A CULTURAL INTERPRETATION OF
SHĀFI‘I’S LEGAL DOCTRINE

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Abstract

This study examines the cultural implications of the methodology followed by Muhammed b Idris al-Shafi'i in the process of Islamic legalism. With reference to Clifford Geertz's model of religion as a cultural system, Shafi'i's methodology is presented as a process which expresses a certain cultural reality. That reality expresses an interrelationship between a world view- the Sunnah of the Prophet Muhammed, and a social context of legal differences. The cultural significance of this interrelationship facilitates the extension of the religious experience beyond the ritual itself and thereby influences the life of society, their ethos. As consequences of a cultural process, rituals such as the salah and fasting emerge as environs which reflects a particular social context and expresses a physiological reality- the world view. The concept of intention (niyyah), an important principle in Shafi'i's legal thought, is shown to enhance the interrelationship between the world view and the social context. A sociological discourse is propagated rather than a purely legal dicta in order to portray Shafi'i as a theologian whose specific style and methodology have been motivated by a specific social ideal. This ideal represents Shafi'i's ideas of the social composition and structure of the ideal Islamic ummah (community) under the leadership of the Prophet Muhammed.

In support of this hypothesis, Shafi'i is located within a socio-historical context which shaped and influenced his legal thoughts. Shown to be motivated by a cultural reality rather than mere legal differences with his
earlier contemporaries, Shāfi‘ī’s ideas express the ideal to experience the aura of the ummah who was once led by the Prophet Mohammed. Shāfi‘ī’s systemisation of the legal process and his unique conception of the Sunnah are presented here as a means whereby Shāfi‘ī sought that physiological reconciliation with the Prophet and his ideal ummah. His legal principles within this system become symbols which had a specific function— to motivate people to experience a reality in which their actions are modeled on a world view, the tradition or Sunnah of the Prophet.

The argument between Joseph Schacht and Mustapha Azami indicates that Shāfi‘ī’s innovative contributions to Islamic legalism are more distinctively recognizable within a social context rather than a legal discourse. Talal Asad’s critique against the symbol system of Geertz further highlight supposed shortcomings when referred to Islam. However, for the purpose of this study Geertz’s model emerges as a convincing manifest to discover the symbolic significance of Shāfi‘ī’s legal thought. The results of this study shows that Shāfi‘ī made innovative contributions to the development of Islamic legalism. These contributions are realised when they are considered not only as dicta that were determined by hermeneutical processes, but rather as symbols which reflect the social ideals of a scholar who was motivated by a particular world view and a determination to reconcile the life of society with that world view. These results also highlight the uniqueness of Shāfi‘ī’s legal thought with regard to his contemporaries. Shāfi‘ī’s perspective of Islam emerges therefore as a socio-religious manifest which encompasses and incorporates Muslims from diverse social structures and cultural patterns.
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Muhammed b. Idris al-Shafi'i, a prominent Islamic jurist during the earlier stages of Islamic jurisprudence, was born in the year 150/767 in the Gaza region of Egypt and died 204, in Fustat, Old Cairo. Shafi'i's approach to the Islamic legal process has been characterised as a systematic program in which he consistently had recourse to revealed sources such as the Qur'an and the hadith. He was also considered by many as the pioneer in the implementation of set rules of hermeneutics in Islamic jurisprudence. According to these studies, Shafi'i followed a methodology in which he strictly adhered to the Qur'an and the Sunnah of the Prophet (Prophet will henceforth refer to Muhammed) when he formulated his legal thought and considered them as the two primary sources of Islamic legalism. In that process he followed a strict order of reference to these legal sources with the Qur'an as the primary source, followed by the Sunnah or tradition of the Prophet as related in the hadith (oral narratives of the Prophet's tradition and statements). In cases where these two sources proved inadequate to deal with a specific issue, Shafi'i resorted to ijma (consensus of prominent religious scholars), followed by ijtihad (independent judgement based on interpretation and application), and finally, qiyas (analogy). Shafi'i was also reputed to have accepted other forms of reasoning such as istihsan (juristic preference) when these secondary sources failed to provide

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relevant information or guidelines.

Shafi'i's systematic research methodology revealed some important innovations in the legal environment of his time. These included the establishment of a clear order of hierarchy when deriving knowledge from legal sources, and secondly, when he consulted secondary legal sources, he did so in strict relation to the Qur'an and the Sunnah. Shafi'i's innovation in the field of Islamic jurisprudence was further highlighted by his proposal that hadith was analogous to the Sunnah it conveyed and that both had therefore the same legal authority. Perhaps the most unique feature of Shafi'i's doctrine was the equation of an established Sunnah with the Qur'an. This meant that in terms of Shafi'i's understanding, the Sunnah of the Prophet had the same binding authority as the Qur'an in instances where the Qur'an was silent on a particular issue. Within the context of these perspectives, Shafi'i proposed a unique conception of the Sunnah as a primary legal source from which social and religious observations could be discerned.

According to Khadduri, this approach of Shafi'i was largely shaped by the milieu in which he resided. Khadduri maintained that this milieu was characterised by disagreement (ikhtilāf) and polemic between various legal scholars. Each of these scholars tried to assert their leadership as legal scholars in their respective communities.2 Documentation of Shafi'i's legal works especially the Risālah and Kitāb al-Umm, revealed a literary style which reflected that nuance of ikhtilāf and highlighted his defensive reaction and

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2 Ibid., 7.
reasoning against pseudo and sometimes realistic opposition. This he did by confronting his opponents with a critical evaluating of their legal opinions and with that asserted his own. Those who were the centre of his criticisms included prominent legal scholars such as Mālik b Anās (d.179) who was his teacher, and the disciples of Abū Ḥanīfah (d.150) namely, Abū Yusuf (d.182) and Shaybānī (d.189). Groups who emphasised the rational evaluation of the Qurʾān, included the Ahl al-Kalām and the Anti-traditionists known as the Ikhtilāf al-Hadīth whose teachings expressed scepticisms towards the ḥadīth as a reliable source and vehicle for conveying the Sunnah. These two groups in particular invited strong opposition from Shāfiʿī. The primary reason for Shāfiʿī's debates and criticisms against such opposition was the supposed disregard for the Sunnah of the Prophet in favour of personal opinion. The rationalism and consideration of customary practices with which they sought to solve legal issues were the focus point of Shāfiʿī's resentment.³

Recent criticisms of Shāfiʿī's work argued that he himself resorted to the random use of alternative and secondary sources in the process of Islamic jurisprudence. Joseph Schacht's extensive study of the earlier development of Islamic jurisprudence presented Shāfiʿī as a scholar who followed a systematic and a strict methodology but also one whose legal procedures were inconsistent and prejudicial.⁴ The inconsistency Schacht referred to here


suggested that it was not always possible for Shafi'i to enforce the rules of his methodology and that he was therefore also guilty of inconsistency in his application of legal principles and reference to legal sources. Schacht gave an example where Shafi'i contradicted his own theory with regard to the issue of punishment for fornication and adultery. In his opinion, Shafi'i found it problematic to apply his theory of naskh (His theory which suggested that a Qur'anic ruling could only be repealed by another Qur'anic ruling and not by the Sunnah). This theory of repeal also suggested that the Sunnah of the Prophet could only be repealed by another Sunnah but not by the Qur'an. This indicated that a prophetic tradition did not contradict the Qur'an but rather explained and supplemented it. According to Schacht, Shafi'i was confronted with a problem when a prophetic tradition indicated that the Prophet punished adultery by stoning and not by flogging. Schacht maintained that this Sunnah was in fact contradicting the existing Qur'anic verse which ruled that adultery was punishable by flogging. In Schacht's opinion, this was a classic example which


6 John Burton, The Collection of the Qur'an, (Cambridge: Cambridge University Press, 1977), 69. Burton cited this example as a case of repeal of the written word of the Qur'an without its ruling (naskh al-tišāwa dīna al-ḥukm). Here he narrated a tradition related by Abdullah Ibn Abbās who confirmed that the Prophet had in fact stoned adulterers on the basis of Qur'anic verses which have previously been part of the Muhaf, the complete revelation to the Prophet, but which have been omitted from the existing Qur'anic text.

7 Yusuf Ali, The Holy Qur'an, vol. 2, (Lahore: Sh. Muhammed Ashraf, 1980), Q 24:2. "The woman and the man guilty of adultery, or fornication, flog each of them with a hundred stripes ... ." Note that all citations of Qur'anic verses will be cited
illustrated the contradiction in Shāfi‘ī’s legal procedures and theory of naskh because he ruled in the Risālah on the basis of the “flogging” verse and thereby ignored the judgement by stoning. This example according to Schacht, indicated that Shāfi‘ī repealed a prophetic tradition with an Qur’anic injunction. However, if it could be accepted that the flogging verse was part of the complete revelation (Mushaf) as Ibn Abbās has indicated, then Shāfi‘ī’s reasoning in this regard was consistent and justifiable. Schacht acknowledged this and in spite of accusations of inconsistency, credited Shāfi‘ī as the pioneer of systematic reasoning and acknowledged his contributions for enhancing a distinctive conception of the Sunnah as the practice of the Prophet. These findings of Schacht have been criticised by Muhammed Mustafa al-Azami who distinctively refuted Schacht’s opinion of Shāfi‘ī being the pioneer of such a perception of the Sunnah. Azami criticised Schacht’s opinion as a misinterpretation of the legal contributions of the earlier schools of thought. According to him, the conception of the term Sunnah as the practice of the Prophet was not developed by Shāfi‘ī, but was part of the legal procedures of earlier jurists such as Mālik. He systemically refuted Schacht’s views as unfounded and branded them as misconceptions of the historical evolution and usage of the term Sunnah. 

from volumes 1 and 2 of this source. The first number of Qur’anic references indicates the chapter and the second the verse.

8 See, Shāfi‘ī, Risālah. 105-27. passim

Azami’s refutation indicated that Schacht focused on Shāfi‘ī’s contributions to the emergence of the prophetic Sunnah in a legal discourse while Azami appealed to its presence earlier. Implicitly, though, Azami also accepted the development of the Islamic legal discourse to incorporate a pronounced focus on the prophetic Sunnah. This study takes this earlier debate further by looking at the implications of the theoretical legal debate on the perception of Islamic rituals. The suggestion is that the distinctiveness of Shāfi‘ī’s legal discourse was not only restricted to a matter of hermeneutical innovation and consistency, but also included direct implications on a cultural and religious reality. In this study, in order to focus on a distinctive framework of rituals, for example the salah and fasting, Shāfi‘ī’s legal methodology will be looked at from a cultural perspective whereas his legal discourse will serve an informative role. Shāfi‘ī’s doctrine of rituals as consequences of theology and expounded by a legal discourse, will be presented as a phenomenon that has a social and a religious function. My opinion is that by professing a cultural discourse, a more convincing illustration of Shāfi‘ī’s distinctive contributions to the Islamic legal process will emerge.

The basis for such an interpretation will be Clifford Geertz’s model of religion as a cultural system. Geertz’s ethnographic research of the social structures of indigenous societies in Morocco, Java, and Indonesia, formed the basis on which he constructed his theory of religion as a cultural system. His basic framework in which he defined religion was that it is:

(1) a system of symbols which acts to (2) establish powerful, pervasive and long-lasting moods and motivations in men by, (3) formulating conceptions of a general order of existence and (4)
clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic. 10

Religion in this context was regarded as a system consisting of symbols which had a definite function within a society. This function enabled a person and subsequently society, to make sense of their lives on earth. In a context of social disorder and chaos, a religious person will conceptualise his existence as meaningful and purposeful. In the observation of a ritual, this conception becomes a visible model of a transcendental reality which he called a worldview- the most comprehensive conception of order and the way things ought to be. Geertz further proposed that a relationship of interdependence existed between religion and the social life of people in which the one is a reflection of the other. Religion being an aspect of culture is connected with and interacts with other aspects of culture. This view implied that any form of culture such as social order, art, economics or law, reflected and shaped the values and principles of a particular religion. This idea was earlier explored by Max Weber who, as a pioneer in the field of sociology, was particularly interested in the relationship between religion and economics. 11 Geertz's theory is evidently an extension of this conception where he argued not only for the existence of a mutual relationship between religion and economic phenomena, but religion and the entire social system. Religion in Geertz's view was therefore defined as


an institution consisting of culturally patterned interactions. The framework of Geertz’s model of religion which serves the basis of this study includes the following: Religion, or the ritual which is a microcosmic representation of it, is a reflection of the social structures of society. This suggests that the values and ideals of the social interactions and patterns of a society, are expressed in the observation of a religious ritual. In this relationship of interdependence, religion serves as a symbol system that influences the ethos of society- the manner in which people interact socially. Geertz’s theory is not without fault because it fails to expand on the role of the world view for having a profound influence on the religious practices and the ethos of society. Within this framework, some of Shafi'i's ideas of rituals are presented as a symbol system which reflects a particular social context. For this purpose, I will limit this investigation to the study of the principle of intention (niyyah) as a symbol which demonstrates that reality. As an expression of the values of a social context, the ritual serves as a reinforcement of values and conceptions and subsequently influence the ethos, the character and quality of social life. The world view, which in Shafi'i's case constitutes his unique ideas of the Sunnah, is shown to have had a profound influence on his conception of rituals. In retrospect, Shafi'i's perspectives are presented as reflections of a specific world view. This would indicate that his world view perspective was shaped by a social context and in turn had an impact on the ethos of society. Thus, the deduction is made that Shafi'i's doctrine was a reflection of his unique conception of the Sunnah. That conception was in turn shaped by a social context in which disagreement and
polemic between the various schools of Islamic jurisprudence was common. Rituals in this sense were both an expression of a world view and reflection of a social context which influenced the character and quality of life of adherents—their ethos.

Geertz’s theory was also the subject of numerous criticisms. Amongst the most noted is the critique of Talal Asad who assessed Geertz’s theory within an Islamic framework. A relevant point which Asad proposed in his critique against Geertz’s theory, was that he should focus on historical and social discourses rather than schematising and de-historicising narratives of typical actors. However, in using the Geertzian model, this study will demonstrate that historical changes and relations of institutions can be accommodated and be shown to have had an impact in a process to present a particular and unique conception of Islam.

Chapter One gives a description of Geertz’s cultural theory by focusing on certain fundamental themes. The first theme to be discussed is that of functionalism and its implication as a definition in terms of Geertz’s understanding and conception of religion. This is followed by a discussion of the plausibility of a symbolic discourse to determine the social functions of a ritual. Within the framework of these two themes, Geertz’s model will be presented with reference to the interrelationship between ethos and social structures on one spectrum, and

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12 Talal Asad, *Genealogies of Religion*, (Baltimore: The John Hopkins University Press, 1993). 27-54 Here Asad questioned the plausibility of an anthropological research as a substantive study of Islam. Geertz’s supposed tendency to ignore the importance of a theological and metaphysical discourse in his assessment of religious systems, have been the primary target of such criticisms.
religion and world view on the other. Chapter Two deals with an epistemology of Shāfi‘ī's legal thought and its relation to the cultural model expounded by Geertz. Chapter Three follows with an analysis and interpretation of the niyyah within Shāfi‘ī’s doctrine of prayer (ṣalāh) and fasting (ṣawm) with the intention to locate the symbolism of the niyyah and its meaning within a particular conception of religion. Shāfi‘ī's legal pronouncements documented in the *Kitāb al-Umm* and the *Risālah*, will serve here as the primary sources of this investigation.

In conclusion, this study demonstrates that critique against Geertz's theory do not necessarily negate it as a useful approach to determine and suggest a particular conception of Islamic rituals. It also proves that as a cultural phenomenon, Shāfi‘ī’s doctrine provides an alternative approach to understand the doctrinal differences between himself and his opponents. Furthermore, the location of the niyyah as a symbol allows the reconstruction of the social context in which Shāfi‘ī formulated his legal thoughts. Finally, the point is made that religion, or the ritual which is a representation thereof, is in fact part of a cultural system which not only reflects the social context and a particular world view, but also has an impact on the ethos of society.
CHAPTER 1

CLIFFORD GEERTZ'S THEORY OF RELIGION AS A CULTURAL SYSTEM

This chapter deals with Geertz's model of religion and focuses on the interrelationship between religion as a cultural system and cultural phenomena which includes social structures, ethos and world view. Within this interrelationship between culture and these cultural forms, symbols played a prominent role. In the introduction I have noted that Geertz considered religion and social structures more than just mere reflections or "mirror images" of each other. This structuralist's approach of scholars such as Malinowsky ignored the independent status of religion. For Geertz religion was an independent variable which functioned interdependently within a social context and shaped the ethos of a society. Religion according to Geertz could perform this function because it consisted of symbols that have certain qualities. These symbols, reflecting the social context and world view, shaped the quality and character of life—the ethos. I will limit myself in this chapter to this model with particular attention to Geertz's conception of culture and its relation to religion as a reflection of a social context and a particular world view. The next step will be to determine Geertz's perception of this variable or type of religion and its influence on the ethos. Some of these perspectives will be evaluated against Talal

Asad's critique in order to demonstrate the plausibility of this model as a
framework in which to understand Shafi'i's distinctive conceptions of Islamic
rituals.

Functionalism

Geertz's Conception of Culture

Geertz determined culture to be "an ordered system of meaning and
symbols in terms of which social action takes place."14 Within this system,
human beings interpret their experience and determine the significance or
meaning of their actions. The concept of meaning occupied a prominent role
in this culture system when Geertz said that:

Believing with Max Weber, that man is an animal suspended in
webs of significance he himself has spun, I take culture to be
those webs, and the analysis of it to be, therefore, not an
experimental science in search of law but an interpretative one in
search of meaning.15

Geertz supposed scholars of social science to interpret these "webs of
significance" rather than to explain their existence. The suggestion was
more to explicate the meaning of people's thoughts and actions instead of
focusing on causal factors that might account for their behaviour. To
demonstrate how people determine the meaning of their actions, Geertz
directed the attention to the differences between winking as a deliberate and

14 Ibid., 123.

15 Clifford Geertz. "Thick Description: Toward an Interpretative Theory of
intentional act and twitching, an act done unintentionally and considered therefore a meaningless behaviour. The innate meaning of winking is derived from its connection with a particular behaviour pattern. This suggest that one cannot wink without contracting the eyelids, which in fact means that the behaviour of contracting the eyelids, expresses the meaning of winking. On the other hand, this behaviour of contracting the eyelids cannot be described as winking without considering the context in which it was done. That context in terms of Geertz's theory, is culture which determined what behaviour counts as winking and what does not. Geertz’s conclusion was that culture is not a mirror image of social behaviour, but rather a dynamic system which regulates and determines behaviour patterns in terms of the meanings it suggests within the structures of society. It becomes apparent here that Geertz considered cultural processes and social structures as two different abstractions. Geertz said in this regard that:

Culture is best seen not as complexes of concrete behaviour patterns- customs, usages, traditions, habits or clusters-... but as a set of controlled mechanisms- plans, recipes, rules, instructions... for the governing of behaviour.  

