāfi‘ī’s, and represents a significant moment in Muslim contemplation of what it means to be addressed in language by the divinity. Ġāḥiẓ’s definition of *bayān* is much closer to that of later *uṣūl al-fiqh*: it is, he says, “anything that lifts for you the veil from ideas” (*kullu mā kaṣafa laka qinā’ al-mā’āni*) (*Bayān*, I, p. 75). Thus, Ġāḥiẓ’s notion of *bayān* is much more transitive than Šāfi‘ī’s: a *bayān* renders something *else*—ideas—intelligible.

Ġāḥiẓ describes *bayān* as a process involving an originator, something to be communicated (an idea), a medium to effect that communication, and a recipient.<sup>19</sup> The complexities of the medium in particular seem emphasized in Ġāḥiẓ’s discussion. Ġāḥiẓ recognizes, moreover, a certain dichotomy between the medium and what the medium conveys, namely “ideas [as] existing in

<sup>18</sup> It seems also conceptually related at some level—though perhaps not genetically—to the discussion of *bayān* in the work *al-Burhān fī Wuḡūḥ al-bayān*, a manual of style and rhetoric attributed to various 9th and 10th century authors. In that work the author identifies four ‘modes’ (*wuḡūḥ*) of *bayān*: *bayān al-aṣyā’ bi-dawātibā*, *al-bayān alladī yahṣulu fī l-qalb ‘inda r māl al-fikr wa-l-lubb*, *al-bayān bi-l-lisān*, and *al-bayān bi-l-kitāb*. One can render these various senses of *bayān* as: self-explanatory matters, clarity achieved through intellection, expression through speech, and expression through writing. Abū l-Ḥusayn Ishāq b. Ibrāhīm al-Kātib (attrib.), *al-Burhān fī wuḡūḥ al-bayān*, A. Maḡlūb and Ḥ. al-Ḥadīthī (eds.), Baghdad, University of Baghdad, 1967, p. 60. Thanks to Professor Beatrice Gruendler of Yale University for alerting me to the relevance of this work.

<sup>19</sup> Montgomery, at p. 124, notes the communicative aspect of Ġāḥiẓ’s discussion of *bayān*.

people's breasts, conceived in their minds" (*al-mā'ānī l-qā'ima fī šudūr al-nās al-mutašawwira fī adhānīhim*) (*Bayān*, I, p. 75). It is not possible to know these ideas unless they are brought to life by being communicated (*wa-innamā yuhyī tilka al-mā'ānī dikruhum lahā wa-iḥbāruhum 'anhā*) (*Bayān*, I, p. 75). Then he tells us "that the express signification of a hidden idea is the *bayān*" (*al-dalāla al-ẓāhira 'alā al-mā'nā al-ḥafi huwa al-bayān*, *Bayān*, I, p. 75). He also uses, shortly thereafter, *dalāla* ("signification") and *išāra* ("intimation", "allusion") as synonyms for *bayān*. Then follows the above-quoted definition: "*bayān* is a comprehensive noun for anything that lifts for you the veil from ideas." Finally, we are told, the evaluation of expressions is distinct from the evaluation of ideas (*ḥukm al-mā'ānī ḥilāf ḥukm al-alfāz*) because ideas are infinite and verbal expressions finite (*Bayān*, I, p. 76).<sup>20</sup> This gulf between medium and message is perhaps the key point here for Ḡāḥiẓ in regard to his subtle reference to and commentary on the *Risāla* and I will come back to it in my conclusion.

#### B. *al-Ġaṣṣās* (d. 370/980)

In regard to the reception of the *Risāla*, one is on decidedly firmer but also unflinchingly hostile ground in the *uṣūl* work of the 4th/10th-century Ḥanafi jurist al-Ġaṣṣās.<sup>21</sup> Ḡaṣṣās launches a sustained, multi-pronged attack on Šāfi'ī's notion of *bayān*. I will focus mostly on Ḡaṣṣās's specific criticisms of Šāfi'ī's five-part division of the *bayān*, but it will be worthwhile to first give an overview of his entire critique.

Ḡaṣṣās first criticizes (extensively) Šāfi'ī's definition of *bayān* (from p. 53-4 of the *Risāla*) on the grounds that it is formally defective, covering less than is denoted by the term *bayān*, admitting things that are not properly defined as *bayān*, and altogether a sloppy formulation that fails to define the term (*Fuṣūl*, II, p. 11-13). Ḡaṣṣās then goes through the five types of *bayān* listed by Šāfi'ī, casting a critical eye especially on the second, fourth and fifth varieties (*Fuṣūl*, II, p. 14-16, a critique that I will examine in more detail). He next objects, on epistemological grounds, to the omission of *iğmā'* and the inclusion of *iğtihād* among the varieties of *bayān* (*Fuṣūl*, II, p. 16). He takes particular exception

<sup>20</sup> The distinction between *lafẓ* and *mā'nā* recalls that between matter and form, respectively. A similar distinction (infinite ideas vs. finite verbal expressions) is made by the grammarian al-Sirāfi (368/979) in his famous debate with the logician Mattā b. Yūnus (328/940) as preserved in al-Tawḥīdī's *K. al-Imtā' wa-l-mu'ānasa*, 3 vols., ed. A. Amin and A. Zayn, Cairo, Lağnat al-ta'lif wa-l-tarğama wa-l-našr, 1953, at I, p. 115.

