CHAPTER FOUR

THE QUR’ĀN IN SHĀFI‘Ī’S RISĀLA

I. Introduction

If it were a condition of being a mujtahid that one know every detail of the Qur’ān and the Sunna, says Abū Bakr al-Jaṣṣāṣ, then no one could possibly claim to be qualified to engage in ijtihād. Fortunately, we learn from Fakhr al-Dīn al-Rāzī, a mujtahid only needs to know about 500 verses of the Qur’ān, these constituting that part of the Qur’ān that is relevant to legal rulings.

The Qur’ān is not for the most part legislative in nature, and yet its role in the early history of Islamic law has received increasing attention from scholars in recent years. Joseph Schacht held that although the Qur’ānic element in Islamic law could be taken for granted, assertions about the role of the Qur’ān in the very “earliest period” would require qualification. Schacht’s well-known claim that the earliest Islamic law evolved out of “popular and administrative practice under the Umayyads,” is the main qualification that he introduces, noting that such practice “often diverged from the intentions and even the explicit wording of the Koran” and concluding that “apart from the most elementary rules, norms derived from the Koran were introduced into Muhammadan law almost invariably at a secondary stage.” More recently, Patricia Crone has sought to survey a growing body of scholarship that focuses on legal passages in the Qur’ān whose meaning seems to have eluded early Muslim scholars.

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1 Fisūl, IV, 274.
2 Mahṣūl, II, 497. Coulson and Hallaq identify 500–600 verses as legislatively relevant and Coulson holds further that only about 80 verses are legal in a narrow sense and that few treat a given legal topic comprehensively. Coulson, History, 12; Hallaq, Legal Theories, 10. The standard Egyptian Qur’ān that I use has 6,236 verses.
3 Origins, 2.
4 Origins, 224. Motzki has made powerful criticisms of Schacht’s conclusions on this score and so it is probably best not to overstate the alleged absence of the Qur’ān in early Islamic legal thought. Origins of Islamic Jurisprudence, 115–117, 152–157.
5 Patricia Crone, “Two Legal Problems;” see also (among the studies cited as examples by Crone), D. Powers, Studies in Qur’ān and Hadith (Berkeley: University of California
Crone concludes that the early community’s exegetical difficulties in regard to such passages suggests that the Qurʾān was not continuously relevant, in the early period, to the elaboration of legal norms. It follows from this, she claims, that there is a gap in the reception of the Qurʾān that is reflected in the preserved records of some early legal debates. From these conclusions she hypothesizes a time-frame for codification of the Qurʾān, dating the conclusion of this process to the period immediately after the conquests or, roughly, to the decades just before 700 or so. Marion Katz’s recent study on the formation of the Islamic law of purity confirms in a general way some of Crone’s conclusions and suggests some additional details about the role of the Qurʾān in early Islamic law. She argues that Qurʾānic passages relevant to ritual purity were scrutinized intensely, but only after debates about the rules of ritual purity had already begun.

It seems odd that what was viewed as the primary evidence of the divinity’s recent and spectacular intervention in human history, the Qurʾān, should appear marginal to the elaboration of religiously-inspired norms. However, the relatively rapid spread of the earliest Muslims out of Arabia may well have outpaced a Qurʾān that was characterized by enormous linguistic and literary complexity, and most likely preserved as an uneasy and irregular mix of written and oral materials. Even Muslim tradition fixes the definitive compilation or collection of the Qurʾān after the conquests are well under way, at some time around 650, during the caliphate of ʿUthmān (r. 644–656). It thus seems unlikely that the Qurʾān could have spread, in its entirety,