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16 Ibid., 7. This example Geertz borrowed from Gilbert Ryle to demonstrate how culture determined the meaning of action and conception.

17 Robert Segal, Interpreting and Explaining Religion (New York: Peter Lang, 1992), 12. Segal draws an analogy between Geertz and Durkheim with reference to their respective methodological preferences. He concluded that Geertz favoured, although not consistently, an interpretative science rather than a observational science.

18 Geertz, The Interpretations of Cultures, 44.
Geertz's perception of culture as a dynamic system is in fact a modification of previous theories. He considered such theories as "static" and "a-historical" because they were unable to demonstrate the manner in which religion as a cultural system transformed social structures. The theory of the structuralist's which considered culture as a mere reflection of social structures and vice versa, ignored one fundamental point. They failed to treat social structures and cultural patterns as separate but also equal entities. The one was either ignored at the expense of the other, or the contributions of the one became a simple reflection of the other. Geertz's definition centred on a revised functional theory in which social and cultural processes were considered mutually interdependent without denying their autonomy. Geertz's analyses of two rituals in the Javanese community demonstrated two fundamental points: The ineffectiveness of these conventional functional theories to adequately deal with and explain the rapid social changes that occurred in society, and secondly, the plausibility of a theory in which culture and social structures were considered autonomous, but yet interdependent.19 These conventional theories failed to provide adequate answers as to why a traditional ritual as the Slametan (meals offered to the close family and neighbours on various occasions of religious significance) which was for generations instrumental in the social cohesion of the Javanese community, now in a modern context, failed to stimulate communal awareness. In a conventional sense (referring to the structuralist's theory), the tension which accompanied the funeral ceremony

which was executed previously with "methodological" and structured efficiency, was considered the consequence of the disintegration of Javanese social structures. Here, social structure and cultural patterns were considered as mere reflections of each other with the presumption that a change in the one will inevitably influence the other and vice versa. A structuralist approach took it for granted that the disruption and fragmentation that occurred in the social order, automatically lead to disruption and fragmentation of the cultural system. On the other hand, Geertz's definition understood social action as an ordered system which became meaningful by reflecting cultural forms. Thus, culture was an independent variable but yet functioned interdependently with the social system. This means that religion as an interdependent system reflects the social context and a world view, but as a independent entity, it shapes the ethos. Having defined Geertz's conception of culture, the task is now to relate that conception to religion.

Religion as a Cultural System

It is evident that Geertz's conception of religion was that of a system in which the relationship between symbols and human beings feature prominently. The objective in this section is to explore the function of sacred symbols of a religious system and how it was related to these cultural phenomena. The methodology Geertz followed in decoding the functions and meanings of sacred symbols, will serve as the general framework of reference for interpreting the *salāḥ* as ritual consisting of such cultural symbols. When studying the methodology proposed by Geertz, we find that
the meanings that religious symbols induced were related both to psychological and social process. He said in this regard:

The anthropological study [of religion] is therefore a two stage operation: first, an analysis of the system of meanings embodied in symbols which make up the religion proper, and, second, the relating of these systems to social-structural and psychological processes.20

Within this framework of religion, the quality and functions of symbols are related both to a psychological order in which they enhanced conceptions and meaning, and to cultural forms which included social phenomena such as social context, world view, and ethos.

Symbolism- Definition and Function of Symbols

Symbols as Vehicles for Conceptions

Geertz defined symbols as any "object, act, event, quality, or relation which serves as a vehicle for a conception."21 This view suggested that within the framework of culture, every aspect or behaviour of human beings becomes meaningful because it conveyed and enhanced a certain meaning or conception. Mircea Eliade who was concerned with the archaic origin of symbols, distinguished between conceptions and symbols. He agreed that symbols enhanced conceptions, but added that their archaic origin attested to their innate ontological character. He suggested therefore that symbols

20 Geertz, The Interpretations of Cultures, 125.

21 Geertz, "Religion as a Cultural System," 5.
were capable of stimulating the expression of thoughts even in the absence of conceptual vocabularies. This phenomenon according to him was possible because "symbols reveal a modality of the real or a deep structure of the World, and in the spiritual horizon of primitive man, the real mingles with the Sacred and the World is considered the creation of the Gods." For Geertz, the functionality of symbols was more complex, because he considered conceptions, or the meanings that symbols induced, together with the social function such symbols performed, innately part of the structures of symbols. This meant that he insisted on the absolute inseparability of concepts and actions. Because symbols were vehicles of meanings, all behaviours could be termed "shaped behaviour". This view indicated that concepts were embedded in action and also that a "concept had no ontological status outside of expression." In this context these conceptions or the meanings of symbols were socially determined. To once again take the example of winking and twitching, winking was considered meaningful and having a specific purpose only because it was modelled on a specific behaviour previously determined by society as winking. Here culture provided the blueprint or conception for the type of behaviour which could be counted as winking and that which did not.

Asad considered religion as a more complex system than the system

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22 Ibid., 3.

23 Joanne Punzo Wagborne, "From Geertz's Ethnography to an Ethnotheology?" in *Anthropology and the Study of Religion* ed. Robert L. Moore and Frank E. Reynolds (Chicago: Centre for the Scientific Study of Religion, 1984), 42. Wagbone proceeds further with her assessment of Geertz's unique ethnographic approach claiming it to be a study of action and the most appropriate method to accommodate this new philosophical position in which concept and action are
of symbols suggested here by Geertz. He suggested that these complexes or conceptions should not be thought of as symbols that carry meanings, but rather as a set of relationships between objects or events brought together as complexes that innately have intellectual and emotional significance.\(^\text{24}\) He considered this approach essential, for it revealed conditions which explained the formulations of such concepts and complexes and provided an understanding of the relationship between this structured process and various practices. According to Asad, the formation of symbols were therefore conditioned by social relations in which the structured process took place. The social relations or contexts he referred to, do not necessarily consist of conceptual categories, but of various social categories which contributed to the formulation of conceptions. Asad calls these social categories "discourses," which served to explain the structure of religion as a symbol system and also explained why and how one particular religious symbol exerted a greater authority than others. What Geertz would identify as religion or types of religion, was according to Asad, a particular discourse or representation of people’s responses. According to him these discourses were not a production of conceptual processes alone, but were also formulated and conditioned by various discourses or representations of people’s understanding of their social complexes and realities. As example he cited Vigotski, who as a behaviourist, demonstrated that a child’s intellect was conditioned by social activities in which speech and subsequent movements were important facets. These conditions

\(^{24}\) Talal Asad, *Genealogies of Religion*, 31.
explained the formulation of the child's intellect and declared why one particular child's intellectual capacity was higher and more advance than other's.\textsuperscript{25}

Thus, Geertz's variable or type of religion which consist of a system of symbols brought together by conceptual processes, was in Asad's view a system that represented a particular discourse of society or a representation of society's understanding and conception of their social functions. Although Asad's critique demonstrates the inability of Geertz's theory to effectively deal with subsequent discourses and practices of society as supportive to and also intrinsically part of religion, this study shows that such discourses can be accommodated within the Geertzian model. In this tradition, Shafi'i's doctrine is presented in this model as a particular interpretation of Islam and a consequence and reflection of a social context in which legal discourses and world view influenced religion. This type or particular reality of religion, had a subsequent impact on the ethos of society. In this manner it is shown that Shafi'i's perception of Islam was influenced by a socio-historical context. The hadith which contained the articulations and practices of the Prophet, his Sunnah, was the central entity in his perspective. Shafi'i's religious perspectives were therefore shaped by socio-historical events and as a particular discourse, represented his world view. These discourses are presented here as conceptual categories which, as sources of information, enhanced a particular conception of religion.

\textsuperscript{25} Ibid., 31.
Symbols as Sources of Information

The conceptual quality of religious symbols as sources of information, enabled Geertz to present a dynamic theory of religion. Geertz considered symbols as "extrinsic sources of information" because symbols provide the necessary ideas for man to live a meaningful life in an otherwise unfamiliar territory. In this manner a person who, unlike the beaver, does not possess the natural physiology to build a dam, was in need of the required information how to build that dam (Geertz 1968). That information according to Geertz, is not readily available because it is "extrinsic," and therefore not part of the everyday and common-sense world of human beings. Humans receive that information from a blueprint or a textbook which, as symbolic resource, provides the conceptions of what a dam should look like, how it should be built, and what materials are needed to construct it.

In the context of culture, Geertz considered such symbols to be "models" which have both an "of" and "for" senses. To explain the "of" sense, a person who developed a basic idea how dams should be constructed, has formulated a chart which could assist others to construct dams. This chart is a representation of a psychological category- an idea or conception of what a dam should look like in reality. The model "for" sense is realised when the chart is used as a source of information for the construction of the dam. In a cultural context, symbols are models "for" the construction of other dams. By expressing this double quality, symbols give meaning to social and psychological reality by shaping themselves to it and shaping it in turn.  

26 Geertz, "Religion as a Cultural System," 93.
Symbols Inducing Moods and Motivations

As a symbol, a ritual such as the șalāh motivates a person to respond religiously in circumstances other than the șalāh, such as in the work place, with the family, friends, in a restaurant, or cinema. Geertz considered this motivation, together with moods, as two distinctive forces of dispositions that religious symbols induced in a worshipper. Therefore, motives which provide temporal directives, are liabilities and inclinations which cause a person to perform particular acts or have certain kinds of feelings. Let us now look more closely at this particular function of symbols.

When a person has been properly stimulated, or rather convincingly motivated, he will be overwhelmed by a particular mood. Geertz considered moods, unlike motivations, as having no direction and therefore responsive to no ends. This is because the effect they exercise on a person is totalistic only when they are present. The major difference between motives and moods is that motives become meaningful when considering the objective of such a mood. For example, a person’s motive for performing the șalāh may be because he wishes to submit to a higher transcendent order. Moods become meaningful when considering the circumstances or sources from which they originate. In this manner, a person performing the șalāh experience moods of humility because his objective was to submit himself physically and spiritually to a higher authority.

Talal Asad comments suggested that in a Christian context (with reference also to Islām), the dispositions suggested by symbols are not the essence of religious symbols. They are accepted as religious symbols even
when failing to induce motivations or moods in a performer because according to Asad, "religious symbols possess a truth independent of their effectiveness." However, Asad conceded that religious symbols had to exercise some form of authority or power in the changing social structures of society. This is exactly what Geertz proposed - that symbols as cultural patterns exercised a particular function by inducing motivations and moods in a performer which enhanced a sense of authority. This authority induced by symbols is essential in order for them to maintain their position as meaningful behaviour patterns in a changing or modernised social contexts. Without this sense of authority, a religious symbol such as the salah will cease to be considered a cultural symbol because it does not enhance a sense of authority or power. Asad perhaps failed to understand that Geertz was unconcerned with scriptural verification or religious truth of symbols because they do not serve the social functions of such symbols. Even though the salah is sanctioned in the hadith and the Qur’an, this does not in itself suffice as guarantee to induce a sense of authority in a social context. What Asad’s theory indicates is that the relationship between the performer and the transcendent God is based on a formal contract between an all-powerful God and the submissive servant - a relationship in which discipline and authority served as the instruments of motivations and moods. Within such a context, Asad presupposes that a ritual such as the salah, will still be conceptualised as a meaningful behaviour mainly because it is sanctioned by scripture. Geertz on the other hand, emphasises a conceptual process in which the worshipper experiences a mutual relationship between his motive

for performing the *salāh* and the moods that such a performance induces. I agree with Asad that power and discipline (referring to the all powerful Church in medieval times) do induce dispositions, but I disagree with his idea that such dispositions serve the end to which it is directed. This is mainly because in a social context where power and discipline are conceptualised as negative or antisocial traits, dispositions emerge which are basically forged in a master-servant relationship. People performing the *salāh* in a context of this nature, experience a conflict between their motive for performing the act (which would be merely to relieve them from the restrictions and obligations placed on them by a higher authority), and their moods which I believe, will be anything but a sense to become liable and prone to extend religious experiences beyond the parameters of the church or the mosque. Religion in this manner becomes compartmentalised where adherents, although motivated to submit, do not cognitively experience a harmony between their beliefs, their ultimate object, and what they experience when acting on that belief, their moods. That which motivates people towards the religious act, fails to move them spiritually and therefore do not induce the relevant moods to extend religiosity beyond the boundaries of the church or mosques. This explains that such worshippers do not experience a connection between that which they believe and that which surrounds them. For this reason, dispositions induced by power in the sense that Augustine advocated, failed to motivate worshippers towards the realisation of an interrelationship between their belief and value system.

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28 Ibid., 33-35. According to Asad, Augustine’s perspective of dispositions in a Christian context indicated that power, rather than the mind, created the conditions
their world view, and that which it is suppose to reflect, their social context.

Symbols Induce Conceptions of Order

In a social context, such a conception is fundamental in that the performer of religious rituals experiences and conceptualises such performances as not only a reflection or symbols of his social and every day life patterns, but also experiences such conceptions within a cosmic aura of order. This brings us to another quality of symbols identified by Geertz. He suggested that symbols which induced religious dispositions in performers were the same symbols which placed those dispositions in a cosmic framework. He said in this regard that:

For those able to embrace them [referring to the dispositions], and for so long as they are able to embrace them, religious symbols provide a cosmic guarantee not only for their ability to comprehend the world, but also, comprehending it, to give precision to their feeling, a definition to their emotions which enables them, morosely or joyfully, grimly or cavalierly, to endure it. 29

Distinguishing between secular dispositions and religious dispositions, Geertz regards the function of religious symbols as two fold: To induce religious dispositions, and locating them in a cosmic framework. He professed this quality of symbols with the question:

For what else do we mean by saying that a particular mood of awe is religious and not secular except that it springs from entertaining a conception of all-pervading vitality like manna and not from a

29 Geertz, "Religion as a Cultural System," 19.
visit to the Grand Canyon?30

The formulation of a general idea of order, was according to Geertz, the fundamental criterion which differentiated between religious and secular activity. Once again Asad found Geertz's equation of two distinctive discourses problematic. Considering the evolution that took place since the Middle Ages in the Christian Church, Asad considered these two discourses as two different operations. He said this because:

Although theology has an essential function, theological discourses do not necessarily induce religious dispositions, and that, conversely, having religious dispositions do not necessarily depend on a clear-cut conception of the cosmic framework on the part of a religious actor.31

To demonstrate the difference between symbols that induce dispositions of religiosity, and those which place such dispositions in a cosmic framework, Asad cited examples in which the medieval Church attempted to subject all religious practices to a unified authority which could distinguish between truth and falsehood, religion and heresy, and sacred and the profane.32 The tension that erupted in the form of heresy and subsequent apathy against the absolute authority of the Church, attested in my opinion to the failure of such regulations to induce dispositions of cosmic proportions with regard to the individual's adherence to religion. This means that the value and belief system of individuals were not always in conformity with the Church's ideals to universalise the belief and practice systems of its

30 Ibid., 12.

31 Talal Asad, Genealogies, 36.

32 Ibid., 38
adherents. Asad was then of the opinion that Geertz ignored the power of authoritative discourses to expound and presuppose a cosmology in which practices and dispositions can be related to a cosmic idea of order. But as we have seen above, and Asad himself acknowledged, that such regulations did not always succeed to induce dispositions that occupied a conceptual place within a cosmic framework. The reason being that such regulations failed to motivate adherents beyond the first stage - it did not induce in them the necessary dispositions, the motivations and moods which would have made them receptive to religiosity. This was because such regulations did not suggest any meanings or values within the culture system of which such individuals were part. Culture, according to Geertz, was more than just a "system of rules" and that a study of it included more than just an analysis and interpretation of "brute behavioural patterns" or regulations (Waghorne, 1984). Therefore Geertz held that religion, in this case the regulations which acts on its behalf, has to affirm something of the fundamental nature of reality as a precondition for its religiosity.

Symbols Induce Conceptions of Reality

The question that needs to be answered here is how conceptions as psychological phenomena, came to be accepted as factual. Geertz dealt with the problem how conceptions which were induced by symbols, came to be accepted as reality and relied upon as empirical facts that served to transform the ethos of society. Geertz proposed that conceptions should not be consigned to a psychological dimension alone, but to recognise that "religious belief involves . . . a prior acceptance of authority which
transforms that experience.” The presence of chaos drives man towards the religious, but Geertz does not consider that process as the basis upon which beliefs rests, but rather the area in which such beliefs are being applied in order to come to terms or to make sense of chaos.