<sup>21</sup> *Al-Fuṣūl fī l-uṣūl*, 4 vols., ed. 'U.Ġ. al-Našmi, Kuwait, Wizārat al-awqāf wa-l-šū'ūn al-islāmiyya, 1994.

to Šāfi'ī's suggestion that God's *bayān* is directed only to persons who know Arabic. Finally, Ğaṣṣāṣ accuses the Šāfi'īs themselves of disavowing their namesake's definition and he cites the much-quoted definition of *bayān* attributed to the Šāfi'ī jurist al-Šayrafi (d. 330/942), which provides that "*bayān* is a noun [denoting] the extraction of something from the realm of problemativeness to [that of] clarity" (*al-bayān ism li-ihṛāğ al-šay' min ḥayyiz al-iškāl ilā l-tağallī*, cited at *Fuṣūl*, II, p. 17; attributed to Šayrafi by, e.g., Ibn 'Aqīl, *Wāḍiḥ*, I, p. 103, substituting *iḥtimāl* for *iškāl*). Ğaṣṣāṣ argues that Šāfi'ī's own examples are inconsistent with this definition (*Fuṣūl*, II, p. 18-19). As we will see, Šayrafi's is close to Ğaṣṣāṣ's own definition of *bayān*.

Ğaṣṣāṣ reports an objection to his own criticism of the form of Šāfi'ī's definition of *bayān*, namely that Šāfi'ī provided examples of what he meant (*Fuṣūl*, II, p. 12), but Ğaṣṣāṣ is not impressed by Šāfi'ī's examples. Ğaṣṣāṣ knows that Šāfi'ī divides the *bayān* into five parts (*qasama l-bayān ilā ḥamsat aqsām*) and this five-part division is, he asserts, unprecedented and neither derived nor derivable from language (*luğā*) or revelation (*šar'*). A description of Ğaṣṣāṣ's discussion is complicated by the fact that he either deliberately or unknowingly misdescribes several of Šāfi'ī's categories. The first variety of the *bayān* is, however, simple enough and Ğaṣṣāṣ's account is accurate. He cites Šāfi'ī's example, from his five-part list, of Koran 7, 142 (*fa-tamma miqāt rabbihi arba'in layla*) (*Fuṣūl*, II, p. 14; passage cited and discussed at *Risāla*, § 76-8).

Ğaṣṣāṣ's discussion of Šāfi'ī's second set of examples of *bayān* is more complex. Recall that Šāfi'ī's second variety of *bayān* involves parallel legislation by the Qur'ān and Sunna pertaining to the same matter, but in regard to which the Sunnaic component is non-essential. Whether Ğaṣṣāṣ understands it in this way is not easy to discern. Ğaṣṣāṣ first refers to the example of Koran 5, 6, "wash your faces and hands to the elbows" (*fa-ğsilū wuğūhakum wa-aydiyakum ilā l-marāfiq*), one of Šāfi'ī's examples of the second variety of *bayān* (*Risāla*, § 84-8; cited at *Fuṣūl*, II, p. 15). Second, he refers to Koran 2, 185 (*fa-man šahida minkum al-šabr fa-l-yaṣumhu*). Third and finally, he refers to prohibitions against sexual immorality, and the eating of carrion, blood, and swine-flesh. The problem here is that the last two examples (fasting and the group of prohibitions) are unmistakably from Šāfi'ī's examples of the first variety of *bayān* (see *Risāla*, § 56). What may have confused Ğaṣṣāṣ is that at § 56 of the *Risāla*, Šāfi'ī mentions *wuḍū'* as an example of the first type of *bayān* but does not cite Koran 5, 6. At *Risāla*, § 84, Šāfi'ī cites Koran 5, 6, the principal Qur'ānic provision governing *wuḍū'*, as an example of the second type of *bayān*. Thus, the same rule appears to serve as an example of different varieties of *bayān*. The different uses made of the rules governing *wuḍū'* as an example of two different kinds of *bayān* are subtle, but comprehensible: There is no

doubt about the obligation to perform ablutions; it is the object of unequivocal legislation (*naṣṣ*) in the Qurʾān, which is why it is an example of the first mode of *bayān*. However, there is some doubt, given the content of some Sunnaic texts, about how many washings or wipings are entailed by the relevant Qurʾānic verse (see *Risāla*, § 87-8, and also § 448-65 for an extended treatment of the problem under the *ḡumla:naṣṣ* rubric). Since the Qurʾān by its own terms, according to Šāfiʿī, requires only one washing or wiping, then the Sunnaic texts furnish merely supplemental, non-essential information and thus do not modify the underlying Qurʾānic obligation. In that respect, Koran 5, 6 is an appropriate example of Šāfiʿī's second variety of *bayān*.

On the other hand, Ğaṣṣāṣ's reference to the *tahrim al-fawāḥiṣ wa-l-mayta wa-l-dam wa-laḥm al-ḥinzīr* (*Risāla*, § 56; *Fuṣūl*, II, p. 15) cannot be conformed to Šāfiʿī's second type of *bayān*. So in this case, Ğaṣṣāṣ has erred in his reporting of Šāfiʿī's views. These examples are used by Šāfiʿī to illustrate basic Qurʾānic legislation that is neither actually nor potentially complicated by Sunnaic texts. According to Ğaṣṣāṣ, Šāfiʿī's followers claim that this second variety of *bayān* is hermeneutically self-sufficient (*kāfi bi-naṣiḥi*), but, he points out, so is the first variety, so they are indistinguishable and should belong to the same category of *bayān* (*Fuṣūl*, II, p. 15). But it is Ğaṣṣāṣ who has mixed up the categories here, not Šāfiʿī's followers. Still, it is true that in both the first and second categories of *bayān* Šāfiʿī seeks to illustrate self-sufficient Qurʾānic legislation. It is just that in the first variety, the Qurʾānic legislation is unaffected by any Sunnaic text and in the second it interacts in a non-material way with Sunnaic texts.