Considering logical and historical factors, Asad deems Geertz’s separation of belief and the conditions which produced chaos, erroneous. This is partly because he believed that belief patterns change automatically when the object to which that belief was directed, had changed. He cited examples in which the perception of religious institutions have changed since medieval times. Pain, having been identified with Christ’s suffering, is now in a modern Catholic perception, regarded as an evil which has to be overcome as Christ the Healer did. However, Geertz, unconcerned with the involvement of such worldly activity in the mode of belief, considered belief rather as a psychological process, a state of mind, and therefore purely conceptual. As we have seen earlier (referring to the Slametan of the Javanese), Geertz acknowledged that conflict emerged when tension developed between belief patterns and the changing social structures of society, but added contrary to Asad that conflict does not result in abrupt or radical changes in the belief patterns of society. The religious status and structure of rituals remained relatively intact in the event of tension or chaos because they were the basis on which belief patterns were formulated and subsequently reinforced. Asad portrayed in this perspective the ideals and ideology of the structuralists such as Malinowski who considered religion as

33 Geertz, "Religion as a Cultural System," 25.

34 Talal Asad, Genealogies, 46-7
a mere reflection of social structures, and therefore attributed changes that
took place in religion, to social structures and historical development. The
study of religion was therefore according to Asad, not a two stage operation,
as Geertz proposed, but rather one; because sacred symbols, whether
communicating or expressing meaning, cannot be understood independently
of their historical relations or connection to non-religious symbols (Asad,
1993). The common-sense world which constituted these historical and non­
religious disciplines, served in his opinion as the context in which
conceptions induced by the religious process were authorised and applied.
Thus, social structures were correctly thought of as a reflection of religion,
but that religion ought also to be considered as an entity to which non­
religious social disciplines and discourses, intrinsically and effectively
contribute. Reflecting once again on the Javanese example, although
Geertz recognised the existence of a mutual relationship between religion
and social structures, he do not explicitly acknowledge and portray the
effects of the world view on the belief system of the community. He stated
earlier that the effect of the social context on religion was proportional to
what was supposed to be believed and what was actually believed. The
changes and its relating consequences were confined to a conceptual
space, which suggested that the urbanised Abangans and the village
Santris represented two types of Islamic perspectives which were
conceptually distinctive. Furthermore, because religion was basically
regarded by Geertz as a system which was produced by conceptual
processes, the meanings of religious practices and utterances attained an
authoritative status within a religious dimension and expressed through
religious discourses. Geertz maintained therefore that the meanings of religious practices were not to be sought in the social context, but rather that the meanings of social structures and disciplines should be sought in the belief and value patterns - the culture system. This is because sacred symbols exert an all powerful influence not only on the belief and value patterns of society, but also effect the ethos. He wrote in this regard:

The dispositions which religious rituals induce thus have their most important impact- from a human point of view- outside the boundaries of the ritual itself as they reflect back to colour the individual's conception of the established world of bare fact.  

Belief as a precondition from which knowledge emulates, was born in the ritual observation, and subsequently reinforced in the ethos of society. Belief, or the acceptance of authority, was seen as a precondition for any attempts to define symbols as phenomena that enshrines conceptions with an aura of factuality. It is within a ritual that these convictions or realistic perceptions of religious directives are experienced. This power that sacred symbols enhances, emulates from its ability to unify fact with value at the most fundamental level- the level where society experiences tension caused by chaos (Geertz, 1973). That which were perceived as merely actual, is now clothed with a normative and comprehensive aura. The moods and motivations on the one spectrum, and conceptions of the order of existence on the other, unite in this consecrated behaviour pattern and subsequently reinforce each other. The ritual becomes in this sense not only a model "of" what people believe, but also acts as models "for" believing therein. The

35 Geertz, "Religion as a Cultural System," 35.
enactment of the ritual results in the acceptance of authority by which a participant perceives religious objects as genuine realities, and he himself becomes part of the realm in which those objects exist. In a ritual, a participant is transported to another dimension, totally engulfed by the intensity of his belief. That same belief in a common-sense world, do not express the same authority and its experience do not have a lasting effect on a person (Geertz, 1968). It is apparent that Geertz was more concerned with the first part of the two stage operation when dealing with religion. This reflected his frustrations against previous anthropological studies of religion which generally failed to explore the symbol systems of religion and to highlight the social and psychological probabilities of symbol systems. Asad's proposals tend to concentrate more on religion's dependence on empirical and non-religious phenomena for its realisation. These non-religious phenomena such as the common-sense and the scientific perspective are according to Geertz, subjected to the religious perspective. This subjugation affirms that a person, having been transformed or changed when observing a ritual, also experiences a change in his common-sense world. For example, the humility a person experiences when submitting himself spiritually and physically in the ṣalāh, causes him to express humility in other spheres, for example when being with his family, talking to his boss or when socialising with his friends. Geertz concentrated in this instance on the logic of human behaviour and reactions and suggested that such logic dictated that one would be unable to express humility and arrogance at one given time without having an effect on another.
Reflecting on Geertz's theory of religion, it is evident that religion comprises of a social and a psychological order. The social order depicts religion as a reflection of the social context which in Geertz's terms, constitutes a model of reality. Religion therefore comprises of an ultimate reality which as a world view, contributes to the formation of a particular cultural order we would call here religion. In this sense religion constitutes a reflection of that ultimate reality and becomes therefore a model for experiencing that ultimate reality. The dynamism of religion is realised through the function of the symbols. This brings the psychological role of religion into perspective. This role includes the relation of the meanings of religious symbols to the ethos of society. People's lives are shaped in accordance with that world view and become models of reality by reflecting the values and ideals of the social context.

Geertz's Conception of a Ritual

As consecrated behaviour patterns, rituals were considered by Geertz a behavioural forms in which conceptions induced by symbols were conceptualised as a realistic experience. He maintained that this experience occurred because in a ritual, "the world as lived and the world as imagined, fused under the agency of a single set of symbolic forms, turn out to be the same world..." Geertz agreed that the religiosity of cultural performances depended on whether such performances involved the fusion of the ethos and world view, and whether it facilitated the shaping of the spiritual consciousness of people by means of such metaphysical

36 Geertz, "Religion as a Cultural System," 112.
conceptions mentioned above. Because the focus in this study is to present a cultural definition of religion, a concept of a one-sided relationship of cause and effect between religion and social variables does not apply here. There are two reasons for this. First of all, by ignoring the interdependence between social variables such as economics, religion, politics and geographical environment, contradictory and simplistic types will surface. One theoriser will take for example, politics to be the cause of religion, whereas another will consider politics to be the effect, rather than the cause of religion. Secondly, in a one-sided causal relationship of social phenomena, the dynamism of social variables to bring about change in society, is largely ignored. Instead, the transition or the change of society from one stage to another according to Geertz, is a complex process. Geertz demonstrated this interdependence of social phenomena in his theory in which the function of religion was influenced by social structure of society and world view. The conceptions induced by religious symbols in a ritual, had an impact on the character of life, the ethos. This is realised when the functions of rituals are conceptualised as "powerful," "pervasive," and "long lasting." Religion in turn provided this perception of order by creating an "aura" in which people perceived their experiences as realistically modelled on that which they considered to be ultimately real, their world view. Religion served here as a system which accommodated the integration of these social and conceptual phenomena. This function of religion is extended further from merely accommodating such an integration, to a more dynamic function of "conceptual design" in which religion weaves together the many customs and beliefs of society. Geertz identifies this
dynamic function of rituals as a process in which rituals synchronise man's experiences to an "envisaged cosmic order and to project images of cosmic order onto the plain of human experiences..."37 Rituals therefore possess a double quality. They provide a cosmology or metaphysical realm of the way things are and provide a guide for human actions- an ethics or aesthetics.

The probability for a ritual to exercise a double quality or function of this nature lies in its social status. This status guarantees that a symbol and its meaning are not merely confined to a person's mind as perceptions and convictions, but are also social and "public." Symbols therefore becomes visible demonstrations from which empirical study and religious guidance can be deduced. This perspective underlines Geertz's suggestions that rituals not only reflect the social order but serve innovative and transformative ends as well. The "normative life" referred to above, can mean a life of modern trends and values, or a life of traditional or conservative proportion and therefore "counter modern." Rituals are able to express all these values and serve as an orientation for the performer to adapt to his new surroundings or to feel content in the old. This also highlights the dynamism of a ritual to withstand the advancement of secularisation in modern society. In a context of modernity in which religious rituals are said to become "devalued", the ritual as a cultural symbol will continue to perform important functions as a religious institution mainly because it reflects and expresses the social values of people and their world.

view, their conception of ultimate order.\textsuperscript{38}

Geertz demonstrated this dynamism of rituals in which they continue to be perceived as a relevant and sacred expression of two distinctive cultural groups. The tension which emerged between the two socially distinctive groups, the village Santris and the urbanised Abangans with regard to the burial, preparation, and ceremonial remembrance of the deceased Paidjan, demands knowledge of the historical evolution and changes of the social and cultural structures in the Javanese community. Geertz was adamant that the tension should not be contributed to the Slametan which he believed, enhanced sacred and communal propensities, but should rather be contributed; "to the discontinuity between the form of integration existing in the social structure ('causal-functional') dimension and the form of integration existing in the cultural ('logical-meaningful') dimension . . . ."\textsuperscript{39} This discontinuity does not lead to social and cultural disintegration as such, but to conflict and tension between the two phenomena. The example which Geertz used to define and explain the scenario indicated that in a social context, there was a conflict of interest between the urbanised elite, the Abangans, and pious Santris, but on the level of culture— the meaning, belief, and value system, the differences between the two variables were minimal. This point was demonstrated when

\textsuperscript{38} Frida Kerner Furman, "Ritual as Social Mirror and Agent of Cultural Change: A Case Study in Synagogue Life," \textit{Journal For the Scientific Study of Religion} 20 (1981): 228-41. passim. Reflecting on Geertz’s functional theory of rituals, Furman demonstrates the accommodation and the expression of both traditional and modern values in Jewish rituals. From this observation, she conveyed that rituals are both a reflections of the social structures of society, and also instrumental in the social and cultural changes in that society.

\textsuperscript{39} Ibid., 137.
the urbanised group continued to maintain the viability of the Slametan as a symbolic expression of their religious ideals. This was because the cultural system of the groups remained relatively intact in the process of urbanisation. The impact of urbanisation was merely felt in a conceptual sphere in which they expected religion and religious symbols to induce meanings and conceptions which could reflect their newly acquired social patterns. The change in their social value system caused them to view the traditional manner in which the funeral was conducted ineffective and relatively less organised as what they would expect of a well organised mass political rally, or corporate meeting. Thus, this tension emerged because of the incongruity between the cultural framework of meaning, and their altered social structure.

The behaviour patterns of rituals can therefore be considered as the reflections of a particular social context and the consequence of a world view. Within this model, Shari'ah's conception of rituals is interpreted as a type or variable form of Islam which emerged from a particular social context and a consequence of a particular conception of ultimate reality. Geertz concludes and explains the mechanisms of his cultural model of religion:

Religious belief and ritual confront and mutually confirm one another; the ethos is made intellectually reasonable by being shown to represent a way of life implied by the actual affairs which the world view describes, and the world view is made emotionally acceptable by being presented as an image of an actual state of affairs of which such a way of life is authentic expression.40

In conclusion, these mechanisms in Geertz's model of religion namely,
social structures, ethos and world view, will form the framework in which I will now discuss Shāfi‘ī’s perspective of Islām. Asad’s observations indicated that Geertz’s theory is not beyond criticisms. However, in this context in which I intend to present Shāfi‘ī’s perspectives as a distinctive type of Islām, Geertz’s model will prove an adequate cultural manifest. These perspectives are related to Shāfi‘ī’s perspectives of rituals which constitute the “occasion” in which social context and world view interact and mutually compliment each other to shape the ethos.
CHAPTER 2

AN EPISTEMOLOGY OF SHAFI'I'S LEGAL THOUGHT

The focus of this chapter is on Shafi'i's doctrine and its interpretation in terms of the Geertzian model of religion. Shafi'i's conceptions of Islamic legalism (shariah) is presented as a cultural phenomenon which was developed in a certain social context in Islamic history and reflected a specific world view of Islam. This social context was characterised by social disputes and polemic between various tribes which later acquired religious connotations. After the demise of the Prophet, religion instead of kinship, became the criterion which determined these group's affiliation to the community (ummah) of the Prophet. Each tribe or group claimed their ideas and perspectives to be the most practical to realise the ideals of the Islamic community of the Prophet. Within this socio-historical context, the orthodox legal schools emerged and continued the tradition in which each school followed its distinctive legal methodology and professed it to be the most ideal reflection of the Sunnah of the Prophet. The problem was that the conception of the term Sunnah amongst these various groups did not always refer to the tradition of the Prophet, but rather to the Sunnah or "ideal practice" of that particular legal school or community.

The complexity of this social context coupled with continued polemic and disagreement amongst the various schools, influenced Shafi'i's conception of the ultimate real, his world view. In this context the Sunnah of the Prophet occupied a key position in Shafi'i's world view conception with
which he endeavoured to reconcile the ethos of society. To achieve this, he proposed and insisted that a Muslim’s life should be regulated by the Qur’ān and the Sunnah of the Prophet as related in the formal ḥadīth. The legal polemic between the orthodox schools during the time of Shāfi‘ī was in fact the epitome of disunity and fragmentation amongst the Muslim communities. This fragmented social context had an impact on the religious perspectives of Shāfi‘ī. The world view he envisaged of Islam was developed primarily to attain order within the legal chaos of his time. His proposal was to restructure and systematise the legal process which appeared informal and in disarray. Therefore the Sunnah of the Prophet was centralised in Shāfi‘ī’s religious conception and constituted a world view which was influenced by and formulated in a particular socio-historical setting. I will proceed with a presentation of Shāfi‘ī’s conception of a world view, and thereafter discuss the social context within which that conception was formulated.

The Sunnah: A World View Concept

In relation to the other legal scholars, Shāfi‘ī attached a distinctive cultural importance to the Sunnah of the Prophet in the process of Islamic jurisprudence. Joseph Schacht’s assessment of Shāfi‘ī’s legal thought and Mustapha Azami’s critique of his findings overlooked this characteristic of a religious system. Schacht’s assessment of Shāfi‘ī painted him as a scholar responsible for introducing a systematic approach to Islamic legalism, but who was actually himself inconsistent in the application thereof. Azami’s response and critique of his assumptions were largely directed against the idea that Shāfi‘ī introduced a new conception of the Sunnah, an idea Azami
believed, was erroneous. He argued that the Madinese under the leadership of Malik, also emphasised and utilised the Sunnah as the tradition of the Prophet in their legal procedures and proposed that they did not necessarily confirm the Sunnah as a tradition entirely based on local and customary practices. In the context of this debate between Schacht and Azami, one question remains unanswered: if the Mālikī's utilized the Sunnah with direct reference to the Prophet as Azami had professed, how do we explain Shāfi'ī's vehement opposition against them? Azami did not answer this question. However, he critically reviewed Schacht's findings and concluded that such findings were based on misconceptions and misinterpretations of the doctrines of the earlier schools of Islamic jurisprudence. He in turn showed that Malik and Abu Ḥanīfah also regarded the Sunnah as the practice of the Prophet and not as the practice of ancestors or local traditions. If there existed justification of Schacht's ignorance, Azami failed to give any credible explanation why Shāfi'ī directed his criticisms against the Mālikī's whom he particularly singled out as the school which had similar conceptions of the Sunnah as Shāfi'ī. Nevertheless, beyond the polemic between Azami and Schacht, both scholars agreed that Shafī, whether considered as a pioneer in the introduction of a new conception of the Sunnah or not, should be credited for enhancing a coherent and consistent perception of the Sunnah in Islamic legal thought. My conclusion on this argument is therefore that Azami was merely defensive and apologetic towards Schacht's theories and that his views in this regard were mainly based on an idealism of Islamic legalism being a structured and formulised

institution. Schacht's and Azami's respective criticisms demonstrated a fundamental point— that Shafii, in relation to other legal scholars, expressed the most consistent and formalistic legal program. The fact that both these scholars agreed and credited Shafii for adhering to a systematic approach gives an indication that in relation to other legal scholars, Shafii demonstrated the greater degree of consistency in the conceptualisation and application of the Sunnah as the practice of the Prophet. Sherman A Jackson in his book, *Islamic Law and the State*, demonstrated Shafii's opposition against the Maliki's. He wrote:

Such justifications [referring to the Maliki practice of using the Madinese tradition as semantic backdrop against which the Sunnah was interpreted and applied], plausible though they might have been, would not be enough to stave off the attacks of Shafii, who insisted, first of all, that the Prophetic reports were authoritative in themselves and in need of no further confirmation by Madinese or any other practice.42

This assessment demonstrates Shafii's conception of the Sunnah with strict reference to the practice of the Prophet. The meaning such an conception conveyed was that the Sunnah of the Prophet was sufficient guidance and a complete model for society to experience the ultimate reality of God. The suggestion of such a conception was that there was no need to proceed beyond the life of the Prophet for spiritual and social direction. Shafii is believed to have proclaimed in this regard, "Whenever a hadith

1985.

proves sound, it is included in my doctrine"\textsuperscript{43} and also, "Muhammed's rulings are God's ruling."\textsuperscript{44} In terms of Shāfi‘i's understanding, the Sunnah as embodied in the formal and established hadith, was the indirect revealed word of God and therefore every Muslim was under obligation to adhere to its teachings and direction in every sphere of his or her life on earth. The Sunnah was in this regard a symbol of God's sovereignty and a model of His Divine ordinance. Shāfi‘i considered the term Sunnah not only in terms of the practice of the Prophet, but also with reference to Divinity, a model of the ultimate transcendent realm.

Shāfi‘i's critique against his opposition was therefore not because of their reluctance to utilize the Sunnah of the Prophet as a legal source, but rather against the conceptions and meanings they attached to the Sunnah in their legal interpretations. Rather than being considered and implemented in terms of local custom and ancestral traditions, the conception of the Sunnah according to Shāfi‘i was the extension of the ultimate realm. In terms of this reality, the Sunnah was considered by Shāfi‘i as a confirmation of the Qur'anic teachings and injunctions. The Sunnah could never contradict the Qur'ān, the word of God, because both originated from one transcendent source. The Sunnah provided specific references to general Qur'anic injunctions and if the Qur'ān was silent on a specific ruling, the Sunnah could supplement it.\textsuperscript{45} According to Shāfi‘i these instances were possible

\textsuperscript{43} Ibid., 58.

\textsuperscript{44} John Burton, \textit{An Introduction to the Hadīth}, (Edinburgh: Edinburgh University Press, 1994), 85.

\textsuperscript{45} Ibid., 88.
because the Sunnah, although considered as indirect revelation, could supplement the Qur'ān. Furthermore, Shāfīʿi understood the Sunnah to be a sufficient and complete model for the social and spiritual direction of society in every sphere. There was therefore no need to go beyond the Sunnah because it encompassed both the ultimate realm of the Divine (as illustrated in the Qur'ān), and the social structures and tradition of society (as illustrated in the Sunnah of the Prophet). The following tradition forms the basis on which Shāfīʿi formulated his conception of the Sunnah. The Prophet is reported to have said; “I have omitted to command nothing that God commanded, and have omitted to prohibit nothing that God prohibited.”