One might note, based solely on his own reporting of Šāfiʿī's examples, that Ğaṣṣāṣ seems to distinguish between Šāfiʿī's first and second categories of *bayān* as encompassing non-legislative and legislative passages from the Qurʾān respectively. Perhaps that is how he understood Šāfiʿī's intent.

The third variety, according to Ğaṣṣāṣ, is the prophet's *bayān* of indistinct obligations (*al-furūd al-muḡmala*) such as prayer and alms-giving (*Fuṣūl*, II, p. 15). This is a generally accurate report of Šāfiʿī's views (see *Risāla*, § 57 and § 92-5).

Šāfiʿī's fourth variety of *bayān* Ğaṣṣāṣ reformulates as follows: "those Sunnas initiated by the Prophet that are on a par with obligations initiated by God; and together these [two] constitute one category" (*mā btadaʾ abu al-nabī min al-sunan fi ḥayyiz mā btadaʾ abu llāh min al-furūd wa-an yakūnā ḡamīʿ an qism wāḥid*) (*Fuṣūl*, II, p. 16). This category, explains Ğaṣṣāṣ, contains those expressions in which the explanatory force (*bayān*) is the same regardless of the speaker. But Ğaṣṣāṣ objects (to his own paraphrase) that the quality of *bayān* is not speaker-dependent, by which he must mean that Šāfiʿī should make a

qualitative distinction (more vs. less *bayān*) between pronouncements rather than a speaker-based one (God vs. Muḥammad). In that case, continues Ğaṣṣāṣ, then every obligation will become unique with respect to its quality of *bayān* and there will result an infinite number of categories of the *bayān* because every originator of an utterance will produce a separate category of *bayān*. This objection illustrates well the overwhelmingly qualitative component that the concept of *bayān* has for Ğaṣṣāṣ, and how different that is from Šāfi'ī's purely structural use of the term.

Finally, Ğaṣṣāṣ notes that Šāfi'ī's fifth category encompasses rulings made on the basis of *iğtibād*, which Ğaṣṣāṣ identifies as problematic because, he argues, if such legal problems were characterizable as *bayān*, then they would not lead to an interpretive result that is, by definition, only probable (*ġalbat zann*). Conversely, Šāfi'ī omits *iğmā'*, which leads to certainty (*Fuṣūl*, II, p. 16). This criticism highlights the fact that for Ğaṣṣāṣ the notion of *bayān* also has an overt epistemologically qualitative aspect: clarification is related to (or produces) certain knowledge.

After reciting this litany of defects, Ğaṣṣāṣ goes on to discuss the remainder of Šāfi'ī's definition of *bayān*, namely that a *bayān* is something "directed to whosoever is addressed thereby among those persons in whose language the Qur'an was revealed" (*Risāla*, § 54). This will not do either, according to Ğaṣṣāṣ, because (a) the term *bayān* can be used of any language (even though Arabic is the most clear and eloquent language of all) because the whole point of language is to effect a *bayān* (express an idea) and (b) because the message from God and the Prophet is directed to all persons, irrespective of language, and those who do not know Arabic need merely be able to understand the meaning of that message translated into their own language (*Fuṣūl*, II, p. 17). Ğaṣṣāṣ is clearly uncomfortable with Šāfi'ī's apparent insistence that all Muslims have an unconditional obligation to learn Arabic at the level of a native speaker, in order to become potential recipients and beneficiaries of the Islamic message; the implication that non-Arabic speakers were not directly addressed by the Qur'an was clearly unacceptable to Ğaṣṣāṣ.<sup>22</sup>

It is interesting to compare Ğaṣṣāṣ's description of Šāfi'ī's concept of the *bayān* with Šāfi'ī's own description of it in the *Risāla*, since Ğaṣṣāṣ has introduced sufficient variation to raise questions about the sources and goals of his discussion:

<sup>22</sup> This point presupposes a distinction between medium and message of the kind made by Ğaḥīz.

Mode of the <i>bayān</i>	Šāfi'ī	Ġaṣṣāṣ's paraphrase of Šāfi'ī
1.	Qur'ān alone	self-sufficient (non-legislative?) Qur'ānic text
2.	Qur'ān and non-essential Sunna	self-sufficient (legislative?) Qur'ānic text
3.	Qur'ān and explanatory Sunna	Qur'ān and explanatory Sunna
4.	Sunna alone	Sunna equivalent to the Qur'ān
5.	<i>Iğtihād</i>	<i>Iğtihād</i>

As can be seen, some of the elements have been transposed, and, as emerged from the foregoing description of Ġaṣṣāṣ's discussion, some of the examples are misdescribed or mischaracterized.<sup>23</sup> Some of Ġaṣṣāṣ's confusion may result from the fact that Šāfi'ī, as noted above, first introduces four kinds of *bayān* and then gives examples of five kinds. On the other hand, Ġaṣṣāṣ is relentless in his criticisms and it seems unlike that he would have passed up an opportunity to ridicule Šāfi'ī for the existence of two slightly inconsistent such lists in the *Risāla*. His failure to do so, as well as the rearrangement of the ordering and the somewhat garbled report of what Šāfi'ī was up to, raises the question of what the version of the *Risāla* that Ġaṣṣāṣ had looked like, since otherwise he quotes Šāfi'ī's remarks on the *bayān* fairly accurately, and he quotes the definition (from *Risāla*, § 53) verbatim. Perhaps he was reporting on the basis of someone else's quotation, or from debates with or works written by Šāfi'īs. I am reluctant to attribute his criticisms of Šāfi'ī to mere partisan debating tactics, since I believe we should take authors at their word, but neither that possibility nor the possibility that he was working from a defective, second-hand source, can be completely discounted.

One has also to wonder, in light of Ġaṣṣāṣ's invective, whether the *Risāla*, perhaps because so un-*uṣūl* like, had become the weapon of choice with which Ḥanafī jurists assaulted their Šāfi'ī colleagues in the mid-10th century. However that may be, Ġaṣṣāṣ's assault on Šāfi'ī himself becomes understandable (apart from inter-*madhāb* polemics) if we consider his own definition of *bayān* and its place in his legal theory. For Ġaṣṣāṣ, *bayān* is the "expression of an idea, and its clarification, to an addressee, dissociated from whatever might become confused with it, or become doubtful by reason of it" (*al-bayān izhār al-ma'nā wa-īdāḥuhu li-l-muḥāṭab munfaṣilan mim mā yaltabih bihi wa-yaṣtabih min aḡlibih*) (*Fuṣūl*, II, p. 6). Ġaṣṣāṣ bolsters his own definition by appealing to the

<sup>23</sup> Marie Bernand, in a posthumously published article, relied on this misdescription by Ġaṣṣāṣ and was persuaded to agree with his criticisms of Šāfi'ī. M. Bernand, "Bayān selon les Uṣūliyyūn", *Arabica*, 42 (1995), p. 145-59.

etymology of words derived from the root b-y-n, which, in the sense of “to separate” or “become distinct,” emphasizes the separation of what is clear from what is doubtful or ambiguous. Thus, *bayān* has both a transitive sense (it clarifies something *else*, as for Ġāḥiẓ) as well as a salutary aspect (it guards against ambiguity) (*Fuṣūl*, II, p. 6-7). One is not surprised, then, to find that among the varieties of *bayān* Ġaṣṣāṣ includes *taḥṣīs al-‘umūm*, *tafsīr al-ḡumla*, and *nash*, all instances in which one revealed text clarifies the legislative status of another revealed text (*Fuṣūl*, II, p. 22). Šāfi‘ī used such categories—all encompassed by the term *bayān*—to explain the *fact* of interaction between texts whereas we might say that Ġaṣṣāṣ uses the term *bayān* to explain the felicitous *result* of such interactions.

The conceptual congruence between Ġaṣṣāṣ’s and Šayrafi’s definitions of *bayān* shows how the world of legal hermeneutics had changed since Šāfi‘ī’s time. In this regard, Ġaṣṣāṣ’s criticisms reflect intervening developments in legal thought at least as much as they preserve a moment in the history of inter-*madhhab* polemics.

#### C. Abū al-Ḥusayn al-Baṣrī (d. 436/1044)

Abū al-Ḥusayn al-Baṣrī is perhaps best known as the student of and commentator on the works of the Mu‘tazilī theologian and judge ‘Abd al-Ġabbār (d. 415/1024). Although he does not attempt to characterize Šāfi‘ī’s five varieties of *bayān* in his *Kitāb al-Mu‘tamad fī uṣūl al-fiqh*,<sup>24</sup> Abū al-Ḥusayn does consider Šāfi‘ī’s definition of the term, which he quotes. It is, he says, not a proper definition (*ḥadd*), but merely a description (*waṣf*) from which one understands that a *bayān* is something that is intelligible to native speakers of Arabic (*yatabayyanuhu ahl al-luġa*), and which is further subdivided into parts (*aqsām*). Moreover, this aspect of the definition defines a *bayān* as a *bayān* (to Arabic-speakers) which is defining something in terms of itself and therefore invalid. He takes exception to Šāfi‘ī’s failure to include “rational indicators” (*al-adilla al-‘aqliyya*) within his definition, if it is meant as a general definition. He also takes exception to Šāfi‘ī’s inclusion of texts whose intendment is immediately apparent (*al-kalām al-mubtada’ idā ‘urifa bihi al-murād*), if it is meant as a technical, juristic definition. In other words, Abū al-Ḥusayn understands *bayān* as a transitive procedure that involves two texts. Abū al-Ḥusayn also possibly alludes to Ġāḥiẓ’s definition of *bayān*, noting that some define it as *al-kalām wa-l-ḥaṭṭ wa-l-išāra*, which he criticizes as being a mere enumeration (*tā dīd*) (*al-Mu‘tamad*, I, p. 318).<sup>25</sup>

<sup>24</sup> 2 vols., ed. M. Ḥamīdullāh, Damascus, Institut Français de Damas, 1964.

<sup>25</sup> The fact that these remarks follow closely on the heels of his discussion of Šāfi‘ī may betray

Abū al-Ḥusayn divides his own definition of *bayān* into two parts, a general sense and a technical sense. In general, *bayān* means “signification” (*al-dalāla*). Its technical meaning as used by jurists is, as one would expect, a narrower variation on the general sense: it is “speech or action signifying the intendment of an address, and which does not function independently in its signification of the intendment” (*kalām aw fi’l dāll ‘alā al-murād bi-ḥiṭāb wa-lā yastaqill bi-nafsihi fi l-dalāla ‘alā al-murād*) (*Mu’tamad*, I, p. 317). In other words, it is a text that only signifies in conjunction with another, presumably by being brought to bear on another text to clarify the (legislative) import of that other text. This is generally in the spirit of Ğāḥiẓ and Ğaṣṣāṣ, but incompatible with the mostly intransitive notion proposed by Šāfi’ī.