The life of Muhammed as related through his Sunnah constituted the fundamental symbol in this conceptual framework in which Shāfīʿi sought to reconcile the world view with the ethos. In this regard the Sunnah of the Prophet consisted of a dogmatic and a personal category. The dogmatic category referred to the life of the Prophet as a jurist who busied himself with the teaching of Qur'ānic injunctions and an endeavour to reconcile the life of society with the divine and transcendent realm. The personal category refers to the personal life or tradition of Muhammed which for Shāfīʿi, was modelled on that ultimate reality portrayed in the Qur'ān. Both these categories constitute the Sunnah which can be considered as a "model of" and as a "model for" society to experience a transcendent reality. By following the Sunnah, a person conceptualised his life as a reflection or model of a particular social order, and as a model for experiencing an ultimate reality.

46 Ibid., 89.
described in the Qur'an. Muslims are reminded in the Qur'an that the only way to attain salvation in the hereafter is to follow the teachings of the Qur'an, by means of the method shown by the Prophet. In this manner, the life of the Prophet as portrayed in the Sunnah induced meanings and conceptions of the ideal way of life or model of an ultimate and divine realm. It also suggested an ideal way of life or model for conceptualising that ultimate reality.

According to Shafi'i, the life of the Prophet was contained in traditions or hadith which had been related and orally conveyed by his companions and successors. It was agreed that Shafi'i was not the first to propagate the use of the Sunnah as a primary source of Islamic jurisprudence. However, in the developing process of Islamic jurisprudence, Shafi'i's doctrine, particularly that pertaining to the Sunnah, contributed to and enhanced a sense of structure and uniformity within a "chaotic" legal scenario. By chaotic, my suggestion is that Islamic jurisprudence during Shafi'i's time, was marred by constant disagreement between jurists who were constantly drawn into controversy in an effort to reconcile between the legal sources which were available to them.47 Islamic legalism before and during the time of Shafi'i was therefore not a consistent and formalised process and legal scholars did not always follow a clear and consistent methodological approach in the process of extracting information from sources available to them.

Shafi'i emerged and advocated the reinstatement of the formal Sunnah as contained in the hadith, as a fundamental source of jurisprudence. In the

47 Shafi'i, Risālah, 7
following section Shafi'i's legal procedures will be analysed and presented as a process that was centred on this conception of the Sunnah and constituted a process in which he enhanced the concept of the Sunnah as the practice of the Prophet and a primary legal source in Islamic jurisprudence.

**Shafi'i's Legal Methodology**

As already mentioned, Shafi'i was not considered the founder of the science of Islamic jurisprudence because scholars before him such as Malik and those from the Iraqi region already developed their legal doctrines (Ansari, 1991). Although Schacht's thesis that earlier jurists of Islamic jurisprudence were being arbitrary and inconsistent was disputed by Azami, his theory of Shafi'i as the pioneer of a systematic and consistent approach to Islamic legalism, remained unchallenged. Shafi'i's conception of each legal source will be analysed and related to this world view he envisaged. Ansari gave an indication of the systematic procedure Shafi'i followed when he consulted legal sources:

First, the Qur'an and the Sunnah- providing the Sunnah is an established one; second, consensus regarding a matter on which nothing is found in the Qur'an and the Sunnah; third, if some Companions of the Prophet (peace be upon him) hold a doctrine and we know that none opposed it; fourth, divergent opinions of the Companions on a legal question; fifth, *qiyaṣ* [analogy] based on any of the above sources. Also one may not have recourse to any source other than the Qur'ān and Sunnah in disregard of them. Knowledge is derived from the sources representing the higher levels [of knowledge] and proceeds downwards.  

The Qur'an and the Sunnah

The Qur'an as the word of God and the practices of the Prophet as related in the hadith, were considered here as the two primary sources of Islamic jurisprudence. The innovation of Shafi'i was that he equated the authority of an established Sunnah with the authority of the Qur'an. Shafi'i himself emphasised this equivalence by calling the Qur'an and the Sunnah "the twin roots". According to Judith Romney Wegner, this idea suggested "a locution which subtly conveyed a sense of equal authority . . . ." Every aspect, act or proclamation which have been established and confirmed as authentic and attributed to the Prophet were equally binding on the Muslims as the Qur'an, the word of God. John Burton identified this particular conception of the Sunnah advocated by Shafi'i with the statement:

In Shafi'i's view, God had appointed Mohammed both to deliver and to interpret the minutest details of the revelation, and both functions are covered in the peremptory divine command that men obey the Prophet of God in all things.50

Hadith as vehicles for conveying a Sunnah, was considered by Shafi'i identical to the Sunnah it conveyed. This meant that by following the statement (hadith), one in fact carried out or followed the norm (Sunnah). In


50 John Burton, An Introduction to the Hadith, 89.
this regard Shafii was adamant that only hadith which could be traced back directly to the Prophet in a chain of transmitters, could be accepted as reliable embodiments of the Sunnah. Shafii even accepted a hadith with one authority or narrator (khabr al-wahid) as a reliable source provided that such a tradition could be traced back directly to the Prophet.\textsuperscript{51} Shafii's justifications for using such traditions rested on the fact that such a hadith was verified by the Prophet himself and that conceptions of its authenticity were confirmed by minimum personal involvement in the transmission process. This assumption was justified when considering that Shafii was sceptical towards traditions from the Companions of the Prophet and accepted them only in the absence of traditions that could be directly traced to the Prophet, and only when there was agreement amongst the Companions on the issue. Thus, as a legal source the Sunnah was subordinate to the Qur'an, but with regard to authority, both enjoyed the same status because the Qur'an depended on the Sunnah for its interpretation and explanation (Schacht, 1979). Therefore Shafii considered the pronouncements and practices of the Prophet not as his own opinions, but as indirect presentations of the teachings and regulations of God. God Himself sanctioned this perception stating in the Qur'an: Whatever the Prophet came to you with, take heed to it, and whatever he prohibited, abstain from it.\textsuperscript{52} Shafii sanctioned this judgement by considering the Qur'an as solemnly recited inspirations (wahy matlû), and the Sunnah as non-

\textsuperscript{51} See, Shafii, Risalah, 239-52, passim.

recited inspirations (*wahy ghayr matlū*). However, this does not mean that Shāfīī considered each and every *Sunnah* of the Prophet an obligation (*fard*). Evidence teaches us that in the course of the legal process, he distinguished between the obligatory and tradition. To give an example, the *ṣalāh* is a ritual which has been prescribed by the Qur'ān. The performance of all its basic movements for example, the bowing (*rukūf*, was incorporated in that prescription and therefore also considered compulsory. All subsequent acts of the *ṣalāh* not sanctioned in the Qur'ān, for example the lifting of the hands (*rafīṣal-yadayn*), were categorised as *Sunnah* and therefore non-obligatory. The distinctiveness of Shāfīī's doctrine was that whenever the Qur'ān, the catalyst for obligatory functions, was silent on a specific issue, the formal *Sunnah* should then be followed. Thus, although Shāfīī followed the generally accepted legal perception of the Qur'ān as the primary legal source, he considered the authority of the *Sunnah* as a legal source equal to the Qur'ān whether such a *Sunnah* denoted a compulsory or a non-compulsory act. In the above-mentioned verse, the Arabic word, *ma* denoted "whatever" the Prophet brought, and was therefore interpreted as a reference to both the Qur'ānic teachings and the tradition of the Prophet. In this context, the Qur'ān and the *ḥadīth* were equally binding and compulsory. Although Shāfīī would not, on the basis of this verse, proclaim the personal *ḥadīth* of the Prophet compulsory, Burton, as we have seen above,


indicated that he relied on it in support of his theory regarding the special status of the Sunnah as a legal authority equal to the Qur’an. Shafi’i’s theory of abrogation (naskh) gives further evidence of the special status he accorded to the Sunnah of the Prophet.\(^5\) Shafi’i maintained in this regard that only a Qur’anic ruling can abrogate an earlier Qur’anic ruling on the same subject or issue, and that only a Sunnah ruling can abrogate an earlier ruling that was established by a Sunnah. According to Burton, Shafi’i made the claim that the Sunnah never contradicted the Qur’an but rather explains it (Burton, 1977).

Four aspects need to be brought into perspective in order to gain a clear understanding of the cultural value of Shafi’i’s conception of the Sunnah as an authoritative legal source. The first of these aspects is Shafi’i’s equation of ḥadīth and Sunnah. Shafi’i considered these two terms to be synonymous but also independent sources. According to John Burton, Shafi’i insisted that any attempts and considerations that were made to the Sunnah as a legal source, should be focused on and restricted to the twenty three years of the Prophet’s life.\(^5\) This meant that to achieve consistency and uniformity in the legal process, Shafi’i maintained that the Sunnah should be interpreted in strict relation to the words and actions of the Prophet— the ḥadīth. Schacht indicated that any ḥadīth related by reliable

\(^5\) Naskh is a principle sanctioned by the Qur’an with the following verse, “None of our revelations do we abrogate or cause to be forgotten, but we substitute something better or similar.” 2: 106. This is a legal principle Shafi’i expounded and discussed in detail in his Risālah and utilised it in excess in the process of establishing his doctrine of the Sunnah.

\(^5\) John Burton, The Collection of the Qur’an, 14.
persons and which could be traced back to the Prophet, was considered by Shafi'i as authoritative and could only be rejected when a later and reliable hadith contradicted it.\(^57\) In the Shafi'i tradition, hadith was a source of legal information and knowledge and also a literary representation or symbol of the Sunnah or actions of the Prophet provided that such a hadith could be traced back to the Prophet. This conception of the hadith had two objectives. The first was to impose a distinction between the Sunnah of the Prophet, and the Sunnah of the Muslims. Secondly, it proposed the equation of the Sunnah with an authentic hadith. This was clearly a strategy to neutralise hadith related by companions or their successors. Shafi'i acknowledged the validity of such hadith but argued they were subjected to and should be removed if relevant prophetic hadith existed on a particular issue in question. According to Judith Wegner, Shafi'i's prooftext for equating the Sunnah with the Qur'ān, was the various Qur'anic verses containing the phrase, “al-kitāb wa al-ḥikma.” The word, al-kitāb which means “the book,” referred to the Qur'ān and al-ḥikma, meaning “wisdom,” referred to the body of oral tradition (hadith) handed down from the Prophet.\(^58\) The Sunnah was therefore in Shafi'i's conception, the ideal conduct of the Prophet and the hadith, the divinely inspired medium used to convey that ideal conduct and statements.

This brings the second aspect dealing with the Sunnah as non-recited inspirations (wahy ghayr matlû) into perspective. Shafi'i devoted an entire

\(^{57}\) Schacht, *Origins*, 77.

Burton gave an explanation for Shafi'i's elevation of the Sunnah. He held that the conception of the Sunnah as revealed source enabled Shafi'i to ignore the many contradicting hadith related by companions and successors and enabled Shafi'i to resolve the contradictions between such reports and those that were supposedly attributed to the Prophet. Shafi'i's argument would be that because contradictions between verses of the Qur'an were accepted as reality, the same principles could be applied to contradictions between hadith. The concept of abrogation (naskh) used by Shafi'i to deal with such contradictions, demonstrated these principles.

Shafi'i's theory of naskh was a measure which undeniably elevated the status of Sunnah as a divine source. As I have indicated earlier, Shafi'i considered the judgement (hukm) of God and the judgement of the Prophet as one and indivisible, both proceeding from the same divine source. His ideal was to protect the Sunnah from any "outside" interference's which indicated that no human utterances could abrogate the Sunnah primarily because it was divinely inspired. In essence, this was a device Shafi'i used to prevent the appeal of the Sunnah to hadith related by companions and successors.

59 Shafi'i, Risalah, 121.

60 John Burton, An introduction to Hadith, 16-17.
successors. Not even the Qur’an could abrogate the Sunnah because in Shafii’s opinion, when God passed a judgement which contradicted any existing Sunnah, the Prophet never failed to issue a subsequent ruling in accordance with God’s judgement.\textsuperscript{61}

The fourth aspect focuses on Shafii’s equation between the Sunnah and the Qur’an with regard to authority. All Sunni legal scholars, agreed that the Qur’an was the basic source from which compulsory (fard) judgements could be derived. The hadith provided rulings that were either recommended (mustahab) or traditional (Sunnah). In Shafii’s tradition, compulsory judgements could be derived from the hadith when no relevant information or judgement could be discerned from the Qur’an. Shafii gave an example of this phenomenon where the Prophet in the absence of any relevant Qur’anic ruling, passed a judgement in order to settle a land dispute. A verse was revealed afterwards (Q 4:68) in which God supported and justified the ruling the Prophet had passed on the issue. For Shafii this was one of many examples which demonstrated the divine ordinance of the Sunnah as legal source.\textsuperscript{62} We shall see later when dealing with Shafii’s doctrine of rituals that this conception of the Sunnah contributed much to the diversity of his views in relation to other legal scholars. In this regard Shafii considered on the basis of this conception, practices in salah to be compulsory, whereas other legal scholars considered them either recommended (mustahab) or traditional.

\textsuperscript{61} Shafii, Risalih, 125.

\textsuperscript{62} Ibid., 114-15
Consensus (ijma')

Shafi'i's consultation of subsequent legal sources was also bound by a strict adherence to the two primary sources, the Qur'an and the Sunnah. Shafi'i only resorted to consensus (ijma') when the Qur'an and the Sunnah failed to provide sufficient judgement on a particular issue. The principle of ijma' had in Shafi'i's opinion, a broader connotation in relation to the other legal scholars. Contrary to the Iraqi's and the Madinese, ijma' according to Shafi'i could only be valid if it was represented by the entire community. 63 Shafi'i broadened the base of ijma' by arguing that it was unlikely that a large number of people could agree on something which contradicted the Sunnah of the Prophet. He therefore does not validate the ijma' of a learned few. Ahmad Hasan observed that the statement, "error comes from isolation," was Shafi'i's reaction against the opposition who signified the consensus of the learned few, rather than the community. 64 To support this communal base of consensus, Shafi'i employed a hadith in which the Prophet proclaimed, "My people will never agree in error." 65 While Schacht

63 Muhammed Muslehuddin, *Philosophy of Islamic Law and Orientalist*, (Lahore, Pakistan: Islamic Publications Ltd., n.d), 147. Muslehuddin quotes from Schacht's "Origin" which gave evidence that Shafi'i justified this communal base of ijma' on the words of the Prophet which he indicated that "It is impossible that the community should agree on something contrary to the words of the Prophet," and concluded that "The consensus comprises the greatest possible number of different groups of people." See Schacht, *Origins*, 92. See also Shafi'i, "Ijma'" chap in *Risalah*, 285-87. (Note, the abbreviation n.d, denotes no publication date.)

64 Ahmad Hasan, "al-Shafi'i and Islamic Jurisprudence," in *Islamic Law and Legal Theory* ed. Ian Edge, 266.

65 P.J Steward, *Unfolding Islam*, (Reading: Ithaca Press, 1994), 149. Schacht used the same hadith to demonstrate the argument on which Shafi'i based his opinion on ijma'. With a slight variation, he used "community," instead of "people" which has the same connotation to communal involvement. See also Schacht,
maintained that this particular hadīth was "fabricated" towards the middle of the third century and used by Shāfi‘ī to counter the legal procedures followed by his opponents, it enabled Shāfi‘ī to enhance his world-view conception in which adherence to the hadīth of the Prophet in all details of life was idealised. Shāfi‘ī therefore argued that there was:

[N]o room left for the exercise of personal opinion, and human reasoning had to be restricted to making correct inferences and drawing systematic conclusions from the traditions.\(^66\)

Shāfi‘ī’s broadened perspective of consensus did not mean that it had negative consequences on the systematic legal procedures he envisaged. Muslehu’din observed in this regard that this general consensus proposed by Shāfi‘ī was criticised by the opposition from Kūfa and Madīna as a principle which made it difficult to efficiently arrive at conclusions. However, the solution Shāfi‘ī proposed to avoid ambiguity and confusion, was that consensus and hadīth should co-operate as a criterion to determine authenticity and clarity of legal issues, and added that once a relevant hadīth was identified which provided clarity on that particular issue, the application of consensus was no longer valid.\(^67\)

It is again evident that Shāfi‘ī’s treatment of consensus was dictated by his conception of the Sunnah as a universal and unified legal source. His innovation on the issue of consensus was to redefine ijma\(^6\) as indicative of the consensus of the Muslim community as a whole instead of the

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consensus of scholars of a particular school. According to Schacht, Shāfi‘ī restricted the functions of consensus to the interpretations of the Qur‘ān and the Sunnah and insisted that conclusion should be drawn from them. Shāfi‘ī’s motivation for such an approach was evidently to neutralise elitism and restrict personal involvement in the legal process. More importantly, its aim was to bring uniformity to the legal process marred by controversy and disagreement. Communal involvement in consensus was in his opinion the ideal platform to attain uniformity in the legal process. Perhaps the most significant motivational factor for Shāfi‘ī’s perspective of consensus was that it was sanctioned by the Prophet himself and more importantly, it involved the Sunnah.

Analogy (Qiyās)

On the subject of qiyās, Shāfi‘ī was very strict and used it mainly as a device to eliminate the free use of personal opinion and independent evaluations and judgements by his opposition. According to Schacht, the only kind of reasoning Shāfi‘ī sanctioned was that which was concluded by analogy (Schacht, 1979). In relation to the other schools of law, Shāfi‘ī, as in the case of ijma, exercised a systematic approach in which analogy was applied in strict relation to the Qur‘ān and hadīth (Muslehuddin, n.d). The theory of Shāfi‘ī on analogy did not only serve to guard against the use of free reason and thereby adding stability to Islamic law, but also brought about a uniformity to the social context of society. Muslehuddin further

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68 Schacht, Origins, 91.
described Shafi‘i’s conception of analogy as “the accord of a known thing with a known thing by reason of the equality of the one with the other in respect of the effective cause of its law.”  

This means that the function of qiyās was to discover efficient cause in the hadith so that it may be extended to cases of a similar nature. To give an example; the cause of wine being prohibited in the Qur‘ān, was that it intoxicates when consumed. On this basis, any liquid substance that intoxicates, or consist of properties which might intoxicate a person, was ruled by Shafi‘i to be prohibited on the bases of that cause. Judged from the numerous criteria and conditions that Shafi‘i attached to the exercise of analogy, it is evident that it was designed to add uniformity to legal procedures and also a principle which could assist society in a changing world to structure their social patterns in conformity with and in relation to the Qur‘ān and the Sunnah.

Independent Reasoning (ijtihād)

On the principle of ijtihād Shafi‘i exercised greater restriction and control by proposing a distinctive conception of the principle. Shafi‘i’s viewed ijtihād and qiyās as two terms that have the same meaning (Schacht, 1979). Mālik and Abū Ḥanīfah exercised ijtihād as a principle based on independent reasoning, whereas Shafi‘i maintained that ijtihād should be the preliminary

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69 Muslehuddin, Philosophy, 140.

70 Schacht, Origins, 122-26, passim. Schacht cited Shafi‘i’s criteria for the implementation of qiyās. These included that Shafi‘i only resorted to qiyās when there was no relevant text in the Qur‘ān, Sunnah, or consensus: that qiyās remained subordinate to, and was weaker than these sources of law; qiyās was not considered as a source of law, but a derivative from them; and that no further analogy could be
procedure in order to apply qiyās. Šafrī’s equation of *ijtihād* and qiyās was clearly an attempt to prevent the free and random exercise of *ijtihād* or independent reasoning in the interpretation of legal issues in Islām. He maintained that if no clear deductions could be attained from the Qur’ān, the Sunnah or *ijma*[^1], then *ijtihād* could be exercised with qiyās. *Ijtihād* in a literal sense means to “*make an effort*” which, in a legal context, referred to an effort that should be made to discover a ruling from the primary sources of law (Musleuddin, n.d). The “*effort*” referred to *ijtihād* as a mode of interpretation which in Šafrī’s case was restricted to a process of analogy. Šafrī’s ideal was that by connecting and restricting interpretations to analogy, it would ensure that meanings obtained by such an interpretation were clear and comprehensive rather than doubtful and ambiguous.

Reflecting on the discussion so far, it is apparent that Šafrī resorted to the primary legal sources in a systematic order of preference that included the Qur’ān, the Sunnah, *ijma*, and qiyās. Šafrī remained sceptical towards any other secondary source or principle which was otherwise commonly used and accepted by other legal scholars. In instances where Šafrī was forced to turn to secondary sources, he managed to maintain a close link with the Qur’ān and the Sunnah because of this systematic approach. Šafrī therefore did not accept, contrary to the general legal fraternity, the principle of juristic preference (*istihsān*). His argument was that such a legal principle based on public interest, would result in the unrestricted use of human opinion which in turn, would result in inconsistency and unreliability. ^71^ True to

[^1]: Abdur Raḥmān I. Doi, *Shari'ah: The Islamic Law* (London: Ta-ha
his world view conceptions, Shafi'i claimed that no one was authorised to
give a judgement unless he based that judgement on the Qur'an, the
Sunnah, ijma; or analogy. Therefore according to Schacht, he ruled out
judgements based on istihsan.72 For Shafi'i, having recourse to istihsan
would suggest that the Qur'an and the Sunnah failed to provide sufficient
guidelines for human beings to lead a meaningful life. Shafi'i's main concern
was clearly to prevent the occurrence of ambiguity and contradiction in
cases where various regions proposed different rulings on the same subject.
The important factor for him was to bring conformity and order in the legal
process and subsequently to the social and religious structures of society by
insisting that ijtihad and qiyas should be applied in relation to the Qur'an and
the Sunnah instead of independent assessments based on public interest.73

Although it is argued that earlier scholars exercised some degree of
coherence and consistency in their legal reasoning, the discussion above
indicated that Shafi'i did not accept their doctrines. Mustafa al-Azami, on the
contrary, argued at length that Malik and Abu Hanifah did exercise some
degree of consistency in their legal procedures. He mainly focused his
criticisms on the research procedures of Schacht which he claimed to be
"arbitrary," "inconsistent" and "over-generalising." He refuted the claims of
Schacht which suggested that the Madinese and Iraqi scholars were

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72 Schacht, Origins, 112.

73 Ibid., 121-22. According to Schacht, Shafi'i restricted the free and random
application of juristic judgments in order to avoid that several judgments on one
particular issue. Although Schacht cited examples where Shafi'i himself utilised
the principle, these examples are isolated and were forced by circumstances. The point is
inconsistent in applying legal principles and went on to prove that in their legal judgements and conceptions, the term *Sunnah* referred not to "living traditions" but to the tradition and practices of the Prophet.\textsuperscript{74} He concluded, contrary to the findings of Schacht, that these ancient schools of Islamic jurisprudence had long before Shafi'i identified the term *Sunnah* as identical to the tradition of the Prophet and not only to the living tradition of the respective schools. However, he agreed with Schacht that even in this supposed coherent legal environment, the methodology of Shafi'i was innovative and that he was more consistent and systematic than his contemporaries in the application of legal principles and references to the legal sources.

The argument between Schacht and Azami demonstrated that the distinctiveness of Shafi'i's legal thought should not only be thought of in terms of a legal discourse but also in cultural terms. Consequently, an attempt will be made here to pursue Shafi'i's legal approach as a product of a social context and reflection of a particular world view. The innovation of Shafi'i emerges when his doctrine is presented as a conceptual category. Within this category, the functions of these legal principles I have discussed, centred on the reconciliation between the ethos of people and his world view comprising of the *Qur'an* and the *Sunnah*. In such a system, these principles functioned as symbols and reflected Shafi'i's conceptions of a world view in which God as transcendent being was idealised as the architect of the

\[\text{that Shafi'i's application of the principle was exceptions to a specific ruling and, as Schacht himself conceded, it was not the general character of Shafi'i's legal thought.}\]

religious dimension of the life of society, and his conception of the ethos in which the social life of the Prophet was conceptualised as the ideal model and representation of that transcendent realm. The Sunnah in Shafi'i's understanding expressed both a world view through its reference to Qur'anic injunctions, and an ethos by means of the Prophet's social and personal functions in society. The fact that Shafi'i emphasised the Sunnah as an important and fundamental legal source indicated that he considered the Sunnah as the most essential mode of realising that reality. My suggestion is therefore that within the context of Islamic legal history, Shafi'i's methodology expressed a significant cultural value which was more observable in his legal procedures than that of scholars such as Malik or Abu Hanifa. This is because Shafi'i redirected all secondary principles of law towards the central point of his world view, the Sunnah.

Social Context

In this section the focus is on the social context in which Shafi'i formulated his methodology. The objective is to demonstrate that Shafi'i's conception of the Sunnah and the methodology which enhanced that conception, was in fact a reflection of and a reaction to a particular social context. With this I suggest that his conception of Islamic legalism (shariah) was shaped by this social milieu and constituted a model for conceptualising a world view. Here that model is presented as a reflection of a particular social milieu.

After the death of the Prophet, the social environment and the social structures of society had changed, and the application of the Qur'an and the
Sunnah as sources for the regulation of social life became increasingly a complex process. Within this complex situation, Shāfi‘ī succeeded to maintain a close connection with the Qur‘ān and the Sunnah even when he was forced to turn to alternative principles. He achieved and maintained this connection by considering these legal principles such as *ijma‘, ijtihād* and *qiyās* not as independent sources, but as principles that were derived from the Qur‘ān and the Sunnah. Because *ijma‘, ijtihād*, and *qiyās* were principles based on personal and individual involvement, Shāfi‘ī chose to neutralise this human involvement within the legal process.

This conception was sustained by historical factors which helped develop and nurture Shāfi‘ī’s skills as an Islamic jurist. Growing up in the Hijaz, the birthplace of the Prophet known as the "home of tradition," Shāfi‘ī, under the guidance of Mālik, developed a special interest in the Sunnah of the Prophet as a legal source of Islamic jurisprudence (Khadduri, 1987). In theory, Shāfi‘ī was instructed in doctrines based on the principle that the tradition or *Sunnah* of the Prophet, was always the overriding authority in solving legal disputes. However, in practice, Mālik’s opinions indicated that he also relied heavily on personal opinion even when relevant traditions existed. Schacht pointed out that the term "Sunnah" in the Māliki tradition generally referred to accepted practices of the Prophet based on local ancestral interpretations. The irony was that institutions which stimulated Shāfi‘ī’s interest in the *Sunnah* of the Prophet, were also responsible for Shāfi‘ī’s revision and consecration thereof. Although Shāfi‘ī kept Mālik in high esteem as an Islamic scholar, he also vehemently criticised his approach towards the Sunnah as a primary source of Islamic
jurisprudence.\textsuperscript{75}

Faced with this paradox, Shafi'i developed a legal doctrine of the Sunnah as a legal source on par with the Qur'\text{\textacuted{n}. It can therefore be argued that while M\text{\textacuted{l}ik kindled Shafi'i's interest in the Sunnah, the aura of the Hijaz, the mystical and spiritual atmosphere that emanated from it as the birthplace of the Prophet and being the cradle of Islam, served perhaps a greater motivation for Shafi'i's legal thought with regard to the Sunnah. For it was here that the Prophet first initiated his task to teach the people of God's divine plans. Those who adhered to his call, his Companions (\text{Sah\text{\textacuted{ba}}}), followed him in every respect and against all adversity. Life in the Hijaz during this earlier period of revelation and the living Sunnah was perceived as the most sacred period in Islamic history. This period and also those who lived during it were idealised as the best of nations (khayr al-ummah). This view was substantiated by a tradition of the Prophet in which he proclaimed: "The best of nations are those closest to me (those who lived during my lifetime, the Companions), then those following them, then those following them . . . ."\textsuperscript{76} The social context during the period before the Prophet was complex in the sense that alliance to a particular tribe was thought of in terms of kinship. With the emergence of the Prophet, those who followed

\textsuperscript{75} Ansari, "The Significance of Shafi'i's Criticisms of the Madinese School of Law," 488. Here Ansari cited three main criticisms of Shafi'i against the Maliki school. These included their neglect of the tradition of the prophet in favour of traditions of Companions of the Prophet. Shafi'i also devoted a portion of his \textit{Kit\text{\textacuted{b} al-Umm} to a legal debate and criticism of the Maliki legal thought. See also Shafi'i, "Kit\text{\textacuted{b} Ikhtilaf al-Malik wa al-Shafi'i," in \textit{Kit\text{\textacuted{b} al-Umm,} vol. 7, 177-248.passim.\textsuperscript{76} See, Muhammed Adul al-Rahm\text{\textacuted{n} bin Abuul al-Rah\text{\textacuted{m} al-Mubarak\text{\textacuted{r}}, "M\text{\textacuted{j}a'a Fi Qarni Thal\text{\textacuted{tha}," chap. in \textit{Tuh\text{\textacuted{fatul al-Ahw\text{\textacuted{d} vol.6 (n.p Dar al-Fakri, n.d), 469-70. (The abbreviation, n.p, denote, no mention of place of publication)
him came to be known as the ummah or “community” and membership in this community was based on religion rather than kinship. According to Montgomery Watt, religion became the criterion for affiliation and identification of social groups and tribes during this period of Islam. Within this social context, the early Islamic state constituted a federation of tribes with a religious base. The community of the Prophet acquired greater political status because of the leadership position of the Prophet. Jewish and Christian tribes functioned as protected minorities (dhimmi’s) under the Muslim community, but as the Muslim community expanded and prospered, the Prophet exerted greater pressure on these tribes to convert to Islam. Thus, as Muslims realised their political power, their social and religious conceptions and ideals changed. The Muslims conceptualised the social and religious order under the leadership of the Prophet as the most ideal, and therefore called for the conversion of other groups to that order. Conversion or change of religious values to Islam, became the criterion whereby others could align themselves to the Muslim community. Those who were part of this religious community conceptualised themselves as the best of nations (khayr al-Ummah)- the best of tribes because of their adherence to the Prophet who was perceived as the symbol of God’s sovereignty on earth.

Because religion became the criterion which determined affiliation to this community, groups within this community responded in diverse manners each with their own conception of the ideal ethos that prevailed during the

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life time of the Prophet. The diversity of these responses was in turn determined by and a reflection of the different social contexts encountered in each region. Consequently, each group professed its own methodology and doctrine and claimed their perspectives to be the most practical and ideal to capture and reflect the aura of the Muslim community once led by the Prophet.

Not all of these groups were concerned with legal issues. Some emphasised a theological perspective while others were overtly political. The most extreme groups who challenged the authority of the Sunnah, were the Barāhima and the Khārijites. The former denied the authority of laws revealed to the prophets and the latter professed that there existed no proof of the validity of consensus and the Sunnah in the legal process. The Rāfidites also expressed the same sentiments and argued that the use of analogy and the Sunnah was invalid because there existed no justification for its usage in the Qurān. The Nizāmiyyah rejected both analogy and consensus. The Qadarites on the other hand prohibited actions on the basis of single traditions.78 Although it may be argued that these groups were insignificant and had little impact on the legal thought of more prominent scholars, their doctrines which devalued the Sunnah as a legal source, contributed to the fragmentation of religious and social groups during this early period of Islamic jurisprudence. Watt acknowledged this when he

78 W. Montgomery Watt, “The Logical Basis of Early Kalām,” chap in Early Islām (Edinburgh: Edinburgh University Press, 1990), 114-15. Although some of these groups such as the Rāfidites, Zāhirites and the Nizāmiyyah emerged only after the time of Shafiī, their existence attested to the challenge that have been made
indicated that for about a century after the Prophet's demise, justice was administered according to the customary and traditional laws of the Arabs. He added that as time passed, these laws were increasingly modified in order to adapt to the changing social structures.\textsuperscript{79}

A prominent group such as the Shi'ite's also contributed immensely to the fragmentation of the Islamic community. The reason for this was that they had both a religious, as well as a political agenda. This was demonstrated by the serious political attempts they made to wrest control of the caliphate. These attempts were driven by a doctrine in which the need for charismatic leaders was emphasised. The implication of this conception decentralised the position of the Sunnah of the Prophet. Schacht indicated that it was only towards the end of the third century (after Shafi'i) that a distinctive Shi'ite doctrine emerged. Schacht further argued that there was, on the bases of certain examples, no definite doctrinal opposition between the Shi'ites and the Sunni order.\textsuperscript{80} He assumed that it was only later, with the emergence of Shi'ite Twelvers (ithnā 'Ashariya), that messianic ideas became the focus of the Shi'ites religious perspectives. Within this context, the Sunnah was marginalised and the focus shifted to the Imam or hidden leader (mahdi) whose coming was anticipated to lead them in the future. My argument to the contrary is that Shafi'i's criticisms of an established and a distinctive doctrine of the Shi'ites, the mut'a (marriage concluded for a

\textsuperscript{79} Ibid., 200.

\textsuperscript{80} Schacht, Origins, 262-68. passim.
certain period and later dissolved at the end of it), indicate that the Shi'ites already expounded a fixed and distinctive doctrine during the time of Shafi'i. During this particular period, the Shi'ites exercised increased pressure on the doctrines of orthodox legal schools and they refrained from asserting their independence from the mainstream Islamic community and rather concentrated their doctrinal expectations on existing Sunni thought. Thus, in spite of differences, each group maintained their autonomy within Islam.\(^{81}\)

The Mu'tazilites was another such group who engaged in the definition of early Islam. Of particular relevance to this study, was the fact that they expressed deep scepticisms of the hadith as a reliable means to convey the Sunnah. This conception was dictated by their rationalistic approach. Prompted by religious motives of their predecessors, the Qadarites introduced into Islamic theology the element of reason and proposed metaphorical interpretations and spiritual elements to every anthropomorphic statement and expression in the sacred writings.\(^{82}\) According to Schacht, they were criticism by Shafi'i as rationalists who based their whole doctrine on reason and analogy with which they criticised and rejected hadith.\(^{83}\)

The traditionists (Ahl al-Hadith) was another group of scholars whose thesis was that traditions derived from the Prophet superseded traditions

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\(^{81}\) Montgomery Watt, “The Logical Base of Early Kalām,” 111.


\(^{83}\) Schacht, *Origins*, 128.
from companions or their successors. In theory, this idea seemed to encompass the same ideals Shāfīī had, but in reality, this was not the case because according to Schacht, Shāfīī was particularly critical of their methodology.\(^4\) Within this socio-historical context of disagreement, they merely followed the social trend of earlier groups before them, that of religious innovations and autonomy. The zealoussness with which they superficially and uncritically adhered to traditions, attested to their ideals to formulate a doctrine which according to them, reflected the values of the community of the Prophet. Although Shāfīī shared the same conception of the Sunnah with the traditionists, their methodology which was susceptible, was not supported by him. In Schacht's opinion, the reason was their ignorance of any substantive form of reasoning and that they based their doctrine almost exclusively on traditions.\(^5\) In Shāfīī's world view conception, the Qur'ān and the Sunnah were equally essential elements Thus, the “Sunnah” element was missing in the case of the Muṭtaṣilites who ignored the ḥadīth and the “Qur'ān” element was absent in the case of the traditionists who emphasised the ḥadīth at the expense of the Qur'ān.

In addition to these groups, differences also existed amongst the Sunnis (those who in principle, accepted the Qur'ān and the Sunnah as primary legal sources). At the time when Shāfīī studied Islamic jurisprudence under Mālik Ibn Anas, Mecca and Madīna were the two primary legal centres in the Hijāz. During the last quarter of the first century,


\(^5\) Schacht, Origin, 128.
the Islamic legal world comprised of two important centres namely, the Hijāz with Mecca and Madīna the main centres, and Iraq with Kūfa and Basra its primary legal regions (Ansari, 1991).

During the second century, these regions developed into schools of law with each school affiliating to a particular jurist. There were minor or smaller schools in existence but their influence on Islamic jurisprudence in relation to these two schools, was marginal. In the Iraqi region, schools claimed affiliation to Abū Ḥanīfah who became the symbol of the Hanafi school of thought and in the Hijāz, Mālik ibn Anas was considered the leading jurist. Each of these schools developed their own legal doctrine and legal principles based on the authority of their respective leading jurists.

World View Perspective

Shaifiant, having been exposed to these legal school’s doctrines and mastering their knowledge and learning procedures, developed his own distinctive legal methodology. Although many reasons, some of it personal and others political, have been cited as motives for Shaifiant’s opposition to the Iraqi and Madinese schools, this study argues that Shaifiant’s distinctive conception of the Sunnah was the primary reason for such opposition. During the final thirty years of the Umayyad dynasty (720-750), scholars such as Malik and Abū Ḥanīfah, followed later by Shaifiant and Ibn Ḥanbal, exerted greater influence on the Islamic legal sphere as they tried to attain order and uniformity in the legal process. Agreement was reached on the fundamental tenets of Islam, but on the details of these tenets, disagreement persisted. Following the tradition of earlier groups, each school in the course
of these differences, argued their respective practices to be superior to the other. Law during this earlier period of Islamic jurisprudence was based on the "living tradition" of the tribe and the term was used with the conception that it was identical to the Sunnah— a conception which according to Schacht, was misleading because it in fact referred to the ancient custom or "generally agreed practice" of a particular group. Schacht pointed out the Madinese, Iraqi's and Syrian's misconception of the term Sunnah. He demonstrated at length Shafi'i's responses and criticisms against them for having recourse to their practice rather than the Sunnah as contained in hadīth. Schacht demonstrated further that the term "practice" presented itself under a retrospective aspect. Explaining the retrospective aspect, Schacht indicated that as "ideal practice," it referred to and reflected the "actual custom of the local community." Because this "ideal practice" was sanctioned by the majority, it developed as Islamic ideas and were consequently imposed on the legal subject matter.