D. *Imām al-Ḥaramayn al-Ġuwaynī (d. 478/1085)*

The 11th-century Šāfi’ī jurist Imām al-Ḥaramayn al-Ġuwaynī is, as one might expect, more sympathetic to Šāfi’ī’s definition of *bayān*, but he paraphrases it in ways that change it fundamentally. In his *al-Burhān fi uṣūl al-fiqh*,<sup>26</sup> Ġuwaynī surveys several (mostly) unsatisfactory definitions of *bayān*, but Šāfi’ī’s is not among them. Then, however, naming his source as the *Risāla*, he offers his own paraphrase of Šāfi’ī’s five varieties of *bayān* as part of a survey of the views of various scholars on what he calls the “degrees” (*marātib*) of the *bayān* (*Burhān*, I, p. 125-6). Ġuwaynī’s paraphrases are all the more interesting because he never quotes from the *Risāla*, even though he does tie his interpretive paraphrases to prooftexts used by Šāfi’ī.

Ġuwaynī describes Šāfi’ī’s first category of *bayān* as “an expression of unequivocal legislative import that directly indicates its intendment, and which may be for emphasis” (*lafẓ nāṣṣ munabbih ‘alā al-maqṣūd min ġayr taraddud wa-qad yakūn mu’akkidan*). It is true that Šāfi’ī formulates similarly,<sup>27</sup> but if I am right that Šāfi’ī meant his first category (and all the others) to have a structural significance, then Ġuwaynī here takes a structural notion—plain Qur’anic texts that are to be read alone—and generalizes it into a category describing certain communicative properties of revelatory language, thereby completely uncoupling it from the Qur’anic specificity of Šāfi’ī’s description. In other words, Šāfi’ī’s purely Qur’anic category will have become, for Ġuwaynī, a qualitative category that is the highest level of *bayān*,

a Mu’tazili school memory of what Montgomery called (above) the “polemical and intellectual connection” between Šāfi’ī and Ğāḥiẓ in regard to the concept of *bayān*.

<sup>26</sup> 2 vols., ed. ‘Abd al-‘Azīm M. al-Dīb, al-Manṣūra, Dār al-wafā’, 1992.

<sup>27</sup> Compare *Risāla*, § 56: *mā abānahu li-ḥalqihī naṣṣan miṭla ġumal farā’idihī... mā’a ġayr dālika mim mā bayyana naṣṣan*. See my discussion above.



independent of its literary setting. The reference to emphasis in this context is not entirely clear, but possibly refers to redundant statements of a given rule. If that is right, then this description would also fit Šāfi'ī's second category of the *bayān*.

Šāfi'ī's second category he also changes fundamentally when he describes it as "speech that is clear and distinct in regard to the matter for which it is employed, but such that only persons capable of independent legal research and having particular insight can understand its meanings and import... which includes expressions that can only be comprehended by an expert in Arabic" (*kalām bayyin wāḍiḥ fi l-maqsūd alladī siqa l-kalām labu wa-lākin yaḥtaṣṣ bi-darak mā'ānihā wa-mā fihā l-mustaqillūn wa-dawū al-baṣā'ir... fi atnā ihā ḥurūflā yuḥiṭ bihā illā baṣīr bi-l-'arabiyya*). This seems to make Šāfi'ī's second category, in which the Sunna adds non-essential detail to a clear Qur'ānic norm, into a sample of language that is outwardly clear but whose subtleties require expertise in both law and language. Here Ğuwaynī has made a relatively unproblematic variety of *bayān* into something potentially deceptive and that justifies the status of experts.

Ğuwaynī's remaining three paraphrases are much closer to Šāfi'ī's ideas in the *Risāla*. In the third variety, the function of providing clarifying details of the Qur'an is given over to the Prophet. However, in this case Ğuwaynī cites Koran 6, 141 (*wa-ātū ḥaqqahu yawma ḥaṣādihī*), which Šāfi'ī does not adduce in either of his lists of examples of the *bayān*, but which he does cite later, in his discussion of the *ğumla:naṣṣ* rubric, as an example of a general Qur'ānic obligation whose details are supplied by the Sunna (*Risāla*, § 531). The fourth consists of valid Prophetic reports that discuss matters not treated in the Qur'an. The fifth comprises analogies based on the Qur'an and the Sunna. But Ğuwaynī's concluding remarks to this summary are oddly Qur'an-centric, especially given his failure to refer to Qur'an or Sunna in his paraphrase of the first two varieties of *bayān*: "It is as if he [= Šāfi'ī] preferred to tie the *bayān* to God's Book in every respect" (*fa-ka-annahu ātara rtibāṭ al-bayān bi-kitāb allāh min kull wağḥ*) (*Burhān*, I, p. 126). That seems *not* to have been Šāfi'ī's point at all; rather, he sought to explain how the seeming confusion of Qur'an-Sunna interaction could be slotted into orderly categories and two of his five categories do not involve the Qur'an at all. The differences between Šāfi'ī's description of modes of the *bayān* and Ğuwaynī's description of Šāfi'ī's ideas are summarized below:

Mode of the <i>bayān</i>	Šāfi'ī	Ğuwaynī
1.	Qur'an alone	a very clear legislative text
2.	Qur'an and non-essential Sunna	an ostensibly clear text, but requiring expertise

- |    |                              |  |
|----|------------------------------|--|
| 3. | Qurʾān and explanatory Sunna | the Prophet clarifies the Qurʾān               |
| 4. | Sunna alone                  | Prophetic reports on matters not in the Qurʾān |
| 5. | <i>Iḡtibād</i>               | analogies                                      |