Perplexities existed as to what constituted the Sunnah as a legal source. Before the time of the Prophet, the word Sunnah, generally referred to the common law and customary practices of the tribes in Saudi Arabia. This law provided both legal and moral principles and was legally validated through its enforcement in practice. Although each of these orthodox schools claimed that their tradition was identical to the Sunnah of the Prophet, Shafi'i's insistence that the Sunnah could only be determined by validly attested hadīth, proved their claims to be unfounded and proved that they

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86 Schacht, Origins, 58-81. passim.

87 Schacht, "Pre-Islamic Background and Development of Jurisprudence," 42.
were based on the conception of "living traditions." Thus, during the time of Shafii, the conception of the term Sunnah validated by hadith did not always constitute the dominant source of legal deductions. This misconception motivated Shafii to realise a world view in which life on earth should be regulated by the Sunnah as the model for and the model of the ultimate realm of God. Numerous works of Shafii attested to his opposition against the use of "ideal practice" or "living tradition" of a particular tribe or group (Ansari, 1991). Ideal practice during this period generally referred to the doctrines held by the Madinese scholars which was usually based on unanimity amongst the various scholars and did not always enjoy the backing of traditions of the Prophet or traditions from his Companions. Shafii's insistence on the formal Sunnah of the Prophet and the high status he allocated to the Sunnah as a source in Islamic legalism, was therefore considered as a strategy to reconcile the world view in which Muhammed was conceptualised as the final Prophet, with the ethos or life patterns of the Muslims. That world view according to Shafii, could only be expressed in traditions validated and accepted as the Prophet's articulations of his own practices and observations.

Shafii's theory of the Sunnah was in this regard a strategy to capture that sacred aura in which the Prophet was idealised as the symbol of order. His theory was manifestly intended to capture that aura that reigned before the Prophet's demise. This he proposed by advocating the superiority of the Sunnah over customary practices and personal reasoning. During the course of Islamic history, the Sunnah underwent a transformation as a legal source-a transformation dictated by the social changes. According to Shafii, during
the life of the Prophet, his Sunnah or practice, served to supplement and explain Qur'anic legislation. In this period, the Qur'an was the basic source of Islamic legal thought and practice, with the Sunnah fulfilling a secondary role. This was because the Prophet as receiver of these verses of the Qur'an was present to explain and place the verses of the Qur'an in its relevant and proper contexts. However, prophetic legislation ended with the demise of the Prophet. Legal scholars whose task it was to formulate the Islamic constitution, had to rely on secondary sources to fill the void left by the Prophet's departure. In order to explain and interpret Qur'anic legislation and solve legal matters and disputes, scholars gradually questioned the importance of the hadith. However, in the case of scholars such as Malik and Abu Hanifa, this realisation was expressed in terms of the social values of that time. By this I mean that their conceptions of the Sunnah were influenced by and also reflected the socio-historical pattern in which the earlier groups sought reconciliation with the Islamic community in term of their "customary" values and ideals.

Shafi'i, according to Schacht, was the scholar whose doctrine expressed the most consistent recourse to the Sunnah of the Prophet. Thus, the Sunnah as a legal source acquired in Shafi'i's doctrine, a status equal to that during the lifetime of the Prophet. The Sunnah became the embodiment of the religious ideals of Islam expressed in the Qur'an. Shafi'i argued that by following the Sunnah, one in fact followed the Qur'an as the ultimate Word of God. That world view suggests that Muhammed had, as the final prophet, fulfilled his duty to inform society of God's commands and with that provided adequate and sufficient guidance for mankind to regulate and
model their lives on the ultimate reality. There was therefore no need to anticipate as the Shi'ites did, the coming of a hidden leader. In addition, Muhammed was also conceptualised as a "historically effective reformer" who not only educated, but also changed his people's dominant social traits of materialism, plutocratic arrogance, and primitive polytheism (Goldziher, 1981). Muhammed symbolised the archetypal true man who represented in his lifetime the transcendent norm through his Sunnah. He acted both as God's vicegerent (khali'ah) and His servant (abd) on earth. He expressed this bipolar nature of man as dependant upon God for guidance and also as representative of His higher order and governance of the cosmos. His Sunnah became the yardstick or norm for human behaviour and practice in society. The Sunnah as epitomised by the Prophet brought together the world view, the nature of God, and the ethos, the way of the earth. The Sunnah constituted a model which allowed society to adapt their social structures to the transcendent and divine patterns. The legal process Shafi' followed was therefore no mere act of theoretical piety, but an act of exceptional importance in which he sought to reconcile the world view in which the life of Muhammed was conceptualised as the ideal way of life, with the social structures of society. The social structures of society should therefore be regulated only by the Sunnah as the expression of that world view and not by tribal values and ideal practices. The Sunnah as a religious category should in turn be reflected in the ethos of society. As a religious category, the Sunnah was not only reflected in the social structures of society, but as a dynamic entity, it actively transforms and changes the ethos. Those who adhered to the Sunnah conceptualise their lives as
modelled on the divine way of life ordained by God. By fusing their lives, their ethos with their world view, their beliefs and their values, the Sunnah acted as a model for reality by providing society with a particular pattern and way of life to conceptually experience harmony with the ultimate reality. Thus, by following the Sunnah as expressed and practised by the Prophet, people experienced moods of religious satisfaction and salvation in the ritual process.

As a conceptual process, Shafi'i's methodology and systematic approach in Islamic legalism, suggest a conception in which the life of the Prophet as expressed in the Sunnah, was idealised as the most essential social and religious pattern for the realisation of the ultimate reality. The form of a ritual in Shafi'i's understanding had to be structured on that pattern of the Sunnah of the Prophet otherwise it did not qualify as a religious practice. The life of the Prophet, his Sunnah, was an ordered and structured life process which expressed both a world view of the transcendent realm of God as indicated in the Qur'an, and an ethos, a social pattern in which to conceptualise a realisation of that transcendent realm. Rituals are considered here as the consequence of that religious ideal. As a product of and constructed from the Sunnah, the ritual as a symbol represents both the social context and world view by being a model of reality and a model for the realisation of ultimate reality.
CHAPTER 3

Rituals as Cultural Symbols

The Concept of Intention (*niyyah*) in Rituals

In this chapter the task is to demonstrate how Shafi'i's systematic methodology can be related to the structural approach of a ritual. In the previous chapter Shafi'i's doctrine had been related to a specific world view which was influenced by a social context. The focus is on two rituals, the *ṣalāh* and fasting (*ṣawm*) in which the *niyyah* functions as a cultural symbol. Shafi'i's ideas of the *niyyah* within these rituals will be presented as a model of his world view and a reflection of a social context. As a model of and for conceptualising a particular world view, the meanings of the *niyyah* are related to the third component in the Geertzian model, the ethos. The *niyyah* in the context of these two rituals is presented as a symbol that has a definite social and a religious function— that is to fuse the world view with the ethos.

I have indicated that the social context during and before the time of Shafi'i was primarily determined in terms of religious differences rather than political sensitivity. Religion was therefore the structural principle of society with the Hijāz and Kūfa known as religious rather than politically distinctive centres. Consciousness of cultural contrasts was considerable where major scholars in each area followed their own doctrine and legal tradition. The caliphate of the Ummayyads and later the Abbāsids contributed to this religious consciousness and responses of the Muslim masses since the
basis of their rule shifted gradually from a political to a religious cause.\textsuperscript{88} According to G.E Von Grunebaum, this expansion of religion into a style of life, made it possible that many bequests from diverse cultures could be integrated and accommodated in the Islamic social ethos.\textsuperscript{89} This social pattern of religious diversity influenced Shāfīʿ's conception of the Islamic world view in which he called for the reinstatement of the Sunnah of the Prophet as the ultimate means to attain social and religious uniformity. The ideal Shāfīʿ envisaged with his conception of religion was to change the character of people's lives so that it not only reflected the social structures and a particular world view, but also transformed people's lives.

From this perspective, the niyyah is considered not only as a product of a legal discourse, but also a consequence of social patterns and therefore part of the culture process. This is because legal discourses are not only dictated by scripture alone, but also shaped by socio-historical structures in which they have developed and have been formulated. Antoine Lion who explored the social role of the theologian, supported this view with the argument that although the theologian was working with dogmatic material, he interpreted such patterns of thought and practices in accordance with his personal faith which was reinforced by the group to which he belonged.\textsuperscript{90}

\textsuperscript{88} Patricia Crone and Martin Hinds, \textit{God's Caliph: Religious Authority in the First Centuries of Islam} (Cambridge: Cambridge University Press, 1990), 80. Crone and Hinds maintained that the caliphate of the Ummayyad's and the Abbāsid's have been primarily religiously motivated and saw themselves as "Imāms of guidance" and "Imāms of justice."


\textsuperscript{90} Antoine Lion, "Theology and Sociology: What Point is There in Keeping the Distinction?", in \textit{Sociology and Theology} ed. David Martin (Sussex: John Orme
What Shāfīʿī proposed was a structure or form of ritual performance which was modeled on the Sunnah of the Prophet. The niyāḥ was pivotal to this form and constituted the criteria whereby Shāfīʿī could distinguish between religious or culturally accepted behaviours and non-religious or secular acts.

The Ṣalāḥ

The Ṣalāḥ as a Fundamental Ritual

The fundamental nature of the ṣalāḥ as a prescribed tenet of the religious system of Islam was accepted by all major and minor religious groups within the framework of Islam. All religious groups irrespective of their diverse political and religious agenda, agreed on the fundamentality of the ṣalāḥ as a prescribed act of worship. Even those who proposed distinctive practices in relation to the Sunni format, recognised the essential nature of the ṣalāḥ. We find that the Shi'a, in spite of their ideological differences with the orthodox order, considered the ṣalāḥ as one of the five tenets (ṣurūq) of Islam. This indicated that before and during Shāfīʿī's time, there was no disagreement on the basic issue of the ṣalāḥ being a fundamental ritual of Islam. However, the ethos of disagreement indicated that diverse legal methodologies were followed by various groups in order to arrive at such a conclusion. Each group argued from their distinctive theological and social perspectives. For Shāfīʿī the fundamental nature of the ṣalāḥ was not derived from arguments and justifications based on rationality, ideal practices, customary traditions or ancestral sanctifications. The primary

Mills, 1980), 164.
sources from which Shafi'i made such deductions were the Qur'an and the Sunnah of Prophet, the two pillars of his world view. He quoted the following verses as proof of the prescribed status of the ṣalāh: indeed the prayer (ṣalāh) had been ordained on those who believe at prescribed times (Q 4:103); and: People have not been commanded but to worship God with sincerity (Q 2:238). Thus, although all legal scholars agreed on the compulsory status of the ṣalāh, Shafi'i's conception of that status was based on a particular world view in which the Sunnah of the Prophet acted in conjunction with the Qur'an as the primary source. His concept of worship was in this regard a reflection of a world view in which the Qur'an and the Sunnah both acted as models of transcendence and ultimate reality. He employed ḥadīth of the Prophet which validated and confirmed the importance of the ṣalāh as indicated in these aforementioned verses. The Prophet was asked what the essence of the religious system of Islam was and replied that; “The performance of five prayers during the day and night.” Thus, Shafi'i's conception of worship as an obligation was induced by a world view in which the Sunnah of the Prophet acted in conjunction with and substantiated the message of the Qur'an. He therefore conceptualised

91 Shafi'i, Kitāb al-Umm, vol. 1, 68. The same verses are presented in the Risālah with additional verses, Q 2:40, 9:104 and 3:91 which demonstrated the importance of the ṣalāh as a duty analogous to paying the compulsory alms (zakāt) voluntary alms (ṣadaqa), and pilgrimage (hajj). See also the Risālah, 158.

92 I am referring here to the five obligatory prayers. All the Sunni legal schools are unanimous that only five prayers are compulsory on Muslims. All other prayers are categorized as non-obligatory. These include Sunnah or traditional prayers and supererogatory prayer.

93 Shafi'i, Kitāb al-Umm, vol. 1, 68.
the salāḥ as a ritual that was conceived by God and affirmed by the tradition of the Prophet.

The Mālikī and the Ḥanafī conception of worship was not the same as that of Shāfī‘ī’s mainly because they had different conception of the term Sunnah. Charles C Adams demonstrated in his article dealing with Abū Ḥanīfah that, in comparison to Shāfī‘ī, he was a scholar who promoted a certain degree of liberalism in the performance of Islamic rituals. Liberalism in the sense that his own tradition, rather than that of the Prophet, dominated and dictated the legal basis of ritual performances. Abū Ḥanīfah was believed to have stated: “It is not permissible for the one who gives a fatwa (legal decision) from my books to give the fatwa until he learns the ground on which I have said what I have said.”

This perception of tradition based on authority was demonstrated in earlier Ḥanafī legal texts such as the Kitāb al-Asl or the Mabsūt of Muhammed ibn al-Hassan al-Shaibanī (d.890), a pupil of Abū Ḥanīfah. Norman Calder remarked that these works contained minimal number of authority statements or hadīth of the Prophet. These texts however, underwent an organic growth caused by continued legal polemic between the various schools. Even after prophetic hadīth became the basic principle of juristic scholarship, it did not acquire authoritative status and was always subjected to interference of Ḥanafī exempla. Calder maintained therefore that authority in these Ḥanafī texts was continually projected back to the three primary lawyers of the Ḥanafī school namely, Abū Yūsuf, al-Shaibanī, and Abū Ḥanīfah, and seldom included the Prophet as

94 Ibid., 381.
This tradition of authoritative statements was also evident in the Māliki legal thought. Norman Calder noted further in his assessment of early Māliki legal texts such as the *Muwatta*, a revised version of Yahya b. Yahya al-Masmūdī (d.234), and the *Mudawwana* of Abd al-Salām b. Sa'īd al-Tānuki (d.230), that Mālik was the primary source in the authoritative justification of statements in these texts. Juristic dicta based on Mālik's statements outnumbered statements of Companions, and these in turn outnumbered prophetic statements. In the *Mudawwana*, Mālik presented the ultimate authority and later in the *Muwatta*, he assumed a penultimate position in the chain of transmitters back to ancient authority. What these legal methodologies demonstrate is that ritual performances were based on *Qurān* and the tradition of the respective school or religious leader in question. Ḥadīth and the *Sunnah* of the Prophet merely fulfilled a role of residual authority in cases where details were necessary or to provide authoritative justification for one school's tradition above that of the other.

This state of affairs prompted Shafi'i to revise his conception of the ultimate realm. The *Sunnah* in addition to the *Qurān* should both represent that realm- the *Qurān* as the word of God, and the *Sunnah* as related in Ḥadīth by the Prophet himself. It also constitute the blue print which enables a person to draw from its experience in order to arrange his life accordingly. Shafi'i's doctrine which elevates the authority of the *Sunnah* on par with the


96 Ibid., 23.
Qur’an, was illustrated in legal dicta dealing with the ṣalāḥ. Here, jurisprudence relied entirely on the Sunnah for information regarding the mode of the ṣalāḥ. This was because the Qur’an did not give a detailed description of the ṣalāḥ. The entire repertoire of the ṣalāḥ was derived from the Sunnah or practice of the Prophet. References made to the ṣalāḥ in the Qur’an are merely informative and served as basic framework for the Prophet to establish a fixed mode for performing the ṣalāḥ. John Burton however, confirmed that the Prophet, through his Sunnah, established the procedure on how the ṣalāḥ should be performed.97 In this regard Shafi’i’s conception of worship was induced by a particular world view and the performance of it was discerned from that world view.

The Sunnah provided information regarding the number of prayers to be performed, the number of cycles, raka‘āt of each ṣalāḥ, the manner of performing the various types of ṣalāḥs, and what should be recited in each stage in the ṣalāḥ.98 Through prophetic Sunnah, Shafi’i constructed a repertoire which expressed the transcendent ideals of his society. The repertoire he proposed was therefore unique in relation to the other legal scholars in that all the movements and invocations especially that of the niyyah, were based on ḥadīth of the Prophet and subsequently reflected the Sunnah. In this manner the performance of ṣalāḥ was a ritual in which the worshipper could experience the world view he envisaged. In the Geertzian sense, the ṣalāḥ or the fast were models for experiencing the ultimate reality.


We have seen that Shafi‘i’s conception of the ultimate real, his world view regarding the Sunnah, was shaped by the ethos of polemic and diversity. In this regard, the ṣalāh was also a reflection of that ethos because it was the ethos that shaped his conceptions of the ultimate real. Those who performed these rituals experienced a conception of that world view as realistic because it was a reflection of that ethos - the reality in which they lived. Rituals in the Shafi‘i sense was in this regard a fusion of two dimensions, the social structure of society - its ethos, and the Sunnah, the perceived world view. Through the meanings and conceptions induced by its performance, ritual performances became models of a transcendent order and also models for conceptually experiencing a relation with the Divine. In this context, rituals became symbolic representations of transcendence which reflected the social context and expressed the religious ideals of performers.

All Muslims were under the obligation to perform the ṣalāh. Authority in this case originated from a divine injunction which compelled Muslims to perform the ṣalāh irrespective of the moods and motivations such performances induced. Within the context of Shafi‘i’s conception of rituals, that authority was also realistically experienced within the ritual itself. The performance of the niyyah in the ṣalāh induced moods in which the worshipper conceptualised his experiences as realistic and “really real.” The authority for performing rituals was thus not only external and imposed, but also emanated from the performance of the niyyah and the ritual itself. It was this sense of authority, external by way of a scriptural command and innate by way of ritual gesture, that maintained the position of rituals as a fundamental religious institution in a changing society. External authority
does not guarantee the continuation of rituals as significant cultural patterns in Islam because that significance depend on whether such rituals reflect the social and religious ideals of a society. A performer of such a ritual conceptualised his experience as reality which further motivated him to extend that experience to other spheres of his life.

Shafi‘i’s doctrine stressed the ultimate nature of rituals and underlined the fact that authority was fundamental to the performance of rituals. Shafi‘i’s formalistic approach incorporated the idea of cosmic order—a conception in which all religious functions were substantiated by and formulated within the framework supplied by the Qur‘ān and the Sunnah. As models of the ultimate realm, rituals were conceptualised as institutions which restored and secured order in a milieu of legal chaos and social fragmentation.

The Structure of the Salāh

As I have indicated, the salāh consists of a number of raka‘āt cycles. All types of prayers have the same structure and are performed in the same manner but differ with regard to their legal status and the number of cycles. All Sunni jurists agreed that a cycle consisted of one standing posture (qiyyām), one bow (ruku‘), two prostrations (sujūd), and the final sitting posture (qaṣda). Specific invocations are recited in each of these movements. The performance of the salāh is also bound by certain conditions (shurūq) as well as various essential elements (farā‘id).

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100 Ibid., 44-56. passim.
Jurists differed on the details of the performances of these basic movements. Shāfi‘ī in relation to the other three scholars, proposed a distinct repertoire which makes his conception of the ṣalāḥ unique. This becomes apparent when considering the various ways in which the scholars justify the practices which constitute the ṣalāḥ. For example, Shāfi‘ī’s treatment of the recital of the first chapter (sūrah Fātiḥah) in the ṣalāḥ is interesting. According to Shāfi‘ī, the worshippers, in addition to the Imām, were under obligation to recite the chapter and insisted that it should be recited and articulated correctly.101 While Shāfi‘ī considered the recital obligatory (fard), Abū Ḥanīfah prohibited it and Ahmad b. Ḥanbal considered it preferable (mustahab) only in the silent prayers (e.g. zuhr, ʿasr). Mālik on the other hand, recommended it (mandūb) in the silent prayers, but did not prefer it in the loud prayers. Shāfi‘ī proclaimed on the basis of several traditions that “it is an obligation on the worshipper whether he is leading the prayer or following, that he should recite the sūrah Fātiḥah in every raka‘at.” He also insisted that when the worshipper pronounced one syllable of the chapter in terms of the Arabic semantics and phonetics incorrectly, such a person had to repeat the ṣalāḥ.102 This suggests that Shāfi‘ī considered the participation of the individual in the ritual process an essential and a fundamental issue. We shall see that this emphasis on participation was


102 Moulana Muhammed Ibrahim Ba‘-katha, Tuh-fatul Ikhwan, 45.
essential in configuring the social and cultural significance of religious symbols that are being investigated.

Shafī maintained further that a worshipper had to adhere to eight requirements before his ṣalāh could be considered correct. The first of these conditions was that a person had to be Muslim. There was therefore no compulsion on a non-Muslim after embracing Islam to perform the ṣalāh during his period of disbelief. Secondly, before any ṣalāh could be performed, the worshipper should be aware of the time of a particular ṣalāh. For example, a person who intends to perform the sunset ṣalāh (maghrib), should wait after the sun has set before he can commence with the ṣalāh. If, while performing the ṣalāh, doubt existed with regard to the time of the ṣalāh, such a ṣalāh was according to Shafī invalid. The third, fourth, fifth, and sixth conditions respectively referred to cleanliness of the body (from major and minor impurities), the clothes, and the place of performing the ṣalāh. In accordance with the seventh condition, the worshipper should face the qiblah while performing the ṣalāh. The final condition compelled worshippers to cover the private portions (awrah) of their bodies.  

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103 Ibid., 33-34.

104 Shafī, Kitāb al-Umm, vol.1, 70-71. Shafī based his ruling on the Qur’anic injunction in which God forgave the past sins of those who turned to Islam. He also employed a prophetic ruling in which the Prophet acted on this injunction. The hadith indicated that the Prophet did not order those who except Islam, to perform any ṣalāh they had missed during their absence.

105 For a detailed discussion on the conditions of ṣalāh, see Shafī, Kitāb al-Umm, vol. 1, 71-77 for the times of ṣalāh, 89-90 for conditions concerning the covering of private parts and 93-97 for facing the qiblah.
cultural context, these conditions contributed to the formalistic approach Shafi'i adopted in order to distinguish between culturally or religiously accepted performances and non-religious practices. These conditions rendered the ritual performance culturally significant. Within this reality the niyyah will be investigated in order to illustrate the dynamics of salāh in Shafi'i's doctrine.

**The Concept of Intention (niyyah) in the Salāh.**

In relation to the other legal scholars, Shafi'i was particularly sensitive about the principle of intention and considered it an important element in all religious observations. He argued that no religious act was valid without having a specific intention for performing that particular act. To give an indication of the importance of intention, Abû Ḥanîfah ruled that when a person forgot to recite his intention at the beginning of the salāh, it did not nullify his salāh. Such a person could recite it during the course of performing the salāh itself.\(^{106}\) Qazi Thanā Ullāh (d.1810), a leading Hanafi jurist of India, gave an indication of the liberal attitude of the Ḥanafi's towards this concept when he stated that, "the niyyah is another precondition of the salāh," but added that, "it is not necessary when making the niyyah to

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\(^{106}\) Charles C. Adams, "Abû Ḥanîfah," in *Islamic Law and Legal Theory*, 382. To give an example to demonstrate the Hanafi perspective of intention. Adams noted that Abu Hanifah did consider a declaration of the niyyah as part of the ritual of purification (wuḍū) as essential to its validity because intention was innately part of a particular act and its pronouncement was therefore not necessary to validate such an act.
specify the number of rak'āt to be made." The concept of intention was considered here as a precondition (shar') whereas Shāfi'i had a more rigid conception and considered it one of the essential elements (fard) of the ṣalāh. He issued the declaration that:

It is an obligation on a person performing the ṣalāh that he observe [the following] in every ṣalāh, cleanliness [of the body, clothes, and place], observe the prescribe times [of each ṣalāh], to face the qiblah [the Ka'ba in Mecca], to specify [the type of ṣalāh] by means of the niyyah, and to perform the takbirat al-ihrām. If one fails to observe any one of these principles, his ṣalāh will be invalid.

In Islamic jurisprudence there is a remarkable difference between a fundamental (fard) and a precondition (shar'). Shāfi'i's perspective of intention as a fundamental principle was also the view held by Mālik. Their perspectives suggested that its omission and altered position (not reciting it in its proper place at the beginning in the ṣalāh), rendered the ṣalāh invalid and had to be repeated. Abū Hanīfah's view which was also shared by Ahmad b. Ḥanbal, indicated that intention was a precondition (shar'), which meant that its omission and disposition did not rule the ṣalāh invalid. Their argument was that such a ṣalāh becomes spoiled (bāṭil). The concept of bāṭil also had different connotations in the Hanafi and Shāfi'i doctrine. In the

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108 The takbirat al-ihrām was considered by all the Sunni legal scholars as one of the fundamentals of the ṣalāh. This is the second compulsory act after the recital of the niyyah and includes the lifting of the hands up to the earlobes with the palms facing the qiblah while reciting the phrase, Allāh hu Akbur (God is the Greatest). See, Ba-kathah, Tuh-futul Ikhwaan, 43.

109 Shāfi'i, Kitāb al-Umm, vol.1, 99.
Hanafi tradition, it referred to "something becoming spoiled," but in the Shafi'ī tradition it meant "to become invalid" and therefore ineffective. According to al-Jaza'irī, the former implied that the act of worship was considered acceptable but that worshipper will receive less spiritual reward for his performance.\textsuperscript{110}

Shafi'i's agreement with Malik on this issue does not mean that they had similar conception or attached the same meanings to the concept. We have already seen that these two scholars had distinctive conceptions of law. This deduction becomes evident when considering that Shafi'i's motivation, compared to Malik's with regard to this ruling, is more detailed and comprehensive. Thus, although Shafi'i agreed with Malik's ruling that the niyyah was a farḍ, he developed a more rigid version of the principle and its observation in the salah. Thus, Shafi'i attached certain conditions to the niyyah whereas Malik's interest according to al-Jaza'irī, was confined to the principle whether it was observed or not.\textsuperscript{111} According to Shafi'i, there were four principles which constituted the essence of the niyyah. The first was the principle of specificity with which the worshipper indicated whether he was performing, a farḍ, Sunnah or nafl salah. The second principle specified that a worshipper should distinguish between the performance of the salah and other deeds (af'āl al-ukhrā). The third principle specified that the worshipper should distinguish between the types of salah he wished to perform, for example, the maghrib or fajr salah. The fourth principle proposed that the niyyah ought to be combined with the recital of the opening invocation

\textsuperscript{110} Al-Jaza'irī, Kitāb al-Fiqh, vol. 1, 210.

\textsuperscript{111} Ibid., 212.
(takbırat al-ihrām). Shāfi‘ī concluded that “if any of these principles are absent in the recital of the niyyah, the niyyah will be invalid (bāṭil) and [so also] the ṣalāh, because the niyyah is considered a fundamental of the ṣalāh.” \(^{112}\) Shafi‘ī argued further that a person who forgot to recite the niyyah at the beginning of the ṣalāh, receives no spiritual reward for that particular ṣalāh because he did not commence the act with a definite objective and intention. Echoing this sentiment Shafi‘ī declared that “if a person commenced with the ṣalāh, but failed to specify the ṣalāh with a specific intention, his ṣalāh is invalid even if he recited the intention afterwards because he entered the ṣalāh without specifying his objective.” \(^{113}\) This means that even when such a person, through the course of performing the ṣalāh, remembers and recites the niyyah, such a ṣalāh remains invalid because the worshipper did not commence with a definite objective. Therefore Shafi‘ī insisted that the niyyah should be coupled with the performance of the opening invocation (takbırat al-ihrām) at the beginning of the ṣalāh. \(^{114}\)

Fulfilling all the conditions specified by Shafi‘ī, the intention for the ṣalāh of zuhr will be as follows: I intend to perform the fundamental four cycle ṣalāh of zuhr facing the Ka‘ba behind the Imām for the sake of God. \(^{115}\) Here the worshipper specified the category of ṣalāh he intended to perform,

\(^{112}\) Ibid., 212-13.

\(^{113}\) Shafi‘ī, Kitāb al-Umm, vol. I, 100.

\(^{114}\) Ibid. vol. I, 99.

\(^{115}\) Ibid. vol. I, 41-44.
for example a *fard*. Muslims are compelled to perform five daily *ṣalāh* which includes, midday prayer (*zuhr*), afternoon prayer (*‘asr*), sunset prayers (*maghrib*), night prayer (*‘isha*), and the morning prayers (*fajr*). The performance of these five prayers are obligatory and restricted to specific times and number of cycles, whereas the *Sunnah* and *nafī* prayers are optional or recommended. An example is the *ṣalāh al-istisqāḥ* which is observed at times of drought. The *Sunnah* prayers were usually performed with the obligatory prayers as a tradition of the Prophet. The Prophet used to perform these *Sunnah* *ṣalāh* in units of either two, four, or six cycles. The second aspect in the *niyyah* is the number of cycles the worshipper intended to perform. In the case of the *fard* *ṣalāh*, Shāfi‘ī held that a person failing to stipulate the correct number of cycles in the *niyyah*, had to repeat that particular *ṣalāh*.\(^{116}\) The third component was the direction of the *qiblah*. Shāfi‘ī was adamant that the worshipper was under obligation to face the *qiblah* wherever he found himself and irrespective of the type of *ṣalāh* he was performing.\(^{117}\) The fourth aspect a worshipper had to indicate in his intention was whether he performed the *ṣalāh* as the *imām* leading the congregation, alone, or whether he followed the *imām*. Finally, the worshipper had to declare his ultimate objective— that he performed the *ṣalāh* only for the sake of God.

\(^{116}\) Ibid., vol. 1, 100.

\(^{117}\) Ibid., vol. 1, 93. One of the verses on which Shāfi‘ī based his ruling was the following: And God said to him [Muhammed] where ever you travel, turn your face towards the holy mosque and where ever you may reside, turn your faces towards the holy mosque.
A Conceptual Evaluation of the *Niyyah*

Having presented Shafi'i's juristic position towards the *niyyah*, the task is now to have a look at the concept in terms of its social and cultural significance. The two questions that need to be answered here are the following: in what way did Shafi'i's conception of the *niyyah* reflect the prevailing social situation and world view he envisaged; and what was the social function and cultural implication of the *niyyah* as a concept. The *niyyah* was a defining element which enabled a person to state the precise nature of his functions or performance. The worshipper performed the *salāh* with certainty of what was expected of him and did so with a distinct and clear motive and objective. He therefore initiated the performance with a clear and defined aim. The *niyyah* was also the criterion with which the worshipper determined the religious nature of his performance. When he declared, "for the sake of God", he distinguished his performance from "other" or non-religious behaviour patterns and dedicated his performance to be religiously motivated. Thus, the *niyyah* provided a sense of purpose and order to the performance. One may suggest here that the *niyyah* fused the metaphysical with the physical. What the worshipper intended was but a notion or an idea, a conceptual category. The performance itself, the physical category, was rendered purposeful by the verbal expression of the *niyyah*. Shafi'i's insistence that performances should be accompanied by a verbal intention, expressed his conception that not all acts were religious acts. Thus, Shafi'i considered the expression of an intention essential in any performance because the religiosity of that performance depended on that
expression.

This discussion of Shafi'i's conception of intention demonstrates that he idealised a formalistic approach to the performance of the šalāh. I agree that scholars such as Abū Ḥanīfah, Mālik and Ahmad b. Ḥanbal also conceptualised a sense of purpose within the context of their legal thought. However, in relation to them, Shafi'i, in response to the ethos of polemic, seemed to envisage a greater degree of formalism in the observation of rituals. He insisted on formality in the sense that every ritual should conform to a particular structure and initiated with a clear intention and purpose.

Shafi'i's strict application of the niyyah implied that there was a need for society to be objective and goal orientated. People should at all times be aware and conscious of their aims and objectives of their life patterns and should always initiate their functions with a definite and structured plan. It also indicated to the need of society to distinguish between religious and secular behaviour patterns. The function of the niyyah as a symbol was twofold. Its religious function pointed to its representation and a model of the ultimate realm or world view of society, and its social function suggested its regulation of the ethos of society.

As a model for conceptualising the ultimate reality, the niyyah was an element which facilitated that conception. It formalised the performance of the šalāh as an act motivated by the ultimate reality. The performance was not just any act but rather one done with a clear objective and a structured plan. The expression of the niyyah induced that sense of order and purpose. For Shafi'i, that purpose should always be religious, "for the sake of God." Shafi'i's argument that no religious observation is valid without any particular
niyyah, meant that by having definite motives served as criteria which enabled a person to distinguish between acts of religiosity and non-religious acts. His doctrine which formulised religious principles and observations could therefore be categorised as a measure he introduced to counter the rationalisation of religious performances. As I have mentioned before, the Mu'tazilites and the Kharijites were two groups who had strong rationalists inclination and although they were regarded as minor groups in relation to the Sunni order, their views had an impact on the development of Islamic jurisprudence. Their emphasis on the logical and rational evaluation of Islamic rituals meant that any act of good nature could be accepted as religious. Shafi'i in particular, was highly critical of their views and it is his doctrine of the niyyah which in my opinion expressed an opposing view to the rationality of Islamic rituals. Shafi'i's conception of a “good” act was not only determined by a majority acceptance of it, but by the fact whether such an act was done in accordance with a distinctive structure. That structure required that the niyyah should be pronounced before the worshipper commenced with the salah. Shafi'i subsequently insisted that the worshipper should clarify and specify whatever he intended to do in the performance.

Some of Shafi'i's contemporaries argued that every good deed was worthy of spiritual reward and therefore qualified as a religious act. However, for Shafi'i, the religiosity of a deed depended on whether it was done in accordance with a formal structure. The fact that such a person experienced conceptions of the ultimate real, does not mean that his visit to the Canyon (referring to Geertz's analogy) was a religious act. In terms of Shafi'i's perception of the niyyah, such acts do not qualify as religious acts and are
considered non-religious and therefore void of any spirituality. Shafi'i's insistence on formality was also demonstrated in the act of ritual purification (wudu). He held that a person who forgot to recite his intention when beginning the wudu, had to repeat the it. This perception was in opposition to the view held by Abū Ḥanīfah who claimed that such a wudu was valid because to have an intention was not an obligation, but a recommended Sunnah. Shafi'i also differed with Mālik on this issue even though both considered the niyyah compulsory. Mālik suggested that the niyyah was compulsory, but added that it was not necessary to utter it when starting the wudu. He therefore held that a person can, during the course of the ritual, utter his niyyah. Shafi'i however, was adamant that the uttering of the niyyah should coincide with the washing of the first limb otherwise the person has to repeat the purification process.\(^{118}\)

To bring the rationalists approach into perspective here, Schacht maintained that Shafi'i's opposition to the Mu'tazilites was because they promoted the interpretation of the Qur'an without much consideration for the ḥadīth of the Prophet. Interpretation of Qur'anic injunctions was guided on the basis of reason which they considered a source of religious knowledge. Reflecting on the argument that every good deed was religious and worthy of spiritual reward, the Mu'tazilites substantiate it with their doctrine of divine justice. According to their law of compensation, reason determined that any believing person or even animal who endured undeserved pain and suffering, will be compensated in the hereafter. The conception of the inseparability of God and justice, was central in their doctrine with which they

\(^{118}\) Al-Jaẓā'i', *Kitāb al-Fiqh*, 59.
proposed that every good act, be it religious or not, will be rewarded because God cannot be unjust. Goldziher sketched their views on religious ethics and demonstrated the incompatibility of their views with that of the Sunnis.\footnote{Ihnaz Goldziher. \textit{Introduction to Islamic Theology and Law}, 90-91.} The Sunni viewpoint, especially that of Abū Ḥanīfah, on what constitutes a good deed or in this context, a religious act, was based on that which God commanded and that which He prohibited. In the Ḥanafi tradition, divine will was the yardstick which determined the religiosity of the ᵇai'ah or any ritual for that matter. God commanded people to perform the ᵇai'ah, and its performance, even without an intention, was good and worthy of reward. The Muṭtazilites, on the other hand, developed that argument and insisted that reason dictated the religiosity of deeds and it was therefore the instrument for ethical judgments. Believing in the inherent status of good and bad deeds, they argued that a deed was good not because God sanctioned it, but rather that God sanctioned it because it was good.