Still, Ğuwaynī's is the first friendly reception that we have seen, which is not surprising since he is also the first Šāfi'ī to be examined. However, his own definition of the term *bayān* is very different from Šāfi'ī's. Ğuwaynī, relying on his Aš'arī forbear al-Bāqillānī (d. 403/1012), defines *bayān* as a *dalīl*, which can be either rational or revelational (*'aqlī* or *sam'ī*) (see *Burhān*, I, p. 124, 127).<sup>28</sup> Revelational *dalīls* are instituted by someone<sup>29</sup> and are represented by languages and verbal expressions (*'ibārāt*), whether established by God or by convention. Rational *dalīls*, by contrast, involve inference of the thing signified, but without the necessity of someone instituting them (he gives the examples of inferring capability from action, volition from specification [*taḥṣīs*], and a display of mastery [*iḥkām*] indicating knowledge) (*Burhān*, I, p. 121). For Ğuwaynī, then, the *bayān* will in most cases be a sample of revelatory language from the Qurʾān or the Sunna and will require decoding in a manner akin to drawing an inference. Ğuwaynī's emphasis on the task of the recipient of communication is much closer conceptually to the thought world of Ğāḥiẓ than to Šāfi'ī's concern with the vagaries of Qurʾān-Sunna interaction.

#### E. *Ibn 'Aqīl* (d. 513/1119)

The late 11th-/early 12th-century Ḥanbalī jurist and Mu'tazilī-leaning theologian Ibn 'Aqīl, in his *al-Wāḍiḥ fi uṣūl al-fiqh*,<sup>30</sup> enthuses about Šāfi'ī's definition of *bayān*. Ibn 'Aqīl quotes the passage cited above from *Risāla*, § 53-4 (*Wāḍiḥ*, I, p. 102) and comments as follows:

Then he [Šāfi'ī] made it into five varieties, but those later [scholars] who objected to him did not understand his words, not having reached the level of his followers in regard to knowledge... Šāfi'ī is, after all, the father and mother of this science and the first to correctly arrange *uṣūl al-fiqh*. From the copiousness of his knowl-

<sup>28</sup> Tantalizingly, Bāqillānī tells us in his *al-Taqrīb al-ṣaḡīr* that because he discussed Šāfi'ī's definition of *bayān* (which he quotes) in sufficient detail in his "Big Book," the more expansive version of the *Taqrīb*, he does not need to go into it in the instant discussion. *Al-Taqrīb wal-irṣād al-ṣaḡīr*, 3 vols., ed. 'Abd al-Ḥamid Abū Zayd, Beirut, Mu'assasat al-risāla, 1998, III, p. 374.

<sup>29</sup> An act described as *naṣb nāṣib*, recalling Ğāḥiẓ's term *niṣba*, though no inference is involved.

<sup>30</sup> 5 vols., G. Makdisi, (ed.), Beirut, Klaus Schwarz Verlag, 1998-2002.

edge and abundant ability he realized that *bayān* is among those things that cannot be completely captured by a definition, since it encompasses a variety of things. Among these are *al-naṣṣ*, *al-zāhir*, *al-'umūm*, *tafsīr al-muğmal*, *taḥṣīṣ al-'umūm*, *dalīl al-ḥiṭāb*, and *fahwā al-ḥiṭāb*. He subsumed all of that under one word, and said it in a general way; all of that is *bayān*, even though its degrees [*marātib*] might differ. His saying “convergent basic meanings” refers to a noun of broad scope [*ism šāmil*], which is *bayān*. And his saying “divergent in their ramifications” refers to what is shared between *naṣṣ*, *zāhir*, *'umūm*, *taḥṣīṣ*, *fahwā*, *dalīl*, and so on. Those are the subsidiary senses of the noun that he referred to in a general way—and that is the *bayān*. (*Wāḍiḥ*, I, p. 103)

This is a generous construction indeed. Although I think that Šāfi'ī was trying to be precise in a different way than Ibn 'Aqīl suggests, Ibn 'Aqīl is quite right to hold that Šāfi'ī's notion of *bayān* was designed to encompass the various hermeneutic techniques that describe the interaction of the Qur'ān and the Sunna. Šāfi'ī carefully and deliberately subsumes all his hermeneutical rubrics under the modes of the *bayān* and, I would argue, uses the resulting framework as the outline of the *Risāla*. However, like his *uṣūlī* colleagues, Ibn 'Aqīl is also attracted by the idea of degrees (*marātib*), or qualitative differences in the level of *bayān*, and imports it into Šāfi'ī's notion of *bayān*.

Ibn 'Aqīl's own definition of *bayān* is almost a quotation from Ğaṣṣāṣ: “It is the extraction of an idea or, you could say, the expression of an idea by means of a verbal expression that is neither confusing nor ambiguous or, you could say, dissociated from whatever might become confused with it, or become doubtful” (*iḥnrāğ al-ma'nā aw taqūl iẓhār al-ma'nā bi-lafẓ ġayr multabīs wa-lā muṣtabīb aw taqūl munfaṣīlan 'ammā yaltabīs bihi wa-yaṣtabīb*) (*Wāḍiḥ*, I, p. 102). A *bayān* is required whenever a verbal expression cannot be used on its own for purposes of making a ruling (*Wāḍiḥ*, I, p. 105). In addition to the notion of degrees, then, Ibn 'Aqīl also, like Ğaṣṣāṣ, conceives of *bayān* as inherently transitive. Unlike Ğaṣṣāṣ, however, Ibn 'Aqīl did not view his own description of *bayān* as fundamentally incompatible with that of Šāfi'ī.

#### F. *al-Zarkaṣī* (d. 794/1392)

Badr al-Dīn al-Zarkaṣī's *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh* offers an appropriate end-point for this survey:<sup>31</sup> His work offers an admirably comprehensive overview of the entire *uṣūl* tradition, which he understands as beginning with the *Risāla*; he quotes from many different authors, including many whose works are lost; and, writing in the late fourteenth century, he stands near to the end of the of pre-modern period of Islamic legal thought.

<sup>31</sup> 4 vols., ed. M.M. Tāmir, Beirut, Dār al-kutub al-'ilmīya, 2000.

Šāfi'ī's definition of *bayān* looms large in Zarkašī's discussion, and he reports extensively on the controversy aroused by Šāfi'ī's formulation. Zarkašī is not surprised by disagreement over the term *bayān* since it is used, he observes, to mean three different things: (1) the person or text that communicates something, by means of an address, in a self-sufficient manner (*al-dāll 'alā al-murād bi-ḥiṭāb tumma yastaqill bi-ifādatihī*); (2) the thing that indicates an intended meaning (*al-dalīl 'alā al-murād*); and (3) the act of rendering something clear(er) (*fi'l al-mubayyin*) (*Muḥiṭ*, III, p. 64). In his survey of various authors' understandings of the term *bayān*, words such as *izhār*, *ifhām*, and *idāḥ* loom large (*Muḥiṭ*, III, p. 64-5), suggesting again a transitive semiotic procedure.

Zarkašī then offers his own summary and explanation of Šāfi'ī's modes of the *bayān*, a discussion that is reminiscent of Ğuwaynī's. The first mode of the *bayān* is the "confirmatory *bayān*" (*bayān al-ta'kid*). This is an unequivocal text (*naṣṣ*) that is clear (*ḡalī*), does not admit of *ta'wīl*, is veridical (though it can encompass both tropological aspects and some restriction of general import: *fi l-ḥaqīqa llatī taḥtamīl al-maḡāz wa-l-'amm al-maḥsūs*), and generally excludes further interpretation (*iḥtimāl*) because it signifies at the surface level of the text (*muqarrir li-l-ḥukm 'alā mā qtaḍahu l-ẓāhir*) (*Muḥiṭ*, III, p. 67). Gone is the mechanical Qur'ānic specificity of Šāfi'ī's definition, replaced by an abstract quality of paramount clarity. Šāfi'ī's second category of *bayān* Zarkašī identifies as an unequivocal text (*naṣṣ*) that can only be understood properly by specialists (*yanfarid bi-darakihī al-'ulamā'*) and that involves linguistic ambiguity (*Muḥiṭ*, III, p. 67).<sup>32</sup> Again, and reminiscent of Ğuwaynī, the specificity of Šāfi'ī's category is replaced with a qualitative description and an assertion of the importance of expertise. Šāfi'ī's third through fifth categories of *bayān* are reported accurately, though the technical idiom is that of Zarkašī's day.

Zarkašī, a Šāfi'ī, defends Šāfi'ī valiantly against the attacks of later *uṣūlīs*: For example, Šāfi'ī did not neglect *iḡmā'*; it is merely the case that *iḡmā'* only coalesces on the basis of a *dalīl*, and Šāfi'ī's list of types of *bayān* is really a listing of possible kinds of *dalīls* that could serve as a basis for *iḡmā'* (*Muḥiṭ*, III, p. 68).

What is striking, however, is the replacement of a schema that foregrounds structural matters—the relationship of the Qur'ān and the Sunna—with a schema that foregrounds qualitative aspects of divine-human communication, conceived of as "levels" (*marātib*) of clarity.

<sup>32</sup> Zarkašī gives the examples of *wa-* and *ilā* in the *āyat al-wuḍū'* (Koran 5, 6), both of which are susceptible to differing interpretations that affect an understanding of how to perform the legal obligations set forth in the verse in question.

#### IV. Conclusions

One question that arises is why the passage from the *Risāla* concerning the notion of *bayān* should garner so much attention in later *uṣūl al-fiqh* literature. Šāfi'ī's discussion of the term contains one of the few definitions offered in the *Risāla*. But even though that fact made it a convenient topic to discuss, I think it most likely that the *Risāla*'s discussion of the term *bayān* was remembered as central to the concerns of its author.

Muḥammad Ibn Dāwūd al-Zāhirī (d. 297/910), son of the eponymous founder of the Zāhirī school of legal thought, criticized Šāfi'ī's five-part definition of *bayān* for omitting consensus, *iğmā'*: "Šāfi'ī ignored, among the degrees [*marātib*, i.e., of the *bayān*], consensus. It is among the basic indicators of the Law [*min uṣūl adillat al-šarī'a*]" (quoted, e.g., by Ğuwaynī at *Burhān*, I, p. 126). This criticism is also made by Ğaṣṣāṣ (*Fuṣūl*, II, p. 16), but the fact that Ibn Dāwūd is said to have been engaged polemically with an idea from Šāfi'ī's *Risāla* tends to suggest that 9th-century jurists were interested in Šāfi'ī's *Risāla*.<sup>33</sup> This fact fits with Montgomery's contention that Ğāḥiẓ's serious interest in Šāfi'ī's notion of *bayān*, expressed as a collection of playful allusions to Šāfi'ī's *Risāla*, shows that Šāfi'ī's hermeneutics were highly relevant to the concerns of 9th-century Muslim thought generally.<sup>34</sup>

But Ibn Dāwūd's criticism is also interesting because it suggests that he viewed Šāfi'ī's enumeration of the varieties of *bayān* as an attempt (albeit a failed one) at a complete statement of the basic 'sources' (*uṣūl*) of law. Ibn Dāwūd felt that Šāfi'ī should have offered something more in the nature of the list of the traditional four sources of law (though presumably without *qiyās*).<sup>35</sup> This aspect of Ibn Dāwūd's critique suggests, perhaps, that Šāfi'ī's intention was more intelligible to him than to the later *uṣūlīs* whose views have been examined above—after all, Šāfi'ī sought to offer a comprehensive typology of ways that norms are expressed.