Shāfi‘i’s perception of Islamic rituals was opposed to these views. He did not consider reason as a source of religious knowledge but rather, as Schacht has pointed out, as a legal principle which had to be exercised in strict relation to the Qur’ān and the Sunnah. His conception of the niyyah dictated that the religiosity of a deed depended on the intention of person. He agreed with the general Sunni perspective that deeds were good or bad because God sanctioned or prohibited them. But the instrument he used to determine the religiosity of deeds, was the niyyah. Thus, his agreement that all deeds are good because God sanctioned them, suggested that such deeds are not necessarily religious and worthy of spiritual rewards because
the niyyah was necessary to render such deeds religious and spiritually fulfilling.

**Niyah as World View Concept**

The niyyah also enhanced the world view conceptions of Shaf'i. For Shaf'i, the rational evaluation of a ritual or an act, was unacceptable because the Sunnah which he considered as the explanation of the Qur'ān was ignored and substituted in favor of reason in such an evaluation. James A Beckford's study of the relation between religion and rationality gives an indication what the reasons were for Shaf'i's vehement opposition against the rationalisation of religious institutions. According to Beckford, religion and rationality can never function in conjunction because the two are "mutually exclusive." This means that religion or that which represents it, does not have any "consequence for the social integration or moral direction of society." In terms of Shaf'i's understanding, this very modern assessment meant that the emphasis that was placed on rational evaluation of religious observations, resulted in the marginalisation of prophetic hadīth which no longer constituted a primary source in the legal process. Shaf'i's world view suggested that every aspect of a person's life should be regulated by the Qur'ān and the Sunnah. These two sources constituted the foundation on which every religious observation had to be constructed and formalized. His strict adherence to these two sources suggested that there was no need to go beyond these two sources for guidance because the Qur'ān was

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sufficiently explained by the Sunnah. The niyyah as a model for experiencing the world view, was a symbol which fused the physical performance with that world view conception. With the expression of the niyyah the worshipper suppressed his own will and desires and acknowledged therein that his life on earth was not determined and regulated by logical and rational processes, but by a transcendent God who was omnipresent and omnipotent. Shafi'i's world view was therefore in opposition to the doctrine of the Mutazilites who proposed that good deeds or culturally accepted patterns of behaviour were ontologically prior to God's vindication and consecration of them. Shafi'i's suggestion was that deeds were religious or culturally acceptable not only because they were sanctioned by the Qur'an, but also because such a deed was done in accordance with a specific pattern or form supplied by the Sunnah.

The formalism of Shafi'i's ideas of the salah became a model for society to structure their lives in accordance therewith. In this sense their behaviours and functions became an ordered system and a reflection of the Qur'an and the Sunnah. The object of Shafi'i doctrine was to stress both the form of religious actions and its contents by structuring theology as a specific and systematic science. To be of assistance to someone is a good social trait, but to help someone in terms of the constitution laid down by God and His Prophet, was considered by Shafi'i not only a good social trait, but also an act of religiosity. In the same manner, to perform the wudu by washing all the necessary body parts was fundamental according to Shafi'i but equally important and absolute essential was that the performer should wash such
body parts in a specific chronological order (taṣīb). Everything a person does should be done with specific motives and a structured plan. In this tradition a person should always ask the question; "why am I doing this?" The interdependent relationship that existed between the niyyah and the act ensured that people's actions conformed to the ultimate ideals expressed in their niyyah. As a symbol it enabled society to realise that life was a ordered process and that it should be led in accordance with a specific model. It is obvious that Shāfi‘ī's conception of the niyyah was a reflection of his ideal that the life of a Muslim be regulated by the Sunnah of the Prophet. To follow the Sunnah, was to follow God. This meant that the Sunnah constituted the ideal model that reflected the ultimate reality expressed in the Qur'ān. Through the niyyah that world view was imposed on the ethos of people where they conceptualised their actions as an ordered reflection of and modeled on that ultimate reality.

The Ritual of Fasting (ṣawm)

Fasting as a Fundamental Practice

Shāfi‘ī further demonstrated this sense of reality in the ritual of fasting during the month of Ramaḍān. Shāfi‘ī declared the niyyah as one of the pillars of the compulsory fast during Ramaḍān. According to al-Jaza‘īrī, the Mālikī's also considered the niyyah a fundamental element of the fast, but added that there were differences of opinion on this issue. This difference suggested that the Mālikī's together with the Ḥanbalīs and the Ḥanafīs,

121 Shāfi‘ī considered taṣīb as one of the fundamentals of the wuḍū. See.
considered the *niyyah* a precondition rather than a fundamental element of the fast.\(^\text{122}\) Within this context the omission or displaced position of the *niyyah* did not necessarily invalidate the fast because the essence of fasting was to abstain from any activity which might nullify it. This difference of opinion between the scholars demonstrates once again Shafi‘i’s unique conception of an Islamic ritual. This suggested that in the Shafi‘i tradition, a person’s fast was not acceptable without a proper intention because such a person omitted a fundamental element of the ritual. In the tradition of Shafi‘i’s opposition, such a person could make his *niyyah* during the course of the fasting and did not have to repeat such a fast even if he entirely forgot to utter a specific *niyyah*. The reason for such a ruling was that Mālik, Abū Ḥanīfah and Ahmad b. Ḥanbal considered the essence of fasting as the abstinence from any activity such as eating, drinking and sexual activity. The *niyyah* in terms of the Ḥanbali’s and the Ḥanafi’s was not a separate institution but one which was incorporated in the act of fasting. However in the Shafi‘i tradition, the *niyyah* was considered an independent principle which determined the validity of fasting.\(^\text{123}\)

For Shafi‘i, the ritual of fasting was an ordered ritual process in which a person had to consciously specify (*tamyīz*) between the ritual act of fasting and any other act of similar nature. Without this principle of specificity, the fast was considered incorrect. In this manner Shafi‘i maintained that the fasting of those who lost their senses (*majnūn*), an

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\(^{122}\) Al-Jazā’irī, *Kitāb al-Fiqh*, vol. 1, 543.

\(^{123}\) Ibid., 534.
unconscious person or a drunkard, was not valid because such persons could not consciously and rationally account for and specify their behaviours.\textsuperscript{124} Šafī‘ī based this ruling on a hadīth of the Prophet in which he declared:

\begin{quote}
No obligation is imposed on three: the one asleep, until he awakes; the child, until he comes of age; and the lunatic, until he recovers.\textsuperscript{125}
\end{quote}

According to Šafī‘ī, divine legislation concerning fasting, pilgrimage, ṣalāh and alms giving, are referred to in this tradition of the Prophet in which those not in control of their senses, are excluded from the obligation. Šafī‘ī further held that for each day of the month of Ramaḍān a niyyah should be made. Such a niyyah had to be made the night before the day of fasting commenced. Demonstrating the importance of the niyyah, Šafī‘ī insisted that a person who forgot to make his niyyah during the night, should continue with the fasting and should recite the niyyah before midday (zawāţ).

Šafī‘ī drew an analogy between the niyyah of fasting and ṣalāh to demonstrate its fundamentality and essence as a principle which facilitated and determined the religiosity of the two rituals and the basic structure to which they had to conform.\textsuperscript{126}

What this discussion so far demonstrates is that although the niyyah of fasting was not specifically laid down by God in the Qurān, the fact that the

\textsuperscript{124} Ibid., 544.

\textsuperscript{125} See, Šafī‘ī, Risūlah, 99.

\textsuperscript{126} Šafī‘ī, Kitāb al-Umm, vol 2, 95.
Prophet established it through his Sunnah by means of hadith, was sufficient cause for Shafi'i to include it as a fundamental principle of fasting. For Shafi'i it was not problematic that the Qur'an was silent on the issue of the niyyah because the Sunnah provided the justification for its inclusion as a fundamental principle of fasting. He therefore justified his ruling on the niyyah with the statement that:

Certain traditions have come from the Apostle on these matters[referring to the rituals] for which there was no specific text in the Qur'an, but the Apostle has specified on God's behalf the meaning intended by Him. . .

The Niyyah and Fasting.

Shafi'i again demonstrated that the ritual of fasting had to conform to a specific pattern. That pattern has been established by the Sunnah of the Prophet in which the niyyah was the criterion which specified the religiosity of fasting. Although God has covered the general principles of obligation and the prescribed time of fasting, the ritual in terms of Shafi'i's understanding was more that just abstaining from certain activities for a prescribed period. It was a ritual in which a person consciously and conceptually sought to realise the world view through the recital of the niyyah and following a specific model. The person had to be continuously objective in his fasting for it had a specific purpose and a particular structure. Fasting

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127 Shafi'i, Risalah, 149.

128 Shafi'i cited Q2:179-80 which indicated that fasting was prescribed and Q2:181 which indicated the period when fasting should be observed. See , Risalah, 149.
was more than just a randomly adopted hunger strike to attain public sympathy or a means to force oppressive authorities to alter their policies. For Shi'ī it had to be a structured and ordered process whereby the worshipper professed his ultimate objective for each day of fasting. Without that ultimate objective his fasting was invalid and considered as a period in which the worshipper subjected himself to hunger for which he would receive no spiritual value.

Shi'ī's particular choice of conception was determined by the ethos of disagreement in which it was observed with diverse religious motives. The Shi'ītes and the Khārijites observed this ritual but applied it in accordance with their ideological and conceptual expectations and values. For example, in the tradition of the Khārijites, fasting, together with the other four other pillars of Islam, was interpreted in terms of a communal framework. The center of that framework was the Khārijite community which acted as the ultimate authority of religious practices. The acceptance of any religious practice depended on affiliation to that community which, as a divinely ordained institution, defined the meaning of religious practices and was deemed capable of bestowing salvation on those who became members of it. ¹²⁹

The historical evolution of the concept of charisma in the various sects and legal schools in Islam discussed by Hamid Dabashi, also revealed that within the Shi'īte context, the community together with the Imam, constituted

the basis of authority. Thus, meaning of religious practices and salvation were received through affiliation to the Shi‘ite community and adherence to the imām.¹³⁰ In the Mu‘tazilite tradition, God was perceived as the sole representative of authority with no references made to charismatic prophetic figures. Every religious act was rationally understood in terms of the ultimate authority of God. On the other hand, the Sunnis community represented by the four major schools of law, discarded the emphasis which was centered on a charismatic community and substituted it for a charismatic period. According to Dabashi, Islamic legalism in the Sunni context became the “institutionalisation of Muhammed’s judicial authority and not a charismatic authority in itself.”¹³¹ Thus, salvation in terms of the Sunni scholars was received through participation and response to such institutions which the Prophet established during his lifetime. However, judged from the distinction Schacht made between the responses of the Sunni scholars (referring to the emphasis of the Mālikī’s and the Ḥanafīs on local tradition and customs in Islamic legalism), this conception was the ideal rather than reality. Shāfi‘ī was the most consistent in discarded living tradition as the basis of ritual observations such as fasting in favor of the tradition of the Prophet in which every observation was based on his teachings and statements. Thus, in this context Shāfi‘ī was the exception because he followed the most consistent and systematic legal process to realise this charismatic authority of the Prophet through an institution such as the hadīth. Motivated by this

¹³⁰ Ibid., 142-44. passim.

¹³¹ Ibid., 142.
conception, Šafī‘ī established a unique form of fasting which, as a ritual, was based solely on the tradition of the Prophet as charismatic authority.

My suggestion is that the meaning of Šafī‘ī's distinctive conception of fasting should be located within the above mentioned socio-historical context. The advent of the Prophet brought about the re-establishment of fasting as a pillar of İslām. Fasting was no longer an isolated and informal religious practice observed for personal spiritual fulfillment, but rather a fundamental and structured practice defined by a specific niyyah. For that reason the ritual of fasting was redefined with regard to specific time and duration. Although this ritual was restructured and redefined in accordance with the new Islamic constitution, its newly acquired form (under the Mālikī's and Ḥanafī's) was in terms of Šafī‘ī understanding, not distinctive enough from the form of fasting practiced by the ancient religious systems and sectarian groups within İslām. His insistence on the niyyah and a particular form of fasting were in this regard criteria which could establish a form of fasting unique within this socio-historical context. I acknowledge that the other Sunni scholars also regarded the niyyah an important principle within their respective doctrines, but in relation to Šafī‘ī, their perception of it as a precondition rather than an obligation, did not distinctively locate it as a fundamental criterion for determining the religiosity of fasting. Thus, as in the case of the ālaḥ, the niyyah of fasting was based on the tradition of the Prophet rather than the living tradition of the school or community. It was an instrument which established fasting as a ultimately motivated ritual and distinguished it from rationally and non-religiously motivated acts. In this
regard the ritual of fasting was for Shāfi‘ī the institutionalisation of a particular world view in which the Prophet through his Sunnah acted as judicial and ultimate authority.
Conclusion

I have used two examples to demonstrate Shafi'i’s distinctive formalistic approach to the performance of Islamic rituals. As a symbol, the *niyyah* was pivotal in a process in which Shafi'i sought to distinguish between religious and non-religious acts. The *niyyah* was also a symbol with which Shafi'i based rituals on the tradition of the Prophet as authority rather than the living traditions of legal schools. The meanings of *salah* and fasting was determined by the charismatic authority of the Prophet which facilitated the induction of conceptions of the ultimate reality- the world view. The ethos of disagreement influenced and shaped this conception of Shafi'i in which he sought to distinguish between acts based on local and school tradition. As a product of a social context, such rituals coupled with a specific *niyyah*, reflected a world view in which the Prophet constituted the central charismatic authority. In this regard the fundamentality of the *niyyah* was not established by the *Qur’ān*, but through the *Sunnah* of Prophet. The *niyyah* became the criteria whereby Shafi'i judged and determined the religiosity of every ritual performance in Islam. This approach was demonstrative of the strict systematic program Shafi'i adhered to when he had recourse to the legal sources.

However, Shafi'i’s interest was not only confined to the external form of Islamic rituals, but also included an interest in its inner significance. That inner significance was the conceptual value of religious behaviour. In the Shafi'i context, the conceptual value of religious behaviour indicated and signified the
Qur'ān and the Sunnah, the two sources which constituted Shāfī‘ī’s worldview.

Geertz’s model of religion allowed me to demonstrate this cultural value in Shāfī‘ī’s formal approach to religious behaviour. That approach was the consequence of an ethos of disagreement and polemic-an ethos in which Shāfī‘ī became disillusioned by what he considered to be the continued decentralisation of the Sunnah as a primary legal source. For Shāfī‘ī, religious rituals had to conform to a specific formula and repertoire based on the Sunnah. Otherwise they were non-religious. Within this chaotic legal scenario, Shāfī‘ī believed that there was a need for order. Shāfī‘ī’s response to that scenario was to systematise the process of jurisprudence and the formulisation of ritual performances.

Shāfī‘ī’s approach to the niyyah as a formal requirement suggested an unexpected consequence in understanding Islamic legal thought. His insistence that niyyah be part of a fixed repertoire of ṣalāh and fasting clearly distinguished his approach from his adversaries. From the Mu‘tazilites to the Hanafis, the other Islamic schools regarded religion in terms of their rational or implicit foundations. Shāfī‘ī located the religiosity of an act only in so far as it conformed to a particular model. In this sense, unwittingly of course, he anticipated the secular tendency of modernity which made a sharp distinction between religious and non-religious acts. The secularism of Shāfī‘ī’s religious act is not a paradox or an inherent contradiction in terms, but the product of a consistent application of formal Islamic legal theory.

Within a cultural context, Shāfī‘ī’s ideas of rituals were related to a specific social context. This showed that his ideas were shaped by the world
view which was subsequently reinforced and reflected in the ethos of society. This indicated that Shafī'ī ideas were not only legally distinctive in relation to other legal scholars, but as conceptual categories, they suggested that religion included both a social and cultural reality. Shafī'ī's emphasis on the hadīth of the Prophet as a primary source contributed immensely to the distinctive character of his cultural project. The nature of his doctrine consisted of a social perspective as well as a religious perspective. The emphasis was on the social function of religion in which religion was conceptualised as a model for experiencing the ultimate reality. As a model for experiencing the ultimate reality, rituals effected the world view (religious component) onto the ethos (the social component). In other words, Shafī'ī's conceptions and ideas of rituals were shaped by his world view in which al Muslims live under the constitution of the Qur'ān and the Sunnah. For Shafī'ī, the ultimate reality or the epitome of social and religious order could only be attained through rituals which reinforce the Sunnah as related by the Prophet himself in the hadīth. What Shafī'ī proposed was a ritual in which the moods induced conceptions of the world view of Sunnah. In saying that religious symbols remain religious symbols irrespective of the moods they induced, Asad failed to give an account of the function of religion as such. The functionality of symbols Geertz emphasised presented religion as a dynamic system which motivated adherents to experience religion in other dimensions of their lives. The view of Asad directed the focus on the ontological status of religious symbols and thereby excluded their conceptual and functional value.

The argument of this thesis is that from a cultural perspective, religion emerges as a dynamic system that enables it to coexist with such modern
trends as secularism or modernity. Muslims need to realise that although their social context changes continually, Islam is able to accommodate such changes and enable them to cope with the trauma and tension that occur between their changed social values and their religious expectation. Religion should therefore be seen as a system that constitutes and incorporates both their social values and their religious or ultimate expectations. Within this conceptual realm, religion could function meaningfully and motivate people to become prone or liable to religiosity.

Another point which I have hoped to highlight was that the social context determines and shapes the meanings of symbols and rituals. This means that religion, or the ritual which reflects it, can have diverse meanings within different cultural or religious types and therefore continue to function as a meaningful system. My observation is therefore that a cultural evaluation of rituals in which social and ultimate values interact, will ensure that they continue to be relevant and important amongst the different groups, not only because God sanctioned it in the Qur'an or that the Prophet emphasised it. In addition to the latter, ritual as a cultural trait reflects the social values of people and may be a model for their ethos. I believe therefore that the answer to the dilemma faced by religion in the modern era should not be looked for in scripture or theology per se, but that the conceptual value of religion should be recognised where it functions as a cultural component. Consequently, symbols such as the niyyah reflect the ultimate reality and at the same time facilitate the reconstruction of lives in accordance with that reality.
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