Later authors seem to have expected the term *bayān* to pertain to levels of communicative clarity. Their expectations were much more strongly colored by the concern with language as the central problem of *uṣūl al-fiqh* (as opposed to contradiction occasioned by Qur'ān-Sunna conflict), and also by the notion

<sup>33</sup> Ibn Dāwūd's interest also reflects his father's positive valuation of Šāfi'ī's jurisprudence. See C. Melchert, *The Formation of the Sunni Schools of Law*, Leiden, Brill, 1997, ch. 9, esp. p. 179-182.

<sup>34</sup> Montgomery, p. 102.

<sup>35</sup> I have argued that Šāfi'ī did not intend to offer a theory of four sources of the law in the *Risāla*, though he has been widely misunderstood in the secondary literature as having proposed such a theory. "Does Šāfi'ī Have a Theory of 'Four Sources' of Law?" in Weiss (ed.), *Studies in Islamic Legal Theory*, p. 23-50.

of *bayān*, emergent in Ḡāḥiẓ's *Bayān*, as describing a communicative process subject to infelicities. It is in this regard that the reception of this idea from the *Risāla* in later *uṣūl* works sheds some light on trends in legal thought connected with the rise of *uṣūl al-fiqh*. The difficulty in assimilating Šāfi'ī's concept of *bayān* into later *uṣūl* suggests a general shift from a concern with contradiction to a concern with communication in language. This shift, which I would call the 'linguistic turn,' is already evident in Ḡāḥiẓ's playful critique of Šāfi'ī.

If it is right that Ḡāḥiẓ meant to refer to Šāfi'ī in his discussion of *bayān*, what did Ḡāḥiẓ mean to say by doing that? We must begin from the premise that Ḡāḥiẓ did not like Šāfi'ī's use of the term *bayān*, likely because Šāfi'ī does not highlight the qualitative aspect that Ḡāḥiẓ viewed as a crucial component in his own communicative concept of *bayān*. Šāfi'ī uses his notion of *bayān* defensively, to repair a breach: he uses it to link the Qur'ān and the Sunna in response to the charge that they do not cohere. Šāfi'ī focuses in the *Risāla* almost exclusively on the difficulties caused by the interpenetrative, interlocking relationship between the two sources of the law, which are mostly understood (and heroically portrayed) as instances of apparent (rather than actual) contradiction. His portrayal of the *bayān* shows that they interlock and thereby produce a seamless body of norms. Šāfi'ī's *bayān* is thus wholly structural; it does not liberate ideas from the speaker's mind and convey them to the recipient with crystal clarity. No wonder, then, that Šāfi'ī's account does not satisfy Ḡāḥiẓ, who anyway probably did not see juxtaposition of the Qur'ān with *ḥadīṭ*-s as a desirable procedure for highlighting eloquence in general, or the Qur'ān's linguistic preeminence in particular.

In his *Bayān* Ḡāḥiẓ explores the human struggle to master the medium and celebrates their successes, their capacity for superlatively felicitous expression, above all expression in Arabic. The ability to fashion sublime discourse in Arabic verges on a kind of human participation in the divine. The Qur'ān presents itself as the paradigmatic act of communicative excellence, a *kitāb mubīn*. On the one hand, the Qur'ān expresses the most sublime ideas that can possibly be expressed, but on the other hand, even the Qur'ān must render the sublime through the earthly medium of language. In Ḡāḥiẓ's model of communication a lack of fit between idea and idiom is always possible, making for the ever-present possibility of miscommunication, infelicity, etc. Humans—quite unlike God—must struggle with that medium. This struggle is exemplified in the opening sections of the *Bayān* (before the introduction proper), which portrays actual instances of infelicitous communication, but also the human capacity for overcoming them, such as Wāṣil b. 'Aṭā's heroic attempts to cope with his speech impediment.<sup>36</sup>

<sup>36</sup> As noted by Montgomery, p. 117.

Recent research on *uṣūl al-fiqh* has also focused on problems of communication, but from the point of view of the recipients, those who must interpret the divine and divinely-inspired samples of language that are the sources of norms.<sup>37</sup> For the *uṣūlīs*, it is not so simple a matter to know what God is saying, however beautifully He may say it. With the recognition of this problem we are no longer in the realm of structural incompatibility, but are instead confronted by the problem of language and its potential for indeterminacy, a major concern that separates *uṣūl al-fiqh* from Ṣāfi'ī and his *Risāla*.

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<sup>37</sup> Above all, M.M. Yunis Ali in his *Medieval Islamic Pragmatics*, Richmond, Curzon, 2000. Bernard Weiss, too, has emphasized the *uṣūlīs*' recognition of the linguistic difficulties attending the interpretation of revelational texts. See his *Spirit of Islamic Law*, p. 52-65. See also Weiss's *The Search for God's Law*, Salt Lake City, University of Utah Press, 1992, p. 117-50; and, in a slightly different vein, S.A. Jackson, "Fiction and Formalism: Toward a Functional Analysis of *Uṣūl al-fiqh*," in Weiss, (ed.), *Studies in Islamic Legal Theory*, p. 177-201.

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